

PESTICIDE REPORTS

Division of Agricultural Sciences and Natural Resources • Oklahoma State University

<http://pested.okstate.edu>



March, 2012

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EPA ELECTRONIC NOTICE OF INTENT (NOI) FOR PESTICIDE GENERAL PERMIT (PGP)

EPA has developed an Electronic Notice of Intent (eNOI) system for pesticide Operators that need to submit Notices of Intent (NOIs) for coverage under EPA's Pesticide General Permit (PGP). The eNOI system is a free online service. EPA is the permitting authority for Oklahoma at this time. More information on the Pesticide General Permit of NPDES can be found at the link below.

http://cfpub.epa.gov/npdes/home.cfm?program_id=410

Applicators in categories 2, 5, 8 should become familiar with this webpage to file any NOIs that they may be required to under and the Pesticide General Permit (PGP) of NPDES.

The eNOI website can be found at <http://cfpub.epa.gov/npdes/pesticides/enoi.cfm>. A decision tool to determine if you need to file an NOI can be found here also.

Any questions over this process should be directed to Jenelle Hill at EPA Region Six Water Quality Protection Division / Permits and Technical Section.

Jenelle Hill

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FUMIGATION PRACTICAL

The first Fumigation Practical for 2012 has been scheduled for March 27th in Stillwater. Registration is now open for this practical. Please plan accordingly the next and last Fumigation Practical will be held September 25th. Registration is \$200 and registration information can be found at <http://pested.okstate.edu/practical.htm>. (PSEP)

OSU PSEP TEST HELP SESSION

The OSU Pesticide Safety Education Program will its next test help session April 12th in Oklahoma City. The meetings will be held at the Oklahoma County Extension Center at 930 N Portland.

This testing session will focus on information covered in the core/service tech test. OSU PSEP will also answer any questions over other category tests during this session.

Cost of registration is \$30 if received by April 6th. Registration will increase to \$50 after by April 6th 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>. Registration forms can also be downloaded from the website. More dates have been scheduled for Oklahoma City and Tulsa for 2012 please check the website or watch the newsletter for future dates. The next test help will be May 30th in Tulsa at the Tulsa County Extension Center.

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!

THREE-YEAR DELAY PROMPTS NRDC TO SUE EPA FOR NOT RESPONDING TO PETITION TO BAN 2,4-D

The Natural Resources Defense Council sued EPA in the D.C. Circuit Court of Appeals on Feb. 23 for “unreasonable and unlawful” failure to respond to its 2008 petition asking the agency to ban the herbicide 2,4-D.

“It is unreasonable for an agency to take three years, three months and counting to respond to a petition regarding serious public health issues bearing on the safety of millions of Americans,” the complaint says, citing a 2004 D.C. Circuit ruling that said a reasonable time is “typically counted in weeks or months, not years.”

The lawsuit says that NRDC is seeking “modest” relief.

“The Court is not required to make a determination of the safety of 2,4-D or to address the merits of the petition NRDC filed with EPA,” it states. “NRDC only requests that the court direct EPA to provide a response to the petition.”

The petition, filed on Nov. 6, 2008, asks EPA to “revoke all tolerances and cancel all registrations for 2,4-D, based on the adverse health effects associated with exposure to 2,4-D.” EPA published that petition for a 60-day comment period on Dec. 4, 2008, but has taken no action since, the complaint alleges, except to write to NRDC in June 2009 to say the agency was reviewing comments received. An EPA employee also called NRDC in 2009 to ask a follow-up question, the complaint says.

The lawsuit posits a potential motivation for EPA to delay action.

“By refusing to respond to NRDC’s petition for over three years, EPA avoids having to start the rulemaking process and also avoids having to face a court challenge to any decision not to regulate 2,4-D,” the complaint states.

Asked about the cause of the delay, an EPA spokesperson tells *Pesticide & Chemical Policy* that it is agency policy not to comment on pending litigation.

2,4-D in the spotlight

About 46 million pounds of 2,4-D, which has been registered for use in the U.S. since 1948 and was re-registered by EPA in 2005, are used annually in the United States, according to numbers cited in the lawsuit. NRDC says there are “dozens” of scientific studies demonstrating the chemical’s link to cancer, cell damage, reproduction problems, birth defects and hormonal problems, among other health impacts.

