

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

**Pesticide Control Enforcement Program
Federal Fiscal Year 2021 Annual Report**

January 11, 2023

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 in order to promote the public health, safety, and welfare and protect agricultural and natural resources. In order to achieve this goal, the VAAFMM's Administration Division's Enforcement Section (Enforcement Section) works cooperatively with the VAAFMM Public Health and Agricultural Resource Management Division (PHARM Division) to implement 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 Action (FIFRA).

This report provides a summary of the enforcement actions taken by VAAFMM during Federal Fiscal Year 2021 (FFY21) for alleged violations of Vermont's Regulation for Control of Pesticides in Accordance with 6 V.S.A. Chapter 87 (the Regulations).

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.

In FFY21, the Enforcement Section continued to:

- Work cooperatively with the PHARM Division to effectively and equitably regulate pesticide companies, pesticide applicators, pesticide dealers, and pesticide producing establishments.
- Hold weekly Enforcement Committee Meetings with PHARM Division leadership and staff to discuss cases with alleged violations and reach agreement on how to move forward with enforcement, if appropriate.
- Remain in close communication with PHARM Division leadership and staff throughout the enforcement process to ensure timely progress is made by the regulated entity in achieving compliance with the regulations.
- Accompany PHARM Division staff on field visits to better understand the issues requiring enforcement and to

explain the enforcement process to the regulated community.

Information about the PHARM Division Enforcement Program and the Regulations can be found at the following links:

- PHARM Division Enforcement: <https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs/pesticide-enforcement>
- PHARM Division Regulations: <https://agriculture.vermont.gov/sites/agriculture/files/documents/PHARM/Pesticides/Vermont%20Regulations%20for%20Control%20of%20Pesticides%20August%202-1991.pdf>
- Pesticide Programs: <https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs>

PESTICIDE APPLICATOR COMPLIANCE REPORT

Pesticide Applicators are subject to inspection/investigation by VAAFMM 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, maintaining the required records, and using pesticides that are registered with both the Environmental Protection Agency (EPA) and the VAAFMM. 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 VAAFMM.

Certified Applicator Records Inspections (CAR) are conducted for both agricultural and non-agricultural applicators of pesticides. Compliance issued identified during these inspections are reported under the corresponding use category in Figure 1 and Table 1 below.

Figure 1. In FFY21, a total of 25 enforcement actions were issued to a total of 17 regulated entities in the following use categories for alleged violations of the Regulations

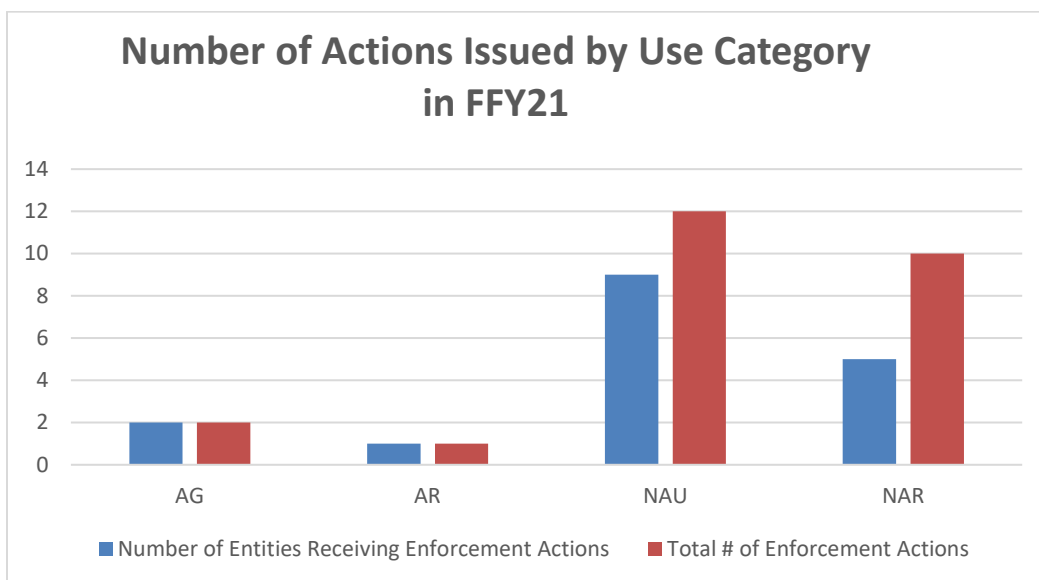


Table 1 – Enforcement Actions Issued by Pesticide Use Category in FFY21

In FFY21, nine regulated entities received a total of 14 enforcement actions for alleged violations of the Regulations based on inspections/investigations conducted during FFY 21. An additional seven regulated entities received a total of ten enforcement actions for alleged violations of the Regulations based on inspections/investigations conducted during FFY20. One regulated entity received one enforcement action for alleged violations of the Regulations based on an inspection/investigation conducted during FFY19. This information is reported in Table 1 below.

