ARKANSAS PESTICIDE CONTROL ACT

AND

REGULATIONS

ACT 410 OF 1975

Pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment.

Sec 2-16-402 (b)

ARKANSAS STATE PLANT BOARD

(Rev. 10/07)

CHAPTER 16 - SUBCHAPTER 4
ARKANSAS PESTICIDE CONTROL ACT

Paragraph Page

2-16-401. Title. 1
2-16-402. Purpose. 1
2-16-403. Definitions. 1
2-16-404. Penalties. 4
2-16-405. Administration. 4
2-16-406. Powers of State Plant Board. 4
2-16-407. Pesticide registration required. 5
2-16-408. Registration of pesticides for local needs. 6
2-16-409. Experimental-use permits. 7
2-16-410. Misbranded pesticides. 8
2-16-411. Unlawful actions - Exceptions. 9
2-16-412. Enforcement. 10
2-16-413. Issuance of stop-sale, etc., order. 11
2-16-414. Hearing on stop-sale, etc., order. 12
2-16-415. Subpoenas. 12
2-16-416. Intergovernmental cooperation. 12
2-16-417. Publication of information. 13
2-16-418. Protection of trade secrets and other information. 13
2-16-419. Disposition of funds. 13

REGULATIONS UNDER ACT 410

Regulation No. 1. Registration Fees; Expiration of Registration 14
Regulation No. 2. Pests Declared 14
Regulation No. 3. Devices Specified; Provisions Applicable 14
Regulation No. 4. Coloration and Discoloration 14
Regulation No. 5. Labeling 14
Regulation No. 6. Pesticides Highly Toxic to Man 14

CHAPTER 16
PLANT DISEASE AND PEST CONTROL

SUBCHAPTER 4
PESTICIDE CONTROL

2-16-401. Title.

This subchapter shall be known as the "Arkansas Pesticide Control Act".

2-16-402. Purpose.

(a) The purpose of this subchapter is to regulate in the public interest the labeling, distribution, storage, transportation, and disposal of pesticides as defined in this subchapter.

(b) Pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment.

(c) New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliants, desiccants, plant regulators, spray adjuvants, and related purposes. However, such pesticides may be ineffective, may cause injury to man, or may cause unreasonable adverse effects on the environment.

(d) Therefore, it is deemed necessary to provide for regulation of pesticides.

2-16-403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant;

(2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on its 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) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish;

(4) "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial;

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

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

(7) "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 microorganism on or in living man or other living animals; but not including equipment used for the application of pesticides when sold separately from the sale of pesticides;

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

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

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

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

(12) "Fungus" means any non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(13) "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under the authority of Section 25(c)(2) of the Federal Insecticide, [Fungicide] and Rodenticide Act or by the State Plant Board under § 2-16-406(a)(2);

(14) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to § 2-16-408 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under P.L. 91-135;

(15) "Inert ingredient" means an ingredient which is not an active ingredient;

(16) "Ingredient statement" means:

(A) Statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide; and

(B) When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. In the case of a spray adjuvant, the ingredient statement need contain only the names of the functioning agents and the total percentage of the constituents ineffective as spray adjuvants;

(17) "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, for example, beetles, bugs, bees, flies, and other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, for example, spiders, mites, ticks, centipedes, and wood lice;

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

(19) "Labeling" means the label and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the United States Environmental Protection Agency; the United States Departments of Agriculture, Interior, and 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;

(20) "Nematode" 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, plants, or plant parts; they may also be called nemas or eelworms;

(21) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(22) "Pest" means:

(A) Any insect, rodent, nematode, fungus, weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living man or other living animals which the United States Environmental Protection Agency declares to be a pest under Section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, or which the State Plant Board declares to be a pest under § 2-16-406(a)(1);

(23) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests;

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

(C) Any substance or mixture of substances intended to be used as spray adjuvant;

(24) "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. The term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments;

(25) "Protect health and environment" means protection against any unreasonable adverse effects on the environment;

(26) "Registrant" means a person who has registered any pesticide pursuant to the provisions of this subchapter;

(27) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the Administrator of the United States Environmental Protection Agency;

(28) "State-restricted pesticide" means any pesticide or pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the State Plant Board determines, subsequent to a hearing, requires additional restrictions for that pesticide or use to prevent unreasonable adverse effects on the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests;

(29) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used;

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

(31) "Weed" means any plant which grows where not wanted; and

(32) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this subchapter, pests. "Wildlife" shall include, but not be limited to, mammals, birds, and aquatic life.

