

ENFORCEMENT RESPONSE POLICY INTRODUCTION

In order to be consistent and predictable about enforcement of pesticide laws, the BPC has developed an Enforcement Response Policy. All potential violations are described together with the enforcement remedies available.

ENFORCEMENT TIMETABLE

Upon detection of a pesticide law violation, the BPC will complete case preparation (when possible) within 30 days and refer the case to the Chief of Enforcement. The Chief will then review the case and whether the facts are adequately documented; if appropriate, he will initiate an enforcement action or refer the case within 90 days.

PENALTIES

The BPC has essentially six types of enforcement actions available. They are:

- 1) Warning letter (WL)
- 2) Civil Action (including consent agreements and adjudicatory judgments) (CA)
- 3) Suspension, revocation or denial of registration, license or permit (SRD)
- 4) Referral to the Attorney General's office (RAG)
- 5) Referral to EPA (REPA)
- 6) Criminal Action where violations are both willful and intentional (CRA)

The BPC has statutory authority to suspend, revoke or deny licenses and registrations subject to a hearing and to levy fines via adjudicatory judgments. The maximum fine is \$1500 for the first offense and \$4000 for second and subsequent offenses. Criminal violations for willful and intentional violations are punishable by a maximum fine of \$7500 and/or imprisonment of up to 30 days.

SEVERITY OF VIOLATION

The severity of each violation will be evaluated based on the criteria listed below as provided by 7 M.R.S.A., Chapter 103, '616-A (7) and whether the violator acted willfully and intentionally (criminal violation). An appropriate remedy will then be selected from remedies section.

- A. Prior violations by the same party;
- B. The degree of harm to the public and the environment;
- C. The degree of environmental damage that has not been abated or corrected;

- D. The extent to which the violation continued following the board’s notice to the violator;
- E. The importance of deterring the same person or others from future violations; and
- F. The cause and circumstances of the violation, including:
 - (1) The foreseeability of the violation;
 - (2) The standard of care exercised by the violator; and
 - (3) Whether or not the violator reported the incident to the board.

In addition to the criteria set forth in statute, the BPC may also consider, where applicable:

- A. The toxicity of the pesticide involved;
- B. Whether a general, restricted or state limited use pesticide was involved; and
- C. Whether the alleged violator was or should have been licensed by the BPC as a private or commercial applicator or general or restricted use dealer.

ENFORCEMENT RESPONSE POLICY/LIST OF REMEDIES

<u>Use Violations</u>	<u>Remedies Available</u>
1) Use inconsistent with product labeling and/or the federal Worker Protection Standard	WL,CA,RAG, REPA,SRD,CRA
2) Use in a careless, faulty or negligent manner	WL,CA,RAG, REPA,SRD,CRA
3) Violation of state regulation	WL,CA,RAG, SRD,CRA
4) Use of a canceled or suspended product	WL,CA,RAG, REPA,SRD,CRA
5) Use of unregistered product	WL,CA,RAG, REPA,SRD,CRA

- | | | |
|----|---|----------------------------|
| 6) | Use of RUP not under direct supervision | WL,CA,RAG,
REPA,SRD,CRA |
| 7) | Custom application not under direct supervision | WL,CA,RAG,
REPA,SRD,CRA |
| 8) | Violation of EUP, 24-C or SSURO | WL,CA,RAG,
REPA,SRD,CRA |

Non-Use Violations

- | | | |
|----|--------------------------------------|-----------------------|
| 1) | Failure to maintain required records | WL,CA,RAG,
SRD |
| 2) | Improper disposal of pesticides | WL,CA,RAG,
SRD,CRA |
| 3) | Improper container disposal | WL,CA,RAG,
SRD,CRA |
| 4) | Unlawful/unsafe storage | WL,CA,RAG,
SRD,CRA |

Dealer Violations

- | | | |
|----|---|------------------------|
| 1) | Illegal recommendation | CA,RAG,CRA
REPA,SRD |
| 2) | Sale of RUP to uncertified applicator | WL,CA,RAG,
SRD,CRA |
| 3) | Sales of canceled or suspended products | WL,CA,RAG,
SRD,CRA |
| 4) | Failure to maintain required records | WL,CA,RAG,
SRD |
| 5) | Sales by unlicensed dealer | WL,CA,RAG,CRA |
| 6) | Violation of BPC Regulation | WL,CA,RAG,
SRD,CRA |

Product Violation

- | | | |
|----|---|-------------------------|
| 1) | Inadequate information on label | CA,RAG,CRA,
REPA,SRD |
| 2) | Non-registered product or establishment | CA,RAG,CRA,
REPA,SRD |
| 3) | Deficient or adulterated product | CA,RAG,CRA,
REPA,SRD |
| 4) | False or misleading claims | CA,RAG,CRA,
REPA,SRD |
| 5) | Improper packaging | CA,RAG,CRA,
REPA,SRD |

Title 7:

Subchapter 2-A: MAINE PESTICIDE CONTROL ACT OF 1975

7

§601. Title

This subchapter may be known and cited as the "Maine Pesticide Control Act of 1975."

§616-A. Penalties

1. Informal hearing. When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing under the Maine Administrative Procedure Act.

[PL 2005, c. 620, §16 (AMD).]

2. Civil violations. The following violations are civil violations.

A. A person may not violate this subchapter or a rule adopted pursuant to this subchapter or [Title 22, chapter 258-A](#) or a rule adopted pursuant to Title 22, chapter 258-A. Except as provided in paragraph B, the following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$4,000 may be adjudged. [PL 2003, c. 452, Pt. B, §6 (RPR); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A private applicator, as defined in [Title 22, section 1471-C](#), may not violate a rule regarding records maintained pursuant to [section 606, subsection 2, paragraph G](#). The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [PL 2011, c. 510, §1 (AMD).]

