

---

---

**Rules of**  
**Department of Natural Resources**  
**Division 20—Clean Water Commission**  
**Chapter 3—Enforcement**

<b>Title</b>	<b>Page</b>
<b>10 CSR 20-3.010</b> Penalty Assessment Protocol .....	3

**Title 10—DEPARTMENT OF  
NATURAL RESOURCES  
Division 20—Clean Water Commission  
Chapter 3—Enforcement**

**10 CSR 20-3.010 Penalty Assessment Protocol**

*PURPOSE: This rule establishes the procedures for assessment of administrative penalties.*

(1) General Provisions.

(A) Pursuant to sections 644.076 and 644.079, RSMo, and in addition to any other remedy provided by law, upon determination by the department that a provision of sections 644.006–644.141, RSMo, or a standard, limitation, order or rule promulgated, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator. The amount of the administrative penalty will be determined according to sections (3) through (7) of this rule. In no event may the total penalty assessed per day of violation exceed the statutory maximum specified in section 644.076, RSMo.

(B) An administrative penalty shall not be imposed until the department has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or had the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is not a minor violation.

(C) An order assessing an administrative penalty shall be served upon the operator, owner, or appropriate representative through United States Postal Service certified mail, return receipt requested, a private courier or messenger service which provides verification of delivery or by hand delivery to the operator's or owner's residence or place of business. An order assessing an administrative penalty shall be considered served if verified receipt is made by the operator, owner, or appropriate representative. A refusal to accept, or a rejection of certified mail, private courier or messenger service delivery or by hand delivery of an order assessing an administrative penalty constitutes service of the order.

(D) The director may at any time withdraw without prejudice any administrative penalty order.

(E) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty being assessed and the basis of the penalty calculation.

(F) Administrative penalties may be assessed for each day that a specific violation exists, including all days between separate observations or reports which indicate that an operator or owner is not complying with a particular statutory or regulatory provision if the director finds that, based on all relevant facts and circumstances, including that offered by the violator, the violation continued unabated during that time.

(2) Definitions.

(A) Definitions for key words used in this rule may be found in section 644.016, RSMo, in 10 CSR 20-2.010 and 10 CSR 20-6.300.

(B) Additional definitions specific to this rule are as follows:

1. Conference, conciliation and persuasion—A process of verbal or written communications, including but not limited to meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

2. Economic benefit—Any monetary gain which accrues to a violator as a result of noncompliance;

3. Extent of deviation—Deviation from the provisions of sections 644.006–644.141, RSMo or its corresponding regulations, rules, standards, limitations, orders or permits related to the degree to which the violation departs from or prevents the attainment of the intended purpose of the specific statutory or regulatory requirement;

4. Gravity-based assessment—The degree of seriousness of a violation, taking into consideration the risk to human health and the environment posed by the violation and considering the extent of deviation from sections 644.006–644.141, RSMo;

5. Major facility—Means any facility or activity requiring a Missouri State Operating Permit (MSOP) and classified as such by the director in concurrence with the United States Environmental Protection Agency (USEPA);

6. Multi-day violation—A violation which has occurred on or continued for two (2) or more consecutive or non-consecutive

days;

7. Multiple violation penalty—The sum of individual administrative penalties assessed where two (2) or more violations are included in the same enforcement action;

8. Significant noncompliance—Violation of one (1) or more provisions of sections 644.006–644.141, RSMo, or corresponding standards, limitations, orders or rules, or a term or condition of any permit which meets one (1) or more of the following criteria:

A. Violation of permit effluent limits which the department must report to the USEPA, or would have to report if the facility was subject to noncompliance reporting requirements;

B. An unauthorized bypass;

C. An unpermitted discharge;

D. A pass through of pollutants which causes or has the potential to cause a violation of Water Quality Standards, 10 CSR 20-7.031;

E. Failure of a municipal wastewater treatment facility to implement its approved pretreatment program, including failure to enforce industrial pretreatment requirements as required in the approved program;

F. Violations of any compliance schedule milestone by ninety (90) days or more from the date specified in an enforcement order or a permit;

G. Failure of the permittee to provide reports within thirty (30) days from the due date specified in an enforcement order or a permit;

H. Violations of narrative requirements in permit which is of substantial concern to the regulatory agency; and

I. Any other violation or group of permit violations which the director considers to be of substantial concern.

(3) Determination of Penalties. The amount of an administrative penalty will involve the application of a gravity-based assessment under subsection (3)(A) and may involve additional factors for multiple violations under subsection (3)(B), multi-day violations under subsection (3)(C) and economic benefit resulting from noncompliance under subsection (3)(D). The resulting administrative penalty may be further adjusted as specified under subsection (3)(E).

