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**Testimony of Agriculture Commissioner Doug Goehring
Interim Natural Resources Committee
Roughrider Room
9:00 am, September 6, 2011**

Chairman Damschen and members of the Interim Natural Resources Committee, I am North Dakota Agriculture Commissioner Doug Goehring. I am here today to provide information to you on the North Dakota Department of Agriculture's pesticide regulatory program, a program for which primacy has been delegated to the Department by the U.S. Environmental Protection Agency (EPA).

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides EPA with authority to regulate the production, distribution, sale, use, and disposal of pesticides. As with most federal laws, EPA can enforce FIFRA directly, or they can delegate FIFRA enforcement primacy to a state if EPA verifies that state laws and rules have equal or greater stringency than the federal law.

North Dakota's state pesticide laws are found in Chapters 4-35 and 19-18 of the North Dakota Century Code (N.D.C.C.). Specifically, N.D.C.C. 4-35 regulates pesticide use, storage, repackaging, disposal, and certification, while N.D.C.C. 19-18 requires that all pesticides be registered prior to being distributed, sold, or offered for sale in the state. EPA has determined that the requirements found in these Chapters are equal to or more stringent than those found in FIFRA. Therefore, the NDDA is essentially enforcing FIFRA through enforcement of these two Chapters of the Century Code.

The Department's delegated FIFRA program operates under an annual performance partnership

grant (PPG) negotiated with the EPA Region 8 office in Denver, CO. In exchange for accepting federal funds, the Department agrees to implement certain pesticide programs, engage in specific activities, and conduct a minimum number of different types of inspections and investigations. The PPG operates on a federal fiscal year that begins October 1 and ends on September 30.

Several base pesticide programs are fully or partially funded through the EPA grant. These include: A) the base pesticide enforcement program, B) Worker Safety and the Worker Protection Standard, C) the Pesticides in Water Program, D) the Endangered Species Protection Program, E) the Healthcare Initiative, and F) the Integrated Pest Management (IPM) in Schools Program. Note that the federal funds typically require an 85 percent federal/ 15 percent state cost-share. Also note that other core programs, such as the state pesticide registration program and pesticide outreach, are not funded through the PPG and rely solely on state funds.

While the FIFRA primacy work is done under state credentials because we are enforcing state law, some of our employees also carry federal credentials so they can conduct federal inspections when needed. This includes FIFRA inspections of the Minot and Grand Forks air bases, as well as border inspections to ensure compliance with federal import and export requirements. In the case of these federal inspections, our employees are serving as direct EPA enforcement staff, and any inspections done under federal credentials are the property of EPA.

The PPG process begins with EPA providing a guidance document in May or June of each year which outlines national priorities and available funding levels for the following federal fiscal year. The Department then prepares a PPG request document and proposed work plan that includes commitments and activities under the grant. For reference, I have included a copy of our federal fiscal year 2011 work plan with my testimony. The PPG request packet also includes a number of federal forms and a proposed budget justifying the requested funding levels. After the PPG is awarded, the Department is then required to submit quarterly reports and a comprehensive final report that is used to determine whether we fulfilled our obligations. In addition, EPA makes at least one visit to ND each year to audit our program and review a subset of our enforcement cases to ensure that our inspections are thorough and our enforcement actions are fair, consistent, and adequately robust.

We operate under a PPG with EPA to enforce FIFRA for several reasons. First, N.D.C.C. 4-35 directs the agriculture commissioner to regulate pesticides in the public's interest, and we are already performing many of the regulatory functions that EPA would do if they were enforcing FIFRA in the state. Therefore, the delegation reduces redundancy of regulation. Second, enforcing provisions of FIFRA under state authority helps ensure that any regulatory actions are not only fair, but also reasonable. Third, persons with regulatory questions or concerns with any of our pesticide programs can contact a state agency instead of EPA staff members out of state, providing direct and ready access to regulators. Last, we interact with the pesticide industry on a daily basis, and we are convinced that we have a level of understanding of the pesticide use practices and issues in the state that EPA simply cannot have. This level of understanding allows us to tailor our programs to meet the needs of the public and to gain greater levels of compliance than what EPA could do.

