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DEPARTMENT OF AGRICULTURE

DIVISION 74

CONFINED ANIMAL FEEDING OPERATION PROGRAM

603-074-0005 


Purpose

These rules guide the Oregon State Department of Agriculture, Natural Resources Division in administering its Confined Animal Feeding Operation Program. In interpreting and applying these rules the Department may consider variations in soils and climate, and the potential for a particular confined animal feeding operation to cause a discharge of animal wastes into the waters of the state.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 561.175

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0010 

Definitions

Unless the context or OAR chapter 340, division 051 or 052 require otherwise, as used in these rules:

(1) "Annual fee" means that fee required each year of each animal feeding operation with a national pollutant discharge elimination system permit or a water pollution control facilities waste disposal permit including, but not limited to, that fee required under ORS 561.175.

(2) "Compliance" means meeting the requirements of ORS chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from an animal feeding operation, a concentrated animal feeding operation, or a confined animal feeding operation.

(3) "Confined animal feeding operation" means

(a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;

(A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or

(B) That have wastewater treatment works; or

(C) That discharge any wastes into waters of the state; or

(b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to **40 CFR § 122.23**.

(4) "Department" means the Oregon Department of Agriculture or the Oregon Department of Environmental Quality.

(5) "Director" means the director of the Oregon Department of Agriculture or the director of the Oregon Department of Environmental Quality.

(6) "Flagrant violation" means any violation where the respondent had actual knowledge of the law and knowingly committed the violation.

(7) "Formal enforcement action" means any order of the director or the director's designee that is issued to a respondent in connection with a violation and requires the respondent to cease the violation, refrain from further violations, pay a civil penalty, or take other actions with respect to the violation. Formal enforcement actions include, but are not limited to, notices of noncompliance, civil penalty assessment, compliance schedules and stipulated or consent orders.

(8) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.

(9) "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(10) "Negligence" or "negligent" means failure to take reasonable care to avoid a foreseeable risk of committing a violation.

(11) "New source" as defined in **40 CFR §122.2** means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced after February 12, 2003.

(12) "Order" has the meaning given in ORS 183.310(5).

(13) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other legal entity whatever.

(14) "Past occurrence of violations," as used in OAR 603-074-0080(4), means any violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(15) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).

(16) "Previous notice of the same or similar violation," as used in OAR 603-074-0070(2), means a notice of noncompliance or assessment of civil penalties for the same or a similar type of violation that was issued within the preceding five years. It includes a notice for the same or a similar type of violation that is the subject of a pending appeal. It does not include a notice that has been withdrawn or successfully appealed.

(17) "Process wastewater" or "process wastes" means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(18) "Production area" means that part of a CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.

(19) "Reckless" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(20) "Repeat violation" as used in OAR 603-074-0080(3), means the recurrence of the same type of violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(21) "Respondent" means a person to whom a formal enforcement action is directed.

(22) "Rule" has the meaning given in ORS 183.310(8).

(23) "Violation" means the failure to comply with any requirement of ORS chapter 468 or 468B, or any rule, order or permit adopted thereunder and relating to the control and prevention of pollution of the waters of the state from a confined animal feeding operation. Each day a violation continues after the time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(24) "Wastewater disposal system," "wastewater treatment works," or "waste water control facility" means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process wastewater, or contaminated production area drainage (e.g., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.

(25) "Wastes" has the meaning given in ORS 468B.005(7).

(26) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).

[Publications: Publications referenced are available from the agency.]


Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0012

Permit Procedures

(1) Except as provided in OAR 603-074-0020  below, permits for Confined Animal Feeding Operations will be issued under the applicable provisions of OAR chapter 340, division 45.

(2) The director may designate an animal feeding operation as a significant contributor of pollutants pursuant to the provisions of **40 CFR § 122.23(c)**. An operator may seek review of the director's determination by requesting a contested case hearing pursuant to ORS 183.413 to 183.470.

Stat. Auth.: ORS 561.468B

Stats. Implemented: ORS 561.468B

Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0014

Adoption of General Permit

(1) The following general permit is adopted by reference in this rule and available for review at the department:

(a) NPDES number 01 (Confined Animal Feeding Operations) (issued on October 1, 2003).

(b) A complete copy of the general permit is available for inspection at the Oregon Department of Agriculture, Natural Resources Division, 635 Capitol St. NE, Salem, Oregon.

(1) Any person owning or operating a confined animal feeding operation has a duty to seek coverage under the Oregon CAFO General permit (NPDES number 01).

(2) Any person owning or operating a CAFO must submit an ODA Application to Register (ATR) according to the following schedule:

(a) All newly constructed CAFOs: Newly constructed CAFOs, including "new sources," must submit an ATR at least 180 days prior to the time that the CAFO commences operation.

(b) Existing CAFOs that met the previous definition of *concentrated* AFOs: CAFOs that were defined as *concentrated* under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.

