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## CHAPTER 14

# UTAH PESTICIDE CONTROL ACT

Section		Section	
4-14-1.	Short title.		ciency to be given registrant —
4-14-2.	Definitions.		Objects of inspection delineated —
4-14-3.	Registration required for distribution — Application — Fees — Renewal — Local needs registration — Distributor or applicator license — Fees — Renewal.	4-14-8.	Warrants. Suspension or revocation — Grounds — Stop sale, use, or removal order authorized — Court action — Procedure — Award of costs authorized.
4-14-4.	Labeling requirement for pesticides specified.	4-14-9.	Examination requirements for license to act as applicator may be waived through reciprocal agreement.
4-14-5.	Issuance of experimental use permits — Application — Terms and conditions for issuance.	4-14-10.	Pesticide Committee created — Composition — Terms — Compensation — Duties.
4-14-6.	Department authorized to make and enforce regulations.	4-14-11.	Repealed.
4-14-7.	Enforcement — Inspection and sampling authorized — Notice of defi-		

### 4-14-1. Short title.

This chapter shall be known and may be cited as the "Utah Pesticide Control Act."

**History:** C. 1953, 4-14-1, enacted by L. 1979, ch. 2, § 15.

#### COLLATERAL REFERENCES

**Utah Law Review.** — Agriculture and the Pollution Problem, Joseph C. Street, 1970 Utah L. Rev. 395.

**Am. Jur. 2d.** — 3 Am. Jur. 2d Agriculture §§ 48, 55, 69; 61A Am. Jur. 2d Pollution Control §§ 293 to 450.

**C.J.S.** — 3 C.J.S. Agriculture §§ 95 to 104.

**A.L.R.** — Liability for injury caused by spraying or dusting of crops, 37 A.L.R.3d 833.  
Products liability: Fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 A.L.R.4th 462.

**Key Numbers.** — Agriculture ⇌ 9.

### 4-14-2. Definitions.

As used in this chapter:

(1) "Active ingredient" means any ingredient which prevents, destroys, repels, controls, or mitigates pests, or which acts as a plant regulator, defoliant, or desiccant.

(2) "Adulterated pesticide" means any pesticide the strength or purity of which is below the standard of quality expressed on the label under which it is offered for sale.

(3) "Animal" means all vertebrate or invertebrate species.

(4) "Beneficial insect" means any insect which is an effective pollinator of plants, or which is a parasite or predator of pests, or is otherwise beneficial.

(5) "Defoliant" means any substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Desiccant" means any substance or mixture intended to artificially accelerate the drying of plant or animal tissue.

(7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver pesticides in this state.

(8) "Environment" means all living plants and animals, water, air, land, and the interrelationships which exist between them.

(9) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power to apply a pesticide, but it does not mean any pressurized hand-sized household apparatus used to apply a pesticide; nor any equipment or contrivance used to apply a pesticide which is dependent solely upon energy expelled by the person making the pesticide application.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(12) "Fungus" means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of an order lower than mosses and liverworts), for example, rust, smut, mildew, mold, yeast and bacteria, except those on or living in man or other animals, and except those on or in processed food, beverages, or pharmaceuticals.

(13) "Insect" means any invertebrate animal generally having a more or less obviously segmented body, for the most part belonging to the Class Insecta, comprising six-legged, usually winged, forms; for example, beetles, bugs, bees, flies, and allied classes of arthropods that are wingless usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.

(15) "Labeling" means all labels and all other written, printed, or graphic matter:

(a) accompanying a pesticide or equipment; or

(b) to which reference is made on the label or in literature accompanying a pesticide or equipment, except to current official publications of the EPA, the United States Departments of Agriculture or Interior, the Department of Health, Education, and Welfare [Department of Health and Human Services], state experimental stations, state agricultural colleges, and other federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means all land, water, air, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.

(17) "Misbranded" means any label or labeling which is false or misleading or which does not strictly comport with the label and labeling requirements set forth in § 4-14-4.

(18) "Misuse" means use of any pesticide in a manner inconsistent with its label or labeling.

(19) "Nematode" means invertebrate animals of the Phylum Nematelminthes and Class Nematoda, that is, unsegmented round worms

with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.

(20) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism which is injurious to health or to the environment or which the commissioner declares to be a pest; except, viruses, bacteria, or other microorganisms on or in living man or other living animals, or protected wildlife species identified in Subsection 23-13-2(27) which are regulated by the Division of Wildlife Resources in accordance with §§ 23-14-1 through 23-14-4.

(21) "Pesticide" means any:

(a) substance or mixture of substances including a living organism which is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its application or effect; and

(d) any other substance designated by the commissioner by rule.

