

K.A.R. 5-14-12. Civil penalties for exceeding the authorized quantity of water.

(a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds a diversion of water in excess of the authorized quantity, a written penalty order may be issued by the chief engineer pursuant to 82a-737(e), and amendments thereto.

(b) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in this state may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.

(c) Penalty categories. Any violation for diversion of water in excess of the authorized quantity may be subject to the penalties specified in one of the following categories, as listed in subsection (e): category 1, category 2, category 3, or category 4.

(1) A category 1 penalty may be assessed if no penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(2) A category 2 penalty may be assessed if one prior penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(3) A category 3 penalty may be assessed if two prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(4) A category 4 penalty may be assessed if three or more prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(d) Severity level of violation. Any violation may be assigned a severity level based upon the amount of water diverted in excess of the authorized quantity, according to the following:

(1) A water right that has exceeded its authorized quantity by less than an amount equal to the amount resulting from 24 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level A penalty.

(2) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 24 hours of pumping but less than an amount equal to 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level B penalty.

(3) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level C penalty.

(e) Penalty table. The following table may be used to determine the maximum civil penalty and the maximum reduction or modification of the water right that may apply to each violation, based on the penalty category and the severity level of the violation:

Penalty category	Severity level A	Severity level B	Severity level C
1	Written notice of Non-compliance	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a reduction in quantity equal to three times the quantity overpumped, not to exceed the annual authorized quantity

2	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a one-year suspension	\$1,000 per day and three-year suspension
3	\$1,000 per day and a One-year suspension	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension
4	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension	\$1,000 per day and a five-year suspension

(f) Mitigating factors. The monetary penalties and suspension terms specified in subsection (e) may be reduced due to one or more of the following factors:

(1) The absence of any prior penalty assessed under the Kansas water appropriation act, or the implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred;

(2) the absence of intentional noncompliance or gross negligence; or

(3) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative of the chief engineer or by personnel from a groundwater management district.

(g) Notice of noncompliance. Any notice of noncompliance issued under this regulation may be considered a category 1 penalty for purposes of classifying any future violation.

(h) Multiple water rights.

(1) If multiple water rights or permits authorize the use of water from a single point of diversion and if the water used exceeds the total quantity of water authorized by the water rights and permits, all water rights and permits under which the water was lawfully diverted may be deemed to be violated unless sufficient evidence to the contrary is offered by one or more of the water right owners.

(2) Any monetary penalty assessed under this regulation may be applied jointly and separately to the water rights, any temporary quantity reduction may be applied proportionally to each water right based on the authorized quantities for the water rights, and any suspension may be applied to all the water rights, unless it can be determined that the quantity available under a given water right was not exceeded

(i) Penalties for water rights in a term permit. For each instance of diversion of water in excess of the total authorized quantity under a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit. For each revocation, a suspension may be applied to the base water right for what would have been the remainder of the term of the permit, in addition to any penalty assessed according to subsection (e). Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term of the term permit.

(j) Expiration of penalty.

(1) Any penalty assessed by the chief engineer for diversion of water in excess of the authorized quantity under this regulation may expire four calendar years after the end of the calendar year in which the penalty was assessed.

(2) Any penalty that has not expired may be counted as a prior penalty for purposes of determining the category level of any future penalty for diversion of water in excess of the authorized quantity.

(3) A penalty that has expired under paragraph (j) (1) shall not be considered in assessing a future penalty under this regulation or under K.A.R. 5-14-10.

(4) A penalty that has expired shall not be expunged from the record of a water right and, except as otherwise provided in this regulation, may be considered by the chief engineer for any purposes pursuant to the Kansas water appropriation act, K.S.A. 82a-701 et seq. and amendments thereto, and the implementing regulations. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2016 Supp. 82a-737; effective July 14, 2017.)