

(b) If the Department does not receive the hearing request within 20 days after receipt by the violator of an administrative order and notice of civil administrative penalty assessment being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Administrative change in (a).
See: 23 N.J.R. 3325(b).

7:27A-3.5 Civil administrative penalty determination— general

(a) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense against each violator who fails to comply with the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each violation of any provision of the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto shall constitute a separate and distinct offense.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:27 or 7:27C for which no penalty amount is specified under N.J.A.C. 7:27A-3.6 through 3.11. The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:27A-3.6 through 3.11 for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping requirements, reporting requirements or emission limits) and the nature and extent of the environmental harm likely to result from the type of violation; and

2. The factors listed in (e) below.

(e) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to this section or under N.J.A.C. 7:27A-3.6, 3.7, 3.8, 3.9, 3.10 or 3.11, based upon any or all of the factors listed in (e)1 through 6 below. The Department may apply such factors in addition to the

factors listed in N.J.A.C. 7:27A-3.10(e)5 and 3.11. No such factor constitutes a defense to any violation.

1. The compliance history of the violator;

2. The number of times and the frequency with which the violation occurred;

3. The severity of the violation;

4. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

5. The nature, timing and effectiveness of measures taken to prevent future similar violations, and the extent to which such measures are in addition to those required under an applicable statute or rule; and

6. Any other mitigating, extenuating or aggravating circumstances.

(f) Except as provided for in (g) and (h) below, the Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(g) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(c) or (e) indicated by a continuous monitoring system, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(n)1 and may, in its discretion for purposes of determining the statutory maximum penalty for an offense, treat an offense as a first offense for civil administrative penalty determination purposes, at the beginning of each calendar quarter.

(h) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(d) or (e) when a continuous monitoring system operates out of control or is out of service, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(n)2 and may, in its discretion, treat an offense as a first offense for civil administrative penalty determination purposes, if the violator has not committed the same offense in the four consecutive calendar quarters immediately preceding the first day of the calendar quarter during which the pending offense was committed.

(i) For violations of N.J.A.C. 7:27C, indicated by a continuous monitoring system or when a continuous monitoring system operates out of control or is out of service, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(u).

Amended by R.1993 d.682, effective December 20, 1993 (operative January 23, 1994).

See: 25 N.J.R. 631(a), 25 N.J.R. 5957(a).

Amended by R.1994 d.501, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 4045(a), 25 N.J.R. 4836(a), 26 N.J.R. 4030(a).

Amended by R.1999 d.423, effective December 6, 1999 (operative January 7, 2000).

See: 31 N.J.R. 2582(a), 31 N.J.R. 4040(a).

In (g) and (h), changed N.J.A.C. 7:27A-3.10 references Amended by R.2008 d.338, effective November 17, 2008 (operative December 9, 2008).

See: 40 N.J.R. 3792(a), 40 N.J.R. 6541(b).

In the introductory paragraph of (d), inserted "or 7:27C"; and added (i).

Case Notes

Summary decision imposing penalty was properly assessed against research company for causing the release of an air contaminant. N.J.S.A. 26:2C-19. Biopharm Research v. New Jersey Dept. of Environmental Protection, 91 N.J.A.R.2d 7 (EPE).

7:27A-3.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, per act or omission, shall be in an amount of \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$2,000 for the first offense, \$4,000 for the second offense, and \$10,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

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

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added (e).

7:27A-3.7 Civil administrative penalty for failure to allow lawful entry and inspection

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

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, or place, except private residences, by any authorized Department representative, shall be an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section shall be \$8,000 for the first offense, \$16,000 for the second offense, and \$40,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

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

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added (e).

7:27A-3.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty against each violator who fails to pay a fee when due.

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

(c) To assess a civil administrative penalty pursuant to this section:

1. The Department shall identify the civil administrative base penalty pursuant to (d) below; and

2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (e) below.

