

# **APPENDIX I**

## **Pesticide Enforcement Action**

### **Penalty Policy**

**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE  
September 1994  
Revised March 1995**

## STATUTORY VIOLATIONS - ENFORCEMENT RESPONSE POLICY

### Likely Violations originating from violation of South Dakota Law (SDCL)

- 38-21-14 Improper transportation, storage or disposal of pesticides
- 38-21-15 Pesticide handling causing injury or pollution prohibited  
38-21-15.1 Operation of a Bulk Pesticide Storage Facility (BPSF) without a permit  
38-21-15.2 Operation of a BPSF in violation of permit provisions
- 38-21-17 Commercial application without an applicator license,
- 38-21-23 Application of a Restricted-Use Pesticide without proper certification  
38-21-40 Certification required for use of restricted-use pesticides
- 38-21-33.1 Operate without a Pesticide Dealer License
- 38-21-39.1 Unlicensed/uncertified purchase or sale of Restricted-Use Pesticides  
38-21-39.2  
38-21-39.3
- 38-21-44(2) Store, transport, apply, dispose or handle a pesticide inconsistent with the labeling
- 38-21-44(5) Operate in a faulty, careless or negligent manner
- 38-21-44(7) Failure to keep required application records
- 38-21-44(8) Falsify or make fraudulent records, invoices or reports
- 38-21-44(13) Aid or abet another person to evade provisions of this chapter
- 38-20A-4 Distribution of an unregistered pesticide
- 38-20A-17.1 Distribution of misbranded or adulterated pesticide  
38-20A-26 Sale or distribution of misbranded or adulterated pesticide prohibited
- 38-20A-28 Distribution of an unregistered pesticide not in the manufacturer's original unbroken container

### Likely Violations originating from legislation (Rules/ARSD) regarding Bulk Fertilizer and Pesticide Facilities

#### **Fertilizer:**

- Article  
12:44:05:27 Load, Mix and Wash Pads are required for all bulk commercial fertilizer dealers after February 1, 1992
- 12:44:05:28 Wash Water and Rinsates can not be disposed of through storm drains and runoff from the wash site is not allowed
- 12:44:05:07 Secondary Containment must meet professional engineering standards and hold 125% of the volume of the tanks within its bounds
- 12:44:05:29 Spills must be reported to the SDDA or Emergency Disaster Services within 3 hours of the discharge

#### **Pesticide:**

- Article  
12:56:02 Pesticide storage & disposal
- 12:56:03 Pesticide transportation requirements  
12:56:03:03 Containers must be secured to prevent significant movement during transportation
- 12:56:13 Bulk Pesticide Storage  
12:56:13:01 Permanent Bulk Pesticide Storage Containers  
12:56:13:02 Bulk Pesticide Storage Facility Construction  
12:56:13:03 Secondary Containment Required  
12:56:13:10 Manager must report spills to SDDA or EDS within 3 hours of when they occur
- 12:56:14 Pesticide handling and loading
- 12:56:17 Operational Area Containment  
12:56:17:05 Sample analysis reports & soil disposition form to SDDA within 30 days of discharge

## Enforcement Response Policy

Enforcement Options - Dependent upon the specific code violated

Stop Sale Order

Warning Letter

Enforcement Meeting

Suspend, Deny or revoke License or Permit

Injunctive Relief

Class II Misdemeanor

Class I Misdemeanor

Civil Penalty

In general...

-Commercial Applicator/Dealer/Wholesaler/Retailer -

Maximum \$500 per day of violation

Maximum \$5000 per violation

-Private applicator-

First violation: Warning unless the matrix calculates settlement offer of \$1000 or more. If over \$1000, the settlement will be reduced by 50%.

Second violation: Civil penalty settlement offer will be reduced by 50% of matrix value.

Third violation: Civil penalty settlement offer will be assessed according to matrix value.

Exception: In regard to purchase of restricted-use pesticides without proper certification, full matrix amount will be assessed.