[PL 2011, c. 510, §1 (AMD).]

2-A. Criminal violation. A person may not intentionally or knowingly violate this subchapter or Title 22, chapter 258-A, a rule adopted under this subchapter or Title 22, chapter 258-A or a restriction of a registration issued pursuant to this subchapter. A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, section 1604, subsection 1 and sections 1704 and 1705, the court may impose a sentencing alternative of a fine of not more than \$7,500 or a term of imprisonment of not more than 30 days, or both, for each violation. Prosecution under this subsection is by summons and not by warrant. A prosecution under this subsection is separate from an action brought pursuant to subsection 2.

[PL 2019, c. 113, Pt. C, §1 (AMD).]

3. Continuation. Each day that the violation continues is considered a separate offense.

[PL 1989, c. 841, §3 (NEW).]

4. Exceptions.

[PL 2003, c. 452, Pt. B, §8 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

5. Criminal violations.

[PL 2003, c. 452, Pt. B, §8 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

6. Other relief. Notwithstanding [Title 22, section 1471-D](#), subsections 6 to 8 and in addition to other sanctions provided under this section, the court may order that a violator obtain recertification credits through board-approved meetings or courses as a condition of retaining, maintaining or renewing a certification or license required under Title 22, chapter 258-A.

[PL 1989, c. 841, §3 (NEW).]

7. Considerations. In setting a penalty under this section, the court shall consider, without limitation:

A. Prior violations by the same party; [PL 1989, c. 841, §3 (NEW).]

B. The degree of harm to the public and the environment; [PL 1989, c. 841, §3 (NEW).]

C. The degree of environmental damage that has not been abated or corrected; [PL 1989, c. 841, §3 (NEW).]

D. The extent to which the violation continued following the board's notice to the violator; [PL 1989, c. 841, §3 (NEW).]

E. The importance of deterring the same person or others from future violations; and [PL 1989, c. 841, §3 (NEW).]

F. The cause and circumstances of the violation, including:

(1) The foreseeability of the violation;

(2) The standard of care exercised by the violator; and

(3) Whether or not the violator reported the incident to the board. [PL 1989, c. 841, §3 (NEW).]

[PL 1989, c. 841, §3 (NEW).]

8. Injunction. The board may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any rule made pursuant to this subchapter in a court of competent jurisdiction of the district in which the violation occurs or is about to occur.

[PL 1989, c. 841, §3 (NEW).]

9. No damages from administrative action if probable cause exists. A court may not allow the recovery of damages from administrative action taken, or for a stop sale, use or removal order, if the court finds that there was probable cause for the administrative action.

[PL 1989, c. 841, §3 (NEW).]

10. Sunset.

Title 22: Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-D. Certification and licenses

7. Suspension.

A. If the board determines that there may be grounds for revocation of a license or certificate, it may temporarily suspend said license or certificate pending inquiry and opportunity for hearing, provided that such suspension shall not extend for a period longer than 45 days. [PL 1975, c. 397, §2 (NEW).]

B. The board shall notify the licensee or certificate holder of the temporary suspension, indicating the basis therefor and informing the licensee or certificate holder of the right to request a public hearing. [PL 1983, c. 819, Pt. A, §47 (AMD).]

C. If the licensee or certificate holder fails to request a hearing within 20 days of the date of suspension, such right shall be deemed waived. If the licensee or certificate holder requests such a hearing, notice shall be given at least 20 days prior to the hearing to the licensee or certificate holder and to appropriate federal and state agencies. In addition, public notice shall be given by publication in a newspaper of general circulation in the State and such other publications as the board deems appropriate. [PL 1983, c. 819, Pt. A, §48 (AMD).]

D. This subsection is not governed by the provisions of [Title 4, chapter 5](#) or [Title 5, chapter 375](#).

8. Revocation.

The District Court may suspend or revoke the certification or license of a licensee or certificate holder upon a finding that the applicant:

A. Is no longer qualified; [PL 1975, c. 397, §2 (NEW).]

B. Has engaged in fraudulent business practices in the application or distribution of pesticides; [PL 1975, c. 397, §2 (NEW).]

C. Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment; [PL 1975, c. 397, §2 (NEW).]

D. Has stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare; [PL 1975, c. 397, §2 (NEW).]

E. Has violated the provisions of this chapter or the rules and regulations issued hereunder; [PL 1975, c. 397, §2 (NEW).]

F. Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the board; [PL 1975, c. 397, §2 (NEW).]

G. Has made false or fraudulent records or reports required by the board under this chapter or under regulations pursuant thereto; [PL 1981, c. 470, Pt. A, §67 (AMD).]

H. Has been subject to a criminal conviction under [section 14](#) (b) of the amended FIFRA or a final order imposing a civil penalty under [section 14](#) (a) of the amended FIFRA; or [PL 1981, c. 470, Pt. A, §67 (AMD).]

I. Has had the license or certificate, which supplied the basis for the Maine license or certification pursuant to subsection 10, revoked or suspended by the appropriate federal or other state government authority

§1471-J. Penalties

A person who violates any provision of this chapter or any order, rule, decision, certificate or license issued by the board or commits any act constituting a ground for revocation, except acts punishable under [section 1471-D, subsection 8](#), paragraphs A and H, commits a civil violation subject to the penalties established in [Title 7, section 616-A](#)

**Department of Agricultural Resources**

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State of Massachusetts, Pesticide Division **Enforcement Matrix**

Introduction

The Massachusetts Department of Agricultural Resources, Pesticide Division (Department) has been designated as the authority with exclusive jurisdiction with regards to pesticides through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Massachusetts Pesticide Control Act (M.G.L. 132B), and its regulations promulgated at 333 CMR. Through its governing statutes, the Department has the authority to issue enforcement actions when the statute/regulations have been violated. Enforcement Actions may include but not be limited to: Letters of Warning, Administrative Orders, Notice of Assessment (Fine), Licenses Suspension, License Revocation, License Modification.

