

Pesticide News

May 2010



Welcome to the latest edition of the Colorado Department of Agriculture Pesticide newsletter. There has been a lot going on here at CDA, so the newsletter is longer than usual. Please take a few minutes to read all about it.

In this issue you'll find information about:

- CDA's Private Applicator Program milestones
- Changes in CDA personnel
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- Pesticide Sensitive Registry Pre-Notification
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Private Pesticide Applicator Program

Does the date January 1, 2007 have any significance to you? If you are a private pesticide applicator it should. January 1, 2007 was the first official day that CDA assumed regulatory authority of private pesticide applicators (farmers, ranchers, greenhouses and homeowners) in Colorado. Prior to January 1, 2007, private pesticide applicators in Colorado were regulated by USEPA Region VIII.

Many changes to the private applicator program have taken place since January 1, 2007 for example:

- Private applicators must take and pass an open book test before being licensed. The cost to take the exam is \$20.00
- Private applicators must pay a \$75.00 fee for a three (3) year license
- CDA conducts Worker Protection Standard compliance assistance meetings with growers
- CDA conducts Worker Protection Standard inspections with growers
- Colorado State University Extension Service continues to provide Worker Protection training to growers and workers....

Private Applicator Program continued...

- CDA now has internet or online pesticide applicator testing available to private applicators. Please visit www.cppatesting.com if you would like to take the private pesticide applicator test online
- CDA also provides credit / debit card payment for testing / licensing fees

CDA has come a long way since January 1, 2007 and we look forward to growing our relationship with the private pesticide applicator community. Please feel free to contact Steve Blunt at 303-239-4178 and tell us how you think we are doing or things that need improvement.

Division of Plant Industry Pesticide Section Personnel Changes

The Pesticide Applicator program would like to announce new employees / job duties since the last CDA newsletter.

Steve Blunt has become the Pesticide Applicator Program Coordinator.

Matthew Lopez was promoted to the Pesticide Enforcement Manager.

Scott Heinley (former Private Applicator Inspector) has been promoted to a Pesticide Enforcement Specialist.

Mike Riggiozzi (formerly with the Soil Conservation Services Division) has taken a position as a Private Applicator Inspector.

Tammra Straub joined DPI as part of the Pesticide Administrative Support staff.

CDA will soon have a new private applicator inspector that will be based in the Grand Junction area.



National Pollutant Discharge and Elimination System (NPDES)

Many of you are wondering what the National Pollutant Discharge and Elimination System (NPDES) is and why is it mentioned here? The National Pollutant Discharge and Elimination System (NPDES) are regulations pertaining to the enforcement of the federal Clean Water Act. What does it have to do with pesticide applicators?

Some Background on NPDES:

Prior to 2006, the USEPA maintained that the Clean Water Act (CWA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

were separate unconnected laws. Before 2006 CWA regulations dealt with pollution of US waterways from a point source and FIFRA regulated the use and disposal of pesticides, including pesticide drift or incidental application of pesticides to US waterways.

In 2006, several lawsuits were filed against USEPA regarding pesticides and the CWA. As a result of this legal fight, EPA decided to formalize their interpretation of the CWA and pesticide regulations. Additional lawsuits followed this new interpretation.

As a result of these lawsuits, the issue was left to be determined by the court system. In January 2009, the 6th Circuit Court of Appeals concluded that the residues left over from a pesticide application and all biologicals did meet the definition of a pollutant under the CWA and therefore, pesticide applications should and will require a NPDES permit. This includes pesticide applications made to water, above water or near water.

EPA decided not to appeal the court's ruling and instead, EPA requested a stay of the court's

ruling for 2 years in order to develop a NPDES permit. In October 2009, the 6th Circuit Court of Appeals granted EPA's request for a stay of the Court's ruling and granted EPA until April 2011 to develop NPDES pesticide permits. This also means that no NPDES pesticide permits are required until April 2011; this means that there is no change in how you spray pesticides until April 2011.

