

Enforcement Overview

2024 Pest Management Professionals Meeting

October 8, 2024

Presented by Dave Huber, Deputy Director, PHARM
Division

What is an enforcement action?

- A tool to gain compliance
- Written documentation of an alleged violation
- Context and history
- Provides an in-depth analysis of what occurred on-site
- Provides a road map for moving forward
- Provides closure

How many enforcement cases occurred in FY2023?

47

How many enforcement cases occurred in FY2024?

80

Types of Enforcement Actions (# issued in FY2024)

- Cease and Desist Order (35)
- Letter of Warning (37)
- Corrective Action Letter (0)
- Notice of Violation (19)
- Assurance of Discontinuance (4)
- Hearing Order (0)

Cease and Desist Order (CDO)

- Issued on-site by the Specialist
- 5-day appeal window for pesticide
- 15-day appeal window for feed/fert

Cease & Desist Order #: 11152

Date Issued: <u>8/8/2024</u>	
Issuing Agent: <u>MATTHEW WOOD</u>	
Issued To:	
Name:	[REDACTED]
Company/Farm:	[REDACTED]
Address:	[REDACTED]
City, State, ZIP:	[REDACTED]
Phone #:	[REDACTED]
License/Cert. #, and Type:	<u>COMMERCIAL</u>
You shall CEASE & DESIST from the:	
<input type="checkbox"/>	sale of unregistered pesticide, feed, seed, fertilizer, or lime.
<input type="checkbox"/>	sale of Class "A" <input type="checkbox"/> , "B" <input type="checkbox"/> , or "C" <input type="checkbox"/> pesticide.
<input type="checkbox"/>	sale or use of a misbranded pesticide.
<input type="checkbox"/>	sale or use of a suspended or cancelled pesticide.
<input type="checkbox"/>	uncertified application of a pesticide.
<input type="checkbox"/>	use of an unregistered pesticide.
<input type="checkbox"/>	application of a pesticide with faulty equipment.
<input type="checkbox"/>	making of uncertified recommendations for the use or sale of a pesticide.
<input checked="" type="checkbox"/>	improper <u>storage</u> , <u>display</u> , <u>transportation</u> , or disposal of a pesticide and/or a container.
<input type="checkbox"/>	sale of a pesticide without a dealer license.
Other/Notes: <u>- pesticide stored in unsecured Backpack sprayer and unlocked STORAGE BOX at service center</u> <u>- CONTAMINATED Rodent bait stored w fresh</u>	
<small>This Order is authorized pursuant to 6 V.S.A. Chapters 26, 28, 35, 61, and 87. If you wish to contest this CDO, then please send a written request, within the timeframe specified below, to: David M. Huber, Deputy Director, PHARM Division, VAAFMM, 116 State Street, Montpelier, Vermont 05620-2901, OR email David.Huber@vermont.gov.</small>	
<input checked="" type="checkbox"/>	<small>Pesticide Violation(s) - must request a hearing within <u>5 days</u> of the "Date Issued" above.</small>
<input type="checkbox"/>	<small>Feed, Fertilizer, or Seed Violation(s) - must request a hearing within <u>15 days</u> of the "Date Issued" above.</small>
<small>This Order shall remain in effect until the identified violation is remedied.</small>	
Received by (print and sign): [REDACTED]	PHARM Specialist Signature: <u>[Signature]</u> <small>Under duly delegated authority of the Secretary of VAAFMM.</small>

Letter of Warning (LOW)

- Lowest level enforcement action issued by the office
- Mailed via certified mail, but service can be waived for quicker delivery via email
- Company and applicator usually named as parties
- Factual description of the violations
- Action needed is identified
- Process for discussion is provided



AGENCY OF AGRICULTURE, FOOD & MARKETS
Public Health & Agricultural Resource Management Division
Steven Dwinell, Director

www.agriculture.vermont.gov 116 State Street • Montpelier, Vermont 05620-2901 • (802) 828-2431 • (802) 828-1410 FAX

CERTIFIED MAIL 7022 2410 0000 5151 2420
RETURN RECEIPT REQUESTED

September 3, 2024

[REDACTED]

Case reference number: NAU- [REDACTED] 2024
Docket number: AAFM #2024- [REDACTED] PT

