

## Department of Pesticide Regulation Enforcement Matrix

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This is a settlement guideline that the Department of Pesticide Regulation uses to address violations to the South Carolina Pesticide Control Act. This guideline is designed to provide a means of parity between large, mid-sized, and small companies when those enforcement actions are taken against a business license. It is also designed to provide a consistent response for similar violations by applicators and businesses while giving the department the flexibility to consider all circumstances pertinent to a particular issue.

While the matrix provides for certain enforcement responses, it also does provide training, quality control, or other measures that can be implemented to lessen the enforcement response. This is consistent with a time-honored and educationally oriented enforcement policy used by DPR.

### Civil Enforcement Responses

The following is a settlement guideline used to decide civil penalty enforcement responses resulting from violations of the aforementioned act. This authority is delegated to the DPR by Title 46 Chapter 13 Section 180 (2) of the South Carolina Pest Control Act. This section of the law allows the Director to levy a civil penalty of up to one thousand dollars (\$1000) per violation. The matrix separates violations into three main categories with a separate response for each category. The most serious violations are considered as Category I violations, and the least serious are considered as Category III minor infractions. DPR has developed a firm but fair response for infractions to the Pesticide Control Act.

### Complaint Inspections

The matrix applies to both Category (PCO) Certified Applicator Certified Applicator Licenses and Pest Control Business Licenses. Typically an applicator will receive three warning letters before they are assessed a civil penalty (exception is Category I violations). A business will generally receive a warning letter after one applicator has received a total of three warning letters (or equivalent) or all of the licensees in the business have received a total of six warning letters (or equivalent).

### Compliance Inspections

Routine compliance inspections for the purpose of evaluating subterranean termite treatments will be conducted by Regulatory Specialists or the Compliance Inspector(s). Each structure that fails to meet the Standards for the Prevention Or Control of Wood Destroying Organisms will count as one-third (1/3) of a violation or offense (3 compliance inspections with standards missed will be equivalent to 1 complaint). Nine (9) compliance inspections with missed standards would be equivalent to three (3) offenses, and the applicator could be sanctioned with a civil penalty. The business would then enter the matrix at the entry level.

## ENFORCEMENT SYSTEM

*(Effective 14 November 1995)*

Note: The enforcement system was proposed to ensure that the system is not overly punitive. To accomplish this goal, the regulated community must acknowledge that regulators must be permitted to utilize a degree of judgment and flexibility. Industry input into this judgment is afforded via the liaison and review committees. This system must also provide for the department to have the opportunity to take into consideration special circumstances that would result in a greater or lesser enforcement response.

The new enforcement system separates infractions into three imprecise categories (which is one necessity for judgment). The list of examples should not be considered exhaustive.

### Category I Major Violations

Violations that could result in actual or potential damage to humans, animals, plants, property, or environment. Also, multiple or intentional blatant violations of the law, regulations, or any lawful order, including failure to obtain a business license. Violations of essential tenets of the Federal Insecticide, Fungicide, and Rodenticide Act or the South Carolina Pesticide Control Act, i.e., sale of a restricted use pesticide to an uncertified individual. In this category, regulatory would retain the unilateral right of imposing a maximum penalty of \$1000 and/or license suspension or revocation. Penalty would be subject to reduction based upon prior record, response to problem, or implementation of pollution prevention measures, etc.

## Category II Moderate Infractions

Offense of moderate severity without significant consequences which would be subject to the modified matrix (Applicator or Business license) as detailed below in Table 1.

- a. Major WIR omissions or inaccurate statements.
- b. Minor cases of pesticide misuse or drift.
- c. Uncorrected Category III infractions.
- d. Operation without a valid certified applicators license (first time)
- e. Significant substandard termite treatments
- f. Failure to issue a waiver when necessary
- g. All other infractions not in Category I or III.

Table 1:

### Enforcement Guidelines

Number of Offenses	Enforcement Response
1	Warning Letter
2	Warning Letter
3	Warning Letter
4	\$250 Civil Penalty
5	\$250 Civil Penalty
6	\$250 Civil Penalty
7	\$250 Civil Penalty
8	\$500 Civil Penalty
9	\$500 Civil Penalty
10	\$500 Civil Penalty
11	\$500 Civil Penalty
12	\$750 Civil Penalty
13	\$750 Civil Penalty
14	\$750 Civil Penalty
15	\$750 Civil Penalty
All Subsequent Offenses	\$1000 per Offense

Note: Multiple violations at \$1000 penalty level could result in license modification, suspension and/or revocation. The guidelines in Table 1 apply to both the Applicator and the Business License. As noted earlier, the difference is that the Business License usually enters the matrix only after three (3) violations by one applicator or six (6) violations by all applicators in the company.

