

**STATE CIVIL PENALTY AUTHORITIES AND POLICIES**

**A Report prepared by the  
Environmental Law Institute  
for the U.S. Environmental Protection Agency**

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## INTRODUCTION

This report describes and analyzes state civil penalty authorities and policies to assist EPA in assessing the need for and possible direction of a policy governing oversight of state civil penalty assessments.

The study looks at provisions authorizing imposition of civil money sanctions on those found to have violated state pollution control statutes. It does not cover Clean Air Act §120 penalties, provisions authorizing criminal fines, or those allowing recovery of damages to natural resources or the environment.

The report is based on a compilation of state civil penalty statutes and regulations drawn from materials located in Washington, D.C. law libraries; a compilation that has been updated in accordance with comments from the many state agencies that reviewed drafts. The states responding are listed on the chart at the end of the Introduction. Authorities researched include provisions governing violations of air, water, solid waste, hazardous waste, drinking water, and toxic substance laws. The civil penalty policies addressed were submitted in response to a recent Steering Committee request. The collection of policies is incomplete, but illustrates how some states are using penalty policies.

Though the picture of civil penalty authorities is broad, it does not cover the entire canvas of state enforcement sanctions. Revocation of permits, criminal sanctions—including indictment or imprisonment of individual corporate officials, bond forfeitures, and recovery of environmental damages, all can be heavy sanctions for violators. Whether a state's civil penalty authority is adequate depends to a significant degree on what other sanction authorities it has, and more important, on how it uses all its enforcement powers, including civil penalty authority. This study does not systematically address implementation of state penalty authorities, although it does identify implementation issues that may make structural differences in penalty authorities significant. In addition, the final section summarizes reported state civil penalty cases

and other information on penalty implementation from selected states. EPA addressed implementation issues in a series of field studies.

The analysis in this report focuses principally on the factors governing the size of civil penalties. Within the context of authorities, the critical factors affecting size of penalties are the statutory maximum and minimum assessments and the statutory and regulatory criteria for setting penalty amounts. The report also considers other factors that influence the size of penalties, but more directly concern whether penalties will be levied in specific cases and how difficult it will be to prosecute penalty actions. These factors include the types of violations for which penalties can be imposed, whether penalties are mandatory or discretionary, whether they may be compromised or remitted once levied, the institutional and procedural context of penalty actions, and what is done with funds recovered in penalty actions. Together, these factors provide a broad picture of civil penalty authorities and policies.

STATES COMMENTING ON SUMMARY CHARTS OF CIVIL PENALTY AUTHORITIES

	Air	Water	Hazardous Waste	Drinking Water		Air	Water	Hazardous Waste	Drinking Water
Alabama	X	X	X	X	Montana	X			
Alaska					Nebraska	X	X	X	X
American Samoa					Nevada	X			
Arizona	X	X	X	X	New Hampshire	X	X	X	X
Arkansas	X	X	X	X	New Jersey		X		X
California	X	X	X	X	New Mexico	X	X	X	X
Colorado	X				New York			X	
Connecticut	X	X	X	X	North Carolina	X	X	X	
Delaware	X	X	X	X	North Dakota	X	X	X	X
District of Columbia		X	X		Ohio	X	X	X	X
Florida	X	X	X	X	Oklahoma	X	X	X	X
Georgia					Oregon	X	X	X	X
Guam	X	X	X	X	Pennsylvania	X	X	X	X
Hawaii	X	X	X	X	Puerto Rico	X			
Idaho	X	X	X	X	Rhode Island	X	X	X	X
Illinois	X	X	X	X	South Carolina	X	X	X	X
Indiana	X		X		South Dakota	X	X	X	X
Iowa	X	X	X	X	Tennessee	X	X	X	X
Kansas	X	X	X	X	Texas	X	X	X	X
Kentucky	X	X	X	X	Utah	X	X	X	X
Louisiana	X	X	X	X	Vermont	X	X	X	X
Maine	X	X	X	X	Virgin Islands		X		X
Maryland	X	X	X	X	Virginia	X	X	X	X
Massachusetts	X	X	X	X	Washington		X		X
Michigan	X	X	X	X	West Virginia	X	X	X	X
Minnesota	X	X	X	X	Wisconsin	X	X	X	X
Mississippi	X	X	X	X	Wyoming				
Missouri	X	X	X						



## **I. ANALYSIS OF STATE CIVIL PENALTY AUTHORITIES**

### **A. WHAT VIOLATIONS GIVE RISE TO CIVIL PENALTY LIABILITY?**

One of the structural issues presented by the compilation of state civil penalty authorities is the question of what state violations authorize the imposition or assessment of civil penalties.

Although collection of this information is not the central focus of our survey, a few key variables should be identified and highlighted, simply because the issue of when civil penalty liability may potentially attach is fundamental to the issue of whether or not a state can implement an effective penalty program, notwithstanding the apparent relative "strength" or "weakness" of the language in its authorities or penalty policy.

An analysis of this issue may focus initially upon whether the activities which result in potential penalty liability are the same as under the federal statutes. Such an analysis, for any given state, would require careful exploration of the substance of the state statutes and regulations, and a comparison of that substance to the federal coverage. Many of the state civil penalty authorities, the subject of this survey, make reference only to "violations of this chapter and the regulations of the Department." Understanding the scope of that authority, and comparing it to federal authority requires a detailed analysis of the substance of both the state and federal regulations. Are state penalties recoverable for any unpermitted discharge (harmful or not) to the groundwaters? To the surface waters? Are penalties available only for violation of a permit condition? Or only for a "pollutional" discharge? This type of detailed state-by-state legal analysis is far beyond the scope of this preliminary survey, but illustrates one important question concerning the effectiveness of state penalty programs. The issue is most easily (and presumably is) addressed in the EPA review preceding authorization of state implementation of federal programs.

Despite these caveats, the survey of penalty authorities does identify several ways in which the question of which violations can be penalized can affect enforcement. The variations are numerous. Are penalties available only for violations of statutory provisions and regulations? What about violations of agency orders? Judicial orders? <sup>1/</sup> Permit conditions? Are penalties available only for violations of agency orders, and not for violations of statutory provisions and regulations? For example, is the agency empowered to recover penalties only after the violator has been notified that it has already violated the act, provided time and an opportunity to comply, and then continues to violate for at least ten days both the law and the agency's order to abate the violation?<sup>2/</sup> Statutory authority limited in one of these ways can greatly influence the utility of penalties. It may be easier to enforce the specific terms of an order than the general requirements of a statutory standard. On the other hand, a state that can only obtain penalties for violations of orders may have more procedural hurdles to jump and may find its authority more difficult to use. Some states establish tiers of penalties, empowering the agency to seek very powerful penalties (e.g., of up to \$50,000/day) for violations of key requirements and lesser penalties for others. <sup>3/</sup>

A statute may contain language to the effect that civil penalty liability is not imposed if "the discharger is not negligent or immediately files [a report of the violation]"; or if the violation is "insubstantial"; or unless a person violates the law "knowingly." Under such statutes, the so-called violation, or issue of initial liability may be so difficult for the agency to establish - - - and in fact be so much more egregious

<sup>1/</sup> See, e.g., Vt. Stat. Ann. tit. 3, §2822 (c)(4) (Equity 1972 & Supp. 1984).

<sup>2/</sup> See Idaho Code §39-108(6) (Bobbs-Merrill 1977 & Michie Supps. 1984 & 1985).

<sup>3/</sup> See La. Rev. Stat. Ann. tit. 30, §1073E (West Supp. 1985). See also Pa. Cons. Stat. Ann. tit. 35, §691.605 (Purdon 1977 & Supp. 1984), (Pennsylvania Clean Streams Law) which mandates penalty in a sum certain for each day of violation of agency orders relating to mining operations. This violation supplements the more substantial penalties authorized for violations of regulations, the Act, and permit conditions.

than the activities which constitute a violation under the federal program or other state programs - - - that the statutory penalty authorization is in practical reality of virtually no value, even to an otherwise aggressive state enforcement agency. Similarly, if a penalty is excused entirely if the illegal discharge is immediately reported and removed,<sup>4/</sup> then in reality that state's penalty authority - - - i.e., what violations give rise to a penalty - - - actually differs dramatically from a state statute which imposes liability, subject to civil penalty assessment, for any illegal discharge, whether or not the discharge is reported and/or removed. The two arguably also differ in deterrent effect. One statute provides that a new (single) violation occurs only once every 30-day period of noncompliance with an agency order;<sup>5/</sup> that each day of continuing violation only after the "date fixed by the court" is a separate offense.<sup>6/</sup> It is striking to compare this type of "violation" authorizing civil penalties, to those which authorize the imposition of penalties for each day of violation of the law, i.e. from the first day the violation occurred, even before agency notice, before filing a complaint in court and securing a court order. Violations in one statute may be characterized in ways that make them difficult to prove, e.g., if a violation is only deemed to occur when conduct is both (a) initially willful or negligent, and (b) followed by a failure to comply even after the violation occurs. Other states may characterize liability as strict.<sup>7/</sup>

<sup>4/</sup> See Me. Rev. Stat. Ann. tit. 38, §1318 (West 1978 & Supp. 1984), Fl. Stat. Ann. tit. 26 §376.16 (West 1973 & Supp. 1984), Alaska Stat. §46.03.760 (State of Alaska 1982).

<sup>5/</sup> Vt. Stat. Ann. tit. 10, §568 (Equity 1984).

<sup>6/</sup> Vt. Stat. Ann. tit. 3, §2822 (Equity 1972 & Supp. 1984).

<sup>7/</sup> Similarly, one cannot compare a state which can recover civil penalties only after proving a violation "beyond a reasonable doubt" (Utah Code Ann. §26-13-18, Allen Smith Co. 1984) to those which require only traditional civil or administrative burdens of proof. This problem will be discussed further in Section F, infra.

A related difference in what is treated as a violation stems from the way states handle force majeure (literally "superior force") issues. Some statutes contain force majeure provisions which exempt the alleged violator from any liability if it can show that a discharge occurred because of events beyond its control.<sup>8/</sup> Again, the question of whether a violation has occurred, subjecting a discharger to civil penalties, may dramatically differ in such programs from those states which impose strict liability for an illegal discharge. While strict liability states may adjust a penalty to reflect force majeure events, in such states the force majeure events will not entirely relieve a discharger, particularly one who causes significant harm, from all liability.

Another type of exculpatory mechanism may influence civil penalties' impact. At least one state provides that the criminal authority is preempted if a civil penalty is assessed for a given violation.<sup>9/</sup> What is the effect of such a provision? How does this compare to a program in which the civil penalty supplements other penalties and remedies in the state environmental statute? Differences in the way violations subject to penalty are defined may be more important in determining the effectiveness of penalty authority than are the differences in maximum penalties and penalty criteria considered in this study.

<sup>8/</sup> Alaska Stat. §46.03.758(h) (1982).

<sup>9/</sup> Mont. Code Ann. §75-2-413(1) (1983).

## B. LIMITS

### INTRODUCTION

This section characterizes maximum and minimum civil penalties by program area. There are eight broad program categories (General, Air, Drinking Water, Water Pollution/NPDES, Oil Discharges, Wetlands, Hazardous Waste, Solid Waste) and a number of subcategories for different types of violations. State penalty authorities are listed under the broadest applicable category. Authorities covering several different programs fall under "general;" a penalty provision in a clean water law applicable to discharge permit violations, oil spills, and wetland filling would be listed solely under "water." Conversely, those authorities listed under "wetlands" would not apply to other water pollution violations. The federal civil penalties in the categories of Air, Drinking Water, Water, and Hazardous Waste are included for comparison.

Within each environmental area, states are placed in the chart according to the magnitude and method of application of the penalty. Minimum as well as maximum penalties are indicated on the charts, where applicable. The existence of minimum penalties is significant since it puts a floor under the size of penalties imposed; it does not, however mean that penalties are mandatory in any given situation. The two major methods of application of penalties are "per day" and "per violation".<sup>10/</sup> A "per day" penalty is imposed on a violator each day of continuing violation. The maximum penalty magnitude for a "per day" provision specifies the maximum fine for each day; theoretically, there is no upper limit to the total penalty that ultimately may be assessed. How a "per violation" penalty is applied depends on how the state interprets

<sup>10/</sup> This survey uncovered on instance in which any violator subject to an agency emergency order is liable for additional penalties which run "per hour." Ind. Code Ann. §13-7-13-1(a) and (b) (Burns 1981 & Supp. 1984).

the statute. If individual days of continuing violations are treated as separate violations, then the penalty is in fact daily. Statutes defining penalty application in these terms are included in the "per day" category. Statutes applying penalties per violation, with no explanation, might be interpreted as daily, or a one-time-only assessment for an improper act. Some statutes authorize a civil penalty but do not describe the method by which it should be applied. These civil penalty provisions are placed in a third category in the charts, "unspecified". Since many types of pollution control violations continue for some time, whether the maximum is per day or per violation can have a tremendous impact on the size of penalties that may be levied.

## AIR

Maximum penalties under most state programs are less than the federal maximum. The maximum federal civil penalty for air violations is \$25,000 per day. There is no minimum. Thirty-six states have one or more penalty authorities specific to their air programs. Only nine states have maximum daily penalties as large as or larger than the federal penalty. In addition four states' general authorities allow penalties of \$25,000 or larger per day which are applicable to air violations. Of the other states employing a per-day method of assessment, twenty-three have maximum penalties smaller than the federal statute. Five states provide maximum air program penalties "per violation," all less than \$25,000. Two states, however, do have general authority applicable to air programs, to levy penalties of \$25,000 per violation. Three set maximum penalties, again all under \$25,000, without specifying how they are applied. Thus, at most 15 states (nine air, per-day; four general, per-day; two general, per-violation) could match the EPA maximum (assuming per-violation penalties are interpreted to apply daily). Some state statutes specify more than one maximum penalty. For instance, Colorado sets a maximum daily penalty as large as the federal penalty for some air violations but sets smaller penalties for other air violations.

Colorado, therefore, is listed on the chart both as a state with a daily penalty as large as the federal one and as a state with a smaller penalty, but counted above only in the former category.

In all, six states have minimum daily penalties for air violations. Only in the solid waste category do as many states provide for minimum penalties.

## DRINKING WATER

Most state drinking water penalty authorities match or exceed the maximum under federal law. The maximum federal civil penalty for drinking water violations is \$5000 per day. Of the 36 states that impose per-day penalties, twenty-five have maximum penalties greater than or equal to the federal program. Eleven states authorize maximum daily penalties less than the federal maximum. Tennessee and Texas establish minimum daily penalties (\$50 per day and \$10 per day, respectively).

A number of states have general penalty authority that could match the federal maximum for this program. Indiana and Mississippi, with general penalty authority applicable to a drinking water program, authorize maximum penalties equal to or greater than the federal maximum. Two other states (Arkansas and Vermont) have general authority with maximum amounts equal to or greater than the federal maximum, albeit per violation.

## WATER

The maximum federal civil penalty for water quality violations is \$10,000 per day and the overwhelming majority of states provide for penalties as large or larger. Thirty-six states provide for maximum daily penalties \$10,000 or larger. Six additional states

have general penalty authority apparently applicable to water pollution violations with maximum daily penalties equal to or greater than those provided by federal law. Five states provide for maximum daily water program penalties less than \$10,000. Five states establish minimum daily penalties. As noted in the Air discussion above, several states are listed in the charts more than once because their statutes set penalties as large as the federal for some water violations but smaller for others (e.g., Arizona). These states are counted only in the category covered by the largest penalty authority.

Of the three states with water penalty maxima in the per-violation or unspecified categories (i.e., Delaware, Vermont and Puerto Rico), two set penalty amounts equal to or greater than those in federal law.

## HAZARDOUS WASTE

The majority of state hazardous waste programs have authority to levy penalties as large as the largest federal maximum under RCRA. The chart below identifies one or more penalty maxima for 48 states. Federal daily civil penalties for hazardous waste violations (under RCRA and CERCLA) involve two maxima: \$5,000 for RCRA monitoring or testing violations, or for CERCLA violations; and \$25,000 for other RCRA violations. Twenty-six state authorities have maximum daily penalties greater than or equal to \$25,000, in one case (UT) only for second offenses. Twenty-one states that do not also have authority for penalties in the \$25,000 and up range have maximum daily penalties between \$5000 and \$24,999. All three of the states with maximum daily penalties less than \$5,000 also have larger maxima for other violations and are represented in the other tallies. Three states authorize minimum daily penalties.



Two states (Alaska and Pennsylvania) without apparent authority for daily penalties have authority to levy penalties of \$25,000 or greater per violation. From the information collected, it is generally unclear whether general penalty authorities apply to RCRA and CERCLA violations for that small number of states that do not have separate statutes governing hazardous waste.

**General \***  
**Substantive Violations**

Penalty (in dollars)

	0 - 4999	5000 - 9999	10,000 - 24,999	Over 25,000
Max/day	ID, NE, OR <sup>8</sup>	WI	DE, FL, ME <sup>3</sup> , OK, SC, VA, WI <sup>24</sup> , WY	IN, LA, MS, PR
Min/day	DE, ME, WI			
Max/ violation	DC <sup>29</sup> , MA, NY <sup>1</sup>		HI, VT <sup>6</sup>	AK <sup>2</sup> , CT <sup>1</sup>
Min/violation	AK, VT			
Max (unspecified)	IA <sup>13</sup>			

**General \***  
**Violations of Orders (emergency,  
or cease & desist)**

Max/day		VA	LA
Max/violation	HI <sup>11</sup>	VT	CT <sup>2</sup> , PR
Max/ hour	IN		

**General \***  
**Procedural Violations**  
(failure to file monitoring reports)

Max/violation	CT <sup>1</sup> , MA
Min/violation	MA

# AIR

	0 - 4999	5000 - 9999	10,000 - 24,999	Over 25,000
Max/day	AZ, CA <sup>32</sup> , CO, CT <sup>43</sup> , GU, KS, MA, MD <sup>41</sup> , NM, NV <sup>19</sup> , RI, WA, WV	AR <sup>16</sup> , CA <sup>32</sup> , IA, MO, NC, NV, WA	AL, CA <sup>32</sup> , KY, MA <sup>5</sup> , MD, ME, MN, MT, ND, OR, UT	CO, GA, NH, OH, TN, TX <sup>45</sup> , UT <sup>38</sup> , VA, WI <b>FEDERAL (\$25,000)</b>
Min/day	AZ, MA, OR <sup>9</sup> , TN, TX, WI			
Max/ violation	MA, NY <sup>1,31</sup> , VT		IL <sup>1</sup> , NY <sup>1</sup> , PA <sup>1</sup>	
Min/violation	DE <sup>27</sup> , MA, NY			
Max (unspecified)	DE <sup>27</sup> , NJ		SD	

# DRINKING WATER/UIC

Max/day	AS, IL, KY, ME, MT, NH, OR, RI, SD, TX, UT	AL, AR, CT, FL, GU, HI, IA, KS, MD, MI, NC, ND, NV, PA, PR, SC, TN, UT, VA <b>FEDERAL (\$5000)</b>	CO, MN, NJ <sup>48</sup> , OH, OK	LA
Min/day	TN, TX			
Max/ violation	CA, GA <sup>1</sup> , MO	CA, NJ	IL <sup>1,23</sup>	
Max (unspecified)	DE, ME, NY, WI	DE, VI		
Min- (unspecified)	DE, WI			

**WATER; NPDES**  
**Water Quality Violations**

	0 - 4999	5000 - 9999	10,000 - 24,999	Over 25,000
Max/day	AZ, CA <sup>33</sup> , NM, TX	AR, CA, IA, NE, NM <sup>42</sup> , RI	AL, AZ, CA <sup>33</sup> , CT <sup>43</sup> , CO, GA, IL, KS <sup>42</sup> , KY, MA, MD, ME, MI, MO, MN, MS, MT, NC, ND, NH, NJ <sup>48</sup> , NV, NY, OH, OK, PA, SD, TN, TX, UT, VA, WA, WI, WV <b>FEDERAL (\$10,000)</b>	FL <sup>25</sup> , NJ <sup>49</sup> , UT <sup>38</sup> , VI
Min/day	KS <sup>42</sup> , MS, NC, NJ <sup>49</sup> , TX			
Max/ violation	DE, MD <sup>31</sup> , NY <sup>1</sup> , VT	CT <sup>42</sup> , NJ <sup>1</sup>	DE <sup>28</sup>	
Min/ violation	AL, DE			
Max (unspecified)	ME <sup>4</sup>			PR
Min (unspecified)	ME <sup>4</sup> , MD, VI			

**WATER**  
**Operating without Permit**

Max/day	MA	NM
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**WATER RESOURCES**

Max/day	VT <sup>7</sup> , WA <sup>10</sup>
Max/ violation	CT <sup>1</sup>

	0 - 4999	5000 - 9999	10,000 - 24,999	Over 25,000
Max/day	NH <sup>46</sup>		TX, WA	
Max/ violation	VA <sup>21</sup>	NC	NH, OR	
Max (unspecified)		CA		

## WETLANDS

Max/day	DE, MA <sup>35</sup> , MS	DE, FL
Min/day	DE	
Max/ violation	CT <sup>1</sup> , GA <sup>1</sup> , NH, NJ, NY, RI	
Max (unspecified)	MS	NH <sup>47</sup>
Min (unspecified)	MS	

## SOLID WASTE

Max/day	CA, DE, IA, KS <sup>17</sup> , KY, MA, ME, MI, MO, MT, NC, ND, OH, OR, TX	AR, NH, TN	DE, FL, MN, PA, UT, VA, WV	KS, MS, UT <sup>39</sup>
Min/day	DE, KS, MA, OR <sup>9</sup> , TN, TX			
Max/ violation	AZ, CT, GA <sup>1</sup> , NJ, NY <sup>1</sup> , RI		ME <sup>17</sup>	
Min/ violation	CT, NJ <sup>39</sup>			
Max (unspecified)	SD			

**HAZARDOUS WASTE**  
Statutory Violations/Violations of Orders

	0 - 4999	5000 - 9999	10,000 - 24,999	Over 25,000
Max/day	IA <sup>14</sup> , ID <sup>18</sup> , MO <sup>20</sup>	ND <sup>22</sup> , NM, WV <b>FEDERAL<sup>36</sup></b> <b>(\$5000)</b>	AZ, CO, CT, FL, GU, IA <sup>14</sup> , ID, MD, ME, MO, MT, NC, NE, NM, NV, OH, OK, OR, RI, SD, TN, UT, VA, VT, WA	AL, AR, CA, CO, CT, DC, DE, FL, GA, IL, KS, KY, MA, ME, MI, MN <sup>44</sup> , MS, ND, NH, NJ, NY, SC, TX, UT <sup>39</sup> , WV, WV <b>FEDERAL<sup>37</sup>(\$25,000)</b>
Min/day	DE, OR <sup>9</sup> , TX			
Max/ violation	MD <sup>40</sup> , TN <sup>26</sup>		CA <sup>34</sup>	AK <sup>2</sup> , CA, MD <sup>30</sup> , PA
Min/ violation	AK, CA			
Max (unspecified)				ME (clean-up costs)
Min (unspecified)	ME			

**HAZARDOUS WASTE**  
Fee Violations

Max/day	WA
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**HAZARDOUS WASTE**  
Permit Violations

Max/day	NV <sup>12</sup>	CT	<b>FEDERAL (\$25,000)</b>
Min/day	CT		
Max (unspecified)			ME (3 times appropriate late fee)

## FOOTNOTES

- \* Includes all states with general environmental protection civil penalties without regard to whether the penalties apply to all categories of pollution or whether the state has more specific civil penalty provisions for other categories. Also, general environmental protection penalties may apply in cases in which specific state programs define violations but refer to the general statute for penalties (see e.g., ME, wetlands).
- 1 Additional daily penalty of \$100 - 4999.
- 2 Additional daily penalty of \$5000 - 10,000.
- 3 \$25,000 if hazardous waste or repeat violator.
- 4 Discharge of certain toxic substances carries a maximum fine of \$10,000/day.
- 5 Violation of emergency order carries a \$10,000/day penalty.
- 6 After date fixed by court for correction, each day of continuing violation is fined as a separate violation.
- 7 Prohibited alteration of stream flow.
- 8 Statute includes a penalty for oil discharges which is included in that chart.
- 9 OR: For Air and Solid Waste violations, minimum ranges from 25 to 100 dollars/day; hazardous waste minimum ranges from 100 to 2500 dollars/day.
- 10 Interference with uses of water, e.g., unauthorized withdrawal.
- 11 Obstructing duly authorized inspections.
- 12 Continuous failure to comply increases maximum penalties to \$25,000/day.
- 13 For minor violations.
- 14 Failure to report hazardous spills or conditions brings a maximum penalty of \$1000.
- 15 AK: \$1-10/gal penalty.
- 16 Penalty is from water statute made applicable to air violations.
- 17 Procedural violation.
- 18 Unauthorized injection of hazardous wastes into wells.
- 19 For minor violations.
- 20 Change of use or transfer of uncontrolled or abandoned hazardous waste sites without approval.

- 21 For oil spills of more than 10,000 gallons the penalty is \$10,000 maximum.
- 22 Monitoring and testing violations.
- 23 Class II Wells.
- 24 Will be greater if formulaic penalty is greater.
- 25 Listed as pollutant spill.
- 26 For nondiscretionary violation.
- 27 Motor vehicle emissions violations.
- 28 Serving water from a well closed due to presence of restricted chemicals.
- 29 Maximum for a twelve-month period.
- 30 Assessed at \$10,000/day; penalty may not exceed \$50,000.
- 31 Emergency rule and regulation enforcement.
- 32 \$10,000/day maximum for violations of toxic air contaminants statute; \$1000/day for nonvehicular air pollution control violations; \$6000/day for abatement order violations.
- 33 No discharge but violation of regional board order.
- 34 For misrepresentations.
- 35 General environmental protection statute: dredge and fill.
- 36 RCRA monitoring and testing violations, and CERCLA violations.
- 37 RCRA and TSCA violations.
- 38 For knowing violation or second offense.
- 39 For second offense.
- 40 Not to exceed \$50,000 total.
- 41 Up to \$20,000 total.
- 42 Pertains to violations including failure to report discharge, tampering with monitoring equipment, and falsifying records or reports.
- 43 Administrative penalties for violating orders are as follows: \$25,000 maximum plus \$1000/day that violation continues after receipt of civil penalties final order.
- 44 MN: With respect to pollutant releases presenting imminent and substantial danger and releases of hazardous substances from facilities the maximum penalty is \$20,000 per day.



- 45 TX: Maximum administrative penalty is \$10,000/day (judicial maximum is \$25,000/day).
- 46 NH: Pertains to underground storage facilities.
- 47 NH: Disobeying order or misrepresentation with respect to dredge and fill regulations.
- 48 NJ: For violations of statute, orders, or failure to pay penalty.
- 49 NJ: Willful or negligent violations.

### C. ARE THE PENALTIES MANDATORY OR DISCRETIONARY?

Penalty authority means little if it is not used. In theory, the greater the assurance that violators will be penalized, the stronger the deterrence. One question posed in this study is whether state laws not only authorize penalties, but mandate them in any circumstances. The question cannot be answered in full from the survey, but mandatory penalties appear to be rare.

A surface review of the penalty statutes does not reveal whether the penalties are mandatory or discretionary. The question of whether a penalty is mandatory requires a determination of (a) whether the statutory language is apparently subject to that interpretation; (b) whether the enforcement agency, by regulation or policy, applies that interpretation; and (c) whether any relevant administrative review board and the judiciary agree with the agency's interpretation. Thus, the question cannot be answered from the statutory summaries.

Experience suggests that legislatures generally do not make penalties mandatory. To test this perception ELI searched the most recently enacted class of state statutes that contain civil penalties, the hazardous waste statutes. Seven out of more than 50 provisions reviewed use language that could possibly be construed to make penalties mandatory.<sup>11/</sup> Legal analysis beyond the scope of this study would be necessary to

<sup>11/</sup> Conn. Gen. Stat. §22a-131 (West 1975 & Supp. 1985) ("shall be fined").  
Va. Code §32.1-186 (Mich. 1979 & Supp. 1984) ("shall . . . be assessed").  
Or. Rev. Stat. §459.995 (1983) ("shall incur a civil penalty").  
Kan. Stat. Ann. §65-3444 (1980 & Supp. 1984) ("shall incur . . . a civil penalty").  
Wash. Rev. Code §70.105.080 (West, Bancroft-Whitney 1975 & West Supp. 1985) ("shall be subjected to a penalty").  
Minn. Stat. Ann. §115B.18 (West 1977 & Supp. 1984) ("shall forfeit and pay to the state a civil penalty").  
Okla. Stat. Ann. tit. 63§1-2005(A)(2) (West 1982 & 1983 Supp.) ("shall . . . result in the carrier being fined").  
Examples of phrases rejected as possibly mandatory are:  
"shall be subject to a civil penalty"  
"shall be liable for"  
"may fine"  
the attorney general "shall institute" an action. . . to recover penalties.

The distinction between the two categories is subtle, but real. The seven statutes listed above as possibly mandatory seem to link penalties automatically to violations. The second set of statutes appears to say that violators are subject to the possibility of penalties. Again, attempting to interpret such differences in

determine whether these provisions are mandatory. Agencies and courts are likely to regard apparently mandatory language of this type as directory, rather than mandatory. Mandatory penalties may not be a boon to enforcement. Agencies may prefer flexibility in choosing among an array of enforcement options. Courts may be reluctant to accept a construction of the law requiring penalties regardless of equitable considerations. An agency, review board, or court may avoid the rigidity of the mandatory penalties simply by finding that no violation exists in many cases. Indeed an agency that tries to impose penalties automatically risks making bad law if the statute does not unambiguously require it to do so and a case where penalties seem inequitable gets before a judge. Furthermore, none of these seven provisions specify a minimum penalty amount, which supports the hypothesis that the penalties are not intended to be mandatory,<sup>12/</sup>

The general survey did uncover one example of a mandatory penalty provision,<sup>13/</sup> set forth in a state clean water law and regulations adopted pursuant to that law, that only applies to surface and underground mining-related violations. That statute provides for a mandatory penalty of a given amount for each day of violation of an administrative order,<sup>14/</sup> and the regulations also provide various mandatory penalties of specified amounts (e.g. for conducting certain activities, or discharging, without authorization by permit).<sup>15/</sup> It appears that this state program example is an exception.

statutory language in the abstract is a risky business; these observations are hypotheses, not conclusions.

<sup>12/</sup> Other, randomly noted statutory provisions which contain language similar to those seven set forth in footnote 1 appear in Iowa Code Ann. §455B.187 (West 1981 & Supp. 1985); Conn. Gen. Stat. §22a-459 (West 1975 & Supp. 1985; and Utah Code Ann. §26-13-18 (Allen Smith Co. 1984). (But see the discussion in Section F regarding the Utah provision.)

<sup>13/</sup> Pennsylvania Clean Streams Law, Pa. Cons. Stat. Ann. tit. 35, §691.605 The state agency does construe the penalties as mandatory, and that construction has not been reversed in court.

<sup>14/</sup> This mandatory penalty is in addition to and supplements the larger discretionary penalties available for all other violations of the act, the regulations, permits and orders.

<sup>15/</sup> 25 Pa. Code, Chapters 86 et seq.

#### D. REMISSION/MITIGATION

A number of civil penalty provisions authorize the mitigation of a penalty. That authority may be important to the operation of a state's penalty program. For one thing, it could result in gross differences between the penalties initially levied and those actually collected, for example, if penalties routinely are forgiven should the violator come into compliance on the schedule set in an enforcement order. If this is the case, penalties may be very effective in bringing violators into compliance, but "ineffective" as a deterrent. Mitigation authorities take many forms.

In some states the enforcement agency directors may mitigate penalties in such manner and amount as they deem proper.<sup>16/</sup> If used liberally, such broad mitigation authority could undermine a penalty policy in any of several ways: staff might, without reason and consistency, avoid the mandates of the policy; administrative review boards or courts might employ the language as an excuse to avoid granting the penalty sought by an enforcement agency; or the agency may be unable to withstand political pressure to weaken or eliminate specific penalties.

Other statutes explicitly empower an agency to compromise or settle a civil penalty.<sup>17/</sup> The procedures may authorize such compromise and settlement only after approval of a commission; by a court or a board; by the agency director; or by the Attorney General, with the approval of the director. Some statutes authorize compromise and settlement only upon a finding by a board,<sup>18/</sup> by the agency director

<sup>16/</sup> See e.g. Wash. Rev. Code Ann. §70.94.431 (West, Bancroft-Whitney 1975 & West Supp. 1985); Conn. Gen. Stat. Ann. §22a-6b(e) (West 1975 & Supp. 1985); Or. Rev. Stat. §448.285(3) (1983); Wash. Rev. Code Ann. §90.48.144(3) (West, Bancroft-Whitney 1962 & West Supp. 1985).

<sup>17/</sup> Or. Admin. R. 340-12-075 (1985); N.Y. Env'tl Conserv. Law §71-0519, §71-2503, §71-3903 (McKinney 1984 & Supp.); Ala. Code §22-30-19 (Michie 1984).

<sup>18/</sup> Ala. Code §22-30-19 (Michie 1984).

(with the concurrence of the Attorney General), <sup>19/</sup> or by the agency<sup>20/</sup> of a part of the penalty (up to a given percentage)<sup>21/</sup> only if the violation is eliminated or corrected.

While mitigation authority may raise some concerns about the effectiveness of state penalty programs, it should be noted that express authority may not be needed to remit penalties. The authority to settle and compromise penalties may be within the agency's inherent power and experience suggests that many agencies so construe their authority. If so, the only issue with which the agency may struggle concerns what procedures to use to effect such a settlement, once the penalty has been formally imposed or litigation has been instituted.<sup>22/</sup>

<sup>19/</sup> Md. Health-Environmental Code Ann. §2-610 (Michie 1982 & Supp. 1984).

<sup>20/</sup> N.J. Stat. Ann. §26:2C-19 (West 1952 & Supp. 1984-85).

<sup>21/</sup> Alabama - 90%; Maryland - 75%; New Jersey - 90%.

<sup>22/</sup> Such issues generally do not arise when a settlement is effected prior to formal assessment or institution of administrative complaint for penalties. For example, in Pennsylvania's environmental agency, which deems settlement of penalties to be within its inherent powers, the independent administrative review board's rules suggest that any penalty assessed or in litigation before the board may only be settled after publication of the proposed settlement, and with the consent of the board. There is no requirement that the agency provide public notice of any proposed penalty settlement which is in litigation before any court, or (with the exception of certain mining matters) any proposed settlement of penalties occurring before penalty assessment or initiation of litigation.

## **E. PENALTY CRITERIA**

Many state civil penalty authorities specify criteria to be taken into account in setting penalties. These statutory and/or regulatory criteria could constrain the type of penalty policy the state may implement. Thirty-one states have authorities specifying one or more penalty-setting criteria in at least one of the major program areas covered by the survey (air, water, solid waste, hazardous waste and drinking water). The numbers range from 23 states for hazardous waste programs to 11 for drinking water. (See accompanying charts.)

The criteria are diverse. They fall into 10 broad categories (which are explained in more detail in the footnotes to the charts at the end of this section):

1. The economic benefit from delayed compliance,
2. The nature or gravity of the violation,
3. The degree of the violator's culpability,
4. The extent of the violator's good faith efforts to comply,
5. The history of prior violations,
6. The economic impact of a penalty on the violator,
7. The deterrent effect of the penalty,
8. The costs to the state of enforcing against the violator, or of cleaning up its pollution,
9. A balancing of the competing interests served by penalizing or not penalizing the violator, and
10. Other relevant factors.

The charts at the end of this section identify the number of state authorities that prescribe criteria of each of the 10 types.

The authorities prescribe penalty criteria in several different ways. Most that specify criteria identify more than one (but see Florida, Montana, New Hampshire and Washington data in summary charts). Many list five to seven criteria and add that any

STATES WITH STATUTORY CRITERIA FOR MAJOR PROGRAMS

	Air 1	Water 2	Hazardous Waste 3	Drinking Water 4		Air 1	Water 2	Hazardous Waste 3	Drinking Water 4
Alabama			X		Montana	X			
Alaska	X	X	X		Nebraska	X	X	X	
American Samoa	O*	O*	O*		Nevada				
Arizona				O*	New Hampshire				X
Arkansas	X	X	X	X	New Jersey		X		
California	X	X	X	X	New Mexico				O*
Colorado	X		X		New York		X		
Connecticut	X	X	X		North Carolina	X	X	X	
Delaware			X		North Dakota				
District of Columbia	O*	O*		O*	Ohio			X	
Florida	X	X	X		Oklahoma	O*			
Georgia	X		X		Oregon	X	X	X	X
Guam		O*			Pennsylvania	X	X	X	X
Hawaii	X	X	X		Puerto Rico				
Idaho			X		Rhode Island				
Illinois					South Carolina				
Indiana					South Dakota				
Iowa	X	X	X	X	Tennessee	X	X	X	X
Kansas		X	X	X	Texas	X	X	X	X
Kentucky					Utah				
Louisiana	X	X	O*	X	Vermont				
Maine	X	X	X		Virgin Islands	O*		O*	
Maryland	X	X	X		Virginia	X			
Massachusetts					Washington	X			
Michigan	O*				West Virginia				
Minnesota	X	X	X	X	Wisconsin				
Mississippi		X			Wyoming				
Missouri									

- No civil penalty authority.
- 1. Twenty-two states have air criteria.
- 2. Twenty-one states have water criteria.
- 3. Twenty-three states have hazardous waste criteria.
- 4. Eleven states have drinking water criteria.

other relevant factors may be taken into account (see, e.g. Louisiana, Oregon, and Tennessee in Air chart).

The New Jersey water pollution control regulations set forth the method of calculating a civil penalty. Criteria include seriousness and type of violation. The seriousness criterion is subdivided into four degrees (as defined in the regulation) of damage or harm caused or likely to be caused by the unlawful discharge, with a "schedule of factor values" set in ranges for each degree of harm, as follows:

<u>Seriousness Factor</u>	<u>Values</u>
(1) Serious damage	2.00 - 1.50
(2) Moderate damage	1.50 - 1.00
(3) Slight damage	1.00 - 0.50
(4) Insignificant damage	0.50

The type of violation criterion is also subdivided into four degrees (as defined in the regulation), with assigned values, as follows:

<u>Type Factor*</u>	<u>Values</u>
(1) Willful	1.00
(2) Highly foreseeable	1.00 - 0.75
(3) Unintentional but foreseeable	0.75 - 0.50
(4) Unintentional and unforeseeable	0.50

\*If the discharge involves a hazardous pollutant, an additional number between 0.10 and 0.25 (depending on harmful characteristics or inherent toxicity) is added to the type factor. "This is intended to reflect the higher standard of care in the storage and use of hazardous pollutants which the Department seeks to encourage." N.J. Admin. Code tit. 7, §7:14-8.10 (Supp. May 21, 1984).

The basic penalty for the discharge is then calculated as follows:

$$(\text{Seriousness}) \times (\text{Type}) \times (\$5000) = \text{Basic Penalty.}$$

This part of the regulation concludes: "[i]f the penalty computed by this method is greater than \$5,000, the \$5,000 maximum basic penalty shall be assessed." N.J. Admin. Code tit. 7, §7:14-8:10.



This "basic penalty" is that which the Commissioner is authorized to assess in the first instance for a violation. Note that an additional \$500 per day is authorized to be levied for each day during which a violation continues after receipt of an order (i.e., a Notice of Assessment of a Civil Administrative Penalty) from the Department. [This regulation also sets forth penalty assessment procedures for non-discharge violations, construction of unpermitted facilities, and for violations of the "Water Supply and Wastewater Operators Licensing Act."]

Some authorities make the criteria mandatory considerations, among others the penalty-setter finds relevant (e.g. Connecticut, Title 22a, §6b(c)—"the commissioner shall consider all the factors which he deems relevant, including, but not limited to, the following"; Maine, water pollution, Title 38, §349.5—"the court shall consider, but shall not be limited to, the following;" Pennsylvania, Title 35, §4009.1—"the hearing board shall consider . . . [three specific criteria] . . . and other relevant factors;" California Health & Safety Code Div. 26, §42403—"the court shall take into consideration all relevant circumstances, including, but not limited to, the following:"). The Summary Chart immediately proceeding the criteria charts following the text of this section indicates that only 20 authorities have "other relevant factors" language. A second group includes no broad authority to add criteria, and could be construed to limit the choice of criteria to those listed (e.g. NY. Article 71, §71-1941—"the commissioner or court shall consider: . . . [three specified factors]"; Nebraska, Title 81, §81-1508(1)(c)—"the amount of such penalty to be based on the size of the operation and the degree and extent of the pollution"). Arguably the penalty-setter may have inherent authority to consider additional factors, but the answer to that question depends on the narrowness with which state courts construe legislative grants of authority to agencies and courts. The actual legal significance of these passages cannot be determined from this simple recitation of their terms, but the foregoing does illustrate the variety such provisions contain.

