



Pesticide and

Noxious Weed Newsletter

Summer 2009

Nebraska Department of Agriculture

Vol. 25

Noteworthy Pesticide Issues

U.S. District Court of Appeals Vacates EPA Rule on NPDES Permits for Aquatic Pesticides

In 2007, the U.S. EPA issued a final rule that stated pesticides applied to, over, or near water (aquatic pesticides) were exempt from the permit requirements of the Clean Water Act. On January 7, 2009, the U.S. 6th Circuit Court of Appeals issued a decision (The National Cotton Council, et al. vs. the U.S. EPA) that “vacated” this rule, effectively requiring any application of any pesticide that is applied to, over, or near water to obtain a NPDES permit prior to the application. The acronym NPDES stands for National Pollution Discharge Elimination System. This is the type of permit typically issued to waste water treatment plants and industries that release treated water to streams, rivers, and oceans (otherwise known as “point source” releases or discharges).

On April 9th, EPA petitioned the Court to stay the decision for a two-year period, during which time they would write a national rule that provided authority to the states to issue NPDES permits for aquatic pesticides. At the same time, the National Cotton Council and other industry litigants petitioned the Court asking for a rehearing before the full court (24 judges). As of this writing, the Court is considering both requests, and must decide on the request for the rehearing before they consider the stay. By the time you read this, the Court will have likely made its decision. In the worst case scenario, the Court will deny both the rehearing and stay requests, and their decision will stand. Nationwide, this will force thousands of pesticide applicators to obtain hundreds of thousands of NPDES permits for pesticide applications.

There is some good news for Nebraska pesticide applicators,

however. On March 31st, in an effort to avoid the overwhelming task of issuing thousands of NPDES permits for pesticide applications, the Nebraska Department of Environmental Quality (NDEQ) was approved to implement a state regulation that allows a NPDES permit to be “issued” for all pesticide applications without the applicator actually being required to apply for the permit. The regulation has not yet been signed or enacted by the Governor, because NDEQ believes it makes sense to wait to see whether the U.S. District Court decision actually stands. If the Court decision stands, NDEQ will enact this new rule, and pesticide applications can proceed as usual, so long as the applicators of the pesticides follow all label directions, keep records of the applications for three years, and report any unexpected consequences of the use to NDEQ.

Regardless of the outcome of the court ruling, more information will be distributed from the Nebraska Department of Agriculture (NDA), NDEQ, and agricultural groups to inform pesticide applicators of new developments and requirements.

Recent Cancellations Involving Furadan Insecticide

On May 11, 2009, the EPA announced they were formally revoking all food tolerances for the insecticide carbofuran, trade name Furadan, effective December 31, 2009. Furadan has been registered and used in Nebraska for more than 30 years, and currently has a label that allows for applications to corn, soybeans, alfalfa, potatoes, and rangeland/pastures. While EPA has not cancelled the actual label for the product, it will do so sometime in 2010. The fact that they revoked the food tolerances means that after 2009, if any food commodity is found to contain any residue of carbofuran, the

Food and Drug Administration (FDA) would have authority to condemn and order destruction of that commodity, and EPA would have authority to take enforcement action against the applicator of the Furadan, if they could determine where the residue came from. It is critical for all applicators, who currently have Furadan, to understand there is no recall program for unused Furadan after 2009. NDA also no longer sponsors a waste pesticide collection program, so any inventory found after December 31, 2009, will be ordered disposed at the expense of the owner.

Landowners and applicators with Furadan are asked to use the product according to label directions before December 31, 2009, and contact a licensed waste disposal contractor for any remaining product. NDEQ maintains a listing of qualified contractors for transporting this type of waste, and a link to this info can be found at <http://www.agr.ne.gov/division/bpi/pes/collection.htm>. If there are questions, please contact NDA at (402) 471-2394.

Lessons Learned in 2008, Expectations for 2009

The summer of 2008 was one for the record books. Crop prices were high, as were pest pressures. The combination of both, together

(Continued on Page 2)

Inside this Issue

"Green" Pesticides and Certification/ Licensing Requirements.....	2
2009 Crop Production Clinic Presentations Available On-line.....	2
2009 Plastic Pesticide Container Recycling Program.....	3
Pesticide Nonpoint Source Pollution Success Story.....	3
2009 NDA Plant Pest Surveys.....	4
Japanese Beetle in Nebraska.....	4
Useful Links.....	5
NDA Web Resources.....	5

(Continued on Page 2)

with an aggressive marketing campaign by fungicide registrants, created a situation where we saw record numbers of out-of-state aerial applicators working in Nebraska. For the most part, these pilots worked for resident aerial applicators; however, a few were brought in by pesticide dealers who either had more work than the local pilot could handle, or who simply had no local pilot to refer customers to. There were a number of situations where pilots were working out of airstrips with no loadout pads or containment facilities, provided no worker training to locally hired employees, and kept inadequate application records due to confusion over who was responsible for completing and maintaining the records. In some cases, dealers failed to provide out-of-state pilots with the name, address, or phone number for the dealer's customers.