In order to facilitate the creation of NPDES pesticide permits for use in 2011, EPA and states have formed a work group to develop the

NPDES Permits continued... initial permit and has over 50 members made up of EPA and State Lead Agencies. A draft permit should be available for public viewing / comment in late spring, possibly at the end of May 2010.

Who will be affected by NPDES?

Potentially any person (private property owner, commercial, limited commercial, public applicator) that applies pesticides to or near any water of the USA will be required to abide by the NPDES pesticide permit requirements.

The Colorado Department of Public Health and Environment (CDPHE) currently have authority to issue NPDES permits in Colorado. Due to the narrow time frame to develop a NPDES permitting process, CDPHE's strategy at this time is to develop and after April 2011 issue, a short term NPDES pesticide permit (about one year) to anyone requiring a permit. This strategy will allow CDPHE time to develop rules and regulations and a more permanent permitting process.

Since CDPHE is responsible for issuing the permit CDPHE will also be responsible for

enforcing the NPDES permit requirements.

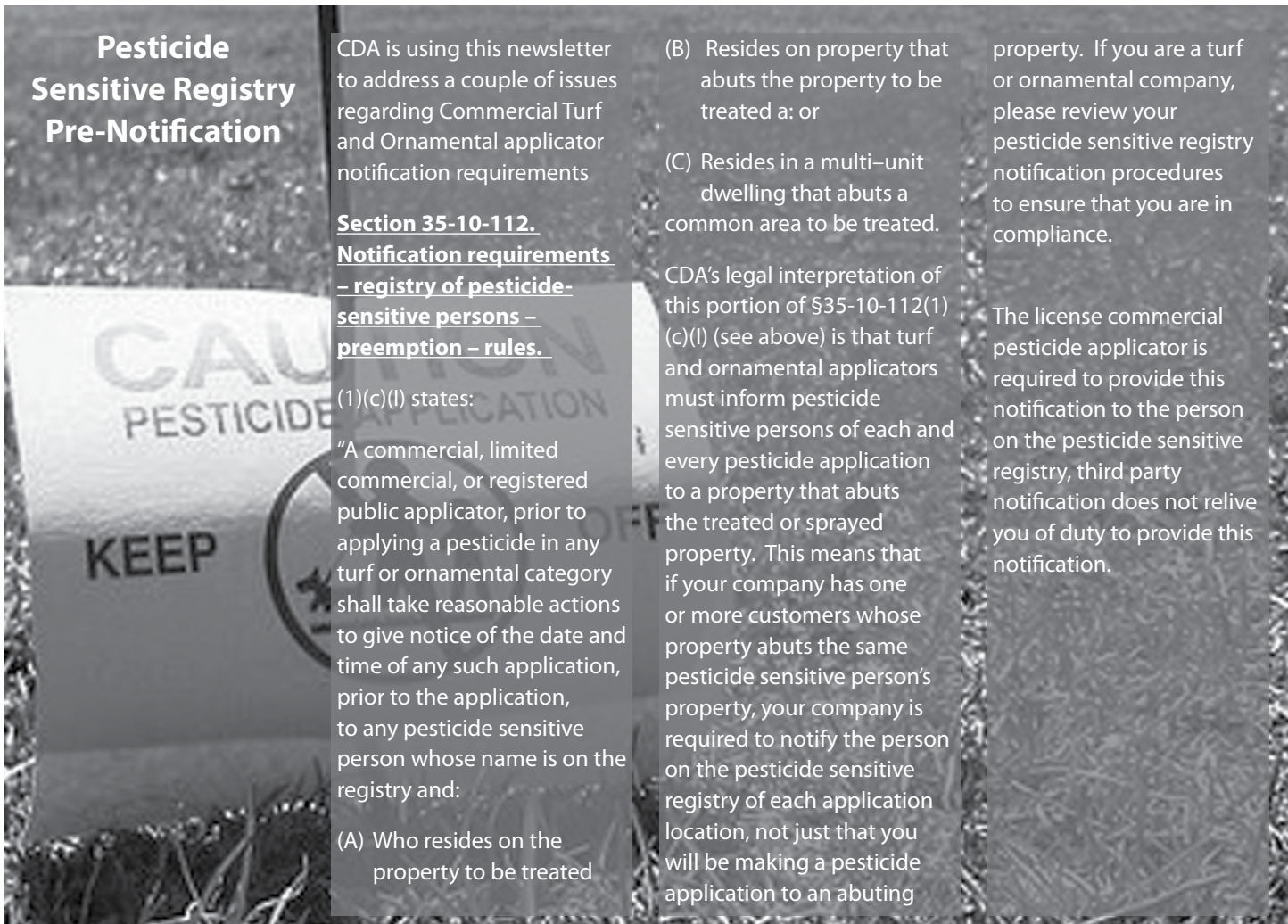
There are still many questions that remain pertaining to NPDES but this is what we currently know.

