

**PROPOSED
AMENDMENTS
TO THE
VIRGIN ISLANDS CODE
TITLE 12, CHAPTER 19**

PESTICIDE CONTROL

Chapter 19. Pesticide Control

SECTION ANALYSIS

- 801. Declaration of purpose; short title
- 802. Definitions
- 803. Powers and duties
- 804. Delegation
- 805. Classification and certification; renewal; fees
- 806. Certification; renewal; recertification; reciprocity
- 807. Private applicators
- 808. Commercial applicators
- 809. Denial, suspension or revocation of certification
- 810. Financial responsibility
- 811. Records of certified applicators
- 812. Inspection of equipment
- 813. Registration; renewal; fees; imported pesticides; resident agent
- 814. Restricted use pesticides; classification and restrictions
- 815. Dealer licensing; renewal; fees; denial, suspension and revocation of license
- 816. Misbranding; labeling; false advertisement
- 817. Pesticide applicator business registration; renewal; fees; denial, suspension and revocation of registration
- 818. Storing, handling, using and disposal of pesticides and containers
- 819. Report of pesticide accidents; pesticide exposure management
- 820. Subpoenas
- 821. Stop sale, stop use, removal, or embargo orders
- 822. Administrative Proceedings
- 823. Enforcement; inspection; sampling; search and seizure; injunctions
- 824. Review
- 825. Penalties

- 826. Cooperative Agreements
- 827. Reports
- 828. Information
- 829. Virgin Islands Pesticide Control Fund

§ 801. Declaration of purpose; short title

The purpose of this chapter, which may be cited as the Virgin Islands Pesticide Control Act, is to regulate in the public interest the use, storage, sale, distribution, disposal and application of pesticides to control pests.--Added Oct. 21, 1975, No. 3750, Sess L. 1975, p. 163.

§ 802. Definitions

As used in this chapter:

(a) "Accident" means an unexpected, undesirable event, caused by the use or presence of a pesticide, that adversely affects man or the environment.

(b) "Act" means Virgin Islands Pesticide Control Act.

(c) "Active Ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, or desiccant.

(1) In the case of a pesticide other than a plant regulator defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(3) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of a plant tissue.

(d) "Adulterated" means any pesticide:

(1) Whose strength or purity falls below the professed standard or quality as expressed on its labeling under which it is sold;

(2) In which any substance has been substituted wholly or in part for the pesticide; or

(3) In which any valuable constituent of the pesticide has been wholly or in part abstracted.

(e) "Agent" or "Representative" means any person who is registered with the Department to represent a registrant for every pesticide which is held, used, distributed, sold or offered for sale or barter within the Territory, through any point outside the Territory. The term "Agent" or "Representative" shall mean the same for the purpose of this Act.

(f) "Agricultural commodity" means any plant, or part thereof,

or animal or animal product produced by a person primarily for sale, consumption, propagation, or other use by man or animal.

(g) "Applicator certificates" means a written certificate, issued by the Commissioner, to private and commercial applicators.

(h) "Business registration" means the requirement that each person or business providing services for the application of pesticides, to the land or building of another person, for hire or compensation, either entirely or as part of the business, register with the Department. Business registration, pursuant to the provisions of this chapter, shall not alter or effect any requirement of business registration or licensing, as may be required by any other chapter of the Virgin Islands Code.

(i) "Certification" means the recognition, evidenced by the issuance of a certificate by the Department that a person is competent and thus authorized to use in the case of commercial applicators any pesticide, and in the case of private applicators, "restricted use pesticides".

(j) "Certified applicator" means any person, eighteen (18) years of age or older, who is certified under this chapter to use those pesticides covered by his certification.

(k) "Commercial applicator" means any person who is certified by the Department (whether or not he is a private applicator with respect to some uses) and who uses any pesticide for any purpose or

on any property other than as provided by the definition of "private applicator". Any staff or operator of a golf course, seed treater, any person engaged in demonstration or research pest control, or any employee of a governmental agency who engages in the use and application of pesticides as is necessary within the scope of his employment is considered a commercial applicator.

(l) "Commissioner" means the Commissioner of the Department of Planning and Natural Resources.

