

**80-8-101. Short title.** This chapter may be cited as the "Montana Pesticides Act".

**History:** En. Sec. 1, Ch. 403, L. 1971; R.C.M. 1947, 27-213.

**80-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

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

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests. The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) applies if the preparation is highly toxic to man, determined as provided in [80-8-105](#); and if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "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, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

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

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health and

human services; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

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

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

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

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally

considered a pest or that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant that grows where not wanted.

**History:** En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973; amd. Sec. 120, Ch. 218, L. 1974; amd. Sec. 1, Ch. 462, L. 1977; R.C.M. 1947, 27-216; amd. Sec. 1, Ch. 51, L. 1991; amd. Sec. 78, Ch. 10, L. 1993.

**80-8-103. Purpose.** The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide

sufficient quantity of quality foods and for the protection of humans from vectorborne diseases. However, the protection of man and his essential needs--water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous--is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

**History:** En. Sec. 2, Ch. 403, L. 1971; R.C.M. 1947, 27-214.

**80-8-104. Administration.** This chapter shall be administered by the department.

**History:** En. Sec. 3, Ch. 403, L. 1971; R.C.M. 1947, 27-215.

**80-8-105. Rules.** (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of [80-8-202](#);

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which must be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

- (m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;
- (n) establishing registration procedures for devices, with a fee not to exceed \$5 per type of device, specifying classes of devices to be registered and providing for additional requirements;
- (o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;
- (p) establishing procedures for implementing and administering the civil penalties under [80-8-306](#);
- (q) establishing fees for training courses and materials;
- (r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;
- (s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.
- (t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.
- (3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must encompass all reasonable factors that the department considers necessary to prevent damage or injury to:
- (i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;
  - (ii) the environment;
  - (iii) plants, including forage plants;
  - (iv) wildlife;
  - (v) fish and other aquatic life.
- (b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.
- (4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under [80-8-106](#) must be held within the above period to determine whether the order or rule should be adopted by the department.
- (5) All rules and orders issued by the department must be made in writing and must be available at the department for public inspection. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department must include and be based upon written findings of fact. A copy of any rule or order certified by the department must be received in evidence in all courts of this state with the same effect as the original.

**History:** En. Sec. 22, Ch. 403, L. 1971; amd. Sec. 123, Ch. 218, L. 1974; amd. Sec. 12, Ch. 462, L. 1977; R.C.M. 1947, 27-234; amd. Sec. 1, Ch. 633, L. 1983; amd. Sec. 27, Ch. 668, L. 1989; amd. Sec. 1, Ch. 465, L. 1993.

**80-8-106. Administrative procedures.** The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

**History:** En. Sec. 23, Ch. 403, L. 1971; amd. Sec. 124, Ch. 218, L. 1974; amd. Sec. 13, Ch. 462, L. 1977; R.C.M. 1947, 27-235.

**80-8-107. Notice -- public information.** (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(b) "Public building" means a building that is owned or leased by a public agency, as defined in [18-1-101](#), and that is open to the public, including but not limited to:

- (i) a building that is used for educational, office, or institutional purposes; or
- (ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to [80-8-212](#) for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

- (a) be permanently displayed if the pesticide is applied on a regular basis;
- (b) be posted at the time of the application if the pesticide is not applied on a regular basis;
- (c) contain the name of the pesticide applied; and
- (d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person.

**History:** En. Sec. 27, Ch. 403, L. 1971; R.C.M. 1947, 27-239; amd. Sec. 28, Ch. 668, L. 1989; amd. Sec. 1, Ch. 454, L. 1997.

**80-8-108. Advisory council.** (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of \$25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in [2-18-501](#) through [2-18-503](#).

(3) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.

**History:** En. Sec. 28, Ch. 403, L. 1971; amd. Sec. 126, Ch. 218, L. 1974; amd. Sec. 14, Ch. 439, L. 1975; amd. Sec. 14, Ch. 462, L. 1977; R.C.M. 1947, 27-240.

**80-8-109. Educational programs.** (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of a state agency or of the Montana cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section.

**History:** En. Sec. 29, Ch. 403, L. 1971; R.C.M. 1947, 27-241; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 633, L. 1983; amd. Sec. 1, Ch. 219, L. 1985; amd. Sec. 1, Ch. 181, L. 1989.