These legislative or regulatory statements could constrain the development of policies governing penalty amounts. In the extreme, a statute specifying that penalties must be based on the nature of the violation alone would seem to bar a policy dictating that penalties be set on the basis of economic benefit from delayed compliance. Few, if any, authorities are that specific, however, and most leave the penalty-setting entity flexibility, either by specifying no criteria (other than maximum amounts) or by indicating that the specified criteria are not exclusive. In such cases, the fact that a criterion that the state agency wants to take into account in a penalty policy is not mentioned in the statute does not preclude its use in the policy, if it is broadly relevant to the enforcement action. Listed criteria can be a policy constraint in another fashion, however. If the statute indicates that the penalty-setter "shall consider" a specific factor, it would seem to preclude an administrative policy based exclusively on other factors.

It is not possible to determine from this analysis which states' authorities are compatible with the EPA penalty policy, which is of interest because one of the EPA penalty oversight options being considered is requiring adoption of the EPA policy. The federal policy relies principally on consideration of two factors: economic benefit and seriousness of the violation, with several others taken into account in mitigating or adding to the basic penalty calculated with reference to those factors. Thirty-four of the state authorities surveyed specify economic benefit as a penalty criterion, and 73 include the seriousness of the violation. Thirty-three authorities that specify economic benefit also mention seriousness, but this is a small subset of the universe. The survey covers five programs (air, water, solid waste, hazardous waste, and drinking water) in 55 states, or 275 programs; only 12 percent of these programs have express authority to consider both factors.

The limited purpose of this section is to review state authorities to determine to what extent statutory penalty criteria constrain state penalty policy options. We do not address the question of how the criteria are construed or will be used, or whether any particular set of criteria will result in larger or smaller penalties under a given set of circumstances. One criterion can cut either, or both ways. For example, state penalty authorities which require consideration of "culpability" and "history of violations" as factors could be used (1) only to augment base penalties for "bad actions," (2) only to reduce base penalties for "good actions," or (3) to do either.

STATES USING BOTH ECONOMIC BENEFIT  
AND SERIOUSNESS OF THE VIOLATION

**AIR**

Alaska  
Arkansas  
Connecticut  
Georgia  
Iowa  
Louisiana  
North Carolina  
Tennessee

**WATER**

Alaska  
Arkansas  
California  
Connecticut  
Iowa  
Louisiana  
North Carolina

**SOLID WASTE**

Alaska  
Arkansas  
Connecticut  
Iowa  
Kansas  
Pennsylvania  
Tennessee

**HAZARDOUS WASTE**

Alaska  
Arkansas  
Connecticut  
Georgia  
Iowa  
Kansas  
Pennsylvania  
Tennessee

**DRINKING WATER**

Arkansas  
Iowa  
Tennessee

**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**AIR VIOLATIONS**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Willful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Alabama (AL)											AL
Alaska (AK) **	AK	AK						AK			
A.Samoa (AS) *											
Arizona (AZ)											AZ
Arkansas (AR) <sup>12, **</sup>	AR	AR	AR	AR	AR			AR			
California (CA)		CA	CA	CA	CA						
Colorado (CO)		CO	CO			CO				CO	
Conn. (CT) **	CT	CT		CT	CT	CT			CT***	CT	
Delaware (DE)											
D. of Columbia (DC) *											
Florida (FL) **				FL							
Georgia (GA)	GA	GA		GA	GA	GA			GA	GA	
Guam (GU)											GU
Hawaii (HI) **		HI		HI	HI						
Idaho (ID)											ID
Illinois (IL)											IL
Indiana (IN)											IN
Iowa (IA) <sup>13</sup>	IA	IA	IA							IA	
Kansas (KS)											KS
Kentucky (KY)											KY
Louisiana (LA) **	LA	LA	LA	LA	LA	LA		LA			
Maine (ME) **		ME		ME	ME		ME				
Maryland (MD)		MD	MD	MD		MD					
Mass. (MA)											MA
Michigan (MI) *											
Minnesota (MN)						MN					
Mississippi (MS)											MS

\* No civil penalty authority; AS, DC, MI, OK and VI authorize criminal penalties only.

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered by the chart. In many cases, e.g., AR, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

\*\*\* For open burning violations only.

**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**AIR VIOLATIONS (continued)**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Missouri (MO)											MO
Montana (MT)	MT										
Nebraska (NE)		NE				NE					
Nevada (NV)											NV
New Hamp. (NH)											NH
New Jersey (NJ)											NJ
New Mexico (NM)											NM
New York (NY)											NY
N. Carolina (NC)	NC	NC		NC	NC	NC		NC			
N. Dakota (ND)											ND
Ohio (OH)											OH
Oklahoma (OK) *											
Oregon (OR) **		OR	OR	OR	OR	OR		OR		OR	
Penn. (PA)		PA	PA							PA	
Puerto Rico (PR)											PR
R. Island (RI)											RI
S. Carolina (SC)											SC
S. Dakota (SD)											SD
Tennessee (TN)	TN	TN		TN		TN			TN		
Texas (TX)		TX		TX	TX		TX			TX	
Utah (UT)											UT
Vermont (VT)											VT
V. Islands (VI) *											
Virginia (VA)		VA				VA					
Washington (WA)				WA							
W. Virginia (WV)											WV
Wisconsin (WI)											WI
Wyoming (WY)											WY

\* No civil penalty authority; AS, DC, MI, OK and VI authorize criminal penalties only.

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered by the chart. In many cases, e.g., AR, FL and OH, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**WATER VIOLATIONS**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Alabama (AL)											AL
Alaska (AK) **	AK	AK						AK			
A. Samoa (AS) *											
Arizona (AZ)											AZ
Arkansas (AR) <sup>12, **</sup>	AR	AR	AR	AR	AR			AR			
California (CA)	CA	CA	CA	CA	CA	CA				CA	
Colorado (CO)											CO
Conn. (CT) **	CT	CT		CT	CT	CT					
Delaware (DE)											DE
D. of Columbia (DC) *											
Florida (FL) **				FL							
Georgia (GA)											GA
Guam (GU) *											
Hawaii (HI) **		HI		HI	HI						
Idaho (ID)											ID
Illinois (IL)											IL
Indiana (IN)											IN
Iowa (IA) <sup>13</sup>	IA	IA	IA							IA	
Kansas (KS)							KS				
Kentucky (KY)											KY
Louisiana (LA) **	LA	LA	LA	LA	LA	LA		LA			
Maine (ME) **		ME		ME	ME		ME				
Maryland (MD)		MD	MD	MD	MD			MD			
Mass. (MA)											MA
Michigan (MI)											MI
Minnesota (MN)						MN					
Mississippi (MS)								MS			

\* No civil penalty authority; AS, DC and GU authorize criminal penalties only.

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered by the chart. In many cases, e.g., AR, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:

WATER VIOLATIONS (continued)

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Willful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Relevant Factors <sup>10</sup>	No Specific Statutory Other or Regulatory Criteria <sup>11</sup>
Missouri (MO)											MO
Montana (MT)											MT
Nebraska (NE)		NE				NE					
Nevada (NV)											NV
New Hamp. (NH)											NH
New Jersey (NJ)		NJ	NJ								
New Mexico (NM)											NM
New York (NY)		NY	NY	NY							
N. Carolina (NC)	NC	NC		NC	NC	NC		NC			
N. Dakota (ND)											ND
Ohio (OH)											OH
Oklahoma (OK)											OK
Oregon (OR) **				OR	OR	OR					
Penn. (PA)		PA	PA					PA		PA	
Puerto Rico (PR)											PR
R. Island (RI)											RI
S. Carolina (SC)											SC
S. Dakota (SD)											SD
Tennessee (TN)		TN	TN	TN		TN	TN	TN	TN		
Texas (TX)			TX								
Utah (UT)											UT
Vermont (VT)											VT
V. Islands (VI)											VI
Virginia (VA)											VA
Washington (WA)											WA
W. Virginia (WV)											WV
Wisconsin (WI)											WI
Wyoming (WY)											WY

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered by the chart. In many cases, e.g., AR, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.



**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**SOLID WASTE VIOLATIONS**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Alabama (AL)											AL
Alaska (AK) **	AK	AK						AK			
A. Samoa (AS) *											
Arizona (AZ)											AZ
Arkansas (AR) <sup>12,**</sup>	AR	AR	AR	AR	AR			AR			
California (CA)											CA
Colorado (CO)											CO
Conn. (CT) **	CT	CT		CT	CT	CT					
Delaware (DE)											DE
D. of Columbia (DC) *											
Florida (FL) **				FL							
Georgia (GA)											GA
Guam (GU) *											
Hawaii (HI) **		HI			HI	HI					
Idaho (ID)											ID
Illinois (IL)											IL
Indiana (IN)											IN
Iowa (IA) <sup>13</sup>	IA	IA	IA							IA	
Kansas (KS)	KS	KS					KS	KS			
Kentucky (KY)											KY
Louisiana (LA) *											
Maine (ME) *											
Maryland (MD)											MD
Mass. (MA)											MA
Michigan (MI)											MI
Minnesota (MN)						MN					
Mississippi (MS)											MS

\* No civil penalty authority; AS, DC, GU, LA and ME (and NM if general statute applies) authorize criminal penalties only.

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered by the chart. In many cases, e.g., AR, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**SOLID WASTE VIOLATIONS (continued)**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Missouri (MO)											MO
Montana (MT)											MT
Nebraska (NE)											NE
Nevada (NV) *											
New Hamp. (NH)											NH
New Jersey (NJ)											NJ
New Mexico (NM) *											
New York (NY)											NY
N. Carolina (NC)		NC	NC	NC	NC			NC			
N. Dakota (ND)											ND
Ohio (OH)											OH
Oklahoma (OK)											OK
Oregon (OR) **		OR	OR	OR	OR	OR		OR		OR	
Penn. (PA)	PA	PA	PA					PA		PA	
Puerto Rico (PR)											PR
R. Island (RI)											RI
S. Carolina (SC)											SC
S. Dakota (SD)											SD
Tennessee (TN)	TN	TN		TN				TN			
Texas (TX)		TX	TX								
Utah (UT)											UT
Vermont (VT)											VT
V. Islands (VI)											VI
Virginia (VA)											VA
Washington (WA)											WA
W. Virginia (WV)											WV
Wisconsin (WI)											WI
Wyoming (WY)											WY

\* No civil penalty authority; AS, DC, GU, LA and ME (and NM if general statute applies) authorize criminal penalties only.

\*\* In this chart the criteria listed for these states appear in a general penul vision governing pollution incidents. The criteria have been included here becau to the best of our knowledge these provisions encompass violations cover the chart. In many cases, e.g., AL, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**HAZARDOUS WASTE VIOLATIONS**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Alabama (AL)		AL		AL							
Alaska (AK)	AK	AK					AK	AK			
A. Samoa (AS) *											
Arizona (AZ)											AZ
Arkansas (AR) <sup>12,**</sup>	AR	AR	AR	AR	AR			AR			
California (CA)		CA		CA	CA						
Colorado (CO)		CO	CO			CO		CO		CO	
Conn. (CT) **	CT	CT		CT	CT	CT					
Delaware (DE)		DE		DE							
D. of Columbia (DC)											DC
Florida (FL) **				FL							
Georgia (GA)	GA	GA		GA	GA	GA					
Guam (GU)											GU
Hawaii (HI) **		HI		HI	HI						
Idaho (ID)		ID		ID							
Illinois (IL)											IL
Indiana (IN)											IN
Iowa (IA) <sup>13</sup>	IA	IA	IA							IA	
Kansas (KS)	KS	KS					KS	KS			
Kentucky (KY)											KY
Louisiana (LA) *											
Maine (ME) **		ME		ME			ME				
Maryland (MD)		MD	MD	MD	MD			MD			
Mass. (MA)											MA
Michigan (MI)											MI
Minnesota (MN)			MN	MN		MN					
Mississippi (MS)											MS

\* No civil penalty authority; AS and LA authorize criminal penalties only.

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered by the chart. In many cases, e.g., AR, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

**STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:**

**HAZARDOUS WASTE VIOLATIONS (continued)**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Missouri (MO)											MO
Montana (MT)											MT
Nebraska (NE)		NE				NE					
Nevada (NV)											NV
New Hamp. (NH)											NH
New Jersey (NJ)											NJ
New Mexico (NM)											NM
New York (NY)											NY
N. Carolina (NC)		NC	NC	NC	NC			NC			
N. Dakota (ND)											ND
Ohio (OH)								OH			
Oklahoma (OK)											OK
Oregon (OR) **		OR	OR	OR	OR	OR		OR		OR	
Penn. (PA)	PA	PA	PA					PA		PA	
Puerto Rico (PR)											PR
R. Island (RI)											RI
S. Carolina (SC)											SC
S. Dakota (SD)											SD
Tennessee (TN)	TN	TN		TN				TN			
Texas (TX)		TX	TX								
Utah (UT)											UT
Vermont (VT)											VT
V. Islands (VI)											VI
Virginia (VA)											VA
Washington (WA)											WA
W. Virginia (WV)											WV
Wisconsin (WI)											WI
Wyoming (WY)											WY

\*\* In this chart the criteria listed for these states appear in a general penalty provision governing pollution incidents. The criteria have been included here because to the best of our knowledge these provisions encompass violations covered in this chart. In many cases, e.g., AR, FL and OR, references to these provisions are explicit, and, some states (e.g., CT and OR) have additional statutory or regulatory authority.

STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:

DRINKING WATER/UIC VIOLATIONS

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability Wilful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Alabama (AL)											AL
Alaska (AK)											AK *
A. Samoa (AS)											AS
Arizona (AZ) **											
Arkansas (AR) <sup>12,***</sup>	AR	AR	AR	AR	AR			AR			
California (CA)		CA		CA						CA	
Colorado (CO)											CO
Connecticut (CT)											CT
Delaware (DE)											DE
District of Columbia (DC) **											
Florida (FL)											FL
Georgia (GA)											GA
Guam (GU)											GU
Hawaii (HI)											HI
Idaho (ID)											ID
Illinois (IL)											IL
Indiana (IN)											IN *
Iowa (IA) <sup>13</sup>	IA	IA	IA							IA	
Kansas (KS)		KS		KS						KS	
Kentucky (KY)											KY
Louisiana (LA)		LA		LA							
Maine (ME)											ME
Maryland (MD)											MD
Mass. (MA)											MA
Michigan (MI)											MI
Minnesota (MN)						MN					
Mississippi (MS)											MS

\* Unless included under general environmental penalty statute.

\*\* No civil penalty authority; DC, NM and VI authorize criminal penalties only.

\*\*\* The criteria listed here are found in the general civil penalty regulation for Arkansas which governs underground injection control (in addition to air, water, and solid and hazardous waste violations).

STATUTORY AND REGULATORY  
CRITERIA USED TO DETERMINE CIVIL PENALTY:

DRINKING WATER/UIC VIOLATIONS (continued)

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Willful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
Missouri (MO)											
Montana (MT)											MO
Nebraska (NE)											MT
Nevada (NV)											NE *
New Hamp. (NH)		NH									NV
New Jersey (NJ)											
New Mexico (NM) **											NJ
New York (NY)											
N. Carolina (NC)											NY
N. Dakota (ND)											NC
Ohio (OH)											ND
Oklahoma (OK)											OH
Oregon (OR)				OR	OR	OR					OK
Penn. (PA)		PA	PA		PA						
Puerto Rico (PR)											
R. Island (RI)											PR
S. Carolina (SC)											RI
S. Dakota (SD)											SC
Tennessee (TN)	TN	TN		TN			TN	TN			SD
Texas (TX)		TX		TX	TX						
Utah (UT)											
Vermont (VT)											UT
V. Islands (VI) **											VT
Virginia (VA)											
Washington (WA)											VA
W. Virginia (WV)											WA
Wisconsin (WI)											WV
Wyoming (WY)											WI
											WY

\* Unless included under general environmental penalty statute.

\*\* No civil penalty authority; DC, NM and VI authorize criminal penalties only.

**SUMMARY CHART  
NUMBER OF STATE STATUTORY AND REGULATORY AUTHORITIES USING THE CRITERIA**

	Economic Benefit of Noncom- pliance <sup>1</sup>	Nature, Extent and Gravity of Viola- tion <sup>2</sup>	Degree of Culpability/ Willful- ness <sup>3</sup>	Good Faith Efforts to Comply <sup>4</sup>	History of Prior Viola- tions <sup>5</sup>	Economic Impact of Penalty on Business <sup>6</sup>	Deterrent Effect of Penalty <sup>7</sup>	Costs to State to Enforce/ Abate/ Correct Damage <sup>8</sup>	Balance Competing Interests and Factors <sup>9</sup>	Any Other Relevant Factors <sup>10</sup>	No Specific Statutory or Regulatory Criteria <sup>11</sup>
<b>EPA GENERAL POLICY *</b>	X	X	X	X	X	X	**				
<b>AIR</b>	9	18	8	14	10	11	2	5	3	7	27
<b>WATER</b>	7	15	10	12	9	8	3	8	1	3	31
<b>SOLID WASTE</b>	7	11	6	6	5	4	1	7	0	3	35
<b>HAZARDOUS WASTE</b>	8	20	9	15	8	6	3	10	0	4	30
<b>DRINKING WATER/ UIC</b>	3	9	3	7	4	2	1	2	0	3	40
<b>TOTAL</b>	<b>34</b>	<b>73</b>	<b>36</b>	<b>54</b>	<b>36</b>	<b>31</b>	<b>10</b>	<b>32</b>	<b>4</b>	<b>20</b>	<b>163</b>

\* EPA "Policy on Civil Penalties" (General Enforcement Policy # GM-21) and framework for Statute-Specific Policies (#GM-22).

\*\* EPA Policy considers that penalties equal to economic benefit plus some amount reflecting the gravity of the offense will deter violations.

## FOOTNOTES FOR CRITERIA CHARTS

- 1/ Includes, without limitation, concepts such as and relating to: amount of money violator saved by not having made necessary expenditures; profit realized/ advantages gained by noncompliance; and, economic savings realized.
- 2/ Includes, without limitation, concepts such as and relating to: seriousness of violation; type of violation or waste; character of violation; amount of discharge; frequency, duration, persistence of violation; whether repeated or continuous; whether discharge susceptible to cleanup or abatement; likelihood of permanent injury; population at risk; and, degree of harm, potential harm, effect on or risk to public health, safety and welfare, the environment, or the reasonable use of property.
- 3/ Includes, without limitation, concepts such as and relating to: whether violation was reported or concealed; whether cause of violation was result of accident, mistake, or omission, negligent or intentional act, gross negligence, reckless, wanton misconduct, wilfulness, recalcitrance, defiance or indifference, misrepresentations, knowing falsities, fraud or recurrent pattern; and, degree of care to prevent spills or violations.
- 4/ Includes, without limitation, concepts such as and relating to: cooperativeness of violator; effectiveness of response actions or corrective measures and efforts to comply; available technology; ability to comply; time necessary to comply; opportunity and degree of difficulty to correct; technical practicability and economic reasonableness of reducing or eliminating discharge; whether mitigation of violation; voluntary cleanup; unproven or innovative nature of control equipment; extent to which violation continued after order to correct; and, amount necessary to insure immediate and continued compliance.
- 5/ Includes, without limitation, concepts such as and relating to: previous compliance record; and, record of maintenance.
- 6/ Includes, without limitation, concepts such as and relating to: effect of penalty on ability to continue in business; appropriateness of penalty to size of business; violator's ability to pay; economic and financial status of violator; gross revenues of violator; and, size of operation.
- 7/ Includes, without limitation, concepts such as and relating to: amount which would constitute actual and substantial economic deterrent to violation for which it is assessed; and, penalty substantial enough to deter others from similar violations.
- 8/ Includes, without limitation, concepts such as and relating to: costs of investigation, enforcement and cleanup; restoration of environment and natural resources; replenishing wildlife; other extraordinary costs to state; and, reasonable compensation for adverse environmental effects determined by toxicity, degradability, and dispersal effects of substances discharged, sensitivity of receiving environment and degree of existing environmental quality.



## CRITERIA CHART FOOTNOTES (continued)

- 9/ Includes, without limitation, concepts such as and relating to: weighing societal costs and benefits by considering advantages and disadvantages to residents and businesses, social and economic value of activity, use of property, area suitability, and practicability of reducing or eliminating discharge.
- 10/ Category represents only statutory language that is general in authorizing states to consider other criteria, such as states that list specific criteria and add the phrase "and any other relevant factors." Category does not include miscellaneous criteria not otherwise covered in the charts. Such miscellaneous criteria, in the case of Arkansas, for example, have been highlighted by dropping an explanatory footnote from the state name on the appropriate chart.
- 11/ These charts represent only criteria included in state statutes and regulations available for analysis.
- 12/ Arkansas is the only state that includes the following factor among its criteria for air, water, solid and hazardous wastes and underground injection control violations: "Whether any part of the noncompliance is attributable to the action or inaction of the state government itself." This factor does not appear as a separate category in the charts.
- 13/ These criteria are used to adopt schedules of penalties and to determine administrative penalties for minor violations of Iowa's air, water, drinking water and waste laws. It is unclear whether these factors can be used to set penalties for major violations, violations not fitting within schedules, or for violations which should be referred to the attorney general for legal action.

## **F. INSTITUTIONAL AND PROCEDURAL ISSUES**

The usefulness of state agency penalty authority and the success of a penalty policy are, at least in part, a function of the institutional mechanisms and procedures for assessing or seeking penalties. An agency that must present an "administrative" civil penalty case to a hearing board before a penalty is collected, and then go to court, represented by an attorney general, to collect the penalty, must convince three other organizations of the wisdom of its penalty rationale. If the necessary procedures at any or all steps are unduly complicated, penalty authority, no matter how powerful on the face of the statute, will rarely be used. This survey of penalty authorities does not identify the full range of institutional and procedural requirements associated with state civil penalties. This section identifies issues that could determine the impact of different institutional and procedural arrangements on the efficacy of a state penalty policy initiative.

Institutionally, penalty programs can be divided into three categories: those with administrative penalty authority, those that have both judicial and administrative authority, and those that are limited to judicial penalty authority. The survey makes possible a first-cut division of state authorities into these three categories. The categorization of authorities is subject to some uncertainty, since statutory authorities are not always clear on how penalties are to be assessed. Many state agencies reviewed the initial characterizations of their authorities, correcting any errors, and project staff rechecked the authorities for states not commenting by press time. While errors may persist, they are not so numerous as to affect the general findings. As the chart on the next page indicates, there is great diversity among and within states on this issue. Twenty-four states must go to court to impose civil penalties in all their programs authorizing such penalties. Eight states have solely administrative civil penalty authority (though they may have to go to court if defendants refuse to pay). The remainder have some mix of administrative and judicial authority, either with some

# TYPE OF CIVIL PENALTY AUTHORITY

	Air	Water	Hazardous Waste	Drinking Water		Air	Water	Hazardous Waste	Drinking Water
Alabama	J	J	A	J	Montana	A/J	A	A/J	A
Alaska	J	J	J	J	Nebraska	J	J	J	J
American Samoa	O*	O*	O*	J	Nevada	A	A	A	A
Arizona	J	J	J	O*	New Hampshire	J	J	J	J
Arkansas	A	A	A	A	New Jersey	J	A/J	J	A/J
California	J	A/J	J	J	New Mexico	J	J	J	O*
Colorado	J	J	J	J	New York	A/J	A/J	A/J	A/J
Connecticut	A/J	A/J	A/J	J	North Carolina	A	A	A	A
Delaware	J	J	A/J	J	North Dakota	J	J	J	J
District of Columbia	O*	O*	A/J	O*	Ohio	J	J	J	J
Florida	J	J	J	J	Oklahoma	O*	J	A/J	J
Georgia	A	A	A	A	Oregon	A	A	A	A
Guam	J	O*	J	A/J	Pennsylvania	A/J	A/J	A/J	A/J
Hawaii	A/J	A/J	A/J	A/J	Puerto Rico	A	A	A	A
Idaho	J	J	A/J	J	Rhode Island	A/J	A/J	A/J	A/J
Illinois	A/J	A/J	A/J	A/J	South Carolina	A/J	A/J	A/J	A/J
Indiana	J	J	A/J	J	South Dakota	J	J	J	J
Iowa **	J	J	J	J	Tennessee	A/J	A/J	A/J	A/J
Kansas	J	A	A/J	A	Texas	A/J	J	J	J
Kentucky	J	J	J	J	Utah	J	J	J	J
Louisiana	A/J	A/J	O*	A/J	Vermont	J	J	J	J
Maine	J	J	J	J	Virgin Islands	O*	J	O*	J
Maryland	A/J	A/J	A/J	J	Virginia	J	J	J	J
Massachusetts	J	J	J	J	Washington	A	A	A	A
Michigan	O*	J	J	J	West Virginia	J	J	J	J
Minnesota	J	J	J	J	Wisconsin	J	J	J	J
Mississippi	A/J	A/J	A/J	A/J	Wyoming	A	A	A	A
Missouri	J	J	J	J					

A = Administrative civil penalty authority.

J = Judicial civil penalty authority.

A/J = Administrative and judicial civil penalty authority.

O\* = No civil penalty authority.

\*\* = Minor violations subject to administratively assessed penalties.

programs solely administrative and others solely judicial, or with authority in a program to impose penalties either administratively or in court. Twenty-two states have both options in at least one program. A majority of states (31) have administrative authority in at least one program. Administrative penalties authority is somewhat more common in hazardous waste programs (26 states), than in the others: air (21 states), water (23 states), and drinking water (21 states).

The distinction between administrative and judicial authorities is important; administrative penalty authority offers the state agency great flexibility and may expedite the final imposition of the penalty,<sup>23/</sup> but a complete understanding of the effect of penalty assessment procedures upon the effectiveness of the program requires a look beyond this simple categorization. In this study we can identify issues that might be addressed, but lack the information on state procedures to analyze them. One might compare, for example, those statutory provisions that authorize the agency enforcement unit to assess penalties unilaterally, without a prior adjudicatory hearing, to those provisions that authorize an agency only to seek the imposition of penalties before an

<sup>23/</sup> See for example, the United States General Accounting Office Report "Illegal Disposal of Hazardous Waste: Difficult to Detect or Deter" (Feb. 22, 1985):

California, Illinois, Massachusetts, and New Jersey environmental agencies do not have administrative authority to issue civil penalties for RCRA programs. In these states, such matters must be referred to the state attorney general to bring civil suit. However, state officials believe that administrative penalty authority would expedite enforcement action. The Enforcement Program Manager of the Illinois Environmental Protection Agency said that the length of time, often 3 to 4 years, required to litigate a case is a problem. He believes the time would be much shorter with administrative order authority because it would not necessarily require court proceedings. The Chief of the Massachusetts Attorney General's Environmental Protection Division, the Chief of the Toxic Substances Control Division of the California Department of Health Services, and

independent administrative board. While both penalty schemes are "administrative," the ability of the agency to secure swift action may differ dramatically. Similarly, the agency's ability to control the penalty amount and to recover a penalty in each case which is consistent with its penalty policy may differ in these two settings.

Reference to one administrative mechanism<sup>24/</sup> that authorizes the enforcement agency to assess the penalty unilaterally, with no more than a conference or informal meeting with the alleged violator prior to the assessment, illustrates key institutional and procedural issues. If the violator wishes to challenge the assessment, and receive a formal hearing on the issue of the propriety of the agency's finding that it violated the law or on the issue of the propriety of the particular penalty assessment, it must, within a specified period, appeal the agency's action to a quasi - judicial administrative board.

(footnote 23 continued...)

the Director of New Jersey's Department of Environmental Protection each made similar statements. (pp. 41-42)

\* \* \*

In commenting on a draft of this report, EPA emphasized its position that state administrative authority to issue civil penalties would be helpful in expediting enforcement actions. (p. 42)

\* \* \*

The report states that administrative authority to issue civil penalties is helpful in expediting enforcement actions. This is a position which EPA has taken for some time. The demonstrated result of "swift justice" is an increase in voluntary compliance. (GAO Report, Appendix II)

<sup>24/</sup> Pa. Cons. Stat. Ann. tit. 35, §691.605 (Pennsylvania Clean Streams Law). The provision discussed in the text pertains to surface and underground mining-related violations.

However, the appeal is only perfected if the alleged violator also posts in an agency escrow account the entire amount of the penalty, or posts a surety bond in the entire amount of the penalty.<sup>25/</sup>

Because the agency's completed penalty assessment action is being reviewed by the board, and the agency is not merely seeking imposition of a penalty, the board will defer to the agency's findings and determinations.<sup>26/</sup> This means that the agency's penalty policy, even if not embodied in formal regulations, is likely to be given some deference as well. The agency retains more control over the process, both before the board and before the reviewing court which, in turn, is likely to afford the board's decision judicial deference.<sup>27/</sup>

In such a system, justice is swift: the penalty is either paid by the violator within the specified time period (30 days) or the penalty assessment becomes final.<sup>28/</sup> The violator is discouraged from challenging the penalty without cause, which reduces the expenditure of agency resources in lengthy hearings and allows the agency to direct more attention to inspection and investigation.

<sup>25/</sup> This procedure, which requires pre-payment of the penalty before a penalty can be challenged, or a formal hearing obtained, has been upheld as constitutional. See e.g. Boyle Land & Fuel Co. v. Env'tl Hearing Bd. et al., Pa. (March 20, 1985, No. 46 W.D. Appeal Dkt. (1984); B&M Coal Corp. v. Off. of Surface Mining, C.A. 83-5103 (3rd Cir. Nov. 29, 1983); B&M Coal Corp. v. Off. of Surface Mining, 699 F.2d 381 (7th Cir. 1983); Blackhawk Mining Co., Inc. v. Andrus, No. 82-5141 (6th Cir. July 20, 1983).

<sup>26/</sup> The issue before the administrative review board is whether the agency "committed an abuse of discretion." Western Hickory Coal Co. v. Cmmw. of Pa., Dep't of Env'tl Resources, Pa. Commw. No. 1733 C.D. (Dec. 31, 1984). Moreover, where the penalty amount is mandated by statute or regulation, the only issue before the board is whether the agency complied with its own regulations. The board is subject to the same penalty assessment system as that prescribed for the agency. Black Fox Mining & Development Co. v. Dep't of Env'tl Resources, No. 84-114-6 (Apr. 29, 1985).

<sup>27/</sup> Western Hickory, supra; Black Fox, supra.

<sup>28/</sup> This creates a judgment in favor of the Commonwealth upon the property of the violator. The violator is deemed to have waived all legal rights to contest the fact of the violation or the amount of the penalty.

An administrative or judicial procedure where the agency must seek a penalty poses more obstacles. The penalty may not be imposed until after hearing and a period of delay. The administrative board or court may not be required to give any deference to an agency penalty policy or determination as to what penalty is appropriate. The board or court may have no interest in the agency's desire to assure consistency among the penalties imposed by the board/court as well as those recovered in voluntary settlement. An enforcement agency that must obtain the assistance of a separate agency (e.g. the Attorney General) in seeking the initial imposition of the penalty, either before an administrative board or court, also may be less likely to sustain use of its penalty policy. Finally, the agency may be less likely to actually recover the penalty. In the above example, under the "pre-payment" appeal requirement, the penalty is in an escrow account, accruing interest, during the pendency of the appeal process; where an agency is merely empowered to seek penalties, it may not actually recover the penalty for years, with a loss of the interest which would otherwise be accruing and the possible loss of the entire penalty if the violator files for bankruptcy and/or goes out of business.

A substantive issue that may be hidden in procedural requirements is whether penalties can be imposed for the initial violation of law. A statutory provision that only authorizes the imposition of a penalty after the agency notifies the violator of the violation, provides time to comply under an order, and then finds the violator to have violated the agency's order to comply,<sup>29/</sup> places on the enforcement agency the burden of qualifying violators for penalties. Such a procedure appears to weaken penalties' deterrent effect. Other states take the opposite approach, penalizing initial violations and authorizing more severe penalties when an order is violated.

<sup>29/</sup> See e.g. Idaho Code §39 (Chapter 1) (Bobbs-Merrill 1977 & Michie Supps. 1984 & 1985), which is referenced supra in Section A, above. This provision, which apparently applies to Idaho's air and water programs actually requires the agency to wait 10 days after the violator has been found to have violated the compliance order before the violator first becomes liable for a civil penalty.

Other relevant procedures which must be examined in evaluating a penalty program, or the ability of the program to make meaningful use of a civil penalty policy, include those which:

- establish presumptions as to the existence of criteria to be considered in determining the appropriate penalty and either specifies who bears the burden of proof or shifts it to the alleged violator;<sup>30/</sup>
- explicitly recognize the finality of findings made in previous administrative or judicial proceedings, and therefore do not require relitigation of the validity of the agency order or of the violation for which the agency now seeks a penalty;
- impose an extremely heavy burden of proof that the violation has occurred (e.g. proof beyond a reasonable doubt) upon the agency before a "civil" penalty may be imposed, <sup>31/</sup> or provide that only "knowing" violations occurring so many days after agency notice of the violation result in a civil penalty.<sup>32/</sup>

<sup>30/</sup> Hawaii's statute (Hawaii Rev. Stat. tit. 19 §342-11.5) (Hawaii 1976 & Supp. 1984) presumes "that the violator's economic and financial condition allows payment of the penalty, and the burden of proof to the contrary is on the violator." See also Or. Admin. R. §340-12-045 (1985) which also specifies that the violator bear the burden of proof and going forward on this issue. See also Pennsylvania Solid Waste Management Act, Pa. Cons. Stat. Ann., tit. 35, §6018.611, and Louisiana Solid Waste Management Act, La. Rev. Stat. §30.1147.1(B) re shifting to the defendant key substantive burdens in penalty actions.

<sup>31/</sup> Utah Code Ann. §26-13-18 (Allen Smith Co. 1984).

<sup>32/</sup> Id.



### G. WHERE DOES THE MONEY GO?

The accompanying charts summarize the disposition of the collected penalties, for each major environmental program. Three categories are used: (1) the general fund or treasury, (2) special environmental funds, and (3) other special funds.

The majority of state air, water, drinking water, and solid waste statutes direct that the penalties recovered be deposited in the state treasury or general fund, and a significant, although lesser, number require deposit in a special environmental fund.

The majority of hazardous waste statutes, the newest group of statutes, direct that the penalties be deposited in a special environmental fund<sup>33/</sup> such as an "emergency spill response fund"; "hazardous waste trust fund"; "hazardous waste emergency account"; or "water pollution abatement grant fund."

Somewhat more intriguing and lesser known provisions are those which authorize the disposition of penalties to the fund of the local county<sup>34/</sup> or school district in which the violation occurred<sup>35/</sup> or the award of a percentage of the penalty to any person who supplies evidence leading to the imposition of that penalty.<sup>36/</sup>

The issue of where the penalties go may not directly affect EPA's oversight responsibilities, but can affect the operation of the penalty program and enforcement overall. Statutes which authorize rewards (percentages of the penalty) to those who provide the agency information which leads to the imposition of the penalty may encourage a greater public awareness of environmental problems and assist the agency to

<sup>33/</sup> Although these special environmental funds were available in some states for penalties collected under the air, water, drinking water, and waste statutes, the use of these environmental funds appears to be increasing across the country as new statutes are enacted.

<sup>34/</sup> S.C. Code Ann. §48-1-350 (Law. Co-op. 1985).

<sup>35/</sup> See, e.g., Nev. Rev. Stat. §445.601(4) (Nev. Legis. Couns. 1979, 1981 & 1983).

<sup>36/</sup> See, e.g., D.C. Code Ann. §8-2:726(b)(19); Cal. Health & Safety Code §25191.7 (West 1979 Cum. Supp. 1980-1984, 1985); Ga. Code Ann. §52-8-1 (Michie 1982 & Supp. 1984).

find and investigate pollution and other environmental problems. The existence of an environmental fund, and/or the public's knowledge of the use to which the fund is put, may have a beneficial effect on the agency's ability to recover favorable penalty settlements or its ability to secure large penalty judgments from the judiciary. Statutes which divert all or part of the penalties to the county in which the violation occurs may encourage environmental awareness by the local officials or community members or reduce the political pressure upon an agency which seeks a high penalty against a large local industry.

