

EPA Raises Civil Penalty Amounts

November 7, 2013

On November 6, 2013, the U.S. Environmental Protection Agency (EPA) published a final rule in the Federal Register raising the maximum penalties that the agency can impose for certain violations of environmental laws. A maximum civil penalty is prescribed in each of the statutes EPA administers. The most common maximum per-day.....

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A maximum civil penalty is prescribed in each of the statutes EPA administers. The most common maximum per-day penalty in environmental statutes is \$25,000. For example, the Toxic Substances Control Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Emergency Planning and Community Right-to-Know Act all include a \$25,000 penalty limit.

The Debt Collection Improvement Act of 1996 (DCIA), however, required EPA to review the civil penalties contained in the statutes that the agency administers every four years and adjust them for inflation according to a formula set forth in the DCIA. In compliance with the DCIA, EPA has previously made penalty adjustments for inflation in 1996, 2004, and 2008. Over time, these adjustments raised the standard maximum per-day penalty from \$25,000 to \$37,500.

Because inflation has been low since 2008, the DCIA's rounding rules resulted in no increase in the \$37,500 standard penalties. Twenty of EPA's 88 penalties—mostly the maximum per-violation assessments—are being increased. Some of the most commonly cited penalties being increased are:

- the Clean Water Act: \$187,500 for Class II violations (up from \$177,500);
- the Marine Protection, Research, and Sanctuaries Act: \$75,000 for most violations and \$150,000 for dumping medical waste (up from \$70,000 and \$140,000 respectively);

- the Safe Drinking Water Act: \$187,500 for underground injection violations (up from 177,500); \$1,150,000 for tampering with a public drinking water system (up from \$1,100,000);
- the Clean Air Act: \$320,000 maximum (up from \$295,000);
- the Comprehensive Environmental Response, Compensation and Liability Act: \$117,500 for Class II violations (up from \$107,500); and
- the Emergency Planning and Community Right-to-Know Act: \$117,500 for subsequent violations (up from \$107,500).

Most environmental penalty cases are settled for less than the maximum penalty. Even when cases are tried, the court often imposes a penalty in an amount that is less than the statutory maximum penalty. However, the statutory maximum is the starting point for determining the reasonableness of any penalty EPA is trying to exact.

The new rule published in the [Federal Register](#) becomes effective on December 6, 2013.

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