

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO COMMERCIAL
PESTICIDE APPLICATORS,
QUALIFIED SUPERVISORS AND
CERTIFIED OPERATORS

1995 SUNSET REVIEW



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1995-1996 Members***

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the regulation of **commercial pesticide applicators, qualified supervisors and certified operators**. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to §24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is a need for the regulation provided under article 10 of title 35, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia

Executive Director

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EXECUTIVE SUMMARY

The Department of Regulatory Agencies has completed its sunset review of the Pesticide Applicators' Act and recommends continuation of the program. Pesticide application involves the placement of hazardous and toxic chemicals onto the ground or in and around buildings in an effort to reduce pests, insects, rodents, and weeds. These chemicals, if improperly applied, can have significant adverse health effects on the public. For this reason public regulation is required.

The Office of Policy and Research found that the Department of Agriculture performs their responsibilities adequately and recommends that the Legislature continue the regulation of pesticide applicators. The major recommendation of this report is to merge the Pesticide Act and Pesticide Applicators' Act into one statute. This will reduce overhead costs of administering each program separately while placing the regulation of pesticides into one logical program designed to regulate the use, sale and application of pesticides.

The report also includes other changes intended to provide the public with greater notification of pesticide application and increase the enforcement authority of the Department of Agriculture against violators of the Act. Finally, the report includes some technical statutory changes intended to clarify the law or to conform the Pesticide Applicators' Act provisions with current practices adopted by the Department of Agriculture.

BACKGROUND

The Sunset Review Process

The licensing of commercial pesticide applicators pursuant to article 10 of title 35 is scheduled to terminate on July 1, 1996 unless continued by the General Assembly (§24-34-104(19.1)(C), C.R.S.). By July 1, 1995, the Office of the Executive Director of the Department of Regulatory Agencies (DORA), must submit its findings and recommendations to the Colorado Joint Legislature Sunrise and Sunset Review Committee, including an evaluation of the effectiveness of the regulation, a determination if continuation of licensure is necessary for protection of the public, and a determination whether the current degree of regulation should be decreased or increased to provide the least restrictive regulation consistent with the public interest. (The statutory sunset criteria are provided in Appendix A of this report.) In addition to the above referenced criteria, paragraph 128 of section 10 specifically requires the Department of Regulatory Agencies to report on the extent of local regulation of pesticides pursuant to §31-15-707(1)(b), C.R.S., or pursuant to the police power of any political subdivision of the state.

This sunset review of the licensure of commercial pesticide applicators included an analysis of the state statute and rules; interviews with members of the Pesticide/Pesticide Applicator Sunset Review Task Force (the "Task Force") assembled by the Department of Agriculture ("DOA") staff in Colorado and contacts with other states, assistant attorneys general, US. Environmental Protection Agency ("EPA") officials, commercial pesticide applicators, agricultural representatives, and representatives of environmental organizations; and the public; research of relevant publications; and a review of relevant federal laws, such as "FIFRA" (the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended) and laws in other states.

**Colorado
Statutes -
Historical
Perspective**

In 1953, the Colorado General Assembly first enacted a commercial pesticide applicator license law for persons making any "application of insecticides, fungicides, herbicides or other agricultural chemicals by aircraft for hire." The Colorado Agriculture Commission was authorized to require applicants to pass an examination and have a surety bond or insurance. The Commission could inspect all aircraft dispensing equipment and could suspend or revoke licenses.

In 1961, the statute was amended to require licensure of all "for hire" applicators of agricultural chemicals, which were defined as "insecticide, fungicide, herbicide, nematocide, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant." Specifically excluded from the requirement were federal employees, structural pest control applicators, persons controlling pests on their own property, and fertilizer applicators. The Commissioner of Agriculture also has the authority to license, examine, and otherwise enforce the law. A surety bond of \$2,500 had to be filed with the Commissioner by each licensee.

In 1967, the statute was revised to specify three types of applicators: ground agricultural applicator, aerial agricultural applicator, and commercial applicator. Applicants were required to pass a written examination. The surety bond provision was changed to require liability insurance coverage of at least \$25,000 per person, \$50,000 per accident and \$5,000 property damage, or other evidence of financial responsibility acceptable to the Commissioner. Structural pest control applicators were exempt.

In 1971, the Structural Pest Control Act was passed requiring all persons preventing, controlling, and eradicating pests in household structures, commercial buildings, or other structures to be licensed by the Commissioner. Applicants for licensure were required to pass a written and oral examination, and have either two years experience in structural pest control or a college degree with a major in entomology, sanitary or public health engineering, or related subjects, including practical experience. They were also required to have minimum liability insurance coverage of \$50,000 per person, \$100,000 per accident for bodily injury, and \$50,000 property damage. The Commissioner could suspend, revoke, or deny licenses.

In 1983, the structural applicator law was repealed and its provisions were combined with the commercial applicator law. The commercial applicator law was rewritten to incorporate federal EPA requirements and allow the state to enter into cooperative agreements for commercial applicator licensure programs. In addition, the new Commercial Applicator Act empowered the DOA to certify commercial applicators who use or supervise the use of restricted use pesticides (RUPs) as allowed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

The current law as passed in 1990 is summarized in Chapter 2 of this report. Modifications to the Act at that time made regulation of pesticide applicators more uniform. All commercial applicators were required to have training with licensing for all qualified supervisors and certified operators. All technicians were required to have training provided by the commercial applicator.

Additional provisions required turf, ornamental and aquatic applicators to post a notification sign stating that pesticides were applied and identifying the name of the applicant. As part of the notification requirements, counties, city and counties, and municipalities were preempted from imposing more stringent notification procedures on commercial applicators but retained authority to impose any additional notification requirements upon private individuals, property owners, or the public.

Finally, the 1990 Pesticide Applicators Act created a registry for pesticide sensitive persons that is maintained by the Department of Agriculture. To be placed on the registry, an individual is required to have a doctor's verification and pay an administrative fee.

SUMMARY OF STATUTE

In order to understand the scope of the Act, it is important to begin with some definitions. Also, for quick reference, an outline of Colorado's current regulatory scheme for commercial pesticide applicators is found in Figure A.

Definitions

Commercial Applicators: Any person who engages in the business of applying pesticides or operating a pesticide device for hire. (§35-10-103(2), C.R.S.)

Limited Commercial Applicator: Any person engaged in applying pesticides on their businesses' property. (§35-10-103(8), C.R.S.)

Public Applicator: Any agency of the state, any county, city and county, or municipality or any other local government entity or political subdivision which applies pesticides. (§35-10-103(12), C.R.S.)

Qualified Supervisor: Any individual, who, without supervision, evaluates pest problems, or recommends pest controls using pesticides or devices, or mixes or loads or applies any pesticide, or sells application services, or operates device, or supervises others in any of these functions. To become a Qualified Supervisor, the individual must be licensed by the Department of Agriculture. (§35-10-103(13), C.R.S.)

Certified Operator: Any person who mixes, loads, or applies any pesticide, including restricted use pesticides, under the supervision of a qualified supervisor. To become a Certified Operator, the individual must be licensed by the Department of Agriculture. (§35-10-103(1), C.R.S.)

Applicants for Qualified Supervisors or Certified Operators must possess the appropriate level of experience as well as pass a written exam in each class or subclass of pesticide application that they wish to be licensed. Licenses are valid for three years and must be renewed on or before the expiration date.

Technician: Any individual who uses a pesticide device under the supervision of a qualified supervisor or who mixes or applies general use pesticides under the supervision of a qualified supervisor or restricted use pesticides under the on-site supervision of a qualified supervisor, or who evaluates pest problems, recommends products or treatments for pest problems under the supervision of a qualified supervisor. (§35-10-103(15), C.R.S.)

Pesticide: Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is not a "new animal drug" as designed by the United States Food and Drug Administration. (§35-10-103(10), C.R.S.)

Restricted Use Pesticide: Any pesticide designated as a restricted or limited use pesticide by the Commissioner or as a restricted use pesticide by the Administrator of the EPA. (§35-10-103(14), C.R.S.) Examples include products containing the active ingredient Bromacil. Such products are used for industrial rights of way and fairgrounds and are a soil sterilant. Other products include Paramitol which contains the restrictive ingredients Prometon, sodium chlorate, and sodium metaborate and the insecticide Parathion 8E. Restricted Use Pesticides (RUPs) are contrasted from General Use Pesticides (GUPs) in that they contain chemicals which potentially could have greater adverse health effects on the public. Consequently, they require a license to purchase these types of pesticides. General Use Pesticides may be purchased by anybody over the counter at retail stores. They include such products as Roundup, 2.4D, and Diazinon.

**Requirements
for a
Commercial
Applicator**

A Commercial Applicator must obtain a commercial applicator business license issued by the Department of Agriculture. Licenses are good for one year and expire on January 1 of each year. Requisites for the license include:

- A. minimum liability insurance of \$400,000 dollars with the provision that written notice of any cancellation of the policy must occur ten days prior to the effective date of cancellation. (§35-10-106(1)(a), C.R.S.)
- B. employ or secure the services by documented agreement of a Qualified Supervisor who is licensed in the class or subclass of pesticide application by the business. (§35-10-106 (1)(b), C.R.S.)
- C. provide verifiable training to all employed technicians according to standards adopted by the Commissioner of Agriculture (§35-10-106 (1)(c), C.R.S.), and
- D. separate application records must be kept for each business name used by a commercial applicator. (§35-10-106(3)(c), C.R.S.)

In addition, Commercial Applicators must include a statement on each customer invoice that states they are licensed by the Department of Agriculture. (§35-10-108, C.R.S.) Any person acting as a commercial applicator must obtain a valid commercial applicator business license. The license is only issued for the class or subclass of pesticide application in which the qualified supervisor employed or otherwise retained by the commercial applicator is licensed. (§35-10-105, C.R.S.) Commercial applicator licenses must be renewed annually and cost \$350.00.

All fees collected are transmitted to the commercial pesticide applicator fund, which is the cash funding source for implementation of the Act. (§35-10-126, C.R.S.)

**Requirements
for Limited
Commercial
and Public
Applicators**

Limited Commercial and Public Applicators need not be licensed by the state if they apply only general use pesticides (GUPs). They instead are regulated by the EPA. However, a Limited Commercial or Public Applicator who only applies GUPs can choose to be regulated by the state. If restricted use pesticides (RUPs) as defined by the EPA or the state are applied, then all pesticide applications (both RUPs and GUPs) are regulated by the Colorado Department of Agriculture.

Limited Commercial and Public Applicators must register with the state and pay a \$50 registration fee. They must employ or secure the services by documented agreement of at least one qualified supervisor who is licensed for each class or subclass of pesticide application (§35-10-110(1); C.R.S.) and provide verifiable training to all employed technicians according to standards adopted by the Commissioner pursuant to §35-10-106(1)(c), and §35-10-110(3), C.R.S.

**Record-
Keeping and
Notification
Requirements
Of All
Applicators:**

Commercial, Limited Commercial, and Public Applicators must keep and maintain records of each pesticide application that they perform. Records must be retained for three years from the date of application. (§35-10-111, C.R.S.)