There are many issues to consider when issuing an enforcement action including but not limited to the following:

- Size of the company
- Severity of the violation
- How the violation was found
- Human/ public health impact
- Environmental impact
- History of violations

Due to the fact that each inspection/investigation is different and there are a multitude of factors that contribute to finding violations, this Enforcement Matrix ("Matrix") is not to be considered a definitive rule of enforcement but rather a guideline to ensure consistency and fairness when issuing enforcement actions. (See Appendix A)

Authority

The authority to regulate pesticides within the Commonwealth is given in the following statute/regulations (See Appendix B):

- M.G.L. c. 132B, Section 10: Certifications and Licenses to Use Pesticides
- M.G.L. c. 132B, Section 12: Orders Requiring Production of Samples and Records; Orders Imposing Restraints
- M.G.L. c. 132B, Section 14: Fines and Penalties; Jurisdiction of Superior Court to Secure Compliance with Chapter
- M.G.L. c. 132B, Section 14A: Pesticide Violations; Enforcement and Penalties

Intent

It is important when considering an enforcement action to determine what the intent, to the extent possible. For the purposes of this Matrix, intent can be broken down into the following three categories:

1. **Lack of Knowledge**: When a person or company who has committed a violation was not aware or would not, within reason, be expected to have been aware of statutory requirements. While this is not a defense to any violation, the type of violation coupled with the statute or regulation at issue may show a lack of intent to negligently or willfully committing a violation. An example might be a record keeping violation or an accident not caused by negligence.
2. **Negligence**: When an individual uses a pesticide in a potentially reckless or harmful manner that may pose a threat to human health or the environment and the individual should have known that such manner had the potential to cause such threat. Negligence may also include when an individual does not know a statute or regulation, but based on their credentials or position should have knowledge. An example might be when an individual does not follow label directions.
3. **Willful**: When a person or company has committed a violation in a flagrant manner, knowing the statute, regulation, or label requirements and yet still commits the violation. Examples might be ignoring warnings given by an inspector, knowingly giving false information to the Department or customer, attempting to defraud, or having numerous previous violations of a related fashion thereby having notice of the correct requirements.

Level of Severity

It is important when considering an enforcement action to determine the level of severity of the violation. For the purposes of this Matrix, the level of severity can be broken down into the following three categories:

1. **Minimal (A)**: When there are no injuries or damage, and no large potential for any injuries or damage, and when there has been no inconvenience caused to the client or public, and when all reasonable corrective measures have been taken by the applicator at his own expense.
2. **Moderate (B)**: When there is any potential for or actual minor damage to non-target species, but where there is no actual threat to the client, public, or environment. Minor injuries, may be considered moderate if all reasonable efforts were made to rectify the situation in a manner that significantly reduced the potential for continued damage or problems.
3. **Extreme (C)**: Any application or related activity that results in, or has a reasonable potential for causing the injury or death of any person; any wide-spread or long-term damage to non-target species; contamination by a pesticide with potentially long term consequences or; any application that has or likely to have long term damage to the environment.

Enforcement Actions

Enforcement actions may be issued to the company, individual or both depending on the violation(s). The Department will determine who the enforcement action is issued to on a case by case basis.

Letters of Warning (LOW): Letters of Warning can be given on site and/or written up and issued at a later date.

Standard LOW: LOWs issued on site are usually given during a routine inspection/stop. These LOW's are already on a standard form. These are given for minor infractions which are usually "administrative," such as incomplete records or not providing proper notification. The inspector

should plan on conducting a follow up inspection at a later date to ensure that the infractions are fixed. In some instances, certain materials are required to be submitted to the inspector or Department within a reasonable time frame.

Non-Standard LOW: LOWs that are not issued on site are usually due to a violation that was found during an investigation but either due to the nature of the violation or information available to the inspector the violation does not arise to the level of issuing an administrative order. LOW's may include minor actions that the applicator must perform or materials that must be submitted. LOW's will be issued when the infraction is not considered egregious and where there has not been any history of violation with the Department.

Administrative Orders (AO): AOs may be issued under the following circumstances:

- Repeat violation/History of Violations
- Egregious violations
- Violation may have caused a potential for harm or actual harm

AO may order a company/individual to perform certain actions. These actions are intended to ensure that the violation does not occur again and provide avenues so that human/environment is protected. A violation of an AO may lead to referral to the Attorney General's office for further enforcement action.

Notice of Assessments (NOA): NOA are administrative fines that are expressly authorized by statute. These may only be issued under the following circumstances: Unlicensed pesticide application or violations of M.G.L. c. 132B, Section 10

- Failure to comply with a 90 Day Corrective Action (LOW)
- Violations regarding 333 CMR 14.00
- Illegal applications to a public or private place used for human occupation and habitation, except residential properties with 3 or less dwelling units

NOAs can be up to \$1000 per day per violation. In some instances, the Department may add up a fine based on the number of products used in the violation.

License Suspension/Revocation: License Suspensions/Revocations may be issued for egregious violations such as but not limited to the following:

- Not following label directions
- Making false or fraudulent statements
- Causing an unreasonable adverse effect to the environment or persons

A suspension will be for a period of time, while a revocation is for a period of time with the requirement of re-taking the licensing test. The suspension/revocation cannot be for more than a two year period, as set forth in G.L. c. 132B, Section 10.

