

**Vermont Agency of Agriculture, Food and Markets
Administrative Division
Enforcement Section**

**Pesticide Control Enforcement Program
Federal Fiscal Year 2023 Annual Report**

February 1, 2024

Dear Reader,

Title 6 of the Vermont Statutes Annotated (6 V.S.A.), Chapter 87: Control of Pesticides, provides the Secretary of the Vermont Agency of Agriculture, Food and Markets (VAAFMM) with the necessary authority to regulate and control the sale, use, storage, treatment, and disposal of pesticides and pesticide wastes to promote public health, safety, and welfare and protect agricultural and natural resources. In order to achieve these goals, VAAFMM implements a comprehensive approach to the regulation of pesticide companies, pesticide applicators (both professional and homeowner), pesticide dealers, and pesticide producing establishments. When necessary, cases are referred to the Environmental Protection Agency (EPA) Region 1 Office in Boston, Massachusetts, to take enforcement under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

This report provides a summary of the enforcement actions taken by VAAFMM during Federal Fiscal Year 2023 (FFY23). In 2022, the Agency undertook a comprehensive revision of the Regulations, with the final Vermont Rule for Control of Pesticides (the Rule) becoming effective on February 24, 2023. Therefore, depending on when an inspection or investigation of a regulated entity took place, the violation(s) alleged in an enforcement action would either be of the Regulations (if the inspection / investigation took place prior to February 24, 2023) or of the Rule (if the inspection / investigation took place after February 24, 2023).

In FFY 23, a total of 46 regulated entities received a total of 57 enforcement actions. These numbers are broken down by pesticide use category in the Pesticide Applicator Compliance Report below and by pesticide sales category in the Pesticide Dealer / Retail Outlet Compliance Report below.

Pursuant to 6 V.S.A. §§ 1, 13, 15, 16, 1104, and 1111, when the Secretary of VAAFMM determines that a person subject to the requirements of Chapter 87 is violating a requirement of the Chapter, the Secretary shall respond to, and require discontinuance of, the violation. The Secretary may respond to a violation of the requirements of Chapter 87 by:

- (1) issuing a Notice of Violation (NOV) with proposed administrative penalty, a Final Order (FO), a Cease and Desist Order (CDO), Letter of Warning (LOW), or Corrective Action Letter (CAL);
- (2) entering into an Assurance of Discontinuance (AOD);
- (3) instituting appropriate proceedings on behalf of VAAFMM to restrain by temporary or permanent injunction the continuation or repetition of the violation by a person(s); or,
- (4) revoking or suspending any license or certificate for failure to comply with Chapter 87 or any rule adopted under its authority.

Please refer to the Glossary at the end of this report for general definitions and definitions of enforcement actions typically issued by VAAFMM.

Information about the Public Health and Agricultural Resource Management (PHARM) Division's Pesticide Enforcement Program and the Regulations/Rule can be found at: <https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs/pesticide-enforcement>

PESTICIDE APPLICATOR COMPLIANCE REPORT

Pesticide Applicators are subject to inspection/investigation by VAAFM in the following pesticide use categories:

Agricultural Pesticide Routine Use Inspection (AG) and Non-Agricultural Pesticide Routine Use Inspection (NAU)

– Routine use inspections into the use of pesticides in agricultural and non-agricultural settings are conducted to ensure that the applicator is properly certified, using the pesticide(s) in a safe and effective manner and according to label directions and the Regulations/Rule, maintaining the required records, and using pesticides that are registered with both the Environmental Protection Agency (EPA) and the VAAFM. In the case of AG inspections, special attention is given to determining whether the Worker Protection Standard requirements have been followed.

Agricultural Pesticide Referral/For Cause Use Investigation (AR) and Non-Agricultural Pesticide Referral/For Cause Use Investigation (NAR)

– Referral, or “for-cause” investigations are conducted in response to complaints received from the public regarding an agricultural or non-agricultural pesticide application that has allegedly violated state or federal pesticide regulations, pesticide product labeling, or use permits issued by the VAAFM.

