

● NORTH DAKOTA PESTICIDE ACT OF 1975

STATUTORY CITATION: N.D. Cent. Code §§ 4-35-01 – 4-35-30

RELATED REGULATIONS: N.D. Admin. Code 60-03-01

GENERAL SUMMARY: The North Dakota Pesticide Act regulates the distribution, transportation, storage, use and disposal of pesticides, plant regulators and similar substances in the state, largely by requiring the licensing of pesticide applicators and enforcing their compliance with application standards and procedural rules. The state agriculture department is expressly authorized to adopt and enforce administrative standards further regulating pesticides and pesticide users in North Dakota.

SPECIFIC TERMS AND CONDITIONS

CERTIFICATION — In general, no one may purchase, use or supervise the use of any restricted-use pesticide for commercial purposes without being certified as a commercial pesticide applicator. Similarly, agricultural producers who intend to use restricted-use pesticides on their own property, or without compensation on agricultural lands belonging to another producer, must be certified by the state as private applicators as a precondition to buying, using or supervising the use of any such product. Among other violations for which a license or certification may be denied, suspended or revoked are the following:

- (1) Applying a pesticide in a manner inconsistent with its labeling.
- (2) Operating faulty or unsafe equipment.
- (3) Refusing or neglecting to keep required records or make required reports.
- (4) Operating unlicensed equipment.
- (5) Purchasing, using or supervising the use of a restricted-use pesticide without complying with certification requirements.

FINANCIAL RESPONSIBILITY — Applicants for commercial applicator certification must submit proof of financial ability to cover liability for damage or injury caused by their pesticide application activity. This requirement may be met by obtaining a performance bond or liability insurance policy in the amount of \$100,000, or a notarized letter from a financial institution or CPA confirming that the applicant has at least \$100,000 in net assets.

PESTICIDE STORAGE AND DISPOSAL — It is illegal for anyone to store or discard surplus pesticides or empty pesticide containers in a manner that would endanger humans, the environment, food, feed or other products.

APPLICATOR RECORDKEEPING — Commercial and private applicators must keep a record of all applications of restricted-use pesticides. Among other elements, each record must include the name and address of the person for whom the pesticide was applied, the location of the treatment and the specific crops and acreage involved, the pest or pests to be controlled, the date and time of the application, the name of the pesticide supplier, the name and amount of the product applied, the wind velocity and air temperature at the treatment site at the time of application, and a description of the equipment used in the application.

REPORTING OF PESTICIDE ACCIDENTS OR LOSSES — Any person claiming injury or damage by a pesticide applied by another party must report the incident to the applicator involved, and must allow the applicator to inspect the property or non-target organism alleged to have been affected. In general, no civil action for damages arising out of the application of a pesticide may be commenced unless the claimant has notified the applicator (1) within 28 days from the date the claimant knew the loss had occurred, or (2) before 20 percent of the crop or field allegedly damaged is harvested or destroyed, whichever period occurs earlier. Refusal by the claimant to permit examination of the damage automatically bars the claim.

SPECIAL NOTES OR ADVISORIES

EFFECT OF FEDERAL RULE CHANGES ON STATE APPLICATOR CERTIFICATION REQUIREMENTS — Effective March 6, 2017, amendments to the U.S. Environmental Protection Agency's regulations governing the certification of pesticide applicators (*see entry, U.S. — Pesticides & Agricultural Chemicals — General Application Standards*) may require state pesticide regulatory agencies to strengthen their requirements for the certification of commercial and private applicators of restricted-use pesticides. In general, existing state rules approved by EPA before the effective date of the new federal regulations will remain in effect until March 6, 2020. If, however, the state agency submits an amended certification plan before that date, the existing state rules will remain in effect until EPA has reviewed and responded to the plan, but generally no longer than two more years.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Pesticide Enforcement Program, North Dakota Department of Agriculture, Bismarck, North Dakota 58505 (701-328-4922)*. The Department is responsible for the certification of pesticide applicators and the enforcement of the statutory and regulatory standards applicable to pesticide use in the state. In addition to civil liability for damages caused by misuse or abuse of pesticide products, anyone who violates the Pesticide Act is subject to criminal prosecution.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None*.

PRIVATE CIVIL ACTION — A person who has suffered damages from a violation of the Pesticide Act may take civil

action against the applicator involved, using a private attorney or public legal service provider.