

BOARD OF AGRICULTURE AND CONSUMER SERVICES
Virginia Animal Shelter
Civil Penalty Matrix
Guidelines for Enforcement

These guidelines provide direction to the State Veterinarian and the State Veterinarian's representative in evaluating the civil penalty that may be considered appropriate for various violations of the Code of Virginia and Virginia Administrative Code by the responsible authorities of animal shelters. It is designed to insure that violations committed by animal shelters will be evaluated and penalties will be uniformly assessed, to the extent practicable, by the Board of Agriculture and Consumer Services.

SECTION 1: AUTHORITY

The Board of Agriculture and Consumer Services shall implement a civil penalties program for Virginia's animal shelters through the Commissioner of Agriculture and Consumer Services and Virginia Department of Agriculture and Consumer Services staff, to include the Director of the Division of Animal and Food Industry Services (State Veterinarian) and Division of Animal and Food Industry Services staff, pursuant to §§ 3.2-6546 and 3.2-6548 of the Code of Virginia.

SECTION 2: DEFINITIONS

Definitions listed below are in supplement to §§ 3.2-5900 and 3.2-6500 of the Code of Virginia.

Board: The Board of Agriculture and Consumer Services.

Critical Violation: A noncompliance with the Code of Virginia or Virginia Administrative Code that causes animal death, serious injury, or egregious suffering that is found upon inspection or investigation by the State Veterinarian's representative. A denial of access for the purposes of inspection will be treated as a critical violation.

Egregious Suffering: Extreme duress or discomfort experienced by a companion animal, be it physically or behaviorally manifested, due to a conspicuous noncompliance with the Code of Virginia or Virginia Administrative Code.

Letter of Information: A written notification to an animal shelter that non-critical violations have been identified during the shelter inspection process.

Non-Critical Violation: A noncompliance with the Code of Virginia or Virginia Administrative Code that does not cause animal death, serious injury, or egregious suffering that is found upon inspection or investigation by the State Veterinarian's representative.

Notice of Violation and Penalty Assessment: A written notification from the Program Manager to the responsible authority of the shelter that identifies the specific critical or repeat non-critical violation(s) committed and indicates the amount of the civil penalties based on the Animal Shelter Civil Penalty Matrix.

Program Manager: The manager of the Office of Animal Care and Emergency Response within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services, who works under the direction of the State Veterinarian.

SECTION 3: INSPECTION PROCESS

All animal shelters, including vehicles used by such to transport companion animals, are subject to inspection by the State Veterinarian or his representative, pursuant to § 3.2-6502 of the Code of Virginia. Such inspections shall occur at least once per inspection cycle, as defined by the State Veterinarian, and may occur more frequently to monitor corrective actions undertaken to address violations or when necessary upon receipt of an official complaint. The State Veterinarian's representative will determine if critical or non-critical violations exist and document said violations.

A. Critical Violation upon Inspection

If the State Veterinarian's representative determines that a critical violation exists, he will: (i) ensure that corrective actions are immediately undertaken to prevent further death, serious injury, or egregious suffering; and (ii) submit documentation concerning the violation to the Program Manager within five business days of inspection for assessment of civil penalties.

B. First Finding of Non-Critical Violation upon Inspection

If the State Veterinarian's representative determines that a non-critical violation exists, he will provide the responsible authority for the animal shelter a Letter of Information within a reasonable time after the inspection. The Letter of Information will include (i) a copy of the inspection report, (ii) an explanation of the violation, including relevant section(s) of the Code of Virginia or Virginia Administrative Code, and (iii) a statement of first violation. The responsible authority may submit a corrective action plan with a timeline for completion to the Office of Animal Care and Emergency Response (OACER). In the event of repeat violations, OACER may consider any submitted corrective action plan when determining whether to assess civil penalties.

