



GENESEE & ORLEANS COUNTY HEALTH DEPARTMENTS

DIVISION OF ENVIRONMENTAL HEALTH

PENALTY DETERMINATION POLICY

Purpose:

As a regulatory agency, the Genesee & Orleans County Health Departments have the responsibility of enforcing the Sanitary Code of Genesee & Orleans Counties 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 & Orleans County Health Departments 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 & Orleans County Health Departments 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 & Orleans County Sanitary Codes, 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.

Attachment 1

NEW YORK STATE DEPARTMENT OF HEALTH OFFICE OF PUBLIC HEALTH CENTER FOR ENVIRONMENTAL HEALTH TECHNICAL REFERENCE	ITEM NO: ADM 2 DATE: 3/3/03
	SUBJECT: Enforcement and Sanitary Code Compliance at Regulated Facilities Page 1 of 10

PURPOSE

To provide local health departments with guidance regarding enforcement and State Sanitary Code compliance at facilities regulated by the State Sanitary Code.

POLICY

Specific actions must be taken by the owner/operator of a regulated facility and the local health department whenever a violation of the State Sanitary Code results in a public health hazard. As specified in the State Sanitary Code (Subparts 6-1, 6-2, 7-2 and 14-1, and Part 15), an owner/operator of a regulated facility must immediately correct all public health hazards or take action to prevent public exposure to the hazard. Public water systems must also comply with provisions in Subpart 5-1, including correcting public health hazards and notifying the public to prevent undue exposures. In addition, the local health department should take administrative actions to assure future compliance so that cited hazards do not recur. Formal enforcement should be initiated when certain facilities are cited for public health hazards or when other specific circumstances, described below, exist.

DISCUSSION AND IMPLEMENTATION

A public health hazard is any condition which poses an imminent threat to the health or safety of the public, i.e., it puts the public at risk. A regulated facility with an uncorrected public health hazard should be prohibited from operating that portion of the facility that would impact the public, unless discontinuing water service would create an additional hazard, such as discontinuing water service to a community system. In these cases, other actions to protect public health, such as boil water orders, or public notifications, should be immediately initiated.

Guidance for proper closure procedures at children's camps is available in Environmental Health Manual (EHM) Technical Reference CSFP 156. Procedures for closing migrant farm worker housing facilities are set forth in Public Health Law (PHL) Section 1330. The guidance for managing a Public Water Supply Emergency is available in EHM Procedure PWS 152, and for managing or executing a Boil Water Notice see EHM Technical

When a public health hazard has been corrected or mitigated, action to assure future compliance and that the hazard does not recur should be initiated. One or a combination of the following methods should be pursued: (1) Education to provide knowledge and motivation; (2)

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Negotiation of a Voluntary Compliance Schedule through informal office conferences; or, (3) Formal Enforcement, especially when necessary to gain correction of the hazard or in response to certain repetitive hazards or other circumstances. (Formal enforcement includes administrative hearings, formal stipulations, court actions and/or closures. It does not include informal office conferences and non-binding compliance timetables.)

When formal enforcement is required, the respondent should ordinarily be served with a Notice of Violation and Notice of Hearing as soon as possible and within 30 days of the violation. The notice may include a stipulation offer, consent order, or equivalent offer to settle that gives the respondent an opportunity to admit to the charges and agree to a settlement which may include fines, and/or a time table of compliance. The Stipulated Settlement or equivalent should include an agreement to correct existing violations and/or avoid future violations. If the respondent accepts the stipulation offer, the hearing may be avoided. The respondent should be given no more than 15 days to respond to the hearing notice/stipulation offer.

PERMIT ISSUANCE/RENEWAL

1. Permits should not be renewed for operators who have not paid their assessed fines as ordered, or who have not arranged for a payment schedule, or not met compliance schedule requirements.

2. The compliance or non-compliance history of an operator should be taken into account when determining whether or not a permit should be issued or renewed (State Sanitary Code Sections 7-2.4(d), 14-1.190(d) and Part 15.4(c)). Operators with a history of repetitive health hazard violations requiring multiple formal enforcement actions should be denied permits based on their compliance history.

