

**DAR-23**  
**Article 19 Violation Penalty Policy for**  
**Short Form Orders on Consent**

New York State Department of Environmental Conservation

**DEC Program Policy**

<b>Issuing Authority:</b> Christopher M. LaLone, P.E.	<b>Title:</b> Director, Division of Air Resources
<b>Signature:</b> 	
<b>Date Issued:</b>	<b>Latest Date Revised:</b>

I. **Summary:** This Program Policy provides a consistent approach to address air violations<sup>1</sup> where the potential for harm and any actual harm to public health, the environment, or the regulatory system is minor. The penalty ranges and guidance contained in this Policy will assist Department Staff in efficiently and fairly deterring future violations and assessing appropriate penalties. Additionally, this policy will provide the regulated community with greater certainty regarding penalties for minor violations. Any adjustment that exceeds the ranges suggested by this Policy (other than the total payable penalty amount not exceeding \$10,000 and the total assessed amount not exceeding \$20,000, which are not adjustable) must be approved by the Regional Attorney. For air violations that are not considered minor and are therefore not covered by this Policy, Department Staff should consult **DAR-24** to calculate an appropriate civil penalty for the purpose of administrative settlement.

Note that penalty calculations performed in anticipation of litigation are exempt from disclosure under the Freedom of Information Law. Pursuant to §4547 of the Civil Practice Law and Rules of the State of New York, all evidence or conduct of

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<sup>1</sup> This Program Policy may also apply to other 6 NYCRR Subparts promulgated under NYS Environmental Conservation Law ("ECL") Article 19, which are implemented by Programs outside of the Division of Air Resources.

negotiations or settlement are inadmissible as evidence as proof of liability for, or invalidity of, the claim which is disputed, as to either validity or amount of damages.

This Program Policy supersedes Program Policies **DEE-23**, dated March 14, 2005, and **DEE-5**, dated December 20, 1985, including the following **DEE 5 Appendices**:

- Appendix I, dated December 20, 1985;
- Appendix II, dated July 6, 1998;
- Appendix II.1, dated August 15, 1995;
- Appendix II.2, dated July 6, 1988;
- Appendix II.3, dated July 29, 1996;
- Appendix IV, dated March 21, 1991;
- Appendix IV (1994 Revision), dated November 1, 1994;
- Appendix V, dated September 30, 1991;
- Appendix VI, dated April 15, 1994;
- Appendix VII (including 5/31/95 revision), dated November 29, 1994; and
- Appendix VIII, dated April 23, 1996.

## **II. Policy:**

### **A. Appropriate Cases**

This Policy applies only to cases involving minor violations, including but not limited to violations of regulations described in Appendix I to this document.<sup>2</sup> For air violations that are not considered minor and are therefore not covered by this Policy, Department Staff should consult **DAR-24** to calculate an appropriate civil penalty for the purpose of administrative settlement. For additional clarification, the following specific violations are **not** covered by this Policy and instead are covered by **DAR-24**:

- "High Priority Violations," ("HPVs") as the U.S. Environmental Protection Agency defines that term:
  - Note: HPVs include those violations which involve exceedance(s) of permitted emission limits by a synthetic

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<sup>2</sup> Note that the Subparts included in Appendix I are intended to represent violations that the Department most frequently encounters. However, as noted by fn.1, this Program Policy may also apply to other 6 NYCRR Subparts promulgated under ECL Article 19, and the Clean Air Act, 42 U.S.C. 7401 et seq., as amended by Public Law 101-549, to the extent incorporated by reference into State law, as long as the violation is considered minor. In those cases, Department staff are encouraged to review the suggested penalty ranges for similar violations to determine an appropriate penalty for the current case.

minor source where the exceedance(s) would classify the source as a major source.

- where the owner or operator repeatedly violates regulatory requirements;
- where the owner or operator violates requirements outside the scope of those identified in Appendix I;
- where the owner or operator fails to cooperate in good faith to return to and remain in compliance with all applicable requirements under Article 19 or any other applicable state and/or federal requirement;
- violation(s) that may:
  - cause serious short-term public health impacts, such as an emergency incident requiring medical treatment;
  - result in serious long-term public health impacts;
  - involve exceedance(s) of an applicable emission standard and cannot be remedied without installation of, or major modification to, pollution control equipment, or process equipment;
  - have been committed intentionally, knowingly, recklessly, or with any of the culpable mental states defined in Penal Law §15.05;
  - warrant a penalty that exceeds the guidelines set forth in §IV.3 of this Policy; or
  - be expected to require corrective action(s) that exceed six months (180 days) or more in duration.

## **B. Appropriate Penalties**

Consistent with the Civil Penalty Policy, a penalty is warranted when a violation occurs unless the respondent provides documentation of compelling circumstances to the contrary (e.g., inability to pay) as described further in this Section. Department Staff should use the penalty amounts in this Policy only when they will adequately address the violations and result in an effective level of deterrence against future non-compliance. The penalty matrix contained within Appendix I should not be used only to promote prompt settlement.