The FIFRA delegation does come with some challenges, however. First, the work associated with preparing the PPG request package and the quarterly and end-of-year reports can be significant. With increased focus on government accountability, there has been a significant increase in the tracking and reporting of performance measures. The need to track certain types of data and information has forced us to invest time and money to restructure our data management system.

Second, the levels of federal funding vary significantly from year to year, adding uncertainty to our funding levels and budgeting process. This uncertainty makes it difficult for us to develop and implement long-term, multi-year projects. Table 1 lists our federal allocation levels from 2008 through 2012. As you can see, the federal allocations can vary by over \$100,000 from year to year. It should also be noted that levels of federal funding have dropped at a steady rate for close to the last decade, and it is anticipated that FY 2013 allocations will be significantly lower than current levels funding.

Third, the high reliance on federal funds reduces the flexibility that we have to administer our pesticide programs. Because EPA controls a significant portion of our pesticide budget, they also control regulatory priorities. For example, a current priority of EPA is environmental justice, and work plans for fiscal years 2011 and 2012 included obligations to conduct pesticide

inspections of socially-vulnerable populations such as daycares, nursing homes, low-income housing, and hospice centers. In exchange for the federal funds, we committed to do a certain number of these types of inspections even though we did not necessarily view them as a priority. This high reliance on federal funds and the subsequent lack of control means that we are not always allocating our resources on those pesticide issues that we view as a high priority at the local or state level.

Table 1. Levels of EPA FIFRA funding to North Dakota, 2008-2012.

Federal Fiscal Year	Federal FIFRA Funding to ND
2008	\$589,599
2009	\$446,800
2010	\$510,400
2011	\$478,800
2012	\$398,800

In summary, we value the partnership that we have with EPA to enforce FIFRA under state authority. Although there are some challenges, I view the relationship to be a positive one that benefits EPA, the Department, and the state as a whole. The partnership helps ensure fair, consistent, and reasonable pesticide regulation in the state. The results of this relationship are evident by our high levels of compliance and the high regard that EPA has for our pesticide regulatory programs.

Chairman Damschen and committee members, I thank you for the opportunity to provide information on North Dakota's pesticide regulatory program. I would be happy to answer any questions you may have.

FY 2011 Pesticide Worker Safety Work Plan

ACTIVITY	OUTPUT	OUTCOME	MILESTONE	WORK YEARS
1. Core: Conduct Outreach and Education <ul style="list-style-type: none"> Provide outreach to affected establishments on new soil fumigant labeling Provide outreach to workers on WPS protections, filing complaints and reporting incidents WPS outreach and compliance monitoring: operations with workforce consisting of workers and handlers and operations with WPS violation history Conduct outreach to operations posing highest risk to work and handlers and to operations with previous violations Communicate to regulated community how to access WPS HTC manual Distribute WPS HTC manuals during field inspections Conduct two public meetings Identify opportunities to provide WPS public information 	Outreach Information/Outreach Outreach Outreach Outreach Outreach Outreach Information Outreach Information	Increased Compliance, Knowledge, & Understanding	FY 2011 FY 201 FY 2011 FY 2011 FY 2011 FY 2011 FY 2011 FY 2011 FY 2011 FY 2011	.45
2. Core: Support WPS Work & Handler Training <ul style="list-style-type: none"> Identify and meet with training providers; assist with distribution of WPS training materials 	Training	Increased Knowledge	FY 2011	.02
3. Core: WPS Coordination and Follow Up <ul style="list-style-type: none"> Monitor and refine complaint follow up process Establish a mechanism to communicate with targeted agencies regarding occupational pesticide exposure incidents/illnesses Develop and distribute a public information packet to be distributed to health care providers, migrant and farm worker organizations, and other parties 	Monitoring Monitoring Outreach	Increased Efficiency & Understanding	FY 2011 FY 2011 FY 2011	.04
1. Supplemental: Provide comments on WPS regulation <ul style="list-style-type: none"> Provide comments on proposed changes to Part 170 WPS regulation 	Information	Increased Knowledge	FY 2011	.01
2. Supplemental: Support the National Strategy for Outreach to Health Care Providers <ul style="list-style-type: none"> Identify and work with health care providers and others Distribute EPA's revised <i>Recognition and Management of Pesticide Poisonings</i> 	Outreach Information	Increased Knowledge & Coordination	FY 2011 FY 2011	.13

