

**ARKANSAS STATE PLANT BOARD**  
**PEST CONTROL ENFORCEMENT RESPONSE**  
**REGULATIONS**  
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## I. STATEMENT OF PURPOSE

Pesticides are valuable to Arkansas' agricultural production and the protection of man and his possessions from insects, rodents, weeds, plant diseases, and other pests. It is essential to the public health and welfare that pesticides be used properly to prevent adverse effects on man and the environment.

The purpose of the regulation is to provide a fair and consistent mechanism by which compliance with the Arkansas Pest Control Law, as amended, and the regulations written pursuant thereto can be achieved.

## II. DEFINITIONS

As used in this policy:

- A. **Base Civil Penalty:** The midpoint of a civil penalty range. [Example: The civil penalty range for failure to report structural pest control work (1st level of enforcement) is \$200.00 to \$400.00. The base penalty is \$300.00]
- B. **Case Development Review Panel:** An internal committee of staff including: 1. the Plant Industry Division Director or his/her designee, 2. the Agency Assistant Director or his/her designee, and 3. the Agency Director or his/her designee. The Case Development Review Panel will carefully review all case documentation to insure completeness and to insure that the recommended enforcement action is appropriate.
- C. **Level of Enforcement:** The category by which a violative incident is considered a first, second, third, or fourth offense.

For a violation to be considered as a second or subsequent offense, it must be a repeat of a violation for which a previous enforcement action has been taken by the Plant Board. The previous violation/violations must have occurred within the past 3 years.

- D. **Minor Violation:** A violative incident which does not involve human health, safety, or endanger the environment; or other incidents of non-compliance which do not create a competitive disadvantage for licensees in full compliance.
- E. **Major Violation:** A violative incident which affects human health, safety, or the environment; or other incidents of non-compliance which create a competitive ~~disadvantage~~ **advantage** over licensees in full compliance; or a history of repetitive violative incidents. **Any violation consisting of a label violation that involves a potential human exposure may result in elevation of the violation to**

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the fourth level of enforcement.

\* In no case shall the failure to meet minimum treating standards (Act 488 of 1975, Sections III A, III B, III C, and III D), except those which require a termiticide application, be considered a violation and subject to a civil penalty.

F. **Respondent:** A person charged with a violation of the Arkansas Pest Control Law as amended, and the regulations written pursuant thereto.

### III. LEGAL AUTHORITY

A. "Arkansas Pest Control Law" A.C.A. 17-30-101 et. seq. and Regulations.

B. "The Arkansas Plant Act" A.C.A. 2-16-203 et. seq. and Regulations.

### IV. ENFORCEMENT ACTIONS

Under the preceding Arkansas Codes, the Plant Board has several options for enforcement action. These are:

A. **Warning Letter:** For minor, 1st level of enforcement violations, the Board or Board Staff will issue a warning letter. The letter will cite the specific violation. The letter will also identify any corrective action that may be needed and notify the respondent that further violations will result in more severe enforcement action.

B. **Informal Agreement:** When a violation has been alleged, the respondent has the option of an informal hearing or a board/committee hearing. The purpose of the informal hearing is to resolve a complaint or incident. A hearing officer will meet jointly with the respondent and Plant Board Staff. The group will seek consensus on an appropriate enforcement action for recommendation to the Board. Enforcement action based on the Penalty Matrix (Appendix A) will include Civil Penalty and/or license suspension, revocation, non-renewal, or registration cancellation. The Full Board acts on all recommendations resulting from the informal hearing.

C. **Board/Committee Hearing:** If the respondent chooses to bypass the informal agreement process, or if an agreement can not be reached during the informal hearing, a hearing will be held by the Pest Control Committee of the Board. Enforcement action will include Civil Penalty and/or license suspension, revocation,

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non-renewal, or registration cancellation. Following the Committee hearing, a written Finding of Fact, Conclusion of Law, and recommendation will be submitted to the Board. The Full Board will act on all recommendations of the Committee.

- D. **Suspension / revocation / non-renewal of a license or registration:**  
The suspension, revocation, or non-renewal of a license by the Board may be in addition to or in conjunction with a civil penalty fine.
- E. **Injunction:** The Board may apply for an injunction to any court of competent jurisdiction for violations of the Pest Control Law. The court, upon hearing and for cause, has the option of a temporary or permanent injunction restraining any person from violating any provisions of The Arkansas Pest Control Law and regulations.
- F. **Referral to Prosecuting Attorney:** The Plant Board has the option of referring violations of the Pest Control Law to the prosecuting attorney.
- G. **Referral to EPA:** The Plant Board will negotiate cases of referral with EPA to determine the appropriate action.

~~H. **Referral to Pesticide Division :**~~

~~The pest control section will refer, the operation of faulty or unsafe equipment, and or distribution of adulterated and/or misbranded pesticides cases to the pesticide division of the AR. State Plant Board.~~

## V. INCIDENT INVESTIGATION

An incident investigation will be initiated when:

Routine compliance monitoring indicates a violation has occurred.

