

ASSEMBLY AGRICULTURE COMMITTEE MINUTES

MARCH 4, 1975

MEMBERS PRESENT: Chairman Hickey
Vice Chairman Price
Mr. Coulter
Mr. Jeffrey
Dr. Robinson
Mr. Getto
Mr. Howard

MEMBERS ABSENT: None

GUESTS: Jack E. Hampton, Nevada Department of Agriculture
M. Blomdal, Nevada Tax Commission
Harold Hall, Nevada Beekeepers
Wendell Wheat, Nevada Beekeepers
Will P. Carver, Nevada Beekeepers
Tom Ballow, Nevada Department of Agriculture
H. E. Gallaway, Nevada Department of Agriculture

A quorum being present, Vice Chairman Price called the meeting to order and stated that the purpose of the meeting was to hear AB 140, 214 and 136. He added that in addition to these bills AB 202 would be heard, although it was not included on the agenda.

AB 140, makes certain changes in laws regulating custom application of pesticides.

Mr. Gallaway, Department of Agriculture, stated that this bill was a part of a packet of three bills to clarify and deal with application of pesticides. These bills will bring Nevada in compliance with federal laws.

Mr. Gallaway went through the bill and made brief explanation of the various sections. Section 1 would amend the act as it applies to custom application of pesticides. It redefines an agent. There had been an exclusion in the act which excluded chemical suppliers who solicit on behalf of an applicator. It is the opinion of the department that someone who solicits on behalf of a licensed operator should be licensed. This is also a federal law requirement.

Section 2, redefines the term custom application of pesticides. There have been instances in the past where a person has held himself out to be able to do custom application of pesticides without a license and did not charge. They have caused damage to property and health. This section would broaden the definition of application.

Other parts of the bill are for removal of language which the Legislative Counsel Bureau feels are desirable, with exception

of Section 6, which broadens the right of entry part of the bill. This was necessary because of the new Federal Environmental Pesticide Control Act of 1972.

Dr. Robinson asked if the act would include exterminators and also wanted to know the rationale behind Section 6. Why did they need to see records. Mr. Gallaway stated that these applicators were required to maintain certain records regarding application, what was applied, when, where, etc. These are required by regulation and federal law. They have to audit these records to see that they are maintained properly and once a month the operators must submit a summary of what they have done.

✓ Mr. Getto asked if in Section 4 they were actually removing the part of the act which allowed the owner of private property to apply his own pesticides. Mr. Gallaway stated that private individuals have not been regulated in the past, but federal law requires that to use restricted use pesticides, a person must be a legally certified applicant and this includes on private property.

Mr. Getto then asked if they must pass some type of examination. Mr. Gallaway stated that they would eventually and explained the procedures that will be followed. Federal law mandates that they have two classifications of applicators, private, where a person who is actively engaged in agriculture uses restricted use pesticides on his own property. Commercial applicator is one who applies pesticides for hire. The degree of competency is the difference between these two licenses. There is one exception to the written test and that is someone who can neither read or write.

Mr. Price asked if these pesticides were available to the average homeowner. Mr. Gallaway stated that at the present time they are as there are approximately 55,000 pesticide products available under various brand names. EPA will classify these by general and restricted use and restricted use pesticides will not be as available. He further stated that they do not know at the present time which ones will be restricted but they can make an educated guess on some.

Mr. Price asked what would happen if the legislature came up with a bill and the Feds didn't do their part. Mr. Gallaway stated that the Feds were under a mandate to have this done by federal law. The state is also under a mandate to have a plan submitted to EPA by October 1975 and by October 1976 have the plan implemented and in operation. If this is not done no one in Nevada will be allowed to use a restricted use pesticide.

AB 214, regulates the application of restricted use pesticides. Mr. Gallaway stated that this "is the meat of the whole pesticide procedure." He then presented a copy of "An Overview of Applicator Certification". (See Exhibit I)

The Department of Agriculture has been working with the University of Nevada, Agriculture Extension Service to work this out to best suit the needs of the people involved and meet the requirements of the federal law.

They hope to have their plan submitted by July 1 so that by October of 1975 a team from the Cooperative Agriculture Service and the Department can be moving around the state and put on two-day courses of instruction. The people in the Department with this team at the same time will allow interested persons the opportunity to take the examination. However, this will not be a one shot program but will be continuous in nature, as new materials come out and more people need to be licensed. EPA has assigned a special committee to assist states in coming up with their proposal.

Mr. Gallaway then went through AB 214, stating that Sections 1-7 were simply definitions. Section 8, they left open ended the definition of the word supervising. There is a great deal of disagreement between federal and state levels just what this should be. This section would allow the department the right to define by regulations after the federal regulations are enacted.

