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sécurité... notre priorité.*

Pest Management Regulatory Agency

Administrative

Monetary Penalties

(AMPs)

(AMPs)

Canada

Inquiries

If you have received a notice of violation inquiries should be directed to:

AMPs Administrator
2720 Riverside Drive, Ottawa, ON K1A 0K9
Fax: 613-736-3540
Email: pmra.amps.administrator@canada.ca

General inquiries should be directed to the
Pest Management Information Service
2720 Riverside Drive
Ottawa, Ontario K1A 0K9
at 1-800-267-6315 or (613) 736-3799.
<http://www.canada.ca/pesticides>
Email: pmra.infoserv@canada.ca

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Table of Contents

What Are Administrative Monetary Penalties (AMPs)?	1
How to Read Your Notice of Violation	2
How to Read Your Certificate of Service	2
What Are Your Options upon Receipt of a Notice of Violation with Warning?	3
What Are Your Options upon Receipt of a Notice of Violation with Penalty?	4
Submitting Your Response	5
When Are You Deemed to Have Committed the Violation	6
Forfeiture	6
How Are the Penalties Assessed?	7
Appendix I - Reviews	8
Appendix II - Compliance Agreements	12
Appendix III - Penalty Adjustments and Total Gravity Values	14



This booklet deals specifically with Administrative Monetary Penalties (AMPs) for violations of the *Pest Control Products Act (PCPA)* and its Regulations. Please refer to Health Canada's Pest Management Regulatory Agency (PMRA) publication *Compliance Policy* (DIR2007-02) for information with respect to other enforcement measures available under the *PCPA*.

Health Canada encourages Canadians to be compliant with the *PCPA* and its Regulations by publishing information about contraventions that have occurred, including those designated as violations under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. Published information can include the violation that was committed, the name, business name or additional information identifying the violator and general details of the case.

What Are Administrative Monetary Penalties (AMPs)

1

The *Agriculture and Agri-Food Administrative Monetary Penalties Act (AMPs Act)*, proclaimed in July, 1997, establishes a system of administrative monetary penalties for the enforcement of certain agri-food Acts, one of which is the *Pest Control Products Act (PCPA)*. The penalties, similar to court-levied fines, are imposed through an administrative process and do not result in a criminal record or imprisonment.

AMPs provide an enforcement option when a person or company has contravened the *PCPA*. AMPs can be imposed instead of, or in addition to, other enforcement measures available under the *PCPA* and its Regulations. An AMP is not proposed when a contravention is serious enough to warrant 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 *PCPA* or its Regulations.

The Notice of Violation identifies the following:

- Recipient of the Notice of Violation;
- Type of Notice of Violation, warning or monetary penalty;
- Alleged *PCPA* violation;
- Summary of supporting facts surrounding the violation;
- Other enforcement actions taken, if any;
- Amount and breakdown of any penalty assessment;
- Options available to the recipient to respond to the notice; and
- Name of the designated Health Canada authority who issued the Notice of Violation.

2

How to Read Your Certificate of Service

A Certificate of Service is a form accompanying the Notice of Violation indicating that the document has been presented or delivered.

The Certificate of Service identifies the following:

- Name of the server;
- Person or company being served;
- Document being served;
- Method of service (delivery);
- Date that the document is served; and
- Deemed date of service.

It is very important to note the **deemed date of service**, as all response deadlines are calculated from this date.

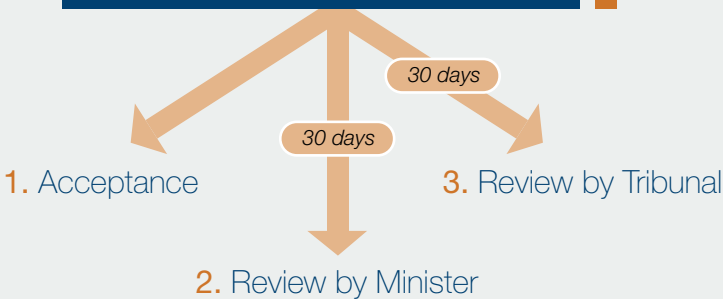
For example, to qualify for the 50% penalty reduction, if the Certificate of Service indicates that the deemed date of service is August 5, 2012, then August 6 is counted as Day 1. Fifteen (15) days after the deemed date of service would be August 20, 2012 (the latest date when reduced payment can be sent).

