

## Title 3 – Agriculture

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### 3-361. Definitions

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the division.
2. "De minimis violation" means a violation which, although undesirable, has no direct or immediate relationship to safety, health or property damage. Repeated de minimis violations constitute a nonserious violation.
3. "Division" means the environmental services division of the Arizona department of agriculture.
4. "Nonserious violation" means a violation that may have had a direct or immediate relationship to safety, health or property damage, but which does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health or property damage risk in which case the violation is de minimis.
5. "Paraquat" means the pesticide dimethyl-dipyridinium dichloride.
6. "Pesticide" means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment.
7. "Pesticide use" means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers.
8. "Restricted use pesticide" means a pesticide classified as such by the United States environmental protection agency.
9. "Serious violation" means a violation of this article or a rule adopted under this article which produces a substantial probability that death or serious physical harm could result, unless the

violator did not, and could not with the exercise of reasonable diligence, know of such safety or human health risk, in which case the violation is nonserious.

### 3-362. Powers and duties

A. The director is responsible for administering this article and shall:

1. Conduct investigations, on complaint and on his own initiative, regarding violations of this article and compile information necessary to administer this article.
2. Take timely action necessary to enforce this article against violators including seeking injunctive relief and other penalties and sanctions authorized by this article.
3. Publish a list of pesticides, by common and proprietary names, which the director determines to be highly toxic, odoriferous, such as profenofos, sulprofos, def and merphos and other pesticides with similar odoriferous characteristics, or otherwise appropriate for inclusion and shall include in that list paraquat and gramoxone.
4. Submit to the United States environmental protection agency a state plan for issuing, monitoring, and controlling experimental use permits pursuant to section 5 of the federal insecticide, fungicide, and rodenticide act (7 United States Code section 136c(f)).
5. Develop systems and procedures to encourage and ensure public contact with the department, which may include:
  - (a) A telephone hotline for pesticide complaints, which is operated and publicized by the department.
  - (b) Outreach and education programs to inform the general public and solicit input regarding pesticide use and public health, safety and the environment.

B. The director may enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this article.

### 3-363. Rules

The director shall adopt rules to regulate pesticides which shall include provisions to:

1. Administer and implement this article.
2. Prescribe measures to control, monitor, inspect and govern pesticide use.
3. Prohibit or restrict pesticide use.
4. Restrict the areas in which pesticide use may occur.
5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including continuing education requirements and meet financial responsibility standards.
6. Prescribe appropriate record keeping and reporting requirements regarding pesticide use, except that the record keeping and reporting requirements for growers and certified private applicators who apply pesticides shall be equivalent to, but not more stringent than, the requirements prescribed under the federal insecticide, fungicide and rodenticide act (61 Stat. 163) and the food, agriculture, conservation and trade act of 1990 (P.L. 101-624; 104 Stat. 3359).

7. Prohibit pesticide use which is inconsistent with the pesticide label as required under the federal insecticide, fungicide and rodenticide act (61 Stat. 163).
8. Exempt from regulation under this article pesticide use that is regulated in title 32, chapter 22.
9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years.
10. Charge and collect the following fees for each permit, license and certification under this article:
  - (a) Not to exceed twenty dollars per year for a grower permit.
  - (b) Not to exceed one hundred dollars per year for a seller permit.
  - (c) Not to exceed one hundred dollars per year for a custom applicator license.
  - (d) Not to exceed fifty dollars per year for a pilot license.
  - (e) Not to exceed fifty dollars per year for a pest control advisor license.
  - (f) Not to exceed twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.
  - (g) Not to exceed fifty dollars per year for restricted use certification.
11. Establish a nonexclusive list of acts and omissions that constitute serious, nonserious and de minimis violations of this article.
12. Establish a system of administrative penalties and fines for violations of this article and any rules adopted under this article. Under this system:
  - (a) Violators shall be assessed a number of points for each violation, depending upon such factors as:
    - (i) Potential and actual consequences of the violation on public and worker health and safety and the environment.
    - (ii) Wrongfulness of the conduct.
    - (iii) Degree of culpability of the violator.
    - (iv) Duration of the violation.
    - (v) Prior violations or citations.
  - (b) Penalties shall be assessed depending upon the number of points accrued by the violator.

