

(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 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)1iii 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.)

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:

imum 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.