



Ohio Administrative Code

Rule 3701:1-38-05 Administrative penalties.

Effective: October 22, 2006

(A) As used in this rule:

(1) "Repetitive violation" means a same or similar violation that reasonably could have been prevented by a facility's corrective action for the previous violation normally occurring either within the past two years of the inspection at issue or the period within the last two inspections, whichever is longer.

(2) "Event" means a situation involving licensable material and characterized by:

(a) An active adverse impact on equipment or personnel readily obvious by human observation or instrumentation; or

(b) A radiological impact on personnel, the general public, or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above the limits set forth in rule 3701:1-38-21 of the Administrative Code or a loss of radioactive material in quantities reportable pursuant to rule 3701:1-38-21 of the Administrative Code.

(B) The director may assess an administrative monetary penalty for failure of any facility required to be licensed under Chapter 3748. of the Revised Code to comply with that chapter or rules adopted thereunder. Any administrative monetary penalty imposed shall be assessed in accordance with this rule. Unless otherwise provided in this rule, the director may issue an order imposing an administrative penalty in addition to and concurrent or subsequent to issuing a written notice of violation as provided in rule 3701:1-38-06 of the Administrative Code. The director may assess an administrative monetary penalty independent of any and all other remedies that may be asserted by the department. Any orders issued or payments or other requirements imposed shall not affect any civil, criminal or administrative enforcement proceedings brought under this chapter or any other provision of state or local law.



(C) Administrative monetary penalties specified in this rule are based upon the level of severity of the violation which includes factors such as the importance or significance of the violation, the length or duration of the violation, whether the violation is repetitive in nature or is similar to previous violations, and the time period between the current violation and any previous violation. The director may issue an administrative monetary penalty as follows:

Severity Level of Violation	Penalty
I	\$5,000
II	\$4,000
III	\$2,500
IV	up to \$500

(D) In addition to the issuance of a notice of violation, in the case of a severity level IV violation the director shall do either of the following:

(1) If within thirty days of the issuance of the notice of violation, or such greater time as the director may determine, the facility remedies the violation and documents to the satisfaction of the director that the facility is in compliance, the director shall withdraw the assessment of an administrative monetary penalty; or

(2) If there remain any items of non-compliance thirty days or such greater time as the director may determine after the issuance of the notice of violation, the director shall maintain the administrative monetary penalty for the items of non-compliance. The director shall reduce the administrative monetary penalty in an amount up to fifty per cent of the penalty assessed for the violation or violations found at severity level IV provided that the facility has corrected at least fifty per cent of the violations.

A group of severity level IV violations may be evaluated in the aggregate and assigned a single severity level III, if the violations have the same or similar underlying cause or program deficiencies, or the violations contributed to or were unavoidable consequences of the underlying problem or program deficiencies.

(E) In addition to the issuance of a notice of violation, in the case of a severity level III violation the



director shall assess an administrative monetary penalty in accordance with the following:

(1) If within thirty days of the issuance of the notice of violation or such greater time as the director may determine the facility remedies the violation and documents to the satisfaction of the director that the facility is in compliance, the director may determine to withdraw the assessment of the administrative monetary penalty; or

(2) If there remain any items of non-compliance thirty days after the issuance of the notice of violation or such greater time as the director may determine, the director shall reduce the administrative monetary penalty in an amount up to fifty per cent of the penalty assessed for the violation or violations found at severity level III provided that the facility has corrected at least fifty per cent of the violations.

(F) In the case of a severity level I or II violation, the director shall issue an administrative monetary penalty. The director may reduce the penalty up to fifty per cent of the assessed amount if it is a non-repetitive violation and the facility achieves and documents compliance to the satisfaction of the director within thirty days of receiving the notice of violation.

(G) Notwithstanding paragraphs (C) to (F) of this rule, in the case of a repetitive violation, the director shall not reduce the administrative monetary penalty specified in paragraph (C) of this rule. In the case of a third or subsequent occurrence of the repetitive violation, the director may increase the administrative monetary penalty specified in paragraph (C) of this rule by an additional twenty-five per cent and continue to increase the penalty by an additional twenty-five per cent for each subsequent occurrence.

(H) When a violation occurs and the facility identifies the violation before it results in an event or is cited by the department, the director may reduce the penalty specified in paragraph (C) of this rule as follows:

(1) In the case of a facility that identified the violation as a result of observation, the director may reduce the administrative monetary penalty assessed in accordance with paragraph (C) of this rule in an amount of up to twenty-five per cent.



(2) In the case of a facility that discovered the violation as a result of a self-monitoring effort, such as an audit, test, surveillance, design review, or trouble shooting, the director may reduce the administrative monetary penalty assessed in accordance with paragraph (C) of this rule in an amount up to fifty per cent.

(3) In the case of a facility that self-corrects a severity III or IV violation in a manner and time period approved by director, the director shall not issue an administrative monetary penalty.

(I) Notwithstanding any other provision in this rule, after determination of the severity level of a violation found by the department, the director may increase the amount of the administrative monetary penalty as follows:

(1) In the case of overall past poor facility performance the administrative monetary penalty assessed in accordance with paragraph (C) of this rule may be increased up to one hundred per cent.

(2) In the case of a violation that is flagrant or reckless and that results in a substantial increase in risk to personnel, the general public or the environment, including cases in which the duration of the violation has contributed to the substantial increase in risk, the administrative monetary penalty assessed in accordance with paragraph (C) of this rule may be increased up to one hundred per cent.

(3) In the case of a willful violation within the administrative control of the licensee, the administrative monetary penalty assessed in accordance with paragraph (C) of this rule may be increased up to one hundred per cent.

(J) The facility may appeal the assessment of an administrative monetary penalty in accordance with Chapter 119. of the Revised Code, provided that the facility requests a hearing within thirty days of receiving notice of the administrative penalty assessment. The director may consolidate a hearing on an administrative monetary penalty assessed under this rule with any other complaint or finding of the director where the director determines that there are one or more issues of fact or law in common. No more than one hearing will be conducted with respect to each violation alleged.