

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE OF ALASKA**

NOTICE OF VIOLATION

Application of pesticide in a manner that resulted in non-target mortality of birds, failure to comply with pesticide product label instructions, and failure to comply with conditions of pesticide use permit, under various regulations specified below.

To:

Steve Delehanty
Refuge Manager
US Fish and Wildlife Service, Alaska Maritime National Wildlife Refuge
95 Sterling Highway, Suite 1
Homer, Alaska 99603

Enforcement Tracking No. 11-0533-40-9277

The Department alleges that on or about the time period between September 29, 2008 and October 5, 2008, on Rat Island, in the Alaska Maritime National Wildlife Refuge in the central Aleutian Islands, Alaska, the United States Fish and Wildlife Service (USFWS) did unlawfully:

- Apply pesticides in a manner that resulted in significant non-target mortality of gulls, Bald Eagles, and other birds;
- Exceed the allowable application rates specified on the pesticide product label;
- Exceed the allowable application rates specified in pesticide use permit 08-0703-09-AIR-01;
- Apply pesticides without ensuring adequate equipment calibration of the spreader or directional deflector;
- Fail to ensure that at least five days elapsed between applications, as specified in pesticide use permit 08-0703-09-AIR-01;
- Fail to monitor the treated area and dispose of dead animals, as specified on the pesticide product label;
- Fail to keep accurate records of application rates and dates of application; and
- Provide inaccurate and misleading information to the Department regarding the occurrence of non-target mortality, the failure to monitor the treated area and dispose of dead animals, application rates, and dates of application.

Such actions are in violation of:

- Title 18, Chapter 90, Section 020, Subsection (1) of the Alaska Administrative Code [18 AAC 90.020(1)], which prohibits the use of a pesticide in a manner that endangers animals or the environment;
- 18 AAC 90.020(4), which prohibits the use of a pesticide in a faulty, careless, or negligent manner;
- 18 AAC 90.020(5), which prohibits the use of a pesticide in a manner that is inconsistent with labeling instructions;
- 18 AAC 90.020(5), which also prohibits the use of a pesticide in a manner that is inconsistent the conditions of a permit;
- Pesticide use permit 08-0703-09-AIR-01, Stipulation 1, which requires that all pesticides be used in the manner specified on the product label;
- Pesticide use permit 08-0703-09-AIR-01, Stipulation 4, which requires compliance with all measures outlined in the permit application;
- Pesticide use permit 08-0703-09-AIR-01, Stipulation 3, which requires that pesticides be applied using properly calibrated equipment;
- Pesticide use permit 08-0703-09-AIR-01, Stipulation 4, which requires the use of a directional deflector on the bait spreader on all flight paths near surface or marine waters;
- 18 AAC 90.020(7) which prohibits submission of false, misleading, fraudulent, or incomplete records; and
- 18 AAC 90.415, which requires applicators to keep accurate written records regarding the use of a restricted-use pesticide.

The pesticide application took place between September 29, 2008 and October 5, 2008. The first follow-up visit to the island after application took place on May 26, 2009. The follow-up visit uncovered a large number of deaths to non-target birds as a result of the pesticide application. Over the course of the visit and at least one additional follow-up visit, carcasses were found from a total of 320 glaucous-winged gulls, 46 bald eagles, and 54 various other birds. Necropsy and residue analysis was conducted on 70 bird carcasses. For those where a cause of death could be determined, results confirmed that Brodifacoum poisoning was the cause of death.


Information about the pesticide application was reported to the Department in the Rat Island Habitat Restoration Project: Operational Report, submitted August 11, 2009, the Operational Report Addendum, submitted December 15, 2009. Information regarding non-target deaths was provided in a necropsy report (Anticoagulant Residual Concentration and Poisoning in Birds Following a Large-scale Aerial Broadcast of 25-ppm Brodifacoum Bait for Rat Eradication on Rat Island, Alaska, submitted in August, 2010).

Due to the large number of non-target bird deaths, and conflicting information regarding application rates, dates, and other details of the pesticide use, the Ornithological Council prepared an independent report, The Rat Island Rat Eradication Project: A Critical Evaluation of Nontarget Mortality, dated December 2010. The USFWS also developed an internal investigation report, dated, October 2009 (Internal Investigation). Both reports concluded that pesticide had been misused, and provided the data and background details for determination of this NOV.

Penalties for violation of state statutes and regulations can be quite serious. In a civil action, a person who violates or causes or permits to be violated a provision of this regulation, may be liable to the State for substantial monetary damages under AS 46.03.760. Depending on the nature of the violation, you may also be liable for the state's response costs under AS 46.03.822, for natural resource damages under AS 46.03.780, or for other kinds of damages or penalties under other statutes.

In a criminal violation, a person who acts with criminal negligence may be guilty of a Class A misdemeanor. AS 46.03.790. Upon conviction, a defendant who is not an organization may be sentenced to pay a fine not exceeding \$10,000.00 and/or sentenced to a definite term of imprisonment of not more than one year. Upon conviction, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of \$200,000.00 or an amount which is three times the pecuniary damage or loss caused by the defendant to another or property of another. AS 12.55.035. Each day of violation may be considered a separate violation. Alaska laws allow the State to pursue both civil and criminal actions concurrently.

Nothing in this Notice shall be construed as a waiver of the State's authority or as an agreement on the part of the State to forego judicial or administrative enforcement of the above-described violation(s) or to seek recovery of damages, cost and penalties as prescribed by law. In addition, nothing herein shall be construed as a waiver of enforcement for past, present, or future violations not specifically set forth herein.



Karin Hendrickson, Enforcement Officer
Credential No. R-0266, Expires 12/30/2011

Personally Served
 Sent by Certified Mail

7009 3410 0001 3229 8966
on the 15th day of August, 2011.