

On Going Trials & Tribulations of Drift Label Language & It's Enforcement

11th Annual TPSA
Conference

February 14, 2011

What we will try to address

- Recent history of drift labeling activities
- Background on drift PRN 2009-X
- Summary of drift PRN 2009-X comments
- EPA response activities
- Potential final drift PRN direction
- Potential timetable for final drift PRN
- Indiana's drift enforcement experience

Recent history of drift labeling

- Pesticide Registration Notice 2001-X
 - Max. 4 ft. boom height & 10 mph wind speed
 - Design standard
 - *“Do not allow spray to drift from the application site and contact people, structures people occupy at any time and the associated property, parks, and recreation areas, nontarget crops, aquatic and wetland areas, woodlands, pastures, rangelands, or animals.”*
 - Performance standard

State comments: PRN 2001-X

- Improved & standardized labels needed
- Nationwide max. boom heights & wind speeds are not practical
- Buffers should be product & site specific
- Replace general drift statement with:

“Do not apply this product in a manner that allows spray to drift from the application target site and/or cause harm to humans, animals or other non-target sites.”

Fate of PR Notice 2001-X

- Many, many ,many comments filed
- No clear consensus of support from stakeholder groups on most of proposals
- Draft PRN 2001-X was never finalized
- Formal drift labeling action went dormant

What renewed interest in drift ?

- 2007 EPA rule: FIFRA / CWA conflict
- Rule to clarify no need for NPDES permits for pesticides applied ***to, over or near*** water when following label directions.
- Rule did not address pesticide residues in water resulting from unintentional “spray drift”*gray area*

EPA to address *gray area* thru:

- 2006 Pesticide Program Dialogue Committee (FACA) workgroup
- Workgroup to investigate drift contribution
- Workgroup to make drift label language recommendations to EPA

PPDC 2007 report to EPA

- Existing product labels contain widely varying language:
 - “Avoiding spray drift is the responsibility of the applicator.”
 - Unenforceable, no standard statement
 - “Do not allow spray to drift from the application site.”
 - Enforceable, zero drift performance standard
- Drift labeling should be:
 - standardized across most outdoor products
 - consistent, clear, protective, enforceable

EPA workgroup on drift labeling

- Formed in February, 2008
- Includes:
 - Office of Pesticide Programs, Office of Enforcement and Compliance Assurance, Office of Water, Office of General Counsel, Office of the Science Advisor, and Office of Policy
 - EPA Regional Offices (5, 9)
 - State Lead Agencies (MN, IN)
- Goal:
 - develop a PRN on pesticide drift labeling

Workgroup members:

- Office of Pesticide Programs (OPP):
 - William Jordan (IO), Jay Ellenberger (FEAD), Richard Keigwin (PRD), Tom Myers (PRD), Cathryn O'Connell (PRD), Kathryn Boyle (FEAD/PRSB), David Brassard (BEAD), Paul Mastradone (RD), Faruque Khan (EFED), Jill Bloom (PRD)
- Office of Enforcement and Compliance Assurance (OECA):
 - Lynn Holloway (OCE/WCED), David Stangel (OC/AD)
- Office of the Science Advisor (OSA):
 - Norman Birchfield
- Office of General Counsel (OGC):
 - Michele Knorr, Jon Fleuchaus
- Office of Policy (OP):
 - Karen Thundiyil
- Regional Offices:
 - Bruce Wilkinson (Region 5), Katy Wilcoxon (Region 9)
- State Lead Agencies (AAPCO):
 - Dave Scott (IN), Paul Liemandt (MN)

Workgroup developed PRN 2009-X

Goal:

- Improve labeling consistency, clarity and enforceability
- Reduce drift to protect people, non-target organisms, and the environment

Approach:

- General Statement: risk-protective std. for all products
 - Performance standard
- Product Specific Statements: allow flexibility to tailor risk mitigation of particular pesticides with product-specific drift risk mitigation measures
 - Design standard(s)

General Statement: Ag & Commercial Products

- “Do not apply this product in a manner that will contact workers or other persons, either directly or through drift. (*carryover from WPS*)
- In addition, do not apply this product in a manner that results in spray [or dust] drift that could cause an adverse effect to people or any other non-target organisms or sites.”



