

**VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS (VAAF)**

**ADMINISTRATIVE PENALTY FORM**

This form is to be used to determine proposed administrative penalties.

Case Name \_\_\_\_\_ Complaint No. \_\_\_\_\_

Violation(s) \_\_\_\_\_

**CLASSIFICATION OF VIOLATION(S)**

The class of the violation must be first determined. To do so, the Administrative Penalty Guidance on pages 6 and 7 may be used. The Guidance is a listing of common violations and their typical class type. Each violation must be evaluated as to whether the typical class type found in the Guidance is appropriate given the specific facts of the violation using these criteria:

**CLASS I – A Class I violation meets one or more of the following criteria:**

- (1) A violation of any of the following that does not qualify as a minor violation under Class II:
  - (a) An assurance of discontinuance; or
  - (b) An order issued pursuant to 6 V.S.A. Chapter 215; or
- (2) The violation presents a threat of substantial harm to the public health, safety, or welfare or to the environment.

**CLASS II – A Class II violation meets one or more of the following criteria:**

- (1) The violation constitutes a minor violation of:
  - (a) An assurance of discontinuance; or
  - (b) An order issued pursuant to 6 V.S.A. Chapter 215; or
- (2) The violation is more than a minor violation of a statute listed in 6 V.S.A. Chapter 215, a rule promulgated under 6 V.S.A. Chapter 215, or a related permit. Activities or construction initiated before the issuance of all necessary permits shall be Class II violations.

**CLASS III – A Class III violation is a minor violation of a statute listed in 6 V.S.A. Chapter 215, a rule promulgated under 6 V.S.A. Chapter 215, or a related permit.**

**CLASS IV – A Class IV violation is a de minimis violation of a statute listed in 6 V.S.A. Chapter 215, a rule promulgated under 6 V.S.A. Chapter 215, or a related permit.**

## INITIAL PENALTY CALCULATION

Once the class of violation is determined, an initial penalty calculation must be made. Each of the following sections should be completed by circling the appropriate score.

- 1. The degree of actual or potential impact on public health, safety, and welfare:**
  - (a) No actual impact or minor potential impact 0
  - (b) Minor actual impact or moderate potential impact 1
  - (c) Moderate actual impact or major potential impact 2
  - (d) Major actual impact 3
  
- 2. The degree of actual or potential impact on the environment:**
  - (a) No actual impact or minor potential impact 0
  - (b) Minor actual impact or moderate potential impact 1
  - (c) Moderate actual impact or major potential impact 2
  - (d) Major actual impact 3
  
- 3. Did the respondent know or have reason to know that the violation existed:**
  - (a) Knowledge of the requirements:**
    - (i) New requirement 0
    - (ii) Had reason to know about violated requirement 1
    - (iii) Had a permit or permit by rule 2
    - (iv) Repeated the violation after written notice, sent by certified mail 3
  
  - (b) Knowledge of the facts of the violation:**
    - (i) Could not have reasonably known that the violation existed 0
    - (ii) Should have reasonably known that the violation existed 1
    - (iii) Some evidence that the respondent knew the violation existed 2
    - (iv) Clear evidence that the respondent knew the violation existed 3

**Lower number of 3(a) or 3(b)** \_\_\_\_\_

**4. The respondent's record of compliance with 6 V.S.A. Chapter 215 or related rules, permits, orders, or assurances of discontinuance in the seven years preceding the violation:**

The issuance of a 6 V.S.A. § 4992 corrective action letter or a 6 V.S.A. § 4991(7) consultation does not constitute a violation.

- (a) No prior violations 0
- (b) One prior violation 1
- (c) Two prior violations 2
- (d) Three or more prior violations 3

**5. The length of time the violation existed:**

This is not to be assessed if VAAFMM is also seeking continuing violation(s) under Section 8 because otherwise the fact that a violation is continuing would be considered twice in the calculating of the total penalty amount.

- (a) Immediate correction (*lasting up to one week*) 0
- (b) A violation of very short duration (*more than one week to one month*) 1
- (c) A violation of moderate duration (*more than one month to one year*) 2
- (d) A violation of long duration (*more than one year*) 3

**Total of Sections 1, 2, 3, 4, and 5** \_\_\_\_\_

**Comments, if any:**

**6. PERCENTAGE OF MAXIMUM PENALTY CALCULATION**

After Sections 1 through 5 have been scored and added to compute a total score, the initial penalty amount shall be determined by multiplying the applicable percentage based on the total score by the maximum penalty amount for the Class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class:

<u>Total Score</u>	<u>Percentage</u>	<u>CLASS I</u>	<u>CLASS II</u>	<u>CLASS III</u>	<u>CLASS IV</u>
1 - 5	50%	\$2,500.00	\$1,500.00	\$1,000.00	\$500.00
6 - 10	75%	\$3,750.00	\$2,250.00	\$1,500.00	\$750.00
11 - 15	100%	\$5,000.00	\$3,000.00	\$2,000.00	\$1,000.00

**INITIAL PENALTY AMOUNT BEFORE ADJUSTMENTS** \$ \_\_\_\_\_

**7. ECONOMIC BENEFIT & COST OF ENFORCEMENT ADJUSTMENT**

The penalty amount calculated in Section 6 may be adjusted when the respondent has realized an economic benefit as a result of the violation(s) and/or the State has incurred costs of enforcement related to the violation(s) by adding an amount equal to such economic benefit and/or enforcement costs to the penalty amount.

