

Distributing Pesticides in South Dakota

Responsibilities of Licensed Pesticide Dealers

Pesticide Handling and Discharge Response Plans

All Commercial Applicators are required to conduct pesticide operational area activities through the use of a written Pesticide Handling and Discharge Response Plan. Although a dealer may not be an applicator or the establishment may not offer pesticide application services to customers, if pesticides are stored or repackaged at the establishment a written response plan can serve as a valuable preventative tool. Preparing and periodically updating a plan can provoke ideas in improving current handling and storage procedures. Maintaining a plan on file provides a written mechanism for personnel at the business establishment to respond in an emergency situation.

All employees of the establishment should be trained to identify an emergency situation and how to respond. No matter how careful you or your co-workers may be, emergency situations can arise. The ability to respond quickly and effectively could be the difference in preventing or mitigating a disastrous situation.

The Department has published a guide to developing a Pesticide Handling and Discharge Response Plan. This guide is available by contacting the Department or it may be accessed on the internet at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Pesticide_Program/Pesticide_Handling.aspx

Specific questions or request for assistance is available by contacting the Department directly.

Summing It Up

Licensed Pesticide Dealer's are an elite group. These professionals must have a good understanding of all aspects of pesticide use, storage, handling, disposal, packaging and the regulations that pertain. They must be able to train employees in proper techniques of carrying-out the day to day activities of the business establishment in a safe effective manner, compliant with state and federal regulations. The responsibility of a Pesticide Dealer's License should not be taken lightly considering the liability that is associated with it. If you currently hold a Pesticide Dealers' License, consider the current situation of your business establishment with respect to compliance with state and federal regulations. If changes are necessary, the Department may be able to provide information to assist you in achieving your compliance goals.

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Pesticides are widely used throughout South Dakota to control or prevent a pest from causing property damage, presenting a risk to human health and as plant growth regulators. Pesticide use is often related to agriculture but they are also used in the nursery industry,

to treat lumber, in public buildings and green areas, private homes, lawns and gardens, and even on you. Without a doubt pesticides have led to an improved quality of life but it is important to consider that these products are designed to alter the growth, kill or repel a living organism. Therefore, pesticides are a regulated substance and are required to be stored, handled, labeled, distributed, and applied according to state and federal law.

Considering that each product has unique characteristics with respect to how it works, what it controls or repels, how it is used, and risk; each product carries unique labeling. Depending on the risk associated with the product, a pesticide may be considered a "Restricted Use Pesticide" (RUP). Restricted Use Pesticides carry a statement on the label alerting the applicator that it is a RUP, required to be applied by a certified applicator. Federal law allows the application of an RUP under the direct supervision of a certified applicator. However, in South Dakota, state law requires that a person be certified to purchase or apply an RUP. Consequently, state law requires that anyone engaging in the business of distributing an RUP obtain certification and licensing from the state.

Distributing Restricted Use Pesticides

For a business establishment to engage in distributing RUP's; each location of that establishment must have an individual on-staff who holds a Pesticide Dealers' License. That individual is then responsible for compliance with all state and federal regulations surrounding the distribution of RUP's.

Depending on the nature of the business establishment, state and federal law may require permits for storage facilities and/or registration for handling facilities. Regardless, dealers must be aware of laws and rules to effectively manage a business establishment engaged in distributing Restricted Use Pesticides.

Obtaining & Maintaining a Dealer's License

Anyone who wishes to obtain a Pesticide Dealers License must be certified as a Commercial Pesticide Applicator. Generally



the steps to obtaining a license include:

- Take a Written Examination Achieving a Score of at Least 70% (General Category); and
- Obtain Certification as a Commercial Pesticide Applicator; and
- Submit an Application With a \$50 fee to the Department of Agriculture for a Pesticide Dealers' License.

A Pesticide Dealers' License is Valid for Two (2) Years. The license can be renewed prior to the expiration date by:

- Attending a Commercial Pesticide Applicator Short Course; and
- Submitting an Application for a Pesticide Dealers' License and \$50 License Fee

If a license is allowed to expire, the license holder will be required to take the examination again, following the same procedure as if obtaining a license for the first time.

Exemptions for Licensing Requirement

State law provides exemptions for certain individuals from the requirement of obtaining a Pesticide Dealers' License. This exemption applies to

- Licensed Veterinarians, Physicians and Pharmacists provided that sale of pesticides does not exceed three percent (3%) of the total sales.
- Business establishments that apply Restricted Use Pesticides for others through equipment owned & operated by that business. Note: All applicators employed by that business must obtain appropriate Commercial Applicator Certification and Licensing.
- Any government agency providing pesticides for its' own program.

