

GENESEE COUNTY HEALTH DEPARTMENT DIVISION OF ENVIRONMENTAL HEALTH PENALTY DETERMINATION POLICY

Purpose:

As a regulatory agency, the Genesee County Health Department has the responsibility of enforcing the Sanitary Code of Genesee County and various sections of the New York State Public Health Law (NYSPHL) and State Sanitary Code (10NYCRR). Accordingly, identification of public health hazards or noncompliance with the requirements of one of the aforementioned regulations results in enforcement activities which may include formal stipulations, administrative hearings, issuance of Board of Health or Commissioner's Orders, levying of penalties, closures, etc.

The purpose of this policy is to categorize various public health hazards and develop a set of criteria for the establishment of a uniform, non-arbitrary set of guidelines, for setting an appropriate initial monetary penalty for a particular violation. This policy does not in any way affect the power of the Board of Health to sustain, modify, or rescind a particular penalty, when considering the recommendation of their appointed hearing officer, following due process.

Attachments:

1. NYS Environmental Health Manual – Technical Reference ADM 2
Categorization of Public Health Hazards
2. NYS Public Health Law, Article 3, Section 348.2
County Health Districts; Violations and Penalties
3. NYS Public Health Law, Article 3, Section 309(f)
Local Boards of Health; Penalties for Violation or Failure to Comply
4. NYS Public Health Law, Article 21, Title IV Rabies, Section 2141.4
Compulsory Vaccination; Violation and Penalty
5. NYS Public Health Law, Article 13-E, Section 1399-v
Regulation of Smoking; Penalties
6. NYS Public Health Law, Article 13-F, Section 1399-ee
Regulation of Tobacco Products-Distribution to Minors; Hearings & Penalties

Categorization:

Public health hazards have been categorized according to the New York State Environmental Health Manual and the New York State Public Health Law.

Category 1 – Public health hazards which require issuance of a formal notice of hearing or a written explanation as to why it should not be issued. This category represents the most serious hazards in terms of adversely affecting the public health.

Category 2 – Public health hazards where it is the normal procedure to issue a formal notice of hearing, but the decision is left to the inspecting officer with explanation.

Penalty Guidelines:

Initial violations of all types may be corrected without formal enforcement action with education and agreement between representatives of the Department and those cited, these actions are to be recorded on the inspection document. It is the policy of the Genesee County Health Department to obtain compliance through cooperative remedial actions. Formal enforcement will be pursued for repeated offenses, scoffs and when demanded by statute.

Penalties can be increased to statutory limits at the discretion of the Board of Health or designee, or as dictated by parts of 10NYCRR and the Public Health Law.

First Offense Stipulation Offer

Category 1 & 2 Public Health Hazard - \$100

Non-Public Health Hazard – Education/Compliance Agreement

Second Offense Stipulation Offer

Category 1 & 2 Public Health Hazard - \$250

Non-Public Health Hazard – \$50 +Education/Compliance Agreement

Third Offense Stipulation Offer

Category 1 & 2 Public Health Hazard - \$500

Non-Public Health Hazard – \$100 +Education/Compliance Agreement

Subsequent Offenses

No Stipulation Offer/Must Attend Hearing

Board of Health to Rule/Revoke Permit Possible

Failure to Stipulate/Attend Hearing

Revoke Permit/Double Amount of Stipulation Offer

Operating Without A Permit - \$100

(Included in Commissioner's CLOSURE ORDER)

Uncorrected Violation

(Missed Compliance Date in Stipulation or Order)

Closure and Stipulate to Maximum Monetary Penalty

Violating Closure Order – Removing/concealing placard –
Maximum Penalty Allowed by Law (\$2,000)

Three (3) years with no reoccurrence of the same cited violations “resets” the penalty escalation schedule.

Cost of Hearing

The expenses incurred by the Genesee County Health Department in the conducting of a formal hearing will be added to any financial penalty imposed as the result of an unsuccessful challenge to a Notice of Violation.