## DISPOSITION OF PENALTY MONEY COLLECTED

AIR

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama		State Dept of Env'tl Mgmt Fund	
Alaska	X		
American Samoa			
Arizona			
Arkansas		Emergency Response Fund (up to \$150,000 cap) then to Remedial Action Trust Fund	
California	Actions for State Air Board-General Fund; Actions by Atty. Gen. for district-1/2 to state, 1/2 to district		Actions by district attorney to district treasurer
Colorado	X		
Connecticut	X		
Delaware			
D. of Columbia			To individual who provides information which leads to conviction
Florida		State Pollution Recovery Fund	
Georgia	X		
Guam	X		
Hawaii			
Idaho	X		
Illinois	X	Environmental Protection Trust Fund or Wildlife and Fish Fund in State Treasury	
Indiana		Environmental Management Special Fund	
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana		State says money goes first to Environmental Emergency Response Fund, then, if Fund is over \$2,000,000, to Abandoned Hazardous Waste Site Fund. Statute says money first to Bond Fund, but state says it has never been done	
Maine	X		
Maryland	X		
Massachusetts		Environmental Fund	
Michigan			
Minnesota	X		
Mississippi		Water Pollution Abatement Grant Fund - may be used for air pollution	
Missouri			
Montana	X		
Nebraska			
Nevada			County School District Fund of County where violation occurred

## DISPOSITION OF PENALTY MONEY COLLECTED

AIR (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York	X	Or Conservation Fund	Or Dep't of Tax and Finance
N. Carolina			
N. Dakota			
Ohio			
Oklahoma			
Oregon	General Fund unless penalty recovered by air quality control authority then to county of violation		County of violation if penalty recovered by air quality control authority; otherwise to general fund
Pennsylvania		Clean Air Fund	
Puerto Rico		Special Account of Board on Env't'l Quality	
Rhode Island	X		
S. Carolina	1/2 to state		1/2 to county
S. Dakota			
Tennessee	X		
Texas	If action brought by local gov't, 1/2 to local gov't, 1/2 to state gov't, otherwise all to general fund		
Utah			
Vermont	X		
V. Islands			
Virginia	State treasury unless court orders it to local government		
Washington	General Fund unless recovered by local authority		If recovered by local air authority, 1/2 to authority treasury, other half divided among cities which support authority on a pro rata basis of support
W. Virginia	X		
Wisconsin			School Fund (for violations of general penalties statute)
Wyoming	X		

DISPOSITION OF PENALTY MONEY COLLECTED  
WATER/NPDES/WATER QUALITY

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama		State Dept of Env'tl Mgmt Fund	
Alaska	X		
American Samoa			
Arizona		Water Quality Assurance Revolving Fund	
Arkansas		Emergency Response Fund (up to \$150,000 cap) then to Remedial Action Trust Fund	
California		State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund	
Colorado	X		
Connecticut	X		
Delaware			
D. of Columbia			
Florida	X	Or State Pollution Recovery Fund	
Georgia	X		
Guam			
Hawaii			
Idaho	X		
Illinois	X	Environmental Protection Trust Fund or Wildlife and Fish Fund in State Treasury	
Indiana			For stream pollution: common school fund
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana		Environmental Emergency Response Fund (up to \$2,000,000), then to Abandoned Hazardous Waste Site Fund	
Maine	X		
Maryland		Monitoring and Surveillance Fund	
Massachusetts		Environmental Fund except for Section 27, Ch. 21 - for oil and hazardous material spills - money is credited to account used to cleanup spill and for restoration	
Michigan			
Minnesota	X		

DISPOSITION OF PENALTY MONEY COLLECTED  
WATER/NPDES/WATER QUALITY (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Mississippi		Water Pollution Abatement Grant Fund	
Missouri			County School Fund
Montana	X		
Nebraska			
Nevada			
New Hampshire	X		
New Jersey	X	Section 58:10-23.11g - For spills only - N.J. Spill Compensation Fund	
New Mexico	X		
New York		Violations resulting in the killing of fish or shellfish, to Conservation Fund	For other violations, to the state comptroller or Dept of Taxation and Finance
N. Carolina			
N. Dakota			
Ohio	X		
Oklahoma			
Oregon	X		
Pennsylvania		Clean Water Fund of State Treasury	
Puerto Rico		Special Account of Board on Env'tl Quality	
Rhode Island	X		
S. Carolina	1/2 to state		1/2 to county
S. Dakota			
Tennessee		Water Quality Control Division	
Texas	General Fund unless local action, then 1/2 to state, 1/2 to local gov't		
Utah			
Vermont	X		
V. Islands	X		
Virginia	NPDES - state treasury if local gov't is violator		If court orders, to local government treasury, or to state treasury
	Water Quality - oil spills - into general fund, or Oil Fund at governor's discretion		
Washington	X		
W. Virginia			School Fund
Wisconsin	X		
Wyoming	X		

DISPOSITION OF PENALTY MONEY COLLECTED  
DRINKING WATER/UIC

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama		State Dept of Env'tl Mgmt Fund	
Alaska	X		
American Samoa			
Arizona		Water Quality Assurance Revolving Fund	
Arkansas		Emergency Response Fund (up to \$150,000 cap) then to Remedial Action Trust Fund	
California			
Colorado	X		
Connecticut	X		
Delaware			
D. of Columbia			
Florida		Environmental Fund	
Georgia	X		
Guam	X		
Hawaii			
Idaho	X		
Illinois	X	Environmental Protection Trust Fund or Wildlife and Fish Fund	
Indiana		Environmental Management Special Fund	
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana		Env'tl Emergency Response Fund (up to \$2,000,000) then to Abandoned Haz. Waste Site Fund	
Maine	X		
Maryland			
Massachusetts			
Michigan			
Minnesota	X		
Mississippi		Water Pollution Abatement Grant Fund	
Missouri			
Montana	X		
Nebraska			
Nevada			

DISPOSITION OF PENALTY MONEY COLLECTED  
DRINKING WATER/UIC (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York	X		
N. Carolina			
N. Dakota			
Ohio	X		
Oklahoma			
Oregon	X		
Pennsylvania		Clean Water Fund of State Treasury	
Puerto Rico		Special Account of Board on Env't'l Quality	
Rhode Island	X		
S. Carolina	X		
S. Dakota			
Tennessee		Water Quality Control Division	
Texas	X		Local Government. Escrow Account if penalty contested, or supersedes bond
Utah			
Vermont	X		
V. Islands	X		
Virginia	X		
Washington	X		
W. Virginia			
Wisconsin	X		Owner of well or water resource
Wyoming	X		



## DISPOSITION OF PENALTY MONEY COLLECTED

## HAZARDOUS WASTE

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama		State Dept of Env'tl Mgmt Fund	
Alaska	X		
American Samoa			
Arizona		Hazardous Waste Trust Fund	
Arkansas		Emergency Response Fund (up to \$150,000 cap) then to Remedial Action Trust Fund	
California		50% to Hazardous Waste Control Account	25% to Dept of Health Services, 25% to office bringing suit, either city attorney or Atty. Gen.
Colorado	X		
Connecticut	X	Credited to Emergency Spill Response Fund	
Delaware			
D. of Columbia	X		
Florida		Pollution Recovery Fund or Hazardous Waste Management Trust Fund	
Georgia		Hazardous Waste Trust Fund	
Guam	X		
Hawaii			
Idaho		Hazardous Waste Account	
Illinois	X	Environmental Protection Trust Fund, Wildlife and Fish Fund, or Haz. Waste Fund	
Indiana		Environmental Management Special Fund	
Iowa		Hazardous Waste Remedial Fund	
Kansas	X		
Kentucky	X		
Louisiana		Env'tl Emergency Response (up to \$2,000,000) then to Abandoned Haz. Waste Site Fund	
Maine		Haz. Waste Fund	Or State account from which funds for cleanup were expended
Maryland		Monitoring and Com- pliance Fund	
Massachusetts		Environmental Fund or to account used for cleanup and restoration	

DISPOSITION OF PENALTY MONEY COLLECTED  
HAZARDOUS WASTE (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Michigan	X		
Minnesota	X	Environmental Response, Compensation and Com- pliance Fund if release presents imminent hazard	
Mississippi		Water Pollution Abatement Grant Fund	
Missouri		Hazardous Waste Remedial Fund - if uncontrolled or abandoned hazardous waste site. Hazardous Waste Fund - if hazardous waste law violations	
Montana	X		
Nebraska			
Nevada			
New Hampshire	State Treasury for imminent hazard sites	Hazardous Waste Cleanup Fund-for strict liability for cleanup, plus knowledge on part of his property being used for illegal treatment, transportation, storage, or disposal	Plaintiff who sues receives treble damages. Office of Waste Management - for ex- penditures from Cleanup Fund
New Jersey	X		1/2 to person who provides information on illegal treatment, storage or disposal
New Mexico	X		
New York		Hazardous Waste Remedial Fund	
N. Carolina		Haz. Waste Site Remedial Fund (up to \$200,000 cap)	
N. Dakota			
Ohio		Hazardous Waste Cleanup Special Account	
Oklahoma		Controlled Industrial Waste Fund	
Oregon	X		
Pennsylvania		Solid Waste Abatement Fund	
Puerto Rico			
Rhode Island	X	Or Env'tl Response Fund	
S. Carolina	1/2 to state		1/2 to county
S. Dakota			
Tennessee		Hazardous Waste Remedial Action Fund	
Texas	General Fund unless local action, then 1/2 to state, 1/2 to local gov't		

**DISPOSITION OF PENALTY MONEY COLLECTED**

**HAZARDOUS WASTE (continued)**

	<b>STATE TREASURY/ GENERAL FUND</b>	<b>SPECIAL ENVIRONMENTAL FUNDS</b>	<b>OTHER SPECIAL FUNDS</b>
Utah			
Vermont	X		
V. Islands			
Virginia	X		
Washington		Hazardous Waste Control and Elimination Account	
W. Virginia		Hazardous Waste Emergency Response Fund	
Wisconsin			
Wyoming	X		

## DISPOSITION OF PENALTY MONEY COLLECTED

## SOLID WASTE

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama		State Dept of Env'tl Mgmt Fund	
Alaska	X		
American Samoa			
Arizona			
Arkansas		Emergency Response Fund (up to \$150,000 cap) then to Remedial Action Trust Fund	
California	1/2 to General Fund, 1/2 to county where action brought unless brought by county atty - then 100% to county		
Colorado			
Connecticut	X		
Delaware			
D. of Columbia			
Florida		Hazardous Waste Management Trust Fund or Poll. Recovery Fund	
Georgia	X		
Guam			
Hawaii			
Idaho	X		
Illinois			
Indiana			
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana		Environmental Emergency Response Fund (up to \$2,000,000) then to Abandoned Hazardous Waste Site Fund	
Maine			Municipality or State Treasury
Maryland		Monitoring and Compliance Fund	
Massachusetts		Environmental Fund	
Michigan			
Minnesota	X		
Mississippi		Water Pollution Abatement Grant Fund	
Missouri			
Montana	X		
Nebraska			
Nevada			
New Hampshire	X		
New Jersey	X		

## DISPOSITION OF PENALTY MONEY COLLECTED

## SOLID WASTE (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
New Mexico			
New York		Conservation Fund if fish or shellfish are killed by violation	State Comptroller or Dept of Taxation and Finance if no death of fish or shellfish
N. Carolina			
N. Dakota			
Ohio Oklahoma			
Oregon	X		
Pennsylvania		Solid Waste Abatement Fund	
Puerto Rico			
Rhode Island	X		
S. Carolina	1/2 to state		1/2 to county
S. Dakota			
Tennessee			
Texas	General Fund unless local action then 1/2 to state, 1/2 to local gov't		
Utah			
Vermont	X		
V. Islands			
Virginia	X		
Washington			
W. Virginia			School Fund
Wisconsin			
Wyoming	X		

## DISPOSITION OF PENALTY MONEY COLLECTED

## WETLANDS/DREDGE AND FILL

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama			
Alaska			
American Samoa			
Arizona			
Arkansas			
California		Water Pollution Cleanup and Abatement Account	
Colorado			
Connecticut	X		
Delaware			
D. of Columbia			
Florida		Environmental Fund	
Georgia	X		
Guam			
Hawaii			
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine	X		
Maryland			
Massachusetts		Environmental Fund	
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
Nevada			
New Hampshire		Nonlapsing state fund for research and investiga- tion, or used to restore wetlands	
New Jersey	X		
New Mexico			
New York	X		

DISPOSITION OF PENALTY MONEY COLLECTED  
WETLANDS/DREDGE AND FILL (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
N. Carolina			
N. Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Puerto Rico			
Rhode Island	X		
S. Carolina			
S. Dakota			
Tennessee			
Texas			
Utah			
Vermont			
V. Islands			
Virginia			
Washington			
W. Virginia			
Wisconsin			
Wyoming			

## DISPOSITION OF PENALTY MONEY COLLECTED

## OIL

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Alabama			
Alaska		Oil Spill Mitigation Account	
American Samoa			
Arizona			
Arkansas			
California		Hazardous Waste Control Account	
Colorado			
Connecticut			
Delaware			
D. of Columbia			
Florida	X	Or Pollution Recovery Fund	
Georgia			
Guam			
Hawaii			
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana	X		
Maine			
Maryland			
Massachusetts	X		Private person if private fishery is damaged by a spill
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
Nevada			
New Hampshire	X		
New Jersey			
New Mexico			
New York			
N. Carolina			
N. Dakota			



## DISPOSITION OF PENALTY MONEY COLLECTED

OIL (continued)

	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUNDS	OTHER SPECIAL FUNDS
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Puerto Rico			
Rhode Island			
S. Carolina			
S. Dakota			
Tennessee			
Texas	X	Saltwater Pit Disposal Fund	If violator seeks judicial review, money goes into escrow account or posted supersedeas bond
Utah			
Vermont			
V. Islands			
Virginia	X	Oil Spill Contingency Fund	
Washington	X	Coastal Protection Fund	
W. Virginia			
Wisconsin			
Wyoming			

# DISPOSITION OF PENALTY MONEY COLLECTED: SUMMARY

CATEGORY	STATE TREASURY/ GENERAL FUND	SPECIAL ENVIRONMENTAL FUND	OTHER SPECIAL FUNDS
AIR	29	11	8
WATER/NPDES/ WATER QUALITY	28	15	6
DRINKING WATER/UIC	28	11	2
HAZARDOUS WASTE	21	28	5
SOLID WASTE	19	9	4
WETLANDS/DREDGE AND FILL	6	4	0
OIL	7	6	2

**Note:** Many states have provisions which split money between the general fund and a special fund, or give it to one or the other depending on the statute, circumstances, court orders, etc. Those which are split are counted separately and may count in the total for one, two or all of the columns, as appropriate.

## **II. ANALYSIS OF STATE CIVIL PENALTY POLICIES**

### **INTRODUCTION**

This report presents a survey of state civil penalty policies received by EPA in response to a request from the Steering Committee. The survey includes 22 policy statements or descriptions from 20 states. A chart identifying the respondents is presented on the next page. It may not present a complete catalogue of state policies, because some states may have chosen not to respond to the request, or the policies may not be formally documented. The absence of a policy for any specific state program means that no such policy exists, although Connecticut reported that they have no policies beyond its regulations; the Colorado air program and Michigan hazardous waste programs likewise reported that they have no policies.

The 22 policy documents and descriptions provide a broad sampling. They cover 20 diverse states in eight different EPA Regions (I, II, III, IV, V, VI, VIII, and X) that span varied geographic areas from Florida to Washington, from Maine to Louisiana. The policies address a variety of programs: six are general, apparently covering all programs of the issuing agencies; eight cover hazardous waste; four apply to air programs; three cover water programs, and one covers drinking water.

The diversity of programs is not only between states. The two states for which more than one policy was submitted are trying distinct approaches in different programs. Most of the policies submitted (15 of 22) cover only one program, but six cover entire agencies.

Because the policies on hand represent only a sample of those in existence and we do not know how many programs operate without policies, it is not possible to make comprehensive conclusions about the current role of civil penalty policies in state enforcement. This report simply characterizes the policies, presents some broad hypotheses that they suggest, and summarizes the policies.

# STATES SUBMITTING INFORMATION ON POLICIES

	GENERAL	AIR	WATER	HAZARDOUS WASTE	NO FORMAL POLICY
Arkansas	X				
Colorado			X		X (Air)
Connecticut					X
District of Columbia				X	
Florida	X				
Idaho			X (Drink. Water)		
Illinois		X			
Indiana		X		X	
Kentucky		X			
Louisiana		X			
Maine	X				
Massachusetts	X				
Michigan					X (Haz. Waste)
New York				X**	
North Carolina				X	
North Dakota				X	
Ohio	X*				
Oregon				X	
Pennsylvania			X	X	
Utah				X	
Virginia			X***		
Washington	X				

\* Uses EPA Policy.

\*\* Uses EPA Policy "as a guide."

\*\*\* Directs penalty-setter to "EPA['s] explanation" for particular calculations.

## **A. OVERVIEW**

The approaches of the various state policies differ, but can be grouped into three categories: penalty amount essentially discretionary; factors-to-be-considered specified; detailed penalty formula. In the last category, some policies track the formula of the EPA penalty policies, others do not, thus providing two subcategories.

### **Discretionary**

One (MA) specifies categories of violations in which penalties should be sought, but does not identify factors governing the amounts to be sought.

One (AR) sets ranges for first and subsequent violations of different types (three exhaustively defined classes in each program), but does not specify factors to govern the choice of penalties within the ranges.

### **Factors**

#### **EPA Factors Included**

Three (IN-air, ME, UT) set rather arbitrary ranges of penalties for different types of violations, with the specific figure to be set with reference to a variety of factors, including economic benefit and others identified in the general EPA penalty policy.

Three (DC, LA, CO) specify a number of factors, including EPA penalty policy factors, to be taken into account, but do not indicate how they affect penalty amounts. The DC policy expressly recognizes that a great deal of discretion is appropriate in setting penalties. A fourth policy (WA) appears to fall into this category, requiring consideration of a long list of factors, including financial incentives to violate and other EPA civil penalty policy factors, without specifying how the factors are to be used. However, a document referenced in the materials submitted, but not included, may offer detailed guidance on using the factors.

A fifth policy (VA-water) lists a number of factors, some of which are based on EPA's policy factors (including economic benefit) and which, when summed, comprise a "total penalty." Other factors, such as mitigation, then are evaluated, and a "final penalty" is recommended.

One (ID - drinking water) uses penalty matrices based on population and number of violations, taking seriousness of the violation and deterrent effect into account.

#### **EPA Factors Not Included**

Oregon's hazardous waste policy mandates consideration of the several statutory penalty criteria, which do not include economic benefit. However, the agency does consider economic benefit in setting enforcement priorities, if not penalties. "Substantial" economic benefit is one factor that goes into determining whether a violation is "high priority."

Kentucky's policy is not public, but apparently does not include economic benefit in the list of factors to be considered.

#### **Formula**

##### **Similar to EPA Formula**

One state (OH) uses the 1977 EPA civil penalty policy, which has been adopted by its courts. Four states (IN, PA, NC, ND) have adopted hazardous waste penalty policies utilizing approaches very similar to that of EPA, basing penalties largely on the gravity of violations and economic benefit. One state (FL) has a draft policy adapting the EPA RCRA policy to all its programs. One (NY) uses the EPA hazardous waste policy "as a guide." One (VA) directs the penalty-setter to EPA's explanation for calculating certain factors such as economic benefit, then incorporates other factors such as mitigation, inability to pay, and alternative resolutions of new issues presented in calculating the "final penalty."

One state's air program (IL) has a policy to seek penalties, within the statutory maxima, based on economic benefit of delayed compliance and "aggravating factors," some of which mitigate, others of which increase the penalty sought.

#### Different from EPA Formula

One state's water program (PA) sets penalties to be sought on the basis of an elaborate formula that tracks statutory penalty criteria. Economic benefit is not considered.

These policies suggest that EPA's penalty policies have been influential with the states. Most (15 of 19) of the policies reviewed either track the EPA policy or provide at least lip service to economic benefit of delayed compliance and other factors utilized in the federal policies. The similarities are most pronounced in hazardous waste programs, perhaps because the state programs are relatively new and have been forced into the federal mold by the recent RCRA delegation process.

The EPA model is not always followed precisely; most of the policies preserve greater flexibility for tailoring the penalty to the facts of specific cases. States are somewhat more willing to consider the EPA policy factors among others than to lock themselves into the formal EPA approach.

## **B. SUMMARIES OF POLICIES**

### **Arkansas**

#### **All Programs**

Arkansas's policy simply prescribes different maxima and minima for penalties, based on the nature of the violation and whether it is a repeat occurrence. The statutes and regulations prescribe maximum penalties for each program. The policy defines three classes of violations in each program in great detail. For example, for air pollution it specifies 11 types of Class I violations, four types of Class II violations, and two types of Class III violations. The ranges of penalties vary depending on the statutory limits, but the same principles govern the allowable ranges in all programs: there is a maximum for first-time Class I violations (\$5,000 for air), with a minimum (\$1,000) and maximum (\$5,000) for subsequent violations of the same regulation within six months, and each "day of a continuing violation may be deemed a separate violation;" for Class II and III violations, the same pattern is followed, but the maxima and minima are smaller (\$1,000 for first-time Class II air offenses, \$500 for first-time Class III air offenses).

### **Colorado**

#### **Water**

The Colorado Department of Health's June, 1984 Water Quality Compliance Strategy Report specifies "criteria and procedures for assessing civil penalties." The stated objective of the penalties is "to deter violations and encourage compliance. Further, civil penalties are to ensure that a polluter will not benefit by negligence, mismanagement or defiance. The Department will set penalties sufficient to serve as an economic incentive to comply with permits issued." (at 25)



The assessment process begins with the categorization of the violation and the harm it might cause as severe, moderate, or minor. A maximum penalty is calculated based on the severity of the violation. The maximum is adjusted after consideration first of potential damage, willfulness, and violation history. Apparently lack of potential damage could result in a reduction of up to 65% of the maximum, lack of willfulness in a further reduction of up to 25%, and violation history of up to 10%. Further deductions can be made for violators that cooperate with the Department. Additions to the penalty can be made if it involves failure to report the violation or to submit other required reports, or if necessary to remove any economic benefit from delayed compliance.

### District of Columbia

#### **Hazardous Waste**

The District has a "Compliance/Enforcement Strategy" that addresses civil penalties. The emphasis is on the discretionary nature of the enforcement process and it is impossible to discern how a specific case would be handled.

"Enforcement decisions are made on a case-by-case basis." No statutory distinction between majors and minors, but those "cited repeatedly for noncompliance" are recommended for criminal penalties. The strategy document includes a flow chart specifying steps in the enforcement process, with time limits for each step before escalation to the next.

"Although". . .the statute "does not contain standards for assessing penalties, administrative recommendations are based on the following guidelines:

- (a) Severity of the violation;
- (b) Actual harm or damage;
- (c) Potential harm or damage;
- (d) Whether the violation is a first or subsequent violation;

- (e) Deterrence effect; and
  - (f) Economic benefit gained or to be gained from delayed (sic) noncompliance."
- (at 9)

The strategy document also notes that the agency "has in the past followed the Department of Consumer and Regulatory Affairs Civil Penalty Policy and will continue to do so. Ultimately, the courts are responsible for determining the penalty to be imposed." (at 9) It also notes that the Department can exercise discretion in deciding to refer cases for legal action.

## Florida

### **General**

The Florida Department of Environmental Regulation submitted a draft "Civil Penalty Policy" (undated) that by its terms governs the amounts of penalties to be sought in negotiating settlements of enforcement actions. Although the Department cannot assess penalties administratively, it "can obtain penalties as part of a settlement to an administrative enforcement proceeding, however." (at 1) The policy states that among the considerations to be made when deciding whether to settle a given enforcement action are whether enforcement will "result in correction of any economic benefit gained by the violator" and "does enforcement provide enough of a financial disincentive to discourage future violations." (at 1) The Department divides violations into Classes A and B, with a primary distinction being that Class A violations are deemed appropriate for penalties.

In penalty cases, the Department calculates penalties using the EPA RCRA approach for all programs, modified to reflect that it has authority to seek maximum penalties of \$10,000 per day as opposed to the \$25,000 maximum reflected in the EPA policy. The state uses a three-by-three matrix matching potential for harm and extent of deviation from legal requirements. The policy gives detailed examples of how to rate

violations in each program on these two scales. The economic benefit from non-compliance is then added to the initial penalty figure.

## Idaho

### **Drinking Water**

Idaho submitted a "Water Quality Program Guidance Memorandum" (effective Feb. 1, 1985), the purpose of which is "[t]o establish uniform guidelines within the Public Drinking Water Supply Program for stipulated penalties for violation of a Board of Health and Welfare Order" (at 1 of unpaginated document). Administrative actions, such as negotiations and public hearings, may be used to develop a Board of Health and Welfare Order, the violation of which results in the assessment of civil penalties.

Idaho Department of Health and Welfare policy is for compliance orders to contain stipulated penalties that are negotiated individually for each order, unless the penalty matrix tables are incorporated. These tables, included in the Guidance Memorandum, consist of Table 1, the penalty matrix establishing monitoring violation penalties, and Table 2, the penalty matrix for maximum contaminant level (MCL) violations. The tables are based on the concepts of population and deferred penalties, with higher per violation penalties in Table 2 due to the attendant health risks involved.

Fines are based on "the seriousness of the violation and deterrence effect on the purveyor" (*id.*). The guidance document states that the Division of Environment will use a progressive compliance approach for water supply systems failing to voluntarily comply, thus necessitating use of the Board Order compliance mechanism. The progressive penalty system is "based on the premise that recurrent violations equate to increased health risk which should result in higher penalties" (at 5 of unpaginated document, under the heading "Penalty Matrices Rational"). The penalty matrices in Tables 1 and 2 set penalties based on population (i.e., size of community served) and number of violations, with increasing penalties for repeat violators serving larger

populations. The following excerpt (from the last page of the document) explains the rationale and imposition of the deferred penalty system in Idaho:

The deferred penalty system combined with a progressive penalty payment is attractive because it can demonstrate the seriousness of the Department through collection of small penalties while deferring the bulk of the penalty. The larger penalty will only be sought where the entity fails to comply with the provisions of the Order and then only if four violations occur within a twelve month period. In other words, the entity is given repeated chances to comply but if it fails to respond further, more drastic measures must be taken to insure that the health of the consumer is protected.

## Illinois

### **Air**

In Illinois, air pollution control penalties are set with reference to five "considerations:" the statutory maxima, a statutory requirement that the agency consider the reasonableness of emissions in regulating them, the economic savings for noncompliance, an enforcement management system that directs the agency to consider the statutory maxima and economic savings and spells out penalty procedures, and case-specific "aggravating factors." (Letter from Michael J. Hayes, Acting Manager, Division of Air Pollution, to Cheryl Wasserman, dated July 18, 1985.)

The agency calculates economic benefit on the basis of the model approved by EPA in 1980 for the federal penalty policy. Aggravating factors include the compliance record, good faith efforts, the cost and availability of controls, and the company's financial condition. If other facilities in the industry are in compliance, a larger penalty may be sought to eliminate the competitive advantage; if the source cooperates when cited for the violation the penalty may be reduced. In other words, these factors may mitigate or increase the penalty. The analysis of these factors is dominated by case-specific considerations.

## Indiana

### **Air**

The Air Pollution Control Board has approved guidance for setting penalties to be sought in negotiating consent decrees. The guidance begins at p. V-51 in a section of an untitled document.

The document presents several "general principles," one of which is that penalties' main purpose is deterrence. Though recognizing that environmental damage and economic benefit of noncompliance are relevant, the guidance states that these factors are too difficult to calculate in practice, but should be used in differentiating among penalties in different cases. In other words, penalties cannot be set equal to the value of environmental harm or economic benefit, but can vary from one case to the next on the basis of the relative volume of pollution (a surrogate for harm) and cost of compliance (a surrogate for benefit).

The general statement also notes that other factors, "such as relative strength of the case and the degree of cooperation from the violating party" may be taken into account, but should not cause major changes from penalties dictated by the formal factors. Second violations are to give rise to double penalties absent mitigating circumstances.

The guidance goes on to specify matrices of penalty figures for violations of different standards or categories of violations, which vary with the volume of uncontrolled emissions from the source, and in cases involving failure to install controls, the costs of control.

The copy of this document is missing pages V-52, 54, and 56, so it is impossible to present a complete picture of this scheme.

## **Hazardous Waste**

The Indiana Division of Land Pollution Control adopted an "Interim Civil Penalty Policy" (CPP) for its Hazardous Waste Program in November, 1984. Adoption by the Environmental Management Board was pending at the time.

The EPA penalty policy for RCRA violations "has been borrowed from generously in formulating this CPP." The policy has three steps; "(1) determining a gravity-based penalty for a particular violation, (2) considering economic benefit of noncompliance, where appropriate, and (3) adjusting the penalty for special circumstances." (at 3)

The gravity component is calculated using a nine cell matrix with three degrees (minor, moderate, major) of potential for harm and deviation from standards along each axis. Each gradation of harm and deviation is defined and illustrated. Minor/minor gravity components range from \$100-499; major/major components, \$20,000-25,000.

The economic benefit from noncompliance is added to the gravity component if the violator "has derived significant savings and competitive advantage." The policy states that the economic benefit component should be calculated whenever possible, but may be disregarded if less than \$1,000. Economic benefit from delayed and avoided costs is computed. Violators are directed to present information documenting any challenges to the agency's calculations.

The penalty based on gravity and economic benefit may be adjusted upward or downward on the basis of several case-specific factors, including the presence or absence of good faith efforts to comply, the degree of willfulness or negligence, the history of compliance, ability to pay, and other unique factors. The policy addresses how each of these factors is to be taken into account.

The policy specifies circumstances appropriate for multiple penalties (independent acts substantially distinguishable from each other; violation of different requirements, or of the same requirement at different locations); and those not appropriate (violation of two requirements as the result of one act). The policy notes that the Board has the

authority to levy multi-day penalties for continuing violations, and indicates their utility in cases of continuing egregious violations, or violations of compliance schedules.

## Kentucky

### **Air**

The Kentucky Division of Air Pollution Control has a formal policy which it uses to determine the amount of a fine for construction or operation without a permit. However, the Division does not provide copies of the policy to anyone outside their Cabinet. (Letter from Roger B. McCann, Director, Division of Air Pollution Control, to Cheryl Wasserman, dated August 15, 1985.) The policy takes into account the nature and amounts of pollutants emitted, the pollutants' potential danger to public health and environment, cooperation of the violator, and previous compliance history of the violator, and determines the penalty within the statutory limits.

The Division has also entered an enforcement agreement with EPA's Region IV that covers enforcement criteria including the assessment of penalties. The agreement provided does not give any specific criteria but provides overall guidelines for the interaction of state and federal enforcement with the goal of reaching compliance.

## Louisiana

### **Air**

The Air Quality Division submitted a "Penalty Assessment Form," which is a checklist calling for a rating on a one to five point scale on each of the following parameters: compliance history, nature and gravity of the violation, gross revenue, culpability or cooperation, monetary benefits through noncompliance, risk to health, reporting, mitigation, enforcement cost, and length of violation.

The document does not indicate how the factors are weighted or how they relate to penalty amounts.

## Maine

### **General**

The Maine Board of Environmental Protection's "Consent Agreement Policy," as amended April 23, 1980, outlines factors to be considered by enforcement staff in calculating penalties sought before the Board. Five variables are included in the calculus, with a range (e.g. 0-35) "units" to be assigned to the violation under each variable. The policy specifies factors to be considered in determining how many units a violation is worth, but not how to weigh them. The total number of units is then compared to a penalty table and a dollar amount identified (e.g. the high end of the scale prescribes penalties of \$4,000-10,000 for violations assigned 86-100 units).

The first variable is environmental impact (0-35 units). Considered are the size of the area affected by the violation and its sensitivity to the type of pollution involved, the duration of the violation, and the relationship between the violation and any applicable permit conditions.

The second variable is the cause of the violation (0-20 units). The factors to be considered include whether the violation was foreseeable, the violator acted with knowledge of the law, the violation could have been prevented, mitigation measures were taken, and the violator gained financially.

The third variable is the number and nature of previous violations.

The fourth variable is corrective action. The less the violator did to correct the violation, the higher the tally.

The fifth and final variable is the potential for a recurrence of the violation.

The calculation just outlined produces a recommended penalty range; the Board has discretion to decide the appropriate penalty within the range. Penalties assessed may be offset by environmentally beneficial expenditures on activities beyond those required by law.



## Massachusetts

### **General**

The Commonwealth's Department of Environmental Quality Engineering issued "Enforcement Policies and Guidelines," dated February, 1985. The policy is applicable to hazardous and solid waste, air and water pollution control, water supply, and wetlands programs; and may be used in other programs as appropriate. The policy states that exceptions to its terms must be exceptional and approved in advance.

The policy specifies categories of violations in which penalties clearly are appropriate (and which should be referred to the Attorney General for immediate action), including midnight dumping, and violations involving substantial harm to the environment, deliberate falsification, chronic violators who have not responded to administrative enforcement, or discharges of toxic chemicals. The policy spells out the circumstances in which alternative administrative (notices of violation, orders) and judicial actions should be taken. The penalty does not include criteria for setting penalty amounts.

## New York

### **Hazardous Waste**

The July 10, 1985 letter sent by the Director of the state's Division of Solid and Hazardous Waste in response to the Steering Committee's request for information states that "we are utilizing the federal RCRA-Subtitle C penalty policy matrix as a guide."

## North Carolina

### **Hazardous Waste**

North Carolina adopted a "Compliance and Enforcement Strategy" on May 8, 1985. The Strategy identifies circumstances under which penalties should or must be assessed (if "a second re-inspection reveals noncompliance, a penalty is automatically

assessed.") (at 14). It also adapts the EPA penalty policy to the authorities and procedures in the state.

The penalty policy is stated in rather general terms. It includes the three basic steps of the EPA policy: calculating a "base penalty" based on the degree of harm and extent of deviation from legal requirements; adding the economic benefit of noncompliance "if readily determinable," and adjusting the penalty for special factors including good or bad faith, culpability, compliance history, ability to pay, and other factors. Upward adjustments are made in calculating the penalty sought; downward adjustments are made in the settlement process. (at 17)

The policy does not attempt to quantify any of these penalty components, but does offer further general guidance. "Penalties are calculated on a case-by-case basis with compliance being the target. Whenever possible, like violations receive the same or consistent penalties." (at 17)

## North Dakota

### **Hazardous Waste**

North Dakota hazardous waste enforcement and penalty policies are included in an appendix to a document entitled "North Dakota/EPA Hazardous Waste Program Enforcement Agreement." The policy indicates that the Department seeks fines only in cases of major violations and minor ones that cannot be corrected through informal processes. The Department views compliance as more important than collection of penalties and thus may assess a large penalty, with most or all to be suspended should the violator achieve compliance on schedule.

In cases where it deems penalties appropriate, the Department calculates them in a process adapted from a 1980 EPA document on RCRA penalties. A base penalty is calculated from one of three matrices matching the damage from the violation against the degree of culpability of the violator for three classes of violations. The amounts

range from \$100-300 for Class III violations with minor damage and minor culpability, to \$4,000-5,000 for major/major Class III violations, and \$500-2,500 for minor/minor Class I violations and \$20,000-25,000 for major/major Class I violations. The matrices provide a base penalty figure, which then may be adjusted based on nine factors: (1) extraordinary controls beyond those required by law (cut penalty by their cost); (2) voluntary effort to mitigate damage caused by violation (cut penalty by cost of that effort); (3) forces beyond the control of the violator (cut penalty by up to 100%); (4) recalcitrance (increase penalty by up to 100%); (5) compliance history (increase by up to 100% of base for each prior violation); (6) intent to violate (increase by up to 100%); (7) enforcement or cleanup costs to the Department (increase by cost of action, if not otherwise to be reimbursed); (8) economic benefit to violator (increase by amount of benefit); and (9) ability to pay (reduce or spread out penalty to avoid bankrupting firm). (at 35)

The policy indicates that penalties thus calculated apply to individual violations, whether single day or multiple day in duration.

## Ohio

### **General**

In a letter from E. Dennis Muchnicki; Chief, Environmental Enforcement, Office of the Ohio Attorney General, to Cheryl Wasserman, dated August 13, 1985, Ohio reported that it has no formal penalty policies beyond that "established by U.S. EPA in the late 1970's," which the Ohio courts have adopted.

## Oregon

### **Hazardous Waste**

The Hazardous Waste Program Enforcement Response Policy (draft, August, 1985) by Oregon's Department of Environmental Quality (DEQ) is to attain and maintain a high

rate of compliance. The policy calls for concentration of enforcement effort on the most serious violators. Although Oregon has criminal penalties in this area and others such as water and air, the primary enforcement method is through administrative civil penalties.

Warning letters and notices of violations as well as stronger actions are used when necessary in order to achieve compliance. The policy establishes a timetable which indicates when stronger actions are warranted. Enforcement action must be consistent. The policy places responsibility for compliance on the regulated community. Enforcement actions must identify each and every violation, establish compliance schedules and require the violator's certification that compliance is achieved. Schedules are for the shortest practicable time and enforcement actions are escalated when violators fail to comply with time schedules. DEQ may use conferences, conciliation and persuasion to solicit compliance.

The policy classifies violations and hazardous waste handlers into categories. Each instance of noncompliance is considered a separate violation, but when several violations of the same type occur, it is considered a single violation.

A two-step approach is used. Individual violations are divided into Class I violations that result in the release or threat of release of hazardous waste, fail to assure protection of groundwater or fail to insure proper delivery to a permitted facility, and Class II violations, which are any other violations.

Second, handlers are classified as high-priority violators, Class I violators and Class II violators. High-priority violators have one or more Class I violations, create potential or actual harm, have realized a substantial benefit from noncompliance, or are recalcitrant or chronic violators. Class I violators are not high-priority violators and have one or more Class I violations. A Class II violator only has Class II violations. High priority identification is subjective and based on quantity of waste, threats to human life or health, threats to fish and wildlife and air, land and water resources. Focus is on

potential harm rather than actual harm. \$5,000 is used as a guideline for determining "substantial" economic benefit.

DEQ established a priority for enforcement, with High-Priority Violators first, then Class I and Class II violators. Enforcement actions need not be taken for all High-Priority Violators before any action is initiated against Class I Violators. The DEQ has discretion to take enforcement action against a Class I Violator which can help prevent it from becoming a High-Priority Violator.

DEQ staff considers the following factors within each category of violators to help establish a priority:

- (a) magnitude and imminence of the actual or threatened harm;
- (b) duration of handler's noncompliance - - violations which have existed longer are addressed first;
- (c) length of time needed to achieve compliance - - longer - term compliance is addressed first;
- (d) strength of case - - stronger cases receive priority if all other considerations are equal;
- (e) willingness of violator to correct violation, plus cooperativeness;  
and
- (f) potential for setting a precedent.

DEQ may issue a Notice of Violation if compliance can be achieved in 30 days. A Notice of Intent to Assess Civil Penalty is an enforceable document which can result in the assessment of a penalty if violated. Assessment of Civil Penalty is the administrative levying of a penalty from \$100 to \$10,000 per day per violation. Considered are prior violations, reasonable steps taken to correct violations, economic and financial condition of violator, gravity and magnitude of the violation, whether it was repeated or continuous, whether the cause was repeated or continuous, opportunity and degree of difficulty to correct the violation, cooperation, efforts to correct the violation, cost to DEQ and any other relevant factors.

## Pennsylvania

### **Hazardous Waste**

The Pennsylvania "FY 1985 Compliance/Enforcement Strategy for Hazardous Waste" spells out a civil penalty policy that relies heavily on the EPA RCRA penalty policy (at 38-62). The policy adheres to the state statutory requirement that the agency consider severity of harm caused by the violation, costs incurred by the state, economic benefit, degree of willfulness, promptness in reporting the incident, history of compliance, and duration of the violation. Some of these factors (e.g. severity of harm, economic benefit) are included in the EPA policy; others are not.

The policy compares the state approach with that of EPA as follows:

The Commonwealth will use a gravity-based penalty matrix with the axis being severity of violation and degree of willfulness. The severity of violation component is similar to the EPA axis of potential for harm; however, under the Bureau of Solid Waste Management system, severity relates to actual harm only. Where as the EPA matrix is heavily weighted toward the potential for harm axis, the present DER policy places equal weight on both axes of the matrix with maximum daily penalty per violation being \$25,000 in both the EPA and DER systems.

Although the initial gravity based penalty component will be calculated using different matrix axis, the EPA economic benefit adjustment will be adopted in total to supplement our existing policy on savings to violators. (at 39)

The factors EPA considers in adjusting the gravity/economic benefit penalty can be considered in the Pennsylvania scheme under authority of the specific list of factors or language allowing consideration of "other relevant factors." (at 39)

### **Water**

The Pennsylvania Department of Environmental Resources relies on the "Civil Penalty Assessments Procedure for Pollution Incidents" and "Civil Penalty Assessments Procedure for Continuing Discharges" for two categories of water pollution violations: pollution incidents and continuous discharges. The guidance, applying the statutory factors of severity, damage, willfulness, and violation history, is used to calculate

maximum penalties to be sought in settlement negotiations. The guidance provides relatively precise directions on how to calculate these amounts. The approach varies for each category.

### Pollution Incidents

The maximum penalty for pollution incidents is calculated in a four-part procedure.

First, the DER establishes a basic penalty using severity, damage, willfulness, and violation history.

Severity, based on the nature and volume of pollutant discharged and its effect on the receiving waters, determines the maximum daily penalty: \$10,000 for severe, \$7,000 for moderate, and \$3,000 for minor violations with some pollution. When there is no pollution "the cost to DER or summary prosecution" is used.

The basic penalty is calculated, up to the appropriate maximum, by combining amounts for damage (up to 50 percent of the maximum), willfulness (up to 40 percent of the maximum), and history of violation (up to 10 percent of the maximum).

The measure of damage is the value of the uses of the affected waters, not actual damages. The policy for continuing violations includes precise values for different types of uses, but it is not clear if those figures are used in calculating penalties for one-time violations. Extraordinary damage is assessed 100 percent of the maximum damage amount (that is, 50 percent of the maximum penalty; \$5,000 per day for a severe violation). High, moderate, and low damage violations are assessed 75, 50, and 25 percent of the 50 percent damage maximum.

The willfulness component is calculated by multiplying 100 percent times the maximum willfulness amount (40 percent of the maximum, or \$4,000 for a severe violation) for deliberate violations; 66.7 percent for reckless violations; and 33.3 percent for negligent violations. Accidental violations give rise to no willfulness penalty, but still may be assessed a penalty based on the other factors.

The final component of the basic penalty (up to 10 percent of the maximum, or \$1,000 for a severe violation) is calculated with reference to the compliance history of the violator. Previous incidents at the same site call for 100 percent of the maximum, at another site controlled by the violator 50 percent, and no previous incidents, no history component.

The maximum basic penalty is adjusted on the basis of three considerations.

Failure to report is considered a separate violation. The penalty imposed is related to the effects of the failure to report. If prompt reporting would have prevented extensive damage, the full penalty amounts based on the damage and willfulness factors for one day of violation (i.e. a maximum of \$9,000 for a severe, intentional violation causing extraordinary damage) will be added to the basic penalty. Failure to report resulting in no added damage is assessed a maximum of \$900.

The basic penalty can be further adjusted if the violator has been cooperative. The policy dictates a reduction of 20 percent for excellent cooperation and 10 percent for good cooperation.

Finally, DER costs are added to the basic penalty. They may include everything from salaries to laboratory and legal costs.

### Continuing Violations

Penalties for continuing violations (e.g. those resulting from a major breakdown of a treatment system) are calculated in a different manner. Penalties sought in settlement negotiations are based on an indirect measure of the value of damages to the affected waterway and the duration of the violation.

The first step is to determine the value of each of four categories of public uses of the waterway: aquatic life, water supply, recreation, and special protection. Values are drawn from a matrix that compares different uses in each category with differences in the degree to which the affected area is used, on a four-point scale from negligible to



high use. For example, the values for public or industrial water supply are \$250 for high, \$150 for moderate, \$50 for low, and \$0 for negligible use. The value of other water supply subcategories in the high use column are \$100 for agricultural water supply and \$75 for wildlife water supply. If the use is "probable" instead of "actual," the value figure is reduced by 50 percent, and by 75 percent if the use is "possible."

The second step is to calculate the damage figure. The agency multiplies the value by a measure of the severity of the damage: 0 for no damage, 0.1 for slight damage, 0.5 for moderate damage, and 1.0 for complete damage. The resulting figure is multiplied by a measure of the extent of the damage, in terms of the length of the stream segment affected. This multiplier varies depending on the category of use, ranging from 1 to 10 per mile for all but special protection streams, which get higher multipliers for shorter segments.

To summarize the calculation process so far, a violation polluting a stream actually and heavily used for public water supply (\$250), with moderate damage (x 0.5), over a stretch 10 miles long (x 10) would have a penalty value of \$1,125. If other categories of uses were affected, additional amounts would be added.

