



Pesticide and Noxious Weed Newsletter

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Nebraska NPDES General Permit for Pesticides

A National Pollution Discharge Elimination System (NPDES) permit for pesticide applications to, over, or near water is now approved for the State of Nebraska. The process for obtaining permits for these types of applications began November 1, 2011. Additional requirements for these kinds of applications are dependent on the TYPE of water affected by the pesticide application. All pesticide applicators, particularly those with Ornamental and Turf, Right-of-Way, Ag Plant, and private applicators are encouraged to visit the Nebraska Department of Environmental Quality's (NDEQ) web site (bit.ly/tT4BDh) to determine those requirements. NDEQ's flow chart and definitions document at this site should be helpful in making this

determination. This is also included in this newsletter (see page 3 and 4).

In general, waters of the state are divided into three categories for the purposes of the NPDES permit for pesticides:

- Group 1 - non-flowing waters,
- Group 2 - flowing waters, and
- Group 3 - water designated as
 - a. "State Resources Waters" in Nebraska's Surface Water Quality Standards (Title 117);
 - b. "impaired" under the Clean Water Act for any of the ingredients found in the pesticide to be applied;
 - c. "critical habitat" under the Endangered Species Act or where threatened or endangered (T & E species) occur;
 - d. water with a direct

connection to, and within 250 feet of, Group 3a, 3b, or 3c.

- e. water with a direct connection to and within 250 feet of a surface water intake for public drinking water supplies.

Pesticide applications to Group 1 and 2 waters are not required to file a Notice of Intent (NOI) but must comply with the other conditions of the permit, such as Best Management Practices for reducing off-site impacts, applying the product correctly and according to the label, document and signing application records, and monitoring for potential effects following the applications. These requirements are outlined in the flow chart and permit. Applications to Group 3 waters require a Notice of Intent, along with a Pesticide Use Management Plan, as outlined in the permit guidance. However, pesticide applications to control flying insects, including mosquitoes and/or their larvae, to state resource waters (Group 3a at left), have been excluded from this requirement. The Notice of Intent is the process of applying to NDEQ to receive authorization to discharge a pesticide to water under this general permit, and it includes several required items, including, but not limited to, a listing of the products to be applied, where they will be applied, and the target pest. The Pesticide Use Management Plan also is to include specific information,

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such as measures taken to reduce environmental impacts, alternative pest control measures considered, and a records management and retention plan. For applications to, over, or near State Resource Waters, Impaired Waters, or T&E Species waters (Group 3a, 3b, and 3c above), the Notice of Intent and Pesticide Use Management Plan must be approved by NDEQ before the pesticide application takes place. Approval will be published on NDEQ's web site, and could take up to 90 days, due to the requirement for NDEQ to notify the public of the pesticide application request.

Please take the time to become familiar with this new process for these types of pesticide applications. More information will be coming from UNL Extension, pesticide industry organizations, and NDA. However, please note that if you are required to submit an NOI and Pesticide Use Management Plan, it may also require significant time on your part to gather the needed information, as well time for NDEQ review and approval once these requirements are submitted. Because of this, it is crucial for applicators to begin thinking about this long before it's time to apply your product, in order to be in compliance with this

A New Face in the Pesticide Program

Mark Christenson began working in the NDA's Pesticide Program on August 1, 2011. He has assumed the duties of applicator certification specialist. Mark grew up in North Platte, now lives in Lincoln, and comes to us fresh out of graduate school at the University of Nebraska, Lincoln. Mark's degrees are in environmental and natural resource



science, and he is a veteran of the Navy's nuclear submarine service.

Mark has extensive experience in safety training, and has caught on to the pesticide applicator certification and licensing program quickly. He is interested in finding ways of providing quick turn around on applicator licenses, helping applicators resolve certification issues, and getting the Huskers into the BCS bowl championship game! Good luck on that last one, Mark.

NDA Web Site Changes - please reset your bookmarks and web page links!



NDA's web site was revamped recently, and most, if not all, of the web addresses have changed, including information you may reference periodically or have linked on your web site. The main NDA web address – www.agr.ne.gov – remains the same.

Unfortunately, anyone using the old links to various program pages or specific documents will not be redirected to the new page, so please take a moment to update your bookmarks and web page links. A few of the more popular links associated with the NDA Pesticide Program are pasted below.

Plant Health Protection (bit.ly/rzZ4nr) contains all of the programs from what was formerly called the Bureau of Plant Industry, including:

- Entomology & Apiary (bit.ly/teVqk0)
- European Corn Borer (bit.ly/uRsGII)
- Export Certification (bit.ly/rUdQN4)
- Fertilizer & Ag Lime (bit.ly/v2HmfT)
- Noxious Weed Program (bit.ly/tlZ8CE)
- Nursery Certification (bit.ly/rM4muW)
- Pesticide Program (bit.ly/pdsloZ)

(Continued in next column)

- Pest, Survey & Detection (bit.ly/sqqxfs)

- Seed (bit.ly/sMBxs6)

Other links of interest include:

- Nebraska Buffer Strip Program (bit.ly/s3KxNn)
- Pesticide and Noxious Weed Newsletter (bit.ly/v3pptg)
- Nebraska Pesticide Sensitive Crop Locator (bit.ly/vvExTJ)
- HHW Directory (bit.ly/rxR9dC)
- Weeds of the Great Plains Order Form (bit.ly/uuHHf5)

New! Plant Health Protection Update RSS Feed

The Plant Health Protection Update will be a source of news and information for people interested in the various programs under the Plant Health Protection focus area (see web links at left), as well as those interested in related national and regional information affecting our programs and the regulated public.

