

19-7-109 Incentives for voluntary disclosure and compliance -- Waiver of civil penalties.

- (1) As used in this section, "regulated entity" means any person, business, or other entity subject to regulation under Title 19, Environmental Quality Code.
- (2) The department shall waive civil penalties for an instance of noncompliance with an environmental law or requirement:
 - (a) that a regulated entity discovered through an environmental self-evaluation;
 - (b) that a regulated entity voluntarily disclosed to the department in writing within 21 days after the entity's discovery of the violation;
 - (c) that a regulated entity remedied or corrected within 60 days after discovery of the violation, or within a reasonable amount of time if the violation cannot be remedied within 60 days; and
 - (d) regarding which the regulated entity submitted to the department a written outline of reasonable steps the regulated entity will take to prevent a recurrence.
- (3) The department may not waive penalties under Subsection (2) if:
 - (a) the instance of noncompliance resulted from a lack of due diligence in complying with environmental laws, taking into account the size and nature of the regulated entity;
 - (b) the instance of noncompliance is a recurrence of a similarly caused specific violation or a violation of the specific terms of a judicial or administrative consent order or agreement;
 - (c) the instance of noncompliance resulted from reckless or willful disregard of environmental laws;
 - (d) the regulated entity conducted the environmental self-evaluation for a fraudulent purpose;
 - (e) the department had already initiated a compliance investigation at the time of the disclosure and the regulated entity had been advised of or was aware of the investigation;
 - (f) the instance of noncompliance was discovered pursuant to a legally mandated monitoring, testing, or sampling requirement prescribed by law, rule, permit, order, or consent agreement; or
 - (g) the instance of noncompliance resulted in serious actual harm or imminent and substantial endangerment to human health or the environment.
- (4)
 - (a) To the extent the instance of noncompliance resulted in an economic benefit or competitive advantage over other similar regulated entities that did achieve compliance, the department may seek a civil penalty to recover the monetary amount of the economic benefit or competitive advantage resulting from the incidence of noncompliance.
 - (b) Action under this Subsection (4) is not prohibited by Subsection (2).
- (5) This section does not limit the department's discretion in reducing penalties for noncompliance with an environmental law which may not fully qualify for waiver under this section, but which the department determines should be appropriately reduced.

Amended by Chapter 181, 2002 General Session