The penalty value thus calculated is then multiplied by the number of days for which the uses were affected (not the number of days of violation). The penalty cannot exceed the maximum daily penalty times the number of days of violation, however.

## Utah

### **Hazardous Waste**

The program office and attorney general's office submitted two documents, an "Enforcement Strategy" (from the AG) and a "Utah Hazardous Waste Program Penalty Policy" (from the Solid and Hazardous Waste Committee, a politically appointed regulatory board served by an administrative and technical staff). The two documents have the same language governing penalty assessments. The cover letter from the AG

noted that "The state does not have any other specific penalty policies other than specified in the State-EPA Agreements. The state agencies generally rely on EPA penalty policies in the administration of its programs." The Committee refers penalty cases to the AG. "In determining whether, and how much, of a penalty should be sought, the Committee will consider, inter alia, the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigation costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good-faith efforts of the violator to comply; the financial condition of the violator; and the possible deterrent effect of a penalty to prevent future violations." (at 33 of "Policy," at 96 of "Strategy")

The AG is to ask for maximum penalties in pleadings, but settlement figures are to be developed within the ranges of \$5,000-10,000 for Class I violations, \$3,000-6,000 for Class II, and \$500-4,000 for Class III (Class based on EPA categories) using the above factors, and multiplying by an "appropriate factor" based on duration.

## Virginia

### **Water**

The Virginia Water Control Board submitted a document entitled "Statement Regarding EPA Penalty Policy" (excerpted from the Proceedings of the Board at its meeting of Dec. 7-9, 1977). This document states that Virginia's Water Control Board "has taken the position that the consideration of economic savings is an appropriate action in evaluating the results of non-compliance with the law and national goals." (at 1) However, as the policy statement indicates, "the Board realizes that the imposition of economic penalties in every case may not be warranted and has declared its position to be an evaluation of penalty assessments on a case-by-case basis. It is the

Board's intent to consider such economic savings for both major and minor discharges, where appropriate." (id.)

The Water Control Board uses a 5-page form, the "Civil Penalty Evaluation For Civil Action Against Water Act Violator," to calculate penalty amounts. This form contains a number of sections to be filled in. Section III — Information Relating to Civil Penalty — directs the penalty-setter to EPA's explanation for filling in information about the following factors: (1) financial information about the source, (2) extent of delayed compliance and investment, (3) penalty needed to recover economic savings, (4) penalty justified by environmental harm and injury to public health (including explanation of basis for amount), (5) penalty justified by purposefulness of source's disregard of legal requirement, and (6) penalty attributable to recovery of extraordinary government expenses including explanation of basis for amount. The "total penalty" calculated is the sum of factors 3-6, listed above. Other factors then come in to play in reaching the "final penalty." These factors include: (1) amount of penalty reduction for mitigating factors, (2) total minimum civil penalty — typically to be argued in court as minimum justifiable, (3) minimum penalty acceptable for settlement, (4) reduction based on inability of violator to pay, (5) credit for environmentally beneficial expenditure that would not otherwise have been made, (6) description of new civil penalty issues presented by the action, (7) facts related to these new issues, (8) alternative resolutions of new issues presented, (9) recommended resolution of the new issues, and (10) final penalty recommended.

## Washington

### **General**

The Washington Department of Ecology's Enforcement Manual (Jan. 1985) details civil penalty policies for all of the Department's programs.

The policy states that penalties are to be set in consideration of a list of 13 "Decision Factors" that also are to govern the selection of enforcement responses generally. (at 6, 4) The factors are: (1) severity of health and environmental impact; (2) magnitude in terms of the type and amount of pollutant emitted, the resources affected, and the duration of the violation; (3) culpability; (4) compliance history; (5) the violator's knowledge of the requirements; (6) relative fault where there are multiple contributors to a violation; (7) cooperation in reaching compliance; (8) timeliness of corrective action; (9) financial incentives to violate; (10) compensation for damage to public resources; (11) whether the violator is a public or private entity; (12) related enforcement actions by others; and (13) any other considerations required by law. The policy indicates that penalties are appropriate in cases of well identified or repeat violations. Penalties are to take account of all relevant factors, including mitigating circumstances; mitigation, suspension, or cancellation of penalties imposed by the Department is barred except for circumstances arising after the initial imposition. (at 6) The statutes generally allow a violator given notice of the Department's intention to impose an administrative penalty 15 days to petition for relief. If no appeal is made, or the appeal is rejected, the penalty becomes due and payable, and is enforceable in court by the attorney general.

A section of the manual that goes into more detail on penalty assessments was not included in the materials received, which provide no information on how the 13 factors are utilized in setting penalties in practice.

### III. STATE CIVIL PENALTY IMPLEMENTATION

To assist EPA in its field visits ELI collected information on civil penalty cases in the states to be visited and several other states. This report compiles information from reported cases on civil penalties as well as the National Association of Attorneys General (NAAG) Environmental Protection Report, which covers both pending cases and decisions, a chart from Washington State summarizing civil penalties assessed and collected in recent years, and additional case information submitted by Texas. Nine states are covered (CO, IL, MD, NY, OH, PA, TX, WA, WI) representing six EPA regions (II, III, V, VI, VIII, X).

Penalty amounts in reported cases vary greatly from state to state and within states. The penalties reported range from \$2000 in two Pennsylvania water pollution cases<sup>1/</sup> to \$4,530,000 (of which \$3,006,000 was awarded to the federal government) in a Texas air pollution case.<sup>2/</sup> In a Texas sewage discharge case<sup>3/</sup>, one penalty was set at the statutory maximum while the other imposed the statutory minimum. The pending cases almost always ask for the statutory maximum. Small penalties, those which are under \$100,000, are the most common, while medium (\$100,000 to \$500,000) and large (over \$500,000) penalties are imposed much less often.

There are some indications that civil penalties increased in size in the late 1970's. In Washington from 1970 through 1977 civil penalties assessed ranged from 39 per year to 98, with the average amount collected ranging from \$375 to \$786. From 1978 through 1981, the state assessed between 107 and 135 penalties per year and collected between

<sup>1/</sup> U.S. Steel Corp. v. Dep't of Env'tl. Resources, 7 Pa. Commw. 429, 300 A. 2d 508 (Pa. Commw. Ct. 1973);

Commw. of Pa., Dep't of Env'tl. Resources v. South Middleton Twp. Bd. of Supervisors, 457 A. 2d 1011 (Pa. Commw. Ct. 1983).

<sup>2/</sup> U.S. v. Chevron U.S.A., Inc., 639 F.Supp. 770 (W.D. Tex. 1985).

<sup>3/</sup> City of Galveston v. State of Texas, 518 S.W. 2d 413 (1975).

\$1079 and \$2341 per penalty assessed. The figures dropped off in 1982 and 1983, but rose again in 1984. In reported Illinois decisions, the four penalties sought in the mid-1970's were \$6000 or less each, and were not always imposed; the two sought in the 1980's were \$40,000 and \$75,000, though only one was imposed by the court. Information on Texas civil penalty cases indicates that penalties in the mid to late 1970's averaged around \$33,000, while the state has recently been imposing very large penalties (e.g., penalties of \$1,000,000 in 1985 and \$329,000 in 1986).

The penalty cases reflect consideration of a number of variables. The duration of the pollution violation and its effects, the amount of pollution released, recalcitrance of the polluter regarding violations, deterrent effect, the economic benefit of delayed compliance, the violator's ability to pay and mitigating factors are some of the considerations used when a state is imposing civil penalties.

In Ohio the agency sought penalties based on the EPA civil penalty policy and the courts accepted that penalty rationale.<sup>4/</sup> Judgments tend to be larger than in most other states reviewed. In a 1981 case,<sup>5/</sup> the appellate court stated that to be an effective deterrent, a civil penalty must be large enough to hurt the offender. The court found the penalty imposed by the trial judge to be inadequate due to the violator's history of unlawful pollution and illegal profits. The case was remanded to reconsider the penalty amount. Another Ohio case<sup>6/</sup> from 1982, and a third from 1984<sup>7/</sup> imposed \$493,500 and \$800,000 penalties, respectively, based heavily on recalcitrance.

<sup>4/</sup> State ex rel. Brown v. Dayton Malleable, Inc., 438 N.E.2d 120 (1982).

<sup>5/</sup> State ex rel. Brown v. Howard, 3 Ohio App. 3d 189 (1981).

<sup>6/</sup> Dayton Malleable, Inc., supra note 4.

<sup>7/</sup> State ex rel. Brown v. K&S Circuits, No. 79-950 (Ohio Ct. C.P., Montgomery County, 1984).

Illinois and Pennsylvania consider economic benefit to the violator from delayed compliance as a major factor and also rely on other variables considered in the EPA policy. The economic benefit factor is a requirement of EPA policy which many states are using or beginning to use in setting their civil penalty amounts. Illinois takes into account whether the violator could demonstrate that compliance would be an arbitrary and unreasonable hardship in assessing penalties based on economic benefit. Illinois penalties tend to be in the small range, while Pennsylvania's range from small \$2000 to very large (\$1,667,000). In one of the Illinois cases, the court rejected the administratively prescribed penalty, because the government's expert witness could not explain clearly how economic benefit had been calculated, suggesting that implementing economic benefit penalties may pose problems for states.

It would be interesting to examine the role, if any, of the economic-benefit penalty criterion in setting penalties in Illinois. In the mid-70's cases, which apparently were brought before the state used economic benefit (there is no mention of the concept in the opinions from that period and the state was only beginning to consider using the approach based on the new Connecticut model in 1975) the amounts sought and awarded were much lower than in the 1980's cases. The small size of the sample and the existence of other possible explanations (e.g., differences in the violations or the penalty philosophy of the administrative bodies) precludes implying a cause and effect relationship on the basis of this information, however.

Pennsylvania has an interesting approach which no other cases reviewed contained. In a 1980 case,<sup>8/</sup> the state set air pollution standards which were "technologically impossible" to meet. The court upheld the standards and the penalty

<sup>8/</sup> Commw. of Pa. Dep't of Env'tl. Resources v. Pa. Power Co., 12 Pa. Commw. 212, 316 A. 2d 96 (1974), aff'd 461 Pa. 675, 337 A. 2d 823 (1975), aff'd penalties for particulates but rev'd those for sulphur dioxide emissions 34 Pa. Commw. 546, 384 A. 2d 273 (1978), rev'd and remanded 416 A. 2d 995 (Pa. 1980).

assessed because state policy was to use the penalty as an incentive to develop new technology to make the industry devise controls which would meet the standards.

New York tended to impose penalties to encourage future compliance, but also required substantial evidence of violations. Colorado follows this policy by requiring the violator to have notice of a violation from the state, as well as substantial evidence before notice is given, before liability will be imposed. Texas, on the other hand requires no knowledge of the polluter to impose liability. The jury sets the penalties in Texas cases, and has discretion in setting the amount within the statutory limits. The jury may take mitigating factors into account when considering evidence of the violation. Pennsylvania requires the penalty to "fit" the violation.

Some states impose penalties administratively, with judicial review, and penalties in other states are imposed by the trial court. No major differences in the manner in which penalty figures were calculated appears in this limited data base. The courts gave deference to the agency's findings as long as the evidence in the record supported the imposition of a penalty. However, they required the agencies to be reasonable in setting the amount of a penalty. Several cases in different states were remanded for reconsideration of the amount to increase or decrease the penalty.

Similar cases in different states demonstrate the differences between state penalty policies, for example Texas, Ohio, and New York cases<sup>9/</sup> dealing with NPDES permits (or the state equivalent). New York imposed an administrative penalty of \$18,000 for substantial violations, including notice and failure to take corrective action on eight occasions. The court could have found recalcitrance on the part of the company just from the record, yet this factor was not mentioned by the court as a consideration. Ohio, at the opposite extreme, imposed a fine of \$493,500 for failure to follow an NPDES

<sup>9/</sup> City of Galveston, supra note 3.  
Dayton-Malleable, Inc., supra note 4.  
D.V.C. Industries, Inc. v. Flacke, 86 A.D. 892, 447 N.Y.S. 2d 523 (App. Div. 1982).



compliance schedule. This was a judicially determined penalty, and recalcitrance as well as economic benefit for noncompliance were considered. (A concurring opinion would have held that \$450,000 of the penalty was for questionable recalcitrance and was not authorized by statute because it was punitive, not remedial.) The Texas case involved sewage discharges into Galveston Bay. A total fine of \$30,100 was imposed; \$23,000 was for the actual discharges, which was the statutory maximum, while \$7,100 was for noncompliance by the deadline, the statutory minimum. These amounts were determined by a jury, which had discretion to take mitigating factors into account. The city had claimed the state water board had granted an extension, but the jury found no evidence of this and imposed liability.

While this is by no means a systematic review, it does suggest several hypotheses. First, state civil penalty policies, even fairly complex ones involving economic benefit and other factors, can effectively sway decisions of administrative boards and courts. Second, states can implement EPA's penalty policy, although they may falter without the resources to explain the sophisticated analysis to a judge (Illinois). Third, while use of the EPA policy can produce large penalties (Ohio) it also can result in small penalties (Illinois).

# CIVIL PENALTY IMPLEMENTATION

## COLORADO

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Lloyd A. Fry Roofing Company v. State Dept. of Health Air Pollution Variance Board; 553 P.2d 800 (1976)</u>					
	SS66-24-1 et seq., 66-29-14, 66-29-15, 66-31-7, 66-31-19, 25-7-109, 25-7-119; air pollution	\$3,000	Observation on 83 days of air emissions in excess of the opacity standard allowed.	Civil penalties are not penal in effect and don't require procedural safeguards of a criminal proceeding. State policy is to administratively enforce air pollution laws and therefore civil penalties are mandated by the state legislature.	Trial court assessed penalty of \$41,500 for 83 days of violation, or \$500 per day. Supreme Court reduced days of violation to six because of lack of notice to defendant on the other days.
<u>Air Pollution Variance Board v. Western Alfalfa Corporation, 553 P.2d 811 (1976)</u>					
	SS66-29-2 66-29-5(2)(b,c).	not given	Violation of state opacity emission regulations.	Basic fairness must be given to violation through notice of inspection within a reasonably short time following the completion of the inspection. The agency responsible for enforcement must show willingness to protect rights of citizens, and increased cooperation between regulator and regulated will be achieved.	

# CIVIL PENALTY IMPLEMENTATION

## ILLINOIS

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Midland v. Ill. Pollution Control Board,</u> 456 N.E. 2d 914 (1983)					
	Ch. 111 1/2, par. 1001 et seq.; water pollution	\$40,000 imposed by Board but overturned by Court.	Discharge of contaminated storm water.	Policy is to assess penalty based on violator's economic benefit from delayed compliance. Violator failed to demonstrate that compliance would impose an arbitrary and unreasonable hardship, but the amount of the fine was not supported by the evidence because economic benefit was not well explained. The court rejected as a penalty basis that the fine might be justified under other statutes, or that the fine was trivial compared to the violator's net worth.	Company appealed from Board's findings of violations; court found no foundation or basis for justification of the fine. Court remanded for reconsideration of the penalty, if any was justified at all. Court said the violations were unintentional, mitigated and the company was attempting to comply.
<u>Wasteland, Inc. v. Ill. Pollution Control Board,</u> 456 N.E. 2d 964 (1983)					
	Ch. 111 1/2, par. 1041; solid waste; (1983)	\$75,000	Violations of solid waste landfill permits, rules and regulations; acceptance of unpermitted refuse; acceptance of much greater amounts of material than permitted; failure to cover daily with clay; modification without necessary permit.	Penalty was based on economic benefit of the violations, and served the legislative purpose of deterring violations of Illinois statutes. It was within the statutory maximum, and was supported by the evidence in the record.	Company appealed from Board order revoking permit and imposing penalties. Court found blatant disregard for requirements and procedures for protecting the environment while allowing useful operations. The severity of the punishment is related to the company's conduct and the seriousness of the dangers of that conduct.

# CIVIL PENALTY IMPLEMENTATION

ILLINOIS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Processing and Books, Inc. et al v. Pollution Control Board</u> , 351 N. E. 2d 865 (1976)	Ch. 111 1/2, par. 1042 et seq. air pollution	\$3,000 upheld as not abuse of discretion.	Odor from chicken manure, and emissions from incinerators to dispose of dead chickens.	Penalty based on seriousness and unreasonable interference with life and property. Consider: 1. character and degree of injury or interference; 2. social and economic value of source; 3. suitability and priority of location in the area involved; 4. technical practicability and economic reasonableness of reducing or eliminating emissions.	Penalty upheld as within Board's discretion. Violation found to unreasonably interfere with life and property.
<u>Metropolitan Sanitary District v. Pollution Control Board</u> , 338 N.E. 2d 392 (1975)	Ch. 111 1/2, par. 1001 et seq.; water pollution	\$6,000 overturned as unjustified.	Water pollution caused by replacement of a trickling filter seal, and effluent discharges causing loss of aquatic life.	Principal reason to impose penalties is to aid enforcement, not for punitive considerations. Board must consider "the technical practicability of reducing or eliminating the emissions.	Court found it was not enough to find a violation; all circumstances and facts bearing upon the reasonableness of the emissions must be considered. Here, the source cooperated fully and there was no practicable way to change the filter without some discharge, so penalty was not warranted.

# CIVIL PENALTY IMPLEMENTATION

ILLINOIS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Mystic Tape v. Pollution Control Board, 328 N.E. 2d 5 (1975)</u>	Ch. 111 1/2, par. §1042; air pollution.	\$3,500 was upheld by court as warranted.	Installation of pollution control equipment without permit after agency had denied permit.	Board must consider bad faith, cooperation, statutory limitations, and economic benefit.	Court discussed the violator's recalcitrance and lack of cooperation in installing equipment after Board had denied permit. Court did not discuss how the amount was calculated.
<u>Southern Illinois Asphalt Co. v. Pollution Control Board and Airtex Products, Inc. v. Pollution Control Board, 326 N.E. 2d 406 (1975)</u>	Ch. 111 1/2, par. 1012 §12(f); NPDES, water pollution	\$5,000 against asphalt company; \$11,000 against Airtex; both overturned by court.	Asphalt Co. - failure to secure permit; Airtex discharge of cyanide into city storm sewer.	In setting a penalty amount, Board must consider bad faith, cooperation, statutory limitations and economic benefit. Board has discretion to set penalty amounts, but the severity of the penalty must bear some relationship to the seriousness of the infraction or conduct. Those violators who are honestly trying should not be penalized.	Court found both companies not to be recalcitrant or dilatory. Both companies cooperated fully to reduce or eliminate the emissions. Asphalt company's failure to secure the permit was inadvertent and was immediately corrected. Court said penalties were unjustified in this situation.

# CIVIL PENALTY IMPLEMENTATION

## MARYLAND

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
	Statutes not cited but mainly concern hazardous wastes, the cite of which is §7-266; June, 1983.	suit asks for \$200,000	Maintenance of an illegal dumpsite for hazardous wastes; pollution of surface and groundwater.	States does not pursue civil penalties very often. Maryland actively seeks criminal sanctions, especially in the hazardous waste area.	
This case comes from the <u>Environmental Protection Report</u> , National Association of Attorneys General (NAAG) Newsletter.					

# CIVIL PENALTY IMPLEMENTATION

## NEW YORK

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Godfrey v. Winona Lake Development Co.,</u> 194 Misc. 905, 88 N.Y.S. 2d 531 (N.Y. Sup. Ct., Albany County 1946)	Public Health Law §47 - construction of sewage treatment plant.	Statutory amount is \$50/violation. Total amount imposed is not given.	Unauthorized construction of sewage plant. Health Department administratively imposed penalty and sued to recover the penalty.	Administrative penalty assessments are judicial in nature. Case predates any formal environmental laws or current policies.	This 1946 case was brought under public health laws and held that a penalty which was administratively imposed was judicial in nature and not subject to collateral attack except on the issue of jurisdiction.
<u>Diamond v. Mobil Oil Corp.,</u> 65 Misc. 2d 75, 316 N.Y.S. 2d 734 (N.Y. Sup. Ct., Erie County 1970)	Cited in case as Public Health Law §§ 1220 and 1225. Now recodified as §71-1929; water pollution and industrial dis- charges.	\$10,000	Failure to comply with standards established for river; failure to comply with abatement order; failure to submit plans for treat- ment facility within time- table of order.	Case decided prior to enactment of comprehensive environmental laws. Policy on penalty was to punish polluter for not ceasing or abating its industrial waste discharge, or submitting plans on time. Penalty to encourage compliance.	State also sought injunction which was denied on basis of no immediate health threat and economic harm to the community.
<u>Diamond v. Peter Cooper Ind.,</u> 65 Misc. 2d 82, 317 N.Y.S. 2d 40 (N.Y. Sup. Ct., Cattaraugus County 1970)	Cited in case as Public Health Law §1264 et. seq. Now recodified as §71- 2103, with possible application of §71- 1707, air pollution and smoke density.	\$5,000	Series of violations for smoke density and air poll- ution which unreasonably interfered with comfortable enjoyment of life and in property in affected areas.	Sanctions (penalty amount) im- posed to insure future compliance with laws and orders of the Commissioner.	State also sought in- junction but dropped demand because both parties agreed com- pliance was a matter of proper adjustment of new pollution - control equipment.

# CIVIL PENALTY IMPLEMENTATION

NEW YORK (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Gac Farms v. Diamond</u> , 40 A.D. 2d 909, 337 N.Y.S. 2d 865 (N.Y. App. Div., 3d Dept. 1972)	\$17-0501, Water pollution	\$5,000	Visual observation of chicken manure discharged into streams; testimony of former employee as to practices of plaintiff verified visual sightings.	No policy other than to uphold administrative fine for violation, plus cease and desist order.	Plaintiff brought action to rescind administrative penalty and cease and desist order. Court found ample evidence of violations and left the fine and the order undisturbed.
<u>Computer Circuits Corporation v. Berle</u> , 57 A.D. 2d 955, 395 N.Y.S. 2d 101 (App. Div., 1977)	Section not given in case, but present statute for discharges affecting groundwater is \$17-0828.	\$50,000	Violation of standards regarding discharge of chemical wastes into groundwaters.	Substantial evidence of violations justified penalty amount. Penalty was "not shocking to one's sense of fairness."	Defendant also required post \$50,000 bond.
<u>Metropolitan Savings Bank v. Residual Realty, Ltd.</u> , 102 Misc. 2d 1105, 425 N.Y.S. 2d 508 (1980)	\$17-2103 and \$17-1707; air pollution.	(a) \$1500 (b) \$1250 (c) \$500 = \$250/violation \$3250 total	(a) failure to obtain or display certificate of operation; (b) no certificate of operation and defective equipment; (c) two smoke emission violations	Penalty is to help protect the health and welfare of the citizens of New York City; fact that violator is in receivership does not excuse the violations or the penalty imposed.	Receivership status does not bar actions to recover penalties imposed due to violations.



# CIVIL PENALTY IMPLEMENTATION

## NEW YORK (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>DVC Industries, Inc. v. Flacke</u> , 86 A.D. 2d 892, 447 N.Y.S. 2d 523 (App. Div., 1982)					
	\$71-1929; State Pollutant Discharge Elimination System permit violation; discharges to ground-water (SPDES).	\$18,000	Eighteen separate violations; company had not complied with schedule of compliance for effluent limitations contained in permits; company violated all limits in permits; company had ample notice on at least eight occasions and failed to take any corrective action.	Penalty amount not arbitrary but based on substantial violations.	Court preferred that the fine for each individual violation be set forth with specificity. Injunction also issued.
<u>State v. Schenectady Chemicals, Inc.</u> , 459 N.Y.S. 2d 971 (1983)					
	§§ 17-0501, 17-0803 and 17-0807 discharge of wastes into surface and groundwaters.	--	Whether statutory term "discharge" meant the gradual migration of pollutants through permeable soil and ground and surface water from the original dumpsite to the surrounding area.	State attempted to collect penalties, costs and attorneys' fees based on statutes prohibiting "discharges," which would broaden state's enforcement powers.	Court decided that although initial dumping was a discharge, the seeping of pollutants gradually over several years could not be considered a "discharge" and therefore no cause of action was stated. Court left open a nuisance cause of actions.
<u>Flacke v. Bio-Tech Mills, Inc.</u> , 95 A.D. 2d 916, 463 N.Y.S. 2d 899 (N.Y. App. Div., 3d Dept. 1983)					
	\$71-1929;	\$10,000	Failure to comply with permit limitations; failure to comply with compliance order; failure to comply with stipulated order.	Company continued to emit effluents in spite of its permit and a court order, so injunction not unwarranted. Penalty is sufficient because of injunction which would economically harm the company.	Defendant was assessed \$2500 per day for four days of violations. State appealed penalties as inadequate and court upheld because state was granted an injunction against defendant.

# CIVIL PENALTY IMPLEMENTATION

## NEW YORK (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Vulcan Fuel Corporation</u>					
	No statute cited; firing of employees seeking information on chemicals to which they were exposed. (February, 1985)	\$500 to state; \$25,000 in back pay to two workers.	Two employees fired for seeking information about the chemicals to which they were being exposed because of adverse health effects both were suffering.	State policy implies that workers have a right to know what chemicals they are being exposed to, and the potential health hazards of those chemicals.	
This case was reported in the NAAG <u>Environmental Protection Report</u> .					

# CIVIL PENALTY IMPLEMENTATION

OHIO

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<b>State ex rel Brown v. K&amp;S Circuits; No. 79-950</b> <b>(Ohio Ct. C.P., Montgomery County, 1984)</b>					
	Statute not given; water pollution; (1984)	\$800,000	328 violations of company's NPDES permit; discharge of industrial waste into a storm sewer.	Policy of assessing penalty based on economic benefit of delayed compliance, harm inflicted on the environment, degree of recalcitrance of the company, and the deterrent effect of the penalty.	Court went through formula to arrive at amount of economic benefit and other factors and arrived at a penalty figure of \$946,934.00. Court then subtracted mitigating factors such as internal problems and changes at company, plus changes and transfer at E.P.A. - \$146,934.00, so the net penalty was \$800,000. Court said environmental damage was devastating, and recalcitrance of company bordered on open defiance, but found some to be due to EPA personnel changes, etc.
<b>State ex rel Brown v. Dayton Malleable, Inc.,</b> <b>438 N.E. 2d 120 (1983)</b>					
	§6111.03(J); water pollution;	\$493,500	Failure to follow compliance schedule of NPDES permit.	Penalty was based on environmental harm, recalcitrance of company, company's ability to pay, deterrent value, economic benefit and mitigating factors such as delays in compliance due to a strike. Both parties agreed that EPA (US) policy was the standard for setting the penalty.	Supreme Court (OH) held that schedules of compliance are terms or conditions of NPDES permits, so failure to comply with schedule is violation of the permit itself. Trial court did not abuse its discretion by an "unreasonable, arbitrary and unconscionable" attitude. Concurring opinion said that over \$450,000 of the \$493,000 assessed was punitive, not remedial and therefore not authorized by the civil penalty statutes.

# CIVIL PENALTY IMPLEMENTATION

OHIO (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>State ex rel. Brown v. Howard,</u> 3 Ohio App.3d 189 (1981).					
	\$6111.09; water pollution; solid waste dumping;	\$2,000 (\$10,000 originally imposed, reduced by trial court) judgment vacated as inadequate.	Operation of solid waste dump without plan approval or required permits.	State policy is to use an economic sanction to deter violations of water pollution laws, and promote clean water within the state. To be an effective deterrent to violations, civil penalties should be large enough to hurt the offender. Court also considered good or bad faith, financial gain to defendant and environmental harm, and attempted to compensate loss of resources through the penalty.	Trial court did not consider defendant's history of unlawful conduct, profits from illegal operation or cost of loss of groundwater resources. Appellate court vacated judgment as inadequate and an abuse of judge's discretion, and remanded for reconsideration of the penalty.

**CIVIL PENALTY IMPLEMENTATION**  
**PENNSYLVANIA**

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
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<u>U.S. Steel Corp. v. Dept. of Env't'L</u> Resources, 7 Pa. Commw. 429, 300 A. 2d 508 (Pa. Commw. Ct. 1973)					
	§§691.307, 691.401 and 691.605 - industrial waste discharges.	\$2,000	Violation need not be willful to assess a penalty. Oil slick in river is harmful to waters of the Commonwealth. Visual observations and grab samples of river water are substantial evidence of violations.	Court found that a penalty in excess of \$2000 would be unreasonable and would not "fit" the statutory violation.	Board initially set penalty at \$2000, then amended to \$5000 without explanation. Company then appealed this amendment and the amendment was reversed. Penalty stood at \$2000 because no basis was given for amendment.
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<u>Middletown Twp. v. Dept. of Env't'L</u> Resources, 7 Pa. Commw. 545, 300 A. 2d 515 (Pa. Commw. Ct. 1973)					
	§§691.201 and 691.202, discharges into surface waters. Violation of Board order prohibiting further hookups to town sewer treatment facility.	\$3,500 (\$500 per violation, 7 violations)	Township Authority allowed seven new hookups to sewer treatment facility despite order from Sanitary Water Board prohibiting new hookups because system was overtaxed.	Public policy of Commonwealth is to prevent further pollution of the state's waters and also to reclaim and restore them to a clean, unpolluted condition. Commonwealth is using successively broader definitions of pollution, successively higher goals of water quality and successively sterner penalties for injuries to this essential resource.	Appeal from Sanitary Water Board's imposition of penalty. Dissenting judge found inadequate criteria for finding the penalty amount, saying the procedure failed to adequately explain the Board's determination of the penalty and the Court was handicapped in its review. However, the judge concurred in the result.

# CIVIL PENALTY IMPLEMENTATION

## PENNSYLVANIA (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Commw. of Pa., Bureau of Air Pollution Control v. Univ. of Pittsburgh, 37 Pa. Commw. 117, 388 A. 2d 1163 (Pa. Commw. Ct. 1978)</u>					
	\$1809.5 Allegheny County Air Pollution Control Department Regulations.	\$211 assessed, but expunged.	County said visible air contaminants from University incinerator were of greater or equal to opacity of No. 1 on the Ringelman chart.	County failed to show that University "caused, suffered or allowed" the emissions. Many research institutions used the incinerator and many wastes were infectious biological or pathological wastes which may not be opened by University employees.	County first filed summary complaint against University, charging violation of air pollution regulations. A justice of the peace found for the County and fines and costs totalled \$211.00. University appealed and court of common pleas found for University. County then appealed to collect \$211.00 to commonwealth court which affirmed judgment.
<u>U.S. V. Pa. Env't'l Hearing Board, 584 F. 2d 1273 (3d Cir. 1978)</u>					
	§§691.1 et seq. violations of Clean Stream Law (1978) Also Federal Water Pollution Control Act, §5101 et seq., 331 et seq., and 1323.	\$1,667,000 assessed against independent contractor.	Operation of plant and discharge of pollutants without a permit; discharging more oily and metallic wastes than allowed under state regulations; failure to notify Department of Environmental Resources.	Government contract specified that contractor would abide by all state and local laws. Federal policy is to take lead in environmental areas. Contractor knew it was violating Pennsylvania law and because of independent contractor status could not avoid civil liability to state for discharges. Board was acting in furtherance of its duty to regulate the discharge of pollutants into state water and therefore assessed these penalties.	US filed for injunction to prevent state from collecting penalties imposed by the Environmental Hearing Board. District Court said independent contractor was not protected by US immunity and upheld penalties; appellate court affirmed.

# CIVIL PENALTY IMPLEMENTATION

## PENNSYLVANIA (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Trevorton Anthracite Coal Co. v. Dep't. of Env'tl. Resources</u> , 42 Pa. Commw. 400 A. 2d 240 (Pa. Commw. Ct. 1979)					
	§§ 691.307 and 691.308; industrial discharges into waters.	\$5,700; \$200 for one violation, \$500 for another, and \$5000 for unauthorized construction of pipe.	Seven discharges from settling lagoon through overflow pipe with no new permit authorizing discharge; conflicted with owner's existing waste treatment permit; pipe existed for 1 1/2 years. Assessed with three violations penalties.	Board spelled out basis for each penalty; the largest penalty \$5,000, was within the statutory limit and was justified because of the willfulness of the violation and the deterrent value. Therefore, Court affirmed, saying the penalties were reasonable if they were fashioned to "fit" the violations.	Appeal from order of Environmental Hearing Board imposing penalties for three violations - \$200 and \$500, respectively, for two separate discharges, and \$5,000 for unauthorized construction and use of the overflow pipe.
<u>Medusa Corp. v. Dep't. of Env'tl. Resources</u> , 51 Pa. Commw. 520, 415 A. 2d 105 (Pa. Commw. Ct. 1980)					
	§§4009, Air Pollution Control Act - opacity, violations, fugitive emissions and air pollution violations.	\$215,000 (see comments)		Opacity violation: DER observers observed 34 days of violations, but company got notice for only 19 days. Of those 19 days, many were start-up conditions, not normal operating mode, so therefore must be reconsidered. Penalties not justified for these reasons. Fugitive emissions: discrepancy on number of days involved, so must be reconsidered. Air pollutions violations: Company filed for rehearing based on new evidence; court granted remand.	Review of final adjudicative order of Board. Violations broken down as follows: opacity violations, 19 days at \$500/day = \$9,500; fugitive emissions, 20 days at \$300/day = \$6,000; air pollution violations 1000 days at \$200/day = \$200,000. Court reversed Board determination and remanded for reconsideration and recomputation because of several factors.

# CIVIL PENALTY IMPLEMENTATION

## PENNSYLVANIA (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Commw. of Pa. Dep't. of Env't'L Resources. v. Pa. Power Co., 12 Pa. Commw. 212, 316 A. 2d 96 (1974), aff'd 461 Pa. 675, 337 A.2d 823 (1975), aff'd penalties for particulates but rev'd those for sulphur dioxide emissions 34 Pa. Commw. 546, 384 A.2d 273 (1978), rev'd and remanded 416 A. 2d 995 (Pa. 1980)</u>					
	\$123.11 (particulates) and \$123.22 (sulphur dioxide emissions of Pa. Code - Air emissions regulations.	\$21,700 (particulates) \$173,700 (sulphur dioxide standards).	Emissions of particulate matter and sulphur dioxide in excess of standards.	Policy of state is to impose a fine to act as an incentive to industry to develop processes to control unacceptable pollution levels, or "technology forcing" strategy as an alternative to complete shutdown of an industry or company or unbridled pollution. The assessment of civil penalties "provides a spark" to develop new technologies and avoid the continued payment of fines.	Appeal by state when commonwealth court declared unconstitutionality of imposing penalties for "technologically impossible" standards. Case remanded for further consideration.
<u>Mobil Pipe Line Co. v. Dep't. of Env't'L Resources, 62 Pa. Commw. 145, 435 A.2d 934 (Pa. Commw. Ct. 1981)</u>					
	\$5691.301 and 691.307, Clean Streams Law.	\$3,500 - Mele Construction Co.; \$5,000 Mobil Pipeline Co. (reversed as to Mobil)	Accidental discharge of about 98,500 gallons of gasoline into river. Pipeline owned by Mobil, but work being done near pipeline by Mele for a sanitary authority. Mele's was negligence; Mobil's was for failure to comply with federal regulations relating to transportation of hazardous substances through pipes.	Mobil - pipeline was constructed in 1947 or 1948 and liability was imposed under 1969 rules, which were not retroactive. State cannot introduce new theory of liability on appeal (absolute liability). Mele - their employee caused spillage and had actual knowledge of where pipeline was located. Accident caused discharge which give rise to liability.	Appeal from order or Board. Affirmed as to Mele, reversed to Mobil.



# CIVIL PENALTY IMPLEMENTATION

## PENNSYLVANIA (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Commw. of Pa., Dept. of Env'tl. Resources</u> <u>v. South Middleton Twp. Bd. of Supervisors,</u> 457 A. 2d 1011 (Pa. Commw. Ct. 1983)	<u>§§691.1 et seq.,</u> Clean Streams Law	\$2,000	Violation of terms of permit to remove heavy underbrush from creek where heavy equipment would not be used in creek; bulldozer was used in creek causing erosion, sedimentation and removal of part of island. Work done in presence of township officers.	State is to protect the public interest through its police power, and statutory means of enforcement is through civil penalties. Official immunity has no place here because the suing party is not a private person. The town officers agreed to the the permit and knew of the violation of the terms. Therefore this is not "unpredictable liability" which would protect them from such civil penalties.	Board assessed civil penalty against town, but none against town officers. Department of Environmental Resources appealed.

# CIVIL PENALTY IMPLEMENTATION

## TEXAS

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>City of Galveston v. State of Texas,</u> 518 S.W.2d 413 (1975)					
	\$21.251 \$21.252; water pollution	\$30,100	Discharge of sewage into bay: failure to establish chlorination facilities by deadline.	State law requires no knowledge of polluter to impose liability. Jury has discretion on the amount of penalties and may take mitigating factors into account, as they did here in imposing the statutory maximum in one situation, and the statutory minimum in the other.	City appealed from trial court finding of liability. Judgement affirmed. Penalty amount broken down as follows: \$1,000 per day for 23 days of violation = \$23,000; \$50 per day for 142 days of noncompliance = \$7,100, total - \$30,100.
<u>Lloyd A. Fry Roofing Co. v. State,</u> 524 S.W.2d 313 (1975)					
	Articles 4477-5 SS3.10(f), 4.02; air pollution	\$43,400 stack sampling; \$19,750 opacity	Failure to install stack-sampling facilities on Board's request; permitting visible emissions of greater opacity than allowed.	Trial court awarded penalties based on jury's answers. Because of reversals, appellate court did not reach penalties issues.	Stack sampling penalty reversed on grounds of lack of jurisdiction. (Board had not exhausted primary jurisdiction.) Opacity penalty reversed because of exclusion of some of defendant's evidence and other factors.

# CIVIL PENALTY IMPLEMENTATION

## TEXAS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>State v. Texas Pet Foods, Inc., 591 S.W.2d 800 (1979)</u>					
	Articles 4477-5, 54.02(a), 4477-6, 519(b); Water Code 521.253(b); air and water pollution	\$25,550 (see comments)	Operation of cooker without permit; odors were emitted from plant; company failed to provide accurate flow-measuring device for water transmitted to fields.	Jury set penalty amount at statutory minimum for each violation it found, and determined penalty amount from this. Jury could reasonably believe that defendant would immediately apply for a permit to avoid future imposition of penalties such as the \$23,900 assessed for that violation.	State sued for injunction and monetary penalties. State won, defendant appealed; appellate court reversed injunction and modified penalties; Supreme Court reinstated permanent injunction and affirmed modified penalties. Original penalty set at \$29,000 but reduced because there was no evidence cooker was operated on Sunday.
<u>City of Houston v. Clear Creek Basin Authority, 589 S.W.2d 671 (1979)</u>					
	SS26.001 et seq., 26.124. Texas Water Code; discharges of waste water from treatment plant.	not given	Unlawful discharge of wastewater by sewage treatment plant.	Issued not reached by courts.	Authority sued City; City moved for summary judgment which was granted; appellate court reversed and remanded; Supreme Court reversed and affirmed district court judgment. Case held that local government may not sue for violations outside its geographic boundaries.

# CIVIL PENALTY IMPLEMENTATION

TEXAS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>Ag-Air, Inc.</u>					
	Case reported from NAAG Env't'l Protection Report, April, 1983; water pollution	--	Illegal dumping of pesticides into drainage ditches.	State aggressively pursues any violator of Texas environmental protection laws.	--
<u>State v. Diamond Shamrock</u>					
	Case from NAAG report; September, 1984; solid waste and water pollution.	\$175,000	Illegal dumping of hazardous wastes and unauthorized discharge of treatment wastewater.		--
The Texas Attorney General's Office submitted information on these additional cases:					
<u>State v. City of Austin,</u> No. 359,468 (Travis County Dist. Ct. 1984)					
	Texas Water Code Violations	\$100,000 (agreed final judgment)	--	--	For violations at City's Williamson Creek Wastewater Treatment Plant.
<u>State v. City of Austin,</u> No. 375,605 (Travis County Dist. Ct.), No. A-85-CA-413, U.S. Dist. Ct., Western Dist. of Texas 1985)					
	Texas Water Code Violations	\$10,000 (agreed final judgment)	--	--	For actual and threatened violations at City's Williamson Creek Wastewater Treatment Plant.