-Penalty action in lieu of civil penalty-

Referral to U.S. Environmental Protection Agency

**PENALTY RANGE MATRIX**

TYPE OF VIOLATION	1st Offense	2nd Offense	3rd Offense
<b>1. Misuse resulting in proven harm to:</b>			
<b>A. Humans</b>			
1. Exposure, potential	100-500	250-1000	500-5000
2. Exposure, subacute illness	500-1500	1000-3000	5000
3. Exposure, chronic illness	2000-4000	3000-5000	5000
4. Death	5000	5000	5000
<b>B. Livestock</b>			
1. Residue preventing marketing of animal or its by-products	100-1000	500-2500	1000-5000
2. Illness			
a. under, equal to, 50 animals affected	100-1000	250-2000	500-5000
b. over 50 animals affected	100-1500	250-2500	500-5000
3. Death			
a. under, or equal to, 50 animals affected	200-2000	500-3000	1000-5000
b. over 50 animals affected	300-2500	500-3500	1000-5000
<b>C. Crops</b>			
1. Residue damage to crop	100-1000	250-2500	500-5000
2. Residue preventing/inhibiting/restricting marketing or consumption of all or part of the crop	100-1500	500-3000	1000-5000
3. Crop destroyed	300-2500	500-3500	1000-5000
<b>D. Environment</b>			
1. Water			
a. contamination causing harm to aquatic plants or animals	100-1000	250-2500	500-5000
b. contamination restricting use for intended purposes (ex: drinking, irrigation, etc.)	500-2500	750-5000	1000-5000
2. Soil			
a. Illegal residues preventing plant growth	100-1000	250-2500	500-5000
3. Animals			
a. Illness	100-500	250-1000	500-5000
b. Death	250-1000	500-2500	750-5000
c. Residues preventing/restricting consumption by humans	200-750	500-2000	750-5000
d. Bees or beneficial insects	100-1000	250-2500	500-5000
4. Plants other than crops			
a. Plants damaged, normal following season	100-1000	250-2500	500-5000
b. Plants damaged, abnormal following season	200-2000	300-3000	500-5000
c. Plants destroyed	200-2500	500-3500	1000-5000
<b>2. Restricted-Use Pesticides (RUP)</b>			
<b>A. Licensed sale of RUP to non-certified individual (per sale)</b>			
	50-500	100-1000	250-5000
<b>B. Unlicensed sale of RUP</b>			
	50-500	100-1000	250-5000
<b>C. Non-certified purchase of RUP</b>			
	50-150	100-300	250-500

**PENALTY RANGE MATRIX (con't)**

TYPE OF VIOLATION	1st Offense	2nd <sup>1</sup> Offense	3rd Offense
<b>3. Record Keeping (Audits)</b>			
A. RUP			
1. No RUP records kept	100-1000	250-2500	500-5000
2. RUP records not in compliance on 1-3 points	Warning	50-500	250-2500
3. RUP records not in compliance on 4-7 points	Warning	100-1000	250-5000
B. CAR			
1. No CAR records kept	50-150	100-400	200-800
2. CAR records not in compliance on 1-15 points	Warning	See attachment	See attachment
3. CAR records not in compliance on 16-19 points	100	See attachment	See attachment
<b>4. License Violations <sup>2</sup></b>			
A. Commercial use of GUP without a license	Warning-600	250-2500	500-5000
B. Commercial use of RUP without a license	100-1000	500-3000	1000-5000
C. Private use of RUP without certification	Warning	50-1000	500-3000
D. Private use of GUP without certification	Warning	50-500	300-2500
E. Licensed application without correct category	50-500	100-1000	250-5000
<b>5. Operating Bulk Pesticide Storage Facility without a permit</b>			
A. Operating in violation of permit provisions	100-500/day Warning- 500/day	250-500/day Warning- 500/day	500/day 500/day
<b>6. Proven Use Violations</b>			
A. Dilution Rate			
1. more than, or equal to, one half stated label amount	Warning	50-500	250-2500
2. less than one half stated label amount	50-150	100-500	300-3000
B. Unlabeled Site	Warning -1000	100-2500	500-5000
C. High Wind Speeds	100-1000	250-2500	500-5000
D. Other	100-1000	250-2500	500-5000
<b>7. Violations of 38-21-44</b>	100-1000	250-2500	500-5000

<sup>1</sup> Second and third offenses are based upon the violation history five years prior to the date the violation occurred. Applicator and dealer record content violations are based upon a three year enhancement period.