No legislative changes were made to the Pesticide Act or Pesticide Regulations in 2009 that would change the way NDA regulates aerial applicators. However, NDA pesticide inspectors will increase the monitoring of out-of-state pilots in an effort to assure better compliance with state laws than we saw last year. Inspectors will be visiting airfields beginning in June to determine who is in charge of any aerial applications, and provide compliance assistance to that individual to make them fully aware of their responsibilities under the Pesticide Act, the Worker Protection Standard, and Title 198 – the rules governing secondary containment and loadout pads of fertilizers and pesticides. While NDA does not enforce Title 198, under a cooperative agreement with NDEQ, we document suspected violations and refer the case to NDEQ for enforcement.

More information on secondary containment and loadout pad requirements can be found in the brochure, *Quick Info for Complying with Nebraska Secondary Containment Regs* (http://www.agr.ne.gov/division/bpi/pes/ndeq_title198.pdf) or from the Title 198 info on NDEQ's web site (<http://www.deq.state.ne.us/>).

Legislative Changes to the Nebraska Pesticide Act

The Nebraska Legislature passed LB 100 this past session, which was the NDA cleanup bill for the Nebraska

Pesticide Act. The following provisions were part of this legislation: Provides for authority to require additional tests or environmental monitoring for pesticide registrations; prohibits Nebraska residents from obtaining a reciprocal applicator license; requires an applicant for a pesticide applicator license to provide their date of birth in order to determine that they are at least 16 years of age; and makes an unlicensed person responsible for the same types of violations the agency could only previously enforce on licensed applicators.

“Green” Pesticides and Certification/Licensing Requirements

For many years, there has been a growing interest in pest control which uses newer chemistry and less toxic ingredients. Many states have even passed laws prohibiting the use of many of the older products in their schools. Our nation's recent desire to move away from foreign oil has placed additional focus on “Green” technology, which has given a boost to the interest in “greener” pesticides. This is a good thing, both for the safety of people and the environment (assuming that the products work).

Some pest control companies now offer “organic,” “natural,” or “alternative” products to their customers who are interested in “going green.”

The question arises as to whether a person needs to be certified and licensed by the NDA if they exclusively offer “green” products whose labels bear no EPA registration numbers.

Many of Nebraska's pesticide applicator categories are only needed if a person wants to use Restricted-Use Pesticides (RUPs). However, for some categories, certification and licensing is required when using ANY pesticide (RUP, GUP, or federally exempted pesticides). In Nebraska, applicators involved in Structural Pest Control (Category 8), Ornamental and Turf Pest Control (Category 4), and Community-wide Mosquito Control (Category 09), MUST BE certified and licensed regardless of how “green” the pesticide they choose to use. Record keeping

requirements for all pesticides in Category 8 apply, as well.

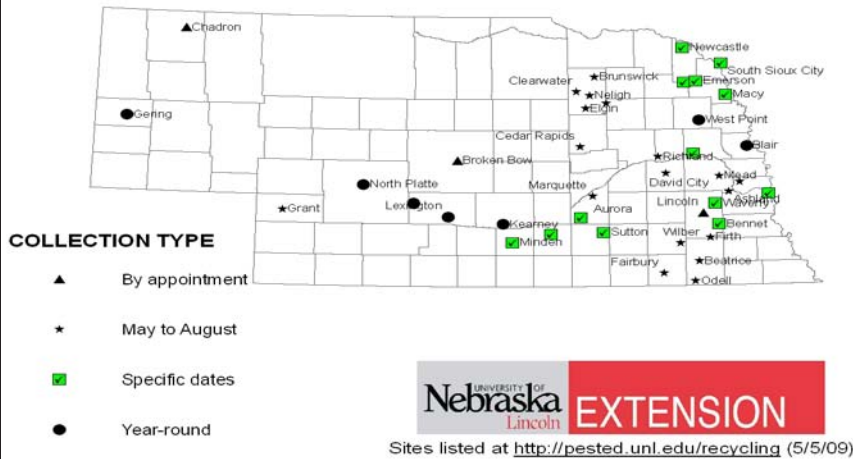
This might raise a follow-up question as to why some pesticides don't have EPA registration numbers on their labels. EPA does not require federal registration of pesticides which meet the guidelines of FIFRA section 25(b). These products are usually referred to as “25b” products. To qualify for the 25b status, a product is limited to an approved list of active ingredients, as well as approved inert ingredients. Many of these ingredients are food grade. Additionally, the labeling must follow certain guidelines to qualify for the exemption from federal registration. Corn gluten meal herbicide and canola oil dormant spray are examples of approved 25b products. These products have been exempted from federal registration; however, they are still subject to state rules in most states.

