



Welcome to AG-ASSIST, a WSDA-sponsored Listserv that is dedicated to chemigation, fertigation, irrigation practices, pesticide use, and related topics.

February 02, 2007

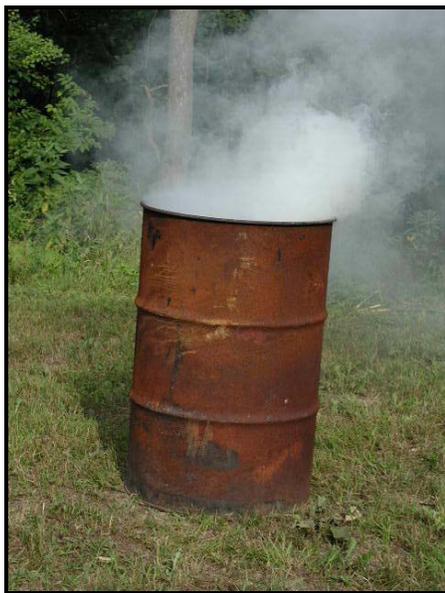
Chemigation and Fertigation Technical Assistance Program

Welcome to the February 2007 Issue of AG-ASSIST-WSDA

## Progressive Implementation of the Clean Air Act – Status of Irrigation Ditch Burning

In August 2006, the Washington State Department of Ecology (Ecology) released the revisions to the Agricultural Burn Rule ([WAC 173-430](#)). The updated agricultural burn rule, in reference to the incidental agricultural burning exception, still allows farmers to burn:

- annual orchard prunings,
- fencelines and ditchbanks,
- organic debris along or in irrigation or drainage ditches, and
- windblown debris, such as tumbleweeds.



It is illegal to burn anything in a burn barrel in Washington State, and it has been since 2000. People who burn illegally are subject to fines of up to \$10,000 per day, per violation.

An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the burn area and not burn during an air pollution episode or any stage of impaired air quality.

Starting January 1, all residential and land clearing burning are prohibited inside all Urban Growth Areas statewide. Outdoor burning within the urban growth areas for communities with populations of 5,000 or more has been banned since 2001. Agricultural burning within an Urban Growth Area is allowed, but a burn permit may be required.

Open field, harvest debris, orchard tear out, spot burning, and bale burning all require an agricultural burn permit. A permit application must be completed and permitting fee paid, which is then submitted to the permitting authority for review and approval prior to burning. If you do obtain a permit, please remember that you are required to file a post burn report with Ecology.

Burning of plastic pesticide containers of any type is an unquestionable violation of the federal Clean Air Act.

If you wish addition information about burning bans, restrictions, or permits for eastern Washington or about Washington State's air pollution laws, please call (509) 329-3400, and then ask for the Ecology Burn Team Member on duty. If a clean air authority or local administrative agency governs the intended burn area, Ecology staff will refer you to the appropriate contact. Ecology also maintains a webpage on [Agricultural Burning and Outdoor Burning](#).

For general information about agricultural burning, please refer to [DOE Publication 98-1027-AQ](#). Additional information about the 2007 outdoor burning ban on residential and land clearing burning appears in [DOE publication 06-02-016](#).

**E-Labels and FIFRA – Electronic Section 3 Labels Are Not Valid Substitutes . . . Yet**

As defined in Chapter 6, Subchapter II, Section 136(p) of the federal pesticide statute (Federal Insecticide Fungicide and Rodenticide Act, or FIFRA), “the term ‘[label](#)’ means the written, printed, or graphic material on, or attached to, the pesticide or device or any of its containers or wrappers.”

While a common practice, a printed Section 3 or Section 24(c) (Special Local Needs Registration, SLN) label from a website or from a CD is not legal nor a valid substitute for an original label. In fact, the website will stipulate that the document is a specimen label (Figure 1) or it will be noted as such on the label (Figure 2), or both. According to [EPA’s Pesticide Labeling Questions and Answers](#), 40 CFR 156.10(a) requires certain items to be included on the affixed Section 3 label while 40 CFR 156.10(i)(1)(ii)(B) allows for limited flexibility by allowing the directions for use to appear elsewhere if properly referenced on the affixed label. The affixed label must be “securely attached,” meaning it can reasonably be expected to remain affixed during “the foreseeable conditions and period of use of the product.”

