

PESTICIDE REPORTS

Division of Agricultural Sciences and Natural Resources • Oklahoma State University
<http://pested.okstate.edu>



October, 2011

CHEM

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Registration forms can also be downloaded from the website. Dates for 2012 have not been set but will be posted on the OSU PSEP web page once those have been finalized.

Registration will start at 8:45 and the program will run from 9:00 am to 12:30 pm. Testing will begin at 1:30 pm.

NO CEU's will be given for this program!

(OSU PSEP)

UNWANTED PESTICIDE DISPOSALS FOR 2011

The 2011 Unwanted Pesticide Disposals will be held November 15th in Ada and November 17th in Apache. There is no charge for this program. Limit is 2,500 pounds per entity. **ONLY PESTICIDES** will be taken at the sites (no fertilizer, paint, oil, etc)! If you have any questions contact Charles Luper (OSU) at 405-744-5808 or Jason Baker (ODAFF) at 405-522-5993.

Times for all locations: 8:00 am to 1:00 pm.
 Nov. 15 Pontotoc County Fairgrounds in Ada
 Nov. 17 Apache Farmers COOP in Apache.

For more information please go to <http://pested.okstate.edu/unwanted.htm>

(PSEP)

LAST TEST HELP OFFERED FOR 2011

The OSU Pesticide Safety Education Program will hold its last test help session for 2011 on October 26th in Tulsa. The meetings will be held at the Tulsa County Extension Center at 4116 E. 15th.

This help session will focus on information covered in the core/service tech test and Category 3A Ornamental & Turf. OSU PSEP will also answer any questions over these tests during this session.

Cost of registration is \$30 if received by October 19th. Registration will increase to \$50 after October 19th or on site (if space available). **ODAFF Testing fees are not included in the registration fee and must be paid separately.** Register online at the Pesticide Safety Education Program (PSEP) website at <http://pested.okstate.edu/practical.htm>.

PESTICIDE CONTAINER RECYCLING

USAg Recycling will be collecting and chipping plastic pesticide containers in Oklahoma during in late October or early November. There is still time to contact USAg Recycling to get on their pickup list before they make their Oklahoma route. Contact USAg directly to be included on the Oklahoma route at 1-800-654-3145. (OSU PSEP)

EXTERMINATOR PLEADS GUILTY TO UNLAWFUL USE OF ORGANOPHOSPHATE

A bedbug exterminator, formerly based in Everett-Mass., this month pleaded guilty in the U.S. District Court for the District of Massachusetts to 16 counts of violating FIFRA and one count of making false statements to federal agents.

According to a Sept. 1 news release from EPA's Office of Compliance and Enforcement, if the case had gone to trial, the government would have shown that Josimar Ferreira told his clients he could eradicate bed bugs with a "special" mixture approved for indoor application. But Ferreira actually applied the organophosphate malathion, which is not approved for indoor use, to a crib, mattresses, bed frames, baseboards, closets and furniture.

Ferreira, who faces up to five years in prison and a \$250,000 fine, is scheduled to be sentenced Nov. 22. (Pesticide & Chemical Policy, September 9 2011, Volume: 39 Issue: 40)

STATE PESTICIDE OFFICIALS WANT EPA TO SEEK MORE TIME FOR NPDES PESTICIDE PERMIT

EPA expects to come within a couple of weeks, or less, of meeting its current deadline for issuing a final Pesticide General Permit, and that has state pesticide officials concerned.

They will soon ask EPA to consider requesting another extension from the 6th Circuit Court of Appeals whose January 2009 ruling requires EPA to develop a permitting system under the Clean Water Act for certain types of pesticide applications to, over or near waters of the U.S.

On March 28, the court agreed to EPA's request to extend until Oct. 31 the deadline for implementing such a permitting system.

But despite the lack of time EPA's schedule would afford for states to review its permit and finalize their own permits, at this point, the agency does not plan to ask the court for another extension, Allison Wiedeman, chief of the Rural Branch in the Water Permits Division of EPA's Office of Water, told members of the State FIFRA Issues Research and Evaluation Group's (SFIREG) Pesticide Operations and Management Working Committee at a meeting on Sept. 20.

Wiedeman said EPA hopes to get the permit out one or two weeks before the Oct. 31 deadline, but the agency is "not making any promises."

