July 29, 2016

EPA and OSHA Enforcement: Increased Maximum Civil Penalties Effective August 1, 2016

On August 1, federal maximum civil penalties will increase significantly per interim final regulatory rules implementing the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. The United States Environmental Protection Agency (EPA) and the United States Occupational Safety and Health Administration (OSHA) are adjusting their maximum civil penalties with an initial "catch-up" amendment in anticipation of the new maximum civil penalties of up to 150 percent over existing penalty amounts taking effect on August 1, 2016.

EPA Increases

Under the interim final rule, the amount of the increase in the maximum penalties EPA may recover is dependent on the regulatory program requirements EPA is enforcing. For example, the rule adjusts the statutory maximum civil penalty for:

- Violations of an effluent limit under the Clean Water Act, 33 U.S.C. § 1319(d), from $37,500 to $51,570 per day per violation;
- Violations under the Emergency Planning and Community Right-to-Know Act and Comprehensive Environmental Response, Compensation, and Liability Act for failure to comply with release-reporting requirements, from $37,000 to $53,907 per day per violation; and
- Violations under the Clean Air Act for failure to comply with implementation plan requirements or permits for major stationary sources, from $37,500 to $93,750 per day per violation.

Per Table 2 of the interim final rule, EPA is implementing more than 65 maximum penalty increases across the environmental statutes EPA enforces. A link to the revised table is attached here. The increases apply to civil penalties assessed after August 1, 2016 whose associated violations occurred after November 2, 2015. Violations occurring on or before November 2, 2015, as well as assessments made prior to August 1, 2016, will continue to be subject to the civil penalty amounts previously in effect. In determining whether to seek a maximum penalty, consistent with EPA's civil penalty policies that are not changing with the interim final rule, EPA will weigh fact-specific considerations, including the seriousness of the violation, the violator's good-faith efforts to comply, economic benefit gained by the violator as a result of noncompliance, and a violator's ability to pay.

OSHA Increases

OSHA, through its interim final rule, increases its maximum penalties by 78 percent (for inflation from October 1990 to October 2015), effective August 1, 2016 as follows:

- Willful and repeat violations increase from $70,000 to $124,709 (maximum) per violation;
- Serious and other-than-serious violation penalties increase from $7,000 to $12,471 (maximum) per violation; and
- Failure-to-abate violations increase from $7,000 to $12,471 (maximum) per day.

The increases in maximum OSHA penalties apply to all penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015. Violations occurring on or before November 2, 2015, as well as assessments made prior to August 1, 2016, will continue to be subject to the maximum civil penalties in effect prior to August 1, 2016.

Should you have any questions regarding either EPA's or OSHA's interim final rule, please feel free to contact any of the attorneys listed in the sidebar.

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