

# Court Issues Order in Endangered Species Case – Washington Toxics Coalition v. EPA

## Introduction

On Feb. 17, the Environmental Protection Agency published in the Federal Register a notice announcing the availability of the Jan. 22, 2004, ruling of the U.S. District Court for the Western District of Washington in the case of Washington Toxics Coalition (WTC) vs. EPA. The Court is establishing buffer zones around certain water bodies in California, Oregon and Washington where the court has ordered that specific pesticides cannot be used.

## Buffer Zones

Generally, for ground pesticide applications, the court order establishes a 20-yard buffer zone. For aerial pesticide applications, the court order establishes a 100-yard buffer zone adjacent to salmon-supporting waters. Chief Judge Coughenour issued the order in response to the WTC's July 16, 2003, motion for injunctive relief to establish buffer

zones as an interim measure to reduce the likelihood of jeopardy to 26 species of salmon and steelhead.

This order is in effect until the EPA and, when appropriate, the National Marine Fisheries Service (NMFS) have completed an evaluation of whether endangered Pacific salmon and steelhead are sensitive to exposure from 55 pesticides. Under the Endangered Species Act, EPA must ensure that its registration of a pesticide is not likely to jeopardize the continued existence of species listed as endangered and threatened or adversely modify habitat critical to those species' survival. In addition to the obligation to ensure that its actions are not likely to jeopardize listed species, the EPA must consult, as appropriate, with the U.S. Fish and Wildlife Service (FWS) or NMFS if a pesticide's use may affect listed species or designated critical habitat species.

## Reactions

The Federal Government is currently reviewing the order issued by Chief Judge Coughenour and considering whether to appeal the decision. The government believes that decisions to protect endangered species from potential pesticide risks should be based on the best available scientific information and a thorough scientific evaluation. EPA's risk assessment process for pesticides provides a level of protection to all nontarget plants and animals, including endangered species.

EPA has been working with the Department of the Interior, Department of Commerce and the U.S. Department of Agriculture to identify ways to make the consultation process more effective and efficient.

FWS and NMFS proposed regulatory changes to the consultation process which were published for public comment on Jan. 30, 2004. The Agency has reviewed over half of the 55 pesticides subject to this litigation. More than a dozen of those reviewed have been determined to have no effect on salmon and steelhead. Others are now undergoing the consultation process, and some pesticide uses are still under evaluation at EPA. The Agency is on schedule to complete the review by Dec. 1, 2004.

EPA is producing geographic information to assist pesticide users in understanding the specifics of the buffers and where they apply. This information will be provided at [www.epa.gov/espp](http://www.epa.gov/espp) under "Quick Resources" when available.

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## Need help with pesticide certification or general pesticide use issues?

### Contact:

NDSU Pesticide Training and Certification Program  
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# COORDINATOR'S COMMENTS

## Washington Toxics Coalition ruling

Welcome to the brave new world of pesticide regulation by the courts. The front page of the PQ describes the imposition of new regulations that pesticide applicators in the Pacific Northwest will have to contend with during this application season. This has chilling consequences for applicators nationwide because advocacy groups have found a novel new approach to by-pass EPA and state pesticide regulatory agencies. Can you imagine how we would implement this ruling in North Dakota? It boggles the mind.

## Tidbits from the training season

It was a big certification season for the pesticide program. Attendance at commercial certification trainings increased by about 10 percent over 2003 and the season is not over yet. We have three more trainings scheduled for late May. To date, we have had a little more than 1,400 people participate in our trainings. That includes about 200 people who attended for Certified Crop Advisor credits as well as Minnesota applicators who attended our Fargo Ornamental and Turf training.

## Project Safe Send will be held in July

Funding cutbacks by the legislature put in doubt whether or not a Project Safe Send waste pesticide collection would be held this summer. However, federal funds have been secured and the legislative council has approved their use to conduct seven to

10 collections across North Dakota in July. Watch for specific announcements to be made in May and June through this program, the North Dakota Department of Agriculture, your local extension office and in newspapers statewide.

## Web Stuff

This past year, the pesticide program home page was viewed about 101,000 times. Further, our database of certified applicators was accessed a little more than 8,000 times. Another popular page was our pesticide label search page which houses State 24C and Section 18 labels. It was accessed about 3,100 times. Clearly these numbers are impressive when you think that we did not even have our own home page until 1999.

## Larson Retirement

Many of you folks in the western part of the state have probably heard the news that our Stark-Billing's county agent, Jerry Larson, is retiring in May. This comes with a bit of sadness as Jerry has been a tireless supporter, innovator, instigator, and leader for quality pesticide programming for nearly 34 years. We will miss him, but we wish him the best in his retirement. A celebration of his career will be held in Dickinson on May 21. If you wish to participate, give the Stark-Billings County Extension Office a call at (701) 456-7665.