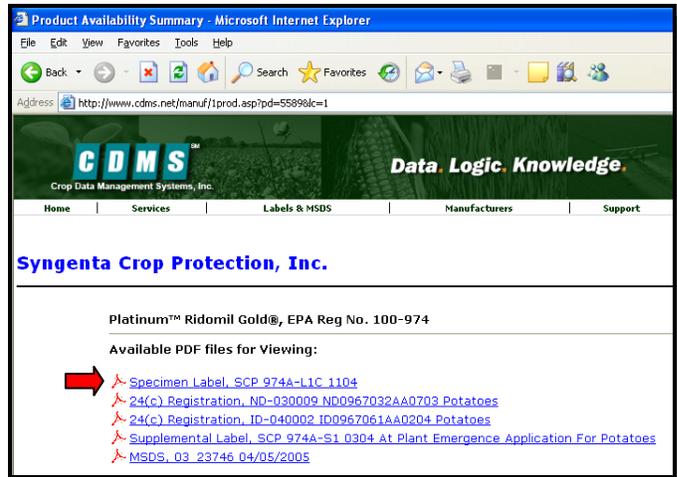


Figure 1. The CDMS website cautions the user that a “Specimen Label” is available for viewing.

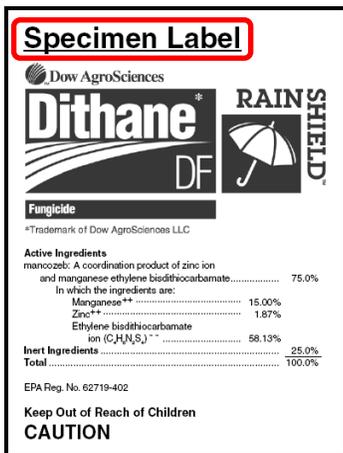


Figure 2. The user is alerted to the fact that the document is a “Specimen Label.”

In addition to label validity, two other factors must be considered before downloading, printing, and attaching electronic labels to pesticide containers or packages.

First, the act of attaching a pesticide label to a pesticide container constitutes “production of a pesticide” in FIFRA and, as such, can only be conducted in a registered pesticide-producing establishment. (“Production” includes formulation, packaging, repackaging, and relabeling.) USEPA issues pesticide-producing establishment numbers for facilities where pesticides or pesticide devices are produced. Production in an unregistered establishment is a violation of the law. In addition, the act of placing a tag or sticker onto a product is considered labeling, thus, the product is considered to be misbranded.

Second, container labeling must accurately represent the pesticide in the container. Safety and use provisions of product labels change frequently. Consequently, the label that accompanied the product may have authorized an application rate, timing, or frequency, or even a treatment site that has been further restricted or withdrawn on an electronic label, which is presumed to be the most current. Thus, if a registrant had subsequently amended or removed a use provision from the label that accompanied the product – which is reflected on the revised label, it would be a violation of the current pesticide label to apply the material in keeping with the use provisions of the original label.

The pesticide label must accurately reflect the use provisions of the product being applied. Consequently, if a label is missing from a container or if the label is unreadable or incomplete, limited options exist to remedy this situation. The distributor can:

- send the container back to the registrant or, in accordance with the repackaging agreement, to the repackager for relabeling, which would then be reported as production at the end of the year, or
- properly dispose of the product.

An electronic label does not constitute a written, printed, or graphical document as defined in FIFRA, therefore, it does not constitute a valid Section 3 label.

Neither registrants nor dealers can issue or replace old labels on existing stock with updated labels. At the time of sale or repackaging, a pesticide label must be affixed to the pesticide container or package. To distribute or sell a pesticide product without a label is misbranding under FIFRA.

### Exceptions to Electronic Labels – Section 18 Emergency Exemptions.

When USEPA initiated the Section 18 program, it was the practice that directions for use as well as additional precautions or restrictions specific to an emergency exemption would be conveyed to the user by a copy of USEPA's authorization letter. Recently, many states have submitted stand-alone "labeling" for their emergency exemptions. These "labels" may contain a variety of use provisions, such as the site to be treated, the application rate, and other basic use restrictions. These specially conceived labels are distributed to growers in lieu of or separate from the USEPA authorization.