(A) Gravity-Based Assessment. The gravity-based assessment is determined by evaluating the potential for harm posed by the violation and the extent to which the violation deviates from the requirements of the Missouri Clean Water Law.

1. Potential for harm. The potential for harm posed by a violation is based on the risk to human health, safety, or the environment

or to the purposes of implementing the Missouri Clean Water Law and associated rules or permits.

A. The assessment of the potential for harm resulting from a violation will be based on the risk of adverse effects upon humans or the environment from exposure to water contaminants as a result of a violator's noncompliance. The potential for harm will be expressed as a point total and evaluated by adding together the points assessed for criteria contained in the following categories.

**Receiving Water Characteristics and Sensitivity**

Points Assessed	Potential for Harm
25	Drinking water lakes (Class L1), and cold water sport fishery streams designated in 10 CSR 20-7.031, groundwaters and losing streams and/or waters listed as impaired on the current Missouri 303(d) list where the violation involved a contaminant responsible for the waters listing
25	Critical aquatic habitats which support populations of plant or animal species designated by the federal government as threatened or endangered; if in a stream, includes the main stem and tributaries for a distance of one (1) mile upstream of the critical habitat area
15	Outstanding national and state resource waters as designated in 10 CSR 20-7.031
10	All other Class L2, L3, P, P1 and C waters and metropolitan no-discharge streams as designated in 10 CSR 20-7.031
0	All other waters and unclassified streams

**Facility and Water Contaminant Characteristics**

Concentrated Animal Feeding Operation/  
Animal Feeding Operation (according to size as designated by 10 CSR 20-6.300(1)).

Points Assessed	Potential for Harm
30	Class IA - >20,000 A.U.
25	Class IA - 7,000 to 20,000 A.U.
20	Class IB
15	Class IC
10	Class II
5	Other

**AG-Chem Secondary Contaminant**

Points Assessed	Potential for Harm
	<b>Product</b>
10	Liquid pesticides or fertilizers
5	Dry pesticides or fertilizers
	<b>Total On-site Tank/Tanks Capacity</b>
10	> 40,000 gallons
5	< 40,000 gallons
0	No on-site storage

**Industrial Facilities and Wastewaters**

Current average daily flow if known or can be readily estimated; if not, the design flow or

approximation of it. (If the violation was due to a bypass, then the volume bypassed per day or an estimate of that volume.)

**Process Wastewater Flows**

Points Assessed	Potential for Harm
30	> 1 million gal/day
20	500,000 to <1 million gal/day
15	100,000 to <500,000 gal/day
10	25,000 to <100,000 gal/day
5	< 25,000 gal/day

**Sludge Handling Facilities (Domestic and Industrial)**

Current average daily sludge production quantity if known or can be readily estimated; if not, the design sludge production or approximation of it. (If the violation was due to a bypass, then the amount bypassed per day or an estimate of that amount.)

**Sludge Handling Facilities**

Points Assessed	Potential for Harm
30	> 50,000 dry lbs/day
20	5,000-50,000 dry lbs/day
15	1,000-5,000 dry lbs/day
10	500-1,000 dry lbs/day
5	<500 dry lbs/day

**Storm Water Flows Land Disturbance**

Points Assessed	Potential for Harm
30	> 100 acres
20	50 to < 100 acres
15	20 to < 50 acres
10	5 to < 20 acres
5	< 5 acres

**Site Specific Industrial Storm Water**

Points Assessed	Potential for Harm
30	> 1 million gal/day
20	500,000 to <1 million gal/day
15	100,000 to <500,000 gal/day
10	25,000 to <100,000 gal/day
5	<25,000 gal/day

**General Industrial Storm Water**

Points Assessed	Potential for Harm
5	All categories of general

**Cooling Water Only Flows**

Points Assessed	Potential for Harm
10	> 5 million gallons/day
5	< 5 million gallons/day

**Domestic Wastewater Facilities**

Current average daily flow if known or can be estimated; if not, design flow. (If the violation was due to a bypass, then the volume bypassed or an estimate of that volume.)

Points Assessed	Potential for Harm
30	>50 million gal/day
25	1 million to 50 million gal/day
20	500,000 to 1 million gal/day
15	100,000 to 500,000 gal/day
10	25,000 to 100,000 gal/day
5	<25,000 gal/day
10*	Pretreatment program is/should be in effect (in addition to previously listed items)

\*The points assessed may be reduced if the permittee can demonstrate that the portion of sewer system that is bypassing serves primarily residential areas with little or no categorical industries.

