

**FINAL RULE      FINAL RULE**

**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 over licensees in full compliance; or a history of repetitive violative incidents.

\* 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, 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.

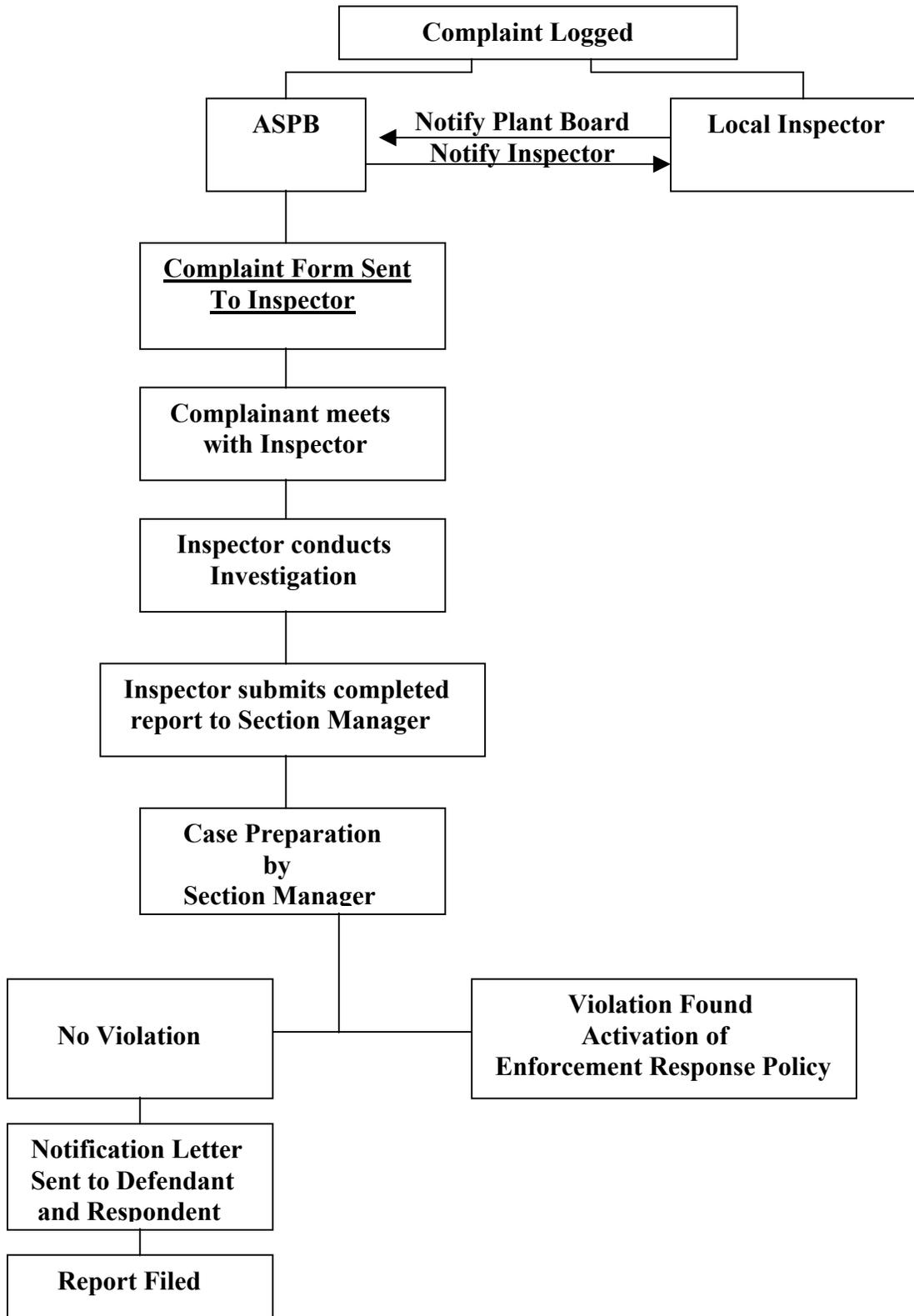
## V. INCIDENT INVESTIGATION

An incident investigation will be initiated when:

- 9. Routine compliance monitoring indicates a violation has occurred.
- B. A formal complaint that an alleged volative 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.