	Letter of Warning (LOW)	Corrective Action Letter (CAL)	Cease and Desist Order (CDO)	Notice of Violation (NOV)	Assurance of Discontinuance (AOD)
AG (FFY20 Cases)	0	0	0	0	0
AG (FFY21 Cases)	2	0	0	0	0
AR (FFY20 Cases)	0	0	0	0	1
AR (FFY21 Cases)	0	0	0	0	0
NAU (FFY19 Cases)	0	0	0	0	1
NAU (FFY20 Cases)	2	0	0	3	2
NAU (FFY21 Cases)	0	2	0	1	1
NAR (FFY20 Cases)	0	0	0	1	1
NAR (FFY21 Cases)	1	0	3	2	2

PESTICIDE DEALER / RETAIL OUTLET COMPLIANCE REPORT

Pesticide Dealers are subject to inspection/investigation by VAAFMM 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. Class A Dealers can sell Class A, B, and C pesticides. In addition, special attention is given to ensuring that those regulations 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. Class B Dealers can only sell Class B and C pesticides.

Class C / Retail (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. Outlets in possession of a Class C Pesticide Retail License can only sell Class C pesticides.

Figure 2. In FFY21, a total of 14 enforcement actions were issued to a total of 13 regulated entities in the following sales categories for alleged violations of the Regulations.

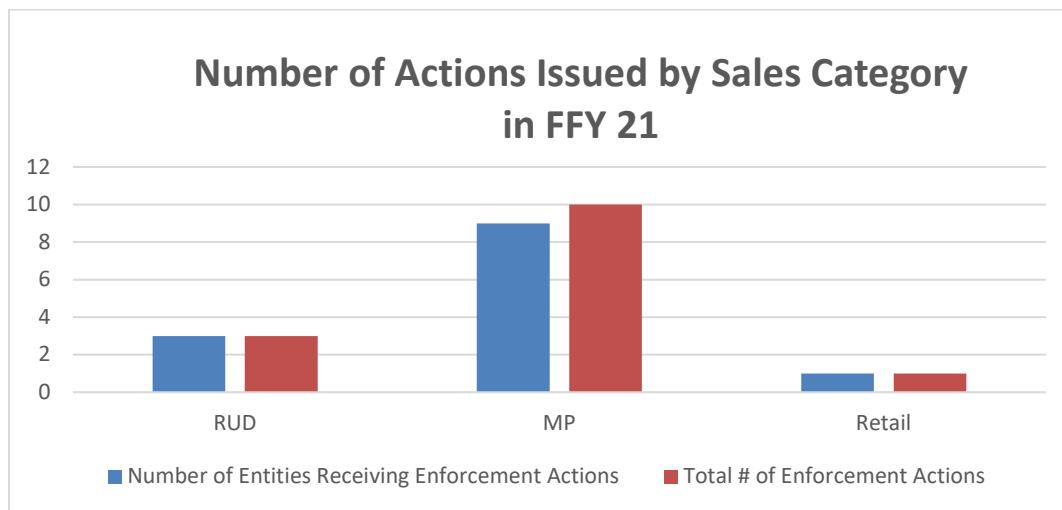


Table 2 – Enforcement Actions Issued by Pesticide Sales Category in FFY21

In FFY21, 10 regulated entities received a total of 11 enforcement actions for alleged violations of the Regulations based on inspections/investigations conducted during FFY 21. An additional three regulated entities received a total of three enforcement actions for alleged violations of the Regulation based on inspections/investigations conducted during FFY20. This information is reported in Table 2 below.

	Letter of Warning (LOW)	Corrective Action Letter (CAL)	Cease and Desist Order (CDO)	Notice of Violation (NOV)	Assurance of Discontinuance (AOD)
RUD (FFY20 Cases)	0	0	0	2	0
RUD (FFY21 Cases)	0	0	0	1	0
MP (FFY20 Cases)	0	1	0	0	0
MP (FFY21 Cases)	0	0	7	1	1
Retail (FFY20 Cases)	0	0	0	0	0
Retail (FFY21 Cases)	0	1	0	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 FFY21. No violations were found.