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

(n) "Department" means the Virgin Islands Department of Planning and Natural Resources.

(o) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(p) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(q) "Distribute" means to offer for sale, sell, barter, ship, or

otherwise supply a pesticide.

(r) "Environment" includes water, air, land, and all plants and man and other animals living therein and the interrelationships which exist among these.

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

(t) "Equipment" means any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land, but shall not include any pressurized hand-sized household apparatus used to apply any pesticide or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(u) "Establishment" means any place where a device or active ingredient used in producing a pesticide formulation is produced or held for distribution, sale or barter.

(v) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (7 U.S.C. 136 et. seq.)

(w) "Fumigation" means the use of smoke or fumes as an exterminating or disinfecting agent.

(x) "Fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses

and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.

(y) "Imported Pesticide" for the purpose of this chapter means any pesticide which is manufactured in a foreign country.

(z) "Inert ingredient" means an ingredient which is not an active ingredient.

(aa) "Ingredient statement" means a statement which contains:

(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

(bb) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(cc) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

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

- (1) accompanying the pesticide or device at any time; or
- (2) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the EPA, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

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

(ff) "Misbranded"

- (1) A pesticide is misbranded if-
 - (A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator of EPA pursuant to section 25(c) (3) of FIFRA;

(C) it is an imitation of, or is offered for sale under the name of another pesticide;

(D) its label does not bear the registration number assigned under section 7 of FIFRA to each establishment in which it was produced;

(E) any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) the labeling, accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3 (d) of FIFRA, are adequate to protect health and the environment;

(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together

with any requirements imposed under section 3 (d) of FIFRA, is adequate to protect health and the environment; or

(H) in the case of a pesticide not registered in accordance with section 3 of FIFRA and intended for export, the label does not contain, in words prominently placed there-on with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: "Not Registered for Use in the United States of America".

(2) A pesticide is misbranded if-

(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or 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, except that a pesticide is not misbranded under this subparagraph if-

(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator of EPA;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing-

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content, except that the Administrator of the EPA may permit reasonable variations; and

(iv) when required by regulation of the Administrator of the EPA to effectuate the purposes of FIFRA, the registration number assigned to the pesticide under FIFRA, and the use classification; and

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by FIFRA-

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(gg) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(hh) "Person" means any individual, partnership, association, fiduciary, any organized group of persons whether incorporated or not, public or private institution, municipality or local government unit, state, territory, or federal governmental agency, or private or public corporation organized under the laws of the Territory or the United States or any other state, territory, or country.

(ii) "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 microorganisms (except viruses, bacteria or other microorganisms on or in living man or other living animals) which is declared to be a pest by the Commissioner.

(jj) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant

or animal life or viruses, except viruses, bacteria or fungi on or in living man or other animals, which the Department declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; however, the term "pesticide" does not include any article that:

(1) Is a "new animal drug" within the meaning of section 201 (w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w));

(2) Has been determined by the Secretary of the United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or

(3) Is an animal feed within the meaning of section 201 (x) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.321(x)) bearing or containing an article covered by paragraph (a) or paragraph (b).

(kk) "Pesticide applicator business" means any person or business which provides services for the application of pesticides, to the land or building of another person within the Territory, for hire or compensation, either entirely or as part of the business. Such person or business is subject to business registration as provided for in this chapter.

(11) "Plant regulator" means any substance or mixture of

substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculates, and soil amendments. Also, the term "plant regulator" shall not be required to include any of such of those nutrients mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

(mm) "Private applicator" means an individual who uses any pesticide which is classified for restricted use for purposes of producing any "agricultural commodity" on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(nn) "Producer and Produce"-- The term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device or

active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of "producer" for the purposes of this chapter and FIFRA.

(oo) "Restricted use pesticide" means any pesticide which, when applied in accordance with its directions for use, warnings, and caution and for uses for which it is registered or for one or more such uses, or in accordance with a wide spread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other person, and which has been classified as a "restricted use pesticide" by the Department or the Administrator of the EPA.

(pp) "State" means the Virgin Islands or a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

(qq) "Subterranean application" means the placement of any pesticide:

- (1) under or adjacent to structures by trenching; or
- (2) under slabs or under or within six inches of foundation walls by rodding, or
- (3) within the interior voids of foundation walls.