- CDPHE is responsible for developing the NPDES pesticide permit
- CDPHE is responsible for enforcement of the NPDES pesticide permit
- NPDES pesticide permit holders will be required to keep and maintain records pertaining to the application. Many of which are similar to what commercial and private applicators

must currently keep although more extensive information may be required.

Applicator NPDES Survey

CDA would like to thank those of you completed our NPDES survey. The survey was sent to thousands of individuals, companies, governmental agencies the CDA believed may be affected by NPDES. The survey provided valuable information to both CDA and CDPHE with about 400 responses.



Pesticide Sensitive Registry Pre-Notification

CDA is using this newsletter to address a couple of issues regarding Commercial Turf and Ornamental applicator notification requirements

Section 35-10-112. Notification requirements – registry of pesticide-sensitive persons – preemption – rules.

(1)(c)(I) states:

“A commercial, limited commercial, or registered public applicator, prior to applying a pesticide in any turf or ornamental category shall take reasonable actions to give notice of the date and time of any such application, prior to the application, to any pesticide sensitive person whose name is on the registry and:

(A) Who resides on the property to be treated

(B) Resides on property that abuts the property to be treated a: or

(C) Resides in a multi-unit dwelling that abuts a common area to be treated.

CDA's legal interpretation of this portion of §35-10-112(1)(c)(I) (see above) is that turf and ornamental applicators must inform pesticide sensitive persons of each and every pesticide application to a property that abuts the treated or sprayed property. This means that if your company has one or more customers whose property abuts the same pesticide sensitive person's property, your company is required to notify the person on the pesticide sensitive registry of each application location, not just that you will be making a pesticide application to an abutting

property. If you are a turf or ornamental company, please review your pesticide sensitive registry notification procedures to ensure that you are in compliance.

The license commercial pesticide applicator is required to provide this notification to the person on the pesticide sensitive registry, third party notification does not relieve you of duty to provide this notification.

Turf & Ornamental Yellow Pesticide Application Notification Flags

After reviewing enforcement statistics from the last two years, CDA has detected an increase in the number violation notices and calls regarding the yellow pesticide application flags that turf and ornamental applicators are required to post. Please remember that these yellow flags are intended to notify the PUBLIC that a turf or ornamental application has been made. Most of the violations and calls involve turf / ornamental applications at multi-unit dwellings. A good rule of thumb to consider is: Where do people come from when entering the areas treated or from inside the property to get to where I am spraying? Don't think just about driveways or sidewalks from off site; think about on site locations as well. Look for doors, mailbox areas, children's play areas, backyard gates into common areas. Generally, the more informed the public is the less likely they may complain about your service.

Section 35-10-113(2)(a) and Rules Part 13.01 and Part 13.05 address the issue of yellow notification flags at conspicuous point or points of entry to the property receiving the application.



