

Sec. 22a-6b-8. Method and schedule for calculating an administrative civil penalty

The requirements and procedures of this section incorporate the criteria listed in sections 22a-6b(b)(1) through 22a-6b(b)(10) of the Connecticut General Statutes, and shall be used to determine the administrative civil penalty amount for each distinct violation. The commissioner may consider any violation to be distinct for each day such violation existed. The commissioner may assess a separate administrative civil penalty for each distinct violation in order to ensure immediate or continued compliance. No administrative civil penalty assessed pursuant to the department's Administrative Civil Penalty Regulations shall exceed the maximum allowable penalty set forth in section 22a-6b of the Connecticut General Statutes.

(a) Administrative Civil Penalty Determination.

The penalty for each distinct violation shall be determined as follows: Calculate the amount of economic benefit resulting from the violation in accordance with subsection (b), calculate the gravity-based penalty component in accordance with subsection (c), and calculate the gravity-based penalty adjustments in accordance with subsection (d). The administrative civil penalty for each distinct violation is the sum of the economic benefit, gravity-based penalty component, and any gravity-based penalty adjustments.

(b) Economic Benefit.

If the respondent derived a measurable economic benefit, such as savings in money, time and effort, as a result of the violation, the commissioner shall calculate the amount of such economic benefit. Economic benefit includes but may not be limited to lower, delayed or avoided compliance costs. The commissioner need not calculate economic benefit if there is no identifiable benefit from the noncompliance or the amount of economic benefit cannot be quantified. The total economic benefit for a violation shall not be less than zero.

(c) Gravity-Based Penalty Component.

The gravity-based penalty component shall be calculated as follows:

(1) Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion or Dam Safety Violations.

Each distinct violation of section 22a-39, 22a-42a, 22a-45a, 22a-342, 22a-345 through 22a-347, 22a-349a, 22a-368, 22a-401 through 22a-405, or 22a-411 of the Connecticut General Statutes, or of any regulation, order or permit administered or issued thereunder, or of an order issued or administered under section 22a-6 or 22a-7 of the Connecticut General Statutes to enforce any provision of sections 22a-36 through 22a-45a, sections 22a-342 through 22a-349a, sections 22a-365 through 22a-379, or sections 22a-401 through 22a-411 of the Connecticut General Statutes, shall first be evaluated in terms of its potential for harm to human health and welfare and the environment using each of the four sub-factors listed in Table 1A. The applicable sub-score under each sub-factor is the highest score that corresponds to the characteristics of the distinct violation. A sub-score of zero shall be used for any sub-factor for which none of the listed characteristics are associated with such violation. The total potential for harm score for each distinct violation is the sum of the four sub-scores.

<p>Table 1A</p> <p>Potential For Harm Sub-factors For Inland Water Resources, Stream Channel En</p>

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croachment Lines, Water Diversion Or Dam Safety Violations	
SUB-FAC-TOR 1:	Potential Impact To The Environment, To Human Health And Welfare, Or To Property Caused By The Violation.
Sub-score	Characteristics
2	<p>Violation involves a land disturbance of 1/2 acre or less, and erosion and sediment controls were either not installed or improperly installed or maintained;</p> <p>Violation involves or impacts a dam with an assigned hazard classification of “A” as determined in accordance with section 22a-409-2 of the Regulations of Connecticut State Agencies;</p> <p>Violation is within a FEMA designated flood fringe and the violation neither caused any loss of flood storage nor created a potential increase in flood heights;</p> <p>Violation resulted in the alteration of a wetland or watercourse, but caused either negligible or no apparent damage to such wetland or watercourse; or</p> <p>A water diversion violation that caused either negligible or no apparent impact on an inland water resource.</p>
4	<p>Violation involves a land disturbance that is greater than 1/2 acre but less than 10 acres, and erosion and sediment controls were either not installed or were improperly installed or maintained;</p> <p>Violation involves or impacts a dam with an assigned hazard classification of “B” or “BB” as determined in accordance with section 22a-409-2 of the Regulations of Connecticut State Agencies;</p> <p>Violation is located within a FEMA designated flood fringe and the violation either caused a loss of flood storage or caused a potential increase in flood heights;</p> <p>A water diversion violation that caused damage to an inland water resource, but such damage is not permanent, and the diversion has neither contributed to nor resulted in human injury or property damage;</p> <p>A diversion of water for consumptive use that may contribute to the degradation of surface water quality for a waterbody not meeting water quality standards as identified by the department pursuant to section 303(d) of the Federal Clean Water Act; or</p> <p>Violation resulted in the alteration of a wetland or watercourse, and the alteration caused damage to a wetland or watercourse but such damage is not permanent.</p>
6	<p>Violation involves a land disturbance that is greater than or equal to 10 acres and erosion and sediment controls were either not installed or were improperly installed or maintained;</p> <p>Violation involves or impacts a dam with an assigned hazard classification of “C” as determined in accordance with section 22a-409-2 of the</p>

