

(2) By less than 40 percent for a nonhazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or
3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may, in its discretion, move from the midpoint of the range to an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

Amended by R.1989 d.282, effective June 5, 1989.

See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

(d)-(f) recodified as (e)-(g), new (c) added regarding each day continuing constituting separation violation.

Amended by R.1991 d.307, effective June 17, 1991.

See: 22 N.J.R. 2870(a), 23 N.J.R. 1926(a).

Added (e)liii and (e)2iii.

Amended by R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

In (a), added penalty amounts for violations occurring after June 30, 1991.

In (b), added "If a violator establishes ... to be a single violation".

In (d), substituted old text for new text with retention of chart.

Changed the \$6,000 penalty assessments in the chart to \$7,000.

Recodified existing (e) as (g) with substantial additions.

Deleted (g)1i; recodified existing (g)1ii as i.

Added (g)1ii and (g)2iii.

In (g)2i, added "other than a violation of an effluent limitation identified in (g)2ii below."

In (g)2ii(1), changed "26" to "20".

In (g)2ii(2), changed "51" to "40".

In (g)3i, added "other than a violation of an effluent limitation identified in (g)3ii or iii below."

In (g)3ii(1), changed "up to 25" to "less than 20".

In (g)3ii(2), changed "up to 50" to "less than 40".

Recodified existing (f) and (g) as (h) and (i).

In (i), changed "adjust the amount determined pursuant to (d) above to assess a civil administrative penalty in" to "move from the midpoint of the range to". Substituted (i)5 with new text and added (i)6, 7 and 8.

Amended by R.1992 d.145, effective April 6, 1992.

See: 23 N.J.R. 2238(a), 24 N.J.R. 1334(a).

pH effluent ranges added.

Amended by R.1999 d.163, effective May 17, 1999.

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

In (g), deleted a former second sentence in the introductory paragraph.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a) and (b), deleted references to the New Jersey Underground Storage of Hazardous Substances Act following references to the Water Pollution Control Act.

Amended by R.2007 d.234, effective August 6, 2007.

See: 38 N.J.R. 2919(a), 39 N.J.R. 3298(a).

In (d), inserted "including any applicable grace period in accordance with N.J.A.C. 7:14-8.18".

#### Case Notes

In assessing penalty under federal Clean Water Act, rebuttable presumption of adequacy will be given to state Department of Environmental Protection's penalty assessment for violations of Jersey Water Pollution Act if there has been meaningful degree of citizen participation, individualized determination based on all relevant facts, and resulting remedy sufficient to abate and deter pollution. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., 970 F.Supp. 363 (D.N.J.1997.)

Initial Decision (2008 N.J. AGEN LEXIS 73) adopted, which concluded that a total penalty of \$60,000 was warranted for a gasoline service station's four violations of the Underground Storage of Hazardous Substances Act; all violations were "non minor" and thus not eligible for a grace period. N.J. Dep't of Env'tl. Prot. v. Excellent Care, Inc., OAL Dkt. No. EWR 00084-06, 2008 N.J. AGEN LEXIS 682, Final Decision (March 14, 2008).

Penalty of \$15,000 was appropriately assessed against a gas station operator for violating N.J.A.C. 7:14B-4.1(a)3(ii) by maintaining inoperable underground storage tank (UST) overfill devices; an inspection revealed that tank gauge sticks broken at both ends had been inserted into the fill ports of two of the three USTs, preventing the overfill devices from functioning properly. Although it was the operator's first offense, the severity of the violation weighed against reduction of the penalty from the midpoint (adopting in part, and rejecting in part, 2006 N.J. AGEN LEXIS 843). N.J. Dep't of Env'tl. Prot. v. Singh, OAL Dkt. No. EWR 2913-05, Final Decision (December 14, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 420) adopted, which concluded that where the underground storage tank registration of respondent, a retail gas station operator, expired more than three years prior to the inspection date, respondent's failure to register its USTs was a moderately serious violation, and was moderately improper conduct; thus, a \$15,000 penalty was appropriate. N.J. Dep't of Env'tl. Prot. v. Egg Harbor Gas & Go, LLC, OAL Dkt. No. EWR 2907-05, 2006 N.J. AGEN LEXIS 780, Final Decision (August 21, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 420) adopted, which concluded that a gas station operator's failure to maintain a record of financial responsibility for its underground storage tanks was a moderately serious violation, and was moderately improper conduct. Without adequate insurance, there was the potential to cause substantial harm to health and the environment with no ability to compensate third parties and mitigate damages; in addition, the operator derived a benefit, a savings over its competitors, from not maintaining insurance. Thus, a \$15,000 penalty was appropriate for this violation. N.J. Dep't of Env'tl. Prot. v. Egg Harbor Gas & Go, LLC, OAL Dkt. No. EWR 2907-05, 2006 N.J. AGEN LEXIS 780, Final Decision (August 21, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 420) adopted, which concluded that a gas station operator's failure to perform release detection monitoring every thirty days on its underground storage tanks as required by N.J.A.C. 7:14B-6.2, 7:14B-6.5, 7:14B-6.1, and 7:14B-6.6 was a moderately serious violation, and was moderately improper conduct, as the violation had the potential to cause substantial harm to human health and the environment. Thus, a \$15,000 penalty was appropriate. N.J. Dep't of Env'tl. Prot. v. Egg Harbor Gas & Go, LLC, OAL Dkt. No. EWR 2907-05, 2006 N.J. AGEN LEXIS 780, Final Decision (August 21, 2006).