License Modification: Modifications may be put on a license when the violation is not egregious enough to suspend /revoke the license but the Department feels the individual needs limitations placed on the license or additional education to ensure this violation does not occur again.

GUIDANCE FOR ENFORCEMENT ACTION

LACK OF KNOWLEDGE			
PREVIOUS VIOLATIONS	A	B	C
0	LOW	LOW/AO	LOW/AO
1	LOW/AO	AO/NOA	AO/NOA
2	AO	AO/NOA	AO/NOA/LIC

NEGLIGENT			
PREVIOUS VIOLATIONS	A	B	C
0	LOW/AO	LOW/AO/LIC	LOW/AO/LIC
1	LOW/AO	AO/NOA/LIC	AO/NOA/LIC
2	AO	AO/NOA/LIC	AO/NOA/LIC

WILLFUL			
PREVIOUS VIOLATIONS	A	B	C
0	LOW/AO	LOW/AO/LIC	LOW/AO/LIC
1	LOW/AO	AO/NOA/LIC	AO/NOA/LIC
2	AO	AO/NOA/LIC	AO/NOA/LIC

**LOW= Letter of Warning
 AO = Administrative Order
 NOA= Notice of Assessment
 LIC = License Suspension/Revocation/Modification

If a Notice of Assessment is issued, the following matrix may be used for guidance:

LACK OF KNOWLEDGE			
PREVIOUS VIOLATIONS	A Sm-Med-Lg	B Sm-Med-Lg	C Sm-Med-Lg
0	0-0-0	0-0-0	0-0-0
1	250-250-250	250-250-250	250-250-250
2 or more	500-750-1000	500-750-1000	500-750-1000

NEGLIGENT			
PREVIOUS VIOLATIONS	A Sm-Med-Lg	B Sm-Med-Lg	C Sm-Med-Lg
0	250-250-250	250-250-250	250-250-250
1	500-750-1000	750-900-1000	750-900-1000
2 or more	750-900-1000	750-900-1000	750-900-1000

WILLFUL			
PREVIOUS VIOLATIONS	A Sm-Med-Lg	B Sm-Med-Lg	C Sm-Med-Lg
0	250-250-250	250-250-250	250-250-250
1	1000-1000-1000	1000-1000-1000	1000-1000-1000
2 or more	1000-1000-1000	1000-1000-1000	1000-1000-1000

**Small Business = 1-2 applicators
 Medium Business = 3-4 applicators
 Large Business = 5+ applicators

Relevant Statute/Regulations

M.G.L.c. 132B Section 10

The department may revoke, suspend, cancel or deny any certification or license, or any class thereof, at any time, if it believes: that the terms or conditions thereof are being violated or are inadequate to avoid unreasonable adverse effects on the environment, or that the holder of or applicant for the certification or license has violated any provision of this chapter or FIFRA or any regulation, standard, order, license, certification or permit issued thereunder or that the holder or applicant for said certification or license is not competent with respect to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered by said individual's certification or license. Any person whose certification or license is suspended or revoked hereunder shall also be subject to such other punishment, penalties, sanctions or liabilities as may be provided by law. As part of its determination to refuse to grant, to revoke, or to suspend a certification or license the department may specify a period, not to exceed two years, within which the applicant may not reapply for a certification or license. In the event that the department has refused to issue or has revoked or suspended such a certification or license, and has specified a period for non-application, the department may later, at its discretion, shorten or waive such period.

(k) The department may impose an administrative or civil penalty on a person who has not been issued either a temporary or permanent certification, license or permit from the department or who uses a pesticide in a public or private place used for human occupation and habitation, except residential properties with 3 or less dwelling units, of not more than \$500 for a first offense and not more than \$1,000 for a subsequent offense.

M.G.L.c 132B Section 12

Whenever it appears to the department that there is an imminent hazard, or a potential threat of unreasonable adverse effect on the environment, or a violation or a potential violation of any provision of this chapter or of any license, certification, permit, order, registration or regulation issued or adopted thereunder, the department may issue to such persons as it deems necessary an order requiring the production of samples and records, or an order imposing restraints on or requiring such action, as it deems necessary. Issuance of an order under this section shall not preclude and shall not be deemed an election to forego any action to recover for damages to interests of the commonwealth or, under section fourteen of this act, for civil penalties or for criminal fines and penalties

M.G.L.c 132B Section 14

Any person who knowingly violates any provision of section six shall be punished by a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment, for each such violation, or shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violations shall constitute a separate offense.

Any person who violates any provision of section 6A to 6I, inclusive or section 7A or who violates any regulation adopted under the provisions of this chapter, (a) shall be punished by a fine of not more than one thousand dollars, or imprisonment for not more than six months, or both such fine and imprisonment,

for the second and each subsequent offense knowingly committed, or (b) shall be subject to a civil penalty not to exceed ten thousand dollars for any offense, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

Any person who violates any order issued under the provisions of this chapter, (a) shall be punished by a fine of not more than twenty-five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment, for each violations knowingly committed, or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

The superior court shall have jurisdiction to enjoin violations of, or grant such relief as it deems necessary or appropriate to secure compliance with, any provision of this chapter or the terms of an order, license, certification registration, permit or regulation issued or adopted thereunder.

DIVISION OF PESTICIDE CONTROL
New Hampshire Department of Agriculture, Markets & Food

NAME OF FIRM: _____

SUPERVISOR/MGR. _____

CASE NAMES & DATES: _____

SIZE OF FIRM (circle): Small Medium Large
 (see attached criteria)

List violations by allegation numbers. Categories are: Lack of Knowledge, Negligent, and Willful (see *Categories*, attached). Under the appropriate category show the number of previous violations and the gravity, expressed as A, B, or C (least to most grave), e.g. gravity B with 1 previous violation would be expressed - 1/B.