<p><u>Worker Safety Reporting Requirements</u></p> <ul style="list-style-type: none"> • Report total number of incidents investigated involving occupational pesticide exposure or illness that may be related to pesticide use/misuse or WPS violations • Report the number of complaints by source: ag versus non-ag • Report number of incidents reported to NDDH and NDLD • Submit reports to EPA Region 8 <ul style="list-style-type: none"> ○ WPS Inspection and Enforcement Compliance Assistance Report ○ Narrative reports on significant WPS enforcement actions ○ Section 26 and 27 referrals; track complaints not referred by EPA Region 8 ○ Provide summary of compliance and non-compliance re: WPS inspections ○ Complete and submit report annually • Provide copies of developed WPS-related outreach materials to EPA 	<p>Reporting Reporting Reporting</p> <p>Reporting Reporting</p> <p>Reporting</p> <p>Reporting Reporting Reporting</p>	<p>Increased Tracking & Knowledge</p>	<p>FY 2011 FY 2011 FY 2011</p> <p>FY 2011 FY 2011</p> <p>FY 2011</p>	<p>.07</p>
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FY 2011 Pesticides in Water Program

ACTIVITY	OUTPUT	OUTCOMES	MILESTONE	WORK YEARS
1. Core: Support implementation of pesticide NPDES Permits <ul style="list-style-type: none"> • Offer technical assistance to NDDH as they develop permits • Review draft NPDES prior to being finalized • Provide outreach to the public and serve as liaison between pesticide users and the NDDH • Distribute educational materials 	Coordination, Meetings	Increased Coordination Knowledge	FY 2011	.25
2. Core – Evaluate Pesticides of Interest over time <ul style="list-style-type: none"> • Evaluate at least 10 percent of Pesticides of Interest to determine whether human health or environmental reference point likely to be approached or exceeded • Identify Pesticides of Concern 	Risk Assessments	Risk Mitigation	FY 2011 FY 2011 FY 2011	.26
3. Core: Take actions to reduce or prevent contamination from Pesticides of Concern	Risk Management	Risk Mitigation	FY 2011	.02
1. Supplemental – Work with NDDH to continue surface water monitoring project <ul style="list-style-type: none"> • Meet with NDDH to design monitoring study • Source 319 CWA funds • Coordinate sampling events and laboratory analysis of samples • Analyze data • Prepare final report 	Monitoring	Increased Coordination Increased Knowledge	FY 2011	.1
2. Supplemental: Investigate and respond to water resource contamination	Inspections & Investigations	Risk Mitigation Compliance	FY 2011	.04
3. Supplemental: Target use inspections according to high risk for ground and surface water	Monitoring	Better Risk Mitigation & Tracking	FY 2011	.03
4. Supplemental: Continue to monitor compliance and enforce labeling as part of inspection strategy	Monitoring	Better Risk Mitigation & Tracking	FY 2011	.1
5. Supplemental: Provide outreach and education on need to comply with labeling and other restrictions aimed at mitigating risk of pesticides to water resources	Outreach	Increased Compliance Risk Mitigation	FY 2011	.1
1. Reporting – Report on national water quality measures developed through OMB Part analysis	Reporting	Increased Knowledge	FY 2011	.02

2. Reporting – Make water quality data available to EPA Region 8	Reporting	Increased Knowledge	FY 2011	.02
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FY 2011 Endangered Species Protection Program