The Plant Health Protection Update, along with other NDA media, can be viewed at bit.ly/vStbEM.

Keep Up with All of NDA's News and Events!



- NDA's web page at www.agr.ne.gov



- NDA's Facebook page at on.fb.me/lXsRIH



- NDA news releases, NDA Updates, and Ag Updates via RSS feeds at bit.ly/vStbEM



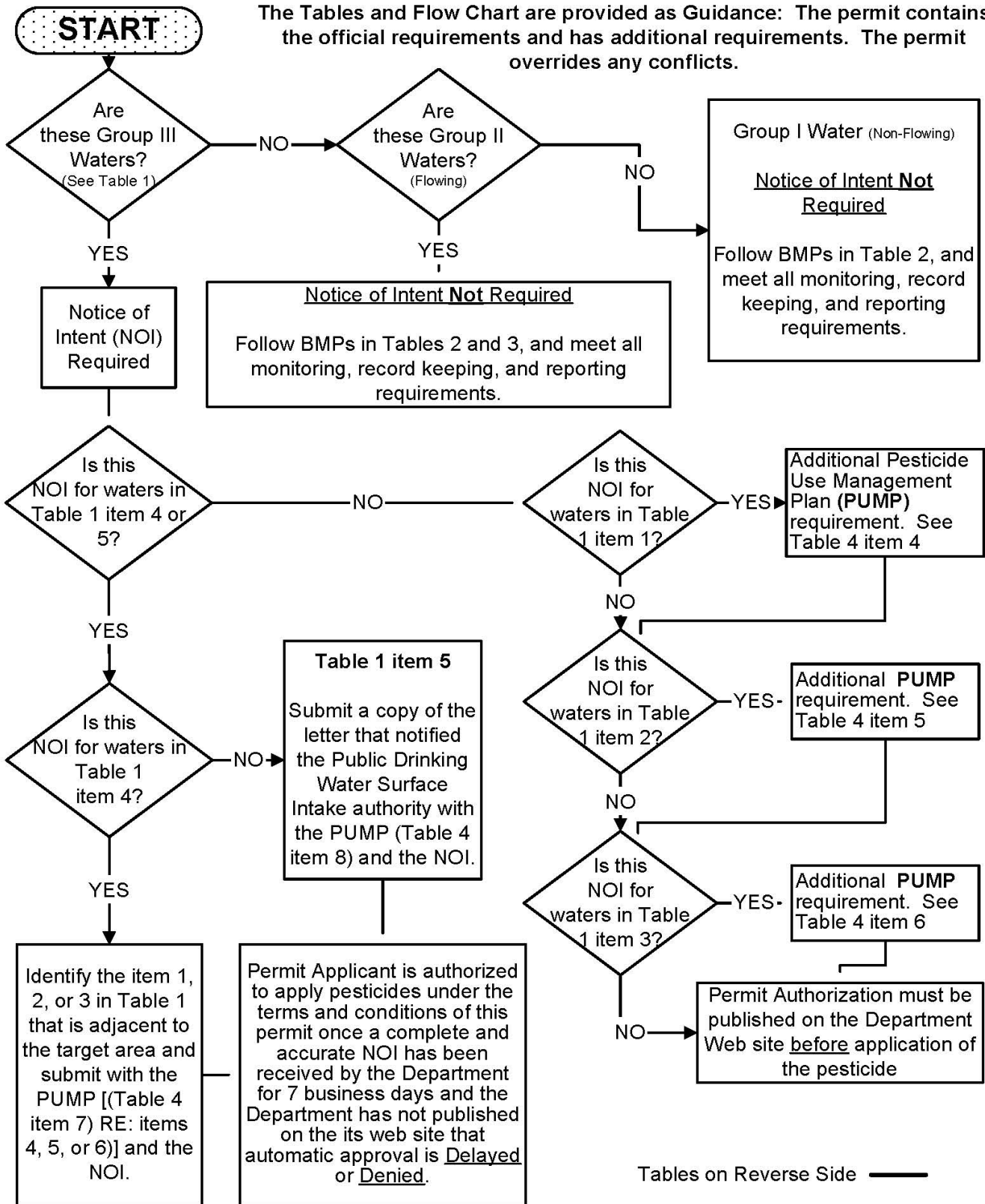
- NDA is on Twitter twitter.com/NeDeptAg



- Nebraska Agricultural Youth Institute on.fb.me/trLsWZ

Pesticide General Permit Guidance for deciding the need for a Notice of Intent (NOI) and associated Best Management Practices (BMPs)

The Tables and Flow Chart are provided as Guidance: The permit contains the official requirements and has additional requirements. The permit overrides any conflicts.