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

You have the choice of **ONE** of the following options.

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

Notice of Violation with Warning



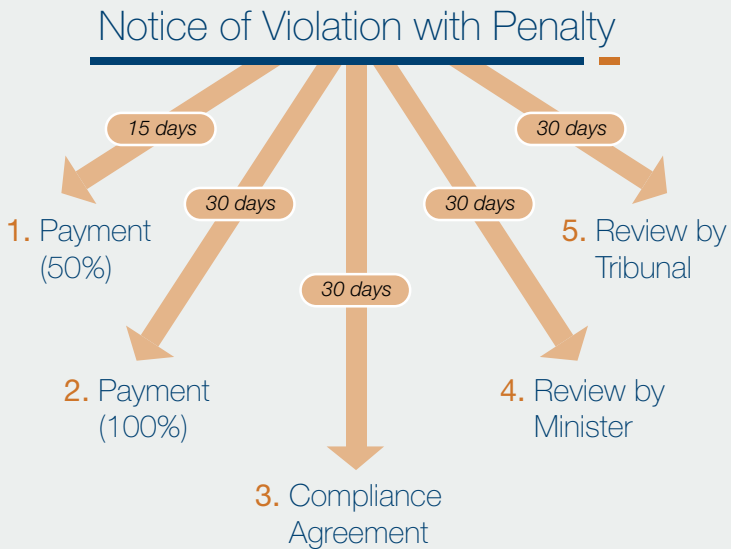
1. **Acceptance:** You may accept the warning. No response is necessary. This Notice of Violation with Warning remains part of your compliance history.
2. **Review by Minister:** You may submit a written request for a review of the facts of the violation by a Health Canada official within 30 days after the deemed date of service stated in the Certificate of Service. Please see note below.*
3. **Review by Tribunal (Canada Agricultural Review Tribunal):** You may submit a written request for a review of the facts of the violation by the Canada Agricultural Review Tribunal within 30 days after the deemed date of service stated in the Certificate of Service. Please see note below.*

**Note for reviews: Please refer to Appendix I for more information about your review options, as the choice of initial review could impact subsequent review avenues.*

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

You have the choice of **ONE** of the following options.

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



1. **Payment within 15 days:** You may reduce the amount of the assessed monetary penalty by 50% if you pay within 15 days after the deemed date of service stated in the Certificate of Service.
2. **Payment after 15 days:** You may pay the full amount of the assessed monetary penalty within 30 days after the deemed date of service stated in the Certificate of Service.
3. **Compliance Agreement:** If the monetary penalty is \$2,000 or more, you may submit a written request to enter into a compliance agreement within 30 days after the deemed date of service stated in the Certificate of Service. You must submit a detailed proposal with your request. The request may or may not be granted. Please refer to Appendix II for further details.

4. **Review by Minister:** You may submit a written request for a review of the facts of the violation by a Health Canada official within 30 days after the deemed date of service stated in the Certificate of Service. Please see note below.**
5. **Review by Tribunal (Canada Agricultural Review Tribunal):** You may submit a written request for a review of the facts of the violation by the Canada Agricultural Review Tribunal within 30 days after the deemed date of service stated in the Certificate of Service. Please see note below.**

***Note for reviews: Please refer to Appendix I for more information about your review options, as the choice of initial review could impact subsequent review avenues.*

Submitting Your Response

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

When Are You Deemed to Have Committed the Violation?