ACTIVITY	OUTPUT	OUTCOMES	MILESTONE	WORK YEARS
1. Core: Provide outreach and educate to pesticide users and inspectors on endangered species program during certification and training sessions, public meetings, and other means	Outreach	Increased Knowledge & Compliance	FY 2011	.1
2. Core : Continue to evaluate potential for pesticide uses allowed under Section 18 and 24 (c)	No. of Reviews	Better Risk Mitigation	FY 2011	.1
3. Core: Provide data on crop acreage and distribution, pesticide use, and listed species location to OPP for use in listed species risk assessments for pesticides in registration review, along with comments on exposure assessments & proposed risk mitigation measures	Comments Data	Better Risk Mitigation, Increased Knowledge	FY 2011	.15
4. Core: Review bulletins for accuracy	Coordination/ No. of Reviews	Increased Accuracy, Better Risk Mitigation	FY 2011	.1
5. Core: Build and maintain relationships with local and regional fish and wildlife agencies	Coordination, Meetings	Increased Coordination	FY 2011	.05
6. Core: Educate pesticide users during certification and training sessions, and through public outreach	Outreach	Increase Knowledge & Compliance	FY 2011	.1
1. Supplemental: Provide data and recommendations to EPA on mitigating risk as part of state-initiated Endangered Species Protection Plan	Information/ Reporting	Increased Knowledge, Better Risk Mitigation	FY 2011	.2
1. Reporting: Submit annual reporting forms	Reporting	Increased Knowledge	FY 2011	.01

FY 2011 Pesticide Container and Containment Regulations

ACTIVITY	OUTPUT	OUTCOMES	MILESTONE	WORK YEARS
1. Core: Continue to develop and put in place program to implement the container and containment regulations <ul style="list-style-type: none"> ● Provide outreach and education to the regulated community ● Develop outreach materials ● Conduct training of inspectors ● Develop an enforcement strategy 	Outreach, Education, Training	Increased Knowledge & Compliance	FY 2011	.1
2. Core: Revise state administrative rules to incorporate federal requirements for container and residue removal	Rule Changes	Adequate Regulations	FY 2011	.3

FY 2011 School Integrated Pest Management (Optional)

[illegible]

FY 2011 Pesticide Enforcement Program

ACTIVITY	OUTPUT	OUTCOMES	MILESTONE	WORK YEARS
Priority 1: Reducing Chemical Risks				
1. Core: Container/Containment Inspections <ul style="list-style-type: none">Inspect repackaging establishments to ensure proper rinsing and disposal instructions are presentInspect containers to ensure they meet DOT requirementsInspect refilling establishments to ensure compliance with repackaging requirements and secondary containment	Inspections	Increased Compliance	FY 2011	.35
2. Core: Targeted Producer Establishment Inspections	Inspections	Increased Compliance	FY 2011	
3. Core: Targeted Use Inspections <ul style="list-style-type: none">Conduct six use inspections focused on high pesticide use patterns of at least one of the following: chlorpyrifos, malathion, diazinon, pyrethrins, carbofuran, and 2,4-DReview water monitoring data and target use inspections on those pesticides with highest number of water quality incidentsConduct use inspections on high pesticide use patterns of four pesticides that nationally exceed aquatic benchmarks (diazinon, chlorpyrifos, malathion, and azinphos-methyl)	Inspections	Increased Compliance, Risk Mitigation	FY 2011	
4. Soil Fumigants <ul style="list-style-type: none">Target outreach and education on soil fumigant users on new labeling requirementsDevelop outreach materials for soil fumigant users on new labeling requirements, including fact sheets, presentations, and inspector checklists	Meetings, Outreach, Outreach Materials	Increased Knowledge, Compliance, Risk Mitigation	FY 2011	
Priority 2: Protecting the Under Served and Vulnerable Populations				
1. Core: Conduct at least five inspections in locations of vulnerable populations, including such places as long-term care facilities, hospice centers, nursing homes, adult and child daycare centers, and rural lower income areas	Inspections	Increased Compliance	FY 2011	.02
Work Activities to Support the Core Pesticide Compliance and Enforcement Program				
1. Core: Producer establishment Inspections	Inspections	Increased Compliance & Knowledge	FY 2011 FY 2011	.3

