

How Do I ...? Bulletin

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How Do I File A Pesticide Incident or Damage Complaint?

The South Dakota Department of Agriculture (SDDA) is the state agency responsible for investigating complaints of illegal pesticide use. Pesticides include herbicides (weed control), insecticides (insect control), fungicides (fungus control), rodenticides (prairie dog, rats, mice, rodent control), avicides (birds) and predicides (coyotes, predators).

The South Dakota Department of Agriculture (SDDA), Agricultural Services Division enforces the provisions of South Dakota Codified Law (SDCL) [Chapter 38-20A](#), [SDCL Chapter 38-21](#), and Administrative Rule [Article 12:56](#) addressing private and commercial pesticide applicator licensing and certification; compliance monitoring; and pesticide distribution, sale and use in SD.

For use in South Dakota, a pesticide must be registered with both the state of South Dakota and the US EPA. All label requirements and restrictions must be strictly followed by pesticide applicators.

South Dakota State Law [SDCL 38-21-46](#) requires that all complaints alleging a violation of state or federal pesticide law and requesting an inspection/investigation must be in writing within 30 days after the date damage occurred or prior to the time that 25% of the crop is harvested.

South Dakota State Law [SDCL 38-21-47](#) requires that SDDA provide a copy of the complaint alleging a violation of SD pesticide laws to the pesticide applicator and the owner or lessee of the land or other person alleged to have caused the damages. If it is determined that the complaint has merit, the information will be made available to the person claiming damage and to the person who is alleged to have caused the damage.

If complaints are received several days or more after the incident, the South Dakota Department of Agriculture (SDDA) may be substantially hindered in collecting evidence necessary to document a violation of state or federal law.

You may withdraw your participation in the complaint process, however, once a complaint is filed it will be investigated to determine if there was a violation of SD state pesticide laws.



The Investigation Process

How do I file a pesticide incident or damage complaint?

- **You may file a pesticide complaint when:**
 - Plants in your yard or in your field are damaged by some else's pesticide application.
 - Your crop or rangeland is damaged by some else's pesticide application.
 - Your animals are injured by some else's pesticide application.
 - Your stock pond or other water source is damaged by someone else's pesticide application.
 - You or another person in your household is injured by someone else's pesticide application.
- **You may file a pesticide complaint by:**
 - Telephone - (605) 773-4432.
 - Online using the [Pesticide Incident or Damage Complaint Form](#).
 - Print the online [Pesticide Incident or Damage Complaint Form](#) and mail it.

What are the Investigation Priorities?

- **Human/Animal Injury**
 - Investigations involving injury/damage to humans and animals are given the highest priority for investigation.
 - If you believe that you, a family member, your pet, or livestock has been harmed from a pesticide exposure, **immediately seek advice and/or medical attention from a medical/veterinary professional first before calling the SDDA** to file a complaint. A medical doctor/veterinarian is the best person to assist you in dealing with immediate health concerns.
 - After seeking medical attention, promptly place all clothes/footwear or other items that were worn the day/time of the alleged injury into a clean plastic bag. Call SDDA to discuss your complaint.

- **Damage to the Environment, Food/Feed Products, or Crop or Ornamental Plant Damage**
 - Investigations involving injury/damage to food/feed products and to the environment are given the second highest priority for investigation.
 - As soon as you are aware that the use of a pesticide may have damaged the environment, contaminated food/feed products, or damaged a crop or ornamental, file a complaint on-line or call the SDDA to discuss your complaint.
 - Do not delay calling while trying to work out compensation or other issues with the responsible person as this may compromise SDDA's ability to investigate your complaint. If complaints are received several days or more after the incident, the SDDA may be substantially hindered in collecting evidence necessary to document a violation of state or federal law.

What is the investigation timeline?

- The goal of SDDA is to respond to pesticide complaints within 3 days and, if an investigation is initiated, submit an initial investigation report within 18 days. The review of investigation reports can take an additional 118 days more. The actual time taken to respond to a complaint and complete an investigation report can vary due to investigator workload, sampling needed, laboratory analysis requested, gathering additional information, and other factors.
- Conclusions and enforcement actions will not be made available until the completed investigation report has been reviewed and associated enforcement actions have been issued.