Along with the permit, EPA will release a detailed fact sheet that will describe the permit requirements; including how and why they were developed. EPA also will make available various forms people can use when submitting their notice of intent (NOI) to be covered under the permit as well as other forms that go along with the permit, such as a template for a pesticide discharge management plan.

"We're making every effort to provide permits with the templates and forms that they can use to

facilitate an understanding of both what the requirements are and to be able to have ready-made documents that they can fill out to assist in compliance," Wiedeman said. EPA also plans to have an electronic NOI system in place, she added, noting that EPA is moving to an electronic system for all permits, not just the Pesticide General Permit (PGP).

Endangered species uncertainty

Wiedemann told the SFIREG committee members that EPA is in the process of incorporating endangered species-related provisions into the PGP.

Despite some gentle prodding, she refused to discuss the provisions. "I can say [that] we are in the process of finalizing them. I can also tell you that we don't believe that the ESA provisions are significant enough to warrant another round of public comment, so we are proceeding with finalizing the permit," she said.

The endangered species provisions stem from consultation with the National Marine Fisheries Service regarding the potential impacts of the PGP on endangered or threatened species.

But Wiedeman's words of assurance were not satisfying to SFIREG Chair Steve Dwinell.

"It's ... concerning we're not going to actually see [the ESA provisions] until the very last minute ... it's just a big gray area with a lot of uncertainty as to what the provisions are actually going to be," he noted.

Dwinell asked whether there is any chance EPA will ask for another stay to resolve this. "The logical course is to say, 'We're still figuring out how to do this, and we have to give states time to comment and to make revisions,'" he said, noting that if EPA publishes the PGP by Oct. 15, "states would only have two weeks to bring everything in compliance, and that's just not doable." He suggested a six month extension. The committee voted to recommend that EPA ask for an additional six month stay and Dwinell tells *Pesticide & Chemical Policy* he is drafting a letter to that effect.

While rejecting the idea of another extension, Wiedeman reminded SFIREG members that the endangered species provisions in EPA's PGP only apply to the six states that will fall under the PGP, that is, states where EPA retains NPDES permitting authority - Alaska, Idaho, Massachusetts, New Hampshire, New Mexico and Oklahoma. The other 44 states, which have their own permitting authority and are developing their own permits, are welcome to do anything they want to or need to under their laws regarding endangered species, she added.

According to Wiedemann, eight of those 44 states have a final permit - California, Florida, Iowa, Montana, South Carolina, South Dakota, Virginia and Washington - and 20 more are close to finalizing their permit.

She noted that in the absence of a general permit, applicators can still apply for an individual permit, "but they need to have [a permit]."

Dwinell also asked about the status of EPA's consultation with the U.S. Fish and Wildlife Service (FWS) on the PGP. With the release of a draft biological opinion that was subject to public comment and is expected to be finalized soon, EPA's consultation with NMFS has been more transparent than its work with FWS regarding the PGP.

"We are in consultation with the Fish and Wildlife Service. We have always been in consultation with them along with being in consultation with the National Marine Fisheries Service. The results of that [FWS] consultation are still to be determined," Wiedeman said.

Asked whether EPA anticipates having to modify the PGP based on input from FWS, Wiedeman responded, "It's an unknown at this point ... I can't really comment in any more detail at this point." (*Pesticide & Chemical Policy*, September 23 2011, Volume: 39 Issue: 42)

WATERHEMP SHOWING GREATER GLYPHOSATE RESISTANCE

A Purdue Extension weed specialist urges farmers to take necessary steps now to better control yield-reducing water hemp next year as it spreads through Indiana with increasing resistance to glyphosate.

Farmers need to learn more about water hemp because it has shown greater resistance to the herbicide the past 2-3 years, Bill Johnson said. The weed has been present in some Indiana field surveys for about 10 years.

"More recently, we've had an increasing number of complaints about glyphosate's failure to control water hemp in soybean production," Johnson said. "The number of calls we have been getting on that has essentially doubled each year over the last couple of years."

Water hemp now is found throughout Indiana. It is most prevalent in the southern, southwestern, northwestern and east-central portions of the state.