VIOLATIONS	LACK OF KNOWLEDGE	NEGLIGENT	WILLFUL	PENALTY, \$
ADJUSTMENTS				(+)
				(-)
TOTAL ADMINISTRATIVE FINE				\$

COMMENTS: _____

SIGNATURE // DATE _____ // _____

SIZE OF FIRM

To the extent possible, the size of the firm is estimated from the data that is on file in this Division. Other information, as might become available, can be employed to adjust these estimates, as needed. The different categories of business will be assessed as follows:

1. Commercial for Hire: In the absence of any other information, size estimates will be based on the number of licensed applicators (supervisors plus operators) under a particular firm. 1-2 applicators = *Small*; 3-4 applicators = *Medium*; 5+ = *Large*.
2. Commercial Not For Hire: In this case the number of applicators is not necessarily tied to the size of the business. For example, a golf course might have only one or two licensed applicators, yet be considered a *Large* firm. Other than golf courses, which constitute the majority of CNFH certificates that are on record at this division, certificates have been issued to municipalities, lumber companies, campgrounds, and large corporations. In all cases, those concerns that are large enough to employ their own licensed applicator(s) are large companies, so other information to the contrary, all CNFH situations (unless levied against an individual) will be considered *Large*.
3. Private Applicators: Here the connection between number of applicators and size of the firm is even less well correlated. A small farm using general-use pesticides might have more licensed applicators than a large farm with a restricted-use permit, only because of the relative ease of obtaining a general use permit. In this case, therefore, the size of the business should be based upon the number of acres of cropland, as reported to this division with the annual renewals. Again, unless other information becomes available to the Division, less than three (3) acres will be considered a *Small* firm; 3-10 acres a *Medium* firm; and greater than 10 acres a *Large* firm. Nurseries where (only) greenhouses are involved might better be based on the area under glass. Less than 10,000 square feet will be considered a *Small* firm; 10,000-25,000 square feet, a *Medium* firm; and greater than 25,000 feet, a *Large* firm.
4. Dealers and Manufacturers: These are even less tied to the possession or number of licensed individuals and must be based on some knowledge of the operation. Barring other information, all dealers who are parts of major chains (i.e. Agway, Blue Seal, etc.) will be considered *Large* firms. Other dealers or retailers who operate out of their own facility will be considered *Medium* firms. Manufacturers who formulate and process their own products will be considered *Large* firms. Those who simply repackage or dilute pesticides manufactured elsewhere will be considered *Medium* firms if there are 3 or fewer products, and *Large* firms if more than 3.

If financial information becomes available for any situation consider less than \$150,000 in gross, annual sales to be a *Small* firm; \$150,000-\$500,000 a *Medium* firm; and greater than \$500,000 to be a *Large* firm.

Note that the ability to remain in business will be taken into consideration in any penalty assessments.

CATEGORIES

1. LACK OF KNOWLEDGE: When a person or firm who has committed a violation was not aware, or would not, within reason, be expected to have been aware of statutory requirements. An example might be a lawn-cutting operation who applies a general-use, "weed and feed" type of "fertilizer," and who does no other pesticide applications on any routine basis. Accidents that are not caused by negligence would also fall under this category.
2. NEGLIGENCE: Use description under Pes 401.02(3) - "has made [an]...application in a careless or negligent manner so as to harm or pose a threat of harm to human health, domestic animals...." Negligence will also include any unlicensed business or applicator who knowingly deals with pesticides (as evidenced by advertising, invoices, etc.), but who did not know of certification or statutory requirements. Failure on their part to have looked into the regulatory aspects of their business will be considered to be a negligent act, as will accidents that occur because of careless operation or poorly maintained or inappropriate equipment.
3. WILLFUL: When a person or firm has committed a violation in a flagrant manner, such as ignoring warnings given by an inspector, knowingly giving false information, attempting to defraud, or having numerous previous violations of a related fashion. In situations where persons make applications without proper certification or special permits the division shall consider it a willful violation if there is reasonable expectation that such person should have been aware of certification or special permit requirements.

GRAVITY DESIGNATIONS

1. MINIMAL GRAVITY (A): When there are no injuries or damage, and no large potential for any injuries or damage, and when there has been no inconvenience caused to the client or community, and when all reasonable corrective measures have been taken by the applicator at his own expense. Examples of Gravity "A" situations might be minor spills that are cleaned up in a timely fashion; drift that does not pose any threat to non-target species; or use of unregistered pesticides in accordance with label instructions.
2. MODERATE GRAVITY (B): When there is any potential for or actual minor damage to non-target species, such as burned turf or damage to shrubbery, but where there is no actual threat to people. Commercial applications by unlicensed parties, by virtue of potential threat to people, will fall in this category. Minor injuries to pets, or death of small numbers of birds or other common species of wildlife, and justified complaints regarding misapplication would also be considered to be of moderate gravity, if all reasonable efforts were made to rectify a situation in a manner that significantly reduced the potential for continued damage or problems.
3. EXTREME GRAVITY (C): Any application or related activity that results in, or has a reasonable potential for causing the injury or death of any person; any wide-spread or long-term damage to non-target species, or contamination by a pesticide with potentially long-term consequences; any application that has or is likely to contaminate drinking water; or any application that might result in the death of domestic or farm animals; or any other act that would be construed as having severe consequences, would be considered to be of extreme gravity.

