

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 549

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO CHEMIGATION; AMENDING SECTION 22-3401, IDAHO CODE, TO REVISE
2 DEFINITIONS AND TO DEFINE A TERM; AMENDING SECTION 22-3404, IDAHO CODE,
3 TO REVISE PROVISIONS REGARDING PESTICIDE AND CHEMIGATION APPLICATORS
4 AND LICENSING; AMENDING SECTION 22-3406A, IDAHO CODE, TO REVISE PRO-
5 VISIONS REGARDING CHEMICAL SUPPLIERS; AMENDING SECTION 22-3414, IDAHO
6 CODE, TO REMOVE A PROVISION REGARDING INSPECTIONS; AND DECLARING AN
7 EMERGENCY.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 22-3401, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 22-3401. DEFINITIONS. When used in this act:

13 (1) "Adulterated" means a pesticide is adulterated for the purpose of
14 this act if the strength or purity of the pesticide is below the purported or
15 professed standard of quality as expressed in its labeling, or any substance
16 has been substituted wholly or in part for any ingredient of the pesticide,
17 or any valuable constituent thereof has been omitted wholly or in part.

18 (2) "Antipollution device" means any mechanical equipment used to re-
19 duce hazard to the environment in cases of malfunction or shutdown of chemi-
20 gation equipment during chemigation and may include, but not be limited to,
21 interlock, irrigation line check valve, chemical line closure device, vac-
22 uum relief device and automatic low-pressure drain.

23 (3) "Certified applicator" means a person who has qualified as a pro-
24 fessional applicator, or private applicator under the provisions of this act
25 and the rules promulgated by the director.

26 (4) "Chemical" means any fertilizer or pesticide.

27 (5) "Chemigation" means any process whereby chemicals are added to ir-
28 rigation water applied to land, crops or plants through an irrigation sys-
29 tem, such as, but not limited to, agricultural, nursery, turf, lawn, golf
30 course and greenhouse sites.

31 (6) "Chemigation applicator" means a person who: (a) applies chemicals
32 through irrigation systems on land owned or rented by him or his employer; or
33 (b) applies chemicals through irrigation systems on the land or property of
34 another for compensation.

35 ~~(6)~~ (7) "Defoliant" means any substance or mixture of substances in-
36 tended for causing the foliage to drop from a plant, with or without causing
37 abscission.

38 ~~(7)~~ (8) "Department" means the Idaho department of agriculture.

39 ~~(8)~~ (9) "Desiccant" means any substance or mixture of substances in-
40 tended for artificially accelerating the drying of plant tissues.

1 ~~(9)~~ (10) "Designated agent" means an employee or agent of the state au-
2 thorized by the director to perform various duties in connection with en-
3 forcement of this act.

4 ~~(10)~~ (11) "Device" means an instrument or contrivance, other than a
5 firearm, intended to trap, destroy, control, repel or mitigate any pest or
6 any other form of plant or animal life, other than man and other than bac-
7 teria, virus, or other microorganism on or in living man or other living
8 animals, but does not include equipment used for the application of pesti-
9 cides when sold separately therefrom.

10 ~~(11)~~ (12) "Director" means the director of the department of agricul-
11 ture of the state of Idaho.

12 ~~(12)~~ (13) "Distribute" means to offer for sale, hold for sale, sell,
13 barter, ship, deliver for shipment, or receive and, having so received, de-
14 liver or offer to deliver, pesticides in this state.

15 ~~(13)~~ (14) "Environment" includes water, air, land, and all plants and
16 man and other animals living therein, and the interrelationships which exist
17 among these.

18 ~~(14)~~ (15) "EPA" means the United States Environmental Protection
19 Agency.

20 ~~(15)~~ (16) "Fertilizer" means any formulation or product used as a plant
21 nutrient which is intended to promote plant growth and contains one (1) or
22 more plant nutrients.

23 ~~(16)~~ (17) "General use pesticide" means any pesticide which is not a re-
24 stricted-use pesticide.

