

**Rules of
Department of Natural Resources
Division 25—Hazardous Waste
Management Commission
Chapter 14—Administrative Penalties**

Title	Page
10 CSR 25-14.010 Administrative Penalties	3

**Title 10—DEPARTMENT OF
NATURAL RESOURCES**
**Division 25—Hazardous Waste
Management Commission**
Chapter 14—Administrative Penalties

10 CSR 25-14.010 Administrative Penalties

PURPOSE: This rule establishes the conditions for issuance and methods for calculation of administrative penalties by the director.

(1) Pursuant to section 260.412, RSMo, upon determination that any provision of sections 260.350—260.481, RSMo or rule of the Hazardous Waste Management Commission or term or condition of any permit has been violated, the director of the Department of Natural Resources may issue an order assessing an administrative penalty upon the violator. An administrative penalty, as described in this rule, shall not be applied to any minor violation, as defined in this rule, and shall not exceed the amount of the civil penalty specified in section 260.425, RSMo.

(2) Definitions.

(A) Adjustments are those factors related to a violator or violation which are not reflected in the gravity-based measure but which distinguish legitimate differences between separate violations of the same provision.

(B) Conference, conciliation and persuasion, for the purposes of this rule, is any written correspondence which notifies a facility of a violation and requests that the violation be corrected.

(C) Economic benefit is any monetary gain which accrues to a violator as a result of noncompliance.

(D) The extent of deviation means the degree to which the violation renders inoperative the requirement violated, ranging from substantial but not total compliance to complete disregard for the requirement, regulations and statutes.

(E) Gravity-based assessment is the degree of seriousness of a violation.

(F) A minor violation means any violation which poses a low likelihood of pollution, creation of health or safety hazard or public nuisance. A minor violation does not pose a substantial or significant risk to humans or to the environment of exposure to hazardous waste; does not have a substantial or significant adverse effect on the purposes of or procedures for implementing sections 260.350—260.481, RSMo or 10 CSR 25; and does not represent substantial or significant noncompliance with sections 260.350—260.481, RSMo, 10 CSR 25 or permit conditions.

(G) A multiday penalty may be issued for a violation which occurs on two (2) or more days. The penalty is calculated by multiplying the gravity-based penalty amount in Matrix 2 by the number of days on which the same violation recurs or continues to exist.

(H) Multiple violation penalty means the sum of all individual penalties assessed where two (2) or more violations are addressed in the same complaint or enforcement action.

(3) Calculation of Penalties. The calculation of administrative penalties may include any of the following five (5) individual factors: gravity-based measure, multiple violation penalties, multiday penalties, economic benefit and adjustments, as defined in section (2) of this rule.

(A) The Gravity-Based Assessment. The gravity-based assessment is determined by the potential for harm and the extent of deviation from the requirements.

1. The potential for harm. The potential for harm posed by a violation is based on the risk to human health or the environment; and the degree that the violation undermines the purposes of or procedures for implementing sections 260.350—260.481, RSMo or 10 CSR 25.

A. The risk to human health or the environment posed by a violation is based on the probability that humans or the environment were or could have been exposed to hazardous waste, the magnitude of the exposure that did or would occur, and the injury that did or would result from the exposure.

B. Violations which do not pose an immediate or direct risk of exposure or contamination but which undermine the purposes of or procedures for implementing sections 260.350—260.481, RSMo or 10 CSR 25 may warrant the assessment of penalties.

C. The potential for harm shall be evaluated according to the following degrees:

(I) Major. The violation poses or may pose a substantial risk to humans or to the environment of exposure to hazardous waste, or the violation has or may have a substantial adverse effect on the purposes of or procedures for implementing sections 260.350—260.481, RSMo or 10 CSR 25;

(II) Moderate. The violation poses or may pose a significant risk to humans or to the environment of exposure to hazardous waste or the violation has or may have a significant adverse effect on the purposes of or procedures for implementing sections 260.350—260.481, RSMo or 10 CSR 25; and

(III) Minor. The violation does not pose a substantial or significant risk to humans or to the environment of exposure to hazardous waste or the violation has or may have a small adverse effect on the purposes of

or procedures for implementing sections 260.350—260.481, RSMo or 10 CSR 25, or both.

2. The extent of deviation. The extent of deviation from the requirements of sections 260.350—260.481, RSMo or 10 CSR 25 will be evaluated according to the following degrees:

A. Major. The violation represents substantial noncompliance with sections 260.350—260.481, RSMo, 10 CSR 25 or permit conditions;

B. Moderate. The violation represents significant noncompliance with sections 260.350—260.481, RSMo, 10 CSR 25 or permit conditions; and

C. Minor. The violation does not represent substantial or significant noncompliance with the requirements of sections 260.350—260.481, RSMo, 10 CSR 25 or permit conditions.

3. The gravity-based assessment matrix. A matrix will be used to determine the gravity-based assessment for an individual violation (see Matrix 1). Potential for harm and extent of deviation form the axes of the matrix. The matrix is composed of nine (9) cells, each of which contains a penalty range. The appropriate cell is determined by the degree (major, moderate or minor) of potential for harm and extent of deviation. The penalty range may be adapted to the circumstances of a particular violation.