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

- Fail to respond to a Notice of Violation within 30 days after the deemed date of service;
- Pay the Monetary Penalty;
- Enter into a Compliance Agreement;
- Request a Review by the Minister only, and the violation is confirmed by the Review; or
- Request a Review by the Tribunal, and the violation or the Minister's Decision is confirmed by the Review.

Once this occurs, the violation becomes part of your compliance history that could increase future penalty amounts should you commit subsequent violations.

Forfeiture

When you are deemed (determined) to have committed a violation, anything seized and detained in relation to the violation in accordance with section 55 of the *Pest Control Products Act* or section 22 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* may be subject to forfeiture to Her Majesty in right of Canada and to disposal at your expense. Forfeiture of goods may not occur if corrective actions to achieve compliance have been taken.

How Are the Penalties Assessed?

Violations of the *Pest Control Products Act* and its Regulations are classified as either minor, serious, or very serious and are listed in Schedule I of the AMPs Regulations. It should be noted that the level of seriousness indicated on your Notice of Violation is based on the section of the *PCPA* that you allegedly violated and not on the specifics of your case. 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	\$500	\$1,300
Serious	\$800	\$6,000*
Very Serious	\$1,300	\$10,000*

* For violations classified as serious and very serious, 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 penalty amounts are adjusted.

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

1. Prior violations or offences of the person or company that committed the violation under any agri-food Act including the *Pest Control Products Act*;
2. Degree of intent or negligence on the part of the person or company; and
3. Harm caused or that could have been caused by the violation.

Gravity values are assigned for each of these three factors, and the total number of gravity value points determines whether the penalty is adjusted. Refer to Appendix III for the table of Penalty Adjustments and corresponding tables of Gravity Values.

Appendix I

Reviews

In verifying instances of alleged non-compliance, Health Canada officials examine 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, but are not limited to: the issuance of a Notice of Violation with Warning, a Notice of Violation with 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 to submit a written request for a review. No extension of this time limitation period is granted.

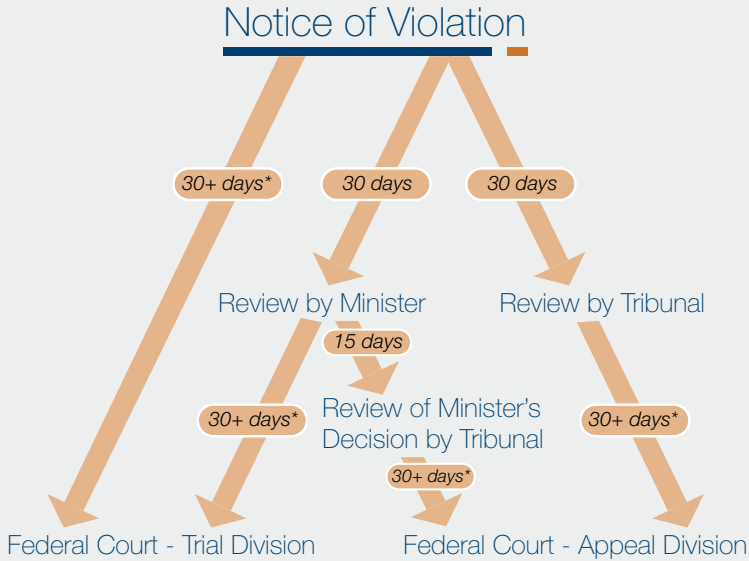
Your request for review should also include reasons why the violation was not committed, or why the penalty amount is incorrect.

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 types of review, including subsequent reviews, are illustrated here and briefly explained on the next few pages.



**At the discretion of the Judge of the Court*

Review by Minister

The Review by Minister, completed by a Health Canada official, provides an opportunity to review the facts of the case and is conducted only on the basis of written submissions. 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 review of the Minister's decision by the Tribunal within 15 days of being served the Minister's decision.

Review by Tribunal

The Canada Agricultural Review 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 were imposed, the Review determines if the penalty was assessed and established in accordance with the Regulations.

