

NEBRASKA

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DEPARTMENT OF AGRICULTURE



# The Pesticide Enforcement Process

Information about routine inspections, complaint investigations and penalties in Nebraska.

## How Pesticides are Regulated in Nebraska

The Nebraska Department of Agriculture (NDA) has jurisdiction for most pesticide regulation in Nebraska. It derives the authority from the Nebraska Pesticide Act, which was enacted in 1994. Prior to this law, the U.S. Environmental Protection Agency (EPA) had the lead role in regulating pesticides in the state. EPA still retains oversight for how the federal pesticide law, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), is administered by NDA.

The Nebraska Pesticide Act allows NDA to regulate the registration, transportation, storage, sales, use and disposal of pesticides. One important aspect of this regulation is to understand the term “pesticide.” A pesticide is any substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest. By definition, pesticides include insecticides, herbicides, rodenticides, fungicides, biocides, disinfectants and sanitizers, as well as plant regulators, defoliants, baits and certain poisons.

NDA does not regulate the process of applying pesticides in irrigation water (chemigation) or facilities where pesticides are mixed or loaded. These two functions are regulated by the Nebraska Department of Environmental Quality.

NDA also regulates pesticides by certifying and licensing the people who apply certain pesticides and by licensing pesticide dealers.

## Routine Inspections

NDA pesticide inspectors conduct routine inspections of pesticide dealers, applicators and marketplaces where pesticides are sold. More than 500 routine inspections are conducted by NDA every year. Documentation of the violations of the Nebraska Pesticide Act are reviewed and processed for enforcement action following the procedure detailed in the section “The Case Development and Review Process.”

# Complaint Investigations

## **Formal Complaints**

A formal complaint can be submitted by any person who contacts NDA reporting an alleged pesticide violation. Individuals reporting concerns provide their name, address, telephone number and background information. They become a part of the investigation by agreeing to be interviewed and provide NDA with a written statement regarding their concerns. Formal complainants can declare their desire to remain anonymous; however, any documents containing their name becomes a part of the complaint file, which will eventually become a public record.

## **Anonymous Tips**

NDA follows up on credible anonymous tips. Experience has shown that the majority of these types of leads often result in discovery of significant violations of the Nebraska Pesticide Act. Anonymous tips often are received from employees of pesticide applicators or dealers who fear retaliation, or neighbors involved in disputes they wish to keep from escalating. NDA investigates anonymous tips similar to formal complaints, but the burden of proof for NDA is greater, if enforcement action is to be considered.

## **Inspection/Investigation Case Reports**

Once a pesticide inspector has completed a facility inspection or collected all available evidence involved in a complaint, he/she will write a narrative report explaining the facts of the case. This report is written with the intent of informing NDA's case review officer of the facts of the inspection or complaint investigation. The language used is sometimes technical; how the report is written is important in order to provide the case review officer a clear understanding of the facts. The written narrative, together with the documentary evidence collected by the inspector, makes up the completed case report.

## **Pesticide Violations and Penalties**

### **Specific Violations**

Specific violations of the Nebraska Pesticide Act are listed in Section 2-2646 of the Act.

### **Penalty Matrix**

The Penalty Matrix has been incorporated into the regulation, and is listed in Section 007, Title 25, Chapter 2 of the Nebraska Administrative Code. The Penalty Matrix is the formal guidance used by NDA to determine the gravity of harm caused by any given violation of the Act, and what type of enforcement response NDA should take for the violation. It helps NDA ensure consistency in administrative enforcement from case to case, and allows for a maximum of \$5,000 per violation, which can be reduced for various factors listed in the Penalty Matrix. The latest version of the Nebraska Pesticide Act and regulations can be found at: [1.usa.gov/RuuPZV](https://www.usa.gov/RuuPZV)

## **The Case Development and Review Process**

The field inspector, program manager and case review officer work together to develop and complete a complaint investigation report. The program manager reviews the report and forwards the report to the case review officer for review.

The case review officer determines if violations of the Nebraska Pesticide Act have been documented and, if so, determines what the appropriate enforcement response should be. If no violations have been documented, the case is closed and the parties involved are informed. If violations are documented, the case review officer calculates the appropriate penalties using the Penalty Matrix, and submits the case to the Animal and Plant Health Protection Administrator and NDA Legal Counsel for administrative approval. Administrative penalties will extend the closure of the case file by one to two months, depending on the nature of the case and the willingness of the violator to settle outside of formal hearings.

## Role of the Inspector in the Enforcement Process

A pesticide inspector's job is to conduct routine inspections and follow-up investigations related to pesticide sales, distribution and use. NDA pesticide inspectors are required to collect evidence in the form of documents, physical samples and written statements to support inspections or complaint investigations. By NDA policy, they are not allowed to discuss information collected in the case, and are to refer all requests for information to the program manager in Lincoln. Additionally, a pesticide inspector follows specific protocols when collecting documents or other evidence during the course of an inspector or complaint investigation.

## Compensation for Damages

The Nebraska Pesticide Act does not include language that would allow a damaged party to collect compensation for their damage. Therefore, as a matter of policy, NDA pesticide inspectors will only estimate damage in order for the case review officer to determine the extent of damage as outlined in the Penalty Matrix.

## Public Disclosure of Records

All information, other than personal, medical or Social Security information collected by NDA, is considered public information. Release of this information is provided once NDA considers the case closed and upon written request.

Please see the following brochures for related information at: [bit.ly/pdsloZ](https://bit.ly/pdsloZ)

- *Pesticide Applicator Certification and Training*
- *The 60-Day Rule: Temporary Exemption from Licensing*
- *Which Pesticide Applicator License Do I Need?*

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