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## Termiticide Use Restrictions in Delaware

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Termiticide labels are regarded as “enforceable documents” by State and Federal pesticide laws. In fact, all pesticide products must be used according to their label or the user may be subject to State and Federal sanctions for “use inconsistent with labeling.” Always read termiticide labels before use and follow the directions. Questions regarding label statements should be referred to the Department.

In addition to the label, Delaware pesticide regulations directly effect your use of termiticides. The purpose of this summary is to provide you: 1) an overview of the state’s regulations covering soil termiticide use and, 2) the Department’s interpretation of some terminology used on termiticide labels. For more specific information about the **Delaware Pesticide Law** and/or the Delaware Pesticide Rules and Regulations, please call the Department of Agriculture at 302-698-4500 or 800-282-8685 (in-state callers only). You may also visit our website at <http://www.state.de.us/deptagri/pesticides/> to download the law, regulations, application forms, and/or to search our on-line databases.

Additional information on termiticides may be found on the internet at the following sites:

[http://www.epa.gov/opppmsd1/PR\\_Notices/pr96-7.html](http://www.epa.gov/opppmsd1/PR_Notices/pr96-7.html)

<http://www.udel.edu/pesticide/>

<http://www.aspcro.org>

## REGULATIONS GOVERNING THE USE OF TERMITICIDES

### Pre-Construction Treatment

U.S. Environmental Protection Agency, Pesticide Regulation (PR) Notice 96-7, dated October 1, 1996, required all soil treatment termiticide products to comply with certain changes to their label directions. One major change in label directions is a statement that pre-construction applications of termiticides shall not be performed at less than the dosage and/or concentration specified on the labeling. All soil termiticides sold after October 1, 1999, have the following statement:

**APRE-CONSTRUCTION TREATMENT: DO NOT APPLY AT A LOWER DOSAGE AND/OR CONCENTRATION THAN SPECIFIED ON THIS LABEL FOR APPLICATIONS PRIOR TO INSTALLATION OF THE FINISHED GRADE®**

Some termiticide labels provide for the application of a higher concentration of the active ingredient, with a corresponding decrease in the gallons of the chemical mixture: for example, instead of using a 1% concentration at 1x volume, you can apply a 12% concentration at a reduced volume. By following these directions for use, you can substantially reduce the total volume of chemical mixture applied.

**This statement established a new performance standard for pest control operators.**

Subsequent to PR Notice 96-7, the Delaware Department of Agriculture (DDA), Pesticides Section, revised the Delaware Pesticide Rules and Regulations (Rules), Section 22, "Restrictions on the Use of Pesticides for the Control of Subterranean Termites." The revisions reference the EPA PR Notice 96-7 and require pre-construction treatments at the label specified volume (dosage), and/or concentration. **The DDA is taking an active role to enforce the pre-construction application of termiticides at full label rate. Investigations have resulted in the assessment of substantial monetary penalties (based upon the size of the company and specific violations). Building contractors and construction sites are surveyed by DDA Inspectors to gather information relating to the use of termiticides. You are strongly urged to comply with the EPA approved label and the Delaware Regulations.**

### Questions and Answers relating to APre-Treats@:

1. **What is the variance allowed for volume applied?** Answer: In general, the DDA will accept a variance of  $\pm 10\%$  of the volume or dosage prescribed for the treatment.
2. **What is the meant by the term Afinished grade® in a pre-treat?** Once the backfill is installed, grading of slope from the foundation is complete and, the structure has received the County Occupancy Certificate (COC), the DDA will consider the structure to have met the condition of Afinished grade®. It is important to understand that once an application is initiated as a pre-treat, it must be completed in accordance with pre-treatment label directions.
3. **What are the County Governme nts= requirements for pre-treats?** The three Delaware counties have different building codes but they are similar in respect to the conditions for pre-treats. In essence, they state: AThe concentration, rate of application and treatment method of the termiticide shall be consistent with and never less than the termiticide label."

4. **What if the building contractor does not notify the PCO prior to pouring the garage floor, and a vertical/horizontal barrier is not completed?** At a minimum the vertical barrier should be completed by drilling and/or long-rodging the perimeter of the slab. If the contractor or home buyer will not permit drilling of the slab, documentation of this refusal is advised (for example, a Registered or Certified letter). Alternatively (if pre-treatment has not begun at the site) you may wait for the finished grade and COC to be issued and begin the job as a post-construction treatment.
5. **What is required for vertical and horizontal barriers when treating a structure with a foundation deeper than four (4) feet (for example, structures with a basement)?** The vertical barrier must be completed at the label volume and concentration to a minimum depth of four (4) feet below grade. The horizontal barrier must be made after grading is complete and prior to the pouring of the slab or footing.
6. **If a building is to be constructed as an attachment to an existing structure (an addition) is treatment of the addition considered a pre-treat?** The treatment of the addition is considered a pre-treat. However, if the treatment starts after the backfill has been installed and graded, the DDA will consider the treatment a post-construction treatment.
7. **What if the soil is too wet or saturated to accept the full, prescribed volume (gallons)?** The site may be treated at a higher concentration and lower volume - only if permitted by label. Or, the applicator can wait until the soil has sufficiently dried.

