

Get My Drift

Legal Aspects of Pesticide Drift



Every year, nearly 5 billion tons of pesticides are intentionally applied to the American landscape.¹ Responsible pesticide use is critical to avoid adverse environmental impacts. At the neighbor-to-neighbor level, the issue can become contentious when pesticides drift from one neighbor's yard to another. The following answers address homeowners' most commonly asked questions about pesticide drift.

1. What is a pesticide?

Federal law defines a pesticide as any substance intended for "preventing, destroying, repelling, or mitigating any pest," and substances intended for use as a plant growth regulator, defoliant, or desiccant.² The word-ending "cide" means "killer." The term "pesticide" is a general term and includes insecticides (killer of insect pests), herbicides (weed control), fungicides (fungi control), rodenticides (mice/rat control), etc.

2. What is pesticide drift?

Pesticide drift is the movement of pesticides through the air, away from the area where they were applied. It's somewhat analogous to secondhand smoke. Cigarette smoke drifts away from the smoker and can be inhaled by nearby non-smokers as secondhand smoke. Similarly, a herbicide sprayed on a plant or tree can drift away from its target and land on non-targeted plants. Drift becomes a problem when the herbicide or other pesticide has an unintended impact or causes damage. An example is 2,4-D, a herbicide used to control dandelions and other broadleaf weeds. Some lawn-care products (*e.g.*, Ortho Weed-B-Gon and Scotts Turf Builder with Plus 2 Weed Control) contain 2,4-D. The granular form of 2,4-D can turn into a gas and drift away from the place where it was applied, harming plants sensitive to 2-4-D, like grapes, tomatoes, and lilacs.³



Graphic: www.nda.agric.za

3. How can pesticide drift be prevented?

Preventing spray drift is the responsibility of the person applying the pesticides. (Applicators include private citizens, farmer/growers, commercial applicators, and non-commercial applicators.) Using common sense is the best means of prevention. Mix and apply pesticides only when winds are calm (less than 10 mph). Most important, read the label on the pesticide before using it, and follow the directions. The label is the law. All of the label directions are the *legal* requirements for using the pesticide safely and effectively. Pesticides must be applied correctly to avoid collateral damage. Pesticide labels are not an easy read; they take some time to review and understand. But it's time well spent ... to use pesticides responsibly and to stay on the right side of the law. Pesticide labels can be found the internet, if the label attached to the product is hard to read.⁴

Pesticides can be used only on the sites, plants, or crops listed on the label. The label also specifies the application rate and method, storage and disposal information, protective clothing to wear while using the pesticide, and environmental hazards (*e.g.*, "toxic to bees").

¹ Timothy Kiely, David Donaldson & Arthur Grube, Ph.D., *Pesticide Industry Sales and Usage: 2000 and 2001 Market Estimates*, at 10 (Biological and Economic Analysis Division, Office of Pesticide Programs, Office of Prevention, Pesticides, and Toxic Substances, U.S. Environmental Protection Agency, May 2004.).

² See 7 U.S.C. § 136 (u)

³ Herzfeld, D, B. Jarvis, *The Considerate Gardener's Guide to Pesticides, Part 2. Yard & Garden Line News*, September 1, 2003. <http://www.extension.umn.edu/yardandgarden/YGLN-Sept0103.html>

⁴ See, for example: <http://www.cdms.net/manuf/default.asp>.

4. Will the vegetables and fruits in my garden be safe to eat?

If a pesticide that drifts onto your vegetables or fruit is not labeled for use on vegetables or fruit, do not eat them. Pesticides that are labeled as safe to use on particular vegetables and fruits identify “safe” levels of pesticide residue for the food-plants listed on the label. But there is no sure way to know if a pesticide labeled for use on a non-food plant has a “safe” level of pesticide residue for a non-target plant. For example, a lawn herbicide can be used on turf, but the label does not identify a safe level of herbicide residue on fruits and vegetables, because they are non-target plants. If you are uncertain, don’t eat the affected fruit and vegetables.

5. What can I do if my neighbor uses a pesticide that damages my plants or property?

In Minnesota, it is illegal to apply a pesticide that strays onto the adjacent property and causes damage.⁵ In fact, pesticide drift is illegal even if there is no damage. “A person may not direct a pesticide onto property beyond the boundaries of the target site,” according to the law.⁶

Taking your case to court for the loss of garden plants is not a good option. Most of the cases that have ended up in court involve aerial spraying of acreage (crops or forests) and significant monetary losses.

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The “garden variety” dispute between neighbors is usually not taken through the trial and appeal process, because of the financial realities of paying for lawyers, expert witnesses, scientific analysis, and other litigation costs. The challenge is proving what pesticide did the damage and the connection between the pesticide that drifted off-target and the damage done. Scientific analysis for pesticide residue is costly (usually several hundred

dollars.) The University of Minnesota Extension Service no longer has a clinic or other means to diagnose pesticide drift or herbicide damage in home landscapes. The Minnesota Department of Agriculture (MDA) oversees pesticide use in the state. But the MDA investigates complaints only when it suspects that there is a violation of the law. Priority is given to investigations involving injury/damage to humans, animals, food/feed products, and the environment. The MDA receives complaints at 651-296-6121. The complaint process is explained online at <http://www.mda.state.mn.us/appd/pesticides/complaints.htm>.

The recommended option is to try the neighborly approach. “My experience has taught me that by far the best way to resolve or prevent drift disputes is for the two parties to discuss the situation as adults in an open and respectful manner,” maintains Dean Herzfeld, a University of Minnesota Associate Professor and Extension Educator in the Plant Pathology Department, and the Coordinator for the Pesticide Applicator Training Program in Minnesota. Speak to your neighbors in a friendly, tactful way and explain your concerns about the impact that their pesticide use has had on you, your health, your garden, or your pets. Try to negotiate a solution that satisfies both of you. Find out what pest problems your neighbors are having and provide constructive information about nontoxic, pest-control methods. For instance, if your neighbors use a product containing 2,4-D to control dandelions and it drifts onto your tomato plants, you could provide information about corn gluten meal, an organic alternative for control of dandelions and other broadleaf weeds.⁷

Take a tip from the experts: Use the neighborly approach to deal with your drift disputes and preserve harmony in your neighborhood.

⁵ “A person may not apply a pesticide resulting in damage to adjacent property.” Minnesota Statutes §18B.07, Subd. 2.3 (b).

⁶ Id.

⁷ U of MN information on corn gluten meal: <http://www.extension.umn.edu/extensionnews/2004/gluten.html>