(rr) "Supplemental registration means an additional registration with the EPA of a primary registered pesticide product for the purpose of allowing a distributor to market that pesticide product under the distributor's brand name. The supplementally registered product is characterized by having the same composition and labeling claims as the primary registered product and by having a label which bears the registration number of the primary registered product and distributor's company number as a suffix to the registration number.

(ss) "Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.

(tt) "Territory" means the United States Virgin Islands.

(uu) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into the account the economic, social, and environmental costs and benefits of the use of any pesticide.

(vv) "Use" means any act of handling or release of a pesticide, or exposure of man, property, or the environment to a pesticide through acts which include but are not limited to:

- (1) Applying a pesticide, including mixing and loading;
- (2) Handling, transporting, or storing a pesticide or pesticide container;

(3) Disposal actions for a pesticide and/or containers or equipment associated with the pesticide.

(ww) "Weed" means any plant which grows where not wanted.--Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 164.

(xx) "Wildlife" means all living things that are neither human, domesticated, nor pests, including but not limited to mammals, birds, and aquatic life.

§ 803. Powers and duties

The Department shall have and may exercise the following powers and duties:

(a) To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder, and to perform any and all acts necessary to carry out the purposes and requirements of this chapter and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(b) To adopt, modify, repeal, and promulgate, after public comment or hearing and due notice, rules and regulations pertaining to the distribution, possession, handling, use, sale, storage, transportation, and disposal of pesticides and pesticide containers;

(c) To identify and designate specific areas within the Territory that may require limited or prohibited use of pesticides;

(d) To adopt, by regulation, lists of restricted use pesticides, which shall include, but not be limited to those pesticides classified as such by the Administrator of the United States Environmental Protection Agency (EPA) under the provisions of FIFRA;

(e) To determine which pesticides are highly toxic to humans and which pesticides, and quantities of substances contained in pesticides, are injurious to the environment and, accordingly, take such measures and precautions, consistent with the purposes, requirements and provisions of this Act;

(f) To develop a program to educate and inform the public as to the proper application, handling and storage of pesticides and the potential hazards associated with their use and misuse.

(g) To establish and collect fees for the performance by the Department of any and all acts necessary to carry out the purposes and requirements of this chapter, including but not limited to those services related to registration, certification and licensing;

(h) To advise, consult, cooperate, contract and enter into

agreements with agencies of the Federal Government and with agencies of the Territory, interstate agencies and with other persons as necessary to carry out the purposes of this chapter;

(i) To establish a Virgin Islands Pesticide Control Fund to which shall be deposited all fees, penalties and other charges collected pursuant to the administration and enforcement of this Act and which shall be used for the sole purpose of supporting the pesticide program.

(j) To exercise all incidental powers necessary to carry out the purposes of this chapter.

§ 804. Delegation

The functions vested in the Commissioner by this chapter may be delegated by him to such employees of the Department or agents he may from time to time designate.-- Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 166.

§ 805. Classification and certification; renewal; fees

(a) The Commissioner shall establish standards for certification and may classify or subclassify certificates issued under this chapter, and

(b) The Commissioner, by regulation, may establish and collect

fees for any certification services the Department performs in amounts sufficient to cover cost of initial certification of applicators, renewal, recertification and late filing fees, as may be necessary.--Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 166.

§ 806. Certification; renewal; recertification; reciprocity

(a) It shall be unlawful to purchase, possess, or use any "restricted use pesticide" without first complying with the certification requirements of the chapter--Added Oct. 21, 1975, No.3750 Sess. L. 1975, p. 166.

(b) The Commissioner, by regulation, shall require periodic renewal of certification of pesticide applicators.

(c) The Commissioner, by regulation, shall require recertification of certified applicators, as necessary, to insure continued competency.

(d) The Commissioner may waive all or part of the examination requirements of this chapter, on a reciprocal basis with any other state which has substantially the same standards, and may issue certificates on the basis of reciprocity.--Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 168.

§ 807. Private applicators

No "private applicator" shall use any "restricted use pesticide" without first complying with the certification requirements including examination and/or other appropriate demonstration as determined by the Commissioner through regulations as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.

