

**Montgomery County, TN
Storm Water Program Management Manual**

Appendix C - Penalty Assessment Methodology and Example

Penalty Assessment:

In order to assess the amount of a civil penalty that is to be levied against individuals and organizations that violate Storm Water Program Regulations, it is necessary to evaluate the damages that have resulted from the specific violation. Specific assessment categories will be used to evaluate environmental damages are based on TCA 68-221-1106.

Each assessment category will be based on a scale of 1 to 10, with 1 representing the best case and 10 representing the worst case. The total score from each category will be added to create a final civil penalty score, which will determine the per day penalty to be assessed.

The Storm Water Coordinator will assign all civil penalty values based on Best Professional Judgment (BPJ). The civil penalty assessment policies and procedures may be altered or changed to better fit specific circumstances and situations. Any changes will be made based on the BPJ of the Montgomery County Building Commissioner and the Storm Water Coordinator. Values for each assessment category will be based on Table 1: Assessment Criteria.

The Storm Water Coordinator shall have authority to recover administrative expenses incurred in investigating violations of, and enforcing compliance with, the Storm Water Management Program Regulations, or any other actual damages caused by the violation.

Civil penalties, damages, and/or administrative expenses shall be paid to the Montgomery County Building and Codes Department Clerk within ten (10) days of receipt of the written notice of imposition of the penalties. If the civil penalty is to be appealed to the Storm Water Appeals Board, the penalty shall be paid into escrow at the time of application for appeal, pending the results of that appeal.

Methodology: In order to assess the amount of a civil penalty that is to be levied against individuals and organizations that violate Storm Water Program regulations, it is necessary to evaluate the damages that have resulted from the specific violation. The follow categories shall be used to make any necessary evaluations:

- a) Harm done to the Environment
- b) Harm to the Public Health (human harm)
- c) How long the damage will affect the environment and humans uses of that environment
- d) Quantity of Pollutants discharged OR the area affected by the pollution based on the size of the development or construction site
- e) The remediation efforts of those responsible for the violation and equities of the situation which outweigh the benefit of imposing any penalty or damage assessment, including:
 - (1) Notification of relevant agencies
 - (2) Cleanup efforts

f) Previous violations of the responsible parties

g) Economic benefit gained by the violator

Each assessment category will be based on a scale of 1 to 10, with 1 representing the best case and 10 representing the worst case. The total score from each category will be added to create a final civil penalty score, which will determine the per day penalty to be assessed.

Value Assignments: The Storm Water Coordinator will assign all values based on Best Professional Judgment (BPJ). The civil penalty assessment policies and procedures may be altered or changed to better fit specific circumstances and situations. Any changes will be made based on the BPJ of the Montgomery County Building Commissioner and Storm Water Coordinator. Values for each assessment category will be based on Table 1: Assessment Criteria.

The County Building Commissioner shall have authority to recover expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation.

Table 1: Assessment Criteria.

	1	2.5	5	7.5	10
Human Impact (HAZMAT Scale)	Minimal Essentially non-toxic	Slight Exposure may cause irritation but only minor residual injury, even without medical treatment	Moderate Intense or prolonged exposure could cause temporary effects or possible residual injury unless prompt medical treatment is given	Serious Short or moderate exposure could cause serious temporary or residual injury, even with prompt medical treatment	Extreme Very short exposure could cause death or major residual injury, even with prompt medical treatment
Environmental Impact	Little/No Harm	Aquatic life leaves area	Few invertebrates die	Several invertebrates die	Significant multi-species kill
Clean up Efforts	Remediation/clean-up efforts were timely and effective or, no measures were required	Clean-up/remediation efforts were timely but partially ineffective.	Clean-up/remediation efforts were mostly ineffective.	Clean-up/remediation efforts were completely ineffective.	No action taken to perform required clean-up or remediation

Notification of Agencies	Appropriate Agencies are notified or not applicable	Failed to notify one or more critical agencies inadvertently	Inadvertent failure to notify any agencies	Intentional failure to notify one or more agencies in a timely manner	Deliberate attempt to conceal or intentional failure to notify
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Table 1 Notes:

- a) For Environmental and Human Impacts:
 - (1) Reference materials such as MSDS sheets, textbooks, etc. may be used if necessary.
 - (2) Environment and Human values will be based on the BPJ of the Storm Water Coordinator, while taking into consideration the effects the material discharged has on the environment and humans respectively.

