

**2017 HOUSE AGRICULTURE**

**HCR 3018**

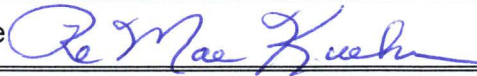
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

HCR 3018  
2/10/2017  
Job #28241

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Resolution requesting the Legislative Management to consider studying the issue of pesticide drift, the procedures and protocols in place to address pesticide drift, and the potential endangerment pesticide drift may cause to humans.

## Minutes:

Attachments 1-3

**Vernon Laning, Sponsor:** (Attachment 1)  
Pesticides include both herbicides and pesticides.

**Representative Schreiber-Beck:** Are you talking about investigative procedures currently in place?

**Representative Laning:** I am asking for a study to look at the present investigative procedures. Are they complete or should there be modifications?

**Representative Magrum:** What does a study cost the state?

**Representative Laning:** Do not know.

**Representative Skroch:** Would it be important to add language to include herbicides? I have a constituent that is very upset about drift of herbicides.

**Representative Laning:** If the committee is more comfortable, I would have no objection.

**Glen Philbrick, Farmer, Turtle Lake:** (Attachment 2)

**Representative Schreiber-Beck:** How would the Agriculture Department be able to find out what product was used at the locale? Would it be easier to ask the applicator?

**Glen Philbrick:** If you know who the applicator is. If it is the vegetation, you have time. If it is a human injury, you may not be able to talk to people.

**Representative Schreiber-Beck:** You could ask adjacent landowners or farmers. You did receive insurance payment. Aerial applicators are required to have liability insurance. I am not sure about ground applicators.

**Glen Philbrick:** The applicator that drifted on me did have insurance. For some of my neighbors a different ground applicator did not have insurance.

**Opposition:**

**Daryl Lies, North Dakota Farm Bureau:** We are sympathetic with these issues. Studies on drift are readily available. Our technologies have improved because of the vast amount of studies on drift.

The investigative procedures can be addressed better by the Agriculture Department. Many of the procedures are based on Federal regulations.

It would be better to do it in a bill rather than spend the money on a study.

The Environmental Protection Agency does come to North Dakota.

**Neutral:**

**Jerry Sauter, Pesticide Program Manager, North Dakota Dept. of Ag.:** (Attachment 3)

**Representative Hogan:** How many investigations did you do in a year over the last five years?

**Jerry Sauter:** In 2016 we had 40 total drift complaints filed. In 2015 we had 34 complaints.

**Representative Hogan:** How many are human?

**Jerry Sauter:** Human is typically 3-5 per year.

**Representative Schreiber-Beck:** Of the 3-5 and the 40, did you find guilt?

**Jerry Sauter:** In 2016, of the 40 drift complaints, 7 were dropped. Fourteen resulted in a violation. Nineteen resulted in nonviolations.

In response to Glen Philbrick's claim, North Dakota Century Code directs that pesticide records are confidential. For us to release them, it has to be the call of a doctor or a subpoena.

**Representative McWilliams:** Why are they held confidential?

**Tom Bodine, Deputy Agriculture Commissioner:** This is an area that could be used against the applicator. It needs to stay between the parties involved.

**Representative Hogan:** If a person calls with a complaint, are they informed that a doctor needs to call?

**Tom Bodine:** Yes.

**Representative Schreiber-Beck:** In the above incident, was the clothing taken?

**Tom Bodine:** We are going back and looking at the case.

**Jerry Sauter:** The human endangerment protocol is a new policy implemented in the last three months.

**Representative Schreiber-Beck:** Are these procedures on the website?

**Jerry Sauter:** They are not; but the website is going through an update.

Clothing in Mr. Philbrick's case was taken. We do take clothing, but we rely more heavily on samples taken from where the individual was as the time of the incident. We have had instances of people walking through application areas.

**Chairman Dennis Johnson:** Closed the hearing.



# 2017 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

HCR 3018—Committee Work  
2/16/2017  
Job #28456

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Resolution requesting the Legislative Management to consider studying the issue of pesticide drift, the procedures and protocols in place to address pesticide drift, and the potential endangerment pesticide drift may cause to humans.

**Minutes:**

**Representative Headland:** Moved Do Not Pass

**Representative Schreiber-Beck:** Seconded the motion.

**Representative Headland:** We don't need a study. The only thing that comes from a study is further regulation that would probably harm agriculture. It is a very heavily regulated industry today.

**Representative Schreiber-Beck:** There have been numerous studies done on drift. The information is already there.

**Chairman Dennis Johnson:** That is where the Agriculture Department received their information--was from studies.

A Roll Call vote was taken: Yes 12, No 2, Absent 0.