Certified Applicator Records Inspections (CAR) are conducted for both agricultural and non-agricultural applicators of pesticides to ensure that applicators are recording and reporting all required information related to their pesticide applications. Compliance issues identified during these inspections are reported under the corresponding use category (AG or NAU) in Figure 1 and Table 1 below.

Figure 1. In FFY23, 26 regulated entities received a total of 33 enforcement actions in the following use categories for alleged violations of the Regulations/Rule. The total number of actions includes Assurances of Discontinuance (AODs) that are entered into between VAAFM and the regulated entity, as an alternative to pursuing further administrative or judicial proceedings regarding a violation(s) of the Regulations/Rule alleged in a Notice of Violation (NOV). Therefore, if a regulated entity received a NOV and an AOD, they are recorded as having received two enforcement actions. A regulated entity may also receive a Cease and Deist Order (CDO) followed by a NOV, in which case they would also be recorded as having received two enforcement actions.

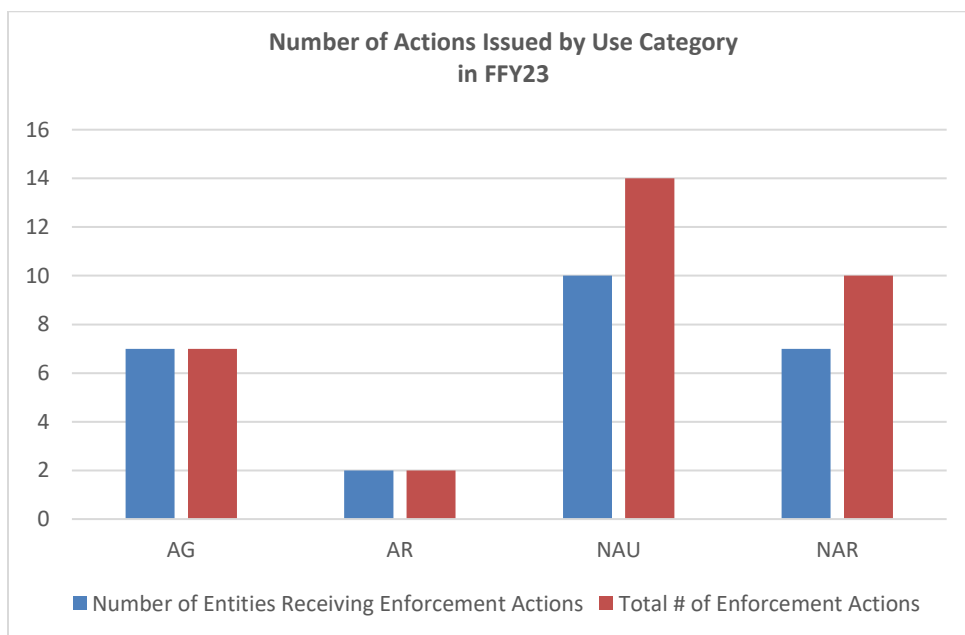


Table 1. Table 1 lists the specific enforcement actions issued by pesticide use category in FFY23.

PESTICIDE USE CATEGORY	Letter of Warning (LOW)	Cease and Desist Order (CDO)	Notice of Violation (NOV)	Assurance of Discontinuance (AOD)
AG	7	0	0	0
AR	1	0	1	0
NAU	4	2	5	3
NAR	2	1	4	3

PESTICIDE DEALER / RETAIL OUTLET COMPLIANCE REPORT

Pesticide Dealers are subject to inspection/investigation by VAAFM in the following pesticide sales categories:

Class A / Restricted Use Dealer Inspection (RUD) – Restricted Use Dealer inspections are conducted to determine if the dealer has the appropriate license for the pesticides being sold, and that pesticide storage, labeling, and registration meet the requirements of the Regulations/Rule. Class A Dealers can sell Class A, B, and C pesticides. In addition, special attention is given to ensuring that those requirements pertaining to the storage, sale, and record keeping associated with restricted use pesticides are being followed.