Regulatory actions by USDA have recently pushed 2,4-D into the spotlight. Agency approval of 2,4-D-tolerant genetically modified corn from Dow AgroSciences is pending. USDA on Feb. 22

extended the public comment period for that proposed action by two months from Feb. 27 to April 27.

Environmentalists and some specialty crop growers worry that if genetically modified 2,4-D-tolerant crops are approved, agricultural use of 2,4-D — which would be used in combination with glyphosate to combat herbicide-resistant weeds — could potentially skyrocket, along with the alleged environmental impacts.

Industry responds

Jim Gray, executive director of the Industry Task Force II on 2,4-D Research Data, says they are disappointed that NRDC is claiming EPA is taking too long to respond to the petition, given that the agency has only recently received new data related to its Endocrine Disruptor Screening Program. In 2009, Gray says, “not even one year after the NRDC petition,” EPA put 2,4-D in Tier 1 of the screening program, which required assays of various endpoints in multiple organisms. The industry task force “just finished” submitting data to EPA from those assays last October.

“It is appropriate to give EPA the appropriate length of time to evaluate the volume of data that go into — not just the assays themselves — but all of the other public information that has been submitted,” Gray says.

Gray says NRDC’s decision to file the lawsuit now raises questions of a complaint based on “political timing as opposed to a scientific basis.”

“Don’t you think the timing is suspicious, given that the data that [NRDC has] been asking EPA to review, when it’s currently just finished being submitted, they would rather jump in and sue them now?” Gray asks.

The task force found that 2,4-D was not an endocrine disruptor, Gray says.

‘We think we have a strong case’

Asked about the timing of the lawsuit, NRDC attorney Nick Morales tells *P&CP* there was no particular reason behind filing the lawsuit now rather than later.

“It’s just been so long that we felt like it was time to seek judicial relief, because it didn’t look like the agency was going to act on it,” Morales says.

He says that although NRDC is also following the pending USDA regulatory decision on 2,4-D-

tolerant corn, this was not what prompted the filing of the lawsuit.

With the lawsuit filed, Morales says any future actions are now “in the court’s hands.” If the court does compel EPA to act, the agency would have to deny NRDC’s petition or initiate a rulemaking response, Morales says.

EPA is compelled to protect public health and the environment, so the economic considerations of banning 2,4-D should not be a factor in the agency’s decision, Morales says.

“We think that, based on the science, that the agency is bound by the law to then take this pesticide off the market,” he says. “The law requires [EPA] to protect the public from unreasonable risk to health. It doesn’t tell them to think about the practical effects on the industry. They just have to think about whether [2,4-D] possesses an unreasonable risk to health and the environment. Under that requirement, we think we have a strong case.” (Pesticide & Chemical Policy, February 23 2012, Volume: 40 Issue: 11)

SPRAY WATER QUALITY IMPACTS HERBICIDE EFFICACY

A series of studies at Purdue University has shown that spray water pH and hardness can reduce the effectiveness of herbicides, making it vitally important for crop producers to test water sources.

Hard water or water with pH values as low as 4 or as high as 9 have been shown to lower the efficacy of herbicides, including glyphosate, nicosulfuron and saflufenacil, said Bill Johnson, Purdue Extension weed scientist and professor of botany and plant pathology. An ideal pH value would be 6-7.

"At this point, it seems to be specific to a limited number of compounds," Johnson said. "It's amazing how little we know about this topic, considering the number of acres of crops planted in Indiana each year."

In his research with saflufenacil, Johnson said the herbicide is less soluble at a low pH.

"It's similar to what happens when you put too much sugar in a glass of tea," he said. "The granules are then harder for plants to absorb."

With spray water at a high pH, the molecules in saflufenacil break apart, turning the herbicide into a different compound altogether.

The high mineral content of hard water makes it more difficult for plants to take up the compounds through their tissues because the minerals bind to the herbicide, Johnson said.

Water sources in Indiana tend to have higher iron content, bringing pH levels lower. Further west in the Corn Belt, water sources can have higher pH values because there is more sodium.

Regardless of location, Johnson said crop producers need to test spray water and understand pH and hardness. He said that is especially important if producers are getting water from multiple sources because levels can vary from well to well.

Growers can buy test kits for both pH and hardness, and there are pH adjuster treatments to neutralize spray water. Hard water issues can sometimes be corrected by adding ammonium sulfate.

