

**FACT SHEET:
Pesticides**

This fact sheet is intended to provide answers to common legal questions that members of the public may have about pesticide use and regulation in Alberta.

What is a pesticide?

Can a pesticide be sprayed on or near my property?

If pesticides drift onto my property, can I sue?

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What is a pesticide?

The term “pesticide” is defined in Alberta’s *Environmental Protection and Enhancement Act (EPEA)*. “Pesticide” means

- (1) a substance that is intended, sold or represented for use in preventing, destroying, repelling or mitigating any insect, nematode, rodent, predatory animal, parasite, bacteria, fungus, weed or other form of plant or animal life or virus, except a virus, parasite, bacteria or fungus in living people or animals;
- (2) any substance that is a pest control product within the meaning of the federal *Pest Control Products Act* or is intended for use as such a pest control product;
- (3) any substance that is a plant growth regulator, a defoliant or a plant desiccant;

(4) a fertilizer within the meaning of the federal *Fertilizers Act* that contains a substance referred to in subclause (i), (ii) or (iii); and

(5) any other substance designated as a pesticide in the regulations.

Pesticide does not include a substance that is intended, sold or represented for use in potable water to prevent or destroy bacteria, parasites or viruses if the substance is not a pest control product within the meaning of the federal *Pest Control Products Act*.

Can a pesticide be sprayed on or near my property?

Generally, another person cannot apply pesticides directly to your private property without your consent. However, pesticides can be sprayed near your property. For instance, a neighbour is free to use a pesticide on his or her land as long as he or she complies with the label and any other applicable laws. Utility companies and municipalities are also allowed to spray pesticides on rights-of-way near your property if it is part of the right-of-way agreement.

If pesticides drift onto my property, can I sue?

Pesticide drift can be the basis for certain legal actions called “nuisance” or “trespass.” You should consult a lawyer to receive advice on how these legal actions may apply to your specific circumstances.

Nuisance is intended to deal with the unreasonable interference with a person’s use and enjoyment of their property. The word “unreasonable” is very important in the above description. A court would assess the reasonableness of any nuisance based on what would be tolerated by an ordinary landowner. This means that abnormal sensitivities may prevent a claim in nuisance. The court will also weigh the inconvenience to you, the landowner, against the usefulness of the person’s conduct in spraying the pesticide.

Trespass occurs where there is direct interference with another person’s property without lawful excuse or justification. The “directness” of the action is what is important in proving trespass for pesticide use. For pesticide spraying, it is more

likely to be considered trespass if the pesticide is directly sprayed onto your land rather than if it is unintentionally blown there due to wind drift.

Do I need a registration or certification to apply a pesticide?

A registration or certification is only required in certain circumstances, depending on the class of pesticide, how it is being used, and by whom. Alberta has four schedules (classes) of pesticides, which are listed under the *Pesticides (Ministerial) Regulation*, Alta. Reg. 43/97 under *EPEA*:

- Schedule 1 lists “restricted” pesticides that contain active ingredients which impact health or the environment;
- Schedule 2 lists “commercial” pesticides and fertilizers that contain pesticides that are used in specialty situations, such as golf course applications;
- Schedule 3 lists “domestic” pesticides that are registered for lawn and garden applications; and
- Schedule 4 lists antimicrobial pesticides as well as other “traditional” pesticides that are either regulated by other legislation or do not present a significant hazard for an untrained individual to use.

If you are a private landowner (who is not a farmer) who plans to apply a domestic pesticide to your own property for lawn or garden maintenance, you do not require a registration or certification to apply that pesticide.

Restricted and commercial pesticides are only available to farmers or other commercial agriculturalists, certified applicators, and registered pesticide services (there are exemptions for acreage or hobby greenhouse uses).

A “pesticide service registration” is required for restricted, commercial and domestic pesticides if they are applied for profit or if they are applied on certain public areas such as parks or boulevards. Bodies with a pesticide service registration are usually commercial applicators, government agencies or irrigation districts. They must employ at least one certified applicator with the appropriate class of certificate to apply these types of pesticides.

Certified applicators must also be used to apply restricted, commercial and domestic pesticides on the grounds of schools, hospitals, nursing homes and daycare facilities and in other common areas such as playgrounds and recreational areas.

Are there special rules for pesticide use around water?

There are special rules for pesticide use within 30 horizontal metres of an open body of water. An open water body includes lakes, streams, rivers, irrigation canals and other natural bodies of water. An open body of water does not include small ponds, dugouts, ditches or intermittent streams that are less than 0.5 metres in width.