LETTER OF WARNING

Pursuant to 6 V.S.A. § 1104, the Public Health & Agricultural Resource Management (PHARM) Division of the Vermont Agency of Agriculture, Food and Markets (the Agency) has reason to believe that [REDACTED] and [REDACTED] collectively, the Company), have allegedly violated the Vermont Rule for Control of Pesticides (the Rule). For more information and complete citations, please visit the Rule at: <https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs>

On or about June 12, 2024, the Company jointly and severally violated 6 V.S.A. § 1111 and Section 8.02(b)(4) of the Rule by failing to include the size of the area treated in a routine operational record for the application of Final All-Weather Blox (EPA Reg. No. 12455-89) made for the control of mice in the basements of [REDACTED] and [REDACTED] 76 East State Street, Montpelier, Vermont.

I. Factual Description of the Violation(s):

- [REDACTED] certified by the Agency as a Commercial Pesticide Applicator (certification # [REDACTED]).
- On June 12, 2024, PHARM Specialist Clark Parmelee was driving on Route 2 in Montpelier, Vermont, when he noticed a truck bearing the company name of [REDACTED]. Specialist Parmelee followed the truck until it parked at [REDACTED], VT. Specialist Parmelee approached the driver who introduced himself as [REDACTED]. Specialist Parmelee gave [REDACTED] his business card, presented his credentials, and issued a Notice of Inspection that [REDACTED] signed.
- Specialist Parmelee observed as [REDACTED] placed one bait block of rodenticide per bait station in the basement of [REDACTED]. After [REDACTED] was finished servicing the bait stations, Specialist Parmelee asked [REDACTED] to send him the record for the pesticides that he had just applied.
- On June 21, 2024, Specialist Parmelee received the pesticide application record from [REDACTED] which indicated that the product Final All-Weather Blox (EPA Reg. No. 12455-89) was used in the basements of [REDACTED] and [REDACTED] Vermont for the control of mice. Specialist Parmelee determined that the size of the area treated was not included in the record for these applications made on June 12, 2024. The label for Final All-Weather Blox (EPA Reg. No. 12455-89) states "[s]pace placement at 8- to 12-foot intervals in infested areas".

II. Action(s):

This letter is a formal warning. This letter may be used if there is cause for future enforcement action related to similar matters in your operation(s). The Secretary of the Agency has additional enforcement options on how he may proceed if a similar violation or additional violation occurs in the future.

By issuing this Letter of Warning (LOW), the Agency is reminding you of the importance of ensuring that all required information is recorded in a routine operational record for all pesticide applications made.

Section 8.02(b) of the Rule states:

"Routine operational records shall be maintained on a daily basis and shall contain:

- (1) name and address of the person for whom the pesticide was applied;
- (2) pest treated for;
- (3) location of the pesticide application;
- (4) size of the area treated;
- (5) crop, commodity, stored product, or site that the pesticide was applied;
- (6) time and date of the pesticide application;
- (7) brand name or product name of the pesticide applied;
- (8) EPA registration number of the pesticide applied;
- (9) total amount of the pesticide applied per location per application and
- (10) name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator."

When making applications of rodenticides in bait stations, the size of the area treated can be reported as the number of bait stations placed along the perimeter of a structure with the distance between each station and/or the linear footage of the building along which the bait stations are placed.

III. Process:

If you wish to informally discuss this matter, please contact David M. Huber, Deputy Director, Public Health & Agricultural Resource Management Division, at (802) 461-7160. If you wish to formally contest the factual allegations upon which this LOW is based, please send a written request within 15 days of receipt to David.huber@vermont.gov, or:

David M. Huber, Deputy Director
Public Health & Agricultural Resource Management Division
Vermont Agency of Agriculture, Food and Markets
116 State Street, Montpelier, Vermont 05620-2901

Regards,

DocuSigned by:
[Signature]

David M. Huber, Deputy Director
Public Health & Agricultural Resource Management Division

9/3/2024 | 11:19:54 EDT

Date



AGENCY OF AGRICULTURE, FOOD & MARKETS

Public Health & Agricultural Resource Management Division
Steve Dwinell, Director

www.agriculture.vermont.gov

116 State Street • Montpelier, Vermont 05620-2901 • (802) 828-2431 • (802) 828-1410 FAX

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 8, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

LETTER OF WARNING

Case reference number: NAU-[REDACTED]2023
Docket number: AAFM #2023-[REDACTED]PT

Pursuant to 6 V.S.A. § 1104 the Public Health & Agricultural Resource Management (PHARM) Division of the Vermont Agency of Agriculture, Food and Markets (the Agency) has reason to believe that [REDACTED] (collectively the Company), with the Company located at [REDACTED] Vermont, have allegedly violated the Vermont Rule for Control of Pesticides (the Rule). For more information and complete citations, please visit the Rule at: <https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs>.