(c) Existing CAFOs newly defined as *concentrated* AFOs as of April 14, 2003: CAFOs that met the federal definition of *concentrated* as of April 14, 2003, that were not defined as *concentrated* in federal regulations prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.

(d) Existing CAFOs that become defined as *concentrated* AFOs after April 14, 2003: CAFOs that become defined as *concentrated* after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a *concentrated* AFO would not have caused it to be defined as a *concentrated* AFO prior to April 14, 2003.

(e) All other existing CAFOs that are not *concentrated* AFOs: Other existing CAFOs that are not *concentrated* AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.

(f) AFOs designated by the director: AFOs designated by the director as a *concentrated* AFO must submit an ATR no later than 90 days after receiving notice of designation.


Stat. Auth.: ORS 468B.050; 468B.217; ORS 561.190; ORS 561.191; Or. Laws 2001, ch 248, Section 1 (2).

Stats. Implemented: ORS 468B.050; 468B.200 to 468B.230; ORS 561.191, Or. Laws 2001, ch 248.

Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0016

Complaint Evaluation

(1) "Complaint" means information provided by a person concerning possible violations of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from a confined animal feeding operation as defined in OAR 603-074-0010 .

(2) If the department finds, upon investigation of the complaint, that the complaint was groundless and made for the purposes of harassing the operator, the department may refuse to consider future complaints made by the complainant. Such a determination may include an evaluation of:

(a) Relationship between the operator and complainant;

(b) Number and validity of previous complaints filed by complainant against the operator;

(c) Frequency of complaints filed by complainant against the operator.




Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0018

Certification of Plans and Specifications

(1) In lieu of department approval of plans and specifications as required by OAR 340-051-0015 , the department will accept certification by a licensed engineer that waste water control facilities specified in subsection (2)(a) of this rule were designed and constructed in compliance with OAR 340-051-0055  through 340-051-0070 .

(a) Certifications may only be made for:

(A) Earthen impoundments, conveyances, and animal holding areas;

(B) Earthen-floored buildings and animal travel lanes between buildings in the production area; and

(C) Primary storage structures for liquid and solid manure. For purpose of this paragraph, a primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.

(b) Certifications must be submitted on forms approved by the department.

(c) Certification in lieu of department approval is not allowed for waste water control facilities using experimental or unproven treatment methods or technology and may be disallowed for any other facility if

the department determines that the nature of the facility or operation is such that department review is needed to ensure protection of waters of the state.

(2) **Exclusion from Department Approval:** Construction or modification of waste water control facilities, other than impoundments, conveyances, holding areas, buildings and animal travel lanes within the production area, and primary storage structures, are not subject to design or post-construction review and approval requirements unless the department determines that the nature of the facility is such that review is needed to ensure protection of waters of the state.

Stat. Auth.: ORS 468.020 & ORS 468B.200 - ORS 468B.230

Stats. Implemented: ORS 468.005, ORS 468B.005 & ORS 468B.205

Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0020

Permit Fees

Any person owning or operating a Confined Animal Feeding Operation (CAFO) under a National Pollutant Discharge Elimination System (NPDES) or Water Pollution Control Facility (WPCF) permit must pay the following fees:

(1) Initial filing fee: \$50.00

(2) Annual fee:

(a) The annual fee shall be paid to the department and be effective with the state's fiscal year July 1– June 30 and shall be paid no later than July 31.

(b) Annual fees are described in the table below: [Table not included. See ED. NOTE.]

(3) Any additional fees required by OAR 340-045-0075 .

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03; DOA 12-2011(Temp), f. & cert. ef. 7-22-11 thru 1-18-12; DOA 22-2011, f. & cert. ef. 10-18-11

Enforcement Procedures

603-074-0030

Consolidation of Enforcement Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0040

Enforcement Actions

(1) A Notice of Noncompliance:

- (a) Informs the owner or operator of the violation, including a reference to a particular statute, administrative rules or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;
- (b) Directs the subject owner or operator to perform those actions necessary to comply with the particular statute, administrative rules or orders involved.
- (c) Specifies a reasonable period of time by which compliance is to be achieved not to exceed 30 business days after the respondent receives the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;
- (d) Is issued by the director or the director's designee;
- (e) Is in writing and must be served personally or by registered or certified mail;
- (f) In all cases must be mailed or delivered to the legal owner of the property;
- (g) Is an order in other than a contested case for purposes of judicial review.

(2) A plan of correction:

- (a) Includes a statement of the actions that must be taken by the owner or operator to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;
 - (b) May include requirements for the owner or operator to report the completion of specific actions;
 - (c) Is in writing and must be sent to the owner or operator by registered or certified mail or served personally;
 - (d) In all cases must be mailed or delivered to the legal owner of the property.
 - (e) Is an order in other than a contested case for the purposes of judicial review.
- (3) The department shall make a reasonable attempt to consult with the subject owner or operator in the development of a plan of correction.
- (4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.

