

Intermittent Private-Commercial Chemigation Applications

Joel Kangiser, Case Review Officer
Pesticide Management Division
Washington State Department of Agriculture
P.O. Box 42589
Olympia, WA 98504-2589
(360) 902-2013
jkangiser@agr.wa.gov

This morning I'm going to talk about a new enforcement policy that involves private and commercial applicators working together on chemigation applications, but before I do that I'd like to cover a few other issues...

License Changes: Within the last year our new license database was completed and now gives us a lot more options on how we do business. How many of you have received your pesticide licenses this year? As you have noticed the licenses are not paper anymore. They're a hard plastic, and they don't have the same information printed on them as your paper licenses did. For those of you that renewed on time you should have received your licenses by now. The contractor sent out the licenses in late January. The plastic licenses were attached to a paper print-out that had all the information about your license on it.

Here is an example of what your new license will look like. On the front side it will have a reminder that you need to renew annually. It will have your name and license number, and it will also have a bar code. You'll notice that the license doesn't say what type of license it is or what categories you have. On the back it provides our website address and a toll-free number where you can go to check on all of the information associated with your license. There is also a signature line and we urge you to sign your card as soon as you receive it.

In the future you'll have the option of how you want to receive your update notification. We can send it by mail as we've always done, or we can email a link to our website with your information on it.

Our on-line information will cover both individuals and companies. You'll be able to check your recertification credits, and you'll be able to look for recert courses that interest you. Eventually you'll be able to report license changes and renew your license on-line. You can actually make license changes right now by emailing us. For example if you change your address or phone number or something like that you can email us, but once we have everything running correctly with our website and database, things should be a lot easier. When you'll be able to use a credit card and renew on-line is probably a ways down the road, but we are working towards that.

Here is an example of how you can look up information if you're a consumer and lets say you wanted to check the license of a commercial operator. You don't know the correct spelling of his first name so all you need to do is enter the first few letters "Steph" and his last name "Smith" which brings up several Stephen Smiths. You can then usually figure out the correct entry by the county. One of the points I want to make is that the Department is very concerned about maintaining your privacy and that's why, as an individual, we won't identify your location by anything closer than the County. If it's a company we do have the full address and information about insurance, etc. posted.

This gives you an idea of what you'll find when you click on the correct Stephen Smith. Note that the "status" indicates that Stephen Smith is "recertified", but the license actually is expired. To me, recertified means that they are currently licensed when what it actually means is that they have the proper amount of recert credits to obtain a new license.

OK, the benefits of this new system... For licensees, you're going to be able to get information much quicker any time of the day. We won't be using the codes for license types and categories anymore. So instead of having categories such as AC for Ag insect and disease control, it will simply spell out the category. One of the neat things that we will eventually have is the ability to search courses by location, topic and language. For example you want to see a listing of all courses in your particular county you can do a simple search on that. I assume then, that you will be able to refine that search to find courses covering particular subject matter.

Credit records will be updated much more quickly once we start using the bar codes to collect attendance records. Right now we have a single person that enters all of that information by hand. With the bar codes it will all be automatic. We will have some type of a fall-back system in case there's ever a problem or discrepancy.

For companies, it will be a lot easier for you to check to make sure your insurance information is up-to-date. When your insurance is ready to expire your insurance company is supposed to send in an original Financial Responsibility Insurance Certificate (FRIC) with original signatures. Technically your license is not valid if that is not on file. A lot of times insurance companies don't get it sent in, or they don't send an original. So we have to send out this nice little letter telling you to contact your insurance company and have them get the FRIC in. You'll be able to check on this for yourself. You can also check to make sure that employee and equipment information is accurate, and that should help you to meet the legal requirement of notifying WSDA within 30 days when you add a new licensee or apparatus.

For Dealers, it will give you an easy way to determine whether a person's license is valid and has been renewed. I can tell you that when we find a pesticide dealer has sold federal restricted-use pesticides to someone who is not properly licensed we suspend the pesticide dealer license. This of course means that the facility cannot sell either general-use or restricted-use pesticides. And Dealers, just a reminder that the rules require you to positively ID restricted-use pesticide purchasers that you don't know. Positively ID means you must see a photo ID.