Individual circumstances may warrant assessment of higher penalties, and this Policy does not preclude Department Staff from exercising their discretion to seek such penalties as appropriate, provided the penalty guidelines for Short Form Consent Orders are followed. In all circumstances, Department Staff should consider any variable factors unique to a facility and impose the appropriate penalty for the particular offense in accordance with the Civil Penalty Policy (DEE-1). Examples of when the imposition of a civil penalty in excess of the Policy guidelines below may be appropriate include instances of ongoing violations continuing over an extended period (defined according to Department Staff's discretion based upon a case-by-case assessment of the violation), where the Department identifies multiple violations, or when violations occur in non-attainment areas.

Exceptional circumstances with significant mitigating factors may warrant a lower penalty than provided for (e.g., the source can make a credible demonstration of inability to pay, has cooperated fully with the Department to come into compliance, and is otherwise in compliance with all other applicable regulations promulgated pursuant to NYS ECL Article 19). In determining whether a deviation from the stated penalty range is appropriate, Department Staff should refer to DEE-1 and ECL § 71-2115. Further, for violations requiring corrective action not expected to exceed six months (180 days) in duration, Department Staff may consider suspending a portion of the administrative penalties when deemed appropriate<sup>3</sup> and after accounting for the following considerations:

- timeliness in response to violation;
- any history of past violations;
- cooperative efforts toward compliance;
- severity of violation and relative risk to human health; and
- other extenuating circumstances.

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<sup>3</sup> Note that the Department is not permitted to suspend penalties that do not have an associated compliance schedule, as suspending a penalty must be contingent upon completion of an action delineated in the Consent Order, thus binding the suspended penalty to the specific terms of the Consent Order. See DEE-1 VI.B. If there is no compliance schedule in the proposed Consent Order, Department Staff should instead consider lowering the gravity component of the penalty as described in DEE-1 IV.E and document those revisions in a memo to file. Generally, when lowering the gravity component of the penalty, Department Staff should consider a percentage of 0-20% for each factor as described in DEE-1 IV.E.

Written documentation should be made in support of any suspended penalty determination and kept in the case file. The violator will not be required to pay the amount suspended if the violator complies with all provisions of the Consent Order. For minor violations covered by this policy, the penalty adjustment range for suspended penalties is 0-100%, depending on the facts of the case and Department Staff's analysis of the above factors. If Department Staff is considering suspending 50% or more of the originally calculated penalty, the Regional Attorney should be consulted. Regardless of Regional Attorney approval, the suspended portion of the penalty may not exceed 80% of the total penalty without prior approval of the General Counsel.

Any adjustment that exceeds the ranges suggested by this Policy (other than the total payable penalty amount not exceeding \$10,000 and the total assessed amount not exceeding \$20,000, which are not adjustable) must be approved by the Regional Attorney.

### **C. Penalty Considerations**

The following should be considered when determining an appropriate penalty:

- Civil penalty guidelines for certain violations which may be resolved by means of a Short Form Consent Order are listed in the table attached as Appendix I. This Appendix is limited to the gravity component of the penalty. Pursuant to DEE-1, any economic benefit (i.e., the economic benefit that results from avoiding or delaying costs related to complying with the law) must be recovered in addition to the indicated amounts in Appendix I. If the gravity component combined with any economic benefit exceeds a payable penalty of \$10,000, Department Staff must refer the matter to the Regional Attorney for appropriate enforcement. When payable penalties are less than \$10,000, Short Form Consent Orders are typically not referred to the Regional Attorney.
- If the facility owner or operator has violated more than one regulatory requirement, Department Staff must assess (but are exempted from disclosing publicly) a separate civil penalty for each violation when calculating the appropriate overall penalty and resultant settlement offer.

- In addition to payment of appropriate penalties and consistent with the Order on Consent Enforcement Policy (OGC-11), Short Form Consent Orders must require that Respondents pay any regulatory fees (plus any penalties and interest) owed to the Department either for operation without a permit or in a way that would require a different type of permit in addition to and separate from any civil penalty fees owed pursuant to the Short Form Consent Order. If regulatory fees are owed, Department Staff conducting the enforcement action should coordinate with Management and Budget Services to ensure that the proper amount of regulatory fee is collected via a separate invoice. In addition, Department Staff should alert the Office of General Counsel if total regulatory fees, when combined with the total payable penalty, amounts to fifty-thousand dollars or more for tax form purposes.
- Environmental Benefit Projects may not be used in Short Form Consent Orders.

As noted earlier in this Policy, penalty calculations performed in anticipation of litigation are exempt from disclosure under the Freedom of Information Law.

Pursuant to §4547 of the Civil Practice Law and Rules of the State of New York, all evidence or conduct of negotiations or settlement are inadmissible as evidence as proof of liability for, or invalidity of, the claim which is disputed, as to either validity or amount of damages.

**III. Purpose:** This Policy applies to administrative settlements of DEC enforcement actions involving minor violations of NYS ECL Article 19, the implementing regulations set forth in Part 200 *et seq.* and Part 494 of Title 6 of the New York Codes, Rules and Regulations, and the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended by Public Law 101-549, November 15, 1990, to the extent incorporated by reference into State law. ECL Article 71 and the State Administrative Procedure Act empower the Commissioner of Environmental Conservation to issue Orders on Consent ("Consent Orders"). Consistent with OGC-11, this Policy authorizes the use of Short Form Consent Orders by Department Staff and Office of General Counsel Legal Staff for specified minor violations and provides guidance for their use, pursuant to the penalty calculations and other requirements found in DEE-1.

