

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 107 APPLYING ADMINISTRATIVE PENALTIES

19.15.107.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture
[7/1/97; 19.15.107.1 NMAC - Rn & A, 19 NMAC 15.107.1, 05/29/09]
[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

19.15.107.2 SCOPE: All parties involved in the manufacture, distribution and sale of petroleum products as defined by the Petroleum Products Standards Act.
[7/1/97; 19.15.107.2 NMAC - Rn, 19 NMAC 15.107.2, 05/29/09]

19.15.107.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.
[7/1/97; A, 3/1/98; 19.15.107.3 NMAC - Rn, 19 NMAC 15.107.3, 05/29/09]

19.15.107.4 DURATION: Permanent.
[7/1/97; 19.15.107.4 NMAC - Rn, 19 NMAC 15.107.4, 05/29/09]

19.15.107.5 EFFECTIVE DATE: July 1, 1997
[7/1/97; 19.15.107.5 NMAC - Rn, 19 NMAC 15.107.5, 05/29/09]

19.15.107.6 OBJECTIVE: This part provides for the assessment of administrative penalties for violations of the Petroleum Products Standards Act or rules adopted under the act and specifies the appeal process.
[7/1/97; 19.15.107.6 NMAC - Rn, 19 NMAC 15.107.6, 05/29/09]

19.15.107.7 DEFINITIONS:
A. "Department" means the New Mexico department of agriculture.
B. "Director" means the director of the New Mexico department of agriculture.
C. "Division director" means the director of the division of standards and consumer services within the New Mexico department of agriculture.
D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for administration of the Petroleum Products Standards Act (PPSA) and associated rules.
[7/1/97; 19.15.107.7 NMAC - Rn, 19 NMAC 15.107.7, 05/29/09]

19.15.107.8 [RESERVED]

19.15.107.9 ASSESSING PENALTIES: The assessment of administrative penalties will be used as an intermediate step between stop sale/stop use orders and court action, or when stop sale/stop use orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions, such as stop sale orders or stop use orders. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration, determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. In making his determination as to the nature and amount of penalty, the director shall be

guided by Sections 10, 11, 12, 13, and 16 of this part.
[7/1/97; 19.15.107.9 NMAC - Rn, 19 NMAC 15.107.9, 05/29/09]

19.15.107.10 CAUSE OF VIOLATION:

A. LINE 1, APPLICABLE TABLE (Classes of Violations, Section 13): Lack of Knowledge - When the person who has committed the violation was not aware of the statutory requirements, the penalty shall be determined from Line 1, Section 16.

B. LINE 2, APPLICABLE TABLE (Classes of Violations, Section 13): Negligence - When the violation is due to negligence, the penalty shall be determined from Line 2, Section 16.

C. LINE 3, APPLICABLE TABLE (Classes of Violations, Section 13): Willful - When a person has willfully committed a violation, or has committed the same violation three or more times within a twelve (12) month period of time, all violations after the second violation will be construed to be willful and the penalty shall be determined from Line 3, Section 16.

[7/1/97; 19.15.107.10 NMAC - Rn, 19 NMAC 15.107.10, 05/29/09]

19.15.107.11 GRAVITY OF VIOLATION:

A. Factors: Any one of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.
- (2) Potential for personal injury.
- (3) Potential for property damage.
- (4) Degree of inconvenience or deception to a buyer or prospective buyer.
- (5) Degree of disregard for the law.

B. COLUMN A, APPLICABLE TABLE (Classes of Violations, Section 13): Minimal Gravity - When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 16.

C. COLUMN B, APPLICABLE TABLE (Classes of Violations, Section 13): Moderate Gravity - When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 16.

D. COLUMN C, APPLICABLE TABLE (Classes of Violations, Section 13): Great Gravity - When the violation has a great gravity, the penalty shall be determined from Column C, Section 16.

[7/1/97; 19.15.107.11 NMAC - Rn, 19 NMAC 15.107.11, 05/29/09]

19.15.107.12 FREQUENCY OF VIOLATION: The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the tables in Section 16.

A. When a person commits the same violation more than three (3) times in twelve (12) months, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be twelve (12) months. If a person has not committed the same offense in twelve (12) months, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three (3) times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[7/1/97; 19.15.107.12 NMAC - Rn, 19 NMAC 15.107.12, 05/29/09]

19.15.107.13 CLASSES OF VIOLATIONS:

A. Table I will apply to the following violations: PPSA Section(s) 57-19-29, (57-19-30 A, B), (57-19-31 B), (57-19-32 A, B, C) 57-19-33.

B. Table II will apply to the following violations: PPSA Section(s) 57-19-29, (57-19-30 A, B), (57-19-32 A, B, C) 57-19-33.

C. Table III will apply to the following violations: PPSA Section(s) 57-19-29, (57-19-30 A), 57-19-33.

[7/1/97; A, 8/1/00; 19.15.107.13 NMAC - Rn, 19 NMAC 15.107.13, 05/29/09]

19.15.107.14 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.

C. In the event the alleged violator does not feel the department followed the correct procedures in

arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 16.
[7/1/97; 19.15.107.14 NMAC - Rn, 19 NMAC 15.107.14, 05/29/09]

19.15.107.15 PAYMENT OF PENALTY: If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.
[7/1/97; 19.15.107.15 NMAC - Rn, 19 NMAC 15.107.15, 05/29/09]

19.15.107.16 PENALTY TABLES:

A. TABLE I

Gravity		FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
		A	B	C	A	B	C	A	B	C
C	1	\$ 0	25.	50.						
A										
U	2	\$25.	50.	75.	50.	75.	100.			
S										
E	3	\$50.	75.	100.	75.	100.	125.	100.	200.	300.

B. TABLE II

Gravity		FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
		A	B	C	A	B	C	A	B	C
C	1	\$ 25.	50.	75.						
A										
U	2	\$ 50.	75.	100.	75.	100.	125.			
S										
E	3	\$100.	150.	200.	200.	250.	300.	300.	400.	500.

C. TABLE III

Gravity		FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
		A	B	C	A	B	C	A	B	C
C	1	\$100.	150.	200.						
A										
U	2	\$150.	250.	400.	250.	400.	600.			
S										
E	3	\$200.	400.	600.	400.	600.	800.	600.	800.	1,000.

[7/1/97; 19.15.107.16 NMAC - Rn, 19 NMAC 15.107.16, 05/29/09]

19.15.107.17 [RESERVED]

HISTORY OF 19.15.107 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
NMDA Rule No. 93-7, Applying Administrative Penalties, filed 5/28/93.

History of Repealed Material: [RESERVED]