



Administrative Monetary Penalties (AMPs)



This booklet deals specifically with the Administrative Monetary Penalties (AMPs) process as administered by the Pest Management Regulatory Agency for the *Pest Control Products Act* and Regulations. Please refer to the Pest Management Regulatory Agency publication *Compliance and Enforcement Policy Guideline* (B98-01, June 12, 1998) for information with respect to other enforcement options available under the *Pest Control Products Act*.

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What Are Administrative Monetary Penalties (AMPs)?

The *Agriculture and Agri-Food Administrative Monetary Penalties Act*, proclaimed in July, 1997, establishes a system of administrative monetary penalties for the enforcement of the seven Acts administered by Agriculture and Agri-Food Canada, as well as for the enforcement of the *Pest Control Products Act*, administered by the Pest Management Regulatory Agency. The penalties, similar to court-levied fines, are imposed through an administrative process with no resulting criminal record or imprisonment.

AMPs provide an enforcement option that can be imposed when a person or company has contravened the *Pest Control Products Act*, rather than pursuing prosecution under the Act itself and can be imposed in lieu of, or in addition to, other sanctions available under the *Pest Control Products Act* and Regulations. An administrative monetary penalty is not proposed when the contravention is considered to be serious enough to recommend prosecution.

How to Read Your Notice of Violation

A Notice of Violation is a document issued to a person or company that has allegedly violated the *Pest Control Products Act* or Regulations.

The Notice identifies the following:

- the recipient of the Notice;
- whether it is a warning or a monetary penalty;
- that there has been a violation of the *Pest Control Products Act* or Regulations;
- which section of the *Pest Control Products Act* or Regulations has been violated;
- a summary of the supporting facts surrounding the violation;

- other enforcement actions taken, if any;
- the amount and breakdown of the assessment if there is a monetary penalty;
- the options available in order to respond to this notice; and
- the name of the issuing authority.

How to Read Your Certificate of Service

A Certificate of Service is a form accompanying a document to indicate that the document has been presented or delivered.

The Certificate of Service identifies the following:

- the name of the server;
- the person or company being served;
- the document being served;
- the method of service;
- the date that the document is served; and
- the deemed date of service.

It is the **deemed date of service** that is of utmost importance as all option response deadlines are calculated from this date.

For example, if the Certificate of Service indicates that the deemed date of service is August 5, 2001, then August 6 is counted as Day 1. Fifteen (15) days after the deemed date of service in the Certificate of Service would be August 20, 2001.

What Are Your Options upon Receipt of a Notice of Violation with Warning?

1. **Acceptance:** You may accept the warning. No response is necessary. This Notice of Violation Warning remains part of your compliance history.
2. **Review by the Minister (PMRA Review):** You may submit a written request for a review with an official of Health Canada's Pest Management Regulatory Agency within 30 days after the deemed date of service of the Certificate of Service. Refer to Appendix III.
3. **Tribunal Review:** You may submit a written request for a review with the Review Tribunal within 30 days after the deemed date of service on the Certificate of Service. Refer to Appendix III.

Note: No extension of these time limitation periods is granted.

If you do not submit a written request for a review of the facts of the violation, you are deemed to have committed the violation. Anything seized and detained in relation to the violation may be subject to forfeiture to Her Majesty in right of Canada and to disposal at your expense.

The Minister may publish a list of persons or companies who have committed violations, with or without reference to the penalty imposed or other actions taken.

What Are Your Options upon Receipt of a Notice of Violation with Penalty?

1. **Payment within 15 days:** You may pay one half of the amount of the assessed monetary penalty listed on the Notice, in lieu of the full amount, if you pay within 15 days after the deemed date of service in the Certificate of Service. This option is not available once another option is chosen.
2. **Payment after 15 days, before 30 days:** You may pay the full amount of the assessed monetary penalty within 30 days after the deemed date of service in the Certificate of Service.
3. **Compliance Agreement:** If the monetary penalty is greater than \$2000, you may submit a written request to enter into a compliance agreement within 30 days after the deemed date of service in the Certificate of Service. You must submit a detailed proposal with your request. The request may or may not be granted. Refer to Appendix II for further details. This option is not available once another option is chosen.
4. **Review by the Minister (PMRA Review):** You may submit a written request for a review with an official of Health Canada's Pest Management Regulatory Agency within 30 days after the deemed date of service in the Certificate of Service. Refer to Appendix III.
5. **Tribunal Review:** You may submit a written request for a review with the Review Tribunal within 30 days after the deemed date of service in the Certificate of Service. Refer to Appendix III.

Note: No extension of these time limitation periods is granted.

If you choose options 1 or 2, enter into a compliance agreement, or do not respond to the Pest Management Regulatory Agency with your option, you are deemed to have committed the violation. This Notice remains part of your compliance history.