1. On July 13, 2023, while making an application of Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055) at the [REDACTED] office located at [REDACTED] Vermont, the Company jointly and severally violated Section 5.01(a) of the Rule by using the product in a manner inconsistent with the product's label. Specifically, [REDACTED] failed to wear all personal protective equipment (PPE) required by the product's label.
2. On July 13, 2023, while making an application of Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055) at the [REDACTED] office located at [REDACTED] Vermont, the Company jointly and severally violated Section 5.01(a) of the Rule by reusing empty containers of Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055) for the storage of trash in the bed of the Company's truck. The Storage and Disposal section of the Talon Weatherblok XT label states "[d]o not reuse or refill this container".

3. On July 13, 2023, while making an application of Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055) at the [REDACTED] located at [REDACTED] Vermont, the Company jointly and severally violated Section 11.01(b) of the Rule by failing to secure containers of Terad3 Blox (EPA Reg. No. 12445-106) in a manner to prevent access by unauthorized persons or wildlife during use or transport. Specifically, containers of Terad3 Blox were located in the open, unsecured bed of the Company's truck while parked in the lot at the [REDACTED] office building.
4. On July 13, 2023, while making an application of Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055) at the [REDACTED] located at [REDACTED] Vermont, the Company jointly and severally violated Section 8.02(b) of the Rule by failing to create a routine operational record containing all required information for that pesticide application. Specifically, the routine operational record was missing the pest treated for, the size of the area treated, and the site of application.
5. On July 13, 2023, while making an application of Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055) at the [REDACTED] located at [REDACTED] Vermont, the Company jointly and severally violated Section 5.02(k) of the Rule by failing to create an invoice containing all required information for that pesticide application. Specifically, the invoice was missing the site of application and the pest treated for.

I. Factual Description of the Violation(s):

1. On July 13, 2023, PHARM Specialist Matthew Wood [REDACTED] when he saw [REDACTED] back pulling into the parking lot of the office building. Specialist Wood met [REDACTED] Company employee, (commercial pesticide applicator certification # [REDACTED]) in the lobby of the office building and asked him what he was doing there. [REDACTED] replied that he was going to the [REDACTED] office, located on the [REDACTED] to check on rodent bait stations. Specialist Wood informed [REDACTED] that he was going to conduct a routine inspection while [REDACTED] performed his service visit and he issued [REDACTED] a Notice of Inspection (NOI) which [REDACTED] signed.
2. Specialist Wood and [REDACTED] then proceeded to the [REDACTED] where [REDACTED] checked mouse bait stations that had been placed in the suspended ceiling. [REDACTED] showed Specialist Wood other placement locations for these interior mouse bait stations, such as next to the refrigerator and under the sink in the kitchen.
3. On the day of inspection, [REDACTED] was using Talon Weatherblok XT Rodenticide (EPA Reg. No. 100-1055).

4. [REDACTED] informed Specialist Wood that he did not observe any feeding activity on any of the baits in the interior mouse bait stations, so he left the bait blocks in place in the stations. [REDACTED] and Specialist Wood then proceeded to the exterior of the office building where [REDACTED] checked the larger outdoor-use rodent bait stations. Specialist Wood observed that [REDACTED] was wearing short pants and a shirt with short sleeves. The Directions for Use section of the Talon Weatherblok XT label states that a long-sleeved shirt and long pants are the required personal protective equipment (PPE) when working with the product, as well as gloves and shoes plus socks. [REDACTED] showed Specialist Wood the interior of the rodent bait stations, and there was no bait remaining in four of the six exterior rodent bait stations that he checked that day. [REDACTED] placed two blocks of the Talon Weatherblok XT product in the four bait stations that had no remaining bait. For the two stations that had some bait remaining, [REDACTED] replaced the old bait with two new blocks of the product and took the old bait blocks for disposal.