General Statement: Non-Com. (Homeowner) Products

“Do not apply this product in a way that could contact people, or that results in spray [or dust] drift that could cause harm to people, pets, property, aquatic life, wildlife, or wildlife habitat.”



Product-Specific Statements

- Product-specific application restrictions will be determined on a case-by-case basis, through OPP's usual risk assessment processes
- Restrictions **could** include:
 - maximum/minimum wind speeds
 - wind direction
 - maximum release height
 - minimum droplet or particle size
 - no spray buffer zones for sensitive sites
 - Drift Reduction Technologies...*mandatory / voluntary*
- Draft PRN 2009-X **does not** require product-specific restrictions for all products

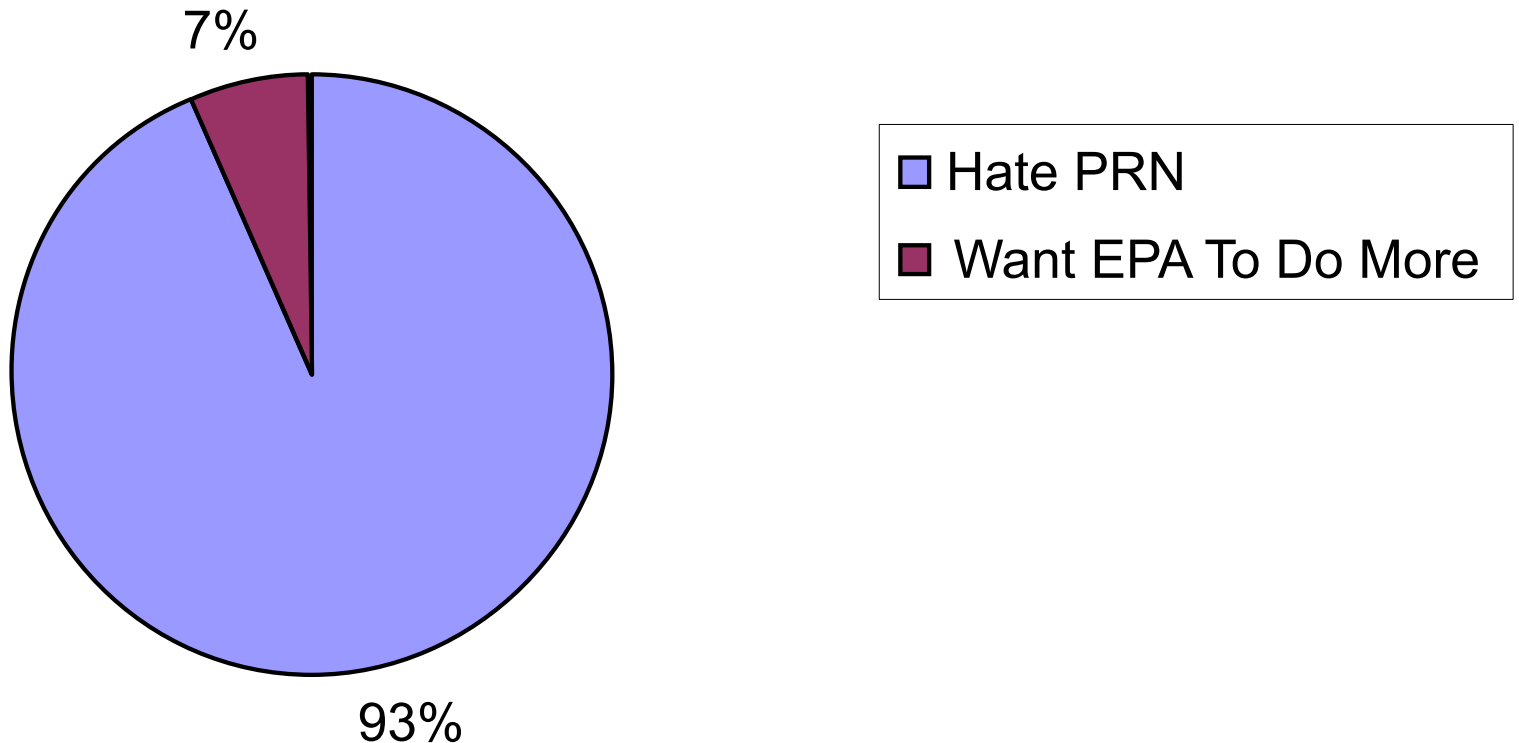
Comments on PRN 2009-X

- Comment period: 11-4-09 thru 3-5-10
- About 600 unique comments received
- Letter writing campaigns: 33,300 indiv.
- Over 34,000 total comments received