Tables on Reverse Side

Table 1: Waters are Considered Group III When:

1. State resource waters as listed in Nebraska Title 117. www.deq.state.ne.us
2. Listed as impaired on the current Nebraska Clean Water Act 303(d) list for any of the ingredients in the pesticide or residuals from the application of the pesticide.
3. Waters where Threatened and Endangered Species (T&E) or critical habitats are present in the target area and there is not a standard procedure established that addresses the application of the pesticide in accordance with the endangered species recommendations by the Nebraska Game and Parks Commission (NGPC) in publication or on the NGPC web sites. outdoornebraska.ne.gov/wildlife/programs/nongame/consultation.asp
4. Application of pesticides to, over, or near water within 250 feet of 1, 2, or 3 identified above, where the application of pesticides is to a flowing or discharging waters that has a direct surface water connection, so the flowing or discharging waters flow directly into 1, 2, or 3.
5. Application of pesticides to, over, or near water within 250 feet of a surface water intake for public drinking water, where the application of pesticides is to surface water that has a direct surface water connection and contribution to the surface water supplying water to the intake for public drinking water.

Table 2: Best Management Practices (BMPs) for all Water Groups I, II, and III

1. Prior to and during pesticide application the pesticide **applicator** must: Identify the target pests. Identify non-target plants and animals that could be impacted by the pesticide and limit the impact from the application of pesticides to these non-targets.
2. Identify Threatened and Endangered (T&E) species and critical habitats listed by the Nebraska Game and Parks Commission (NGPC) or the U.S. Fish and Wildlife Service (U.S. FWS) and follow any requirements from NGPC or U.S. FWS. If the T&E was not identified prior to pesticide application reevaluate, Part 1 B(1)(a)(iii) and if a NOI or resubmitted NOI is required stop pesticide application until authorization is granted by the Department.
3. The pesticide **applicator** must do the following immediately preceding and during pesticide application: Identify weather conditions that could impact the application of the pesticide. Stop application of pesticides when weather conditions will or do adversely impact the pesticide application.
4. The permittee must do the following preceding pesticide application: Properly determine the volume of the receiving water and identify the chemical characteristics of the receiving water such as pH, temperature, or other necessary characteristics for calculating mixture and application doses as required by the label. Identify the proper timing for application of pesticides to optimize treatment.
5. Application of pesticides shall be in accordance with all relevant requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136 et seq., and the Nebraska Pesticide Act, Neb. Rev. Stat. §2-2622 et seq., relating to water quality including compliance with all label application directions, such as application rates, active ingredient concentrations and dilution requirements, buffer zones, application locations, intended targets, protecting threatened or endangered species, times of day, temperature or other application requirements, proper disposal of pesticide residues, and record keeping.
6. Application equipment shall be appropriate for the application and properly maintained. Equipment shall be calibrated at least annually or more frequently if required by the pesticide label or manufacturer. All equipment shall be inspected prior to application and monitored during application for uneven spray, leaks, inoperative nozzles, or valves and, repairs shall be made and the equipment shall be recalibrated if necessary before the application continues or takes place.
7. The permittee or the permittee in conjunction with their pesticide applicator shall conduct visual monitoring during pesticide application and conduct visual monitoring at least once between the end of the pesticide application and up to five (5) days following the application for: The occurrence or new knowledge of any spills, leaks, contamination, or incident at the target area that could impact water quality. Any adverse impact to non-target species or threatened and endangered species, human health, or the environment. Evidence indicating a possible violation of the effluent limitations and requirements listed in Effluent Limitations and Monitoring Requirements for Discharges. Evidence of oil or petroleum product contamination in the pesticide application (e.g., visible oil sheen). Any physical characteristic in the pesticide application that could indicate the presence of a pollutant or pollutants not previously identified or anticipated.

Table 3: Additional Best Management Practices (BMPs) for Group II Waters

1. Apply pesticides to the upstream target area in a manner that lessens the likelihood that the effects of the pesticides will be compounded or that the pesticides will adversely impact the downstream segments of the target area.
2. Evaluate and apply pesticides in a manner to minimize impacts to waters adjacent to the target area.

Table 4: Pesticide Use Management Plan Requirements

A Pesticide Use Management Plan (PUMP) at a minimum must include the following:

1. How all required BMPs in Section E will be implemented and documented.
2. Documentation of the chemical characteristics of the receiving water and determine the volume of receiving water for calculating mixture and application doses.
3. Copies of the labels for all pesticides used.
4. For Table 1 item 1, how the application of pesticides will impact, maintain or enhance state resource waters.
5. For Table 1 item 2, how the application of pesticides will impact current Clean Water Act 303(d) impaired waters for the pollutant of concern.
6. For Table 1, item 3, how the application of pesticides will impact threatened or endangered species or the critical habitats present. This requirement must include documentation of the threatened and endangered species consultation with the Nebraska Game and Parks Commission.
7. For Table 1, item 4, identification of the Table 1, Item 1, 2, or 3 adjacent to the target area.
8. For Table 1 item 5, a copy of the notification letter to the controlling entity of the public drinking water surface intake.
9. A description of the alternative methods evaluated in lieu of or in conjunction with the pesticide for pest control, why the proposed method is selected, and how impacts will be minimized to the greatest extent possible.
10. A records management and retention plan that Identifies:
Who will maintain records, **Where** records will be maintained, **What** records will be maintained, and **Contact** information for requests for records.