#### 3-363.01. Reporting requirements; interagency agreement

- A. The director of the Arizona department of agriculture may enter into an interagency agreement with the department of environmental quality to allow the director to collect the pesticide reports required pursuant to section 49-305, subsection B.
- B. Rules adopted by the director pursuant to section 3-363, paragraph 6 shall not prevent the director from collecting the pesticide reports required pursuant to section 49-305, subsection B as a part of any interagency agreement entered into with the department of environmental quality.

#### 3-364. Inspection powers; notice

- A. The director may enter at reasonable times into or on or through any public or private property for the purpose of ascertaining compliance or noncompliance with any rules or orders adopted or issued under this article. If practicable, and if notice will not inhibit the director's

ability to enforce this article, the director or the director's agent shall notify the owner, operator or lessee of the property when entering on the property.

B. Within five days after the inspection the director shall inform any alleged violator in writing if the director anticipates an enforcement action. The notice of a potential enforcement action shall indicate the nature of the alleged violation and the last possible date for issuing a citation under section 3-368, subsection F. If in the course of an investigation the department identifies any additional alleged violator, the director shall inform the additional alleged violator within five days of initiating the new investigation. The notice of a potential enforcement action against the additional alleged violator shall indicate the nature of the alleged violation and the last possible date for issuing a citation or notice of de minimis violation under section 3-368, subsection F. If the director does not issue a notice of a potential enforcement action, the director shall inform the alleged violator within fifteen days after the inspection that the director does not anticipate any enforcement action.

### 3-365. Buffer zones

A. The odoriferous pesticides profenofos, sulprofos, def and merphos and other pesticides with similar odoriferous characteristics shall not be applied within one-fourth mile of a school, a day care center, a health care institution, a child care group home as defined by section 36-897 or at least twenty-five residences adjoining the field to be sprayed, except by soil injection.

B. Highly toxic pesticides or paraquat shall not be applied within four hundred feet of a health care institution, except by soil injection.

C. Highly toxic pesticides or paraquat shall not be applied in liquid form, except by soil injection, within one hundred feet by aircraft or within fifty feet by ground equipment of at least twenty-five residences adjoining the field to be sprayed. Highly toxic pesticides shall not be applied in dust form by aircraft within three hundred feet of at least twenty-five residences adjoining the field to be sprayed.

D. Highly toxic pesticides and paraquat shall not be applied within one-fourth mile of schools, child care group homes, or day care centers. However, highly toxic pesticides and paraquat may be applied within one-fourth mile of schools, child care group homes, and day care centers unless authorized activities at the school, child care group home or day care center are scheduled to occur before the reentry time period assigned to the pesticide by provisions of the product label elapses. A responsible individual at a school or a day care center shall be notified of the application of pesticides, other than highly toxic pesticides or paraquat, by aircraft during daylight hours.

E. Nothing in this section permits the application of pesticide in such a way as to cause drift within the grounds of a residence, school, health care institution, child care group home, or day care center, but compliance with this section and the requirements of the pesticide label establishes a presumption of compliance with this subsection.

F. For the purposes of this section, distances shall be measured from the property boundary of a school, residence, day care center, child care group home, or health care institution closest to the field to be sprayed to the area of the field that is to be sprayed.

### 3-366. Pesticide management areas

A. The director shall designate pesticide management areas. Pesticide management areas may be urban areas that are adjacent to farmlands and have a history of concerns known by the department regarding nearby aerial pesticide applications. The director may adopt rules for designating pesticide management areas.