<sup>2</sup> License violations are assessed base penalty amount plus \$250/application made (known only).

## VIOLATION LEVEL<sup>3</sup> & BASE PENALTY MATRIX<sup>4</sup>

Type of violation	Base Penalty According to Offense Number		
	1	2	3
<b>1. Misuse resulting in harm to:</b>			
<b>A. Humans</b>			
1. Potential exposure	300	625	2750
2. Exposure, subacute illness	1000	2000	3000
3. Exposure, chronic illness	3000	4000	5000
4. Death	5000	5000	5000
<b>B. Livestock</b>			
1. Residue preventing marketing of animal or its by-products	550	1500	3000
2. Illness			
a. Under 50 animals affected	500	1125	2750
b. Over 50 animals affected	800	1375	2750
3. Death			
a. Under 50 animals affected	1100	1750	3000
b. Over 50 animals affected	1400	2000	3000
<b>C. Crops</b>			
1. Residue damage to crop	550	1375	2750
2. Residue preventing/inhibiting/restricting marketing or consumption of all, or part of crop	800	1750	3000
3. Crop destroyed	1400	2000	3000
<b>D. Environment</b>			
1. Water			
a. Contamination causing harm to aquatic plants or animals	550	1375	2750
b. Contamination restricting use for intended purpose (drinking, irrigation)	800	2875	3000
2. Soil			
a. Illegal residue preventing plant growth	550	1375	2750
3. Wildlife-Penalty consideration levied by GFP			
a. Illness	300	625	2750
b. Death	625	1500	2875
c. Residue preventing or restricting human consumption	475	1250	2850
d. Bees or beneficial insects	550	1375	2750
4. Plants Other than Crops			
a. Plants damaged-normal following season	550	1375	2750
b. Plants damaged-abnormal following season	1100	1650	2750
c. Plants destroyed	1350	1900	3000
<b>2. Restricted Use Pesticides</b>			
<b>A. Licensed sale of RUP to non-certified individual         (per sale)</b>	275	550	2625
<b>B. Unlicensed sale of RUP</b>	275	550	2625
<b>C. Non-certified purchase of RUP</b>	100	200	375

<sup>3</sup> Private Applicators: The SDDA adopted the following adjustments for private applicators:

First violation: Warning unless the matrix calculates settlement offer of \$1000 or more. If over \$1000, the settlement will be reduced by 50%.

Second violation: Civil penalty settlement offer will be reduced by 50% of matrix value.

Third violation: Civil penalty settlement offer will be assessed according to matrix value.

Exception: In regard to purchase of restricted-use pesticides without proper certification, full matrix amount will be assessed.

<sup>4</sup> The SDDA may consider factors not included in the matrix either in favor or against individual involved in determining the civil penalty to be pursued.

**VIOLATION LEVEL & BASE PENALTY MATRIX (con't)**

Type of violation	Base Penalty According to Offense Number		
	1	2	3
<b>3. Record Keeping<sup>5</sup></b>			
<b>A. RUP</b>			
1. No RUP records kept	550	1375	2750
2. RUP records not in compliance on 1-3 points	Warning/50	275	1375
3. RUP records not in compliance on 4-7 points	Warning/50	550	2625
<b>B. CAR</b>			
1. No CAR records kept	100	250	500
2. CAR not in compliance on 1-15 points	Warning	see attachment	
3. CAR not in compliance on 16-19 points	100	see attachment	
<b>4. License Violations<sup>6</sup></b>			
A. Commercial use of GUP without a license	300	1375	2750
B. Commercial use of RUP without a license	550	1750	3000
C. Private use of GUP without certification <sup>7</sup>	Warning	525	1750
D. Private use of RUP without certification	Warning	275	1400
E. Licensed application without correct category	275	550	2625
<b>5. Operating Bulk Pesticide/Fertilizer Storage Facility without a permit (ARSD 12:44 and 12:56 violation) <i>Base on days of operation while in violation, economic gains from non-compliance, size of business, &amp; cleanup costs</i></b>			
A. Non-reported spill		Warning to \$500	
B. Operating in violation of permit provisions		civil penalty	
C. Operating without wash/rinse pad or secondary containment as required		per day	
<b>6. Proven Use Violation</b>			
<b>A. Dilution Rate</b>			
1. > or = ½ stated label amount	Warning	275	1375
2. < ½ stated label amount	100	550	1650
B. Unlabeled Site	500	800	3000
C. High Wind Speeds	500	1375	2750
D. Other	500	1375	3000
<b>7. Violations of 38-21-44</b>	500	1375	3000

<sup>5</sup> Record violations include all record violations within the past 3 years, whereas all other types of violations include violations within the last 5 years.