**Do Not Pass** carries.

**Representative Schreiber-Beck** will carry the bill.

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3018**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

**Recommendation**

- Adopt Amendment
  - Do Pass     Do Not Pass     Without Committee Recommendation
  - As Amended                                     Rerefer to Appropriations
  - Place on Consent Calendar
- Other Actions:**     Reconsider                                     \_\_\_\_\_

Motion Made By Rep. Headland                                    Seconded By Rep. Schreiber-Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee		X
Vice Chairman Wayne Trottier	X		Rep. Kathy Hogan		X
Rep. Jake Blum	X				
Rep. Craig Headland	X				
Rep. Michael Howe	X				
Rep. Dwight Kiefert	X				
Rep. Jeffery Magrum	X				
Rep. Aaron McWilliams	X				
Rep. Bill Oliver	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				

**Total**    **Yes**    12                                    **No**    2

**Absent**    0

Floor Assignment    Representative Schreiber-Beck

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3018: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **DO NOT PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HCR 3018 was placed on the Eleventh order on the calendar.

**2017 TESTIMONY**

**HCR 3018**



Testimony for HCR 3018

2/10/17

Thank you Mr. Chairman. For the record, I am Representative Vernon Laning from District 8 and I am here to introduce HCR 3018 dealing with pesticide drift.

Pesticide drift is a real problem that seems to face the agricultural community every year. The word pesticide has been used in a somewhat generic form and can actually refer to either a pesticide or herbicide.

Applicators attempt to apply their products on days when wind and weather are best to reduce uncontrolled drift but undesirable drift still occurs and causes unwanted crop damages. Although commercial applicators are required to carry insurance for damage to other crops, it's an area that is difficult to prove. This is true for crops and even more so dealing with human health.

This resolution proposes to study the investigative procedures dealing with both human health and property damage. I'd like to read the three Whereas statements of the bill.

Whereas, pesticide drift refers to the unintentional spreading of pesticides and the potential negative effects of pesticide application, including off-target contamination and runoff from plants and soil; and

Whereas, pesticide drift can lead to damage in human health, environmental contamination, and property damage; and

Whereas, study of potential solutions and mitigation techniques to pesticide drift may lead to protection of vital resources and cost savings for the agricultural industry and citizens of the state.

With those items in mind, I'd like to request a Do Pass recommendation from your committee to initiate an interim study of these issues with possible recommendations for legislative action during the 2019 legislative session.

Thank you Mr. Chairman and I'd be happy to stand for questions.

HCR 3018  
2/10/17 #2

Glen Philbrick

As a farmer in central North Dakota, I am asking to House Agriculture Committee recommend a "Do Pass" on HCR 3018. While working in my yard on my farm in 2014, I began to smell herbicide and my eyes were burning as well. Being a farmer I could identify what herbicide smells like. I located the applicator, informed the applicator they were drifting, and immediately went to the hospital. I was diagnosed with a burnt throat and a wheezing lung which resulted in medical treatments. The Ag Department was contacted the following day. An inspector visited and informed me human exposure cases are rare. I was not present when the inspector took samples several days later.

Time had passed and I learned the inspector did not sample any the forage of the four crops that were damaged. Instead, the inspector sampled forage in an area that did not have damage. My voluntary statement submitted before the samples were taken via email can verify this. That area was also protected by roughly three hundred feet of trees between the forage and wind direction of the herbicide. The area I was in during the exposure was not tested either. The lab test result was negative for herbicide. The samples I sent in tested positive for herbicide.

The insurance adjuster who visited my farm stated "you have drift here." This is rather interesting considering the adjuster has to write a check at some point.

The nozzles of the applicator's sprayer were not examined. Nozzle size can impact how spray performs especially if the herbicide in question is volatile. Herbicides that are volatile can change into a gas and move over two miles. In my case the herbicide moved three quarter's of a mile. The inspector also did not obtain a test sample from the applicator's tank.

The inspector claimed the forage was too small to sample for one crop in particular. Indeed, the crop was small as it just germinated the week before. Two other crops had over six inches of growth but the inspector refused to sample them.

It is worth noting during the initial conversation with the inspector, the inspector stated two people were sprayed in the field by an aerial applicator the year before, and she laughed about the incident. I did not appreciate that sort of attitude in regards to the situation.

I did visit with Jim Grey, the head of the pesticide division at the time, regarding my case. Jim did not want anything tested again. I asked for a copy of policies and procedures when investigating drift. Jim informed me there are none.

The applicator in my case faced no consequences.