Section 9, is the illegal act. They have one additional problem with the wording here. There will be instances of some pesticides which will need additional controls above and beyond federal controls. The department will have to add these additional restrictions by regulation. Mr. Gallaway submitted their suggested amendment to this section. (See Exhibit II). This will make it clear to any person that they also have to comply with requirements of the department under this section.

Sections 10 and 11 set forth application procedures and insight into the knowledge and level of competence needed.

Section 12 asks that there be a fee along with the examination. This is to help defray the costs of examinations and more important to make individuals have a personal interest in the exam. Will not defray all the costs involved by will help.

Mr. Getto stated that with this act every farmer that wants to apply a restricted use pesticide will have to be licensed. Mr. Gallaway stated that this was true.

Mr. Hickey asked if the pesticides had been classified as yet. Mr. Gallaway stated that they had not and in fact the federals were putting the cart before the horse which made it a bit difficult for the states.

Mr. Getto said that it was foreseeable that a rancher could have to be licensed in order to take a can of dusting power and dust his own cattle. Mr. Gallaway stated that he would if it was a

restricted use pesticide but that not all pesticides would be restricted. There are two basis for restricting use which are: 1. hazardous to the individual making the application and, 2. potential impact or danger on the environment.

Mr. Hickey asked if the Department of Agriculture has any idea about how many would have to be licensed. Mr. Gallaway stated that they have had many different estimates but that he felt it would be between 1,000 and 1,200 people in the state that would be licensed both private and commercial. A lot of ranchers and farmers will not be licenses as they will hire theirs done.

Mr. Getto asked ~~asked~~ if there was any appropriations. Mr. Gallaway stated that the federal law does provide some money for assistance to develop state plans. Mr. Gallaway further stated that the department has been gearing up for this since 1971.

Mr. Gallaway went to say that Section 14 gave the causes for revocation of license that the federal law sets forth. Section 16, 17, 18, and 19 are simply language to clean up as suggested by the Legislative Counsel Bureau to add to the continuity of the bill.

Section 20, applies to right of entry for the records that must be maintained for the purpose of this act.

Mr. Price questioned Mr. Gallaway about right of entry without a search warrant. Mr. Gallaway stated that they have this right in connection with many things they do. This simply grants them the right to go on property but the individual who's property it is has the right to refuse entry. In that case they must resort to court orders.

Mr. Ballow stated that this rarely happens but should it happen they must go to the district judge and if he agrees with them, a search warrant is issued and they can subpoena records by the court.

Mr. Gallaway went on to say that Sections 21-25 are necessary language to make this act compatible with other portions of the law.

Section 25 is a fiscal note which provides for salary and travel for an additional agriculturist in the Las Vegas area and a Clerk Typist to handle the additional volume of paperwork which will be involved.

Mr. Getto referred to Mr. Gallaway's mention of some federal money and asked him to elaborate on this. Mr. Gallaway stated that EPA has been allotted \$10,500,000 for fiscal year 1976 to work and cooperate with the states. Looking at the number of applicants made, they anticipate that Nevada may receive no more than \$5,000 and that perhaps the College of Agriculture Extension Service may receive about \$10,000 for instructional purposes. None of

this money is for enforcement purposes.

Mr. Ballow stated that they feel that this legislation is very critical and they consider this one of their top priorities. If they do not get the program into effect, they feel that it will be more restrictive under the federal act. They are gearing up to have the maximum flexibility under the law for the people involved.

AB 136, authorizes increase in special tax rate and registration fee for each hive of bees located within State.

Mr. Gallaway stated that this was an administrative bill. The present tax structure has been in effect for a very long time. Position the department is in at the present time is that they have to cut back each year as a result of rising cost of living. Resident bees bring approximately \$1,600 a year and an adequate inspection program as relates to these resident bees would cost approximately \$2,200. What this bill does is establish an authorization for this special tax to be set at a figure not to exceed \$.50 on each hive of bees. It also has the ability to set the same level as a registration fee on bees brought into the State for the purposes of colonization.

Department work programs depend on actual source of money. Monies from the colonization program are directed right back to this project, etc. Nevada Beekeepers Association does support this bill. The State Board of Agriculture recommends that if this should be passed the assessment fee of \$.35 be used for the coming year.

Mr. Hicked stated that the hobbyists are concerned about the lack of inspection for hobbyists. Mr. Gallaway stated that they do not have any set inspection for hobbyists but they direct a certain amount of work toward these people. Their main concern is to protect the commercial beekeeper.