5. [REDACTED] and Specialist Wood then returned to [REDACTED] truck in the parking area so he could complete his pesticide application paperwork. Specialist Wood then noticed some buckets of rodent bait in the back of the open truck bed. Specialist Wood asked [REDACTED] if they contained rodent bait. [REDACTED] explained that the Talon Weatherblok XT containers were being used to hold trash he had collected from previous jobs and therefore did not contain any pesticide. However, the Terad3 Blox (EPA Reg. No. 12445-106) container did contain rodent baits. Specialist Wood explained to [REDACTED] that pesticides need to be stored in a secure manner so that unauthorized people do not have access to any pesticides while the truck is unattended and that the truck should have a lock box or truck cap that locks. In addition, Specialist Wood pointed out to [REDACTED] that the Storage and Disposal section of the Talon Weatherblok XT label states "[d]o not reuse or refill this container".

6. Specialist Wood then reviewed [REDACTED] pesticide application paperwork. [REDACTED] explained that the form he fills out is a carbonless copy paper that creates a copy of the information he writes on the form and then a portion of the form gets left with the customer. As a record of the pesticide application, this form is missing the pest treated for, the size of the area treated, and the site of application. As a notice or invoice to the customer, this form is missing the site of application and the pest treated for.

II. Action(s):

This letter is a formal warning. This letter may be used if there is cause for future enforcement action related to similar matters in your operation(s). The Secretary of the Agency has additional enforcement options on how he may proceed if a similar violation or additional violation occurs in the future.

III. Process:

If you wish to informally discuss this matter, please contact David M. Huber, Deputy Director, Public Health & Agricultural Resource Management Division, at (802) 461-7160. If you wish to

formally contest the factual allegations upon which this Letter of Warning (LOW) is based, please send a written request within 15 days of receipt to David.huber@vermont.gov, or:

David M. Huber, Deputy Director
Public Health & Agricultural Resource Management Division
Vermont Agency of Agriculture, Food and Markets
116 State Street, Montpelier, Vermont 05620-2901

Regards,

DocuSigned by:


David M. Huber, Deputy Director
Public Health & Agricultural Resource Management Division

12/8/2023

Date

Notice of Violation (NOV)

- Mailed via certified mail, but service can be waived for quicker delivery via email
- Company and applicator usually named as parties
- Counts have monetary penalties that are achieved by running the alleged violations through the Pesticide Penalty Matrix
- Statement of facts
- Required corrective actions identified even if the Company/Applicator decides to pay the penalty and not pursue appeal rights
- Identifies the legal right to a hearing



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Steve Dwinell, Director

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Certified Mail
Return Receipt Requested

February 1, 2024

[REDACTED]

Case Reference Number: NAR-[REDACTED]2023
Docket: AAFM #2024-[REDACTED]PT

NOTICE OF VIOLATION

The Public Health and Agricultural Resource Management (PHARM) Division of the Vermont Agency of Agriculture, Food and Markets (the Agency) puts [REDACTED] (collectively, the Company), on notice of having violated 6 V.S.A. § 1111 and the Vermont Rule for Control of Pesticides (the Rule). The Agency has legal authority to bring this action pursuant to 6 V.S.A. §§ 15, 16, 1104, and 1111. For more information and complete citations, please visit <https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/pesticide-programs>.

Count One - On August 3, 2023, the Company jointly and severally violated 6 V.S.A. § 1111 and Section 5.02(e) of the Rule by failing to operate in a careful manner, resulting in the unsolicited application of Vista XRT (EPA Reg. No. 62719-586) to the property located at [REDACTED] Vermont. **Proposed penalty - \$5,000.00**

Count Two - On August 3, 2023, the Company jointly and severally violated 6 V.S.A. § 1111 and Section 7.01(c) of the Rule by failing to leave a statement containing all required information regarding the unsolicited application of Vista XRT (EPA Reg. No. 62719-586) to the property located at [REDACTED] Vermont, with the resident of that property immediately upon completion of the application. **Proposed penalty - \$1,750.00**