A registry of pesticide-sensitive persons in the state is maintained by the Department of Agriculture. The registry began in 1990 and currently consists of 24 names. In order to be placed on the registry, an individual must apply to the DOA and provide proof of medical need from a doctor. The cost for the application and subsequent yearly renewal is \$25 dollars. The registry is updated annually and provided by the DOA to all commercial, limited commercial, and public applicators. Any commercial, limited commercial or public applicator applying any turf or

ornamental pesticide must take reasonable action to give notice of the date and approximate time that pesticide application will occur to any abutting property of the pesticide-sensitive person. Properties separated by streets or alleyways would not be considered abutting. Notice of publication may be given by telephone, in person or in writing. (§35-10-112 (1)(c), C.R.S.)

Any Commercial, Limited Commercial, or Public Applicator making a pesticide application in any turf or ornamental category must at the time of application provide notice to the public by posting signs at conspicuous points of entry. Any pesticide application in any aquatic category must also be posted. Signs are to meet specific statutory requirements. (§35-10-112 (2)(a), C.R.S.)

No county, city and county, or municipality may enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by the Pesticide Applicator's Act. However, these entities may impose notification requirements upon private individuals, property owners, and the general public. (§35-10-112 (3), C.R.S.)

Who is Not Covered by the Act

Referring once again to Figure A, for pesticide applicators, it is important to note who is not regulated. As discussed earlier, any Public Applicator or Limited Commercial Applicator who only applies general use pesticides (GUPs) is not covered by the Act, but rather by EPA. However, they do have the option to be regulated by the state.

Additionally, anyone using GUPs on a not-for-hire basis are also not regulated by the state. This would include farmers, gardeners, ranchers, and homeowners. Finally, persons or businesses giving advice on pesticide use (i.e. consultants) are not covered, unless they fall under regulated applicator categories.

Figure A

Pesticide Applicators			
Commercial	Limited Commercial	Public	Private or Other
Regulates all pesticide use	State regulates RUP. EPA regulates GUP (or optional state regulation)	State regulates RUP. EPA regulates GUP (or optional state regulation)	EPA regulates
Business License required \$350	Registration fee required \$50	Registration fee required \$50	No license requirement
Qualified Supervisor Experience/Test/Examination Fee Licensed in class of pesticide application performed by business Evaluates pest problems/recommends/or mixes loads/or supervises			not applicable
Certified Operator Test/License Fee		not applicable	
Technician Training requirements			not applicable

Powers and Duties of the Commissioner

In addition to licensing and certifying pesticide applicators, the Commissioner has the following powers and duties:

- To administer and enforce the provisions of the Act (§35-10-118(1), C.R.S.);
- To adopt rules and regulations (§35-10-118(2), C.R.S.);
- Establish any competency requirements and standards for licensure of individuals (§35-10-118(5), C.R.S.);
- To determine the amount of any licensing fee under this Act (§35-10-118(2)(d), C.R.S.).

Enforcement. §35-10-117, C.R.S. authorizes specific acts that are in violation of the statute. They include:

- operating without a valid appropriate license;
- make false, misleading, deceptive or fraudulent representations;
- improperly dispose of pesticides;
- recommend or use any pesticide not registered with the Department of Agriculture;
- Use any pesticide or operate any pesticide device without providing appropriate supervision;
- use, supervise, or recommend any pesticide that would be ineffective or inappropriate for the pest problem being treated;
- operating without insurance; and
- violation of the Colorado Consumer Protection Act;

The Commissioner has the authority to inspect and analyze pesticides being used as well as inspect equipment used for the application of pesticides (§35-10-119, C.R.S.). The Commissioner may issue a cease and desist order, which is a written notice prohibiting further application of pesticides in violation of the Act or the Commissioner's rules and regulations (§35-10-120, C.R.S.). The Commissioner may also apply to any court of competent jurisdiction to obtain a temporary or permanent restraining order to prevent or prohibit an activity that is in violation of the Act (§35-10-120(3), C.R.S.).

Advisory Committee. An 11-member advisory committee is appointed by the State Agricultural Commission to assist in rule making. (§35-10-125, C.R.S.) The committee must consist of the following members:

- a formulator, or its Colorado representative, actively engaged in the sale of pesticides in Colorado;
- a licensed commercial applicator, who is actively engaged in the commercial application of pesticides for the control of agricultural crop pests;
- a licensed commercial applicator, who is actively engaged in the commercial application of pesticides for the control of turf or ornamental pests;
- a licensed commercial applicator, who is actively engaged in the application of pesticides for the control of structural pests;
- a qualified supervisor, employed by a limited commercial applicator, who is actively engaged in the application of pesticides;
- two representatives from public applicators registered under this article, each or whom are elected officials or a designee thereof;
- a representative from the Colorado State University agricultural experiment station or extension service;

- a representative from the Colorado Department of Public Health and Environment; and
- two representatives from the general public, one of whom is actively engaged in agricultural production.

All members except for the formulator must be a resident from the state of Colorado.

Summary of Rules and Regulations

In addition to the statute the DOA has issued rules and regulations which augment the Pesticide Applicator's Act. The following information summarizes key provisions in the rules and regulations.

The Commissioner has designated three general areas: agricultural applicators, ornamental applicators and structural applicators - with 22 categories, in which a business or person may be licensed or a person certified, as follows:

Agricultural applicators - agricultural insect control, agricultural plant disease control, agricultural weed control, seed treatment, livestock pest control, forest pest control, rangeland pest control, aquatic pest control, industrial and right-of-way weed control, public health pest control, and research and demonstration (rule 8.01);

Ornamental applicators - turf insect control, turf plant disease control, turf weed control, ornamental insect control, and ornamental plant disease control (rule 9.01); and

Structural applicators - wood destroying organism pest control, fumigation, residential/commercial pest control, outdoor vertebrate pest control, stored commodities treatment, and wood preservation and wood products treatment (rule 10.01).

In addition to passing the examination for each category in which an applicant intends to practice, the applicant for qualified supervisor must have experience, or education and experience as required for the specific category(ies). "Upon a showing of exceptional circumstances by an applicant, the Commissioner may waive part of the experience requirements specified in these rules" (rule 4.04).

Applicants for agricultural categories must have at least eight months of field experience in agricultural pest control, or two years related college training and two months experience, or one year related college training and five months experience. Such experience must have been gained within the last five years (rule 8.02). The only additional requirement for aerial applicators is that at least one employee of a licensed business holds a current commercial agricultural aircraft operator certificate (rule 2.14).

Applicants for ornamental categories seeking qualification for the turf insect, plant disease, or turf weed control categories must have at least four months of experience in turf pest control, or have two years college credit in a related field and one month experience, or have one year of college credit in a related field and two and one-half months experience. The experience must have been gained within the last two years (rule 9.02).

Applicants for the ornamental insect control and ornamental plant disease control categories must have at least eight months experience in ornamental pest control over two seasons within the last five years, or two years college credit in a related field and four months experience, or one year related college credit and six months experience, with the experience having been gained within five years of the date of license application (rule 9.03).

Structural applicants for wood destroying organisms, residential/commercial, and fumigation must have at least 24 months experience, or four years of college and four months experience, or three years of college and nine months experience, or two years of college and 14 months experience, or one year of college and 19 months experience, with such experience having been gained within the last five years (rule 10.02).

Structural applicants for outdoor vertebrate, store commodities, and wood preservation and wood products treatment must have at least eight months experience, or two years of college and two months experience, or one year of college and five months experience. Again, the experience must have been gained within the five years prior to application (rule 10.03).

Summary of Applicable Federal Laws

Under FIFRA, as amended, the EPA is authorized to "restrict the use of certain pesticides to individuals who (1) have demonstrated competency in the use and handling of pesticides or (2) work under the direct supervision of an individual who has demonstrated competency. However, the overwhelming majority of non-agricultural pesticides are unrestricted, in the sense that they may be used by anybody."¹ FIFRA's main thrust is the registration of pesticides and the use of those products. They require that commercial applicators of those pesticides have obtained some degree of training, but EPA depends heavily on the states to help make those regulations work.

EPA has promulgated rules regarding the certification of pesticide applicators pursuant to sections 7 U.S.C. 136b and 136w of FIFRA (40 CFR part 171). Although EPA has authority to regulate both private and commercial pesticide applicators, it has actively encouraged states to assume that authority through implementation of an EPA-approved program. Congress has appropriated funds to assist states with approved programs.

¹ U.S. General Accounting Office (GAO) Non-agricultural Pesticides Risks and Regulations, April 18, 1986 p.48

Other federal agencies with overlapping regulatory power in the pesticide area are OSHA, the Federal Occupational Health and Safety Administration, FAA, the Federal Aviation Administration, and FTC, the Federal Trade Commission. OSHA has general jurisdiction under Section 5(a)(1) of the Occupational Safety and Health Act to ensure a "safe and healthy work place." In practice, however, EPA is clearly the lead agency in this area, and a memorandum of understanding is currently being drafted on this subject by EPA for clarification. Moreover, since most pesticide application is out-of-doors, OSHA's powers are not always clearly applicable. FTC, as referred to later in this report, has power to review safety and advertising claims of pesticide manufacturers, but is generally inactive in that area. Only FAA, which has authority over pilots who aeri ally apply pesticides, provides effective regulation with penalties against their pilot's license.

Colorado's commercial applicator program, which is the subject of this sunset review, was approved by the EPA in 1985. We are the only state that does not have a state private applicator certification program. Private applicators of restricted use pesticide, such as gardeners and farmers, are regulated by the EPA directly.

The major EPA requirements for commercial applicator certification programs are enforced by EPA or the states. It requires only persons applying restricted use pesticides to be certified or under the direct supervision of a certified person.

EPA's role in regulating pesticide applicators in Colorado is mainly directed toward two activities: (1) Any private person wishing to use restricted use pesticides must satisfactorily complete a mail-in "open book" test. In return, EPA grants a four-year certificate. (2) EPA attempts to inspect, at least once a year, chemical dealerships that sell restricted use pesticides.

It is the EPA's often stated position that, "no pesticide is 'safe' because pesticides are, by their very nature, designed to be biologically active and kill various kinds of organisms."² EPA designates pesticides as restricted use pesticides if necessary to prevent unreasonable risks. According to a 1986 study by the United States General Accounting Office (GAO), EPA has generally designated as restricted use pesticides those that can cause severe acute effects if improperly used, but has begun to restrict pesticides for other reasons, including chronic health effects.³ Under the 1988 amendments to FIFRA, EPA has been directed to assess the chronic health risks of more than 50,000 pesticides currently in use. Due to the magnitude of this reassessment effort, accurate information on the chronic health affects of those pesticides will not be available until sometime after the turn of the century.

Ten recommended certification categories have been adopted by EPA, all of which are encompassed in the Colorado Department of Agriculture list of 22 categories (40 CFR 171.3). EPA requires commercial applicators to pass a general written examination and a written examination specific to each category in which certification is sought. Each examination of a category must be based on examples of problems and situations appropriate to that category, labeling comprehension, safety, environment, pests, pesticides, equipment, application techniques, and state and federal laws. EPA rules provide further detail on knowledge especially of importance in the ten categories it has designated (40 CFR 171.4).

Any state approved plan must also include provisions to ensure that certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly (40 CFR 171.8(a)(2)).

² U.S. General Accounting Office (GAO) Non-agricultural Pesticides Risks and Regulations, April 18, 1986 p.35

³ U.S. General Accounting Office (GAO) Non-agricultural Pesticides Risks and Regulations, April 18, 1986 p.11

Certification Laws in Other States

The EPA estimates that at least 40 states have regulations which are designed to insure that these applicators have some degree of knowledge and training. Twenty-four states require professional applicators to provide notification when applying lawn care pesticides.