# CIVIL PENALTY IMPLEMENTATION

TEXAS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
State v. City of Austin, No. 383,063 (Travis County Dist. Ct. 1985)	Texas Water Code Violations (raw spill from City's sewage collection system "junction box")	\$10,000 (agreed final judgment)	--	--	--
State v. Arthur Bayer, individually and d/b/a Spring-Bayer Water System, No. 81-20379 (Harris County Dist. Ct. 1986)	Drinking Water Act violations (State Health Dep't regulations)	\$20,000	--	--	Injunction for remedial actions also issued.
State v. City of Canyon, No. 27,364-A (Randall County Dist. Ct. 1985)	Municipal Solid Waste Act violations	\$30,000	--	--	Injunction for clean-up operations and rehabili- tation of older facility also issued.
State v. Chaparral Steel Co., No. 40,507 (Ellis County Dist. Ct. 1985)	Texas Solid Waste Disposal Act violations	\$75,000	--	--	Injunction for remedial actions also issued.

# CIVIL PENALTY IMPLEMENTATION

TEXAS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>State v. Chemical Waste Management,</u> No. A-122,291 (Jefferson County Dist. Ct. 1985)					
	Violations of Texas Solid Waste Disposal Act, Texas Injection Well Act, and Water Quality Control Act	\$1,000,000	--	--	Injunction for remedial actions also issued.
<u>U.S.A., the State of Texas, and the City of El Paso v. Chevron USA, Inc., No. 80-CA-265, U.S. Dist. Ct., Western Dist. of Texas 1985)</u>					
	Clean Air Act violations	\$4,530,000; \$3,006,000 to U.S.A.; \$762,000 to Texas; and \$762,000 to El Paso (plus 10% interest)	--	--	--
<u>State v. Chromalloy American Corp.,</u> No. 85-CI-0757 (Bexar County Dist. Ct. 1985)					
	Improper hazardous waste management and spills at two facilities	\$50,000 (agreed final judgment)	--	--	Injunction for remedial actions and installation of proper procedures management also issued.

# CIVIL PENALTY IMPLEMENTATION

TEXAS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<u>State v. Rex Clemons, individually and d/b/a American Utility Co. and Crest Utility Co., and Crest Sanitary Co., No. 84-61497 (Harris County Dist. Ct. 1986)</u>					
	Drinking Water Act violations (State Health Dep't regulations)	\$17,500	--	--	Injunction for remedial actions also issued.
<u>State v. Formosa Plastics Corp., No. 85-10-11452 (Calhoun County Dist. Ct. 1985)</u>					
	NESHAPs violations involving release of vinyl chlorides into air	\$66,000	--	--	Injunction to require air pollution control equipment also issued.
<u>State v. Larry Pyke, individually and d/b/a Chaparral Water System, No. 5270 (Gillespie County Dist. Ct. 1985)</u>					
	Drinking Water Act violations (State Health Dep't regulations)	\$16,190	--	--	Injunction for remedial actions also issued.
<u>State v. Quality Service Railcar Repair Corp. and G.E. Railcar Services Corp., No. 32,011 (Eastland County Dist. Ct. 1985)</u>					
	Texas Solid Waste Disposal Act violations	\$200,000	--	--	Injunction for closure plan also issued.

# CIVIL PENALTY IMPLEMENTATION

TEXAS (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
<hr/>					
<u>State v. Gibraltar Chemical Resources, Inc., No. 85-2139</u> (Smith County Dist. Ct. 1985)					
	Texas Injection Well Act violations	\$80,000	--	--	Injunction for site clean-up and remedial actions also issued.
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<u>State v. Kenyatta Sand &amp; Gravel, Inc., and James R. Green, No. 84-7525-K</u> (Dallas County Dist. Ct. 1986)					
	Unpermitted operation of municipal solid waste site near Grande Prairie which allowed for on-site ponding and no final cover	\$329,000	--	--	Permanent injunction requiring site remedial action also issued.
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<u>State v. City of Lufkin, No. 20,403-84-9 (Angelina County Dist. Ct. 1984)</u>					
	Actual and threatened violations of Texas Water Code	\$32,000 (agreed final judgment)	--	--	Noncompliance at City's Hurricane Creek Wastewater Treatment Plant.
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# CIVIL PENALTY IMPLEMENTATION

## WASHINGTON

Chart Supplied by Washington Department of Ecology

ENFORCEMENT ACTIVITIES - OCTOBER 1, 1984 THROUGH DECEMBER 31, 1984

Summary 1968 - 1984

Year	No.	Assessed	Paid	Pending with AG-PCHB	Remitted/ Mitigated	Outstanding
1968	17	\$14,300	\$8,200	\$ —	\$6,100	\$ —
1969	57	36,200	20,950	—	15,250	—
1970	98	102,030	42,555	—	59,475	—
1971	59	90,100	30,020	—	60,080	—
1972	80	78,900	30,019	20,000	28,881	—
1973	79	59,900	52,450	—	7,450	—
1974	52	50,900	33,025	—	17,875	—
1975	39	21,750	16,750	—	5,000	—
1976	62	46,975	36,925	—	10,050	—
1977	82	87,075	64,475	—	22,600	—
1978	117	402,450	273,975	—	128,475	—
1979	135	196,100	145,775	—	50,325	—
1980	114	175,685	132,635	1,250	40,800	1,000
1981	107	175,550	130,900	4,050	35,200	5,400
1982	70	70,826	47,250	2,600	19,976	1,000
1983	83	146,300	76,000	6,000	21,750	42,550
1984	131	442,250	203,950	77,250	11,800	149,250
<b>Total</b>	<b>1,382</b>	<b>\$2,197,291</b>	<b>\$1,345,854</b>	<b>\$111,150</b>	<b>\$541,087</b>	<b>\$199,200</b>

Money received October 1, 1984 through December 31, 1984 for:

Penalties assessed during:

1976	\$ 2,500.00
1984	\$ 61,400.00
<b>Total</b>	<b>\$ 63,900.00</b>

Resource Damage Claims assessed during:

1984	\$ 1,104.12
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Total Actions for 1984:

	No. of Total actions				Penalties Assessed	Penalties Paid
	1st	2nd/3rd	4th	Total		
Air Quality	6	42	17	65	\$ 127,150.00	\$ 98,400.00
Flood Control	1	1	0	2		
Well Construction and Licensing	30	49	73	152		
Water Resources	0	13	6	19	100.00	100.00
Water Quality	49	223	47	319	259,500.00	94,950.00
Shorelines	0	0	1	1		
Hazardous Waste	4	19	8	31	55,500.00	10,500.00
Resource Damage Assessment	0	1	1	2	2,373.47	1,104.12
<b>Total</b>	<b>90</b>	<b>348</b>	<b>153</b>	<b>591</b>		

# CIVIL PENALTY IMPLEMENTATION

## WISCONSIN

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
The following are all Wisconsin cases reported in the National Association of Attorneys General <u>Environmental Protection Report</u> . Many do not give dollar amounts and only describe the case and the topic of case, without statutory citations or case names and citations. They are listed by the name reported.					
Jor-Mac Corp.; air pollution; January, 1985		not given	Emission of volatile organic compounds into the air (over 20 tons annually).		State asks for civil forfeitures and penalties.
Proctor & Gamble; air pollution December, 1984		\$39,100	Bark-burning unit of paper mill failed to meet air quality standards. Operation without a permit.	Lawsuit settled out-of-court.	34 days of operating without a permit \$1,000 per day = \$34,000, plus 15% penalty of \$5,100
Ed's Masonry & Trucking; solid and hazardous waste; July 1984		not given	Operation of unlicensed hazardous waste site, and other regulations violations.		State asks for civil forfeitures, penalties, costs, restoration and cleanup costs, and a groundwater monitoring program.
James B. Downing Company; waste Discharges into stream; July, 1984		\$87,500	Past violations of discharging wastes into the Milwaukee River.	Lawsuit settled out-of-court.	
Wausau Paper Co.; air pollution; June, 1984		\$23,500 and costs and assessments	Violation of sulphur dioxide emission standards of 47 separate occasions.	Air quality standards are set to protect public health and prevent harm to the environment.	
Phillips Plating Corporation; water pollution; March, 1984		\$14,050	Exceeding effluent limits for copper, nickel, chromium and hexavalent chromium.	State took criminal action and got convictions; also filed this civil action.	Plus \$8,000 for monitoring, and to take remedial clean-up measures.
Nuclear Engineering Services, Inc. and National Interiors; PCB contamination; March, 1984		\$1,000 to state school fund.	Improper handling, storage and disposal of PCBs	Court settlement.	Also paid \$2,500 reimbursement costs for investigation.

# CIVIL PENALTY IMPLEMENTATION

WISCONSIN (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
	City of Monroe, Wisconsin; sewage treatment; February, 1984	not given	Noncompliance with compliance schedule; violation of permit discharge levels.	State will not allow city to "drag its feet" on improvements to plant.	Suit asks for civil forfeitures of up to \$10,000 per day for each day of violation.
	Waste Control, Inc.; solid waste; January, 1984	not given	Failure to close and maintain landfill site properly in violation of agreement reached at time of closure.		Suit asks for forfeitures of up to \$5,000 per day for each day of violation.
	Frigo Cheese Corp.; water pollution; December, 1983	\$15,000	Violations of state water pollution laws.	Lawsuit settled out-of-court.	
	Weychauser Co.; water pollution; November, 1983	\$445,900 forfeiture	Illegal discharge of pollutants on more than 400 occasions. Company displayed utter disregard from law and deliberately continued production when they knew they were in violation.	"A discharger must strongly consider environmental and health hazards."	When mandatory statutory penalty assessments are added to the forfeiture, the total penalty exceeds \$500,000.
	Rosen Metals, Inc.; hazardous waste dumping; September, 1983	not given	Deposit of motor vehicle and industrial casings at unlicensed dumpsite.		
	Scrap Processing Company, Inc.; water pollution; March, 1983	not given	Discharges of hazardous substances.		Suit asks for up to \$10,000 per day of violation.
	City of Prairie du Chien and Superintendent of city sewage treatment plant; water pollution; March, 1983	not given	Falsification of monitoring reports.		Suit asks for up to \$10,000 per day of violation.

# CIVIL PENALTY IMPLEMENTATION

## WISCONSIN (cont'd)

Case Citation (Year of Case)	Statute and Subject Matter	Penalty Amount	Criteria; Basis for Penalty	State Policy on Civil Penalties	Comments
	Uniroyal, Inc. and Waste Management of Wisconsin, Inc.; toxic waste; March, 1983	not given	Disposal of toxic, hazardous and other solid wastes in gravel pits.		Suit asks for forfeitures from \$10 to \$5,000 for each violation of hazardous substance law.
	Village of LaFarge; water pollution; February, 1983	\$11,400	Violation of discharge permits.	Lawsuit settled out-of-court.	Village also must pay \$15,200 minus \$5,000 previously spent of sewage treatment improvements.
	Wisconsin Electric Power Co.; water pollution; January, 1983	\$15,000	Discharge of 42 tons of flyash into Lake Michigan.	Lawsuit settled out-of-court.	Total forfeiture of \$17,000 less credit for remedial measures by WEP CO.

**APPENDIX  
ANALYSIS OF STATE CIVIL PENALTY AUTHORITIES**

**A Report prepared by the  
Environmental Law Institute  
for the U.S. Environmental Protection Agency**

**Submitted pursuant to  
EPA Order Number 6W-2773-NASA  
by the Environmental Law Institute  
1616 P Street, N.W.  
Washington, D.C. 20036**

**September 30, 1986**

# ALABAMA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
WATER	Judicial	\$22-22-9	\$10,000/ violation and for each day of continuing violation	\$100	Alabama Dep't of Env't'l Mgmt Fund	Ala. Dep't of Env't'l Mgmt through Atty. Gen. or district attorney	Violation of any order, rule, regula- tion or permit; dis- charge of sewage or other wastes into waters without permit.	Civil action for damages may include punitive and compensatory damages in cases of wilful or wanton conduct; com- pensatory alone if negligence was cause. See also \$22-22-9(q) re pollution resulting in death of fish or wildlife.
DRINKING WATER	Judicial	\$22-23-52	\$5,000/ violation and for each day of continuing violation	--	"	"	Violation of any rule, order, regulation, variance or exemption.	--
AIR	Judicial	\$22-28-22	\$10,000/ violation and for each day of continuing violation	--	"	"	Violation of air pollution control act, rule, order, or regulations.	Knowing violations result in criminal penalties.
HAZARDOUS WASTE	Admin.	\$22-30-19	\$25,000/ violation and for each day of continuing violation	--	"	Dep't of Env't'l Mgmt through Atty. Gen.	Seriousness of violation, good faith efforts to comply, failure to take corrective action considered. Viola- tion of order only.	Assessed penalties must be collected by com- mencing civil action. Compromise and settle- ment of penalty available.

# ALASKA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$46.03. 760 (a)	\$100,000/ initial violation, \$5,000/ each day thereafter	\$500/ initial violation	State	Dep't of Env'tl Conservation, Atty. Gen. (sum assessed by court)	Assessment reflects: (1) reasonable compensation (liquidated damages) for adverse env'tl effects determined by toxicity, degradability and dispersal characteristics of substance discharged, sensitivity of receiving env't, and degree of degradation of existing env'tl quality; (2) reasonable costs incurred by state in detection, investigation and attempted correction of violation; (3) economic savings realized by person in non-compliance. "Economic savings" means that sum which a person would be required to expend for planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with standard violated (\$46.03.760 (d)).	Re: Civil actions for causing pollution, violating env'tl protection chapter, regulations, permits or orders of Dep't except radiation and haz. waste violations. Actions not used for punitive purposes except when needed to deter future noncompliance under \$46.03.760 (f)(4) re radiation and haz. waste violations. Court, upon its own or dep't motion, may defer assessment of all or part of economic savings factor conditioned upon person complying within shortest feasible time, with requirement for which a violation is shown. \$46.03.760 (b), (c). Alaska Admin. Code, Title 18, Ch. 70 at 18 AAC 70.086 states: in deciding whether to initiate water quality enforcement actions Dep't will consider whether activity was conducted in compliance with permit conditions, engineering plans or best mgmt practices.
	"	\$46.03. 760 (e)	--	--	"	"	--	Section provides that in addition to liability under \$46.03.760 (a)-(d), a person who violates \$46.03.740 - 46.03.750 (re oil pollution and ballast water discharge) is liable under \$46.03.822 (strict liability for haz. substance discharge) for full amount of actual damages to state, including direct and indirect costs associated with the abatement, containment or removal of pollutant, restoration of env't to its former state and all incidental admin. costs.

## ALASKA CIVIL PENALTY STATUTES (continued)

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>RADIATION AND HAZ. WASTE</b>	Judicial	\$46.03. 760 (f)	\$100,000/ initial violation, \$10,000/day thereafter	\$500/ initial violation	State	Dep't of Env'tl Conservation, Atty. Gen. (sum assessed by court)	Violations of radiation and hazardous waste protection provisions (\$46.03.250-.314), orders, permits, approvals or acceptances. Criteria same as listed in General Section 46.03.760(a) plus additional factor: the need for an enhanced civil penalty to deter future noncompliance. \$46.03.760 (f).	--
<b>OIL POLLUTION</b>	Judicial	\$46.03. 758 (b)	\$10/gal of oil entering freshwater env't with significant aquatic re- sources; \$2.50/gal entering estuarine, intertidal or confined saltwater env't; \$1/gal entering unconfined saltwater env't, public land or freshwater env't without significant aquatic resources.	--	Oil Spill Mitigation Account	"	Schedule of penalties varies re: toxicity, degradability and dispersal character- istics of oil, sensitiv- ity and productivity of receiving env't. Maximum penalties apply to discharges in most sensitive areas with decreasing penal- ties for less sensitive areas. See regula- tions at Alaska Admin. Code, Title 18, Ch. 75, esp. 18 AAC 75.570: Schedule of Civil Penalties.	For grossly negligent or inten- tional acts or if discharger did not take reasonable cleanup measures, penalty is determined by multiply- ing maximum fixed penalty by a factor of five. For unpermitted discharges in excess of 18,000 gallons joint and several liability attaches at maximum allowable by regulation or \$100,000, which- ever is less, to: owners, lessees and operators of commercial or industrial facilities; owner or operator of vessels; owner of oil carried as cargo (see \$46.03.758 (e) (2) (B)); and lessee of tract and operator of offshore plat- forms (\$46.03.758 (e)). Court shall deduct from penalties that amount of oil removed by cleanup unless cleanup under- taken by gov't agency. Evidence of mitigating circumstances relating to effects of discharge on environment may be received and court may reduce or totally eliminate penalty. Liability under this section is in lieu of liability under \$46.03.760 (a). For unpermitted discharges of 18,000 gallons or less, liability attaches under \$46.03.760 (a); however, court may impose penalty of less than \$500 for discharge (\$46.03.758 (i)).



# AMERICAN SAMOA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
DRINKING WATER	Judicial	\$25.3010	\$1,000/ day	--	--	Director of Health Agency	Violation of statute.	Penalty is for willful violation.
		\$25.3010	\$1,000/ day	--	--	"	Violation of emergency orders for imminent hazards.	Penalty is for willful violations or failure or refusal to comply with orders.

# ARIZONA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
WATER	Admin.	\$36-132	\$20/day	--	--	Department of Health Services (See also R9-21-213: Enforcement by Water Quality Control Council)	Violation of terms of cease and desist order, or knowing operation of a facility in violation of standards.	Statute is general in describing Department's duties. This subsection deals only with onsite wastewater treatment facilities.
	Judicial	\$36-1864.01	\$10,000/day	--	Water Quality Assurance Revolving Fund	Attorney General	Violation of water quality regulations or orders.	--
AIR	Judicial	\$36-1720 (state)	\$1,000/day	\$50/day	--	--	Violation of article or any rule, regulation or order.	--
	"	\$36-789 (county)	\$300/day	\$50/day	--	--	--	--
HAZ. WASTE	Judicial	\$36-2824(A)	\$10,000/day	--	Hazardous Waste Trust Fund	Attorney General	Violation of article or permit, rule, regulation or order.	--
SOLID WASTE	Judicial	\$36-3151(B)	\$1,000/violation	--	--	--	Violation of solid waste regulations; open burning without variance; scavenge, damage or destroy signs or dump solid waste on public or private land.	All criteria deal with actions at a public facility. Note that under \$36-3135 authorized cities and towns may provide for civil and criminal penalties for local solid waste violations.

# ARKANSAS CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Admin.	\$82-1909, Reg. 07, \$5	\$5,000/day	--	Emergency Response Fund (until it contains \$150,000) then to Remedial Action Trust Fund.	Dep't of Pollution Control & Ecology	The following criteria apply to penalty assessments for air, water, solid and hazardous waste and underground injection control violations: seriousness of noncompliance and its effect on env't, including degree of risk or harm to public health; whether cause was unavoidable accident; violator's cooperativeness and efforts to correct; history of violator in taking all reasonable steps to correct noncompliance; violator's history of previous documented violations within last six months, regardless of whether admin., civil or criminal proceedings commenced therefore; whether cause was intentional act or omission on part of violator; economic benefit; whether investigation enforcement action has resulted in unusual or extraordinary costs to Dep't or public; whether any part of noncompliance is attributable to action or inaction of state gov't itself. Regulation No.7, \$9.	This is a general statute made applicable to air by \$82-1940. Costs and damages available. Authority for State Clean Air programs.
HAZ. WASTE	Admin.	\$82-4213, Reg. 07, \$6	\$25,000/day	--	"	Pollution Control Commission	See Air, in general. Knowingly making false statements, disposal of hazardous wastes at unlicensed facility, or to store, transport or treat hazardous waste contrary to the Act or rules.	May also recover related costs of investigation and cleanup.
BCRA	Admin.	\$82-4223	\$25,000/day	--	"	Pollution Control Commission	See Air, in general. Transportation of hazardous wastes into states for disposal in state transportation or out of state Dep't permission, or transportation to another state, all unless in accordance with interstate agreements.	May also recover costs of investigation, cleanup and compensation for actual damages.

**ARKANSAS CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>STATE SUPERFUND</b>	Admin.	Act 452 of 1985	\$25,000/ day	--	Emergency Response Fund	"	To knowingly make false statement; to violate the Act, order, regulation, or rule, to fail to implement response actions in accordance with representations made by liable persons.	--
<b>REMEDIAL ACTION TRUST FUND ACT</b>	Admin.	Act 479 of 1985	\$25,000/ day	--	Remedial Action Trust Fund	"	To knowingly make false statement, or to violate any order issued by Dep't.	--
<b>NPDES/ WATER</b>	Admin.	\$5, Regulations; Reg. 07, \$7.	\$5,000/day	--	Emergency Response Fund then to Remedial Action Fund	"	See Air, in general.	Any violation of these regulations is subject to \$82-1909 penalties, and Reg. 07.
<b>SOLID WASTE</b>	Admin.	Reg. 07, \$4; \$82-2711	\$5,000/day	--	"	"	See Air, in general. Violations of state solid wastes statute (\$82-2701) or code.	--
<b>UIC</b>	Admin.	Reg. 07, \$8	\$5,000/day	--	"	"	See Air, in general. Violations of underground injection control code, Part I of state water and air poll. control act, violations of permits, orders, rules or agreements.	--

# CALIFORNIA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
TOXIC AIR	Judicial	\$39674 (Health and Safety Code)	\$10,000/day	--	--	State Air Resources Board, Atty. Gen.	Violations of Art. 4- Control of Toxic Air Contaminants, Ch. 3.5 of Part 2 - State Air Resources Board, Div. 26- Air Resources. (For violations of rules, regulations, emission limitations or permit conditions adopted thereunder.)	Re: Control of toxic air contaminants. No liability if affirmative defense of nonnegligent or unintentional conduct.
NONVEHICULAR AIR	Judicial	\$542402 - 42406	\$1000/day	--	(1) Actions on behalf of district (by Atty. Gen.): 1/2 of penalty collected is paid to district treasurer, 1/2 to state treasurer for deposit in General Fund (2) Actions on behalf of state board (by Atty. Gen.): entire penalty collected paid to state treasurer for deposit in General Fund. (3) Actions by dist. atty. or atty. for district: entire provides that civil penalty collected is paid to district treasurer.	Atty. Gen., district atty., atty. in any district where violation occurs (in court of competent jurisdiction).*	Extent of harm caused by violation, nature and persistence of violation, length of time over which violation occurs, frequency of past violations, record of maintenance, unproven or innovative nature of control equipment, and corrective action, if any, taken by defendant. (See \$42403.)	Violations re: Nonvehicular air pollution control (Part 4, Div. 26); \$42316 (City of Los Angeles; mitigation of air quality impacts on water activities; reasonable fees imposed by Great Basin air pollution control district); or any rule, permit or order of any district, district hearing board or state board issued pursuant to Part 1 (commencing with \$39000) to Part 4 (commencing with \$41500). Actions for civil penalties preclude prosecution under misdemeanor penalty section (\$42402) for same offense. No liability if affirmative defense of non-negligent or unintentional conduct. \$42406 provides that civil penalty imposed on operation of vessel shall be secured by a district's lien on the vessel. Injunctive relief available for violations (\$41513). Penalties under this section apply to prohibited acts of non-agricultural burning (\$541800-41812). Re agricultural burning: in addition to \$42400 penalties, the cost of putting out fires caused by violation of the orchard and citrus grove heater provision (\$41860) will be imposed upon violators of that section. Penalty provisions are also applicable (in general) to violations of gasoline cargo tank and vapor control laws (\$541950-41974). (For alternatives to criminal penalties see \$41970.)

\* Forty-five local air pollution control districts have primary authority - nonvehicular sources of emissions.

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>NONVEHICULAR AIR (cont)</b>	Judicial	\$42401	\$6000/ day	--	"	"	Intentional or negligent violation of abatement orders issued by district (\$42450), by hearing board, (\$42451), or by state board (\$41505). Criteria same as above, \$42403.	Re: Abatement orders prohibiting or limiting discharge of air contaminants into the air.
<b>WATER AND WATER SYSTEMS (DRINKING WATER)</b>	Judicial	\$4033 (a) (Health and Safety Code, Ch. 7 of PL 1 (Sanitary Provisions) of Div. 5-Sanitation)	\$5000/ violation	--	--	Dept of Health Services requests Atty. Gen. to petition court to impose, assess and recover penalties (\$4034).	Failure to comply with primary drinking water standards. Criteria for assessments under \$4033 (a), (b) and (c): extent of harm, nature and persistence of violation, length of time over which violation occurred, and any corrective actions taken.	For \$4033 subsections (a), (b) and (c) civil penalties may be imposed when any person intentionally or negligently violates cease-and-desist orders issued, reissued or amended pursuant to the provisions of section 4031. Note that Part 2 (Garbage and Refuse Disposal) of Div. 5 - Sanitation, of the Health and Safety Code contains Ch. 4 on Pollution of Waters and Public Places. Violations of this chapter — including dumping garbage in navigable waters or the ocean, contamination of water supplies by livestock, and other discharges into waters — result in the misdemeanor penalty. See §§4400 - 4485.
	Judicial	\$4033 (b)	\$250/ violation	--	--	"	Failure to comply with any secondary drinking water standards.	--
	Judicial	\$4033 (c)	\$50	--	--	"	Failure to comply with any drinking water standard, dept rule or regulation that has only minimal relationship to health of users.	--

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>WATER QUALITY</b>	Admin. Judicial	<b>\$13350 (d) (Water Code)</b>	\$5000/ day adminis- tratively, \$13350 (d) (1); \$15,000/ day judicially, \$13350 (d) (2)	- -	State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund (admin- istered by state water resources control board).	Regional boards assess administra- tive penal- ties pursu- ant to §§ 13323-13327. Superior courts assess judicial penalties pursuant to §§ 13350 - 13351 and §§ 13360 - 13361 upon petition by Atty.Gen. at request of regional or state water re- source control boards.	For intentional or negligent violations of cease and desist orders, cleanup and abatement orders or waste (including oil or petroleum residues) dis- charge requirements, orders or prohibitions. Strict liability for unlawful discharge of hazardous waste into or on waters of state that creates pollution or nuisance. Factors considered in assessing admin- istrative penalties are listed in §13327 which states: "In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section §13324, shall take into consideration the nature, circumstance, ex- tent, and gravity of the viola- tion, or violations, whether the discharge is susceptible to cleanup or abatement and with respect to the violator, the ability to pay, the effect on ability to continue in business, and voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require." In judicial proceedings the court shall take all relevant circumstances into consideration including: extent of harm, nature and persistence of violation, length of time over which viola- tion occurs and corrective action, if any, taken by discharger (\$13350 (g)). Additionally, §13351 lists factors to be considered in imposing liability under this chapter (i.e., Ch. 5- Enforcement and Implementation). These include: "the nature, circumstance, extent	Re: Discharges that occur and cleanup and abatement order is issued pursuant to §13304. Principles of contribution and comparative fault apply to judicial proceedings (§13350(i)). §13350 (j) states that remedies hereunder are in addition to all civil and criminal remedies, except that no liability shall be recovered under §13350 (b) (re hazardous substance discharges into waters) for any discharge for which liability is recovered under §13385 (see below). Penal- ties issued pursuant to orders are to be paid within 30 days. See, e.g., §13323 (d). Note: The State Board has not yet adopted regulations establishing "reportable quantities" of hazard- ous substances. Thus, under Water Code §13050 (p)(2)(D) there is not yet strict liability for dis- charge of haz. substances to land that results in discharges to groundwater. See also the follow- ing sections relating to hazard- ous waste discharges: 25189.5, 25191, 25191.5 and 25195.

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

**WATER  
QUALITY  
(con't)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
						and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require."	
Admin. Judicial	\$13350 (e)	\$10/ gallon of waste discharged (admin. penalty), \$13350 (e) (1); \$20/gallon of waste discharged (judicial penalty), \$13350 (e) (2)	--	"	"	"	Re: Discharges that occur and cleanup and abatement orders are <u>not</u> issued pursuant to \$13304.
"	\$13350 (f)	\$1000/ day (admin., \$13350 (f) (1)); \$10,000/day (judicially) \$13350 (f) (2)).	--	"	"	"	Re: No discharge but order issued by regional board is violated.
Admin. Judicial	\$\$13261 (a), (b)	\$1000/ day (admin., \$13261 (b) (1)); \$5000/day (judicial, \$13261 (b) (2))	--	"	" or district attorney	Failure to furnish report required by \$13260 when requested by region.	Violations are misdemeanors and may also result in civil liability under \$13261 (b).
"	\$\$13261 (c), (d)	\$5000/ day (admin., \$13261 (d) (1)); \$25,000 (judicial \$13261 (d) (2))	--	"	" or district attorney	Haz. waste dischargers who knowingly or wilfully furnish false reports, who fail to file reports or who withhold material information.	Violations are misdemeanors and may also result in civil liability under \$13261(d). This subdivision is not applicable to waste discharges subject to §§ 13370-13389. See below.
"	\$13265 (a), (b)	\$1000/day (admin., \$13265 (b)(1)); \$5000/day (judicial, \$13265 (b)(2))	--	"	" or district attorney	Violations of \$13264 (i.e., restrictions on new discharge or material change in discharge).	Violations are misdemeanors and may result in civil liability under \$13265 (b).



**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
"	§§13265 (c), (d)	\$5000/day (admin., \$13265 (d)(1)); \$25,000/day (judicial, \$13265 (d) (2))	--	"	" or district attorney	Discharging haz. waste in violation of §13264.	Violations are misdemeanors and may also result in civil liability under §13265 (d). Liability not imposed if discharger is non- negligent and files report of discharge with board, or if regional board determines §13264 violation was insubstantial. This liability provision is not applicable to waste discharge subject to §§13370 - 13389. See below.
Admin. Judicial	§§13268 (a), (b)	\$1,000/ day (admin., \$13268 (b) (1)); \$5,000/day (judicially, \$13268 (b) (2))	--	"	" or district attorney	Failing or refusing to furnish technical or monitoring program report re water quality (§13267 (b)) or falsifying any information therein.	Violations are misdemeanors and may also result in civil liability under §13268 (b).
"	§§13268 (c), (d)	\$5,000/ day (admin., \$13268 (d) (1)); \$25,000/day (judicially, \$13268 (d) (2))	--	"	" or district attorney	Any person discharging haz. waste who knowingly fails or refuses to furnish technical or monitoring program reports required under §13267 (b), or who knowingly falsifies any information provided therein.	Violations are misdemeanors and may also result in civil liability under §13268 (d). Not re waste discharge subject to §§13370- 13389. See below.
NPDES/ DREDGE AND FILL (re Water Quality)	Judicial §13385 (a) (1)	\$15,000/ day	--	State Water Pollution Cleanup and Abatement Account	Atty. Gen. at request of regional or state boards petitions superior court to impose, assess and recover penalties (§13386(a)).	Unlawful discharge of pollutants or dredged or fill material; violations of cease and desist orders or cleanup and abatement orders, prohibitions, waste discharge requirements, dredged or fill material permit, effluent limitations, water quality limitations, nat'l standards of performance, pre- treatment or toxicity standards, or §13382 violations re wells and groundwater pollution.	Re: Discharge occurs and cleanup and abatement order is issued pursuant to §13304. Note: With respect to violations of waste discharge requirements or cease and desist orders, remedies under §13385 are in lieu of civil monetary remedies provided for in §13350. See §13386 (c). See §13387 (a) and (b) for criminal penalties.
"	§13385 (a) (2)	\$20/ gallon of waste discharged	--	"	"	"	Re: Discharge occurs and cleanup and abatement order is <u>not</u> issued.
"	§13385 (a) (3)	\$10,000/ day	--	"	"	"	Re: No discharge but order of regional board is violated.

CALIFORNIA CIVIL PENALTY STATUTES (continued)

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
HAZARDOUS WASTE	Judicial	§§25189 (a), (b) (Health and Safety Code, Div. 20-Misc. Health and Safety Provis- ions, Ch. 8.5- Haz. Waste Control)	\$25,000/ violation or, for continuing intentional violations, for each day of continuing violation.	--	50% to Hazz. Waste Control Account of General Fund, 25% to office of city atty., or Atty. Gen. (which- ever brought the action), 25% to Dep't of Health Services and used to fund enforce- ment activi- ties by local health officers pursuant to §25180. §25192 (a).	City Atty., Dist. Atty., or Atty.Gen. at request of State Dep't of Health Services	Intentional or negligent false representations in labels, permits, manifests, records, or other documents such as applica- tions or reports (§25189 (a)). Intentional or negligent violation of chapter, permit, rule, regulation, standard or re- quirement, except as provided in §§25189 (c) or (d) (see below).	§ 25191.7 states that any person who provides information materially contributing to imposition of civil penalties for violations of §§ 25189 (a),(b), or (c) shall be paid a reward by the Dep't equal to 10% of amount of penalty collected, not to exceed \$5000. §25192 (b) states that if a reward is paid pursuant to §25191.7, the amount of reward shall be deducted from amount of civil penalty before amount is apportioned pursuant to §25192 (a). The haz. waste control law also authorizes criminal penalties and rewards for supplying material information contributing to convictions. Note also that § 25188 authorizes a maximum \$25,000/day civil penalty for failure to comply with a schedule of compliance.
	"	§25189 (c)	\$25,000/ violation	\$1,000/ violation	"	"	Intentional disposal or causing disposal of any haz. or extremely haz. waste at unauthorized point.	Violator may be ordered to disclose the fact of this violation or these violations to those persons as the court may direct. Each day the deposit remains is a separate additional violation unless person immediately files report of deposit with Dep't and is complying with order issued by director or court for cleanup.
	"	§25189 (d)	\$25,000/ violation	--	"	"	Negligent disposal or causing disposal of any haz. or extremely haz. waste at unauthorized point.	" "
	"	§25189. 2 (a),(b)	\$10,000/ violation and for each day of con- tinuing viola- tion thereafter.	--	"	"	Making false statements or representations in labels, permits, manifests, records, applications or other documents. Violations of chapter, rules, etc., except as provided in §§25189.2 (c) or (d). See below.	No person may be liable for a civil penalty imposed under this section and for a civil penalty imposed under §25189 for the same act or failure to act (§25189 (d)).

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
HAZARDOUS WASTE (cont'd)	"	\$25189. 2 (c)	\$10,000	- -	"	"	Disposal or causing disposal of any haz. or extremely haz. waste at unauthorized point.	" Violator may be ordered to disclose the fact of violation to those persons as court may direct. Each day deposit remains is separate violation unless person immediately files report of deposit with Dept and is complying with order issued by director or court for cleanup.
	"	\$25196	25% of fair market value of land and improvements, 25% of sale price of land and improvements, or \$50,000, whichever has been established and is greatest.	- -	"	"	Knowing violations of \$25221 (a) (application for designation as haz. waste property or border zone property) or \$25232 (a) or (b) (prohibited actions on land without specific variance).	- -
(re Toxic Pits)	Judicial	\$25208.9 (a)	\$10,000/day report is not received	\$1,000/day report is not received	"	Regional board shall submit any report which contains false information to State Board for Geologists and Geophysicists for disciplinary action pursuant to \$7860 of Business and Professions Code or to State Board of Registration for Professional Engineers and Land Surveyors for disciplinary action pursuant to \$ 6775 of Business and Professions Code, as appropriate (\$25208.9 (d)).	Failure to file required hydro-geological assessment report with regional board (notwithstanding \$25189). Criteria for \$25208.9 (a) and (b): Extent of harm caused by violation, nature of violation and period of time over which it occurred, frequency of past violations, and corrective action, if any, taken by person.	Re: Surface impoundments (Art. 9.5 of Ch. 6.5 - Haz. Waste Control Law).

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
(re Toxic Pits)	Judicial	\$25208. 8 (b)	\$25,000/ day false informa- tion goes uncorrected	\$2,000/ day false information goes uncorrected	"	"	Submitting false information to regional board.	"
(re Disposal) on Public Land)	Judicial	\$25242. 2	--	--	(See comments.)	Dep't of Health Services, plaintiff.	Unlawful haz. waste disposal.	Owner, lessee or lessor of affected land may recover compliance costs from responsible party; lessee who is not responsible for unauthorized disposal may recover compliance costs from owner if responsible party cannot be located or is unable to compensate lessee for costs. All feasible civil and criminal actions may be pursued.
<b>UNDER- GROUND STORAGE OF HAZARDOUS SUBSTANCES</b>	Judicial	\$25299(a), (b)	\$5,000/ day	\$500/ day	Haz. Waste Control Account, General Fund or local gov't (varies)	Dep't of Health Services, Regional Water Quality Board, city, county and enforceable by respec- tive attys in court.	Operating or owning unpermitted storage tank; failure to: monitor tank, maintain record, report un- authorized release, properly close tank, obtain permit, repair tank; abandonment or improper closure; knowing failure to take reasonable steps to assure compliance. Criteria for court to consider: extent of harm or potential harm, nature of violation and period of time over which it occurred, frequency of past viola- tions, and corrective action, if any, taken by permit-holder (\$25299 (d)).	Re: Liability of owners and operators of underground storage tanks. Penalties are in addition to other civil and criminal penalties and remedies under chapter; criminal penalties authorized.
	Judicial	\$13173 (Water Code)	\$5,000/ day state- ment not rec'd	\$500/ day state- ment not rec'd	State Water Poll. Cleanup and Abatement Account	State Water Board, Atty. Gen.	Failure to submit haz. substance storage statement and fee (per container).	Re: Storage of haz. substances in concrete sumps, nonvaulted buried tanks or other underground containers (except as provided in \$13174 - Underground farm storage tanks storing fuel).
	"	\$13173	\$20,000/ day false informa- tion goes uncorrec- ted	\$2000/ day false informa- tion goes uncorrec- ted	"	"	Submitting false information to Board.	"

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Co	Who Enforces	Criteria	Comments
<b>HAZARDOUS SUBSTANCES</b> (in general)	--	--	--	--	--	--	The California Hazardous Substances Act (Ch. 13 of Div. 22 of the Health and Safety Code) authorizes criminal penalties for violations of its provisions which include manufacturing, importing and selling misbranded or banned haz. substances or tampering with labels, etc. Note also that the Revenue and Taxation Code contains Part 22 - the Hazardous Substances Tax Law which provides penalties for nonpayment of taxes on generation of waste and for failure to file returns or required reports. Additionally, §25343 imposes a \$500 civil penalty for failure to file annual disposal report required under §25342. There is a maximum \$25,000 penalty for §25358 violations, such as intentionally making false statements or refusing to provide information in reports.
<b>OIL</b>	Judicial	\$151, Ch. 4 (Harbors and Navigation Code)	\$6,000 plus cleanup costs	--	--	If more than one agency has respon- sibility for waters in question, the agency which conducts cleaning or abating activities is the agency authorized to proceed under this section.	Amount of discharge, likelihood of permanent injury. Intentional or negligent oil into state waters.

**CALIFORNIA CIVIL PENALTY STATUTES (continued)**

<b>Type</b>	<b>Section</b>	<b>Max \$</b>	<b>Min \$</b>	<b>Where \$ Go</b>	<b>Who Enforces</b>	<b>Criteria</b>	<b>Comments</b>
<b>SOLID WASTE</b>	Judicial  §66796.51 (Gov't Code)	\$1,000/ day of violation	- -	1/2 to General Fund; 1/2 to County where action brought; or 100% to City or County if brought by their attys.	Authorized attorney petitions superior court to impose, assess and recover sums; Atty. Gen.	Operating unpermitted solid waste facility; permit or standard violations.	§66796.62 provides for petition for reinstatement of permit or reduction of penalty after 1 year from effective date of decision.

**COLORADO CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$25-7-122 (1)(a,b)	\$25,000/ day	--	General Fund	Atty. Gen., Air Pollution Control Div. (Dep't of Health), or Dist. Atty. for district where violation occurred.	Size of business, economic impact of penalty on business of violator, seriousness of violation, and other relevant factors. Court also considers whether violation due to malfeasance or non- feasance, in addition to reasons for admin. or judicial review (whether legal or factual issues raised were frivolous or used for purposes of delay).	Penalty assessment may be adjusted if U.S. EPA finds it insufficient to meet federal act. Maximum applies to violations of final orders and for each day of continued operation after receipt of notice of violation or non- compliance.
	Admin.	\$25-7-115 (5) House Bill 1109	--	--	--	Air Pollution Control Div.	--	House Bill 1109 gives the state authority to carry out the non- compliance penalty provisions in conformance with §120 of the federal Clean Air Act, using the federal act formula.
	Judicial	\$25-7-122 (1)(c)	\$100/day for violating \$25-7-114	--	"	"	--	--
	Judicial	\$25-7-123	\$100/day for incinerator and open burning without permit	--	"	"	Re permit approval or denial see \$25-7-123 (2).	--
	Judicial	\$25-7-128	\$300/day	--	"	Local air pollution control authority in addi- tion to those listed above.	--	--
HAZ. WASTE	Judicial	\$25-15-212	\$10,000/ day for violating Art. 15, Pt. 2: Haz. waste disposal sites	--	General Fund	Waste Mgmt Div. (Dep't of Health), Atty. Gen., Bd. of county comm'rs, municipality.	Seriousness of violation, whether willful or due to mistake, economic impact of penalty on on violator, other relevant factors.	Reimbursement for of cleanup by local is paid out of fund attributable to penalty.