Total proposed penalty - \$6,750.00

I. Statement of the Facts

- [REDACTED] licensed by the Agency as a Pesticide Company (License # [REDACTED]) is certified by the Agency as a Commercial Pesticide Applicator (certification [REDACTED]).
- On August 15, 2023, PHARM Deputy Director David Huber sent an email to PHARM Specialist Matthew Wood, requesting that he initiate an investigation into a complaint received by the Agency from [REDACTED] Vermont, alleging that [REDACTED] had treated her property and that she was not a customer of the Company.
- After a number of attempts to contact [REDACTED] Specialist Wood spoke with her on the phone on August 25, 2023. During their phone conversation, [REDACTED] explained that she came home on the morning of August 4, 2023, to find a note from her neighbor taped to her door saying that [REDACTED] had sprayed her yard. The neighbor sent [REDACTED] some pictures she had taken, and [REDACTED] forwarded them to Specialist Wood via text message to his work cell phone. One image showed [REDACTED] truck parked in front of [REDACTED] house. Another image showed a lawn sign allegedly left by the [REDACTED] employee stating "Backyard only - 8/3 - 10:30 AM - Sorry! Accidentally treated for weeds + fertilizer!"
- Specialist Wood asked [REDACTED] if she knew what was applied to her property and she replied that she did not. She said no paperwork was left behind that she could find. She said she was worried that her windows were open on the day of the application and wondered if any chemical came into the house. [REDACTED] explained that she found a number for the Company online and spoke with someone, but they were at the national call center and not the local branch. [REDACTED] said that she was told it was safe and didn't need to worry about it.
- Specialist Wood asked [REDACTED] if she could meet with her to inspect her property. She said she would probably be away from home that day, but Specialist Wood could stop by and inspect her property anytime. On August 25, 2023, Specialist Wood went to the property located at [REDACTED] and knocked on the door, but [REDACTED] was not home. Specialist Wood then went to the right-side of the house where there is a gate in the metal fence that surrounds the backyard. Specialist Wood observed that there is also a gate to the property located to the right of [REDACTED] house, located between the two houses.
- On August 25, 2023, Specialist Wood emailed [REDACTED] to see if he was aware of the unsolicited treatment made at [REDACTED] property located at [REDACTED] on August 3, 2023, and if he could provide Specialist Wood with the paperwork for the treatment made so he could inform [REDACTED] about the product or products applied to her backyard. Specialist Wood did not receive a response to his email, so he sent a second email to [REDACTED] on September 1, 2023. On September 8, 2023, [REDACTED] emailed Specialist Wood and attached an invoice. He explained that he spoke with the applicator, [REDACTED], who said that he was treating the backyard with fertilizer and Vista XRT when he went to the front yard and realized he was treating the wrong property. [REDACTED] explained that [REDACTED] left the sign in the backyard of the [REDACTED] property and proceeded to the correct property next-door. Specialist Wood told [REDACTED] that he would like to meet with the applicator in order to obtain a written statement regarding the events of August 3, 2023.
- Specialist Wood reviewed the invoice he was sent by [REDACTED] on September 8, 2023, and determined it was for the customer at [REDACTED] and not the property of concern at [REDACTED]. The invoice listed the fertilizer and Vista XRT (EPA Reg. No. 62719-586) as well as two other herbicides that were used

to spot treat weeds at the customer's property. Specialist Wood emailed [REDACTED] that same day and asked him to confirm that Vista XRT was the only pesticide used at [REDACTED] and that it was only applied in the backyard. [REDACTED] replied to Specialist Wood's email on September 8, 2023, and simply stated "correct". Specialist Wood then contacted [REDACTED] via email on September 8, 2023, and informed her about the pesticide product used on her property on August 3, 2023.

8. On September 18, 2023, Specialist Wood met with [REDACTED] and [REDACTED] at the [REDACTED] branch office to obtain a written statement from [REDACTED] describing what happened on August 3, 2023. In his statement, [REDACTED] describes that he simply got distracted, went to the wrong house, and proceeded to treat the back yard. When he came to the front yard his co-worker notified him of the error. He then made the sign to place in the back yard of the [REDACTED] property, apologizing for treating the wrong yard. Specialist Wood asked him if he left any paperwork at the house he treated in error, and he wrote that he did not. Specialist Wood asked [REDACTED] if he tried to contact the owner of the house and he said he did knock on the door, but nobody was home.