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

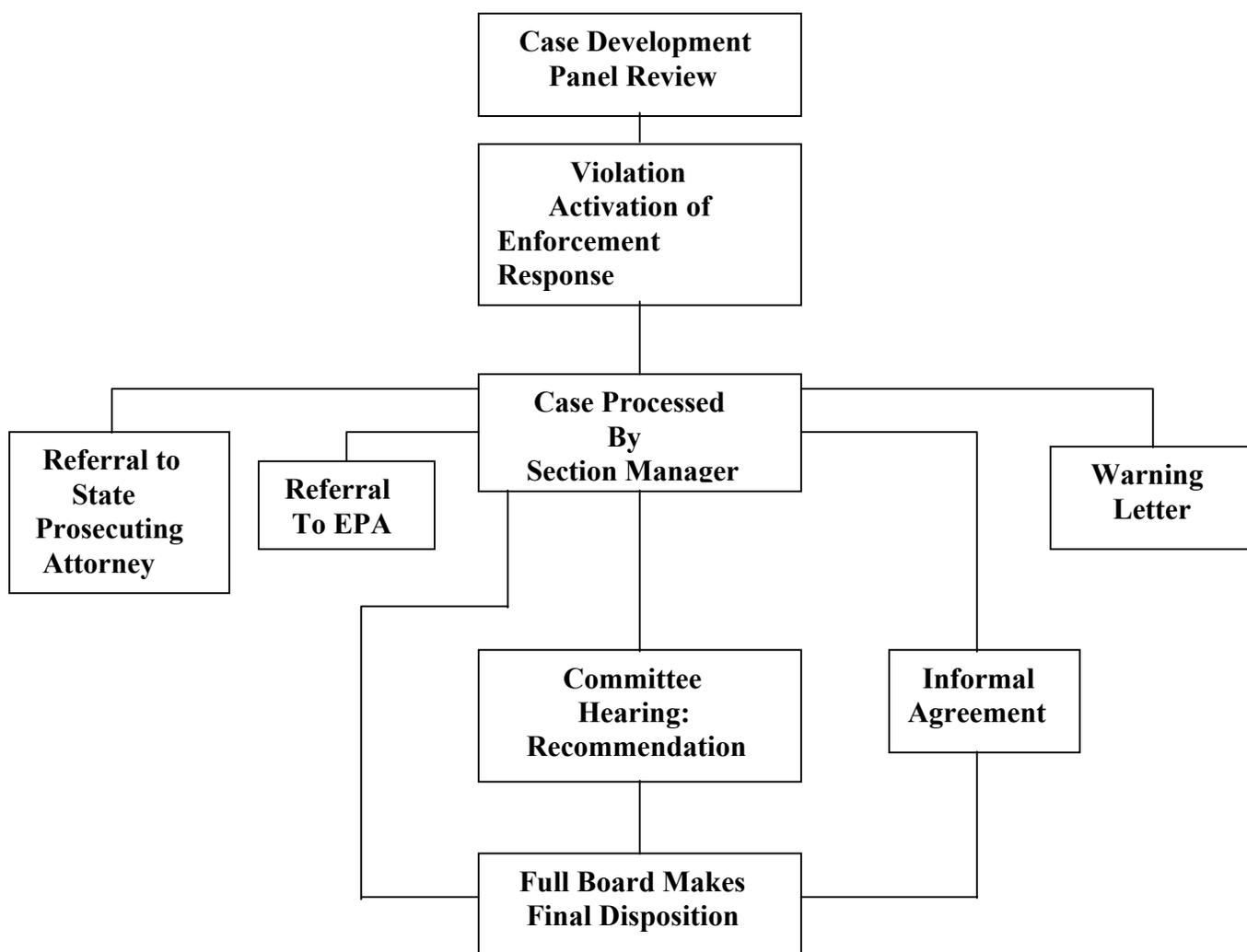
FIGURE I  
PROCESSING SEQUENCE



## **VI. 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 Plant Industry Division. The sequence of events within the enforcement response policy is follows:

**FIGURE II**



## **VII. 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.

## **VIII. HEARINGS**

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

Should it be determined a violation(s) has occurred, the severity and level of enforcement of each violation will be determined by the three (3) factors in Section VII; as they are applied to the Penalty Matrix (Appendix A).

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

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

The Hearing Officer/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.

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

## **IX.**

## **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.

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# **APPENDIX**

## **A**

### **A PENALTY MATRIX**

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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-\$)						
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 thereon 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 License

E - Injunction  
 F - Referral to Prosecuting Attorney  
 G - Referral to EPA  
 H - Referral to Pesticide Division

PENALTY MATRIX

APPENDIX A (con=t)

<u><b>VIOLATION</b></u>	Violatio n 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	
		Enforcemen t Action	Civil Penalty (Fine-\$)	Enforcemen t Action	Civil Penalty (Fine-\$)	Enforcemen t Action	Civil Penalty (Fine-\$)	Enforcemen t 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				
	Major					B,C	600-800	B,C,E	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,C	600-800	B,C,E	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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		Enforcemen t Action	Civil Penalty (Fine-\$)	Enforcemen t Action	Civil Penalty (Fine-\$)	Enforcemen t Action	Civil Penalty (Fine-\$)	Enforcemen t 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	H							
	Major	H	200-600	H	400-800	H	600-1000	H	800-1000
15. Distribution of adulterated and/or misbranded pesticides.	Minor	H							
	Major	H	200-600	H	400-800	H	600-1000	H	800-1000

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