2-16-404. Penalties.

(a) Any person who violates any provision of this subchapter or the regulations adopted hereunder shall be guilty of a misdemeanor and upon conviction shall be punishable for the first offense by a fine of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000) and for the second and any additional offense a fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000).

(b) Any offense committed more than three (3) years after a previous conviction shall be considered as a first offense.

2-16-405. Administration.

(a) This subchapter shall be administered by the State Plant Board.

(b) The functions vested in the board by this subchapter shall be considered to be delegated to the employees of the State Plant Board or its authorized representatives.

2-16-406. Powers of State Plant Board.

(a) The State Plant Board is authorized, after due notice and an opportunity for a hearing, to:

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

(2) Determine whether pesticides registered under the authority of Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act are highly toxic to man. The definition of "highly toxic" in 40, C.F.R. § 162.8, as issued or hereafter amended, shall govern the board's determination;

(3) Determine pesticides, and quantities of substances contained in pesticides, which are injurious to the environment. The board shall be guided by the United States Environmental Protection Agency regulations in this determination; and

(4) Prescribe regulations requiring any pesticide registered for special local needs to be colored or discolored if it determines that the requirement is feasible and is necessary for the protection of health and the environment.

(b) The board is authorized to inspect pesticides wherever found and may sample and analyze or cause to be analyzed samples thereof, to determine compliance with this subchapter and the regulations adopted hereunder.

(c) The board is authorized, after due notice and a public hearing, to make appropriate regulations where the regulations are necessary for the enforcement and administration of this subchapter. These regulations shall include, but not be limited to, regulations providing for:

(1) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(2) Labeling requirements of all pesticides required to be registered under provisions of this subchapter. The regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act;

(3) Specifying those classes of devices which shall be subject to any provision of § 2-16-410.

(d) For the purpose of uniformity and in order to enter into cooperative agreements, the board may:

(1) Adopt restricted-use pesticides classifications as determined by the United States Environmental Protection Agency. In addition, the board may declare certain pesticides or pesticide uses as state-restricted pesticides when, after investigation and public hearing, it finds and determines the pesticide to be injurious to persons, animals, or vegetation other than the pest or vegetation which it is intended to destroy, or otherwise requires additional restrictions under the conditions set forth in § 2-16-403(28). The sale or distribution of such pesticides in Arkansas or their use in pest control or other operation is prohibited, except in accordance with such rules and regulations as may be made by the board after a public hearing. The rules and regulations may include rules and regulations prescribing the time when and the conditions under which the materials may be used in different areas in the state. The board, in its rules and regulations, may charge inspection and permit fees sufficient to cover the cost of enforcement of this subdivision (d)(1); and

(2) Adopt regulations in conformity with the primary pesticide standards, particularly as to labeling and registration requirements, as established by the United States Environmental Protection Agency or other federal or state agencies.

2-16-407. Pesticide registration required.

(a) Each pesticide must have been accepted for registration by the State Plant Board, and the registration must be in force at the time it is sold, offered for sale, or distributed in this state. Registration is not required if a pesticide is shipped from one (1) plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this subchapter or if the pesticide is distributed under the provisions of an experimental use permit issued under § 2-16-409 or an experimental use permit issued by the United States Environmental Protection Agency.

(b) The applicant for registration shall file a statement with the board which shall include:

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

(2) The name of the pesticide;

(3) Other necessary information required for completion of the board's application for registration form; and

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in the Federal Insecticide, Fungicide, and Rodenticide Act.