Mr. Hickey asked if it would be possible to develop a flat tax for the hobbyist. Mr. Gallaway stated that this would be possible but that it would take complete legislation to do this.

Mr. Gallaway stated that the hobbyist is not taxed if he has 50 or less colonies. Today they have about 90 people in the state registered as hobbyists with 1-5 colonies totally 203 colonies. They have 55 beekeepers with 6 or more colonies totalling 6,920 colonies. They know there are more hobbyists than are registered.

To charge the hobbyist would require legislation and considerable administrative expense.

Mr. Hall, President of the Beekeepers Association, spoke in behalf of the bill, stating that a resolution on this was presented to their recent convention and carried overwhelmingly. Even though

this bill will cost him considerable; he is in favor of this bill. He explained about bee diseases and how they are so disastrous. He stated that he was very concerned about hobbyists and commercial beekeepers being inspected and educated so that this disease will not wipe out the industry.

Wendell Wheat, Carson City Commercial beekeeper, stated that he opposed any increase in the tax rate at this time. This was also the opinion of four other commercial beekeepers who all together have more than 1/2 of the bees in the state. He stated that he felt that the department was not adequately doing their job and could do it more effeciently without any new taxes. He further stated that the resolution that was passed was passed by hobbyists who are not even effected by these taxes and therefore do not care how much tax there is on the bees.

He also stated that he believed that all bee hives should be taxed and that the hobbyist should not be exempted. He stated that the State Apiarist had estimated that there perhaps 2,000 hives in the state that are not taxed. He ended his comments by stating that he opposed spending of more tax money. The Department of Agriculture which is suppose to be a regulatory and enforcement agency is now becoming instead a policy department telling rather than asking.

There was a general discussion on this amongst the guests and the committee members. They discussed the structure of the Association, inspections that the Department conducted, etc.

AB 202, establishes authority in State Department of Agriculture to regulate and control vertebrate pests.

Mr. Gallaway gave a brief background on this bill and the events leading up to it. He stated that the rodent problem in Northern Nevada was getting tremendous. They were asked to come up with something that would help and this is what they have arrived with. The problem is partly the inability to get a supply of poisons which are effective on these rodents. The EPA has made it very difficult to do so and have restricted the use on BLM land of which Nevada has about 80%.

These rodents migrate from BLM land to agricultural lands where there is more favorable habitats. They would like the bill to become effective upon passage and approval as there is a real need for this at this time.

Mr. Price and Mr. Hickey proceeded to fill in the rest of committee on the events of the previous weekend trip to Elko and Winnemucca where this problem was brought to their attention. It is most important that something be done now as time was a real factor.

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As there was no further testimony on the various bills, Vice Chairman stated that the committee would proceed to take some action on these bills.

AB 140, makes certain changes in laws regulating custom application of pesticides. Mr. Hickey moved "do pass" and Mr. Jeffrey seconded the motion. The vote was unanimous. (Dr. Robinson, Mr. Getto had been excused.)

AB 214, regulates application of restricted use pesticides. Mr. Jeffrey moved "do pass as amended" and Mr. Hickey seconded the motion. The vote was unanimous.

AB 136, authorizes increase of special tax rate and registration fee for each hive of bees located in State, Mr. Howard moved that no action be taken at this time and that the bill be set aside for the preset time, and Mr. Jeffrey seconded the motion. The vote was unanimous.

AB 202, establishes authority in State Department of Agriculture to regulate and control vertebrate pests, Mr. Howard moved "do pass as amended" and Mr. Hickey seconded the motion. The vote was unanimous.

Mr. Hickey announced to the committee that he had scheduled a public hearing in North Las Vegas, in the City Hall, 10:00 a.m. this coming Saturday, March 8, for the purpose of hearing further testimony on AB 29, which abolishes the Dairy Commission.

As there was no further business to conduct, Vice Chairman Price adjourned the meeting.

Respectfully submitted,

Sandra Gagnier,
Assembly Attache

INTRODUCTION

Pesticide users who apply certain products, classified for "restricted" use only, should become familiar with certification requirements that have been developed by the U.S. Environmental Protection Agency (EPA). Final regulations establishing standards for applicator certification were published in the Federal Register by EPA on October 9, 1974.

Applicator certification is required by the Federal Insecticide, Fungicide and Rodenticide Act of 1947 as amended in 1972. After October 21, 1976, most pesticides classified for restricted use may be applied only by or under the direct supervision of certified applicators.

The certification program is designed to ensure that users of restricted pesticide products are properly qualified to handle and apply these materials without harming themselves, other people or the environment.

Actual certification of applicators will be done by each State. However, States that wish to certify applicators must develop and administer certification programs that conform with the standards recently set forth by EPA.