**Effects of Water Contaminant Discharges**

Points Assessed	Potential for Harm
30	Discharge has harmful effect on animal or aquatic life as evidenced by fish kills, creates an immediate or persistent threat to public health or results in impairment of any beneficial uses contained in the Water Quality Standards, 10 CSR 20-7.031(1)(C)
30	Discharge causes violation of Cave Resources Act sections 578.200-578.225
20	Discharge causes visible contamination of a surface water or a violation of any general or specific criteria described in 10 CSR 20-7.031
15	Discharge reduces water quality below existing levels but does not prevent maintenance of beneficial uses described in the Water Quality Standards, 10 CSR 20-7.031(1)(C)
10	Discharge causes a public nuisance (for example: taste, odor)
5	Discharge does not comply with the effluent limitations, but produces no readily apparent impact on watercourse
5	A water contaminant was placed, caused or permitted to be placed in a location where it is reasonably certain to cause pollution

2. Extent of deviation. The extent of deviation may range from slight to total disregard of the requirements of the Missouri Clean Water Law and associated rules and/or permits. The assessment will reflect this range and will be evaluated according to the degrees of severity. The extent of deviation will be expressed as a point total and evaluated by adding together the points assessed for criteria contained in the following categories:



**Organizational Capability and Sophistication**

Points Assessed	Extent of Deviation
30	Major discharger (municipal, industrial, federal) or Class IA Concentrated Animal Feeding Operation
25	Non-major industrial facility with more than 50 corporate employees
20	Non-major federal and state construction grant-state revolving fund funded facility
15	Non-major, nonconstruction-grant or state revolving fund funded facility, Class IB and IC concentrated animal feeding operation, or Missouri Public Service Commission regulated facility
10	All other facilities

**Facility Compliance Status**

Points Assessed	Extent of Deviation
25	Facility in noncompliance more than 67% of time during a period of at least three (3) consecutive months
15	Noncompliance with one (1) or more requirements followed by periodic returns to compliance
5	Infrequent problem (long periods of compliance; noncompliance less than 20% of time; includes spills and short-term discharge events)

**Facility Responsiveness**

Points Assessed	Extent of Deviation
30	Demonstrated recalcitrance by owner or operator, or failure to comply until a lawsuit was filed
20	Lack of attention and concern until formal administrative enforcement action has been initiated or referral to the U. S. Attorney, U.S. Department of Justice, Office of the Attorney General or the county prosecutor for civil or criminal actions
10	Violations continued after responsible party had been clearly informed on at least three (3) separate occasions of the noncompliance and the need to correct it
0	Other

**Regulatory Compliance Characteristics**

Points Assessed	Extent of Deviation
25	Failure to meet schedule of compliance or attain final limits contained in an abatement order, court order, consent decree or settlement agreement.
20	Discharge without an MSOP permit or operation without required permit for Class I CAFOs.
15	Discharge fails whole effluent toxicity testing (WET) requirement specified in the operating permit.
15	Significant noncompliance with effluent limits.
10	Failure to meet schedule of compliance or special conditions in an MSOP permit.
10	Violations of effluent limits that do not meet the definition of significant noncompliance.
10	Failure to submit Discharge Monitoring Reports (DMRs) or other reports required by the operating permit or letter of approval.
10	Failure to employ or retain a certified operator if required to do so.
10	Discharge without a required Storm Water Permit.
10	Failure to install and maintain erosion control measures.
5	Failure to develop and implement a required Storm Water Pollution Prevention Plan.
5	Construction without a construction permit or letter of approval for construction, or failure to construct in accordance to plans and specifications.
5	Failure to comply with subdivision regulations.
5	Failure to comply with MSOP standard conditions not previously specified, including failure to provide proper operation and maintenance and perform in-plant testing.
5	Failure to meet regulatory compliance date.

3. Gravity-based penalty assessment matrix. The matrix that follows will be used to determine the gravity-based assessment portion of the administrative penalty. Potential for harm and extent of deviation form the axes of the matrix. The penalty range selected may be adopted to the circumstances of a particular violation.

Potential for Harm	Extent of Deviation
Major-51 or more points	101 or more points
Moderate-26 to 50 points	46 to 100 points
Minor-0 to 25 points	0 to 45 points

4. Base penalty determination. The final penalty calculated shall not exceed the amounts established in section 644.076, RSMo.

A. The penalty assessment will be determined by selecting the appropriate cell from the gravity-based assessment matrix. Potential for harm and extent of deviation form the two (2) axes of the matrix. The matrix is composed of nine (9) cells, each of which contains a monetary penalty range and a midpoint.