Table 3. Enforcement Actions Issued in FFY21 by General Nature of Violation of Regulations by Pesticide Use and Sales Categories¹

General Nature of Violation	Actual Number of Individual Counts/Violations ²	Enforcement Actions Issued
AG Compliance		
Pesticide Misuse	0	0
Violation of Regulatory Standards of Operation	0	0
Unregistered Pesticides	0	0
Recordkeeping / Reporting	2	LOW (2)
Uncertified / Improperly Certified Application	0	0
Transportation / Storage / Disposal	0	0
AR Compliance		
Pesticide Misuse	0	0
Violation of Regulatory Standards of Operation	0	0
Unregistered Pesticides	0	0
Recordkeeping / Reporting	0	0
Uncertified / Improperly Certified Application	0	0
Transportation / Storage / Disposal	0	0
NAU Compliance		
Pesticide Misuse	2	LOW (1), NOV (1)
Violation of Regulatory Standards of Operation	3	CAL (2), NOV (1)
Permit Violations	10	LOW (1), NOV (3)
Unregistered Pesticides	1	LOW (1)
Recordkeeping / Reporting	3	CAL (1), NOV (2)
Uncertified / Improperly Certified Application	1	LOW (1)
Application without Company License	1	LOW (1)
Transportation / Storage / Disposal	0	0
NAR Compliance		
Pesticide Misuse	4	CDO (2), NOV (2)
Violation of Regulatory Standards of Operation	5	NOV (3)
Permit Violations	0	0
Unregistered Pesticides	0	0
Recordkeeping / Reporting	1	NOV (1)
Uncertified / Improperly Certified Application	3	CDO (2), NOV (1)
Application without Company License	2	CDO (1), NOV (1)
Transportation / Storage / Disposal	0	0
RUD Compliance		
Unregistered Pesticides	4	NOV (1)
Pesticide Misuse	0	0
Recordkeeping / Reporting	2	NOV (2)
Limitations on Sales of Pesticides	1	NOV (1)

¹ Assurances of Discontinuance (AODs) are not included in this table. 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, so numbers of counts/violations may exceed the total number of enforcement actions issued. In addition, the total number of enforcement actions listed in Table 3 exceeds the 39 enforcement actions issued by Use and Sales Category in FFY21. If an enforcement action contains counts for more than one "General Nature of Violation", that action is listed multiple times for each different violation contained in the action.

Unlicensed/Improperly Licensed Sale of Pesticides	2	NOV (1)
Storage / Disposal	1	NOV (1)
MP Compliance		
Unregistered Pesticides	0	0
Pesticide Misuse	2	CDO (2)
Unlicensed/Improperly Licensed Sale of Pesticides	8	CDO (5), CAL (2), NOV (1)
Storage / Disposal	0	0
Retail Compliance		
Unregistered Pesticide	0	0
Pesticide Misuse	0	0
Unlicensed/Improperly Licensed Sale of Pesticides	1	CAL (1)
Storage / Disposal	0	0

The following figures illustrate the data presented in Table 3.

Figure 3.