ENFORCEMENT ACTIONS FOR OTHER STATE SANITARY CODE/PHL VIOLATIONS

The existence of a public health hazard at a regulated facility is not the sole justification for initiating a formal enforcement action. A formal enforcement action should be initiated when other solutions are not available or effective, or when circumstances leave no other viable options. In some instances, an enforcement action should be taken even though the hazard is immediately corrected. Some circumstances involving willful violations that put the public at risk are so egregious that they demand formal enforcement. Other circumstances when formal enforcement action should be considered include: operating without a permit; repetitive and/or severe sanitation violations; failure to report injury/illness incidents; or failure to meet monitoring and/or analytical requirements.

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Public water supplies meeting the definition of a significant non-complier (SNC), as defined in United States Environmental Protection Agency guidance and in EHM Technical Reference PWS 239, are subject to either a voluntary compliance agreement or a formal enforcement action (see EHM Technical Reference PWS 239).

CATEGORY 1 AND 2 PUBLIC HEALTH HAZARDS

A list identifying Category 1 and Category 2 public health hazards by code section is provided in Attachment 1. When a public health hazard is identified, the inspector must take action to obtain prompt compliance and insure the hazard does not recur. Actions could include education, compliance schedules and/or formal enforcement. For a Category 1 public health hazard, if a formal enforcement action is not initiated, the decision not to initiate a formal enforcement action should be documented in the facility’s written record and a local health department supervisor should endorse this action. A decision not to initiate formal enforcement when a Category 2 public health hazard is identified need not be documented in the file.

**ATTACHMENT 1
PUBLIC HEALTH HAZARDS**

Technical Reference ADM 2

Code Section	Public Health Hazard	Enforcement Category
Part 5 Public Water Supply		
5-1.1 (ar)(1)	Repetitive violations of specific drinking water quality standards, or any E.coli violation.	1
5-1.1(ar)(2)	Use of a water supply source or alteration of a treatment process necessary to protect public health without Health Department approval.	1
5-1.12(a)	Refusal to take the appropriate actions in response to deteriorating source water quality or diminished effectiveness of treatment with potential for MCL violation.	2
5-1.22(a)	Construction or modification of a public water system without Health Department approval.	2
5-1.23(b)	Unplanned, or inadequately planned disruption of water service to a minimum of 25 individuals or 15 service connections, or a minimum of one percent of the total number of individuals served or service connections for a period of four hours or more.	2
5-1.25	Failure to disinfect repaired facilities prior to restoring to service.	2
5-1.27	Inadequate distribution system pressure.	2
5-1.30(a)	Inadequate disinfection of a groundwater source	1
5-1.30(b)	Failure to install filtration facilities for a surface water source after June 29, 1993, unless the supplier can meet specific avoidance criteria.	1
5-1.30(b)	Inadequate disinfection of a surface water source or a groundwater source directly influenced by surface water.	1
5-1.30(b)(2)	Failure to maintain a free chlorine residual disinfection concentration in the water entering the distribution system of at least 0.2 mg/l for more than four hours.	1
5-1.30(g)	Failure to maintain a free chlorine residual in representative points in the distribution system.	2
5-1.31(a)	Failure to protect the water distribution system from cross connections of sufficient hazard to adversely affect water consumers' health.	1
5-1.32	Uncovered reservoir without adequate disinfection.	1

