**Section 4190.203 Civil Penalties**

a) Authority to Assess Civil Penalty. The Department may assess a civil penalty against any person who has violated any prohibition contained in the Act, any regulation promulgated by the Department pursuant to the Act or any term or condition included in a permit. Section 5 of the Act also allows civil damages to be assessed by the land managing agency.

b) Notice of Violation. The Department shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Agency shall include in the notice:

1) A concise statement of the facts believed to show a violation;

2) A specific reference to the provisions of the Act or this Part allegedly violated;

3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

4) Notification of the right to file a petition for relief pursuant to subsection (d) of this Section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

c) Alternatives in Response to Notice of Violations. The person served with a notice of violation shall have 30 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

1) Seek informal discussions with the Agency;

2) File a petition for relief in accordance with subsection (d) of this Section;

3) Take no action and await the Department's notice of assessment;

4) Accept in writing, or by payment of the proposed penalty, any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under subsection (g) of this Section.

d) Petition for Relief. The person served with a notice of violation may request that no penalty be assessed, or that the amount be reduced, by filing a petition for relief with the Department within 30 calendar days after the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

e) Assessment of Penalty.

1) The Department shall assess a civil penalty upon expiration of the period for filing a petition for relief, or upon completion of informal discussions, whichever is later.

2) The Department shall take into consideration all available information, including information provided pursuant to subsections (c) and (d) of this Section or furnished upon further request by the Department.

3) If the facts warrant a conclusion that no violation has occurred, the Department shall so notify the person served with a notice of violation, and no penalty shall be assessed.

4) Where the facts warrant a conclusion that a violation has occurred, the Department shall determine a penalty amount in accordance with Section 5 of the Act and Section 4190.205 of this Part.

f) Notice of Assessment. The Department shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Department shall include in the notice of assessment:

1) The facts and conclusions from which it was determined that a violation did occur;

2) The basis in Section 4190.205 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

g) Hearings.

1) Except where the right to request a hearing is deemed to have been waived as provided in subsection (c)(4), the person served with a notice of assessment may file a written request for a hearing with the Department. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

2) A person served with notice must deliver a written request for a hearing within 30 days after the date of service of the notice of assessment, or shall be deemed to have waived the right to a hearing.

h) Final Administrative Decision.

1) When the person served with a notice of violation has accepted the penalty pursuant to subsection (c)(4) of this Section, the notice of violation shall constitute the final administrative decision;

2) When the person served with a notice of assessment has not filed a timely request for a hearing pursuant to subsection (g)(1) of this Section, the notice of assessment shall constitute the final administrative decision;

3) When the person served with a notice of assessment has filed a timely request for a hearing pursuant to subsection (g)(1) of this Section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

i) Payment of Penalty.

1) The person assessed a civil penalty shall have 30 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed.

2) Upon failure to pay the penalty, the Department Director may request the Attorney General to institute a civil action to collect the penalty in a court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Department is not represented by the Attorney General, a civil action may be initiated by the State's Attorney of the county in which the violation occurred.

j) Other Remedies Not Waived. Assessment of a penalty under this Section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

k) Injunctive Remedy. The Agency may seek injunction or other relief as the Department deems appropriate for any violation of the Act or this Part.