§ 808. Commercial applicators

No "commercial applicator" shall use any pesticide without first complying with the certification requirements including examinations and/or other appropriate demonstration as determined by the Commissioner through regulations as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.

§ 809. Denial, suspension or revocation of certification

(a) The Commissioner may suspend, pending inquiry, for not longer than ten days, excluding weekends and holidays, and, after opportunity for a hearing, may deny, suspend, revoke or modify any certificate of a certified applicator or applicant if the Commissioner finds that the certified applicator or applicant has:

- (1) Refused or, after due notice, failed to comply with any

applicab1e provision of this chapter, any regulation promulgated pursuant thereto, any lawful order issued by the Commissioner, or any provision of FIFRA;

(2) Operated in a faulty, careless, or negligent manner so as to cause harm, injury or damage to persons, property, or the environment, or present a risk of harm, injury or damage thereto;

(3) Applied any pesticides to an agricultural crop where any person other than those engaged in the application is present within the boundaries of the targeted site at the time of application;

(4) Failed to disclose to an agricultural crop grower, owner of land or building, at the time pesticides are applied thereto, any available information regarding the possible harmful effects to human beings or animals and the earliest safe time for any persons or animals to reenter the land or building.

(5) Made false or misleading statements in an application for certification or renewal of certification;

(6) Failed to maintain a bond or policy of insurance as required by this chapter;

(7) Refused or neglected to keep and maintain records required by this chapter or FIFRA or failed to make reports as required by this chapter;

- (8) Made false or fraudulent records, invoices, or reports;
- (9) Made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the Department or the EPA;
- (10) Stored or disposed of pesticides or pesticide containers by means other than those prescribed on the labeling or by the provisions of this chapter;
- (11) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land or in a building;
- (12) Impersonated any inspector or official that is or would be duly authorized by the Department or the provisions of this chapter;
- (13) Refused or neglected to comply with any limitations or restrictions on a duly issued applicator certificate;
- (14) Failed to pay the initial or renewal certification fee when due and continued to operate or apply pesticides;
- (15) Aided or abetted a certified or uncertified person to evade the provisions of this chapter, conspired with a certified or uncertified person to evade the provisions of this chapter, or allowed their certificate to be used by another person;
- (16) Operated faulty or unsafe equipment;

(17) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(18) Made false or misleading statements in regard to, or failed to report, any accident or incident, in accordance with the provisions of section 819 of this chapter.

(19) Failed to provide authorized representatives of the Department with records required by this chapter or with free access for inspection and sampling of pesticides, areas treated with pesticides, and equipment used in their application; or

(20) Failed to demonstrate that he or she has sufficient knowledge and experience concerning the proper use and application of pesticides.

(b) The above enumerated acts or omissions shall also be and are hereby declared to be violations of this chapter and subject to the civil and criminal penalties prescribed by section 825 of this **chapter.**

§ 810. Financial responsibility

The Commissioner shall not issue a certificate to either a private or commercial applicator until the applicant has furnished evidence of financial responsibility consisting of either a surety bond or a liability insurance policy or certification thereof

protecting the environment, property and persons who may suffer legal damages as a result of the pesticide operations of the applicant.

(1) The amount of the surety bond or liability insurance may be established by regulation and may require different amounts of coverage for different classifications under this chapter, but shall not be less than one hundred thousand dollars (\$100,000.00) for property and/or environmental damage and not be less than one hundred thousand dollars (\$100,000.00) for bodily injury and shall be maintained at all times during the certification period.

(2) Should the surety furnished become unsatisfactory, the applicant shall notify the Department in writing of the deficiency within forty eight (48) hours and immediately execute a new bond or issuance and if he fails to do so, the Commissioner shall revoke his certification.

(3) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or property, personal or real, of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Department.--Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 167.

§ 811. Records of certified applicators

The Commissioner may by regulation require commercial and private applicators to maintain records for a period of not more than three years and submit reports with respect to the purchase, possession, use, application, storage, transportation, or disposal of pesticides, or pesticide containers.--Added Oct. 21, 1975, No. 3750, Sess L. 1975, p. 167.