Commercial Agricultural Applicators & WPS Grower Information Exchange

Over the last couple of years conducting Worker Protection Standard inspections (with growers) it has come to the attention that the exchange of pesticide application information between the commercial applicator and the grower may not be consistently being done. As a commercial agricultural applicator it is your responsibility to provide pesticide application information to the grower (your customer) so that they provide the information to

their employees and remain in compliance with the Worker Protection Standard (WPS). For example: if the commercial applicator provides the wrong "Restricted Entry Interval" (REI) the grower would not be in compliance with the WPS requirements. If the pesticide application is delayed or rescheduled for another time and the grower is not notified then the grower may allow early entry of unprotected workers into a field. Commercial applicators

please communicate with your grower / customers to make sure they are getting the appropriate information.

The growers must provide the commercial pesticide applicator with the specific location and description of any areas or fields that may be treated with pesticides or under a Restricted Entry Interval while the commercial applicator will be there and any restrictions on entering the treated areas.



Pesticide Applicator Enforcement

Cease and Desist Orders

During the 2008/2009 state fiscal year, the Division of Plant Industry issued twelve (12) Cease and Desist Orders to companies for applying pesticides for hire without possessing the required CDA license. Eight (8) of the Cease and Desist Orders were issued to unlicensed companies making turf & ornamental pesticide applications. Two (2) Cease and Desist Orders were issued to

unlicensed companies making agricultural pesticide applications and two Cease and Desist Orders were issued to companies making structural pesticide applications.

CDA will allow these companies to license upon meeting all of the licensure requirements and payment of fees and civil penalties.

Violation Notices

During the 2008/2009 State

Pesticide Applicator Enforcement continued...

Fiscal Year CDA issued 54 violation notices to licensed commercial pesticide application companies. These violation notices were issued for a variety of violations, the top five most common violations were:

- 1.) Incomplete pesticide application recordkeeping
- 2.) Improper vehicle identification
- 3.) Incomplete verifiable technician training documentation
- 4.) Improper service container identification
- 5.) Improper / incomplete customer notification

A breakdown of the 54 violations reveal that 41

violation notices were issued to Turf and Ornamental applicators, 4 violation notices were issued to agricultural applicators, 5 violation notices were issued to non production agricultural applicators (ie: Industrial & Right of Way category 109, Rangeland Pest Control category 107) and 4 violation notices were issued to structural applicators.

In all cases the violations were corrected and no additional enforcement action was required by DPI Enforcement Specialists.

Pesticide Application Complaints

During the 2008/2009 State Fiscal Year, CDA

investigated 41 complaints of alleged pesticide misuse and 4 Pesticide Act complaints. Fifteen (15) of the complaints CDA investigated involved private pesticide applicators, twenty-five (25) of the complaints involved commercial pesticide applicators and one (1) public applicator complaint.

A breakdown by type of applicator is as follows: CDA investigated twenty-one (21) complaints involving Agricultural Applicators, Fifteen (15) complaints involving Turf and Ornamental Applicators, five (5) complaints involving Agricultural Aerial Applicators.

CDA resolved forty-six (46) complaints during the 2008

/ 2009 state fiscal year. Of the forty-six (46) complaints resolved during 2008 / 2009, twenty-five (25) complaints were dismissed based on evidence that did not support the allegation that a violation occurred, of the remaining twenty-one (21) resolved complaints, Fourteen (14) complaints were resolved by stipulation and the violating applicator paying a civil fine, two (2) complaints were resolved by CDA issuing a Letter of Admonition to the applicator, four (4) complaints were resolved by CDA issuing a Cease and Desist Order.

Colorado State University Extension

Changes at Colorado State University Extension

Change has been in the air at Colorado State University Extension and at the Colorado Environmental and Pesticide Education Program (CEPEP) within the Department of Bioagricultural Sciences and Pest Management in the College of Agriculture at Colorado State University (CSU).



Claudia Arrieta Thia Walker

CSU recently announced the appointment of Thia Walker as the new Pesticide Coordinator at CEPEP. Thia is currently transitioning to her new

Pesticide Coordinator position on the CSU Campus in Fort Collins from her last job as an extension specialist in Lamar Colorado. Thia has hit the ground running with several projects between CSU and CDA.