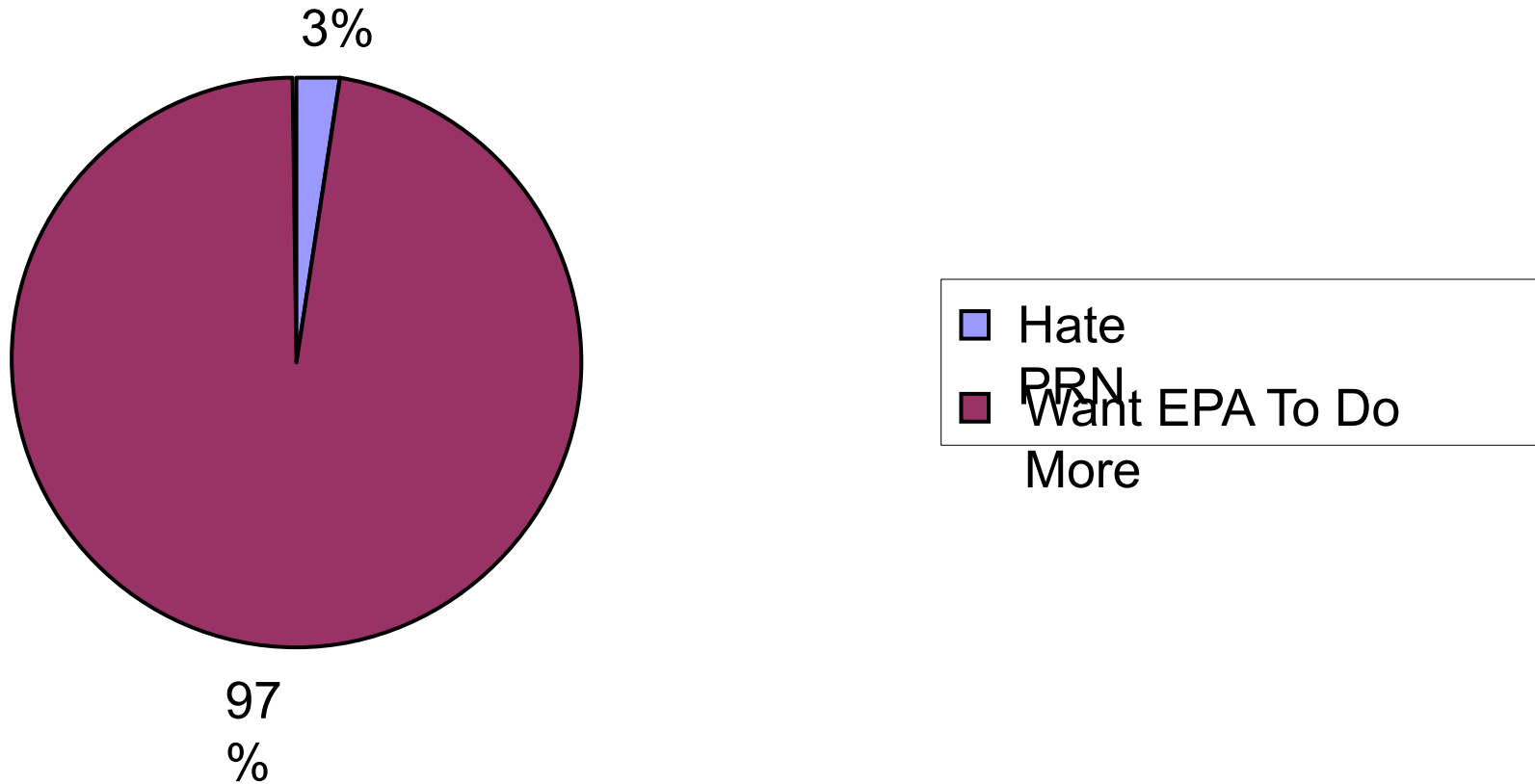
Types of commenters

	Commenter	Number of Comments
1	Applicators	137
2	Individual Growers - Against	111
3	Agribusiness Associations (including Forestry, Golf Courses)	108
4	Private Citizen - Against	105
5	Ag Retail Business	59
6	State and Federal Agencies	30
7	Registrants and their organizations	25
8	Environmental Groups	19
9	Private Citizen - Support	18
10	Beekeeper Groups	8
11	Individual Growers - Support	2
12	Letter Writing Campaigns - Support	33,095
13	Letter Writing Campaigns - Against	323
Total (excluding letter campaigns)		622
Total (including letter campaigns)		34,040

General Opinion of PRN (excluding Letter Campaigns)



General Opinion of PRN (including Letter Campaigns)



Major Comments Received

	Comment	Number of Comments	Percent of Total
1	"Could cause" and other proposed wording is ambiguous/unenforceable/confusing	379	22%
2	Language doesn't meet FIFRA standards/approach not science-based	283	16%
3	Frivolous lawsuits will be inevitable	278	16%
4	Zero drift standard that EPA is proposing is unattainable	230	13%
5	Proposed wording will adversely affect the agricultural and other industries	183	11%
6	Current regulations/practices/technology are sufficient to prevent spray drift	174	10%
7	Do not require buffers	117	7%
8	Supports draft PRN as-is	38	2%
9	Better enforcement/education of current regulations is necessary	34	2%

Workgroup Review

Most contentious part of proposed labeling:

“Do not apply this product in a manner that results in spray [or dust] drift that **could cause an adverse effect** to people or any other non-target organisms or sites.”