NDA maintains a database of 25b products whose labels have been reviewed and approved for use in Nebraska. For additional information about FIFRA 25(b), please refer to www.epa.gov/pesticides/biopesticides/regtools/25b/25b-faq.htm.

2009 Crop Production Clinic Presentations Available On-line

Commercial applicators with Category 01 (Ag Plant) or 12 (Aerial), crop consultants and growers, may be interested to know that audio/video broadcasts of many of the presentations given at the 2009 Crop Production Clinics are available on the web at <http://cpc.unl.edu/>. Presentations from these general topic groups are available: weed science, entomology, plant pathology, pesticide safety, soil fertility, irrigation, and crop production. If you missed these meetings, or if you want to see a rerun, please take advantage of the wealth of information presented here!

2009 Pesticide Container Collection Sites



2009 Plastic Pesticide Container Recycling Program

At last count, 43 Nebraska locations are accepting empty plastic pesticide containers for recycling in the 18th year of this UNL Extension statewide program.

The program helps recycle 1- and 2.5-gallon plastic pesticide containers and 15-, 30-, and 55-gallon plastic crop protection chemical drums, said UNL pesticide safety educator Clyde Ogg, who coordinates the program for NU's Institute of Agriculture and Natural Resources.

A full list of recycling sites, program information, and details are on UNL's Pesticide Education Resources web site at <http://pested.unl.edu/recycling>.

Plastic from collected containers is turned into industrial and consumer products such as shipping pallets, drain tile, dimension lumber, and parking lot tire bumpers. Last year, the UNL program helped recycle about 25 tons of containers, contributing to a 17-year total of about 900 tons of containers, Ogg said.

"Knowledge of the program, plus teamwork and cooperation, has always formed a base for this very successful program," Ogg said, citing cooperation from UNL Extension Educators and collection site managers statewide.

"Most of the (collection) sites are at agricultural chemical dealerships or community recycling centers, which volunteer to take on this additional responsibility," he said, adding "Every pesticide container collected through

this program is one less that might otherwise be improperly disposed of."

The program accepts pressure-rinsed or triple-rinsed 1- and 2.5-gallon plastic pesticide containers. They must be clean and drained, inside and out. Caps, labels, and slipcover plastic labels must be removed, since they cannot be recycled as part of the program. They should be disposed of as solid waste.

Of the 43 sites, 24 accept 15-, 30-, and 55-gallon plastic crop protection chemical, crop oil, and adjuvant drums. These drums must be thoroughly rinsed before delivery to collection sites and should not be cut or opened in any way. Seven of the sites are collecting year-round, 19 collect May through August, 14 collect on specific dates, and 3 are by appointment only.

Mini-bulk, saddle tanks, and nurse tanks, which can be made of fiberglass or plastics not compatible with the recycling program, are not accepted.

Before delivery to collection sites, containers and drums should be cleaned, rinsed, and drained. Rinsate should be returned to the spray tank. Remove and properly dispose of booklets and caps from containers, and remove and properly dispose of plastic shrink-wraps. Glued-on paper labels can be left on the container.

This program is funded by a national coalition of agri-chemical manufacturers through the Agricultural Container Recycling Council, Washington, DC (<http://www.acrecycle.org/>).

Portions of this article were used with permission from CropWatch, UNL's on-line newsletter on crop production and pest management (<http://cropwatch.unl.edu/>).

Pesticide Nonpoint Source Pollution Success Story

The Nebraska Department of Environmental Quality (NDEQ) and the Lower Big Blue Natural Resources District recently announced that surface water samples tested for atrazine in Swan 5A Reservoir have seen lower concentrations due to watershed best management practices implemented by local landowners. A summary of the findings can be found at http://www.epa.gov/nps/success/state/ne_swan.htm.