Although most states regulate professional pesticide applicators, the strength and effectiveness of the regulation varies widely. The Association of American Pesticide Control Officials (AAPCO) estimates that at least 43 states and the District of Columbia have regulatory systems which generally follow the outline of FIFRA, including requirements for licensure and definitions of "direct supervision". These definitions also vary among the states. "Most states do not require a supervisor to be physically present when unlicensed for hire applicators are working. However, five states always require a supervisor to be present and three other states require a supervisor to be present during certain types of applications."⁴

Quoting the General Accounting Office study of non-agricultural pesticides, "A typical state control program provides that professional applicators of restricted pesticides must either 1) demonstrate competency in the use and handling of pesticides and obtain a license, or 2) work under the direct supervision of an individual who has demonstrated competence and obtained a license. However, several state programs are more restrictive. Five states require all for hire applicators to demonstrate their competency and become licensed. These states do not provide the option of direct supervision. Six additional states do not provide the option of direct supervision for certain types of pesticide use such as fumigations and termiticide applications."⁵

⁴ U.S. General Accounting Office (GAO) Non-agricultural Pesticides Risks and Regulations, April 18, 1986 p.50

⁵ U.S. General Accounting Office (GAO) Non-agricultural Pesticides Risks and Regulations, April 18, 1986 p.13

The GAO report concludes by recommending tighter controls on the use and application of all pesticides, not just restricted use pesticides. FIFRA does not require professional pesticide applicators to demonstrate their competency unless they use the relatively few pesticides that EPA has restricted due to their potentially severe acute effects. We believe that those states that have control programs for professional applicators of unrestricted pesticides are making an effort to assure that they perform competently It would seem appropriate that EPA should encourage states that do not have programs to institute them. In this regard, EPA, with its massive pesticide experience, should develop a model program to help all the states institute effective programs that can provide assurance to the public that the pesticide applicator they hire is competent."⁶

⁶ U.S. General Accounting Office (GAO) Non-agricultural Pesticides Risks and Regulations, April 18, 1986 p.14

SUNSET ANALYSIS

Pesticides contain toxic substances which can pose a serious risk to the public health and safety. The purpose of the Pesticide Applicators' Act is to prevent any adverse effects on individuals and the environment. This is accomplished through a licensing program where both the application business and specific individuals within the business are regulated. Additionally, the DOA performs inspections, reviews complaints and takes disciplinary action, all in an effort to minimize the risk of pesticides to the public.

The use of pesticides is a highly emotionally-charged debate where beliefs range from elimination of all pesticides to a disbelief of any harm from their use. One reason for these divergent beliefs may be how one measures the benefits from pesticides and the attachment one places on current scientific data regarding the adverse health effects on people from pesticides.

The use of pesticides has existed since the 1st century - when arsenic was advocated as an insecticide. Since that time, pesticides have become more prevalent and sophisticated while performing a valuable function in controlling insects, rodents, weeds and other forms of life which have been injurious to crops, livestock, and individuals. As a result of pesticides, crop yield has been significantly increased and certain diseases have been reduced. Pesticide application has also become a multi-billion lawn care industry. Individual homeowners currently spend over \$1.5 billion dollars nationally on hiring commercial pesticide applicators and even more money to buy pesticides themselves in an effort to keep their lawns and trees healthy, weedless and bug-free. The EPA estimates that 69 million American households, or more than 85% of the nation's total families store and use pesticides.⁷

⁷ EPA, Lawn Care Pesticides White Paper, February, 1993

However, scientific research continues to unveil the real and potential damages that can occur from the exposure to pesticides. In the late 1960's the public became aware of the adverse health effects of DDT and chlorinated pesticides and they were outlawed from use. Yet, DDT continues to have effects on the reproductive systems in wildlife.

Through the 1970's and 80's, a new generation of pesticides were developed which were more effective at lower dosages than older pesticides. These pesticides have helped reduce the amount of pesticide being applied today.

However, exposure to pesticides has been documented to create certain adverse health effects including poisoning, fevers, disorientation and seizures. More chronic health effects have also been found including associations between exposure to pesticides and certain cancers.

One area of research that has been studied more recently is the relationship between home pesticide use and childhood cancer. Studies have associated brain tumors in children and households that use insecticide extermination, and leukemia with household pesticides and garden pesticides.^{8 9}

⁸ Lowergant RA, et. al. Childhood Leukemia and Parents' Occupational and Home Exposures J. Nat'l. Cancer Institute 1987: 79: 39-46.

Davis, JR et. al. Family Pesticide Use and Childhood Brain Cancer. Environ. Contam. Toxicol. 1993: 24:87-92

⁹ Gold, E, et. Al. Risk Factors for Brain Tumors in Children, Am. J. Epidemiol 1979 109: 309-319

Most recently, a pesticide study was conducted using Denver, Colorado children and information obtained from the Colorado Central Cancer Registry and area hospital records. That study found an association of home pesticide use and childhood cancer. Specifically, the strongest associations were found for yard treatments and soft tissue sarcomas and the use of pest strips and leukemia.¹⁰ OPR's conversation with one of the authors helped illuminate the results. The study does not prove that pesticides cause cancer. However, due to the statistical significance, neither can they be dismissed. The results are strong enough to suggest that these are significant but further research is warranted. Cancer itself, statistically, is a very rare disease, especially among children. Placing this report's findings in perspective may assist in understanding the danger of pesticides. The chances of children contracting cancer as a result of pesticide exposure is small. It is more likely that they would be hit by an automobile. The report indicates however, that those who do contract cancer may have gotten it from pesticide exposure.

EPA has reported that in 1991, there were 105,800 incidents of poisoning in the country due to pesticides. Of that number, over half, 64,281 of the victims were children under the age of six. Unfortunately, the large majority of pesticide poisoning occurs from homeowners misapplying pesticides. The National Academy of Sciences report of 1993 stated that children may be of far greater risk from pesticides than adults. Children by their behavior are more likely to be closer to pesticides and consequently have a greater chance of exposure. Playing out in the yard, coupled with the fact that children more often put their hands in their mouth and thereby may ingest foreign material that has contaminated their hands or under their nails increases their exposure.

¹⁰ Leiss, JK and Savitz, DA. Home Pesticide Use and Childhood Cancer: A Case - Control Study *Am. J. of Public Health* 1995: 85:245-252

Because of the dangers of pesticides, a strong regulatory program is needed to protect the public from the dangers of exposure. OPR finds that a substantial risk to the public welfare exists and would increase without regulation of pesticide applicators.

This report includes recommendations that will strengthen the Department of Agriculture's ability to maintain the public safety. Specifically, these recommendations include making the Department of Agriculture more effective in public notification of pesticide application as well as the enforcement against violators in an effort to reduce the public's exposure to pesticides.

However, enforcement and notification will not prevent all the problems with pesticide application. As stated earlier, many of the adverse health effects from pesticides are the result of homeowners incorrectly applying pesticides which they purchased at retail stores. Only education, outside of a complete ban, will significantly impact how pesticides have an effect on the public.

A trend toward more education of applicators has developed, and the use of Integrated Pest Management control (IPM) has been employed and continues to gain in popularity. The emergence of pest management programs have also decreased the use of insecticides on major crops such as soybeans, cotton, and wheat. Currently, research is developing genetically-engineered microbial agents which are grafted directly to the seed. This same educational approach should be taken with the public at large. IPM is a holistic approach designed to prevent outbreaks. For example, if a house is having ant problems, rather than applying pesticides to kill the ants, removal of soda cans from the yard which is the cause of the ants, will eliminate the problem. Often, IPM techniques would include the introduction of natural predators and process as well as the judicious use of pesticides.

As the public becomes more sophisticated on the use and application of pesticides, they may employ the IPM techniques or may decide not to use any pesticides at all. But this is the right of the individual homeowner, which goes beyond the scope of this review.

RECOMMENDATIONS

Should the Program be Continued?

times when ashes, common salts and bitters were used as herbicides to deter rodents and pests from crops and food. As early as the 1st century, the Roman naturalist Pliny the Elder advocated the use of arsenic as an insecticide. Today, pesticides have become more sophisticated and are used for widely diverse purposes from controlling disease, to increasing agricultural products to keeping home lawns looking green and lush. Currently, there are over 34,000 different pesticides used in the U.S. that are derived from over 600 basic ingredients. In Colorado, there are over 9,000 pesticides that are registered for use and sale with the Department of Agriculture (as of April 1995). Application of these pesticides are used primarily for agriculture, however many others are applied in and around homes and businesses.

Pesticide use has provided many benefits to society. This is most prevalent in the agricultural area. Through the use of pesticides, we are now capable of producing large amounts of crops in relative small areas saving millions of dollars from crop failure due to pests. Pesticides have also assisted in the prevention of disease through the use of rodenticides, fumigants and molluscides.

Although these benefits are great, scientists and the public are continuing to realize the real and potential dangers from pesticide use. The improper use of pesticides has been documented to show immediate and long term life-threatening consequences if not properly applied. Acute health effects such as neurotoxicity, skin disorders, pulmonary abnormalities and chronic health effects such as cancer may be a consequence of exposure to pesticides.

The Pesticide Applicators' Act provides a regulatory process which assists in minimizing the exposure the public has to pesticides. Any commercial applicator business must obtain a business license as well as licenses for specific personnel, i.e. Qualified Supervisors and Certified Operators. This two pronged approach assures that both the business and the individual applying the pesticides is competent to perform these tasks. See Figure B. Additionally, any public applicator or limited commercial applicator who applies the more hazardous restricted use pesticides (RUPs) are regulated by the Department of Agriculture. Private applicators such as farmers and ranchers who apply restricted use pesticides are regulated by the EPA. Currently, there are approximately 700 commercial applicator businesses licensed in the state. The number of individuals regulated is over 2,500. All apply pesticides which if done improperly can cause detrimental health effects to the public. In an effort to continue the protection of the public health and welfare from the exposure of pesticides and its harmful health effects, The Department of Regulatory Agencies recommends the continuation of this program.

Although a sunset review of the Pesticide Applicator Advisory Board is beyond the scope of this report, OPR acknowledges the Advisory Committee's involvement with this sunset review and the Committee's contributions to the success of the program.

Recommendation 1: Continue the licensing program for commercial pesticide applicators and the registration program for limited commercial and public applicators.

**Should the
Pesticide Act
and the
Pesticide
Applicators'
Law be
Merged?**

The purpose of pesticide legislation whether on the federal or state level has consistently been two fold. One is to provide for a comprehensive list of those pesticides in use and the second is to establish some type of regulation over the application of those pesticides. Many state statutes as well as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) have combined these two goals into one statute. Colorado has not. The reason for this may be historical. The Pesticide Act and the Pesticide Applicators' Act were both enacted prior to FIFRA. Currently, Colorado is the only state in the country which has not assumed the regulation of private applicators from the federal government.

The Pesticide Act is a cash funded program and regulates the advertisement, distribution, sale and transport of pesticides. Specifically it creates a registry of all pesticides that are advertised, distributed, sold, or offered for sale within the state or delivered or transported intrastate to be registered with the Department of Agriculture. (§35-9-101, C.R.S. et al.) A registration fee is required as part of the registration.