As noted in DEE-1, the purpose of enforcement guidance is to assist Department Staff in efficiently and fairly deterring and addressing violations. The consistent implementation of this policy will provide the regulated community with greater certainty regarding the Department's enforcement response to minor air violations

and ensure that those who comply with the law are not placed at a competitive disadvantage.

This document should be used in conjunction with DEE-1; OGC-11; Record of Compliance Policy (DEE-16); and Small Business Self-Disclosure Policy. The policies and procedures set out in this document are intended solely for the use and guidance of Department Staff. They are not intended to create any substantive or procedural rights, enforceable by any party in administrative or judicial litigation with the State of New York. The Department of Environmental Conservation reserves the right to act in contradiction with these policies and procedures at its sole discretion.

When used by Department Staff, this Policy may only be used for settlement purposes. It is not to be used in determining penalties at a hearing or trial. In accordance with DEE-1, however, penalties in "adjudicated cases must, on average and consistent with consideration of fairness, be significantly higher" than the amounts suggested below.

**IV. Background:** Short Form Consent Orders facilitate the efficient resolution of minor violations and encourage facility owners and operators to expeditiously come into compliance with applicable rules and regulations. Consistent with OGC-11, Short Form Consent Orders are appropriate where:

1. Remedial and/or corrective action is not required or has been satisfactorily completed in accordance with program directives or where only minor compliance activity lasting no more than six months duration is anticipated to be required after approval of the Program Supervisor and Regional Attorney;
2. The Short Form Order has been endorsed as to form by the Regional Attorney and as to content by the appropriate program supervisors and/or program Attorney, where necessary; and
3. The penalty amount assessed does not exceed \$20,000, provided that:
  - a. the payable portion of the penalty amount assessed does not exceed \$10,000; and
  - b. if warranted and when all other elements of the policy are followed, the suspended penalty portion of the penalty amount assessed does not exceed \$10,000.

**V. Responsibility:** The Division of Air Resources (DAR)<sup>4</sup> is responsible for implementing the procedures described in this policy. The Office of General Counsel (OGC) is responsible for advising Department staff regarding compliance with this and other DEC policies, including but not limited to the policies referenced in this policy. Regional Air Permit Control Engineers (RAPCEs) will typically be responsible for ensuring that a case has merit and that use of the Short Form Consent Order by their Staff<sup>5</sup> is appropriate. Because Short Form Consent Orders are designed to provide facility owners and operators with a relatively straightforward means of coming into compliance, such matters must be resolved expeditiously. Accordingly, the offer to settle violations by Short Form Consent Order in accordance with this guidance must be limited to a period not to exceed thirty (30) days. **All cases that are not promptly resolved must be referred to the Regional Attorney for appropriate enforcement.**

## **VI. Procedure**

### **1. Notice of Violation**

Within 30 days of discovering a violation which may be resolved via a Short Form Consent Order, Staff should issue a written Notice of Violation ("NOV") via certified mail, return receipt requested. The NOV should succinctly state the specific regulatory, statutory, and/or permit provision the respondent violated and the dates the violations occurred; factual, legal, and policy considerations should not be included. If available, Department Staff should attach any supporting documentation of the violation as appropriate. For violations other than mobile sources, a NOV is generated by the Air Facility System ("AFS") when documenting violations. A model NOV cover letter to be used for matters addressed under this Policy is found in Appendix II. For mobile source violations wherein AFS does not generate a NOV, a model NOV to be used for matters addressed under this Policy is found in Appendix III.

For all other violations covered by this Policy wherein AFS is not used, the model NOV in Appendix III can be used as a template.

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<sup>4</sup> Or, for certain regulations implemented pursuant to Article 19, the Office of Climate Change.

<sup>5</sup> Or other Program staff enforcing other 6 NYCRR Subparts promulgated under NYS ECL Article 19 for Programs outside of Division of Air Resources.

## **2. Short Form Consent Order**

The model Short Form Consent Order to be used for matters addressed under this Policy is found in Appendix IV.

The Short Form Consent Order should be drafted in a manner that thoroughly states the specific regulatory, statutory, and/or permit provision(s) the respondent violated, the dates the violation(s) occurred, how the Department determined the existence of the violation(s), and, if appropriate, the amount of any regulatory fees, and any penalty and interest thereon, owed. Staff should not deviate from the language of the model or accept any signed Consent Order to which a respondent has made changes without the review and approval of the assigned Office of General Counsel attorney and/or Regional Attorney. The Office of General Counsel or Regional Legal Secretary should be contacted to obtain a case number for the Consent Order.

## **3. Department Review and Execution**

In addition to any other regional or program procedures, all regional Short Form Consent Orders negotiated by regional Air Resources Staff<sup>6</sup> must be approved by the Regional Attorney as to form before their submission to the Regional Director for execution. After issuance of the Order, the respondent(s) must be served with a fully executed copy of the Consent Order via a mechanism that guarantees proof of service, such as email, certified mail, return receipt requested, or hand delivery pursuant to OGC-11. Penalties shall be paid directly to the Division of Management and Budget Services, Revenue Accounting Services, either via check or electronic payment, in accordance with Department policy and as further detailed within the Consent Order.

Information pertaining to all executed Consent Orders must be properly recorded and handled in accordance with Department policy.