The Investigation Process

What Does The Investigator Do?

- The investigator gathers information by conducting interviews, obtaining statements, reviewing application records and pesticide labels, taking photographs and making on site assessments. The information gathered will help document whether a violation of state or federal pesticide laws has occurred.
- If you have concerns regarding the investigative process or forgot to tell the investigator something, you should first contact the investigator. The investigator needs to know all of the facts in order to conduct a thorough and accurate investigation.

Will The Investigator Take Samples?

- Samples are only taken when deemed necessary to prove or disprove a violation. These are examples of samples the investigator may collect:
 - Physical samples (soil, water, vegetation, swabs, etc.) from the application site and other areas.
 - Documentary samples of records or photographs.
- Samples must be collected by SDDA personnel or other approved state or federal regulatory agencies to maintain a proper chain of custody and ensure that the evidence obtained can be used, if needed, in administrative actions.
- SDDA cannot use evidence collected by the complainant because we cannot ensure maintenance of proper chain of custody.
- Documentary samples of records or photographs may also be taken. Samples are only taken when deemed necessary to prove or disprove a violation of the State or Federal pesticide laws.
- When completed, copies of the results of samples collected by the investigator are mailed to the owner or lessee of the land where the samples were collected.

What Happens After The Investigator Talks To Me?

- SDDA reviews completed investigation reports to determine if the evidence supports that a violation of state or federal pesticide laws has occurred.

What Happens After The Investigation Is Completed?

- In the event that SDDA's investigation finds a violation of state or federal law, the SDDA is authorized to take enforcement action against the responsible person. Enforcement actions may include:
 - Warning Letter Cease and Desist Order;
 - Notice of Violation;
 - Imposition of Civil Penalty (monetary);
 - Pesticide License Suspension/Revocation;
 - Product Stop Sale, Use or Removal Order;
 - Crop Embargo/Detainment.
- After the completed investigation report has been reviewed and associated enforcement actions have been issued, the person(s) filing the complaint and the person(s)/business alleged to have caused the damages will be mailed a copy of the completed investigative report and final enforcement action information.

When Can I Get A Copy Of The Investigation Findings?

- Results of completed laboratory analyses or preliminary findings may be shared while the investigation is underway.
- Conclusions and enforcement actions will not be made available until the completed investigation report has been reviewed and associated enforcement actions have been issued.





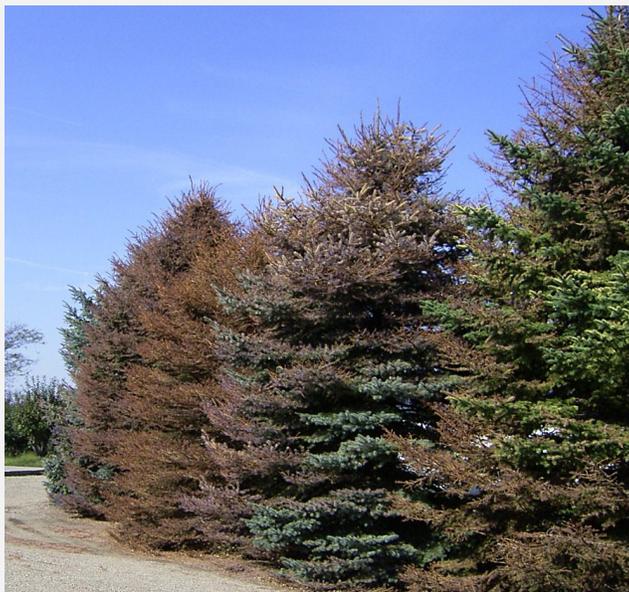
The Investigation Process

How Do I Request A Copy Of The Investigation Findings?

- Complaint, investigation, and enforcement action information is public record. Members of the public have the right to view and obtain case files after a pesticide investigation report is completed and associated enforcement action has been issued. All requests must be in writing.
- A fee to cover document reproduction, labor, and mailing costs may be charged.

How Do I Get My Damages Reimbursed?

- **SDDA does not have the authority to seek compensation on the behalf of any complainant.**
- **The complainant may pursue damage compensation/ reimbursement through the court system.** SDDA **cannot act** as your legal counsel. If you have questions about your legal rights, you should contact an attorney.



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