The Pesticide Applicators' Act provides for the regulation of pesticide applicators. The Act enables the Department of Agriculture to regulate the application of those pesticides that are registered under the Pesticide Act. It too is cash funded and consistently has been underfunded. The underlying focus on pesticide laws and the underlying historical purpose for these acts suggests that these two statutes should be merged. Merging of these two statutes would also save expenses to the program and reduce government spending. Currently, both programs are administered by the Plant Industry Division within the Department of Agriculture. Merging these two statutes would reduce the overhead costs in administering these programs. This savings would in turn result in a negative fiscal impact on the program.

Merging the two statutes would also merge the two funds and result in reducing their overhead administrative costs. This commingling of the two funds would provide the DOA more flexibility in running these programs. Although the funds from the registry of pesticides would assist in funding the applicator fund, the pesticide manufacturers which fund the registry understand the interconnected relationship between those who produce pesticides and those who apply pesticides. This proposal has received approval from the Pesticide Act Advisory Committee/ Pesticide Applicator's Act Advisory Committee. For these reasons, OPR recommends that the Pesticide Applicators' Law and Pesticide Act be merged.

Recommendation 2: Repeal one law and merge the Pesticide Applicators' Law and the Pesticide Act and create the Pesticide Law.

If Statutes are Merged, Funds Should be Merged.

If the two statutes are merged, then the pesticide applicator fund under §35-10-126, C.R.S. should be repealed and replaced with one fund that covers both the pesticide applicators and the pesticide fund. OPR suggests the following changes to §35-10-126, C.R.S.

Recommendation 3: Repeal Commercial Applicator Fund and merge with Pesticide Fund as follows:

35-10-126. ~~Commercial Pesticide Applicator~~ PESTICIDE Fund- fees

All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the ~~commercial pesticide applicator~~ fund, which fund is hereby created PURSUANT TO ARTICLE 9 OF TITLE 35. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of ~~this~~ THE fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. The general assembly may make annual appropriations from such fund to the department to carry out the purposes of this article.

Repeal Fee

There are certain individuals within the state of Colorado that are acutely sensitive to pesticides. Any exposure to these chemicals can create any variety of medical symptoms including difficulty in breathing, skin rashes, headaches, and nausea. In an effort to reduce the exposure pesticide-sensitive individuals have to pesticides, a pesticide-sensitive registry was established by the Pesticide Applicators' Act in 1990. The registry contains the names of pesticide sensitive individuals and is provided by the Department of Agriculture to all commercial, limited-commercial, and public applicators. Applicators licensed in the turf and ornamental category are responsible for notifying the pesticide-sensitive individual when they are applying pesticides to any abutting property of that individual. Any person who wishes to be placed on the registry must fill out an application and deliver it to the DOA. Proof of medical justification, which consists of a doctor's signature, must be included with the application along with a \$25.00 fee. The registry is updated at least once a year. (§35-10-112(1)(A), C.R.S.)

Originally, the application requested that a Colorado licensed physician must sign the proof of medical justification certifying that the individual was pesticide sensitive. However, during the Pesticide Applicator Sunset Review Task Force meetings it was explained that some individual's personal physicians live and practice in other states, making it difficult and expensive to see that physician. As a result of these discussions, the Department of Agriculture has changed this requirement and now allows any licensed physician from any state to sign the medical verification form.

Additionally, the \$25 fee has been discontinued. Since May, 1995, the DOA no longer charges pesticide-sensitive individuals to be placed on the registry. Questions regarding whether the fee was in violation of the Americans with Disabilities Act caused the DOA to drop the fee charge. In order to make the Act consistent with the current practices and future rules and regulations of the DOA, OPR recommends that the language in §35-10-112(1)(a), C.R.S. requiring the pesticide-sensitive applicant “to pay an administrative fee in the amount determined by the commissioner” be deleted.

The pesticide-sensitive registry has been in existence since 1991. That year there were 11 individuals listed on the registry. Each year the registry has continued to see small growth in the number of registrants. However, that number is minimal. Currently, there are 24 individuals on the registry.

Figure B

COLORADO PESTICIDE-SENSITIVE REGISTRY					
YEAR	91	92	93	94	95
NUMBER OF REGISTRANTS	11	13	20	21	24

A comparison of all other states which have registries shows Colorado’s registry to be the smallest and suggests that the program is not reaching all those who would use it. Although there may be reasons for the small number of registrants (i.e., urbaness of the state, requirement of a fee, overall health of the public, etc.), OPR encourages the Department of Agriculture to more actively advertise the program in an effort to reach all those who are pesticide-sensitive.

Figure C

STATES WITH PESTICIDE APPLICATION NOTIFICATION REGISTRIES						
State	# of Registrants	Population (millions)	Physician Statement	Fee	Mandatory or Voluntary Notification	Program Initiated
CO	24	3.6	Yes	\$25	Mandatory	1990
CT	150	3.2	No	None	Mandatory	1991
FL	75	13.9	Yes	\$50	Mandatory	1991
LA	40	4.3	Yes	None	Voluntary	1989
MD	144	5.0	Yes	None	Mandatory	1989
MI	72	9.5	Yes	None	Mandatory	1993
PA	588	12.0	Yes	None	Voluntary	1988
WA	107	5.3	Yes	None	Mandatory	1992
W.Va.	38	1.8	Yes	None	Voluntary	1991
WI	676	5.0	No	None	Mandatory	1993

Recommendation 4: Eliminate the fee provision for the Pesticide Registry and better promote the Registry.

Preemption

The issue of preemption, whether on the state or federal level, is always hotly debated. Preemption of local pesticide ordinances by the states is no exception. Following the United States Supreme Court Case Wisconsin Public Intervenor v. Mortier 501 U.S. 597 (1991), many commercial applicators began to push for state preemption. Under Wisconsin Intervenor, the Supreme Court held that FIFRA did not preempt local government regulation of pesticide use and that local authority to regulate was within the absolute discretion of the states. This holding was followed by the local Colorado case COPARR LTD. V. City of Boulder 942 F.2d 724 (10th Cir. 1991).

Preemption provides for greater efficiency and consistency when the public is interpreting its laws. Different laws in different political subdivisions places a burden on the citizen to know which law to apply under each locality. The burden magnifies itself in an increase in time, education, and ultimately, cost. These are the arguments that are echoed by the commercial applicators. Their concern is that different localities will enact different ordinances. This will create additional burdens on the applicator to know these laws and potentially could obstruct their business. (For example, locality X could ban the use of a specific pesticide and a commercial applicator driving through that locality en route to another locality that authorizes that pesticide may be in violation of X's ordinance.

Currently, the Pesticide Applicators' Act under §35-10-112(3), C.R.S. preempts only certain notification requirements. Localities are preempted from enacting or imposing any notification requirements upon commercial applicators but the locality is allowed to impose notification requirements onto the homeowner. Pesticide applicators and the DOA are in favor of the state to preempt the whole area of pesticide application.

Proponents of preemption also will argue that creation of local pesticide ordinances is the result of public hysteria where there is no substantial factual basis to support their claims and that local officials are either pandering for political gains or that they lack the expertise to make good law. Ironically, these are the same arguments made by federal officials when they wish to preempt state law.

Perhaps the best measure for determining whether the state should preempt local pesticide ordinances is to review the number of municipalities and counties that have enacted ordinances and examine whether these ordinances are subsequently a burden on the applicator of pesticides or the public at large.

In August, 1992, the Colorado Municipal League conducted a survey from their files of municipalities which had adopted watershed protection ordinances pursuant to §31-15-707(1)(b), C.R.S. Their results revealed that there were 33 municipalities which had adopted watershed protection ordinances. Specifically, 10 municipalities had watershed protection districts and 23 had 5-mile watershed protection ordinances (See Figures D and E).

Pursuant to §35-10-128, C.R.S., DORA was charged to report "on the extent of local regulation of pesticides under §31-15-707(1)(b), C.R.S. or under the police power of any political subdivision of the state." In February, 1995, OPR mailed to each municipality and county a survey requesting information on ordinances they had adopted with respect to pesticides (See Appendices).

In May, those municipalities and counties who did not respond to the questionnaire were contacted by telephone and the information was compiled from both sources.

Of the 267 municipalities and the 63 counties surveyed in the state, there are currently 31 watershed protection ordinances. These all came from municipalities. Figure D identifies which municipalities have ordinances and Figure E identifies those ordinances.

Certain conclusions may be drawn when comparing the two studies. Although there was a slight change in who had local pesticide ordinances, the general number did not change over a three year period. This suggests that predictions of a future potential increasing burden on applicators is unfounded. Secondly, only 12% of all the municipalities across the state have pesticide ordinances, again suggesting that the burden is small.

Figure D

MUNICIPALITY	YES	NO
AGUILAR		X
AKRON		X
ALAMOSA	X	
ALMA	X	
ANTONITO		X
ARRIBA		
ARVADA		X
ASPEN		X
AULT		X
AURORA		X
AVON		X
BASALT		X
BAYFIELD		X
BENNETT		X
BERTHOUD		X
BETHUNE		X
BLACK HAWK		X
BLANCA		X
BLUE RIVER		X
BONANZA CITY		X
BOONE		X
BOULDER		X
BOW MAR		X
BRANSON		X
BRECKENRIDGE		X
BRIGHTON		X
BROOKSIDE		
BROOMFIELD		X
BRUSH		X
BUENA VISTA	X	
BURLINGTON		X
CALHAN		X
CAMPO	X	
CANON CITY		X
CARBONDALE		X
CASTLE ROCK	X	
CEDAREEDGE		X
CENTRAL CITY		X

CENTER		
CHERAW		X
CHERRY HILLS VILLAGE		X
CHEYENNE WELLS		X
COAL CREEK		X
COKEDALE		X
COLBRAN	X	
COLORADO SPRINGS		X
COLUMBINE VALLEY		X
COMMERCE CITY		X
CORTEZ		X
CRAIG		X
CRAWFORD		X
CREEDE		X
CRESTED BUTTE	X	
CRESTONE		X
CRIPPLE CREEK	X	
CROOK		X
CROWLEY		X
DACONO		X
DE BEQUE		X
DEER TRAIL		X
DEL NORTE		X
DELTA		X
DENVER	X	
DILLON		X
DINOSAUR		X
DOLORES		X
DOVE CREEK		X
DURANGO		X
EADS		X
EAGLE		X
EATON		X
ECKLEY		X
EDGEWATER		X
ELIZABETH		X
EMPIRE	X	
ENGLEWOOD	X	
ERIE		X
ESTES PARK		X
EVANS		X
FAIRPLAY		X

FEDERAL HEIGHTS		X
FIRESTONE		X
FLAGLER		X
FLEMING		X
FLORENCE	X	
FOUNTAIN	X	X
FOWLER		X
FRASER		X
FREDERICK		X
FRISCO		
FRUITA		X
FT. COLLINS		X
FT. LUPTON	X	
FT. MORGAN		X
GARDEN CITY		X
GENOA		X
GEORGETOWN		X
GILCREST		X
GLENDALE		X
GLENWOOD SPRINGS		X
GOLDEN	X	
GRANADA		X
GRANBY		X
GRAND JUNCTION	X	
GRAND LAKE		X
GREELEY		X
GREEN MT. FALLS		X
GREENWOOD VILLAGE		X
GROVER		X
GUNNISON		X
GYPNUM		X
HARTMAN		X
HASWELL		
HAXTUN		X
HAYDEN		X
HILLROSE		X
HOLLY		X
HOLYOKE		X
HOOPER		X
HOTCHKISS		X
HOT SULPHUR SPRINGS.		X
HUDSON		X