**80-8-110. Cooperation with other agencies.** (1) The department may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department and the department of environmental quality shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the

mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to wastes that are toxic, radioactive, corrosive, flammable, irritants, or strong sensitizers or that generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

**History:** En. Sec. 30, Ch. 403, L. 1971; amd. Sec. 15, Ch. 462, L. 1977; R.C.M. 1947, 27-242; amd. Sec. 7, Ch. 529, L. 1981; amd. Sec. 328, Ch. 418, L. 1995.

**80-8-111. Waste pesticide and pesticide container collection, disposal, and recycling program.** (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a license or permit fee under [80-8-203](#), [80-8-205](#), [80-8-207](#), [80-8-209](#), or [80-8-213](#) with a credit against the fees levied pursuant to [80-8-105\(2\)\(s\)](#), provided that:

(a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or operator under [80-8-203](#), [80-8-205](#), [80-8-207](#), [80-8-209](#), or [80-8-213](#); and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.

(6) The department shall consult affected local governments before implementing the collection program under this section.

**History:** En. Sec. 2, Ch. 51, L. 1991; amd. Sec. 2, Ch. 465, L. 1993; amd. Sec. 290, Ch. 42, L. 1997.

**80-8-112. Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees.** (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to [80-8-111](#)(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided for in [80-8-111](#). Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

**History:** En. Sec. 3, Ch. 465, L. 1993.

**80-8-113 through 80-8-115 reserved.**

**80-8-116. Pesticide management account -- deposit of fees and penalties -- investment.** (1) There is a pesticide management account within the state special revenue fund established in [17-2-102](#).

(2) All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

(a) the cost of equipment and facilities;

(b) the cost of inspecting, investigating, analyzing, and examining:

- (i) pesticide products;
- (ii) applicators, operators, and other users of pesticides;
- (iii) dealers and retailers selling pesticides;
- (iv) pesticide equipment, storage, disposal, and operational facilities; and

(c) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and [80-7-711](#) through [80-7-714](#) and [80-7-720](#).

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of [17-6-201](#). The income from the investments must be credited to the pesticide management account within the state special revenue fund.

**History:** En. Sec. 10, Ch. 633, L. 1983; amd. Sec. 1, Ch. 588, L. 1991; amd. Sec. 1, Ch. 65, L. 1999.

**80-8-117. Pesticide cleanup special revenue account.** (1) There is a pesticide cleanup special revenue account in the state special revenue fund established in [17-2-102](#).

(2) There must be deposited in the pesticide cleanup account any civil penalties collected under [80-8-306](#).

(3) The funds must be used by the department for cleanup and associated costs when a responsible party cannot be identified and located or if the responsible party is unable or unwilling to clean up the pesticide contamination and there is an imminent need to protect agriculture,

health, or the environment.

(4) Unencumbered and unexpended funds remaining in the pesticide cleanup account at the end of the fiscal year may not lapse but must be carried forward for the stated purpose unless appropriated by subsequent legislative action.

(5) If a responsible party is identified and located after expenditure of the funds in the pesticide cleanup account, the department may initiate recovery of the funds through a voluntary agreement or in district court.

**History:** En. Sec. 2, Ch. 65, L. 1999.

**80-8-118 through 80-8-119 reserved. 80-8-120. Local pesticide regulation.** (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in [80-8-102](#), to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

- (A) at least 4 inches in height and 5 inches in width; and
- (B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

- (A) the words "pesticide application"; and
- (B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

- (A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;
- (B) for an interior application, at each public access to the treated property with the front of the sign facing the access;
- (C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed management district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

- (A) a spot treatment of an area that is less than 100 square feet;
- (B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

- (C) an application on land classified as agricultural land or forest land for taxation purposes;
- (D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;
- (E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;
- (F) an application on a railroad facility or right-of-way;
- (G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

- (A) educating its citizens of the ordinance's requirements;
- (B) compensating personnel to enforce the ordinance; and
- (C) prosecution of a violation of the ordinance.

(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under [80-8-105\(3\)\(a\)](#).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1).

**History:** En. Sec. 10, Ch. 465, L. 1993; amd. Sec. 1, Ch. 180, L. 1997; amd. Sec. 126, Ch. 114, L. 2003.

**80-8-121. Penalty.** A person who violates a notification ordinance adopted pursuant to [80-8-120](#):

(1) is subject to a written warning for the first violation;

(2) is guilty of a misdemeanor and upon conviction may be fined not more than \$50 for the second violation; and

(3) is guilty of a misdemeanor and upon conviction may be fined not more than \$500 for a third or subsequent conviction.

**History:** En. Sec. 2, Ch. 180, L. 1997.