

Title 8. Environmental Law

Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment

Subchapter B. Administration

Part 10. Civil Penalties

Subpart 1. Generally

8 CAR § 10-101. Authority.

Pursuant to the authority and provisions of the Arkansas Solid Waste Management Act, Arkansas Code § 8-6-201 et seq. through Arkansas Code § 8-6-709, the Arkansas Water and Air Pollution Control Act, Arkansas Code §§ 8-4-101 – 8-4-313, Arkansas Code §§ 8-5-101 – 8-5-612, the Arkansas Hazardous Waste Management Act and the statutes governing regulated substance storage tanks, Arkansas Code §§ 8-7-101 – 8-7-908, and the Recycling Act, Arkansas Code §§ 8-9-101 – 8-9-406, including amendments to these acts and acts which the Division of Environmental Quality may be charged with enforcement authority, wherefore, the Arkansas Pollution Control and Ecology Commission hereby promulgates this part to provide guidance for the assessment of civil penalties for the violation of any provisions of these acts, or for the violation of any rules issued pursuant to these acts or for the violations of any order, rule, agreement or permit, or any part thereof, issued under these acts.

Authority. Arkansas Code §§ 8-4-202, 8-4-311, 8-6-207, 8-6-208, 8-7-209, 8-7-308, 8-7-804.

8 CAR § 10-102. Definitions.

When used in this part:

- (1) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (2) "Director" means the Director of the Division of Environmental Quality;
- (3) "Division" means the Division of Environmental Quality;

(4) "Person" means any:

- (A) Individual;
- (B) Corporation;
- (C) Company;
- (D) Firm;
- (E) Partnership;
- (F) Association;
- (G) Trust;
- (H) Joint stock company;
- (I) State agency;
- (J) Government instrumentality or agency;
- (K) Institution;
- (L) County, city, town, or municipal authority or trust;
- (M) Venture; or
- (N) Other legal entity, however organized; and

(5) "Violation" means the failure to comply with any statute, regulation, order, rule, agreement, permit, or any part thereof, and includes both acts and omissions.

Authority. Arkansas Code §§ 8-4-202, 8-4-311, 8-6-207, 8-6-208, 8-7-209, 8-7-308, 8-7-804.

8 CAR § 10-103. Procedure.

The assessment of civil penalties hereunder shall be in accordance with the administrative procedures specified in 8 CAR pt. 11, or if an action in a court of competent jurisdiction, then under the Arkansas Rules of Civil Procedure.

Authority. Arkansas Code §§ 8-4-202, 8-4-311, 8-6-207, 8-6-208, 8-7-209, 8-7-308, 8-7-804.

8 CAR § 10-104. Solid waste management.

(a) 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, Arkansas Code § 8-6-201 et seq., the Recycling Act, Arkansas Code § 8-9-101 et seq., or the Solid Waste Management Rules, 8 CAR pt. 60, and rules, 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 Acts 1991, No. 1057, and shall not exceed ten thousand dollars (\$10,000) per violation.

(b) Each day of a continuing violation may be deemed a separate violation.

Authority. Arkansas Code §§ 8-6-207, 8-6-208.

8 CAR § 10-105. Air.

(a) 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, Arkansas Code § 8-4-101 et seq., and rules, 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 Acts 1991, No. 1057, and shall not exceed ten thousand dollars (\$10,000) per violation.

(b) Each day of a continuing violation may be deemed a separate violation.

Authority. Arkansas Code § 8-4-311.

Codification Notes. Part II of the Arkansas Water and Air Pollution Control Act was enacted through Acts 1965, No. 183. The Arkansas Water and Air Pollution Control Act is codified at Arkansas Code § 8-4-101 et seq.

8 CAR § 10-106. Hazardous waste management.

(a) The amount of any civil penalty to be assessed any person for the violation of any provision of the Arkansas Hazardous Waste Management Act of 1979, Arkansas Code § 8-7-201 et seq., and rules, plans, or procedures developed thereunder, the

Hazardous Waste Management Rules, 8 CAR pt. 81, or the violation of any permit, order, rule, or agreement, or any part thereof, shall not exceed twenty-five thousand dollars (\$25,000) per violation.

(b) Each day of a continuing violation may be deemed a separate violation.

Authority. Arkansas Code §§ 8-7-209, 8-7-308.

8 CAR § 10-107. Water.

(a) 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, Arkansas Code § 8-4-101 et seq., and rules, plans, or procedures developed thereunder, or the violation of any permit, order, rule, or agreement, or any part thereof, shall not exceed ten thousand dollars (\$10,000) per violation.

(b) Each day of a continuing violation may be deemed a separate violation.

Authority. Arkansas Code § 8-4-202.

Codification Notes. Part I of the Arkansas Water and Air Pollution Control Act was enacted through Acts 1949, No. 472. The Arkansas Water and Air Pollution Control Act is codified at Arkansas Code § 8-4-101 et seq.

8 CAR § 10-108. Regulated substance storage tanks.

(a) The amount of any civil penalty to be assessed any person for the violation of any provision of the Regulated Substance Storage Tank statutes, Arkansas Code § 8-7-801 et seq., and rules, plans, and procedures developed thereunder, or the violation of any permit, order, rule, or agreement, or any part thereof, shall not exceed ten thousand dollars (\$10,000) per violation.

(b) Each day of a continuing violation may be deemed a separate violation.

Authority. Arkansas Code § 8-7-804.

8 CAR § 10-109. Determination of amount.

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

(1) 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;

(2) Whether the cause of the noncompliance was an unavoidable accident;

(3) The violator's cooperativeness and expeditious efforts to correct the violation;

(4) The history of a violator in taking all reasonable steps or procedures necessary or appropriate to correct any noncompliance;

(5) The violator's history of previous documented violations regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

(6) Whether the cause of the violation was an intentional act or omission on the part of the violator;

(7) Whether the noncompliance has resulted in economic benefit or pecuniary gain to the violator, including but not limited to cost avoidance;

(8) Whether the pursuit and the execution of the enforcement action has resulted in unusual or extraordinary costs to the division or the public;

(9) Whether any part of the noncompliance is attributable to the action or inaction of the state government; and

(10) Whether the violator has delayed corrective action.

(b)(1) These factors, along with the provisions of the above-named acts and specifically Acts 1991, No. 1057, shall be used when determining an appropriate amount.

(2) In addition, the division may develop and utilize formulas for the calculation of penalties for specific offenses, in an effort to uniformly assign penalty

amounts where practicable.

Authority. Arkansas Code §§ 8-4-202, 8-4-311, 8-6-207, 8-6-208, 8-7-209, 8-7-308, 8-7-804.

8 CAR § 10-110. Effective date.

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

Authority. Arkansas Code §§ 8-4-202, 8-4-311, 8-6-207, 8-6-208, 8-7-209, 8-7-308, 8-7-804.