§ 812. Inspection of equipment

The Commissioner shall require that inspection of equipment used for application of pesticides be conducted periodically and may require repairs or other modifications or changes before its further use for pesticide application.--Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 168.

§ 813. Registration; renewal; fees; imported pesticides; resident agent

(a) No person shall possess, use, distribute, sell, barter, or offer for sale within the Territory or deliver for transportation or transport in intrastate commerce, or between points within the Territory through any point outside the Territory any pesticide unless it is properly registered with the EPA.

(b) The Commissioner may require every pesticide which is

possessed, used, distributed, sold, or offered for sale or barter within the Territory, or delivered for transportation or transport in intrastate commerce, or between points within the Territory through any point outside the Territory be registered with the Department and renewed periodically; and may establish, by regulation, criteria and conditions for registration, renewal, and denial or revocation of registration of any pesticide.

(c) The Commissioner, by regulation, may establish and collect a registration and renewal fee for each pesticide required to be registered, and prescribe a late filing fee for failure to renew within the time period provided.

(d) The Commissioner may, whenever it is deemed necessary in the proper administration of this chapter, require the registrant to submit the complete formula of a pesticide, including active and inert ingredients, evidence of efficacy and the safety record or information pertaining thereto, and any other relevant data and information that may be requested.

(e) Imported pesticides

(1) Any pesticide which is produced in a foreign country and is imported into the United States Territory must be registered with EPA.

(2) Any pesticide which is imported and is not registered with EPA or this Department shall be returned to the manufacturer

or disposed of under the supervision of the Department.

(3) The cost incurred by the Department for either return or disposal of the pesticide at the time of discovery shall be reimbursed to the Department by the owner or custodian of the subject pesticide within thirty (30) days of notification that such action was taken.

(f) The Commissioner may require that each pesticide, or device, introduced, distributed, sold or offered for sale or barter, or offered for shipment, receipt, delivery or offered for delivery or use in the Territory must have a designated agent or representative residing in the Territory.

§ 814. "Restricted use pesticides"; classification and restrictions

(a) The Commissioner may classify a pesticide as a "restricted use pesticide" if the pesticide, when applied in accordance with its directions for use, warnings, and cautions, for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment or injury to the applicator or other persons. In addition, the Department shall classify a pesticide as a "restricted use pesticide" if such classification has been made by the Administrator of the EPA.

(b) The Department shall adopt regulations which govern the purchase and use of "restricted use pesticides". Such regulations may prescribe the area, time, amount, and other conditions and restrictions deemed necessary under which a "restricted use pesticide" may be used to avoid injury to any person(s) or damage to property or the environment.

(c) "Restricted use pesticides" may be purchased or used by any person who holds a valid applicator's certificate issued in accordance with the provisions of this chapter.

§ 815. Dealer licensing; renewal; fees; denial, suspension and revocation of license

(a) Each person holding or offering for sale, selling, or distributing "restricted use pesticides" within the Territory shall obtain a dealer's license from the Department, to be renewed periodically.

(b) The Commissioner, by regulation, may establish and collect a dealer licensing and renewal fee and prescribe a late filing fee for failure to renew within the time period provided.

(c) A record of each sale of a "restricted use pesticide" shall be maintained by the licensed dealer for a period of one (1) year.

(d) The Department may deny, suspend, or revoke the license of any person who violates any provision of this chapter or regulation promulgated hereunder.

§ 816. Misbranding; labeling; false advertisement

(a) It shall be unlawful to distribute, sell, or offer for sale within the Territory or deliver for transportation or transport in intrastate commerce or between points within the Territory through any point outside the Territory any pesticide which is adulterated or misbranded, or any device which is misbranded.

(b) It shall be unlawful for any person to detach, alter, deface, or destroy in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this chapter.

(c) It shall be unlawful for any person to engage in or disseminate any false advertisement regarding the application, use, safety, or performance of any pesticide.

§ 817. Pesticide applicators business registration; renewal; fees; denial, suspension and revocation of registration

(a) No person shall cause, allow, own, engage in, operate or permit the operation of a pesticide applicator business as defined

by this chapter in the Territory without first registering such business with the Department, unless, by regulation, such business is exempt from registration.