Class B / Marketplace Inspection (MP) – Marketplace inspections are conducted to determine if the dealer has the appropriate license for the pesticides being sold, and that pesticide storage, labeling, and registration meet the requirements of the Regulations/Rule. Class B Dealers can only sell Class B and C pesticides.

Class C / Retail Inspection (Retail) – Retail inspections are conducted to determine if the sales outlet has the appropriate license for the pesticides being sold, and that pesticide storage, labeling, and registration meet the requirements of the Regulations/Rule. Outlets in possession of a Class C Pesticide Retail License can only sell Class C pesticides.

Figure 2. In FFY23, 20 regulated entities received a total of 24 enforcement actions in the following sales categories for alleged violations of the Regulations/Rule. The total number of actions includes AODs that are entered into between VAAFM and the regulated entity, as an alternative to pursuing further administrative or judicial proceedings regarding a violation(s) of the Regulations/Rule alleged in a NOV. Therefore, if a regulated entity received a NOV and an AOD, they are recorded as having received two enforcement actions. A regulated entity may also receive a CDO followed by a NOV, in which case they would also be recorded as having received two enforcement actions.

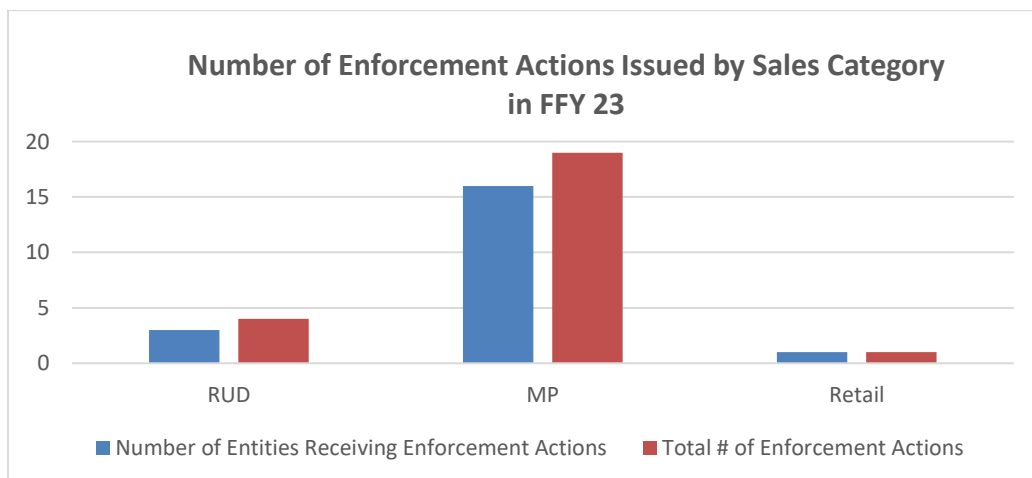


Table 2 – Table 2 lists the specific enforcement actions issued by pesticide sales category in FFY23.

