

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Point and Non-Point Source Management

DOCUMENT NUMBER: 362-4180-006

TITLE: Civil Penalty Assessment Informal Hearing Procedure for Water Quality Operations

EFFECTIVE DATE: Upon final publication in the *Pennsylvania Bulletin*

AUTHORITY: Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended.

POLICY: This guidance establishes the procedure to be used for holding informal hearings as authorized under the PA Clean Streams Law.

PURPOSE: The purpose of this guidance is to describe the procedure to be used for holding an informal hearing as it relates to civil penalty assessments for violations of NPDES (National Pollutant Discharge Elimination System) permits.

APPLICABILITY: This procedure is applicable where it has been determined that violations of an NPDES Permit, issued under the PA Clean Streams Law, have occurred and it is appropriate to assess penalties for these violations.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures in this guidance are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 10 pages

LOCATION: Volume 33, Tab 35

Section 92a.102 of the Department of Environmental Protection's (Department) Rules and Regulations sets forth two options which the Department may use in assessing civil penalties for violations of the National Pollutant Discharge Elimination System (NPDES) permitting requirements. The Department may either (1) file a complaint for civil penalties before the Environmental Hearing Board (EHB) or (2) assess the civil penalty after a hearing. This document outlines the procedure for the assessment of the civil penalty for such violations by the Department and for the conduct of the hearing.

Section 92a.103 of the Department's Rules and Regulations provides that a person who has been served with a proposed civil penalty assessment by the Department for a violation of NPDES permitting requirements may request an informal hearing on the proposed assessment. Such a request must be submitted to the Department within 30 days of receipt of the proposed assessment. The following are the rules of practice and procedure for the conduct of informal hearings relating to the assessment of civil penalties by the Department.

I. Service of Proposed Civil Penalty Assessment

The Department will serve a copy of the proposed civil penalty assessment on the NPDES permittee.

- A. Service shall be by registered or certified mail, or by personal service.
- B. If the mail is tendered at the address specified in the NPDES Permit, or at an address where the discharger is located, and delivery is refused, or mail is not collected, the service requirements of this section shall be deemed to have been complied with upon the first-class mailing of the proposed civil penalty assessment to that respect address.

II. Request for Informal Hearing

Upon service of a proposed civil penalty assessment, the permittee has 30 days to request that the Department hold an informal hearing on the proposed assessment.

- A. The request for an informal hearing should be served on the Department by registered or certified mail at the Department's regional office that issued the proposed civil penalty assessment.
- B. The failure to submit a timely request will operate as a waiver of the opportunity for an informal hearing and the proposed assessment will become a final assessment of the Department upon the expiration of the 30 day period unless the Department makes a determination to hold an informal hearing.
- C. If a timely request for a hearing is received by the Department, the Department will establish a hearing date and notify the permittee requesting the hearing of the date of the hearing in accordance with the service procedures in Section I. At least 5 days prior to the hearing, the Department will also post notice of the time and place of the hearing at the Department's office where the hearing will be held.

III. Nature of Hearing

Section 92a.103(c) of the Department's Rules and Regulations provides that informal, rather than formal, hearing procedures apply when the Department proposes to assess a civil penalty after a hearing. The essential intent of the informal hearing is to provide an opportunity for effective resolution of the issues, which can be carried out in an expeditious manner and in the absence of rigid procedures, which might unduly impede or protract the hearing process. Accordingly, the other requirements for the informal hearing are as follows:

- A. The Respondent shall have the right to representation by counsel at the informal hearing.
- B. The Respondent shall have an opportunity to ask questions, and present information and arguments to the Presiding Officer.

IV. Powers of Presiding Officer

The Department will assign a representative (the "Presiding Officer") to preside at the informal hearing on a proposed civil penalty assessment. The Presiding Officer shall be a person who is authorized to affirm, raise, lower or vacate a civil penalty assessment (e.g., group manager, program manager, assistant regional director or regional director). The Presiding Officer will be from another program area of the Department different from that which has initiated assessment of the civil penalty.

V. Decision

The Presiding Officer will consider the relevant information presented and either affirm, adjust or vacate the proposed assessment. The Presiding Officer shall prepare a written final assessment.

VI. Appeal

Section 92a.103(d) of the Department's Rules and Regulations provides that the Respondent may contest the final civil penalty assessment by filing a timely appeal (within 30 days) with the EHB.

VII. Collection

If the Respondent fails to file a timely appeal to the EHB, the penalty assessed by the Presiding Officer shall become due and payable upon expiration of the time allowed for filing the appeal. If the Respondent fails to pay, the amount shall be collected in the manner provided by Section 605 of the Clean Streams Law (35 P.S. § 691.605).