25 ~~(17)~~ (18) "Irrigation system" means any device or combination of de-
26 vices having a hose, pipe, or other conduit which connects directly to any
27 source of ground or surface water, through which water or a mixture of wa-
28 ter and chemicals is drawn and applied to land, crops or plants. The term
29 does not include any hand-held sprayer or other similar device which is con-
30 structed so that an interruption in water flow automatically prevents any
31 backflow into the water source.

32 ~~(18)~~ (19) "Label or labeling" means the written, printed or graphic mat-
33 ter on or attached to the pesticide or device or any of its containers or
34 wrappers. It would also include all other written, printed or graphic mate-
35 rial that accompanies the pesticide or device at any time.

36 ~~(19)~~ (20) "Land" means all land and water areas, including airspace, and
37 all plants, animals, structures, buildings, contrivances, and machinery ap-
38 purtenant thereto or situated thereon, fixed or mobile, including any used
39 for transportation.

40 ~~(20)~~ (21) "Misbranded" shall apply to (a) any pesticide or device if its
41 labeling bears any false or misleading statement, design or graphic repre-
42 sentation, and (b) any pesticide if such pesticide is not labeled as required
43 by section 22-3402, Idaho Code, and (c) any pesticide if the labeling bears
44 any reference to the registration provisions of section 22-3402, Idaho Code,
45 unless such reference is required by rules promulgated by the director.

46 ~~(21)~~ (22) "Person" means any individual, partnership, association,
47 fiduciary corporation, or any organized group of persons whether incorpo-
48 rated or not.

49 ~~(22)~~ (23) "Pest" means (a) any insect, rodent, nematode, fungus, weed,
50 or (b) any other form of terrestrial or aquatic plant or animal life or virus,

1 bacteria, or other microorganism, except virus, bacteria, or other microor-
2 ganism on or in living man or other living animals, which the director de-
3 clares to be a pest.

4 ~~(23)~~ (24) "Pesticide" means but is not limited to (a) any substance or
5 mixture of substances intended to prevent, destroy, control, repel or mit-
6 igate any insect, rodent, nematode, snail, slug, fungus, weed and any other
7 form of plant or animal life or virus, except virus or fungus on or in living
8 man or other animal, which is normally considered to be a pest or which the
9 director may declare to be a pest, and (b) any substance or mixture of sub-
10 stances intended to be used as a plant regulator, defoliant or desiccant, and
11 (c) any spray adjuvant.

12 ~~(24)~~ (25) "Pesticide dealer" means a person who distributes any re-
13 stricted-use pesticide or general use pesticide except those exempted in
14 section 22-3406, Idaho Code, or any pesticide whose uses or distribution are
15 further restricted by the director by rule.

16 ~~(25)~~ (26) "Pesticide equipment" means any equipment, machinery, or ap-
17 paratus used in the actual application of pesticides including aircraft and
18 ground-spraying equipment.

19 ~~(26)~~ (27) "Pesticide industry representative" means a person who is a
20 pesticide manufacturer's representative, distributor's representative, or
21 any field representative of any company or organization that deals in agri-
22 cultural commodities, who uses or supervises the application of restricted-
23 use pesticides solely for the purpose of demonstrating the use of the re-
24 stricted-use pesticide.

25 ~~(27)~~ (28) "Plant regulator" means any substance or mixture of sub-
26 stances intended through physiological action, for accelerating or retard-
27 ing the rate of growth or rate of maturation, or for otherwise altering the
28 behavior of plants or the produce thereof, but shall not include substances
29 to the extent that they are intended as plant nutrients, trace elements,
30 nutritional chemicals, plant inoculants and soil amendments.

31 ~~(28)~~ (29) "Private applicator" means a person who: (a) uses or super-
32 vises the use of restricted-use pesticides to produce agricultural commodi-
33 ties or forest crops on land owned or rented by him or his employer; or (b)
34 applies restricted-use pesticides on the property of another without com-
35 pensation other than the trading of personal services between producers of
36 agricultural commodities; ~~or (c) applies chemicals through irrigation sys-~~
37 ~~tems on land owned or rented by him or his employer.~~

38 ~~(29)~~ (30) "Professional applicator" means a person who: (a) applies
39 pesticides upon the land or property of another for compensation, ~~or applies~~
40 ~~chemicals through irrigation systems upon the land or property of another~~
41 ~~for compensation;~~ or (b) uses or supervises the use of restricted-use pes-
42 ticides and is not a private applicator; or (c) offers or supplies technical
43 advice or recommendations regarding the use of agricultural pesticides.

