Virginia Department of Agriculture and Consumer Services

GUIDELINES FOR ENFORCEMENT OF THE VIRGINIA PESTICIDE CONTROL ACT: CIVIL PENALTY ASSESSMENT DECISION MATRIX

Statutory Authority: § 3.1-249.70 of the Code of Virginia (1950), as amended.

§ 1.1 Definitions

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Virginia Pesticide Control Act, Chapter 14.1 of Title 3.1 (§§ 3.1-249.27 through 3.1-249.78) of the Code of Virginia (1950), as amended.

"Board" means the Pesticide Control Board.

"Pesticide Business" means any person engaged in the business of: distributing, applying, or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does NOT include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the Board.

"Previous Violation" means any violation of the Virginia Pesticide Control Act, or regulations adopted pursuant thereto, that resulted in a Notice of Warning or civil penalty cited within the three-year period preceding the current violation.

"Reportable pesticide spill, accident, or incident" means any release of a pesticide into the environment in any manner not in accordance with instructions for use or disposal provided on the product label.

§ 1.2 Provision for Civil Penalties Generally

A. The Board may assess a penalty of not more than $1,000 for a violation that is less than serious, not more than $5,000 for a serious violation, and not more than $20,000 for a repeat or knowing violation.*

B. The Board may assess an additional penalty of up to $100,000 for any violation that causes serious damage to the environment, causes serious injury to property; serious injury to, or death of, any person.*

C. Civil penalties may be imposed against a pesticide business or its employees for acts determined to be violations of the Pesticide Control Act or regulations of the Board. Each physical business location shall be treated as a separate entity.

D. Civil penalties may be imposed against any person for acts determined to be violations of the Pesticide Control Act or regulations of the Board.

*Language taken from the Code of Virginia, § 3.1-249.70, Part D

§ 1.3 Assessment of separate violations

A. Each violation of the Act, or regulations adopted pursuant thereto, shall be assessed separately for the purpose of determining the total civil penalty assessment.

B. In cases of continued violation, a civil penalty may be assessed separately for each day of the violation beginning with the date of notification of the violation and ending with the date of abatement.

§ 1.4 Penalty Point System

The point system described in this section shall be used to determine the amount of the civil penalty.

A. Type of violation

A natural person or pesticide business in violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the type of violation described in one of the following categories:

Points	Violation Category
1-2	Failing to comply with the regulations for certification or licensing, or the conditions of a certificate or license.
1-2	Failing to meet all requirements regarding labeling, registration, color, composition, and container for a pesticide or device.
1-2	Making any statement, declaration or representation

	through any medium implying that any natural person certified or registered under the provisions of Article 3 of the Act is recommended or endorsed by any agency of the Commonwealth.
2-3	Applying any pesticide in a negligent manner.
2-3	Failing to maintain proper records or permit access to records as required.
2-3	Failing to notify Department of a reportable pesticide spill, accident, or incident.
2-3	Dispensing, applying or using any pesticide through any equipment not in sound mechanical condition, or not properly equipped with effective cut-off valves, leak-proof pesticide tanks and distribution systems, or not equipped to dispense a pesticide at the proper rate.
2-4	Handling, transporting, storing, displaying, or distributing pesticides in a manner that may endanger humans, and the environment, or which may contaminate food, feed, or other products transported, displayed, stored, or distributed with pesticides.
2-4	Making pesticide recommendations, or causing a natural person to use any pesticide, in a manner inconsistent with label directions or in violation of the Act, or regulations promulgated pursuant thereto.
2-4	Making false or fraudulent records, invoices or reports.
3-6	Using any pesticide, or storing or disposing of any pesticide or container inconsistent with label directions or in violation of the Act, or regulations promulgated pursuant thereto.
3	Providing one's certification or registration to be used by another natural person.
4	Using to fill pesticide handling, storage, or application equipment, any hose, pump, or other equipment that has not been fitted with an effective device to prevent back flow or back siphon.

4	Providing or making available any restricted use pesticide to any natural person not certified to use such a pesticide.
7-8	Aiding, abetting or conspiring with any natural person to violate the provisions of Article 3 of the Act, or regulations adopted pursuant thereto.
8	Using fraud, or false claims involving pesticide sale or use, or involving licensing, certification, or registration requirements of the Act, or regulations adopted pursuant thereto.
8	Making false or fraudulent claims misrepresenting the effect of materials or methods to be utilized or sold or the effects of a pesticide application on the environment or on human health and safety.
10	Violating a stop sale, use, or removal order.
10	Failure to comply with any lawful order of the Commissioner or the Board.
10	Neglecting, or after notice, refusing to comply with the provisions of Article 5 of the Act, or regulations promulgated pursuant thereto.
10	Interfering with the Commissioner or his duly authorized agents in the performance of duties.
10	Impersonating any federal, state, county or city inspector or official.

