



Pete Ricketts
Governor

State of Nebraska

Department of Agriculture

Steve Wellman

Director

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MAR 19 2018

Mr. Jamie Green
U.S. EPA Region VII
11201 Renner Blvd
Lenexa, KS 66219

March 13, 2018

Dear Mr. Green:

On March 9, 2018, the Nebraska Department of Agriculture (NDA) received the enclosed letters from Ms. Amanda McMahon, an attorney who works for Legal Aid of Nebraska, and is representing the two individuals identified in the letters. The individuals have asked Legal Aid of Nebraska to represent them in a complaint alleging that they were sprayed by an aerial application of a pesticide while detasseling seed corn in Nebraska on July 19, 2017.

The Nebraska Pesticide Act, Section 2-2645(2), provides that the NDA is not required to investigate any complaint that the department determines is made more than ninety days after the person complaining knew of the damages, is outside the scope of the Pesticide Act, or is frivolous or minor in nature. The NDA believes the enclosed complaints merit serious investigation, since the allegations involved potential harm to human health by a pesticide, however, given the complainants both live outside of Nebraska (Florida and Texas), the jurisdiction to collect statements and other evidence from them does not exist.

Additionally, Appendix 3 of the 2018-2021 FIFRA Cooperative Agreement Guidance provides a mechanism whereby the State Lead Agency for pesticides retains the primary authority to investigate cases of alleged misused or misapplied pesticides, "...unless the state requests or defers the inspection or enforcement to EPA." Over the last 24 years that NDA has been granted regulatory primacy for pesticides, the Department has referred fewer than five complaints received by the Department. NDA takes its regulatory primacy seriously, but recognizes situations when EPA is better suited to carry out the mission.

Given the scant details included in the letters, it is difficult to determine the validity of the claim, however, at the very least I would anticipate that EPA will request NDA to assist in collection of evidence that is present in Nebraska. This evidence would potentially include written statements from pesticide applicators, field worker crew leaders, seed corn company labor contractors, and field agronomists. It is not yet known if an actual pesticide application was involved, but if the preliminary evidence suggests there was, I would anticipate NDA will be available to gather application records and any field evidence that might still be available, and submit that evidence to EPA to support EPA's

investigation. Before NDA begins those activities, please advise me whether referral of the case to EPA requires the evidence be collected under federal or state inspector credentials.

Finally, it is my understanding that while NDA will likely conduct the bulk of the investigation into the allegations in our state, EPA will conduct the enforcement case review and make a determination of compliance with FIFRA and the Worker Protection Standard, not NDA.

Please contact me if you have any questions.

Sincerely,

Tim Creger
NEBRASKA DEPARTMENT OF AGRICULTURE

A handwritten signature in black ink, appearing to read "Tim Creger", with a stylized flourish at the end.

Pesticide/Fertilizer Program Manager

S:\Legal\AidNE_WPS referral to EPA 3-13-18