## Category III Minor Infractions

Errors or deviations from the standards that have minor impact would be non-matrix offenses. Thirty days given for correction where appropriate. If any one or two of the above is found, the PCO is allowed to correct in 30 days. However, if there are more than two of these OR if live termites are present due to the omission, it becomes a Category II.

An informational letter will be issued in cases to the ones similar to the ones listed below:

- a. Small amount of wood debris.
- b. Stump that was not waived but treated.
- c. Failure to drill a small area.
- d. Drilling slightly over minimum spacing.
- e. Failure to scrape off all visible termite shelter tubes.
- f. Failure to sign otherwise correctly issued WIR.
- g. Failure to include license number on otherwise correctly issued WIR.

- h. Front and rear of WIR not in exact agreement.
- i. Unreported problems that are of little concern, i.e., ambrosia beetle damage.
- j. Small number of form boards that cannot be removed.
- k. Failure to issue waiver, but documentation provided to property owner clearly states what was not done.
- l. Others as later determined.

The Matrix is a settlement guideline. The department will make exceptions to it as appropriate. Note: All Category III informational letters, if not corrected within 30 days, subject the PCO to civil penalty action.

### **Clearing Enforcement Histories**

At the upper end of the Matrix, a lessening of one full level civil penalty by the following measures may be accomplished (e.g., from the first \$750 civil penalty down to the first \$500). The department recognizes the desire to reduce one position in the enforcement matrix (Applicator and/or Business). Upon careful reflection the department considers the following to be an appropriate means of "backing up" in the matrix.

### **Training**

1. Attending a remedial termite training course such as special session of the Apprentice Termite Training Course.
2. Attending a similarly designed remedial course presented by industry and approved by the department.
3. Completion of the PCO Technician correspondence from Purdue University.
4. Other departmental approved training courses.

### **Quality Control**

PCO would develop standard operating procedures or Best Management Practices (BMPs) quality control checklist/training recommendations. These BMPs would be mandated for the company for at least 6 months. A copy of training and quality control paperwork would be submitted to the department for possible monitoring.

This one level reduction in the matrix could be repeated for a second time in a five-year window.

### **Other**

- If any licensed applicator or licensed business has a period of two (2) years with no violations, the licensee (applicator or business) will be completely reset in the enforcement matrix.
- Once the applicator reaches the first \$250 level in the matrix, they may petition DPR to undergo an approved training program (as mentioned above). Upon the successful completion of this approved training, DPR will reset this applicator in the enforcement matrix back to the entry level. The next enforcement response will be a first warning letter. The applicator will still be required to pay the first \$250 penalty prior to entering the approved training program. An applicator may utilize this option to clear an enforcement history only once in a five-year period. This is the first \$250 level only.

### **Special Considerations**

At the lower end of the matrix the following regulatory interpretations would lessen entrance into the matrix for unique conditions.

For conditions out of the control of the PCO (determined by DPR), the PCO will not be cited a violation and will be included as a Category III informational letter.

1. Exterior wood-to-ground contact: trellis, porches constructed after PCO's treatment.
2. Final grade not completed by contractor; therefore, final grade treatment by PC not completed.

### **Failure to Comply within Thirty Day Period**

The following involves all substandard treatments not brought into compliance within the allotted 30 days. If a violation occurs as a result of a substandard termite treatment, the PCO will be given 30 days to bring the treatment into

compliance, and the violation may result in a Category I, IUI, or III enforcement response. If after 30 days the treatment is still not in compliance, DPR may take a more stringent action (per Section 27-1085 F for the Rules and Regulations for the Enforcement of the Act). For some of these situations, DPR proposes to ask the PCO to refund to the customer the payment of the treatment. This would allow the customer to contract with another pest control firm to provide this service.

### **PCO Review Committee**

A review committee will be established to review case jackets of proposed significant regulatory actions against PCOs. Actions subject to review would include civil penalties and/or license suspension or revocation. Also, warning letters that have been issued and contested in writing are subject to review. The following stipulations apply to the committee:

- The review committee is composed of two regulatory members (Department Head and Staff Attorney) and two PCOs appointed by the Executive Board of the South Carolina Pest Control Association. Two alternates are also appointed to review any cases that have a conflict of interest with the other two PCOs. PCO nominees are subject to concurrence by the Director.
- The committee will meet once a month, unless no actions are pending. The committee will review the proposed action considering the case file and enforcement history and vote to agree or disagree (i.e., amend) with the proposed action.
- A majority vote for the agreement or disagreement (amendment) with the action is binding on the department. A tie vote means that the proposed action becomes the final action of the department. Civil penalties and/or license suspension or revocations are subject to review via the formal hearing process.
- Members of this review committee must avoid expert communications relative to any issue under review.