HUGO		X
IDAHO SPRINGS		X
IGNACIO		X
ILIFF		X
JAMESTOWN	X	
JOHNSTOWN		X
JULESBURG		X
KEENESBURG		X
KERSEY		X
KIM		X
KIOWA		X
KIT CARSON		X
KREMMLING		X
LAFAYETTE		X
LA JARA		X
LA JUNTA		X
LAKE CITY		X
LAKESIDE		
LAKEWOOD		X
LAMAR		X
LARKSPUR		X
LA SALLE		X
LAS ANIMAS		X
LA VETA		X
LEADVILLE		X
LIMON		X
LITTLETON		X
LOCHBUIE	X	
LOG LANE VILLAGE		
LONGMONT		X
LOUISVILLE		X
LOVELAND	X	
LYONS		X
MANASSA		X
MANCOS		X
MANITOU SPRINGS		X
MANZANOLA		X
MARBLE		X
MEAD	X	
MEEKER		X
MERINO	X	
MILLIKEN		X

MINTURN	X	
MOFFAT		
MONTE VISTA		X
MONTEZUMA		X
MONTROSE		X
MONUMENT		X
MORRISON		X
MOUNTAIN VIEW		X
MOUNTAIN VILLAGE	X	
MT. CRESTED BUTTE		
NATURITA		X
NEDERLAND		X
NEW CASTLE		X
NORTHGLENN	X	
NORWOOD		X
NUCLA		X
NUNN		X
OAK CREEK		X
OLATHE		X
OLNEY SPRINGS		X
OPHIR		
ORCHARD CITY		X
ORDWAY		X
OTIS		X
OURAY		X
OVID		X
PAGOSA SPRINGS		X
PALISADE		X
PALMER LAKE		X
PAOLI		X
PAONIA		X
PARACHUTE		X
PARKER	X	
PEETZ		X
PIERCE		X
PITKIN		
PLATTEVILLE		X
PONCHA SPRINGS		
PRITCHETT		X
PUEBLO	X	
RAMAH		X
RANGELY		X

RAYMER		X
RED CLIFF		X
RICO		X
RIDGWAY		X
RIFLE	X	
ROCKVALE		X
ROCKY FORD		X
ROMEO		X
RYE		
SAGUACHE		X
SALIDA		X
SANFORD		X
SAN LUIS		X
SAWPIT		
SEDGWICK		X
SEIBERT		X
SEVERANCE		
SHERIDAN	X	
SHERIDAN LAKE		X
SILT		X
SILVER CLIFF		X
SILVER PLUME		X
SILVERTHORNE		X
SILVERTON		X
SIMLA		X
SNOWMASS VILLAGE		X
SOUTH FORK		X
SPRINGFIELD		X
STARKVILLE		
STEAMBOAT		X
STERLING		X
STRATTON		
SUGAR CITY		
SUPERIOR		X
SWINK		X
TELLURIDE		X
THORNTON		X
TIMNATH		
TRINIDAD	X	
TWO BUTTES		X
VAIL		X
VICTOR	X	

VILAS		X
VONA		X
WALDEN		X
WALSENBURG		X
WALSH		
WARD		X
WELLINGTON	X	
WESTCLIFFE		X
WESTMINSTER		X
WHEATRIDGE		X
WIGGINS		X
WILEY		X
WILLIAMSBURG		X
WINDSOR		X
WINTER PARK		X
WOODLAND PARK		X
WRAY		X
YAMPA		X
YUMA		

Figure E
Municipal Ordinances

Alamosa: City ordinance 7-1995

Alma: City Ordinance 2-1992*

Buena Vista: Municipal Code Chapter 13*

Castle Rock: Castle Rock Watershed Protection District, Castle Rock Municipal Code Chapter 4.02

Colbran: Chapter 9.08

Crested Butte: Crested Butte Town Code, "W" Watershed District, Article 14-5

Cripple Creek: *

Denver: Mayor's Executive Order #121 regarding notification of pesticide application

Empire: Ordinance 187 Watershed District 12/1/82

Englewood: Englewood Municipal Code 12-1-5(A)(B), Pollution of Water Supply

Florence: Chapter 13 Protection of Water Supply

Ft. Lupton: Ordinance-sec 7-116, Spraying, trimming, and removing business-license required.

Fountain: City of Fountain Water Code, Chapter 13.04 Section V, Control and protection of water system.
Water Code: 14.04-Unlawful Acts, 13.04.690 Unlawful to Pollute

Golden: Golden Revised ordinances, Chapter13, " Waterworks Permit", Section 13.18.070(C)

Grand Junction: C.R.S 35:5 and 35:5.5

Jamestown: Watershed ordinance #4, Series 1991 section 4

Lochbuie: Ordinance 196, effective March 1, 1992 The Uniform Building Code and Uniform Fire Code

Loveland: City of Loveland Municipal Code 13.04.150

Mead: The Uniform Building Code and Uniform Fire Code

Merino: *

Minturn: Title 13 of Municipal Code

Mountain Village: N/A

Northglenn: Ordinance #115 Series of 1994, Municipal Code Section 16-15-7

Parker: Section 12(2)(b) Harmful Chemicals

Pueblo: City ordinance 10-2-9-Standards of spraying

Rifle: City ordinance #22 Series of 1994 section 10.05.040(3)-Prohibited Activities and Permitted Activities Requiring Notice

Sheridan: Uniform Fire Code adopted by reference

Trinidad: City of Trinidad Ordinances, Chapter 24 water, sections 24-25 through 24-30

Victor: Ordinance # 239, City of Victor Watershed District Ordinance

Wellington: The Uniform Building and Uniform Fire Code

* **Citation Unknown**

Finally, meetings with pesticide applicators, the public and state officials did not reveal any actual significant burdens on pesticide applicators or the state. As a result of OPR's survey, the small number of municipalities with pesticide ordinances, and the lack of any established proof of burden, OPR recommends that the preemption language under §35-10-112(3), C.R.S. remain as it currently is written.

Recommendation 5: OPR recommends that the preemption language under §35-10-112(3), C.R.S. remain as it currently is written.

Notification Signs

Under §35-10-112, C.R.S., commercial, limited commercial and public applicators making a pesticide application in any turf or ornamental category are required to post signs at points of entry notifying the public of the application. The applicator will post yellow notification flags on the ground where the pesticides were applied and indicating what company applied the pesticide. In addition, the applicator will notify the owner of the property that pesticides were applied to their property, by whom, and at what time. The applicator will personally give the owner this information, or if the owner is not present, leave notification attached on the door of the entrance.

A problem occurs when an owner of a commercial property does not reside at the application site. For example, the owner of a strip mall will contract with a commercial applicator to have pesticides applied at the property. Since there is no owner to leave notification at the time of the application, the applicator will often mail the notification to the owner. A customer visiting the strip mall who has an adverse reaction to the pesticides and requires medical treatment has difficulty in obtaining pertinent information about the pesticide application. In order to provide appropriate treatment, it is imperative to have quick answers as to who specifically applied the pesticide in order to ascertain what type of pesticide was applied. With no owner at the site, the flags are inadequate to provide this information. Although the flags indicate the company who applied the pesticides, larger companies have many different offices and tracking down the appropriate office is burdensome and time consuming when there may be a medical emergency. Because of the difficulty in obtaining this information, OPR recommends that the notification procedures be changed to address this problem. In situations where the owner does not reside on their commercial property, the applicator shall post notification flags, that in addition to the requirement listed in §35-10-112, C.R.S., include the applicator's telephone number, the chemical applied and the date of the application.

Recommendation 6: In situations where the owner does not reside on their commercial property, the applicator shall post notification flags, that in addition to the requirement listed in §35-10-112, C.R.S., include the applicator's telephone number, the chemical applied and the date of the application.

**Add Mixing
and Loading
to Definition
of Technician**

Section 35-10-103, C.R.S. of the Pesticide Applicators' Act provides definitions of terms used in the Act. Certified Operator is currently defined as:

“anyone who mixes loads or applies any pesticide, including restricted use pesticides, under the supervision of a qualified supervisor.”

A Technician is defined as:

“any individual who uses a device under the supervision of a qualified supervisor; (II) mixes or applies general use pesticides under the supervision of a qualified supervisor or restricted use pesticides under the on-site supervision of a qualified supervisor...”

Technicians are often college students usually hired for the summer to assist in the application of pesticides. Their training is minimal, but they are supervised by qualified supervisors who are more sophisticated in the operation of pesticide application. Often the Technician is told by the Supervisor to perform certain limited tasks. This would include mixing the chemicals in preparation for application. However, the Technician may not "mix or "load" the restricted use pesticides. Currently, the technician can only "mix" and "load" RUPs when the Qualified Supervisor is on site. This leaves the applicator in a dilemma of cost and time. They must either train and require their seasonal help to become licensed as Certified Operators (including traveling from their place of business in the state to Denver to take the exam), or hire additional Certified Operators to perform this task. The purpose of the Pesticide Applicators' Act was to provide safeguards in the application of pesticides. It is the Department of Agriculture's belief that the loading of pesticides does not pose a great risk to the public's health and safety. For this reason OPR recommends that Technicians be able to mix and load restricted use pesticides and proposes the following statutory language changes:

Recommendation 7: Amend §35-10-103, C.R.S. as follows:

(1) “Certified operator” means an individual who ~~mixes, loads or applies any pesticide, including restricted use pesticides under the supervision of a qualified supervisor.~~

(15)(a) “Technician” means any individual who:

(I) Uses a device under the supervision of a qualified supervisor;

(II) Mixes, LOADS, or applies general use pesticides under the supervision of a qualified supervisor, MIXES OR LOADS RESTRICTED USE PESTICIDES UNDER THE SUPERVISION OF A QUALIFIED SUPERVISOR, or applies restricted use pesticides under the on-site supervision of a qualified supervisor; or

(III) Evaluates pest problems, recommends products or treatments for pest problems, or sells application services under the supervision of a qualified supervisor.

**Include Lease
as Part of
Limited
Commercial
Applicator
Liability**

The definition of Limited Commercial Applicator under §35-10-103(8), C.R.S. applies to the application in or on property owned by the person or the person’s employer. In some situations the applicator is leasing the property where their business(es) are located. Consequently, if they apply Restricted Use Pesticides they do not need to be registered with the DOA as a limited commercial applicator, and consequently they would not fall under the state's jurisdiction. OPR recommends that the term “or leased” be added to the statutory language in an effort to prevent owners of businesses from being excluded as a limited commercial applicator.

Recommendation 8: Amend §35-10-108, C.R.S. to add the term "Lease" to Limited Commercial Applicator liability as follows:

(8) "Limited commercial applicator" means any person engaged in applying pesticides in the course of conducting a business; except that such application shall be only in or on property owned OR LEASED by the person or the person's employer.