When you are deemed to have committed a violation or when no written request is submitted to have the decision reviewed, anything seized and detained in relation to this violation may be subject to forfeiture to Her Majesty in right of Canada and to disposal at your expense.

The Minister may publish a list of persons or companies who have committed violations, with or without reference to the penalty imposed or other actions taken.

How Are the Penalties Assessed?

All violations of the *Pest Control Products Act* and Regulations are classified as either minor, serious, or very serious and are noted in Schedule I of the AMPs Regulations. The amount of the monetary penalty varies, depending on whether the violation was committed by someone in the course of business or by someone not in the course of business, e.g., the general public.

Section 5 of the AMPs Regulations sets out the monetary penalties for the classification of violations as follows:

Classification	Non Business	Business
Minor	\$100	\$500
Serious	\$200	\$2000*
Very Serious	\$400	\$4000*

* For serious and very serious violations committed by persons or companies in the course of business, the penalty amounts may be adjusted up or down, depending upon the total gravity value. No other violation penalty is adjusted.

The total gravity value is established in consideration of the following:

1. prior violations or offences of the person or company who committed the violation;
2. degree of intent or negligence on the part of the person or company; and
3. harm done by the violation.

Gravity values are issued for these three factors, and the total number of gravity value points indicates whether or not the penalty is adjusted. Refer to Appendix I for tables of Penalty Adjustments and corresponding Total Gravity Values.

Submitting Your Response

It is recommended that you submit your response via registered mail. When making a payment for your monetary penalty, please make your certified cheque or money order payable to the Receiver General for Canada. Detailed instructions as well as the addresses for sending in your response are indicated on the Notice of Violation.

Forfeiture

When you are deemed to have committed a violation, and you have goods that are detained in accordance with section 10 of the *Pest Control Products Act*, the goods may be subject to forfeiture to Her Majesty in right of Canada and to disposal at your expense.

You are deemed to have committed the violation when you do any of the following:

- fail to respond to a Notice of Violation;
- pay the Monetary Penalty;
- enter into a compliance agreement;
- request a Pest Management Regulatory Agency review only, and the violation is confirmed by the review; or
- request a Tribunal Review and the Tribunal confirms a violation.

Forfeiture of goods may occur if corrective actions to achieve compliance are unsuccessful or nonexistent.

Appendix I

Penalty Adjustments and Total Gravity Values

Taken from the *Agriculture Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations*

SCHEDULE 2 (Subsection 5(3))

PENALTY ADJUSTMENTS

	Column 1	Column 2
Item	Total Gravity Value	Penalty Adjustment
1.	1	Reduce penalty by 50%
2.	2	Reduce penalty by 40%
3.	3	Reduce penalty by 30%
4.	4	Reduce penalty by 20%
5.	5	Reduce penalty by 10%
6.	6–10	Do not adjust penalty
7.	11	Increase penalty by 10%
8.	12	Increase penalty by 20%
9.	13	Increase penalty by 30%
10.	14	Increase penalty by 40%
11.	15	Increase penalty by 50%

SCHEDULE 3 (Section 6)

TOTAL GRAVITY VALUES

PART 1 HISTORY OF PRIOR VIOLATIONS OR OFFENCES

	Column 1	Column 2
Item	Gravity Value	History
1.	0	No previous violations or offences have been committed under the Act or Regulations under which the particular penalty is being assessed in the three years preceding the day on which the violation or offence subject to the assessment is committed.
2.	3	No more than one previous minor or serious violation has been committed under the Act or Regulations under which the particular penalty is being assessed in the three years preceding the day on which the violation or offence subject to the assessment is committed.
3.	5	The history in the three years preceding the day on which the violation or offence subject to the assessment is committed is other than the history described in item 1 or 2.

**PART 2
INTENT OR NEGLIGENCE**

	Column 1	Column 2
Item	Gravity Value	Intent or Negligence
1.	0	The violation subject to the assessment is committed without intent or negligence.
2.	0	The person who commits the violation subject to the assessment makes a voluntary disclosure of the violation and takes necessary steps to prevent its recurrence.
3.	3	The violation subject to the assessment is committed through a negligent act.
4.	5	The violation subject to the assessment is committed through an intentional act.

**PART 3
HARM**

	Column 1	Column 2
Item	Gravity Value	Harm
1.	1	The violation subject to the assessment causes or could cause minor harm to (a) human, animal or plant health or the environment; or (b) any person as a result of false, misleading or deceptive practices.
2.	3	The violation subject to the assessment could cause (a) serious harm to human, animal or plant health or the environment; (b) serious harm to any person as a result of false, misleading, or deceptive practices; or (c) a monetary loss exceeding \$1000.
3.	5	The violation subject to the assessment causes (a) serious harm to animal, or plant health or the environment; (b) serious harm to any person as a result of false, misleading, or deceptive practices; or (c) a monetary loss exceeding \$1000.

