

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Subsequent Offenses</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
590. Failure to include in the EHSARA report the findings of the verification required by N.J.A.C. 7:31-9.2(b)2.	N.J.A.C. 7:31-9.5(d)1	1,000	2,000	5,000	NM	
591. Failure to include in the EHSARA report the findings of the review required by N.J.A.C. 7:31-9.2(b)3.	N.J.A.C. 7:31-9.5(d)2	1,000	2,000	5,000	NM	
592. Failure to include in the EHSARA report the report of the hazard review required by N.J.A.C. 7:31-9.2(b)4.	N.J.A.C. 7:31-9.5(d)3	1,000	2,000	5,000	NM	
593. Failure to include in the EHSARA report the findings of the reviews required by N.J.A.C. 7:31-9.2(b)5 through 9.	N.J.A.C. 7:31-9.5(d)4	1,000	2,000	5,000	NM	
594. Failure to include in the EHSARA report the recommended risk reduction plan including the listing of all of the deficiencies identified in N.J.A.C. 7:31-9.5(d)1 through 4, the remedial actions and alternatives to correct the deficiencies or a proposed schedule for implementation.	N.J.A.C. 7:31-9.5(d)5	1,000	2,000	5,000	NM	
595. Failure to implement the risk reduction plan which includes a list of risks that must be reduced.	N.J.A.C. 7:31-9.5(e)1	4,000	8,000	20,000	NM	
596. Failure to implement the risk reduction plan which includes the scheduled actions that were required to be taken to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 for Program 2 covered processes or N.J.A.C. 7:31-4 for Program 3 covered processes.	N.J.A.C. 7:31-9.5(e)2	4,000	8,000	20,000	NM	

(d) The Department may assess a civil administrative penalty for a violation of the Toxic Catastrophe Prevention Act and for violations of any rule, consent agreement or administrative order adopted or issued pursuant thereto, for which no penalty amount is specified under (c) above, according to the following:

1. The Department shall assess a penalty in an amount not to exceed the following:

- i. \$10,000 for the first offense;
- ii. \$20,000 for the second offense;
- iii. \$50,000 for the third and each subsequent offense.

2. The Department shall determine whether the violation is a minor violation and subject to a grace period or whether the violation is non-minor and not subject to a grace period and shall assess a penalty as follows:

- i. If, pursuant to (e) below, the violation is comparable to a violation listed in (c) above, and the comparable violation in (c) above is minor, then the violation under this section is also minor, provided the criteria at N.J.A.C. 7:31-11.5(c)1 through 4 are also met. The minor violation shall be subject to the grace period set forth in (c) above for the comparable violation, and the penalty shall be assessed in the amount of the penalty for the comparable violation, in accordance with the procedures set forth at N.J.A.C. 7:31-11.5;

ii. If the violation is not comparable to a violation listed in (c) above and the violation meets all of the criteria at (d)2ii(1) through (3) below as well as the criteria at N.J.A.C. 7:31-11.5(c)1 through 4, then the violation under this section is minor. The minor violation shall be subject to a grace period of 30 days, and may be subject to a penalty to be assessed under (d)1 above, in accordance with the procedures set forth at N.J.A.C. 7:31-11.5.

(1) The violation poses minimal risk to the public health, safety and natural resources;

(2) The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

(3) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department;

iii. If, pursuant to (e) below, the violation is comparable to a violation listed in (c) above, and the comparable violation in (c) above is non-minor, then the violation under this section is also non-minor and the penalty shall be assessed in the amount of the penalty for the comparable non-minor violation.

iv. If the violation is not comparable to a violation listed in (c) above and the violation does not meet the requirements of (d)2ii above, the violation is non-minor

and the penalty shall be assessed pursuant to (d)1 above, and (g) below as appropriate.

(e) Comparability of a violation under (d) above with a violation listed in (c) above is based upon the nature of the violation (for example, a violation of recordkeeping, completeness, reporting completeness or performance of risk management program requirements) and the nature and extent of the extraordinarily hazardous accident risk likely to result from the type of violation.

(f) If the owner or operator has not committed the same offense within the three year period preceding the pending offense, the penalty for the pending offense will be assessed at the frequency of violation level of the prior offense. 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) The Department may, in its discretion, adjust the amount of any penalty assessed for a non-minor violation pursuant to this section to assess a civil administrative penalty amount no greater than \$ 10,000 for the first offense, \$ 20,000 for the second offense and \$ 50,000 for the third and each subsequent offense, based upon any or all of the following factors:

1. The nature of the violation;
2. The nature and extent of the extraordinarily hazardous accident risk;
3. The nature, timing and effectiveness of prevention measures to minimize extraordinarily hazardous accident risks in addition to those minimally required by applicable statute or rule;
4. The compliance history of the violator;
5. The number of times and the frequency with which the violation occurred;
6. The severity of the violation;
7. Any other mitigating, extenuating or aggravating circumstances; and/or
8. 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.

Amended by R.1993 d.358, effective July 19, 1993.

See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Rewrote the section.

Amended by R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

In (c), substituted "III" for "II" in the introductory paragraph and rewrote the Table.

Amended by R.2006 d.143, effective April 17, 2006.

See: 37 N.J.R. 1595(a), 38 N.J.R. 1678(a).

In introductory paragraph (c), added " , the type of violation as minor (M) or non-minor (NM), and the applicable grace period if the violation

is minor,"; in (c) Table III, added type of violation and grace period columns; rewrote (d), (e) and in (g) added "for a non-minor violation" after "assessed".

Case Notes

Municipal water utility failed to timely file site documentation; penalty assessed. Department of Environmental Protection and Energy v. North Brunswick Water Works. 92 N.J.A.R.2d (EPE) 121.

Late filing of summary risk management program statement; de minimis violation. Division of Environmental Quality v. Middlesex Water Company. 92 N.J.A.R.2d (EPE) 62.

Failure of municipal utilities authority to timely submit Summary Risk Management Program Statement was one-time event. Department of Environmental Protection and Energy v. Gloucester Township Municipal Utilities Authority. 92 N.J.A.R.2d (EPE) 57.

Utility operating sewerage treatment facility utilizing liquid chlorine could not be penalized for failing to enter into administrative consent agreement. Camden County Municipal Utilities Authority v. New Jersey Department of Environmental Protection and Energy. 92 N.J.A.R.2d (EPE) 41.

7:31-11.5 Grace period applicability; procedures

(a) Each violation identified in the penalty table at N.J.A.C. 7:31-11.4(c) Table III by an "M" in the Type of Violation column and for each violation determined under N.J.A.C. 7:31-11.4(d) as minor, for which 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 table at N.J.A.C. 7:31-11.4(c) Table III 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 shall provide a grace period for any violation identified as minor under this section, provided that 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. The person responsible for the violation has not been identified 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 stationary source within the preceding 12-month period; and

4. 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 indicate 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 violation, and the violation will not be considered an offense for purposes of determining whether the violation constitutes a second or subsequent offense.

3. The person responsible for the minor violation shall submit to the Department or local government agency, before the end of the specified grace period, written information, certified in accordance with 40 C.F.R. 68.185, incorporated by reference at N.J.A.C. 7:31-7.1, and signed by a qualified person or position as defined in N.J.A.C. 7:31-1.5, 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 40 C.F.R. 68.185, incorporated by reference at N.J.A.C. 7:31-7.1. 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 on which 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.143, effective April 17, 2006.
See: 37 N.J.R. 1595(a), 38 N.J.R. 1678(a).