

(b) Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall be an additional, separate and distinct violation.

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

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount up to \$50,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$8,000.

(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 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) 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).

The word "lawful" added before "entry" wherever it appears; language 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 amount to "up to \$50,000".

In (c)2, changed penalty amount to "up to \$8,000".

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).

#### 7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who approves, endorses, allows construction or operation to commence or proceed, builds, modifies, installs, replaces, expands or operates a facility or treatment works, as defined by N.J.A.C. 7:14A, without the proper authorization or in violation of any rule, administrative order, sewer connection ban, or permit issued or imposed pursuant to the Water Pollution Control Act.

(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and conduct of the violator based on the following:

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, modify, install, replace, expand or operate a facility or treatment works, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) indicated in the permit application for that facility or project, or if there is no permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For building, installation, modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) as determined

from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department, either:

i. Twice the total penalty for the illegal building, installation, modification, replacement or expansion of a facility of treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation:  
civil administrative penalty = (seriousness) x (conduct) x (\$1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

(c) 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).

Cite to N.J.A.C. added in (b) and language regarding seriousness of violation and conduct of violator.

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 "allows construction or operation to commence or proceed,"; "installs, replaces, expands"; "sewer connection ban"; "or imposed"; deleted "-1 et seq." in code citation.

Deleted (a)2.

In (b), deleted "in accordance with N.J.A.C. 7:14-8.5 or".

Substituted old text for new text in (b)1, 2, 3.

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

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

In (b), substituted references to permit applications for references to CP-1 Permit Applications and substituted references to the Projected Flow table in N.J.A.C. 7:14A-23.3 for references to the Contributory Design Flow table in N.J.A.C. 7:9-1 throughout.

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

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

Added (c).

#### Case Notes

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.

#### 7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports, monitoring report forms or sludge quality assurance reports required by the Water Pollution Control Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(c) Except as provided in (e) below, 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 any 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;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount up to \$40,000; or

3. For any other violations the civil administrative penalty shall be in an amount up to \$20,000.

(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 violation(s);