

Added "Discrete emission reduction" and "Oxides of nitrogen".
 Administrative change.
 See: 31 N.J.R. 639(b).
 Amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
 See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
 Rewrote the section.
 Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
 See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
 Deleted "Discrete emission reduction" or "DER".
 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 "Emission increase" and "Grace period".
 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).
 Substituted a comma for "and in" following "26:2C-2" and inserted "and N.J.A.C. 7:27C".
 Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).
 See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).
 Rewrote definition "Volatile organic compound".

Case Notes

Incineration company violated permit and certificate; penalties imposed based upon current regulations. New Jersey Department of Environmental Protection v. Trofe Incineration Inc. 93 N.J.A.R.2d (EPE) 177.

7:27A-3.3 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act, the Department shall, by means of an administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. This Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, administrative order, operating certificate, registration requirement or permit violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:27A-3.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:27A-3.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or
3. If an adjudicatory hearing is conducted, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

7:27A-3.4 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment stated in short and plain terms;
3. An admission or denial of each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(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

Contrary to the ALJ's finding, a laminating facility's failure to continuously monitor carbon monoxide emissions was not "minor" for purposes of the Grace Period Law because the criteria set forth in the Grace Period Law did not require a demonstration of either actual "harm" or "genuine risk" to sustain a penalty; rather, the criteria required that for a penalty to be forgiven, the violation had to have been one that posed minimal risk to the public health, safety, and natural resources. Because the penalty was imposed for problems with the emissions monitoring system that resulted in an inability to collect valid data, the breakdown made it difficult to say with any degree of certainty that no harm was done and supported the finding that where the regulatory goal was monitoring and risk assessment, that goal was undermined when the monitoring equipment was not functioning properly (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN LEXIS 177). N.J. Dep't of Env'tl. Prot. v. Lamart Corp., OAL Dkt. No. EEQ 7868-04 and EEQ 7873-04 (Consolidated), 2008 N.J. AGEN LEXIS 677, Final Decision (April 17, 2008).

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).