Anyone who feels they may be exempt from the requirement of obtaining a Dealers' License is advised to contact the Department. Do not assume exemption before consulting with the Department directly.

Responsibility of Licensed Pesticide Dealers'

Licensed Pesticide Dealers' are similar to other professionals such as pharmacists, doctors, and veterinarians, who are licensed by other government entities to dispense regulated substances. Although these individuals may distribute pesticides, for the most part they are exempt from obtaining a Pesticide Dealers License. These professionals agree to operate within the conditions of a license providing service to the public. Obtaining a Pesticide Dealers' License, means that you agree to assume similar responsibilities including:

- *Insuring Compliance with All State and Federal Regulations.*
- *Insuring Proper Storage, Handling, and Dispensing of the Product at the Business Establishment.*
- *Insuring Proper Packaging of the Product*
- *Verifying the Credentials of the Person Purchasing the Product.*
- *Maintaining Records of Sales of Restricted Use Pesticide Products.*
- *Providing Data and/or Records When Requested by Authorized Individuals.*

Compliance with State and Federal Regulations

Pesticides are considered to be regulated or “controlled” substances; it is the responsibility of anyone engaging in distributing pesticides to be knowledgeable of the regulations pertaining to pesticides. Information and compliance assistance for Dealer’s and other individuals engaged in pesticide distribution is available via the internet at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Pesticide_Program/compliance_checklists/default.aspx

This website addresses a broad range of topics pertaining to pesticides. Specific questions should be directed to the Department.

Proper Storage, Handling, and Dispensing of Pesticide Products.

Proper storage, handling, and dispensing of pesticides is an important consideration for Dealers from the regulatory aspect but maintaining customer service is equally important. Pesticides must be stored, handled, and dispensed in a manner so as not to alter the product or present an unreasonable risk of human injury, environmental impact, or economic loss.

Pesticides stored in permanent bulk containers greater than 300 US gallons must be stored in a facility permitted by the state. Prior to construction, plans must be submitted to the Department for review and approval. Any modifications to a bulk pesticide storage facility must follow similar procedures; submitting plans to the Department for review and approval prior to alteration of a facility. The Department publishes a manual for building or altering storage facilities that includes examples of approved designs, rules, and other pertinent information. A copy of the “Fertilizer and Pesticide Bulk Facility Manual” can be obtained by contacting the Department or by accessing the internet at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Fertilizer_Soil_Amendment_Program/fert_pest_bulk_man_web.pdf

Depending on the nature of the business establishment, an “Operational Area Containment” may be required. Operational area containment, (often referred to as a “Pad”) may be required depending on; the amount of pesticide handled in a particular area; or the proximity to sensitive areas where pesticides are handled. An operational area containment must be approved prior to

construction or use and is registered with the Department.

Assistance with specific questions related to bulk storage facilities and operational area containment can be obtained by contacting the Department.

Dispensing pesticides from bulk to smaller containers (bulk re-packaging) for resale must be conducted within an operational area containment if certain conditions are met considering amount of product handled on an annual basis and proximity to sensitive areas. If a business establishment intends to re-package pesticides, the business is required to:

- *Obtain an EPA Establishment Number from the US Environmental Protection Agency; and*
- *Obtain authorization from the registrant of the product to repackage the pesticide; and*
- *Submit a “Notice of Initial Bulk Pesticide Delivery for Bulk Repackaging” to the Department*

All repackaged products must be accompanied with an approved product label provided by the registrant of the product. Dealers must follow all state and federal regulations and conditions of the authorization to repackage from the registrant.

More information regarding bulk pesticide storage, handling and dispensing can be obtained on the web at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Pesticide_Program/Pesticide_Handling.aspx

Specific questions should be directed to the Department.

Proper Packaging of Pesticide Products

Unless a business establishment has been authorized to re-package bulk pesticides, it is illegal to sell any pesticide in anything other than its’ original container. Repackaged product may only be distributed in containers approved by the registrant. Product labels must be intact and legible by the user to insure proper application and use. Products where the original label has been compromised or is illegible are not legal for sale and must be disposed of or returned to the manufacturer. Any pesticides considered unusable can be registered for collection with the Department. Information regarding un-useable pesticide collection can be found on the internet at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Pesticide_Container_Recycling_Waste/

Assistance and further information can be obtained by contacting the Department directly.

