

# Montana State Laws and Regulations Pertaining to the Use of Pesticides

Appendix to the National Pesticide Applicator Certification Core Manual

---



(Blank Page)

## **Introduction**

This supplemental manual is intended to be used as a study guide to accompany the National Pesticide Applicator Certification Core Manual. The information included in this manual has been taken from the Montana Code Annotated (MCA) and the Administrative Rules of Montana (ARM). It is intended to be used by Pesticide Dealers and Commercial, Governmental, Non-Commercial, and Public Utility Pesticide Applicators.

The information highlighted in this manual does not release an applicant's responsibility for being knowledgeable of all the information contained in any of the statutes or rules mentioned in this manual. Applicants are accountable for compliance with all state and federal regulations.

(Blank Page)

# Contents

Page

|   |     |
|---|-----|
| Introduction .....  | iii |
| Montana State Pesticide Laws and Regulations .....                        | 1   |
| Montana Pesticide Act (MPA) .....   | 1   |
| Registration of Pesticides .....  | 1   |
| Special Registrations .....   | 2   |
| Licensing Provisions.....   | 2   |
| Types of Applicator Licenses .....  | 2   |
| Licensing Requirements .....  | 3   |
| Financial Responsibility .....  | 3   |
| Re-Certification .....  | 3   |
| Non-Residents .....   | 4   |
| Government Agencies .....   | 4   |
| Commercial/Government Applicator Licensing Classifications .....          | 4   |
| Other Types of Licenses and Permits .....                                 | 10  |
| Pesticide Record Keeping .....  | 11  |
| Dealer Records .....  | 12  |
| Applicator Records .....  | 12  |
| Incident Reports .....  | 13  |
| Notification by Applicators .....   | 13  |
| Enforcement and Administrative Procedures .....                           | 14  |
| Revocation of License .....   | 14  |
| Report of Loss or Damage .....  | 14  |
| Public Information .....  | 15  |
| Investigation and Enforcement Authority .....                             | 15  |
| Montana Agricultural Chemical Ground Water Protection Act (MACGWPA) ..... | 15  |
| Water Quality Standards .....   | 16  |
| Monitoring .....  | 16  |
| Management Plans .....  | 16  |
| Commercial Fertilizer Ground Water Management Plans .....                 | 17  |
| Enforcement and Investigations .....                                      | 17  |
| Administrative Civil Penalties .....                                      | 17  |
| Judicial Civil Penalties .....  | 18  |
| Criminal Penalties .....  | 18  |
| Montana Water Quality Act (MWQA) .....                                    | 18  |
| Montana Food, Drug and Cosmetic Act .....                                 | 18  |
| Montana Solid Waste Laws .....  | 18  |
| Appendix A (Examples).....  | 20  |
| Restricted Use Pesticide Sales Records .....                              | 21  |
| Daily Pesticide Application Records .....                                 | 22  |

(Blank Page)

# Montana State Pesticide Laws and Regulations

At the federal level, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sets the laws and regulations governing pesticides and dictates the enforcement necessary under those laws and regulations. States are given primary enforcement authority when they have adopted adequate state laws and regulations and have adequate procedures for enforcing state law, keeping records, and making reports of all enforcement activities. State laws and regulations may not be less restrictive, but may be more restrictive, than the federal laws and regulations established under FIFRA.

Montana has established a cooperative agreement with EPA and has assumed the primary responsibilities of administering FIFRA programs.

In 1947, Montana adopted its first pesticide law, entitled the "1947 Insecticide, Fungicide and Rodenticide Act." This Act was administered by the Department of Health and required registration of all economic poisons (pesticides) in Montana. This law was repealed July 1, 1971. Since then, several other laws affecting the use of pesticides have been enacted.

## Montana Pesticides Act (MPA)

The Montana Pesticides Act (MPA), Title 80, Chapter 8, Sections 80-8-101 through 80-8-405, MCA, as amended, enacted by the 43<sup>rd</sup> Legislature in 1971, is administered by the Montana Department of Agriculture (MDA).

The MPA is comprehensive in its regulation of the sale and use of pesticides. The Act may be subdivided into three major areas of responsibility: registration of pesticides; licensing of pesticide applicators, operators, and dealer; and enforcement and administrative procedures.

### **Registration of Pesticides**

All pesticides must be registered by the U.S. Environmental Protection Agency (EPA). All EPA registered pesticides must also be registered with the MDA before they may be legally offered for sale or used in Montana. Montana also registers pesticides formulated within the state. An annual registration fee per pesticide product registered is required. All registrations expire each year on December 31 following the date of issuance.

Montana must register all federally registered pesticides upon receipt of such registration from the registrant. The MDA has the authority to impose additional restrictions on the use and application of pesticides within the state. The state may restrict application of certain pesticides to type of applicator, time, and place. The MDA may suspend or cancel the registration of a pesticide whenever it does not appear that the product or its labeling complies with the MPA or scientific evidence proves that the product endangers humans or the environment.

