

Legal Resources for Pesticide Drift

The purpose of this document is to provide farmers and their lawyers with basic resources for pesticide drift-related legal issues. This page was created for educational purposes only, and in no way constitutes legal advice.

REGULATIONS

Federal and state laws regulate the use of pesticides. Some of the main laws include the following:

FEDERAL LAW:

Pesticides are regulated under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, the state has primary enforcement responsibility.

7 U.S. Code §136w-1 State primary enforcement responsibility:

(a) In general

For the purposes of this subchapter, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State—

(1) has adopted adequate pesticide use laws and regulations, except that the Administrator may not require a State to have pesticide use laws that are more stringent than this subchapter;

(2) has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and

(3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.

States report to the [Environmental Protection Agency](#)⁷

PESTICIDE LABELS

Each pesticide has a unique label with directions for use and a list of appropriate crops. Allowable residue levels are also listed. If a crop is not listed on the label, the pesticide is not approved for use on that crop and the allowable residue level is 0.

Search for pesticide labels:

EPA: [Pesticide Product and Label System](#)⁸

Purdue University: [National Pesticide Information Retrieval System \(NPIRS\)](#)⁹

What is pesticide drift?

Pesticide spray drift is the movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended. (EPA definition, 2017). “Pesticides” include herbicides, insecticides and fungicides.

For Farmers:

Pesticide Drift Response Guides

[Practical Farmers of Iowa Response Guide](#)¹

[IDALS Pesticide Bureau Reponse Guide](#)²

IDALS Pesticide Bureau³

Iowa State Bar Association

[Glossary of Legal Terms](#)⁴

[“Find-A-Lawyer”](#)⁵

Basic Overview of Tort Law⁶

IOWA LAW:

Pesticide Act of Iowa

[Iowa Code §206](#)¹⁰

Note: Restricted use pesticides must be applied in accordance with their label. PESTICIDES §206.11, subsection 3, paragraph “b” states: “It shall be unlawful... For any person to use or cause to be used any pesticide contrary to its labeling or to rules of the state of Iowa if those rules differ from or further restrict the usage.”

Note: Incidence of pesticide drift should be investigated by the IDALS Pesticide Bureau. PESTICIDES §206.14, subsection 2 states: “Any person claiming damages from a pesticide application shall have filed with the secretary on a form prescribed by the secretary a written statement claiming that the person has been damaged.” PESTICIDES §206.14, subsection 3 states: “The filing of such a report or failure to give notice shall not preclude recovery in an action for damages and shall not affect the limitations of actions set forth in chapter 614. Nothing herein shall pro-

hibit an action for damages for bodily injury or death to any person.”

Note: See §614 for statute of limitations.

Iowa Admin. Code 21—45: PESTICIDES¹¹

CASE LAW INVOLVING PESTICIDE DRIFT OR RELATED ISSUES

Iowa

Marx v. Elkader Cooperative Co., No. 2-064/01-0287, 2002 Iowa App. Lexis 414 (Iowa Ct. App. April 24, 2002) (unpublished decision)

Minnesota

Johnson vs. Paynesville Farmers Union Cooperative Oil Co., 817 N.W.2d 693, 2012 Minn. LEXIS 380 (Minn. Aug. 1, 2012)

Johnson vs. Paynesville Farmers Union Cooperative Oil Co., 802 N.W.2d 383, 2011 Minn. Ct. App. LEXIS 92 (Minn. App. July 25, 2011)

Missouri

Keller Farms, Inc. v. McGarity Flying Serv., LLC, No. 1:16-CV-00265 ACL (E.D. Mo. Jan. 9, 2017).