For WSDA it's just going to be a much easier, much more efficient way of doing business, and that should translate to better customer service. I want to really encourage you to use our website. There's a lot of good information that's posted there. There are fact sheets, newsletters, news releases, links to all the laws and rules, to forms, to processes, and a lot of other information. At some point down the road we should be able to use the website for direct notification by email. For example, we have an issue that comes up that affects one particular license type, or one particular category. We would hopefully be able to send information automatically by email to all who hold that category.

For time-lines, our major mailing did go out in late January, and our website is up and running. We will hopefully have the ability to do searches on recert courses and check license credit status by this summer. Hopefully will start using the bar codes to track credits this fall, but realistically that might be pushing it just a little bit. We'll see...

The ability to take credit cards and renew on-line might be a ways down the road but we are working towards that. If you have a routine question please email or call us at our regular number which is license@agr.wa.gov or toll free at 1-(877) 301-4555. If you have questions about licensing changes or the new system please contact us by email at licensechanges@agr.wa.gov or toll free at (800) 606-9641.

Ok, just a few odds and ends that I would like to run by you...

Downloading labels off the internet: I don't know how it came about, but there is apparently a lot of misinformation going around about downloading labels off the internet. Except for Section 18 emergency exemptions, it is not legal to use a label that you've downloaded off the internet. The law and rules require that you follow the instructions on the container label. If the instructions on the internet label happen to be the same instructions as on the container label then you would not have committed a violation, but... if you go by internet label directions that are different from directions on the container label, you have broken the law and rules. When we investigate an incident we will be looking at what the container label requires. OK, that's fair warning.

Chemigating over irrigation ponds: Usually this is a label violation because the label will state "do not apply to rivers, lakes, ponds, etc." and we would consider an irrigation pond to fit in those water bodies, but... if the irrigation pond is wholly impounded or wholly contained with no way for the water to get out, we would consider it a technical violation and not something we're going to get real excited about. Of course there could be the unusual situation where you affect waterfowl or something like that, then we might look at the possibility of action, but normally it's a technical violation.

Presenter's post-conference note: Department expectations are that new systems will be constructed in a manner that prevents chemigation over such ponds.

If however, there is a way for the water to get out and enter another body of water, it would be an actionable violation. I would also like to mention a different type of situation: If you have seasonal standing water in a field, and you have to chemigate over it, it will not generally be considered a label violation because the water bodies on labels are not the same as seasonal standing water. On the other hand, you need to use some common sense. If you have waterfowl landing on the water and you chemigate and knock off water fowl, it likely will be considered a violation (though not a label violation) and we will likely take action.

Chemigating over the top of running water is almost always an actionable violation. I have to say that it would be very unusual circumstances for us to not take any action in such a case.

Monitoring chemigation applications: Just a reminder, by rule you are required to monitor a chemigation system at least every 4 hours. The label could require more frequent monitoring. If you are chemigating near a sensitive site, such as a road, or residence or water body, you must continuously monitor.

How private and commercial applicators can work together on chemigation applications:

The Department has a new enforcement policy that deals with chemigation applications where a farmer or grower and a commercial application business are both involved in a single chemigation application. Over the last couple years staff here at our Moses Lake office have been working with an advisory group involved in chemigation and one of the questions that came up was whether there was a way for private and commercial applicators to work together on chemigation applications. We decided to take a close look at what the law and rules might allow and also have our attorneys review it.

This idea of private and commercial applicators working together is really foreign to WSDA's way of doing business. Exclusively we have always enforced the laws and rules based on a single applicator, either private or commercial. In the past, when we have encountered applications involving both commercial and private, we've always considered them to be commercial. Whether there is any contract or not, or whether any money actually is exchanged is irrelevant. With a few minor exceptions, when an applicator is applying pesticides to the land of another they are acting as a commercial applicator. In our previous way of thinking, since there can only be one applicator involved in an application, and we have someone who is acting as a commercial applicator, then the entire application is a commercial application.