Most pesticide applications within 30 metres of open water must be done by a person or organization holding a pesticide service registration. All applications must be done according to the *Environmental Codes of Practice for Pesticides* published by Alberta Environment. In order to apply the pesticide in a way that does not follow the *Code of Practice*, a request must be made for a Pesticide Special Use Approval.

Persons applying pesticides on cultivated land, such as crop land, must follow the directions on the label including any setbacks for open bodies of water.

Subject to certain limited exceptions, you need a Pesticide Special Use Approval to apply pesticide directly into an open body of water.

How do I know if a pesticide is registered for use in Canada?

Any pesticide used in Canada must be registered for use by the federal government. An agency of Health Canada called the Pest Management Regulatory Agency (PMRA) conducts all screenings and registrations for pesticides in Canada. All registered pesticides have a *Pest Control Products Act* registration number on the label.

The PMRA maintains a public registry of information about pesticides registered for use in Canada. The registry is accessible through the PMRA's website at <http://www.pmra-arla.gc.ca/english/pubreg/pubreg-e.html>. Through the registry you can obtain information such as applications to register a pesticide and evaluation reports.

What if I have a complaint about pesticide use?

Alberta Environment is supposed to respond to public complaints regarding improper pesticide use such as spraying on private property or near water bodies. If you have concerns about the use of pesticides, you should contact Alberta Environment at 1-800-222-6514 (toll-free number).

If you have complaints about the negative health effects of pesticides, these should be reported to the PMRA. Under the federal *Pest Control Products Act*, registrants of pesticides must report "incidents" to the PMRA for investigation. An incident includes any unintended or unexpected effects on humans, domestic animals or the environment that results from exposure to a pesticide. For example, this can include symptoms such as:

- for humans: headache, nausea, rash, seizures or respiratory problems;
- for domestic animals: excessive drooling, vomiting, loss of fur or convulsions; and
- for the environment: plant damage, abnormal leaf or fruit loss, dead fish or birds.

If you have concerns about a pesticide you should report this to the manufacturer (the pesticide registrant), who will be required by law to report the incident to the PMRA. A toll-free number and address should be provided on all product labels to facilitate reporting to the manufacturer. You should also report the incident to the PMRA at 1-800-267-6315.

Can municipalities regulate pesticide use?

Some municipalities have made bylaws that regulate pesticide use. Often bylaws ban the cosmetic use of pesticides on outdoor properties such as lawns and golf courses. The Supreme Court of Canada has ruled that municipalities may make bylaws on pesticide use as long as it is possible to comply with both federal and provincial legislation and the municipal bylaw.

Where can I get more information?

For general information on pesticide regulation, please contact the Environmental Law Centre. Further resources are included below.

Environmental Law Centre Library Resources and Online Catalogue:

Pesticide Advisory Committee. *Report to the City of Edmonton Community Services Department* (Edmonton: City of Edmonton, 2003).

Standing Committee on Environment and Sustainable Development. *Pesticides: Making the Right Choice for the Protection of Health and the Environment* (Ottawa: Public Works and Government Services Canada, 2000).

Online Articles:

Kwasniak, Arlene. "Is municipality spraying by the rules?" (1999) 14:3 *Environmental Law Centre News Brief* 12, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=643>>.

Kwasniak, Arlene. "Municipal regulation of pesticide use: 114957 *Canada Ltée (Spraytech, Société d'arrosage and Services des espaces verts Ltée/Chemlawn v. Town of Hudson*" (2001) 16:3 *Environmental Law Centre News Brief* 7, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=717>>.

Additional Online Resources:

Alberta Environment, Pesticide Management:

<<http://www3.gov.ab.ca/env/protenf/pesticide/>> - this website provides links to information on pesticide legislation, use, sales, monitoring, disposal and publications in Alberta.

Pest Management Regulatory Agency, online:

<<http://www.pmra-arla.gc.ca/english/index-e.html>> - this website provides information about the federal regulation of pesticides in Canada.

Sierra Club of Canada, online:

<<http://www.sierraclub.ca/national/programs/health-environment/pesticides/index.shtml>> - this website provides information on pesticide use in Canada.

A word of caution about your use of this material

The information provided in this fact sheet is current to December 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

The Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library of environmental law materials that is accessible by the public free of charge.

ENVIRONMENTAL LAW CENTRE



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