

Arkansas Regulations

Department of Pollution Control and Ecology

Regulation No. 7 -- Civil Penalties

SECTION 1. Authority

Pursuant to the authority and provisions of the Arkansas Solid Waste Management Act, A.C.A. §§8-6-210 through 709; the Arkansas Water and Air Pollution Control Act, §§A.C.A. 8-4-101 through 313 and §§8-5-101 through 612; the Arkansas Hazardous Waste Management Act and the statutes governing regulated substance storage tanks, A.C.A. §§8-7-101 through 908; and the Recycling Act, A.C.A. 8-9-101 through 406; including amendments to these Acts and acts which the Department may be charged with enforcement authority,

WHEREFORE, the Arkansas Pollution Control & Ecology Commission hereby promulgates this Regulation No. 7 to provide guidance for the assessment of civil penalties for the violation of any provisions of these Acts, or for the violation of any regulations issued pursuant to these Acts or for the violations of any order, rule, agreement or permit, or any part thereof, issued under these Acts.

SECTION 2. Definitions

When used in this regulation:

- (a) "Commission" means the Arkansas Pollution Control and Ecology Commission.
- (b) "Department" means the Arkansas Department of Pollution Control and Ecology.
- (c) "Director" means the Director of the Arkansas Department of Pollution Control and Ecology.
- (d) "Violation" means the failure to comply with any statute, regulation, order, rule, agreement, permit, or any part thereof, and includes both acts and omissions.
- (e) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized.

SECTION 3. Procedure

The assessment of civil penalties hereunder shall be in accordance with the administrative procedures specified in Regulation No. 8, or if an action in a court of competent jurisdiction, then under the Arkansas Rules of Civil Procedure.

SECTION 4. Solid Waste Management

The amount of any civil penalty to be assessed for any person for the violation of any provision of the Arkansas Solid Waste Management Act, the Recycling Act or the Arkansas Solid Waste Disposal Code, and regulations, plans or procedures developed thereunder, or the violation of any permit, order, rule or agreement, or any part thereof, shall be in accordance with the provisions of Act 1057 of 1991 and shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 5. Air

The amount of any civil penalty to be assessed any person for the violation of any provision of Part II of the Arkansas Water and Air Pollution Control Act and regulations, plans or procedures developed thereunder or the violation of any permit, order, rule or agreement, or any part thereof, shall be in accordance with the provisions of Act 1057 of 1991 and shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 6. Hazardous Waste Management

The amount of any civil penalty to be assessed any person for the violation of any provision of the Arkansas Hazardous Waste Management Act and regulations, plans or procedures developed thereunder, the Arkansas Hazardous Waste Management Code or the violation of any permit, order, rule or agreement, or any part thereof, shall not exceed \$25,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 7. Water

The amount of any civil penalty to be assessed any person for the violation of any provision of Part I of the Arkansas Water and Air Pollution Control Act and regulations, plans, or procedures developed thereunder, or the violation of any permit, order, rule, or agreement, or any part thereof, shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a

separate violation.

SECTION 8. Regulated Substance Storage Tanks

The amount of any civil penalty to be assessed any person for the violation of any provision of the Regulated Substance Storage Tank Act and regulations, plans and procedures developed thereunder, or the violation of any permit order, rule, or agreement, or any part thereof, shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 9. Determination of Amount

In determining the amount of a civil penalty to be assessed hereunder, the Department shall consider the following factors which may increase or decrease the amount of the assessed fine:

- (a) The seriousness of the noncompliance and its effect upon the environment, including the degree of potential or actual risk or harm to the public health caused by the violation.
- (b) Whether the cause of the noncompliance was an unavoidable accident.
- (c) The violator's cooperativeness and expeditious efforts to correct the violation.
- (d) The history of a violator in taking all reasonable steps or procedures necessary or appropriate to correct any noncompliance.
- (e) The violator's history of previous documented violations regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore.
- (f) Whether the cause of the violation was an intentional act or omission on the part of the violator.
- (g) Whether the noncompliance has resulted in economic benefit or pecuniary gain to the violator, including but not limited to cost avoidance.
- (h) Whether the pursuit and the execution of the enforcement action has resulted in unusual or extraordinary costs to the Department or the public.
- (I) Whether any part of the noncompliance is attributable to the action or inaction of the state government.
- (j) Whether the violator has delayed corrective action.

These factors, along with the provisions of the above named Acts and specifically Act 1057 of 1991, shall be used when determining an appropriate amount. In addition, the Department may develop and utilize formulas for the calculation of penalties for specific offenses, in an effort to uniformly assign penalty amounts where practicable.

SECTION 9. Effective Date

This Regulation shall be in full force and effect as of July 24, 1992.

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