

901:10-5-04

Civil penalties.

(A) Civil penalty rules applicability. For purposes of this rule, facility means facilities as defined in rule 901:10-1-01 of the Administrative Code, or facilities operated pursuant to a review compliance certificate or major concentrated animal feeding facility as that term is defined in paragraph (M) in section 903.01 of the Revised Code.

(B) Consolidation. Each and every day of violation of any rule or statute of Chapter 903. of the Revised Code is a separate and distinct offense, and in cases of continuing violations, each day's continuance is a separate and distinct violation unless otherwise determined by the department or unless the violations are of sections 903.06(C) or 903.07(A) of the Revised Code. Proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.

(C) Hearing procedures. All adjudication hearings concerning violations cited in accordance with section 903.16 and section 903.17 of the Revised Code shall be conducted in accordance with Chapter 119. of the Revised Code. The director may consider the factors listed in paragraph (D)(1) of this rule in the adjudication hearing as presented by the parties.

(D) Civil penalty assessment.

The amount of a civil penalty shall be determined by the reasonable exercise of the director's discretion in considering the following factors

(1) The economic benefit (if any) resulting from the violation.

(2) The economic impact on the violator.

Comment: In considering economic impact, the director may consider such factors as cost of repairs, construction, installation including, but not limited to, installation of equipment, monitoring devices and related operational costs.

(3) Acts of nature or acts of third parties that resulted in or contributed to violations.

(4) Any history of such violations, including recalcitrance resulting in costs incurred by the director to enforce any previously issued final orders of the director.

(5) Any good-faith efforts to comply with applicable requirements.

(6) Any supplemental environmental projects that may be undertaken by the owner or operator to off-set some of the amount of civil penalty payable to the livestock management fund if the director finds that any project may enhance

the owner's or the operator's compliance by undertaking a project that is beyond any work or activities required by law or if the director agrees that any proposed supplemental environmental projects will enhance the environment.

(7) The seriousness or magnitude of the violation or violations.

(8) The gravity of effect of the violation or violations.

(9) Such other matters as justice requires.

(E) Penalty matrix.

(1) Applicability. The director may use the penalty matrix contained in this paragraph to modify a penalty amount derived from paragraph (D) of this rule by following this procedure:

(a) Determine the magnitude or seriousness of the violation as specified in paragraph (E) (2) (a) of this rule;.

(b) Determine the gravity of effect pertinent to the violation as specified in paragraph (E) (2) (b) of this rule; and

(c) Determine whether the violation is the first violation or past violation, and modify the penalty amount by reference to the appropriate matrix contained in paragraphs (F) to (K) of this rule.

(2) Penalty matrix.

(a) Categories of magnitude or seriousness.

(i) Category I (major):

(a) A violation of a department order issued as part of or in connection with a formal enforcement action;

(b) Failure to provide access to premises or records when required by statute, rule or order;

(c) Any discharge of manure that enters the waters of the state, either without a permit or from a point source not authorized by a permit unless the discharge has been reported as an emergency in accordance with rule 901:10-2-17 of the Administrative Code;

(d) Submitting records, reports or application forms which are false, misleading, or fraudulent;

- (e) Failure to provide notification of a known spill or upset condition that results in a non-permitted discharge into waters of the state;
- (f) Failure to comply with division (A) of section 903.07 of the Revised Code;
- (g) The presence of insects or rodents indicating a failure to comply with the insect and rodent control plan approved by the director in accordance with rule 901:10-2-19 of the Administrative Code.
- (h) Failure to apply for applicable permits or review compliance certificate;
- (i) Installing or operating facilities regulated under Chapter 903 of the Revised Code prior to issuance of applicable permits;
- (j) Failure to provide corrections specified by the director's designated representatives on any applicable permits or review compliance certificate; or
- (k) Upon completing construction authorized by a permit to install, failure to comply with paragraph (B)(2) of rule 901:10-2-01 of the Administrative Code.

(ii) Category II (moderate):

- (a) Failure to submit a plan or report if required by permit or rule;
- (b) Placing manure such that manure is likely to enter the waters of the state by any means;
- (c) Any violation of a department rule or order that is not classified elsewhere in these rules as major or minor or any failure to operate in accordance with approved best management practices;
- (d) Failure to maintain the freeboard requirements of approved best management practices; or
- (e) Failure to comply with the insect and rodent control plan approved by the director in accordance with rule 901:10-2-19 of the Administrative Code.

(iii) Category III (minor):

- (a) Any violation of record keeping requirements in approved best management practices.
 - (b) Failure to maintain records in accordance with rule 901:10-2-16 of the Administrative Code.
- (b) Gravity. The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to the public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:
 - (i) Gravity of effect high level:
 - (a) Significant injury to wildlife; or
 - (b) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment;
or
 - (c) High risk of or actual zoonotic disease transmission as determined by the director upon consultation with federal, state or local health agencies.
 - (ii) Gravity of effect medium level:
 - (a) Surface or groundwater contamination that causes short-term impact but does not meet the criteria of high level gravity of effect yet exceeds the definition of low gravity of effect and does not pose a significant threat to human health or the environment; or
 - (b) Insect and rodent populations in exceedance of target levels posing potential off-site impacts or posing a lower risk of zoonotic disease transmission.
 - (iii) Gravity of effect low level:
 - (a) Water contamination not found or not found at a level in excess of applicable water quality standards.