Workgroup deliberation options

- Delete “could cause” ?
- Replace “adverse effect” with “harm” ?
- Don’t use “unreasonable adverse effect”
 - What is a reasonable adverse effect?
 - Wouldn’t this require same standard for runoff & other label prohibitions?

Outreach Since Proposal

- Minor Crop Farmer Alliance (1/10)
- Weed Society Meeting (2/10)
- The Pesticide Stewardship Alliance (2/10)
- Maryland Applicators Association (3/10)
- AAPCO meeting (3/10)
- Tribal Council Meeting (3/10)
- American Chemical Society Symposium (3/10)
- CropLife America and RISE (4/10)
- SFIREG (4/10 & 9/10)

What could final PRN look like?

- PRN 2011-X
- Suggest a consistent label format
 - General FIFRA misuse statement
 - General drift statement...*performance std.*
 - Product-specific drift statement(s)...*design std*

Potential final PRN 2011-X

- Ag & commercial products
- “Do not apply this product in a manner that will contact workers or other persons, either directly or through drift. In addition, do not apply this product in a manner that results in spray [or dust] drift that harms people or any other non-target organism or site.”

Potential final PRN 2011-X

- Homeowner products
- “Do not apply this product in a way that will contact people, or that results in spray [or dust] drift that harms people, pets, property, aquatic life, wildlife, or wildlife habitat.”

PRN Next Steps

- Finalize PRN (2011-X) ?
- Develop responses to major comments & issues
- Four plus months?

How might States enforce this?

Indiana's experience with a similar state drift rule....Beth Carter