

SUMMATION OF SOUTH DAKOTA PESTICIDE LAWS

The South Dakota Department of Agriculture has been designated the lead agency to regulate pesticide use **under South Dakota Law** (SDCL) 38-21 and Administrative Rule (ARSD) 12:56. This includes the responsibility to develop and maintain a pesticide applicator certification program.

The South Dakota Cooperative Extension Service, under an interagency agreement, provides training and training materials to support the Department's certification program.

In South Dakota, commercial pesticide applicators applying restricted or non-restricted use pesticides must be certified. All other pesticide applicators purchasing "Restricted Use" pesticides must be certified. Additionally, using pesticides in the production of an agricultural commodity amounting to greater than one thousand dollars gross sales potential per year on any property requires private applicator certification.

TERMS

Following are explanations of some of the more important terms used in South Dakota pesticide law and rules.

1. "**Certification**," the process by which the South Dakota Department of Agriculture determines whether or not a person is a competent pesticide applicator;
2. "**Certified applicator**," any individual who is certified under this chapter to use any pesticide;
3. "**Competent**," qualified in the performance of functions associated with pesticide application, the degree of proficiency required being directly related to the nature of the activity and the associated responsibility;
4. "**Distribute**," to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply pesticide for sale or use in this state;
5. "**Drift**," movement of a pesticide during or after application or use through air to a site other than the intended site of application or use;
6. "**Environment**," includes water, air, land, and all plants, and animals living therein, and the inter-relationships which exist among those;
7. "**Land**," all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

8. **“Licensed applicator,”** any certified applicator who is licensed under this chapter and who owns, manages or is employed by a pesticide application business which is engaged in the business of applying pesticides upon the lands of another or applies pesticides while in the performance of his duties as a government employee;
9. **“Licensed pesticide dealer,”** any person who is licensed under this chapter and who distributes restricted-use pesticides or pesticides whose uses or distribution are restricted by regulation;
10. **“Pest,”** any insect, rodent, nematode, fungus, weed or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism on or in living man or other living animals, which the secretary by regulation may declare to be a pest;
11. **“Pesticide,”** any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances intended for use as a plant growth regulator, defoliant or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant;
12. **“Private applicator,”** a certified applicator who:
 - (a) Uses any pesticide other than a restricted-use pesticide for purposes of producing any agricultural commodity amounting to greater than one thousand dollars gross sales potential per year on property owned or rented by him or his employer, but not including any person who applies pesticides other than restricted-use pesticides while riding on agricultural pesticide spraying equipment commonly known as a bean buggy or bean bar; or
 - (b) Uses any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by him or his employer; or (c) Applies any pesticide on the property of another person without compensation other than trading of personal services between producers of agricultural commodities;
13. **“Secretary,”** the secretary of the Department of Agriculture;
14. **“Triple rinse,”** flushing of containers three times, each time using a volume of the normal diluent equal to approximately 20 percent of the containers’ capacity, and adding the rinse liquid to the spray mixture or disposing of it by a method prescribed for the pesticide in chapter 12:56:02;
15. **“Weed,”** any plant which grows where not wanted.

APPLICATOR CERTIFICATION

There are two types of certification:

1) Private applicator certification

2) Commercial applicator certification

1) Private applicator certification authorizes an individual to purchase and apply any pesticide for the purpose of producing any agriculture commodity:

- a. On property owned or rented by the individual or his or her employer, or
- b. On the property of another without compensation other than trading of personal services between producers of agricultural commodities.

To qualify for private applicator or certification an individual must:

- 1) Attend an educational training course approved by the Department of Agriculture conducted by County Extension Educators; or
- 2) Pass an open-book exam approved by the Department of Agriculture. A score of 70% or high is passing.

A certification card is issued by the Department of Agriculture to each individual who satisfactorily completes the requirements of certification. The private applicator should have this card in his/her possession when purchasing and applying a restricted use pesticide or when applying any non-restricted pesticide for purposes of producing any agricultural commodity amounting to greater than one thousand dollars gross sales potential per year. This card should be presented to the restricted-use pesticide dealer when purchasing a restricted-use pesticide.

Each private applicator certification card is good for a 5-year period. Certification may be renewed by attending an approved training course of writing and passing the open-book exam.

No supervision of uncertified applicators is allowed.

2) Commercial applicator certification is necessary to become eligible for a commercial license. Commercial applicators must obtain the certification categories which pertain to the type of application work they will be doing. Initial certification can be achieved by either;

1) Scoring at least 70% on the appropriate South Dakota Category

Exam; or

2) Showing proof of initial certification in a state with a reciprocal certification agreement with South Dakota.

Applicants failing an exam may be re-examined three days after notification of failure.

To maintain certification an individual can re-test or attend a Department of Agriculture approved re-certification short-course at least every two years. Individuals must attend training specific for the category in which they wish to maintain certification.

Upon becoming certified, an individual is eligible to apply to the Department of Agriculture for a commercial applicator license or a dealer license.

