**Section 310.81 Policy for Assessment of Civil Penalties**

a) Civil penalties shall be assessed in accordance with the provisions of this Section.

b) A civil penalty will be assessed whenever the Agency, based on consideration of the factors set forth in subsection (c), determines that a civil penalty is appropriate and issues a Preliminary Order and Notice of Opportunity for Hearing, in accordance with 32 Ill. Adm. Code 200.

c) Factors to be Considered in Assessing Civil Penalties

1) The Agency shall consider the factors contained in subsection (c)(2) to determine whether a penalty should be assessed, as provided in subsection (d), and the amount of the penalty. However, if the Agency has by rule established the amount to be assessed for a particular violation, the Agency shall assess the penalty as specified in that rule without regard to the factors contained in subsection (c)(2).

AGENCY NOTE: For an example of a rule that establishes the amount of the civil penalty to be assessed, see 32 Ill. Adm. Code 401.170, which specifies the civil penalties to be assessed for violations of the Agency's radiologic technologist accreditation requirements.

2) The factors to be considered by the Agency are:

A) History of Previous Violations. The Agency shall consider the person's history of previous violations of the Radiation Protection Act of 1990, the Agency's rules promulgated under that Act (Title 32, Chapter II, Subchapters b and d) and licenses issued pursuant to the Act. Each prior violation will be considered without regard to whether it led to a civil penalty assessment. A prior violation shall not be considered, however, if the notice or order relating to the prior violation is the subject of pending administrative or judicial review, or if the time to request such review or to appeal any administrative or judicial decision relating to the prior violation has not expired. The Agency shall not consider a prior violation if a Preliminary or Final Order pertaining to that prior violation has been vacated. The Agency shall not consider previous violations that occurred more than 6 years prior to the issuance of the Preliminary Order or other action taken by the Agency for those violations.

B) Severity of the Violation. The Agency shall consider the severity of the violation, including, but not limited to, actual or potential contamination of the environment resulting from the violation and any actual or potential hazard to the health or safety of the public or to workers, resulting from the violation. When evaluating the severity of the violation, the Agency may also consider the impact that the violation has on the Agency's ability to determine compliance with requirements established by statute, regulation or license condition.

C) Culpability. The Agency shall consider whether the person to whom the Preliminary Order was issued was negligent in causing, allowing, or failing to correct the violation, condition, or practice which was cited in the Preliminary Order. The Agency shall also consider:

i) whether the violation was intentional or inadvertent;

ii) whether the violation was allowed to continue once identified;

iii) whether actions were taken to correct or mitigate the violation and the timeliness of those actions; and

iv) whether the violation was voluntarily reported to the Agency.

d) Determination of the Amount of Penalty; Assessment of Separate Violations for Each Day

1) The Agency may assess a civil penalty not to exceed $10,000 per violation for each day the violation continues. If the Agency's rules (Title 32, Chapter II, Subchapters b and d) specify the amount of the civil penalty to be assessed for a particular violation, the Agency shall assess the civil penalty in that amount so specified, without consideration of the factors listed in subsection (c) of this Section.

2) When determining the amount of penalty, the Agency shall consider each day of a continuing violation to be a separate violation. Accordingly, the Agency may assess a separate penalty, in accordance with this Section, for each day that a violation continues.

(Source: Amended at 45 Ill. Reg. 9911, effective July 22, 2021)