### **Related References**

Order on Consent Enforcement Policy (OGC-11) (issued February 27, 2020)

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<sup>6</sup> Or other Program staff enforcing other 6 NYCRR Subparts promulgated under NYS ECL Article 19 for Programs outside of Division of Air Resources.

Civil Penalty Policy (DEE-1) (issued 06/20/1990)

Calculation of Penalties for Air Violations at Stationary Sources (DAR-24) (issued [REDACTED])

Commissioner's Policy 49 "Climate Change and DEC Action" (CP-49) (issued 10/22/2010, last revised 12/14/2022)

## Appendix I

Assessed Penalty Guidelines for Minor Violations - Gravity Component	
Violation	Penalty
<p><b>Part 201, Failure to Make a Timely Application for a State Facility Permit or Registration:</b></p> <p>Where a source, other than a "major stationary source" as defined in 6 NYCRR 201-2.1, fails to make a timely application for a State Facility permit or fails to register with the Department pursuant to 6 NYCRR 201-1.2. This includes the failure to make a timely application for permit renewals and modifications.</p> <p><b>Note:</b> Failure to submit a timely application for a Clean Air Act Title V Major Stationary Source Permit under 6 NYCRR 201-6 cannot be addressed under this Policy, is likely a HPV, and must be referred to the Regional Attorney for appropriate enforcement as violations of this nature warrant penalties exceeding \$10,000.</p>	<p><b>Permit Applications:</b></p> <p>\$3,000 - \$10,000: 0 to 365 days late Additional \$2,000 for every additional year of noncompliance</p> <p><b>Registrations:</b></p> <p>\$500 - \$5,000: 0 to 365 days late Additional \$2,000 for every additional year of noncompliance</p>
<p><b>Violations of Specified Reporting and Record Keeping Requirements:</b></p> <p>Any failure:</p> <ul style="list-style-type: none"><li>• to submit a compliance certification report or any other information, including but not</li></ul>	<p><b>Submissions:</b></p> <p>In all circumstances, delinquent reports must be promptly submitted and penalties for any reported exceedance(s) must be assessed as appropriate. Failure to promptly submit reports shall result in added penalties. <b><u>All penalty recommendations correlate to a single</u></b></p>

<p>limited to protocols, reports, analyses, summaries, and schedules, required to be submitted to the Department pursuant to 6 NYCRR Chapter III or IV, as promulgated under NYS ECL Article 19;</p> <ul style="list-style-type: none"> <li>• to submit a required emission statement or a stack test report to the Department;</li> <li>• to retain for up to 5 years and submit to the Commissioner fuel analyses, information on the quantity of fuel received, burned, or sold, and the results of stack sampling, stack monitoring, and other procedures;</li> <li>• to satisfy any other reporting and record keeping requirements found in 6 NYCRR Chapter III or IV, as promulgated under NYS ECL Article 19;</li> <li>• to notify the EPA Administrator of construction or startup dates of an affected facility.</li> </ul>	<p><b><u>failure to submit a report or other information (i.e., penalties are to be calculated per missing report).</u></b></p> <p><b>Penalties:</b></p> <p><b>Major stationary sources:</b></p> <p>\$500 - \$3,000: less than 60 days late  \$2,000 - \$10,000: 60 to 180 days late</p> <p><b>Note:</b> if over 180 days late, refer to the Regional Attorney for appropriate enforcement.</p> <p><b>Non-major stationary sources:</b></p> <p>\$500 - \$1,000: less than 60 days late  \$750 - \$3,000: 60 to 180 days late  \$1,500 - \$10,000: more than 180 days late</p>
<p><b>Violations of the following Performance Testing and Monitoring Requirements:</b></p> <p>Any failure:</p> <ul style="list-style-type: none"> <li>• to conduct an initial performance test in violation of 40 CFR 60.8(a), to perform any emission test in violation of NYS regulations, or to satisfy the performance testing</li> </ul>	<p><b>Submissions:</b></p> <p>In all circumstances, delinquent reports must be promptly submitted and penalties for any reported exceedance(s) must be assessed as appropriate. Failure to promptly submit reports shall result in added penalties.</p> <p><b>Penalties:</b></p>

<p>requirements set forth in 40 CFR 63.7;</p> <ul style="list-style-type: none"> <li>• to satisfy any other testing and/or monitoring requirements in a New York State permit;</li> <li>• to satisfy the monitoring requirements set forth in 40 CFR 63.8;</li> <li>• to satisfy the notification requirements set forth in 40 CFR 63.9.</li> </ul>	<p><b>Major stationary sources:</b></p> <p>\$500 - \$3,000: less than 60 days late  \$2,000 - \$10,000: 60 to 180 days late</p> <p><u>Note:</u> if over 180 days late, refer to the Regional Attorney for appropriate enforcement.</p> <p><b>Non-major stationary sources:</b></p> <p>\$500 - \$1,000: less than 60 days late  \$750 - \$3,000: 60 to 180 days late  \$1,500 - \$10,000: more than 180 days late</p> <p><u>Note:</u> A testing and/or monitoring violation that, via a case-by-case analysis conducted by EPA Region 2 and DAR Staff, substantially interferes with enforcement of an applicable requirement and/or determination of a source's compliance is considered an HPV and is not covered by this policy.</p>
<p><b>Subparts 227-1.4, 211.2, 212-1.6, and 228-1.3, Opacity:</b></p> <p>Excess opacity periods in violation of 6 NYCRR Subparts 227-1.4, 211.2, 212-1.6, and 228-1.3, which must be reported pursuant to 6 NYCRR 227-1.4 and 227-1.5(b)(2)(i). Each six-minute period is a separate violation.</p> <p>Cases with up to 25 six-minute exceedances of the opacity standard in consecutive calendar quarters may be eligible for treatment under this policy.</p>	<p><b>Each six-minute period:</b></p> <p>\$500 if opacity <math>\leq</math> 20%  \$750 if opacity <math>&gt;</math> 20%</p> <p><u>Note:</u> Refer all instances of non-operational COMs to the Regional Attorney for appropriate enforcement.</p>
<p><b>Subparts 228-1 and 228-2, Surface Coating, and Subpart 234, Graphic Arts:</b></p> <p>Violations of VOC content limits and work practice requirements at non-major sources.</p>	<p><b>Facilities in Severe Non-Attainment Areas:</b></p> <p>\$1,000 - \$5,000: facilities emitting less than 5 tons per year of VOCs (actual)</p>

