

N.D.A.G. Letter to Vogel (April 20, 1992)

April 20, 1992

Ms. Sarah Vogel
Commissioner of Agriculture
State Capitol
600 E Boulevard Avenue
Bismarck, ND 58505

Dear Commissioner Vogel:

Thank you for your March 4, 1992, letter regarding the certification of pesticide dealers.

You asked whether a business certified as a pesticide dealer must provide a certified individual at each of the business' branch locations. For the reasons set forth below, it is my opinion that North Dakota law does not require a certified individual at each branch location.

North Dakota Century Code (N.D.C.C.) § 4-35-12 provides, in part:

1. It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained certification from the North Dakota state university extension service, or the service's designee in the county in which the applicant operates his principal place of business.
2. Application for a certificate must be accompanied by an examination fee set by the board and must be on a form prescribed by the board. . . . The application must also state the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board. (Emphasis supplied.)

The statutory language does not dictate that a business provide a certified pesticide dealer at each location. Any person wishing to be certified as a pesticide dealer must apply for a certificate. N.D.C.C. § 4-35-12(2) provides that the application must state the address of each outlet, but does not require each outlet provide a certified pesticide dealer.

N.D.C.C. § 4-35-12(1) was amended in 1989. See 1989 N.D. Sess. Laws ch. 89, § 7, which reads in part as follows:

~~It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained an annual license certification from the county treasurer North Dakota state university extension service, or the service's designee in ~~each~~ the county in which the applicant operates his principal place of business, which license expires on December thirty-first of each year. A license is required for each location or outlet located within this state from which restricted use pesticides are distributed; provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license from any county treasurer for his principal out of state location or outlet.~~

This amendment deleted the language which required a license for each outlet or location from which restricted use pesticides were sold. Furthermore, the requirement that a pesticide dealer obtain a license in each county in which the applicant operated its business was modified to require certification only in the county of the applicant's principal place of business. Id.

The fact that the legislature enacts an amendment to an existing statute is an indication that it intended to change the original act. City of Minot v. Knudson, 184 N.W.2d 58 (N.D. 1971). Nothing in the legislative history supports a different conclusion in this case. Therefore, if the legislature had intended to require each branch location of a business to provide a certified pesticide dealer, it would not have deleted the above-mentioned language.

N.D. Admin. Code § 60-03-01-05(2) does not dictate a different result. That section merely augments existing statutory requirements. If the Department believes having a certified individual at branch locations is a prudent requirement, it should seek to introduce appropriate legislation.

I hope I have satisfactorily answered your question.

Sincerely,

Nicholas J. Spaeth

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