

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
§397.5	Failure of carrier to attend a vehicle that contains hazardous materials.	\$4,500	NM	
§397.7(b)	Carrier parked a hazardous material vehicle within five feet of the traveled portion of a street or highway.	\$3,000	M	30 days
§397.11	Carrier operated or parked a hazardous material vehicle near an open fire.	\$4,500	NM	
§397.13	Person smoked within 25 feet of a hazardous material vehicle.	\$4,500	NM	

(49 C.F.R. Part 397 Subpart C—Routing of Non-Radioactive Hazardous Materials)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
§397.67(b)	Carrier operated a hazardous material vehicle over inappropriate routes.	\$4,500	NM	

Amended by R.2002 d.140, effective May 6, 2002.  
See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

Rewrote section.

Amended by R.2006 d.202, effective June 5, 2006.  
See: 37 N.J.R. 1285(a), 38 N.J.R. 2426(a).

In (g), added "In the 'Type of Violation' column, 'M' identifies a violation as minor and 'NM' identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the 'Grace Period' column." at the end of the first paragraph. Rewrote (g)2 through (g)9 and inserted (g)10.

Amended by R.2007 d.350, effective November 5, 2007.  
See: 39 N.J.R. 1953(a), 39 N.J.R. 4834(a).

In introductory paragraph of (g), inserted "N.J.A.C." preceding "7:26G-2.5"; in (g)3, rewrote tables for "40 C.F.R. Part 262 Subpart B-The Manifest" and "N.J.A.C. 7:26G-6"; in (g)4, rewrote tables for "40 C.F.R. Part 263 Subpart B-Compliance with the Manifest System and Recordkeeping" and "N.J.A.C. 7:26G-7"; in (g)5, rewrote tables for "40 C.F.R. Part 264 Subpart E-Manifest System, Recordkeeping, and Reporting" and "40 C.F.R. Part 264 Subpart W-Drip Pads"; in (g)6, rewrote table for "40 C.F.R. Part 265 Subpart E-Manifest System, Recordkeeping, and Reporting"; and in (g)8, rewrote table for "40 C.F.R. Part 268 Subpart E-Prohibitions on Storage".

### 7:26G-2.5 Civil administrative penalty determination

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26G-2.4, when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26G-2.4 would be too low to provide a sufficient deterrent effect as required by the Act; or
2. The violation is not listed under N.J.A.C. 7:26G-2.4.

(b) Each violation of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or re-

port shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator as follows:

1. A violation that meets the criteria at (f)li through iii below and the criteria at N.J.A.C. 7:26G-2.10(c)1 through 5 is minor. Such a minor violation is subject to a grace period of 30 days if the violation meets the criteria at (f)li through iii below and at N.J.A.C. 7:26G-2.10. If compliance is not achieved within the grace period, the Department may assess a \$3,000 penalty in accordance with the procedures set forth at N.J.A.C. 7:26G-2.10.

- i. The violation poses minimal risk to the public health, safety and natural resources;
- ii. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and
- iii. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

2. A violation that does not meet the criteria set forth in (f)1 above is non-minor and the penalty shall be assessed at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

## SERIOUSNESS

		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
CONDUCT	Major	\$40,000-	\$30,000-	\$15,000-
		\$50,000	\$40,000	\$25,000
	Moderate	\$30,000-	\$10,000-	\$3,000-
		\$40,000	\$20,000	\$6,000
	Minor	\$15,000-	\$3,000-	N/A*
		\$25,000	\$6,000	

\*N/A means not applicable.

(g) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which:

i. Has caused or has the potential to cause serious harm to human health or the environment; or

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act; 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 seriousness shall apply to any violation which:

i. Has caused or has the potential to cause substantial harm to human health or the environment; or

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, or any Part A permit application filed, pursuant to the Act; 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; and

3. Minor seriousness shall apply to any violation not included in (g)1 or 2 above.

(h) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may adjust the amount determined pursuant to (f), (g) and (h) 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 (f) 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 shall 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 violation.

Amended by R.2006 d.202, effective June 5, 2006.

See: 37 N.J.R. 1285(a), 38 N.J.R. 2426(a).

Rewrote (f).

Administrative correction.

See: 38 N.J.R. 2798(a).

#### 7:26G-2.6 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 pursuant to the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, or any Part A permit application filed, pursuant to the Act.

(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 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 mid-point 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 per act or omission shall be in an amount of not more than \$50,000 nor less than \$40,000 per act or omission; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$1,000 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