

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 10 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 or hand delivered 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. This question is issue specific.

- (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*)

- **2.04(b)** – Violation of a cease and desist order
- **4.03(a)** – Distribution, sale or use of a pesticide cancelled or suspended by the EPA or Agency (not covered by an existing stocks provision) resulting in pesticide release to environment and/or impact to human health.
- **5.01(a) / 5.02(j)** - Use inconsistent with product label resulting in pesticide release to environment and/or impact to human health.
- **5.01(b)** - Pesticide use resulting in drift.
- **5.02(c) - (d)** - Failure to use anti-siphoning device when filling pesticide application devices or during chemigation operations.
- **5.02(e)** - Failure to operate in a careful manner resulting in pesticide release to environment and/or impact to human health.
- **5.02(f)** - False or fraudulent claims.
- **5.02(h)** – “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.
- **5.02(l) - (m)** - Pesticide use not in accordance with Ground Water Protection Rule and Strategy, 10 V.S.A. Chapter 48.
- **5.02(n)** – Application of pesticide to soil or vegetation within 50-foot application buffer around private wells (potable water sources) – with contamination of well resulting.
- **5.02(o)(1)** – Application of pesticide to soil or vegetation within 100 feet of public non-community groundwater drinking water source.
- **5.02(o)(2)** – Application of pesticide to soil or vegetation within 200 feet of public community drinking water sources and intakes or within 200 feet of surface water non-community drinking water intakes.
- **5.04(a) – (d)** - Application of a pesticide in a manner not protective of bees.
- **12.02(a)** – Failure to anchor bulk pesticide container at facility within 100-year flood plain.
- **12.03(a) – (e)** - Failure to construct, install and maintain storage containers and appurtenances so as to prevent the discharge of liquid bulk pesticide.
- **12.04(a) - (b)** – 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.
- **12.04(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.
- **12.05(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.

- **12.09** – 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.).
- **12.11(a)** - Failure to take immediate action following a pesticide accident to protect human health and the environment.
- **12.11(b)** - Failure to report a pesticide accident immediately to the Agency and the Vermont Department of Public Safety.

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*)

- **3.01(a)** - Application of pesticides by Company without required Company License.
- **3.02(b) / 4.04(a)(1)** - Sale of Class A pesticides without a Class A Dealer License.
- **3.02(c) / 4.04(b)(1)** - Sale of Class B pesticides without a Class A or B Dealer License.
- **3.02(e)** – Sale of Class A or Class B pesticides without an appropriately licensed employee working at least 32 hours per week year-round.
- **3.04(a) (Comm and non-comm)** - Application of pesticides without certification or without the direct supervision by a certified applicator.
- **3.04(b) (Private)** - Use of Class A pesticides without certification or without the direct supervision by a certified applicator.
- **3.04(d)** - Failure of sales and technical field representatives of commercial companies recommending or demonstrating pesticides to be certified under Category 10 and the category or categories of products sold.
- **3.04(e) / 5.03(a)** – Use of a federally restricted pesticide without certification.
- **3.05(c)** - Use by comm / non-comm certified applicator in a category in which the applicator is not certified.
- **4.03(a)** – Distribution, sale or use of a pesticide cancelled or suspended by the EPA or Agency (not covered by an existing stocks provision) NOT resulting in pesticide release to environment and/or impact to human health.
- **4.04(a)(2)** - Sale of Class A pesticides to uncertified applicators / individuals unable to produce authorization from a certified applicator.
- **4.04(a)(3)** - Display of Class A pesticides for self-service / storage of Class A pesticides in food areas.
- **5.01(a) / 5.02(j)** - Use inconsistent with product label NOT resulting in pesticide release to environment and/or impact to human health.
- **5.02(a)**- Failure to use only methods and equipment which ensure the safe and efficient application of materials.
- **5.02(b)** – Failure to use functioning equipment that is free of leaks and defects that is calibrated according to manufacturer's instructions.
- **5.02(e)** - Failure to operate in a careful manner NOT resulting in pesticide release to environment and/or impact to human health.
- **5.02(h)** – “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.
- **5.02(i)** - Failure to cooperate with Agency investigations.
- **5.02(n)** – Application of pesticide within 50-foot application buffer around private wells (potable water sources) – without contamination of well resulting.