Non-permitted Facilities and Residential Sanitation

Violations of these items will be assessed monetary penalty as allowed by the local code. Stipulation and compliance schedule offers may offer incentives for timely remediation, typically reducing the monetary penalty to 10% of potential liability.

Closed Enforcement Cases

In an enforcement proceeding, a respondent cited for violating the Genesee County Sanitary Code, the New York State Sanitary Code or the New York State Public Health Law receives a Notice of Administrative Hearing. The respondent has the option of returning the signed stipulation offer. If the respondent chooses this option, the case will be considered officially closed at the next Board of Health meeting following the scheduled date of the hearing. If there are compliance dates to be met in the stipulation offer, the case may be left open until the respondent is in compliance.

§ 348. County or part-county health districts; sanitary codes; violations and penalties. 1. The provisions of the sanitary code of a county or part-county health district shall have the force and effect of law.

2. Any non-compliance or non-conformance with any provision of such sanitary code or of a rule or regulation, duly made thereunder shall constitute a violation punishable on conviction for a first offense by a fine of not more than two hundred fifty dollars or by imprisonment for not more than fifteen days or by both such fine and imprisonment; and for a second or subsequent offense by a fine not exceeding five hundred dollars or by imprisonment for not exceeding fifteen days, or both.

3. Certified copies of the sanitary code of a county or part-county health district shall be received in evidence in all courts and proceedings in the state.

§ 309. Local boards of health; quasi-judicial powers; enforcement. 1. Every local board of health may:

(a) issue subpoenas which shall be regulated by the civil practice law and rules;

(b) compel the attendance of witnesses;

(c) administer oaths to witnesses and compel them to testify;

(d) by resolution, designate one of its members to sign and issue such subpoenas;

(e) issue warrants to any peace officer, acting pursuant to his special duties, or police officer of the municipality to apprehend and remove such person or persons as cannot otherwise be subjected to its orders or regulations, and to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so;

(f) prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, or any of the regulations of the state sanitary code, not exceeding one thousand dollars for a single violation or failure, to be sued for and recovered by it in any court of competent jurisdiction; and

(g) appoint one or more hearing officers as shall be necessary to carry out its functions and duties, The hearing officer shall have the same powers possessed by the board to hold and conduct hearings. The hearing officer shall function under the supervision of the local board and shall make findings of fact and recommendations to the board.

2. No subpoena shall be served outside the jurisdiction of the board of health issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health.

3. Every warrant issued by a local board of health shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state.

4. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them misdemeanors or felonies or prescribing a penalty therefor.

5. The penalty imposed by this section may be released or compromised by the commissioner.

§ 2141. Compulsory vaccination. 1. Every dog, cat and domesticated ferret shall be actively immunized against rabies in accordance with regulations promulgated by the commissioner. Every dog, cat and domesticated ferret shall have all initial vaccinations administered no later than four months after birth. Every dog, cat and domesticated ferret shall have a second vaccination within one year of the first. Terms of subsequent vaccine administration and duration of immunity must be in compliance with USDA licenses of vaccines used. The veterinarian immunizing or supervising any person authorized by law to immunize such animal shall provide the owner with a certificate of immunization consistent with the requirements of section one hundred nine of the agriculture and markets law. The veterinarian immunizing or supervising any person authorized by law to immunize such animal shall provide any public health official with the certificate of immunization in any case involving a dog, cat or domesticated ferret which has been or may have been exposed to rabies or in any case of possible exposure of a person or another animal to rabies.

2. Subdivision one of this section shall not apply to any feral animal or any dog, cat or domesticated ferret:

(a) that is transported through the state and remains in the state fifteen days or fewer;

(b) confined to the premises of an incorporated society devoted to the care of lost, stray or homeless animals;

(c) for which vaccination against rabies would adversely affect the animal's health, as determined by a licensed veterinarian; or

(d) confined for the purposes of research to the premises of a college or other educational or research institution.