<p>Program Staff should review available records to determine the degree to which VOC content limits were exceeded and/or the duration of the violation(s) when determining the appropriate penalty.</p>	<p>\$3,000 - \$7,500: facilities emitting 5 to 12.5 tons per year of VOCs (actual)  \$5,000 - \$10,000: facilities emitting more than 12.5 tons per year but less than 25 tons per year of VOCs (actual)</p> <p><b>Facilities in Other Areas, including Areas Previously in Severe Non-Attainment:</b></p> <p>\$500 - \$10,000: facilities emitting less than 50 tons per year of VOCs (actual)</p> <p>Program Staff has discretion to consider the higher end of the penalty range for facilities located in previous severe non-attainment areas.</p>
<p><b>Subpart 200.7, Maintenance of Emission Control Equipment:</b></p> <p>Any corrective action must <b>not</b> involve extensive repairs of equipment and all work must be completed within a short time frame. A referral to Legal and a significantly higher penalty, as discussed in <b>DAR-24</b>, is appropriate where the violation contributed to the exceedance(s) of an applicable emission limit, where extensive repairs are necessary, or where major modifications to pollution control equipment are necessary.</p>	<p><b>Major stationary sources:</b>  \$5,000 - \$10,000</p> <p><b>Non-major stationary sources:</b>  \$500 - \$5,000</p>
<p><b>Subpart 218, New Vehicle Emissions Standards:</b></p> <p>Dealers selling or leasing noncomplying vehicles and improper record keeping. Such cases will typically be handled by the Bureau of Mobile Sources working in conjunction with Central Office Legal Staff.</p>	<p><b>First Violation - Sale, Lease, Registration, or Access Offense:</b>  \$2,000</p> <p><b>Second and Subsequent Violations - Sale, Lease, Registration, or Access Offense:</b> \$2,500 per violation, or higher to the statutory limit</p> <p><b>First Violation - Installing, selling, offering for sale, or advertising a non-complying catalytic converter:</b> \$750</p>

**Second and Subsequent Violations-  
Installing, selling, offering for sale, or  
advertising a non-complying catalytic  
converter:** \$1,000 per violation, or higher to  
the statutory limit

**First Violation - Failure to permit an  
authorized representative of the  
Department the right of entry to the  
premises as permitted in Part 218:  
\$1,000**

**Second and Subsequent Violations –  
Failure to permit an authorized  
representative of the Department the  
right of entry to the premises as  
permitted in Part 218:** \$2,000 per violation,  
or higher to the statutory limit

**First Violation – Failure to permit an  
authorized representative of the  
Department to examine records as  
permitted in Part 218:** \$1,000

**Second and Subsequent Violations –  
Failure to permit an authorized  
representative of the Department to  
examine records as permitted in Part  
218:** \$2,000 per violation, or higher to the  
statutory limit

**First Violation – Failure to maintain  
records as required by Part 218: :  
\$1,000**

**Second and Subsequent Violations -  
Failure to maintain records as required  
by Part 218:** \$2,000 per violation, or higher  
to the statutory limit

**Note: Manufacturers** should pay at least  
\$5,000 per vehicle for delivery for sale or  
for sale in New York and \$1,000 to  
\$2,000 for record keeping offenses.

**Subpart 230, Gasoline Dispensing Sites and Transport Vehicles:**

Vapor Collection System violations

Failure to replace or modify any worn or ineffective component to ensure vapor tight integrity and efficacy of Stage I vapor control systems. Failure to decommission Stage II systems pursuant to 6 NYCRR Part 230.3(d).

\*Applies to all GDF's in NYCMA with annual throughputs of  $\geq 800,000$  gallons

\*Applies to all GDF's outside of the NYCMA with annual throughputs of  $\geq 1,200,000$  gallons

Note:

\*GDF's in NYCMA with annual throughputs  $<800,000$  gallons are not subject to Stage I test requirements.

\*GDF's outside of the NYCMA with annual throughputs  $<1,200,000$  gallons are not subject to Stage I test requirements.

