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Equal Opportunity in Employment and Services

Minutes from the December 19, 2008 Meeting of the Pesticide Control Board

The Pesticide Control Board (PCB) held a meeting in the 6th Floor Conference Room at the State Capitol and at NDSU via video conference on December 19, 2008. The meeting was called to order by Agriculture Commissioner Roger Johnson at 1:00 p.m.

Members present were: Roger Johnson, Jim Gray, Dave Phillips, Angela Keller, Glen Wharam (aerial app.), Brian Rau (aerial app.), Gary Knudson, Andrew Thostenson, Duane Hauck, Tim Fowler (sitting in for Ken Grafton), and Greg Troftgruben (aerial app.).

Approval of Minutes

Johnson made a motion to accept the minutes from the PCB meeting from September of 2008. Motion was seconded by Hauck. Motion carried.

AG Opinion on Inactive Certification and RUP Sales to Non-Residents

The Board discussion a recent Attorney General's informal opinion on inactive commercial certifications and RUP sales to non-residents certified in their home state. Both topics were raised as issues at that September 2008 PCB meeting. In an email to Ken Junkert, Assistant Attorney General Charles Carvell stated that both practices are illegal.

It has been a long-standing practice to designate commercially certified applicators as "inactive" if those applicators lose their financial responsibility through changes in employment. Thostenson stressed that some people want to retain an "inactive" card to prove to potential employers that they have completed all competency requirements for commercial certification. Some applicators who lack proof of financial responsibility also want to purchase and use Restricted Use Pesticides (RUPs) for their own use. NDDA enforcement staff reiterated many of the concerns that they raised at the September meeting.

The Board agreed that inactive certifications must no longer be issued. Thostenson stated that there are 175 inactive applicators in ND, and 53 of them are coming up for renewal in 2009. The question was raised, "What do we do with these people?"

Gray stated that the issue pushes the need for a separate commercial applicator certification and license. A certification card could show that an applicator is competent, sat through the classes,

and passed the test to be an applicator. This way, people that are between jobs, or a student, etc. can show a potential employer that they are certified. However, a license would be required to apply pesticides, and a license would be issued when the person shows proof of financial responsibility.

Financial responsibility was also a topic of discussion due to the issue of inactive applicators. Other states also require \$100,000 for insurance. The aerial applicators present at the meeting stated that they don't really need financial responsibility because they are already covered above and beyond what is required. Another question was brought up, "Does financial responsibility keep the riff-raff out?" It was a general consensus that general liability insurance is not that much of an expense for people, it is part of the job, and it's professional. It was also decided that we would wait for the next interim to change financial responsibility, if needed.

It was decided that a letter needed to be sent to the inactive certificate holders stating that we cannot continue this practice. Johnson moved that Thostenson communicate with all holders of inactive certificates that we have an AG interpretation that the practice is illegal. Those applicators may be given a private certification if they request it. Or, information on the "inactive" commercial applicators will be kept in a database, and if the applicator provides financial responsibility, NDSU will then issue a commercial certification. Hauck second the motion. Motion carried.

The Board then discussed the AG informal opinion that persons purchasing RUPs must hold a North Dakota certification. This is contrary to the practice of some North Dakota dealers selling RUPs to citizens of neighboring states as long as the customer holds a certification in their home state. The Board voiced support for a mechanism to allow for those customers to buy RUPs in North Dakota with an out-of-state certification, provided that the neighboring state's certification program is comparable to North Dakota's. However, the Board wanted a person to hold a North Dakota certification to apply the pesticide in the state. Thostenson stated that North Dakota recognizes the equivalency of the certification programs in neighboring states. The only concern is that SD and MN do not have fumigation requirements for private applicators.

Proposed Changes to N.D.C.C. 4-35

The Board discussed proposed changes to N.D.C.C. 4-35 this upcoming legislative session. It is too late to be an agency bill, meaning that we would need to find a legislative sponsor.

The Board agreed that we only want to change what we absolutely have to and need to. The Board also supported changes to make the law easier to read and comprehend. The Board reviewed the proposed changes and concurred with them.

For substantive changes, the Board agreed to add language that would allow the state to implement the new federal bulk container/containment regulations. The Board also supported changes to the open records provisions to N.D.C.C. 4-35 to make it clear that application and sales records are closed records, while allowing for the release of limited information in the event of a medical emergency.

Gray asked if the Board wanted to amend the law to improve overall flow, but the Board agreed to wait for the interim to make such changes.

Hauck moved to adjourn the meeting and Johnson seconded. Motion passed.