

Administrative Actions – State Penalties

Section 324.XXXXX Administrative Actions – State; Penalties

- (1) Failure to comply with any requirement, submittal, or demand under this part constitutes a violation of this part. If any obligation is not completed or any required submittal under sections xxxxx [*Inquiry*], [*Due Care Obligations*], [*Release Reporting*], [*Remedial Obligations*], [*Immediate Response Activities*], [*Facility Determination Notification*], and [*MDEQ Demand for Response Activity*] is not provided during the time required, the department may impose a penalty for a violation of this part. The department may impose a separate penalty for each separate violation. The penalty imposed shall be according to the following schedule; however, an instant fine and an accruing fine shall not be assessed for the same violation for the same day.
 - (a) An instant flat fine not less than \$100.00 and not more than \$1,000.00 for one day of the violation.
 - (b) An instant one time fine not more than \$25,000.00 for a violation that cannot be corrected including destruction of documents required to be retained pursuant to subsection xxxxx(1) [*Document Retention and Access to Information*].
 - (c) An accruing fine of not more than \$100.00 per day for the first 7 days of the violation
 - (d) An accruing fine of not more than \$500.00 per day for days 8 through 14 of the violation.
 - (e) An accruing fine of not more than \$1,000.00 per day for each day beyond day 14 of the violation.
 - (f) Not more than three times subsections (1)(b) through (d) for failure to comply with section xxxxx [*Source Removal*] and the person who is liable did not receive authorization from the department for source control in lieu of source removal.
- (2) Penalties imposed under subsection (1) shall be increased according to the following schedule, if the facility is located within a designated well head protection zone, or impacts a groundwater aquifer that serves as a potable water supply or a Great Lake or its connecting waters:
 - (a) Failure to comply with subsection xxxxx (Controlled Risk - categories 3-5) shall be two times the amount provided in subsection (1).
 - (b) Failure to comply with section xxxxx (Uncontrolled Risk - category 2) shall be five times the amount provided in subsection (1).
 - (c) Failure to comply with subsection xxxxx (Uncontrolled risk - category 1) shall be ten times the amount provided in subsection (1).
- (3) An appeal of an administrative penalty imposed under this part may be taken pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, as amended, Michigan Compiled Laws 600.631. In establishing that the penalty applies, the department must demonstrate that the requirement or deadline was not met pursuant to the statutory requirements.
- (4) Any judicial action regarding a penalty imposed under this section shall be limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the action. In considering objections raised in a judicial action under this section, the court shall uphold the state's decision unless the objecting party can demonstrate based on the administrative record that the decision was

arbitrary and capricious, or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

- (5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the cleanup and redevelopment fund, environmental response subaccount created under subsection xxxxx(4) [*Cleanup and Redevelopment Fund (4)*].
- (6) This section does not prohibit enforcement actions under other state or federal laws applicable to an activity described in this section.