II. Required Corrective Actions

Please note that if the Company chooses to waive its right to a hearing (as outlined in Section III. below) and pay the proposed penalty in full, then the Company must still correct the violations outlined in Counts One and Two above.

III. Right to a Hearing

The Company has a right to a hearing on the alleged violation. The proposed decision to find the Company in violation as set forth in this Notice shall become final and the administrative penalty shall be imposed if the Company does not request a hearing within 15 days from the date on which notice is received. Failure to request a hearing within 15 days from the date on which notice is received will be deemed a waiver of the right to a hearing. Hearings shall be conducted pursuant to 3 V.S.A. Chapter 25. The Company may also elect to waive the hearing and pay the penalty, by certified check or money order payable to the Vermont Agency of Agriculture, Food and Markets, by delivering it to the above address within 30 days from the date on which notice is received.

To request a hearing, the Company must, within 15 days from the date on which notice is received, deliver a written request for a hearing to David.huber@vermont.gov, or

David M. Huber, Deputy Director
Public Health & Agricultural Resource Management Division
Vermont Agency of Agriculture, Food and Markets
116 State Street
Montpelier, VT 05620-2901

In determining the amount of the penalty to be assessed under this section, the Secretary may give consideration to the degree of actual and potential impact on public health, safety, and welfare resulting from the violation; the presence of mitigating or aggravating circumstances; whether the violator has been warned or found in violation of the same provisions of law in the past; the economic benefit gained by the violation; the deterrent effect of the penalty; and the financial condition of the violator.

Penalty Requested by:

DocuSigned by:



David M. Huber, Deputy Director
Public Health & Agricultural Resource Management Division

2/1/2024 | 4:17:48 EST

Date

I have reviewed this Notice of Violation and find that the alleged facts constitute probable cause to support the charges. I have reviewed the proposed penalty and, if no hearing is requested, I shall impose it as recommended. In the event of a hearing, it will be the responsibility of the Division to establish the facts and law alleged in this Notice.

DocuSigned by:



Anson B. Tebbetts, Secretary
Agency of Agriculture, Food and Markets

2/1/2024 | 4:21:13 EST

Date

Penalty Matrix

- https://agriculture.vermont.gov/sites/agriculture/files/doc_library/Pesticide%20Programs%20Penalty%20Matrix_New%20Rule%206-1-23.pdf
- Ensures that penalties are fair and consistent
- Includes Administrative Guidance at the end of the document

VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS (VAAFMD)

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.

What to do upon receiving a Notice of Violation?

- Within 15 days of receiving the NOV...
 - Request a Pre-Hearing
 - Request a Hearing
 - Pay the penalty in full and make any required corrective actions identified in the NOV

What NOT to do upon receiving a Notice of Violation?

- NOT RESPOND TO THE AGENCY
 - By not responding to the Agency, you run the risk of further enforcement, including a Secretary's Order and potential collection suit

Assurance of Discontinuance

- Legally binding agreement
- Lays out the terms of the agreement reached during a pre-hearing
- Becomes effective once signed by the Secretary of VAAFMM



AGENCY OF AGRICULTURE, FOOD & MARKETS
Public Health and Agricultural Resource Management Division
Steve Dwinell, Director

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August 18, 2023

[REDACTED]

Case Reference Number: [REDACTED]
Docket: AAFM 2023 [REDACTED] PT

ASSURANCE OF DISCONTINUANCE

This Assurance of Discontinuance (AOD), consisting of three pages, is entered between the Vermont Agency of Agriculture, Food and Markets (the Agency) and [REDACTED] and [REDACTED] collectively, the Club), pursuant to 6 V.S.A. § 1(a)(11) and § 13 as an alternative to pursuing further administrative or judicial proceedings regarding this matter. Either party may file this AOD with the superior court that has jurisdiction over the subject matter and request that its terms and conditions become an order of the court.

