

Title VI: Increasing Equity, Transparency, and Environmental Protection in the Permitting of Swine Operations in North Carolina

Attachment E: Violations Point System Rule – Initial Draft



15A NCAC 02T .1311 VIOLATION POINTS SYSTEM - DRAFT

(a) This Rule applies to each swine animal waste management system subject to regulation pursuant to G.S. § 143-215.10 which has a certified animal waste management plan that complies with either Rule .1304(b) or Rule .1305(b) of this Subchapter.

(b) This Rule shall not alter the authority of the Commission to revoke a permit for an animal waste management system under G.S. § 143-215.1(b) or Rule .0110 of this Subchapter,

(c) The Director shall assign a permitted facility two points for any of the following violations:

- (1) A discharge to surface water or groundwater;
- (2) Land application of waste to a field exceeding the agronomic rate specified in the certified animal waste management plan;
- (3) Land application of waste to a field resulting in runoff of waste to property not approved for waste application in the certified animal waste management plan;
- (4) The freeboard level in a lagoon or waste storage structure is less than the designed depth needed for structural stability and notification requirements for failure to maintain adequate storage capacity specified in the applicable permit were not met; or
- (5) Any violation committed willfully or intentionally.

(d) The Director shall assign a permitted facility one point for the recurrence of a lesser violation not covered by Paragraph (c) of this Rule within any rolling 12-month period.

(e) In addition to any points assigned under Paragraph (c) of this Rule, the Director may assign a permitted facility up to four points for any willful violation that results in serious harm to the natural resources of the State, the groundwater or surface water quantity or quality, public health, or the environment.

(f) Points shall not be assigned for violations resulting from rainfall from a storm event more severe than the 25-year/24-hour storm as defined by the National Oceanic and Atmospheric Administration Atlas 14 (NOAA 14), Volume 2, version 3.0 or subsequent versions.

(g) The Director shall notify the permittee in writing when any point has been assigned or removed.

(h) Upon a facility accumulating six or more points in a rolling five-year period, the Director shall issue a written notice of intent to revoke the facility operating provisions in the permit to the permittee indicating how the facility has met or exceeded the criteria for permit revocation. The notice of intent shall not apply to the facility closure provisions in the permit.

(i) A facility receiving a notice of intent to revoke in Paragraph (j) of this Rule shall:

- (1) Remove all permitted animals from the facility within 30 days of notification;
- (2) Close all permitted containment basins, such as lagoons or waste storage structures, in compliance with Rule .1306(a) of this Subchapter within 1 year of notification; and
- (3) Within 15 days of completion of the requirements of Subparagraph (2) of this Paragraph, provide written documentation to the Division that Subparagraphs (1) and (2) of this Paragraph have been completed.

The Director may extend the time period specified in Subparagraph (i)(2) of this Rule up to six months.

(j) At least 60 days after providing notice under Paragraph (h) of this Rule, the Director shall revoke the facility operating provisions in the permit for a minimum period of at least two years. The revocation shall not apply to the facility closure provisions in the permit.

(k) The permittee may appeal the issuance of a point under this Rule:

- (1) The permittee shall submit an appeal in writing to the Director within 30 days of receiving notice the point has been issued.
- (2) The permittee shall explain in writing why the violation did not meet the criteria in Paragraphs (c), (d), or (e) of this Rule.

DEQ DRAFT May 2020; For Discussion Only; Pre-Decisional Material;
Not Approved for Rulemaking

- (3) The Director may remove an assigned point upon demonstration by the permittee that the violation did not meet the criteria in Paragraphs (c), (d), or (e) of this Rule.
- (l) The Director may not subdelegate authority to issue the notice of intent to revoke in Paragraph (h) of this Rule, the authority to revoke in Paragraph (j) of this Rule, or the appeal authority in Paragraph (k) of this Rule.
- (m) A permittee whose permit has been revoked under Paragraph (j) of this Rule may be eligible to reapply for a permit for an animal waste management system for a swine farm if the Director determines:
 - (1) The permittee has substantially complied with all applicable environmental laws, rules, regulations, and permit since the revocation occurred;
 - (2) The permittee has paid all pending civil penalties in full; and
 - (3) The permittee has demonstrated the facility is in compliance with all applicable environmental laws, rules, regulations, and permit conditions if a new permit is issued.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); 143-215.6E; 143-215.10A
Eff.;*