**COLORADO CIVIL PENALTY STATUTES (cont'd)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
Judicial	\$25-15-309	\$25,000/day for viola- ting Art.15, P.L. 3: State haz. waste management program	--	"	"	--	--
<b>DRINKING H<sub>2</sub>O</b>	Judicial	\$25-8-608	\$10,000/day	--	General Fund	Water Quality Control Div. (Dep't of Health), Atty. Gen.	--
<b>NPDES/ WATER</b>	Judicial	\$25-8-608	\$10,000/day	--	General Fund	Water Quality Control Div. (Dep't of Health), Atty. Gen.	--



# CONNECTICUT CIVIL PENALTY STATUTES \*

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$22a-6a	--	--	General Fund	Atty. Gen.	Reasonable costs and expenses of state in investigating and abating violation, for restoring resources, or for damages to resources. Violation may be caused by negligence or with knowledge.	Claim for damages under this section is not exclusive remedy. Responsible parties are jointly and severally liable when damages cannot be reasonably apportioned.
	Admin.	\$22a-6b (b), (c)	--	--	"	Comm'r of Dep't of Env'tl Protection	Amount of assessment necessary to insure immediate and continued compliance, and the character and degree of injury to (1) public health, safety or welfare, (2) public trust, (3) reasonable use of property caused by activity. Other factors include impact on natural resources, conduct of violator in achieving compliance, prior violations and financial status of violator.	Civil penalties assessed under this section are set forth in schedules that establish amounts or ranges of amounts due for particular violations. Final orders (assessments) are appealable to superior court (Hartford). Final orders are enforced as judgments of superior court.
	Admin.	\$22a-6b(a)(1)	\$1,000 plus \$100/day of continuing violation after final assessment.	--	"	"	Violations under this part include failure to file any registration or report, failure to obtain permit, etc.	Regulations for assessing penalties for failure to file monitoring reports are found at sec. 22a-6b-504(e) including a schedule of maximum amounts.

\* Connecticut has extensive civil penalty regulations which include economic benefit of noncompliance among criteria for determination of civil penalty. See sections 22a - 6b - 100, et seq., at Regulations tab.

**CONNECTICUT CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments	
Admin.	\$22a-6b (a)(2,3)	\$25,000 plus \$1,000/day of continuing violation after final assessment.	--	"	"	Assessments are calculated in four broad steps: (1) gross cash flow of required compliance expenditures (facility and operating costs) is estimated; (2) net cash flow is establish- ed taking tax and other savings into account; (3) net cash flow is discounted to present value; and (4) individual monthly civil penalty is calculated as that amount which would, if paid monthly, amortize net present value of project. See section 22a-6b-503(e) of the Regulations tab.	" (Violations under this part include discharges, emissions, removal or disposal of substances and violations of final orders or permits.) Penalties may be mitigated and corrected.	
Admin.	\$22a-6b (a)(4)	\$25,000 plus \$5,000/day of continuing violation after assessment.	--	"	"	" (For violations of emergency orders or cease and desist orders.)		
Admin.	\$22a-6b (a)(6)	\$25,000/day	--	"	"	" (This part pertains to RCRA violations.)		
WETLANDS	Judicial	\$22a-35	\$1,000/ offense and for each day of continuing violation.	--	General Fund	Atty. Gen. (upon complaint of comm'r)	Cost of wetland restoration.	Knowing violations only.

**CONNECTICUT CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments	
Admin. Judicial	\$22a-44 (re inland wetlands)	"	--	Money damages resulting from court suit go to person who brought suit; moneys collec- ted to be used by comm'r to restore wetland, whenever possible.	Inland wetlands agency (admin.); comm'r, gov't unit, or person (judicial)	"	Reasonable attorney's fees included in assess- ment of court costs.	
HAZ. WASTE	Judicial	\$22a-123 (re construc- tion of haz. waste facilities See also GENERAL penalty section above, \$22a-6b (a)(6), re RCRA.	\$10,000/day	\$1,000/day	General Fund	Atty. General in Superior court for any judicial district affected by violation.	Construction or operation in material violation of chapter or certificate (permit).	Knowing or wilful viola- tions result in criminal penalties. Comm'r and Conn. Siting Council can issue cease and desist orders, or suspend or modify permits after opportunity for hearing. Courts also can issue injunctions and restrain- ing orders. Remedies and penalties are cumulative.
	Judicial	\$22a-131 (\$22a-131a is criminal only for knowing violations)	\$25,000/ day	--	General Fund and credited emergency spill response fund.	Atty. General	For violations of state's haz. waste program that has been approved in accordance with RCRA.	--

**CONNECTICUT CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Admin.	\$22a-175(a) (re open burning)	\$50/first violation; \$200/sub- sequent violations	--	General Fund	Comm'r	Balancing test (\$22a-176): Comm'r is to weigh equities involved and advantages and disadvantages to residents and businesses (includes social and economic value of activ- ity; use of property; area suitability and practicability of reducing or eliminating discharge).	--
	Judicial	\$22a-180	\$5,000/week for violation	--	General Fund	Atty. General	Re: violations of orders.	Penalty assessment commences on the tenth day after expira- tion of time fixed for taking preventative or corrective measures in an order.
	Admin.	\$22a-6-b 600 et seq. (regula- tions)	\$25,000 plus \$1000/day of unabated activity after receipt of civil penalties final order.	--	General Fund	Comm'r	Amount of assess- ment necessary to insure immediate and continued com- pliance, and the character and degree of injury to (1) public health, safety or welfare, (2) public trust, (3) reason- able use of proper- ty caused by activ- ity. Other factors include impact on natural resources, conduct of violator in achieving com- pliance, prior viola- tions and financial status of violator.	For violations of emission standards (see sec. 22a-6b- 602(d)). Maximum amounts assessed represent economic advantages a person responsible for unabated activity could gain from delay in complying. Gross and net cash flow are determined and civil penalty is assessed. Re assessment of civil penalties for viola- tion of terms of an order to abate emissions violation, see sections 22a-6b-603(a) to (i) (at Regulations tab), citing same criteria and maximum penalty amounts.

**CONNECTICUT CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>SOLID WASTE</b>	Judicial	<b>\$22a-246</b> (re- beverage container law)	\$100/first offense; \$200/second offense; \$500/third offense	\$50/first offense; \$100/second offense; \$250/third offense	General Fund	Comm'r, Atty. General	--	--
	Judicial	<b>\$22a-250</b> (re litter control law)	\$100/for subsequent offenses	\$10/first offense	General Fund	Comm'r, Atty. General	--	Court has discretion to order other appropriate remedy.
<b>WATER RESOURCES</b>	Judicial	<b>\$22a-376</b> (re-water diversion)	\$1,000/ offense and for each day of continuing violation	--	General Fund	Atty. General	\$22a- 376(c) imposes a maximum \$10,000 fine (if convicted) for knowingly making false statements or misrepresenta- tions in a report or application, or for tampering with monitoring equipment.	Note that \$ 22a-363 provides for a criminal penalty (\$15-minimum, \$50 or imprisonment (or both)-maximum) for unlawful dredge and fill activities.
<b>DAMS AND RESERVOIRS</b>	Judicial	<b>\$22a-407</b>	\$500/offense and for each day of con- tinuing violation	--	"	"	--	Remedy includes injunc- tion against construc- tion and use of structure.
<b>WATER</b>	Judicial	<b>\$22a- 438(a)</b>	\$10,000/ offense and for each day of continuing violation	--	General Fund	Atty. General (upon com- plaint of Comm'r)	Pertains to NPDES and water quality violations.	Criminal penalties for knowing violations are set out in \$22a-438(b) and (c).
	Judicial	<b>\$22a-450</b>	\$1,000; employer fined \$5,000.	--	"	"	Failure to report discharge, spill, loss, seepage or filtration.	--
	Judicial	<b>\$22a-457</b>	\$5,000	--	"	"	Failure of financial responsi- bility (bond).	Pertains to discharging or receiving cargo of oil or bulk products.

**CONNECTICUT CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>WATER</b> (continued)	Judicial	\$22a-459	Municipal- ity's share of cost of compliance plus 1/10 of 1% of such share. If knowing violation: \$1,000 for each day of continuing violation.	--	General Fund	Atty. General, Comm'r, Comm'r of Admin. Services (in case of municipal violation)	Pertains to failure to establish pollu- tion control authority.	If violator fails to pay prior penalty for same violation, charge is \$500 minimum for each day of continuing violation.
	Admin.	\$22a-6b 503	\$25,000 plus \$1000/day that order assessment period con- tinues after receipt of civil penalties final order.	--	"	Comm'r	See General penalty provisions at \$22a-6b (b),(c) for criteria.	Re violating terms of order to abate pollution or to correct potential water pollution sources. For monitoring report violations see General penalty provisions at \$22a-6(b) (a) (1) and regula- tions at \$22a-6b-504 <u>et seq.</u>
<b>DRINKING WATER</b>	Judicial	\$25-32c, 25-38	\$5000/day	--	"	Dep't of Health Services	Failure to comply with order; safe drinking water violations.	--

**DELAWARE CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$6005 (tit. 7)	\$10,000/day	\$1000/day	Department of Natural Resources & Env't'l Control	Secretary of Natural Resources & Env't'l Control	--	May also claim expenses for (1) abating the violation (2) controlling pollution related to the violation (3) cleanup and restoration.
AIR	Judicial	\$6702	\$100	\$50	--	"	Emissions of smoke or other air contaminants.	\$ deals with motor vehicle emissions.
HAZ. WASTE	Admin.	\$6309(a)(2)	\$25,000/day	--	--	"	Seriousness; good faith efforts to comply.	Failure to take corrective action within time specified in compliance order.
	Judicial	\$6309(b)	\$25,000/day	\$1,000/day	--	Superior Court	Violation of chapter, conditions of permit, or orders of secretary.	Subsection (b) is in lieu of subsection (a), compliance order proceedings. May also seek injunctions.
SOLID WASTE	Judicial	\$6417 (tit. 7)	\$1,000/day	\$100/day	--	Solid Waste Authority	Violation of license con- dition or regulation.	May also seek injunction.
	Judicial	Reg. 5.01	\$1,000/day	\$100/day	--	"	Violation of regulation.	--
	Judicial	\$1704 (tit. 16)	\$100	\$15	--	--	Dumping of refuse.	--
	Judicial	\$1706 (tit. 16)	\$ 50 plus costs of suit	\$10	--	Dept of Natural Resources & Env't'l Control	Dumping un- treated blood, carrion & refuse from poultry industry.	Violator can be imprisoned for nonpayment of civil fine.
	Judicial	\$1707 (tit. 16)	\$ 25	--	--	--	Burning of refuse or other materials.	--
	Judicial Judicial	\$6025 \$6005 (tit. 7)	\$500/day \$10,000/day	\$100/day \$1,000/day	--	Secretary of Dept't	Disposal or discharge of solid waste into any surface or ground water.	Fine cannot be suspended. Also provides for removal of improperly disposed- of waste by violator.

**DELAWARE CIVIL PENALTY STATUTES (cont'd)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>DRINKING H<sub>2</sub>O</b>	Judicial	\$1301 (UL 18)	\$5,000	\$1,000	--	--	Discharge of chemicals or other pollutants into drinking water supply.	\$ provides for abatement, by arrest of the violator and the closing of the offending business if necessary.
	Judicial	\$1302	\$100	--	--	--	Placement of privy, hogpen or slaughterhouse near source of drinking water.	\$ provides for immediate abatement of nuisance.
<b>NPDES</b>	Admin.	\$1507	\$100/first offense, \$200/subsequent offenses	\$10/first offense, \$25/subsequent offenses	--	Alderman of town where violation occurs	Violation of any rule, regulation or refusal to comply.	\$ deals with State Board of Health rules, regulations and orders.
	Judicial	\$6034(a)	first offense written warning, subsequent offenses \$500	--	--	Secretary of Department	Sale or distribution of sewage system cleaner containing restricted chemicals in excess of 1 part per hundred.	\$ deals with sewage system cleaners and additives.
	Judicial	\$6034(b)	\$100/first offense, \$1,000/subsequent offenses	--	--	"	Use of such cleaner or additive in any sewage system, surface or ground waters.	"
	Judicial	\$6034(c)	\$10,000/first offense	\$1,000/first offense	--	"	Serving water from well closed due to presence of restricted chemicals.	Subsequent violations result in closing of the entire facility until new source is found.
<b>WETLANDS</b>	Judicial	\$6617(a)	\$10,000/day	\$500/day	--	Atty. Gen.	Intentional or knowing violation.	\$ also has provision allowing Atty. Gen. to sue for costs of restoration of wetlands.
	Judicial	\$6617(b)	\$500/day	\$50/day	--	"	Violation of rule, regulation or order.	
	Judicial	\$6617(c)	\$10,000/day	\$1,000/day	--	"	Violation of chapter, limitation in permit, rule or regulation.	



# DISTRICT OF COLUMBIA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Admin.	\$8-2:726(b)	\$1000 in a 12-month period	--	Private individual	Administrator	Information which leads to conviction under statute.	D.C. provides mostly criminal penalties with this one section as a "reward" section for individuals who give information which leads to a conviction for violations.
WASTE		\$6-531 \$6-508	--	--	--	--	--	All criminal penalties.
DRINK. WATER		\$508.1 \$610.2	--	--	--	--	--	All criminal penalties.
NPDES		\$6-604	--	--	--	--	--	All criminal penalties.
H <sub>2</sub> O		\$8-2:815	--	--	--	--	--	All criminal penalties.
HAZARDOUS WASTE	Admin. Judicial	D.C. Law 5-103 §2h	\$25,000/ violation and each day constitutes separate offense.	--	D.C. Treasury	Enforcement Div. of D.C. Office of Compliance, D.C. Corp. Counsel, Mayor.	Violation of haz. waste laws and regulations.	Upon continued violation of corrective order in Notice of Violation enforcement action may be taken by various admin. and judicial measures. Section provides both civil and criminal penalties.

**FLORIDA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	--	\$403.087 (8)	--	--	--	Dept of Env'tl Regulation*	--	Section states that air and water permit violations of sec. 403.087 are punishable under Ch. 403.
	Judicial	\$403.121 (1)	\$10,000/ day	--	State pollu- tion recovery fund (\$403.165) used for restoration	"	Any injury to air, waters or property (including animal, plant, and aquatic life) of the state caused by any violation.	Court may receive evidence in mitigation. Sec. 403.131 states that judicial and administrative remedies to recover damages are alternative and mutually exclusive. Injunctive relief available. Each day constitutes a separate violation.
	Admin.	\$403.121 (2)	--	--	"	"	"	Admin. proceedings used to establish liability and recover damages (judgment enforced by court); also to order prevention, control and abatement.
	Judicial	\$403.141	\$10,000/ offense and for each day of continuing offense	--	"	"	For violations listed in \$403.161 (1). Violator is liable to state for reasonable costs of state in tracing pollution, in controlling and abating source and pollutants and for restoration.	Court may receive evidence in mitigation. Joint and several liability if two or more persons cause pollution of air or waters and damage is indivisible. Section does not apply to damage from application of chemicals to waters for control of insects, aquatic weeds or algae. See \$403.141 (4).
	Judicial	\$403.161	\$10,000 as per \$403.141	--	"	"	Causing pollution that injures human health or welfare, animal, plant or aquatic life or property. Failure to obtain permit. Failure to comply with any lawful rule, order, regulation, permit or certification adopted or issued by Dep't of Env'tl Regulation.	Section states that violators are subject to civil penalties under \$403.141. Legislative intent that penalties imposed by court be of such amount as to insure immediate and continued compliance with Env'tl Control Act. See \$403.161(5).

\* Approved local programs may have separate authority under their ordinances or special state laws to enforce some or all of department's environmental laws and regulations. See \$403.182.

**FLORIDA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>SOLID WASTE</b>	Judicial	\$403.708	\$10,000/ day	--	State Pollution Recovery Fund or Hazardous Waste Mgmt Trust Fund (\$403.725 (3)).	Dep't of Env't'l Regulation, any county or municip- ality	Unlawful burning or disposal of solid wastes into water or on land.	Section provides that viola- tions are subject to penal- ties under \$403.141 (general penalty section). This sec- tion pertains to solid wastes.
<b>HAZ. WASTE</b>	Judicial	\$403.726	\$25,000/ day	--	"	Dep't of Env't'l Regulation	Spill or release of hazardous waste creating immediate and substantial danger to human health, safety, or welfare or the env't.	Re abatement of imminent hazards caused by improper hazardous waste mgmt. Injunctive relief also.
	Judicial	\$403.727	\$50,000/ day	--	"	"	Haz. waste generators transporters, or facility owners: operating without permits or who fail to comply with permit; creating imminent hazards; or refusing lawful inspec- tions. Defenses listed at \$403.727 (5), (6) and (7).	Violators also liable for damages under \$403.141 (general penalty section). Knowing violations result in criminal penalties. Sections 403.121, 403.131 and 403.726 are available to Dep't to abate violations.
	Judicial	\$403.758(1)	\$10,000/ day	--	Dep't of Env't'l Regulation Trust Fund	"	See §§403.121 and 403.131.	Re used oil.
	Judicial	\$403.758(2)	\$300	--	"	"	Failure to register with Dep't to transport, collect or recycle used oil.	"
<b>DRINKING WATER</b>	Judicial	\$403.860	\$5,000/ day	--	State Env't'l Fund	"	Violations of drinking water law, rules, regulations or orders.	Violator may also have to pay state for reasonable costs of investigating and prosecuting admin. action. Injunctive relief available.

**FLORIDA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>WETLANDS</b>	--	\$403.924	\$10,000/ day	--	"	Dept of Env'tl Regulation	Violations re permitting activities in wetlands.	Section refers to general penalty section 403.141, and enforcement provisions under §§403.121, .131, and .161.
<b>POLLUTANT SPILLS</b>	Judicial	\$376.311	\$10,000/ day	--	State Pollution Recovery Trust Fund	Dept of Env'tl Regulation	Discharge of pollutants (i.e., oil, gas, pesticides, ammonia, chlorine and derivatives). \$376.303 states that §§403.121, .131, .141 and .161 apply to enforcement under §§376.30 to 376.317.	Assessed persons are exempt from Ch. 403 penalties for water pollution violations. Discharges promptly reported and removed are not subject to penalties. For liabilities and defenses of facilities see \$376.308.
	Judicial	\$376.16	\$50,000/ day	--	General Revenue Fund	Dept of Natural Resources, Dept of Env'tl Regulation	Discharge of pollutants (i.e., oil, gas, pesticides, ammonia, chlorine and derivatives) into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the sea coast (\$376.041).	Dept of Natural Resources regulates coastal petroleum or other substance spills; Dept of Env'tl Regulation regulates inland and ground-water spills.

# GEORGIA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Admin.	\$12-9-23	\$25,000/ day	--	State treasury, general fund	Director of Env'tl Protection Div., Dep't of Natural Resources	Violation of laws, rules, orders or permits under air act. Factors con- sidered: (1) amount of assessment need- ed to insure immediate and con- tinued compliance and extent to which violation may have profited by noncom- pliance; (2) character and degree of impact of violation on natural resources of state, esp. any rare or unique natural phenomena; (3) conduct of assessed person in taking all feasible steps to insure compliance; (4) prior violations; (5) economic and financial conditions (see \$12-9-7); and (6) character and degree of injury to public health, safety or welfare and to reasonable use of property caused or threatened to be caused by violation.	See also \$12-9-7: Factors to be considered in exercising powers and responsibilities relating to prevention, control, etc., of air pollution. This section calls for a balancing and weighing of factors including the social and economic values of the source.
WATER	Admin.	\$\$12-5-51, 12-5-52	\$10,000/day plus cleanup and abatement costs	--	General Fund	"	Intentional, neg- ligent or acciden- tal spill, dischar- ge or deposit of sewage, industrial or other wastes, oil, scum, floating debris, etc.	Strict liability for damages to state or gov't unit for re- lated expenses if spill of toxic, corrosive, acidic, caustic or bacterial substance is harmful to public health, safety or welfare or to animals, birds or aquatic life.

**GEORGIA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GROUND WATER</b>	Admin.	\$12-5-105	\$100/ viola- tion plus \$10/day of continuing violation	--	"	"	Violation of monitoring, record- ing or reporting requirements re groundwater usage for irrigation.	--
	Admin.	\$12-5-106	\$1,000/viola- tion plus \$500/day	--	"	"	Negligent or intentional violation or refusal to comply.	--
<b>DRINKING WATER</b>	Admin.	\$12-5-192	\$1,000/viola- tion plus \$500/day of continuing violation; \$5,000/day for wilful violations	--	"	"	Violation of permit conditions or limita- tions, refusal or failure to comply with order, permit, or drinking water regulations.	--
<b>COASTAL WATERS</b>	Admin.	\$12-5-246	\$10,000/ violation/day	--	"	"	Violation of permit, order, re- gulation or emergency order.	Re permits for shoreline engineering activities.
<b>COASTAL MARSHLANDS</b>	Admin.	\$12-5-288	\$1,000/viola- tion and \$500/day thereafter	--	"	Coastal Marsh- lands Protection Committee	Failure, neglect or refusal to comply with permit or order.	Re dredge and fill activities.
<b>RIVERS</b>	Admin.	\$12-5-452, 12-5-456	\$1,000/acre or part on which violation occurs	--	"	Appropriate gover- ning authority, Dept of Natural Resources	Unlawful land - disturbing activi- ties.	Cease and desist orders, emergency orders, and restoration are also available remedies.
<b>SOLID WASTE</b>	Admin.	\$12-8-41	\$1,000/viola- tion plus \$500/day thereafter	--	"	Dir. of Env'tl Protection Div.	Violations of pro- visions of solid waste law, inten- tional or negligent failure or refusal to comply with orders.	Injunctive relief and judicial review available.

**GEORGIA CIVIL PENALTY STATUTES (continued)**

<b>Type</b>	<b>Section</b>	<b>Max \$</b>	<b>Min \$</b>	<b>Where \$ Go</b>	<b>Who Enforces</b>	<b>Criteria</b>	<b>Comments</b>
<b>HAZARDOUS WASTE</b>	Admin. §12-8-81	\$25,000/day and for each day of continuing violation	--	Haz. Waste Trust Fund (\$12-8-68)	"	Violations of laws, rules, regulations or permit conditions or negligent or inten- tional failure or refusal to comply with order. Factors include: (1) amount of assessment needed to insure immediate and continued compliance and extent to which violation may have profited by noncompliance; (2) character and degree of impact of violation on natural resources of state, esp. any rare or unique natural phenomena; (3) conduct of assessed person in taking all feasible steps to insure compliance; (4) prior violations; (5) economic and financial conditions (see §12-9-7); and (6) character and degree of injury to public health, safety or welfare and to reasonable use of property caused or threatened to be caused by violation.	--
<b>DISCHARGES TO NAVIG. WATERS</b>	Judicial §52-8-1	\$2,000	\$500	1/2 to person giving informa- tion, 1/2 to Bd. of Pilotage Comm'rs	Bd. of Pilotage Comm'rs, Court	Unlawful disposal of stone, gravel or other ballast from vessels into waters of bays or harbors of state.	Re discharges of sub- stances dangerous to navigation or property. Court may order max- imum 3-month imprison- ment.

**GUAM CIVIL PENALTY STATUTES\***

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$49114 TIL 10 PL 2 Ch. 49	\$1,000/ day	--	"	"	Any person who violates any provision of this Act or any rule or regulation in force pursuant thereto, other than \$549113 and 49116 shall be guilty of a violation.	Each day of violation shall constitute a separate offense.
Confidential- ity of Information	Judicial	\$49113 TIL 10 PL 2 Ch. 49	\$1,000	--	"	"	Any person who willfully violates \$49113 of this Act shall be guilty of a violation.	--
HAZARDOUS WASTE	Judicial	\$51113 Tit. 10 PL 2 Ch. 51	\$10,000/ day	--	"	"	Any person who violates any hazardous waste management provisions of this Chapter, or any valid hazardous waste management rules and regulations promulgated under this Chapter, or who refuses or neglects to comply with any lawful order issued by the Administrator in carrying out the provisions of this Chapter shall forfeit and pay the Government of Guam a civil penalty for each day and for each violation for noncompliance.	--

\* Guam statutes governing water pollution, pesticides, solid waste, and sewage disposal authorize criminal penalties only.



**GUAM CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>WATER AND WASTEWATER OPERATOR'S MANDATORY CERTIFICATION</b>	Judicial  §52112 Tit. 10 PL 2 Ch. 52	\$1,000/ day	--	"	"	Any person who violates or is about to violate any provision of this Act, or any rule, regulation, criterion, procedure or certificate issued hereunder may, in a legal action commenced by the Administrator, with the approval of the Board of Certification: (a) be enjoined from continuing or commencing such violation; and (b) be subject to a civil penalty.	--
<b>DRINKING WATER</b>	Admin. Judicial §53114 Tit. 10 PL 2 Ch. 53	\$5000/ day	--	"	"	(a) Administrative. If the Administrator determines that any person is violating any provision of this Chapter, any rule or regulation promulgated thereunder or any variance or exemption issued pursuant thereto, the Administrator may have that person served with a Notice of Violation and an Order.  (b) Judicial. The Administrator may institute a civil action in the Superior Court of Guam for <u>injunctive relief</u> to prevent violation of any order or regulation issued pursuant to this Chapter in addition to any other remedy provided for under this Section.	Re administrative actions: The notice of violation shall specify the alleged violation. The order may require that the alleged violator do any or all of the following: cease and desist from the violation; pay a civil penalty not to exceed Five Thousand Dollars (\$5,000) for each day of violation; or appear before the Administrator at a time and place specified in the order and answer the charges complained of. When the Administrator issues an order for immediate action to protect the public health from an imminent and substantial danger, the Agency shall provide an opportunity for a hearing within twenty-four (24) hours after service of the order. After a hearing pursuant to this Subsection before the Board, the Board may affirm, modify or rescind the Administrator's order as appropriate. The Administrator may institute a civil action in any court of appropriate jurisdiction for the enforcement of any order issued pursuant to this Subsection.

# HAWAII CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where § Go	Who Enforces	Criteria	Comments
GENERAL	Admin. Judicial	\$342- 11 (e)	\$10,000/ offense	--	--	Dir. of Env'tl Quality Control, Atty. Gen.	For violations of env'tl quality chapter provisions or rules (excluding vehicular noise control and vehicular smoke emissions, \$342-11 (a), and open burn- ing, \$342-11(b)). Section 342-11.5 includes factors to be considered in assessing admin- istrative penalties: nature and history of violation, prior violations, and the opportunity, difficulty and history of corrective action.	Note: \$342-11 (e) states that wilful or negligent water pollution violations "shall be punished by a fine of not less than \$2,500 nor more than \$25,000, per day of violation or by imprisonment for not more than one year, or both" suggesting that criminal penalties are imposed for these violations. Hawaii regulations §§11-59-5, 11-59-6, 11-60-37 (re Air Pollution), 11-55-35 (re Water Pollution), and 11-58-8 (re Solid Waste Pollution) refer to the General Penalty section for enforcement actions.
	Admin. Judicial	\$342-11 (f)	\$500	--	--	"	Obstructing duly authorized inspections.	--
DRINKING WATER	Admin. Judicial	\$340E-8	\$5000/day and \$7500/day for violations of underground injection control regulations	--	--	Dir. of Dep't of Health (either administratively or judicially in any court of appropriate jurisdiction).	safe drinking water violations	Injunctive relief available.

# IDAHO CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$39-108	\$1000/day commencing on tenth day after expiration of time fixed for taking preventive or corrective measures in Board's order.	--	General Fund	Depending on type of action, Dir. of Dep't of Health and Welfare, Atty. Gen. or prosecuting atty. in district court in country where violation occurred.	Violations relating to air, water, drinking water and solid waste pollution.	Violator also liable for state expenditures relating to violation. Injunctive relief available. Idaho Code §31-4410 re solid waste provides for treble, civil damages (used for restoration) imposed upon persons in addition to criminal penalties. Administrative actions such as negotiations and public hearings may be used to develop a Board of Health and Welfare Order, the violation of which results in the assessment of penalties.
HAZARDOUS WASTE	Admin. Judicial	§§39-4413, 4414	\$10,000/violation and for each day of continuing violation thereafter	--	Hazardous Waste Account	Dir. of Dep't of Health and Welfare	Seriousness of violation, good faith efforts to comply.	Re falsifying applications, labels, manifests, reports, permits or other documents; violations of other requirements of chapter, regulations, or permits relating to hazardous waste. Damages may include state expenditures in connection with violation, natural resource damages and other costs. Injunctive relief available. Two-year statute of limitations.
HAZ. WASTE INJECTION	Judicial	\$42-3917	\$2500/day	--	General Fund	Dir. of Water Resources has authority to file enforcement action in district court.	Unauthorized injection of hazardous or radioactive waste into wells.	--

**ILLINOIS CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial Admin.	Ch. 111 1/2 § 1042	\$10,000 for violation \$1,000/day after that	--	General Revenue Fund, Environmental Protection Trust Fund, or Wildlife and Fish Fund in State Treasury	State's Atty. or Atty. Gen.	--	Each day is not considered a separate offense.
<b>HAZ. WASTE (RCRA)</b>	Judicial Admin.	Ch. 111 1/2 § 1042 and §§ 21(f)(g) (h) and (i)	\$25,000/day	--	"	"	Violation of any condition or filing requirement.	Funds may also be deposited in Haz. Waste Fund.
<b>DRINKING H<sub>2</sub>O</b>	Judicial Admin. § 12 (g)	Ch. 111 1/2 § 1042	Class II wells \$10,000 per violation, \$1,000/day afterwards; all other wells \$2500/day	--	"	"	UIC permit violations, or filing requirements, etc.	Each day <u>not</u> considered a separate offense. This section referred to in § 1042 (b)(2).
<b>NPDES</b>	Judicial Admin.	§ 12 (f)	\$10,000/day	--	"	"	Violation of permit, terms, con- ditions or filing re- quirements.	This section referred to in § 1042 (b)(1).
<b>RESOURCE DAMAGES</b>	Judicial Admin.	Ch. 111 1/2 § 1042 (c)	\$10,000/day	--	Fish & Wildlife Fund	"	--	Any action which causes death of fish or other aquatic life is charged with the reasonable value of the life destroyed, and is in addition to other penalties. This is payable into the Fish & Wildlife Fund of the state treasury.

# INDIANA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$13-7-13-1	\$25,000/day	--	Environmental Management Special Fund	Environmental Management Board or agency may commence civil action in court.	Env'tl violations.	INDIANA civil penalties fall under one general statute, \$13-7-13-1.
	"	"	\$500/hour	--	"	"	Violations of emergency orders.	--
NPDES	Judicial	\$18, Regulations	refers to \$ below	--	--	Atty. Gen.	Discharge without permit, violation of terms of permit, failure to comply with permit applica- tion requirements, failure to monitor and refusing lawful inspection.	Regulation refers to statute for amounts.
	Judicial	\$13-7-13-1	\$25,000/day	--	--	Atty.Gen.	"	--
STREAM POLLUTION	Judicial	\$13-1-3-15	\$100/day	--	Common School Fund	Atty. Gen.	--	Statute is a time extension for compliance. Penalty is for non-good-faith effort to comply with abatement or corrective order.
HAZ. WASTE	Judicial Admin.	320/IAC 4-11-2 (cites \$13-7-13-1)	\$25,000/day	--	Env'tl Mgmt Special Fund	Env'tl Mgmt. Bd. or Atty. Gen.	Any violation of statute or rule.	Rule denies exempt status for Small Quantity Generators for violations of status twice in any 12 month period. See also \$13-7-13-1, above.

# IOWA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>MINOR VIOLATIONS (GENERAL)</b>	Admin.	\$455B. 109	\$1,000	--	General fund	Executive Director, Comm'n, Atty. Gen.	Economic benefit of noncompliance, gravity of violation, degree of culpability of violator, and maximum penalty authorized for that violation under chapter, among other relevant factors. In addition to the actual or reasonably estimated economic benefit, an administratively determined penalty may include up to \$300 each for the gravity and culpability factors. See Iowa Admin. Code ch. 10 (900-10.1 to 10.3).	Interest on unpaid penalties accrues at the rate of 1 1/2% of unpaid balance of assessed penalty for each month (or part thereof) that the penalty remains unpaid. Atty. Gen. may institute summary proceedings to recover penalty and interest.
<b>AIR</b>	Judicial	\$455B. 146	\$5,000/day and for each day of continuing violation thereafter	--	"	Atty. Gen. (at request of comm'n or exec. director)	Violations of orders, rules or permits.	Injunctive relief available. Local control agency may also seal equipment not in compliance. Regulation 27.3 (4) (b).
<b>WATER QUALITY</b>	Judicial	\$455B. 187 (1)	\$5,000/day and for each day thereafter	--	"	Atty. Gen. (at request of executive director with approval of comm'n)	For violations of any provision of part I of division III of Chapter or for violations of permits, rules or orders issued thereunder	This subject covers both the water pollution control program and the drinking water program. Civil penalty is an alternative to criminal penalty under this part. Section 455 B. 182 authorizes a \$500/day fine for failure to obey order which constitutes contempt.
<b>SOLID WASTE</b>	Judicial	\$455B. 307	\$500/day	--	"	Atty. Gen.	Solid waste disposal violations.	See also Minor Violations.

**IOWA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
HAZARDOUS CONDITIONS	Judicial	\$455B. 386	\$1,000	--	"	Atty. Gen.	--	Re reporting of hazardous substance spills or conditions. Strict liability for cleanup and other costs is imposed under Section 455B.392. Cleanup cost recovery goes to haz. waste remedial fund.
HAZ. WASTE	Judicial	\$455B. 417 (3)	\$10,000/ violation and for each day thereafter	--	Haz. waste remedial fund	Atty. Gen.	Haz. waste violations	Note: Iowa's RCRA authority has been suspended for two years.
	Judicial	\$455B. 454	\$10,000/ violation and for each day of con- tinuing violation	--	General fund	Atty. Gen.	Constructing a haz. waste disposal facility without a site license.	--

# KANSAS CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial	\$65-3018	\$1,000/day and for each day of continuing violation thereafter	--	State treasury (general fund)	Atty. Gen. (at request of Sec'y of Health and Env't)	Violations of orders, rules or regulations.	Injunctive relief available.
<b>SEWAGE DISCHARGE</b>	Judicial	\$65-167	\$25,000/day and for each day thereafter	\$2,500/ day	"	"	Willful or negligent sewage dis- charge without a permit or in violation of a permit.	Additional \$1,000/day penalty for failure to file a report on the discharge of sewage.
	Judicial	\$65-171 f	\$10,000/day and for each day thereafter	\$25	"	"	Willful or negligent failure to comply.	Statutory language is in terms of "convictions" and thus may be a criminal penalty.
<b>WATER</b>	Judicial	\$65-170c	\$10,000/ day	\$25/ day	"	"	Making false statements, representa- tions or certifications in any document, or for falsifica- tion, tampering or knowingly rendering in- accurate any monitoring device or method.	Statutory language is in terms of "convictions" possibly indicating this is a criminal penalty.
	Admin.	\$65-170 d	\$10,000 day and for each day thereafter	--	"	Dir. of Div. of Env't	Penalty shall constitute an actual and sub- stantial econo- mic deterrent to violation for which it is assessed. For violations of sewage discharge permits, effluent or water quality standards, filing, reporting, inspec- tion or monitoring requirements or for violations of orders or requirements of sec'y of health and env't.	--



**KANSAS CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>DRINKING WATER</b>	Admin.	<b>\$65- 171 a</b>	<b>\$5,000/ day and for each day thereafter</b>	- -	"	"	All relevant circumstances including extent of harm, nature and persistence, length of time over which violation occurs and any corrective actions taken.	Re public water supplies. Note that \$65-171 u provides that any person who injures natural resources by discharging pollutants is liable to state for natural resource damages.
<b>SOLID &amp; HAZARDOUS WASTES</b>	Judicial	<b>\$65- 3444</b>	<b>\$25,000/ day and for each day thereafter</b>	- -	General fund	Atty. Gen., sec'y, county or dist. atty.	Extent to which violation presents a substantial hazard to health of individuals; adverse effects on env't as determined by court according to toxicity, degradability and dispersal characteristics of haz. waste disposed of or potential for damage if no haz. waste has been disposed, the sensitivity of receiving env't and degree of env't'l degradation; amount of reasonable costs incurred by state for detection, investigation and attempted correction of violation; economic savings realized by violator in noncompliance; quantity of haz. waste disposed of, if any, in a manner which constitutes a violation; and the amount which would constitute actual and substantial economic deterrent to violation for which it is assessed.	- -
	Admin.	<b>\$65- 3446</b>	<b>\$10,000/day and for each day thereafter</b>	- -	"	Sec'y of Health and Env't, Dir. of Div. of Env't	Actual and substantial economic deterrent to violation for which it is assessed.	- -

# KENTUCKY CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$224.994 (1)	\$10,000/day	--	General expenditure fund	Atty. General, Natural Resources and Env'tl-Protection Cabinet, departmental counsel (Franklin Circuit Court has concurrent jurisdiction)	Violations of laws, rules, orders, permits or regulations.	Re: general prohibition against pollution (\$224.060); POTWs (\$224.140); and, air pollution violations (\$224.330). Injunctive relief available. Cabinet may order necessary remedial measures pursuant to \$224.033 (18).
	Judicial	\$224.994 (2)	\$1,000/day	--	"	"	Violations of laws, rules, orders, permits or regulations.	Re: drinking water, water treatment, certification of water and sewage plant operators, noise, and non-hazardous solid waste violations. Cabinet may order necessary remedial measures pursuant to \$224.033 (18). Injunctive relief available.
	Judicial	\$224.994 (8)	\$1,000/day	--	"	"	Violations for which no express penalty provision applies, failure to perform duties, violations of any order or determination of cabinet.	Injunctive relief available. Cabinet may order necessary remedial measures pursuant to \$224.033 (18).
	Judicial	\$224.997	\$1000	--	"	"	Applicant or certificate holder who fails to provide info re \$224.852.	Falsified information also subject to civil penalties.
WATER	Judicial	\$224.110	See \$224.994	--	"	Atty. Gen., departmental counsel (special atty. gen.)	--	In addition to penalties under \$224.994 (general penalty provision) court may order assessed person to restock or replenish destroyed fish or wildlife.
HAZARDOUS WASTE	Judicial	\$224.994 (5)	\$25,000/day	--	"	"	Unlawful generation, treatment, storage, transportation or disposal of haz. waste.	Injunctive relief available. Cabinet may order necessary remedial measures pursuant to \$224.033 (18).

**KENTUCKY CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
Judicial	\$224.876 (8), (9), (10)	Additional 10% of amount originally assessed, plus 5% for each 30 days elapsing between due date of return and date of filing. Interest on unpaid amount is assessed at 8% per annum from date prescribed for its payment until payment is actually made.	- -	Hazardous Waste Management Fund	Atty. Gen., Revenue Cabinet	Haz. waste generator or facility opera- tor who fails or refuses to file a return or furnish information reques- ted in writing by cabinet.	Revenue Cabinet may assess this additional penalty. Total penalty assessed under \$224.876 (10) shall not exceed 25% of the assessment.

**LOUISIANA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Admin. Judicial	\$1073(EX1)	\$25,000/ day	--	Bond Security & Redemption Fund, then to Environ- mental Emergency Response Fund	Secretary,* Atty. Gen.** \$1073(A),(B) (C)	History of previous viola- tions or repeated noncom- pliance; nature and gravity of violation; gross revenues of violator; degree of culpability, recalcitrance, defiance or indifference to regulations or orders; monetary benefit from non- compliance; degree of risk to health or property; whether violation was immediately reported or concealed; whether there was mitigation or attempt to mitigate damages; costs of bringing enforcement action.	State says money goes first to Env'tl Emergency Response Fund, then, if Fund is over \$2,000,000, to Abandoned Haz. Waste Site Fund. Statute says money first goes to Bond Fund; State says this has never been done. Note that Title 30 Ch.11, Pt. VII-Hazardous Waste Control Law §1137 pro- vides for criminal penalties only, as does §371 of Title 45-Litter Control Law.
	Admin. Judicial	\$1073(EX2)	\$50,000/ day	--	"	"	"	This section is for one who fails to take corrective action within the specified time pursuant to a compliance order or cease and desist order.
	Judicial	\$1074(1)	\$10,000/ day plus actual damages to plaintiff.	--	"	Private citizens	"	This section allows enforcement by any plain- tiff with any interest or who is adversely affected, subject to certain exceptions.
UNDER- GROUND INJECTION CONTROL	Admin. Judicial	\$4.1F	\$25,000/ day	--	"	Atty. Gen., Assistant Secretary	Gravity of violation and demonstrated good faith of person charged.	No penalty assessed if it appears, upon later hearing, that order was issued without reasonable cause; order referred to means an emergency cease and desist order.