B. If possible at least twenty-four hours before applying a pesticide listed by the director under section 3-362, subsection A, paragraph 3 by aircraft in a pesticide management area the applicator shall notify the department. In any event, every reasonable attempt shall be made to notify the department before every application of pesticide in a pesticide management area.

### 3-367. Private right of action

A. Except as provided in subsection B of this section, any person having an interest that is or may be adversely affected may commence a civil action in superior court on the person's own behalf:

1. Against any person, including this state and any political subdivision of this state, who is alleged to be in violation of this article or of an order, permit or rule adopted or issued pursuant to this article other than a de minimis violation. The court shall have jurisdiction to enforce the provision, order, permit or rule and to apply any appropriate civil penalty under section 3-370.

2. Against the director where there is alleged a failure of the director to perform any act or duty under this article that is not discretionary with the director. The court shall have jurisdiction to order the director to perform such act or duty.

B. No action may be commenced in either of the following cases:

1. Before sixty days after the plaintiff has given notice of the alleged violation to the department and to any alleged violator or if, within the sixty days, the director begins and diligently performs the act or duty sought to be compelled.

2. If the attorney general has commenced and is diligently prosecuting an action before the department under section 3-368 or a civil action in the superior court of this state to require compliance with the permit, order, rule or provision of this article.

C. In any action under this section:

1. The director, if not a party, may intervene as a matter of right.

2. The plaintiff has the burden of proof.

D. The court, in issuing any final order in any action brought pursuant to this section, may:

1. Award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate and, in addition, to the defendant in the case of a frivolous action.

2. Provide for injunctive or other equitable relief or assess civil penalties that could have been administratively assessed. Any monies collected as civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. This section shall not be construed to abrogate the provisions of chapter 1, article 2 of this title.

#### 3-367.01. Report of loss, damage or nonperformance; effect of failure to file

A. A person suffering loss, damage or nonperformance on any agricultural, ornamental or silvicultural crop resulting from the use or application by others of a pesticide or a method or device for applying pesticides shall file with the department and with the person or persons who are alleged to have caused the loss, damage or nonperformance a written report as prescribed by subsection B within the following times:

1. For a growing crop, within thirty days after the damage is noticed or before fifty per cent of the affected portion of the crop is harvested.
2. For a crop if damage is not visible during growing, within fifteen working days after the damage was visible at harvest.
3. For a crop if damage was not visible during growing or at harvest and the crop is sold by the farmer, within fifteen working days after the farmer is notified of the damage by the buyer.

B. The report shall include, so far as is known to the claimant:

1. The name and address of the claimant.
2. The type, kind and location of property allegedly injured or damaged.
3. The date the alleged loss, damage or nonperformance occurred.
4. The name of the person allegedly responsible for the loss, damage or nonperformance.
5. The suspected pesticide or action that caused the loss, damage or nonperformance.
6. The name of the owner or occupant of the property on which the loss, damage or nonperformance occurred.

C. The failure to report damage as required under this section is prima facie evidence that no loss occurred.

### 3-367.02. Notification by beekeepers of bees located in a commercial agricultural area

A. Before locating bees on an apiary site, the owner of the bees shall obtain the landowner's or lessee's permission and notify in writing persons engaged in commercial agriculture on whose land the bees may forage. The notice shall include the beekeeper's address and telephone number, the location of the hives within a quarter section and the exact dates that the bees will be in the area.

B. After receiving the notice required by subsection A, the person who engages in commercial agriculture shall inform the beekeeper, before application, when a bee sensitive pesticide will be applied to the area in which the bees are foraging.

C. A failure by the beekeeper or the owner of the bees to notify the person or persons who engage in commercial agriculture as provided by subsection A constitutes prima facie evidence that no loss occurred due to a pesticide application and no pesticide violation related to bees has occurred.

