



Be Prepared: Civil Penalties to Rise Starting August 1

Brooke F. Dickerson

Effective August 1, OSHA, EPA and the Department of the Interior, among other federal agencies, are raising the ranges of civil penalties assessed under their respective programs. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended in 2015, requires federal agencies to adjust penalty amounts for inflation. The 2015 amendment requires agencies to implement a one time “catch-up” to account for inflation dating back to when the penalty was first enacted, although any increase is capped at 150% of the value as of November 2, 2015. Fines will continue to rise as the law also requires agencies to revisit penalty ranges annually. This growth is in contrast to the relative stable penalty amounts that have been reflected in various regulatory penalty policies.

OSHA penalties, for violations of employee health and safety requirements, have not changed since 1990. As a result of the 2015 amendment, however, they will significantly increase by 78%.

Penalties under many environmental statutes such as the Superfund law (CERCLA) and the Clean Water Act are also set to rise considerably. In fact, EPA increased more than 65 types of environmental penalties. Together with OSHA and EPA, various agencies in the Department of the Interior, including the Fish and Wildlife Service, raised their penalty amounts for all violations occurring after November 2, 2015 for which a penalty has not been assessed by August 1, 2016. The Pipeline and Hazardous Materials Safety Administration, though, elected to apply its adjusted civil penalties only to violations occurring after August 1, 2016.

Many statutes mandate the imposition of designated civil penalties, and the details of the adjustments vary by agency. Although there is still an opportunity to comment on many of the penalty increases, a company’s best bet to avoid high fines is to be prepared for surprise inspections by (1) training employees how to respond, (2) having all required paperwork in order and available, and of course, (3) understanding the legal requirements and complying with those that apply to the facility.

Authors and Contributors

Brooke F. Dickerson
Of Counsel, Atlanta Office
404.873.8632
brooke.dickerson@agg.com

not *if*, but *how*.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit www.agg.com.

Atlanta Office
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2016. Arnall Golden Gregory LLP. This client alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.