LEGISLATIVE BACKGROUND

In 1947, Congress passed the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to regulate the marketing of pesticides, which were then termed "economic poisons," and devices using these substances. The law required Federal registration of pesticides shipped across State lines and made it unlawful to sell in interstate commerce unregistered pesticides or substances that had been misbranded or adulterated. Although the 1947 law also made it unlawful to detach, alter, deface or destroy labels on pesticides and provided for Federal inspection of products being shipped across State lines, it did not address itself to actual pesticide use. Nor did the 1947 FIFRA control pesticides produced and used within the same State.

Over the years between 1947 and 1972, problems of pesticide misuse and overuse were noted despite extensive labeling and use instructions. Sometimes these incidents caused serious effects on man and the environment.

In 1972, Congress amended the FIFRA to deal with these problems. The amended FIFRA extends Federal regulation to cover all pesticides used in the United States instead of only those products shipped across State lines. It also provides stronger enforcement provisions, makes pesticide misuse unlawful, and contains a number of other key regulatory provisions.

The most important of the latter to pesticide users are provisions (1) that EPA must classify all pesticide products for either "general" or "restricted" use and then (2) "restricted use" pesticides may be used only by, or under the direct supervision of, certified applicators or under such other regulatory restrictions as EPA may require. Congress specified that the amended FIFRA should be fully implemented by October 21, 1976.

CLASSIFICATION OF PESTICIDES

General use pesticides are those that will not ordinarily cause unreasonable adverse effects on the user or on the environment when used in accordance with their label instructions. Such products will be available to the public without further restrictions other than those specified on the label.

Restricted use pesticides are those which may cause adverse effects on the environment or the applicator unless applied by competent persons who have shown their ability to use these products safely and effectively. Such persons will be identified through applicator certification programs.

TYPES OF APPLICATORS

The amended FIFRA provides for two types of certified applicators, commercial and private. Commercial applicators will generally be those who apply pesticides for a livelihood, and they are defined as those who use or supervise the use of restricted pesticides on any property other than as provided by the definition of "private applicator."

A private applicator is, in most cases, a farmer, rancher, orchardist, or other applicator who uses or supervises the use of restricted pesticide products to produce an agricultural commodity on property owned or rented by him or his employer or (if the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

STATE CERTIFICATION PLANS

Although EPA was given responsibility for developing and publishing standards of competence, the amended FIFRA reflects

Congressional intent that States assume primary responsibility for certification of applicators. State certification plans must be reviewed and approved by EPA. Therefore, State plans should be submitted to EPA by October 21, 1975 if a State wishes to certify applicators by the 1976 deadline. Guidelines applying to the development and submission of State plans are being formulated by EPA.

CATEGORIES OF COMMERCIAL APPLICATORS

The regulations establish 10 occupational categories for commercial applicators. In developing their State plans, States may adopt these categories as needed, propose establishment of necessary subcategories or deletion of unneeded categories. States may also request the EPA Administrator's approval to add major categories to meet local conditions.

The 10 categories are: (1) agricultural pest control; (2) forest pest control; (3) ornamental and turf pest control; (4) seed treatment; (5) aquatic pest control; (6) right-of-way pest control; (7) industrial, institutional, structural and health-related pest control; (8) public health pest control; (9) regulatory pest control; and (10) demonstration and research pest control.

COMMERCIAL APPLICATOR REQUIREMENTS

Competence of commercial applicators will be determined by written examinations and, as appropriate, by performance testing. All commercial applicators are required to demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides.

Testing will be based on examples of problems and situations pertaining to the particular category or subcategory of the applicator's certification and will include the following:

(1) label and labeling comprehension; (2) safety; (3) environmental factors and the consequences of use and misuse of pesticides; (4) knowledge of pests; (5) knowledge of pesticides and types of formulations, including hazards associated with residues; (6) equipment use; (7) application techniques; and (8) applicable State and Federal laws and regulations.

Commercial applicators must be particularly qualified with respect to practical knowledge within their category, and the standards further specify special areas of knowledge for each of the major occupational categories.

PRIVATE APPLICATOR REQUIREMENTS

Private applicators, whether they are farmers, ranchers, plant propagators, orchardists or other producers of agricultural commodities, are normally confronted with a rather narrow range of recurring pest problems. Accordingly, the private applicator standards reflect the need for practical knowledge of pest problems associated with their particular farming operations.