(c) The board, when it deems it necessary in the administration of this subchapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

(d) The board may require a full description of the tests made and the results upon which the claims are based on any pesticide not registered pursuant to § 3 of the Federal Insecticide, Fungicide, and Rodenticide Act or on any pesticide on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(e) The board may prescribe other necessary information by regulation.

(f) The applicant desiring to register a pesticide shall pay an annual registration fee as prescribed in the regulations of the board for each pesticide registered by the applicant. The annual registration fee shall be no less than sixty dollars ($60.00) for each product registered. All registrations shall expire December 31 each year.

(g) Any registration approved by the board and in effect on December 31 for which a renewal application has been made and the proper fee paid shall continue in full force and effect until such time as the board notifies the applicant that the registration has been approved or denied, in accordance with the provisions of § 2-16-408. Forms for reregistration shall be mailed to registrants at least thirty (30) days prior to the due date.

(h) Provided the board is certified by the Administrator of the United States Environmental Protection Agency to register pesticides to meet special local needs pursuant to Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, the board shall require information set forth under subsections (b)-(e) of this section and shall register a pesticide if it determines that:

(1) The pesticide's composition is such as to warrant the proposed claims for it;

(2) The pesticide's labeling and other material required to be submitted comply with the requirements of this subchapter;

(3) The pesticide will perform its intended function without unreasonable adverse effects on the environment;

(4) When used in accordance with widespread and commonly recognized practice, the pesticide will not generally cause unreasonable adverse effects on the environment; and

(5) The classification for general or restricted use is in conformity with Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(i) The board shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two (2) pesticides meet the requirements of this section, one (1) should not be registered in preference to the other.

2-16-408. Registration of pesticides for local needs.

(a) Provided the State Plant Board is certified by the Administrator of the United States Environmental Protection Agency to register pesticides for those pesticides formulated to meet special local needs, the board shall consider the following for refusal to register, for cancellation, for suspension, or for legal recourse:

(1) If it does not appear to the board that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or regulations adopted hereunder, it shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections.

(A) If, upon receipt of the notice, the applicant does not make the required changes, the board may refuse to register the pesticide.

(B) The applicant may request a hearing as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) When the board determines that a pesticide or its labeling does not comply with the provisions of this subchapter or the regulations adopted hereunder, it may cancel the registration of a pesticide after a hearing in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(3) When the board determines that there is an imminent hazard, it may, on its own motion, suspend the registration of a pesticide in conformance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq. Hearings shall be held with the utmost possible expedition; and

(4) Any person adversely affected by an order in this section may obtain judicial review of the order by filing in the circuit court, within sixty (60) days after the entry of the order, a petition praying that the order be set aside in whole or in part.

(A) A copy of the petition shall be forthwith transmitted by the clerk of the court to the board, and then the board shall file in the court the record of the proceedings on which it based its order.

(B) The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part.

(C) The findings of the board with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(D) Upon application, the court may remand the matter to the board to take further testimony if there are reasonable grounds for the failure to adduce such evidence in the prior hearing.

(E) The board may modify its findings and order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

(b) If the board determines that any federally registered pesticide, with respect to its use in this state, requires further restrictions pursuant to § 2-16-406(d)(1), it may refuse to register or cancel or suspend the current registration of the pesticide in order to comply with such rules and regulations as may be adopted under § 2-16-406.

2-16-409. Experimental-use permits.

(a) Provided the State Plant Board is authorized by the Administrator of the United States Environmental Protection Agency to issue experimental-use permits, the board may:

(1) Issue an experimental-use permit to any person applying for an experimental-use permit if it determines that the applicant needs that permit in order to accumulate information necessary to register a pesticide under § 2-16-407;

(2) Refuse to issue an experimental-use permit if it determines that the pesticide applications to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment;

(3) Prescribe terms, conditions, and a period of time for the experimental-use permit which shall be under the supervision of the board; and

(4) Revoke any experimental-use permit at any time if it finds that the permit's terms or conditions are being violated or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(b) Regulations adopted under this subchapter as to experimental-use permits as authorized by the Federal Insecticide, Fungicide, and Rodenticide Act shall not be inconsistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and regulations promulgated thereunder.