Have a great season,



Andrew A. Thostenson,  
Pesticide Program Specialist

## NDWCA 2004 Spring Sprayer School Scheduled for May 25 and 27

The North Dakota Weed Control Association has again scheduled two spring sprayer schools in Mandan and Devils Lake. These schools are a great primer and brush up course to prepare for the spraying season. The school is targeted at spray applicators working in noxious weed control programs. The North Dakota State University Extension Service Pesticide Program has approved these events for recertification in the Right of Way category.

There are no fees required for the schools. However, applicators wanting credit for pesticide certification purposes will need to pay the appropriate fees to the NDSU Extension Service Pesticide Program.

### May 25, 2004 • Mandan

Morton County Highway/Weed Control Building at 2916 37th Street NW (west and north of the Seven Seas Inn).

Local Contact: Wayne Carter  
(701/667-3389)

### May 27, 2004, Devils Lake

Ramsey County Courthouse at 524 4th Ave.

Local Contact: Roger Gunderson  
(701/662-7007)

### Spring Sprayer School Agenda

- 8:00 a.m. Registration
- 8:30 a.m. Andrew Thostenson, NDSU, Right Of Way Recertification
- 10:00 a.m. Break
- 10:15 a.m. Dr. Rod Lym, NDSU, Noxious Weed and Broadleaf Crop Identification Review
- 11:15 a.m. NDDA Regional Pesticide Inspector, Field Records and Observed Violations
- 11:45 a.m. ATV Safety Video
- 12:15 p.m. Lunch (on your own)
- 1:15 p.m. Bill Walker, UAP Timberland, Application Equipment and Calibration, Nozzles Calibration Exercises, PPE/Hand Sprayers, Wind Meters, and Nozzle Display
- 3:15 p.m. Sessions end

# Public Health Training for Mosquito Control Slated for May 26

This training is designed to provide information to people who may be interested in city or municipal wide mosquito control programs.



The morning session will cover basic pesticide laws and safety. The afternoon session will focus specifically on mosquito control and West Nile virus issues.

The entire training will be necessary for prospective applicators and recertifying applicators. The afternoon program would be useful for decision-makers. Space should not be limiting at these trainings, so preregistration is not required. People who wish to attend for education or information purposes only, need not pay any certification fees.

**Date:** May 26, 2004

**Time:** 8:30 a.m. CDT – Registration  
9 to 3:30 p.m. CDT – Training

## Locations:

- **Bismarck**  
Burleigh County Extension Office,  
3715 E. Bismarck Expressway
- **Devils Lake**  
Ramsey County Courthouse,  
524 4th Ave
- **Fargo**  
NDSU Campus, 204 Hultz Hall
- **Grand Forks**  
Grand Forks County Extension  
Office, 151 S. 4th St., S302
- **Williston**  
NDSU Research Extension Center,  
14120 Hwy 2 West

# HAZMAT Transportation Security Plan Pesticides

*Bruce E. Paulsrud, Illinois Extension Service Pesticide Safety Educator*

Since Sept. 11, 2001, the U.S. Department of Transportation (USDOT) has worked closely with hazardous materials shippers and carriers, as well as federal, state, and local government agencies, to improve the security of hazardous materials in our nation's transportation system. This article outlines USDOT's new hazardous materials transportation security requirements and is written specifically to alert and inform farmers, a group that has historically been exempt from hazardous materials (HAZMAT) regulations.

Many pesticide educators (including myself) and regulators were caught off guard by this new regulation because it arrived via federal legislative channels that we don't normally watch. Although I had more questions than answers at the time, I addressed this topic in the November 2003 issue of Illinois Pesticide Review. As you will see, the question "Does this apply to farmers?" has been resolved.

**In a nutshell.** Beginning Sept. 25, 2003, agricultural producers who ship or transport certain hazardous materials in quantities that require placards must develop and implement a transportation security plan. The written security plan must include measures to address personnel, unauthorized access, and transportation issues. Your security plan will *not* be collected by state or USDOT offices, but these agencies are authorized to enforce the regulation. Note that if your dealer/supplier delivers the affected pesticides, fertilizers, and fuels to your operation, you do *not* need a security plan; but the dealer/supplier does. Furthermore, if you transport the affected pesticides, fertilizers, and fuels only between fields on your farm, you do *not* need a security plan.

The following information was obtained from a USDOT document entitled "Transportation Security Evaluation & Planning for Farmers, Ranchers & Production Agricultural Operations."