3. (a) Every veterinarian providing treatment to a dog, cat or domesticated ferret shall verify, in accordance with standards established by the commissioner, if such animal is actively immunized against rabies or is exempt under subdivision two of this section. If active immunization or exemption cannot be verified, the veterinarian shall immunize the animal at the owner's request.

(b) If the animal is exempt from the provisions of subdivision one of this section, pursuant to paragraph (c) of subdivision two of this section, the veterinarian shall provide the owner of the dog, cat or domesticated ferret with a certified statement verifying that the animal is exempt from immunization because the immunization would adversely affect the health of the animal, and verifying the nature and duration of such exemption. The certified statement shall be in a form prescribed by the commissioner and shall be consistent with the requirements of section one hundred nine of the agriculture and markets law. Medical exemptions are to be renewed on an annual basis.

4. The owning of a dog, cat or domesticated ferret by any person in violation of subdivision one of this section shall constitute a violation, and shall be subject to a fine not to exceed two hundred dollars for each offense.

§ 1399-v. Penalties. The commissioner may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in subdivision one of section twelve of this chapter. Any other enforcement officer may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in paragraph f of subdivision one of section three hundred nine of this chapter.

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§ 1399-ee. Hearings; penalties. 1. Hearings with respect to violation of this article shall be conducted in the same manner as hearings conducted under article thirteen-E of this chapter.

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, he or she shall impose a civil penalty of a minimum of three hundred dollars, but not to exceed one thousand dollars for a first violation, and a minimum of five hundred dollars, but not to exceed one thousand five hundred dollars for each subsequent violation, unless a different penalty is otherwise provided in this article. The enforcement officer shall advise the retail dealer that upon the accumulation of three or more points pursuant to this section the department of taxation and finance shall suspend the dealer's registration. If the enforcement officer determines after a hearing that a retail dealer was selling tobacco products while their registration was suspended or permanently revoked pursuant to subdivision three or four of this section, he or she shall impose a civil penalty of twenty-five hundred dollars.

3. (a) Imposition of points. If the enforcement officer determines, after a hearing, that the retail dealer violated subdivision one of section thirteen hundred ninety-nine-cc of this article with respect to a prohibited sale to a minor, he or she shall, in addition to imposing any other penalty required or permitted pursuant to this section, assign two points to the retail dealer's record where the individual who committed the violation did not hold a certificate of completion from a state certified tobacco sales training program and one point where the retail dealer demonstrates that the person who committed the violation held a certificate of completion from a state certified tobacco sales training program.

(b) Revocation. If the enforcement officer determines, after a hearing, that a retail dealer has violated this article four times within a three year time frame he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to revoke the dealer's registration for one year.

(c) Duration of points. Points assigned to a retail dealer's record shall be assessed for a period of thirty-six months beginning on the first day of the month following the assignment of points.

(d) Reinspection. Any retail dealer who is assigned points pursuant to paragraph (a) of this subdivision shall be reinspected at least two times a year by the enforcement officer until points assessed are removed from the retail dealer's record.

(e) Suspension. If the department determines that a retail dealer has accumulated three points or more, the department shall direct the commissioner of taxation and finance to suspend such dealer's registration for six months. The three points serving as the basis for a suspension shall be erased upon the completion of the six month penalty.

(f) Surcharge. A fifty dollar surcharge to be assessed for every violation will be made available to enforcement officers and shall be used solely for compliance checks to be conducted to determine compliance with this section.

4. (a) If the enforcement officer determines, after a hearing, that a retail dealer has violated this article while their registration was suspended pursuant to subdivision three of this section, he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to permanently revoke the dealer's registration and not permit the dealer to obtain a new registration.

(b) If the enforcement officer determines, after a hearing, that a vending machine operator has violated this article three times within a two year period, or four or more times cumulatively he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to suspend the vendor's registration for one year and not permit the vendor to obtain a new registration for such period.

5. The department shall publish a notification of the name and address of any retailer violating the provisions of this section and indicate the number of times the dealer has violated the provisions of this section. The notification shall be published in a newspaper of general circulation in the locality in which the retailer is located.