Claudia Arrieta, a Research Associate with CEPEP is another recent addition to CSU. Claudia has been focusing on Worker Protection Standard training for workers, handlers, as well as other applicator related training issues.

We look forward to working with them in the future. Please join CDA in welcoming both of Thia and Claudia to the pesticide applicator community.

Pesticide Applicator Study Guide Update



Good news for rangeland applicators, CDA has recently printed the new Rangeland Pest Control Study Guide. CDA anticipates that the corresponding new Rangeland Pest Control examination will be available in 2011. The new Rangeland Study Guide is available from the: Cooperative Extension Resources Center 115 General Services Building—CSU Fort Collins, CO 80523-4061

Fax: (970) 491-2961 Phone: (970) 491-6198 Email: cerc@coop.ext.colostate.edu.

A new regional Aquatic Pest Control Study Guide is going through the development process as well. A different approach to the new Aquatic Pest Control study guide is being used. In an effort to assist all of the states in USEPA Region VIII, EPA has provided additional funding to develop a "regional study guide and examination". In this case an "Aquatic category study guide and examination" will be developed and each state will then be able to customize the study guide / examination to fit their particular needs and concerns.

A Look into the future

CDA has been looking into the future and the future is e-testing. The current test generating software CDA is using may enable CDA to generate tests in this manner. CDA is looking at several options of providing applicator tests in a web based format and what this means is that instead an applicator sitting down with a paper test they will be sitting in front of a computer screen while taking the test.

All of the options CDA is considering include applicator testing in our Lakewood office. CDA's testing room has already been equipped to administer exams in this manner and we will be able to use remote testing sites throughout Colorado in this manner as well.

Please keep in mind that

web based testing will continue to be a closed book examination and will be conducted in a secure environment. The web based tests will not be available at your home computer.

One of the biggest changes in using web based applicator testing will be how CDA administers applicator tests in remote areas of the state. Currently, a limited number of remote testing sites and dates are chosen each year and a CDA inspector administers or proctors the paper test.

One remote testing option for CDA is that certain selected CSU Extension Offices would proctor the tests in the CSU Extension Office. Another option for remote testing that CDA is looking at is using certain Colorado Community Colleges around the state. Another option is combination of using CSU Extension offices and Colorado Community Colleges.

There are many issues that CDA is analyzing in regards to web based testing,

the biggest issue is the fiscal impact to both the applicator and to CDA. CDA anticipates a change in applicator testing fees which are currently a flat fee of \$100.00 per testing session with the applicator being able to take as many tests as possible in one day.

Web Based testing would require a per test fee and specific scheduled exam times. CSU and the Community Colleges need this fee so that they can recoup administrative costs associated with proctoring each exam. At this time the per test fee has not been determined. CDA is discussing this with the Pesticide Advisory Committee and is asking for feedback on this proposed change to applicator testing.

Mountain Pine Beetle Pesticide Use and Water Quality

As the result of the massive Mountain Pine Beetle infestation in Colorado and concern for water quality in mountain lakes and reservoirs in Grand and Summit counties, CDA and the Colorado Department of Public Health and Environment (CDPHE) conducted water sampling in 2009. CDA and CDPHE reached an agreement in which CDPHE would conduct water sampling in numerous lakes and reservoirs in Grand and Summit counties. Samples were taken in accordance with CDPHE procedures in areas where CDPHE was already obtaining water samples from these

lake and reservoirs. The water samples were analyzed for Carbaryl and Permethrin, the most widely used insecticides used to control Mountain Pine Beetle.

All samples were analyzed and there was one detection of Carbaryl found in one sample taken from Dillon Reservoir. The analysis indicated a detection in the part per trillion level, a detection well below any health level concern. This site was sampled several more times without any additional detection.

CDPHE will continue to sample / monitor lakes and reservoirs in these counties

as well as expanding the pesticide analysis sites into new areas where the Mountain Pine Beetles have infested.