Include Home Rule County, City, or City and County Into Notification Requirements

Currently, under §35-10-112, C.R.S., no county, city and county or municipality is allowed to enact or impose more stringent notification requirements upon commercial applicators, but there are no limits as to notification requirements imposed upon homeowners. In an effort to make this provision more consistent, OPR recommends home rule counties, home rule cities, and home rule cities and counties be included in the preemption language as follows:

Recommendation 9: Include Home rule county, city, or city and county into notification requirements as follows:

§35-10-112 Notification requirements - registry of pesticide-sensitive persons- preemption.

(3) No county, city and county, HOME RULE COUNTY, CITY, OR CITY AND COUNTY, or municipality shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, HOME RULE COUNTY, CITY, OR CITY AND COUNTY, or municipality shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county, HOME RULE COUNTY, CITY, CITY OR COUNTY or municipality on private individuals, property owners, or the general public shall not be held to be applicable to any commercial applicator, nor shall any commercial applicator be exposed to any liability for a failure to comply with any such notification requirement.

**Remove
Obsolete
Language for
Certified
Operator
License
Requirements**

Section 35-10-114, C.R.S. dictates that certified operators are required to have a license“ on or after a date determined by the commissioner pursuant to the rules and regulations.” Since this statute was adopted in 1990, the DOA has determined through rules and regulations that all certified operators are to be licensed. OPR recommends that the obsolete language above be deleted from the statute as indicated below.

Recommendation 10: Certified operator license clarification as follows:

§35-10-114 Certified operator - license required

~~On and after a date determined by the commissioner pursuant to the rules and regulations, a ANY individual acting as a certified operator must possess a valid certified operator license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.~~

**Expand
Commissioner's
Powers**

Section 35-10-118, C.R.S. of the Pesticide Applicator’s Act outlines the powers and duties of the Commissioner of Agriculture in relation to this act. Currently, the Commissioner has certain disciplinary actions which may be invoked against the licensee. These include the ability to issue letters of admonition, and the denial, suspension and revocation of any licensee of the Pesticide Applicators' Act. There are times when a licensee may warrant discipline from the DOA in which a letter of admonition is not adequate for the violation committed, and denial, suspension or revocation is too severe a punishment.

The DOA also places many creative stipulations to an applicator's license as a means to discipline a licensee. For example, DOA may require the applicator to receive additional training, prepare written SOPs (Standard Operating Procedures), have a specific ratio of qualified supervisors to technicians, or submit operating records for a certain period of time. For these reasons, OPR recommends that the commissioner be given the explicit authority to restrict a license, place a license on probation, or provide other discipline through stipulation. The following language is recommended:

Recommendation 11: Expand Commissioner's ability to restrict, or place licensees on probation as follows:

35-10-118 Powers and Duties of the Commissioner

(c) The issuance and restatement of any license authorized under this article and the grounds for disciplinary actions authorized under this article, including letters of admonition or the RESTRICTION, denial, suspension, or revocation, or PROBATION OR OTHER DISCIPLINE THROUGH STIPULATION of any license authorized under this article.

Eliminate Fee Ceiling

Currently, the commercial applicator license fee is set in statute under section (d) of §35-10-118, C.R.S. It states "the amount of the license fee for a commercial applicator business license, not to exceed two hundred fifty dollars through licensing year 1991 and three hundred fifty dollars thereafter, and such fee may be less than that in effect on May 31, 1990."

The statutory language determining the fee through 1991 is obsolete and should be removed from the act. Requiring separate legislation to adjust fees is inefficient and time consuming. Currently, the Department of Agriculture has discretion to set fees within the \$350 ceiling. The current licensing fee is inadequate to pay for the costs of administering the pesticide applicator program. An increase will be necessary. However, the merging of the two statutes as suggested in Recommendation 3 may allow the fee to remain the same.

Recommendation 12: Eliminate Fee Ceiling

Recommendation 13. Change "immediate" under §35-10-120, C.R.S. to "prompt".

Increase Civil Penalties

Under §35-10-122, any person who violates any provision of this Act or any rule or regulation adopted pursuant to this Act is fined a maximum of one thousand dollars. Because of the low civil fine that can be imposed upon a violator, DOA feels that some commercial applicators are not deterred by the civil fine. Instead, it is more profitable for the commercial applicator to be fined than to change their procedures or do not change until they are fined. Additionally, other state statutes requiring civil penalties have a maximum of \$5,000. For these reasons, OPR recommends that the civil penalty fine maximum be increased to \$5,000.

Recommendation 14: Increase Civil penalties to \$5,000.

**Rewrite
Criminal
Penalties**

The criminal penalties under §35-10-123, C.R.S. of the Pesticide Applicators' Act are confusing and difficult to enforce. Under the statute, an individual must commit a violation twice before being charged under the criminal provisions. Secondly, the code distinguishes criminal violations as either a class 1 or class 2 misdemeanor and references the violation by statute section. This makes the statute difficult to understand unless one flips back and forth through the statute. Most importantly, however, is that the statute is never used by the Attorney General's office when enforcing the Pesticide Applicator's Act. The reason why the Attorney General never uses this provision is because the statute only makes the violation a misdemeanor, and there are other criminal charges that the Attorney General may use to charge a violator with a felony. An example of this is the Consumer Protection Act. Because of confusing language in the statute and the lack of use, OPR recommends that §35-10-123 be rewritten as follows:

Recommendation 15: Rewrite Criminal Penalties under §35-10-123, C.R.S. as follows:

Any person who violates any section of §35-10-117, C.R.S., commits a class 6 felony and shall be punished as provided in §18-1-105, C.R.S.

**Require
Administrative
Examination
and Grading
Fees**

Under the Pesticide Applicators' Act, the Department of Agriculture administers the licensing exams for Certified Operators and Qualified Supervisors. Normally these exams are administered in Denver and the results of the individual's exam is recorded about a week later. An individual who lives or works in another part of the state must travel to Denver to take the exam and travel back home. If that individual fails the license exam, he or she would be required to return to Denver and take the exam again. The DOA recognizes the burden this potentially has on an out of town license examinee should they fail the exam. As a result, they began to grade the exam immediately for out of town examinees in order for the examinee to find out if they passed the exam. If the examinee had failed they could immediately take the exam again (different set of questions). Because this procedure discriminated against Denver examinees, DOA's policy was expanded to grade any exam immediately upon the completion for anybody who requested it. The grading of these out of sequence exams had an administrative cost that is not recovered by the DOA. Additionally, some examinees will take the exam continuously until they receive a passing grade. This requires DOA personnel to grade each exam which also creates a financial cost to the DOA. OPR believes that the policy to immediately grade out of sequence exams benefits out of town examinees and recommends that an administrative fee be charged to grade out of sequence exams in order to recover the additional cost incurred in performing this task. OPR recommends that the statutory language under §35-10-118(3), C.R.S. be amended to allow the Commissioner to determine the amount of any examination and "grading" fee.

Recommendation 16: The statutory language under §35-10-118(3), C.R.S. be amended to allow the Commissioner to determine the amount of any examination and "grading" fee.

**Require
Notification to
Pesticide-
Sensitive
Individuals
Living on
Abutting
Property**

Under §35-10-112, commercial, limited commercial, or public applicators that are applying turf or ornamental pesticides must take reasonable actions to notify any pesticide-sensitive person listed on the registry whose property abuts the property being treated with pesticides. This allows the pesticide-sensitive individual to take precautions so that their health will not be seriously impaired. Because of the language in the statute, specifically, the word "abuts", pesticide-sensitive individuals at times are still exposed to pesticides without notification. The problem is that an alley which separates two properties is not considered abutting. Consequently, an applicator applying pesticides to the property will not need to notify the pesticide-sensitive person who's property is just across the alley. This distance becomes even closer if the applicator is applying pesticides to an overhanging tree. In order to ensure reasonable protection against pesticides from individuals on the registry, OPR recommends that the following language be added to the statute under §35-10-112(c).

Recommendation 17: Require notification to pesticide individuals that would abut applicated land except for the fact that an alley divides the two properties as follows:

"If two properties would be considered abutting but for the fact that they are separated by an alley, for the purposes of this section they will be considered abutting property."

Court of Appeals

Under the current Pesticide Applicators' Act, any appeal for any disciplinary action taken by the Department of Agriculture can be appealed to the District Court. Once the appeal has been decided by the District Court, it then may be further appealed to the Court of Appeals. It is a consistent standard by many of the practice acts that appeals be made directly to the Court of Appeals. This saves time by putting the appeal in the court most familiar with the process and allows the District Court to devote more of its time to their over-burdened docket. For these reasons, OPR recommends that additional language be added to the statute which provides for appeals against disciplinary actions taken by the DOA to be held in the Colorado Court of Appeals.

Recommendation 18: Require disciplinary actions to be appealed directly to the Colorado Court of Appeals by amending §35-10-121(f) by adding a new subsection (4) which reads:.

"Any person aggrieved by any final disciplinary action taken by the Commissioner may appeal to the Colorado Court of Appeals."

Imposing Fines

Under the current statute, if an individual is improperly applying pesticides, the Department of Agriculture has the ability to seek an injunction to prohibit the applicator from applying pesticides. In order to receive the injunction, DOA must receive a court order. In addition to seeking an injunction, the DOA may separately impose a fine against the applicator. If the applicator fails to pay the fine, the DOA may enforce the penalty through the legal system. In order to save time and expense, the DOA could require the court to impose the fine at the same time it seeks an injunction. This would also eliminate any question of whether the court has jurisdiction to impose a fine. For these reasons, OPR recommends that §35-10-122, C.R.S. be amended to include language that would allow the courts to impose fines for civil penalties against anyone violating the Pesticide Applicators' Act.

Recommendation 19: OPR recommends that §35-10-122(1), C.R.S. be amended to allow the civil penalties to be determined by the Commissioner "or a court of competent jurisdiction."

APPENDICES

Appendix 1

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Appendix 2

Pesticide Applicators' Act

35-10-101. Short title. This article shall be known and may be cited as the "Pesticide Applicators' Act".

35-10-102. Legislative declaration. The general assembly hereby finds and declares that pesticides perform a valuable function in controlling insects, rodents, weeds, and other forms of life which may be injurious to crops, livestock, and other desirable forms of plant and animal life, to structures, and to individuals. The general assembly further finds and declares that pesticides contain toxic substances which may pose a serious risk to the public health and safety and that regulation of pesticide use is necessary to prevent adverse effects on individuals and the environment.

35-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Certified operator" means an individual who mixes, loads, or applies any pesticide, including restricted use pesticides, under the supervision of a qualified supervisor.

(2) "Commercial applicator" means any person who engages in the business of applying pesticides or operating a device for hire.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Department" means the department of agriculture.

(5) "Device" means any instrument or contrivance, other than a firearm, 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); except that "device" shall not include equipment used for the application of pesticides when sold separately therefrom.

(6) "EPA" means the United States environmental protection agency.

(7) "General use pesticide" means any pesticide so designated by the commissioner or the administrator of the EPA.

(8) "Limited commercial applicator" means any person engaged in applying pesticides in the course of conducting a business; except that such application shall be only in or on property owned by the person or the person's employer.

(9) "Pest" means any insect, rodent, nematode, fungus, weed, or 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 in other living animals) which the commissioner or the administrator of the EPA declares to be a pest.

(10) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States food and drug administration.

(11) "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; except that "plant regulator" shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, "plant regulator" shall not be required to include any of those nutrient mixtures or soil amendments which are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, which are not for pest destruction and which are nontoxic and nonpoisonous in the undiluted packaged concentration.