C. Second or Subsequent Finding of Non-Critical Violation upon Inspection

If the violation is the second or subsequent such violation, the State Veterinarian's representative will ascertain if a corrective action plan exists for the violation and if such plan is in implementation. The State Veterinarian's representative will provide the responsible authority for the animal shelter within a reasonable timeframe a copy of the inspection findings and a Letter of Information. The Letter of Information will include (i) a copy of the inspection report, (ii) an explanation of the violation, including relevant section(s) of the Code of Virginia or Virginia Administrative Code, (iii) a statement of subsequent violation, and (iv) a statement indicating either a satisfactory corrective action plan is in place or that civil penalties will be considered. If civil penalties are to be considered, documentation concerning the violation will be submitted to the Program Manager within 15 business days.

D. No Violation upon Inspection

If the State Veterinarian's representative determines that no violations exist, he will provide the responsible authority for the animal shelter a copy of the inspection findings and a Letter of Information indicating no violation was determined within a reasonable time after the inspection.

E. Determination of Subsequent Violation

The State Veterinarian's representative will determine that a subsequent violation has occurred upon review of inspection findings if such violation was noted in one of the previous three inspections of the animal shelter, or during the current year and the two previous calendar years if such period is shorter in time.

SECTION 4: CIVIL PENALTY ASSESSMENT

Upon receipt of documentation from the State Veterinarian's representative concerning (i) a critical violation or (ii) a repeat non-critical violation that a corrective action plan failed to address, the Program Manager will review said documentation and determine if a civil penalty is to be assessed as follows:

A. Critical Violations

If the Program Manager concurs that a critical violation has occurred, the Program Manager will determine the appropriate civil penalty per the civil penalty matrix and prepare a Notice of Violation and Penalty Assessment. The Notice of Violation and Penalty Assessment will be sent to the responsible authority and include a (i) summary of the inspection findings and supporting documentation and previous violation history if applicable; (ii) notification of the penalty assessed; (iii) request for a corrective action plan from the responsible authority within a specified timeframe; and (iv) statement advising that the responsible authority may agree to the assessment, sign a consent resolution, and pay the civil penalty (due within 30 days after the date of receipt by the responsible authority) or may attend an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia.

If the Program Manager determines that the violation was non-critical in nature, penalties will be assessed as appropriate for non-critical violations.

B. Non-Critical Violations

The Program Manager will review the violation history and resultant corrective action plans of the animal shelter. If the Program Manager concurs that a repeat violation has occurred and that the corrective action plan from the previous violation has not been implemented or is ineffective, the Program Manager will determine the appropriate civil penalty per the civil penalty matrix and prepare a Notice of Violation and Penalty Assessment. The Notice of Violation and Penalty Assessment will be sent to the responsible authority and include a (i) summary of the inspection findings and supporting documentation and previous violation history if applicable; (ii) notification of the penalty assessed; (iii) request for a new corrective action plan from the responsible authority within a specified timeframe; and (iv) statement advising that the responsible authority may agree to the assessment, sign a consent resolution, and pay the civil penalty (due within 30 days after the date of receipt by the responsible authority) or may attend an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia.

C. Informal Fact Finding Conference

Should the responsible authority dispute the civil penalty assessed, he shall request an informal fact finding conference within 30 days of receipt of the Program Manager's Notice of Violation and Penalty Assessment. The State Veterinarian will hold an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia. Following the informal fact finding conference, the State Veterinarian will send to the responsible authority a written final notice of the findings via certified mail along with the fact basis for the findings and the civil penalty assessed.