PENALTIES

LACK OF KNOWLEDGE			
PREVIOUS VIOLATIONS	A	B	C
	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE
0	0 - 0 - 0	0 - 50 - 100	100 - 175 - 250
1	0 - 50 - 100	100 - 175 - 250	250 - 375 - 500
2 or more	100 - 175 - 250	250 - 375 - 500	500 - 625 - 750

NEGLIGENT			
PREVIOUS VIOLATIONS	A	B	C
	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE
0	0 - 50 - 100	100 - 175 - 250	250 - 375 - 500
1	100 - 175 - 250	250 - 375 - 500	500 - 625 - 750
2 or more	250 - 375 - 500	500 - 625 - 750	750 - 875 - 1000

WILLFUL			
PREVIOUS VIOLATIONS	A	B	C
	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE
0	100 - 175 - 250	250 - 375 - 500	500 - 625 - 750
1	250 - 375 - 500	500 - 625 - 750	750 - 875 - 1000
2 or more	500 - 625 - 750	750 - 875 - 1000	1000

Figures represent dollar amounts of administrative fines for categories of violations (Lack of Knowledge, Negligent, Willful), and for different gravities of violations (A, B, or C), depending on the numbers of previous violations and size of firm (Small to Large). Definitions of categories and gravity designations are attached. Results should be tabulated on attached compilation form. The amount of compensation associated with any alleged unlawful act may be taken into consideration and the proposed penalty may be increased accordingly - not to exceed \$1000.00 per violation - to discourage future violations.

VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS (VAAFMM)

PESTICIDE PROGRAMS

ADMINISTRATIVE PENALTY FORM

This form is to be used to determine proposed administrative penalties.

Case Name _____ Complaint No. _____

Violation(s) _____

CLASSIFICATION OF VIOLATION(S)

The class of the violation must be first determined. To do so, the Administrative Penalty Guidance on pages 6 through 9 may be used. The Guidance is a listing of common violations and their typical class type. Each violation must be evaluated as to whether the typical class type found in the Guidance is appropriate given the specific facts of the violation using these criteria:

CLASS I – A Class I violation meets one or more of the following criteria:

- (1) An assurance of discontinuance; or
- (2) An order issued pursuant to 6 V.S.A. Chapter 87; or
- (3) The violation presents a threat of substantial harm to the public health, safety, or welfare or to the environment.

CLASS II – A Class II violation is a minor to moderate violation of a statute listed in 6 V.S.A. Chapter 87, a rule promulgated under 6 V.S.A. Chapter 87, or a related permit.

CLASS III – A Class III violation is a de minimis violation of a statute listed in 6 V.S.A. Chapter 87, a rule promulgated under 6 V.S.A. Chapter 87, or a related permit.

INITIAL PENALTY CALCULATION

Once the class of violation is determined, an initial penalty calculation must be made. Each of the following sections should be completed by circling the appropriate score.

- 1. The degree of actual or potential impact on public health, safety, and welfare:**
 - (a) No actual impact or minor potential impact 0
 - (b) Minor actual impact or moderate potential impact 1
 - (c) Moderate actual impact or major potential impact 2
 - (d) Major actual impact 3

- 2. The degree of actual or potential impact on the environment:**
 - (a) No actual impact or minor potential impact 0
 - (b) Minor actual impact or moderate potential impact 1
 - (c) Moderate actual impact or major potential impact 2
 - (d) Major actual impact 3

- 3. Did the respondent know or have reason to know that the violation existed:**
 - (a) Knowledge of the requirements:**
 - (i) New requirement 0
 - (ii) Had reason to know about violated requirement 1
 - (iii) Had a permit or permit by rule, applicator certificate, company license, or dealer license. 2
 - (iv) Repeated the violation after written notice, sent by certified mail 3

 - (b) Knowledge of the facts of the violation:**
 - (i) Could not have reasonably known that the violation existed 0
 - (ii) Should have reasonably known that the violation existed 1
 - (iii) Some evidence that the respondent knew the violation existed 2
 - (iv) Clear evidence that the respondent knew the violation existed 3

Lower number of 3(a) or 3(b) _____

4. The respondent’s record of compliance with 6 V.S.A. Chapter 87 or related rules, permits, orders, or assurances of discontinuance in the seven years preceding the violation:

- (a) No prior violations 0
- (b) One prior violation 1
- (c) Two prior violations 2
- (d) Three or more prior violations 3

5. The length of time the violation existed:

This is not to be assessed if VAAFm is also seeking continuing violation(s) under Section 8 because otherwise the fact that a violation is continuing would be considered twice in the calculating of the total penalty amount.

- (a) Immediate correction 0
- (b) A violation of very short duration 1
- (c) A violation of moderate duration 2
- (d) A violation of long duration 3

Total of Sections 1, 2, 3, 4, and 5 _____

Comments, if any:

6. PERCENTAGE OF MAXIMUM PENALTY CALCULATION

After Sections 1 through 5 have been scored and added to compute a total score, the initial penalty amount shall be determined by multiplying the applicable percentage based on the total score by the maximum penalty amount for the Class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class, with the first number being the penalty amount for private applicators or certified private applicators, and the second number being the penalty amount for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders:

TOTAL SCORE	PERCENTAGE	CLASS I	CLASS II	Class III
1-5	50	\$500.00/\$2,500.00	\$325.00/\$1,625.00	\$175.00/\$850.00
6-10	75	\$750.00/\$3,750.00	\$500.00/\$2,400.00	\$260.00/\$1,300.00
11-15	100	\$1,000.00/\$5,000.00	\$650.00/\$3,250.00	\$350.00/\$1,750.00

INITIAL PENALTY AMOUNT BEFORE ADJUSTMENTS \$ _____

7. ECONOMIC BENEFIT AND COST OF ENFORCEMENT ADJUSTMENT

The penalty amount calculated in Section 6 may be adjusted when the respondent has realized an economic benefit as a result of the violation(s) and/or the State has incurred costs of enforcement related to the violation(s) by adding an amount equal to such economic benefit and/or enforcement costs to the penalty amount.