- b) For Quantity Values (See Chart 2):
 - (1) If the Human or Environmental Impact value in Section 1 is greater than 4, then the “total gallons” scale is to be used to quantify the spill or discharge.
 - (2) If the Human or Environmental Impact value in Section 1 is less than or equal to 4, then the “discharge rate” scale is to be used to quantify the spill or discharge.

- c) The Long Lasting Effects value will be based on the BPJ of the Storm Water Coordinator, taking into consideration the effect the discharged material has on the environment over time, and/or the magnitude of damage done to the environment and its ability to recover.

- d) The Notification of Agencies value will be based on the BPJ of the Storm Water Coordinator based the following:
 - (1) If it was required in a previous NOV issued to the site.
 - (2) The discharge was a “reportable quantity” as required by State or Federal guidelines.
 - (3) It posed either a threat to human health or significant impact to the environment.

- e) The Clean-up Efforts value will be based on the BPJ of the Storm Water Coordinator based on the effectiveness of required remediation and/or required housekeeping/clean-up efforts.

- f) Violations refer to violations that resulted in fines.

- g) Economic benefit gained by the violator shall be evaluated based on the BPJ of the Storm Water Coordinator, as part of the Previous Violations section.

Assessment Scoring: The per-day civil penalty to be assessed for a violation will be based on Chart 1: Civil Penalty based on Penalty Scores.

Chart 1: Penalty amount based on Calculation of Civil Penalties.

Penalty Score Range	Per-Day Fine	Penalty Score Range	Per-Day Fine
0-4	\$50	27-32	\$1,500
5-9	\$100	33-38	\$2,000
10-14	\$250	39-43	\$3,000
15-20	\$500	44-47	\$4,000
21-26	\$1,000	48-50	\$5,000

Chart 2: Quantity of Discharge or Area Effected Rating Scale

Section 2: Quantity of Discharge (a) or Area Effected (b or c)				
(a) Non-Construction Related		(b) Development	(c) Construction Site	
Discharge Rate (Gal/Min)	Total Gallons	Acreage	Acreage	Rating
0-10	0-1	1	1	1
11-20	1-5	2-3	2	2
21-30	6-10	4-6	3	3
31-40	11-20	7-10	4	4
41-50	21-30	11-15	5	5
51-60	31-50	16-20	6	6
60-70	51-100	21-30	7	7
71-80	101-1000	31-40	8	8
81-90	1001-5000	41-50	9	9
>90	>5000	>50	>10	10

Figure 1: Excel Spreadsheet for the Calculation of Civil Penalties (Blank)

Facility or Site Name:				
Note: 1 = Best Case; 10 = Worst Case. Fill in all Orange blocks				
Section 1: Harm to the Environment and Public health				
(1 to 10)	Harm to the Environment			
(1 to 10)	Harm to the Public Health (human harm)			
(1 to 10)	Long Lasting effects			
Section 2: Quantity of Discharge (a) or Area Affected (b or c)				
(a) Non-Construction Related		(b) Development	(c) Construction Site	
Discharge Rate (Gal/Min)	Total Gallons	Acreage	Acreage	Rating
0-10	0-1	1	1	1
11-20	1-5	2-3	2	2
21-30	6-10	4-6	3	3
31-40	11-20	7-10	4	4
41-50	21-30	11-15	5	5
51-60	31-50	16-20	6	6
60-70	51-100	21-30	7	7
71-80	101-1000	31-40	8	8
81-90	1001-5000	41-50	9	9
>90	>5000	>50	>10	10
Quantity				
Section 3: Remediation Efforts				
(1 to 10)	Notification of Agencies			-10
(1 to 10)	Clean up Efforts			-10
Section 4: Previous Violations				
	0 Violations		0	
	1 Violations		4	
	2 Violations		6	
	3 Violations		8	
	4 or More Violations		10	
	Violation Penalty			
Penalty Calculation				
(1 to 30)	Harm Total		0	
(1 to 10)	Quantity Total		0	
(1 to 20)	Remediation Credit		-20	
(0 to 10)	Previous Violations		0	
	Total Penalty Points		-20	
Fine Assessed	\$50	Per Day Times		Days =
		as of		\$0

