

**Nye County
Pahrump Regional Planning District**

PENALTY POLICY GUIDANCE DOCUMENT

March 2009

PREFACE

This document presents the Nye County, Pahrump Regional Planning District policy for assessing administrative fines for violations of Nye County Code 15.28. It describes the step-by-step process for determining a recommendation for an administrative fine amount for violations of the Code. The purpose of this policy is to ensure that administrative fines are determined in a fair and consistent manner and that the amount is appropriate for the violation committed.

Nye County has implemented a three-tiered approach for calculating administrative fines. The first, or lowest tier matrix is to be applied for an individual, or single residence violation. The second, or intermediate tier matrix is applicable to small commercial projects with an aggregate disturbance of less than 5 acres. The third, or highest tier matrix is applicable to large, commercial projects with an aggregate disturbance of 5 acres or more.

Nye County seeks administrative fines to deter future violations and to promote voluntary compliance among the regulated community. Administrative fines are necessary for obtaining and maintaining compliance.

1. INTRODUCTION

Nye County Ordinance No. 316 Section 9.A. provides the authority to Nye County to levy administrative fines. The Code in part states:

“Any person who violates any provision of this chapter shall be punished by a fine of not more than \$10,000 for each day of each violation.”

The administrative fine assessment is composed of a gravity component which is dependent on the severity of the violation, multiplied by the number of days of noncompliance, minus or plus adjustment factors surrounding the violation.

$$\text{FINE} = \left\{ \begin{array}{c} \text{GRAVITY} \\ \text{ADJUSTMENT} \\ \text{COMPONENTS} \end{array} + \begin{array}{c} \text{NUMBER OF DAYS} \\ \text{OF} \\ \text{NONCOMPLIANCE} \end{array} \right\} \pm \begin{array}{c} \text{FINE} \\ \text{ADJUSTMENT} \\ \text{FACTORS} \end{array}$$

2. Gravity Component

The first portion of the administrative fine to be calculated is the gravity component. Gravity based fines are scaled to reflect the seriousness of the violation. To determine the seriousness of a violation two factors must be evaluated, actual or potential harm to the environment and/or human health and the extent of the deviation from the requirement.

A. Potential for Harm

Potential for harm involves evaluating the volume of release, and the public health risk, including the health impact of the release and potential for safety and/or environmental impacts.

Instructions: *Shaded cells are required inputs*

On the administrative fine worksheet, select the appropriate score for the factors that contribute to the “Potential for Harm” categories (**Volume of Release and Public Health Risk**). The total gravity score is calculated automatically.

1. Volume of Release – The quantity of pollutant released as a result of the violation. Incidents that are administrative and have no associated release would receive a score of 0. Incidents that significantly violate any requirements in Nye County Code 15.28 for a large amount of time or incidents that greatly violate any requirement for a short duration would receive a score of 4.

0	1	2	3	4
Negligible Amount	Relatively Low Amount	Medium Amount	Relatively High Amount	Extremely High Amount

2. Public Health Risk – Actual or potential impact to the environment or public health as a result of the violation. The volume of release and the environmental consequence of the pollutant released are examined with respect to potential transport and proximity to sensitive receptors. A moderate volume release of moderate health impact next to a sensitive receptor could receive a rating of 4 (for example, a dust plume by a highway that creates a hazardous driving condition by restricting visibility)

0	1	2	3	4
Negligible Risk	Relatively Low Risk	Medium Risk	Relatively High Risk	Extremely High Risk

B. Extent of Deviation

The degree to which the violator has deviated from the requirements in Nye County Code 15.28 is also considered when the gravity component of the fine is being determined. A violator may have substantially complied with the requirement, totally disregarded it, or deviated to some degree in between. The deviation shall be determined without regard to any hazard posed by the violation. Factors regarding the potential impact on the environment or public health are evaluated when determining potential for harm.

Instructions: *Shaded cells are required inputs*

On the administrative fine worksheet, enter the appropriate score for the factors that contribute to the **Extent of Deviation** in the shaded cell.

1. Minimal Non-Compliance – the violator deviates partially from the regulatory requirement and most of the components of the requirement are met.
2. Significant Non-Compliance – the violator deviates significantly from the regulatory requirements, but portions of the components of the requirements are met.
3. Substantial Non-Compliance – the violator deviates from the regulatory requirement to such an extent that a majority of the components of the requirements are not met.