Purchasing Restricted-Use Pesticides (RUPs)

Having a pesticide applicator's license is not an open permit to purchase RUPs. In Nebraska, it is the responsibility of pesticide dealers to ensure pesticides are only sold to applicators certified in the appropriate categories for the pests and sites specified on the pesticide label. For example, it is unlawful for an applicator certified in the Aquatics (05) category to purchase grain fumigants which should only be used by an applicator certified in the Fumigation (11) category. However, it is not uncommon for a pesticide to be labeled in a manner that would allow multiple categories to be eligible for purchasing that pesticide. For instance, persons with an Ornamental & Turf (04), Right-of-Way (07), or Agricultural-Plant (01) certification may all use the same pesticide. If that pesticide is labeled for all three sites and pests, then all three applicators can lawfully purchase that pesticide.

When purchasing pesticides keep in mind a few simple rules to make the process easier:

- Have your Pesticide Applicator's License with you when you go to the dealer.
- Always read the label before purchasing any pesticide.
- Make sure that the sites and pests listed on the label are covered by your certification categories.

A listing and description of each commercial/noncommercial category can be found at bit.ly/sUZB57. If you have questions about what is allowed with your license or whether you need to add a category, please contact NDA at 1-877-800-4080.

Training and/or testing dates for adding a category can be found on page 6 of this newsletter, as well as at bit.ly/vtxWqq. Information on obtaining study material or registering for these events can be found on page 6, as well, or by going to pested.unl.edu.

Rodenticide Updates

On July 27, 2011, resulting from a lawsuit of Defenders of Wildlife vs. Liphatech, the U.S. District Court of the District of Columbia ordered that Rozol Prairie Dog Bait (EPA Reg. No. 7173-286) can no longer be SOLD or USED in the states of South Dakota, North Dakota, Montana, or New Mexico.

This decision does not impact the sale or use of Rozol Prairie Dog Bait in the state of Nebraska. However, good product stewardship will likely play a large part in determining the future of this product. As with all pesticides, it is very important to carefully read and follow all label directions.

Also changed this summer is the status of single-feeding anticoagulants used for rodent control. Homeowners, for instance, will not have access to single-feeding anticoagulants, and the multiple-feeding products for homeowner use will be sold in block form and come with a tamper-resistant bait station. Older products on store shelves will be available until supplies run out. All new products will follow the new guidelines.

Farmers and commercial applicators will have access to single-feeding anticoagulants. The product labeled for use on farms will be allowed for barns, poultry houses, and storage areas, with all above-ground placement needing to be done in tamper-resistant bait stations. Farm use labels will specifically prohibit use in residential settings.

Single-feeding anticoagulants labeled for use by commercial applicators will allow the product to be used in warehouses and residential settings, among other places. Again, all above-ground placement will need to be done in tamper-proof rodent bait stations. The labels prohibit placing bait stations more than 50 feet from a "building." Although we do not yet have a clear interpretation of what constitutes a "building," it appears any structure that an adult person can stand up in and which

has a roof in place is considered a "building." Stay tuned for further clarification.

With the new label restrictions, keep in mind the use of multiple Integrated Pest Management tactics, such as sanitation, exclusion, use of traps, and multiple-feeding anticoagulants or non-anticoagulant rodenticides.

IPM in Action

In the summer of 2010, zebra mussels were discovered in Zorinsky Lake, a flood control and recreation structure in the Omaha metro area. A coordinated effort by many agencies and groups led to the development of a plan to lower the lake in the fall of 2010 in an attempt to dry-out and/or freeze any adult zebra mussels in the lake. This action was chosen after considering pesticide treatment options, as well as cost. In the early spring and summer of 2011, Nebraska Game and Parks Commission initiated sampling in Zorinsky, as well as other nearby lakes, to determine if young, free-floating larvae were present. As of this writing, no live adult or larval zebra mussels have been found. The latest U.S. Army Corps of Engineers' press release describing the project can be found at bit.ly/vIYJkb. Information on zebra mussels and other invasive species can be found at the Nebraska Invasive Species Project site (bit.ly/turiQG).



2012 Initial Certification Meetings Commercial and Non-Commercial

(UNL or Association Training plus NDA Exam)