6. (a) In any proceeding pursuant to subdivision three of this section to assign points to a retail dealer's record, the retail dealer shall be assigned one point instead of two points where the retail dealer demonstrates that the person who committed the violation of section thirteen hundred ninety-nine-cc of this article held a valid certificate of completion from a state certified tobacco sales training program.

(b) A state certified tobacco sales training program shall include instruction in the following elements:

- (1) the health effects of tobacco use, especially at a young age;
- (2) the legal purchase age and the additional requirements of section thirteen hundred ninety-nine-cc of this article;
- (3) legal forms of identification and the key features thereof;
- (4) reliance upon legal forms of identification and the right to refuse sales when acting in good faith;
- (5) means of identifying fraudulent identification of attempted underage purchasers;
- (6) techniques used to refuse a sale;
- (7) the penalties arising out of unlawful sales to underage individuals; and
- (8) the significant disciplinary action or loss of employment that may be imposed by the retail dealer for a violation of the law or a deviation from the policies of the retail dealer in respect to compliance with such law.

(c) A tobacco sales training program may be given and administered by a retail dealer duly registered under section four hundred eighty-a of the tax law which operates five or more registered locations, by a trade association whose members are registered as retail dealers, by national and regional franchisors who have granted at least five franchises in the state to persons who are registered as such retail dealers by a cooperative corporation with five or more members who are registered as retail dealers and are operating in this state, and by a wholesaler supplying fifty or more retail dealers. A person or entity administering such training program shall issue certificates of completion to persons successfully completing such a training program. Such certificates shall be prima facie evidence of the completion of such a training program by the person named therein.

(d) A certificate of completion may be issued for a period of three years, however such certificate shall be invalidated by a change in employment.

(e) Entities authorized pursuant to paragraph (c) of this subdivision to give and administer a tobacco sales training program may submit a proposed curriculum, a facsimile of any training aids and materials, and a list of training locations to the department for review. Training aids may include the use of video, computer based instruction, printed materials and other formats deemed acceptable to the department. The department shall certify programs which provide instruction in the elements set forth in paragraph (b) of this subdivision in a clear and meaningful fashion. Programs approved by the department shall be certified for a period of three years at which time an entity may reapply for certification. A non-refundable fee in the amount of three hundred dollars shall be paid to the department with each application.

Chapter 162 of the Laws of 2002 has amended Article 13-F of the Public Health law (a.k.a., Adolescent Tobacco Use Prevention Act (ATUPA))

Effective date: October 21, 2002

The amendment establishes a point based penalty system for sustained violations against a **RETAIL** tobacco dealer for a sale of tobacco to a minor

How Points Are Assigned

- Two (2) points will be assigned for each sustained violation
- One (1) point will be assigned if the staff selling the product possesses a valid training certificate from a Department certified training course. It is the operator's responsibility to provide documentation that proves the clerk possessed valid training at the time of the sale.
- One (1) point will also be assessed for sustained violations involving sales to minors that occurred from 9/1/00 – 10/21/02 that have not been used as the basis for suspension or revocation under the pre 10/21/02 law.

Penalties For The Accumulation Of Points

- Accumulating three points will now require the suspension of the retailer's Department of Taxation and Finance (DTF) registration to sell tobacco and, where applicable, their lottery license for six (6) months.
- Regardless of the number of points, any four (4) violations of Article 13-F that occur within a three (3) year period will now be the basis for a one (1) year suspension of a retail dealer's registration and lottery license.
- Lottery licenses will no longer be permanently revoked for violations of Article 13-F
- Any retail dealer that has points on his/her record requires two re-inspections annually until all points are removed.

Removal of Points

- The point(s) assigned after a sustained violation will be removed after three (3) years, unless the retail dealer's registration is suspended. In the case of a suspension, upon completion of the six (6) month registration suspension, the three points leading to the suspension will be removed.

Fines

Remain the same, with the exception of a \$50 surcharge which applies to all violations

- 1st Violation \$300 - \$1,000 + surcharge
- Subsequent Violation \$500 - \$1,500 + surcharge