Johnson has produced the educational document "Water hemp — an Emerging Weed Problem in Indiana" to raise awareness among farmers and help them develop a plan to better control the weed next year. The document, which includes pictures to help farmers identify water hemp, is available online [here](#).

Water hemp is among a dozen species in the pigweed, or amaranth, family. Other pigweed found in Indiana includes redroot pigweed, smooth pigweed and Palmer amaranth.

"We've had pigweed for a long time, but this one - water hemp - has really emerged as a major threat to soybean production," Johnson said.

One water hemp plant can produce as many as 1 million seeds. Just a few untreated weeds in a field can lead to a major infestation within a couple of years, Johnson said.

Water hemp is more of a problem for soybeans than it is for corn. A heavy infestation in a soybean field can reduce yields by 30-50 percent, Johnson said.

Water hemp has proven difficult to control. Although Johnson said pre-emergence herbicides greatly reduce water hemp density, it emerges throughout the growing season and usually also requires a post emergence herbicide treatment, especially for soybeans.

"It is very common to have to spray a field multiple times to get the water hemp under control," Johnson said. "One-pass herbicide programs are not going to be effective on it because it has a very long emergence pattern."

Because water hemp is dioecious - male and female flowers on separate plants - two plants always mix genes when they reproduce, increasing genetic diversity within a population and the potential for spreading herbicide resistance and other traits that enable the plant to survive.

Johnson recommended that farmers now going through their fields at harvest time take note of whether water hemp is present and, if so, the level of density and whether there appears to be more of it this year than last. He said that will help them determine a plan for better controlling it.

Water hemp first was controlled in the mid-1980s by herbicides known as ALS- and PPO-inhibitors before Roundup Ready soybeans, resistant to glyphosate, were introduced. But glyphosate-resistant water hemp also has been found in recent years in Illinois and other states in addition to Indiana (Crop Life)

<http://croplife.com/news/?storyid=3580&style=1>

REPUBLICAN, DEMOCRATIC HOUSE MEMBERS URGE SENATE ACTION ON PESTICIDE-NPDES BILL

A bipartisan group of 20 U.S. Representatives wrote to six of their Senate colleagues on Oct. 3 urging "prompt consideration" of H.R. 872, which would exempt FIFRA-compliant pesticide applications from requiring discharge permits under the Clean Water Act.

"The House of Representatives passed H.R. 872 with broad bipartisan support on March 31. We believe this measure is a reasonable solution to avoiding duplicative regulation while preserving decades of safe, effective pest control standards and oversight," write the nine Democrats and 11 Republicans who signed the letter.

In his weekly radio address, known as the *Ag Minute*, House Agriculture Committee Chairman Frank Lucas (R-Okla.), on Oct. 4, also urged Senate passage of H.R. 872.

The sense of urgency is propelled by the upcoming Oct. 31 deadline when a January 2009 ruling from the 6th Circuit Court of Appeals requiring National Pollutant Discharge Elimination System (NPDES) permits for certain pesticide applications to, over, or near waters of the U.S. is due to go into effect.

According to the letter, EPA has long maintained that existing standards under FIFRA are sufficient to protect public health and the environment, a view shared by many state, industry and other stakeholders who see a permitting requirement under the Clean Water Act as unnecessarily duplicative with FIFRA.

The biggest concern, the representatives write, is the impact of a new permitting regime on already constrained state budgets. Some states have already significantly reduced their mosquito control budgets, and other public health-related activities would likely have to be curtailed going forward to implement and enforce the permitting system,

which will largely be a responsibility of the states, the letter notes.

"In light of the foregoing, we believe the costs of this court-ordered rulemaking outweigh the benefits. The federal government should not impose new requirements or costs on states and citizens that are not justified by a clear need," the letter states.

The letter is addressed to Senate Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (R-Ky.) as well as the chairmen and ranking members of the agriculture and environment committees.

The Senate agriculture committee did pass H.R. 872 on June 21, but Sens. Barbara Boxer (D-Calif.) and Ben Cardin (D-Md.) subsequently placed a hold on the bill, and there has been no further movement.

Cardin in particular has expressed concerns that the environmental protections under FIFRA are not sufficient to address the problems of particular waterways the way the Clean Water Act is.

According to one industry source following the matter closely on Capitol Hill, who asked not to be identified, there has been no progress of late in addressing the concerns of Boxer and Cardin and moving toward a vote.