The MDA is given the authority to sample, inspect, and make analysis of pesticides distributed within Montana to determine whether such pesticides are in compliance with the MPA. Pesticides not in compliance may be embargoed if they are:

- adulterated or misbranded,
- not registered,
- fail to bear a proper label, or
- a white powder pesticide and are not colored as required.

Embargoed pesticides cannot be removed, disposed, or sold without MDA permission. Embargoed pesticide products which are brought into compliance with the law will have the embargo removed. If the product cannot meet the provisions of the MPA, it is returned to the registrant or disposed of at the expense of the claimant.

### Special Registrations

Please see page 33 of the core manual to review Special Local Need Section 24(c) registrations and Emergency Exemptions from registration (Section 18). MDA is the agency for attaining these pesticide uses in Montana. Any person may contact MDA to determine if there is an unmet need that can be addressed using these registrations or exemptions.

When applying a Section 24(c) or 18 pesticide, a state specific label or use directions must be in the possession of the applicator. Section 24(c) registrations are generally registered for five years at a time, and then reevaluated to determine if the need is still present. Section 18 exemptions are only valid for a specific amount of time, usually during the period of time surrounding the presence of the pest population within a one-year time frame.

It is the responsibility of the dealer to ensure the appropriate use directions accompany the product when it is sold for use under a special registration or exemption. If an applicator or dealer has any questions or concerns regarding a special registration, he or she should contact the MDA.

For more detailed information concerning the registration of pesticides refer to Sections 80-8-201 through 80-8-202, MCA of the MPA.

### Licensing Provisions

The individual, not the business or government entity, holds the pesticide applicator license document. If an employee licensed as an applicator leaves employment, the business may not apply pesticides until a new person is licensed.

#### Types of Applicator Licenses

**Commercial applicators** are individuals who by contract or for hire apply by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, water, structures, or vehicles.

**Public Utility applicators** are individuals who apply pesticides for a public utility. A public utility is any governmental organization supplying water, electricity, transportation, etc. to the public, including utilities operated by a private entity under governmental regulation.



These applicators must meet the same conditions and standards established for commercial applicators.

**Governmental applicators** are individuals who apply pesticides for agencies, municipal corporations, or any governmental agencies and are subject to the same licensing requirements as a commercial applicator.

**Non-Commercial applicators** are individuals who cannot be classified as a commercial, public utility, or government certified applicator or who cannot be classified as a private applicator but desire the use of restricted use pesticides. A certified non-commercial applicator may only use restricted use pesticides on lands owned, rented, or leased by his employer or himself.

### Licensing Requirements

A license for commercial, public utilities, governmental, and non-commercial applicators is required annually. The license document is valid from the date of issuance through December 31 each year. It must be renewed each calendar year BEFORE applying pesticides. Before issuing a license document, the MDA requires that an applicant submit a signed department approved application form, pay the current licensing fee, and pass the Core examination and specific classification examinations with an 80 percent or better for the use of **general and/or restricted** use pesticides.

### Financial Responsibility

Applicants for a commercial pesticide applicators license are required to provide, on forms approved by the MDA, evidence of financial responsibility establishing the ability of the applicant or their employees to respond to and indemnify any person or persons for all damages to their person or property arising out of the use, misuse, or attempted use of application of pesticides.

**Liability insurance** is the only acceptable form of financial responsibility.

Aerial applicators must have an insurance policy with minimum liability limits of \$50,000. All other commercial applicators must carry minimum coverage of \$30,000.

Commercial seed treatment and elevator pest control applicators, vertebrate pest control applicators using ground applied baits only, public utility, and non-commercial applicators applying pesticides in or on properties managed by them are exempt from the financial responsibilities required in ARM 4.10.101 through 4.3.103. Governmental applicators are also exempt from financial responsibility requirements.

Financial responsibility must be maintained throughout the licensing period and must cover damages caused by the unintentional violations of the Montana Pesticides Act in MCA Title 80, chapters 1 through 4. Aerial applicators must, in addition, meet all the requirements of the Federal Aviation Agency and the Aeronautics Division of the Montana Department of Transportation before a license is issued.

### Re-certification

All license holders must recertify their specific licensing classification every four years. Licensed applicators have the option of recertifying by re-examination or by attending

Montana Department of Agriculture (MDA) approved training. Recertification training is available through the MDA on a pre-determined schedule or by attendance at MDA-approved industry sponsored training. All applicators or dealers who choose to recertify by training must attend training equivalent to 12 recertification credits (hours) during the recertification period. Commercial pesticide applicators wishing to recertify by examination may contact the MDA in Helena or one of the MDA field offices.

Certification and recertification training is required to contain components of the competency standards for licensing of pesticide applicators as outlined in Administrative Rule (4.10.204, ARM).

Montana Pesticide Applicator/Dealer Training Standards:

- Labels and labeling
- Safety
- Environment
- Pest identification and biology
- Pesticide factors
- Equipment
- Calibration
- Laws and regulations

#### Nonresidents

Nonresidents applying for a license in Montana, in addition to meeting the above requirements, must file a written Power of Attorney designating the Secretary of State as their agent. This permits a service of process to be made in the event of suit brought against the nonresident. The Power of Attorney will be written to provide effective jurisdiction by the courts of Montana over the nonresident applicant. Nonresident corporations may appoint a resident agent in lieu of appointing the Secretary of State as their agent.