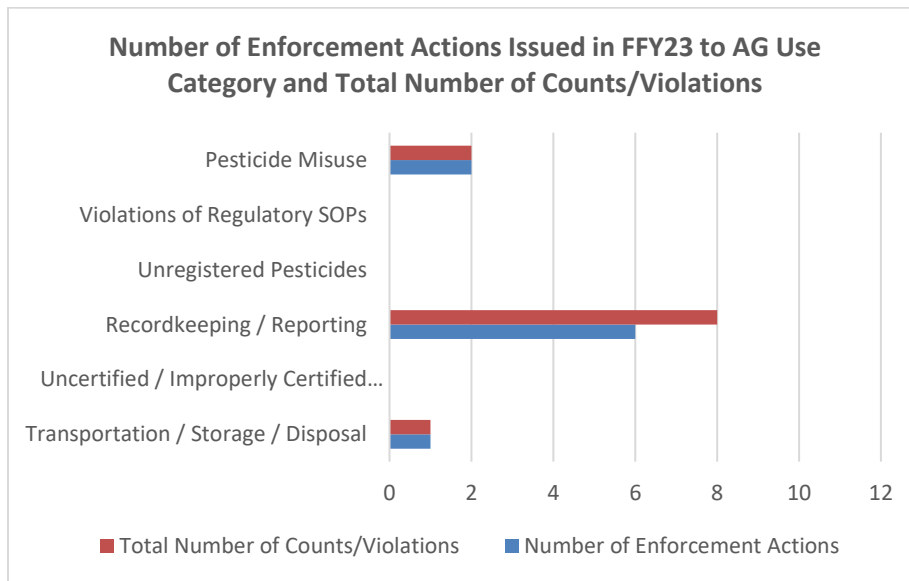
PESTICIDE SALES CATEGORY	Letter of Warning (LOW)	Cease and Desist Order (CDO)	Notice of Violation (NOV)	Assurance of Discontinuance (AOD)
RUD	2	0	1	1
MP	1	11	7	0
Retail	0	1	0	0

PRODUCER ESTABLISHMENT COMPLIANCE REPORT

Routine inspections of producer establishments are conducted to confirm that these establishments are producing pesticides, including the re-packaging of pesticide products, and to ensure they are maintaining the appropriate records for production of pesticides, receipt of pesticide active ingredients used in product production, shipment of pesticides produced, export of pesticides, and any other records required under FIFRA. Producer establishment inspections are conducted by Agency staff under Federal EPA Credentials. Two producer establishment inspections were conducted in FFY23. No violations were found.

Figures 3 through 9. Enforcement Actions¹ Issued by Pesticide Use and Sales Categories in FFY23 by General Nature of Violation and Total Number of Counts/Violations²

Figure 3.



¹ Assurances of Discontinuance (AODs) are not included in these figures. While they are enforcement actions, they are not charging documents with specific counts.

² An enforcement action may include more than one count/violation of the Regulations/Rule, so number of counts/violations may exceed the total number of enforcement actions issued in FFY23.

Figure 4.

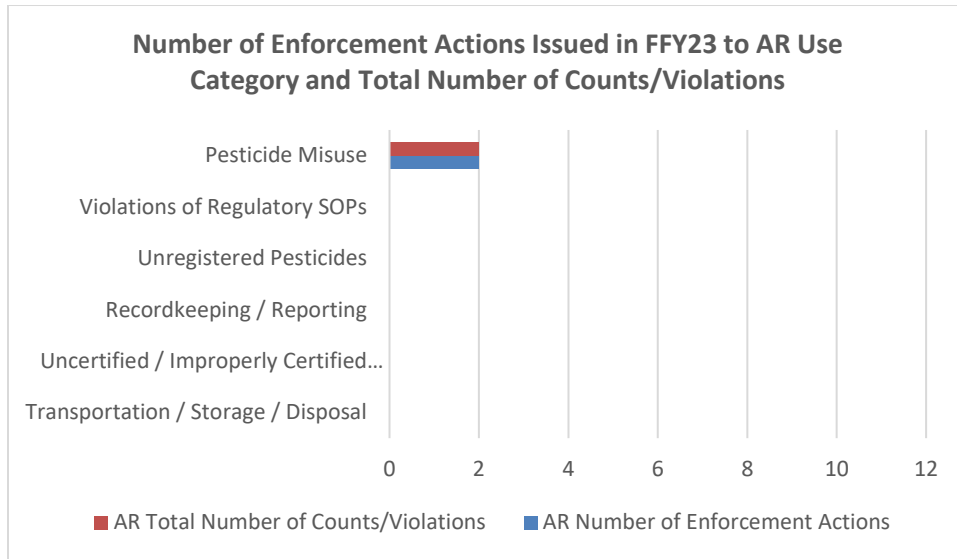


Figure 5.