Case number 08-08-C-02260, dealt with a case involving Dale and Kathy Vollan, who were exposed to pesticide or pesticides. The Ag Department was taken to court in an effort to obtain the name of the chemical or chemicals used the by applicator. The Ag Department did not want to provide the name of the chemical. The judge ordered them to provide the name of the chemical. This is concerning because life was not taken seriously. One should not have to go to court to obtain this information to save a life, or in this case, two lives.

/



In order to remedy this problem, when human exposure is involved, there should not be a question as to whether or not the name of the chemicals should be provided. Statute currently states the Ag Department "may" provide the chemical name. This should be a requirement.

Given that most government offices close by 5 or 6PM, it would be prudent to allow law enforcement to obtain the chemical name if the victim of the drift is unable to do so from the applicator. Time is of the essence in human exposure.

A manual should be developed to ensure investigations have consistency and follow procedures. There is no manual now. I have asked for one. Law enforcement is required to follow a manual when sampling evidence. There is no proof of this when investigating pesticide drift.

A violation report should be published for those found guilty of a violation, just as the courts publish a court report. This was done at one time in North Dakota.

Commercial applicators are required to have insurance. This is not enforced very well. Applicators should be required to send proof of insurance. Some of my neighbors who have been victims of pesticide drift did not collect because the applicator had no insurance. The applicator continued to spray.

If you have any questions please contact me via email or (701) 214-8958.

Glen

#3

COMMISSIONER  
DOUG GOEHRING



ndda@nd.gov  
www.nd.gov/ndda

**NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 602  
BISMARCK ND 58505-0020

**Testimony of Jerry Sauter  
Pesticide Program Manager  
HCR 3018  
House Agriculture Committee  
Peace Garden Room  
February 10, 2017**

---

---

Chairman Johnson and members of the House Agriculture Committee, my name is Jerry Sauter, I am the Pesticide Program Manager with the North Dakota Department of Agriculture, and I am here on behalf of North Dakota Agriculture Commissioner Doug Goehring. I am here with neutral testimony for House Concurrent Resolution 3018 and would like to discuss what the program currently does in regards to drift.

**Policies and procedures**

The North Dakota Department of Agriculture pesticide staff attend Pesticide Inspector Regulatory Training (PIRT). This training teaches hands-on skills in regards to conducting investigations and inspections, and this includes handling of drift investigations. Skills taught include evidence collection, interview techniques, case development, and many other inspection related topics and our staff utilize these skills in their daily work. All of our inspectors also use the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) Inspection Manual which details information for conducting inspections and investigations.

/

I also included two documents, the Human Endangerment Case Protocol and a document titled Process Pesticide Complaint, which describes a general outline of our process for handling complaints. The human endangerment case protocol describes the process we take every time someone calls and alleges human exposure from application of a pesticide. It includes details such as what to do to minimize effects from exposure, what actions we will take, and an approximate timeline.

The Process Pesticide Complaint document is a flowchart that works through the normal steps we take in an investigation and I can talk through that document if you would like.

Chairman Johnson and committee members, thank you for your time. I would be happy to answer any questions you may have.



## Human Endangerment Case Protocol

When someone contacts the NDDA alleging exposure from pesticides immediately inform them to take the following steps for anyone that may have been exposed:

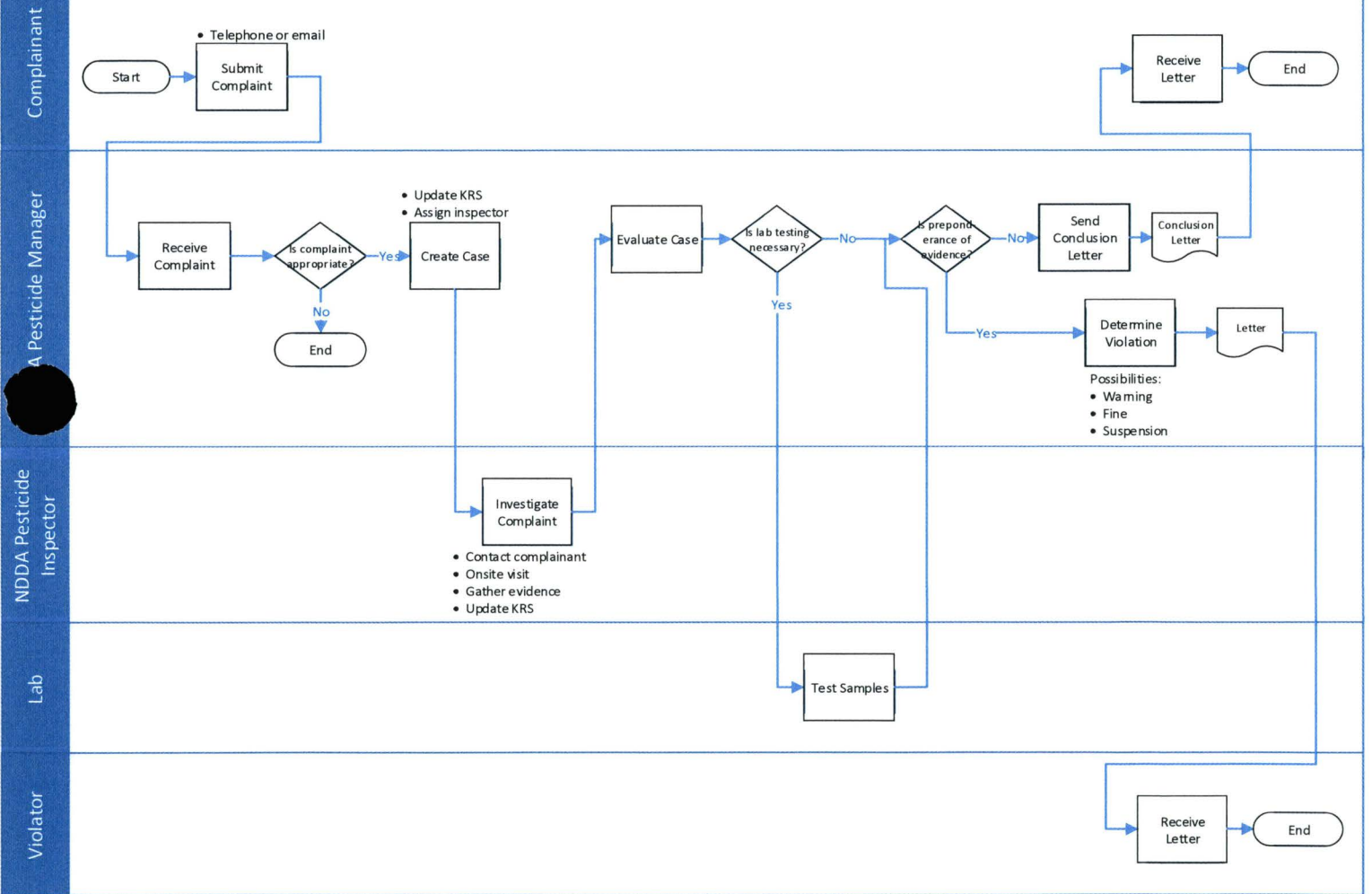
1. Remove all of their clothing and place in a plastic bag, seal the bag and place bag outside of the home.
2. Wash themselves with large amounts of water
3. If eyes were exposed, flush eyes with water
4. Note any symptoms and contact a doctor if any symptoms are present
5. Do not contact any areas that may have been contaminated (yard, playground equipment, pool, garden, etc.)
6. Wear rubber or nitrile gloves when handling the bag of clothes. If the clothes are not collected as part of the investigation, it is recommended to contact the local fire department for disposal of the bag of clothes. Notify complainant that an inspector will visit them within 48 hours
7. Notify complainant of 28 day notification requirement

Upon receiving a potential human endangerment case the NDDA will do the following:

1. Record standard information in KRS and assign the case to the inspector in the region immediately. If that inspector is unavailable, assign another inspector.
2. Call the inspector and inform them of the case assignment (this will happen within an hour or less of the complaint call)
3. An inspector must visit the site within 48 hours of the initial call
4. The inspector shall visit the site and perform a standard investigation
5. The inspector shall notify the complainant that samples will not be shipped to the lab until the voluntary statement form is signed
6. The inspector shall freeze the samples as soon as possible after collection
7. The inspector shall contact the Pesticide Enforcement Supervisor and decide which samples to analyze first
8. The inspector shall mail the samples directly to the lab within 5 business days of the NDDA receiving the voluntary statement form from the complainant AND the inspector obtaining the required application records from applicator(s) in the area
9. Upon receiving sample results, the NDDA shall make an enforcement decision within 5 business days
10. If an enforcement action is taken, this letter shall be mailed within 10 business days of receiving sample results
11. If an enforcement action is taken, a closing letter shall be sent to the complainant within 10 business days of receiving the signed ACA or other case closing action (administrative hearing, etc.)
12. If no enforcement action is taken a closing letter shall be sent to the complainant with 10 business days of receiving sample results

# Process Pesticide Complaint

As-Is



4