

21—45.102 (206) Civil penalties—establishment, assessment, and collection. Commercial applicators who violate provisions of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206 may be subject to civil penalties. This rule outlines the criteria and procedures for establishing, assessing, and collecting civil penalties.

45.102(1) Criteria. In evaluating a violation to determine which cases may be appropriate for administrative assessment of penalties, and in determining the amount of penalty, or for purposes of assessing civil penalties, the department shall consider all of the following factors:

- a.* Willfulness or recklessness of the violation.
- b.* Actual or potential danger of injury to the public health, safety, or damage to the environment caused by the violation.
- c.* Actual or potential cost of the injury or damage caused by the violation to the public health or safety or to the environment.
- d.* Actual and potential cost incurred by the department in enforcing the provisions of Iowa Code chapter 206 and rules adopted pursuant to this chapter against the violator.
- e.* Remedial action taken by the commercial applicator.
- f.* Previous history of noncompliance by the commercial applicator being assessed the civil penalty.

45.102(2) Notice and hearing. Civil penalties may be assessed against a commercial applicator only after notice and an opportunity for a contested case hearing unless the parties agree to an informal settlement which assesses a civil penalty or other disciplinary action. The department may seek assessment of a civil penalty by serving a complaint upon the commercial applicator. The complaint shall include a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing will be held, a reference to the statute or rules involved, a statement of the matters asserted, and shall inform the applicator of the availability of review by the panel. The complaint may be served on the commercial applicator by personal service or by certified mail, return receipt requested. The contested case shall be governed by the department's rules on contested case hearings. The department's procedures for informal settlement also apply.

45.102(3) Administrative order. Upon finding that a commercial applicator has violated Iowa Code chapter 206 or rules adopted pursuant to this chapter, an administrative order shall be issued assessing the civil penalty. The order shall recite the facts, the legal requirements which have been violated, the rationale for the assessment of the civil penalty and the date of issuance.

45.102(4) Amount of penalty. The civil penalty imposed on a commercial applicator shall not exceed \$500 per violation of Iowa Code chapter 206 or to the rules promulgated pursuant to Iowa Code chapter 206. Each day a commercial applicator is in violation following receipt of written notification of such violation from the department may be considered a separate violation.

45.102(5) Payment. The penalty shall be paid within 30 days of the date the order assessing the civil penalty becomes final. Failure to pay the civil penalty within three months of the date the order becomes final shall be grounds for suspension or revocation of the commercial applicator's license. The department may request that the attorney general institute judicial proceedings to recover an unpaid civil penalty.

45.102(6) Informal settlement. These rules do not apply to any settlement reached between the commercial applicator and the department prior to the initiation of a contested case proceeding. The department shall notify the applicator that it has found a probable violation with a proposed penalty and provide the applicator an opportunity to attend an informal settlement conference. The department and the applicator may attend an informal settlement conference and reach an agreement about the assessment of a civil penalty or other disciplinary action against the applicator. This agreement is not reviewable by the panel.