<sup>6</sup> License violations area assessed base penalty amount plus \$250/application made (known only).

<sup>7</sup> Violation if over \$1,000 of gross agricultural sales potential.

### GRAVITY ADJUSTMENT CHART<sup>8</sup>

Violation	Value	Circumstances
GRAVITY OF HARM- Pesticide	2	Toxicity - Category I pesticides; restricted use Signal word "Danger, "Flammable"; "Extremely Flammable"; flammable/explosive characteristics; associated with chronic health effects (mutagenicity, oncogenicity, teratogenicity, etc.)
	1	Toxicity - Category II through IV pesticides; Signal word "Warning", "Caution"; No known chronic effects
GRAVITY OF HARM- Harm to Human Health	5	Actual serious or widespread harm to human health.
	3	Potential or widespread harm to human health.
	2	Minor potential or actual harm to human health, neither serious nor widespread.
	1	Harm to human health is unknown.
	0	No harm to human health.
GRAVITY OF HARM- Environmental Harm	5	Actual serious or widespread harm to the environment (i.e. crops, water, livestock, wildlife, wilderness, or other sensitive natural areas)
	3	Potential serious or widespread harm to the environment.
	2	Minor potential or actual harm to the environment, neither widespread or substantial.
	1	Harm to the environment is unknown.
	0	No harm to the environment.
GRAVITY OF MISCONDUCT- Compliance History  * Based upon violation history 5 years prior to date violation occurred; except for application record content violations, which have a 3 year enhancement period.	5	If a violator is a commercial applicator or dealer with more than 2 violations. Or if a violator is a private applicator with more than 3 prior violations.
	3	If a violator is a commercial applicator or dealer with more than 1 violation. Or if a private applicator has more than 2 violations.
	2	If a violator is a commercial applicator or dealer with one violation.
	1	If a violator is a private applicator with one prior violation.
	0	No prior violations.
GRAVITY OF MISCONDUCT- Culpability	4	Knowing and willful violation of the statute. Knowledge of the general hazardousness of the action.
	2	Violation resulting from negligence.
	1	Culpability unknown.
	0	Violation was neither knowing nor willful and did not result from negligence. Violator instituted steps to correct the violation immediately after discovery of the violation.

<sup>8</sup> Use Gravity Adjustment Chart to determine Gravity Values.

### PERCENT GRAVITY ADJUSTMENT CRITERIA

TOTAL GRAVITY ADJUSTMENT	ENFORCEMENT REMEDY
0-2	No action, Notice of warning, or % Reduction of matrix value <sup>9</sup>
3	<i>Reduce</i> matrix value <b>50%</b>
4	<i>Reduce</i> matrix value <b>40%</b>
5	<i>Reduce</i> matrix value <b>30%</b>
6	<i>Reduce</i> matrix value <b>20%</b>
7	<i>Reduce</i> matrix value <b>10%</b>
8 to 12	Assess matrix value
13	<i>Increase</i> matrix value <b>10%</b> <sup>10</sup>
14	<i>Increase</i> matrix value <b>15%</b>
15	<i>Increase</i> matrix value <b>20%</b>
16	<i>Increase</i> matrix value <b>25%</b>
17 or above	<i>Increase</i> matrix value <b>30%</b>

<sup>9</sup> 50% reduction of matrix values is recommended where multiple count violations exist.

<sup>10</sup> Matrix values can only be increased to the statutory maximum.