NDA applauds the efforts of the landowners, agencies, and individuals involved in this project, and suggests it can serve as a model for the cooperation needed to address high concentrations of atrazine found in other watersheds which have also been designated as "water quality limited" by NDEQ. Information on Nebraska water bodies impaired due to atrazine and other pollutants can be found at <http://www.deq.state.ne.us/> (look for the "TMDL program" or "integrated report"). Additional information on national concerns for atrazine in surface water and other monitoring taking place can be found at http://www.epa.gov/pesticides/reregistration/atrazine/atrazine_update.htm.



<http://stopthebeetle.info/>

See next Article for related information.

2009 NDA Plant Pest Surveys

The NDA Entomology Program will again be conducting a number of survey programs this year. The purpose of this survey work is to determine whether or not a specific plant pest exists in Nebraska and, if so, to what extent. Many of the pests we survey for are exotic, invasive pests that either are not known to exist in the U.S., or are only found in certain parts of the country. We survey for these pests in order to protect our state by detecting any introductions and infestations early, when treatment and eradication options are most effective. During the next few months, NDA inspectors will be conducting surveys for gypsy moth, Japanese beetle, Emerald Ash Borer (EAB), Khapra beetle, karnal bunt, cereal leaf beetle, small grain survey, potato cyst nematodes, soil nematodes, and an invasive weeds survey.

Approximately 1,500 gypsy moth traps will be set statewide at nurseries, rest stops, and state parks. Every community in the state is trapped based on risk as determined by the Nebraska Gypsy Moth Management Plan. Traps may be placed in a community every year, or on a multi-year rotation, depending on risk. The traps are triangular, approximately 10" long and 4" high, hung in trees, and baited with pheromone lure to attract the male moth. No gypsy moth infestations exist in Nebraska, though we do catch the occasional hitch-hiker. When that happens, we flood the area with traps, to determine if more moths are present.

NDA will be setting 300 Japanese beetle traps at nurseries and rest stops across the state. These yellow and green traps are hung on metal poles three feet above the ground. They are baited with a pheromone and floral scented lure, and will attract both male and female beetles. Japanese beetle infestations can be found in a few counties in eastern Nebraska. But we continue to monitor for new infestations and introductions.

EAB is continuing to spread through states to the east of Nebraska. So, NDA and USDA staff are setting and monitoring 200 large purple prism traps around the state. These traps are hung in ash trees, and baited with a manuka oil lure and coated in tanglefoot. The beetle is attracted to the combination of the purple color

and the oil scent. EAB has not been detected in Nebraska, and we continue to monitor high-risk locations like parks and campgrounds, rest stops, lumber mills, green waste sites, and nurseries.

Khapra beetle and karnal bunt surveys will be conducted at grain elevators again this year. Small cardboard traps, measuring 3" by 3", and baited with a pheromone lure, will be attached to walls at grain elevators to detect Khapra beetle. Wheat samples will also be pulled from elevators to test for karnal bunt. Khapra beetle is not known to occur in the U.S., and karnal bunt has only been found in a few counties in Texas, Arizona, and California. Neither pest has ever been detected in Nebraska, and these surveys will provide negative data that will help keep export markets open for Nebraska products.

NDA inspectors will also randomly survey small grain fields for cereal leaf beetle and other exotic small grain pests. These surveys will occur from late May through early July, across the southern portion of the state, where small grain production is highest. Inspectors do sweeps of fields for insect pests and visual surveys for diseases. Cereal leaf beetle is not known to occur in Nebraska, and neither are the various diseases that will be included in the survey. The results of these surveys are also used to assist Nebraska producers with exporting grains and grain products.

Soil samples will be taken from potato, small grain, and nursery stock fields across the state to test for the presence of soil nematodes. NDA will again participate in the National Potato Cyst nematode survey, focusing on seed potato fields, and will take approximately 2,000, five-pound soil samples. Potato cyst nematode is not known to occur in Nebraska. Smaller samples will be taken from fields as part of the general soil nematode survey. These soil nematode surveys are necessary in order to certify plant products, particularly potatoes and nursery stock, for export to foreign countries.