2-16-410. Misbranded pesticides.

A pesticide is misbranded:

(1) If its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(2) If it is an imitation of, or is distributed under the name of, another pesticide;

(3) If any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, 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;

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

(5) If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended, and the directions if complied with, together with any requirements imposed under section 3(3) [correction to original codification: section 3(d)] of the Federal Insecticide, Fungicide, and Rodenticide Act, are adequate to protect health and the environment;

(6) If the label does not bear:

(A) The name, brand, or trademark under which the pesticide is distributed;

(B) An ingredient statement on that part of the immediate container and on the outside container and wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase. The ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(C) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, would be adequate to protect the health and environment;

(D) The net weight or measure of the content;

(E) The name and address of the manufacturer, registrant, or person for whom manufactured; and

(F) The United States Environmental Protection Agency registration number assigned to each establishment in which it was produced and the United States Environmental Protection Agency registration number assigned to the pesticide, if required by regulations under the Federal Insecticide, Fungicide, and Rodenticide Act;

(7) If that pesticide contains any substance in quantities highly toxic to man unless the label bears, in addition to other label requirements:

(A) The skull and crossbones;

(B) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(C) A statement of a practical treatment, first aid or otherwise, to be used in case of poisoning by the pesticide;

(8) If the pesticide container does not bear a registered label; and

(9) If a spray adjuvant label fails to state the type or function of the functioning agents.

2-16-411. Unlawful actions - Exceptions.

(a)(1) It is unlawful for any person to distribute in this state any of the following:

(A) Any pesticide which has not been registered pursuant to:

(i) The provisions of this subchapter; or

(ii) The provisions of the Federal Insecticide, Fungicide, and Rodenticide Act;

(B) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration. A change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect the change and if the change will not violate any provision of the Federal Insecticide, Fungicide, and Rodenticide Act or this subchapter;

(C) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and the regulations adopted under this subchapter. The State Plant Board may designate that certain specified economic poisons may be sold by the manufacturers or dealers in bulk, in which case the label information required and any other statements required by this subchapter must be stated in or attached to the invoice. In addition, a copy of the invoice must be given to the purchaser at the time the economic poison is delivered;

(D) Any pesticide which has not been colored or discolored pursuant to the provisions of § 2-16-406(a)(4) or of Section 25(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act;

(E) Any pesticide which is adulterated or misbranded or any device which is misbranded; and

(F) Any pesticide in containers which are unsafe due to damage.

(2) However, this subsection shall not apply to:

(A) Any carrier while lawfully engaged in transporting a pesticide within this state if the carrier shall, upon request, permit the board to copy all records showing the transactions in and movement of the pesticides or devices;

(B) Public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research;

(C) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides if the manufacturer or shipper holds a valid experimental-use permit as provided for by § 2-16-409 or by the United States Environmental Protection Agency;

(D) Any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties, from which the user does not expect to receive any benefit in pest control from its use.

(b) It shall be unlawful for any person to:

(1) Detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this subchapter or in regulations adopted under this subchapter or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or the regulations adopted hereunder;

(2) Use for his own advantage or to reveal, other than to the board, to properly designated state or federal officials, to employees of the state or federal executive agencies, to the courts of the state in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of § 2-16-407 or any information judged by the board as containing or relating to trade secrets or commercial or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

(3) Handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with the pesticides;

(4) Dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any water supply or waterway;

(5) Refuse or otherwise fail to comply with the provisions of this subchapter, the regulations adopted hereunder, or of any lawful order of the board.

(c) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any waterway in a way harmful to any wildlife therein. The board may promulgate rules and regulations governing the storing and disposal of pesticides or pesticide containers. In determining these standards, the board shall take into consideration any regulations issued by the United States Environmental Protection Agency.

(d) No pesticide or device shall be deemed in violation of this subchapter when intended solely for export to a foreign country, and when prepared or packed according to the specification or directions of the purchaser. If not so exported, all the provisions of this subchapter shall apply.