#### Government Agencies

Government employees applying pesticides are subject to the provisions of the MPA and its regulations. Supervisors and/or applicators of government sponsored pesticide spray programs will be required to obtain a government applicator license and are subject to the same requirements as commercial applicators. All applicants for this license will be required to pass examinations, submit an application form, and pay the specified licensing fees. The license allows the applicator to apply pesticides for agency use only. One licensed applicator or licensed operator is required for each pesticide equipment unit operated by a business or government agency.

#### Commercial/Government Applicator Licensing Classifications

**Agricultural Plant Pest Control:** An applicator using or supervising the use of pesticides in the production of agricultural crops, including but not limited to: small grains, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands. Agricultural Plant Pest applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on

which they may be using pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury, and community problems resulting from the use of pesticides in agricultural areas.

***Agricultural Animal Pest Control:*** An applicator using or supervising the use of pesticides on livestock animals including but not limited to: beef cattle, dairy cattle, swine, sheep, horses, goats, and poultry, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying restricted use pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in a large-scale use of restricted pesticide are included in this classification and must be certified and licensed. Agricultural animal pest applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge concerning specific pesticide toxicity and residue potential is required since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as pesticide formulation, application techniques, age of animals, stress, and extent of treatment.

***Agricultural Vertebrate Pest Control:*** An applicator using or supervising the use of pesticides in the management of vertebrate animals normally wild or feral, including certain predators, rodents, and birds, which may adversely affect human health or property or are a nuisance to humans. Vertebrate applicators must demonstrate practical knowledge of vertebrates for which they may be using pesticides. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. The applicator must demonstrate a practical knowledge of control and application methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. These applicators must demonstrate knowledge of the use of these pesticides which will minimize or prevent hazards to humans, pets, and other domestic animals.

***Forest Pest Control:*** An applicator using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas. Forest pest control applicators shall demonstrate practical knowledge of the types of forest, forest nurseries, and seed production in Montana and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for planning pesticide applications. A practical knowledge of the beneficial organisms and their vulnerability to the pesticides to be applied is required. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which minimize the possibility of secondary problems, such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may be related to meteorological factors and adjacent land use.

***Ornamental & Turf Pest Control:*** An applicator using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees,

shrubs, flowers, and turf. Ornamental and turf pest control applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, planting, and turf. Applicators must understand the potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitation to application activities, applicators in this classification must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

***Seed Treatment & Elevator Pest Control:*** An applicator using or supervising the use of pesticides onto seeds, the use of fumigants in seed storage areas or on or in seeds and the use of pesticides in or around the elevator seed storage facilities. Applicators in this classification must demonstrate practical knowledge of the types of seeds that require pesticide protection against pests, and factors such as seed coloration, carriers, and surface-active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seed, such as introduction of treated seed into food and feed chains, as well as proper disposal of unused treated seeds. Applicators must be able to demonstrate proper use of grain fumigants to protect seeds, knowledge to assure safe handling, application techniques, worker exposure and protection considerations, and re-entry standards into fumigated structures. They must demonstrate practical knowledge of using herbicides around and rodenticides and avicides in and around these structures.

***Aquatic Pest Control:*** An applicator using or supervising the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in the public health pest control classification. Applicators in this classification must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. Aquatic pest control applicators must demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. These applicators shall demonstrate practical knowledge of the principles of limited area application. Persons in this classification may be certified as commercial, government or farm (private) applicators.

***Right-of-Way, Rangeland, Pasture, and Noncrop Pest Control:*** An applicator using or supervising the use of pesticides to manage weeds or other vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas. This classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation on grassland and pastures that are not harvested for forage, and any applicator using or supervising the use of pesticides on noncrop areas to manage weeds or other vegetation. Right-of-Way, rangeland, pasture, and noncrop pest control applicators shall demonstrate practical knowledge of a wide variety of environments since these applicators can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, excessive foliage destruction, and potential effects to livestock and nontarget organisms. Applicators must have the ability to recognize target plants and differentiate them from nontarget plants. They shall also demonstrate practical knowledge of the

nature of herbicides, the need for containment of these pesticides within the target application site, and the impact of their application activities in the adjacent areas and communities.

**Public Health Pest Control:** A state, federal, or other governmental applicator or contracted commercial applicator using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance. Public health pest control applicators must demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved, and it is essential that they be recognized. Life cycles and habitats must be understood to develop control strategies. These applicators shall have practical knowledge of a great variety of environments ranging from stream habitats to those conditions found in buildings. They should also have practical knowledge of the importance and employment of non-chemical control methods, such as sanitation, waste disposal, and drainage.

**Demonstration & Research Pest Control\*:** An applicator who demonstrates to the public the proper use of pesticides and pesticide application techniques or supervises such demonstrations or makes or approves recommendations on pesticide product use and/or selection, or an applicator conducting field research of pesticides and in doing so, uses or supervises the use of pesticides. Persons licensed as pesticide dealers are exempt from this classification. Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to others will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities associated with demonstrations. Practical knowledge of problems, pests and population levels occurring in each demonstration situation is required. They should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in the Montana Pesticide Act – Administrative Rules of Montana (ARM) 4.10.204.

