

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT**

DOCUMENT NUMBER: 250-4180-302

EFFECTIVE DATE: January 14, 2023

TITLE: Calculation of Civil Penalties

AUTHORITY: This document is established in accordance with Sections 104 and 605 of Act 97 of 1980, the Solid Waste Management Act, as amended.

POLICY: It is the Department of Environmental Protection's (DEP or Department) policy that the procedure specified in this document should be used to calculate the amount of a civil penalty for appropriate violations of the Waste Management Acts and the regulations promulgated thereunder. Civil Penalties are to be calculated using an assessment of the following factors:

- a. Degree of severity of incident caused by the violation
- b. Costs incurred by the Commonwealth
- c. Savings to the violator
- d. Degree of willfulness
- e. Promptness of reporting the incident
- f. Past history of violations
- g. Duration of the violation
- h. Deterrence

The maximum statutory penalty for each offense for each separate day the violation persists is \$25,000.

PURPOSE: This document provides policy and procedure for the calculation of civil penalties so that civil penalties are calculated uniformly within the Bureau of Waste Management (BWM). It is based on the procedure that has been in effect since soon after the passage of Act 97 in July of 1980 with modifications based on the BWM's experience and adjudication since that time.

APPLICABILITY: This directive applies to BWM personnel and activities including, but not limited to permitting, enforcement, resource recovery and planning, grants, monitoring and administration. It is normally the responsibility of a Compliance Specialist in the Regional Office or Central Office to apply

the procedures that follow to a particular case. The procedure is used to assess the amount that a violator of the Department's Waste Management statutes or rules and regulations should be penalized when it is deemed appropriate to assess a civil penalty.

DISCLAIMER:

The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give these policies that weight or deference. This document establishes the framework within which DEP exercises its administrative discretion. DEP reserves the right to deviate from this policy statement if circumstances warrant.

PAGE LENGTH:

6 Pages

REFERENCES:

Act 97 of 1980, 35 P.S. Sec. 6018.101 et seq. (the Solid Waste Management Act, as amended); Act 93 of 1988, 35 P.S. Sec. 6019.1-6019.6, (the Infectious and Chemotherapeutic Waste Act); Act 101 of 1988, 53 P.S. Sec. 4000.101 et seq. (the Municipal Waste Planning, Recycling, and Waste, Reduction Act).

SCOPE:

This directive identifies the procedures to be used when determining the amount of civil penalty that will be assessed when it has been determined that a penalty assessment is appropriate or required by statute or regulation.

PROCEDURES:

The total penalty is calculated as follows:

Step I. Degree of Severity

Since many aspects of an incident do not lend themselves to accurate monetary calculations, the following approach should be used to determine the relative severity of the incident. Use the criteria outlined below (“CRITERIA FOR ASSESSING SEVERITY OF INCIDENT”) to determine the severity of the incident. Each incident should be ranked as SEVERE, MODERATE or LOW. For example, if the incident causes any of the results listed in the severe column, the incident is usually considered to be SEVERE. The same approach applies to ranking an incident as MODERATE. Incidents which do not produce any of the listed results normally are considered to be of LOW severity.

CRITERIA FOR ASSESSING SEVERITY OF INCIDENT

SEVERE		MODERATE	
1.	Loss of service of public or private water supplies - contamination exceeding drinking water standards	1.	Significant contamination of public or private water supplies - not exceeding drinking water standards
2.	Contamination of groundwater sufficient to restrict present or potential future use, or contamination exceeding drinking water standards	2.	Measurable contamination of groundwater but not exceeding drinking water standards
3.	Major substrate (soil, streambed, etc.) contamination requiring excavation & removal, extensive treatment or neutralization, or long-term natural recovery	3.	Substrate contamination requiring short-term natural recovery
4.	Destruction, alteration, or contamination of critical habitat of endangered or threatened species	4.	
5.	Major fish or wildlife kill or destruction of natural vegetation	5.	Limited but significant fish or wildlife kill or destruction of natural vegetation
6.	Incident results in physical injury, illness or death of individuals	6.	Incident results in minor injury or illness of individuals.
7.	Incident results in major damage to private, personal, or public property	7.	Incident results in moderate but significant damage to private, personal, or public property
8.	Incident necessitates prolonged evacuation or evacuation over a comparatively large area	8.	Incident necessitates short term evacuation or evacuation over a limited area
9.	Incident results in a major public nuisance (vectors, odors, smoke, etc.)	9.	Incident results in moderate but significant public nuisance
10.	Incident results in a severe or prolonged interruption of public transportation systems	10.	Incident results in significant but limited interruption of public transportation systems
11.	Incident results in major impact on land use (agriculture, silviculture, mineral extraction, recreation, future development, etc.)	11.	Incident results in significant but limited or short-term impact on land use
12.	Incident involves extremely dangerous wastes or large quantities of wastes	12.	Incident involves moderately dangerous wastes or limited but significant quantities of wastes
13.	The total calculable monetary damage and economic loss (including that from above and any other factors) exceeds \$12,500. Do not include any direct Commonwealth expenditures	13.	The total calculable monetary damage and economic loss is greater than \$5,000 but is less than \$12,500

Consider such factors as loss of fish and wildlife, loss of timber, loss of farm crops and stock, loss of mineral resources, increased costs for water treatment or alternate supply sources, evacuation costs, other emergency response costs (municipal, county, etc.), costs incurred by disruption to transportation systems, economic losses due to altered or restricted land and water uses, etc.