<ul style="list-style-type: none"> Inspect producer establishments Conduct antimicrobial sampling 				
2. Core: Dealer/distributor/retail inspections <ul style="list-style-type: none"> Ensure compliance with bulk repackaging/custom blend policies and sales of RUPs 	Inspections	Increased Compliance	FY 2011	.04
3. Core : e-Commerce <ul style="list-style-type: none"> Monitor and enforce regarding pesticides marketed via e-commerce 	Strategy	Increased Compliance	FY 2011	.02
4. Core: Misuse <ul style="list-style-type: none"> Address pesticide misuse as it relates to WPS and risk to human health, food safety, environment Track tips and complaints, review Section 27 referrals 	Monitoring Monitoring	Increased Compliance, Better Risk Mitigation	FY 2011 FY 2011	.25
5. Core: Pesticide infrastructure <ul style="list-style-type: none"> Send two personnel to training Refine database 	Training IT	Increased Knowledge & Tracking	FY 2011 FY 2011	.04
6. Core: Compliance assistance <ul style="list-style-type: none"> Provide compliance assistance through public meetings, seminars, and requested reviews, especially where requirements are new or areas with recurring violations Provide remedial training for violators Work with EPA Ag Center to identify information/compliance needs 	Outreach Strategy	Increased Compliance & Knowledge	FY 2011 FY 2011	.2
7. Core - Cancellations, Suspensions, Other Major Regulatory Actions, Recalls and National High Risk Ints. <ul style="list-style-type: none"> Conduct inspections and other compliance monitoring activities 	Inspections	Increased Compliance	FY 2011	.06
8. Core - Imports and Exports <ul style="list-style-type: none"> Conduct pesticide export inspections Work with NAFTA labels 	Inspections Strategy	Increased Compliance & Knowledge	FY 2011 FY 2011	.03
9. Core: Section 18, Section 24 C and Experimental Use Permits <ul style="list-style-type: none"> Section 18 <ul style="list-style-type: none"> Conduct inspections Section 24 C <ul style="list-style-type: none"> Conduct inspections Experimental Use Inspections <ul style="list-style-type: none"> Conduct inspections 	Inspections Inspections Inspections	Increased Compliance	FY 2011 FY 2011 FY 2011	.02
10. Core: Antimicrobial pesticides <ul style="list-style-type: none"> Sample upon request 	Inspections	Increased Compliance	FY 2011	.02
11. Core: Endangered species <ul style="list-style-type: none"> Report number of cause and for cause inspections – following pesticide use limitations 	Reporting	Increased Knowledge &	FY 2011	.02

<ul style="list-style-type: none"> Report number of cause and for cause inspections – label violation 	Reporting	Tracking	FY 2011	
12. Core: WPS protection compliance and enforcement <ul style="list-style-type: none"> Direct resources to maintain an emphasis on high risk, high exposure situations to ensure health of workers Conduct Tier 1 and 2 WPS use inspections to ensure coverage of agricultural establishments regulated under WPS <ul style="list-style-type: none"> Tier I – 10 inspections Tier II – 5 inspections Follow EPA WPS Agriculture Guidance for WPS enforcement, with particular attention to follow-up inspections at agricultural establishments with prior enforcement actions for WPS violations Continued Outreach/compliance assistance <ul style="list-style-type: none"> Target compliance assistance efforts to establishments with highest risk Reporting <ul style="list-style-type: none"> Provide EPA Region 8 annual report Send appropriate personnel to training 	Inspections Inspections Strategy Outreach Reports Knowledge	Increased Compliance Knowledge, Risk Mitigation	FY 2011	.4
13. Core - Inspection and Sample Collection Activities <ul style="list-style-type: none"> Categories: <ul style="list-style-type: none"> Agriculture use Agricultural follow up Non-agriculture use Non-agricultural follow up Experimental use* Producer establishment Certified applicator records Restricted use pesticide dealer Federal facility Export* WPS Tier I WPS Tier II Ag use sample Ag follow up sample Non-ag use sample Non-ag follow up sample Chemigation (considered an ag use inspection) Marketplace 	50 20 8 5 2 40 150 100 1 1 10 5 10 50 8 10 20 100	Increased Compliance & Tracking	All inspections FY 2011	2.33
*Upon Request from Region				

FY 2011 Total Work Years = 7.27 calculated as follows

Program	Total Work Years
Pesticide Worker Safety	0.72
Pesticides in Water	0.94
Endangered Species Protection Program	0.81
Pesticide Container and Containment	0.4
IPM in Schools	0.3
Pesticide Enforcement	4.1
Total	7.27

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