Fumigation Label Changes and CDA Inspection Efforts



Due to changes in phosphine fumigation product labels which included the label requirement that Fumigation Management Plans (FMP's) be developed for each fumigation application, CDA has prioritized the inspection of companies that use phosphine fumigants. Applicable phosphine fumigation categories are;

Category 302 – Outdoor Vertebrate Pest Control,
Category 303 – Fumigation Pest Control,
Category 305 – Stored Commodities Pest Control.

In order to help companies that use fumigants, CDA now has a variety of FMP templates available on our website: www.colorado.gov/ag/dpi

Several months ago, an incident occurred in Utah, where a phosphine fumigant to control burrowing rodents was made by an applicator that resulted in the death of two young girls. It is alleged that the applicator did not follow label directions and that the application was made

too close to the customer's home.

As a result of this incident and several others in the recent past, EPA has used unprecedented speed in proposing label changes to phosphine fumigant pesticide product labeling.

Please keep in mind that these label changes do not affect products in your storage or that were in the channels of trade at the time the label changes were proposed by EPA. As always, you need to follow label directions.

EPA's statement regarding phosphine fumigant label changes is as follows:

"To increase public safety by reducing potential exposure to phosphine fumigants, EPA is expanding the restrictions and requiring clearer label directions and precautions for aluminum and magnesium phosphide products that are used in rodent burrow fumigation. Phosphine fumigants are highly toxic

pesticides that are restricted to use only by specially trained pesticide applicators. Indoor use of such products has long been prohibited. EPA has recently expanded and clarified the outdoor use restrictions for these products as follows:

- Use is strictly prohibited around all residential areas, including single and multi-family residential properties, nursing homes, schools (except athletic fields where use may continue), day care facilities, and hospitals.
 - The products must only be used outdoors for control of burrowing pests, and are for use only on agricultural areas, orchards, non-crop areas (such as pasture and rangeland), golf courses, athletic fields, parks and recreational areas, cemeteries, airports, rights-of-way, earthen dams, and other non-residential institutional
- Products must not be applied in a burrow system that is within 100 feet of a building that is or may be occupied by people or domestic animals. This buffer zone for treatment around non-residential buildings that could be occupied by people or animals has been increased from 15 feet to 100 feet.
 - When this product is used in athletic fields or parks, the applicator must post a sign at entrances to the treated site containing the signal word DANGER/PELIGRO, skull and crossbones, the words: DO NOT ENTER/NO ENTRE, FIELD NOT FOR USE, the name and EPA registration number of the fumigant, and a 24-hour emergency response number. Signs may be removed 2 days after the final treatment.

Fumigation Label Changes continued...

- When this product is used out-of-doors in a site frequented by people, other than an athletic field or park, the applicator shall post a sign at the application site containing the signal word DANGER/PELIGRO, skull and crossbones, the name and EPA registration number of the fumigant, and a 24-hour emergency response number. Signs may be removed 2 days after the final treatment.
- Fumigant Management Plans must be written before all applications of phosphine products, including all burrowing pest fumigations. A Fumigant Management Plan is a written description of the steps designed to plan for a safe, legal and effective fumigation. The certified applicator and owner of the

property to be fumigated must characterize the area to be treated and include all safety requirements in the plan before application.

New restrictions on soil fumigants coming soon!

EPA is requiring extensive new restrictions to soil fumigants. We would like to thank the applicators, agricultural producers, dealers, and pesticide registrants that have talked to us lately, as we try to gain a better understanding of soil fumigant use in Colorado.

It seems that the biggest impact for Colorado producers will be on use of products containing metam sodium (e.g. Vapam II) or other metam-containing products. Any products containing chloropicrin will also be affected (e.g. Telone C-17).

We don't expect the labels for Telone II (or other products containing only

1,3-dichloropropene) to be changed until several years from now.

More information is at the following EPA website:

http://www.epa.gov/pesticides/reregistration/soil_fumigants/

There have been many protests to EPA on the onerous nature of some of these new restrictions, which has resulted in the original timelines being pushed back. However, the most recent indications are that CDA's Pesticide Registration program may see the revised labeling for our review within the next few months. However, product with new labeling may not be shipped until October or November of 2010.