(12) "Public applicator" means any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision which applies pesticides.

(13) "Qualified supervisor" means any individual who, without supervision, evaluates pest problems, or recommends pest controls using pesticides or devices, or mixes, or loads, or applies any pesticide, or sells application services, or operates devices, or supervises others in any of these functions.

(14) "Restricted use pesticide" means any pesticide designated as a restricted or limited use pesticide by the commissioner or as a restricted use pesticide by the administrator of the EPA.

(15) (a) "Technician" means any individual who:

(I) Uses a device under the supervision of a qualified supervisor;

(II) Mixes or applies general use pesticides under the supervision of a qualified supervisor or restricted use pesticides under the on-site supervision of a qualified supervisor; or

(III) Evaluates pest problems, recommends products or treatments for pest problems, or sells application services under the supervision of a qualified supervisor.

(b) "Technician" does not include any individual whose duties are solely clerical or janitorial or otherwise completely disassociated from pest control.

(16) "Under the on-site supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor who is present at the work site at the time the work is being performed.

(17) "Under the supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor, even if the qualified supervisor is not physically present at the work site at the time the work is performed.

35-10-104. Scope of article. (1) The following shall be subject to the provisions of this article and to any rules and regulations adopted pursuant thereto:

(a) Any commercial applicator;

(b) Any limited commercial applicator or any public applicator which applies restricted use pesticides, whether or not a particular application involves restricted use or general use pesticides; except that this article shall not apply to any limited commercial applicator or public applicator which does not apply restricted use pesticides, unless such limited commercial or public applicator requests that it be subject to the provisions of this article pursuant to paragraph (c) of this subsection (1); or

(c) Any limited commercial applicator or public applicator which requests, in the form and manner specified by the commissioner, that it be subject to the provisions of this article and to any rules and regulations adopted pursuant thereto.

(2) The provisions of this article shall not apply to:

(a) Any person who performs the following acts for the purposes of producing any agricultural commodities on property owned or rented by him or his employer or, if such acts are performed without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person:

(I) The operation of a device or the supervision of such operation;

(II) The use or supervision of the use of any pesticides except those designated for limited use by the commissioner pursuant to section 35-9-108 (5);

(b) Any individual who operates a device or uses any pesticide or who supervises, evaluates, or recommends such acts on the property of another without compensation; or

(c) Any individual who uses a device or applies any pesticide or who supervises such acts at his home or on his property, when such use or supervision is not compensated and is not in the course of conducting a business. Nowhere is it the intent of the general assembly to prevent private citizens from using legal chemicals for the control of weeds and pests on their own property.

35-10-105. Commercial applicator - business license required. Any person acting as a commercial applicator must possess a valid commercial applicator business license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto. A commercial applicator business license may only be issued for the class or subclass of pesticide application in which the qualified supervisor employed or otherwise retained by the commercial applicator is licensed.

35-10-106. Commercial applicator - license requirements - application - fees. (1) As requisites for licensure, the applicant for a commercial applicator business license shall:

(a) Obtain liability insurance in the minimum amount of four hundred thousand dollars with the provision that such policy shall not be cancelled unless written notice is provided to the commissioner at least ten days prior to such cancellation; except that liability insurance policies containing a so-called "pollution exclusion" shall satisfy this paragraph (a);

(b) Employ or secure the services by documented agreement of a qualified supervisor who is licensed in the class or subclass of pesticide application performed by the business;

(c) Provide verifiable training to all technicians in his employ according to standards adopted by the commissioner;

(d) Identify all pesticide application equipment in the form and manner prescribed by the commissioner;

(e) If it engages in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for a commercial applicator business license shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that the applicant has complied with subsection (1) of this section.

(3) (a) If a commercial applicator operates under more than one business name from a single location, the name of each such business providing services related to pesticide application shall be listed with the commissioner in the form

and manner he shall designate. The commissioner may require that a separate fee be paid for each business name so listed.

(b) No additional commercial applicator business license shall be required for such additional business names.

(c) If a commercial applicator operates under more than one business name from a single location, the applicator must maintain separate pesticide application records pursuant to section 35-10-111 and separate business records for each such business name.

(4) Each applicant for a commercial applicator business license shall pay a license fee in an amount determined by the commissioner.

(5) Each commercial applicator business license shall expire on January 1 of each year.

(6) Each licensee shall report to the commissioner, in the form and manner the commissioner shall designate, any change to the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

35-10-107. Commercial applicator business license - renewals. (1) Each commercial applicator shall make an application to renew its business license on or before the first working day of January for the year of renewal. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal is not postmarked on or before the first working day of January for the year of renewal, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If the application and fee for renewal are not postmarked on or before February 1, the business license shall not be renewed, and the commercial applicator shall apply for a new license.

35-10-108. Commercial applicators - invoice notice. Commercial applicators shall include a statement in conspicuous type on each customer invoice that indicates that commercial applicators are licensed by the department. Said statement shall be exactly prescribed by rule adopted by the commissioner.

35-10-109. Limited commercial and public applicators - no business license required. No business license shall be required for limited commercial or public applicators; except that the commissioner may require such applicators to register with the department in the form and manner he shall designate and to pay an administrative fee in an amount which he shall determine.

35-10-110. Limited commercial and public applicators - requirements for operation. (1) For each class or subclass of pesticide application a limited commercial or public applicator applies, it shall employ at least one qualified supervisor who is licensed in that class or subclass of pesticide application or shall secure the services of such qualified supervisor by documented agreement.

(2) Notwithstanding the provisions of subsection (1) of this section, no public applicator shall be required to pay licensing or certification fees for any qualified supervisor or certified operator which it may employ.

(3) Every limited commercial or public applicator shall provide verifiable training to all technicians in its employ according to standards adopted by the commissioner. Such standards shall be identical to those adopted by the commissioner with respect to commercial applicators pursuant to section 35-10-106 (1) (c).

(4) If the commissioner, pursuant to section 35-10-109, establishes a registry of limited commercial and public applicators, he may also require that each applicator report, in the form and manner the commissioner shall designate, any change to the information provided by such applicator to the registry or in any such reports previously submitted, within fifteen days of said change.

35-10-111. Record-keeping requirements. Each commercial, limited commercial, and public applicator shall keep and maintain records of each pesticide application in the form and manner designated by the commissioner. Such records shall be retained for a period of three years from the date of the pesticide application and shall be kept at the address specified in the application for the commercial applicator's business license or, in the case of limited commercial and public applicators, at the address specified in the registry authorized in section 35-10-109.

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption. (1) (a) The commissioner shall promulgate rules and regulations for the establishment of a registry of pesticide-sensitive persons to be maintained by the department. Pesticide-sensitive persons may apply to be placed on the registry provided they can provide proof of medical justification in the form and manner prescribed by the commissioner and shall pay an administrative fee in an amount to be determined by the commissioner. Said registry shall be updated at least annually and the published registry shall be provided to all commercial, limited commercial, and public applicators on record with the commissioner. Names added after the most recently published registry shall be available from the department upon request.

(b) The commissioner shall provide standardized notification signs to any person accepted for the registry for such person to post on his property. These signs shall be designed, manufactured, and distributed solely by the department.

(c) A commercial, limited commercial, or public applicator, prior to applying a pesticide in any turf or ornamental category, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any person who resides on property which abuts the property to be treated and whose name is on the published registry.

(2) (a) Any commercial, limited commercial, or public applicator making a pesticide application in any turf or ornamental category shall, at the time of application, post a sign notifying the public of the application, such sign to be posted at any conspicuous point or points of entry to the property receiving the application.

(b) Any commercial, limited commercial, or public applicator making a pesticide application in any aquatic category shall post, at the time of application, a sign notifying the public of the application, such sign to be posted in the manner designated by the commissioner through the adoption of rules and regulations pursuant to article 4 of title 24, C.R.S.

(c) The notice-of-application signs specified in paragraphs (a) and (b) of this subsection (2) shall be water resistant and shall measure at least four inches in height and five inches in width. The sign shall contain the following information in black lettering and symbols on a bright yellow background:

(I) The word "WARNING", in at least sixty-point boldfaced type;

(II) The words "PESTICIDES APPLIED", in at least twenty-four-point boldfaced type;

(III) The symbol of a circle at least two inches in diameter with a diagonal slash over an adult, child, and dog; and

(IV) The name of the commercial, limited commercial, or public applicator which made the application, in at least eighteen-point boldfaced type.

(3) No county, city and county, or municipality shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, and municipality shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county, or municipality on private individuals, property owners, or the general public shall not be held to be applicable to any commercial applicator, nor shall any commercial applicator be exposed to any liability for a failure to comply with any such notification requirement.

35-10-113. Qualified supervisor - license required. Any individual acting as a qualified supervisor must possess a valid qualified supervisor license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

35-10-114. Certified operator - license required. On and after a date determined by the commissioner pursuant to rules and regulations, any individual acting as a certified operator must possess a valid certified operator license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

35-10-115. Qualified supervisor and certified operator licenses - examination - application - fees. (1) Each applicant for a qualified supervisor or certified operator license shall:

(a) Pass a written examination in each class or subclass of pesticide application in which he wishes to be licensed;

(b) Possess the degree of experience and any other qualifications which may be required by the commissioner for licensure under this section; and

(c) If he wishes to be licensed to engage in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for licensure under this section shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that such applicant has complied with subsection (1) of this section.

(3) Each licensee shall be required to report to the commissioner, in the form and manner he shall designate, any change to the information provided in such licensee's application or in any such reports previously submitted, within fifteen days of such change.

(4) Each applicant for a license issued under this section shall pay a license fee in an amount determined by the commissioner, after review by the advisory committee created in section 35-10-125.

35-10-116. Qualified supervisor and certified operator licenses - expiration - renewal of licenses. (1) Licenses issued pursuant to section 35-10-115 shall be valid for three years and shall expire on the anniversary date of such license.

(2) A licensee licensed pursuant to section 35-10-115 may have the option to apply to renew a license without further examination if he has completed, within the previous three years, the competency requirements established by the commissioner.

(3) A licensee shall submit a renewal application in the form and manner designated by the commissioner on or before the termination date of such license and shall pay a renewal fee in an amount determined by the commissioner.

(4) If the application for renewal of any license issued pursuant to section 35-10-115 is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total renewal fee is paid.

(5) If the application and fee for renewal of any license issued pursuant to section 35-10-115 are not postmarked on or before the thirtieth day following the expiration date of the license, the license shall not be renewed and the licensee shall apply for a new license.

35-10-117. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person:

(a) To perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to do so;

(b) To hold oneself out as being so qualified to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts;

(c) To solicit, advertise, or offer to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts; to act as an agent for any principal to solicit from any person the purchase of pesticide application or pest control services from the principal when the principal does not possess a valid license to perform the services being offered; or to enter into a contract to perform such services;

(d) To refuse to comply with a cease and desist order issued pursuant to section 35-10-120;

(e) To refuse or fail to comply with the provisions of this article;

(f) (I) To make false, misleading, deceptive, or fraudulent representations.

(II) No claims of absolute safety shall be made for any product regulated by this article.

(g) To impersonate any state, county, city and county, or municipal official or inspector;

(h) To refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner.