Example Civil Penalty Calculation

The Wisteria Development Company has a 70 acre development site that has some erosion controls, but the controls are largely ineffective. The result is that during rain events, large areas of exposed soils are eroding into the storm drain system. The sediments are being washed by runoff into a nearby stream that the state has declared impaired. The sediment contaminated runoff is resulting in an *objectionable* color change in the stream when conditions upstream of the development are compared to downstream conditions during the runoff period.

The company has no previous record of violations. The company has been notified twice by the Storm Water Inspector that the situation is in violation of the Storm Water Resolution. The first Notice of Violation was issued and received 20 days ago (according to the signature and date of the certified mail receipt), and the company was given 5 business days to submit a remediation plan and 15 total days following that to show significant progress in implementing the plan. No plan was submitted and no action was taken. When contacted, the company's storm water contact stated that he did not understand the terms of the NOV and that the rain was making it too difficult to get equipment into the problem areas. The contact was verbally warned and reminded that the company had signed and agreed to the standard Pre-Construction Agreement at the Pre-Construction Meeting and that that these were not acceptable excuses for non-compliance with the terms of the NOV. The company's storm water contact stated he would comply, but refused to give a time line for that compliance until he had consulted with his business partners.

The second Notice of Violation was issued 10 days after the verbal conference, a total of 30 days from the first NOV. The NOV again gave the company 5 business days to submit a remediation plan and 15 total days following that to show significant progress in implementing the plan. There was no response from the development company after 6 days, so the company's storm water contact was again contacted. The company's storm water contact stated that he was "working on a solution" and that he would "contact the Storm Water Inspector when he had something in writing". He further stated his partner was out of town and could not be reached. The storm water contact was verbally warned that inaction within the next 5 days would result in penalties being assessed against his company. This warning was repeated in a certified letter. The letter was signed for and accepted two days later.

No action was taken by the end of the 6th day following the warning. The fine calculation is based on the date of the 2nd NOV (27 days at the time of the calculation). The company was notified of the fine (\$13,500) and also notified that a stop work order was in effect until the erosion controls were in place and working properly and the fine was paid in full. Figure 2 shows the Excel penalty calculation.

Figure 2: Wisteria Development Company penalty calculation.

Facility or Site Name: Wisteria Development Company				
Note: 1 = Best Case; 10 = Worst Case. Fill in all Orange blocks				
Section 1: Harm to the Environment and Public health				
(1 to 10)	Harm to the Environment		3	
(1 to 10)	Harm to the Public Health (human harm)		1	
(1 to 10)	Long Lasting effects		3	
Section 2: Quantity of Discharge (a) or Area Effected (b or c)				
(a) Non-Construction Related		(b) Development	(c) Construction Site	
Discharge Rate (Gal/Min)	Total Gallons	Acreage	Acreage	Rating
0-10	0-1	1	1	1
11-20	1-5	2-3	2	2
21-30	6-10	4-6	3	3
31-40	11-20	7-10	4	4
41-50	21-30	11-15	5	5
51-60	31-50	16-20	6	6
60-70	51-100	21-30	7	7
71-80	101-1000	31-40	8	8
81-90	1001-5000	41-50	9	9
>90	>5000	>50	>10	10
Quantity	10			
Section 3: Remediation Efforts				
(1 to 10)	Notification of Agencies		8	-2
(1 to 10)	Clean up Efforts		10	0
Section 4: Previous Violations				
	0 Violations		0	
	1 Violations		4	
	2 Violations		6	
	3 Violations		8	
	4 or More Violations		10	
	Violation Penalty		0	
Penalty Calculation				
(1 to 30)	Harm Total		7	
(1 to 10)	Quantity Total		10	
(1 to 20)	Remediation Credit		-2	
(0 to 10)	Previous Violations		0	
	Total Penalty Points		15	
Fine Assessed	\$500	Per Day Times	27	Days = \$13,500