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	<p>Regulations of Connecticut State Agencies;</p> <p>Violation is located within a FEMA designated floodway;</p> <p>A water diversion violation that caused damage to an inland water resource, but the diversion cannot be ceased or the damage cannot be remediated, or the diversion violation has contributed to or resulted in human injury or loss of life or property damage;</p> <p>Violation resulted in the alteration of a wetland or watercourse, and the alteration caused permanent damage to a wetland or watercourse; or</p> <p>Violation caused the destruction of or damage to endangered species habitat.</p>
SUB-FAC-TOR 2:	Quantity Or Extent Of Resource Potentially Impacted By The Violation.
Sub-score	Characteristics
1	<p>➤ Less than 5,000 square feet of wetland, watercourse, floodplain, or land riverward of a State established stream channel encroachment line;</p> <p>➤ Less than 200 linear feet of watercourse; or</p> <p>➤ Violation had a potential to result in a consumptive withdrawal of surface or ground water that is less than 250,000 gallons per day.</p>
2	<p>➤ From 5,000 to 50,000 square feet of wetland, watercourse, floodplain, or land riverward of a State established stream channel encroachment line;</p> <p>➤ From 200 to 1,000 linear feet of watercourse; or</p> <p>➤ Violation had a potential to result in 250,000 to 2,000,000 gallons per day of consumptive withdrawal of surface or ground water.</p>
3	<p>➤ Physically impact more than 50,000 square feet of wetland, watercourse, floodplain, or land riverward of a State established stream channel encroachment line;</p> <p>➤ Physically impact more than 1,000 linear feet of watercourse; or</p> <p>➤ Violation had a potential to result in more than 2,000,000 gallons per day of consumptive withdrawal of surface or ground water.</p>
SUB-FAC-TOR 3:	Quality Or Condition Of Natural Resource Potentially Impacted By The Violation.
Sub-score	Characteristics
1	Class C Inland Surface Water that is not a swamp, marsh, bog, vernal pool or wetland containing alluvial or floodplain soils; or groundwater classified as GC. ^a
2	Class B Inland Surface Water that is not a swamp, marsh, bog, vernal pool or wetland containing alluvial or floodplain soils; or groundwater classified as GB. ^a
3	Oligotrophic Lake or Class A Inland Surface Water or Class AA Inland

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	<p>Surface Water, or any swamp, marsh, bog, vernal pool or wetland, or groundwater classified as GA, GA *, GAA, GAA or GAA *;^a</p> <p>Coldwater fishery, special management area as described in section 26-112-46 of the Regulations of Connecticut State Agencies, or a stocked watercourse;</p> <p>All or a portion of the area potentially impacted is part of the Connecticut natural diversity database inventory; or</p> <p>The violation is located in or potentially impacts a public water supply watershed.</p>
SUB-FACTOR 4:	Potential Impact On The Department's Ability, Through its Regulatory Programs, To Prevent Or Monitor Potential Harm To Human Health And Welfare Or The Environment.
Sub-score	Characteristics
1	Failure to provide notification to the department upon completion of an activity, when such notification was required by a statute, regulation, order, permit or approval.
2	<p>Failure to obtain an authorization for a regulated activity that could have been covered under a general permit; or</p> <p>Failure to submit on time a monitoring or progress report, notice of commencement of an activity, non-compliance notice, or any other notice or report, except a notice of completion, required by a statute, regulation, order, permit or approval.</p>
3	Failure to obtain a permit for a regulated activity that was not covered by a general permit, or to submit on time plans or descriptions of work, or to perform any other action required by a statute, regulation, order, permit or approval.