(2) It is unlawful and a violation of this article for any person acting as a commercial, limited commercial, or public applicator, or as a qualified supervisor, or as a certified operator:

(a) To use, store, or dispose of pesticides, pesticide containers, rinsates, or other related materials, or to supervise or recommend such acts, in a manner inconsistent with labelling directions or requirements, unless otherwise provided for by law, or in an unsafe, negligent, or fraudulent manner;

(b) To use or recommend the use of any pesticide or device not registered with the department pursuant to article 9 of this title or to use or recommend the use of a pesticide or device in any manner inconsistent with the restrictions of the commissioner or the administrator;

(c) To use any device or pesticide or to direct or recommend such use without providing appropriate supervision, including, but not limited to, the application of any pesticide without providing the supervision of a qualified supervisor licensed in that class or subclass of pesticide application;

(d) To maintain or supervise the maintenance of any device or pesticide application equipment, including, but not limited to, loading pumps, hoses, or metering devices in an unsafe or negligent manner;

(e) To fail to provide the notification required pursuant to section 35-10-112 (1) (c);

(f) To make false or misleading representations or statements of fact in any application, record, or report required by this article or any rules or regulations adopted pursuant thereto;

(g) To fail to maintain or submit any records or reports required by this article or any rules or regulations adopted pursuant thereto.

(3) It is unlawful and a violation of this article for any commercial applicator, qualified supervisor, or certified operator:

(a) To permit the use of his license by any other person;

(b) To use or supervise or recommend the use of any device or pesticide which, including but not limited to generally accepted standards of practice, would be ineffective or inappropriate for the pest problem being treated;

(c) (I) To use any device or apply any pesticide or to recommend or supervise such acts in any manner which fails to meet generally accepted standards for such use or application except as provided by subparagraph (II) of this paragraph (c).

(II) If a commercial applicator receives instructions from a party contracting for such applicator's services and the commercial applicator knows or should know that using the device or applying the pesticide in the manner specified by the contracting party may not or does not meet generally accepted standards for such use or application, the commercial applicator must so inform the contracting party. If the contracting party, after being so advised, continues to require the commercial applicator to perform the application or use the device according to these instructions, the commercial applicator may follow these instructions for such application or use unless such application or use would violate any of the directions contained on the pesticide or the device or the labeling of either or would violate any provision of this article or article 9 of this title or any rule or regulation adopted pursuant to this article or article 9 of this title. If the commercial applicator complies with these requirements, the party contracting for such application of any pesticide or use of any device shall have no cause of action for damages against the commercial applicator if the application or use causes death or injury to the contracting party or his property or is unsatisfactory in its result, unless the contracting party establishes, by a preponderance of the evidence, that such death, injury, or unsatisfactory result resulted from negligence or an intentional act not encompassed within or necessitated by the instructions provided by such contracting party.

(4) It is unlawful and a violation of this article for any commercial applicator:

(a) To operate any device or to apply any pesticide if the insurance required by section 35-10-106 (1) (a) is not in full force and effect at the time of such use or application, or if it does not have on file with the department, in the form and manner designated by the commissioner, verification that said insurance is in full force and effect;

(b) To fail to provide any customer with any information required to be so provided by this article or by any rules and regulations adopted pursuant thereto.

(5) It is unlawful and a violation of this article for any employee or official of the department to disclose or use for his own advantage any information derived from any applications, reports, or records, including medical records, submitted to the department pursuant to this article or to reveal such information to anyone except authorized persons, who may include officials or employees of the state, the federal government, the courts of this or other states, and physicians.

(6) The failure by any person to comply with the provisions of subsection (1) (a), (1) (b), (1) (c), (1) (f), or (4) (b) of this section is a deceptive trade practice and is subject to the protections of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

35-10-118. Powers and duties of the commissioner. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules and regulations for the administration and enforcement of this article, including, but not limited to:

(a) The regulation of all aspects of pesticide application, including, but not limited to, the storage, use, application, and disposal of any pesticide or device by any person subject to this article;

(b) The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article, including the establishment of classifications and subclassifications for any license authorized under this article;

(c) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition or the denial, suspension, or revocation of any license authorized under this article;

(d) The amount of the license fee for a commercial applicator business license, not to exceed two hundred fifty dollars through licensing year 1991 and three hundred fifty dollars thereafter, and such fee may be less than that in effect on May 31, 1990.

(3) The commissioner shall determine the content of each such examination required for the administration of this article and the amount of any examination fee. He shall establish a passing score for each examination which reflects a minimum level of competency in the class or subclass for which the applicant is being tested.

(4) The commissioner shall establish standards and procedures to issue a license to any person who possesses a valid license from another jurisdiction, where the qualifications for that license are substantially similar to those adopted for a comparable license authorized under this article.

(5) The commissioner shall establish any competency requirements and standards for any individuals licensed under section 35-10-115.

(6) The commissioner is authorized to conduct hearings required under sections 35-10-119 and 35-10-120 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(7) The commissioner is authorized to determine the amount of any licensing fee authorized under this article based on the actual cost of administering and enforcing the article and any rules and regulations adopted pursuant thereto.

(8) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving grants-in-aid, securing uniformity of rules, and entering into reciprocal licensing agreements.

(9) The commissioner is authorized to promulgate rules and regulations to comply with the "Federal Insecticide, Fungicide and Rodenticide Act", as amended; except that such rules and regulations shall not contravene any provision of this article, article 9 of this title, or any other provision of state law.

(10) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

35-10-119. Inspections - investigations - access - subpoena. (1) The commissioner shall provide for the inspection and analysis of pesticides being used and for the inspection of equipment, devices, or apparatus used for the application of pesticides, and he may require proper repairs or other changes before further use.

(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(4) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To all buildings, yards, warehouses, and storage facilities in which any devices, pesticides, containers, rinsates, or other related materials are kept, used, stored, handled, processed, disposed of, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

(b) To all records required to be kept and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(5) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

35-10-120. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease and desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease and desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at his discretion, an immediate hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to him indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

35-10-121. Disciplinary actions - denial of license. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, or revoke any license authorized under this article if the applicant or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has had an equivalent license denied, revoked, or suspended by any authority;

(d) Has been adjudicated a violator or has committed a violation of the "Federal Insecticide, Fungicide and Rodenticide Act", as amended; except that a consent decree entered into with the EPA shall not be considered a violation of such act unless an order from the regional administrator of the EPA or the consent decree shall specifically state that a violation has occurred;

(e) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding methods or materials used or work performed when requested by the commissioner; or

(f) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee or certified person from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) No licensee whose license has been revoked may apply or reapply for any license under this article until two years from the date of such revocation.

35-10-122. Civil penalties. (1) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision, rule, or regulation for the second time.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

35-10-123. Criminal penalties. (1) No person may be charged under this section unless it is determined, after notice and an opportunity for hearing conducted pursuant to article 4 of title 24, C.R.S., that such person has twice committed the violation to be charged; except that this subsection (1) shall not apply to any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (g), and (5).

(2) Any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (g), (2) (a), (2) (b), (2) (c), (2) (d), (3) (a), or (4) (a) commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) Any person who violates any of the provisions of section 35-10-117 (1) (f), (2) (f), (2) (g), (4) (b), and (5) commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

35-10-124. Information. The commissioner, in cooperation with other agencies of this state or the federal government, may publish information pertaining to the use and handling of pesticides and conduct workshops for the purpose of informing the pesticide applicators of new developments in the field of pesticides.

35-10-125. Advisory committee - sunset review. (1) The state agricultural commission created by section 35-1-105 shall appoint an advisory committee of eleven members to assist the commissioner in promulgating rules and regulations to carry out the provisions of this article.

(2) The committee shall consist of the following members:

(a) A formulator, or his Colorado representative, actively engaged in the sale of pesticides in Colorado;

(b) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of agricultural crop pests;

(c) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of turf or ornamental pests;

(d) A commercial applicator, licensed under this article, who is actively engaged in the application of pesticides for the control of structural pests;

(e) A qualified supervisor, employed by a limited commercial applicator, who is actively engaged in the application of pesticides;

(f) Two representatives from public applicators registered under this article, each of whom shall be an elected official or a designee thereof;

(g) A representative from Colorado state university agricultural experiment station or extension service;

(h) A representative from the department of health; and

(i) Two representatives from the general public, one of whom is actively engaged in agricultural production.

(3) All members of the advisory committee, with the exception of the formulator, shall be residents of this state.

(4) The appointment of the formulator, the commercial applicator engaged in the control of agricultural crop pests, and one of the representatives from a public applicator shall expire on January 1, 1991; and the appointment of the commercial applicator engaged in the control of turf or ornamental pests, the representative from the general public who is actively engaged in agricultural production, the qualified supervisor employed by a limited commercial applicator, and the representative from the department of health shall expire on January 1, 1992. The initial appointment of all other members shall be for a term of three years. Thereafter, the appointment of each member to the committee shall be for a term of three years.

(5) Members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of such committee.

(6) (a) This section is repealed, effective July 1, 1996.

(b) Prior to said repeal, the advisory committee appointed pursuant to this section shall be reviewed as provided for in section 2-3-1203, C.R.S.

35-10-126. Commercial pesticide applicator fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the commercial pesticide applicator fund, which fund is hereby created. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of this fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. The general assembly may make annual appropriations from such fund to the department to carry out the purposes of this article.

35-10-127. Deadline for promulgation of rules and regulations for implementation of article, as amended. Any rules and regulations necessary for the implementation of this article, as amended at the second regular session of the fifty-seventh general assembly, shall be promulgated by the commissioner no later than December 31, 1991.

35-10-128. Repeal of article - termination of functions. Effective July 1, 1996, this article shall be repealed. The licensing function of the commissioner of agriculture shall also terminate on July 1, 1996. Prior to such repeal and termination, the licensing function shall be reviewed as provided for in section 24-34-104, C.R.S., and, as part of such review, the department of regulatory agencies shall report on the extent of local regulation of pesticides pursuant to section 31-15-707 (1) (b), C.R.S., or under the police power of any political subdivision of the state.

Appendix 3**Letter and Questionnaire Sent to Municipalities and Counties
Regarding Water Protection Ordinances**

April 5, 1995

«NAME»

«MUNIC»

«ADDRESS»

«ADDRESS2»

«SALUTE»

The Department of Regulatory Agencies (DORA) is currently performing a sunset review of the Pesticide Applicators' Act. Pursuant to this act, DORA is required to report on the extent of local regulations of pesticides under C.R.S. §31-15-707(1)(b) or under any regulation by police powers of any political subdivision of the state. Section 707(1)(b) states:

“(1) The governing body of each municipality has the power:

(b) To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect;”

Our findings will be presented to the Joint Interim Sunrise/Sunset Committee of the General Assembly. We are requesting that you complete the enclosed questionnaire and mail it back to us in the self-addressed envelope by Friday, April 28, 1995. If you have any questions regarding this questionnaire, please contact us at (303) 894-7851. Thank you for your attention in this matter.

Sincerely,

Christopher J. Flanagan
Management Analyst

Enclosure

1. Person responding to questionnaire:

Telephone Number:

2. Name of your municipality or county:

3. Has your municipality adopted a watershed protection ordinance pursuant to C.R.S. §31-15-707(1)(b) that addresses pesticide use?

_____ YES _____ NO

If yes, please provide the name and citation of the ordinance:

Comments:

4 Do you have any other local pesticide regulations?

_____ YES _____ NO

If yes, please provide the name and citation of the ordinance:

Comments: