

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Agriculture

Department Plant Board

Contact Wade Hodge E-mail wade.hodge@agriculture.arkansas.gov Phone 501-219-6361

Statutory Authority for Promulgating Rules 2-16-207

Rule Title: Soil Amendments Rules

Intended Effective Date

(Check One)

Date

☐ Emergency (ACA 25-15-204) Legal Notice Published _____

☐ 10 Days After Filing (ACA 25-15-204) Final Date for Public Comment _____

☒ Other 08/31/2018 Reviewed by Legislative Council _____
(Must be more than 10 days after filing date.)

Adopted by State Agency 08/21/2018

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Wade Hodge wade.hodge@agriculture.arkansas.gov 12/23/2019
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Wade Hodge
Signature

501-291-6361 wade.hodge@agriculture.arkansas.gov

Phone Number E-mail Address

Managing Attorney

Title

12/23/2019

Date

RULES ON SOIL AMENDMENT

Approved and Issued by:

ARKANSAS STATE PLANT BOARD

Under Authority of:

The Soil Amendment Act (A.C.A." 2-19-401 through 414)

Section I Purpose. Pursuant to Ark. Code Ann. § 2-19-404. This Act shall be administered by the Arkansas State Plant Board.

Section II Definitions. For the purpose of these rules, the following definitions shall apply:

1. "Name" means the specific designation under which the individual product is offered for sale.
2. "Bulk" means in non-packaged form.
3. "Distribute" means to import, consign, offer for sale, sell, barter, or to otherwise supply soil amendments to any person in this state.
4. "Distributor" means and includes any person who imports, consigns, sells, offers for sale, barter or otherwise supplies soil amendments in this State.
5. "Manufacturer" means any person who produces, compounds, mixes or blends soil amendments.
6. "Label" means the display of written, printed or graphic matter upon the immediate container of a soil amendment.
7. "Labeling" means all written, printed or graphic matter upon or accompanying any soil amendment, and all advertisements, brochures, posters, television or radio announcements used in promoting the sale of such soil amendment.
8. "Board" means the Arkansas State Plant Board.
9. "Active Ingredient" means the ingredient or ingredients which are claimed to have beneficial effects on soil or crops growing on soils.

10. "Inert Ingredient" means the ingredients which do not have any beneficial or harmful effects on soil or crops but are present in the product.
11. "Person" means individuals, partnerships, associations and corporations.
12. "PERCENT or PERCENTAGE" means by weight.
13. "REGISTRANT" means any person who registers a soil amendment under the provisions of this Act.
14. "MISBRANDED" means and shall apply if:
 - (a) any soil amendment bears a label that is false or misleading in any particular,
 - (b) any soil amendment is distributed under the name of another soil amendment,
 - (c) any material is represented as a soil amendment or is represented as containing a soil amendment, unless the soil amendment conforms to the definition of identity, if any, prescribed by regulation,
 - (d) the percentage of active ingredient in any soil amendment is not shown in the approved ingredient form,
 - (e) the labeling on any soil amendment is false or misleading in any particular;
15. "ADULTERATED" means and shall apply to any soil amendment if:
 - (a) it contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial plants, animals or aquatic life when applied in accordance with the directions for use shown on the label; or if adequate warning statements and directions for use, which may be necessary to protect plants, animals or aquatic life are not shown on the label,
 - (b) its composition falls below that which it is purported to possess by its labeling, or
 - (c) it contains, noxious weed seed, harmful insects or harmful disease organisms.

Section III (2-19-407) Labeling Requirements and Approval of Ingredients

- A. Each container of a soil amendment shall be labeled on the face or display side in a readable and conspicuous form to show the following information:
 1. The net weight of the contents;
 2. The name of the product;
 3. The guaranteed analysis, including the name and the percentage of each active ingredient, and the percentage of inert ingredients;
4. A statement as to the purpose of the product;
5. Adequate directions for use such as application rates, cultural practices and plants to be benefitted;

6. The name and address of the registrant.
- B. Bulk lots shall be labeled by attaching a copy of the label to the invoice which shall be furnished the purchaser.
- C. The Plant Board may require proof of claims made for any soil amendment. If no claims are made the Board may require proof of usefulness and value of the soil amendment. For evidence of proof the Plant Board will rely on experimental data, evaluations or advice supplied from such sources as the University of Arkansas Agricultural Experiment Station and Cooperative Extension Service. All experimental results shall be related to Arkansas conditions for which the product is intended. The Plant Board may accept or reject other sources of proof as additional evidence in evaluating soil amendments.

1. Documentation Required

- a. Material Safety Data Sheet
- b. Product Label that includes all of the following:
 - i. Directions for product use
 - ii. The concentration of active and inert ingredients
 - iii. Mixing instructions
 - iv. Application rate
 - v. When and how often to apply (e.g., crop growth stage)
 - vi. How to apply (nozzle restrictions, gallons per acre, environmental conditions, etc...)
 - vii. Product expiration date (if products contain living organisms)
- c. Statement of product benefit. Explain the beneficial effects of the product on soil characteristics and plant growth.
- d. Explanation of the mode of action by which the product benefits or enhances soil productivity, fertilizer performance, microbial activity, plant growth, yield, or any other claimed benefit.
- e. Methods of Determination. Provide the name of two laboratories and the published method(s) for determination of active and inert ingredient concentrations.

2. Research Requirements

- a. Results from replicated, randomized trials following scientific methods and statistically analyzed using accepted methods.
- b. Results from research methods, statistical analysis and results credible and rigorous enough to stand up to a scientific peer review. For example, testimonials or demonstrations without adequate replication and statistical interpretation are not acceptable proof of product efficacy.

- c. A detailed description of research materials and methods used to conduct each field trial, so that the exact experiment could be repeated. Soil property and crop management details are required.
- d. Studies repeated across space and time to examine crop/soil response across multiple soils, climatic conditions, and production practices that are common to Arkansas and the field environments that the product will be marketed. For example:
 - i. Greenhouse or growth chamber trials are not sufficient evidence of benefit for products that are targeted for field-grown crops.
 - ii. Studies conducted with hydroponic systems and potting media are also not sufficient, as evidence for benefits to field-grown crops.
 - iii. Data from studies conducted in climates and/or geographies that are dissimilar to Arkansas are not suitable surrogates for data that are pertinent to Arkansas soils, conditions, and crops.
- e. Studies conducted in Arkansas, on Arkansas soils and climatic conditions are preferred. Trials conducted in states surrounding Arkansas that have similar soils, production practices, and climatic conditions may be sufficient provided the experiments are scientifically rigorous. The use of out-of-state information will be evaluated on a case-by-case basis.

3. Result Interpretation

- a. The results must be concisely presented, and provide the reader/reviewer with a means of unbiased statistical comparison.
- b. The results must directly support the product use information and claim of product benefit printed on the label or other company advertisement. This means that product application rates, frequencies, method of application and placement (e.g. soil, seed, plant, etc...) and timing(s) must be supported by sufficient evidence supporting the use recommendations.
- c. The results must provide for statistically defensible results regarding:
 - i. the frequency of positive (statistically significant) agronomic responses
 - ii. the range of responses, and
 - iii. the average or median response

- 4. Research Sources. The source of research and their research credentials must be clearly listed along with contact information (name, address, phone number, and email). Scientists conducting the research must have expertise in soil science and plant/crop production.

- a. The Board is required by law to consider pertinent research from "other agencies of the state". Therefore, studies conducted by Arkansas university researchers, are preferred.
 - b. Studies conducted by scientists outside the state may be considered, provided the research requirements explained above are met.
 - c. Studies conducted by private research entities will be closely scrutinized as private research entities often obtain personal monetary gain from conducting these studies, and their resulting monetary gain may be predicated on whether positive results are obtained from the use of the product.
 - d. Results published in reputable, scientific, peer-reviewed journals are preferred for all the above cases.
- D.** No soil-amending ingredient may be listed or guaranteed on the labels or labeling of soil amendments without Plant Board approval. The Plant Board may allow a soil-amending ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided the Plant Board to substantiate the value and usefulness of the soil-amending ingredient. When a soil-amending ingredient is permitted to be listed or guaranteed it must be determinable by laboratory methods and is subject to inspection and analysis. The Plant Board may prescribe methods and procedures of inspection and analysis of the soil-amending ingredient. The Board may stipulate, by regulation, the quantities of the soil-amending ingredient or ingredients required in soil amendments.

Section IV (2-19-408) Registration of Products

Each soil amendment product shall be registered with the Plant Board before it is distributed in this State. Application for registration shall be submitted to the Board, on a form prepared for that purpose, showing the information required on the label, as provided in Section 4 of this Act, except net weight of product.

The registration fee shall be set by the Board for each product. The applicant shall submit with the application for registration a copy of the label and a copy of all advertisements, brochures, posters and television and radio announcements to be used in promoting the sale of the soil amendment.

- I. Registration Fees** - Registration fees shall be \$25.00 for each soil amendment product registered by any manufacturer, registrant or distributor. Registrations shall expire on June 30 of the year for which such soil amendment product is registered.

Section V (2-19-410) Inspection Fee and Sales Report

- A.** The registrant shall pay to the Plant Board an inspection fee of thirty-seven and one-half cents (\$0.375) per ton on all products registered and sold in this State. Each registrant shall keep adequate records of his sales, and shall file with the Board, on a monthly basis, a signed report of the tonnage distributed by county during the

preceding month. The report and payment of the inspection fee shall be due on or before the twentieth of the month. The Board, after a public hearing, may change the inspection fee schedule.

- B. If the report is not filed, or the report is false in any respect or the inspection fee is not paid within the thirty (30) day period, the Plant Board may revoke the registration. A penalty of One Dollar (\$1.00) per day is assessed for each day the payment is overdue until paid. The inspection fee and the penalty shall constitute a debt and become the basis for a judgment against the registrant which may be collected by the Plant Board in any court of competent jurisdiction without prior demand.

Section VI (2-19-412) Stop Sales, Use or Removal Orders

The Plant Board may issue and enforce a written or printed stop sale, use or removal order to the owner or custodian of any lot of soil amendment, and to hold at a designated place when the Plant Board finds said soil amendment is being offered or exposed for sale which is not registered, is not labeled, is misbranded or is adulterated, until such time as the product or labeling complies with this Act. The soil amendment may then be released in writing by the Board.

Section VII (2-19-411) Prohibited Acts

It shall be a violation of this Act for any person:

1. To distribute a soil amendment that is not registered with the Plant Board;
2. To distribute a soil amendment that is not labeled;
3. To distribute a soil amendment that is misbranded;
4. To distribute a soil amendment that is adulterated;
5. To fail to comply with a stop sale, use or removal order; or
6. To fail to pay the inspection fee.

Section VIII (2-19-405) Inspection Authorized

The authorized agents of the Plant Board may inspect, sample, analyze and test soil amendments distributed in this State at any time and place, and to such extent as may be deemed necessary to determine whether such soil amendments are in compliance with this Act. The Plant Board and its employees or agents are authorized to enter upon public or private property during regular working hours in order to have access to soil amendments for the purpose of administering this Act.

Section IX (2-19-406) Rules

The Plant Board is authorized to adopt such rules as may be necessary to administer this Act, including methods of sampling, methods of analysis, designation of ingredient forms and promulgate definitions of identity of products.

Section X (2-19-409) Denial or Revocation of Registration

The Plant Board shall refuse to register any product that does not comply with this Act and the rules promulgated under this Act. The Plant Board is also authorized and empowered to revoke any registration upon satisfactory evidence that the registrant or any of his agents has used fraudulent or deceptive practices except that registration shall not be revoked until the registrant has been given an opportunity for hearing before the Board or its duly authorized agent.

Section XI (2-19-403) Penalty & (2-19-413) Injunctions

- (A) Any person convicted of violation of any provision of this Act or the rules and regulations promulgated under this Act shall be guilty of a misdemeanor.
- (B) The Plant Board is hereby authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Act or any rule or regulation promulgated under this Act, notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

Section XII (2-19-414) Deposit of Monies

The Plant Board shall remit all monies received by or for it under this Act to the State Treasurer. Upon receipt of any such remittance the State Treasurer shall deposit the entire amount thereof in the State Treasury and handle in the same manner as required in Section 4 of Act 106 of 1951, as amended, by Acts 221 and 301 of 1953 and Act 356 of 1957.