^aSurface water and groundwater classifications as prescribed by the Water Quality Standards.

Each distinct violation shall then be evaluated in terms of its extent of deviation from the legal requirement using the criteria in Table 1B.

Table 1B Extent of Deviation Criteria For Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion Or Dam Safety Violations	
Extent of Deviation	Criteria
Minor	Minimal noncompliance with the legal requirement in that the violator deviates somewhat from the requirement but that most of the requirement, or all important aspects of the requirement, were met after either minimal or no delay.
Significant	Deviation from the legal requirement that does not meet the criteria for

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	minor deviation.
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The gravity-based penalty component for each distinct violation shall comprise:

(1) A gravity-based penalty for the first day of violation, which is obtained from the appropriate subcell in the penalty matrix in Table 1C; and

(2) A gravity-based penalty for each day the violation continued beyond the first day, which is equal to the number of days such violation continued beyond the first day multiplied by an amount not less than ten percent and not greater than twenty-five percent of the first day gravity-based penalty.

Table 1C Penalty Matrix for Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion Or Dam Safety Violations		
POTENTIAL FOR HARM	EXTENT OF DEVIATION	
Total Score	Significant	Minor
15	\$ 1,000	\$ 600
14	\$ 930	\$ 570
13	\$ 860	\$ 540
12	\$ 790	\$ 510
11	\$ 720	\$ 480
10	\$ 480	\$ 180
9	\$ 424	\$ 160
8	\$ 368	\$ 140
7	\$ 312	\$ 120
6	\$ 256	\$ 100
5	\$ 110	\$ 50
4	\$ 100	\$ 45
3	\$ 90	\$ 40
2	\$ 80	\$ 35
1	\$ 70	\$ 35

(2) Tidal Wetlands, Structures, Dredging and Fill Violations.

Each distinct violation of section 22a-32, 22a-359, 22a-361 or 22a-362 of the Connecticut General Statutes, or of a regulation administered or issued thereunder, or of a permit administered or issued either thereunder or under section 22a-363b or 22a-363d of the Connecticut General Statutes, or of an order administered or issued under section 22a-6, 22a-7 or 22a-363f of the Connecticut General Statutes to enforce either section 22a-32, 22a-359, 22a-361, 22a-362, 22a-363b, 22a-363d or 22a-363f of the Connecticut General Statutes or a regulation or permit administered or issued thereunder, shall first be evaluated in terms of its potential for harm to human health and welfare and the environment using each of

the three sub-factors listed in Table 2A. The applicable category of harm for each sub-factor is the highest category that corresponds to the characteristics of the distinct violation. The potential for harm of such violation shall be the highest category of harm identified in the sub-factor analysis.

Table 2A Potential for Harm Sub-factors for Tidal Wetlands, Structures, Dredging or Fill Violations		
Potential for Harm Sub-Factors	Violation Characteristics	Category of Harm
1. Potential Impact to a Coastal Resource	Dredging, excavating or filling, or performing work incidental thereto, of a tidal wetland, intertidal flat, submerged aquatic vegetation or other statutorily protected coastal resource; or placing a structure or performing work incidental thereto either on, in, or affecting any tidal wetland, intertidal flat, submerged aquatic vegetation or other coastal resource.	Major
	A violation that has a significant potential to cause damage to any coastal resource, or has caused damage that can be fully remediated within one year.	Moderate
	Storage or placement of boats, floats or other material in a tidal wetland, or deposition or disposal of brush or other readily retrievable material.	Minor
2. Encroachments	Constructing a new bulkhead or seawall, or performing work incidental thereto; or excavating or filling, or performing work incidental thereto, with heavy equipment waterward of the high tide line; or constructing docks or other marine facilities, or performing work incidental thereto, for five or more boats, or greater than forty feet in length.	Major
	Constructing or placing docks or other marine facilities, or performing work incidental thereto, for two to four boats, or less than or equal to forty feet in length; non-water-dependent encroachments such as decks, gazebos and floating homes with no potential for discharges; or capping or additional riprap, concrete or rocks placed on existing erosion control structures or armored shorelines.	Moderate
	Constructing or placing a residential dock, or performing work incidental thereto, not greater than thirty feet in length for only one boat; or a deck, balcony or other	Minor