A survey for several invasive weeds will be conducted this summer, also. NDA staff, in cooperation with local landowners, county weed control superintendents, and other interested agencies, will focus on identifying and documenting infestations in counties where garlic mustard, St. Johnswort, and leafy spurge have been reported in the past. Much of the most suitable habitat for these invasive weed can be

found along Nebraska's river systems. Surveys will take place primarily along the Missouri River in the eastern parts of the state, the Republican River in southern Nebraska and the Platte River in central and eastern Nebraska. Some work will also take place in the rangeland of Nebraska's central and western counties. The data gathered will be used to identify sites for potential bio-control releases to help prevent spread of these invasive weeds.

The NDA staff will be busy setting and monitoring these traps, and conducting surveys, throughout the summer. In addition, they will continue their regular duties, including nursery and phytosanitary inspections, for licensing and certification. If you have any questions about these programs, please contact Julie Van Meter, Entomology Program Manager/State Entomologist, at (402) 471-2394. More information on the Entomology Program's activities can be found at www.agr.ne.gov.

Japanese Beetle in Nebraska

The NDA Entomology Program has trapped for Japanese Beetle (*Popillia japonica*) in our state for many years.



Clemson University - USDA Cooperative Extension Slide Series

Based on the results of the 2008 trapping survey, NDA has now declared five counties in our state to be infested with Japanese beetle. These are Dodge, Douglas, Lancaster, Saline, and Sarpy counties. Homeowners and lawn care company employees may see damage to turf and ornamental plants in parts of these counties, particularly in the Omaha Metro area. Chemical controls can be applied to target both the grubs and adults. Pesticides for the control of adult beetles include those with the active ingredient carbaryl or permethrin. Pesticides containing the chemical imidacloprid or halofenozide may provide effective control of the grubs. Other pesticides may also be effective. Read and follow all label directions when applying any chemical.

Useful links:

- Riparian Vegetation Management Task Force (<http://www.agr.ne.gov/riparian/riparian.htm>) Includes background info, meeting minutes, reports, and Nebraska Weed Management Area contacts and web links.
- EPA's pesticide storage and disposal page (<http://www.epa.gov/pesticides/regulating/storage.htm>) Storage and disposal information for homeowners, farmers, dealers, applicators and registrants.
- Buffalograss Seed Program (<http://www.npnrd.org/>) Promoted by the North Platte NRD designed to help homeowners reduce water use, as well as time, labor, and costs.
- USDA Soil Data Mart (<http://soildatamart.nrcs.usda.gov/>) Download soil data by soil survey area. All of the data tables found in a soil survey book are found here.
- USDA Web Soil Survey (<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>) An alternative presentation of the soil survey area data is available here, including on-screen soil maps that can be printed and survey area manuscripts, when they exist for the corresponding survey area.
- Stormwater and Lawn Pesticide Management publications (<http://www.ianrpubs.unl.edu/epublic/pages/index.jsp>) These titles, among others, are included: Stormwater Management: Pesticide Use in the Lawn and Garden (G1844); Stormwater Management: Water Pollution and Our Own Yards (G1848); Stormwater Management on Residential Lots (EC707); Stormwater Management: Landscape Water Conservation (G1859)
- The Pollinator Partnership (<http://www.pollinator.org/guides.htm>) Featuring ecoregional planting guides for attracting pollinators; simply enter your zip code to find the guide for your area. Also includes reports on the status of pollinator populations.
- Colorado potato beetle info (<http://potatobeetle.org/>) "Entomologists might find the searchable bibliography to be helpful in their investigations. Farmers and crop consultants may want to check out the section on chemical control and insecticide resistance."
- EPA video, "Reduce Runoff: Slow It Down, Spread It Out, Soak It In" (<http://www.epa.gov/owow/nps/lid/video.html>) Highlights green techniques such as rain gardens, green roofs and rain barrels to help manage stormwater runoff.
- Manitoba - North Dakota Zero Tillage Farmer's Association (<http://www.mandakzerotill.org/>) Includes links to newsletters and other resources on no till, crop rotations, cover crops, and soil quality/soil health.
- Nebraska NRCS No-till Information (<http://www.ne.nrcs.usda.gov/technical/notill.html>) Contains important reports, fact sheets and links to no-till information.
- 2009 Northern Plains SWCS Technical Conference – (<http://www.ndswcs.org/>) The proceedings include presentations on soil quality, crop rotations, no-till, and water quality contaminants, among others.
- Conservation Buffers: Design Guidelines for Buffers, Corridors, and Greenways (www.bufferguidelines.net) - provides over 80 illustrated design guidelines for water quality, biodiversity, economic opportunities, and other benefits. This publication was synthesized and developed from a review of over 1400 research publications.
- SDI in the Great Plains (<http://www.oznet.ksu.edu/sdi/>) Information and resources on subsurface drip irrigation, including an upcoming field day in Colby, KS and other educational events in 2009.
- Prevention and Control of Wildlife Damage (<http://icwdm.org/handbook/index.asp>) No longer in print, the 1994 edition is available here – for free. It details identification, control and management of over 90 species of wildlife.
- Quality-Assessed Agrichemical Contaminant Database for Nebraska Ground Water (<http://dnrdata.dnr.ne.gov/Clearinghouse/>) Individuals curious about the condition of Nebraska's ground water can search this database containing ground water analyses of nitrates and pesticides. The user can search by location and type of well, the substance being analyzed, as well as the depth and date of the sample.
- EPA's Greenscapes (<http://www.epa.gov/greenscapes/>) provides cost-efficient and environmentally friendly solutions for landscaping.
- Agricultural Health Study – EPA's Role and Plans (<http://www.epa.gov/pesticides/health/ag-health.html>) New and updated information on this very large, long-term health study of potential pesticide impacts and how information will be used by EPA.
- High Plains Integrated Pest Management Guide (<http://www.highplainsipm.org/>) Contains current, effective management options for insect and other arthropod pests, and for plant pathogens affecting all major field crops grown in Colorado, Montana, Wyoming, and Western Nebraska.