Appendix II

Compliance Agreements

The purpose of a compliance agreement is to ensure the person's or company's compliance to the *Pest Control Products Act* and Regulations via corrective and preventative actions.

When Can You Request a Compliance Agreement?

- If your monetary penalty is \$2000 or more, and
- If you send in your written request which includes a detailed proposal within 30 days after the deemed date of service in the Certificate of Service.

The Pest Management Regulatory Agency will contact you to enter into discussions for the compliance agreement. Both parties sign the compliance agreement upon mutual acceptance and by doing so you are deemed to have committed the violation.

If your request is not accepted, you are notified and have 15 days to either pay the full amount of the original monetary penalty or request a review by the Tribunal.

Why Might You Consider a Compliance Agreement?

If, to achieve compliance or to prevent future violations, you are required to spend money (e.g., fixing equipment or building proper facilities), the amount of the monetary penalty shall be reduced by \$1 for every \$2 that you spend with a maximum reduction to nil.

For example: If you have a \$6000 penalty, and to comply you have to spend \$10 000 on equipment, your resulting penalty is \$1000

\$6000	original penalty
<u>! \$5000</u>	reduction ($\$10\ 000 \div 2$)
\$1000	resulting penalty

The penalty for not achieving compliance is also determined during initial discussions. Noncompliance with the agreement results in double the initial monetary penalty and you may be subject to further enforcement action.

What Is Required in Your Detailed Proposal for the Compliance Agreement?

1. You, as the respondent, admit the allegations and the facts.
2. The proposal must be applicable to compliance and/or correcting the violation specified in the Notice of Violation.
3. The indicators of compliance with the agreement must be stated and measurable.
4. The deadlines for corrective actions must be stated.
5. The estimated expenditure must be clearly itemized and recorded on a separate page.
6. The proposal must meet the stringency and timeliness requirements of the *Pest Control Products Act* and Regulations or the corresponding Pest Management Regulatory Agency Regulatory Directives. The compliance agreement cannot extend any deadlines stated in these documents.
7. The estimated expenditure for penalty reduction requires all of the following:
 - It must not include government funding;
 - It must not include Pest Management Regulatory Agency fees, e.g., product registration or maintenance fees, as part of the calculation.
 - It must be reasonably sound.

In addition, the Pest Management Regulatory Agency does not play a role in managing funds or in controlling the ongoing activity of maintaining compliance.

Appendix III

Reviews

During an investigation, the Pest Management Regulatory Agency investigation team examines the evidence to determine whether there has been a contravention of the *Pest Control Products Act*. If there has been a contravention, a decision is made as to the most appropriate enforcement response. Enforcement responses include: the issuance of a Notice of Violation Warning, a Notice of Violation Penalty, product detention, or prosecution in provincial courts.

If you receive a Notice of Violation and you do not agree with the conclusion that you have committed a violation, or if you do not agree with the assessment of your monetary penalty, you have 30 days after the deemed date of service in the Certificate of Service to submit a written request for a review to make your concerns known. No extension of this time limitation period is granted.

Please submit information as to the grounds for your request.

Who May Request a Review?

The person or company who is implicated in the Notice of Violation may submit a written request for a review. Where the Notice of Violation recipient is a company, an official of that company with signing authority may act on behalf of the company.

What Review Options Are Available?

The two types of review provided for in the *Agriculture and Agri-Food Administrative Monetary Penalties Act* are explained below.

Review by the Minister (Pest Management Regulatory Agency [PMRA] Review)

This is referred to as a Review by the Minister in the *AMPs Act* and is typically conducted on the basis of written submissions and review responses.

The Review by the Minister (PMRA Review) provides an opportunity to review the facts of the case. The review may involve determining whether the recipient cited in the Notice of Violation committed a violation. Where monetary penalties were imposed, the review may also determine if the monetary penalty was assessed and established in accordance with the Regulations. If the recipient of the Notice of Violation is not satisfied with the review result, he or she may request a Tribunal Review within 15 days of being served the Pest Management Regulatory Review results.

Tribunal Review

The Tribunal is an independent quasi-judicial body appointed by the Governor-in-Council to hear appeals of warnings or administrative monetary penalties issued under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

The Tribunal Review provides an opportunity to review the facts of the case and to determine whether the person or company named in the Notice of Violation committed a violation. Please note that this is a review of the facts relating to this violation only. Where monetary penalties are imposed, the review determines if the penalty was assessed and established in accordance with the Regulations.

Upon receiving your request, you are contacted by the Tribunal to inform you of the rules and procedures.

After the review, if you do not agree with the results of the Tribunal, you may, within 30 days, apply for a judicial review under Section 28 of the *Federal Court Act*.