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	attachment which extends waterward of the high tide line.	
3. Navigational or Riparian Interference.	Constructing or placing a structure, or performing work incidental thereto, which encroaches into a navigational channel or creates a clear and obvious obstruction to riparian access, public access, navigation, fishing or other traditional public trust use.	Major
	Constructing or placing a structure, or performing work incidental thereto, that results in less than a complete blockage or obstruction to riparian access, public access, navigation, fishing or other traditional public trust use, and creates a potential navigational or riparian interference.	Moderate
	Structures that appear to cross riparian boundaries or may affect navigation under certain conditions.	Minor

If the distinct violation does not have any of the characteristics listed in Table 2A, the potential for harm of such violation shall each be categorized as either major, moderate or minor using Table 2B.

Table 2B Alternate Potential for Harm Characteristics for Tidal Wetlands, Structures, Dredging or Fill Violations	
Category of Harm	Violation Characteristics
Major	Unauthorized activity which, without rapid and active restoration or remediation of the site or other impacted area, could create permanent resource damage, significant encroachment or acute and ongoing navigational or riparian interference, or which substantially inhibit or limit the Department's ability, through its regulatory programs, to ensure against actual or potential harm to the environment or to public health or welfare.
Moderate	Unauthorized activity that could cause a substantial adverse impact to a coastal resource, the public trust, navigational or riparian considerations, or regulatory programs, but can be more readily corrected than major impact activities; or where formal enforcement action is warranted to ensure consistency and compliance with Department regulatory programs.
Minor	Unauthorized activity that could cause only a minimal adverse impact and does not require substantial restoration of the site, or a violation having no on-site manifestation, such as a failure to file a report, plan or other form required by a permit.

Each distinct violation shall then be evaluated in terms of its extent of deviation from the

legal requirement using the criteria in Table 2C.

Table 2C Extent of Deviation Criteria for Tidal Wetlands, Structures, Dredging or Fill Violations	
Category	Extent of Deviation Criteria
Major	A violation that is substantially inconsistent with legal requirements; examples include: Significant violation of a permit or order. Activity that is inconsistent with applicable statutory standards and would not have been authorized by the department. Unauthorized activity that does not modify or reconstruct any previously existing or authorized structure or work. Unauthorized activity that is significantly different in scope and scale from surrounding existing or historical activities.
Moderate	Violation that is generally consistent or can be made consistent with legal requirements through a permit authorization process or through modification of the violating activity; examples include: Unauthorized activity that might be statutorily consistent and permissible if reconfigured or modified. Unauthorized minor modifications to existing commercial facilities. Significant reconstruction or modification of pre-existing structures which does not significantly change the footprint of the structure. Activity that is not significantly different in scope and scale than surrounding or prior activities.
Minor	Unauthorized activity that was consistent with applicable statutory standards and would likely have been authorized had a timely and complete application been filed.

The gravity-based penalty component for each distinct violation shall comprise the following:

(1) A gravity-based penalty for the first day of violation, which is determined by first locating the penalty range from the appropriate subcell in the penalty matrix in Table 2D. The commissioner shall, upon consideration of all of the potential harm sub-factors evaluated for such violation, set the gravity-based penalty for the first day of violation to an amount within such penalty range;

(2) A gravity-based penalty for each day the violation continued beyond the first day, up to a maximum of one-hundred-eighty days thereafter, which is equal to either: Twenty-five percent of the first day gravity-based penalty for each day such violation continued provided the violation commenced on or before one year prior to the date of issuance of the penalty notice; or, if the violation commenced within one year prior to the date of issuance of the penalty notice, one-hundred percent of the first day gravity-based penalty for each day such violation continued, up to a maximum of thirty days, and twenty-five percent of such first day penalty for each additional day thereafter. If the violation commenced prior to the

effective date of these regulations, the first day of violation shall be the first day such violation continued after such effective date; and

(3) At the sole discretion of the commissioner, a gravity-based penalty for each day the violation continued for more than one-hundred-eighty-one days, provided such violation has caused major or moderate damage to a coastal resource. The amount of such gravity-based penalty shall not exceed the number of days the violation continued beyond one-hundred-eighty-one days multiplied by twenty-five percent of the first day gravity-based penalty.