### 3-368. Enforcement; consultation with attorney general; citations and notices of violation

A. The director is responsible for enforcing this article and shall receive and shall promptly and efficiently process all complaints regarding pesticide use. The director shall furnish to the attorney general a copy of each complaint filed under this article and copies of all investigative reports, citations, hearing notices and other action or pending action documents. Before a final disposition of a pesticide complaint the director and the attorney general shall jointly review

the case to ensure that proper action is taken and to determine whether additional action or prosecution is required.

B. The director shall notify all persons who submit complaints alleging violations of this article or rules adopted pursuant to this article of the progress, status and disposition of their complaints.

C. If the director investigates an alleged violation under this article and rules adopted pursuant to this article and determines that the violation did not result in any adverse health effects or property damage, the director may issue a letter of warning. A letter of warning issued pursuant to this subsection is not subject to section 3-363, paragraph 12.

D. If the director following an inspection or investigation determines that a de minimis violation occurred, the director shall issue a notice of de minimis violation and maintain a record of the violation for three years. A person receiving a notice of de minimis violation may request a hearing pursuant to title 41, chapter 6, article 10.

E. If the director following an inspection or investigation determines that a nonserious or serious violation occurred, the director shall issue a written citation. The citation shall be issued within twenty days for a nonserious violation or within ten days for a serious violation. Each citation shall contain the following:

1. A particular description of the nature of the violation, including a reference to the provision of this article.
2. A reasonable time to abate the violation or take appropriate action.
3. A notice of the right to a hearing pursuant to title 41, chapter 6, article 10.

F. No citation or notice of de minimis violation may be issued after the expiration of six months from the date of the inspection which produced evidence of the violation. If in the course of an investigation the department identifies any additional alleged violator, the department may investigate the additional alleged violator. No citation or notice of de minimis violation may be issued after the expiration of six months from the date any additional alleged violator is identified by the department.

### 3-370. Civil penalty; criminal violation; classification

A. A person who, after a hearing, is found to have caused a nonserious violation of any provision of this article or any rule or order issued or adopted pursuant to this article is subject to probation or suspension, revocation, nonrenewal or denial of a permit, license or certification. Additionally, a person may be subject to a civil penalty of not to exceed five hundred dollars for each nonserious violation.

B. A person who, after a hearing, is found to have caused a serious violation of any provision of this article or any rule or order issued or adopted pursuant to this article is subject to probation or suspension, revocation, nonrenewal or denial of a permit, license or certification. Additionally, the person may be subject to a civil penalty of not more than ten thousand dollars for each serious violation.

C. In addition to civil penalties prescribed by this section, a person who knowingly commits:

1. A nonserious violation of this article is guilty of a class 1 misdemeanor.
2. A serious violation of this article is guilty of a class 6 felony.

D. Actions to recover penalties under subsection C shall be brought by the attorney general in the name of this state in the superior court in the county in which the violation occurred or in a county in which the department maintains an office.

### 3-371. Cease and desist order

The director of the Arizona department of agriculture or the director of the department of health services may issue a cease and desist order for not to exceed twenty-four hours, or until an administrative hearing is held, to terminate the application of pesticides if either or both find that an imminent and serious hazard to the public health and safety exists. The order is immediately effective. The order shall also set a time, but not later than twenty-four hours after the date and time of the order, for the hearing on the order. If evidence produced at the hearing shows that the order was unreasonable and that public health and safety were not threatened or that conditions have changed making the order unnecessary, the order shall be revoked. Except as provided in section 41-1092.08, subsection H, a party to the final administrative decision on the cease and desist order may obtain judicial review pursuant to title 12, chapter 7, article 6.

### 3-372. Emergency use of pesticides

During a time when a person's license, permit, certificate or registration is under suspension or revocation or an order has been issued, a person requiring the application of a pesticide may apply to the director for emergency relief. If the director determines that an emergency exists which requires an application of pesticide, the director may authorize an application of pesticide under supervision and under conditions prescribed by the director. The cost of such supervision shall be borne by the person whose permit or license is suspended or revoked or on whom an order has been issued. The director shall adopt guidelines on what constitutes an emergency.