The following **minimum** amounts apply:

**\$500** for any of the following violations:

- **Face Plate** missing, torn more than 25%, or separated more than 25%;
- **Latch Ring** missing;
- **Check Valve** improperly installed;
- **Vapor Return Line** improperly installed;
- Failure to minimize **on-site gasoline spills**
- **Instructions/800 Number** not posted or incorrect number.
- **Coax Drop Tube** installed improperly or damaged;
- **Retractor Assembly** broken;
- **Check Valve** missing or not functioning properly;
- **Product Fill Cap or Vapor Cap** not making vapor tight seal due to gasket missing and/or cap broken;

**\$1,000** for any of the following violations:

- **Hose:** any damage to a hose that prevents the hose from functioning properly, including, but not limited to the following:
  - slit(s) or tear(s),
  - hole(s),

- hose weather checked to allow vapor loss,
- hose improper length,
- hose crushed or kinked, or
- hose repaired using unapproved method (e.g. tape or glue).
- **Product Fill Cap or Vapor Cap** cracked, missing, or not installed;
- **Stage I Valve** (poppet/dry break) not making vapor tight seal;
- **Gasoline storage tank** submerged, fill pipe not installed.

**\$1,500** for the following violations:

- Failure to submit a passing **Stage I Static Pressure Test report** to the Department once every 3 years;
- Failure to submit a passing **P/V Vent Valve(s) Test report** to the Department once every 3 years;
- Failure to properly connect and/or ensure a vapor tight connection of **Stage I Vapor**

	<p><b>Recovery</b> during fuel delivery to a gasoline dispensing site gasoline transport vehicle: <b>\$5,000/failure</b>)</p> <ul style="list-style-type: none"> <li>• <b>Failure to remove Stage II Vapor Recovery</b> systems by February 12, 2022.</li> </ul> <p><b>\$2,000</b> for first, <b>\$5,000</b> for second violation(s) of any of the following:</p> <ul style="list-style-type: none"> <li>• <b>Stage I Valve</b> (poppet/dry break) missing or defeated;</li> </ul> <p><b>Other minimum amounts:</b></p> <p>Failure to pressure-vacuum test gasoline transport vehicle annually and/or failure to keep a copy of the most recent pressure-vacuum test results with the gasoline transport vehicle: <b>\$1,000/truck</b>;</p> <p>Excessive vapor leakage during truck loading/unloading of fuel: <b>\$1,000/truck</b>.</p> <p><b>FINES DOUBLE FOR ANY REPEAT VIOLATIONS UNDER 6 NYCRR PART 230 WITHIN 24 MONTHS.</b></p>
<b>Subpart 232, Dry Cleaning Facilities</b>	<p><b>\$1,000</b> for any of the following violations:</p> <ul style="list-style-type: none"> <li>• Failure to have a trained/certified perc dry cleaning operator operating the dry cleaning equipment according to 232-2.6;</li> </ul>

	<ul style="list-style-type: none"> <li>• Improper operation and maintenance of the perc dry cleaning equipment according to 232-2.6;</li> <li>• Vapor barrier room improperly constructed, operated and maintained according to 232-2.4 (a) (1) &amp; (2);</li> <li>• End of Cycle (EOC) perc drum concentration greater than 1.25 times the allowable limit for a 4<sup>th</sup> generation machine;</li> <li>• measured fugitive perc emission concentration of 50 ppm or greater emanating from any unintended openings in the dry cleaning system;</li> <li>• Improper handling of hazardous waste according to 232-1.4;</li> <li>• Failure to operate without a certified operator, owner/manager per 232-2.10(a);</li> <li>• Improper operation and maintenance of alternate solvent dry cleaning equipment per 232-3.5.</li> </ul>
<b>Subpart 217-3, Idling Diesels</b>	<p><b>First incident:</b> \$500 - \$1,000 per vehicle  <b>Second incident:</b> \$1,000 - \$5,000 per vehicle  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement.</p>
<b>Subpart 247, Outdoor Wood Boilers</b>  Violations including but not limited to: use of prohibited fuels; allowance of emissions of air contaminants to the outdoor atmosphere of a quantity, characteristic or duration which is	<p><b>First incident:</b> \$500 - \$1,000  <b>Second incident:</b> \$2,500 - \$5,000  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>

<p>injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life or property; creation of a smoke plume with an opacity of 20 percent or greater (six minute mean) as determined using EPA Reference Method 9 (or equivalent); sale, lease, or operation of uncertified boiler; location of boiler; boiler smoke contact with neighboring property.</p>	
<p><b>Subpart 226, Solvent Cleaning Processes and Industrial Cleaning Solvents</b></p> <p>Violations of storage, handling, transfer, and/or disposal requirements, as well as violations involving noncompliant cleaners and solvents.</p>	<p><b>First incident:</b> \$750  <b>Second incident:</b> \$1,500  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>
<p><b>Subpart 219-4, Human and Animal Crematories</b></p> <p>Violations of particulate emissions, temperature limitations, or opacity limitations;</p> <p>Burning of prohibited materials;</p>	<p><b>First incident:</b> \$1,000  <b>Second incident:</b> \$3,000  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p> <p><b>First incident:</b> \$1,500  <b>Second incident:</b> \$3,000  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>
<p>Failure to maintain cremation authorization forms, crematory operator certification(s), or other required records;</p> <p>Failure to perform annual inspection and maintenance;</p>	<p><b>First incident:</b> \$500  <b>Second incident:</b> \$1,000  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p> <p><b>First incident:</b> \$1,000  <b>Second incident:</b> \$3,000  <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>
<p><b>Part 215, Open Fires</b></p>	<p><b>First incident:</b> \$500-2,500</p>