That portion of total penalty assessed on the basis of severity should be carefully decided after an objective consideration of all the factors involved, realizing that a number of the pertinent criteria do not lend themselves to the application of absolute monetary values (e.g., the destruction of an endangered species habitat). The portion of the total penalty assessed for severity should fall within the following ranges:

<u>Severity</u>	<u>Minimum Amount</u>	<u>Maximum Amount</u>
LOW	\$ 1,000	\$ 5,000
MODERATE	\$ 5,000	\$ 12,500
SEVERE	\$ 12,000	\$ 25,000

Step II. Costs Incurred by the Commonwealth

Calculate all costs related to the investigation and abatement of the incident. Costs incurred by personnel from all Commonwealth agencies involved should be carefully recorded and should include the following:

1. Abatement, remedial, and preventive measures performed
2. Salaries and benefits
3. Travel and expenses
4. Legal staff costs
5. Cost of contracts awarded to Commonwealth subcontractors
6. Cost of sampling and laboratory analyses

That portion of the total penalty assessed for Commonwealth costs is the sum of the above expenditures and may vary greatly depending on the nature of the incident. It may actually exceed the maximum statutory penalty.

Step III. Savings to the Violator

This amount is determined by calculating the costs, if any, of the actions that should have been taken by the violator, the omission of which directly or indirectly caused the incident to occur.

Example: A severe erosion and sedimentation problem results from an operator's failure to construct surface water control ditches and swales as required in the permit. Calculate the savings resulting from the failure to construct, seed, mulch, and maintain the required structures.

Step IV. Degree of Willfulness

The behavior of the violator should be carefully evaluated before, during, and after the incident and should be categorized as follows:

1. Willful Violation: a deliberate premeditated action with prior knowledge that the act constituted a violation of environmental statutes, regulation, etc., or a deliberate attempt to circumvent or avoid compliance with same.
2. Reckless Violation: a violation resulting from the disregard of an obvious risk or regulatory responsibility, the existence, nature, and possible consequences of which were known, or of which prior warning or notice had been given.
3. Negligent Violation: a violation resulting from the failure to recognize, correct, or prevent a condition which the violator should have recognized carried a certain degree of risk or regulatory responsibility.
4. Accidental Violation: a violation resulting from factors beyond the control of the violator and, therefore, which could not reasonably have been prevented.

That portion of total penalty assessed for willfulness should be determined as follows:

Type of Violation	Minimum Penalty	Maximum Penalty
ACCIDENTAL	NONE	NONE
NEGLIGENT	\$ 500	\$ 5,000
RECKLESS	\$ 5,000	\$ 12,500
WILLFUL	\$ 12,500	\$ 25,000

Step V. Promptness of Reporting of Incident

This criterion applies to those types of incidents for which a reporting requirement exists in the relevant statutes, regulations, or permit conditions (e.g., spill reporting requirements) or for those situations in which failure to report the incident would clearly constitute a negligent or reckless endangerment to the environment or the public health, safety, and welfare.

That portion of the total penalty to be assessed for failure to report the incident in a timely manner should be determined by the length of the period of delay and any mitigating circumstances surrounding the failure to report. The minimum penalty, if applicable should be \$1,000 and the maximum penalty should be \$2,500.

Step VI. Past History of Violations

The total penalty calculated by adding those amounts obtained from Steps I through V above should be increased by a factor of five percent (5%) for each prior violation occurring during the previous five (5) year period. For purposes of computing civil penalties, such violations should include those resulting in any final adjudicated proceeding, consent order and agreement, consent decree, or civil penalty assessment. Violations occurring anywhere throughout the Commonwealth should be considered.

Step VII. Duration of Violation

Separate violations occurring on separate days are considered to be separate offenses for which civil penalties may be individually assessed. If violations occur over a number of days and collectively result in a single incident or pollution event which persists for a number of days, calculate the total penalty as follows:

1. Determine the total penalty assessable under Steps II, III, and V above for the entire incident or pollution event.
2. Determine the degree of severity of the incident for each day of violation and add these values. Note that the degree of severity may increase or decrease over time.
3. Determine the degree of willfulness of each separate violation and add these values.
4. Add, the values from A, B, and C above and multiply by the past history of violation factor as described in Step VI.

Step VIII. Deterrence

Some violations do not involve all or any of the factors in the previous steps. In such cases the need for the Department to assess may be required by statute or regulation, or there may be a need to deter the violation by imposing a monetary penalty. An example of such a violation is incomplete or improper hazardous waste manifest completion. Penalty determinations for this type of violation should be made on a case by case basis to assure statewide uniformity and to take into account the facts of each case.