(b) Insect and rodent populations not found off-site but not in compliance with the approved plan for the facility.

(F) Civil penalty matrix for first violation of Chapter 903. of the Revised Code except violations of requirements for insect and rodent control plans which shall be assessed in accordance with division (B)(2) of section 903.16 of the Revised Code or violations of requirements for certified livestock managers which shall be assessed in accordance with division (B)(3) of section 903.16 of the Revised Code shall be assessed per day per violation.

	<u>Gravity of effect</u>		
<u>Magnitude of Violation</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Category I (Major)</u>	<u>Up to and including \$10,000</u>	<u>Up to \$3,200</u>	<u>Up to \$1,600</u>
<u>Category II (Moderate)</u>	<u>Up to \$2,400</u>	<u>Up to \$1,600</u>	<u>Up to \$800</u>
<u>Category III (Minor)</u>	<u>Up to \$1,000</u>	<u>Up to \$500</u>	<u>Up to \$200</u>

(G) Civil penalty matrix in the event of past violations of Chapter 903. of the Revised Code (except violations of requirements for insect and rodent control plans which shall be assessed in accordance with division (B)(2) of section 903.16 of the Revised Code or violations of requirements for certified livestock managers which shall be assessed in accordance with division (B)(3) of the Revised Code) shall be assessed per day per violation.

	<u>Gravity of effect</u>		
<u>Magnitude of Violation</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Category I (Major)</u>	<u>Up to \$10,000</u>	<u>Up to \$6,000</u>	<u>Up to \$3,200</u>
<u>Category II (Moderate)</u>	<u>Up to \$6,000</u>	<u>Up to \$3,200</u>	<u>Up to \$1,600</u>
<u>Category III (Minor)</u>	<u>Up to \$3,000</u>	<u>Up to \$1,600</u>	<u>Up to \$400</u>

(H) Civil penalty matrix for insect and rodent control plans. As set forth in division (D)

of section 903.10 of the Revised Code, the director may use this penalty matrix to assess a preliminary penalty amount for enforcement of section 903.06 of the Revised Code and shall exercise reasonable discretion in accordance with paragraph (D) of this rule.

Concentrated animal feeding facility - civil penalty matrix for insect and rodent control first violation per seven days.

	<u>Gravity of Effect</u>		
<u>Magnitude of Violation</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Category I (Major)</u>	<u>Up to \$5,000</u>	<u>Up to \$2,500</u>	<u>Up to \$1,000</u>
<u>Category II (Moderate)</u>	<u>Up to \$2,500</u>	<u>Up to \$1,500</u>	<u>Up to \$500</u>
<u>Category III (Minor)</u>	<u>Up to \$1,000</u>	<u>Up to \$500</u>	<u>Up to \$200</u>

(I) Concentrated animal feeding facility - civil penalty matrix for insect and rodent control in the event of past violations per seven days.

	<u>Gravity of effect</u>		
<u>Magnitude of Violation</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Category I (Major)</u>	<u>Up to \$10,000</u>	<u>Up to \$5,000</u>	<u>Up to \$2,000</u>
<u>Category II (Moderate)</u>	<u>Up to \$5,000</u>	<u>Up to \$2,500</u>	<u>Up to \$1,000</u>
<u>Category III (Minor)</u>	<u>Up to \$2,000</u>	<u>Up to \$1,000</u>	<u>Up to \$500</u>

(J) Major concentrated animal feeding facility - civil penalty matrix for insect and rodent control first violation per seven days.

	<u>Gravity of effect</u>		
<u>Magnitude of Violation</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Category I (Major)</u>	<u>Up to \$12,500</u>	<u>Up to \$7,500</u>	<u>Up to \$4,000</u>

<u>Category II</u> <u>(Moderate)</u>	<u>Up to \$7,500</u>	<u>Up to \$4,500</u>	<u>Up to \$2,500</u>
<u>Category III</u> <u>(Minor)</u>	<u>Up to \$4,000</u>	<u>Up to \$2,500</u>	<u>Up to \$1,500</u>

(K) Major concentrated animal feeding facility - civil penalty matrix for insect and rodent control in the event of past violations per seven days.

	<u>Gravity of effect</u>		
<u>Magnitude of Violation</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Category I (Major)</u>	<u>Up to \$25,000</u>	<u>Up to \$15,000</u>	<u>Up to \$7,500</u>
<u>Category II</u> <u>(Moderate)</u>	<u>Up to \$15,000</u>	<u>Up to \$9,000</u>	<u>Up to \$4,500</u>
<u>Category III</u> <u>(Minor)</u>	<u>Up to \$7,500</u>	<u>Up to \$4,500</u>	<u>Up to \$2,500</u>

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