"Producers also need to read their herbicide labels and understand which water conditions they need to avoid," Johnson said.

He also warned producers against making complex mixtures of herbicides, insecticides, fungicides and foliar fertilizers because the characteristics of each chemical potentially could change the way the other chemicals perform.

"If farmers are putting together complex mixtures, they really need to pay attention to what each chemical does," Johnson said. "A unique mixture will have unique characteristics. For example, you might be adding hardness to the mix when you shouldn't."

More information on spray water quality, testing and solutions to hardness and high pH values are available in the Purdue Extension publication "The Impact of Water Quality on Pesticide Performance." The publication, number PPP-86, is available for free download at Purdue Extension's Education Store at www.the-education-store.com.

(Crop Life January 26, 2012)

<http://www.croplife.com/article/24787/researcher-spray-water-quality-impacts-herbicide-efficacy>

TESSENDERLO KERLEY ACQUIRES CARBARYL BUSINESS FROM BAYER

Tessenderlo Kerley, Inc. (TKI), a U.S. subsidiary of Tessenderlo Group, has purchased the crop protection assets of the global carbaryl business from Bayer CropScience, which will retain the non-crop business. Financial terms of the agreement were not disclosed.

• Crop Protection Database Search: [Carbaryl](#)

Carbaryl is marketed under the Sevin brand, as well as other associated trademarks in 40 countries. TKI will acquire global crop protection assets, including trade names, know-how, registrations and registration data.

Jordan Burns, CEO of TKI, stated, "TKI is committed to expanding its crop protection portfolio. We intend to continue building our NovaSource Crop Protection group with the addition of strategic products as they become available."

Responsibility for the carbaryl product will be undertaken by TKI's business unit, [NovaSource](#). NovaSource Group Vice President David Cassidy stated, "The acquisition of the carbaryl insecticide franchise is another step in the planned expansion of the company's niche crop protection product portfolio, following the acquisition of the terbacil and linuron businesses from DuPont, the Surround

business from BASF and the Purshade business from Purfresh."

Tessengerlo Kerley, Inc., headquartered in Phoenix, AZ, produces and markets specialty chemical solutions, including fertilizers, crop protection chemicals, and process chemicals and services to diverse markets around the globe. TKI operates 10 manufacturing plants in North America, in addition to an extensive [terminal network](#). TKI is a subsidiary of the Tessenderlo Group, Brussels, Belgium. (Crop Life February 2, 2012) <http://www.croplife.com/article/24822/tessenderlo-kerley-acquires-carbaryl-business-from-bayer>

ORGANIC GROUP LAWSUIT AGAINST MONSANTO DISMISSED

The U.S. District Court for the Southern District of New York has officially dismissed a lawsuit brought by The Organic Seed Growers and Trade Association (OSGATA) and dozens of other plaintiff growers and organizations against Monsanto Company.

OSGATA and plaintiffs in the case alleged that they did not want to grow crops containing Monsanto's biotechnology traits but feared a patent-infringement lawsuit in the event the company's traits happened to enter their fields inadvertently through, for example, cross-pollination. However, the court rejected the lawsuit finding that OSGATA and plaintiffs had engaged in a "transparent effort to create a controversy where none exists." The court also held that there was no "case or controversy" on the matter as Monsanto had not taken any action or even suggested to take any action against any of the plaintiffs.

In its ruling, the court cited Monsanto's long-standing public commitment that "it has never been, nor will it be, Monsanto policy to exercise its patent rights where trace amounts of our patented seeds or traits are present in a farmer's fields as a result of inadvertent means."

"This decision is a win for all farmers as it underscores that agricultural practices such as ag biotechnology, organic and conventional systems do and will continue to effectively coexist in the agricultural marketplace," said David Snively, Monsanto's executive vice president, secretary and general counsel. "Importantly, this ruling tore down a historic myth which is commonly perpetuated against our business by these plaintiffs and other parties through the internet, noting that not only were such claims unsubstantiated but, more importantly, they were unjustified."

The ruling makes it clear that there was neither a history of behavior nor a reasonable likelihood that Monsanto would pursue patent infringement matters against farmers who have no interest in using the company's patented seed products.

