

2. For any other refusal, inhibition, or prohibition of immediate lawful entry and inspection the civil administrative penalty shall be in an amount of not more than \$5,000 nor less than \$3,000 per violation.

(d) The Department may 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 described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;
2. 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;
 - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
 - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or the violation.

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

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Rewrote (d)2 through (d)4.
Amended by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).
Added (e).

7:26-5.8 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 act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act.

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

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

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

(c) The base penalty shall be as follows:

1. An amount equal to one-half of the unpaid fee or \$100.00, whichever is greater, for nonpayment of a fee due in any calendar year; or

2. An amount equal to the unpaid fee or \$250.00 whichever is greater, for the nonpayment of a second fee due in the same calendar year as that in (c)1 above; or

3. An amount equal to the twice the unpaid fee or \$500.00, whichever is greater for the nonpayment of a third fee due in the same calendar year as that in (c)1 or 2 above.

(d) 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 (c) above by the amount obtained by multiplying the base penalty dollar amount by one percent for each day that the fee is past due.

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

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), deleted reference to Part A permit application; rewrote (b) and (c); and added (d).

Amended by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Added (e).

7:26-5.9 Civil administrative penalty for economic benefit

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include 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 promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act. If the total economic benefit was derived from more than one violation, the total economic benefit may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Deleted reference to Part A permit application.

7:26-5.10 Grace period applicability; procedures

(a) Each violation identified in the penalty tables at N.J.A.C. 7:26-5.4(g) by an "M" in the Type of Violation column and each violation that is determined to be minor under N.J.A.C. 7:26-5.5(f)1, for which the conditions at (c)

below are satisfied, is a minor violation, and is subject to a grace period, the length of which (in days) is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty tables at N.J.A.C. 7:26-5.4(g) by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department or local government agency shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;

3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and

5. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the viola-

tion, and in addition, shall not consider the minor violation for purposes of calculating the "severity penalty component" under N.J.A.C. 7:26-5.4(f).

3. The person responsible for a violation shall submit to the Department or local government agency, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26-2.4(e) or 7:26A-3.2(b), and signed by the person responsible for the minor violation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing no later than one week before the end of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance, and shall be certified in accordance with N.J.A.C. 7:26-2.4(e) or 7:26A-3.2(b). The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

New Rule, R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Former N.J.A.C. 7:26-5.10, Severability, recodified to N.J.A.C. 7:26-5.11.