D. Formal Hearing

If any final notice issued by the State Veterinarian has not been disposed of through a consent resolution, then the responsible authority may appeal to the Board pursuant to § 2.2-4020 of the Code of Virginia. If the responsible authority intends to appeal the final notice of the State Veterinarian, he shall notify the Secretary of the Board in writing within 30 days following his receipt of the State Veterinarian's findings. The Board shall hear the appeal at its next meeting following the Secretary's receipt of the responsible authority's written notification of intent to appeal. However, if said next meeting of the Board is less than 30 days from the Secretary's receipt of the responsible authority's written notification, the Board shall hear the appeal at the next meeting thereafter that is at least 30 days from the Secretary's receipt of the responsible authority's written notification. The Board may establish limits on how much time the animal shelter representative will be afforded to address the Board with respect to the State Veterinarian's findings and the civil penalty. After a representative of the animal shelter has appeared before the Board, the Board shall render its decision in accordance with the timetable established in § 2.2-4021 of the Code of Virginia.

E. Recovery of Civil Penalties, Use of Civil Penalty Funds

If the civil penalty is not paid within the allowed time period, the case will be referred to the Office of the Attorney General for further action. All civil penalties assessed shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of the Comprehensive Animal Care laws.

SECTION 5: DETERMINATION OF CIVIL PENALTY

The following matrix will be used to determine the dollar amount of civil penalties to be assessed for violations. The matrix, in conjunction with the assessment procedure, considers (i) the history of previous violations at the animal shelter; (ii) whether the violation has caused injury to or death or suffering of an animal; and (iii) the demonstrated good faith of the responsible authority to achieve compliance after notification of the violation. Cumulative penalties, where indicated, will be assessed for each day of the period from the day of the first violation through the day of the current violation.

Violation			Penalty			
Authority	Category of Violation	Type of Violation	1 st Violation	2 nd Violation	3 rd Violation	4 th and Subsequent Violation
§3.2-6502 §3.2-6566 Code of Virginia	Right to Inspect	Critical	\$500.00	\$1000.00	\$250.00 per day cumulative	\$500.00 per day cumulative
§3.2-6503 Code of Virginia	Animal Care	Critical	\$500.00	\$1000.00	\$250.00 per day cumulative	\$500.00 per day cumulative
		Non-Critical	No penalty	\$250.00*	\$1000.00*	\$250.00 per day cumulative*
§3.2-6546 §3.2-6562 Code of Virginia	Confinement and Disposition, Public Animal Shelters	Critical	\$500.00	\$1000.00	\$250.00 per day, cumulative	\$500.00 per day cumulative
		Non-Critical	No penalty	\$250.00*	\$500.00*	\$100.00 per day cumulative*
§3.2-6548 Code of Virginia	Confinement and Disposition, Private Animal Shelters	Critical	\$500.00	\$1000.00	\$250.00 per day cumulative	\$500.00 per day cumulative
		Non-Critical	No penalty	\$250.00*	\$500.00*	\$100.00 per day cumulative*
§3.2-6557 §3.2-6574 §3.2-6575 Code of Virginia	Recordkeeping, Sterilization	Critical	\$500.00	\$1000.00	\$250.00 per day cumulative	\$500.00 per day cumulative
		Non-Critical	No penalty	\$100.00*	\$250.00*	\$50.00 per day cumulative*
§3.2-6555 §3.2-6556	Animal Control Officer Employment and Training	Non-Critical	\$100.00	\$500.00	\$1000.00	\$250.00 per day cumulative
2 VAC 5-110-10 through 2 VAC 5-110-110 Virginia Administrative Code	Pound Regulations**	Critical	\$500.00	\$1000.00	\$250.00 per day cumulative	\$500.00 per day cumulative
		Non-Critical	No penalty	\$250.00*	\$500.00*	\$100.00 per day cumulative*
2 VAC 5-150-120 through 2 VAC 5-150-170 Virginia Administrative Code	Transport Regulations	Critical	\$500.00	\$1000.00	\$250.00 per day cumulative	\$500.00 per day cumulative
		Non-Critical	No penalty	\$250.00*	\$500.00*	\$100.00 per day cumulative*
* Civil penalty may be waived or reduced based on the implementation of a submitted corrective action plan.						
** Failure to comply with state laws and regulations governing the disposal of solid waste will be reported to appropriate authorities. Civil penalties will not be assessed in such cases.						

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