(d) The base penalty shall be as follows:

1. An amount equal to one-third of the unpaid fee or \$50.00, whichever is greater, for the nonpayment of a fee due in any calendar year; or

2. An amount equal to two-thirds of the unpaid fee or \$100.00, whichever is greater, for the nonpayment of a second fee in the same calendar year as in (d)1 above, but not the same fee as in (d)1 above; or

3. An amount equal to the unpaid fee or \$250.00, whichever is greater, for the nonpayment of a third and each subsequent fee due in the same calendar year as in (d)1 above, but not the same fee as in (d)1 or 2 above.

(e) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (d) above by the amount

obtained by multiplying the base penalty dollar amount by 0.1 percent for each day that the fee is past due.

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

Amended by R.1995 d.5, effective January 3, 1995 (operative January 27, 1995).

See: 26 N.J.R. 3566(a), 27 N.J.R. 93(a).

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added (f).

Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).

See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).

In the table in (m)4, under the "Citation" column, inserted "(a), (b) and (c)" following "N.J.A.C. 7:27-4.2"; in the table in (m)10, inserted the entry for "N.J.A.C. 7:27-10.2(h) and 10.5(a), (b) and (c)"; and rewrote the tables in (m)16 and (m)19.

Amended by R.2009 d.343, effective November 16, 2009 (operative December 18, 2009).

See: 41 N.J.R. 1606(a), 41 N.J.R. 4195(b).

In the table in (m)15, updated the fee amounts for "Commercial Vehicle Registration", added classes for "School Bus Owner", "School District, if the School District does not own the bus" and "Property Owner", and inserted the footnote.

Case Notes

New rules reducing penalty assessment for remediation of offending odor violation properly applied to reduce penalty for violations that occurred when former rules were in effect. NJDEPE v. American National Can Company, 96 N.J.A.R.2d (EPE) 123.

Debtor charged with excess carbon monoxide emissions was not entitled to stay penalty assessment proceedings based upon subsequent

bankruptcy filing. DEPE v. Prospect Industries Corporation, 96 N.J.A.R.2d (EPE) 118.

Failure to submit required emission statement within mandatory time frame warranted assessment of civil administrative penalty. Department of Environmental Protection and Energy v. Northgate, 95 N.J.A.R.2d (EPE) 190.

Evidence proved air pollution from sewage plant; penalty assessed. Division of Environmental Quality v. Township of Cedar Grove, 92 N.J.A.R.2d (EPE) 252.

Perforation of gasoline pump nozzle "vapor boot"; air pollution penalty assessed. New Jersey Department of Environmental Protection v. Columbus Texaco, 92 N.J.A.R.2d (EPE) 235.

Odor emitted by chemical manufacturing facility constituted air pollution; penalty assessed. Givaudan Corporation v. New Jersey Department of Environmental Protection. 92 N.J.A.R.2d (EPE) 130.

Farmer who obtained permits to perform burning of tree trimmings violated air pollution regulation even though dispersal of ash caused by wind shift; penalty reduced. DeEugenio & Sons v. Division of Environmental Quality. 92 N.J.A.R.2d (EPE) 47.

7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)

(a) The Department shall determine the amount of the civil administrative penalty for violations in this section on the basis of the provision violated and the frequency of the violation as follows:

Citation	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment	NM	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which might reasonably result in citizen complaints, but which does not pose a potential threat to public health, welfare or the environment	M	\$200	\$400	\$1,000	\$3,000

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

Reference to TVOS and VOS changed to TXS and VOC.

Amended by R.1995 d.5, effective January 3, 1995 (operative January 27, 1995).

See: 26 N.J.R. 3566(a), 27 N.J.R. 93(a).

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Rewrote the section.

as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with or by delaying compliance with the requirements of the Act, or any rule, administrative order, operating certificate or permit issued pursuant thereto. If the total economic benefit was derived from more than one offense, the total economic benefit amount may be apportioned among the offenses from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$10,000 for the first offense, no greater than \$25,000 for the second offense, and no greater than \$50,000 for the third offense and each subsequent offense.

7:27A-3.12 Economic benefit component of a civil administrative penalty

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include