After an initial round of meetings among the staffs of Sens. Boxer, Cardin and agriculture committee Chair Debbie Stabenow (D-Mich.), nothing has transpired in the past couple of months due to other priorities, the source tells *Pesticide & Chemical Policy*, based on discussions with committee staff members.

"We're still hopeful, but it's so unpredictable and so hard to know," the source tells *P&CP*, referring to prospects for Senate passage of H.R. 872. He says the preference is to deal with the matter through another legislative vehicle as there are very few stand-alone bills that make it through the Senate these days.

The latest vehicle for doing that is S. 1619, a bill to address foreign currency manipulation by other

countries. On Oct. 4, Sens. Pat Roberts (R-Kan.) and Mike Johanns (R-Neb.) introduced an amendment that would exempt FIFRA-compliant pesticide applications from Clean Water Act permitting requirements.

While enacting legislation by Oct. 31 is the goal, doing so after the court deadline would also be acceptable. "Better late than never," the industry source agrees. . "(Pesticide & Chemical Policy website, October 5, 2011)

ORGANIC BEEF FARMERS SUE OVER DAMAGES FROM HERBICIDE SPRAYING

Sedro Woolley, Wash.-based organic farmers Lonni and Tarie Benson sued the U.S. government and a vegetation management contractor in federal court Sept. 28 for damages sustained from herbicides that were sprayed to maintain the right-of-way for a power transmission line that runs through their property.

The complaint, filed in the U.S. District Court for the Western District of Washington at Seattle, says that on June 13, 2009, Forest for the Future, a vegetation management contractor for the government-operated Bonneville Power Administration (BPA), sprayed herbicide on the plaintiffs' property where they operated a certified organic beef farm.

The complaint describes the consequences of that spraying and why it should not have happened.

In November 2008, the Bensons were notified by BPA of upcoming plans to spray herbicides in rights-of-way. On Dec. 8, 2008, Tarie Benson allegedly told Jacob Grinolds, a natural resource specialist for BPA, that her farm is certified organic so herbicides could not be applied.

Grinolds said he would make a note on the paperwork to be given to the vegetation management company and promised that no herbicide would be sprayed.

But while the paperwork prepared by Grinolds said "NO herbicide" in red ink at the bottom of the sheet, the upper part said "Manual brush cut/Ground herbicide..." the complaint notes. In addition, the copy of the sheet actually received by Forest for the Future said "Contact Landowner" in the last column whereas BPA's version said "No Herbicide, Contact Landowner," with the plaintiffs' business name and phone number.

Despite the "NO herbicide" instructions on the sheet and a "NO SPRAY" sign near the access gate to the Benson's property, spraying occurred, contaminating a 2.5 acre pasture and about 143 of the Benson's certified organic beef, which were due to be sold to Skagit River Ranch between July 10, 2009 and Dec. 31, 2010.

Because of the contamination, the Bensons were unable to market their herd as organic and had to immediately sell 143 cattle on the regular market. In addition, the Bensons lost their contract with Skagit River Ranch to supply up to 100 cows per year, and "an additional 100 head of cattle will be lost per year as [the Bensons] rebuild their certified organic herd."

The complaint further notes the Bensons had to take steps to protect the cattle that were not exposed to the herbicide, which has led to the loss of about 60 acres of their property for three years following the contamination. "The only access to the 60 acres was through the contaminated area, so these acres were inaccessible," the complaint states.

The complaint alleges seven causes of action, including negligence, nuisance, breach of contract and trespass.

BPA Natural Resource Specialist Grinolds "acted negligently, carelessly and unlawfully under the circumstances in that: he failed to adequately communicate the instruction not to spray herbicides to Forest [for the Future]; and he failed to prevent the spraying on Plaintiffs' property even though he knew Plaintiffs ran an organic farm, injuring plaintiffs and damaging Plaintiffs' property," the complaint states.

At the same time, employees of Forest for the Future acted negligently by disregarding the "NO SPRAY" sign on the defendants' property and failing to completely read the sheet from BPA and asking for clarification of the conflicting instructions, the complaint continues.

It alleges violations of both state and federal law.

