

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Department of Energy and Environment

Contact Michael McAlister E-mail mcalister@adeq.state.ar.us Phone 501-682-0918

Statutory Authority for Promulgating Rules Act 704 of the 93rd General Assembly

Rule Title: Rule 7, " Civil Penalties"

Intended Effective Date

(Check One)

Date

Emergency (ACA 25-15-204) Legal Notice Published _____

10 Days After Filing (ACA 25-15-204) Final Date for Public Comment _____

Other _____ Reviewed by Legislative Council _____
(Must be more than 10 days after filing date.)

Adopted by State Agency 12/03/2021

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Peter Alberg Peter.Alberg@adeq.state.ar.us 12/15/2021
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-7890 moulton@adeq.state.ar.us
Phone Number E-mail Address

Administrative Law Judge
Title

12/13/2021
Date

Arkansas ~~Regulations~~

~~Department of~~ Pollution Control and Ecology
Commission

~~Regulation Rule~~ No. 7 -- Civil
Penalties

SECTION 1. Authority

Pursuant to the authority and provisions of the Arkansas Solid Waste Management Act, A.C.A. §§8-6-210 through 709; the Arkansas Water and Air Pollution Control Act, §§A.C.A. 8-4-101 through 313 and §§8-5-101 through 612; the Arkansas Hazardous Waste Management Act and the statutes governing regulated substance storage tanks, A.C.A. §§8-7-101 through 908; and the Recycling Act, A.C.A. 8-9-101 through 406; including amendments to these Acts and acts which the ~~Department~~ Division may be charged with enforcement authority,

WHEREFORE, the Arkansas Pollution Control & Ecology Commission hereby promulgates this ~~Regulation Rule~~ No. 7 to provide guidance for the assessment of civil penalties for the violation of any provisions of these Acts, or for the violation of any ~~regulations~~ 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.

SECTION 2. Definitions

When used in this ~~regulation rule~~:

- (a) "Commission" means the Arkansas Pollution Control and Ecology Commission.
- (b) "~~Department Division~~" means the ~~Arkansas Department of Pollution Control and Ecology~~. Division of Environmental Quality.
- (c) "Director" means the Director of the ~~Arkansas Department of Pollution Control and Ecology~~ Division of Environmental Quality.
- (d) "Violation" means the failure to comply with any statute, ~~regulation~~, order, rule, agreement, permit, or any part thereof, and includes both acts and omissions.
- (e) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint stock company, state agency, government instrumentality or agency, institution,

county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized.

SECTION 3. Procedure

The assessment of civil penalties hereunder shall be in accordance with the administrative procedures specified in ~~Regulation Rule~~ No. 8, or if an action in a court of competent jurisdiction, then under the Arkansas Rules of Civil Procedure.

SECTION 4. Solid Waste Management

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, the Recycling Act or the Arkansas Solid Waste Disposal Code, and ~~regulations 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 Act 1057 of 1991 and shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 5. Air

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 and ~~regulations 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 Act 1057 of 1991 and shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 6. Hazardous Waste Management

The amount of any civil penalty to be assessed any person for the violation of any provision of the Arkansas Hazardous Waste Management Act and ~~regulations rules~~, plans or procedures developed thereunder, the Arkansas Hazardous Waste Management Code or the violation of any permit, order, rule or agreement, or any part thereof, shall not exceed \$25,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 7. Water

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 and ~~regulations rules~~, plans, or procedures developed thereunder, or the violation of any permit, order, rule,

or agreement, or any part thereof, shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 8. Regulated Substance Storage Tanks

The amount of any civil penalty to be assessed any person for the violation of any provision of the Regulated Substance Storage Tank Act and ~~regulations~~ rules, plans and procedures developed thereunder, or the violation of any permit order, rule, or agreement, or any part thereof, shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 9. Determination of Amount

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

- (a) 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.
- (b) Whether the cause of the noncompliance was an unavoidable accident.
- (c) The violator's cooperativeness and expeditious efforts to correct the violation.
- (d) The history of a violator in taking all reasonable steps or procedures necessary or appropriate to correct any noncompliance.
- (e) The violator's history of previous documented violations regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore.
- (f) Whether the cause of the violation was an intentional act or omission on the part of the violator.
- (g) Whether the noncompliance has resulted in economic benefit or pecuniary gain to the violator, including but not limited to cost avoidance.
- (h) Whether the pursuit and the execution of the enforcement action has resulted in unusual or extraordinary costs to the ~~Department~~ Division or the public.
- (I) Whether any part of the noncompliance is attributable to the

action or inaction of the state government.

(j) Whether the violator has delayed corrective action.

| These factors, along with the provisions of the above named Acts
| and specifically Act 1057 of 1991, shall be used when determining
| an appropriate amount. In addition, the ~~Department~~ ~~Division~~ may
develop and utilize formulas for the calculation of penalties for
specific offenses, in an effort to uniformly assign penalty
amounts where practicable.