\*This is not a stand-alone classification, but is a subclassification requiring the specific standards for classifications (1)(a) through (g) of ARM 4.10.205 applicable to their particular activity be met. Persons conducting field research or method improvement work with restricted use pesticides are expected to know the general standards required for classifications (1)(a) through (j) of ARM 4.10.205, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under “Demonstration” in ARM 4.10.205 (1)(k).

**Industrial, Institutional, Structural and Health-Related Pest Control (PCO):** An applicator using or supervising the use of pesticides in, on, or around food handling and manufacturing establishments, human dwellings, institutions such as schools and hospitals, industrial establishments, including warehouses and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products. These applicators must demonstrate a practical knowledge of a wide variety of pests and their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets. Since human exposure includes babies, children, pregnant women, and elderly people, applicators must demonstrate practical knowledge of the

specific factors which may lead to hazardous conditions for these individuals, including continuous exposure in the various situations encountered in this classification. Because health-related pest control may also involve outdoor applications, applicators must demonstrate practical knowledge of environmental conditions particularly related to this activity.

***School Pest Control (School IPM)\*:*** School pest control applicators include any applicators using or supervising the use of pesticides in the school environment under a “Model School Integrated Pest and Pesticide Management Safety Program” including but not limited to schoolyards, buildings, playing fields, and other property under the jurisdiction of the school district. School pest control applicators must demonstrate a practical knowledge of the principles of integrated pest management (IPM) and a knowledge of pesticides registered for use in the school environment in addition to the knowledge required by applicators in the Industrial, Institutional, Structural, and Health-Related classification or Ornamental and Turf classification, depending upon their work duties.

\*This is not a stand-alone classification, but is a subclassification allowed only under the Ornamental & Turf and Industrial, Institutional, Structural & Health Related classifications. 4.10.202 (c) and (g).

***Wood Product Pest Control:*** Any applicator using or supervising the use of pesticides for pole framing, silling applications, some home and farm uses, brush on treatments, sapstain control, and uses in nonpressure treatment plants for the protection of wood products. Wood product pest control applicators must demonstrate practical knowledge of the specific wood preservative products used in their operation, for example: creosote, pentachlorophenol, and inorganic arsenicals. They shall be knowledgeable about the protective clothing and equipment requirements as well as the requirements for proper care and disposal of work clothing and equipment. Applicators must demonstrate practical knowledge of pesticide application techniques which prevent direct exposure to domestic animals and livestock and prevent contamination of food, feed, or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking, and smoking, and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste. They must be familiar with the Consumer Awareness Program (CAP) which is implemented through the use of Consumer Information Sheets (CIS's) provided to the end users of treated products (the consuming public).

***Livestock Protection Collar (LPC):*** Livestock Protection Collar applicators are certified to apply collars containing sodium monofluoroacetate (Compound 1080) to sheep for the control of coyotes that prey on domestic sheep. The LPC, placed on the throat of the sheep, targets predatory coyotes by keying on their tendency to attack prey at the throat and puncturing the LPC in the process. To be certified, applicators must attend MDA sponsored training specific to the LPC and, by field demonstration and examination, demonstrate knowledge of, including but not limited to, predator biology and identification, alternative methods of coyote control, sheep management, safety practices in handling and storing Compound 1080, disposal, non-target wildlife hazards, the protection of endangered species, practical treatment of 1080 poisoning in humans and domestic animals, record keeping requirements and collar labeling.

Persons in this classification may be certified as commercial, government or farm (private) applicators.

**Sodium Cyanide (M-44):** M-44 applicators are certified to use sodium cyanide in the M-44 device for the control of coyotes, fox, and wild dogs that prey on livestock and poultry. Capsules containing sodium cyanide are used in a spring-operated mechanism called an M-44 device. The sodium cyanide is ejected into the mouth of a coyote when the coyote bites and pulls on the device, releasing a spring powered plunger. To be certified, applicators must attend a specific MDA training on the M-44 device, and thorough field demonstration and examination, demonstrate knowledge of predator biology and identification, alternative methods of coyote control, livestock management, and safety practices in handling sodium cyanide, non-target wildlife hazards, and the protection of endangered species.

Persons in this classification may be certified as commercial, government or farm (private) applicators.

**Special Utility:** Special Utility applicators are persons using or supervising the use of pesticides in the maintenance of utility rights of way, substations, and pole conditioning or other similar areas. Applicators in this classification must demonstrate practical knowledge of a wide variety of utility right-of-way environments. They shall demonstrate practical knowledge of problems of runoff, drift and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and soil sterilants, the need for containment of these pesticides within the designated areas, and the impact of their application activities in the adjacent areas. They shall demonstrate practical knowledge of the specific wood preservative products used in their operation. They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking, and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste.