- \* Administrative actions.
- \*\* Civil actions.

# MAINE CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$349(2), Title 38	\$10,000/ day; \$25,000 if violation relates to hazardous waste or when it can be shown that the same party has violated the same law within the 5 preceding years.	\$100/ day	State treasury (general fund)	Attorney General	Violations of any provision of laws, orders, regulations, licenses, permits or other decisions of Bd. of Env'tl Protec- tion. In setting penalties the court is to consider: prior violations by same party; degree of env'tl damage that cannot be abated or corrected; extent to which violation continued after order to correct; the importance of setting a civil penalty substantial enough to deter others from similar viola- tions \$349(5).	\$349(4) lists violations that result in Class E crimes. In addition, the court may order restoration of any affected area. See \$348(2). Comm'r of Dept of Env'tl Protection may initiate enforcement proceedings. (\$342).
AIR	Judicial	\$589, Title 38	\$10,000/ day	--	State treasury	Attorney General	--	Section refers to §§348-349 re violations of Board of Env'tl Protection orders.
WATER	Judicial	\$420, Title 38	\$10,000 (pursuant to \$349(2))	--	State treasury	Atty. Gen. (pursuant to \$348); see \$451- Enforcement.	Section refers to discharges of certain toxic substances into inland or tidal waters, or on ice or banks of such waters.	--
	Judicial	\$417, Title 38	\$500	\$100	--	" "	Discharges of refuse, forest products or potatoes into inland or tidal waters of state, or on ice or banks of such waters.	Section does not apply to municipal or quasi- municipal solid waste disposal facilities in operation on July 1, 1977 (approved under Ch. 13).

**MAINE CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>DRINKING WATER</b>	Judicial	\$2617, Title 22	\$500/ day	--	State treasury	District or Superior Court	Violations of \$2618.	--
	Judicial	\$2642	\$500	--	"	Municipality	Wilful violations of municipal regulations.	--
<b>SOLID WASTE</b>	Judicial	\$1305(7), Title 38	--	--	State treasury	Municipality	--	Provides that municipalities shall enforce provisions of section 1306, subsec. 2 re on- site disposal of domestic septage.
	Judicial	\$1306(2)	\$1000/ day	--	Municipality	"	Disposal of septage less than 300 feet from property boundaries, waters or other struc- tures as listed.	Re on-site disposal of domestic septage. Note that \$349(4)(E) states that violations of \$1306 re solid waste result in criminal penalties (i.e., a Class E crime).
	Judicial	\$1310-B	\$5000	--	State treasury	Atty. Gen.	Knowing disclosure of information designated confidential.	--
<b>HAZ. WASTE</b>	Judicial	\$1308	\$25,000/day	\$100	State treasury	Atty. Gen.	Any construction or operation of a haz. waste facility without a license, or, any haz. waste discharge.	--
	Judicial	\$1306-C	All resulting damages.	Limited to damage to real estate or personal property or loss of income directly or indirectly resulting from disposal of haz. wastes.	State; plaintiff	Atty. Gen.; complainant	Strict liability for disposal of haz. waste that, in fact, endangers the health, safety or welfare of another.	Damages awarded mitigated if disposal results from act of war or act of God.

**MAINE CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>HAZ. WASTE</b> (continued)	Judicial	\$1317-A	\$10,000/day plus cleanup costs	\$100	State treasury	Atty. Gen.	Discharge of haz. matter prohibited.	Section 1318 provides that (1) immediate reporting of discharges or threatened dis- charges by responsible party will be considered in mitiga- tion of criminal and civil penalties, and (2) immediate reporting and removal of dis- charge by responsible party relieves that party of criminal or civil liability.
	Judicial	\$1319-I (6)	Three (3) times appropriate fee charged under Me. Haz. Waste Fund statute.	--	Me. Haz. Waste Fund	Atty. Gen.	--	This is a penalty for late payment of fee if fee has not been paid to Fund within 6 months after due date.
	Judicial	\$1319-J	All cleanup costs.	--	State account from which funds were expended.	Atty. Gen.	Negligence need not be proven. Discharge or threatened discharge of haz. waste while in control of person causing discharge or involving property under custody or control of that person.	--
	Judicial	\$1367	Abatement, cleanup, and mitigation costs and damages.	--	State treasury	Atty. Gen.	--	Re uncontrolled haz. waste sites. Real estate and monies of persons involved in violations should be forfeited to State. Joint and several liability of each responsible party for cleanup costs.
<b>WETLANDS</b>	Judicial	\$475	See \$349(2) for general penalty provisions.	--	State treasury	Atty. Gen.	Any filling, dredging, draining, depositing, altering, erecting or removal of materials in coastal wetlands or sand dunes without a permit or in violation of permit provisions.	Owner of wetlands or dunes is prima facie held to be responsible for violation. Wilfulness irrelevant.

**MARYLAND CIVIL PENALTY STATUTES\***

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial	\$2-610, Health-Env't'l Article	\$10,000/day	--	State treasury	Atty. Gen.	--	If violation corrected in 36 months, can return up to 75% of penalty.
	Admin.	\$2-610.1, Health-Env't'l Article	\$1000/day \$20,000 total	--	State treasury	Atty. Gen.	Consider: willfulness; actual harm to human health or to environment, cost of control, nature/degree of injury to general welfare, health, and property; location of violation; available technology and economic reasonableness of control; recurrence of violation.	--
<b>HAZ. WASTE</b>	Judicial	\$7-268(a)	\$10,000/day	--	--	"	--	--
	Admin.	\$7-268(b)	\$1000/day \$50,000 total	--	Penalties go to monitoring and surveillance fund.	"	Consider: actual or potential harm; cost of clean-up; nature/degree of injury to welfare, health, or property; available technology; degree of hazard of pollutants, part of recurrent pattern; willfulness; extent to which violation known but uncorrected; reasonable care.	--
<b>DRINKING WATER</b>	Judicial	\$9-413(a)	\$5,000/day	--	--	"	--	--
<b>NPDES</b>	Judicial	\$9-342(a)	\$10,000/day	--	--	"	--	--
	Admin.	\$9-342(b)	\$1,000/violation \$50,000 total	--	Penalties go to monitoring and surveillance fund.		Consider: same factors as above.	--
<b>H<sub>2</sub>O, ICE, Sanitary Facilities</b>	Judicial	\$9-225	\$10,000 or \$10,000/day of violation beyond limit of compliance order; no more than \$50,000 total	\$500	--	"	--	--
<b>TOXICS</b>	Judicial	\$6-422 (a)	\$5000/day	--	--	--	--	--

\* There is a one year statute of limitations in Maryland to commence judicial actions for monetary penalties (courts and judicial proceedings; \$5-107). This applies to any program (air, hazardous waste, drinking water, NPDES, and H<sub>2</sub>O, Ice, and Sanitary Facilities).



**MASSACHUSETTS CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL</b>	Judicial	\$6F, Ch. 21	\$100	\$50	Environmental Fund (\$10, Ch. 21A)	Attorney General	For refusing to state name and address or giving false informa- tion when Div. of Law Enforcement officer (from Dept of Env'tl Mgmt) has probable cause to believe violation is occurring.	--
	Judicial	\$6G, Ch. 21	\$10	--	Env'tl Fund	Attorney General	For violation of \$4A of Ch. 21, and for other statutory viola- tions as listed.	--
	Judicial	"	\$50	--	"	"	For violation of statutory provisions.	--
	Judicial	"	\$100	--	"	"	"	--
	Judicial	"	\$10	--	"	"	"	--
<b>GENERAL (Re: Dredge and Fill/ Wetlands)</b>	Judicial	\$14, Ch. 21A	\$1,000/day	--	"	Attorney General	--	--
		\$40, Ch. 131	\$1,000/day					Penalty of up to \$1,000/day and/or six months in jail is criminal in construction. Each day of violation is continuing offense.
<b>AIR</b>	Judicial	\$2B, Ch. 111	\$10,000/ day	\$20/day	"	Atty. Gen., Department of Env'tl Quality Engineering	Knowing failure within a reasonable time to comply with emergency orders.	Violator may give due con- sideration to the prac- ticability and to the physical and economic feasibility of compliance.
	--	\$142B	\$50/offense	\$10/offense	"	"	Knowing violation of orders, rules or regulations.	Statute deals with Metropolitan air pollution control district.
	Judicial	\$142B	\$100/first offense, \$500 subsequent offense	\$50/first offense \$200 sub- sequent offense	"	"	Violation of any department order.	Each day is considered a separate offense.

**MASSACHUSETTS CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
--	\$142F	\$750	\$250	Environmental Fund	"	Allowing excess fuel to be discharged into atmosphere from aircraft.	--
Judicial	\$150A, Ch. 111	\$500/day	\$100	"	"	Maintenance and opera- tion of waste facility not in accordance with this section.	Statute deals mainly with solid waste, but includes dust, smoke, odors and fly ash. See also Waste.
WASTE	Judicial	\$10, Ch. 21C	\$25,000/ day	--	"	Violation of chapter, regulation, order or rule of Dep't.	Statute is for hazardous waste.
Judicial	\$11, Ch. 21E	\$25,000/ day	--	"	"	Release of oil or hazardous materials.	Statute is for releases of oil and hazardous materials. The violation is also liable for costs of assessment, containment, removal and investigation of a release or threatened release.
--	\$2.07	\$25,000/ day	--	"	"	--	Regulation quotes \$10, Chapter 21 C of the General Laws.
Judicial	\$150A	\$500/ day	\$100/ day	"	"	Failure to maintain and operate a waste facility in accordance with this section.	See also AIR.
--	\$18:26	\$500/ day	\$100/ day	"	"	Same as above, plus failure to follow these rules and regulations.	This regulation is in addition to the penalties of \$150A above.
--	\$19:31	\$500/ day	\$100/ day	"	"	Failure to maintain and operate a sanitary landfill in accordance with \$150A above, plus these regulations.	Also in addition to \$150A above.
Judicial	\$3, Ch. 111F	\$250/ day	--	"	"	--	Re: Hazardous substances disclosure by employers. Subsequent violations carry criminal penalties.

**MASSACHUSETTS CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>WATER</b>	Judicial	\$175, Ch. 111	\$1,000	\$25	"	Department of Env'tl Quality Engineering, Atty. Gen.	--	Re: Protection of Charles River from pollution.
	Judicial	\$27, Ch. 21	--	--	Credited to account used to clean up spill and for restoration.	Division of Water Pollution Control; Atty. Gen.	Costs of cleanup and restoration; natural resource damages included.	Re: Spills of oil and hazardous materials. Also: \$5,000 fine for failure to report spill. Section provides for fine of \$10,000/- day of spillage "or imprison- ment for not more than two years or both."
	Judicial	\$34 C, Ch. 21	\$2500/ day	--	Env'tl Fund	"	Managing, operating or maintaining wastewater treatment facility without a valid certificate.	--
	Judicial	\$42, Ch. 21	\$10,000/ day	--	Env'tl Fund	"	Discharge of pollu- tants into waters in violation of permit, or for other violations of Chapter, regulations or permits.	--
<b>MSC. (Pollution of Coastal Waters)</b>	Judicial	\$24, Ch. 130, Title XIX	Treble damages for fishery or shell- fish resource damages.	--	State or private person (if private fishery)	Atty. Gen.	--	--

# MICHIGAN CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	--	--	--	--	--	--	--	Criminal statutes only.
HAZ. WASTE	Judicial	\$299.548	\$25,000/day	--	State treasury	Atty. Gen.	--	Can also recover full value of damages & surveillance/ enforcement, plus all court costs and attorneys fees.
SOLID WASTE	Judicial	\$299.310	\$2500/day	--	--	"	--	--
DRINKING H <sub>2</sub> O	Judicial	\$325.1022	\$5,000/day	--	--	Atty. Gen.	--	--
NPDES, H <sub>2</sub> O	Judicial	\$323.10	\$10,000/day	--	--	Atty. Gen.	False info. on application; discharges that result in damages to public health, domestic agricultural, recre- ational & commercial uses of water, or livestock & wildlife.	--

# MINNESOTA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR/ GENERAL	Judicial	\$115.071 Subd. 3	\$10,000/day	--	State treasury	Atty. General	--	This is the general civil penalty provision. \$116.07 (subds. 2 and 4) gives state pollution control authority the power to adopt air standards for the abatement or control of air pollution. Court has discretion to determine penalty and is required to consider defendant's economic circumstances (\$115.072). Atty. Gen. may seek litigation expenses if violation was willful.
HAZ. WASTE	Judicial	\$115.071 Subd. 3	\$25,000/day	--	"	"	Violations of haz. waste rules, permits, stipulation agree- ments, compliance schedules or orders.	Cleanup costs, natural re- source damages, injunctive relief, actions to compel performance, and litigation expenses are available. See also \$116.07 subds. 2 and 4 for relevant state authorities.
STATE SUPERFUND	"	\$115B.18	\$20,000/day		Envtl. Response, Compensation and Com- pliance Fund	"	For releases of pollutants or con- taminants presenting imminent and sub- stantial danger to public or env't, or for releases of haz. substances from facilities.	Threatened releases also included. Civil penalty is assessed for failure to take reasonable and necessary response actions or to make reasonable progress in com- pleting response actions. Other civil remedies available. If state proceeds with cleanup activities, responsible person may be re- quired to pay any reasonable and necessary state expenses, including response costs and admin. and legal expenses. \$115B.17 subd. 6. Respons- ible persons are strictly liable for haz. substance releases or threatened releases. \$115B.04.

**MINNESOTA CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>DRINKING H<sub>2</sub>O</b>	Judicial	\$115.071 subd. 3	\$10,000/day	--	State treasury	"	--	--
<b>NPDES; WATER QUALITY</b>	Judicial	\$115.071 subd. 3	\$10,000/day	--	"	"	NPDES, effluent limitations, water quality and permit violations and other violations including failure to follow filing requirements.	See \$116.07 for relevant state authorities.
<b>SOLID WASTE AND SEWAGE SLUDGE</b>	Judicial	\$115.071 subd. 3	\$10,000/day	--	"	"	Violations of law, rules, permits, stipula- tion agreements, variances, compliance schedules or orders.	"

**MISSISSIPPI CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL</b>	Judicial Admin.	\$49-17-43	\$25,000/ day	--	Water Pollution Abatement Grant Fund (\$49-17-43 (f)).	Comm'n on Natural Resources. Comm'n may institute court proceedings in lieu of, or in addition to, the civil penalty assessment.	Violations of state air and water poll. control law, or permit (except re waste disposal see \$17-17-29). Owners of facilities creat- ing hazards liable for cleanup costs imposed by circuit court (\$49-17-43 (d)).	Fund used to clean up or abate pollution of: land, air or waters of the state (\$49-17-43(f)). Person may be liable for natural resource damag- es; penalty includes civil fines plus cost of restocking or replenish- ing wildlife (\$49-17- 43 (c)).
(re NPDES)	Judicial Admin.	\$49-17-43 (e)	\$10,000/ day	\$2,500/ day	"	"	Violation of NPDES permits.	" "
<b>WASTES</b>	Admin. Judicial	\$17-17-29	\$25,000/day	--	"	"	Violation of chapter or any rules or re- gulations.	Statute deals with waste disposal. May also seek injunctions. Provision for compensation for destruction of wild- life. If hazardous, state may also recover re- medial and cleanup costs.
<b>WETLANDS</b>	Admin. Judicial	\$49-27-51	\$1,000	\$50	--	Commission on Wildlife Con- servation, Atty. Gen., district or county atty.	Violation of chapter.	Statute concerns wet- lands dredge and fill. These fines are <u>punitive</u> damages for unauthor- ized work. Commission may retroactively authorize work, but imposes these damages for having done the work.
	Judicial	\$49-27-55 "	\$500/day; \$500/day (see comments)	--	--	chancery court	Violation of chapter.	Violator liable for cost of restoration. The first \$500/day is punitive damages for the damage. The second \$500/day is for every day the violation exists beyond the court order- ed date for completion of restoration.

**MISSOURI CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial	\$203.151	\$5,000/day and for each day of con- tinuing violation	--	--	Air Conservation Comm'n, Atty. Gen. or other counsel as re- quested by Air Conservation Comm'n.	Emissions violations of listed statute sections; emissions outside state which enter state in violation of emissions limitations; violations of regulations.	Injunctive relief available.
<b>WATER POLLUTION</b>	Judicial	\$204.076	\$10,000/day and for each day of con- tinuing violation.	--	County School Fund	Water Pollution Control Comm'n, Exec. Sec'y, Atty. Gen. or prosecuting atty.	Violations of water pollution law, re- gulations, permits, standards, orders or filing requirements.	State or political sub- division may recover damages for investiga- ting and prosecuting cases and for restoration of affected waters. See \$204.096. Injunctive relief also available.
<b>SOLID WASTE</b>	Judicial	\$260.240 (1)	\$1000/day and for each day thereafter	--	--	Dir., Atty. Gen., Prosecuting Atty.	Violations re solid waste disposal.	--
	Judicial	\$260.240 (2)	\$100/day and for each day thereafter	--	--	Prosecuting atty. or other atty. (as requested by county court)	Violations of rules, regulations, standards or orders of county court.	--
<b>HAZARDOUS WASTE</b>	Judicial	\$260.425	\$10,000/day and for each day thereafter	--	Haz. Waste Fund (\$\$260.425 (2), 260.391)	Haz. Waste Mgmt Comm'n or Dept of Natural Resources, Atty. Gen. or prosecuting atty.	Hazardous waste violations.	Injunctive relief available. \$260.530 Imposes strict liability for cleanup costs and punitive damages (three times cleanup costs) for wilful failure of respon- sible party to clean up haz. substance.
	Judicial	\$260.465	\$1,000/day	--	Haz. Waste Remedial Fund (\$\$260.475(4), 260.480)	"	Re change of use or transfer of uncon- trolled or abandoned haz. waste sites without approval of Dir.	"
	--	\$260.478(2)	15% of tax imposed plus 10% per annum interest for overdue taxes.	--	"	Dept of Natural Resources	Failure to pay haz. waste generator tax (\$260.478 (1)).	--
<b>DRINKING WATER</b>	Judicial	\$640.130	\$50/first violation, \$100/violation thereafter	--	--	Atty. Gen., Dept of Natural Resources	Safe drinking water violations.	--



# MONTANA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Admin. Judicial	\$75-2-413	\$10,000/day	--	General fund	Dep't of Health & Environmental Sciences, Atty. General or county atty.	--	Civil penalty is in lieu of criminal penalty.
	Admin.	\$75-2-422	--	--	"	Dep't of Health & Environmental Sciences	--	Noncompliance penalty and late charge are figured according to expenditures, etc., see statute.
HAZ. WASTE	Admin. Judicial	\$75-10-417	\$10,000/day	--	"	Dep't of Health & Environmental Sciences, Atty. Gen. or county atty.	--	Civil penalty is in lieu of criminal penalty.
SOLID WASTE	Judicial	\$75-10-542	\$50/day	--	"	"	--	Statute deals with motor vehicle wrecking facilities and disposal.
DRINKING H <sub>2</sub> O	Admin.	\$76-4-109	\$1,000	--	"	Water Quality Bureau (Sub- division Bureau)	--	Statute regulates sewage lines in subdivisions.
NPDES	Admin.	\$75-5-631	\$10,000/day	--	"	Dep't of Health & Environmental Sciences, Water Quality Bureau	--	--

# NEBRASKA CIVIL PENALTY STATUTES

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
NPDES	Judicial §81-1508(1) (c)	\$5,000/ day	--	--	Dep't of Envt'l Control, Atty. Gen., County Atty. (injunctive relief available)	Size of operation and degree and extent of pollution.	Re refusing right of entry and inspection, violation of effluent standards and limita- tions, filing and monitoring requirements water quality standards, permit conditions or any rules, regulations or orders under NPDES.
MISC.	Judicial §81-1508(1) (e)	\$500/ day	--	--	"	" §81-1508 (1) (f) states that viola- tions of air laws or regulations are subject to criminal penalties. Failure to report emission data or to obtain permit, violation of air poll. permit, etc. §81-1508 (1) (e).	Solid Waste Regulations, Ch. 12, state that viola- tions are subject to enforcement actions either administratively under §81-1507 or judicially under §81- 1508 Air and Water pollution violations are also generally enforceable under admin. §81-1507 and judicial §81-1508.
HAZARDOUS WASTE	Judicial §81-1508(1) (g)	\$10,000/day and for each day thereafter	--	--	"	Size of operation, degree and extent of pollution, any injuries to humans, animals or the environment.	Re hazardous waste violations.

# NEVADA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>HAZARDOUS WASTE</b>	Admin.	\$444.740	\$10,000/ shipment	\$2500/ violation	--	Health Dep't. public service commission, highway patrol and motor carrier division.	Transportation of waste into or through Nevada.	Statute deals with safety of hazardous waste, including packaging, handling & transpor- tation. The penalty is civil for those with Dep't licenses, criminal for those without.
	Admin.	\$444.744	\$3,000/day	--	--	Commission	Failure to comply with license or agreement.	First penalty is for each separate failure to comply. Second is for any 30-day period for all failures to comply.
	Admin.	\$444.744	\$25,000/day	--	--	"	Continuous failures to comply.	
	Admin.	\$444.774	\$10,000/day	--	--	Health Department	Any violation of chapter or failure to take action to correct a violation.	Penalty is in addition to the above statutes. State may also recover actual damages for clean-up and replacement of resources, plus administrative costs.
<b>WATER</b>	Admin.	\$445.331	\$10,000/day	--	--	--	--	Excludes diffuse sources. Penalty is in addition to other penalties. Actual damages may be recovered for loss of wildlife, fish or aquatic life.
<b>DRINKING WATER</b>	Admin.	\$445.397	\$5,000/day	--	--	--	Violation of any standard, order, con- dition, variance or exemption.	--
<b>AIR</b>	Admin.	\$445.601	\$5,000/ occurrence	--	County school district fund of county where violation occurred.	State Environ- mental Commis- sion and Director, approved local control agency.	Violation of provision or regulations.	Major violations. Minor viola- tions become major upon occurrence of 4th violation in period of 12 consecutive months.
	Admin.	\$445.601	\$200; see NAC 445.699 for schedule	--	"	Director of Dep't of Conser- vation and Natural Resources	Violation of statute or regulation.	This penalty is for minor violations and is established through regulations; see Nev. Admin. Code, §§ 445.699 and 445.700 for schedule of fines for minor violations.

**NEW HAMPSHIRE CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial	\$125-C:15	\$25,000/ day	--	State Treasury	Director of Air Resources Comm'n, Air Resources Agency, Atty. Gen. (of Env'tl Protection Division)	--	Violations of rules or final orders also subject to superior court injunction
<b>OIL SPILLS IN PUBLIC WATERS</b>	Judicial	\$146-A:14, II	\$10,000/ violation	--	"	Atty. Gen.	--	Violations include spillage into public surface and ground waters or spills on land area where oil will ultimately seep into public waters.
	Judicial	\$146-A:14, III	\$1,000/day	--	"	"	Operating under- ground storage facility without permit; failure to comply with permit; violation of underground storage facility regulations.	--
<b>RUBBISH AND WASTE</b>	Judicial	\$147:9, 11, 13-16, and 22	--	--	"	"	--	These sections state that persons who discharge offensive matter or otherwise violate the rubbish disposal rules will be guilty of violations. No penalty amount is stated.
<b>HAZ. WASTE</b>	Judicial	\$125:95	--	--	State Treasury	Atty. Gen.	--	Re imminent hazard sites: Div. of Public Health Services may after court authorization or order apply to governor for clean-up funds.
	Judicial	\$147:58	Treble damages	--	Successful plaintiff	"	--	In civil actions arising from hazardous waste violations, a convicted defendant shall be liable to a successful plaintiff in an amount equal to 3 times actual damages sustained by plaintiff.
	Judicial	\$147-A:9	--	--	Reimburse state and/or office of waste manage- ment for cleanup costs.	Atty. Gen., Office of Waste Management	Operators, gener- ators and/or transporters strictly liable for costs resulting from violations relating to containment, cleanup and restoration, and hazardous waste removal.	Prejudgment attachment and injunctive relief also available.

**NEW HAMPSHIRE CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Co	Who Enforces	Criteria	Comments
	Judicial	\$147-A:10	--	--	Hazardous Waste Clean- up Fund	Atty. Gen. holds hearing conducted as civil in rem action in superior court	Preponderance of evidence that owner knew or should know that property was used in illegal treat- ment, transporta- tion, storage or disposal of hazardous waste.	Property of generator, trans- porter or operator may be seized and sold in forfeiture proceeding. Proceeds go to cleanup fund. Failure to give notice of any storage, treatment or disposal violations results in misdemeanor "if a natural person" and "felony if any other person." See \$147-A:11.
	Judicial	\$147-A:17	\$50,000/day for each day of continuing violation	--	"	Atty. General	Strict liability for costs of restoration, con- tainment, removal and cleanup in addition to forfeiture.	This is the civil forfeiture provision.
	Judicial	\$147-B:10	--	--	Office of Waste Management	Atty. General	Costs of cleanup, containment or removal paid from hazardous waste cleanup fund.	Office of Waste Management is entitled to lien on business revenues and all real and personal property of one who caused expenditures from fund.
<b>DRINKING WATER</b>	Judicial	\$148-B:10	\$500/day	--	State treasury	Atty. General, Water Supply and Pollution Control Comm'n	Comm'n may issue orders for repairing equipment, pro- hibiting sale or distribution of public water supply, testing/and or notification of potential users of health effects, (in cases where the viola- tion of a primary standard may result in serious risk to public health).	Misstatements of material facts or other wilful viola- tions constitute misdemeanors for "natural persons" and felonies for "any other person".
<b>WATER; NPDES</b>	Judicial	\$149:19, II	\$10,000/day	--	State treasury	Atty. General, Water Supply and Pollution Control Comm'n	--	Comm'n may issue cease and desist orders.

**NEW HAMPSHIRE CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>SEWAGE DISPOSAL</b>	Judicial	\$149-E:7	\$5,000	--	To enforce sewage disposal system chapter.	Superior court (Atty. General)	Any violation under chapter, or for failure, neglect, refusal or misstatement.	--
	Judicial	\$149-E:7, IV	\$1,000/day	--	--	"	Neglecting or refusing to comply with \$149-E:3-b (maintenance and operation of sub- surface septic systems).	Civil forfeiture.
<b>SOLID WASTE</b>	Judicial	\$149-M:12	\$5,000/viola- tion and for each day of con- tinuing violation	--	State treasury	Superior court (Atty. General)	--	--
<b>WETLANDS</b>	Judicial	\$483-A:6	\$5,000	--	To restore wetland or \$ placed in non- lapsing state fund for wetlands research and investigation.	Atty. General	Failure, neglect or refusal to obey order of wetlands board or misrepresentation of material fact.	Re: Regulating dredge and fill in wetlands.
	Admin.	\$483-A: 5-a	\$2,000/ violation	--	"	Wetlands Board	Violation of any provision of chapter.	After notice and hearing pursuant to \$541-A, Wetlands Board is empowered to impose adminis- trative fine.
	Judicial	\$483-A: 5-b	--	--	"	State and local law enforcement officials	"	State and local law enforcement officials may prosecute any violation of chapter as violation; does not limit state's enforce- ment authority under chapter.

**NEW JERSEY CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL</b>	Judicial	\$2A:58	See individual statutes for amounts.	See individual statutes for amounts.	State treasury, unless otherwise provided.	Atty. General	--	This is a general penalty statute covering the entire N.J. Code.
<b>AIR</b>	Judicial	\$26:2C-19	\$2500	--	State treasury	Department of Environmental Protection	--	Violator can receive up to 90% rebate for compliance. Compromise and settlement available.
<b>HAZ. WASTE</b>	Judicial Admin.	\$13:1E-9(c)	\$25,000/day	--	State treasury	Dept., county, or local board of health	Transporting to, or storing hazardous waste at unauthorized facility.	Can also assess investigation & monitoring costs, litigation, costs cleanup of the violation, actual & compensatory damages for loss of wildlife, fish or aquatic life. Compromise and settlement available.
	Admin.	\$13:1E-67	--	--	Person who provides information leading to arrest & conviction for violation.	Atty. Gen.	Information on illegal treatment, storage or disposal of hazardous wastes.	Provider of information receives one-half of any penalty imposed.
	Judicial	\$13:1K-13	\$25,000/offense	--	State treasury	Atty. Gen.	Giving false information.	Hazardous wastes
	Judicial	\$7:26-5.5	\$10,000	--	State treasury	Atty. Gen.	Violation of guidelines in \$7:26-2-see chart.	See chart for penalties and rebates.
	Judicial	\$7:1-3.16	\$25,000/offense	--	State treasury	Atty. Gen.	Giving of false information upon transfer of industrial establishment.	Can also consider failure to comply with other provisions relating to transfer of industrial establishment.
	Judicial	\$13:1I-5	\$3,000/offense	--	State treasury	Atty. Gen.	--	Non-hazardous waste
<b>SOLID WASTE</b>	Judicial Admin.	\$48:13A-12	\$500/first offense \$1000/second offense \$1000/third & subsequent offenses	100/second offense 500/third and subsequent offenses	State treasury " "	Atty. Gen. " "	Engaging in solid waste collection or disposal without permit.	--

**NEW JERSEY CIVIL PENALTY STATUTES (cont'd)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>DRINKING H<sub>2</sub>O</b>	Judicial Admin.	<b>\$58:12A- 10(B)</b>	\$5000/first offense \$10,000/second offense \$25,000/third	-- \$5,000/ second offense --	State Treasury	Commissioner, Atty. Gen.	Violation of Act, rule, regulation or order issued pursuant to the Act.	--
		<b>\$58:12A- 10(d)</b>	\$10,000/day	--				
<b>NPDES</b>	Judicial Admin.	<b>\$58:10a - 10(d)</b>	\$5000/violation plus \$500/day thereafter	--	State treasury	Commissioner, Atty. Gen.	Violation of Act, water quality standard, effluent limitation or permit.	Violator can be charged compensatory damages for loss of wildlife, fish or aquatic life, or any other actual damages.
		<b>\$58:10a- 10(e)</b>	\$10,000/day	--				
		<b>\$58:10a- 10(f)</b>	\$25,000/day	\$2,500/day	State treasury	Commissioner, Atty. Gen.	Willful or negligent violation of Act.	"
		<b>\$58:10a- 10(f)</b>	\$10,000/day	--				



**NEW JERSEY CIVIL PENALTY STATUTES (cont'd)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments	
Admin.	Regulation 7:14-8.10	\$5,000 (basic penalty)	--	"	Comm'r	Type (whether wilful and highly fore- seeable, unin- tentional but foreseeable, or unintentional and unforesee- able); serious- ness and duration of violation.	Re basic penalty for discharge violations. Compromise of assessed penalty is dis- cretionary with Administrator. Dep't will not seek additional civil penalties for a violation for which assessment has been paid unless the violation is repeated or is of a continuing nature and is not abated. Penalties are computed after assigning values to the Serious- ness and Type Factors from the ranges set forth in the regula- tions at 7:14-8.10(a)(5).	
<b>H<sub>2</sub>O POLLUTION</b>	Admin. Judicial	\$58:10- 23.11g	\$50,000,000/ major facility or \$150/gross ton per vessel	--	N.J. Spill Compensation Fund	Dept. of Public Advocate, State Treasurer, commis- sioner or director of Dep't of Env'tl Protection.	--	If violation is proved wilful or grossly negligent, maximum amounts do not apply.
	Judicial	\$58:10- 23.11u	\$25,000/offense	--	State treasury	Atty. Gen.	Knowingly giving false information in cleanup efforts.	--
<b>WETLANDS</b>	Judicial	\$13:9A-9	\$1000/violation	--	State treasury	Atty. Gen.	--	Can also be charged for the costs of restoration of the affected wetlands.

# NEW MEXICO CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$74-2-12	\$1,000/ day	--	General Fund	Env't'l Improvement Div., local Air Quality Control Bd.	Emissions of air pollutants with- out permit.	Allows Class A counties and municipalities in such counties authority to adopt own programs at least as stringent as state's.
HAZ. WASTE	Judicial	\$74-4-12	\$10,000/ day	--	"	Director of Env't'l Improvement Div.	Violation of Act, rules or com- pliance orders.	--
	Judicial	\$74-4-13	\$5,000/ day	--	"	"	Willful viola- tion or refusal to comply with com- pliance order regard- ing handling, storage, treatment, transporta- tion or disposal of hazardous waste.	May also seek injunctions.
H <sub>2</sub> O, NPDES	Judicial	\$74-6-5	\$5,000/ day	--	"	Water Quality Control Commission	Failure to obtain permit, violation of conditions of permit, failure to disclose relevant facts or obtaining permit by misrepresentations.	Statute deals mainly with procedures for obtaining a permit.
	Judicial	\$74-6-10	\$1,000/ day	--	"	"	Any violation of Water Quality Act, or regulation.	May also assess reasonable cleanup costs and seek injunctions.

# NEW YORK CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$71-0211	--	--	State comptroller	--	--	Statute gives disposition of fees & penalties collected.
	Admin. Judicial	\$71-0301	\$2500/violation, -- \$500/day thereafter	--	"	Atty. Gen.	--	Statute provides for summary abatement.
	Admin.	\$71-0401	--	--	--	Atty. General, Dept. of Environ- mental Conserva- tion Commissioner	--	Statute allows Atty. Gen. to delegate enforcement power to Dept attorneys.
	Admin.	\$71-0507	--	--	State comptroller, conservation fund or Dept of Environmental Conservation, or Dept of Taxation and Finance	--	--	State comptroller pays all legal fees involved, then remainder of money goes to conservation fund, Dept of Envi'l Conservation or Dept of Taxation & Finance.
	Judicial	\$71-0519	maximum given \$10 under statute in use	--	"	Conservation, game officers or state police	Agreement by violation, officers involved and court.	Statute allows the penalties imposed to be compromised if judgment entered is paid within thirty days.
	Judicial	\$71-1707	\$1000/ violation	--	"	Atty. Gen. or Commissioner	--	Penalties may be compromised.
	Admin.	\$71-1711	\$50/first violation	--	"	Local board of health	--	Applies to tenants or owner occupied dwellings for first violation. For subsequent violations and other persons, penalty is criminal.
	Admin.	\$71-1725	\$1000/ violation	--	"	Commissioner	--	--
	Admin.	\$71-4003	\$500/day	--	"	Commissioner	--	General penalty statute to be used if no specific statute is available.

NEW YORK CIVIL PENALTY STATUTES (cont'd)

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$71-2103	\$10,000/violation; \$500/day thereafter	\$250	State comptroller, conservation fund or Taxation & Finance	Atty. Gen.	- -	May be settled or compromised by parties.
	Judicial	\$71-2111	\$2500/violation; \$500/day thereafter	--	"	"	- -	No compromise or settlement allowed.
	Admin.	Title 6 \$481.5	25% of deficiency of fee not paid, total; no more than 5% of deficiency of fee not paid per month up to 25% plus interest	--	State comptroller	Commissioner	Non-payment of fees due	If fee not paid within 45 days of given date, penalty of 5% per month imposed up to 25% of total deficiency plus interest.
WASTE	Admin.	\$71-2703	\$2500/violation; \$1000/day thereafter	--	State comptroller, conservation fund or Taxation & Finance	Commissioner,	- - Atty. Gen.	--
	Admin. Judicial	\$71-2705	\$25,000/day first violation; \$50,000/day for subsequent violation	--	Hazardous waste remedial fund	"	--	--
DRINKING H <sub>2</sub> O	Admin.	\$71-1115	\$1500	--	State comptroller	"	--	Also has criminal penalty of \$1000.
	Admin. Judicial	\$71-1127	\$500/violation; \$100/day thereafter	--	"	Atty. Gen.	--	Also applicable to other water statutes.
	Admin. Judicial	\$11-1103	\$200/day	--	"	Dep't of Health	--	--

**NEW YORK CIVIL PENALTY STATUTES (cont'd)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>NPDES, H<sub>2</sub>O</b>	Judicial	\$71-1929	\$10,000/day	--	State comptroller, conservation fund or Taxation & Finance	Atty. Gen. or health com- missioner of local government	Any violations which result in the death fish or shell- fish.	Penalty amount goes to conservation fund. May be settled or compromised.
	Admin. Judicial	\$71-1941	\$2500/violation; \$500/day thereafter	--	"	Commissioner, Atty. Gen.	Type & extent of damage, degree of care to prevent spill & efforts to mitigate damage.	Statute is for liquid spills if more than 1100 gallons are stored in bulk.
	Admin.	\$71-1105	\$500	--	State comptroller	Atty. Gen.	--	--
	Admin.	\$71-1107	\$5000	--	"	"	--	Statute applies to state employees as well as public and private contractors who disregard specifications of construction contracts.
	Judicial	\$71-1109	\$500/offense	--	"	"	--	Applies to any person or local public corporation.
	Judicial	\$71-1111	"	--	"	"	--	"
	Admin.	\$71-1121	\$1500	--	"	"	--	--
<b>TOXICS</b>	Judicial	\$71-3103	\$2500/ violation; \$500/day thereafter	--	State comptroller	Atty. Gen.	--	Statute deals with detergents and other cleansers.
	Admin.	\$71-3703	\$2500/ violation; \$500/day thereafter	--	State comptroller	Atty. Gen.	--	Statute applies to industrial and commercial users of hazardous substances.
	Judicial	\$71-3803	"	--	"	"	--	Statute deals with chlorofluorocarbon compounds.
	Admin. Judicial	\$71-3903	\$3000/ violation	--	"	"	--	May be compromised or settled. May recall any sewage system cleaners or additives as well.

**NEW YORK CIVIL PENALTY STATUTES (cont'd)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
	Judicial	\$71-3905	\$3000/ violation	--	" "	Atty. Gen., District Atty.	--	May recall any sewage system cleaners or additives as well.
WETLANDS	Admin. Judicial	\$71-2303	\$3000/ violation	--	State comptroller	Atty. Gen., commissioner, local government or District Atty.	--	Violator may be ordered to restore fresh water and tidal wetlands.
MISC.	Admin.	\$71-4103	\$1000 plus any fine imposed by other statutes	--	State comptroller	Atty. Gen.	Violation of chapter 72	Re regulatory program fees.
	Admin.	\$71-0201	25% of deficiency of fee not paid, total; no more than 5% of deficiency of fee not paid per month up to 25%, plus interest.	--	State comptroller	Commissioner	Non-payment of fees due.	If fee not paid within 45 days of given date, penalty of 5% per month imposed, up to 25% of total deficiency, plus interest.

**NORTH CAROLINA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Admin.	\$143-215.114	\$5,000/ violation and for each day of con- tinuing violation	--	--	Env'tl Mgmt Comm'n, Dep't of Natural Re- sources and Community Development	Degree and extent of harm, cost of rectifying damage, amount of money the violation saved by not having made necessary expenditures for compliance. Re permit and reporting violations.	Judicial enforcement available to recover assessed penalty. Atty. Gen. may seek injunc- tive relief.
<b>WATER</b>	Admin.	\$143-215.6; \$143-215.69 (b)	\$10,000/ violation and for each day of con- tinuing violation	\$100/day (see reg. \$0509: Penalties)	--	Env'tl Mgmt Comm'n, Superior court can enforce	Degree and extent of harm, cost of rectifying damage. Violations of effluent limita- tions, failure to obtain permit, permit violation, refusing lawful inspection, viola- tion of special order.	Judicial enforcement available to collect penalty. Atty. Gen. may seek injunctive and other necessary relief. See \$143-215.69 (b) re violations of water quality reporting.
<b>WASTE</b>	Admin.	\$130A-22 (a),(d),(g)	\$500/ day if non- hazardous waste; \$10,000/ day if hazardous waste	--	Haz. Waste Site Remedial Fund (up to \$200,000 cap)	Dep't of Human Resources, Sec'y may enforce in superior court to collect unpaid penalty.  Delegated to Head, Solid & Haz. Waste Mgmt Branch.	Nature of violation, violation's previous compliance record, degrees and extent of harm, cost of rectifying damage, failure to comply with waste mgmt rules, refusal of right of entry. Criteria for viola- tions of Act: type of violation, type of waste, duration, cause (whether negligent, inten- tional or reckless act), potential effect on public health and env't, effectiveness of violation's response	Civil action in superior court is available to recover administrative penalty if assessed person fails to pay (see \$130A-22(g)). Injunctive relief avail- able. Penalty stayed if admin. hearing for other than remission or reduc- tion (Reg. .0705). Depending on violation, Dep't may issue notice of assessment or give violation time to comply (Reg. .0703).