In most cases, the pesticide product authorized for use under an emergency exemption is already USEPA-registered for other uses. It is understood in such cases that the product will be shipped bearing its USEPA-accepted parent label. The special directions for use and any restrictions and precautions relating to the emergency exemption must be available to the user at the time of pesticide application. These directions for use have increasingly been issued by the states in the form of additional Section 18 labeling. Labeling for use of products under emergency use exemptions in Washington are state specific, reviewed and approved by WSDA Registration staff and are suitable for downloading from the [Pesticide Notification Network \(PNN\)](http://ext.wsu.edu/pnn/) section of the WSU-maintained Washington State Pest Resource Service website (Figure 3). For this reason, in addition to e-labels, copied or faxed Section 18 labeling is acceptable.

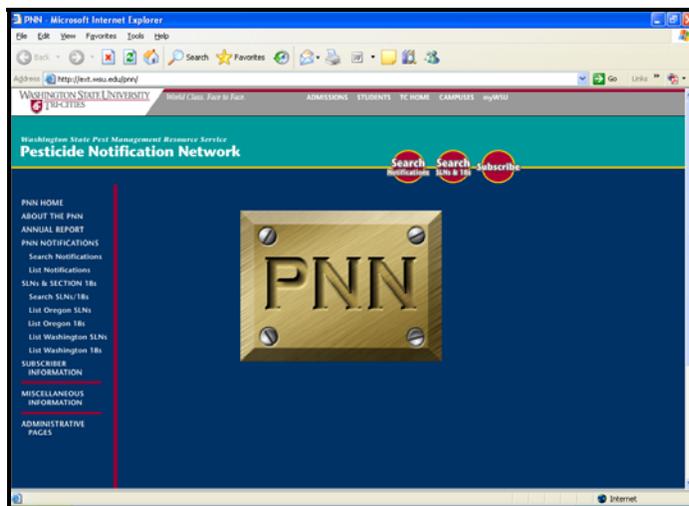


Figure 3. Section 18 and 24(c) labels for Washington and Oregon can be accessed from the PNN webpage, at <http://ext.wsu.edu/pnn/>.

### The Future of E-Labeling.

In 1999, EPA's Office of Pesticide Programs created a [work group](#) to coordinate a series of pilots with registrants that were designed to set standards for electronic data submission and review efforts to improve the efficiency and effectiveness of its regulatory processes. The pilots included an effort to develop standards for electronic product labels. Although, USEPA has developed Interim Guidance on the creation and submission of label text information for registration purposes, they have not proposed policy that would allow the general dissemination and use of electronic labels.

Tim Creger, Chair of the AAPCO Information Technology Committee submitted an [E-Labeling Issue Paper](#) in 2002, which identified several high priority e-labeling issues that require additional research and clarification. After researching this issue, USEPA's Labeling Committee agrees that a change is needed in regulations to accommodate e-labeling.

According to Jim Gray, Pesticide Registration Coordinator with the North Dakota Department of Agriculture, "The current model of electronic labeling being pursued by EPA through the NAFTA [North American Free Trade Agreement] Technical Working Group is a basic container label with minimal information such as the product name, an ingredients statement, signal word, emergency contact information, and similar information. However, the major parts of the labeling, including use directions, would be found in electronic labeling that could be downloaded from the Internet. Therefore, there would not be an electronic label per se, but we would have electronic labeling."

With the advent of the Endangered Species Protection Bulletins coming on-line early next year, these documents will contain enforceable use limitations for the pesticide. Bulletins will be referenced on the pesticide product label and available on the web at [www.epa.gov/espp](http://www.epa.gov/espp), or by calling 1-800-447-3813.

For information about E-Labels or E-Labeling, please contact [Steve Foss](#), WSDA Pesticide Registration Specialist, at [SFoss@agr.wa.gov](mailto:SFoss@agr.wa.gov), or by calling (360) 902-2049.

### **Pollen Trespass . . . The Plight of Sweet Corn Growers and Processors**

Insecticidal (Bt) and herbicide-tolerant (Starlink or Roundup Ready<sup>®</sup>) traits are two of the several widely adopted genetically engineered applications of biotechnology in crops. As forms of pest management, distributors tout reduced pesticide costs and an improvement in yields.

Despite an apparent comparative advantage, uncertainty exists about consumer willingness to accept the risk associated with the unintentional movement of engineered genes (transgenes) from transgenic crops into related populations for which they were not intended. These factors are reflected in the marketplace. Gene flow – the movement of genes between cross-compatible species or populations – by pollen or by seed may occur in crops intended to have a certain level of purity with regard to market demands, for example, crops certified as organic or destined for foreign markets. Oftentimes, these lucrative international markets do not tolerate the presence of materials from genetically engineered plants in the human food supply.