U.S. District Judge Naomi Buchwald found that plaintiffs' allegations were "unsubstantiated ... given that not one single plaintiff claims to have been so threatened." The ruling also found that the plaintiffs had "overstate[d] the magnitude of [Monsanto's] patent enforcement," noting that Monsanto's average of roughly 13 lawsuits per year "is hardly significant when compared to the number of farms in the United States, approximately two million."

Snively noted that the company's position on this matter and its support of all agriculture production practices has been clear since the beginning of this case. Monsanto believes that all farmers should have the opportunity to select the production method of their choice – whether that be organic, conventional or the improved seeds developed using biotechnology. All three production systems contribute to meeting the needs of consumers.

The case is *Organic Seed Growers and Trade Association et al. v. Monsanto Company et al.*, No. 1:11-cv-2163-NRB (S.D.N.Y.).

(Ag Professional February 27, 2012) <http://www.agprofessional.com/news/Court-dismisses-organic-group-lawsuit-against-Monsanto-140574373.html>

INDUSTRY STAKEHOLDERS SEEK DISMISSAL OF PESTICIDE-ENDANGERED SPECIES 'MEGA SUIT'

Industry stakeholders this week filed a motion to dismiss a lawsuit alleging EPA violated the Endangered Species Act by failing to consult with federal wildlife agencies regarding the impacts of some 382 pesticide active ingredients on 214 endangered and threatened species across the country. The lawsuit was filed too late, in the wrong court, and without enough specificity, the stakeholders assert.

The Center for Biological Diversity and Pesticide Action Network North America filed the lawsuit Jan. 19, 2011, in the U.S. District Court for the Northern District of California. The case has been stayed for nearly one year as the two sides pursue settlement discussions.

Asked why the industry stakeholders filed the motion to dismiss at this time, Doug Nelson, executive vice president and general counsel at CropLife America, one of the industry groups involved, said there have been two successful lawsuits that set the ground for the motion.

In the two cases, the 9th Circuit Court of Appeals and the U.S. District Court for the District of Arizona concluded that broad ESA complaints dealing with pesticide use were really an attack on the registration and reregistration of pesticides. Under FIFRA, challenges to EPA registration and reregistration actions are to be filed in a federal court of appeals within 60 days.

So PANNA and CBD “are in the wrong court and are time-barred,” Nelson says.

Industry stakeholders want to avoid the kinds of settlements reached in a number of similar pesticide-endangered species cases where interim restrictions are placed on the pesticides in question.

When asked about one of those similar cases, which dealt with the impacts of 37 pesticides on about two dozen species of Pacific Salmonid, Nelson says that if the case happened today, given the more recent rulings in Arizona and the 9th Circuit, “odds are it would have a different conclusion.”

The two cases cited by Nelson, which involved challenges to EPA’s reregistration of azinphos-methyl and rotenone, have greater precedential value than the salmonid case, he asserts.

In addition to asserting that the ‘mega suit’ was filed too late and in the wrong court, the industry stakeholders claim in their motion to dismiss that CBD and PANNA are not challenging any specific agency action — something that is required by the Endangered Species Act to trigger consultation requirements.

Instead, because EPA’s registration and reregistration actions for the majority of chemicals listed in the suit occurred beyond the six-year general statute of limitations that applies to claims dealing with federal actions, CBD and PANNA are not pointing to any explicit agency action in their complaint. What they are challenging is EPA’s discretionary control over all pesticides. But that’s not an action that triggers ESA obligations, Nelson tells *P&CP*.

Joining CropLife America on the motion to dismiss are: Responsible Industry for a Sound Environment, Western Plant Health Association, Mid America CropLife Association, Southern Crop Production Association, the American Chemistry Council and Reckitt Benckiser.

They’ve also renewed their motion to intervene in the liability phase of the case — the court previously allowed them to intervene in the remedy phase of the case.

But their interests are not adequately represented by EPA, the industry stakeholders contend. This is evident “from the very fact that settlement discussions are occurring at all, when plaintiffs’ claims are subject to immediate dismissal for lack

of jurisdiction and other issues,” the motion to intervene states.

Given the scope of the case, any potential settlement could have a significant negative impact on agricultural and public health activities, Nelson says. “Under the worst case scenario, U.S. agriculture would be severely curtailed across the country,” he tells *P&CP*.