2-16-412. Enforcement.

(a) The sampling and examination of pesticides or devices shall be made by the State Plant Board for the purpose of determining whether they comply with the requirements of this subchapter.

(1) The board is authorized to enter any distributor's premises, including any vehicle of transport, at all reasonable times, in order to have access to pesticides or devices packaged or labeled for distribution and to collect samples of the contents, containers, or labeling for the pesticides or devices.

(2) If an analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(3) If it appears from the examination that a pesticide or device fails to comply with the provisions of this subchapter or regulations adopted hereunder and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to that person.

(4) Any person so notified shall be given an opportunity within a reasonable time to present his views, either orally or in writing, with regard to the contemplated proceedings.

(5) If thereafter, in the opinion of the board, it appears that the provisions of this subchapter or regulations adopted hereunder have been violated by the person, the board shall refer a copy of the results of the analysis or the examination of the pesticide or device to the prosecuting attorney for the county in which the violation occurred

(b)(1) For the purpose of carrying out the provisions of this subchapter, the board may enter upon any public or private premises at reasonable times in order to inspect storage or disposal areas or sample pesticides being applied or to be applied.

(2) Should the board be denied access to any premises or other areas where access was sought for the purposes set forth in this subchapter, it may apply to any court of competent jurisdiction for a search warrant authorizing access to those premises or other areas for the purposes set forth in this subchapter. The court may, upon such application, issue the search warrant for the purposes requested.

(c) The board, with or without the aid and advice of the prosecuting attorney, is charged with the duty of enforcing the requirements of this subchapter and any rules or regulations issued thereunder. In the event a prosecuting attorney refuses to act on behalf of the board, the Attorney General may so act.

(d) The board is authorized to apply to any court of competent jurisdiction for, and the court upon hearing and for cause shown may grant, a temporary or permanent injunction. This injunction shall restrain any person from violating any provisions of this subchapter or of the rules and regulations made under authority of this subchapter and shall be without bond.

(e) Nothing in this subchapter shall be construed as requiring the board to report minor violations of this subchapter for prosecution or for the institution of condemnation proceedings when it believes that the public interest will be served best by a suitable notice of warning in writing.

2-16-413. Issuance of stop-sale, etc., order.

(a) When the State Plant Board has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this subchapter, or of any of the regulations prescribed under the authority of this subchapter, it may issue and serve a written stop-sale, use, or removal order upon the owner or custodian of the pesticide or device.

(b) If the owner or custodian is not available for service of the order upon him, the board may attach the order or other suitable marking to the pesticide or device and notify the owner or custodian and the registrant.

(c) The pesticide or device shall not be sold, used, or removed until the provisions of this subchapter have been complied with and until the pesticide or device has been released in writing under conditions specified by the board or the violation has been otherwise disposed of as provided in this subchapter by a court of competent jurisdiction.

2-16-414. Hearing on stop-sale, etc., order.

(a) After service of a stop-sale, use, or removal order is made upon any person, either that person, the registrant, or the State Plant Board may file an action in a court of competent jurisdiction in the county in which a violation of this subchapter or regulations adopted hereunder is alleged to have occurred for an adjudication of the alleged violation.

(1) The court in the action may issue temporary or permanent injunctions, mandatory or restraining orders, and such intermediate orders as it deems necessary or advisable.

(2) The court may order condemnation of any pesticide or device which does not meet the requirements of this subchapter or regulations adopted hereunder.

(b) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs.

(1) If the pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the State Treasury as provided in § 2-16419.

(2) The pesticide or device shall not be sold contrary to the provisions of this subchapter or regulations adopted thereunder.

(3) Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to its owner for relabeling, reprocessing, removal from the state, or otherwise bringing the product into compliance.

(c) When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

(d) No state court shall allow the recovery of damages from administrative action taken or for stop-sale, use, or removal if the court finds that there was probable cause for such action.

2-16-415. Subpoenas.

The State Plant Board may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records in the state in any hearing affecting the authority or privilege granted by a registration issued under the provisions of this subchapter.