Section XIII

The provisions of this Act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

Section XIV

It is hereby found and determined by the General Assembly of Arkansas that the introduction on certain substances into the soil of this State endangers the soil of Arkansas, and poses a severe threat to the health, safety and welfare of the people of Arkansas. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

ARKANSAS STATE PLANT BOARD
SOIL AMENDMENT ENFORCEMENT RULES

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
Statement of Purpose	2
Definitions	2
Legal Authority	3
Enforcement Actions	3-4
Incident Investigation	4-5
Activation of Enforcement Response Policy	6
Internal Review	7
Hearings	7
Right of Appeal	7

APPENDIX A – Penalty Matrix

STATEMENT OF PURPOSE

Soil Amendments are valuable to Arkansas' agriculture production once scientific research has proven them to be of benefit by approved scientific research. Any product proven to increase production is vital to Arkansas farmers.

The purpose of the regulation is to provide a fair and consistent mechanism by which compliance with the Arkansas Soil Amendment Law, and the rules written pursuant thereto can be achieved.

DEFINITIONS

- A. **Base Civil Penalty:** The midpoint of a civil penalty range. [Example: The civil penalty range for failure to report tonnage reports 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 Feed/Fertilizer Division Director or his/her designee, and 2. 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 advantage over licensees in full compliance; or a history of repetitive violative incidents.
- F. **Respondent:** A person charged with a violation of the Soil Amendment Law and the regulations written pursuant thereto.

LEGAL AUTHORITY

"Arkansas Soil Amendment Law" A.C.A. 2-19-401 through 414 et. seq. and rules.

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 may 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. The group, staff and respondent will seek consensus on an appropriate enforcement action for recommendation to the Board. Enforcement action based on the Penalty Matrix (Appendix A) may include a 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 cannot be reached during the informal hearing, a hearing may be requested before the Fertilizer & Lime Committee of the Board. Enforcement action may include Civil Penalty and/or license suspension, revocation, 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 and may accept the recommendation or may alter the settlement.
- D. **Suspension / Revocation / non-renewal, 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 Soil Amendment Law. The court, upon hearing and for cause, has the option of temporary or permanent injunction restraining any

person from violating any provisions of The Arkansas Soil Amendment Law and rules.

- F. **Referral to Prosecuting Attorney:** The Plant Board has the option of referring violations of the Soil Amendment Law to the prosecuting attorney.