(b) The Commissioner, by regulation, may establish and collect a registration and renewal fee and prescribe a late filing fee for failure to renew within the time period provided.

(c) Every business shall be required, by regulation, to keep adequate records.

(d) The Commissioner may deny, suspend, revoke, or modify a pesticide applicator business registration for any violation of the provisions of this chapter.

(e) A pesticide applicator business registration shall not be transferable.

§ 818. Storing, handling, using and disposal of pesticides and containers

(a) No person shall handle, use, transport, store, display, distribute or dispose of any pesticide in such a manner as to endanger any person(s) or the environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with such pesticide, or in any manner contrary to the provisions of this chapter or regulations promulgated thereto.

(b) No person shall use, dispose of, discard, or store any pesticide or pesticide container in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply, waterway or waterfront, or in any manner contrary to the provisions of this chapter or regulations promulgated thereto.

(c) No person shall use any pesticide, including a "restricted use pesticide", or dispose of any pesticide containers in a manner other than that stated in the labeling or on the label or as specified by the Department or the EPA.

(d) The Department shall adopt regulations:

(1) Concerning the handling, transport, storage (which may include security precautions), display or distribution of any pesticide.

(2) Concerning the disposal of any pesticide and pesticide containers.

(3) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to the type of construction, strength, and/or size to alleviate danger of spillage, breakage, or misuse.

§ 819. Report of pesticide accidents; pesticide exposure management

(a) any person who handles, uses, possesses, applies,

distributes, sells, transports, stores, or disposes of pesticides shall report all pesticide accidents or incidents that may cause damage to property or the environment or injury or illness to any person(s), to the Department and any other designated agency immediately, but in no event shall the period of notification exceed twenty four (24) hours.

(b) The Commissioner may adopt regulations regarding exposure to and pesticide usage in public or private areas.

§ 820. Subpoenas

The Commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents and records anywhere in the Territory in any hearing affecting the authority or privilege granted under the provisions of this chapter.-- Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 168.

§ 821. Stop sale, stop use, removal, or embargo orders

(a) When a pesticide or device is being held, used, distributed, sold or offered for sale in violation or suspected violation of any of the provisions of this chapter, or any requirements of FIFRA, the Commissioner or his designee may issue a stop sale, stop use, removal, or embargo order, in writing, to the owner or custodian of

any such pesticide or device. In such case, he shall give the owner or custodian prompt notice of such action and afford the owner or custodian the opportunity for an expedited hearing pursuant to the provisions of this chapter.

(b) The owner or custodian of the pesticide or device subject to an order issued pursuant to (a) above shall comply with the requirements of such order until the provisions of this chapter have been complied with, and the Department has issued a release, in writing, to the owner or custodian of the pesticide or device.

§ 822. Administrative Proceedings

(a) Whenever the Commissioner has reason to believe that a violation of any provision of this chapter or of any regulation promulgated thereunder or of any order issued pursuant to the provisions of this chapter, the Commissioner may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter, regulation, or order alleged to be violated, the facts alleged to constitute a violation thereof, and may contain an order that necessary corrective action be taken within a reasonable period of time. Any such order for corrective action shall become effective upon issuance. Any person or persons named therein may request in

writing, within thirty (30) days after the date such notice and/or order is served, a hearing before the Commissioner. Such request shall not act as a stay of the Commissioner's order unless so ordered and directed by the Commissioner or by a court.

(b) The Commissioner shall afford an opportunity for a hearing to the alleged violator or violators at a time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing the Commissioner shall make findings of fact and conclusions of law and enter such order as in his opinion will best further the purposes of this chapter. The Commissioner, prior to entering his order on the basis of such record and recommendations, shall provide an opportunity to the parties to submit for his consideration exceptions to the recommended findings of facts and conclusions of law and supporting reasons for such exceptions, such submission to be due within ten (10) days after the hearing. Written notice of such order shall be served on the alleged violator or violators and shall become final and binding on all parties unless appealed to the appropriate court as provided for in section 824.

(c) Any person who has had a certificate, license, or registration denied, modified, suspended, or revoked shall be afforded an opportunity for a hearing as provided in subsection (a)

of this section in connection therewith upon written application to the Commissioner within thirty (30) days after receipt of notice from the Commissioner of such denial, modification, suspension or revocation.

