



Compliance and Enforcement Policy Guideline

Those who administer legislation and those who must comply with it need to understand how enforcement is carried out. The purpose of this document is to provide detailed, up-to-date information on the Pest Management Regulatory Agency's (PMRA) policies regarding compliance and enforcement.

This document describes:

- the techniques and measures the PMRA uses to promote and facilitate compliance with the *Pest Control Products Act* (PCPA);
- the principles established to help ensure fair and equitable treatment of the regulated community; and
- the parameters within which PMRA inspectors exercise their discretion.

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1.0 Introduction

Canadians expect their government to provide good laws and regulations that will protect them and their society. To be effective in this role, the government must be able to enforce the laws and regulations they enact. The government's role in enforcement is to:

- Ⓒ encourage and facilitate compliance;
- Ⓒ encourage voluntary reporting of suspected infractions;
- Ⓒ inspect for compliance; and
- Ⓒ respond to non-compliance situations.

Enforcement must be fair, nationally consistent and predictable. Those who administer legislation and those who must comply with it need to understand how enforcement is to be carried out.

The registration of pest control products works to minimize risk to human health and the environment. The terms and conditions to meet this requirement are specified during the registration and on the product label. The information (instructions or restrictions for use, precautions for storage, handling and disposal) on the labels of pest control products reflects the scientific studies that have been carried out on the product.

Compliance to regulatory decisions is a key step in risk reduction and sustainable pest management. The goal of any enforcement response is to achieve and maintain continuing compliance. Studies have shown that the majority of the regulated community will comply with regulations if they understand them. For the minority who may be tempted to ignore the rules, deterrence is necessary. Deterrence depends upon:

- Ⓒ the perception by the potential violators that they are likely to be detected;
- Ⓒ a quick response when infractions are detected; and
- Ⓒ the penalties being high enough to encourage violators to change their behaviour.

2.0 Objectives

This document aims to:

- describe the range of techniques and measures for promoting and facilitating compliance,
- state the principles established by the PMRA to help ensure fair and equitable treatment of the regulated community, and
- define the parameters within which inspectors can exercise their discretion.

3.0 Legislation and Authorities

The following acts and regulations or parts thereof are administered by the PMRA.

Pest Control Products Act

The PCPA regulates the import, packaging, manufacturing, distribution, labelling, sale, and use of products that control pests. All control products are evaluated on the basis of scientific data for safety, merit and value.

Agriculture and Agri-Food Administrative Monetary Penalties Act

The *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMPs Act) provides the authority to issue official warnings and impose monetary penalties to persons who have violated designated infractions the PCPA and Regulations.

4.0 Definitions

The terms *inspector*, *enforcement*, and *compliance* are used throughout this document. Their meaning for the purpose of this document is as follows.

Compliance: the state of conformity of a regulated company (including a corporation, individual or other legal entity) or a product with a legislative requirement.

Enforcement: the action(s) that may be taken to induce, encourage or to compel compliance with legislative requirement.

Inspector: a person designated by the Minister of Health for purposes of the PCPA.

5.0 Measures to Promote and Verify Compliance

Compliance with the PCPA and Regulations is mandatory. Inspectors will encourage voluntary reporting of suspected infractions, inspect for compliance, and respond to non-compliance situations. Inspectors will examine suspected infractions and take action as described below.

5.1 Education/Consultation

Information and education are effective tools in securing conformity with the law. Providing an opportunity for input and explaining the rationale for a regulation or regulatory decision will generally facilitate compliance. Consultations are used to gather and exchange information on regulatory decisions and enforcement issues.

5.2 Inspections

Inspections allow for on-site education and compliance assessment. On-site inspections may involve sampling for analysis, examination of documents and facilities, as well as the reporting of information by those who are being regulated.

5.3 Investigations

PMRA inspectors conduct an investigation when an infraction of the PCPA is suspected. An investigation involves obtaining the facts of the suspected infraction, gathering and preserving the evidence, evaluating the facts, and determining and taking appropriate enforcement actions.

6.0 Enforcement Measures in Response to Infractions

Enforcement must be fair, nationally consistent and predictable. PMRA Inspectors use only those rules, sanctions and processes founded in law. The following factors are considered in determining the enforcement action:

- the contravener's history of compliance with the PCPA;
- the contravener's demonstrated willingness to achieve compliance;
- the evidence of corrective action already taken;
- the degree of actual harm or potential harm as a result of non-compliance;
- the expected standard of expertise of an individual or company;
- the intent of the contravener; and
- the level of response necessary to achieve and maintain continuing compliance.