Before we could even explore this issue we had to acknowledge that chemigation is really different, and our previous enforcement stance may not be the best way to handle chemigation applications. Chemigation, at least circle-pivot applications, obviously take much longer to complete than most other types of applications. The equipment essentially runs itself and only needs to be monitored on an occasional basis. People who monitor a system may be able to shut down the system if there is a problem without necessarily knowing much more about the application. Growers and commercial applicators are forced to share equipment. The irrigation system itself is owned by the grower or landowner, while the commercial applicator owns the injection system. There are many things that make a chemigation application different than other types of application.

As we looked closely at the law and rules and had our attorney look at them, we found nothing that would really prohibit commercial and private applicators working on the same application, but one critical issue was having the capability of holding each applicator accountable for their own actions. We must know who is responsible for what and who to take action against if there are violations. When we have investigated applications involving both commercial and private applicators, it is common to have a lot of finger pointing going on with everyone denying responsibility.

So what do the current, existing laws and rules require with this type of application? Well, the application cannot be both private and commercial at the same time. There are different licensing requirements, different requirements for direct supervision and there's an insurance requirement for commercial applicators. I haven't looked into it, but I really doubt that a commercial applicator's insurance will cover damages as a result of a mistake by the private applicator who is working with them.

So what you have is an application that is commercial part of the time, and an application that is private part of the time. Each time a private applicator takes over for a commercial applicator or vice versa, it becomes a new application. And that's regardless of whether the activity only takes a few minutes or several hours. Each time there is a new application, there must be a new pesticide application record. Again, that's regardless of whether the activity takes a few minutes or several hours.

Another key thing that the law and rules disallow is commercial applicators/businesses disclaiming responsibility for their activities. The law requires that commercial applicators be insured for their activities and by implication this means that they must be responsible for their actions. Therefore, disclaimers of responsibility are not allowed when commercial applicators become involved in an application in any manner.

So, according to current laws and rules, an applicator would need to create a new record each time there's a change from private to commercial or vice versa. This can mean that either or both parties will need to fill out multiple pesticide application records for a single chemigation application. This obviously would be very burdensome, so we have come up with what we believe will be a much easier, workable solution. This new enforcement policy that we have developed will allow one person, who we are calling the primary applicator, to maintain the pesticide application record throughout the application so long as the assisting applicator records all of their activities in a log.

Prior to the application or at least prior to a second party becoming involved, both parties must sign an agreement which identifies the primary applicator who agrees to keep the pesticide application records for the entire application. The primary applicator can be either the commercial or the private applicator depending on the situation. The primary applicator should really be the person that controls most of the application. The primary applicator also must provide a copy of all pesticide labels so the assisting applicator is aware of any entry precautions, PPE requirements, etc.

As I mentioned, the assisting applicator will need to record and initial all of his/her activities in an activity log that will be kept at the injection site. The primary applicator must receive the activity log upon completion of the application. The activity log must be jointly retained with the pesticide application record and the assistance agreement. These documents must be available to the Department upon request.

The agreement that is signed by the primary and assisting applicators must have the exact language and format as approved by WSDA, but you can substitute your company or farm name/logo for WSDA's. The agreement can cover up to a maximum of one growing season, but must be signed by the commercial applicator and farm owner/operator when covering more than a single application. The policy is in effect this season and the agreement forms and activity logs will be available on our website at: www.agr.wa.gov, or we can fax, mail or email copies.

We believe this new policy will allow private and commercial interests to work together while providing a number of advantages: simplified record keeping, more awareness of responsibility, better accountability, and effective enforcement. Another option if the application is not "intermittent" (for example, only one change of applicators) each applicator can keep their usual pesticide application record covering their portion of the application. I would caution you, though, that there must be a clear hand-off of responsibilities with no gaps in "time" of application.