(continued)

**NORTH CAROLINA CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
						measures, private property damage. Criteria for violations of orders: subject matter of order, duration, cause, type of violation, effect on health and env't, effectiveness of response. Criteria for refusing to allow authorized right of entry: type of violation, duration of refusal, effect on health and env't, type of waste handled by violator at solid waste facility. (See esp. §§ .0700 et seq. Admin. Penalty Procedures of N.C. Admin Code.)	
<b>DRINKING WATER</b>	Admin.	\$130-166.54	\$5,000/violation and for each day of continuing violation	--	--	Sec'y of Dep't of Human Resources, Sec'y may enforce in superior court to collect unpaid penalty.	Violation of drinking water standards or other monitoring or reporting requirements. Judicial enforcement available. See \$130-166.54(c).
<b>OIL OR HAZ. SUBSTANCE DISCHARGES</b>	Admin.	\$143-215.91	\$5,000/violation	--	--	Env'tl Mgmt. Comm'n	Gravity of violation, previous compliance record of violator, amount spent to achieve compliance, estimated damages and other considerations. Intentional or negligent discharges of oil or hazardous substances; knowingly causing or permitting such discharge; failure to report discharge. Atty. Gen. may bring action to recover unpaid penalty.
<b>WATER, OIL, AIR</b>	Admin.	NC Admin. Code - Env'tl Mgmt Subch. 2J - Civil Penalties	\$5,000/day	--	--	--	Gravity of violation and degree and extent of harm; cost of rectifying damage; compliance history; ability to pay. These are the civil penalty regulations.



# NORTH DAKOTA CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$23-25-10	\$10,000/day	--	--	Atty. Gen. Dep't of Health	--	--
HAZ. WASTE	Judicial	\$23-20.3-09	\$25,000/day	--	--	"	--	Statute allows for interest- ed persons affected by violations to intervene if department brings suit. \$ allows for penalty of up to \$50,000/day if facts show extreme indifference to human life.
	"	\$23-20.3-07	\$5,000/day	--	--	"	--	Statute deals with monitoring & testing.
SOLID WASTE	Judicial	\$23-29-12	\$300/day	--	--	"	--	--
DRINKING H <sub>2</sub> O	Judicial	\$61-28.1-06	\$5,000/day	--	--	"	--	--
H <sub>2</sub> O POLLUTION, NPDES	Judicial	\$23-28-08	\$10,000/day	--	--	"	--	Fine of up to \$25,000/day can be levied for a willful violation.

# OHIO CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$3704.99(B)	\$25,000	--	--	Atty. Gen.	Knowing falsity in plans, data, records, etc. to be submitted to Director; emissions or permit violations.	--
SOLID WASTE	Judicial	\$3734.99	\$250/day	--	--	Atty. Gen., Director	Solid waste disposal violations.	--
HAZ. WASTE	Judicial	\$3734.13	\$10,000/ day	--	Hazardous "Waste Clean-up Special Account"	"	Hazardous waste violations.	--
DRINKING H <sub>2</sub> O	Judicial	\$6109.33	\$10,000/ day	--	State treasury	Atty. Gen.	Knowing falsities in documents.	--
NPDES H <sub>2</sub> O POLL., SANITATION	Judicial	\$6111.09 day	\$10,000/	--	State treasury	"	--	--
	Judicial	\$6111.99	\$6111.45 or .46; \$500.00; \$6111.42: \$100 first offense, \$150 thereafter; \$6111.07(C): \$25,000	--	--	"	--	Re solid waste disposal (\$6111.45, .46); re water planning (\$6111.42); re knowing falsities in reports or permit violations. (\$6111.07(C)).

**OKLAHOMA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL</b>	Judicial	<b>§1-1701 (Title 63)</b>	<b>\$10,000/day</b>	<b>\$200/day (criminal)</b>	--	District Atty.	Violation of code relating to water pollu- tion, sewage and discharge of pollutants.	This is a general statute which covers any sec- tion not containing penalty provisions of its own (e.g., drinking water violations). Includes civil and criminal penalties.
<b>AIR</b>	--	<b>§1-1802 (Title 63)</b>	--	--	--	--	--	Criminal penalties only.
<b>HAZ. WASTE</b>	Admin.	<b>§1-2012.1 (Title 63)</b>	<b>\$10,000/day</b>	--	Controlled Industrial Waste Fund	Dept. of Health	Notice of present viola- tion of rules, and failure to comply with order.	<u>Appeal</u> of assessed fines to District Court.
	Judicial	<b>§§1-2011, 1-2012 (Title 63)</b>	<b>\$10,000/day</b>	<b>\$200/day (criminal)</b>	--	District Attorney	Any violation of act or rules.	May also seek injunctions and temporarily suspend operating permit of a waste facility. Includes civil and criminal penalties.
<b>H<sub>2</sub>O, NPDES</b>	Judicial	<b>§926.10 (Title 82)</b>	<b>\$10,000/day</b>	--	--	Atty. Gen., district atty.	Violation of provisions or failure to perform duty under code.	Most of statute is criminal. May also seek injunctions. See also §1-1701, above.
	Judicial	<b>§937 (Title 82)</b>	--	--	--	Atty. Gen.	Death of fish or wildlife.	Criminal penalties and damages.

**OREGON CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL POLLUTION CONTROL</b>	Admin. Judicial	<b>\$468.130;</b> Div. 12, Admin. Rules <b>\$340-12- 055</b>	\$500/day except that oil discharges into water have max. penalty of \$20,000/violation and unpermitted waste discharges into air or water have \$10,000/day maximum penalty. See SS 468.130(1) and 468.140 (3).	- -	General Fund of State Treasury or to county of violation if re- covered by re- gional air quality control authority	Env'tl Quality Comm'n may institute legal and equitable enforcement proceedings (court may collect unpaid penalty as ex- ecution of judgment on record)	Consider: Prior violations, history of violator in tak- ing feasible steps to correct viola- tion; economic and financial condi- tions of violator; gravity and magni- tude of violation; whether violation was repeated or con- tinuous; whether cause of violation was unavoidable accident, or negligence or inten- tional act; oppor- tunity and degree of difficulty to correct; violator's cooperativeness and efforts to correct; cost to Dep't to invest- igate and correct; other relevant factors. See \$340-12-045: Mitigating and Aggravating Factors.	1. Re: Violations of statutory provisions listed in \$468.140. For inten- tional or negligent unlawful open field burning penalty is minimum \$20, maximum \$40 per acre burned (\$468.140 (5)). 2. Compromise or settlement of unpaid penalty available if approved by Comm'n (\$340-12-075). Penalty assessed if violation continues 5 days after receipt of notice of violation (\$340-12-040). Some types of violations can result in penalties without prior notice of violation.
<b>WATER SYSTEMS (Drinking Water)</b>	Admin.	<b>SS448.280,</b> <b>448.285</b>	\$500/ day	- -	General Fund of State Treasury	Asst. Dir. of State Health Div. (court may collect unpaid penalty as ex- ecution of judgment on record)	Factors: past history of person incurring penalty in taking all feasible steps to correct any viola- tions; prior viola- tions of statutes, rules, orders or permits re water system; economic and financial con- ditions of violator.	Re: Polluting, destroying or endangering water systems resulting from maintaining slaughter pens or stock- feeding yards or depositing unclear or unwholesome substances (violations con- stitute public nuisances). Violating rules re con- structing, operating or maintaining water systems. Penalty imposed may be remitted or mitigated consistent with public health and safety.

**OREGON CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>SOLID WASTE</b>	Admin. Judicial	\$459.995 (1); Div. 12, Admin. Rules \$340-12-065	\$500/day	\$25 to \$100/day	State treasury	Dep't of Env't'l Quality (Env't'l Quality Comm'n may institute legal and equi- table enforcement proceedings).	Violations re disposal, collec- tion, storage, reuse or recycling of solid waste. See General Criteria above.	See General Comment 2 above.
<b>HAZARDOUS WASTE</b>	Admin. Judicial	\$459.995 (2); Div. 12, Admin. Rules \$340-12-068	\$10,000/day	\$100 to \$2500/day	State treasury	"	Violations re generation, treat- ment, storage, disposal or transportation by air or water of hazardous waste. See General Criteria above.	See General Comment 2 above.
<b>AIR</b>	Admin.	Div. 12, Admin. Rules \$340-12-050	\$10,000/day	\$25 to \$ 100/day	General Fund or County	Dir. of Dep't of Env't'l Quality, Dir. of Regional Air Quality Control Auth.	Violations re noncompliance with permit or variance, operating source without permit, emission of ex- cessive air con- taminants, un- authorized open burning. See General Criteria above.	See General Comment 2 above.

**PENNSYLVANIA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial Admin.	\$4009.1, \$4009.2 \$4010	\$10,000 plus up to \$2,500/day of continuing violation	--	Clean Air Fund of State Treasury	Dep't of Env't'l Resources	Wilfulness of violation, damage to outdoor atmosphere or its uses. Wilfull- ness is not a pre- requisite.	Lien imposed upon real and personal property for non- payment of penalty,
<b>HAZ. WASTE</b>	Judicial Admin.	\$6018.605	\$25,000/ offense	--	Solid Waste Abatement Fund of State Treasury	"	Wilfulness, damage to air, land or other natural re- sources or their uses, cost of restora- tion and abatement, savings resulting to person in consequence of violation. Wilfull- ness or negligence irrelevant.	Judgment on property for nonpayment of penalty.
<b>NPDES, SEWAGE &amp; INDUSTRIAL WASTES</b>	Judicial Admin.	\$691.605	\$10,000/day	--	Clean Water Fund of State Treasury	"	Wilfulness of violation, damage to waters or their uses, cost of restoration. Wilfulness is not a prerequisite.	Judgment on property for nonpayment of penalty. Five-year statute of limitations for Dep't to act. \$691.602 provides for criminal penalties. \$691.605(b) relates to mining activities.
<b>DRINKING H<sub>2</sub>O</b>	Judicial Admin.	\$721.13	\$5000/day	--	Safe Drinking Water Account of State Treasury	"	Seriousness, culpability, violator's history, population affected.	--

**PUERTO RICO CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR/ GENERAL</b>	Admin.	\$1136(c)	\$25,000/day	--	Special Account of Board on Environmental Quality	Board on Env't'l Quality	Violation of chapter.	This is a general penalty statute covering the environmental field.
		\$1136(d)	\$50,000	--	"	"	Contempt of previous order for fines already imposed; recurrent acts.	--
<b>HAZ. WASTE</b>	--	--	--	--	--	--	--	Falls under above penalty statute with one additional criminal penalty regulation.
<b>DRINKING H<sub>2</sub>O</b>	Admin.	\$1559	\$5,000/day	--	Special Account of Board	Secretary of Board	--	
<b>H<sub>2</sub>O, POLLUTION</b>	Admin.	\$1518	\$50,000	--	Special Account of Board	Secretary of Board	Violation of chapter or regulation.	Statute is in addition to general penalty statute of Title 12, above.

# **RHODE ISLAND CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL</b>	Admin.	\$42-17.1- 2 (v)	\$500	--	State Treasury	Dir. of Dep't of Env'tl Mgmt	Violation of any law, rule, regulation or order of director, unless another penalty is provided elsewhere.	Statute provides for fine or imprisonment or both and is interpreted by state to authorize both civil and criminal penalties.
<b>HAZARDOUS WASTE</b>	Judicial Admin.	\$23-19.1- 17	\$10,000/ viola- tion and for each day of continuing violation	--	State Treasury, Env'tl Response Fund	Dir. of Dep't of Env'tl Mgmt, Env'tl Advocate (Atty. Gen. Office); outside counsel in cases of conflicting interest.	--	\$23-19.1-17.1 allows Dep't to seize certain property and to use property or sale proceeds from property to further haz. waste enforcement.
	Judicial Admin.	\$23-19.1- 14	\$10,000/year plus 7% interest per annum for payments past due. (See \$ 23- 19.1-14(B).)	--	"	"	--	Re: Applications, renewals, suspensions or revocations of permits: Applicants or haz. waste facility owners must pay for expenses incurred by Dep't in connection with facility.
<b>AIR</b>	Judicial Admin.	\$23-23- 14	\$500/day	--	State Treasury	Dir. of Env'tl Mgmt, Env'tl Advocate	Violations of orders.	Statute provides for fine or imprisonment or both and is interpreted by state to authorize both civil and criminal penalties.
<b>REFUSE DISPOSAL</b>	Judicial Admin.	\$23-18.9- 6	\$500	--	"	"	--	Re: Depositing of out-of-state refuse prohibited. Note that \$23-18.9-10 re construction of solid waste management facili- ties or installation of equipment without proper approval results in a penalty (\$500 fine or imprisonment for a maximum of 30 days, or both).
<b>SEWAGE SYSTEM CLEANERS</b>	Judicial Admin.	\$23-24.3-6		\$1,000	--	" Superior Court for Providence County	" ;	--



**RHODE ISLAND CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>SEPTAGE, INDUSTRIAL WASTES AND WASTE OIL</b>	Judicial Admin.	\$23-19.4- 4	\$100	--	"	"	For wilful violations.	Statute provides for fine or imprisonment or both and is interpreted by state to authorize both civil and criminal penalties. \$23-19.4-5 states that all compliance orders and their enforcement are in accordance with \$42-17.1-2, general powers of director.
<b>WATER</b>	Judicial Admin.	\$46-12-13	\$5,000/ day	--	State treasury	Dir. of Dep't of Env't'l Mgmt, Env't'l Advocate	--	--
<b>DRINKING WATER</b>	Judicial Admin.	\$46-14-2	\$20/day	--	"	Dir. of Health, Env't'l Advocate	For refusing or neglecting to comply with order to remove sewage, drainage or pollution matter that may impair the quality or purity of drinking water.	--
	Judicial Admin.	\$46-13-15	\$500/ day	--	State Treasury	Superior Court	Re public water supplies.	Statute provides for fine or imprisonment or both and is interpreted by state to authorize both civil and criminal penalties.
<b>DEPOSIT OF DIRT IN PUBLIC WATERS</b>	Judicial Admin.	\$46-6-1	\$100/ offense	--	1/2 to State, 1/2	Dir. of Env't'l Mgmt, Env't'l Advocate	For depositing mud, dirt -- or other substances in public tidewaters without proper authority.	--
	Judicial Admin.	\$46-6-4	\$20/ offense	--	State treasury	"	For depositing substances -- in the Blackstone or Seekonk Rivers.	--
	Judicial Admin.	\$46-6- 5, 6, 7	\$100/ offense	--	"	District court for the sixth division, Env't'l Advocate	For throwing various -- substances into Narragansett Bay, Providence Harbor or other waters as listed.	--
	Judicial Admin.	\$46-6-9	\$100/ day	--	"	Dir. of Env't'l Mgmt, Env't'l Advocate	For failure to comply -- with notice to remove obstruction.	--
<b>WETLANDS</b>	Judicial Admin.	\$2-1-23	\$1,000/ viola- tion	--	"	Dir. of Dep't of Env't'l Mgmt, Env't'l Advocate	For violation of a freshwater wetlands restora- tion order.	Note that \$2-1-24 provides for penalty (\$500 or 30-day imprisonment, or both) for violations of orders of Dir. of Natural Resources.
		\$2-1-26	\$100 plus liability to purchaser for considera- tion and damages.	--	"	Purchaser of land at issue.	For sale or transfer -- of land designated as wetland without written disclosure in purchase and sale agreement.	--

**SOUTH CAROLINA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial Admin.	\$48-1-330	\$10,000/ day	--	State treasury (1/2 inures to benefit of county (\$48-1-350))	Dep't of Health and Environmental Control (see \$48-1-220), atty. gen. and solicitors (see \$48-1-210)	Violating any provisions of chapter, or any rule or regulation, permit or order of Dep't. Unlawful discharge of organic or inorganic matter, or industrial or other wastes into the environment of the state. See \$ 48-1-90.	Penalties assessed under Poll. Control Act are held as debt payable to state by person charged and constitute a lien against that person's property. (See \$48-1-350.)
NPDES	Judicial Admin.	R61-9	"	--	"	"	NPDES permit violations	Regulation refers to \$48-1-330 (general civil penalty provision) and \$48-1-320 (criminal penalty).
DRINKING WATER	Judicial Admin.	\$44-55- 90	\$5,000/ day	--	State	Dep't of Health and Environmental Control, Atty. Gen.	Violations of \$44- 55-80: Unlawful acts (incl. failure to comply with laws, regulations, permits, or orders and rendering a public water supply inoperable or unuseable).	Statute includes protection of ground- water (UIC and LUST).
HAZARDOUS WASTE	Judicial Admin.	\$44-56-140	\$25,000/ day and for each day of continuing noncompliance	--	"	"	Failure to comply with laws, regula- tions, permits or orders; unlawful generation, treat- ment, storage, trans- portation or disposal of hazardous wastes (see \$44-56-130).	Violation of court order is deemed con- tempt of issuing court.

# **SOUTH DAKOTA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	34A-1-39	\$20,000	--	--	Atty. Gen.	--	--
HAZ. WASTE	Judicial	34A-11-20	\$10,000/day	--	--	Atty. Gen.	--	--
SOLID WASTE	Judicial	34A-6-46	\$1,000	--	--	Atty. Gen.	--	--
DRINKING H <sub>2</sub> O	Judicial	34A-3A-15	\$500/day	--	--	Atty. Gen.	--	--
NPDES, H <sub>2</sub> O	Judicial	34A-2-76	\$10,000/day	--	--	Atty. Gen.	--	--

**TENNESSEE CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Admin. Judicial	\$68-25-116	\$25,000/ day and for each day of con- tinuing violation	\$10.00	General Fund	Technical Sec'y of Air Poll. Con- trol Bd., duly exempted local poll. control program. Comm'r of Dept of Health and Env't may institute chan- cery court suit for collection or assessment of penalty. Bd. affirms, modifies, or sets aside penalty assess- ment, if appealed.	Character and degree of injury to, or inter- ference with the protec- tion of the health, general welfare and fare and physical property of the people; social and economic value of the air contaminant source; suit- ability or unsuitability of the air pollution source to the area in which it is located; technical practicability and economic reasonableness of reducing or eliminating the emission of such air contaminants; emission of such air con- taminants; economic benefit gained by the air contaminant source through any failure to comply; the amount or degree of effort put forth by the air contaminant source to attain compliance. See \$68-25-106.	Damages may include state investigation and enforcement ex- penses, remedial costs and natural resource damages. Financial inability of assessed person considered in mitigation. Non-jury trial for execution of judgment.
<b>WATER</b>	Admin. Judicial	\$69-3-115	\$10,000/ day	--	Water Quality Control Div.	District attys. general, atty. gen., Dep't (through atty. gen. and reporter) may institute chancery court assessment proceedings.	Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity; damages to the state, including compensation for loss or destruc- tion of wildlife, fish and other aquatic life resulting from the violation, as well as expenses involved in enforcing this section and the costs involved in enforcing this section and the costs involved in rectifying any damage; cause of the discharge of violation; the severity of the dis- charge and its effect upon the quality and quantity of the receiving waters; effectiveness of action taken by the violator to cease the violation; the technical and economic reasonableness of reducing or eliminating the discharge; and the social and economic value of the discharge source.	Re effluent limitations or water quality viola- tions, permit or order violations, failure of industrial POTW user to pay user or cost recovery charges, and for violations of pre- treatment standards or toxic limits. Note that \$69-3-107(16) lists as one of the duties of the Comm'r the authority to assess civil penalties in accordance with \$69-3- 115.

**TENNESSEE CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>DRINKING WATER</b>	Admin. Judicial	<b>\$68-13-713 (a)</b>	\$5,000/day and for each day of con- tinuing violation	\$50.00	Water Supply Div.	Comm'r of Health and Env't	Harm to public health or env't; whether penalty will be a substantial economic deterrent; economic benefit gained by violation; violator's efforts to remedy violation; extra- ordinary enforcement costs incurred by comm'r; amount of penalty set for specific categories of violations.	Violator also liable to state for damages (e.g., for investigation and enforcement) whether or not a civil penalty is assessed. When assess- ment has become final because of person's failure to appeal, comm'r may apply to court for execution of judgment. Criminal penalties and injunctive relief available as judicial remedies.
<b>SOLID WASTE</b>	Admin. Judicial	<b>\$68-31-117</b>	\$5,000/day and for each day of continuing violation	\$100	--	Comm'r, solid waste disposal control board. Comm'r may insti- tute chancery court assessment proceedings.	Harm to public health or env't, economic benefit gained by violation, efforts of violation to comply, extraordinary enforcement costs incurred by comm'r.	Violator also liable to state for damages whether or not civil penalty assessed.
<b>HAZARDOUS WASTE</b>	Admin. Judicial	<b>\$68-46-114 (b), (c)</b>	\$10,000/day and for each day of con- tinuing violation; \$500/ violation admin. penalty for non-discretionary violation.	--	Haz. waste remedial action fund (\$68-46-204)	Comm'r may insti- tute chancery court assessment proceedings.	Harm to public health or env't, economic benefit gained by violation, efforts of violation, to comply, extraordinary enforce- ment costs incurred by Comm'r.	Damages assessed may include reasonable investigation and enforcement costs and natural resource restoration.
	Judicial	<b>\$68-46-213</b>	\$10,000/day and for each day of continuing violation.	--	"	Atty. Gen. (chancery court), comm'r.	Failing, neglecting or refusing to comply with order of comm'r or solid waste control board.	Assessment includes original fee plus interest if appropriate.

**TEXAS CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>MINIMUM STANDARDS: SANITATION AND HEALTH PROTECTION</b>	Judicial	Art.4477-1, §24	\$200/day	\$10/day	--	Dept of Health Resources, city, county and district attorneys	--	Pertains to drinking water violations, protection of public water supplies, sewage, etc.
<b>AIR</b>	Judicial	Art.4477-5, §§4.01, 4.02 SB 725 (1985)	\$25,000/day and for each act of violation	\$50/day and for each act of viola- tion	General Revenue Fund of State (\$4.04(e)). If brought by local gov't, penalties divided 50% to general state fund and 50% to local gov't (\$4.04(f)).	Air Control Board, Executive Secretary (when authorized Board), Atty. Gen., local government atty. (if authoriz- ed; Board is indis- pensable party)	--	Threatened violations included; injunctive relief may also be obtained. These lawsuits are given precedence over other cases of a different nature on docket of appellate court (see §4.04(c)).
	Admin.	SB 725 (1985)	\$10,000/ violation per day	--	--	Air Control Board	Seriousness of violation, prior history, amount needed for deterrence, violation's efforts to correct, and any other matters as justice may require.	Air Control Bd. is authorized to issue compliance order where violation continues for more than 30 days.
<b>SEWAGE DISCHARGE INTO PONDS</b>	Judicial	Art.4477- 1a, §3	\$1000/day of continuing nuisance	--	--	Atty. General	--	Pertains to municipalities of 600,000 to 900,000 (in population) that fail to abate nuisances.
<b>SEWAGE DISCHARGE INTO PONDS</b>	Judicial	Art.4477- 1b, §4	\$10,000/day	\$1000/ day	--	Atty. General	--	Pertains to San Antonio's discharges of municipal sewage and waste sludges.
<b>SOLID &amp; HAZARDOUS WASTES</b>	Judicial	Art.4477- 7, §8	\$2000/day and for each act of violation; if hazardous waste: \$25,000/day and for each act of viola- tion	\$100/day and for each act of viola- tion; if hazardous waste: \$100/day and for each act of viola- tion	General Revenue Fund; if brought by local gov't, penalties divided 50% to state, 50% to local gov't	Atty. General at request of Commissioner or Executive Director, local gov't (Municipal and industrial haz. wastes are managed by the Texas Water Comm'n.)	--	Threatened violations included; injunctive relief may also be obtained. §325.222 - Enforcement Policy: Three-step process of seeking compliance includes (A) Advisory and Enforcement Letters, (B) Compliance Schedules and (C) Legal Action (See Tex. Admin. Code, Title 25, Pt. I, Ch. 325 Solid Waste Management, Subch. II - Surveillance and Enforcement.) Levels can be omitted if willful violation.

**TEXAS CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
OIL & GAS	Admin. Judicial	\$81.0531 of Title 3 (Nat. Res. Code)	\$10,000/day	--	If violator seeks judicial review penalty amount goes to comm'n for placement in escrow, or in a posted supersedeas bond.	Railroad Commission, Atty. General	History of previous viola- tions, serious- ness of viola- tion, hazard to health or safety of public, good faith of person charged.	Penalty assessed only after public hearing opportunity. Penalty may be refunded after judicial review.
	Judicial	\$91.459 (saltwater disposal pits)	\$10,000/act of violation or failure to comply	\$100/act of viola- tion or failure to comply	State Treasury: Saltwater Pit Disposal Fund	Atty. General	--	--
MINING	Admin. Judicial	\$131.2661 of Title 4 (Nat. Res. Code)	\$10,000/day	--	Escrow Account if penalty is con- tested.	Railroad Commission, Atty. General	History of previous violations, seriousness of violation, hazard to public health or safety, good faith of person charged.	Penalty assessed only after public hearing opportunity. Injunctive relief also. Penalty may be refunded after admin- istrative or judicial review.
WATER	Judicial	Ch.11-Water Rights, Subch. C- Unlawful Use, Diversion, Waste, Etc., \$11.082	\$1000/day	--	--	State Atty. General	--	Suit must be brought within 2 years of alleged violation.
	Judicial	Ch.12 - General Water Rights Pro- visions, \$12.141	\$1000/day and for each day of con- tinuing violation.	--	--	--	--	" "
	Judicial	Ch.26 - Water Quality Control (NPDES), §§26.122, 26.123	\$10,000/day and for each act of viola- tion (\$1000/ day if prior to delegation of NPDES authority)	\$50/day and for each act of viola- tion	General Revenue Fund; if local action, 50% to state and 50% to local govt.	Executive Director, Atty. Gen., local govt (if authorized), Parks and Wildlife Dept if activity affects aquatic life or wildlife.	--	Injunctive relief also; suit given precedence over other suits on appellate docket.

**TEXAS CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments	
--	\$26.268	\$2000/day and for each act of violation	\$100/day and for each act of violation	--	--	--	This section is cumulative of all penalties provided elsewhere. No liability if promptly reported and removed unless negligence was cause of spill.	
INJECTION WELLS	Judicial	\$27.101	\$5000/day and for each act of non- compliance	--	--	Executive Director, or Railroad Comm'n	--	
	Admin. Judicial	\$27.1011	\$10,000/day	--	Escrow account if penalty is contested, or supersedes bond.	Railroad Comm'n, Executive Director, Atty. General	History of previous violations, seriousness of violation, public health or safety hazard, good faith of permittee or charged.	Penalty assessed only after public hearing opportunity. Judicial review available. Injunctive relief also. Penalty may be refunded after judicial review.
WATER WELLS	Judicial	\$28.061	\$10,000/day and for each act of non- compliance	--	State treasury	Atty. Gen.	--	Injunctive relief also.
	"	\$28.066	\$1000/ violation	\$100/ violation	local gov't	local gov't	--	Re: Denying access to property or records.
SALT WATER HAULERS	Admin. Judicial	\$29.047	\$10,000/day for each violation	--	Escrow account if penalty is contested, or supersedes bond.	Railroad Comm'n, Atty. Gen.	History of previous viola- tions, serious- ness of viola- tion, public health or safety hazard, good faith of permittee or person charged.	Penalty assessed only after public hearing opportunity. Judicial review available. Injunctive relief also. Penalty may be refunded after judicial review.



**UTAH CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial	\$26-13-18	\$10,000/day;	--	--	Atty. Gen. County Atty.	--	Must establish violation beyond a reasonable doubt.
			\$25,000/day (knowing violation of SIP);					
			\$50,000/day (second offense)					
<b>SOLID/HAZ. WASTE</b>	Judicial	\$26-14-13	\$10,000/day;	--	--	"	--	--
			\$15,000/day (Knowing violation);					
			\$25,000/day (second offense)					
<b>DRINKING H<sub>2</sub>O</b>	Judicial	\$26-12-10 (1)	\$1,000/ day	--	--	"	Violation of statute, order or rule.	--
	Judicial	\$26-12-10 (2)	\$5,000/day	--	--	"	Willfull violations of rules.	--
<b>WATER POLLUTION</b>	Judicial	\$26-11-16 (1)	\$10,000/day	--	--	"	Violation of statute in general.	--
	Judicial	\$26-11-16 (2)	\$25,000/day, first offense, \$50,000/day subsequent offenses	--	--	"	Willfull discharge of pollutants, or violation of pretreatment standard or toxic effluent standard.	--

**VERMONT CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>GENERAL</b>	Judicial	<b>\$2822</b> (Title 3- Executive)	\$10,000/ violation	\$100/ violation	State Treasury	Sec'y of Agency of Env't'l Con- servation, Atty. General	--	Where violation of order is of continuing nature, each day during which such violation continues after date fixed by court for correction or termination of violation shall constitute a separate offense except during the time appeal may be taken or is pending.
<b>AIR</b>	Judicial	<b>\$588</b> (Title 10- Conservation)	\$2,000	--	"	Sec'y of Agency of Env't'l Con- servation, Atty. General	--	Where violation of agency order continues after rea- sonable time for com- pliance specified in order, each 30-day period of noncompliance is separate violation. If violation of emergency order, each 5-day period of noncompliance is separate violation. Judicial review available.
	Judicial	<b>\$583</b>	\$100	--	"	"	Knowing violations of confidential records provision.	--
<b>STREAM FLOW</b>	Judicial	<b>\$1025</b> (Title 10)	\$1,000/ violation and for each day of con- tinuing violation	--	"	"	Prohibited alteration of a water course.	--
<b>BEVERAGE CONTAINERS</b>	Judicial	<b>\$1527</b> (Title 10)	\$1,000/ violation	--	"	"	--	Container deposit law.

**VERMONT CIVIL PENALTY STATUTES (continued)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>HAZ. WASTES</b>	Judicial	<b>\$6612</b> (Title 10)	\$10,000/ violation and for each day of continuing violation.	--	"	Sec'y of Agency of Env'tl Con- servation, Atty. General	--	--
	Judicial	<b>\$6608a</b>	--	--	"	Comm'r of Agric.	--	This section provides that procedures governing waste economic poisons are to be issued con- currently by comm'r of agric. and sec'y of agency of env'tl conservation. Comm'r of agric. has enforcement authority.
<b>WATER; SUBDIVISIONS</b>	Judicial	<b>\$1215</b> (Title 18-Health)	\$200	\$20	"	Sec'y of Agency of Env'tl Conser- vation, Atty. General	Unlawful "sewage or other polluted matter" discharges into pond or lake of 1000 acres or more.	--
	Judicial	<b>\$1219</b>	\$1,000 secured by lien against property.	--	"	"	Unlawful subdividing of lands.	--
<b>UNDER- GROUND LIQUID STORAGE TANKS</b>	Judicial	<b>\$1935</b> (Title 10)	\$10,000	--	"	Sec'y of Agency of Env'tl Conser- vation, Atty General	--	--

**VIRGIN ISLANDS CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>NPDES/ SANITARY</b>	Judicial	\$190	\$50,000	\$2,500	Gen. Fund	Comm'r of Conservation and Cultural Affairs/Comm'r of Public Works	Violation of rules and regulations.	--
<b>DRINKING H<sub>2</sub>O</b>	Judicial	\$1309	\$5,000	--	Gen. Fund	Comm'r of Cons. and Cult. Affairs.	Violation of rules and regulations.	--

**VIRGINIA CIVIL PENALTY STATUTES**

	Type	Section	Max\$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Judicial	\$10-17.23 (B)	\$25,000/ day	--	As directed by court to state or local treasury.	Atty. Gen., State Air Poll. Control Board.	Size of business; severity of economic impact of penalty on business; seriousness of violation.	*Civil charges in specific sums* (not to exceed \$25,000) may be ordered by Bd. (administratively) in lieu of civil penalty (assessed judicially), upon consent of violator. See \$10-17.23(C).
	Admin.	\$10-17.18: 3	--	--	State treasury	Air Poll. Control Board	--	The state has authority to carry out the non- compliance penalty provisions in con- formance with \$120 of the federal Clean Air Act. After the Board determines the penalty amount the Board peti- tions the appropriate circuit court for an order requiring payment of the noncompliance penalty in such sum as the court deems appropriate. This order is enforceable as a judgment.
<b>SOLID AND HAZARDOUS WASTES</b>	Judicial	\$32.1- 186	\$10,000/ day	--	State treasury (general fund)	State Bd. of Health represented by Atty. Gen.	For violations of solid and haz. waste provisions.	--
<b>GENERAL</b>	Judicial	\$32.1-27	\$10,000/day/ violation	--	Treasury of county, city or town as directed by court.	Atty. Gen. of city, town	--	For violation of court ordered remedy.
<b>DRINKING WATER</b>	Judicial	\$32.1-176	\$5,000/day	--	State treasury	State Bd. of Health represented by Atty. Gen.	--	--
<b>NPDES</b>	Judicial	\$62.1-44. 32 (a)	\$10,000/day	--	At judge's dis- cretion to treasury of city, county or town or state treasury.	Atty. Gen.	Violation of chapter or any final order.	--

**VIRGINIA CIVIL PENALTY STATUTES (cont'd)**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>OIL POLLUTION</b>	Judicial	<b>§62.1-44. 34:4</b>	a. up to 2500 gallons \$250	--	General fund, then into Oil Spill Contingency Fund at Governor's discretion.	Atty. Gen.	Consider: appropriateness of penalty to size of business; effect of penalty on ability to con- tinue business; gravity of viola- tion; circumstances which made reporting difficult or impossible; other mitigating factors.	Provisions for failure to report oil spills.
			b. up to 10,000 gallons \$500 c. over 10,000 \$10,000					

**WASHINGTON CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
<b>AIR</b>	Admin.	\$70.94.431	\$1000/day and for each day of continuing violation (\$70.94.431 (1)); \$5000 if Dir. requested by Bd. of local authority or if penalty needed for effective enforcement. (\$70.94.431(2))	--	General fund of state treasury or if recovered by local authority: 50% to authority treasury, 50% to cities within authority on pro rata basis as each contributes to support of authority.	Air. Poll. Control Authorities, Dir. of Dept of Ecology; Atty. Gen. or atty. for local Bd. may institute collection proceedings for unpaid penalties.	Violations of state clean air act or any rules or regulations thereunder.	If prior penalty for same violation has been paid to local authority, penalty under \$70.94.431 (2) shall be reduced by amount of payment. Maximum penalty for opacity standard violation is \$400/day. Liens on vessels available to secure penalties. For remission and mitigation provisions see \$70.94.431 (4).
<b>WATER</b>	Admin.	\$90.48.144	\$10,000/day and for each day of continuing violation thereafter (due and payable in 30 days unless appeal is taken)	--	General fund of state treasury	Dep't of Ecology; Atty. Gen. may recover natural resource damages and may institute penalty collection proceedings in superior court if requested by dir. of Dept of Ecology.	Waste discharge permit violation; conducting commercial or industrial operation or point source discharge operation without permit, or any other violation of \$90.48 or rules or orders thereunder.	Natural resource damages recoverable under \$90.48.142 (money paid to state game fund, dept of fisheries or other agency with jurisdiction over damaged resource). Remission or mitigation of penalty is available under \$90.48.144 (3).
<b>OIL DIS-CHARGES</b>	Admin.	\$90.48.350	\$20,000/violation per day	--	General fund of state treasury (to credit of coastal protection fund (see \$90.48.390).	Dir. of Dep't of Ecology; Atty. Gen. may enforce collection in superior court.	Intentional or negligent oil discharge. Criteria: gravity of violation, previous record of violation in complying or failing to comply, and other appropriate considerations.	Violator also liable for cleanup costs. See e.g., \$90.48.335, 90.48.336 and 90.48.338. Remission, mitigation and discontinuance of prosecution available.
<b>WATER RIGHTS</b>	Admin.	RCW 43.03B.335	\$100/day	--	General fund of state treasury	Atty. Gen. enforces collection of penalty assessed by Dept of Ecology.	Violations of surface and groundwater resource codes, e.g., unauthorized withdrawal.	Remission and mitigation available.

**WASHINGTON CIVIL PENALTY STATUTES (continued)**

Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
HAZARDOUS WASTE	Admin. \$70.105. 080 (1)	\$10,000/day and for each day of con- tinuing violation.	--	Haz. Waste Control and Elimination Account of general fund	Dep't of Ecology; Atty. Gen. may collect unpaid penalties.	Failure to comply with chapter pro- visions or rules. Wash. Admin. Code \$ 173-303-950 lists violations: offering or transporting dangerous waste to unpermitted facility; unpermitted handling (transferring, treating, storing or disposing) of dangerous wastes; and falsely representing information in any com- pliance documents.	Remission and mitigation of penalties available. Note: Wash. Admin. Code \$173-301-825 states that the jurisdic- tional health dept shall enforce solid waste mgmt requirements on local level.
	Admin. \$70.105. 095 (2)	\$10,000/day of continued noncom- pliance.	--	"	"	Failure to take corrective action specified in com- pliance order.	In addition, Dep't may suspend or revoke any permits and/or certifica- tes issued under chapter provisions.
	Admin. \$70.105 A. 080	\$500/day fees and interest due and owing are unpaid.	--	"	"	Re: Fees for opera- tion of facilities for treating, stor- ing or disposing of hazardous wastes.	Fees bear interest at 9% per annum for each month (or portion there- of), that fee is not paid.



**WEST VIRGINIA CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
AIR	Judicial	\$13-20-8	\$1000/day	--	General Fund	Air Police Control Comm'n	Failure or refusal to comply with a final order	
HAZ. WASTE	Judicial	\$20-5E-16	\$25,000/day	--	W.V. Hazardous Waste Emergency Response Fund	Dep't Chief	--	--
	Judicial	\$20-5E-17	\$5,000/day	--	"	"	--	Used only for imminent and substantial hazards.
SOLID WASTE	Judicial	\$20-5F-6	\$10,000/day	--	"School Fund"	Dep't Chief	--	Solid waste only.
DRINK. WATER	--	--	--	--	--	--	--	See NPDES.
NPDES	Judicial	\$20-5A-17	\$10,000/day	--	"School Fund" W.V. CONST. Art. 12, §5	Dep't Chief	Violating effluent limitations, rules of board, provisions of article, terms of the permit, and orders of Board and Chief.	--

**WISCONSIN CIVIL PENALTY STATUTES**

	Type	Section	Max \$	Min \$	Where \$ Go	Who Enforces	Criteria	Comments
GENERAL	Judicial	\$144.99	\$5000/ violation/ day	\$10/ violation/ day	School fund (Wis. Const.)	Atty. Gen. (Dep't of Justice)	--	This is a General Penalties provision.
	Judicial	\$144.98	\$10,000 or double fee (greater of two)	\$200/ offense	"	"	--	Re reporting requirements for assessing fees.
AIR	Judicial	\$144.428	\$25,000/ violation/ day	\$10/viola- tion/day	"	"	--	--
	Judicial	\$144.385	\$50,000/ violation/day	\$25,000/ violation/day	"	"	500,000 tons/ annually for sulfur dioxide.	Applies to major utilities.
HAZ. WASTE	Judicial	\$144.74 (2)	\$25,000/day	--	--	"	--	Intentional violations result in criminal penalties.
DRINKING H <sub>2</sub> O	Judicial	\$144.027 (19)	\$1,000	\$100	Owner of well or water source	Private citizens; Dept. of Justice	Causes or furthers well contamination or submits fraudulent claim.	Applies to private water supply grants. General penalties statute applies to regulation of public and private water supplies.
NPDES	Judicial	\$147.21 \$147.23	\$10,000/day cost of clean- up of discharge	--	School Fund	Atty. Gen. (Dep't of Justice)	--	Can recover investigation & costs; relates to water quality.
SEWAGE DISCHARGE; DRAINAGE	Judicial	\$144.05	\$500/ violation- per day	\$100/ violation per day	"	Owner of land or city or village involved.		Re sewage discharge into certain lakes. Forfeitures enforced by Atty. Gen. For damages or injunction only.

# WYOMING CIVIL PENALTY STATUTES

	Type	Section	Max \$	Min \$	Where \$ Go	Enf. Enforces	Criteria	Comments
GENERAL	Admin.	\$35-11-901, \$35-11-902	\$10,000/day	--	General Fund	Dep't of Envtl Quality	--	Violations which result in death of fish or wildlife result in additional penalties for reasonable value of fish or wildlife destroyed.
AIR	"	"	"	"	"	"	"	"
HAZ. WASTE	"	"	"	"	"	"	"	"
DRINKING H <sub>2</sub> O	"	"	"	"	"	"	"	"
NPDES, H <sub>2</sub> O	"	"	"	"	"	Adm'r of Water Quality Div. delegates en- forcement authority to municipalities, water and sewer districts or counties.	"	"