SECTION 9. Effective Date

| This ~~Regulation~~ rule shall be in full force and effect as of
July 24, 1992.

| File: L:\PC&EREGS\REG07.WPD

Arkansas

Pollution Control and Ecology Commission

Rule No. 7 -- Civil Penalties

SECTION 1. Authority

Pursuant to the authority and provisions of the Arkansas Solid Waste Management Act, A.C.A. §§8-6-210 through 709; the Arkansas Water and Air Pollution Control Act, §§A.C.A. 8-4-101 through 313 and §§8-5-101 through 612; the Arkansas Hazardous Waste Management Act and the statutes governing regulated substance storage tanks, A.C.A. §§8-7-101 through 908; and the Recycling Act, A.C.A. 8-9-101 through 406; including amendments to these Acts and acts which the Division may be charged with enforcement authority,

WHEREFORE, the Arkansas Pollution Control & Ecology Commission hereby promulgates this Rule No. 7 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.

SECTION 2. Definitions

When used in this rule:

- (a) "Commission" means the Arkansas Pollution Control and Ecology Commission.
- (b) "Division" means the Division of Environmental Quality.
- (c) "Director" means the Director of the Division of Environmental Quality.
- (d) "Violation" means the failure to comply with any statute, order, rule, agreement, permit, or any part thereof, and includes both acts and omissions.
- (e) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized.

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The assessment of civil penalties hereunder shall be in accordance with the administrative procedures specified in Rule No. 8, or if an action in a court of competent jurisdiction, then under the Arkansas Rules of Civil Procedure.

SECTION 4. Solid Waste Management

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, the Recycling Act or the Arkansas Solid Waste Disposal Code, 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 Act 1057 of 1991 and shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 5. Air

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 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 Act 1057 of 1991 and shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

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The amount of any civil penalty to be assessed any person for the violation of any provision of the Arkansas Hazardous Waste Management Act and rules, plans or procedures developed thereunder, the Arkansas Hazardous Waste Management Code or the violation of any permit, order, rule or agreement, or any part thereof, shall not exceed \$25,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

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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 and rules, plans, or procedures developed thereunder, or the violation of any permit, order, rule, or agreement, or any part thereof, shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a

separate violation.

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The amount of any civil penalty to be assessed any person for the violation of any provision of the Regulated Substance Storage Tank Act and rules, plans and procedures developed thereunder, or the violation of any permit order, rule, or agreement, or any part thereof, shall not exceed \$10,000.00 per violation. Each day of a continuing violation may be deemed a separate violation.

SECTION 9. Determination of Amount

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

- (a) 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.
- (b) Whether the cause of the noncompliance was an unavoidable accident.
- (c) The violator's cooperativeness and expeditious efforts to correct the violation.
- (d) The history of a violator in taking all reasonable steps or procedures necessary or appropriate to correct any noncompliance.
- (e) The violator's history of previous documented violations regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore.
- (f) Whether the cause of the violation was an intentional act or omission on the part of the violator.
- (g) Whether the noncompliance has resulted in economic benefit or pecuniary gain to the violator, including but not limited to cost avoidance.
- (h) Whether the pursuit and the execution of the enforcement action has resulted in unusual or extraordinary costs to the Division or the public.
- (I) Whether any part of the noncompliance is attributable to the action or inaction of the state government.
- (j) Whether the violator has delayed corrective action.

These factors, along with the provisions of the above named Acts and specifically Act 1057 of 1991, shall be used when determining an appropriate amount. 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.

SECTION 9. Effective Date

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

File: L:\PC&EREGS\REG07.WPD

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Approval
of Amendments to APC &
EC Rules**

Docket No. 21-003-MISC

MINUTE ORDER NO. 21- 18

Pursuant to Act 704 of the 93rd General Assembly, the Arkansas Pollution Control and Ecology Commission hereby grants and approves the Division of Environmental Quality's Motion to Approve Rule Amendments, and approves the amendments to rules which are specifically set forth and contained in the mark-up drafts of rules provided to the Commission with the above-referenced motion; that further, the Commission orders that the existing effective date of each rule shall remain the same and that no substantive changes to these rules are promulgated or intended by these amendments.

**THIS 3RD DAY OF DECEMBER, 2021, BY ORDER OF THE ARKANSAS
POLLUTION CONTROL AND ECOLOGY COMMISSION.**

COMMISSIONERS:

SUA S. Ausbrooks
L.B. L. Bengal
CC C. Colclasure
JSF J. Fox
MMS M. Goggans
R. McMullen R. McMullen

D.A. by M D. Melton
R.M. R. Moss, Jr.
RR R. Reynolds
R. Roper R. Roper
D. Vandergriff D. Vandergriff
WWW W. Ward

CC by M SUBMITTED BY: Michael McAlister DATE PASSED: 12/03/21
R. Roper, Chair