44 ~~(30)~~ (31) "Restricted area" means an area established under the provi-
45 sions of section 22-3419, Idaho Code, to prohibit or restrict the applica-
46 tion of pesticides in order to prevent injury to land, people, animals, crops
47 or the environment.

48 ~~(31)~~ (32) "Restricted-use pesticide" means any pesticide or pesticide
49 use classified for restricted use by the administrator of EPA.

1 ~~(32)~~ (33) "Spray adjuvant" means any wetting agent, spreading agent,
2 deposit builder, adhesive, emulsifying agent, deflocculating agent, water
3 modifier, or similar agent with or without toxic properties of its own in-
4 tended to be used with any other pesticide as an aid to the application or
5 to the effect thereof, and which is in a separate container from that of the
6 pesticide with which it is to be used.

7 ~~(33)~~ (34) "State restricted pesticide use" means any pesticide use
8 which, when used as directed in accordance with a widespread and commonly
9 recognized practice, may be further restricted when the director deter-
10 mines, subsequent to a hearing, that additional restrictions are needed for
11 that use to prevent unreasonable adverse effects on the environment includ-
12 ing man, lands, beneficial insects, animals, crops and wildlife, other than
13 pests.

14 ~~(34)~~ (35) "Under the direct supervision of a certified private appli-
15 cator" means that, unless otherwise prescribed by its labeling, a pesticide
16 shall be considered to be applied under the direct supervision of a certified
17 private applicator if it is applied by a competent person acting under the
18 instructions and control of a certified private applicator who is available
19 if and when needed, even though the certified private applicator is not phys-
20 ically present at the time and place the pesticide is applied.

21 ~~(35)~~ (36) "Unreasonable adverse effects on the environment" means any
22 unreasonable risk to man or the environment, taking into account the eco-
23 nomic, social, and environmental costs and benefits of the use of any pesti-
24 cide.

25 ~~(36)~~ (37) "Wildlife" means all living things that are neither human, do-
26 mesticated, nor as defined in this act, pests, including but not limited to,
27 mammals, birds and aquatic life.

28 SECTION 2. That Section 22-3404, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 22-3404. PESTICIDE AND CHEMIGATION APPLICATORS -- CLASSIFICATION
31 LICENSING REQUIREMENTS. (1) The director may classify pesticide applica-
32 tor licenses issued under this act. Such classifications may include, but
33 are not limited to, ~~professional and applicators,~~ private applicators, and
34 chemigation applicators. Separate licensing requirements and testing pro-
35 cedures may be utilized for each classification.

36 (2) Chemigation Applicators. Any user of a chemigation system must be
37 at least eighteen (18) years of age and shall be certified for competency by
38 the department.

39 (a) On the application to perform chemigation, the applicant must cer-
40 tify that the equipment and system he plans to use for chemigation meet
41 department standards and provide other relevant information.

42 (b) Financial requirements and fees for chemigation certification
43 shall be commensurate with state requirements for professional and pri-
44 ivate applicators.

45 ~~(2)~~ (3) Professional Applicators. No person shall act as a profes-
46 sional applicator without first obtaining a professional applicator's
47 license issued by the department.

48 (a) Application for a license shall be on a form prescribed by the de-
49 partment and shall be accompanied by a fee as prescribed by rule; ~~and~~

~~(b) On the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and~~

~~(e) (b)~~ An applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake, or proper equipment and methods for injecting chemicals through irrigation systems; and

~~(d) (c)~~ Show proof of financial responsibility as prescribed by rule; and

~~(e) (d)~~ An examination fee will be charged as prescribed by rule and an additional examination fee of five dollars (\$5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

~~(f) (e)~~ If at any time a licensed professional applicator fails to maintain the financial responsibility required by paragraph ~~(d) (c)~~ of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph ~~(d) (c)~~ of this subsection.