5-1.71(a)	Failure to exercise due care and diligence in the maintenance and/or supervision of all sources of the public water system which results in an insufficient quantity of water to meet drinking or sanitary demands.	2
5-1.71(b)	Failure to exercise due care and diligence in the operation and maintenance of a public water system.	2
Part 6 Swimming Pools and Bathing Beaches		
6-1.4(b)(1) 6-2.4(b)(1)	Failure to provide adequate supervision.	1
6-1.4(b)(2)	Failure to provide the minimum disinfectant residual levels listed in various sections of this Subpart.	2
6-1.4(b)(3)	Failure to continuously operate the swimming pool's filtration and disinfection equipment.	2
6-1.4(b)(4) 6-2.4(b)(4)	Use of an unapproved or contaminated water supply source for potable water use.	1
6-1.4(b)(5) 6-2.4(b)(2)	Overhead electrical wires within 20 feet horizontally of the swimming area.	1
6-1.4(b)(6)	Unprotected electrical circuits or wiring within ten feet of the swimming pool.	1
6-1.4(b)(7)	Failure to maintain emergency lighting sources as required in Section 6-1.17(h) of this Subpart.	2
6-1.4(b)(8) 6-2.4(b)(3)	Absence of all required lifesaving equipment.	1
6-1.4(b)(9)	Swimming pool bottom not visible.	1
6-1.4(b)(10)	Absence of or improper depth markings at a swimming pool.	1
6-1.4(b)(11)	Plumbing cross-connection between the drinking water supply and swimming pool water or between sewerage system and the swimming pool's filter backwash facilities.	1
6-1.4(b)(12)	Failure to provide and maintain an enclosure around the swimming pool area that will prevent access to the swimming pool, during the hours in which the pool is not open for use.	1
6-1.4(b)(13)	Use of unapproved chemicals or the application of chemicals by unapproved methods to the swimming pool water.	2
6-1.4(b)(14)	Broken or missing main drain grate in the swimming pool.	1

6-1.4(b)(15)	Overcrowding of the swimming pool that results in poor supervision of bathers.	2
6-1.4(b)(16)	Glass or sharp objects in swimming pool or on deck area.	2
6-2.4(b)(5)	Failure to meet water quality standards contained in Section 6-2.15 of this Subpart.	2
6-2.4(b)(6)	The existence of sewage and wastewater discharges in the bathing area.	1
6-2.4(b)(7)	Failure to properly delineate swimming area boundaries.	2
6-2.4(b)(8)	Failure to provide signs indicating swimming is prohibited when the bathing beach is closed or unsupervised.	2
Subpart 7-1 Temporary Residences		
7-1.6(b)	No employee emergency training plan.	1
7-1.6(c)	Required fire detection system, sprinklers, exit or smoke barrier doors, emergency lights, or exit signs not maintained.	2
7-1.9(b)	Heat-producing equipment causing a fire hazard or inadequate venting.	1
7-1.9(c)	Flammable, volatile liquids or hazardous materials not stored correctly.	2
7-1.11(a)	Failure to provide or maintain required exits.	1
7-1.16(a)	Water Supply public health hazards as listed for Part 5.	-
7-1.16(c)(4)	Sewage on ground accessible to occupants; in food storage or preparation areas or polluting a water supply or bathing beach.	1
7-1.20(a)	Food Service public health hazard as listed for Part 14.	-
7-1.31	Bathing Facilities public health hazard as listed in Part 6.	-
Subpart 7-2 Children's Camps		
7-2.1(b)	Any condition which could be expected to be responsible for illness, physical injury or death.	1
7-2.1(b)(2)(l)	Supervision of children not in accordance with the supervisory or personnel qualification standards prescribed in sections 7-2.5 and 7-2.25.	1a
7-2.1(b)(2)(v)	Sewage on ground surface in areas accessible to children or which may contaminate food or pollute water supply or bathing beach.	1
7-2.1(b)(2)(xxii)	Public Health hazards designated in Parts 5, 6 and 14 of SSC.	-