- B. A formal complaint that an alleged violative incident has occurred. (Filing of written form by a complainant). In cases of apparent immediate endangerment to health or the environment, the written notification may be waived and the investigation of the alleged incident will begin immediately).
- C. Possible human exposure to pesticides is assigned priority status.

PENALTY MATRIX

APPENDIX A

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> Level of Enforcement	
		Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)
1. Failure to secure an applicator license	Minor	A							
	Major	B,C,E,F	200-1000	B,C,E,F	400-1000	B,C,E,F	600-1000	B,C,E,F	800-1000
2. Pesticide recommendations or applications which are inconsistent with any/or all of the following: (A) Labeling (B) Federal or State registrations (C) Federal or State restrictions of the use of a pesticide	Minor	A		B,C	200-400				
	Major	B,C,G	200-400	B,C,G	400-600	B,C,D,G	600-800	B,C,D,E,G	800-1000
3. Intentional misrepresentation(s) in any application for a license.	Minor								
	Major	B,C	200-400	B,C	400-600	B,C	600-800	B,C,E	800-1000
4. Misrepresentations for the purpose of deceiving for defrauding.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D	800-1000
5. Making a false statement with knowledge of its falsity for the purpose of inducing others for act theron to their damage.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D,E	800-1000

ENFORCEMENT ACTION OPTIONS

A - Warning letter  
 B - Informal Agreement  
 C - Board/Committee Hearing

E - Injunction  
 F- Referral to Prosecuting Attorney  
 G - Referral to EPA

D - Suspension/Revocation of License

H - Referral to Pesticide Division

PENALTY MATRIX

APPENDIX A (con=t)

<u><b>VIOLATION</b></u>	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> Level of Enforcement	
		Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)
6. Performing work, with or without compensation, in a classification for which the licensee does not hold a license.	Minor								
	Major	B,C,D,E,F	200-1000	B,C,D,E,F	400-1000	B,C,D,E,F	600-1000	B,C,D,E,F	800-1000
7. Falsification of records or failure to maintain or make available all records required by this Act	Minor	A		B,C	200-400	<b><u>B, C, D</u></b>	<b><u>400-800</u></b>	<b><u>B, C, D, E, F</u></b>	<b><u>600-1000</u></b>
	Major	<b><u>B, C, D</u></b>	<b><u>200-1000</u></b>	<b><u>B, C, D</u></b>	<b><u>400-1000</u></b>	<b><u>B, C, D, E</u></b>	<b><u>600-800</u></b> <b><u>800-1000</u></b>	<b><u>B, C, E</u></b> <b><u>B, C, D, E, F</u></b>	800-1000
8. Failure of licensee to supply the Board or its authorized representative, upon request with true and accurate information concerning methods and materials used on work performed.	Minor	A		B,C	200-400				
	Major	<b><u>B, C, D</u></b>	<b><u>200-1000</u></b>	<b><u>B, C, D</u></b>	<b><u>400-1000</u></b>	<b><u>B, C, D, E</u></b>	<b><u>600-800</u></b> <b><u>800-1000</u></b>	<b><u>B, C, E</u></b> <b><u>B, C, D, E, F</u></b>	800-1000
9 Failure of licensee to register agents or solicitors, or failure to pay registration inspection or reporting fees due or failure to make reports within the time specified	Minor	A		B,C	200-400				
	Major	B,C	200-400	B,C	400-600	B,C,D	600-800	B,C,D,E	800-1000

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PENALTY MATRIX

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> Level of Enforcement	
		Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)	Enforcement Action	Civil Penalty (Fine-\$)
10. Failure to report structural pest control work.	Minor	A		B,C	100-400				
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D,E	800-1000
11 Failure to correct substandard work.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D,E	800-1000
12. Failure of licensee to obtain satisfactory control of the pests or diseases which the licensee engages to control or eradicate as evidenced by repeated inspections by the Board.	Minor	A		B,C	200-400				
	Major					B,C,D	600-800	B,C,D,E	800-1000
13. Conviction of any court of a violation of this chapter or of FIFRA.	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D,G	600-800	B,C,D,E,G	800-1000
14.Operation of faulty or unsafe equipment.	Minor	<del>A</del> H		<del>B, C</del> H	<del>200 -600</del>	<del>B, C, D</del>	<del>400 -800</del>	<del>B, C, D, E</del>	<del>600 - 1000</del>
	Major	<del>B, C</del> H	200-600	<del>B, C, D, F</del> H	400-800	<del>B, C, D, E, G</del> H	600-1000	<del>B, C, D, E, F, G</del> H	800-1000
15. Distribution/ <u>USAGE</u> of adulterated and/or <u>UNLABELED</u> /misbranded pesticides.	Minor	<del>H</del> A		<del>B, C</del>	<del>200-600</del>	<del>B, C, D</del>	<del>600-800</del>	<del>B, C, D, E, G</del>	<del>800-1000</del>
	Major	<del>H</del> B, C	200-600	<del>H</del> B, C, D	400-800	<del>H</del> B, C, D, E, F, G	<del>600-1000</del> 800-1000	<del>H</del> C, D, E, F, G	800-1000

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# **APPENDIX**

## **A**

### **A PENALTY MATRIX**