

	<b>OFFICE OF DRINKING WATER AND MUNICIPAL ASSISTANCE POLICY AND PROCEDURE</b>		DEPARTMENT OF ENVIRONMENTAL QUALITY
<b>Original Effective Date:</b> July 1, 1999  <b>Revised Date:</b> June 15, 2000  <b>Reformatted Date:</b> January 24, 2013	<b>Subject:</b> Administrative Fines – Violation of State Drinking Water Standards  <b>Division/Office and Program Names:</b> ODWMA-Public Water System Supervision Program		<b>Category:</b> <input type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Noninterpretive <input checked="" type="checkbox"/> External/Interpretive
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#### **INTRODUCTION, PURPOSE, OR ISSUE:**

Drinking water standards are established for public water supplies under the Safe Drinking Water Act, 1976 PA 399, as amended (Act 399). Administrative fines are established under amendments to Act 399 (1998 PA 56) for those water supplies that fail to meet state drinking water standards. These fines are to be used as a tool for the DEQ and their authorized agents to promote compliance and meet regulatory requirements.

Exposure to drinking water that exceeds a state drinking water standard puts the public health at risk. Suppliers of water to the public are responsible to comply with regulations to construct, operate, and maintain drinking water systems in a manner that prevents violations of drinking water standards and to take immediate action to protect public health, issue public notice (PN), investigate, and resolve such violations if they occur.

The exceedance of a state drinking water standard can occur even though the water supplier has complied with regulations, procedures, and good practices; and a violation can continue even though the supplier follows all DEQ rules and recommendations to find and correct the problem. In such cases, administrative fines are normally not appropriate. However, suppliers of water that fail to exercise due diligence to prevent, report, or resolve a violation of state drinking water standards or fail to issue PN of the violation of state drinking water standards are subject to administrative fines in accordance with this policy.

This policy replaces Drinking Water and Radiological Protection Division policy DWRP-03-012, Administrative Fines – Violation of State Drinking Water Standards, dated July 1, 1999, Revision #1 dated June 15, 2000.

#### **AUTHORITY:**

Safe Drinking Water Act, 1976 PA 399, as amended

#### **DEFINITIONS:**

"Contributory category fine" – an administrative penalty issued for failure to comply with a regulation, policy, or procedure resulting in a condition that could have caused or contributed to

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the violation of a state drinking water standard or increased public exposure to water exceeding a state drinking water standard.

"Negligent category fine" – an administrative penalty for each day the supplier of water fails to comply with a DEQ directive, compliance schedule, consent agreement, or order; fails to issue PN; or fails to minimize public exposure associated with violation of a state drinking water standard.

"State drinking water standard" – quality standards setting limits for contaminant levels or establishing treatment techniques to meet standards necessary to protect public health.

"Tier 1 PN" – a notice informing the public of a violation of a drinking water standard with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the DEQ.

"Tier 2 PN" – a notice informing the public of a violation of a drinking water standard, except where a Tier 1 PN is required.

**POLICY:**

**1. Contributory Category Fines**

Issue a contributory category fine to a water supply when the DEQ determines the supply's action or inaction may have:

- a. Contributed to a violation of a state drinking water standard; or
- b. Increased exposure to water exceeding a state drinking water standard.

Examples of actions or inactions that warrant contributory category fines are:

- a. Putting a public water system into service without DEQ approval.
- b. Failure to properly disinfect.
- c. Constructing or altering a water system in violation of Act 399.
- d. Failure to operate and maintain a well, distribution system, or treatment system in accordance with Act 399.
- e. Failure to maintain optimal corrosion control treatment that results in exceedance of a lead or copper action level.

Calculate the contributory category fine, not on a per day basis, but rather per violation of a drinking water standard where there are contributory actions or inactions. Increase the fine amount based on the number of contributory actions or inactions.

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For contributory category fines, the fine amounts are based on the following table:

<b>Contributory Category Fines</b>	<b>For supplies serving...</b>	
	<b>Not more than 10,000 people</b>	<b>10,000 or more people</b>
a. A minimum contributory fine applies when there is a single action or inaction that contributed to the violation. The minimum fine is...	\$400.00	\$1,000.00
b. For each additional action or inaction that may have contributed to the violation, an additional fine may be added to the minimum fine. This additional fine is...	\$200.00	\$400.00
c. The maximum fine per drinking water standard violation is...	\$1,000.00	\$2,000.00

## 2. Negligent Category Fines

Issue a negligent category of a fine to a water supply after a violation of a state drinking water standard has been identified and the water supply has failed to comply with any of the following to minimize public exposure associated with exceedance of a state drinking water standard