C. Gravity Component Matrix

The matrix contains 27 cells: each cell has a dollar amount. To locate the appropriate cell, plot the **Gravity Score** versus the **Extent of Deviation Score**. Note the potential for harm is weighted more heavily than the extent of the deviation in the matrix. This is because the potential for harm is more directly related to the ultimate purpose and objectives of the Nye County Air Quality Program. Fines, therefore, increase more rapidly as the potential for harm increases.

Gravity	Extent of Deviation		
	1	2	3
0	\$0	\$100	\$200
1	\$200	\$400	\$600
2	\$600	\$900	\$1,200
3	\$1,200	\$1,600	\$2,000
4	\$2,000	\$2,600	\$3,200
5	\$3,200	\$3,800	\$4,400
6	\$4,400	\$5,200	\$6,000
7	\$6,000	\$7,000	\$8,000
8	\$8,000	\$9,000	\$10,000

Instructions: *Shaded cells are required inputs*

Locate the appropriate cell from the Gravity Component Matrix and enter the dollar amount in the shaded cell next to **Dollar Amount**.

D. Multiple Day Violation

After the dollar amount is determined from the gravity component matrix, it is multiplied by each day the violation occurred. A completed inspection report is required for each day a violation is alleged. Nye County can negotiate the number of days applied to multiple day violations.

Instructions: *Shaded cells are required inputs*

Enter the **Number of Days** of multiple violations in the shaded cell, the Total Gravity Fine will be calculated automatically.

3. Fine Adjustment Factors.

A. Degree of Cooperation

The degree of cooperation may be used as a basis for either increasing or decreasing the fine. Downward adjustments should be made if the efforts consist primarily of coming into compliance. A downward adjustment may be made if the efforts to comply are extraordinary. Failure to take reasonable and prompt measures to comply is cause for an upward adjustment.

From the four statements that follow, choose the one that best fits the violator's degree of cooperation/good faith after discovery of the violation by Nye County and enter its corresponding percentage in the shaded cell next to **Degree of Cooperation**.

1. The violator made extraordinary voluntary efforts: to avoid an imminent violation of a requirement or to successfully come into compliance after learning of a violation (-15%).

2. The violator came into compliance after learning of a violation, but these efforts were not extraordinary (-5%).
3. The violator made voluntary efforts that failed to bring them into compliance (0%).
4. The violator has a clear legal obligation to correct a violation, and Nye County had informed them of this obligation, yet the violation was not corrected (+25%).

B. History of Noncompliance Factors

If the violator had any similar violation (violation of the same requirement) within the past 5 years, include 5% in the shaded cell next to **Similar Violation**.

If the violator had any violation within the past years, enter the applicable adjustment factor in the shaded cell next to **Most Recent Violations**.

Determine the number of all past violations. Enter the adjustment factor in the shaded cell next to **Number of Previous Violations**.

The **Total Fine Adjustment Factor** will be calculated automatically.

The **TOTAL FINE** will be calculated automatically.

C. Administrative Violations

For administrative, non-dust generating violations, a modified penalty calculation will be used. The appropriate fine calculation worksheet is selected. Because the violation is administrative in nature (no quantity of release and no public health risk), the first part of the gravity Component, comprised of the Potential for Harm is assigned the lowest (zero) value. The Extent of Deviation is considered and assigned in the usual manner. In applying the Fine Adjustment Factors, the calculated Gravity Component and Fine Adjustment Factors are assigned only 1 day of violation, regardless of the number of days of violation.

4. Documentation of Calculations

Nye County staff implementing this policy should complete the appropriate Nye County Administrative Fine Calculation Worksheet for each violation where a negotiated settlement is reached. It is essential that a thorough and accurate description of how each factor was developed is documented in the file.

This policy is a public record and will not be kept confidential.

5. Tiered Penalty Matrices

This section contains the tiered penalty matrices that are to be used for establishing the penalty(ies) for each category of violations. The three categories of the penalty matrices are as follows:

- Individuals/Residential
- Small Businesses less than 5 acres
- Large Businesses 5 acres or greater

The appropriate matrix, based on the violator's category, should be selected.