Penalty for violation of permit upheld when maximum boron discharge limits exceeded. Department of Environmental Protection v. Florence Land Recontouring Company, Inc., 97 N.J.A.R.2d (EPE) 17.

Penalty assessment for exceedances of effluent limitations were reduced for remedial efforts and "upset" from sewer blockage. Department of Environmental Protection v. Harding Woods, 95 N.J.A.R.2d (EPE) 195.

Chemical company failed to show that permit exceedance violations were laboratory error. Department of Environmental Protection v. CPS Chemical Company, Inc., 94 N.J.A.R.2d (EPE) 218.

Penalty assessed against county when county repeatedly exceeded limits established by environmental permit. DEPE v. Cumberland County Improvement Authority, 94 N.J.A.R.2d (EPE) 45.

Pipe foundry exceeded effluent limitations set forth in permit. DEPE v. Griffin Pipe Products Co., 93 N.J.A.R.2d (EPE) 251.

Discharges by quarry of crusher waters constituted violations of Water Pollution Control Act; penalty assessed. Division of Water Resources v. Tilcon New Jersey, Inc. 93 N.J.A.R.2d (EPE) 245.

Penalty of \$1,750 for violation by car wash of permit condition was appropriate. Gem Car Wash v. Department of Environmental Protection. 93 N.J.A.R.2d (EPE) 234.

Former regulation imposed duty on town to cease sewer extension approvals if ban criteria were met; penalty regulation effective when Department discovered violations and assessed penalties governed penalty assessment. Department of Environmental Protection v. Town of Newton. 93 N.J.A.R.2d (EPE) 167.

Failure to submit timely and adequate notice of force majeure occurrences; violation of effluent limitations not excused. Evesham Municipal Utilities Authority v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 222.

Operator of pork slaughtering and packaging facility violated wastewater permit; civil administrative penalties. New Jersey Department of Environmental Protection v. Triolo Brothers, Inc., 92 N.J.A.R.2d (EPE) 1.

#### **7:14-8.6 Civil administrative penalty for submitting inaccurate or false information**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits

inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each day, from the day of submittal by the violator of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$50,000 per act or omission;

2. For each other violation not identified pursuant to (c)1 above for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$30,000; and

3. For each other violation not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violations;

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) Except as set forth in Table 1 or Table 2 at N.J.A.C. 7:14-8.18, a violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Language added at (c) regarding assessing penalty at mid-point of ranges and new (d) added.

Amended by R.1991 d.378, effective August 5, 1991.  
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

In (c)1, changed penalty to "up to \$50,000".

Added (c)2.

Recodified existing (c)2 as 3 and added "not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation".

Deleted (d)5 and substituted new text.

Added (d)6, 7 and 8.

Amended by R.2007 d.234, effective August 6, 2007.

See: 38 N.J.R. 2919(a), 39 N.J.R. 3298(a).

Added (e).

#### Case Notes

Penalty assessment for exceedances of effluent limitations were reduced for remedial efforts and "upset" from sewer blockage. Department of Environmental Protection v. Harding Woods, 95 N.J.A.R.2d (EPE) 195.

