

(f) After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Department will:

1. Evaluate each of the comments received;
2. Respond to the comments received; and
3. Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Department's responses to the comments.

New Rule, R.1991 d.378, effective August 5, 1991.
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or the Water Supply and Wastewater Operators' Licensing 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, CN 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 findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. 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);

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

7. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-3.10 if the violator intends to:

i. Raise an affirmative defense to liability for a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5(a) or 8.9(e) for the violation of an effluent limitation on the basis that a violation of an effluent limitation occurred as a result of an upset, an approved anticipated bypass or unanticipated bypass, or a testing or laboratory error; and

ii. To request that the Department determine through an administrative hearing whether or not it agrees with the violator's allegations concerning the matter;

8. For a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e), the following as applicable:

i. Documentation of compliance with the requirements in N.J.A.C. 7:14-8.9(e) that the violator notify the Department in writing, within 30 days after the date the violator was required to submit the information to the Department, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;

ii. Documentation of the violator's correction of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of the omission; a violator's failure to comply with the notice requirements in N.J.A.C. 7:14-8.9(e) will be a waiver of the violator's right to correct the violation within the required 10-day period and thus avert liability; or

iii. If the violator intends to contest a civil administrative penalty assessed pursuant to N.J.A.C. 7:14-8.9(e) based on the existence of extenuating circumstances beyond the violator's control, documentation that the violator complied with N.J.A.C. 7:14-8.9(e)3; if the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so; and

9. If the violator is not a local agency, financial assurance in the full amount of the civil administrative penalty in the notice of civil administrative penalty assessment as follows:

i. Financial assurance, in the form of a surety bond guaranteeing payment, an irrevocable letter of credit or a fully funded trust, worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix D or in another form the Department individually approves in writing for this purpose; and

ii. Unless the financial assurance is in the form of a letter of credit, a certification of acknowledgement worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix D.

(b) The Department shall deny the hearing request if the Department does not receive a complete hearing request pursuant to (a) above within 20 days after receipt by the violator of the Notice of a Civil Administrative Penalty Assessment, the Administrative Order, or Notice of Civil Administrative Cost Assessment being challenged. A violator's failure to notify the Department in writing, within the 30 days allotted under (a)8i above, of the existence of extenuating circumstances which prevented timely submission of a complete discharge monitoring report, shall be grounds for the Department to deny any hearing request on a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e).

(c) All adjudicatory hearings held pursuant to this section 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.

Amended by R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Added "or a notice of civil administrative cost assessment" to heading and in (a) and (b).

Added (a)7, 8, 9.

In (b), added "A violator's failure ... pursuant to N.J.A.C. 7:14-8.9(e)".

Deleted (c).

Recodified existing (d) as (c).

Administrative Change in (a).

See: 23 N.J.R. 3325(b).

Administrative Correction to N.J.A.C. 7:14-8.4(a)9i and ii.

See: 23 N.J.R. 3754(a).

Administrative Correction to N.J.A.C. 7:14-8.4(a)9ii.

See: 25 N.J.R. 2862(b).

Amended by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

Law Review and Journal Commentaries

Environmental Law—Administrative Law. Steven P. Bann, No. 2, 138 N.J.L.J. 54 (1994).

Case Notes

State administrative action brought against polluter by New Jersey Department of Environmental Protection was not "comparable" to an action brought under Clean Water Act, and, thus, state administrative action did not bar citizens' suit under Act where there had been no previous provision for public comment or hearing. Public Interest Research Group of New Jersey, Inc. v. GAF Corp., D.N.J.1991, 770 F.Supp. 943.

State administrative action was not comparable to action brought under Clean Water Act. Public Interest Research Group of New Jersey, Inc. v. GAF Corp., D.N.J.1991, 770 F.Supp. 943.

Posting of financial assurance for potential penalty as condition to obtaining hearing violated due process. and Energy, 275 N.J.Super. 342, 646 A.2d 447 (A.D.1994).

Statutory 20-day time limit for requesting adjudicatory hearing on notice of administrative penalty for violation of pollutant discharge permit was mandatory and jurisdictional. Schaible Oil Co., Inc. v. New Jersey Dept. of Environmental Protection, 246 N.J.Super. 29, 586 A.2d 853 (A.D.1991), certification denied 126 N.J. 387, 599 A.2d 163.

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty for violations which occur after June 30, 1991 in an amount:

1. Not less than \$5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier; or
2. Not less than \$1,000 for each serious violation.

(b) Each violation of any provision of 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, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation. If a violator establishes, to the satisfaction of the Department, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, the Department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to (a) above, the violation of interrelated effluent limits to be a single violation.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.12, the Department shall assess a civil administrative penalty for violations described in this section as described in (e) below.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty range within the matrix in (f) below by:
 - i. Determining the seriousness of the violation pursuant to (g) below; and
 - ii. Determining the conduct of the violator pursuant to (h) below.

2. The civil administrative penalty shall be at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$40,000-\$50,000	\$30,000-\$40,000	\$15,000-\$25,000
	Moderate	\$30,000-\$40,000	\$10,000-\$20,000	\$ 3,000-\$ 7,000
	Minor	\$15,000-\$25,000	\$ 3,000-\$ 7,000	\$ 1,000-\$ 2,500

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below. Nothing in the description of seriousness in one level shall prevent the Department from assigning a different level of seriousness to the violation.

1. Major shall include:

i. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By more than 50 percent for a hazardous pollutant; or

(2) By more than 100 percent for a nonhazardous pollutant;

ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

iv. Any violation which seriously deviates from a requirement of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if

some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a nonhazardous pollutant;

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above; or

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(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 continuing 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.

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 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.