Applicator License fee: \$25.00

Dealer License Fee: \$50.00

A person applying any pesticide while in the performance of his duties as a governmental employee must obtain an applicator's license; however, this license is fee exempt.

The licensing period for all licenses is from March 1 to the last day of February of the following year. All licenses are to be renewed by March 1 of every other year or a fifty dollar penalty is assessed and added to the original fee. Governmental employees are not subject to the late fee.

Persons (other than governmental employees) applying non-restricted pesticides to non-agricultural commodities without charge are not required to become certified or licensed.

EXAMPLE #1 – Individuals applying 2,4-D (non-restricted pesticide) to their lawn (non-agricultural commodity) are not required to become certified or licensed.

EXAMPLE #2 – Individuals applying 2,4-D to their gardens (agricultural commodity) are required to become certified if the annual sales potential of the produce is greater than \$1,000.

RECORD KEEPING

Commercial applicators must keep records of applications for a three year period of time. Licensed dealers must keep records of sales of restricted-use pesticides for three years. Records shall be made available to the Department of Agriculture upon request and are to be available for inspection at the end of each day.

COMMERCIAL PESTICIDE APPLICATOR RECORDS

Each commercial applicator shall keep records which shall include the following for each application.

1. The name and address of the person for whom the pesticide was applied
2. The location of the land or property where the pesticide was applied
3. The pest to be treated
4. The acreage, area, or number of plants or animals treated or other appropriate description
5. The year, month, day, and time the pesticide was applied
6. The person or firm who applied the pesticide
7. The trade or brand name and common name of the pesticide applied
8. The company name appearing on the product label
9. The weather conditions at the time of the application, including direction and estimated velocity of the wind and the temperature at the time the pesticide was applied. (This requirement does not apply to applications of baits in bait stations or pesticide applications in or immediately adjacent to structures.)
10. Amount of pesticide applied and concentration in pounds or gallons per unit or percentages of active ingredient per unit of the pesticide applied
11. Specific crop or designed site or commodity to which pesticide application was made
12. Name and address of the applicator

LICENSED PESTICIDE DEALERS RECORDS

Each licensed pesticide dealer shall keep records of restricted-use pesticide sales for a period not less than three years. The record for each sale shall include:

1. Dealer's name, address and license number;
2. The name, address, certification or licenses number of the private or commercial applicator;
3. The date of sale; and
4. The trade name, quantity and EPA registration number of the pesticide sold.

The Department has a policy allowing a non-certified applicator to pick up restricted-use pesticides for use by a certified applicator. The certified applicator must first, however, complete the RUP permission notice form. This form lists, among other items, the name and amount of product to be picked up and the person that is being given permission to pick it up. This form is available from the Department and local extension offices.

Records may be maintained in the form of a log, registry of invoices, billing tickets, or delivery tickets.

The Department has the authority to enter any public or private premises at any reasonable time to inspect, investigate, examine records or to take samples. If access is denied, the Department may apply for a search warrant.

The Secretary of Agriculture may deny, suspend, revoke or modify any provision of any license or certification if he finds that the applicant or holder of a license or certification has committed an act declared to be a violation.

Any person found in violation is guilty of a Class 2 misdemeanor and may be assessed a civil penalty not to exceed five thousand dollars per violation.

ENFORCEMENT

The Department is charged with the responsibility of enforcement of not only the state pesticide laws and rules but the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well. The Department enters into cooperative agreements with the U.S. EPA for such enforcement. The following is a summation of the many inspections and investigations conducted by the Department.

- Agricultural and Non-Agricultural Use – routinely inspect private and commercial pesticide application, handling, storage and disposal operations.

- Agricultural and Non-Agricultural Follow-up – investigate all pesticide related complaints.
- Experimental Use – routinely investigate use of experimental use pesticides.
- Producing Establishment - inspect the manufacturing or re-packaging of pesticides.
- Marketplace – assure that pesticides are registered for sale in the state and that they are stored properly.
- Certified Applicator Records – assure that records of use are properly maintained.
- Dealer Record Audit – assure that records of restricted-use pesticide sales are maintained.

RESPONSIBILITIES OF CERTIFIED APPLICATORS

A certified or pocket card will be issued to each person who satisfactorily completes the requirements of certification or licensing. This card is to be presented to the dealer for proof of current certification to purchase restricted-use pesticides. In the case of commercial applicator certification, the dealer will check the card for certification in the proper category to determine eligibility to purchase and use a particular pesticide.

TRANSPORTATION OF PESTICIDES

Pesticides being transported must bear the registered product label except for pesticides fully prepared for use by the applicator and held in the application tank.

STORAGE AND DISPOSAL

A person shall not construct a bulk pesticide storage facility, for the storage of permanent bulk pesticide storage containers (capable of holding more than 300 gallons), without a means of secondary containment. Plans and specifications for the facility must be submitted to the Secretary of Agriculture for review and approval prior to construction.

Pesticides may be disposed of by using them for legal purpose originally intended or returning to manufacturer. The Department also conducts an Unusable Pesticide Collection in the fall of each year to collect pesticides that are no longer usable.