(_____) REGIONAL OFFICE

[DATE]

CERTIFIED MAIL NO. _____

[ADDRESSEE]

Re: _____

NOTICE OF PROPOSED ASSESSMENT

Dear :

On [DATE], by [REPORT, NOV, LETTER, ORDER], the Department of Environmental Protection (Department) notified you that [NAME OF PERMITTEE] (“NAME”) violated the Clean Streams Law, the Act of June 27, 1937, P.L. 1987, as amended, 35 P.S. Sections 691.1—691.1001 (“Clean Streams Law”) and/or the rules and regulations promulgated thereunder (“Rules and Regulations”). Based upon the information presently available to the Department, a preliminary evaluation of the violations indicates that [NAME] is subject to a civil penalty of [--\$--]. The potential penalty may be changed in the final assessment upon consideration by the Department of any relevant information including new information concerning culpability, speed of and effectiveness of compliance, diligence, unforeseen circumstances and other factors brought to the Department’s attention.

Pursuant to 25 Pa. Code Section 92a.103 of the Department’s Rules and Regulations, [NAME] may request an informal hearing with the Department to discuss the final assessment for these violations within 30 days of receipt of this letter. You have the right to attend and participate in the informal hearing and to be represented by counsel. If an informal hearing is requested, the Department will issue a final assessment following the informal hearing.

If you do not contact me within thirty (30) days to request an informal hearing, the proposed assessment will become a final assessment. If you have any questions regarding this matter, please contact me at [PHONE].

Sincerely,

[NAME]

Compliance Specialist
Water Management Program
(_____) Region

bcc: Region, Operations, [OTHERS]

[_____] Regional Office | [Address] | [City], PA [Zip Code]

[Phone] | Fax [Fax]

www.depweb.state.pa.us

(_____) REGIONAL OFFICE

[DATE]

CERTIFIED MAIL NO. _____

[ADDRESSEE]

Re: _____
NPDES Permit No. _____
_____ Township
_____ County

Dear _____:

Enclosed is an assessment of a civil penalty in the amount of [_____ \$ _____] for violations of the Pennsylvania Clean Streams Law.

The Department of Environmental Protection (Department) previously sent you a Notice of Proposed Assessment by (registered or certified mail or by personal service), dated [_____ Date _____], notifying you of the opportunity to request an informal hearing to review the proposed penalty. **[The informal hearing was held on [date] or [An informal hearing was not requested].**

Payment of the civil penalty should be made within thirty (30) days of receipt of this assessment by sending a check made payable to the "Commonwealth of Pennsylvania" with "The Clean Water Fund" noted in the memorandum line of the payment to the address listed above.

You may contest the penalty assessment by filing an appeal with the Environmental Hearing Board at the address listed in the Assessment of Civil Penalty under Notice of Appeal Rights. An appeal must be made within thirty (30) days from the date of receipt of this assessment.

Sincerely,

[NAME] _____
Compliance Specialist
Water Management Program
(_____) Region

[_____] Regional Office | [Address] | [City], PA [Zip Code]

[Phone] | Fax [Fax]

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

_____ : The Clean Streams Law

_____ :
_____ : (Municipality, County)

ASSESSMENT OF CIVIL PENALTY

NOW, this _____ day of _____, 20____, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) has found and determined the following:

1. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1—691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §§ 510-17 (“Administrative Code”), and the rules and regulations promulgated thereunder and which has been delegated authority to administer the National Pollutant Discharge Elimination System (“NPDES”) permit program under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

2. (NAME) is a municipality as defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1, with a mailing address of _____.

3. (NAME) is a (Individual / Corporation / Partnership), with a mailing address of _____.

4. At all times material hereto, (NAME) owned or operated the (Name of Treatment Plant) (“Short Name / Plant”), which is located in (Municipality / County), Pennsylvania. This facility discharges to (Name of Stream), a water of the Commonwealth. This discharge constitutes (Sewage / Industrial Waste) under Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

#. On (Date), the Department issued National Pollutant Discharge Elimination System (NPDES) Permit No. PA_____ to (NAME) which authorized the discharge of

treated effluent from the ____ (Plant) ____ to ____ (Name of Stream) ____ and set effluent limits and monitoring requirements for the discharge.

[OPTIONAL PARAGRAPHS]

FAILURE TO COMPLY WITH EFFLUENT LIMITS SET FORTH IN THE NPDES PERMIT

#. All dischargers are required by their NPDES Permit, Section 92a.1 of the Rules and Regulations, 25 Pa. Code § 92a.1, and the Clean Streams Law, to fully comply with the effluent limits set forth in the NPDES Permit.