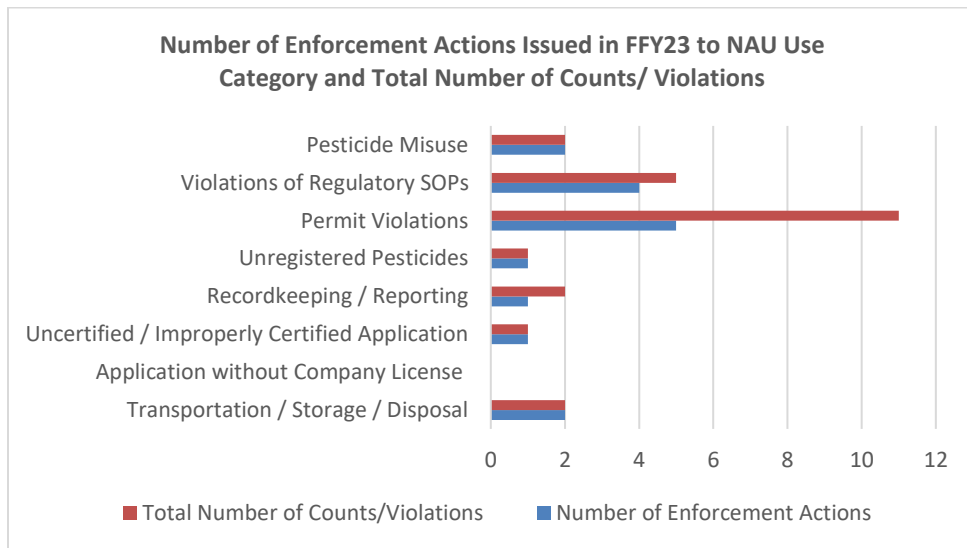


Figure 6.

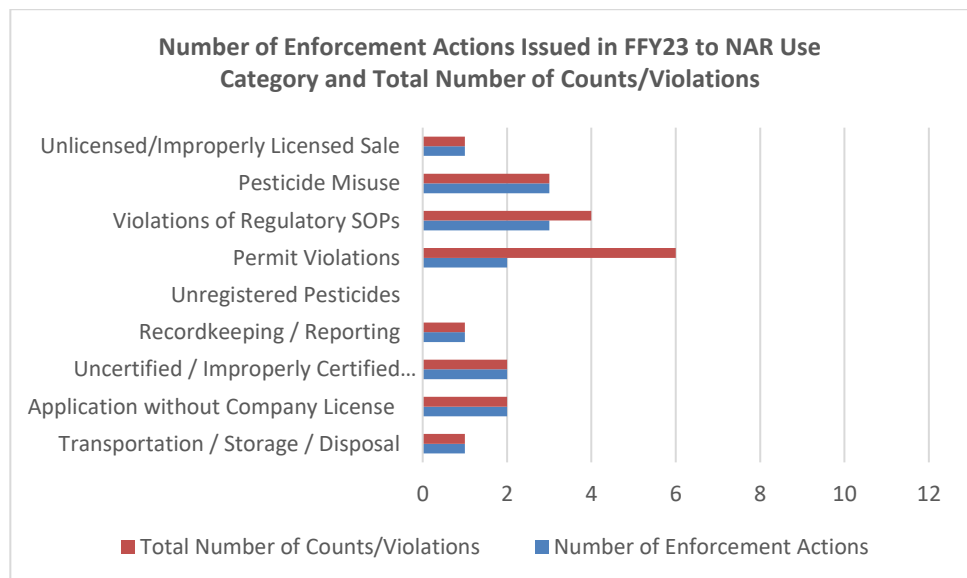


Figure 7.