(d) The Commissioner may provide an expedited hearing to an aggrieved party, if specifically requested by the alleged violator or violators and if circumstances so warrant.

(e) Civil penalties may be assessed administratively by the Commissioner to any person who violates any provision of this chapter.

§ 823. Enforcement; inspection and sampling; search and seizure; injunctions

(a) For the purpose of carrying out the provisions of this chapter, the Commissioner, or designee, may enter upon any public or private premises in a lawful manner at reasonable times.

(b) The Commissioner, or designee, is authorized and directed to sample, test, inspect, and make analyses of pesticides sold, offered for sale, distributed, or used within the Territory, at a time and place and to such an extent as he may deem necessary, to determine whether such pesticides are in compliance with the provisions of this chapter, regulations promulgated thereto, and

the provisions of the pesticide label or labeling.

(c) If denied access to any premises, he may apply to any court of competent jurisdiction for a search warrant.

(d) Any pesticide or device not in compliance with the provisions of this chapter shall be subject to seizure on application by the Commissioner to any court of competent jurisdiction. In the event the court finds the pesticide or device to be in violation of this chapter and orders it condemned, it shall be disposed of as the court may direct, provided, that in no instance shall the disposition of said pesticide or device be ordered by the court without first giving the owner or custodian an opportunity to apply to the court for release of said pesticide or device or for permission to process or relabel it to bring it into compliance with this chapter.

(e) The Commissioner may request that the Attorney General commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction, for any violation of any provision of this chapter, rule, regulation, or order issued hereunder, in the court of the district in which such violation occurs or is about to occur.

§ 824. Review

Any person aggrieved by any action, decision, or order of the Commissioner may obtain a review thereof by filing in the Territorial Court within thirty (30) days after the date of notice of the action, decision or order, a written petition praying that the action of the Commissioner be set aside, which petition shall include such information as required by the applicable rules of the Territorial Court.--Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 168.

§ 825. Penalties

(a) Civil Penalties

(1) Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this chapter, rule, regulation, or order issued hereunder may be assessed a civil penalty of not more than \$5,000 for each offense.

(2) Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter, rule, regulation, or order issued hereunder may be assessed a civil

penalty of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

(3) No civil penalty shall be assessed unless the person charged with a violation of a provision of this chapter, rule, regulation or order has been given notice and opportunity for a hearing on such violation.

(4) In determining the amount of the penalty, the Commissioner or the court may consider the following; degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefitted from by none compliance, whether the violation was committed knowingly, and the compliance record of the violator.

(5) In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Commissioner may determine, the Commissioner shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate court.

(b) Criminal Penalties

(1) Any registrant, dealer or applicant for the same who knowingly violates any provision of this chapter, rule, regulation, or order issue hereunder shall be fined not more than \$50,000 or imprisoned for not more than five (5) years, or both.

(2) Any commercial applicator, or any other person not

described in subparagraph (1) who distributes or sells pesticides or devices, who knowingly violates any provision of this chapter, rule, regulation, or order issue hereunder shall be fined not more than \$25,000 or imprisoned for not more than two (2) years, or both.

(3) Any private applicator or other person not included in paragraphs (1) or (2) who knowingly violates any provision of this chapter, rule, regulation, or order issue hereunder shall be guilty of a misdemeanor and shall upon conviction be fined not more than \$1,000, or imprisoned for not more than six (6) months, or both.

§ 826. Cooperative agreements

The Commissioner may cooperate, receive grants-in aid and enter into agreements with any agency of the Federal Government, or this Territory or with any agency of another State, to obtain assistance in the implementation of this chapter, or in the enforcement of the Federal Insecticide, Fungicide and Rodenticide Act, as amended.--
Added Oct. 21, 1975, No. 3750, Sess. L. 1975, p. 168.

History

References in text. The Federal Insecticide, Fungicide and Rodenticide Act, referred to in this section, has been superseded by the Federal Environmental Pesticide Control Act of 1972, as amended, which is classified to 7 U.S.C. § 136 et seq.

§ 829. Virgin Islands Pesticide Control Fund