(a) Economic benefit \$ _____

Calculation:

(b) Cost of enforcement \$ _____

Calculation:

Total of Sections 7(a) and 7(b) \$ _____

8. CONTINUING VIOLATIONS

Any violation of a statute listed in 6 V.S.A. Chapter 87 or a rule thereunder or a condition of a related permit, order, or assurance of discontinuance that continues longer than one day may be considered a continuing violation subject to additional penalties for each day of continuance.

The continuing violation amount may be determined by multiplying the applicable percentage based on the total score by the per-day maximum continuing violation penalty for the class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class:

TOTAL SCORE	PERCENTAGE	CLASS I	CLASS II	Class III
1-5	50	\$200.00/\$1,000.00	\$130.00/\$650.00	\$70.00/\$350.00
6-10	75	\$300.00/\$1,500.00	\$195.00/\$975.00	\$105.00/\$525.00
11-15	100	\$400.00/\$2,000.00	\$260.00/\$1,300.00	\$140.00/\$700.00

(a) Per-day penalty amount for continuing violation _____

(b) Number of days constituting continuance of the violation _____

Total of Sections 8(a) multiplied by 8(b) \$ _____

9. FINAL ADJUSTMENTS

After the initial penalty amount and the amount of economic benefit and/or the costs of enforcement and the penalty for a continuing violation, if applicable, have been determined, the criteria below shall be considered.

(a) Mitigating circumstances \$ _____

If mitigating circumstances exist, the penalty may be reduced. Unreasonable delay by VAAFm in seeking enforcement shall be considered a mitigating circumstance. Mitigating circumstances may include factors outside the control of the respondent.

Explanation:

(b) Deterrent effect \$ _____

The penalty amount may be increased up to the maximum allowed in the class of the violation if it is determined that a larger penalty is reasonably necessary to deter the respondent from committing this violation or similar violations in the future.

Explanation:

Total of Sections 9(a) and 9(b) \$ _____

FINAL PENALTY AMOUNT

The maximum administrative penalty assessed for separate and distinct violations of 6 V.S.A. Chapter 87 shall not exceed \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders for each violation pursuant to 6 V.S.A. § 1111.

Initial Penalty	Section 6	\$ _____
Economic Benefit and Enforcement Cost	Section 7	\$ _____
Continuing Violation(s)	Section 8	\$ _____
Final Adjustment	Section 9	\$ _____
TOTAL PENALTIES:		\$ _____

Prepared by _____ Date _____

ADMINISTRATIVE PENALTY GUIDANCE

This Guidance is only intended to provide a listing of common violations and their typical class type. It is not intended to substitute for the consideration of each violation under Classification of Violations on page 1.

Class I (*Up to \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders*)

- **IV. 1.a.** - Use inconsistent with product label resulting in pesticide release to environment and/or impact to human health.
- **IV. 1.b.** - Pesticide use resulting in drift.
- **IV. 2.l. and m.** - Pesticide use not in accordance with Ground Water Protection Rule and Strategy, 10 V.S.A. Chapter 48.
- **IV. 2.d.** - Failure to operate in a careful manner resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.e.** - False or fraudulent claims.
- **IV. 2.b. and c.** - Failure to use anti-siphoning device when filling pesticide application devices or during chemigation operations.
- **IV. 2.g.** – “Permit Violations” - Application restrictions established in 6 V.S.A. Chapter 87, the Regulations for Control of Pesticides and permits issued thereunder resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.o.** – Application of pesticide within 50-foot application buffer around private wells – with contamination of well resulting.
- **IV. 3.** - Application of a pesticide in a manner not protective of bees.
- **XII. 1.** - Failure to take immediate action following a pesticide accident to protect human health and the environment.
- **XII. 2.** - Failure to report a pesticide accident immediately to the Agency and the Vermont Department of Public Safety.
- **XIII. 2.(4)(a)–(f)** - Failure to construct, install and maintain storage containers and appurtenances so as to prevent the discharge of liquid bulk pesticide.
- **XIII. 2.(5)** – Failure to have a mixing, loading and rinsate collection area(s) consisting of curbed, paved surfaces with catch basins protected from damage by moving vehicles and designed for the recovery of spills.
- **XIII. 2.(5)(c)** – Failure to recover discharges incident to loading and unloading of pesticides and use as originally intended or dispose of in accordance with 10 V.S.A. Chapter 159.
- **XIII. 2.(6)(a)-(f)** – Failure to store pesticide containers in an appropriately designed secondary containment facility which is adequate, in the event of a discharge, to prevent the movement of liquid pesticide to waters of the state including groundwater.
- **XIII. 10.(a)** – Storage of liquid bulk pesticide or pesticide rinsate underground. (This prohibition does not apply to a watertight catch basin used for temporary collection of discharges or runoff.)