Table 2D			
Penalty Matrix for Tidal Wetlands, Structures, Dredging or Fill Violations			
POTENTIAL FOR HARM	EXTENT OF DEVIATION		
	Major	Moderate	Minor
Major	\$720 to \$1,000	\$570 to \$770	\$480 to \$600
Moderate	\$256 to \$480	\$160 to \$288	\$100 to \$180
Minor	\$70 to \$110	\$50 to \$70	\$35 to \$50

(3) Pesticide Control Violations.

For each distinct violation of chapter 441 of the Connecticut General Statutes, or of any regulation, order or permit administered or issued thereunder, the gravity-based penalty component shall be determined using Table 3A.

Table 3A		
Penalty Schedule for Pesticide Control Violations		
Type of Violation	Penalty for Minor Extent of Deviation[†]	Penalty for Significant Extent of Deviation[‡]
Commercial application of pesticides without supervisory certification in violation of 22a-54(c)(1) of the Connecticut General Statutes.	Not a minor deviation.	\$1000 plus \$100 for each subsequent application.
Sale of a restricted use or permit use pesticide by a dealer who has not registered in violation of 22a-56(c) of the Connecticut General Statutes.	Not a minor deviation.	\$1000 plus \$100 for each additional sale
Sale, use or distribution of a pesticide that has not been registered in violation of 22a-61(a)(1) of the Connecticut General Statutes.	Not a minor deviation.	\$800 plus \$100 for each additional sale
Sale of a restricted use or permit use pesticide to a person who is not registered, certified or who has not obtained a permit in violation of 22a-57 of the Connecticut	Not a minor deviation.	\$1000 plus \$100 for each additional sale

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General Statutes.		
Failure of a registered dealer to: Maintain records of the sale of restricted use or permit use pesticides or to allow inspection of such records by the commissioner in violation of section 22a-58 of the Connecticut General Statutes; or submit records to the commissioner in violation of section 22a-66-4 of the Regulations of Connecticut State Agencies; or display restricted use or permit use pesticides in a separate secure area in violation of section 22a-66-4(f) of the Regulations of Connecticut State Agencies.	\$300	\$1000
Failure of a certified private applicator to maintain or submit records of the use of restricted use pesticides in violation of section 22a-58 of the Connecticut General Statutes.	\$100	\$500
Failure of a certified commercial supervisor to maintain records of the use of pesticides in violation of 22a-58 of the Connecticut General Statutes.	\$250 plus \$50 for each additional violation	\$750 plus \$50 for each additional violation
Refusal to allow an inspection of a place where pesticides may have been used or stored, in violation of section 22a-59 or 22a-61(b)(2) of the Connecticut General Statutes, or refusal to allow inspection of records in violation of section 22a-58 or 22a-61(b)(2) of the Connecticut General Statutes.	\$300	\$1000
Use or sale of a pesticide that has been adulterated or misbranded as defined in section 22a-47 of the Connecticut General Statutes in violation of section 22a-61(a)(5)	Not a minor deviation.	\$1000
Detaching, altering, defacing, or destroying any pesticide label in violation of section 22a-61(b)(1) of the Connecticut General Statutes.	\$250	\$750
Using a registered pesticide in a manner	\$750	\$2500

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inconsistent with its labeling in violation of section 22a-61(b)(7) of the Connecticut General Statutes.		
Advertising or soliciting to perform work that requires a commercial supervisory certification by a person who is uncertified or holds an operator's certification, or performance of such work by a person who holds operator certification in violation of section 22a-61(d) and 22a-61(e) of the Connecticut General Statutes.	\$500 plus \$100 for each additional advertisement, solicitation or performance	\$1000 plus \$100 for each additional advertisement, solicitation or performance
Failure to post required notice of a pesticide application, or failure to post signs and provide signs at a retail establishment, or failure to provide other notification in violation of 22a-66a of the Connecticut General Statutes.	\$75	\$90
Failure to register or renew a registration of a pesticide application business in violation of section 22a-66c(a) of the Connecticut General Statutes.	Not a minor deviation.	\$1000
Failure of a registered pesticide business to notify the commissioner of changes to the registration within 30 day of the change in violation of section 22a-66c(b) of the Connecticut General Statutes.	\$200	\$500
Failure to maintain or retain for the required period a pesticide application business record, or failure to include all required items in a pesticide application business record in violation of 22a-66g of the Connecticut General Statutes.	\$300 plus \$100 for each additional violation	\$1000 plus \$100 for each additional violation
Introducing a chemical into the waters of the state to control aquatic organisms without a permit in violation of section 22a-66z of the Connecticut General Statutes.	\$500	\$1500
Failure to comply with a requirement of a permit to apply chemicals to the waters of the state issued under 22a-66z of the Connecticut General Statutes.	\$500	\$1000