B. Damage Caused or Potential for Causing Damage

A natural person or pesticide business in violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the real or potential damage associated with the violation, taking into consideration any harm to the environment and any hazard to public health and safety, as described in one of the following categories:

Points	Damage Category
0	No actual or potential damage to the environment or threat to human health and safety.
1-2	Slight actual or potential damage to property or the environment, or such threat to human health and safety.
3-4	Moderate, but significant, actual damage to property or the environment; also, moderate, but significant, potential damage to property or the environment, or such threat to human health and safety.
5-6	Serious actual damage to property or the environment; also, serious potential damage to property or the environment, or such threat to human health and safety.
7-8	Very serious actual damage to property or the environment; also, very serious potential damage to property, the environment, or such threat to human health and safety.
9-10	Extremely serious actual damage to property or the environment that may be irreparable, or which can be corrected only after a considerable effort or period of time; also, extremely serious potential damage to property or the environment, or such threat to human health and safety.

C. Culpability

A natural person or pesticide business in violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to six points, from one of the following categories, based on the degree of fault of the natural person to whom the violation was attributed:

Points	Culpability Category
0	No fault attributed; an inadvertent violation that was unavoidable by the exercise of reasonable care.
1-2	Negligent.
3–6	Knowing, aware of actions.

D. History of Previous Violations

In determining the amount of a civil penalty, the history of previous violations of the pesticide business or natural person shall be considered.

For current violations resulting from actions of a pesticide business, one point shall be assigned for each previous violation found that resulted from the actions of the pesticide business. Each physical business location shall be treated as a separate entity.

For current violations resulting from the actions of a natural person, one point shall be assigned for each previous violation found that is attributable to the same natural person cited in the current violation.

Previous violations overturned through the appeal process shall not be counted.

In instances where both the pesticide business and a natural person have been cited in the current case, and both have previous violations, points may be assigned for both.

E. Credit for good faith in attempting to achieve compliance.

The demonstrated good faith of the natural person or pesticide business in attempting to achieve rapid compliance after notification of the violation shall be taken into consideration in determining penalty points. No more than four points may be deducted from the total points assigned under Subsections A, B, C, and D, based on the following categories:

Points	**Good Faith Credit Category**
3-4	Immediate action taken to abate the violation, and correct any conditions resulting from the violation, in the shortest possible amount of time.
1-2	Prompt and diligent efforts made to abate the violation, and correct any conditions resulting from the violation, within a reasonable period of time.
0	No points deducted.

F. Determination of base civil penalty

The total penalty point amount shall be determined by adding the points assigned under Subsections A, B, C, and D, and subtracting from that subtotal the points assigned under Subsection E of this Section. The resulting total penalty point amount is converted to a dollar amount, according to Table A.

G. Reduction of Penalty

In the case of a less than serious violation where no previous violation exists, the base civil penalty may be reduced by 20 percent. In the case of a serious violation or a previous violation, the base civil penalty shall not be reduced.

H. Additional penalty for causing serious damage, illness, or death

An additional penalty of up to $100,000 may be assessed for any violation that causes serious damage to the environment, serious injury to property, or serious injury to or death of any person. Each serious incident shall be examined on a case-by-case basis, taking into consideration the severity of the damage or injury, the potential long-term effects, and any economic loss involved. The basis for an additional assessment shall be fully explained and documented in the records of the case.

§ 1.5 Waiver of Use of Formula to Determine Civil Penalty

A. The Virginia Pesticide Control Board may waive the use of the formula contained in Section 1.4 to set the civil penalty, if the Board determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case.

B. If the Board waives the use of the formula, it shall give a full written explanation of the basis for any penalty assessment to the natural person or pesticide business found in violation.

TABLE A
For converting total penalty points into base civil penalty

Points	Dollars	Points	Dollars
1	$ 50	21	$ 7000
2	100	22	7500
3	150	23	8000
4	200	24	8500
5	350	25	9000
6	500	26	9500
7	650	27	10000
8	800	28	10500
9	1000	29	11000
10	1500	30	11500
11	2000	31	12000
12	2500	32	12500
13	3000	33	13000
14	3500	34	14000
15	4000	35	15000
16	4500	36	16000
17	5000	37	17000
18	5500	38	18000
19	6000	39	19000
20	6500	40	20000