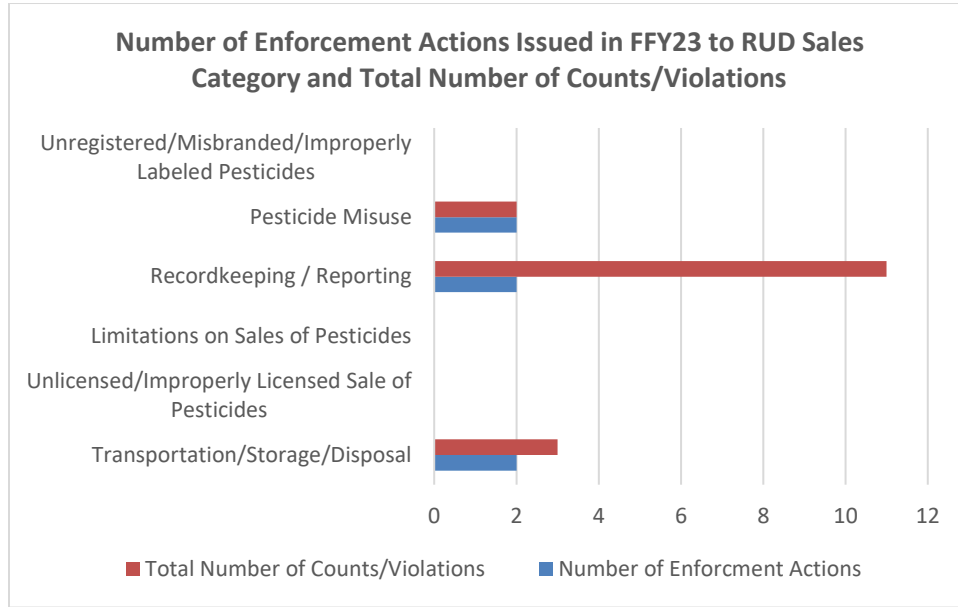


Figure 8.

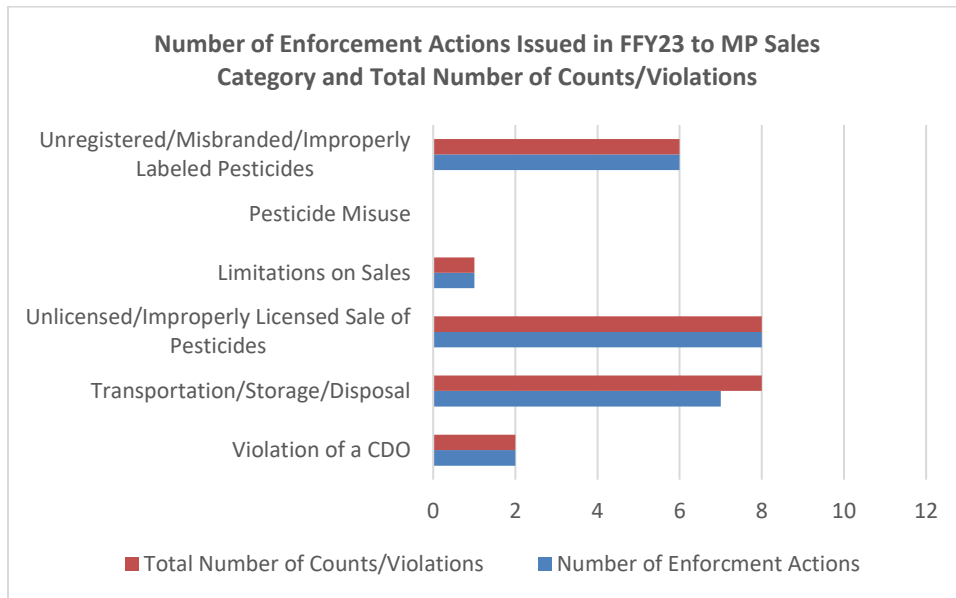
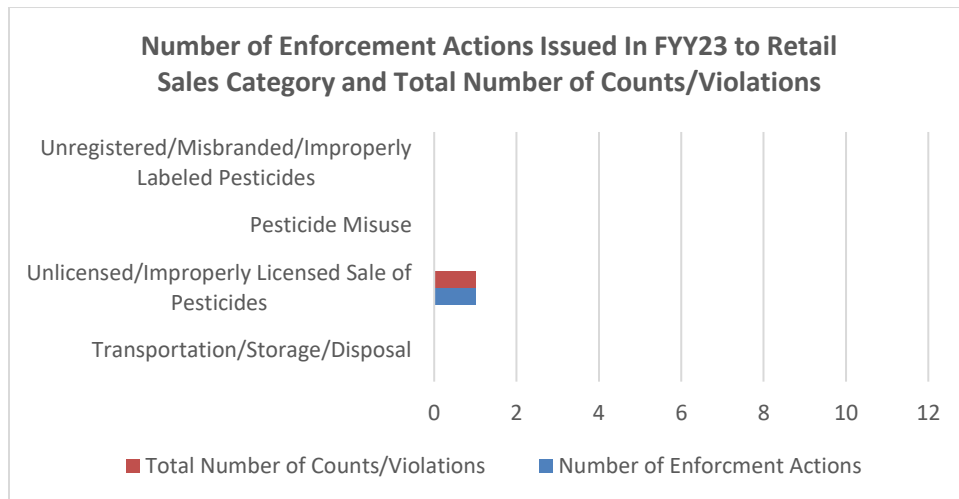