Class II (Up to \$650.00 per violation per violation for private applicators or certified private applicators or \$3,250.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders)

- **IV. 1.a.** - Use inconsistent with product label NOT resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.a.**- Failure to use only methods and equipment which ensure the safe and efficient application of materials.
- **IV. 2.d.** - Failure to operate in a careful manner NOT resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.g.** – “Permit Violations” - Application restrictions established in 6 V.S.A. Chapter 87, the Regulations for Control of Pesticides and permits issued thereunder NOT resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.h.** - Failure to cooperate with Agency investigations (use).
- **IV. 2.o.** – Application of pesticide within 50-foot application buffer around private wells – without contamination of well resulting.
- **II. 1.a./VI. 1.** - Application of pesticides by Company without required Company License.
- **II. 2.a./VII. 1. (Comm and non-comm)** - Application of pesticides without certification or without the direct supervision by a certified applicator.
- **VII. 3.** - Application by comm / non-comm certified applicator in a category in which the applicator is not certified.
- **II. 2.b./IX. 1. (Private)** - Application of pesticides without certification or without the direct supervision by a certified applicator.
- **II. b.(1)/X. 4.a.(1)/XI. 1.a.(1)** - Sale of Class A pesticides without a Class A Dealer License (FTE).
- **II. b.(2)/X. 4.b.(1)/XI. 1.a.(2)** - Sale of Class B pesticides without a Class A or B Dealer License (FTE).
- **IV. 2.n.** – Application of pesticides to waters of the State without first obtaining a Water Quality Permit from the Vermont Department of Environmental Conservation, Water Quality Division.
- **IV. 4.a** – Application of herbicides for the purpose of clearing or maintaining a right-of-way (ROW) without first obtaining a ROW permit from the Agency.
- **IV. 5.c.** – Aerial application of pesticides without first obtaining an Aerial Application Permit from the Agency.
- **IV. 6.a.** – Any use of an unregistered pesticide or a registered pesticide for an unregistered use without first obtaining an Experimental Use Permit from the Agency.
- **IV. 7.a.** – Use of a pesticide for the lethal control of pest birds or other animals without first obtaining a bird or other animal control permit from the Agency.
- **IV. 9.a.** – Use of a pesticide on a golf course without first obtaining a permit from the Agency.
- **X. 4.a.(2)** - Sale of Class A pesticides to uncertified applicators / individuals unable to produce authorization from a certified applicator.
- **X. 4.a.(3)** - Display of Class A pesticides for self-service / storage of Class A pesticides in food areas.
- **XI. 3.** - Failure of sales and technical field representatives of commercial companies recommending or demonstrating pesticides to be certified under Category 10.
- **XIII. 1.(a)** - Failure to secure pesticides to prevent spillage during transportation.
- **XIII. 2.(1)** – Failure to prevent unauthorized access by persons, livestock or wildlife to pesticides or pesticide containers.

- **XIII. 3.a.(1)** – Failure to dispose of pesticides in a manner consistent with the product’s label.
- **XIII. 2.(6)(a)/XIII. 3.a.(3)** – Storage of empty pesticide containers within a secondary containment facility.
- **XIII. 3.b.** – Failure to dispose of obsolete, excess, and mixtures of pesticides in accordance with 10 V.S.A. Chapter 159.
- **XIII. 3.c.** – Failure to triple rinse pesticide containers (not made of paper).
- **XIII. 2.(2)(a)** – Failure to maintain legible labels on all bulk storage containers at all times.
- **XIII. 2.(3)(a)** – Failure to properly store dry bulk pesticides.
- **XIII. 2.(6)(g)** – Failure to promptly recover discharges within secondary containment facilities.
- **XIII. (7)(a)-(d)** – Failure to routinely inspect and maintain pesticide storage facilities, storage containers, and appurtenances in accordance with the Regulations in order to minimize the risk of a discharge.
- **XIII. 9.(a)-(c)** – Failure to prepare, and keep current, a written discharge response plan for the pesticide storage facility. / Failure to have accessible all equipment and supplies needed to respond to a discharge. / Failure to train employees in the discharge response procedures.

Class III (*Up to \$350.00 per violation for private applicators or certified private applicators or \$1,750.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders*)

- **II. b. (3)/X. 4.c.(1)/XI. 2.** - Sale of Class C pesticides without a Class A or B Dealer License, or Retail License.
- **IV. 2.f.** - Failure to fill out weekly spray reports.
- **IV. 2.j.** - Failure to provide proper invoicing.
- **IV. 8.** – Failure to provide notification of and/or properly post turfgrass applications.
- **IV. 2.h.** - Failure to cooperate with Agency investigations (non-use - recordkeeping, etc.).
- **IV. 9.i.(1)** – Failure of golf course to keep and maintain required operating records and report of pesticide use.
- **V. 1.** - Failure of Private applicator to accurately record use of restricted use pesticides.
- **V. 1.** - Failure of Private applicator to maintain records of restricted use pesticide use for two years.
- **V. 2.a.** - Failure of comm / non-comm applicator to create accurate routine operational records.
- **V. 2.a.** - Failure of comm / non-comm applicator to maintain routine operational records for two years.
- **V. 2.b.** - Failure of comm / non-comm applicator to submit accurate Annual Pesticide Usage Report.
- **V. 5.a.** - Failure of Class A Dealer to accurately record sales of restricted use pesticides.
- **V. 5.a.** - Failure of Class A Dealer to submit accurate Annual Restricted Use Sales report.
- **X. 4.b.(2)** - Display or storage of Class B pesticides in food areas.
- **X. 4.c.(2)** - Display or storage of Class C pesticides in food areas.
- **XI. 3.** - Failure of applicator licensed under Category 10 (Research and Demonstration) to submit accurate Annual Restricted Use Sales report.
- **XI. 1.c.** - Failure of Class A and B Dealers to notify Agency of a change of employment within 30 days.

- **XIII. 1.(b)** – Failure to ensure that vehicles used for transporting pesticides are properly placarded.
- **XIII. (7)(e)** - Failure to maintain a written record of all inspections and maintenance of pesticide storage facilities, storage containers and appurtenances on the day of the inspection or maintenance.
- **XIII. (8)(a)-(f)** – Failure to maintain records for five years of discharges from the storage facility, pesticide levels in each storage container, monthly inventory reconciliations, storage containers, appurtenances, and secondary containment facilities, and manufacture’s compatibility statements.