(22) "Pesticide dealer" means any person who distributes restricted use pesticides.

(23) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants, but it does not mean plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(24) "Restricted use pesticide" means any pesticide, including a highly toxic pesticide which is a serious hazard to beneficial insects, animals, or land; or any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.

(25) "Weed" means any plant which grows where not wanted.

(26) "Wildlife" means all living things that are neither human, domesticated, nor pests.

**History:** C. 1953, 4-14-2, enacted by L. 1979, ch. 2, § 15; 1987, ch. 92, § 2.

**Amendment Notes.** — The 1987 amendment corrected the section references in Subsection (20)(b) and substituted "rule" for "regulation" in Subsection (21)(d).

**Compiler's Notes.** — The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in Subsection (11) and as amended by the Federal Environmental Pesticide Control Act of 1972, is compiled as 7 U.S.C. § 136 et seq.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 61A Am. Jur. 2d Pollution Control § 294.

**C.J.S.** — 3 C.J.S. Agriculture § 95.

### **4-14-3. Registration required for distribution — Application — Fees — Renewal — Local needs registration — Distributor or applicator license — Fees — Renewal.**

(1) No person may distribute a pesticide in this state which is not registered with the department. Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection 4-2-2(2) for each pesticide registered. Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause. Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee. Each renewal fee shall be paid on or before June 30 of each year.

(2) The application shall include the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(b) the name of the pesticide;

(c) a complete copy of the label which will appear on the pesticide; and

(d) any information prescribed by regulation of the department deemed necessary for the safe and effective use of the pesticide.

(3) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires. A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to § 4-14-8.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and inert ingredients and may also, for any pesticide not registered pursuant to Section (3) of FIFRA or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

(a) a special local need exists;

(b) the pesticide warrants the claims made for it;

(c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and

(d) the proposed classification for use conforms with Section 3(d) of FIFRA.

(6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under § 4-14-5.

(7) No pesticide dealer may distribute a restricted use pesticide in this state without a license. No person may apply a pesticide for hire in this state

without a license. A license to engage in either activity may be obtained upon application from the department upon the payment of a license fee determined by the department pursuant to Subsection 4-2-2(2), which shall entitle the applicant to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued. Such a license is annually renewable upon the payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2).

**History:** C. 1953, 4-14-3, enacted by L. 1979, ch. 2, § 15; L. 1984 (2nd S.S.), ch. 15, § 13; 1985, ch. 130, § 9.

**Amendment Notes.** — The 1984 (2nd S.S.) amendment substituted "fee determined by the department pursuant to Subsection 63-38-3(2)" for "fee of not less than \$15 nor more than \$30" in the second sentence of Subsection (1) and for "fee in the amount of \$10" in the third sentence of Subsection (7); substituted the last sentence of Subsection (7) for "Such a license is renewable for a period of one year upon the payment of an annual license renewal fee in the amount

of \$10 on or before December 31 of each year"; and made minor changes in phraseology and punctuation.

The 1985 amendment substituted "Subsection 4-2-2(2)" for "Subsection 63-38-3(2)" in the second sentence of Subsection (1) and the third and fourth sentences of Subsection (7).

**Compiler's Notes.** — Sections 3 and 24 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in Subsections (4) and (5), are compiled as 7 U.S.C. §§ 136a and 136v, respectively.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 61A Am. Jur. 2d Pollution Control §§ 305 to 323.

**C.J.S.** — 3 C.J.S. Agriculture § 97.

#### 4-14-4. Labeling requirement for pesticides specified.

(1) Each container of pesticide distributed in this state shall bear a label setting forth:

- (a) the name, brand, or trademark under which it is distributed;
- (b) an accurate statement of the ingredients on that part of the immediate container (and on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase; provided, that the ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;
- (c) a warning or caution statement if necessary, which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect the health and environment;
- (d) the net weight or measure of the content;
- (e) the name and address of the manufacturer, registrant, or person for whom manufactured;
- (f) the EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;
- (g) the federal use classification under which the pesticide is registered or designated for "experimental use only"; and

(h) directions for use of the pesticide sufficient to effectuate the purposes for which the product is intended and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.

(2) If the pesticide is highly toxic the label shall, in addition to the other label requirements, display:

- (a) the skull and crossbones;
- (b) the word "POISON" in red prominently displayed on a background of distinctly contrasting color; and
- (c) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

**History:** C. 1953, 4-14-4, enacted by L. 1979, ch. 2, § 15; L. 1981, ch. 3, § 2.

**Compiler's Notes.** — Sections 2 and 3 of the Federal Insecticide, Fungicide, and Rodenti-

cide Act, referred to in Subsections (1)(b), (1)(c), and (1)(h), are compiled as 7 U.S.C. §§ 136 and 136a, respectively.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 61A Am. Jur. 2d Pollution Control § 312.