### 3-373. Annual pesticide report

The associate director shall submit an annual report to the director, the governor and the legislature on or before October 1 each year containing the following information for the preceding fiscal year relating to the division's activities under this article:

1. The number of full-time employee positions in the division that are authorized and filled for regulating pesticides as of June 30.
2. A brief summary of rules proposed or adopted during the reporting period.
3. The number of persons having each type of permit, certificate, license and registration issued as of June 30.
4. The number of persons whose permits, certificates, licenses or registrations were revoked, suspended or otherwise altered in status with brief statements of the reasons for the revocation, suspension or alteration.
5. The number of written complaints and other communications received by the division which allege a violation of this article or a rule adopted under this article.

6. A summary, by specific category, of the substance of the complaints and communications referred to in paragraph 5 of this section and, for each specific category, the responses or dispositions of those complaints.
7. A compilation, based upon reports filed in compliance with rules adopted pursuant to section 3-363, of the amount, frequency and type of pesticides used in this state by specific categories of acute toxicity and including but not limited to identification of pesticides which:
  - (a) Are known by the administrator of the federal environmental protection agency to require special application procedures to protect endangered species or which contain ingredients or produce degradation products that are carcinogenic, mutagenic or teratogenic.
  - (b) Are extremely hazardous substances listed pursuant to section 302 of the superfund amendments and reauthorization act or title III of the clean air act as amended.
  - (c) Have extended reentry intervals of greater than forty-eight hours for worker protection.
8. Based on reports received from pesticide users and reports prepared pursuant to paragraphs 4, 5 and 6 of this section, specific recommendations regarding statutory or administrative changes to improve pesticide regulation in this state considering environmental and public health and safety factors.
9. Any other information which the associate director believes is useful in reviewing the division's activities.

#### 3-374. [Availability of information to the public](#)

- A. Any records, reports or information obtained from any person under this article, including records, reports or information obtained or prepared by the department, shall be available to the public, except that the information, or a particular part of the information, shall be considered confidential on either:
  1. A showing, satisfactory to the director, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person.
  2. A determination by the attorney general that disclosure of the information, or a particular part of the information, would be detrimental to an ongoing investigation by the director.
  3. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this article in superior court.
- B. Notwithstanding subsection A, the following information shall be available to the public:
  1. The name and address of any permit applicant or permittee.
  2. Information contained in or derivable from the pesticide label or the relevant material safety data sheet.
- C. Notwithstanding subsection A, the director may disclose any records, reports or information obtained from any person under this article, including records, reports or information obtained by the department, to:
  1. Other state employees concerned with administering this article or if relevant to any administrative or judicial proceeding under this article.
  2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with applicable federal law.

### 3-375. Preservation of rights

This article shall not be construed to abridge or alter causes of action or remedies under the common law or statutory law, criminal or civil, nor shall any provision of this article, or any act done by virtue of this article, be construed so as to estop any person, this state or any political subdivision of this state, or owners of land having groundwater or surface water rights or otherwise, from exercising their rights or, under the common law or statutory law, from suppressing nuisances or preventing injury due to pesticide use.

### 3-376. Discrimination prohibited

A. No person may intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against any person because that person has filed a complaint or instituted, or caused to be instituted, a proceeding under this article or has testified or is about to testify in such a proceeding or has exercised, on behalf of himself or others, any right or protection afforded by this article.

B. A person who believes he has been discriminated against in violation of this section may, within one hundred eighty days after the violation, file a complaint with the attorney general. On receipt of the complaint, the attorney general may investigate as he deems appropriate. If, after investigation, the attorney general determines that this section has been violated, he may bring an action in superior court against any alleged violator.

C. In an action brought under this section, the court has jurisdiction to restrain a violation and order any appropriate relief, including rehiring or reinstatement of a person, with back pay and double damages.

### 3-377. Local regulation

The provisions of this article and the rules which implement this article are of statewide concern and are not subject to further local regulation.