Date	Meeting	Categories	City	Location
Jan. 31	<u>Ag Expo</u>	1	Omaha	Hilton Hotel
Feb. 07	UNL Initial Certification	1 4 6 7	Fremont	Dodge County Extension
Feb. 07	UNL Initial Certification	1 4 5 8 8W 10	Grand Island	College Park
Feb. 07	UNL Initial Certification	1 4 7 9 11 14	Lincoln	Lancaster County Extension
Feb. 07	UNL Initial Certification	1 3 5 9 14	North Platte	UNL WCREC
Feb. 07	UNL Initial Certification	1 4 9 11	Scottsbluff	Panhandle REC
Feb. 07	UNL Initial Certification	3 4 7 9	Omaha	Douglas County Extension
Feb. 23	<u>Custom Applicator School</u>	1	Hastings	Central Community College
Mar. 01	UNL Initial Certification	4 6 7 9 11 14	Grand Island	College Park
Mar. 01	UNL Initial Certification	1 4 7 8 8W 10	Lincoln	Lancaster County Extension
Mar. 01	UNL Initial Certification	1 4 5 10 14	Norfolk	Lifelong Learning Center
Mar. 01	UNL Initial Certification	4 7 8 8W	North Platte	UNL WCREC
Mar. 01	UNL Initial Certification	4 5 7 8 8W	Scottsbluff	Panhandle REC
Mar. 20	UNL Initial Certification	1 4 6 14	Beatrice	Gage County Extension
Mar. 20	UNL Initial Certification	1 4 8 8W	Columbus	Platte County Extension
Mar. 20	UNL Initial Certification	1 4 5 7 8 8W 9 10 14	Norfolk	Lifelong Learning Center
Mar. 20	UNL Initial Certification	1 4 7 9	Ogallala	Valentino's 55 River Road
Mar. 20	UNL Initial Certification	1 4 8 8W 10 14	Omaha	Douglas County Extension
Mar. 20	UNL Initial Certification	1 4 7 14	Scottsbluff	Panhandle REC
Mar. 20	UNL Initial Certification	1 7 14	Valentine	Cherry County Extension
Apr. 12	UNL Initial Certification	4	Lincoln	Lancaster County Extension
Apr. 12	UNL Initial Certification	1 4	North Platte	UNWCREC
Apr. 12	UNL Initial Certification	4 7 8 8W	Omaha	Douglas County Extension
Apr. 12	UNL Initial Certification	4	Scottsbluff	Panhandle REC

To register for all UNL Initial Certification meetings, go to the Pesticide Safety Education Program web site (**pested.unl.edu**).

For the meetings underlined above, registration must be made through the Nebraska Agri-Business Association (402) 476-1528 (**www.na-ba.com**).

Applicator Categories

1	Ag Plant	8W	Wood Destroying Organism
1a	Soil Fumigation	9	Public Health
2	Ag Animal	10	Wood Preservation
3	Forest	11	Fumigation (grain)
4	Ornamental and Turf	12	Aerial
5	Aquatic	14	Wildlife Damage Control
5S	Sewer Root (<i>metam sodium</i>)	REG	Regulatory Subcategory
6	Seed Treatment	D/R	Demonstration/Research Subcategory
7	Right-of-Way		
8	Structural Health		

Please Post for Future Reference

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2012 Recertification/Renewal Meetings Commercial and Non-Commercial

(No NDA Exams Offered)

Date	Meeting	Categories	City	Location
Jan. 04	Crop Production Clinic	1 D/R	Beatrice	Classics (Beatrice Country Club)
Jan. 05	Crop Production Clinic	1 D/R	York	City Auditorium
Jan. 06	Crop Production Clinic	1 D/R	Kearney	Younes Conference Center
Jan. 10	Crop Production Clinic	1 D/R	Hastings	Adams County Fairgrounds
Jan. 11	Crop Production Clinic	1 D/R	North Platte	UNL WCREC
Jan. 12	Crop Production Clinic	1 D/R	Gering	Gering Civic Center
Jan. 17	Crop Production Clinic	1 D/R	Ainsworth	Community Center
Jan. 18	Crop Production Clinic	1 D/R	Norfolk	Lifelong Learning Center NECC
Jan. 19	Crop Production Clinic	1 D/R	Fremont	Midland University Event Center
Jan. 23	<u>Green Expo</u>	4	Council Bluffs	Mid-America Center
Feb. 09	UNL Recertification	4 7 8 8W	Ainsworth	Courthouse Meeting Room
Feb. 09	UNL Recertification	4 7 11 14	Beatrice	Gage County Extension
Feb. 09	UNL Recertification	4 7 8 8W	Fremont	Dodge County Extension
Feb. 09	UNL Recertification	4 7 8 8W 10 14	Grand Island	College Park
Feb. 09	UNL Recertification	4 5 7 8 8W 11	Lincoln	Lancaster County Extension
Feb. 09	UNL Recertification	4 7 8 8W 10 11	Norfolk	Lifelong Learning Center
Feb. 09	UNL Recertification	4 5 7 11 14	North Platte	UNL WCREC
Feb. 09	UNL Recertification	4 7 8 8W 9 11	Omaha	Douglas County Extension
Feb. 09	UNL Recertification	4 7 8 8W 9 11	Scottsbluff	Panhandle REC
Feb. 13-15	<u>NATA (pilots) Conv</u>	1 12	Grand Island	Midtown Holiday Inn
Feb. 14-15	<u>Urban Pest Mgt Conf</u>	8 8W 9 11 (up to 3)	Lincoln	Cornhusker Hotel
Feb. 21	UNL Recertification	4 5 7 8 8W 11	Grand Island	College Park
Feb. 28	UNL Recertification	4 5 7	Ainsworth	Courthouse Meeting Room
Feb. 28	UNL Recertification	4 7 9 11	Beatrice	Gage County Extension
Feb. 28	UNL Recertification	4 5 7 14	Columbus	Platte County Courthouse
Feb. 28	UNL Recertification	4 7 9	Holdrege	Phelps County Fairgrounds
Feb. 28	UNL Recertification	4 5 7 8 8W 14	Norfolk	Lifelong Learning Center
Feb. 28	UNL Recertification	4 7 9 10 14	North Platte	UNL WCREC
Feb. 28	UNL Recertification	4 5 7 11 14	Scottsbluff	Panhandle REC
Mar. 22	UNL Recertification	4 7 9	Beatrice	Gage County Extension
Mar. 22	UNL Recertification	4 7 9	Fremont	Dodge County Extension
Mar. 22	UNL Recertification	4 5 7	Holdrege	Phelps County Extension
Mar. 22	UNL Recertification	4 7 8 8W 11 14	Lincoln	Lancaster County Extension
Mar. 22	UNL Recertification	4 7 8 8W 9 14	Norfolk	Lifelong Learning Center
Mar. 22	UNL Recertification	4 7 9 11 14	Ogallala	Valentino's 55 River Road
Mar. 22	UNL Recertification	4 5 7 9 10 14	Omaha	Douglas County Extension
Mar. 22	UNL Recertification	4 5 7 9 11 14	Scottsbluff	Panhandle REC
Mar. 22	UNL Recertification	4 5 7 14	Valentine	Cherry County Extension