7-2.1(b)(2)(vii)	Implementation of the camp medical plan not under supervision of camp health director; at camps for developmentally disabled, medication is not under supervision of licensed or certified individual.	1
7-2.1(b)(2)(viii)	Children transported in the bed of a truck; children transported without counselor supervision in vehicle.	1
7-2.1(b)(2)(ix)	Camp waterfront not under the direct supervision of the camp aquatics director or their assistant.	2
7-2.1(b)(2)(x)	Minimum safety equipment in Part 6 of this Title not provided at the waterfront or swimming pool. Depth markings not provided at swimming pools or at piers, floats and platforms used for diving.	1
7-2.1(b)(2) (xi)	Failure to provide fencing or other security to prevent unsupervised use of a pool.	1
7-2.1(b)(2) (xii)	Failure to use personal floatation equipment during boating or other waterfront activities.	1
7-2.1(b)(2)(xiii)	Failure to establish and enforce Buddy System and Board System or other generally accepted method of accounting for bathers.	1
7-2.1(b)(2)(xiv)	Permitting diving in hazardous areas.	1
7-2.1(b)(2)(xv)	Riflery conducted without adequate supervision or on a range hazardous to campers or the general public.	1
7-2.1(b)(2)(xvi)	Archery or horseback riding not under the direction of competent instructors with equipment and facilities installed and maintained to eliminate hazards.	1
7-2.1(b)(2)(xvii)	Overcrowding of sleeping quarters resulting in inadequate spacing of bunks or blockage of fire exits, failure to supervise children in sleeping quarters.	1
7-2.1(b)(2)(xviii)	Failure to provide two fire exits where required or blockage of a required fire exit by locking or other obstruction.	1
7-2.1(b)(2)(xix)	Failure to provide a fire alarm system in multi-story buildings.	1
7-2.1(b)(2)(xx)	Installation of stoves or heating equipment constituting a fire hazard or inadequate venting of fumes.	1
7-2.1(b)(2)(xxi)	Failure to properly store flammable liquids and toxic substances.	2
7-2.1(b)(2)(xxii)	Failure to maintain fire fighting equipment in working order.	
Subpart 7-3 Campgrounds		
7-3.5(b)(1)(i)	The condition of the electric service, wiring or electrical system components is such that an imminent fire or shock hazard exists.	1

7-3.5(b)(1)(ii)	The potable water system serving the campground contains contaminants in excess of the maximum contaminant levels prescribed in applicable sections or Part 5 of this Chapter or section 7-3.13(b) of this Subpart.	1
7-3.5(b)(1)(iii)	Use of an unapproved water supply source.	1
7-3.5(b)(1)(iv)	Insufficient quantity of water to meet drinking or sanitary demands.	2
7-3.5(b)(1)(v)	The treatment of the campground water system, when required for disinfection or removal of contaminants, is not continuous	1
7-3.5(b)(1)(vi)	Disinfection which is inadequate to destroy harmful microorganisms or to maintain a specified chlorine residual	1
7-3.5(b)(1)(vii)	The presence of cross connections or other faults in the water distribution or plumbing systems which result, or may result, in the contamination of the potable water supply.	1
7-3.5(b)(1)(viii)	Inadequately treated sewage discharging on the ground surface in an area accessible to campground occupants or which may result in pollution of a ground or surface water supply or bathing beach	1
7-3.5(b)(1)(ix)	If food service is provided at the campground by the operator or a food vendor, the presence of any of the public health hazards defined in section 14-1.10(b) and (c) of Subpart 14-1 of this Chapter.	-
7-3.5(b)(1)(x)	Where pools or beaches are provided, the presence of any of the public health hazards defined in sections 6-1.4(b) of Subpart 6-1 of Part 6 of this Chapter or section 6-2.4(b) of Subpart 6-2 of Part 6 of this Chapter.	-
Subpart 7-5 Agricultural Fairgrounds		
7-5.5(b)(1)(i)	The potable water serving the agricultural fairground contains one or more contaminants in excess of one or more maximum levels prescribed in applicable sections of Part 5 of this Title and/or Section 7-5.12(g) of this Subpart.	1
7-5.5(b)(1)(ii)	Use of an unapproved or contaminated water supply source.	1
7-5.5(b)(1)(iii)	Insufficient quantity of water to meet drinking or sanitary demand.	2
7-5.5(b)(1)(iv)	Hazardous or toxic chemical contamination of the potable water supply.	1
7-5.5(b)(1)(v)	Disinfection of the potable water supply which is inadequate to destroy harmful microorganisms or to maintain a specified chlorine residual.	1