Verifying Customer Credentials

In most cases, anyone who applies pesticides either for themselves or commercially is required to obtain certification and/or licensing to do so. Exceptions are individuals applying general use pesticides for themselves on anything not considered an agricultural commodity of less than \$1,000 in value. Certification is required of anyone purchasing and/or using a Restricted Use Pesticide for any purpose. Applicator certification

and licenses’ are issued by the Department after all requirements are met.

Certified Private and Licensed Commercial Applicators are issued credentials by the Department in the form of a card. Certification numbers are found on the applicators’ Certification Card directly below the barcode for Private Applicators and to the right of the expiration date on a Commercial Applicators’ certification card. Private applicators’ certification is valid for five (5) years while a commercial applicator certification is valid for two (2) years. Expiration dates are printed on certification cards.

Since only certified applicators may purchase a RUP, verification of certification or licensing status at the time of sale is the responsibility of the Dealer. Many Dealers’ maintain a list of certification numbers for frequent customers for convenience. It is recommended that Dealers’ periodically verify certification status of these individuals as a sale to an individual with an expired certification is an illegal sale.

It is also recommended that Dealers’ request a form of “Photo ID” from unknown individuals to positively identify the individual presenting a certification card. If the status of an applicators certification is in question, Dealer’s can verify certification online at

Commercial Applicators:

https://apps.sd.gov/doa/cat/search/CAT_View_Searchlist.asp

Private Applicators:

https://apps.sd.gov/doa/pat/pas_searchlist.asp

Specific inquiries can be addressed by contacting the Department. In considering that RUP’s could be used for malicious acts, Dealers need to take a proactive approach in protecting homeland security. Any attempts of illegally purchasing a pesticide should be reported to the Department as soon as possible.

Sales Records of RUP’s

Administrative rules require that all Licensed Pesticide Dealers maintain records of all Restricted Use Pesticide sales. Records are to be maintained for a period of no less than three (3) years and made accessible to the Department upon request. Sales records are required to contain:

- *The Dealers’ Name, Address, and Dealers’ License Number; and*
- *The Applicators’ (Commercial or Private) Name, Address, and Certification Number; and*
- *The Date of Sale; and*
- *The Trade Name, Quantity, and EPA Registration Number of the Pesticide Sold.*

As business practices vary between establishments, state rule allows some flexibility in how these records can be kept. Dealers’ may keep records in the form of a log, registry of invoices, billing tickets, or delivery tickets. Regardless of the recordkeeping method, Dealer’s should be able to present these records to a

representative of the Department within a matter of minutes if requested.

In today’s business place it is not uncommon for computers to be used to track business activities. Dealers’ have the means to record and store sales data electronically with computers, increasing the efficiency of conducting business. However, these systems are often unique to each business establishment or corporate entity. If Dealers’ wish to use business activity computer applications, special attention must be given to determine if these applications will provide records compliant with state and federal regulations. If it is not possible to use business transaction records to effectively maintain RUP sales records, a log may be kept in paper form or electronically. The Department has examples of these sales logs available in paper copy form and as a Microsoft® Excel spreadsheet. A paper copy of an example RUP sales log is also included in the publication and may be freely copied and distributed. Additional copies of the sales log and the spreadsheet are available for download on the internet at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Pesticide_Program/Pesticide_Recordkeeping.aspx

Common Mistakes in Recordkeeping

Some common mistakes made in recordkeeping are associated with identifying the applicator purchasing the product. Always keep in mind that the purpose of keeping these records is to identify the applicator, recording when and the amount of a product purchased. Records must identify the certified applicator actually receiving the product for his/her use. This person may be different from who will actually make payment for all or a portion of that product. Examples of this situation include landlord/tenant situations; corporate or communal farms; or applications made to lands other than those held by the applicator.

Many business establishments offer clients the option of purchasing the product “applied” by employees of the business. In this situation, the person purchasing the product is not required to be certified as he/she is not applying the product. Therefore, the record of sale is important as a business transaction but is not relevant as an RUP purchase by an applicator. Dealer’s need to be able to differentiate between products purchased and received by an applicator and those purchased to be applied by the Dealers’ business establishment.

State and federal law allow the applicator to designate another person to obtain a RUP on their behalf provided written permission is presented to the Dealer at the time the product is received. The Department provides forms for this purpose. A copy of this form is provided with this document, additional copies are available on the internet at:

http://sdda.sd.gov/Ag_Services/Agronomy_Services_Programs/Pesticide_Program/Pesticide_Recordkeeping.aspx