<p>Open burning prohibited by Part 215 Department Staff should review and determine appropriate penalty level from suggested penalty ranges based upon size, contents, and location of fire</p>	<p><b>Second incident:</b> \$1,000-5,000 <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>
<p><b>Subpart 225-1, Sulfur-in-fuel Limitations</b></p> <p>Violations of sulfur-in-fuel limitations. Department Staff should review and determine appropriate penalty level with special attention to degree of willfulness in carrying out violation.</p>	<p><b>Major Stationary Sources:</b> <b>First incident:</b> \$5,000-10,000 <b>Second incident:</b> \$7,250-10,000 <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p> <p><b>Non-major stationary sources:</b> <b>First incident:</b> \$1,500-5,000 <b>Second incident:</b> \$5,000-10,000 <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>
<p><b>Part 212, Process Operations</b></p> <p>Violations of particulate emissions or opacity limitations;</p> <p>Violations of sampling and monitoring requirements not involving high toxicity air contaminant emissions;</p>	<p><b>Major Stationary Sources:</b> <b>First incident:</b> \$2,500/first day, \$1,000 subsequent days <b>Second incident:</b> \$5,000/first day, \$2,500 subsequent days <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p> <p><b>Non-major stationary sources:</b> <b>First incident:</b> \$1,000/first day, \$500 subsequent days <b>Second incident:</b> \$2,000/first day, \$1,000 subsequent days <b>Subsequent incidents:</b> refer to the Regional Attorney for appropriate enforcement</p>

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## Appendix II

### Model Notice of Violation Cover Letter

[Insert Date]

#### CERTIFIED-RETURN RECEIPT REQUESTED

[Insert Respondent Addressee Information]

RE: [Insert Violation Information]

[Insert Address of Violation]

#### NOTICE OF VIOLATION

Dear [Insert Respondent Name]:

PLEASE TAKE NOTICE THAT YOU ARE IN VIOLATION OF THE NEW YORK STATE AIR POLLUTION CONTROL LAW, Article 19 of the Environmental Conservation Law ("ECL"), and applicable regulations as set forth therein, in connection with operation of [Insert Violation Information] located at [Insert Address of Violation]. [Insert Description of Violation] in the documented manner constitutes a violation of Article 19 of the ECL and the regulations promulgated thereunder. Please see enclosed Notice of Violation (NOV) dated [Insert Date of NOV].

Any inquiries, submissions, and requests relating to the enclosed NOV should be directed to: [Insert Issuing Staff Name, Contact Information, and NYSDEC Office Location].

By: \_\_\_\_\_

[Insert Issuing RAPCE/Regional Engineer Name<sup>7</sup>]

[Insert Signatory's Title]

[Insert NYSDEC Office]

Enclosures

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<sup>7</sup> Or other Program Staff enforcing Article 19 violations, as applicable.

## Appendix III

### Model Notice of Violation for Mobile Violations (where AFS does not generate a NOV)

Owner/Operator: \_\_\_\_\_

Address: \_\_\_\_\_

Facility Name and Location: \_\_\_\_\_

DMV Dealer Facility Number (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

#### **NOTICE OF VIOLATION**

On the date and place noted above, you violated the New York State Environmental Conservation Law (ECL) and 6 NYCRR [**Insert Subpart(s)**], a State Regulation promulgated pursuant to the ECL, in that you caused or permitted the following activities to occur:

[**Insert description of violation(s)**]

**YOU ARE HEREBY DIRECTED TO CEASE AND DESIST** from violating the ECL and 6 NYCRR [**Insert Subpart(s)**]. Failure to cease and desist from such violation(s) within the terms of this Notice of Violation and the accompanying Consent Order will subject you to new liability for such additional violation(s) and may cause DEC to assess a larger monetary penalty or fine, per violation, than would otherwise be assessed.

If you do not contest the above violations, an authorized person(s) [e.g., head of company named as respondent (if agent, please provide proof of authorization to sign)] should sign and date the Consent Order in the space titled "Respondent" and send the complete form to the attention of: [**Insert where and to whom payment and partially executed CO should be sent**].

**IF YOU DO NOT RESPOND TO THIS NOTICE BY RETURNING THIS DOCUMENT AFTER SIGNING THE CONSENT ORDER SET FORTH BELOW WITHIN THIRTY (30) DAYS, DEC WILL BRING CIVIL ENFORCEMENT PROCEEDING AGAINST YOU.** Please be advised that significant penalties will be sought if this matter is brought to a hearing.

Issuing Inspector: \_\_\_\_\_

## Appendix IV

### Model Short Form Consent Order

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X  
CONSENT ORDER

In the Matter of Violations of Article 19 of the

Environmental Conservation Law and [Insert Subpart(s)]

Violation(s)] of Title 6 of NYCRR

Index No.

-By-

[Insert No.]

[Insert Respondent Name and include location if  
necessary],

Respondent.