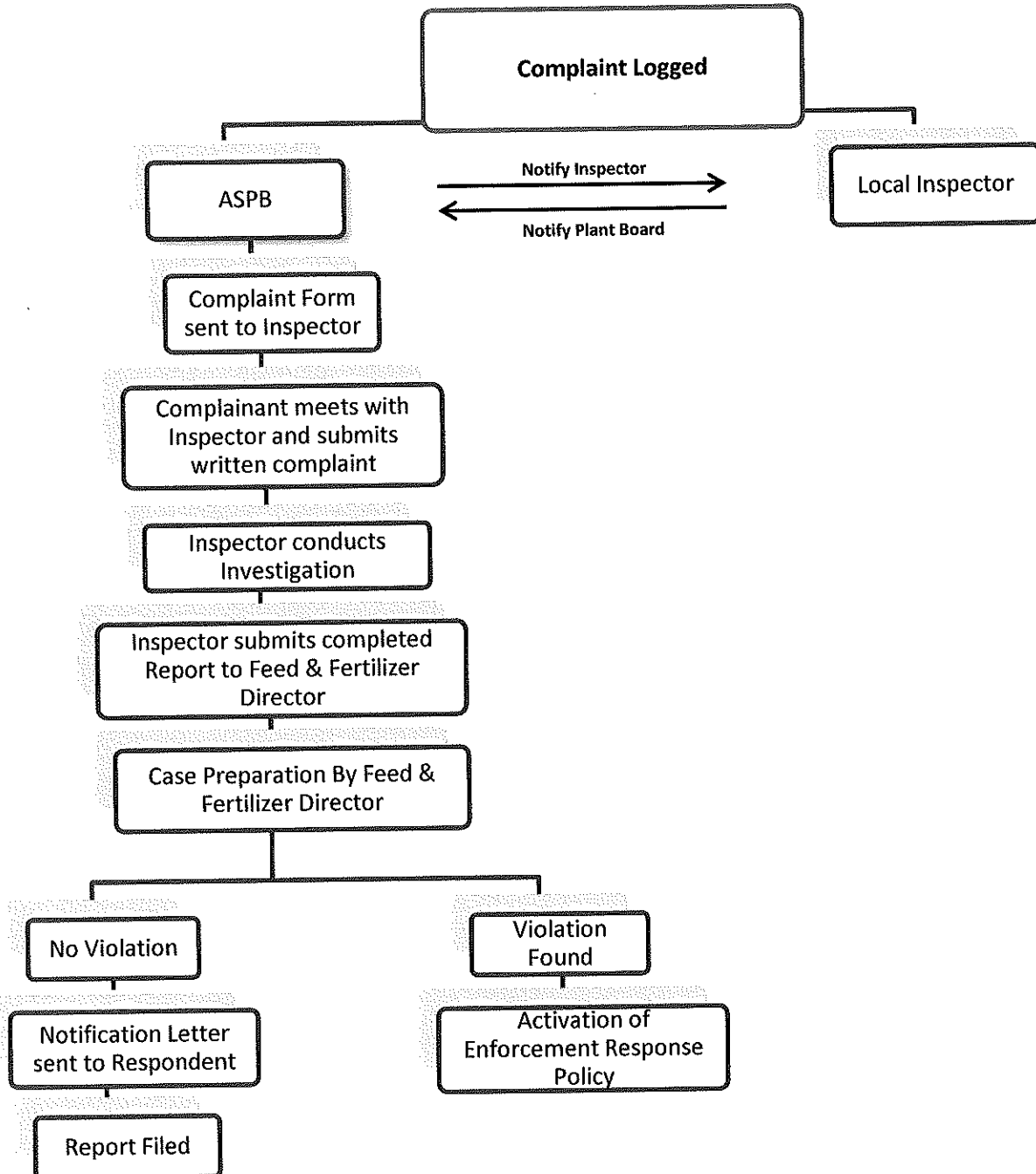
INCIDENT INVESTIGATION

An incident investigation will be initiated when:

- A. Routine compliance monitoring indicates a violation has occurred.
- B. A formal complaint that an alleged violative incident has occurred (Filing of a 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).

The processing sequence for an incident investigation is outlined in Figure I.

