

**§349. Penalties**

**1. Criminal penalties.** Except as otherwise specifically provided, a person who intentionally, knowingly, recklessly or with criminal negligence violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, commits a Class E crime. Notwithstanding Title 17-A, section 1704, subsection 5 and section 1705, subsection 5, the fine for a violation of this subsection may not be less than \$2,500 and not more than \$25,000 for each day of the violation, except that the minimum amount for knowing violations is \$5,000 for each day of violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T. [PL 2019, c. 113, Pt. C, §115 (AMD).]

**2. Civil penalties.** Except as otherwise specifically provided, a person who violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, is subject to a civil penalty, payable to the State, of not less than \$100 and not more than \$10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation. This penalty is recoverable in a civil action. [RR 2009, c. 2, §116 (COR).]

**2-A. Supplemental environmental projects.** In settling a civil enforcement action for any violation of any of the provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, the parties may agree to a supplemental environmental project that mitigates up to 100% of the assessed penalty. "Supplemental environmental project" means an environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform.

A. An eligible supplemental environmental project is limited to the following categories:

- (1) Pollution prevention projects that eliminate all or a significant portion of pollutants at the point of generation;
- (2) Pollution reduction projects that significantly decrease the release of pollutants into a waste stream at the point of discharge to a point significantly beyond levels required for compliance;
- (3) Environmental enhancement projects in the same ecosystem or geographic area of the violation that significantly improve an area beyond what is required to remediate any damage caused by the violation that is the subject of the enforcement action;
- (4) Environmental awareness projects substantially related to the violation that provide training, publications or technical support to members of the public regulated by the department;
- (5) Scientific research and data collection projects that advance the scientific basis on which regulatory decisions are made;
- (6) Emergency planning and preparedness projects that assist state or local emergency response and planning entities in preparing or responding to emergencies; and
- (7) Public health projects that provide a direct and measurable benefit to public health. [PL 1997, c. 570, §1 (NEW).]

B. Supplemental environmental projects may not be used for the following situations:

- (2) When a project is required by law;
- (3) If the violator had previously planned and budgeted for the project;
- (4) To offset any calculable economic benefit of noncompliance;
- (5) If the violation is the result of reckless or intentional conduct; or
- (6) If the project primarily benefits the violator.

Any settlement that includes a supplemental environmental project must provide that expenditures are not tax deductible and are ineligible for certification as tax exempt pollution control facilities pursuant to Title 36, chapters 105 and 211. [PL 2017, c. 376, §1 (AMD).]

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**3. Falsification and tampering.** A person may not knowingly:

- A. Make a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained by any law administered by the department or by any order, rule, license, permit, approval or decision of the board or commissioner; [PL 2003, c. 452, Pt. W, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- B. Tamper with or render inaccurate a monitoring device or method required by any law or by any order, rule, license, permit, approval or decision of the board or commissioner; or [PL 2003, c. 452, Pt. W, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- C. Fail to comply with an information submittal required by the commissioner pursuant to section 568, subsection 3 or section 1364, subsection 3. [PL 2003, c. 452, Pt. W, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

A person who violates this subsection commits a Class E crime. Notwithstanding Title 17A, section 1704, subsection 5, a fine for a violation of this subsection may not be more than \$10,000.

[PL 2019, c. 113, Pt. C, §116 (AMD).]

**4. Violations.**

[PL 1987, c. 402, Pt. A, §195 (RP).]

**5. Considerations.** In setting a penalty, the court shall consider, but shall not be limited to, the following:

- A. Prior violations by the same party; [PL 1983, c. 796, §19 (NEW).]
- B. The degree of environmental damage that cannot be abated or corrected; [PL 1983, c. 796, §19 (NEW).]
- C. The extent to which the violation continued following an order of the commissioner or board to correct it; and [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §8 (AMD).]
- D. The importance of setting a civil penalty substantial enough to deter others from similar violations. [PL 1983, c. 796, §19 (NEW).]

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §8 (AMD).]

**6. Maximum penalties.** The maximum civil penalty may exceed \$10,000 for each day of that violation, but may not exceed \$25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed \$25,000 for each day of violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.

[PL 1997, c. 794, Pt. A, §8 (AMD).]

**7. Notification.** The commissioner shall notify all newspapers of general circulation in the State of all administrative consent agreements, court-ordered consent decrees and adjudicated violations involving laws administered by the department.

[PL 1989, c. 110 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §9 (AMD).]

**8. Economic benefit.** If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

[PL 1989, c. 282, §5 (NEW).]

**9. Unavoidable malfunctions.** The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. [PL 2003, c. 245, §6 (AMD).]

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the malfunction is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation. The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. [PL 2003, c. 245, §6 (AMD).]

[PL 2003, c. 245, §6 (AMD).]

#### SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 510, §§89-91 (AMD). PL 1979, c. 127, §207 (AMD). PL 1979, c. 663, §226 (AMD). PL 1979, c. 699, §§1,2 (AMD). PL 1981, c. 470, §A162 (AMD). PL 1983, c. 566, §9 (AMD). PL 1983, c. 785, §8 (AMD). PL 1983, c. 796, §§18,19 (AMD). PL 1985, c. 162, §§2,3 (AMD). PL 1985, c. 485, §§1,2 (AMD). PL 1985, c. 746, §12 (AMD). PL 1987, c. 402, §A195 (AMD). PL 1987, c. 491, §3 (AMD). PL 1987, c. 517, §3 (AMD). PL 1989, c. 110 (AMD). PL 1989, c. 282, §§2-5 (AMD). PL 1989, c. 820, §§9,10 (AMD). PL 1989, c. 890, §§A40,B7-9 (AMD). PL 1991, c. 483, §1 (AMD). PL 1993, c. 232, §1 (AMD). PL 1993, c. 349, §71 (AMD). PL 1995, c. 235, §1 (AMD). PL 1997, c. 570, §1 (AMD). PL 1997, c. 794, §§A7-9 (AMD). PL 2003, c. 245, §6 (AMD). PL 2003, c. 452, §§W2-4 (AMD). PL 2003, c. 452, §X2 (AFF). RR 2009, c. 2, §116 (COR). PL 2017, c. 376, §1 (AMD). PL 2019, c. 113, Pt. C, §§115, 116 (AMD).

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