- **5.03(c)** – Re-use of a pesticide container in a manner other than what is specified on the container’s original labeling.
- **5.03(d)** – Service container not meeting Rule requirements.
- **6.01(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.
- **6.02(a)** – Aerial application of pesticides without first obtaining an Aerial Application Permit from the Agency.
- **6.03(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.
- **6.04(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.
- **6.05(a)** – Use of a pesticide on a golf course without first obtaining a permit from the Agency.
- **6.06(a)** – Use of a mosquito larvicide without first obtaining a permit from the Agency.
- **6.07(a)** – Use of a mosquito adulticide with a ground-based truck-mounted sprayer without first obtaining a permit from the Agency.
- **6.08(a)** – Use of a pesticide to control terrestrial invasive plants without first obtaining required permit from the Agency.
- **11.01(a)(1)** - Failure to secure pesticides to prevent spillage during transportation.
- **11.01(b) / 11.02(d)** – Failure to prevent unauthorized access by persons, livestock or wildlife to pesticides or pesticide containers.
- **11.02(a) & (c) - (s)** – Failure to comply with non-bulk pesticide and container storage requirements.
- **11.02(b) / 5.03(b)** – Failure to maintain legible manufacturer label on pesticide containers at all times.
- **12.01** – Failure to properly store dry bulk pesticides.
- **12.02(b) - (f)** – Failure to properly secure bulk pesticide storage containers.
- **12.05(g)(1)** – Failure to promptly recover discharges within secondary containment facilities.
- **12.06(a) - (e)** – Failure of pesticide storage facility operator to routinely inspect and maintain storage facilities, bulk storage containers, and appurtenances in accordance with the Rule in order to minimize the risk of a discharge.
- **12.08(a) - (e)** – 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.
- **12.10(b)** – Failure to request in writing for exemption when employing alternative bulk pesticide storage technology.
- **13.01(a)** – Failure to properly store unused or unwanted pesticides prior to disposal.
- **13.01(b)** – Failure to dispose of pesticide containers in a manner consistent with the product’s label.
- **13.01(d)** – Storage of empty pesticide containers within a secondary containment facility.
- **13.02** – Failure to dispose of obsolete, excess, and mixtures of pesticides in accordance with 10 V.S.A. Chapter 159.
- **13.03** – Failure to triple rinse and puncture pesticide containers (not made of paper).

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)

- **3.02(d) / 4.04(c)(1)** - Sale of Class C pesticides without a Class A or B Dealer License, or Retail License.
- **3.03(c)** - Failure of Class A and B Dealers to notify Agency of a change of employment within 30 days.
- **4.01(b)** – Failure to register a pesticide before offering for sale.
- **4.04(b)(2)** - Display or storage of Class B pesticides in food or feed areas.
- **4.04(c)(2)** - Display or storage of Class C pesticides in food or feed areas.
- **5.02(g)** - Failure to completely and accurately maintain, submit, and report use and sales data (weekly spray reports, sales records, training records, application records, annual usage).
- **5.02(i)** - Failure to cooperate with Agency investigations (non-use i.e. recordkeeping, etc.).
- **5.02(k)** - Failure to provide proper invoicing.
- **6.01(e) - (f)** – Failure to properly issue a notice of intent (meeting all requirements) to use an herbicide on rights-of-way.
- **6.05(e)(1)** – Failure of gold course to meet soil testing requirements.
- **6.05(f)(1) - (2)** – Failure of golf course to keep and maintain required pesticide operating records.
- **6.05 (f)(3) - (4)** – Failure of golf course to keep and maintain required nutrient application records.
- **6.05(f)(5)** - Failure of golf course to post written notice of application.
- **6.05(f)(7)** – Failure of golf course to have an up-to-date mapped site plan, integrated pest management plan, and nutrient management plan.
- **6.05(g)** – Failure to submit complete and accurate permit renewal prior to application in subsequent year.
- **6.06(d) - (f)** – Failure to properly issue a notice of intent (meeting all requirements) and proof of notification to use a mosquito larvicide.
- **6.07(d) & (f)** – Failure to properly issue a notice of intent (meeting all requirements) and proof of notification to use a mosquito adulticide with a ground-based truck-mounted sprayer.
- **7.01(a) - (e) / 7.02(a) - (c)** – Failure to provide notification of and/or properly post turfgrass and ornamentals applications.
- **7.03(a)-(d)** – Failure to provide notification of and/or properly post indoor applications to residential dwelling units.
- **8.01(a) - (b)** - Failure of Private applicator to accurately record use of restricted use pesticides.
- **8.01(c)** - Failure of Private applicator to maintain records of restricted use pesticide use for three years.
- **8.02(a) - (b)** - Failure of comm / non-comm applicator to create accurate daily routine operational records.
- **8.02(c)** - Failure of comm / non-comm applicator to maintain routine operational records for three years.

- **8.02(d)** - Failure of comm / non-comm applicator to submit accurate Annual Pesticide Application Report.
- **8.03** – Failure of permittee to comply with all recordkeeping and reporting requirements in the Rule and their permit.
- **8.04(a) - (c)** – Failure of licensed company to maintain routine operational records for three years and submit annual pesticide reports to the Agency.
- **8.05(a) - (f)** - Failure to follow record requirements for Class A Dealers
- **8.07(b)** – Failure to submit annual reports for last year valid certification/license held.

- **11.01(a)(2)** – Failure to ensure that vehicles used for transporting pesticides are properly placarded.
- **12.07(a)** - 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.
- **12.07(b)** – 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.