#. ____ (NAME) ____ has had a discharge from the ____ (Facility Name) ____ that does not comply with the effluent limits set forth in NPDES Permit No. PA _____. The specific violations are listed in Appendix ____, which is attached hereto and incorporated herein by reference.

FAILURE TO SUBMIT DISCHARGE MONITORING REPORTS

#. All dischargers are required by their NPDES Permit and Section 92a.61(g) of the Department's Rules and Regulations, 25 Pa. Code § 92a.61(g), to periodically report, on the Discharge Monitoring Report (DMR), or other proper NPDES reporting form, effluent monitoring results obtained by the permittee pursuant to monitoring requirements set forth in the NPDES Permit.

#. ____ (NAME) ____ failed to submit ____ (quarterly, monthly, etc.) ____ DMRs for the period _____ as required in NPDES Permit No. PA _____.

FAILURE TO COMPLY WITH A SCHEDULE OF COMPLIANCE

#. Failure to comply with a schedule of compliance included within an NPDES Permit is a violation of (Part B., Section #) of the NPDES Permit and Section 92.a.51 of the Department's Rules and Regulations, 25 Pa. Code § 92.a.51.

#. (NAME) has failed to comply with (Part C Requirement/Paragraph #) as set forth in NPDES Permit No. PA_____, issued to (NAME) by the Department on (Date). Specifically:

- a) _____
- b) _____
- c) _____

FAILURE TO COMPLY WITH AN ORDER OF THE DEPARTMENT

#. Failure to comply with an order of the Department issued pursuant to Section 610 of the Clean Streams Law, 35 P.S. § 691.610 constitutes a nuisance under Section 610 of the Clean Streams Law, 35 P.S. § 691.610 and is unlawful conduct pursuant to Section 611 of the Clean Streams Law, P.S. § 691.611.

#. (NAME) has failed to comply with (Order, COA (issued/executed)), to (NAME) by the Department on (Date). Specifically:

- a) _____
- b) _____
- c) _____

RESERVATION OF RIGHTS

#. The Department reserves all other rights to institute equitable, administrative, civil and criminal action with respect to any matter addressed by this Assessment of Civil Penalty, including the right to require abatement of any conditions resulting from the events described in this Assessment.

NOW, THEREFORE, pursuant to the Department's authority under Section 605(a) of the Clean Streams Law, 35 P.S. § 691.605(a), a civil penalty in the amount of (\$ _____), which amount is explained below, is hereby assessed against _____ (NAME) _____.

- (a) A civil penalty in the amount of (\$ _____) is assessed for failing to _____ (Choose violation from above paragraphs) _____, as set forth in Paragraph _____ herein.

- (b) A civil penalty in the amount of (\$ _____) is assessed for failing to _____ (Choose violation from above paragraphs) _____, as set forth in Paragraph _____ herein.

- (c) A civil penalty in the amount of (\$ _____) is assessed for failing to _____ (Choose violation from above paragraphs) _____, as set forth in Paragraph _____ herein.

Payment of the civil penalty shall be made within thirty (30) calendar days from receipt of this assessment by means of a corporate check or the like, made payable to "Commonwealth of Pennsylvania" with "The Clean Water Fund," noted in the memorandum line of the payment, sent to:

_____, Compliance Specialist
Department of Environmental Protection

NOTICE OF APPEAL RIGHTS

This action of the Department may be appealed to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, 717-787-3483 by any aggrieved person pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514; and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A. TDD users may contact the Board through the Pennsylvania Relay Service 800-654-5984. You must pay the civil penalty assessed herein in full within 30 days of receipt of this assessment, or if you wish to appeal the assessment, you must (1) file an appeal with the Environmental Hearing Board within 30 days of notice of this Assessment of Civil Penalty and (2) forward either (i) the amount of the assessment for deposit in an escrow account or (ii) an appeal bond, to the Escrow Agent, Litigation Support Unit, Department of Environmental Protection, P.O. Box 8464, Harrisburg, PA 17105-8464. The appeal procedures as set forth in Section 605 of the Clean Streams Law, 35 P.S. Section 691.605, must be followed or the right to appeal this Assessment of Civil Penalty may be waived. Copies of the appeal

form and the Board's rules of Practice and Procedure may be obtained from the Board. The appeal form and the Board's rules of Practice and Procedure are also available in Braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Regional Manager

_____ Regional Office

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