#### Post-Construction Treatments and “Re-treatments”

**Post-construction treatments and retreatments of structures with soil termiticides generally require a customer disclosure** - (they are required when the application of the soil termiticide is at less than the minimum concentration and/or volume prescribed by the label and/or not applied in all label- prescribed areas). For the purposes of complying with Section 22 of the Delaware Pesticide Rules and Regulation, applicators must disclose any and all partial treatments of structures using soil termiticides. The disclosure requirement also applies in the case of soil termiticide warranty work).

## **Questions and Answers relating to Post-construction and re-treats@:**

**When may structures be retreated?** Termiticide labels generally prohibit annual retreats unless the structure has been reinfested or the chemical barrier has been disrupted. Other than annual retreats, the labels are vague. It is the interpretation of the DDA that the structure may be retreated if:

1. The PCO treated the structure five or more years earlier and, in the judgment of the PCO, a retreat is necessary to ensure the structure is adequately protected. (In determining the timing of any retreat, the PCO should consider efficacy and/or degradation data and/or site specific conditions which might indicate a vulnerability of the structure to termite attack); or,
2. The PCO has placed a structure under warranty but does not know and cannot determine when the structure was last treated, or in the judgment of the PCO, the evidence of the previous treatment and the condition of the structure indicate that a treatment is necessary to ensure the structure is adequately protected.

### **Customer Disclosure with Post-Construction Treatments**

**For Post-Construction or re-treatments what is a “Customer Disclosure” and, why are they required?** “Customer Disclosure” is written information you provide to your customers, detailing your use of soil-applied termiticides. The term “Customer Disclosure” is generally used to describe requirements under the Delaware Pesticide Rules and Regulations, Section 22. The intentions of Section 22, and customer disclosure are to:

1. Foster better communication (and avoid misunderstandings between the applicator and customer).
2. Protect the interests of the customer.
3. Encourage a fair and equitable market for commercial applicators of termiticides.

**Does Section 22 cover termite baits?** The Section 22 Rule is limited to the use of soil-applied termiticides and excludes direct wood treatment, dusts, aerosols, fumigants, biological control agents, or termite baits.

**How does Section 22 regulate soil-applied termiticides?** In accordance with industry standards and label directions, the Rule mandates the application of a continuous chemical barrier@ in all applicable areas prescribed by the label of the specific termiticide product used by an applicator. Therefore, if a product prescribes 4 gallons of 1% active ingredient per 10 linear feet per foot of depth around the foundation exterior perimeter - an applicator is obliged to apply that amount.

To determine if the Section 22 Rules apply to a particular job, a PCO must be capable of evaluating each site and/or structure to be treated. An applicator must take measurements of structural features such as, interior and exterior foundation walls; depth to footer; concrete slab areas; dividing walls; support piers; and/or utility lines. These measurements are necessary to calculate the amount of

termiticide to complete a continuous chemical barrier as prescribed by the label. An informed decision of whether to disclose the treatment is not possible otherwise.

Section 22 provides that an applicator may apply less than the amount prescribed by the termiticide label - if he provides the customer or their agent with a disclosure of the following:

1. A description of the difference between a full and partial application; the termite control strategy being utilized; and, the reason for using an alternative to full application rate.
2. The brand name of the pesticide used and its EPA Registration Number.
3. The actual volume of pesticide applied.
4. A diagram of the structure and identification of treated areas, known well-heads and, areas of visible termite activity.
5. The terms of any guarantee or warranty covering the application.

**When does the customer disclosure have to be furnished?** The information listed above in 1–5, must be provided to the customer or their agent within fourteen (14) days of the termiticide application. If a structure is treated on three (3) different days in a 14 day time-frame, one disclosure may be provided (as opposed to 3) within fourteen days of the first application. However, if a structure is treated on “day 1” and treated again on “day 15” (fifteen days from “day 1”), then two (2) separate customer disclosure notices would be required.

**Is there a particular customer disclosure “form”?** The customer information disclosure must be on a form approved by the Department. A copy of the only approved form is enclosed. You may order these forms in quantities of 100, at our cost of \$30. An order form is enclosed for your convenience. You may also have copies duplicated through your own printer or a private print shop. If there are any questions relating to how this form should be completed, please call our office.

**Are there other restrictions for soil application of termiticides in Delaware?** All soil termiticide applications must be performed with a certified commercial applicator present at the site. This applicator must be certified in Category 7.07(b) Wood Destroying Pest Control.

Utility poles, fence posts, and tree stumps are exempt from the disclosure notice requirements of Section 22.03 (b).

All completed customer disclosure forms must be kept for a period of two years from the date of application.