Nye County
Administrative Fine Calculation Worksheet
Individuals/Residential

For (Name) _____
Violation No _____

Gravity Component

Potential for Harm

Volume of Release

0	1	2	3	4
Negligible Amount	Relatively Low Amount	Medium Amount	Relatively High Amount	Extremely High Amount

Public Health Risk

0	1	2	3	4
Negligible Risk	Relatively Low Risk	Medium Risk	Relatively High Risk	Extremely High Risk

Gravity Score (Release + Risk) 0

Extent of Deviation

1	2	3
Minimal	Significant	Substantial

Extent of Deviation Score

Gravity Component Matrix Dollar Amount

Gravity	Extent of Deviation		
	1	2	3
0	\$ 25.00	\$ 37.50	\$ 50.00
1	\$ 50.00	\$ 62.50	\$ 75.00
2	\$ 75.00	\$ 100.00	\$ 125.00
3	\$ 125.00	\$ 150.00	\$ 175.00
4	\$ 175.00	\$ 200.00	\$ 225.00
5	\$ 225.00	\$ 250.00	\$ 275.00
6	\$ 275.00	\$ 325.00	\$ 375.00
7	\$ 375.00	\$ 425.00	\$ 475.00
8	\$ 475.00	\$ 500.00	\$ 550.00

Multiple Day Violations

\$0
X

\$0

Dollar Amount
Number of Days
Total Gravity Fine

Degree of Cooperation*Degree of Cooperation****History of Non-Compliance****Similar Violation*Yes 5
No 0*Most Recent Violations*1 year 10
5 years 5
> 5 years 0

Number of Previous Violations

5% X 0%**Total Fine Adjustment Factor 0%****Total Fine**Total Fine Adjustment

\$0	X	0%	\$0
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TOTAL FINE

\$0	+	\$0	\$0
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Nye County
Administrative Fine Calculation Worksheet
Less Than 5 Acres/Small Businesses

For (Name) _____
Violation No _____

Gravity Component

Potential for Harm

Volume of Release

0	1	2	3	4
Negligible Amount	Relatively Low Amount	Medium Amount	Relatively High Amount	Extremely High Amount

Public Health Risk

0	1	2	3	4
Negligible Risk	Relatively Low Risk	Medium Risk	Relatively High Risk	Extremely High Risk

Gravity Score (Release + Risk) **0**

Extent of Deviation

1	2	3
Minimal	Significant	Substantial

Extent of Deviation Score

Gravity Component Matrix

Dollar Amount

Gravity	Extent of Deviation		
	1	2	3
0	\$50	\$75	\$100
1	\$100	\$125	\$150
2	\$150	\$200	\$250
3	\$250	\$300	\$350
4	\$350	\$400	\$450
5	\$450	\$500	\$550
6	\$550	\$650	\$750
7	\$750	\$850	\$950
8	\$950	\$1,000	\$1,050

Multiple Day Violations

\$0 X
Dollar Amount

Number of Days

\$0
Total Gravity Fine

Fine Adjustment Factors

Degree of Cooperation

Degree of Cooperation

History of Non-Compliance

Similar Violation

Yes 5
No 0

Most Recent Violations

1 year 10
5 years 5
> 5 years 0

Number of Previous Violations

5% X 0%

Total Fine Adjustment Factor 0%

Total Fine

Total Fine Adjustment

\$0	X	0%	\$0
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TOTAL FINE

\$0	+	\$0	\$0
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Nye County
Administrative Fine Calculation Worksheet
Disturbance of 5 Acres or Greater/Large Businesses

For (Name) _____
Violation No _____

Gravity Component

Potential for Harm

Volume of Release

0	1	2	3	4
Negligible Amount	Relatively Low Amount	Medium Amount	Relatively High Amount	Extremely High Amount

Public Health Risk

0	1	2	3	4
Negligible Risk	Relatively Low Risk	Medium Risk	Relatively High Risk	Extremely High Risk

Gravity Score (Release + Risk) **0**

Extent of Deviation

1	2	3
Minimal	Significant	Substantial

Extent of Deviation Score

Gravity Component Matrix

Dollar Amount

Gravity	Extent of Deviation		
	1	2	3
0	\$500	\$750	\$1,000
1	\$1,000	\$1,250	\$1,500
2	\$1,500	\$1,750	\$2,000
3	\$2,000	\$2,500	\$3,000
4	\$3,000	\$3,500	\$4,000
5	\$4,000	\$4,500	\$5,000
6	\$5,000	\$5,500	\$6,000
7	\$6,000	\$7,000	\$8,000
8	\$8,000	\$9,000	\$10,000

Multiple Day Violations

\$0 X \$0
 Dollar Amount Number of Days Total Gravity Fine

Fine Adjustment Factors

Degree of Cooperation

Degree of Cooperation

History of Non-Compliance

Similar Violation

Yes 5
No 0

Most Recent Violations

1 year 10
5 years 5
> 5 years 0

Number of Previous Violations

5% X 0%

Total Fine Adjustment Factor 0%

Total Fine

Total Fine Adjustment

\$0	X	0%	\$0
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TOTAL FINE

\$0	+	\$0	\$0
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