

Office of Oil and Gas
Civil Administrative Penalty Policy
November 7, 2005
Revised May 4, 2009

I. Purpose and Scope

This civil penalty assessment policy is established for use by the Office of Oil and Gas to ensure fair and consistent enforcement responses and practices; and, to determine the appropriate assessments in settlements of civil and administrative actions for violations of WV Code 22-6, 22-10, 22-11, 22-12, 22-21 and the legislative rules pertaining to the above cited codes. It should be initiated subsequent to the written notice of violation and the associated abatement period. Any violation written during the three-year period prior to the date of implementation of this policy and which has not been assessed, should be subject to this policy.

The Office of Oil and Gas may apply this policy to determine whether to seek a penalty/assessment administratively or judicially. If the offense requires a higher penalty than can be achieved in this policy, then the Office of Oil and Gas may choose to refer the case to the circuit court for judicial enforcement. The Office of Oil and Gas may also refer the enforcement case for judicial action for other reasons, such as the need for injunctive relief, e.g., 22-6-39, etc.

II. Statutory Authority

WV Code 22, Article 6, Section 34 (a) makes any person or persons, firm, partnership, partnership association or corporation who willfully violates any provision of this article or any rule or order promulgated hereunder subject to a civil penalty not exceeding two thousand five hundred dollars. Each day a violation continues after notice by the division constitutes a separate offense.

WV Code 22, Article 10, Section 9 (a) makes any person who fails to plug an abandoned well within thirty days, or upon a showing of good cause, within a longer period as determined by the director not to exceed one hundred eight days, from the date such plugging is ordered by the director, shall be liable for a civil penalty of twenty-five thousand dollars.

WV Code 22, Article 11, Section 22 (a) makes any person who violates any provision of any permit issued under or subject to the provisions of this article subject to a civil penalty not to exceed twenty-five thousand dollars per day.

WV Code 22, Article 12, Section 10 (a) makes any person who violates any provision of this article, or any permit or agency approval, rule or order issued to implement this article, subject to civil penalties in accordance with the provisions of WV Code 22-11-22.

WV Code 22, Article 21, Section 3 (d) makes activities permitted under this article subject to the provisions of WV Code 22-6-34.

III. Assessment Factors

Office of Oil and Gas assessments will be based on the following four factors: seriousness, negligence, good faith and history. Each of these factors is defined and discussed below.

Seriousness (base assessment)

The seriousness of the violation will be based exclusively on the harm or potential for harm to human health or the environment.

Minor: Violations which have no potential for harm to human health or the environment or are of an administrative nature. Range: \$200-\$1000

Moderate: Violations which have the potential for harm to human health or the environment. Range: \$1000-\$2000

Major: Violations which have resulted in harm to human health or the environment. Imminent danger orders would also be included in this category. Range: \$2000-\$5000

Negligence

Negligence shall reflect the amount of effort expended by the operator to prevent the violation from occurring/continuing.

- A. The violation is considered beyond the control of the operator and hence, no negligence can be attributed. (0% increase in base assessment)
- B. The violation was an oversight on the part of the operator and may have been avoided if a more conscientious effort had been given. (33% increase in base assessment)
- C. The violation was obvious and no action was taken by the operator to prevent the problem prior to the violation being written. (67% increase in base assessment)
- D. The operator failed to adequately respond to instructions by the inspector to prevent the situation. (100% increase in base assessment)

Good Faith

Good faith shall refer to the promptness by the operator to abate the violation.

- A. Operator failed to take remedial action to abate the violation during the abatement period. (0% decrease in base assessment)
- B. Operator took prompt remedial action and abated the violation within the initial or extended time period mandated by the inspector. (25% reduction in base assessment)
- C. Operator was already taking remedial action at the time the violation was written. (50% reduction in base assessment)

History of Prior Violations

All violations written against the operator within the past 3 years shall be considered in determining the final assessment, according to the table below:

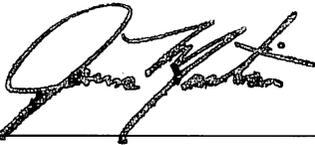
Number of Violations	\$ Amount
1-5	\$200
6-10	\$400
11-15	\$800
16-20	\$1600
> 20	\$3200

Economic Benefit

In addition to the above factors, a penalty must include an amount that represents the economic benefit of noncompliance. Examples of such benefit are delayed or avoided costs in failing to install, operate or properly maintain required treatment or control systems, conduct required testing or monitoring, improper disposal, failure to obtain necessary permits, and failure to establish or follow methods required by rules or permits. Economic benefit may be calculated using EPA's BEN computer model or equivalent.

IV. Calculation of Assessment

I. Seriousness:		_____
II. Negligence:	+	_____
III. Good Faith:	-	_____
IV. History:	+	_____
		Subtotal _____
V. Economic Benefit	+	_____
		Total _____



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