Figure 9.



Glossary of Definitions and Enforcement Actions Pursuant to 6 V.S.A. Chapter 87

Assurance of Discontinuance (AOD) – An AOD is an agreement, entered into between VAAFM and the regulated entity, as an alternative to pursuing further administrative or judicial proceedings regarding an alleged violation(s) of the Regulations/Rule. The AOD typically lays out a schedule of compliance, which may include the payment of penalties, that the regulated entity must follow to regain compliance with the Regulations/Rule.

Cease and Desist Order (CDO) – A CDO requires the immediate cessation of an alleged violation of the Regulations/Rule. Recipients of a CDO have five days to request a hearing on the violations alleged in the CDO.

Class A Restricted Use Pesticides – Class A pesticides include Federally restricted use pesticides identified by the EPA designation “Restricted Use Pesticide” on the product label. Class A pesticides also include those pesticides classified as “General Use” by the EPA, and reclassified as restricted use by VAAFM after consideration of the following:

- (1) Toxicological profile, including acute, sub chronic and chronic effects;
- (2) Environmental profile, including aquatic and wildlife effects;
- (3) Physical hazard profile, including the potential for fire, explosion and reactivity;
- (4) Potential for ground and surface water contamination;
- (5) Potential for misuse;
- (6) Container construction and size;
- (7) Those requiring training due to special concerns; and,
- (8) Method of application.

Class B Controlled Sale Pesticides – Class B pesticides are those pesticides determined to be less hazardous than Class "A", but that require some control over where products are sold. Class "B" pesticides are generally for use outside of the home and contain more than 3% total active ingredient. However, VAAFM reserves the right to classify additional pesticides as Class "B".

Class C Homeowner / Specialty Pesticides – Class C pesticides are those pesticides which are generally used in and around the home and which contain no more than 3% total active ingredient. However, VAAFM reserves the right to classify additional pesticides, including non-homeowner specialty products, as Class "C". There are a number of Class C pesticides that can have a limited percentage of active ingredient above 3%, and products that can have an unlimited percentage of active ingredients. Please refer to the Rule for a complete list.

Commercial Pesticide Applicators – Pursuant to the Regulations/Rule, a Commercial Applicator is a person who applies pesticides to the lands or homes of another whether for remuneration or gratis under the direct supervision of a Certified Commercial Applicator. A Certified Commercial Applicator may purchase, use, or supervise the application and use of Class A, B, and C pesticides.

Company License – Pursuant to the Regulations/Rule, Companies employing Commercial Applicators that are making applications to the land or homes of another for remuneration must be licensed by VAAFm.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) – FIFRA is the Federal Statute, administered by the U.S. Environmental Protection Agency (USEPA) that governs the registration, distribution, sale, and use of pesticides in the United States.