With the significant increase in corn acreage being planted to mostly genetically engineered varieties in response to an anticipated ethanol-driven demand, sweet corn producers – and processors – are contemplating the ensuing impact on their industry. Citing intervarietal cross-pollination between contracted nontransgenic (isogenic) sweet corn and nearby transgenic cornfields, sweet corn producers wondered if WSDA has enforcement authority to mitigate gene flow by imposing some form of production isolation, such as buffers or planting restrictions, or field monitoring criteria.

Because neither the product label (in the case of a plant-incorporated protectant, or biopesticide variety) nor the grower agreement with the product registrant stipulates a buffer or setback for the transgenic crop relative to another isogenic, intervarietal crop, no enforceable provisions exist to justify or warrant an interdiction by WSDA in response to a “pollen trespass” complaint. Similarly, WSDA cannot exercise enforcement action in response to an alleged contamination or crop damage resulting from pollen drift because no violation of law or rule has occurred.



As such, the burden of ensuring a marketable crop befalls processors and producers. The grower will need to contact neighboring growers in an effort to ensure that adequate isolation factors, whether time (emergence or pollen-shed dates) or distance, exists to mitigate cross contamination.

### **Proposal to Pursue Possible Rule-Making – Attending to the Phenoxy Rules**

In order for a rule, or any part thereof, to become final and enforceable, at some point, it must be a proposed rule. A proposed rule is literally a proposal by an agency to adopt a new rule, change or amend an existing rule, or repeal an existing rule. Rule-making is a very formal process with strict guidelines that must be followed in order for the rule to become legal and enforceable. When a decision is made by an agency to initiate rule-making, the process begins with the filing of a CR-101: Preproposal Statement of Inquiry by the sponsoring agency with the Office of the Code Reviser.

Last month, WSDA filed a CR-101 as notification of intent to initiate possible rulemaking involving sections of Chapter 16: Department of Agriculture, Washington Administrative Code (WAC). An overview of the proposed changes follows.

- Amend phenoxy definitions.
- Define rules relating to use restricted pesticides in county orders.
- Define herbicides and related container sizes that should be considered use restricted or have use restrictions due to product volatility causing phytotoxicity.

Chapters of the WACs referenced in the CR-101 appear below. Sections 230-232 reflect proposed title changes.

- WAC 16-228: General Pesticide Rules
- WAC 16-230: Rules Relating to the Use of Insecticides on Blossoming Alfalfa, Clover and Mint.
- WAC 16-231: Rules Relating to Use Restricted Pesticides in Franklin County
- WAC 13-232: Rules Relating to Use Restricted Pesticides in Walla Walla County

The proposed changes to sections of rule can be viewed at and downloaded from the [WSDA Rulemaking](http://agr.wa.gov/LawsRules/Rulemaking/RulemakingActivity.htm) webpage at <http://agr.wa.gov/LawsRules/Rulemaking/RulemakingActivity.htm>. Scroll down the page and click on “[Phenoxy Pesticide Regulation Revisions and Terminology in Pesticide County Orders Revisions.](#)”

Comments on the proposed language contained in the CR-101 should be submitted to WSDA by February 15. Contact information appears on the website. Stakeholders will have an opportunity to comment in writing or to participate in the public hearing process once the CR-102: Proposed Rule Making is filed.

### When Commercial Operators Cause Commercial Operators to Violate Law

It is an unfortunate reality: commercial operators, upon assuming application responsibility for a commercial applicator or for a fellow commercial operator, have resigned themselves to possible enforcement action for violations of label provisions, providing that the violations existed at the time that application responsibility was assumed.

Before assuming responsibility for an application, you should assess all aspects of the application – including the application system – for compliance with the pesticide label, and state law and rule.

To illustrate, a commercial operator assumed control of an on-going chemigation application from a fellow commercial operator; however, the unassuming commercial operator did not know that his colleague failed to check whether the irrigation system contained appropriate or otherwise functional backflow prevention devices. In the event that these deficiencies were detected during an agricultural use inspection, the initiator of the chemigation application along with any subsequent applicator of record would be in violation of federal and state statutes and of state rules.

Please, don't presuppose . . . verify before you assume responsibility for a pesticide application.

Archival issues along with supplemental reference materials are available in an Adobe Reader (\*.pdf) format at <<http://agr.wa.gov/PestFert/ChemFert/agassistwsda/default.htm>>.

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