(a) Economic benefit \$ \_\_\_\_\_

*Calculation:*

(b) Cost of enforcement \$ \_\_\_\_\_

*Calculation:*

**Total of Sections 7(a) and 7(b)** \$ \_\_\_\_\_

**8. CONTINUING VIOLATIONS**

Any violation of a statute listed in 6 V.S.A. Chapter 215 or a rule thereunder or a condition of a related permit, order, or assurance of discontinuance that continues longer than one day may be considered a continuing violation subject to additional penalties for each day of continuance.

The continuing violation amount may be determined by multiplying the applicable percentage based on the total score by the per-day maximum continuing violation penalty for the class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class:

<b>Total Score</b>	<b>Percentage</b>	<b>CLASS I</b>	<b>CLASS II</b>	<b>CLASS III</b>	<b>CLASS IV</b>
1 - 5	50%	\$1,000.00	\$600.00	\$400.00	\$200.00
6 – 10	75%	\$1,500.00	\$900.00	\$600.00	\$300.00
11 -15	100%	\$2,000.00	\$1,200.00	\$800.00	\$400.00

(a) Per-day penalty amount for continuing violation \_\_\_\_\_

(b) Number of days constituting continuance of the violation \_\_\_\_\_

**Total of Sections 8(a) multiplied by 8(b)** \$ \_\_\_\_\_

**9. FINAL ADJUSTMENTS**

After the initial penalty amount and the amount of economic benefit and/or the costs of enforcement and the penalty for a continuing violation, if applicable, have been determined, the criteria below shall be considered.

(a) Mitigating circumstances \$ \_\_\_\_\_

If mitigating circumstances exist, the penalty may be reduced. Unreasonable delay by VAAFm in seeking enforcement shall be considered a mitigating circumstance. Mitigating circumstances may include factors outside the control of the respondent.

Explain:

(b) Deterrent effect \$ \_\_\_\_\_

The penalty amount may be increased up to the maximum allowed in the class of the violation if it is determined that a larger penalty is reasonably necessary to deter the respondent from committing this violation or similar violations in the future.

Explain:

**Total of Sections 9(a) and 9(b)** \$ \_\_\_\_\_

**FINAL PENALTY AMOUNT**

The maximum administrative penalty assessed for separate and distinct violations of 6 V.S.A. Chapter 215 shall not exceed \$5,000.00 for each violation, and the maximum amount of any administrative penalty assessed for separate and distinct violations of this chapter shall not exceed \$50,000.00. 6 V.S.A. § 4993(a)(5). If higher penalties are calculated, the violations may be referred to the Attorney General for civil enforcement.

**Initial Penalty** Section 6 \$ \_\_\_\_\_

**Economic Benefit and Enforcement Cost** Section 7 \$ \_\_\_\_\_

**Continuing Violation(s)** Section 8 \$ \_\_\_\_\_  
Amount per day \$ \_\_\_\_\_

**Final Adjustment** Section 9 \$ \_\_\_\_\_

**TOTAL PENALTIES:** \$ \_\_\_\_\_

---

Prepared by \_\_\_\_\_ Date \_\_\_\_\_

**ADMINISTRATIVE PENALTY GUIDANCE**

This Guidance is only intended to provide a listing of common violations and their typical class type. It is not intended to substitute for the consideration of each violation under Classification of Violations on page 1.

**Class I** (*Up to \$5,000.00 per violation per day*)

- Direct discharge
- Indirect discharge
- Evidence of past discharge
- Spreading waste in a conveyance (such as a ditch or stream)

**Class II** (*Up to \$3,000.00 per violation per day*)

- Livestock access to surface water in production area
- Spreading of manure in buffer and well setbacks
- Over-application of manure leading to runoff
- Spreading manure during the winter ban
- Stacking wastes, such as manure and compost, inappropriately (setbacks and floodplain requirements)
- Inadequate waste storage/lack of freeboard
- No Nutrient Management Plan (NMP) or inadequate NMP
- No Certification, Notice of Intent to Comply (NOIC), or request for Individual Permit (IP)

- Conservation practices not in place to prevent a discharge (also includes not managing barnyards, feedlots, etc.)
- Lack of operation and maintenance of conservation practices to prevent a discharge
- New, not modified, waste storage with no certification
- Non-payment of annual operating fees for Large Farm Operations (LFOs)
- No submittal of Appendix D of the Annual Compliance Report for LFOs

**Class III** (*Up to \$2,000.00 per violation per day*)

- Livestock access to surface water outside of production area
- Inadequate waste storage, not meeting permit of 180 days
- Lack of vegetative buffers
- Not following rotation in NMP
- Not meeting T in NMP
- Over-application of wastes/nutrients not leading to runoff
- NMP not up to date
- Modified or existing waste management system not certified (including field stack on LFOs)
- Construction initiated/completed without proper administrative process (National Flood Insurance Program (NFIP) requirements or Required Agricultural Practices (RAP) setbacks)
- Animal numbers over permitted threshold and/or operating a farm/structure not included in the farm's operational permit as executed even if requested (i.e. jumped the gun)
- Wastes are impacting groundwater (i.e. storage integrity, location, lack of storage, etc.) but not land application
- Non-payment of annual operating fees for Medium Farm Operations (MFOs)
- No submittal of Appendix D (annual compliance report) for MFOs

**Class IV** (*Up to \$1,000.00 per violation per day*)

- Record keeping (field application, crop yield, weather)
- Failure to notify town and/or Agency of construction of farm structure
- Non-payment of annual operating fees for Certified Small Farm Operations (CSFOs)
- No submittal of Appendix D (annual compliance report) for CSFOs
- Failure to notify VAAF of discharge