

CHAPTER 10
ADMINISTRATIVE PENALTIES
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—10.1(455B) Scope. Iowa Code section 455B.109 authorizes the assessment of administrative penalties for violations of Iowa Code chapter 455B or rules, permits and orders promulgated or issued pursuant to 455B. This rule describes the policies and procedures for assessing such penalties.

567—10.2(455B) Criteria for screening and assessing administrative penalties. All formal enforcement actions are processed through the environmental protection division administrator of the department. The administrator shall screen each case to determine the most equitable and efficient means of redressing and abating the violation. In evaluating a violation for purposes of screening the violation to determine which cases may be appropriate for administrative assessment of penalties or for purposes of assessing administrative penalties, the department will consider among other relevant factors the following:

10.2(1) Costs saved or likely to be saved by noncompliance by the violator. Where the violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.

10.2(2) Gravity of the violation. Factors include but are not limited to:

- a.* The actual or threatened harm to the environment or the public health and safety.
- b.* Involvement of toxic or hazardous substances or potential long-term effects of the violation.
- c.* The degree to which ambient or source-specific standards are exceeded, where pertinent.
- d.* Federal program priorities, size of facility, or other pertinent factors.
- e.* Whether the violation is repeated and whether it violates an administrative or court order.
- f.* Whether the type of violation threatens the integrity of a regulatory program.
- g.* Expenses or efforts by the government in detecting, documenting, or responding to a violation.

10.2(3) Culpability. Factors include but are not limited to:

- a.* The degree of intent or negligence. The standard of care required by the laws of the state of Iowa will be considered.
- b.* Whether the case involves false reporting of required information, or tampering with monitoring devices.
- c.* Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

10.2(4) The maximum penalty authorized for that violation under Iowa Code chapter 455B. The penalty provisions of chapter 455B establish different maximum penalties for different categories of violation, for example: \$500 for flood plain and water rights (455B.279); \$1,000 for hazardous condition notification (455B.386); \$5,000 for solid waste (455B.306), wastewater and drinking water (455B.191), and underground tanks (455B.477); \$10,000 for air pollution (455B.146) and hazardous waste (455B.417 and 455B.454); and more severe criminal sanctions for culpable water, hazardous waste, and underground tank violations. These penalty provisions also authorize penalties for each day of violation, which for an ongoing violation can be substantial. Thus, the department will consider not only the maximum daily penalty in the Code for that type of violation, but also the maximum penalty for cumulative violations under consideration.

10.2(5) Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or by others similarly situated.

10.2(6) Other relevant factors. The department will consider other relevant factors which arise from the circumstances of each case.

10.2(7) This screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action, nor does this procedure require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

567—10.3(455B) Assessment of administrative penalties. Except for operator discipline, administrative penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements which have been violated, and a general rationale for the prescribed penalty. The order may include cumulative penalties up to \$10,000 for multiple violations. The order also may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions, and is subject to normal contested case and appellate review. Operator discipline is governed by 567—Chapter 81, Iowa Administrative Code.

10.3(1) *Minimum penalty.* No penalty may be assessed unless the cumulative amount is \$50 or more.

10.3(2) *Determination of amount.* The amount of penalty for each day of violation shall be determined from evaluation of the factors outlined in 10.2(1) to 10.2(6). The actual or reasonably estimated economic benefit shall always be assessed. An additional amount up to \$3,000 shall be assessed depending on the gravity factors, 10.2(2) and 10.2(4), and an additional amount of up to \$3,000 shall be assessed depending on the culpability factor, 10.2(3). The penalty may be increased or discounted up to \$1,000 due to aggravating or mitigating factors, respectively. Notwithstanding the foregoing statements, the statutory penalty level shall not be exceeded.

These rules are intended to implement Iowa Code section 455B.109.

[Filed 7/12/85, Notice 5/8/85—published 7/31/85, effective 9/4/85]

[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]

[Filed 8/28/92, Notice 7/8/92—published 9/16/92, effective 10/21/92]