NDA Web Resources

- Application forms for pesticide dealer licenses, reciprocal licenses, and pesticide product registration can be found at <http://www.agr.ne.gov/division/bpi/pes/pest1.htm>. In addition, online renewal of dealer licenses and product registrations are available in the fall of each year.
- All of NDA's pesticide and noxious weed program informational material can be found at the link above. Look under "Brochures" about one-third of the way down.
- Conferences, meetings, and other events that involve Nebraska agriculture are posted on NDA's web calendar. Go to www.agr.ne.gov and look for the link in the blue bar at the top of the page.

**Department of Agriculture
Noxious Weed Program
(402) 471-2394**

Mitch Coffin - Manager

Kay Bantam - Pesticide and Noxious Weed
Program Secretary

Chris Kelly - (*southeast*)
(402) 821-3023

David Boschult - (*northeast*)
(402) 887-4789

Brent Meyer - (*south central*)
(402) 416-5587

Cris Burks - (*west*)
(308) 487-5520

Galen Niehues - (*southwest*)
(402) 416-6148

This newsletter is posted on NDA's web page shortly after it is published. If you would rather view it on-line instead of receiving a hard copy, please follow the directions at the web site listed below, and we will notify you of the next publication.

Web site: www.agr.ne.gov/division/bpi/pstnx/news.htm

**Department of Agriculture
Pesticide Program Staff
(402) 471-2394**

Tim Creger - Manager

Buzz Vance - Certification/WPS Training

Craig Romary - Groundwater/Buffer Strip/
Endangered Species

Janie Nelson - Product Registration/
Dealer Licenses

Herbert Bates - Case Review Officer

Inspectors:

Kevin Holdorf - (*Omaha metro region*)
(402) 253-3948

Rich Franchini - (*north central region*)
(402) 529-6808

Clayton Haman - (*southeast region*)
(402) 471-2394

Jeff Elsen - (*Panhandle region*)
(308) 254-7640

Eric Fuentes-Ruiz - (*southwest region*)
(308) 995-2158

Readers are free to reprint, in whole or part, information in this newsletter. However, NDA respectfully requests the following citation be used:

Reprinted from the Nebraska Department of Agriculture's Pesticide & Noxious Weed Newsletter (www.agr.ne.gov)

Articles from other sources are often used in this newsletter, and should be cited accordingly.

This newsletter is available in other formats for persons with disabilities upon request. For an alternate format or for additional information on topics in this publication, please call the Nebraska Department of Agriculture at (402) 471-2394.

TDD users can contact the Department by first calling the Nebraska Relay System. Telephone (800) 833-7352 and asking the operator to call (402) 471-2394.

Greg Ibach, Director
Craig Romary, Editor

PRRST STD
U.S. POSTAGE
PAID
LINCOLN, NE
PERMIT NO. 212

Nebraska Department of Agriculture
Bureau of Plant Industry
P.O. Box 94756
Lincoln, NE 68509-4756