



# **AIR QUALITY**

## **Civil Penalty Policy**

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# Civil Penalty Policy

## Purpose

- To update existing procedures for assessing civil penalties for violations of the Article XXI regulations
- To develop a health-based penalty formula for assessment of civil penalties
- To provide increased deterrence for future violations



# **Civil Penalty Policy**

## **State Requirements**

All air quality penalties are limited by the Pennsylvania Air Pollution Control Act (APCA) requires that the Department apply the penalty provisions under the APCA to ensure that civil penalties for air pollution violations are uniform throughout the State for a maximum of \$25,000 per day per penalty.



# Civil Penalty Policy

## Past Procedures

- Penalty Matrix based on Article XXI § 2109.06.b.1 requirements
  - (1) the willfulness of the violation;
  - (2) the actual and potential harm to the public health, safety, and welfare;
  - (3) the damage to the air, soil, water, and other natural resources of the County and their uses;
  - (4) the economic benefit gained by such person by failing to comply with this Article;
  - (5) the deterrence of future violations;



# Article XXI

## § 2109.06.b.1 Cont.

- (6) the costs of the Department;
- (7) the size of the source or facility;
- (8) the compliance history of the source;
- (9) the nature, frequency, severity, and duration of the violation;
- (10) the degree of cooperation in resolving the violation;
- (11) the speed with which compliance is ultimately achieved;
- (12) whether or not the violation was voluntarily reported;
- (13) other factors unique to the owners, operators, or other responsible parties of the source or facility; and
- (14) other relevant factors



# Civil Penalty Policy

## New Policy

- Formally adopted policy for ACHD on 1.10.2018
- Based on:
  - EPA’s “Clean Air Act Stationary Source Civil Penalty Policy”
  - PA DEP’s “Guidance for the Application of Regional Civil Assessment procedures
- Very Prescriptive
  - Ensures consistent application of penalties
  - Legally defensible
- Procedure for Supplemental Environmental Projects



# Key Points

- More emphasis on public health impact
  - Toxicity
  - Nonattainment Areas
- Moves violation target to 99% from 85-95%
- Incorporates coke plants into violation policy
- Will increase violation fees overall; Average increase in penalties about 60% if applied to 2016 violations



# Civil Penalty Policy

## How it Calculates Penalties

Maximum penalty may not exceed \$25,000 per day for each violation as limited by Pennsylvania Statute

**NOTE:** The maximum penalty that the Department may assess is \$25,000 per day for each violation. This civil penalty policy requires a determination of the Gravity Based Component (“Step 1”) and the Adjustment Factor (“Step 2”). **After these two determinations have been made, the preliminary penalty amount for major violations may increase to \$33,000.** The Department may then add to the penalty amount any economic benefit from noncompliance (“Step 3”) and any additional costs to the Department (“Step 4”). The Department also has the discretion to include an additional deterrence amount (“Step 5”), if appropriate. **If the calculated civil penalty amount exceeds the statutory maximum of \$25,000 per day for each violation, then the final civil penalty amount must be reduced to \$25,000.**





# **Civil Penalty Policy**

## **How it Calculates Penalties**

### **Step 1**

#### 1. Potential for Harm (0, 1, or 3 for each)

- Toxicity of pollutant
- Amount of pollutant
- Duration of violation
- Impact on Public
- Sensitivity of the Environment

Total: Major 8-10, Moderate 4-7, or Low 0-3



# **Civil Penalty Policy**

## **How it Calculates Penalties**

### **Step 1 Cont.**

#### 2. Severity of Violation

(Major, Moderate, or Low)

- Specified by policy
- Case by Case



# Civil Penalty Policy

## How it Calculates Penalties

### Step 1 Complete

### Determine Gravity Component

POTENTIAL FOR HARM	SEVERITY OF VIOLATION		
	Major	Moderate	Low
Major	\$12,000-\$6,000	\$6,000-\$3,500	\$3,500-\$2,000
Moderate	\$5,000-\$2,500	\$2,500-\$1,300	\$1,300-\$900
Low	\$2,500-\$1,300	\$1,300-\$900	\$900-\$400



# **Civil Penalty Policy**

## **How it Calculates Penalties**

### **Step 2**

Calculate Adjustment Factor

- Degree of cooperation
- Compliance History
- Degree of Willfulness
- Size of Violator

Add each and multiply by Gravity Component



# **Civil Penalty Policy**

## **How it Calculates Penalties**

### **Additional Steps**

Step 3. Determine Economic Benefit

Step 4. Determine Cost to the Department

Step 5. Determine need for additional  
Deterrence

Each of these may be added to adjusted  
Gravity Component to finalize penalty



# Civil Penalty Policy

The Civil Penalty Policy will be reviewed in 2019 to determine the effectiveness of the changes