NJDEP Issued Your Company a Penalty. Can You Negotiate It?



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NJDEP civil administrative penalties are often negotiable, but not in the sense that most businesses expect.

Most NJDEP regulatory programs have their own rules governing civil administrative penalties. Those rules may establish penalty amounts, ranges, matrices, multipliers, or adjustment factors based on the nature of the violation and the circumstances surrounding it.

For a company seeking to reduce an NJDEP penalty, the starting point should therefore be the applicable penalty framework — not simply an across-the-board request for a lower number.

Understand How NJDEP Calculated the Penalty

The first step is to identify the regulations governing the penalty assessment.

Depending on the NJDEP program, the penalty may be based on a specified amount for the particular violation or may be calculated using factors such as the seriousness of the violation, the conduct of the violator, prior violations, duration, or other circumstances.

Some programs also expressly allow NJDEP to adjust penalties based on mitigating or aggravating factors.

For example, NJDEP's solid waste utility regulations permit penalty adjustments based on compliance history, mitigation, measures taken to prevent recurrence, environmental or public impacts, and other circumstances.

The specific program therefore matters.

Before negotiating, a company should understand the factors NJDEP relied upon, whether those factors were applied correctly, and whether the available facts support NJDEP's conclusions.

Negotiate Within the Penalty Framework

Penalty negotiations are generally more productive when they address NJDEP's calculation directly.

If NJDEP treated a violation as particularly serious, the company should evaluate the factual basis for that conclusion. If prior compliance history increased the penalty, the company should confirm that the cited history is accurate and applicable. If NJDEP's calculation assumes a continuing violation, the company should determine whether the duration is correct.

Mitigating circumstances may also matter.

Prompt corrective action, measures taken to reduce environmental impacts, steps designed to prevent recurrence, and other circumstances may provide a basis for seeking a reduction where the applicable regulatory framework allows NJDEP to consider those factors.

The objective is not simply to argue that the penalty is too high. It is to identify why the penalty should be different under the rules NJDEP itself uses to calculate it.

Preserve Your Rights While Negotiating

Companies should not assume that engaging in settlement discussions extends the deadline for contesting a penalty.

Where NJDEP has issued an AONOCAPA or other appealable penalty assessment, the company should review the applicable hearing deadline and preserve its administrative hearing rights while settlement discussions proceed. NJDEP's hearing process expressly contemplates settlement discussions and alternative dispute resolution, but those discussions do not eliminate the need to comply with applicable procedural requirements.

Failure to preserve those rights can result in waiver of objections to the penalty assessment and, depending on the enforcement document, the underlying violations or corrective requirements.

Visit our NJDEP Enforcement Insights page for additional guidance, updates, and resources.