

CHEMICAL SPRAY DRIFT LAWS IN SOUTH DAKOTA

ISSUE: Are SD laws adequate in the area of damages from spray drift?

In 2018, SB 147 would have increased regulation on commercial applicators by requiring a surety bond of \$300,000 or liability insurance of \$100,000 in order to acquire and to keep a commercial applicator license.

In 2017, SB 179 required the financial conditions listed above of aerial applicators and required a 500-foot buffer around occupied homes, food processing sites, registered apiaries and organic sensitive sites as certified by USDA. Both years the bills were tabled in Senate Ag Committee. In 2018 the Senate Ag Committee instructed the SD DOA to improve the process.

BACKGROUND: Currently this is what to do if a violation is suspected:

1. Call the Agricultural Services Division of the SD Department of Agriculture to obtain a Pesticide Incident form. SD DOA has an agreement with EPA to enforce FIFRA, including that a license is current and label instructions were properly followed.
2. An inspector will contact you to collect your statement. If you have been harmed or sustained damage, speak to local law enforcement and/or contact legal counsel.
3. If the SDDA determines your statement has merit, a complete and thorough investigation will be completed.
4. A determination will be made if any pesticide laws or rules were broken. Included will be spray records, samples, weather records, and other statements. Adjoining fields will be inspected. The local weed board and DOT will be contacted to determine if road ditches were sprayed.
5. If a violation has occurred, outcomes may include administrative sanctions or civil penalties. Injured parties need to pursue private action to recover losses, including insurance claims and/or court action.

Actions taken by SD DOA in 2018 and 2019.

1. Launched FieldWatch, a national program to improve communication and reduce damage.
2. Changed aerial applicator rules to require national training that includes education on reducing accidents and drift incidents.

3. Increased training requirements for using dicamba and classified dicamba a restricted use pesticide.
4. Updated the penalty review matrix to apply equal values to private and commercial applicators and increased recommended penalty amounts.
5. Established a June 30th cutoff date for use of dicamba.
6. Reached out to local law enforcement to coordinate training opportunities.
7. Currently working with EPA to update training standards and certification and increase the requirements for both commercial and private applicants.

SDFB POLICY:

- We support state and local farm organizations have input in the handling and use guidelines of hazardous chemicals.
- We oppose any additional taxes and regulations on non-registered ag chemicals.
- We oppose any additional taxes to pay for chemical spills.
- We oppose cities, municipalities or townships enacting stricter regulations than current state or federal regulations in regard to the use, storage or disposal of ag chemicals.
- We oppose holding farmers legally or financially responsible for trace amounts of ag chemicals found in a water source providing manufacturer's directions and instructions have been followed.
- We oppose holding present owners accountable for past violations of water protection or environmental laws by former owners of the land.

DISCUSSION:

1. Are present SD laws adequate? Should SD DOA be responsible for requiring/checking insurance or other financial responsibility for each licensed applicator?
2. Should state laws treat private applicators (who do only application to their own property) the same as commercial applicators? Or, different laws?
3. SD DOA is planning to work with SDSU to improve training for licensed applicators. What kinds of items should be added to the present training program?
4. In 2018, SD DOA began a program called FieldWatch (www.fieldwatch.com) to help improve communications between producers of crops and specialty crops, beekeepers, and pesticide applicators. Were you aware of this program? Are there changes and/or improvements you would suggest?
5. Some would like to expand SD DOA's role in the process for damaged parties to collect recovery for their loss. Is the present system of insurance and the court process serving both sides today? Should DOA play a bigger role in assisting recovery from damage caused by spray drift?
6. Do you have other ideas or suggestions to improve the current situation?