**Piscicide Pest Control:** An applicator using or supervising the use of pesticides purposefully applied to waters to eliminate fish species as a fishery management tool. Piscicide pest control applicators must demonstrate knowledge of registered piscicides and safety practices for use, storage, and transportation. They shall demonstrate knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations, the potential of downstream effects and piscicide decontamination procedures. They must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. They must show practical knowledge of water chemistry, pest identification, and the ecology within the aquatic environment. Applicators must also have knowledge of applicable laws and regulation related to introduction of pesticides into state waters and demonstrate practical knowledge of the principles of limited area application.

***Aerial Pest Control:*** An applicator that applies pesticides by aircraft. Aerial applicators shall qualify in one or more of the classifications in 4.10.202(3) (a) through (m). Aerial applicators shall demonstrate practical knowledge of laws and regulations for aerial applicator pilots, operation, and application safety, preventing pesticide drift, aerial pesticide dispersal systems, calibrating aerial application equipment, and making an aerial pesticide application.

***Regulatory Pest Control:*** A state, federal, or other governmental applicator who uses or supervises the use of pesticides in the control of regulated pests. Regulatory pest control applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. Factors which influence introduction, spread, and population dynamics of relevant pests must be understood. In the case of some federal agency applicators, their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

*Regulatory Pest Control – Mosquito Abatement:* A governmental applicator who applies pesticides to control mosquitoes.

*Regulatory Pest Control – Predator:* A governmental applicator who applies pesticides to control predators for the protection of domestic livestock or endangered species.

*Regulatory Pest Control – Quarantine:* A governmental applicator who applies pesticides to control vectors of diseases that affect the public health.

*Regulatory Pest Control – Rodent:* A governmental applicator who applies pesticides for the control of rodents on publicly owned property.

*Regulatory Pest Control – Weed:* A governmental applicator who applies pesticides to public roadways or right-of ways for the control of weeds.

*Regulatory Pest Control – Piscicide:* A governmental applicator who applies pesticides to public waters for the control of fish.

### Other Types of Licenses and Permits

***Operators*** are employees of certified pesticide applicators and do not hold their own pesticide certification. Montana Pesticide rule allows one certified applicator or one licensed operator to accompany each spraying equipment unit when in actual operation. Licensed operators may not apply pesticides beyond one hundred (100) miles of the certified pesticide applicator. An operator's license may be obtained in the following ways:

- pass an MDA examination with a score of 80 percent or better;
- attend an MDA training course; or
- receive training from a certified applicator.

Operators are required to be licensed annually and must be renewed each calendar year BEFORE applying pesticides. They may renew their license by receiving training from a certified applicator or attend a training course approved by MDA and submitting the application fee and application.



*Government operators* must meet all of the above standards for operators except government operators can only operate within their respective governmental boundaries regardless of the number of miles from the government certified applicator's business location.

The MDA may also establish licensing and examination requirements for operators by regulation. Applicators are responsible for all pesticide related actions by their employees.

***Farm (private) applicators*** are individuals who need to use a restricted use pesticide on property owned, rented, or leased by the applicator, or their employer, for the purpose of producing any agricultural commodity. To obtain a permit, farm applicators must pass a Farm Applicator examination or attend a training course and complete an upgraded quiz. The training manual, examination and training required for this permit can be obtained from your local MSU County Extension.

A farm (private) applicator does not require a commercial applicator license when they:

- apply general use pesticides to their own land;
- apply general use pesticides to accommodate neighbors on lands immediately adjacent or across a road from lands owned, leased, or rented by the farm applicator doing the applications;
- are not engaged in the business of applying pesticides for hire; or
- operate their equipment only in the vicinity of their own property.

***Dealer Licensing*** is required for the sale of pesticides except those pesticides labeled only for home, yard, and garden use. Each outlet must have an individual licensed to sell pesticides in Montana. Pesticide sales and field personnel not under the supervision of a dealer must also be licensed. The individual, not the business or government entity, holds the pesticide dealer license. If an employee licensed as the dealer leaves employment, the business cannot sell pesticides until a new person is licensed. Dealers are required to pass an examination with a score of 80 percent or better before a license is granted. To become licensed, dealers must submit an application to the MDA with the required licensing fee each calendar year. It is a violation of the Montana Pesticides Act for a dealer or their employees to sell pesticides prior to becoming licensed.

***Retail Sale*** of general use pesticides which are labeled for only home, yard, garden, and lawn uses does not require a license from the MDA. All retailers must maintain shipping, purchasing or invoice records for pesticide products received for MDA inspectional purposes.

### ***Pesticide Record Keeping***

Applicator and dealer records of pesticide use and sales are important to provide a history of your operation. Meaningful records will also serve to protect your business and assist in evaluating efficacy in pest control, expenses, and profit, and in maintaining an inventory.

There are many different record keeping systems which may be used by applicators and dealers. These systems may range from field notes and records to office sales, use and

inventory records, to the use of electronic records. Please see appendix A for examples of forms that could be used.