This document, along with the two-page "Hazardous Materials Transportation Security Plan for Agricultural Operations" ([www.pesticidesafety.uiuc.edu/newsletter/html/200401aplan.htm](http://www.pesticidesafety.uiuc.edu/newsletter/html/200401aplan.htm)) can be used by farmers as a template to aid in complying with the new HAZMAT regulations. The original documents can be obtained via USDOT's Web site (<http://hazmat.dot.gov/pubtrain/AgSecPlan.pdf>, 1/13/04).

**Background.** Farmers, ranchers, and other agricultural operations can better secure the safe transport of hazardous materials, deter terrorist and illegal acts, and reduce their exposure to liability by developing and implementing security plans that conform to USDOT requirements in 49 CFR Part 172, Subpart I. Agricultural operations commonly use many materials that are potential targets for terrorism and illegal activities, including explosives such as dynamite or detonators; certain poisonous pesticides; fertilizers such as anhydrous ammonia and ammonium nitrate; and fuels such as gasoline, diesel, and propane.

To assist agricultural operations in assessing risk and transporting hazardous materials safely, this sample security plan contains three important components—personnel security, unauthorized access, and security while in transit. Most importantly, the plan conforms to USDOT security requirements for persons who offer or transport hazardous materials.

## Assessing Your Risk

**Explosion and fire.** Hazardous materials that are explosive, flammable, or combustible can be used to attack large groups of people, buildings, and critical infrastructure. Examples include explosives and bulk quantities of gasoline, diesel fuel, or propane. In addition, bulk quantities of

*continued*

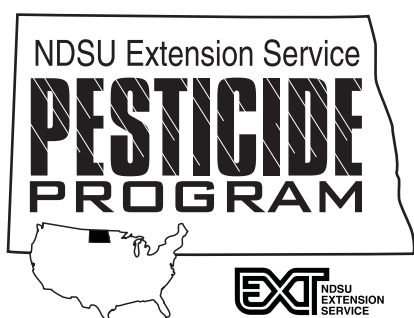
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ammonium nitrate and ammonium nitrate fertilizers can be used to make explosives. For agricultural operations transporting these hazardous materials, the greatest security risk is that a shipment may be hijacked or stolen.

**“Toxic by inhalation” hazards (TIH).**

TIH materials, either as gases or volatile liquids, can be used to attack people in confined spaces such as buildings or subways. Bulk quantities present dangers to large areas and could affect many people. In agriculture, TIH includes the fertilizer anhydrous ammonia. For farmers transporting TIH materials, the greatest security risk is that a shipment may be hijacked, stolen, or attacked while traveling in a populated area.

**Poisonous liquids or solids.**

Materials with oral toxicity (that is, poisonous if consumed) can be used to attack food or drinking-water supplies. Also, liquids that are toxic via inhalation of their vapors can be used to attack

groups of people indoors or outdoors. In agriculture, certain pesticides are considered toxic and are labeled by DOT as “Poison.” For agricultural operations transporting toxic/poisonous materials, the greatest security risk is a shipment being highjacked, stolen, or illegally released while traveling in a populated or vulnerable infrastructure area.

**Which pesticides are affected?**

The regulation specifies that only certain quantities of USDOT Division 6.1 pesticides are affected. The Southern Crop Production Association Web site ([http://southcrop.org/Ship\\_Desc/secondpage.htm](http://southcrop.org/Ship_Desc/secondpage.htm)) provides shipping descriptions for a wide range of pesticides (in various formulations and container sizes); look for the “6.1” in the product description. Your dealer may have a similar list for products commonly used in your area. The most reliable place to find a product’s DOT hazard class is in the “Transportation Information” section of that product’s

Material Safety Data Sheet (MSDS). You can obtain an MSDS from pesticide dealers or label Web sites, such as [www.cdms.net/manuf/manuf.asp](http://www.cdms.net/manuf/manuf.asp).

**No joke.** Rural America and agricultural products may seem unlikely targets for terrorists. However, before Sept. 11, 2001, few considered it likely that two airplanes would be used in a devastating act of terrorism. Inconveniences in modern air travel serve as reminders that we must be vigilant about homeland security. Now is a good time to critically assess the security and safety of your *entire* operation and take action to prevent problems.

**Pesticide security and safety resources.** For more information about this and other HAZMAT regulations, contact the Hazardous Materials Information Center at (800) 467-4922 or visit the Hazardous Materials Transportation (HMT) Security Web site at: [http://hazmat.dot.gov/hmt\\_security.htm](http://hazmat.dot.gov/hmt_security.htm).