### CIVIL PENALTY CALCULATION WORKSHEET

CASE NUMBER: \_\_\_\_\_

RESPONDENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_

COMPANY/OCCUPATION: \_\_\_\_\_

PREPARED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

	Count 1	Count 2	Count 3	Count 4
1. Statutory Violation				
2. Violation Level				
3. Base Penalty	\$	\$	\$	\$
4. Gravity Adjustments				
a. Pesticide Toxicity				
b. Human Harm				
c. Environmental Harm				
d. Compliance History				
e. Culpability				
f. Total Gravity Value				
5. Penalty Adjustment				
a. Percent Adjustment	%	%	%	%
b. Dollar Adjustment	\$	\$	\$	\$
6. Count Penalty (#3 - #5b)	\$	\$	\$	\$
7. Final Penalty Assessment				
a. TOTAL COMBINED PENALTY (Count 1 + Count 2 + Count 3 + Count 4)				\$

PREVIOUS VIOLATIONS				
Date	Case #	Type	Violation	Penalty

COMMENTS:

**COMMERCIAL APPLICATOR RECORDS**  
Penalty Matrix Worksheet

Respondent: \_\_\_\_\_ License #: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Company/Occupation: \_\_\_\_\_

	Audit Date _____ Points Deficient	Audit Date _____ Points Deficient	Audit Date _____ Points Deficient
1) Name of Customer			
2) Address of Customer			
3) Location			
4) Pest Treated			
5) Area Treated			
6) Date Applied			
7) Time Applied			
8) Firm Name			
9) Trade or Brand Name			
10) Common Name			
11) Company Name			
12) Wind Direction			
13) Wind Velocity			
14) Temperature			
15) Amount Applied			
16) Total Volume			
17) Crop Treated			
18) Name of Applicator			
19) Address of Applicator			
TOTAL POINTS			

Are any of the same items deficient as the previous audit with no improvement in points?

Yes \_\_\_ No \_\_\_

Penalty (per matrix): \_\_\_\_\_

Adjusted Penalty: \_\_\_\_\_

Penalty to be pursued: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**PENALTY MATRIX<sup>11</sup>**

**COMMERCIAL APPLICATOR RECORDS**

	Points Deficient	First Offense	Points Deficient	Second Offense	Points Deficient	Third Offense
No Records	--	100	--	250	--	500
Records Deficient	16-19 1-15	100 Warning	16-19 11-15 5-10 1-4	250 100 50 Warning <sup>12</sup>	16-19 11-15 5-10 1-4	500 250 100 50 <sup>13</sup>

The above penalty matrix should not be interpreted to mean the department cannot pursue an enforcement action or penalty different from those in the matrix, when circumstances would indicate such deviation is prudent.

<sup>11</sup> Violative audits that were conducted within the three years prior to a current violative audit will be considered prior offenses for the purposes of penalty determination. The matrix above is based upon the number of points deficient. Any individual record item, as listed on page 13, that is more than 50%, but less than 100% in compliance, shall count as 1/2 point. Any individual record item, as listed on page 13, that is less than 50% in compliance shall count as 1 point.

<sup>12</sup> When a second violative audit indicates no improvement in points has been made from the previous audit and one or more of the items deficient is the same as on the first violative audit, a \$50 civil penalty shall apply to the 1-4 Points Deficient category.

<sup>13</sup> On the third violative audits, a \$100 civil penalty shall apply under the same circumstances.

**PENALTY MATRIX**

**COMMERCIAL APPLICATOR RECORDS**

**BREAKDOWN OF COMMERCIAL APPLICATOR RECORD REQUIREMENTS**

- 1) Name of the person for whom the pesticide was applied
- 2) Address of the person for whom the pesticide was applied
- 3) Location of the land or property where the pesticide was applied
- 4) The pest to be treated
- 5) The acreage, area or number of plants or animals treated or other appropriate description
- 6) Date the pesticide was applied
- 7) Time the pesticide was applied
- 8) Person or firm who applied the pesticide
- 9) Trade or brand name of the pesticide applied
- 10) Common name of the pesticide applied
- 11) Company name appearing on the product label
- 12) Wind direction
- 13) Wind velocity
- 14) Temperature
- 15) Amount of the pesticide applied
- 16) Total volume applied per unit
- 17) Crop, site or commodity treated
- 18) Name of the applicator
- 19) Address of the applicator

Effective Date: \_\_\_\_\_

By: \_\_\_\_\_