

Penalty Policy Development – Base Liability Factors

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Section 66641.9

“In determining the amount of administrative civil liability, **the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution**, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution 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.”

The Audit Recommendation

To ensure that it maximizes the efficiency and effectiveness of its enforcement and permitting programs, the commission should take the following actions by January 2020:

- Create a penalty calculation worksheet. The commission should require the worksheet's use for all enforcement actions that will result in fines or penalties, and it should create formal policies, procedures, and criteria to provide staff with guidance on applying the worksheet.

Factors common to many policies

- Consideration of harm or potential for harm

Includes:

- Harm to the environment
- Significance/status of resources at issue
- Harm to human health
- Quantity of discharge, extent of impact, or severity of damage at issue
- Susceptibility to clean-up or remediation

- Consideration of impact to regulatory program

Includes consideration of the importance of the requirement at issue and extent of deviation

Should staff develop a scoring system to rank or score the gravity of violations as part of the development of a penalty policy or penalty matrix?

What criteria should be used for the ranking or scoring of violations based on gravity?

Extent of risk created? Resources at issue? Quantity of the fill? Extent of public access impacted? Importance of the regulatory requirement at issue?

What should be the possible range employed in a ranking or scoring system?

See EPA CWA policy – 0-20 to provide “broad ranges for the factors to afford broad discretion to assess the appropriate penalty”

Compare Connecticut DEP – Using a score between 0 and 3 for each factor

Should staff develop two different scoring or ranking methods to apply separately to public access violations and violations involving fill of the bay?

Should staff attempt to set a specific gravity score or ranking level for certain violation types, rather than using several factors and employing an individualized calculation in each case?

Note NOAA schedule of offenses

Additional questions or comments?