~~(3) (4)~~ Private Applicator. No person shall act as a private applicator without first obtaining a private applicator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

~~(b) On the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and~~

~~(e) (b)~~ An applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake or proper equipment and methods for injecting chemicals through irrigation systems; and

~~(d) (c)~~ An applicant must pay a license fee as prescribed by rule.

~~(4) (5)~~ If the director finds an applicant qualified for a professional ~~or~~, private, or chemigation applicator's license, and if an applicant applying for a license to engage in the application of pesticides or chemicals has met all of the requirements of any applicable federal or state laws, regulations and rules, the director shall issue the license. The license or permit may restrict the applicant to the use of a certain type or types of equipment, pesticides or chemicals. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

1 ~~(5)~~ (6) The director may by rule require professional applicators to
 2 maintain and furnish records forthwith pertaining to the application of pes-
 3 ticides and other relevant information as he may deem necessary.

4 ~~(6)~~ (7) Licenses issued to dealers and professional ~~and, private, and~~
 5 chemigation applicators shall expire as designated by the director unless
 6 suspended or revoked as provided for in section 22-3409, Idaho Code.

7 ~~(7)~~ (8) Exemptions:

8 (a) The following persons are exempt from subsections ~~(2), (3) and (4)~~
 9 (3), (4), and (5) of this section ~~unless the person is applying chemi-~~
 10 ~~cals through an irrigation system:~~

11 1- (i) Any person applying pesticides other than restricted-use
 12 pesticides for himself or on an exchange of service basis, and who
 13 does not publicly hold himself out as a professional applicator;
 14 ~~and~~

15 2- (ii) Any person using hand-powered equipment to apply pesti-
 16 cides other than restricted-use pesticides to lawns, or to orna-
 17 mental trees and shrubs and who employs two (2) or fewer persons in
 18 his business who apply pesticides and is not holding himself out as
 19 a professional applicator; ~~and~~

20 3- (iii) Any industry, governmental, university of Idaho research
 21 personnel and extension research personnel who apply pesticides
 22 other than restricted-use pesticides to experimental plots or to
 23 demonstrate the use of pesticides; ~~and~~

24 4- (iv) Any veterinarian who applies pesticides as an integral
 25 part of his business and does not publicly hold himself out as a
 26 professional applicator.

27 (b) Federal, state, and other governmental agencies are exempt from the
 28 licensing fees provision of subsections ~~(2) and (3)~~ (3) and (4) of this
 29 section.

30 (c) Professional applicators who do not apply pesticides may receive
 31 an exemption from the proof of financial responsibility required in
 32 subsection ~~(2)(3)~~ (d) of this section, upon submitting a completed form
 33 prescribed by the department.

34 SECTION 3. That Section 22-3406A, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 22-3406A. RESPONSIBILITIES OF CHEMICAL SUPPLIERS. Any person who
 37 supplies or sells at retail a chemical and who knows or has reason to know
 38 that the chemical will be applied by chemigation shall sell chemicals only
 39 to licensed ~~professional or private applicators with a chemigation category~~
 40 chemigation applicators.

41 SECTION 4. That Section 22-3414, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 22-3414. INSPECTION. (1) For the purpose of carrying out the provi-
 44 sions of this act the director may enter on any public or private premises
 45 at reasonable times in order to have access for the purpose of observing the
 46 use and application of pesticides, inspecting records that are required to
 47 be maintained by this act, chemigation equipment and standards, chemical use

1 for chemigation, spraying equipment, storage facilities, disposal areas,
2 investigating complaints of injury, inspection and sampling of land and sam-
3 pling pesticides being distributed, offered for sale, applied or to be ap-
4 plied. The department shall conduct, ~~or make provision to conduct, at least~~
5 ~~two hundred fifty (250)~~ annual chemigation system inspections to assure the
6 effectiveness of the chemigation system from keeping chemicals out of sur-
7 face and ground water.

8 (2) Should the director be denied access to any land where such access
9 was sought for the purposes set forth in this act, he may apply to any court of
10 competent jurisdiction for a search warrant authorizing access to such land
11 for said purposes. The court may, upon such application, issue the search
12 warrant for the purposes requested.

13 SECTION 5. An emergency existing therefor, which emergency is hereby
14 declared to exist, this act shall be in full force and effect on and after its
15 passage and approval.