

Radioactive Materials Enforcement (R195)
Issues Analysis Document - Appendix 1
Civil Penalty Structure Concepts
8/18/20

This document was generated for the purpose of stimulating discussion among the RAC, and does not reflect a preference or position of the Oregon Department of Energy or the Energy Facility Siting Council. The analysis and recommendations within are subject to change based on input from the Council, staff, and stakeholders.

The general structure of the table took inspiration from the following examples:

- OAR 333-124 (Civil Penalties related to violations of Oregon Health Authority rules on radioactive licensing) <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1319> and
- OAR 340 Division 12, DEQ Civil Penalty structure <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1433>

Table 1 provides a possible penalty structure for violations of OAR 345, Division 050. Violations are classified based on severity of the impact or potential impact on public health and safety or the environment. Severity would be determined based on factors including, but not limited to location of the disposed waste, the amount of area affected, the composition and inherent radioactivity of the waste, and how accessible the waste is to public. Base penalty amounts apply to each day of violation, and may be increased upon the Department or Council's finding that the violation was willful or reckless, repeated, or was irreversible. A cap on the total amount of civil penalty that can be imposed is provided for lower level violations.

Table 2 provides a possible penalty structure for violations of OAR 345, Division 060. Specific rule violations are classified based on the potential for harm to public health and safety or the environment. Base penalty amounts apply to each violation, and may be increased upon the Department or Council's finding that the violation was willful or reckless, or repeated.

Mitigation of penalty amounts, or non-enforcement options are discussed elsewhere in the issues analysis, however staff recommends that Class 3 violations in both tables could be resolved with a warning if the violation is corrected without impact to health or environment.

Table: Division 50 Penalty Matrix

Class	Base Penalty (Per Day)	Willful or reckless	Repeated	Irreversible	Maximum Penalty
Class 1 – Violation resulting in significant adverse impact to health or environment or reasonable expectation of significant adverse impact if corrective action is not taken to limit exposure.	\$10,000	2.5	X2.5	X2.5	\$25,000 per day of violation
Class 2 – Violation resulting in no adverse impact on health or environment, but there is reasonable expectation of low or moderate impact if exposure was not controlled (e.g., by being buried or isolated somehow).	\$1,000	X5	X2	X2.5	\$25,000 per day of violation, up to \$1,000,000
Class 3 – Violation resulting in no more than a minimal adverse impact on health or environment, with no reasonable expectation of additional impact to health or environment.	\$500	X5	X2	X2.5	\$12,500 per day, up to \$500,000

Table 2: Division 60 Penalty Matrix

Class	Violations	Base Penalty (Per Violation)	Willful or reckless	Repeated
Class 1	Failure to immediately report an accident involving a radioactive material shipment that results in a spill or release of radioactivity	\$10,000	X2.5	X2.5
Class 2	Failure to follow an appropriate route Failure to immediately report an accident involving a radioactive material shipment that does not result in a spill or release or radioactivity	\$1,000	X5	X2
Class 3	Transporting radioactive material without an Oregon permit Transporting radioactive material without reporting the shipment Failing to pre-notify the state to inspect certain shipments Failure to pay transport fees Failure to properly mark/placard a shipment	\$500	X5	X2

Reference Comparison: DEQ Penalty Structure

Formula for calculating civil penalty

Under OAR 340-012, DEQ determines the amount of civil penalty using the following formula:

$$BP + [(0.1 * BP) * (P + H + O + M + C)] + EB^1$$

Where:

- **BP** equals the Base Penalty for the violation. (See discussion below)
- **P** equals a value from 0 to 10 based on the number of prior violations cited in formal enforcement actions against the responsible party, adjusted for the severity and recency of the violations.²
- **H** is a value from -2 to 0 based on the responsible party's history of correcting prior violations.³
O is a value from 0 to 4 based on the number of occurrences of a repeated or ongoing violation.⁴
- **M** is a value from 0 to 10 based on the "mental state" of the responsible party, such as whether the violation was a result of negligent, reckless, or flagrant conduct.⁵
- **C** is a value from -5 to 2 based on the responsible party's efforts to correct or mitigate the violation.⁶
- **EB** equal the economic benefit gained and costs avoided as a result of the responsible party's noncompliance. This calculation is typically made using models produced by the US Environmental Protection Agency.⁷

Base Penalties under OAR 340-012

Using the DEQ formula, a Base Penalty may be increased by up to 260% or decreased by up to 70% based on the mitigating and aggravating factors described above. The Base Penalty is determined based using a matrix of penalty amounts based on the classification and magnitude of the violation. The \$12,000 matrix, shown in the table below, applies to violations of rules, laws, and permits governing solid waste and hazardous waste:

Table 3: DEQ \$12,000 Penalty Matrix, OAR 345-012-0140(2)

	Class III	Class II	Class I
Minor	\$1,000	\$1,500	\$3,000
Moderate	\$1,000	\$3,000	\$6,000
Major	\$1,000	\$6,000	\$12,000

¹ OAR 340-012-0045

² OAR 340-012-0030(19); 340-012-0145(2)

³ OAR 340-012-0145(3)

⁴ OAR 340-012-0145(4)

⁵ OAR 340-012-0145(5)

⁶ OAR 340-012-0145(6)

⁷ OAR 340-012-0150

The Magnitude of a violation is determined based on the degree of deviation from applicable statutes or commission and rules, standards, permits or orders; the extent of actual or potential effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. Certain categories of violations have specific thresholds for the magnitude of a violation, for example a violation involving the improper disposal of more than 55 gallons or 330 pounds of hazardous waste is considered a major violation, where a violation involving less 55 gallons or 330 pounds is considered moderate.⁸ If no specific threshold is given, a violation is moderate unless it is found to have resulted in a significant adverse impact on human health or the environment, in which case it is considered to be a major violation; or it is found to have had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment, in which case it is a minor violation.⁹

⁸ OAR 340-012-0135(4)(b)

⁹ OAR 340-012-0130