### 4-14-5. Issuance of experimental use permits — Application — Terms and conditions for issuance.

(1) The department upon application may:

(a) issue an experimental use permit to any person if it determines that the applicant needs such a permit in order to accumulate information necessary to register a pesticide under § 4-14-3; or

(b) refuse to issue an experimental permit if it determines that issuance is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.

(2) The department may also with respect to issuance of an experimental use permit:

(a) prescribe the terms and conditions for the conduct of the experimental use which in all events shall be under the supervision of the department; and

(b) revoke or modify any experimental use permit if it determines that the terms or conditions of the experimental use are being violated, or that the terms and conditions prescribed are inadequate to avoid unreasonable adverse effects to the environment.

(3) Application for an experimental use permit may be made before, after, or simultaneously with an application for registration.

**History:** C. 1953, 4-14-5, enacted by L. 1979, ch. 2, § 15.

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 61A Am. Jur. 2d Pollution Control §§ 354 to 368.

#### **4-14-6. Department authorized to make and enforce regulations.**

The department is authorized, subject to the Utah [Administrative] Rule-making Act, to:

(1) declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) determine in accordance with the regulations promulgated by the EPA under Section 25(c)(2) of FIFRA whether pesticides registered for special local needs under the authority of Section 24(c) of FIFRA are highly toxic to man;

(3) determine, consistent with EPA regulations, that certain pesticides, or quantities of substances contained in these pesticides, are injurious to the environment;

(4) adopt a list of "restricted use pesticides" for the state or designated areas within the state if it determines upon substantial evidence presented at a public hearing and upon recommendation of the pesticide committee that restricted use is necessary to prevent damage to property or to the environment; or

(5) adopt any regulation, not inconsistent with federal regulations promulgated under FIFRA, deemed necessary to administer and enforce this chapter, including but not limited to, regulations relating to the sale, distribution, use, and disposition of pesticides as deemed necessary to prevent damage and to protect the public health.

**History:** C. 1953, 4-14-6, enacted by L. 1979, ch. 2, § 15.

**Compiler's Notes.** — Sections 24 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in Subsection (2), are

compiled as 7 U.S.C. §§ 136v and 136w, respectively.

**Cross-References.** — Utah Administrative Rulemaking Act, §§ 63-46a-1 to 63-46a-16.

#### **4-14-7. Enforcement — Inspection and sampling authorized — Notice of deficiency to be given registrant — Objects of inspection delineated — Warrants.**

(1) The department to determine compliance with this chapter, shall periodically sample, inspect, and analyze pesticides distributed within this state; observe and investigate the use and application of pesticides within this state; and inspect equipment used to apply pesticides in this state to determine if they comply with this chapter.

(2) If a pesticide sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to the registrant or owner of the pesticide. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or



for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(3) The department, for the purpose of enforcing this section, is authorized at reasonable times, to enter any private or public premises for the purpose of:

- (a) inspecting any equipment used in applying pesticides;
- (b) inspecting or sampling lands actually or reported to be exposed to pesticides;
- (c) inspecting storage or disposal areas;
- (d) investigating complaints of injury to animals or lands;
- (e) sampling pesticides wherever located including in vehicles; or
- (f) observing the use and application of a pesticide.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for any purpose specified in Subsection (3) of this section.

**History:** C. 1953, 4-14-7, enacted by L. 1979, ch. 2, § 15.

**Cross-References.** — Enforcement of Agricultural Code, § 4-1-4.

#### **4-14-8. Suspension or revocation — Grounds — Stop sale, use, or removal order authorized — Court action — Procedure — Award of costs authorized.**

(1) The department may revoke or suspend the registration of any pesticide upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution in this state.

(2) The department may issue a "stop sale, use, or removal order" to the owner or distributor of any designated pesticide or lot of pesticide which it finds or has reason to believe is being offered or exposed for sale in violation of this chapter. The order shall be in writing and no pesticide subject to it shall be moved, offered, or exposed for sale, except upon the subsequent written release by the department. Before a release is issued, the department may require the owner or distributor of the "stopped" pesticide or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a pesticide which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(4) If condemnation is ordered, the pesticide or equipment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the pesticide into conformance, or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the pesticide or equipment.