### Dealer Records

The Montana Pesticide Act – Administrative Rules of Montana (ARM) 4.10.504 requires the following for dealers:

All pesticide dealers, including pharmacists, veterinarians, and certified pharmacies are required to maintain shipping, purchase or invoice records of all pesticide products received. A complete and accurate record of all restricted use pesticides purchased and sold also must be maintained. All records must be kept for two (2) years.

Records of each sale of a restricted use pesticide must include:

- the company name on the label;
- the complete trade name and the EPA registration number;
- the volume sold;
- the license or permit number of the certified applicator or dealer purchasing the restricted pesticide;
- the date; and
- the name of the applicator, dealer, employee, or family member purchasing the restricted pesticide.

Records required of dealers, pharmacists, veterinarians, and certified pharmacies are subject to inspection by authorized employees of the MDA during normal business hours. Dealers are required to submit the records (a copy or the original) to the MDA upon written request.

Sales of retail pesticides are exempt from the record keeping and reporting requirements of this rule. Further information on records of retail pesticides can be found in ARM 4.10.502 (2).

### Applicator Records

The Montana Pesticide Act – Administrative Rules of Montana (ARM) 4.10.207 requires the following for applicators:

All certified commercial, public utility, government applicators, non-commercial applicators, and their operators are required to keep and maintain operational records for two (2) years.

A record must be kept of every application performed by either an applicator or operator and must include the following.

- The name of the **applicator** or **operator** applying the pesticide must be recorded.
- The **date** the application was made.
- The **time** of application, including both start and end times, must be recorded.
- The **location** must include the property owner's or lessee's name and address where the pesticide was applied. The specific application site must be expressed by township, range, and section number, local identifiable landmarks or latitude and longitude coordinates. Right-of-way applications may be expressed in general terms of identifiable landmarks. Non-agricultural applications may specify the site, building, facility, or other identifiable landmarks.

- The **equipment** used. If the same piece of equipment is used for all applications, then this equipment may be listed only once. If more than one piece of equipment is used, the applicator may assign a number to each piece of equipment and list the equipment once by description and thereafter by number.
- The **pesticide(s)** used, with the company or manufacturer's name, trade name, and the EPA registration number is required.
- The **rate** of application used, including the amount of formulated product per volume or weight to be applied on a given unit area.
- The size of the **area** treated (number of acres, trees, livestock, square feet, or yards, etc.) or the type of treatment for structural applications.
- The primary **pest(s)** involved (do not use general terms such as weeds and bugs).
- The **site** or **crop** treated and the stage of crop development, if applicable.
- The **weather** conditions, such as the temperature, wind speed, and direction.

Seed treatment applicators and wood product applicators are required to maintain the same records, but are not required to make a record of pests involved, the site or crop treated, or weather conditions, as provided by ARM 4.10.207 (6).

Applicators using two or more pesticides in a tank mixture must record all data as required for each pesticide in the tank mix.

Application records must be completed within 24 hours of the actual pesticide application. Applicator records are open to inspection by authorized employees of the MDA during all business hours. Applicators are required to submit copies of their records or any portion of the records when requested, in writing, by the MDA.

### Incident Reports

An applicator who causes or allows any pesticide to drift, run off or otherwise escape onto another person or property must file a written report to the MDA within forty-eight (48) hours of the incident. The report will include:

- specific location of the incident;
- name of the pesticide involved;
- type of formulation;
- method of application;
- name and address of the person for whom the application was being made; and
- name and address of the person whose land, person or property was subjected to the unintentional pesticide application.

In addition, if the pesticide is classified as either extremely toxic or highly toxic to people or animals, the applicator or operator must immediately stop the application and notify the landowner and the MDA of the unintentional pesticide application immediately, by the quickest available means, after applying first aid or personal decontamination if appropriate.

### Notification by Applicators

Applicators applying EPA restricted use pesticides shall notify the owner, lessee, or manager of the property of all precautions and restrictions before applying the restricted use pesticide. The applicator, if requested, is required to provide a copy of the label to the

owner, manager, or lessee. Applicators applying EPA restricted use pesticides in an easement or right-of-way situation are not required to notify any person if the applicator is employed by or specifically contracted by the person holding or managing the easement or right-of-way.

## **Enforcement and Administrative Procedures**

### **Revocation of License**

The MDA may refuse to issue, or renew a license, or may revoke a license or permit when the MDA has determined that the licensee is not qualified to use, sell, or apply pesticides under the conditions in the locality in which the licensee or permittee operates, or has operated, or has committed any of the following:

- made false or fraudulent claims misrepresenting the effect of materials or methods to be utilized;
- applied or sold unapproved or illegal materials;
- applied or sold a pesticide without possessing a current and appropriate license or permit;
- operated in a faulty, careless, or negligent manner;
- operated faulty or unsafe equipment;
- refused or neglected to comply with provisions of FIFRA or the MPA and its associated rules;
- used or applied a registered pesticide inconsistent with its label or labeling or the department restrictions on the use of that pesticide;
- refused or neglected to keep and maintain application records or make reports when and as required;
- made false or fraudulent records or reports;
- operated equipment for the commercial application of a pesticide without a permit or license;
- used fraud or misrepresentation in making application for license or permit or renewal of a license or a permit;
- made false or misleading statements in an attempt to sell pest control services or made misleading statements concerning the effectiveness of any pesticide or application; or
- failed to satisfy a judgement entered against the licensee as a result of a complaint concerning the use of a pesticide.