Matrix #1
Gravity-Based Assessment Matrix
Extent of Deviation
From Requirement

	Major	Moderate	Minor
Potential Major	\$1,000—\$8000	\$8000—\$6000	\$6000—\$4400
for Moderate	\$4400—\$3200	\$3200—\$2000	\$2000—\$1200
Harm Minor	\$1200—\$600	\$600—\$200	\$0

(B) Penalties for Multiple Violations. When a given violation is independent of and substantially different from any other violation so that it requires a distinct element of proof, the department may seek a separate penalty for that violation as set forth in this rule.

(C) Penalties for Multiday Violations. If it is determined that a violation has occurred or continued for more than one (1) day, the department may seek penalties for each additional day of noncompliance. Penalty assessments for multiday violations will be determined by multiplying the amount determined from the gravity-based assessment matrix for multiday penalties by the number of days of noncompliance (see Matrix 2).

1. Mandatory multiday penalties. Multiday penalties are mandatory for days two through one hundred eighty (2—180) for violations with the following gravity-based designation: major—major, major—moderate, or moderate-major. Multiday penalties for



days one hundred eighty-one plus (181+) are discretionary.

2. Appropriate multiday penalties. Multiday penalties are presumed appropriate for days two through one hundred eighty (2–180) of violations with the following gravity based designations: major-minor, moderate-moderate or minor-major. In these cases multiday penalties must be sought, unless case-specific facts indicating otherwise are documented. Multiday penalties for days one hundred eighty-one plus (181+) are discretionary.

3. Discretionary multiday penalties. Multiday penalties are discretionary, generally for all days for violations with the following gravity-based designations: moderate-minor or minor-moderate.

Matrix #2

Gravity-Based Assessment Matrix for Multiday Penalties

		Extent of Deviation	From Requirement	
		Major	Moderate	Minor
Potential For Harm	Major	\$2000–\$400	\$1600–\$300	\$1200–\$220
	Moderate	\$880–\$240	\$640–\$120	\$400–\$60
	Minor	\$160–\$40	\$100–\$40	\$0

Extent of Deviation

From Requirement

		Major	Moderate	Minor
Potential For Harm	Major	\$2000–\$400	\$1600–\$300	\$1200–\$220
	Moderate	\$880–\$240	\$640–\$120	\$400–\$60
	Minor	\$160–\$40	\$100–\$40	\$0

(D) Economic Benefit of Noncompliance. The department will add to an administrative penalty an amount which reflects the economic benefit which accrues to the violator as a result of noncompliance. This includes delayed costs and avoided costs. The determination will be made by using an economic benefit formula which provides a reasonable estimate of the economic benefit of noncompliance. Economic benefit must be included in an administrative penalty assessment unless—

1. The economic benefit is an insignificant amount;

2. There are compelling public concerns that would not be served by taking a case to trial;

3. It is unlikely that the department will be able to recover the economic benefit in litigation based on the particular case; or

4. The company has documented an inability to pay.

(E) Adjustments. In consideration of administrative penalties, the department may add to or subtract from the total amount of the penalty after consideration of any of the following adjustments:

1. Recalculation of penalty amount. After the issuance of a complaint, if new information indicates that the original penalty calculation was incorrect, the department may recalculate the gravity-based penalty amount in light of that information;

2. Good faith efforts to comply. The department may adjust a penalty amount downward if the violator has documented good faith efforts. 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, efforts to achieve compliance after detection are assumed and are not grounds for decreasing the penalty;

3. Culpability. In cases of heightened culpability which do not meet the standard of criminal activity, the department may increase a penalty. Conversely, where there is a demonstrable absence of culpability, the department may decrease the penalty. Lack of knowledge of sections 260.350–260.481, RSMo or 10 CSR 25 shall not be considered evidence of decreased culpability. The department should use the following criteria in determining 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 a penalty.

4. History of noncompliance. The department may increase a penalty if a violator has demonstrated previous noncompliance with sections 260.350–260.481, RSMo or 10 CSR 25. The department should use the following criteria in determining history of noncompliance:

- A. How similar the previous violation was;
- B. How serious the previous violation was;
- C. How recent the previous violation was;
- D. The number of previous violations; and
- E. Violator's response to previous enforcement actions;

5. Ability to pay. If the department assesses a penalty that is clearly beyond the means of the violator to pay, the department may waive any of that penalty. It is the responsibility of the violator to demonstrate inability to pay. When a violator has documented that part or all of a penalty will preclude the violator from achieving compliance or from carrying out important

remedial measures, the department may waive some or all of the penalty;

6. Environmental projects. The department may consider decreasing a penalty in return for an agreement by the violator to undertake an environmentally beneficial project. The project must involve activities which are in addition to all efforts to achieve compliance with any pending enforcement action; and

7. Other factors. This rule allows for other penalty adjustments not mentioned in this rule which may arise on a case-by-case basis.

(4) The proceeds from any administrative penalty assessed in accordance with this rule shall be credited to the general revenue fund.

(5) This rule may be used as guidance in assessing civil and criminal penalties.

Auth: sections 260.370, RSMo (Cum. Supp. 1990), 260.412, RSMo (Cum. Supp. 1991) and 260.437, RSMo (1986). Original rule filed Jan. 3, 1992, effective Dec. 3, 1992.*

**Original authority: 260.412, RSMo (1991); 260.370, RSMo (1977), amended 1980, 1988; 260.437, RSMo (1983).*