FIGURE I
Processing Sequence



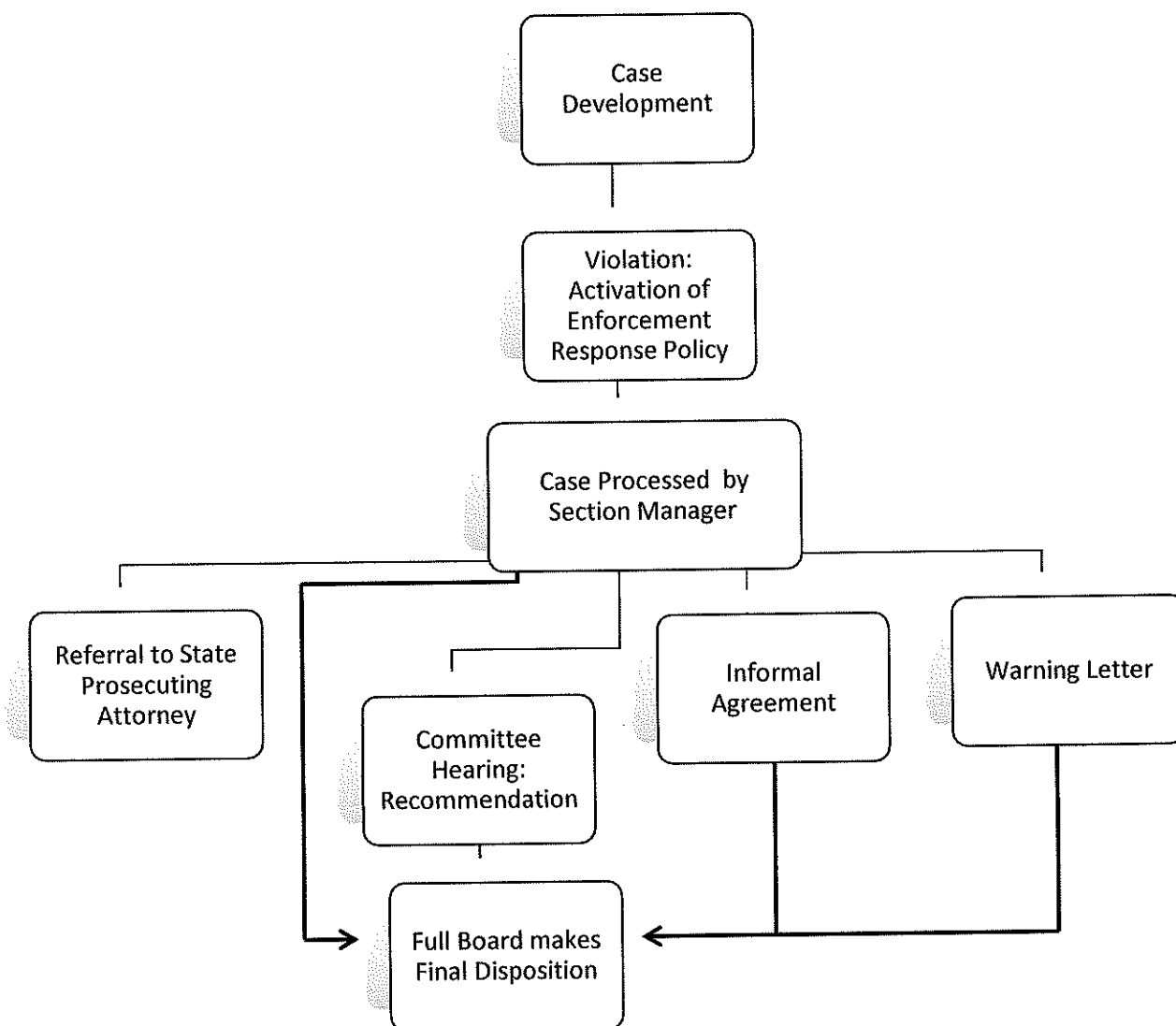
ACTIVATION OF ENFORCEMENT RESPONSE POLICY

An apparent violation of law and/or regulation must be documented to initiate an enforcement action.

Documentation must conform to the requirements of the Feed and Fertilizer Division.

The sequence of events within the enforcement response policy is as follows:

FIGURE II



INTERNAL REVIEW

The Case Development Panel will carefully review all documentation and records to determine:

- A. That apparent violation / violations have occurred.
- B. Whether the apparent violation or violations are Minor and/or Major violations.
- C. The correct level of enforcement based on the penalty matrix and the documented history of the respondent.

Concurrence with the Division's finding by the Panel must be unanimous before further action can be taken on the case.

HEARINGS

The informal hearing panel and/or the appropriate Committee and the Full Board will carefully review the documentation and hear cases of alleged violations.

Should a violation be determined in this sequence; the following factors will be considered:

- A. Cooperation of the respondent.
- B. Other extenuating/mitigating circumstances.

The Committee/Board may use these factors to accelerate or mitigate enforcement action. When a civil penalty is the preferred action, the base penalty may be increased or decreased based on these factors. The civil penalty will not be more or less than the range for the specific violation listed in Appendix A unless determined by committee or board action.

The Full Board will take action to determine the final disposition of the case.

RIGHT OF APPEAL

Any person aggrieved by any action of the Plant Board may obtain a review thereof, by filing in circuit court within 30 days of notice of the action, a written petition praying that the action of the Plant Board be set aside.

APPENDIX – A

PENALTY MATRIX

PENALTY MATRIX

Appendix A

VIOLATION	Violation Level	1 st Level of Enforcement		2 nd Level of Enforcement		3 rd Level of Enforcement		4 th 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 register product.	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-Failure to submit monthly tonnage reports	Minor								
	Major	B,C	200-400	B,C	400-600	B,C	600-800	B,C,E	800-1000
3-Soil Amendments not meeting guarantees	Minor								
	Major	B,C,D	200-400	B,C,D	400-600	B,C,D	600-800	B,C,D	800-1000
4-Knowingly making a false statement for the purpose of inducing others to act 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
 D - Suspension/Revocation of Registration

E - Injunction
 F - Referral to Prosecuting Attorney