**History:** C. 1953, 4-14-8, enacted by L. 1979, ch. 2, § 15. sion or revocation of licenses or registrations, § 4-1-5.

**Cross-References.** — Procedure for suspen-

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 61A Am. Jur. 2d Pollution Control §§ 319, 398 to 401.

**C.J.S.** — 3 C.J.S. Agriculture § 98.

### 4-14-9. Examination requirements for license to act as applicator may be waived through reciprocal agreement.

The department may waive any or all examination requirements which may be specified by regulation for noncommercial, commercial, and private applicators through a reciprocal agreement with another state whose examination requirements and standards for licensure are substantially similar to those of Utah.

**History:** C. 1953, 4-14-9, enacted by L. 1979, ch. 2, § 15.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 61A Am. Jur. 2d Pollution Control §§ 333 to 346.

**C.J.S.** — 3 C.J.S. Agriculture §§ 101 to 104.

### 4-14-10. Pesticide Committee created — Composition — Terms — Compensation — Duties.

(1) There is hereby created a "Pesticide Committee" composed of eight persons appointed by the governor to four-year terms of office with the advice and consent of the Senate from among the following state agencies and organizations:

- (a) one member from the Utah State Agricultural Extension Service;
- (b) one member from the Department of Agriculture;
- (c) one member from the State Department of Health;
- (d) one member from the State Division of Wildlife Resources;
- (e) one member from the Utah Pest Control Association;
- (f) one member from the agricultural chemical industry;
- (g) one member from the Utah Farmers Union; and
- (h) one member from the Utah Farm Bureau Federation.

(2) The committee shall elect one of its number to serve as chairman who is responsible for the call and conduct of meetings of the Pesticide Committee.

(3) Attendance of a simple majority of the members shall constitute a quorum for the transaction of official business. Members, exclusive of those who are employees of the state, are entitled to per diem and expenses in accordance with § 63-2-15 [as established by the Division of Finance].

(4) The Pesticide Committee shall make recommendations to the commissioner regarding the promulgation of regulations pertaining to the sale, distribution, use, and disposal of pesticides.

**History:** C. 1953, 4-14-10, enacted by L. 1981, ch. 126, § 32.

**Repeals and Reenactments.** — Laws 1981, ch. 126, § 32 repealed former § 4-14-10 as enacted by Laws 1979, ch. 2, § 15, relating to the Pesticide Committee, and enacted the present section.

**Compiler's Notes.** — Section 63-2-15, referred to at the end of Subsection (3), was repealed by Laws 1981, ch. 257, § 13. The bracketed language following reference to that section was inserted pursuant to instructions by the Office of Legislative Research and General Counsel.

**4-14-11. Repealed.**

**Repeals.** — Sections 4-14-11, as enacted by Laws 1979, ch. 2, § 15, making violations of

the chapter class "B" misdemeanors, was repealed by Laws 1985, ch. 104, § 8.

**CHAPTER 15  
UTAH NURSERY ACT**

- Section 4-15-1. Short title.
- 4-15-2. Definitions.
- 4-15-3. Department authorized to make and enforce regulations.
- 4-15-4. Unlawful to offer nursery stock for sale or to solicit orders for nursery stock without license.
- 4-15-5. License — Application — Fees — Expiration — Renewal.
- 4-15-6. Nursery stock for wholesale or retail sale — Graded and sized — Labels and tags — Information to appear on label or tag.
- 4-15-7. Inspection — Issuance of certificate — Destruction of infested or diseased stock.
- 4-15-8. Transport for out-of-state nursery stock to Utah — Certificate of inspection to be filed with department by out-of-state nurseries — Option in department to accept exchange list in lieu of certificate of

- Section inspection — Imported stock to be tagged — Treatment of stock not tagged.
- 4-15-9. Nursery stock offered or advertised for sale — Unlawful to misrepresent name, origin, grade, variety, quality or vitality — Information required in advertisements.
- 4-15-10. Infested or diseased stock not to be offered for sale — Identification of "nonestablished container stock" — Requirements for container stock — Inspected and certified stock only to be offered for sale — Prohibition against coating aerial plant surfaces.
- 4-15-11. Enforcement — Inspection — Stop sale order — Procedure — Warrants.
- 4-15-12. Suspension or revocation — Grounds — Notice and hearing.
- 4-15-13. Repealed.

**4-15-1. Short title.**

This chapter shall be known and may be cited as "The Utah Nursery Act."

**History:** C. 1953, 4-15-1, enacted by L. 1979, ch. 2, § 16.

COLLATERAL REFERENCES

- Am. Jur. 2d. — 3 Am. Jur. 2d Agriculture § 55.
- C.J.S. — 3 C.J.S. Agriculture § 68.