Review of the Minister's Decision by Tribunal

This review differs from the Review by the Tribunal (described above) and can only occur where the request is made following the completion of a Review by the Minister. The request is to be made within 15 days after the day on which the decision from the Review by the Minister is served (i.e. 15 days from the deemed date of service stated on the Certificate of Service issued with the decision of the Review by the Minister). The Canada Agricultural Review Tribunal, in this case, would conduct a review of the Minister's decision.

Note for Reviews by Tribunal: There are specific legal rules that apply to the two types of tribunal reviews with certain rules applicable to one type of review, but not the other.

For more information on reviews conducted by the Canada Agricultural Review Tribunal please contact:

Canada Agricultural Review Tribunal Secretariat

Registry, P.O. Box 56008, Minto Place RO

Ottawa, Ontario K1R 7Z0

Email: Infotribunal@cart-crac.gc.ca

Tel: (613) 943-6405

Fax: (613) 943-6429

<http://cart-crac.gc.ca/>

Judicial Review

Following any of these reviews, if you do not agree with the results, you may apply for judicial review under the *Federal Court Act*. You may also apply for judicial review directly following the issuance of the Notice of Violation itself. If you request judicial review of the Notice of Violation, or of a Review by Minister, the judicial review will be conducted by the Federal Court Trial Division. If you request judicial review of a Tribunal decision, the review will be conducted by the Federal Court of Appeal.

Appendix II

Compliance Agreements

The purpose of a compliance agreement is to ensure compliance to the *Pest Control Products Act* and its Regulations is achieved via corrective and preventative actions.

When Can You Request a Compliance Agreement?

- If your monetary penalty is \$2,000 or more, and
- If you send in your written request which includes a detailed proposal within 30 days after the deemed date of service stated in the Certificate of Service.

Once these requirements have been met, you will be contacted to discuss the specifics of 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 acceptable, you will be notified and will have 15 days to either pay the full amount of the original monetary penalty, or request a review by the Canada Agricultural Review Tribunal.

Why Might You Consider a Compliance Agreement?

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

For example: If you have a \$6,000 penalty, and to comply you have to spend \$10,000 on equipment, your resulting penalty is \$1,000

\$6,000	original penalty
<u>-\$5,000</u>	reduction ($\$10,000 \div 2$)
\$1,000	resulting penalty

Non-compliance 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 to the allegations and the facts.
2. The proposal must be applicable to compliance and/or correcting the violation specified in the Notice of Violation, now, and into the future.
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 cannot extend any deadlines or alter any requirements of the *Pest Control Products Act* and Regulations or the corresponding Pest Management Regulatory Agency (PMRA) Regulatory Directives.
7. The estimated expenditure for penalty reduction requires all of the following conditions be met:
 - It must not include government funding;
 - It must not include PMRA fees, e.g. product registration or maintenance fees, as part of the calculation; and
 - It must be reasonably sound.

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

Appendix III

Penalty Adjustments and Total Gravity Values

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

SCHEDULE 2

(Subsection 5(3))

PENALTY ADJUSTMENTS

Item	Column 1 Total Gravity Value	Column 2 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 VALUE

PART 1

HISTORY OF PRIOR VIOLATIONS OR OFFENCES

Item	Column 1	Column 2
	Gravity Value	History
1	0	There were no previous violations or convictions under an agri-food Act in the five-year period immediately before the violation.
2	3	There was no more than one previous minor or serious violation and no convictions under an agri-food Act in the five-year period immediately before the violation.
3	5	The history of violations or convictions under agri-food Acts in the five-year period immediately before the violation is other than the history described in item 1 or 2.

PART 2

INTENT OR NEGLIGENCE

Item	Column 1	Column 2
	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 and item 2 does not apply.
4	5	The violation subject to the assessment is committed through an intentional act and item 2 does not apply.

PART 3

HARM

Item	Column 1	Column 2
	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 \$1,000.
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 \$1,000.

Notes