To register for all UNL Recertification meetings, go to the Pesticide Safety Education Program web site (pested.unl.edu). To register for meetings underlined above, contact the appropriate meeting sponsor:

- Green Expo - (402) 475-8873 - (www.nebraskaturfgrass.com)
- NATA (pilots) Convention (402) 475-6282 - (www.gonata.net)
- Urban Pest Management Conference - (402) 472-0816; (<http://entomology.unl.edu/upm.shtml>)

Recertification in the following categories will not be offered via training. Exams will need to be taken to recertify in: 01a (Soil Fumigation), 02 (Ag Animal), 03 (Forest), 5S (Sewer Root), 06 (Seed Treatment)

Please Post for Future Reference

Pesticide Inspection and Enforcement Activities

The following data reflects the NDA's inspection and enforcement activities for the period of October 1, 2010, through September 30, 2011 (federal fiscal year 2011). Numbers and types of inspections, numbers and types of enforcement actions, and numbers and types of violations, are presented below.

Please note that the violations represented in the first table will not "add up" with the second table because multiple enforcement actions can occur for any one violation of the Nebraska Pesticide Act.

FY11 Violations	
Description	Count
Disposal/Storage	2
Drift	17
Misbranded Pesticide	4
Personal Protective Clothing	11
Records/Record Keeping	90
Restricted-Use Violation	4
State Specific Violation	3
Use Inconsistent with Label	17
Unlicensed Applicator	22
Use Involving Environmental Harm	3
Unregistered Pesticide, Federal	4
Unregistered Producing Establishment	1
Unregistered Pesticide, State	18
Worker Protection Standard (all violations)	10
Total	206

NDA Pesticide Inspection Summary for Federal FY2011		
Inspection Type	Number of Inspections	Enforcement Type and Count
Certified Applicator Inspections	130	101 non-penalty actions; 1 penalty action
Certified Applicator Inspections (private)	75	4 non-penalty actions
RUP Dealer Record Inspections	143	40 non-penalty actions
Marketplace Inspections	166	16 non-penalty actions
Producing Establishment Inspections	12	1 EPA (referral)
Agricultural Complaint Investigations	38	20 non-penalty actions; 4 penalty actions
Agricultural Use Observations	54	11 non-penalty actions
Non-Agricultural Complaint Investigations	30	24 non-penalty actions; 3 penalty actions
Non-Agricultural Use Observations	34	11 non-penalty actions; 1 penalty
Import/Export Inspections	1	No actions
Experimental Use Permits	1	No actions
Worker Protection Standard (WPS) Field Inspections	19 ¹	4 non-penalty actions ¹
Total	684	237

¹ WPS inspections are counted as Agricultural Use Observations and are counted only once in the total for this column

Q&As for Bulk Pesticide Containers

As many dealers should be aware, new Federal rules concerning refilling, marking, labeling, and testing of bulk pesticide containers went into effect in August 2011. Included in this newsletter is a two-page EPA document which addresses one aspect of these new rules – non-DOT marked tanks being allowed for low-hazard liquids. The questions included here are just a few of many that have been asked by industry personnel and state regulators. Other questions, including types of containers regulated, leak-proof testing, DOT hazmat training, repackaging, non-refillable containers, are included in two documents that have been posted on NDA's web site at bit.ly/w4BZaF. Dealers and others having questions about these rules are encouraged to call NDA at (402) 471-2351 or 1-877-800-4080.

Pesticide Certification Exams: Manuals Matter

All pesticide certification exams administered by NDA are based on the information provided in each category manual. The University of Nebraska (UNL) Pesticide Safety Education Program (PESP) has done an excellent job of creating initial certification and recertification videos which provide another tool to communicate important pesticide safety information to applicators. However, these videos may not cover all testable material from the manuals. NDA expects that all pesticide applicators will be able to read and understand pesticide labels, thus applicators should also have the ability to read and understand category manuals. We encourage all current and future applicators to acquire the manuals from UNL to study for certification exams and have a reference guide in the field. Study manuals for all categories can be purchased from PSEP office at pested.unl.edu.