-----X

**WHEREAS**, The New York State Department of Environmental Conservation (the “Department”) is an Executive Agency of the State of New York (the “State”) with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law (“ECL”) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR” or the “Regulations”);

**WHEREAS**, This Order on Consent (“Order”) is issued in accordance with the Department’s enforcement authority pursuant to ECL Articles 3 and 71;

**WHEREAS**, [Insert Respondent Name], [maintaining a place of business] or [residing at] at [Insert Respondent Address], and is a “person” as defined in ECL §1-03030(18) and 19-0107(1);

**WHEREAS**, [Insert Respondent Name] (“Respondent(s)”), violated the provisions of Article 19 of the New York State Environmental Conservation Law (“ECL”), and Part [Insert Subpart(s) Violation(s)] of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”);

**WHEREAS**, the violations consist of [describe violations and what the relevant Subpart(s) require];

**WHEREAS**, Respondent, having waived the right to a hearing on the violation(s) recited herein and having admitted the violation(s), after due consideration having been had

thereon, and it appearing that this Order will be advantageous to the State;

**NOW, HAVING CONSIDERED THIS MATTER, IT IS HEREBY ORDERED**, pursuant to the applicable provisions of the ECL and/or 6 NYCRR, that:

**I. [Insert only if applicable to violations]**

**Compliance Schedule.** Respondent is bound by, and agrees to follow and comply with the terms, provisions, and requirements set forth in this Order, including Appendix A, which is incorporated and made enforceable herein.]

**II. Civil Penalty.** With respect to the violation(s) identified in this Order, the Department hereby assesses against Respondent a civil penalty in the amount of [Insert Penalty Amount] to be paid as follows:

- A. **Payable Penalty:** [Insert Penalty Amount] shall be paid when Respondent signs this Order and returns it to the Department. Payment must be made by certified check or money order (payable to the "Department of Environmental Conservation") or online (<http://www.dec.ny.gov/about/61016.html#On-Line> ). The signed copy of the Order (and check or money order, if penalty is not paid online) shall be sent to:

NYS Department of Environmental Conservation  
Division of Management and Budget Services  
Attn: Revenue Department  
625 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12233-4900

**B. [Only include if suspended penalties included]**

**Suspended Penalty:** The remaining balance of the penalty, in the sum of [Insert Suspended Penalty Amount], shall be suspended, and shall not be payable provided that the Respondent fully complies with the requirements of this Order, including the Schedule of Compliance attached hereto. If, in the Department's sole discretion, Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within thirty (30) days of receiving written notice from the Department that such penalties are due. ]

- C. The penalty assessed in the Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover

the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty become due.

- III. General Conditions Applicable to Submissions Required Under this Order.** The following conditions apply to the submissions required under the compliance directives of this Order:
  - A. Should Respondent fail to make any submissions as required by this Order, or should the submission otherwise fail to comply with the requirements of this Order, the Department may declare Respondent to be in violation of this Order, and pursue any other remedy against Respondent provided by law.
  - B. [add in additional general conditions if necessary per violation(s)]**
- IV. Reservation of Rights.** Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or their designee including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers or authorities with respect to any party, including Respondent(s).
- V. Modification.** No change or modification to this Order shall be effective except as may be specifically set forth in writing by the Department.
- VI. Indemnification.** Respondent(s) shall indemnify and hold harmless the Department, the State of New York, and their respective representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order and the acts, and/or omissions by Respondent(s) and his/her/its/their trustees, officers, employees, servants, agents, successors (including successors in title) and assigns resulting from the compliance or attempted compliance with the provisions of this Order.
- VII. Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its employees, servants, agents, successors, and assigns, and all persons, firms, and corporations acting subordinate thereto. This Order settles all claims for civil and administrative penalties concerning only those violations recited herein against Respondent(s) and his/her/its/their successors (including successors in title) and assigns. Respondent(s) has/have

paid a civil penalty of [Insert Penalty Amount] and the Department has accepted this payment in satisfaction of those violations.

- VIII. **Formal Terms.** The provisions herein shall constitute the complete and entire Order between Respondent and the Department. No terms, conditions, understandings, or agreements purporting to modify or vary the terms herein shall be binding unless made in writing and subscribed by the party to be bound, pursuant to the Modification provision of this Order. No informal oral or written advice, guidance, suggestions, or comments by the Department regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as required by this Order.
- IX. **Obligations.** This Order does not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law.
- X. **Effective Date and Period of Order.** The effective date of this Order is the date that the Commissioner or their designee signs it on behalf of the Department. The Order will remain in effect until Respondent has certified in writing to the fulfillment of all the remedial requirements stated in this Order, if applicable, and has paid all penalties assessed hereby.

DATED: [Insert Date]

Albany, New York

[Insert Commissioner's Name]

N.Y.S. Department of Environmental Conservation

By:

[Insert Regional Director for Regional Matters or DAR Director for Central Office Matters<sup>8</sup>]

Division of Air Resources

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<sup>8</sup> Or other Program Director, as applicable.

## **CONSENT BY RESPONDENT**

### **[Insert Consent Order Number]**

Respondent, [Insert Respondent Name], hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

### **[Insert Respondent Name]**

By [Signature]: \_\_\_\_\_

Name [Print]: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Email: \_\_\_\_\_

### **Acknowledgment**

STATE OF NEW YORK )

) ss:

COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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\_\_\_\_\_  
Notary Public

**If you are unable to secure notarization, you must sign the statement below.**

In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement

made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

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Signature

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Printed name