A second round of revised labels (with some very significant new buffer zone requirements) will follow, perhaps a year after the first set of label revisions.

We expect the first set of label changes will include the following:

- Federal Restricted Use Status for Vapam II and all other soil fumigants containing metam or dazomet
- Soil Fumigant Management Plans (FMPs)
- Rate reductions and use site limitations
- New handler protections, extended worker reentry restrictions (REI's), working training requirements

These are just a few examples of the pending label changes for soil fumigants. More information is at the following EPA website: http://www.epa.gov/pesticides/reregistration/soil_fumigants/

New Pesticide Advisory Committee (PAC) Members

CDA welcomed two new members to the Pesticide Advisory Committee (PAC) at the quarterly meeting on April 26, 2010.



Lanny Huston, C.C.A., of Centennial Agricultural Supply in the Greeley/Kersey area joins the Committee as the new Pesticide Formulator

representative. Lanny hails from Fort Morgan where he worked on the family farm. He has more than 21 years experience applying fertilizer and pesticides to large acreages.

Lanny assumed the position previously held by Gordon Hankins so his term expires February 9, 2011.

Thia Walker, M.S., works as the CSU Extension Specialist for Pesticide Education. She has degrees in Biology, Chemistry, and Plant Pathology. She has spent the last 20 plus years in Southeast Colorado being a

Plant Disease Diagnostician, Plant Pathologist, and Field Scout.



Most recently she was a Research Associate in the CSU Department of Bioagricultural Sciences and Pest Management studying pest and beneficial insects in dryland cropping systems.

Thia replaces Ned Tisserat who was an interim replacement for Sandra McDonald as the CSU Extension representative on the Committee.

Her nomination is expected to be confirmed at the May 2010 Ag Commission meeting with her term expiring February 9, 2012.

All PAC members serve a three year term with the potential re-nomination by their peers and confirmation from the Ag Commission. Contact information for all PAC members can be found at: www.colorado.gov/ag/dpi.

CDA's pesticide program expects to gain authority over pesticide refilling activity soon.

Legislation to amend Colorado's Pesticide Act has passed both houses and is awaiting Governor Ritter's signature. The Pesticide Act currently provides us with the authority to regulate pesticide distribution, including requiring state registration of pesticides and licensing of pesticide dealers. The pending changes will provide CDA authority over pesticide refilling operations.

Extensive new EPA requirements for pesticide refilling operations take effect on August 16, 2011, including:

- Residue removal requirements prior to refilling or disposal, and
- Extensive new record-keeping requirements for refilling establishments.

Upon signature of the governor, we will be working on rules to make these new federal requirements also requirements under Colorado's Pesticide Act.

Miscellaneous items

CDA is considering clarifying some of the Pesticide Applicators' Act (PAA) Rules and Regulations. The pending rule changes to the PAA are listed below.

- Rules 1.02, 2.1 and 2.13 - Engaged in the business

of / business location clarification due to changes in technology

- Rule 15.02 and 15.03 - QS use of an RUP when they do not hold the category of licensure
- Rule Part 11 Storage to possibly include vehicle pesticide storage requirements
- Rule 6.03(g) Recordkeeping - application rate information clarification
- Rule 12.06 Pesticide Sensitive Notification clarification of the existing notification requirements
- Part 8. Agricultural Applicators - Clarification of category uses to make

it easier to determine the proper licensure category – to specifically provide examples of areas / pests to be treated in the category.

- Rule 5.2(c) Sales Technician Training – sales of RUP “under the supervision” of a QS. CDA is proposing changing the rule to remove conflicts with the PAA statute : 35-10-112(c)(I)

Please direct any comments that you have to your Pesticide Advisory Committee member. The Pesticide Advisory Committee member names and contact information can be found at: <http://www.colorado.gov/cs/Satellite/Agriculture-Main/CDAG/1175895790525>

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