

Private Pesticide Applicators – Questions and Answers Regarding Moving the Program from EPA to the Colorado Department of Agriculture

In June 2006, you should have received a letter informing all private applicators in the State of Colorado of the recent change to the Pesticide Applicators' Act, which gave the Colorado Department of Agriculture (CDA) authority to administer the private pesticide applicator program. The CDA has received several inquiries and concerns from private applicators questioning the change in program authority. The CDA has developed the following fact sheet to answer many of the common questions we are receiving in an attempt to clarify how this change came about.

1) Why did the Colorado Department of Agriculture take this program over from the Environmental Protection Agency?

Pesticides are regulated under Federal law by the Environmental Protection Agency (EPA) under the authority provided by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). FIFRA provides the authority for EPA to delegate the requirements for pesticide applicator certification and enforcement of use to the States. For many reasons both fiscal and managerial, EPA would rather the States carry out this program and EPA provide some grant funding to assist the States to carry out the requirements.

In 1985, Colorado accepted delegation of the authority for commercial pesticide applicators. Many times since then the EPA has asked Colorado to take over the private pesticide applicator program as well. Currently 48 out of 50 states conduct both the private and commercial pesticide applicator programs and have for over a decade.

Until a few years ago there was no support from industry to have the State carry out the private pesticide applicator program. Thus when EPA asked, the CDA always declined to ask the legislature for authority to conduct this program.

Unfortunately, EPA Region VIII, for the years it has administered the program, was unable to provide a large amount of guidance to the regulated industry on what it must do to comply with the Federal regulations, resulting in some applicators and growers being out of compliance. When inspections were conducted and violations found, EPA then took what the State of Colorado felt was an inflexible enforcement approach vs. compliance assistance. In one case EPA issued a civil penalty to a grower in excess of \$200,000, in several other cases they issued penalties that ranged from \$5,000 to \$25,000. These fines were issued for what the industry felt were minor administrative and record keeping violations that did not warrant such large fines.

These actions, coupled with the minimal amount of compliance assistance and education offered by EPA for private pesticide applicators, resulted in a change in the agricultural industry's mindset. It was for these reasons and with overwhelming support from agricultural organizations that the State determined it was in the best interest of Colorado agriculture for the State to begin administering the private pesticide applicator program.

2) Was the agricultural industry involved in this decision?

The Colorado agricultural industry, through many associations as well as individuals, was extensively involved during the legislative process to obtain the statutory authority for private applicator certification and pesticide use enforcement. Without their support this change would not have been possible. They and the legislature understood the need for the change in who was running this important program. They also understood that this change would affect thousands of growers and applicators throughout the State of Colorado, yet they fully supported the delegation of the program from EPA to CDA.

3) Why will there be a fee associated with my license now and what will the fee be used for?

The EPA was statutorily prohibited from charging a fee for any part of the pesticide applicator certification program. Therefore the program was free to private applicators. EPA operated the program with federal funding appropriated by Congress. The funding provided minimal capability for issuing licenses and conducting a few inspections. EPA provided little in the way of meaningful education or compliance assistance. Therefore, when farms were inspected, they typically had violations. EPA will pass through to the CDA the federal funds they were receiving for the program - however, this amount is not sufficient to run the program effectively. Therefore CDA must use other revenue sources to run the program.

A number of factors were considered in determining the license fee. First CDA took into account that there will be a drop in the number of licensed private applicators in a fee based licensure program from the private applicator community, no matter what the fee is. CDA is expecting 50% of private applicators to opt to let their current certification expire and no longer use restricted use pesticides (RUPs). Many of these individuals haven't and don't plan to use RUPs anyway. CDA did identify pesticide registration fees (fees charged for chemical companies to sell their products in the State of Colorado) that it will use to help supplement the program. However, even with the federal funding and the registration fees, it still left CDA with no choice but to charge for the service of issuing private applicator licenses to cover all expenses and services this program will generate, including: private applicator certification, compliance assistance outreach (vs. taking only enforcement actions when violations are found), pesticide misuse investigations, worker protection standards inspections, continuing education, and, in the future, private applicator record inspections.

There is a valid argument to be made that general tax dollars should be used in this program because there is an overall public good that results from weed and pest control. However, with the State of Colorado's current budget situation, obtaining general tax dollars is not feasible.

It should be noted that other states do use a combination of licensure fees, registration fees, and general fund dollars to support their programs as well. Colorado was one of the last states where the license was free.

4) Is my license still valid after January 1, 2007?

Yes, if your EPA private applicator license does not expire **before** January 1, 2007, it is still valid until the expiration date printed on the license. When your license does expire, anytime after January 1, 2007, you will need to contact the CDA to obtain a new private applicator certification.

5) Can I use a Restricted Use Pesticide (RUP) product that I purchased with my private applicator license if my license has expired?

It is a violation to use RUPs if you do not have a valid private pesticide applicator license. Should an individual do this and the CDA verify and prove that a private applicator continued to use RUPs after the expiration of their private applicator license, the private applicator could face penalties of up to \$1,000 per violation for use of that product.

Some concerns were expressed about the control of noxious weeds for individuals who choose to let their private pesticide applicator license expire or don't meet the qualifications for a license. The CDA provides fact sheets with control options that list herbicides, both restricted use and general use pesticides, for managing List A noxious weed species present in Colorado and for some List B species for which we have developed statewide noxious weed management plans. Fact sheets for these species (which includes management recommendations) can be found at <http://www.ag.state.co.us/CSD/Weeds/Brochures/FactSheets.html>. The management recommendations for each species are provided by Colorado State University scientists based upon their research as well as that of other weed scientists around the West.

If you have additional questions please contact the Department at (303) 239-4178 or address you questions in writing to:

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