7-5.5(b)(l)(vi)	The presence of cross-connections or other faults in the agricultural fairground's water distribution or plumbing system which results, or may result, in the contamination of the potable water supply.	1
7-5.5(b)(l)(vii)	The storage of animal waste at the agricultural fairground in a manner which results, or may result, in contamination of a water supply.	1
7-5.5(b)(l)(viii)	Inadequately treated sewage discharging on the ground surface in location accessible to agricultural fairground occupants which results, or may result in contamination of water supply.	1
7-5.5(b)(l)(ix)	If food service is provided by the agricultural owner, the presence of any public health hazard identified in Section 14-1.10(b) or (c) of this Title.	-
Part 14 Food Service Establishments		
14-1.10(b)(1) 14.2.3(a) 14-2.4 14.4.20(b)(1) 14.5.10(b)(1)	Food is present in the establishment from an unapproved or unknown source or which is or may be adulterated, contaminated or otherwise unfit for human consumption.	1
14-1.10(b)(2) 14-2.3(c)&(d) 14-4.20(b)(2) 14-5.10(b)(2)	Potentially hazardous food is held for a period longer than that necessary for preparation or service at a temperature greater than 45 degrees Fahrenheit (60 degrees Celsius).	2
14-1.10(b)(3) 14-2.3(d) 14-2.4 14-4.20(b)(3) 14-5.10(b)(3)	Potentially hazardous food exposed to consumer or other contamination is served again.	1
14-1.10(b)(4) 14-4.20(b)(4) 14-5.10(b)(4)	Toxic items are improperly labeled, stored or used.	2
14-10(b)(5) 14-2.16 14-4.20(b)(5) 14-5.10(b)(5)	Persons with disease or infection which can be transmitted by food or drink are not restricted to prevent food contamination within the food service establishment.	1
14-1.10(c)(1) 14.2.9 14-4.20(b)(6)	Potable water supply within a food service establishment is not in conformance with the requirements of Part 5 of this Title. (See public health hazards for Part 5.)	-
14-1.10(c)(2) 14-2 14-4.20(b)(7) 14-5.10(b)(7)	Any cross-connection or other fault in the potable water system which may permit contamination of the potable water supply. (See public health hazards for Part 5).	-

14-1.10(c)(3) 14-2.11(a) 14-4.20(b)(8) 14-5.10(b)(8)	Sewage or liquid waste is not disposed of in an approved and sanitary manner, sewage or liquid waste contaminates any food, food storage areas, food preparation area or area frequented by consumers or employees.	1
Part 15 Migrant Farmworker Housing		
15.3(b)(2)(i)	The condition of the electric service, wiring, or electrical system components is such a that an imminent fire or shock hazards exists.	1
15.3(b)(2)(ii)	Installation or operation of stoves, including cook stoves, or other heat producing equipment constituting a fire hazard or inadequate venting of fumes.	1
15.3(b)(2)(iii)	Failure to provide required fire exits, or blockage of a required exit by locking or other obstruction.	1
15.3(b)(2)(iv)	Use of construction materials resulting in an imminent fire, or structural safety hazard.	2
15.3(b)(2)(v)(vi) and (vii)	Water supply public health hazards as listed in Part 5.	-
15.3(b)(2)(viii)	Inadequately treated sewage discharging on the ground surface in an area accessible to camp occupants, or in a manner which may contaminate food service areas, or result in pollution of a ground or surface water supply sources.	1
15.3(b)(2)(ix)	Storage of hazardous materials, including agricultural chemicals and pesticides, or their containers in a manner which is hazardous to the health or safety of the housing occupants, or contamination of housing by hazardous materials that are hazardous to the health and safety of the housing occupants.	2
15.3(b)(2)(x)	Other conditions which constitute a public health hazard.	1
Part 17 Mobile Home Parks		
17.6(a)	Public health hazards as listed in Part 5.	-
17.6(a)(1) and (2)	Drinking water not supplied in adequate quantity.	2
17.6(b)(6)	Inadequately treated sewage on the ground surface in areas accessible to children, or which may pollute a source of water supply or discharge to any other surface waters used for bathing or other recreational purposes.	1
17.6(c)	Any electrical hazard that poses an imminent fire or shock potential.	1
17.9	Inadequate anchoring as required in the Residential Code of New York State, Appendix E.	2

Article 3

1. § 348. County or part-county health districts; sanitary codes; violations and penalties. 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.

Article 3

§ 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.

Article 21
Title IV Rabies

§ 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) (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.

Article 13-E

§ 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.

Article 13-F

§ 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