Nelson emphasizes that CropLife contends the products in question are safe if used properly, consistent with the EPA approved labels, and that no endangered species are being adversely impacted by current uses. “These are procedural lawsuits for alleged failure of EPA to conduct appropriate consultations,” he says.

A Different View

CBD Staff Attorney Collette Adkins Giese tells *P&CP* via e-mail that “at the appropriate time, we will oppose the motion to dismiss, and we have a very different view of the law. The 9th Circuit has made clear that EPA has continuing authority over pesticide regulation and therefore a continuing obligation to follow the Endangered Species Act.”

She also disputes the notion that the case will unreasonably burden agriculture, saying, “We need common-sense restrictions on pesticide use to protect endangered species and safeguard human health. Pesticides pose a clear and preventable danger to our health and the environment.”

The latest stay in the case is scheduled to end May 4. But the industry stakeholders are asking that the stay be lifted earlier in order to consider their motions to dismiss and to intervene the first week of April. (*Pesticide & Chemical Policy*, February 23 2012, Volume: 40 Issue: 11)

NRDC SEEKS INFORMATION ON DEREGULATION OF HERBICIDE-RESISTANT CROPS

The Natural Resources Defense Council sued USDA in federal court Feb. 1 over the department’s failure to provide records in response to a Freedom of Information Act request regarding the proposed deregulation of herbicide-resistant crops.

According to the complaint, filed in the U.S. District Court for the Southern District of New York, NRDC submitted a FOIA request to USDA on Oct. 17, 2011. Under the statutory deadline, NRDC asserts, a response was due by Nov. 15. But instead of meeting that alleged deadline, USDA, in a Dec. 7 letter, gave itself until Jan. 27 to review records that are responsive to NRDC’s request.

“This purported extension violates USDA regulations. USDA did not state any deadline by which it would produce all responsive records as required by law,” the complaint states.

USDA is currently reviewing petitions to deregulate three herbicide-resistant varieties of corn and soybeans — 2,4-D-, glyphosate-, and glufosinate-tolerant soybeans; 2,4-D- and glufosinate- tolerant soybeans; and 2,4-D- and ACCase Inhibitor-tolerant corn.

Under the Plant Protection Act, genetically modified plants, including those designed to be resistant to herbicides, must be deregulated by USDA before they can be sold commercially, the complaint notes.

The current petitions for corn and soybeans, if granted, “would significantly increase usage of the herbicides to which these genetically modified crops are resistant,” the complaint continues.

NRDC is seeking a court order declaring that USDA’s failure to provide the requested records in a timely fashion is unlawful and ordering USDA to provide the records “promptly and at no cost.”

NRDC attorney Aaron Colangelo says the group's main concern is the possibility of increased 2,4-D use if 2,4-D-resistant crops are approved. In its FOIA request, NRDC asked for the petitions for determination of nonregulated status for the three crop varieties, supporting documentation and any environmental assessments.

"We're trying to collect this information in order to comment on the pending deregulation petitions," Colangelo tells *Pesticide & Chemical Policy* via e-mail.

(Pesticide & Chemical Policy, February 10 2012, Volume: 40 Issue: 09)

In-State CEU Meetings

Date: March 7, 2012

Title: OKVMA

Location: Magnuson (Formerly the Clarion) Convention Center Oklahoma City

Contact: Kathy Markham (918)-256-9302

Course #: OK-12-010

CEU's:	Category(s):
4	6
4	10
1	Aerial
1	5
1	8

Date: March 22, 2012

Title: Univar Training

Location: Broken Arrow

Contact: Deb Chambers (918) 622-2048

Course #: OK-12-029

CEU's:	Category(s):
6	10
3	7A
2	7B
1	All
1	3A
1	11

ODAFF Approved Online CEU Course Links

Technical Learning College
<http://www.abctlc.com/>

Green Applicator Training
<http://www.greenapplicator.com/training.asp>

All Star Pro Training
www.allstarce.com

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

CTN Educational Services Inc
http://www.ctnedu.com/oklahoma_applicator.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 Biopesticides 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 March/April 2012 are as follows:

March		April	
5	McAlester	9	OKC
6	Goodwell	11	Lawton
7	Hobart	12	Tulsa
8	Tulsa	23	OKC
14	OKC	26	Tulsa
22	Tulsa		
26	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