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Failure of a certified supervisor to provide written instructions to a certified operator in violation of section 22a-66-5(g)(2) of the Regulations of Connecticut State Agencies.	\$250 plus \$100 for each additional application	\$750 plus \$100 for each additional application
Failure to obtain operator certification for use of pesticides in other than a supervisory capacity in violation of section 22a-66-5(h) of the Regulations of Connecticut State Agencies.	\$500	\$1000
Failure of a pesticide application business to employ a certified supervisory applicator in violation of section 22a-66f of the Connecticut General Statutes.	\$500	\$1000
Application of pesticides or fertilizers by aircraft without a landowner's permit; or application of pesticides or fertilizers by aircraft without an aircraft applicator's certificate in violation of section 22a-54(e)(1) of the Connecticut General Statutes.	\$500	\$1500
Failure to comply with a requirement of section 22a-66-7 of the Regulations of Connecticut State Agencies in violation of a permit or license to apply pesticides or fertilizer by aircraft.	\$500	\$1000
Failure to have check valves or other anti-siphon devices on filler hoses used to draw water for mixing pesticides or failure to cover filler hoses while spraying pesticides in violation of section 22a-66-3 of the Regulations of Connecticut State Agencies	\$300	\$1000

† Minor deviation means minimal noncompliance with a legal requirement in that the respondent deviated somewhat from the requirement, but all or most of the important aspects of the requirement were met, or were met after minimal delay.

‡ Significant deviation means noncompliance with a legal requirement that is not a minor deviation.

(d) Gravity-Based Penalty Adjustments.

For each distinct violation, gravity-based penalty adjustments shall be determined as follows:

- (1) Good Faith Efforts to Comply.

A gravity-based penalty component may be adjusted downward by as much as 25% depending upon whether or not, in the sole judgment of the commissioner, the respondent had taken all steps or followed all procedures necessary or appropriate to comply or to correct the violation prior to the department's discovery of such violation. However, the commissioner need not adjust such gravity-based penalty in accordance with this provision if the respondent failed to take reasonable and prompt measures to fully comply upon respondent's discovery of such violation.

(2) History of Noncompliance.

A gravity-based penalty component may be adjusted upward by as much as 25% if the respondent has a history of a prior violation. In determining the amount of upward penalty adjustment, the commissioner shall consider all known violations, any prior violations by the respondent of statutes, regulations, orders, permits or licenses administered, adopted or issued by the commissioner, and any judgments or orders entered by the federal government or any state or municipality against the respondent.

(3) Ability to Pay.

The gravity-based penalty component, plus any gravity-based penalty adjustments under subdivisions (1) and (2) of this section, may be adjusted based on the economic and financial conditions of the violator. The commissioner may deem a respondent to be unable to pay a gravity-based penalty if payment of such penalty would interfere with the respondent's financial ability to come into compliance or force the respondent out of business. It shall be the respondent's sole burden to assert any claim of inability to pay and to submit all documents that the commissioner reasonably believes are necessary to evaluate such claim. Any penalty adjustment for a demonstrated inability to pay may be limited if the:

(1) Violation is chronic or repeat, or causes or has the potential to cause serious harm to the environment;

(2) Respondent refuses to correct a violation; or

(3) Respondent is a business entity that is no longer doing business.

Further, any of the following does not necessarily constitute an inability to pay: Potential reduction of manager or officer salaries or employee bonuses; potential reduction of shareholder dividends; limited cash flow, but respondent is able to raise money through borrowing, selling assets, or other steps without incurring extraordinary burdens.

(Adopted effective May 29, 2007)