Final Order (FO) - If the regulated entity fails to request a hearing or respond to a NOV, a FO may be issued which imposes the proposed administrative penalty. Recipients of a FO may appeal within 30 days of the decision to Superior Court.

Hearing / Pre-hearing Settlement Conference - When requested, hearings shall be conducted pursuant to 3 V.S.A. Chapter 25. VAAFm typically offers to hold a pre-hearing settlement conference (pre-hearing) to see if an agreement on the alleged violations and proposed penalties can be reached. If an agreement is reached at pre-hearing, it is memorialized in an AOD. If agreement is not reached at pre-hearing, then the case will progress to a formal hearing with a hearing officer.

Non-Commercial Pesticide Applicators - Pursuant to the Regulations/Rule, a Non-Commercial Applicator is a person who uses or applies pesticides in the course of their employment. A Certified Non-Commercial Applicator may purchase, use, or supervise the application and use of Class A and B pesticides. Those Non-Commercial Applicators who are not certified may only use Class C pesticides in the course of their employment.

Notice of Violation (NOV) – A NOV proposes an administrative penalty for an alleged violation of the Regulations/Rule. Recipients of a NOV have 15 days to request a hearing on the violations alleged in the NOV.

Pesticide Applicator Certification Process – Pesticide applicators become certified by taking and passing the appropriate exam(s) that demonstrate their competence to meet general and specific standards described in the Regulations/Rule.

Pesticide Dealer Licenses - Class A and Class B - Individuals that wish to sell Class A or Class B pesticides must become licensed by VAAFm by taking and passing an examination that demonstrates that the applicant possesses adequate knowledge of the Regulations/Rule, classification of pesticides, safe handling, and hazards and disposal of pesticides which will be sold or recommended for use.

Pesticide Use Permits – The following pesticide use permits are issued by VAAFm:

1. Golf Course Permits - are issued to golf courses to limit the locations, amounts, and types of pesticides used. The permits restrict pesticide usage based on site-specific conditions.
2. Right-of-Way (ROW) Permits - are issued to utilities, rail companies, and others for the clearing or maintaining of rights-of-ways.
3. Mosquito Larvicide Permits - are issued for the application of mosquito larvicides to water. Currently, there are two mosquito control districts in Vermont.
4. Mosquito Adulticide Permits - are issued for the application of mosquito adulticides for the control of nuisance mosquitos.
5. Bird or other Animal Control Permits - are issued for the control of birds or other animals that the Secretary has declared a pest.
6. Aerial Permits - are issued for the application of pesticides from an aircraft.
7. Experimental Use Permits (EUPs) - are issued for applications of an unregistered pesticide, or for the use of a

registered pesticide for an unregistered use.

8. Terrestrial Invasive Plant Control Permits - are issued for the application of pesticides to control a terrestrial invasive plant on property the applicator does not have a legal right to control without first obtaining a permit.

Private Pesticide Applicators - Pursuant to the Regulations/Rule, a Private Applicator is any person who uses or supervises the use of any pesticide other than restricted use pesticides on property owned or rented by the applicator that is residential in nature or on property owned or rented by the applicator or the applicator's employer for the production of an agricultural commodity. A Certified Private Applicator may purchase, use, or supervise the use of restricted use pesticides.

Retail License – Retail outlets that wish to sell Class C pesticides must obtain a retail license. No examination is required.

Worker Protection Standard - EPA's Agricultural Worker Protection Standard (WPS) aims to reduce pesticide poisonings and injuries among agricultural workers and pesticide handlers. VAAFPM conducts inspections and investigations to determine compliance with the WPS.

Questions regarding the Vermont Pesticide Control Enforcement Program or this report in general can be directed to David M. Huber, Esq., PHARM Division Deputy Director at (802) 461-7160 or David.Huber@vermont.gov