As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of pest problems associated with his agricultural operation plus the proper storage, use, handling and disposal procedures for the pesticides that he needs, including proper disposal of used pesticide containers. This practical knowledge includes the ability to: (1) recognize common pests and pest damage; (2) read and understand labels and labeling information, including any specific disposal procedures; (Testing procedures for persons who cannot read are permitted if approved by the EPA.) (3) apply pesticides in accordance with label instructions and warnings, including ability to prepare proper dilutions; (4) recognize local environmental situations that must be considered; and (5) recognize poisoning symptoms and know what to do in case of an accident.

Competence of private applicators is to be verified by the responsible State agency using a system to ensure that such persons are qualified to use restricted pesticide products. Written or oral tests, or other equivalent systems as approved in the State plan, may be used.

SUPERVISION OF NON-CERTIFIED APPLICATORS

The amended FIFRA provides that under certain circumstances a restricted use pesticide may be applied by competent persons under the direct supervision of a certified applicator. Certified applicators who have supervisory duties must know State and Federal supervisory requirements. Availability of the certified applicator must be directly related to the hazard involved. In many situations where actual presence of the certified applicator is not required, "direct supervision" may consist of verifiable instruction to the competent person on applying the pesticide properly and instructions for contacting the certified applicator in the event he is needed. In some situations, the label or additional State regulations may require actual physical presence of the certified applicator.

IMPACT OF CERTIFICATION

Standards for certification of pesticide applicators reflect the intent of Congress in amending the FIFRA to bring about a better balance between the risks and benefits inherent in pesticide use.

The overall thrust of applicator certification is to allow more efficient use of those pesticides needed for the production of the Nation's food supply, and for the preservation of our other natural resources, while protecting both the public and the environment from possible ill-effects of improper pesticide use.

Limiting the use of certain highly toxic or persistent pesticides to certified applicators who have demonstrated their ability to properly handle such materials may allow continued utilization of certain products that would otherwise have to be withdrawn from the market to keep them out of the hands of inexperienced persons.

For more information on certification of private or commercial applicators, contact your County or State Cooperative Extension Service office or your State or local pesticide regulatory officials. The latter may be located in the State Department of Agriculture, State Department of Natural Resources, State Environmental Office, or similar agencies. Also, you may contact any of EPA's ten Regional Offices across the country or write to the Environmental Protection Agency, Washington, D.C. 20460.

Section 9: ... certified applicator[.]provided, that if the Executive Director has required a special use permit to use a restricted use pesticide, that such special use permit should also be obtained.

Section 26 - Section 9 of this act shall become effective July 1, 1976. All other sections shall become effective July 1, 1975.

AMENDMENT AB-202

Add Section 7

Section 7. There is hereby appropriated from the general fund in the State Treasury to the Department of Agriculture to be used by the Division of Plant Industry for the purpose of administrating the program of vertebrate pest control:

1. For the fiscal year 1975-76 the sum of \$25,735.
2. For the fiscal year 1976-77 the sum of \$22,504.

- effective upon passage
 - Get supplemental appropriations of ()
- ~~←~~

Agriculture
Hickey

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BDR 49-157
A.B. 214
S.B.

FISCAL NOTE

AMENDMENTS:

Assembly: First Reading _____
 Second Reading _____
 Third Reading _____
 Senate: First Reading _____
 Second Reading _____
 Third Reading _____

Date transmitted _____

Agency submitting _____

Date prepared August 2, 1974

Summary	Fiscal Year 1974-75	Fiscal Year 1975-76	Fiscal Year 1976-77	Continuing
Salary and Payroll		\$21743.00	\$22725.00	\$23861.00
In-state Travel		600.00	600.00	600.00
Operation		2000.00	2100.00	2100.00
Equipment		5506.00	300.00	100.00
Total.....		29849.00	25725.00	26661.00

EXPLANATION (use continuation sheets if required):

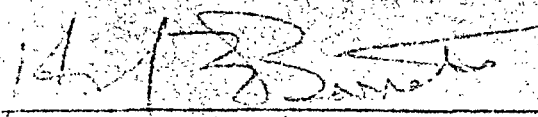
- Salary and Payroll cost - Agriculturist - Las Vegas
 Clerk-typist - Reno
- In-state Travel - Per diem and public transportation cost
 for agriculturist
- Operation - Postage - Office Supplies - Communication
 Printing - Vehicle Operation
- Equipment - Vehicle (truck) - Executive Unit -
 Secretarial Unit and Field Equipment

Signature *Thomas Wells*
 Title *Executive Director*

over

Reviewed by Department of Administration
Comments by Department of Administration:

Many amounts would have to be adjusted dependent upon Legislative approved level of fringe benefits and costs. The other costs appear reasonable. (General fund appropriation, continuing, and not included in Plant Industry budget request).

Signature 

Date February 11, 1975 Title Director of Administration