7.0 Guidelines for Using Enforcement Measures

To best achieve and maintain compliance, more than one type of enforcement measure may be appropriate for a particular infraction. The level of the response is based on the evidence and on what is needed to achieve continuing compliance .

7.1 Actions with Respect to Persons

a) Education

An education letter is appropriate when the findings of a routine inspection or an investigation indicate a problem, but there is either no infraction, or the infraction cannot be clearly attributed to that person. It is also appropriate if the letter is deemed to be sufficient to achieve compliance.

b) AMPs

C Notice of Violation Warnings

A Notice of Violation (NOV) Warning is appropriate when an infraction is detected for the first time and has not caused significant harm. A warning may be used if it will have an appropriate deterrent effect.

• **Notice of Violation Penalties**

The following factors are taken into account when deciding whether to proceed with a monetary penalty:

- whether a previous warning(s) has been issued;
- whether a warning would have the appropriate deterrent effect;
- whether there is an expected standard of expertise of an individual or a company; or
- whether the infraction presents an actual or potential risk of harm to health, the environment or the economy.

c) **Prosecution**

Prosecution may be recommended when:

1. any regulated party, acting willfully or with negligence, takes actions that pose a significant health and safety or environmental risk or that constitute significant fraud;
2. it is demonstrated that another enforcement option such as an Administrative Monetary Penalty, when available, has not had the appropriate deterrent effect and more severe enforcement action may be warranted;
3. the value of the product to be forfeited is considered punitive; or
4. a punitive amount is sought for a fine, i.e., an amount that is higher than allowed under the Administrative Monetary Penalty System.

7.2 Actions with Respect to Products

a) **Seizure and Detention**

This enforcement measure is considered one of the most immediate and effective compliance tools. Seizure and detention of regulated products are permitted where the inspector has reasonable grounds to believe that an infraction has occurred, and are appropriate where:

1. such an infraction poses a health, safety or environmental risk or creates unfair competition with other compliant products; or

2. the contravener exhibits an unwillingness to comply by not removing the product from the market, including disposal of the product, or by not taking corrective action to bring the product into compliance.

Detention of seized products can be continued until:

- C the product is brought into compliance;
- C AMPs or court proceedings have been instituted; or
- C a period of six months following the seizure has expired without the commencement of proceedings.

b) Forfeiture

The person must be deemed to have committed the infraction (either via the Court, the AMPs Tribunal or through their response to the NOV). Goods detained will be seized and forfeited if they pose a significant risk to the health of Canadians or their environment, and/or the owner of the goods will not respond to requests for safe disposal.

Forfeiture can occur when:

1. a person consents to it in writing;
2. a Court or the AMPs Tribunal issues such an order; or
3. Her Majesty in Right of Canada elects to forfeit (AMPs Act, Section 22).

Forfeited products/goods will be disposed as ordered by the court, AMPs Tribunal or the Crown. This generally will be at the expense of the person from whom the product was seized.

c) Denial of Entry into Canada

The PMRA, with the aid of Canada Customs, may deny entry to pest control products/goods that do not comply with import requirements.

d) Voluntary Recall

Recalling a product from the marketplace usually occurs when a registrant has a product that is not in compliance or has lost its registration status. This procedure is implemented when the company agrees to take responsibility for the labour and cost of removal of their product from the marketplace.

7.3 Actions with Respect to Registration

The registration of a pest control product may be suspended or cancelled at any time during the registration period if the product is found to present an unacceptable risk of harm to human health and safety or the environment, or if it no longer meets the criteria of merit or value for its intended uses.

a) Cancellation

Cancellation of registration is the most severe regulatory action imposed on a product. Cancellation of registration stops all sale, use and importation of the product.

b) Suspension

Suspension of registration allows the product already in the marketplace to be sold and used until the end of the registration period or as specified under special conditions, but stops all sales by the registrant. As a result, all new supplies coming onto the market are halted.

7.4 Other Actions

a) Publicity

Publicising regulatory activities is a useful tool for notifying the public about the compliance status of the regulated industry, thereby encouraging compliance. The release of information by the PMRA is regulated by the *Access to Information Act* and the *Privacy Act*. Generally, the PMRA will publicize the following information:

- compliance program plans;
- Administrative Monetary Penalties and warnings; and
- prosecutions.