Monsanto Container Q&As
Draft as of: October 21, 2011

Why do Monsanto's 120-, 150- and 250-gallon Shuttle containers and 265-gallon CUBE containers comply with EPA's refillable container regulations even though they do not have the DOT/UN marking?

Short answer: Monsanto's 120-, 150- and 250-gallon Shuttle containers and 265-gallon CUBE containers can be used under EPA's refillable container regulations even though they do not have the DOT/UN marking because they are "non-DOT Specification portable tanks suitable for the transport of liquids." The U.S. Department of Transportation (DOT) regulations in 49 CFR 173.241(c), which are incorporated into EPA's refillable container regulations, authorize the use of non-DOT Specification portable tanks suitable for the transport of certain low-hazard liquids.

Details: For pesticides that are not DOT hazardous materials and are sold or distributed in refillable containers, EPA's regulations in 40 CFR 165.45(a)(1) require the pesticide to be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with certain requirements in DOT's regulations at a Packing Group III level. This section in EPA's regulations refers to and adopts a subset of DOT's Hazardous Materials Regulations (HMR), including 49 CFR 173.241(c), which states:

"DOT Specification 51, 56, 57 and 60 portable tanks; IMO type 1, 2 and 5, and IM 101 and IM 102 portable tanks; UN portable tanks; marine portable tanks conforming to 46 CFR part 64; and **non-DOT Specification portable tanks suitable for transport of liquids are authorized.** ..." (Emphasis added,)

The DOT regulations authorize the use of these types of containers, including non-DOT Specification portable tanks^{1 2} suitable for transport of liquids, for certain DOT hazardous materials that are low hazard liquid and solid materials. By citing 49 CFR 173.241(c) in the refillable pesticide container regulations, EPA is allowing non-DOT Specification portable tanks suitable for transport of liquids to be used to distribute or sell pesticides that are not DOT hazardous materials. (See the Table of Hazardous Materials and Special Provisions in 49 CFR 172.101 to determine the packaging that DOT authorizes for pesticides that are hazardous materials.)

¹ EPA believes that Monsanto's 120-, 150- and 250-gallon Shuttles and 265-gallon CUBEs are "non-DOT Specification portable tanks" based on DOT Interpretation 10-0186. This interpretation states "An IBC is defined by the HMR as a rigid or flexible portable packaging, other than a cylinder or specification portable tank, that is designed for mechanical handling (see § 171.8)." The DOT interpretation further states that "If the specification markings [on an IBC] are destroyed, removed, or covered, the packaging no longer meets the standards of a specification packaging in accordance with the HMR. Therefore the packaging is a non-specification bulk packaging and can be considered a non-specification portable tank." (Letter from T. Glenn Foster, U.S. DOT to Erin N. Jarman, URS Corporation)

² Section 173.241 of DOT's regulations require non-DOT Specification portable tanks suitable for transport of liquids to comply with the "general packaging" requirements in 49 CFR Part 173 for DOT hazardous materials, including §173.24 "General requirements for packagings and packages"; §173.24b "Additional general requirements for bulk packagings" and §173.32 "Requirements for the use of portable tanks." For pesticides that are not DOT hazardous materials, EPA's regulations refer to and adopt 49 CFR 173.24 and 173.24b, but not 49 CFR 173.32. Therefore, non-DOT Specification portable tanks suitable for transport of liquids that are used for pesticides that are not DOT hazardous materials must comply with 49 CFR 173.24 and 173.24b.

Please note that Monsanto has not received a specific exemption or waiver from EPA for its Shuttles and CUBEs, which are bulk packagings³. Instead, for refillable pesticide containers larger than 119 gallons, Monsanto is choosing to use containers that are authorized by 49 CFR 173.241(c) rather than by 49 CFR 173.241(d), which is also incorporated into EPA's regulations. Section 173.241(d) authorizes the use of intermediate bulk containers (IBCs) that comply with the DOT testing requirements for IBCs at the Packing Group III performance level.

The option for "non-DOT Specification portable tanks suitable for transport of liquids" is not valid for refillable containers that are 119 gallons or smaller (for liquid pesticides that are not DOT hazardous materials). These smaller containers are UN marked non-bulk packagings⁴. Section §165.45(a)(1) in EPA's regulations refers to and adopts 49 CFR 173.203, which lists the authorized non-bulk packagings for liquid hazardous materials in Packing Group III. All of the non-bulk containers identified in 49 CFR 173.203 must be designed, tested and marked to comply with DOT's requirements at the Packing Group III performance level. Therefore, all refillable pesticide containers that are 119 gallons or smaller must be designed, tested and marked to comply with DOT's requirements at the Packing Group III performance level.

Do Monsanto's 120-, 150- and 250-gallon Shuttle containers and 265-gallon CUBE containers (that do not have the DOT/UN marking) need to be leakproofness tested every 2.5 years? Do these Shuttle containers and CUBEs need to pass the DOT external inspection every 2.5 years or the DOT internal inspection every 5 years?