(5) A Notice of Civil Penalty Assessment:

- (a) Is issued by the director or the director's designee;
- (b) Is issued in a manner consistent with the provisions of ORS 183.415, 468B.230 and OAR chapter 137;
- (c) Is in writing and must be served personally or by registered or certified mail to the owner and operator.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0050

Hearing Procedures

All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR Chapter 137


Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0060

Entry of Order and Appeal Rights

(1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-074-0050 , or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order must be signed by the director or the director's designee.

(3) The order may be appealed pursuant to ORS 183.480 to 183.497.

(4) An order assessing a civil penalty becomes due and payable and may be enforced as provided by ORS 183.090.


Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0070

Civil Penalty Assessment

(1) In addition to any other penalty provided by law, the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. The amount of the civil penalty shall be determined using the two matrices contained in OAR 603-074-0080  in conjunction with the formula contained in OAR 603-074-0080(4).

(a) Except for those animal feeding operations defined in OAR 603-074-0010(3)(b), the amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(b) For those animal feeding operations defined in OAR 603-074-0010(3)(b), civil penalties may not exceed \$5,000 per violation and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(2) Prior to assessment of a civil penalty for a violation, the department must provide a notice of noncompliance to the owner or operator. No advance notice or period to achieve compliance prior to

assessment of a civil penalty is required under section (1) of this rule and the department may issue a notice of civil penalty assessment if:

(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation; or

(c) The facility meets the definition of an animal feeding operation as defined in OAR 603-074-0010(3)(b).

(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation.

(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:

(a) Category I (Major):

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

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

(C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;

(D) Submitting records, reports or application forms that are false, misleading, or fraudulent;

(E) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge of waste to waters of the state;

(F) Violation of a permit compliance schedule;

(G) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works that either impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment.

(b) Category II (Moderate):

(A) Failure to submit a plan or report as required by rule, permit or order;

(B) Placing wastes such that the wastes are likely to enter the waters of the state by any means:

(C) Any violation related to water quality that is not classified elsewhere in these rules as major or minor.

(c) Category III (Minor):

(A) Failure to operate in accordance with an animal waste management plan when one has been approved by the department;

(B) Failure to submit a discharge monitoring report on time or failure to submit a completed discharge monitoring report.

(5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any

factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(a) Gravity of Effect - High Level:

(A) Evidence of significant injury to crops, wildlife or livestock;

(B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment.

(b) Gravity of Effect - Medium Level: Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards, but does not pose a significant threat to human health or the environment.

(c) Gravity of Effect - Low Level: Water contamination not found or not found at a level in excess of applicable water quality standards.

(6) Pursuant to ORS 468B.220, any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 may be assessed a civil penalty of \$500 in addition to other penalties that the director may assess.

(7) Notwithstanding section (1) above, the department may assess a penalty larger than that specified by the matrices in OAR 603-074-0070 and 603-074-0080 if the violation is committed by an operation defined in OAR 603-074-0010(3)(b) and the department determines that a larger penalty is appropriate given the extraordinary nature of the violation or its environmental consequences. In no event, however, may the penalty be increased above the maximum amount specified in subsection (1)(b) of this rule.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0080

Civil Penalty Determination Procedure

In determining the amount of a civil penalty to be assessed for any violation, the department shall apply the following procedure:

(1) Determine the magnitude of the violation as specified in OAR 603-074-0070(4).

(2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-074-0070(5).

(3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in OAR 603-074-0080.

Civil Penalty Matrix for First Violation

Gravity of Effect Magnitude of Violation

	High	Medium	Low		
Category 1 (Major)	\$1,200			\$800	\$400
Category II (Moderate)	\$600			\$400	\$200

Category III (Minor)	\$240	\$120	\$50
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Civil Penalty Matrix for Repeat Violations

Gravity of Effect Magnitude of Violation

	High	Medium	Low		
Category I (Major)		\$5,000		\$2,400	\$800
Category II (Moderate)	\$1,600			\$800	\$400
Category III (Minor)	\$400			\$200	\$100

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula: $B + [(0.1 \times B) (P + H + R)] = \text{Penalty Amount}$ where:

(a) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-074-0080 [🔗](#);

(b) P = Past occurrence of violations. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a category III violation;

(C) 2 = past occurrence of a Category II violation or two category III violations;

(D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations;

(E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(c) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations:

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(d) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be in violation were unavoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(B) -1 = the person's actions determined to be in violation were unavoidable;

(C) 0 = information is insufficient to make any finding;

(D) 2 = the person's actions determined to be in violation were reasonably avoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(E) 4 = the person's actions determined to be in violation were reasonably avoidable;

(F) 7 = the person's actions were flagrant or reckless.

(5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments that may include payment of interest on the unpaid balance for any delayed payments.

Stat. Auth.: ORS 468B.217, 468B.230 & 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03; DOA 2-2009, f. & cert. ef. 1-30-09

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