This AOD is based upon the following facts and agreement:

1. On, or around, July 24, 2023, the Agency served a Notice of Violation (NOV) (Docket # AAFM 2023 [REDACTED] PT), including a proposed administrative penalty in the total amount of \$9,362.50, upon the Club. The NOV is incorporated by reference.
2. On August 7, 2023, the parties convened a pre-hearing settlement conference over the phone.
3. The Club admits to Counts One through Six in the NOV. [REDACTED] stated that the Club made personnel changes since the March 9, 2023 inspection, and that [REDACTED] is no longer employed by the Club. Additionally, the Club has worked with Public Health & Agricultural Resource Management (PHARM) Division Specialist Matthew Wood to amend their permit to come into compliance.
4. In order to conclude this matter, the parties agree as follows:
 - A. The Club waives its right to a hearing on the NOV.

- B. An administrative penalty in the amount of \$850.00 is hereby imposed for the violation of Vermont law and regulations as alleged in Count One of the NOV, but \$170.00 is suspended and shall remain suspended as long as the Club meets all conditions set forth in this AOD.
 - C. An administrative penalty in the amount of \$850.00 is hereby imposed for the violation of Vermont law and regulations as alleged in Count Two of the NOV, but \$170.00 is suspended and shall remain suspended as long as the Club meets all conditions set forth in this AOD.
 - D. An administrative penalty in the amount of \$2,400.00 is hereby imposed for the violation of Vermont law and regulations as alleged in Count Three of the NOV, but \$480.00 is suspended and shall remain suspended as long as the Club meets all conditions set forth in this AOD.
 - E. An administrative penalty in the amount of \$3,250.00 is hereby imposed for the violation of Vermont law and regulations as alleged in Count Four of the NOV, but \$650.00 is suspended and shall remain suspended as long as the Club meets all conditions set forth in this AOD.
 - F. An administrative penalty in the amount of \$812.50 is hereby imposed for the violation of Vermont law and regulations as alleged in Count Five of the NOV, but \$162.50 is suspended and shall remain suspended as long as the Club meets all conditions set forth in this AOD.
 - G. An administrative penalty in the amount of \$1,200.00 is hereby imposed for the violation of Vermont law and regulations as alleged in Count Six of the NOV, but \$240.00 is suspended and shall remain suspended as long as the Club meets all conditions set forth in this AOD.
 - H. The Club shall submit to the Agency payment in the amount of \$7,490.00 payable to the Agency of Agriculture, Food and Markets, within 30 days from the date that the Secretary signs this AOD.
 - I. The Club shall remain in compliance with 6 V.S.A. § 1111 and the Vermont Rule for Control of Pesticides until August 31, 2024.
5. If the Club fails to comply with any of the requirements laid out in this AOD, then the suspended penalty of \$1,872.50 shall become due, after notice and opportunity for a hearing.
 6. If the Club maintains compliance with 6 V.S.A. § 1111, the Vermont Rule for Control of Pesticides, and the terms and conditions of this AOD, then the suspended \$1,872.50 in penalties shall be discharged.

- 7. As set forth in 6 V.S.A. § 13(c), the Club understands that a violation of this AOD shall constitute a separate and distinct violation of the underlying regulatory program and may subject the Club to additional administrative penalties as set forth in 6 V.S.A. Chapter 87.
- 8. As set forth in 6 V.S.A. § 13(b), evidence of a violation of this AOD shall be prima facie proof of the violations upon which it is based.
- 9. Nothing in this AOD shall preclude the Agency from seeking collection of unpaid administrative penalties as provided in 6 V.S.A. § 17 or as otherwise provided by law, or otherwise preclude the Agency from pursuing any and all remedies to protect the public health, safety, and welfare from on-going violations of 6 V.S.A. Chapter 87.

Terms Accepted for the Agency by:



David M. Huber, Deputy Director
Public Health and Agricultural Resource Management Division
Vermont Agency of Agriculture, Food and Markets

8/23/2023

Date

I have read this AOD and fully understand and agree with its terms. I understand the facts on which it is based, and the actions I have to take to comply with it. I am entering this agreement voluntarily and after an opportunity to seek legal advice.

[REDACTED]

[REDACTED]

Date

SECRETARY'S ACCEPTANCE AND APPROVAL

I have reviewed the foregoing AOD and hereby accept it pursuant to 6 V.S.A. § 1(a)(11) and § 13.

So Ordered:



Anson B. Tebbetts, Secretary
Vermont Agency of Agriculture, Food & Markets

8/23/2023

Date

Questions

Dave Huber – (802) 461-7160
david.huber@vermont.gov