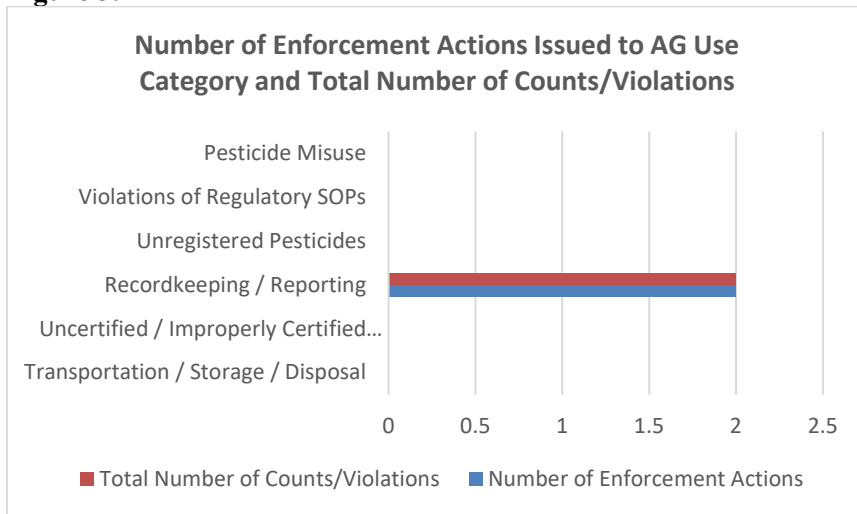


Figure 4

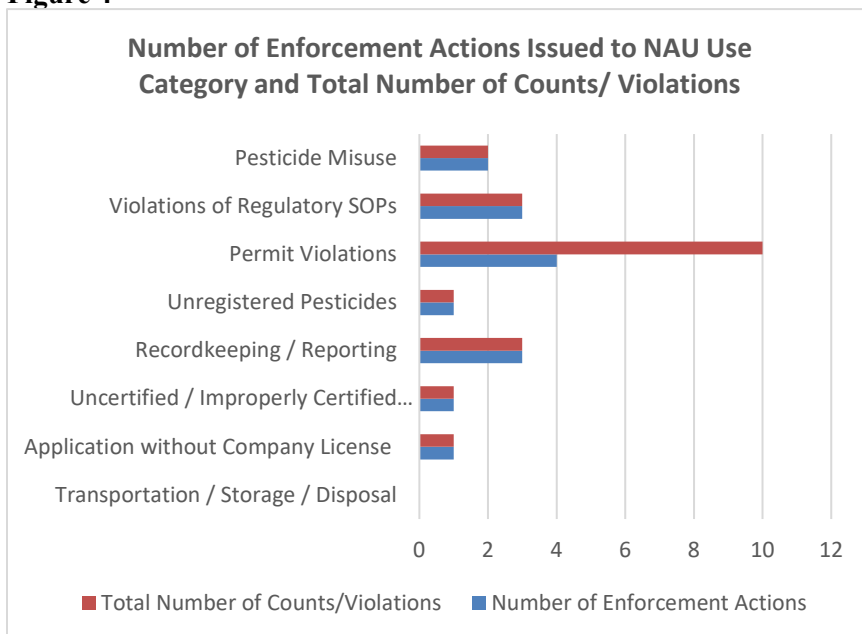


Figure 5.

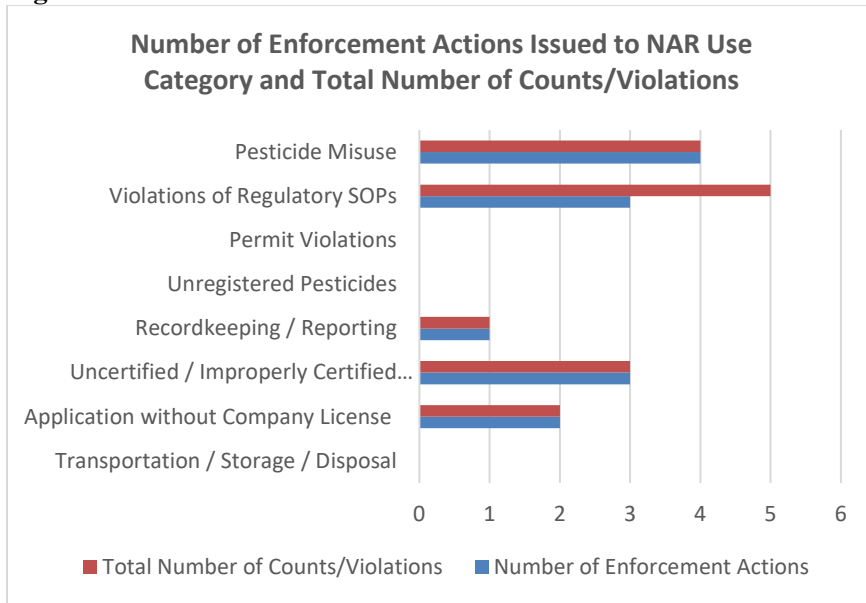


Figure 6.

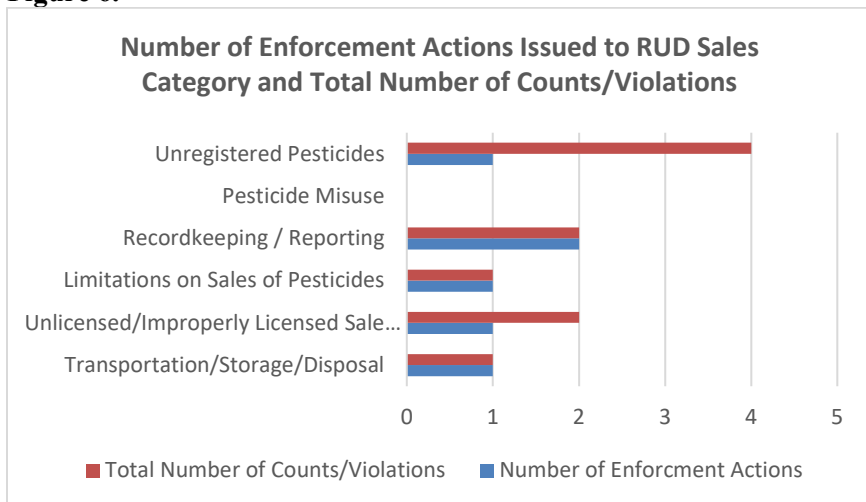


Figure 7.