2-16-416. Intergovernmental cooperation.

The State Plant Board may cooperate, receive grants-in-aid, and enter into cooperative agreements or contracts with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, in order to:

(1) Secure uniformity of regulations;

(2) Enter into cooperative agreements with the United States Environmental Protection Agency to register pesticides under the authority of this subchapter and the Federal Insecticide, Fungicide, and Rodenticide Act; and

(3) Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and implement cooperative enforcement programs, including, but not limited to, the registration and inspection of establishments.

2-16-417. Publication of information.

The State Plant Board may publish, in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides.

2-16-418. Protection of trade secrets and other information.

(a) In submitting data required by this subchapter, the applicant may:

(1) Clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information; and

(2) Submit such marked material separately from other material required to be submitted under this subchapter.

(b) Notwithstanding any other provision of this subchapter, the State Plant Board shall not make public any information which, in its judgment, contains or relates to trade secrets or commercial or financial information obtained from a person and is privileged or confidential, except that, when necessary to carry out the provisions of this subchapter, information relating to formulas of products acquired by authorization of this subchapter may be revealed to any state or federal agency consulted or in findings of fact issued by the board.

(c) If the board proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b) of this section, it shall notify the applicant or registrant, in writing, by certified mail.

(1) The board shall not, after mailing the notice as provided in this subsection, make available for inspection the data until thirty (30) days after receipt of the notice by the applicant or registrant.

(2) During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under subsection (b) of this section.

2-16-419. Disposition of funds.

All moneys received by the State Plant Board under the provisions of this subchapter and the regulations adopted hereunder shall be deposited in the Plant Board Fund of the State Treasury and be used for carrying out the provisions of this subchapter.

REGULATIONS UNDER ACT 410

REGULATION NO. 1. Registration Fees; Expiration of Registration -

Through December 31, 2007 the registration fee for each pesticide product registered for calendar year 2007 by any manufacturer, registrant or distributor shall be $150. For products registered for calendar year 2008, the registration fee shall be $200. For products registered for calendar year 2009 and each additional year thereafter the fee shall be $250. Registrations shall expire December 31 of the year for which registered. This fee does not include the Abandoned Agricultural Pesticide Disposal Fee as required by Act 1130 of 2001.

REGULATION NO. 2. Pests Declared -

Each of the following forms of plant and animal life and viruses is declared to be a pest when it exists under circumstances that make it deleterious to man or the environment:

(1) Vertebrate animals (other than man), including but not limited to mammals, birds, fish, amphibians, and reptiles.

(2) Invertebrate animals (other than internal parasites of living man or other living animals), including but not limited to insects and other arthropods, nematodes, and mollusks such as slugs and snails.

(3) Plants growing where not wanted, including mosses, liverworts, and all plants of higher orders, and plant parts such as roots.

(4) Microorganisms (other than those on or in living man or other living animals, and those on or in processed food, beverages, pharmaceuticals including cosmetics), including but not limited to algae, fungi. and bacteria.

(5) Viruses (other than those on or in living man or other animals and those on or in food, beverages, and pharmaceuticals including cosmetics).

REGULATION NO. 3. Devices Specified; Provisions Applicable -

A device shall be construed to be 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, viruses, or other microorganisms on or in living man or other living animals), but not including equipment used for the application of pesticides when sold separately therefrom. Devices shall be subject to the misbranding provisions of Section 2-16-410 (1), (2) and (3) of this Act.

REGULATION NO. 4. Coloration and Discoloration -

The requirements for coloration and discoloration of pesticides shall be those as set forth in the regulations adopted by EPA pursuant to Section 25(c)(5) of FIFRA.

REGULATION NO.5. Labeling-

Labeling requirements for pesticides shall be those as set forth in Section 162.10 of the Regulations adopted under FIFRA.

REGULATION NO. 6. Pesticides Highly Toxic to Man -

The determination of pesticides highly toxic to man shall be those in accord with the regulations promulgated by EPA pursuant to Section 25(c)(2) of FIFRA.