**Extent of Deviation**

Potential for Harm	Gravity	Major	Moderate	Minor
	Major (Range) (Midpoint)	\$8,501-\$10,000 \$9,250.50	\$7,501-\$8,500 \$8,000.50	\$6,501-\$7,500 \$7,000.50
Moderate (Range) (Midpoint)	\$5,501-\$6,500 \$6,000.50	\$4,501-\$5,500 \$5,000.50	\$3,501-\$4,500 \$4,000.50	\$2,501-\$3,500 \$3,000.50
Minor (Range) (Midpoint)	\$2,501-\$3,500 \$3,000.50	\$1,501-\$2,500 \$2,000.50	\$0-\$1,500 \$750	

B. The matrix cell appropriate for a specific penalty assessment will be determined by identifying the appropriate category (for example, major, moderate, minor) for both the potential for harm and the extent of deviation. This results in the penalty being set at the midpoint of the range in the selected matrix cell.

(B) Multiple Violation Penalty. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation. The director may order a separate administrative penalty for that violation as set forth in this rule.

(C) Multi-Day Penalty. Penalties for multi-day violations may be determined when the director concludes that a violation(s) has continued or occurred for multiple consecutive or nonconsecutive days. Multi-day penalty assessments will be determined by using the Gravity-Based Assessment Matrix in paragraph (3)(A)3. The director may seek penalties for each day of noncompliance, not to exceed the amount of civil penalty specified in section 644.076, RSMo.

(D) Economic Benefit. Any economic benefits, including delayed and avoided costs that have accrued to the violator as a result of noncompliance, will be added to the penalty amount. Determination will be made by the department using an economic benefit formula that provides a reasonable estimate of the economic benefit of noncompliance. Economic benefit may be excluded from the administrative penalty if any one (1) of the following occur:

1. The economic benefit is an insignificant amount;
2. There are compelling public concerns that would not be served by taking a case through administrative appeal or circuit court litigation; or
3. It is unlikely that the department would be able to recover the economic benefit in litigation based on the particular case.

(E) Adjustments. The department may add to or subtract from the total amount of the penalty after consideration of the following adjustments:

1. Recalculation of penalty amount. After the issuance of an order by the director, if new information about a violation becomes available which indicates that the original penalty calculation may have been incorrect, the department may recalculate the penalty;

2. Good faith efforts to comply. The department may adjust a penalty amount downward if good faith efforts have been adequately documented by the violator. Good faith efforts include, but are not limited to, documentation that the violator has reported noncompliance or instituted measures to remedy the violation prior to detection by the department. However, good faith efforts to achieve compliance after agency detection are assumed and are not grounds for decreasing the penalty amount;

3. Culpability. In cases of heightened culpability, the penalty may be increased, at the department's discretion, within the ranges of the matrix. Likewise, in cases where there is a demonstrable absence of culpability, the department may decrease the penalty. Lack of knowledge of the Missouri Clean Water Law and any associated rule and/or permit shall not be a basis of decreased culpability. The following criteria will be used to determine culpability:

A. How much control the violator had over the events constituting the violation;

B. The foreseeability of the events constituting the violation;

C. Whether the violator took reasonable precautions against the events constituting the violation;

D. Whether the violator knew or should have known of the hazards associated with the conduct; and

E. Whether the violator knew or should have known of the legal requirement which was violated. This criteria shall be used only to increase a penalty, not to decrease it.

4. History of noncompliance. Where there has been a history of noncompliance with the Missouri Clean Water Law or any associated rule or permit to a degree deemed significant due to frequency, similarity or seriousness of past violations, and considering the violator's response to previous enforcement actions, the department may increase the administrative penalty. No downward adjustment is allowed because of this factor;

5. Ability to pay. When a violator has adequately documented that payment of all or a portion of the penalty will preclude the vio-

lator from achieving compliance or from carrying out important remedial measures, the department may take one (1) of the following actions:

A. Waive any portion or all of the administrative penalty; or

B. Negotiate a delayed payment schedule, installment plan or replace upfront penalties with stipulated penalties; and

6. Other adjustment factors. This rule allows for other penalty adjustments based on fairness and equity not mentioned in this rule which may arise on a case-by-case basis.

(4) Proceeds from Administrative Penalties. The proceeds from any administrative penalty assessed in accordance with this rule shall be paid to the county treasurer of the county in which the violation(s) occurred for the use and benefit of the county schools within that county.

(5) Natural Resource Damages. Nothing in this rule shall be construed as satisfying any claim by the state or federal government for natural resource damages.

*AUTHORITY: sections 644.026, RSMo Supp. 1998 and 644.079, RSMo 1994.\* Original rule filed June 8, 1973, effective June 18, 1973. Rescinded: Filed Oct. 12, 1979, effective July 10, 1980. Readopted: Filed Dec. 31, 1991, effective Aug. 6, 1992. Rescinded and readopted: Filed April 15, 1999, effective March 30, 2000.*

*\*Original authority: 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995; and 644.079, RSMo 1991, amended- 1993.*