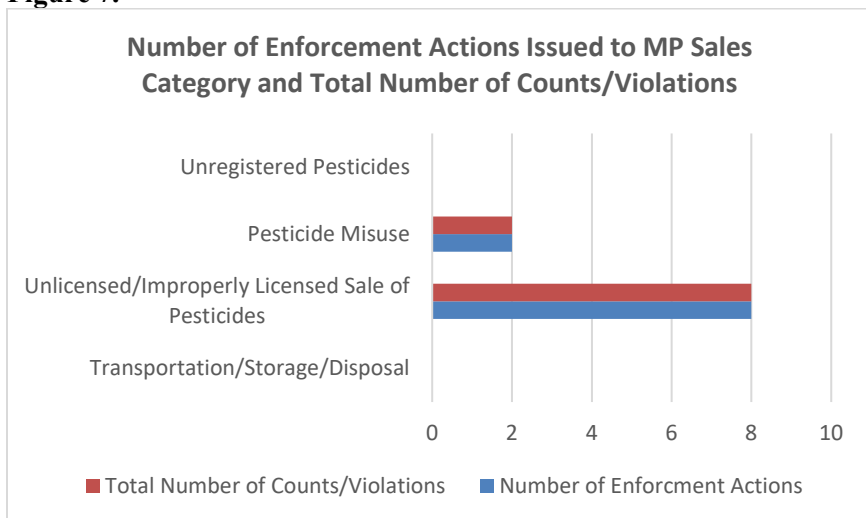
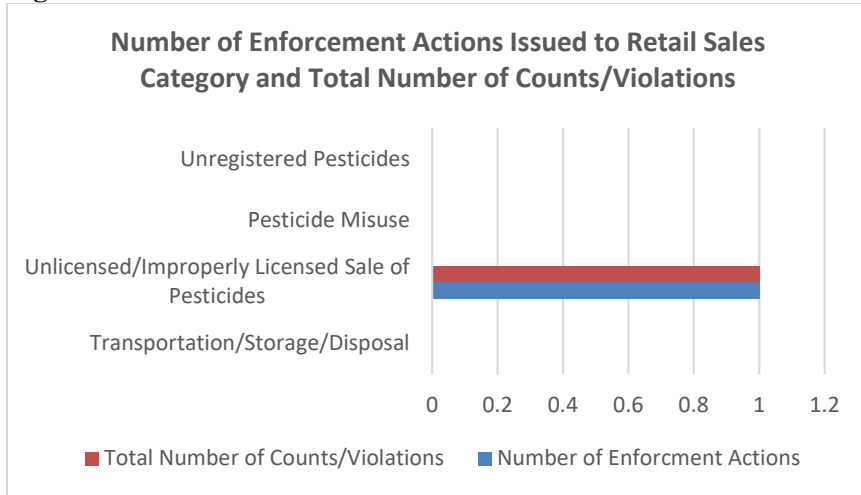


Figure 8.



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. 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.

Cease and Desist Order (CDO) – A CDO requires the immediate cessation of an alleged violation of the Regulations. 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 A – Restricted Use – by Permit Only - Pesticides are classified as Class A - Restricted Use - by Permit Only by the Secretary after a determination that routine use of the chemical could result in harm to human health or the environment. These pesticides may be purchased and used only after securing a special permit from the Secretary.

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 Regulations for a complete list.

Commercial Pesticide Applicators – Pursuant to the Regulations, 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, Companies employing Commercial Applicators that are making applications to the land or homes of another for remuneration must be licensed by VAAFM.

Corrective Action Letter (CAL) – A CAL serves as a written warning to put a regulated entity on notice that they have allegedly violated the Regulations. A CAL requires the regulated entity to take action within a specified time period to correct the alleged violation(s).

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, 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. 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.

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, classification of pesticides, safe handling, and hazards and disposal of pesticides which will be sold or recommended for use. The licensing exams are specific to the Class of pesticide that will be sold.

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 applications of mosquito larvicides to water. Currently, there are two mosquito control districts in Vermont.
4. Bird or other Animal Control Permits - are issued for the control of birds or other animals that the Secretary has declared a pest.
5. Aerial Permits - are issued for the application of pesticides from an aircraft.
6. Experimental Use Permits (EUPs) - are issued for applications of an unregistered pesticide, or for the use of a registered pesticide for an unregistered use.

Private Pesticide Applicators - Pursuant to the Regulations, 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. VAAFME 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 VAAFME Enforcement Section: (802) 461-7160 or David.Huber@vermont.gov