No, Monsanto's 120-, 150- and 250-gallon Shuttle containers do not need to be leakproofness tested or DOT inspected according to the requirements in 49 CFR 180.352 (which is referred to and adopted by EPA's refillable pesticide container regulations.) Monsanto's Shuttle containers and CUBE containers are "non DOT-Specification portable tanks" rather than IBCs and the "requirements for retest and inspection of IBCs" in 49 CFR 180.352 only apply to IBCs "constructed in accordance with a UN standard." Specifically, 49 CFR 180.352(a) states: "Each IBC constructed in accordance with a UN standard for which a test or inspection specified in paragraphs (b)(1), (b)(2) and (b)(3) of this section is required may not be filled and offered for transportation or transported until the test or inspection has been successfully completed." Section 180.352(b) establishes test and inspection requirements for metal, rigid plastic and composite IBCs. Monsanto's 120-, 150- and 250-gallon Shuttle containers and 265-gallon CUBE containers are not IBCs so the retest and inspection requirements in 49 CFR 180.352 do not apply to them.

Refillable pesticide containers need to be leakproofness tested if the DOT regulations that are referred to and adopted into the pesticide container regulations require the testing. There are no EPA-specific requirements in the pesticide container regulations that require pesticide containers to be leakproofness tested. However, EPA's repackaging regulations do require a refiller to inspect a container each time before it is refilled. (40 CFR 165.65(e) and 165.70(f)) Currently, Monsanto is considering a revision to their repackaging contracts to require refillers to conduct a periodic performance test of some type on Monsanto 120-, 150- and 250-gallon Shuttles and 265-gallon CUBEs to address the continued qualification of these containers.

³ DOT defines "bulk packaging" as "a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment. ... Additionally, a bulk packaging has: (1) A maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid; ..." (49 CFR 171.8)

⁴ "Non-bulk packaging means a packaging which has: (1) A maximum capacity of 450 L (119 gallons) or less as a receptacle for a liquid; ..." (49 CFR 171.8)

Nebraska Pesticide Sensitive Crop Locater

The Nebraska Pesticide Sensitive Crop Locater – an on-line searchable database and map – is growing, though not overflowing. As of this writing, 192 landowners having 305 separate crop locations were contained in the database. The table below shows the numbers for each crop type in the database.

Crop Type	Location Count
Fruit or Vegetables	32
Grapes	117
Honey	13
Nursery (ornamental plants, plants for seed, flowers/cut flowers, etc)	8
Orchard (trees for fruit/nuts)	6
Organic	104
Other	25
Total	305
Individual Landowners	192
Counties Represented	60 out of 93

NDA encourages all applicators to check the Locater database and/or map frequently to determine if pesticide sensitive crops are nearby, and to take appropriate actions to prevent drift, potential crop damage and economic hardship, and violations of the Nebraska Pesticide Act. The Locater web page is at bit.ly/vvExTJ. Or go to the NDA home page, select the search button in the upper left-hand corner, and type in 'locater'.

Nebraska
Pesticide Sensitive Crop Locater

www.agr.ne.gov
(search for 'locater')

Commercial Growers - Register your crop locations
Pesticide Applicators - Locate sensitive crops in your area

Potential Pesticide Sensitive Crops

- Fruit Orchards
- Nut Trees
- Flowers
- Vineyards
- Woody Florals
- Nurseries
- Organic
- Vegetables

Strategic Plans, Crop Profiles, and Pest Alerts)

- Bed Bug Resources
 - UNL Extension Article (pg 7) (bit.ly/nzT5X1)
 - EPA (www.epa.gov/bedbugs)
- Nebraska Statewide Arboretum (www.arboretum.unl.edu)
- Don't Move Firewood - You Wouldn't Take Firewood to a Ballgame (bit.ly/vumqFI)
- Don't Move Firewood – The Gypsy Moth Sees Your Future (bit.ly/uBkUfq)
- Weed Resistance
 - Weed Science Society of America (bit.ly/uBGegA)
 - Center for IPM (bit.ly/w0YuFt)
- NDA Noxious Weed and Pesticide Program Informational Material (bit.ly/rCPXh4)
- National Pesticide Information Center (npic.orst.edu)

Web Links of Interest

Regional agriculture, agronomy, IPM, and/or horticulture web sites and newsletters (many with e-subscription services with delivery right to your PC or handheld device!):

- CropWatch News Service (University of Nebraska) (cropwatch.unl.edu/)
- Horticulture Update and Acreage E-News (University of Nebraska) (byf.unl.edu/)
- Nebraska IPM in Schools Blog (bit.ly/vUsXnb)
- Internet Center for Wildlife Damage Management (UNL and others) (icwdm.org)
- Nebraska Invasive Species Project (bit.ly/turiQG)
- Missouri Environment and Garden Newsletter (University of Missouri) (bit.ly/sLF0HO)
- Integrated Pest and Crop Management (University of Missouri) (bit.ly/uGwB1E)
- Horticulture Newsletter (Kansas State University) (bit.ly/vqaQ7R)
- Kansas Insect Newsletter (Kansas State University) (bit.ly/vcBdOH)
- Agronomy e-Update (Kansas State University) (bit.ly/vF84vL)
- Integrated Crop Management Newsletter (Iowa State University) (bit.ly/w446IB)
- Horticulture and Home Pest News (Iowa State University) (bit.ly/v3Zixs)
- South Dakota State University (igrow.org/)
- North Central Region IPM Center (bit.ly/semQY6) (links to many states with links similar to the above, as well as Pest Management

(Continued in next column)

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