

## Crop Production Recommendations -- 1994

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### PESTICIDE AND FERTILIZER DRIFT AND MISAPPLICATION POLICY

1. Statutory Requirement Section 2105(2): [To be sold or labeled as an organically produced agriculture product under this title, an agricultural product shall] (2) except as otherwise provided in this title and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products.

2. Senate Agriculture Report: "On occasion, organic farmers, although following the strict standards in this bill, may produce products with minimum residues due to inadvertent environmental contamination such as drift from a neighboring farm." "The (Senate Agricultural) Committee does not intend to prohibit minimal residue contamination that does not result from practices used by the organic farming operation." (Reference: U.S. Senate Committee on Agriculture, Nutrition, and Forestry, Report 101-357, July 6, 1990, page 300.)

#### COMMENTARY

An understanding of the legislative intent of the Organic Foods Production Act with respect to pesticide and fertilizer drift onto certified organic farms can be found in the Senate Agricultural Committee Report. "On occasion, organic farmers, although following the strict standards in this bill (emphasis added), may produce products with minimum residues due to inadvertent environmental contamination such as drift from a neighboring farm." "The (Senate Agricultural) Committee does not intend to prohibit minimal residue contamination that does not result from practices used by the organic farming operation (emphasis added). (Reference: U.S. Senate Committee on Agriculture, Nutrition, and Forestry, Report 101-357, July 6, 1990, page 300).

The National Organic Standards Board has received many comments from the public on the subject of pesticide drift onto organic farms. In addition, discussion and debate of the drift issue at the May 1993 NOSB meeting clearly indicated that the majority of NOSB members think that pesticide drift incidents should be handled in the same manner as the NOSB Draft Recommendation for government emergency pest eradication programs.

Recognizing the importance of striking a balance between meeting the consumer's expectation that organic food has not been subjected to drift and protecting organic producers from unreasonable penalties caused by drift or misapplication incidents which are beyond the organic producer's control, the NOSB makes the following recommendation.

#### RECOMMENDATION

The National Organic Standards (NOSB) requests that the Secretary recommend to Congress that certified organic producers who incur crop losses and/or market losses caused by pesticide or fertilizer drift or misapplication be eligible for reimbursements from Federal crop disaster programs or Federal crop insurance programs for all damages and expenses incurred. Such eligibility should only apply in situations where the drift incident or misapplication occurs as the result of actions of a person who is not the certified organic producer or a person working under the direction of the certified organic producer.

#### I. Definitions of Drift and Misapplication

A. For the purpose of the OFPA, "drift" means the physical movement of prohibited pesticides or fertilizers from the intended target site onto a certified organic field or farm, or portion thereof, caused by a person who is not the certified organic producer or a person working under the direction of the certified organic producer.

B. For the purpose of the OFPA, "misapplication" means the accidental direct application of a prohibited pesticide or fertilizer to a certified organic field or farm, or portion thereof, by a person who is not the certified organic producer or a person working under the direction of the certified organic producer.

## II. Agricultural Products Subjected to Drift or Misapplication

Agricultural products, including livestock feed crops and pasturage, that are exposed to drift or misapplication with a prohibited pesticide or fertilizer shall not be sold or labeled as organically produced or fed to certified organic livestock.

### A. Requirements of the Certified Organic Producer

1. As a drift prevention measure, certified organic producers must give notification to all adjacent property owners and to their appropriate public officials informing them of the boundaries of the organic farming operation and of any possible financial responsibility should any drift or misapplication incident occur. It is recommended that this notification be in writing in order to facilitate any potential legal claims on behalf of the certified organic producer.

2. In cases where physical and/or visual evidence indicate that agricultural products have been subjected to drift or misapplication with a prohibited substance, the certified organic producer shall:

a. notify the certifying agent and the appropriate public officials within 48 hours of discovery.

b. not sell or label as organically produced or feed to certified organic livestock the agricultural products subjected to drift or misapplication.

### B. Requirements of the Certifying Agent and/or State Official

1. Upon receiving notification (from a certified organic producer, an organic farm inspector, a certifying agent, a State or County Official, or a member of the public) that an agricultural product has been subjected to drift or misapplication with a prohibited substance on a certified organic farm, the certifying agent shall work with the appropriate public officials to do the following:

a. determine if a drift or misapplication incident has actually occurred and, if so, investigate the incident;

b. attempt to identify the prohibited substance that has drifted onto or been misapplied to the certified organic farm;

c. identify and mark the portion of the organic field exposed to drift or misapplication and assure that agricultural products growing in this area of the field are not sold or labeled as organically produced or fed to certified organic livestock;

d. conduct, if necessary, pre-harvest residue testing to verify the extent of the drift of misapplication incident; and

e. determine the portion, if any, of the field that was not subjected to drift or misapplication and determine if agricultural products growing in this area of the field can be sold or labeled as organically produced or fed to certified organic livestock.

### III. Agricultural Products Grown In The 3 Year Period Immediately Following A Drift Or Misapplication Incident

Agricultural products grown in the 3 year period immediately following a drift or misapplication incident may be excepted from the requirement in § 2105(2) [§ 6504(2)] which requires agricultural products sold or labeled as organically produced to be produced on land that has not had prohibited substances applied during the 3 years immediately preceding harvest of the agricultural products. The exception shall be determined by the certifying agent subject to the following requirements:

#### A. Requirements of the Certified Organic Producer

The certified organic producer shall not, without the approval of the certifying agent, sell or label as organically produced or feed to certified organic livestock, any agricultural products grown on the portion of a certified organic farm that was subjected to drift or misapplication in the 3 year period immediately following the drift or misapplication incident.

#### B. Requirements of the Certifying Agent and/or State Official

The certifying agent and/or State Official shall determine using pre-harvest residue testing, if deemed necessary, if agricultural products can be sold or labeled as organically produced or fed to certified organic livestock that are:

1. produced on the portion of a certified organic farm that was previously subjected to drift or misapplication; and
2. not directly exposed to drift or misapplication during the current crop growing season.

In the case of drift or misapplication onto pastures or forage that cannot be cut for hay or otherwise removed, organic livestock shall not be allowed access to the pasture or forage for the remainder of that pasture season. For continuous season pasture systems, the determination of the withholding period shall be at the discretion of the certifying agent.