The Bensons are seeking compensation for their claimed damages in an amount to be proven at trial. They are also seeking permanent injunctive relief prohibiting the government and Forest for the Future from spraying herbicides on their property or the right-of-way running through their property.

While cases involving damages to organic agriculture from pesticides are becoming more common as the organic sector expands, there are few published decisions in this area and cases are relatively rare as disputes are typically settled, Ted Feitshans, extension associate professor at North Carolina State University, told *Pesticide & Chemical Policy* last July after the Minnesota Court of Appeals ruled that herbicide spray drift that had contaminated an organic farm could be considered a trespass under Minnesota law. The appellate court also upheld claims for negligence and nuisance and remanded the case to district court.

In another case, *Jacobs Farm/Del Cabo v. Western Farm Service*, the Court of Appeals for California's Sixth Appellate District, in San Jose, ruled last December that a pesticide applicator can be sued for damage caused to a nearby organic farm, even if the applicator complied with governing pesticide laws. "(Pesticide & Chemical Policy website, October 5, 2011)

In-State CEU Meetings

Date: October 12 2011

Title: Winfield Solutions CEU Academy

Location: Tulsa Convention Center Tulsa, OK

Contact: (918) 234-0560

Course #:

CEU's:	Category(s):
3	3A
3	7A
1	7B
6	10

Date: October 13 2011

Title: Winfield Solutions CEU Academy (Pest Control)

Location: Reed Conference Center Midwest

City, OK

Contact: (405) 232-2493

Course #:

CEU's:	Category(s):
1	3A
5	7A
1	7B
5	10

Date: October 13 2011

Title: Winfield Solutions CEU Academy (Turf)

Location: Reed Conference Center Midwest

City, OK

Contact: (405) 232-2493

Course #:

CEU's:	Category(s):
5	3A
1	6
1	7A
6	10

Date: November 1-3 2011

Title: OK Ag Expo
Location: Oklahoma City OK
Contact: Tammy Miller 580-233-9516
Course #: OK-11-098

CEU's:	Category(s):
2	All Categories
6	1A
3	7C
9	10

Date: November 2 2011

Title: Target Specialty Products
Location: Tulsa OK

Contact: Kelly Sheffield 800-522-9701
Course #: OK-11-104

CEU's:	Category(s):
5	3A
5	7A
5	10

ODAFF Approved Online CEU Course Links

Wood Destroying Organism Inspection Course
www.nachi.org/wdocourse.htm

All Star Pro Training
www.allstarce.com

CTN Educational Services Inc
http://ctnedu.com/oklahoma_applicator_enroll.html

Pest Network
<http://www.pestnetwork.com/>

Univar USA
<http://www.pestweb.com/>

Southwest Farm Press Spray Drift Mgmt
<http://www.pentonag.com/nationalsdm>

SW Farm Press Weed Resistance Mgmt in Cotton
<http://www.pentonag.com/CottonWRM>

Western Farm Press ABC's of MRLs
<http://www.pentonag.com/mrl>

Western Farm Press Bio pesticides Effective Use in Pest Management Programs
<http://www.pentonag.com/biopesticides>

Western Farm Press Principles & Efficient Chemigation
<http://www.pentonag.com/Valmont>

For more information and an updated list of CEU meetings, click on this link:
<http://www.state.ok.us/~okag/cps-ceuhome.htm>

ODAFF Test Information

Pesticide applicator test sessions dates and locations for October/November 2011 are as follows:

October		November	
10	OKC	1	Goodwell
13	Tulsa	3	Tulsa
19	Altus	14	OKC
24	OKC	16	Hobart
27	Tulsa	17	Tulsa
		28	OKC

Altus: Western OK State College
2801 N Main, Room A23

Enid: Garfield County Extension Office,
316 E. Oxford.

Goodwell: Okla. Panhandle Research &
Extension Center, Rt. 1 Box 86M

Hobart: Kiowa County Extension Center
Courthouse Annex, 302 N. Lincoln

Lawton: Great Plains Coliseum, Annex Rm.
920 S. Sheridan Road.

McAlester: Kiamichi Tech Center on
Highway 270 W of HWY 69

OKC: Oklahoma County Extension Office,
930 N. Portland.

Tulsa: NE Campus of Tulsa Community
College, (Apache & Harvard)
Large Auditorium

**Pesticide Safety
Education Program**