Decisions of the MDA relating to issuance or revocation of licenses or permits may be appealed.

### **Report of Loss or Damage**

A person suffering loss or damage resulting from the use or application of any pesticide by any person must report the loss to the department within 30 days from the time the loss became known to the person. Refer to Section 80-8-301, MCA of the Pesticide Act for a full description of requirements.

### Public Information

The MDA may publish or make available information on the registration, use, or application of pesticides in Montana provided that such information will NOT disclose the operations as selling, production, or use of pesticides by any person.

### Investigation and Enforcement Authority

The MDA, upon reasonable cause, has the authority to enter upon private and public premises and property, at reasonable times, with a warrant or consent of the owner to inspect or investigate:

- equipment used for applying pesticides;
- actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;
- records on the selling and use of pesticides and the person's stock of pesticides;
- handling, use, application, storage, and disposal of pesticides;
- pesticides being applied or to be applied and to sample the pesticide or agricultural commodities;
- the use and application of a pesticide;
- the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples;
- compliance with pesticide EPA Worker Protection Standards and labeling, including handlers and workers;
- compliance with pesticide groundwater and EPA Endangered Species Standards and labeling; or
- compliance with licensing, labeling, permitting, and certification requirements.

The MDA is authorized to investigate all incidents involving the application, sale, introduction or use of registered pesticides or compounds capable of acting in the manner of a pesticide, when the incidents have a potential to adversely affect people or the environment. The investigation or inspection authority provided for in section 80-8-304 MCA includes persons not possessing a license or permit.

## **Montana Agricultural Chemical Ground Water Protection Act (MACGWPA)**

The Montana Agricultural Chemical Ground Water Protection Act, Title 80, Chapter 15, MCA is administered jointly by the Departments of Agriculture and Environmental Quality. This law establishes Montana policy protecting water resources and the use of agricultural chemicals. Both agencies will:

- Protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals.
- Ensure that agricultural chemicals are properly and correctly used.
- Provide management of agricultural chemicals which will prevent, minimize, and mitigate their presence in ground water.

- Provide education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

### **Water Quality Standards**

The Montana Department of Environmental Quality (DEQ) is responsible for the adoption of ground water quality standards for agricultural chemicals for which federal standards exist and for those agricultural chemicals whose presence has been verified in ground water. Upon request from the MDA, DEQ develops or request EPA to develop an interim numerical standard for agricultural chemicals for which there is no existing standard. Water quality standards are used by both agencies in assessing potential threats to human health from consumption of contaminated ground water.

### **Monitoring**

Both the MDA and DEQ are required to conduct monitoring of ground water resources to determine:

1. Whether residues of agricultural chemicals are present in ground water, and
2. The likelihood of an agricultural chemical entering ground water.

Both the MDA and the DEQ review and evaluate monitoring and sampling data jointly. The departments, in cooperation, determine the appropriate response to contamination. Such determinations are based upon water quality standards, water classification (i.e., how the water is used) and risk to human health, based on consumption patterns.

### **Management Plans**

The MDA is responsible for the development of management plans which provide for the protection of ground water resources through the management of agricultural chemicals. The MDA published the Montana General Agricultural Chemical Ground Water Management Plan (GMP) in 1994. The GMP sets the basis upon which all state specific management plans are based. Specific management plans will be specific to particular agricultural chemicals and to a defined geographical area. A specific management plan must be implemented when the level of an agricultural chemical found in ground water is at 50 percent or greater of the official standard.

The department may develop and implement an agricultural chemical ground water management plan specific to particular agricultural chemicals and may consider but is not limited to considering the following elements when determining whether or not to develop and implement agricultural chemical ground water management plans:

- (a) a definite trend of increased presence of the agricultural chemical in ground water;
- (b) agricultural chemicals have been determined to have migrated in the ground water from the point of detection;
- (c) EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns, and EPA's action, restriction, or prohibition will be implemented unless the state develops and adequate management plan; or
- (d) agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlain by ground water that is vulnerable to impairment.

The department may initiate educational programs about agricultural chemical management to provide information and management techniques to protect ground water in an effort to preclude the need for development of specific agricultural chemical ground water management plans in the future.

A person using an agricultural chemical in the geographical region that is addressed by a specific agricultural chemical ground water management plan must comply with that plan. The department may specifically identify and designate persons who are under the plan and may inform any person about the plan.

The department prioritizes preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources. The MDA must consider the current and potential beneficial use or uses of the ground water included in or affected by the plans. The MDA must also consider the benefits of appropriate agricultural chemical use when developing any management plan.

All management plans must be adopted as administrative rules and are enforceable under the Montana Ground Water Act.

### **Commercial Fertilizer Ground Water Management Plans**

If the MDA or the DEQ determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers, a commercial fertilizer ground water management plan may be developed.