#### 7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than \$100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than \$50,000 per month for any one discharge monitoring report, for any discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. To contest a civil administrative penalty assessed pursuant to this section, a violator shall submit evidence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof, within 30 days after the date on which the effluent parameter information was required to be submitted to the Department. If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

4. A violator will not be subject to a civil administrative penalty for the inadvertent omission of one or more effluent parameters in a discharge monitoring report if both of the following conditions are met:

i. The violator submits the omitted information to the Department within 10 days after receipt by the violator of notice of the omission; and

ii. The violator demonstrates to the satisfaction of the Department that the violation for which the Department assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters.

(f) A violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Language added at (b) regarding each day constituting a separate violation and at (d), new 5.

Amended by R.1991 d.378, effective August 5, 1991.  
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

In (a), added "discharge monitoring reports, baseline monitoring reports, monitoring report forms or sludge quality assurance reports".

In (c), added "Except as provided in (e) below".

In (c)1, changed penalty amount to "up to \$50,000".

In (c)2, changed penalty amount to "up to \$40,000".

In (c)3, changed penalty amount to "up to \$20,000".

Substituted old text with new text in (d)5 and added 6, 7, 8.

Added (e).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), deleted "or the New Jersey Underground Storage of Hazardous Substances Act" following "the Water Pollution Control Act".

Amended by R.2007 d.234, effective August 6, 2007.

See: 38 N.J.R. 2919(a), 39 N.J.R. 3298(a).

Added (f).

#### Case Notes

Failure to properly monitor, sample and report discharge characteristics required civil penalty assessment. Department of Environmental Protection v. East Coast Ice, 95 N.J.A.R.2d (EPE) 154.

Operator of pork slaughtering and packaging facility violated wastewater permit; civil administrative penalties. New Jersey Department of Environmental Protection v. Triolo Brothers, Inc., 92 N.J.A.R.2d (EPE) 1.

#### 7:14-8.10 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on an amount equal to the unpaid fee, up to a maximum of \$50,000 per violation.

(d) A violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Deleted reference to "unpaid civil administrative penalty".

Amended by R.2007 d.234, effective August 6, 2007.

See: 38 N.J.R. 2919(a), 39 N.J.R. 3298(a).

Added (d).

**Case Notes**

Penalty found appropriate for failure to provide self-monitoring reports, failure to construct treatment works and continued excessive discharge of pollutants. *Lentine Aggregates v. Dept. of Environmental Protection*, 4 N.J.A.R. 117 (1981), affirmed per curiam Dkt. No. A-3424-80 (App.Div.1982).

Discharge monitoring ordered as part of penalty found proper exercise of Commissioner's authority. *Dept. of Environmental Protection v. Kearney Industries*, 3 N.J.A.R. 339 (1981).

**7:14-8.11 (Reserved)**

Amended by R.1989 d.282, effective June 5, 1989.

See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

At (b), reference to each day constituting a separate violation and (d) and (e) deleted.

Repealed by R.1996 d.307, effective July 1, 1996.

See: 27 N.J.R. 4761(a), 28 N.J.R. 3330(c).

Section was "Civil administrative penalty for violation of the rules governing laboratory certification and standards of performance".

**7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations**

(a) The Department may assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), an Inhibition Concentration (IC25) or No Measurable Acute Toxicity (NMAT) pursuant to this section.

(b) Each violation of a whole effluent toxicity limitation shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section the Department shall identify the civil administrative penalty range pursuant to (d) or (e) below.

(d) The Department shall determine the range for the civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), or an Inhibition Concentration (IC25) described in this section as follows, except as adjusted pursuant to (f) below:

1. For any violation of an LC50, a NOEC or an IC25 limit included in the following table, the civil administrative penalty shall be in an amount up to \$50,000, when upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

2. For any other violation of an LC50, a NOEC or IC25 limit the civil administrative penalty shall be in an amount up to \$40,000.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) or No Observed Adverse Effect Concentration (NOAEC) based on the extent of the violator's exceedance of the whole effluent toxicity limitation at the midpoint of the following ranges except as adjusted pursuant to (f) below:

1. For any violation of a NMAT or NOAEC limit with greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent, the civil administrative penalty shall be in an amount up to \$50,000;

2. For any other violation of a NMAT or NOAEC limit the civil administrative penalty shall be in an amount up to \$40,000.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (d) or (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

(g) A violation under this section is non-minor and, therefore, not subject to a grace period.

New Rule, R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Old section 8.12 Civil administrative penalty for economic benefit recodified to 8.13.

Amended by R.1999 d.163, effective May 17, 1999.

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

In (a) and (d), inserted references to No Observed Adverse Effect Concentration and to Inhibition Concentration throughout; and in (e),