

**LETTER OPINION**  
**98-L-34**

March 30, 1998

Honorable Francis J. Wald  
State Representative, District 37  
P.O. Box 330  
Dickinson, ND 58602-0330

Dear Representative Wald:

Thank you for your letter regarding N.D.C.C. § 4-35-09.1. You have asked for an interpretation of the term "financial responsibility" in N.D.C.C. § 4-35-09.1, and also what the general liability policy referred to in the statute was intended or expected to cover.

N.D.C.C. § 4-35-09.1, which was passed during the 1997 legislative session, provides in part:

A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. Minimum financial responsibility must be demonstrated annually in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy.

When determining the meaning of a statute, one must first look at the statutory language. County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 325 (N.D. 1985). Words in a statute are to be given their plain, ordinary, and commonly understood meanings unless specifically defined in the Century Code. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); N.D.C.C. § 1-02-02. "When the meaning of a word or phrase is defined in a section of our Code, that definition applies to any use of the word or phrase in other sections of the Code, except when a contrary intent plainly appears." Adams County Record v. GNDA, 529 N.W.2d 830, 834 (N.D. 1995) (citing N.D.C.C. § 1-01-09).

N.D.C.C. § 4-35-09.1 does not define the term "financial responsibility." However, both N.D.C.C. § 39-16.1-02 and N.D.C.C. § 39-01-01(55) define "proof of financial responsibility" in the motor vehicle liability context as "proof of ability to respond in damages to liability, on account of accidents . . . ." N.D.C.C. § 61-04.1-19

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states that "[p]roof of financial responsibility is made by showing to the satisfaction of the [atmospheric resource] board that the permittee has the ability to respond in damages to liability which might reasonably result from the operation for which the permit is sought." Black's Law Dictionary similarly defines the term "financial responsibility acts" as "[s]tate statutes which require owners of motor vehicles to produce proof of financial accountability as a condition to acquiring a license and registration so that judgments rendered against them arising out of the operation of the vehicles may be satisfied." Black's Law Dictionary 631 (6<sup>th</sup> ed. 1990).

By analogy, one can conclude the term "financial responsibility" in N.D.C.C. § 4-35-09.1 means sufficient financial accountability to ensure that a commercial pesticide applicator can satisfy judgments or claims filed against it due to the applicator's operations. This conclusion is consistent with both the common-law definition provided by Black's Law Dictionary and the definition of "proof of financial responsibility" referred to in other chapters of the code. Accordingly, it is my opinion that the term "financial responsibility" in N.D.C.C. § 4-35-09.1 means a commercial pesticide applicator's financial ability to satisfy judgments entered against the applicator as a result of the applicator's actions. In particular, it means that an applicator must have at least \$100,000 in resources available to pay a liability claim.

Your second question asks what liability a "general liability insurance policy" is to cover. N.D.C.C. § 4-35-09.1 provides three options for an applicator to demonstrate its financial responsibility: (1) submission of a letter attesting to the existence of net assets equal to at least one hundred thousand dollars; (2) a performance bond; or (3) a general liability insurance policy. The statute does not define "general liability insurance policy," and does not specify what actions or damages such a policy is required to cover.

Our primary goal in construing a statute is to discover the intent of the legislature. We first look to the language of the statute in seeking to find legislative intent. If a statute's language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. If a statute's language is ambiguous, however, we may look to extrinsic aids in interpreting the statute. . . . A statute is ambiguous if it is susceptible to differing but rational meanings.

Northern X-ray Co., Inc. v. State ex rel. Hanson, 542 N.W.2d 733, 735 (N.D. 1996) (citations and internal quotation marks omitted).

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The plain language of N.D.C.C. § 4-35-09.1 provides no guidance on what liabilities are to be covered by a "general liability insurance policy." Further, the term "general liability insurance policy" is not defined anywhere in the code. Black's law dictionary defines "liability insurance" as a "[c]ontract by which one party promises on consideration to compensate or reimburse other if he shall suffer loss from specified cause or to guaranty or indemnify or secure him against loss from that cause." Black's Law Dictionary, 915 (6<sup>th</sup> ed. 1990).

N.D.C.C. § 4-35-09.1 does not specify what losses or causes of the losses are to be covered by the insurance policy. Since one could make any number of reasonable arguments about the liabilities the Legislature contemplated should be insured by the policy, the statute is ambiguous, and reference to extrinsic aids to interpret the statute is appropriate. See Northern X-ray Co., Inc., 542 N.W.2d at 735.

