

§8870. Penalties

1. Civil violation. A person who violates a rule adopted pursuant to section 8869, subsection 14 or a condition or term of a permit, variance or decision issued by the director or the commissioner in accordance with rules adopted pursuant to section 8869, subsection 14 commits a civil violation. [PL 2003, c. 694, §1 (NEW).]

2. Penalty. Except as provided in subsection 3, the following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$100 and not more than \$1,000 may be adjudged for each day of that violation. [PL 2003, c. 694, §1 (NEW).]

B. A person who violates this section after having previously been adjudicated of a violation of this section within the previous 5-year period commits a civil violation for which a fine of not less than \$1,000 but not more than \$2,000 may be adjudged for each day of that violation. [PL 2003, c. 694, §1 (NEW).]

[PL 2003, c. 694, §1 (NEW).]

3. Economic benefit. If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum fines may be increased. The maximum fine may not exceed an amount equal to twice the economic benefit resulting from the violation. The bureau shall consider as economic benefit, without limitation, the costs avoided or the enhanced value accrued at the time of the violation by the violator as a result of not complying with the applicable legal requirements. [PL 2003, c. 694, §1 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

4. Effective date.

[PL 2005, c. 514, §1 (RP).]

5. Supplemental environmental projects. In settling a civil enforcement action for any violation of this subchapter or any rule adopted under this subchapter, the parties may agree to a supplemental environmental project that mitigates not more than 80% of the assessed penalty. "Supplemental environmental project" means an environmentally beneficial project primarily benefiting the public health or the environment that a violator is not otherwise required or likely to perform.

A. An eligible supplemental environmental project is limited to the following categories:

(1) Environmental enhancement projects in the same ecosystem or geographic area of the violation that significantly improve an area beyond what is required to remediate any damage caused by the violation that is the subject of the enforcement action;

(2) Community forestry projects in the same ecosystem or geographic area of the violation that are conducted in accordance with the purposes of section 8705;

(3) Environmental awareness projects substantially related to the violation that provide training, publications or technical support to members of the public and that are regulated by the Department of Agriculture, Conservation and Forestry; or

(4) Scientific research and data collection projects that advance the scientific basis on which regulatory decisions are made. [PL 2005, c. 514, §2 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

B. A supplemental environmental project may not be used in the following situations:

(1) Repeat violations of the same or a substantially similar law administered by the Department of Agriculture, Conservation and Forestry by the same person;

- (2) When a project is required by law;
- (3) If the violator had previously planned and budgeted for the project;
- (4) To offset any calculable economic benefit of noncompliance;
- (5) If the violation is the result of reckless or intentional conduct; or
- (6) If the project primarily benefits the violator. [PL 2005, c. 2, §11 (COR); PL 2011, c. 657, Pt. W, §5 (REV).]

Any settlement that includes a supplemental environmental project must provide that expenditures are not tax deductible.

[RR 2005, c. 2, §11 (COR); PL 2011, c. 657, Pt. W, §5 (REV).]

6. Costs permitted. In any action or proceeding brought by the Attorney General under this section, the court may award litigation costs, including court costs, reasonable attorney's fees and reasonable expert witness fees, to be deposited in the General Fund of the State if the State or any of its officers or agencies is a prevailing party in the action or proceeding and the defendant's defense was not substantially justified. For the purposes of this subsection, a defense is "substantially justified" if the defense had a reasonable basis in law or fact at the time it was raised.

[PL 2009, c. 536, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 694, §1 (NEW). RR 2005, c. 2, §11 (COR). PL 2005, c. 514, §§1,2 (AMD). PL 2009, c. 536, §1 (AMD). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

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