Empty containers must be triple or pressure rinsed with the rinsate reused as diluent or properly disposed of. A properly rinsed container may be offered for reconditioning, recycling, crushed and sold for scrap or disposed of in a sanitary landfill.

No person may dispose of any pesticide, pesticide container, or pesticide container residue so as to cause or allow:

1. open dumping,
2. open burning,
3. waste dumping,
4. or storage next to food or other articles for consumption by humans or animals.

PESTICIDE HANDLING AND DISCHARGE RESPONSE PLANS

All applicators who conduct operational area activities shall utilize procedures to minimize and mitigate adverse effects of discharges on the environment. All private and commercial applicators must conduct operational area activities utilizing a written pesticide handling and discharge response plan. The plan must be available for inspection by the Department at either the operational area or the applicator's nearest local office of the location from which the operational area is administered. The written plan shall contain the following information:

1. Methods and procedures to be used for the transfer, loading, unloading, mixing, repackaging, and refilling of pesticide containers and pesticide application equipment;
2. Methods and procedures to be used for the periodic inspection of appurtenances used to transfer or hold pesticides and for the repair of any equipment found to be defective;
3. Methods and procedures to be used for the rinsing, washing, and cleaning of pesticide containers and application, storage, or transportation equipment;
4. Methods and procedures to be used in the transfer, handling, storage, and disposal of materials recovered from within operational area containment, if required;
5. Methods, procedures, materials, and equipment to be used to contain, recover, store, transport, and dispose of discharges outside of operational area containment systems; and
6. The identity and telephone numbers of responsible persons and agencies who are to be contact if a discharge occurs.

Pesticide handling and discharge response plans written to comply with another law, rule or ordinance may be used to comply with all or part of the requirements in this section. The Department has booklets available which can be used to develop individual plans.

CONNECTIONS TO POTABLE WATER SUPPLY

All pesticide operational areas shall implement procedures to prevent backflow incidents from contaminating potable water supplies. Potable water supply lines may not be connected to process water lines, chemical lines, or equipment unless backflow prevention is installed.

Backflow prevention shall consist of one of the following:

1. A reduced pressure principle device which meets the American Water Works Association Standard C511-59 (September 1, 1990) for backflow prevention devices; or
2. Air gap separation. Air gap is a physical separation between the free flowing discharge end of a water pipeline and an open or non-pressurized receiving vessel. To have an acceptable air gap, the end of the discharge pipe must be located a distance of at least twice the diameter of the pipe above the top most rim of the receiving vessel.

SPILLS

Any significant spill of any pesticide shall be reported to the Department of Agriculture or the Division of Emergency Management as soon as possible.

In the case of commercial carrier, notification shall be within 12 hours after a spill of more than 5 gallons of liquid or 50 pounds of dry pesticides which occurs during transportation. Written notice shall follow within 72 hours.

In the case of bulk storage facilities, notification shall be made within three hours after spill of more than 25 gallons of liquid or 500 pounds of dry pesticides outside the secondary containment area.

Pesticide discharges in excess of 25 pounds active ingredient that occur at operational areas outside of operational area containment must be reported to the Department of Agriculture.

Minor spills occurring in secondary containment shall be disposed of as provided on the label. Spills less than the amounts listed above may legally be required to be cleaned up. If in doubt about a spill, contact the South Dakota Department of Agriculture, Division of Emergency Management, or the Department of Environment and Natural Resources.

PESTICIDE OPERATIONAL AREA CONTAINMENT

The Department has adopted pesticide operational containment (mixing, loading, rinsing pad) rules. Containment is required when an operational area meets any one or more of the following conditions:

1. The operational area is the applicator's principal operational area **and**:
 - a) more than a total of 1,500 pounds of pesticide active ingredients are transferred, loaded, unloaded, mixed, repackaged, or refilled during a calendar year; or
 - b) either concentrate or diluted pesticides are cleaned, washed, or rinsed from containers or from application, handling, storage, or transportation equipment for over 30 days accumulated during a calendar year.
2. The operational area is within:
 - a) 150 feet of a lake, stream, streambed or wetland;
 - b) 150 feet of a well;
 - c) 200 feet of populated buildings, either commercial or residential premises, excluding the owner or operator's own residential or commercial buildings;
 - d) 500 feet of a well used as a public water supply.

Two or more operational areas under common ownership and control within one-half mile of each other are calculated collectively to determine if the thresholds listed in 1.a) or 1.b) above have been reached.

2.c) and 2.d) do not apply to mixing and loading operations conducted by pesticide applicators utilizing containers and equipment with holding capacities of 10 gallons or less or 50 pounds net dry weight or less.

Except for pressure wood preserving operational areas, 1.a) and 1.b) do not apply to those operational areas located within or immediately adjacent to each pesticide application site.

DAMAGE CLAIMS

Any person claiming pesticide damage resulting from a pesticide application may file, within thirty days of application, a damage complaint form with the Department. If a growing crop is alleged to be damaged, a claim must be filed before twenty-five percent of the crop has been harvested so that it can be adequately investigated by the Department.