Arkansas

Mangrum v. Pigue, 359 Ark. 373, 2004 Ark. LEXIS 686 (Ark. Nov. 11, 2004)

Wilson v. Williams Farm Inc., 2014 Ark. App. 334, 2014 Ark. App. LEXIS 444 (Ark. Ct. App. 2014)

Vermont

Larkin v. Marceau, 2008 VT 61, 2007 Vt. LEXIS 343 (Vt. May 2, 2008)

South Dakota

Kurth v. Aerial Blades, Inc., 2001 SD 118, 2001 S.D. LEXIS 145 (S.D. Sept. 26, 2001)

California

Jacobs Far, Inc. v. Western Farm Service, Inc., 190 California 1502, 2010 Cal. App. LEXIS 2126 (Cal. App. Dec. 20, 2010)

Texas

Parker v. Three Rivers Flying Service, Inc., 220 S.W.3d 160, 2007 Tex. App. LEXIS 1597 (Tex. App. March 1, 2007)

Boyd v. Thompson-Hayward Chemical Co., 450 S.W.2d 937, 1970 Tex. App. LEXIS 2104 (Tex. App. Jan. 22, 1970)

ARTICLES

Baker, Zachariah, Berg, E., & Margolis, J. (2014). Organic Farming, Drift, and the Law (White Paper). Eugene: University of Oregon Environmental and Natural Resources Law Center.

Blomquist, R. F. (1995). Applying Pesticides: Toward Reconceptualizing Liability to Neighbors for Crop, Livestock, and Personal Damages from Agricultural Chemical Drift. *Oklahoma Law Review*, 48(Summer).

Centner, T. J. (2012). Securing recompense under nuisance law for crop damages from pesticide applications. *Science of the Total Environment*, 432, 78–84.

Centner, T. J., & Ferreira, S. (2012). Controlling diseases and nuisances: Time-based rights and agricultural production. *LAND USE POLICY*, 29(3), 513–520. <https://doi.org/10.1016/j.landusepol.2011.09.006>

Dowell, T. (May 9, 2016). Pesticide Drift Liability (Part 1): Potential Legal Theories. Retrieved from <http://agriflife.org/texasaglaw/2016/05/09/pesticide-drift-liability-part-1-potential-legal-theories/>

Eckley, E. (2012). Never Mind, Pesticide Drift Doesn't Constitute a Trespass After All. Iowa State University, Ames: Center for Agricultural Law and Taxation.

Feitshans, T. A. (1999). An analysis of state pesticide drift laws. *San Joaquin Agricultural Law Review*, 9.

Feitshans, T. A. (2011). An analysis of state pesticide drift laws revisited. *San Joaquin Agricultural Law Review*, 20.

Klass, A. B. (2005). Bees, trees, preemption, and nuisance: A new path to resolving pesticide land use disputes. *Ecology Law Quarterly*, 32, 763–819.

Looney, J. W. (1996). Rylands v. Fletcher Revisited: A comparison of English, Australian, and American approaches to common law liability for dangerous agricultural activities. *Drake Journal of Agricultural Law*, 1(2).

Uchtmann, D. L. (2000). Legal Aspects of Herbicide Drift. *Proceedings of the January 2000 Illinois Specialty Growers Conference*.

DOCUMENT WEB LINKS

Linked resources throughout the document are shown in blue. URLs are below.

¹ <http://practicalfarmers.org/app/uploads/2014/06/Drift-Brochure-1.pdf>

² http://www.iowaagriculture.gov/Pesticide/pdf/2015/Enforcement2014_06FINAL.pdf

³ <http://www.iowaagriculture.gov/pesticides.asp>

⁴ <http://www.iowabar.org/?page=LegalGlossary&hhSearchTerms=%22glossary%22>

⁵ <https://www.iowafindalawyer.com/>

⁶ http://c.ymcdn.com/sites/www.iowabar.org/resource/resmgr/CLE_materials/2014_Basic_Skills_Fall_Iowa_.pdf

⁷ <https://www.epa.gov/regulatory-information-topic/regulatory-information-topic-pesticides#label>

⁸ <https://iaspub.epa.gov/apex/pesticides/f?p=PPLS:1>

⁹ <http://npirspublic.ceris.purdue.edu/ppis/>

¹⁰ <https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=206&year=2014>

¹¹ <https://www.legis.iowa.gov/law/administrativeRules/rules?agency=21&chapter=45&pubDate=02-05-2014>

Prepared by:

Practical Farmers of Iowa

600 5th St., Suite 100, Ames, IA 50010

(515) 232-5661

www.practicalfarmers.org