

USE INSPECTIONS & FOLLOW-UP ENFORCEMENT

AUTHORITY

FIFRA authorizes primary enforcement responsibility to states for pesticide use violations; see section 26 of FIFRA for more information.

Introduction

Use inspections and follow-up investigations are a necessary and indispensable element of pesticide use enforcement. While section 12(a)(2)(G) of FIFRA, as amended, makes it unlawful to use any registered pesticide in a manner inconsistent with its labeling, it does not give the federal inspector right of entry to conduct the inspection/investigation.

The Fourth Amendment of the U.S. Constitution states, in part: “the rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...” To ensure lawful inspections, the Agency has developed procedures consistent with this provision and relevant court decisions.

Statutory Basis

FIFRA section 12(a)(2)(G) and section 2(ee) state that “it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.”

The phrase “to use any registered pesticide in a manner inconsistent with its labeling” means to use any registered pesticide in a manner not permitted by the labeling. This does not include:

- < Applying a pesticide at a rate, concentration, or frequency less than specified on the labeling, unless the labeling specifically prohibits deviation from the specified rate, concentration, or frequency.

- < Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling, unless the Administrator has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment.
- < Employing any method of application not prohibited by the labeling.
- < Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.
- < Any use of a pesticide in conformance with section 5, 18, or 24 of this Act.
- < Any use of a pesticide in a manner that the Administrator determines to be consistent with the purposes of the Act.

An advisory opinion was issued on March 3, 1981. It permits the use of less diluent than that specified on the label in ultra low volume (ULV) and low volume agricultural and forestry applications. This advisory opinion does not permit a discretionary choice of diluent different than that specified on the label, regardless of the recommendation by an authorized person or entity (see Federal Register Vol. 46, Number 41, March 3, 1981).