- a. A DEQ directive
- b. Compliance schedule
- c. Consent agreement
- d. PN requirements
- e. Order

Examples of scenarios that warrant negligent category fines are:

- a. A water supply that was required to replace a defective vent on its elevated tank by a specific date and fails to comply with the compliance schedule; subsequently, a bird entered the vent causing a violation of the drinking water standard for coliform bacteria.
- b. A water supply with a maximum contaminant level violation for coliform bacteria was ordered to flush the water system and chlorinate and failed to comply with that requirement.
- c. A water supply exceeds turbidity limits after missing a deadline to complete specific improvements that would have eliminated or minimized this turbidity excursion.
- d. A water supply that exceeds drinking water standards and fails to comply with public notice requirements after being notified of the requirement.

Violations and situations that require a Tier 2 PN represent a less imminent health threat than those that require a Tier 1 PN. Therefore, the negligent category fines are less severe for failure to issue a Tier 2 PN.

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A negligent category fine is calculated on a per day basis according to the following table:

Negligent Category Fines	For supplies serving...	
	Not more than 10,000 people	10,000 or more people
a. The fine per day per violation is...	\$1,000.00	\$2,000.00
b. The total per violation amount may not exceed ...	\$2,000.00	\$10,000.00
c. The fine per day per Tier 2 PN violation is ...	\$400.00	\$1,000.00
d. The total per Tier 2 PN violation amount may not exceed ...	\$800.00	\$5,000.00

**3. Disputed Fines**

When administrative fines are assessed but disputed by the water supply, give the water supply an opportunity to resolve the dispute. If the case is not resolved through informal means, the ODWMA or local health department (LHD) or its authorized agent will schedule a hearing to resolve the case as outlined in the Administrative Procedures Act, 1969 PA 306, as amended.

**4. Ongoing Violations of Drinking Water Standards**

The ODWMA or LHD should pursue enforcement actions against a water supply or reassess the source of supply or treatment required if the supply repeatedly violates drinking water standards or associated public notification requirements.

**5. Voiding a Fine:**

A fine may be voided before or after a requested hearing, with supporting documentation, if the fine is found to have been issued based on incorrect information or no violation of a state drinking water standard has occurred. Other compelling reasons or extenuating circumstances beyond the reasonable control of the water supply requires the approval of either the Field Operations Section Chief for Community Water Supply (CWS) or the Environmental Health Section Chief in consultation with the appropriate LHD Environmental Health Director for noncommunity water supply (NCWS).

**PROCEDURES:**

WHO	DOES WHAT
ODWMA staff for CWS, or the LHD staff for the NCWS	<p>Determines violation has occurred.</p> <p>For CWS violations, ODWMA staff forward the request for fine to the Lansing Central Office CWS program staff for approval. Lansing Central Office CWS program staff approves and sends to the Administration Section for invoice. For NCWS, LHD forwards citation including fine to supply. Forwards copy to Administration Section.</p> <p>Recommends voiding a fine requiring supervisor approval.</p>

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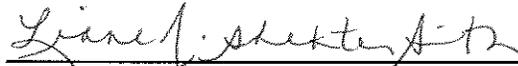
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WHO	DOES WHAT
Administration Section	For CWS, creates the invoice for the administrative fine and mails it to the water supply. For NCWS, creates file in anticipation of payment of fine.
Field Operations Section Chief for CWS or Environmental Health Section Chief in consultation with the LHD Environmental Health Director for NCWS	Review and approve voiding a fine.
ODWMA employee for CWS program, or the LHD staff for the NCWS Program	Resolves issues if supply believes the fine is in error or should not be issued.  Holds an informal meeting among affected staff, the supply and a reviewing officer to provide an opportunity for the supply to show compliance.
Reviewing Officer	Hears both positions presented at the informal meeting. Writes memo to ODWMA Chief with recommendations. Drafts letter for ODWMA Chief's signature to the supply with findings.

**REFERENCES:**

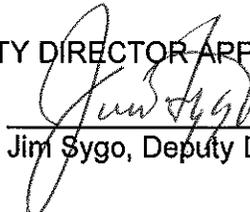
Act 399, Section 7 being MCL 325.1007.

**OFFICE CHIEF APPROVAL:**

  
\_\_\_\_\_  
Liane J. Shekter Smith, P.E., Chief  
Office of Drinking Water and Municipal Assistance

1/18/2013  
\_\_\_\_\_  
Date

**DEPUTY DIRECTOR APPROVAL:**

  
\_\_\_\_\_  
Jim Sygo, Deputy Director

1/24/2013  
\_\_\_\_\_  
Date