N.D.C.C. § 1-02-39 lists a number of extrinsic aids which may be used in construing an ambiguous statute, including the statute's legislative history and the administrative construction of the statute. "[T]he cardinal rule of statutory interpretation is that the interpretation must be consistent with legislative intent and done in a manner which will accomplish the policy goals and objectives of the statutes." O'Fallon v. Pollard, 427 N.W.2d 809, 811 (N.D. 1988).

Unfortunately, the legislative history does not specify what actions or damages the "general liability policy" must cover. Nonetheless, the legislative history does provide some guidance regarding losses which were not intended to be covered. The history includes repeated discussion of the fact that the general liability insurance required by the bill would not cover damage from spray drift. Hearing on S. 2315 Before the Senate Agriculture Committee 55<sup>th</sup> N.D. Leg. (Feb. 13, 1997) (Testimony of J.B. Lindquist, North Dakota Aeronautics Commission and Air Dakota Flite, Gary Ness, North Dakota Aeronautics Commission, Bob Graveline, North Dakota Aeronautics Task Force, and Cindy Shreiber-Beck, North Dakota Agricultural Aviation Association). See also Hearing on S. 2315 Before the House Agriculture Committee 55<sup>th</sup> N.D. Leg. (March 13, 1997) (Testimony of Senator Russell Thane). The term "drift" includes the negligent application of chemical on unintended land, an application that destroyed the crop on which it was sprayed, and use of the wrong chemical. Hearing on S. 2315 Before the Senate Agriculture Committee 55<sup>th</sup> N.D. Leg. (Feb. 13, 1997) (Testimony of J.B. Lindquist, North Dakota Aeronautics Commission and Air Dakota Flite).

Testimony on S. 2315 further indicates that while chemical drift insurance was necessary to address many of the damages associated with

commercial pesticide applications, such insurance was considered prohibitively expensive, and would place a significant financial burden on commercial applicators. Hearing on S. 2315 Before the Senate Agriculture Committee 55<sup>th</sup> N.D. Leg. (Feb. 13, 1997) (Testimony of J.B. Lindquist, North Dakota Aeronautics Commission and Air Dakota Flite, Gary Ness, North Dakota Aeronautics Commission, Bob Graveline, North Dakota Aeronautics Task Force, and Cindy Shreiber-Beck, North Dakota Agricultural Aviation Association). Several persons testifying in favor of the bill testified that, while the bill would not address drift situations, the general liability insurance requirement would be a first step toward increasing financial responsibility among chemical applicators and that it may establish a framework for addressing chemical drift insurance at a later date. Hearing on S. 2315 Before the Senate Agriculture Committee 55<sup>th</sup> N.D. Leg. (Feb. 13, 1997) (Testimony of J.B. Lindquist, North Dakota Aeronautics Commission and Air Dakota Flite, Gary Ness, North Dakota Aeronautics Commission, Bob Graveline, North Dakota Aeronautics Task Force, and Cindy Shreiber-Beck, North Dakota Agricultural Aviation Association). A general farm policy which covers commercial application activities not including drift appears to have been intended to be adequate for the purposes of this statute. Hearing on S. 2315 Before the Senate Agriculture Committee 55<sup>th</sup> N.D. Leg. (Feb. 13, 1997) (Testimony of Bob Graveline, North Dakota Aeronautics Task Force).

Thus, the legislative history indicates that the Legislature recognized the potential deficiencies of a general liability policy for covering chemical incidents, but passed the requirement in an effort to provide at least some coverage for liability arising out of commercial pesticide applications. The policy contemplated would not include coverage for damage due to drifting.

Another extrinsic aid which may be used in determining legislative intent is the administrative construction of the statute. N.D.C.C. § 1-02-39. The pesticide control board is the regulatory agency charged with administering N.D.C.C. § 4-35-9.1. N.D.C.C. § 4-35-06. The Legislature gave the pesticide control board the authority to issue regulations to carry out the provisions of chapter 4-35. Id. Pursuant to that authority, the pesticide control board may issue rules regarding what losses are to be covered by the general liability insurance policy required by N.D.C.C. § 4-35-09.1. However, to this point, that board has not issued any regulations indicating what liability is to be covered.

Given the broad nature of the term "general liability," the purpose for which the Legislature enacted the statute, and the lack of any specific guidance other than the preclusion of drift liability, it is my opinion

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that the term "general liability insurance policy" means a policy that includes coverage for any type of damage that may reasonably result from the operations of a commercial pesticide applicator, with an exclusion for drift damage. Such a policy would logically include coverage for the negligent operation of a chemical application implement.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

CGM/SAM/bah