### **Enforcement and Investigations**

The MDA has the authority to:

- investigate conditions relating to compliance with agricultural chemical labels, agricultural chemical ground water management plans, monitoring requirements, ground water protection requirements and to investigate violations of plans or compliance orders;
- gain access to and copy any records required by the MDA;
- establish and inspect monitoring equipment; and
- sample ground water, including drinking water supply sources such as wells and similar structures.

The MDA may issue a compliance order to any person(s) violating a standard or any other requirement of the MACGWPA. The MDA may require cleanup of any agricultural chemical that has contaminated or has a significant probability of entering ground water.

### **Administrative Civil Penalties**

Persons violating the MACGWPA may be assessed an administrative civil penalty of up to \$1,000 for each offense for commercial applicators and up to \$500 for farm (private) applicators. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action. When determining an appropriate administrative civil penalty, the MDA will consider the effect of the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

### **Judicial Civil Penalties**

Persons who violate any order, specific agricultural chemical ground water management plan or any provision of MACGWPA will be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

### **Criminal Penalties**

Violations of the MACGWPA committed intentionally by any person(s) are subject to a fine up to \$25,000 for each day the violation continues or imprisonment for up to 1 year or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

## **Montana Water Quality Act (MWQA)**

The Montana Water Quality Act (MWQA) is administered by the DEQ. The purpose of this Act is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. MWQA outlines the responsibilities of the DEQ in the development of water quality standards, water resource use and quality classifications, and non-degradation rules as they relate to surface and ground water resources of Montana. Also contained within the MWQA are the Emergency Powers of the DEQ (ARM 16.20.1025) which contain the procedures that must be followed when there are spills or unanticipated discharges of pesticides or other toxic substances that would lower the quality of any ground waters of the state below Montana ground water quality standards. Under the Water Quality Act, it is unlawful to pollute any state waters, or to place or cause to be placed any wastes, in a location where they will cause pollution of state waters. Before applying pesticides in water, pesticide applicators should contact the Water Protection Bureau of the DEQ for information on required permitting.

## **Montana Food, Drug, and Cosmetic Act**

The Miller Amendment (1954) of The Montana Food, Drug and Cosmetic Act requires that any raw agricultural commodity be condemned as adulterated if it contains pesticides for which there is no established tolerance or for which established tolerance limits are exceeded.

## **Montana Solid Waste Laws**

The Montana Solid Waste Management Act prohibits the disposal of any solid waste in any location not licensed as a solid waste disposal site by the DEQ. Refuse is defined as "all putrescible and non-putrescible solid industrial wastes." In this context, some pesticides are included within the definition. Any person found violating this act is guilty of a misdemeanor.



(Blank Page)

## APPENDIX A

### EXAMPLES OF MONTANA PESTICIDE RECORD KEEPING FORMS

**RESTRICTED USE PESTICIDE SALES RECORD**

Dealer Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

License Number: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

| Date of Sale | Purchaser's Name   | Purchaser's Address | Pesticide Company Name | Pesticide Trade Name        | Volume Sold (lbs or gals) |
|--------------|--------------------|---------------------|------------------------|-----------------------------|---------------------------|
|              | License/Permit No. |                     |                        | EPA Reg. No. and/or SLN No. |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |
|              |                    |                     |                        |                             |                           |

Instructions: This record will satisfy minimum requirements of 4, 10, 504 Administrative Rules of Montana and Title 40 Code of Federal Regulations 171.12 for sales of restricted use pesticides. The record must be filled out for each sale of a restricted use pesticide. Sales of restricted use pesticides shall be made only to certified applicators in possession of valid licenses or permits issued by the Montana Department of Agriculture. Prior to making a sale of a restricted use pesticide, dealers are required to confirm this by viewing the purchaser's license or permit. For questions about this form or other pesticide matters, contact the Montana Department of Agriculture, Agricultural Sciences Division, Helena, MT (406)444-3144. Revised 1/2021.

Compliments of the

MONTANA DEPARTMENT OF AGRICULTURE  
AGRICULTURAL SCIENCES DIVISION  
PO BOX 200201  
HELENA, MT 59620-0201  
Phone: 406-444-3144

## DAILY PESTICIDE APPLICATION RECORD

|                  |          |
|------------------|----------|
| BUSINESS         | LICENSE# |
| NAME             | ADDRESS  |
| CITY, STATE, ZIP | PHONE    |

CUSTOMER \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_

|                                | APPLICATION #1 | APPLICATION #2 |
|--------------------------------|----------------|----------------|
| Applicator/Operator Name       |                |                |
| Date                           |                |                |
| Time Start/Stop                |                |                |
| Temperature                    |                |                |
| Wind Speed/Direction (from)    |                |                |
| Pesticide Manufacturer         |                |                |
| Trade Name                     |                |                |
| EPA Reg# or Formulation        |                |                |
| Rate: Product/Diluent Per Acre |                |                |
| Rate: Calibration              |                |                |
| Crop or Site & Crop Stage      |                |                |
| Pest(s)                        |                |                |
| Equipment Used                 |                |                |
| Acres/Area Treated             |                |                |
| Location #1                    | COMMENTS/MAP   |                |
| Location #2                    |                |                |

