

BSB Penalty Process

BSB 0101-04

Prepared by: Jeremy Smith

A handwritten signature in black ink, appearing to read 'Jer Smith', written over a horizontal line.

Date: **09/11/2020**

Approved by: Don Kinney

A handwritten signature in blue ink, appearing to read 'D. Kinney', written over a horizontal line.

Date: **09/11/2020**

BOILER SAFETY BUREAU

STANDARD OPERATING PROCEDURE

1.0 Purpose

- 1.1 The purpose of this procedure is to provide guidance for the issuance of penalties.

2.0 Scope

- 2.1 This procedure applies to penalties issued for safety violations and unpaid invoices.

3.0 Personnel Responsibilities

- 3.1 The Bureau Chief has the overall responsibility for the implementation of this procedure.
- 3.2 The Assistant Bureau Chief is designated as the primary document custodian, and is responsible for the control and review of this document.
- 3.3 All Boiler Safety Bureau personnel are responsible for ensuring that only the most current applicable procedures and attachments are used in the performance of work functions.

4.0 Health and Safety Issues

- 4.1 This procedure is intended to clarify the penalty process, to ensure compliance with our Law and Rules, and to promote the safe operation of boilers and pressure vessels in this State.

5.0 Procedure

- 5.1 The two common situations in which penalties will be assessed are unpaid invoices and safety violations. For each individual penalty occurrence, the initial penalty shall be assessed at \$250 per day pursuant to 95-69.19(a). All subsequent penalties assessed for the same occurrence shall be assessed at \$500 per day pursuant to 95-69.19(b), as the BSB will have refused to issue, renew or revoked the inspection certificate.

- 5.2 Penalties are assessed for each day the boiler or pressure vessel is operated in violation of 95-69.18.

- 5.2.1 Initial penalties issued pursuant to 95-69.19(a) (\$250) shall be assessed for each day the object was operating in violation as follows;

- Initial penalties issued for operating without a valid inspection certificate due to unpaid fees shall be assessed for only one day per device.
- Initial penalties issued for safety violations shall be assessed for each day the object was witnessed in operation, beginning from the day the violation was discovered.

- 5.2.2 Subsequent penalties issued pursuant to 95-69.19(b) (\$500) shall be assessed for each day the object was operating in violation, and for each day a reasonable person would conclude that the object would have been in operation. Some examples are;

- Hydro-pneumatic tanks providing potable water to tenants, schools, etc.
- Hot water supply boilers, water heaters and storage tanks providing potable hot water to tenants, schools, etc.
- Heating boilers in operation during cold weather months
- Compressed gas storage vessels

*All subsequent penalties shall be assessed from the date of confirmed receipt of the previously issued penalty, or from a different date as deemed appropriate by the Bureau Chief, but not before the date of confirmed receipt of the previously issued penalty.

5.3 Unpaid invoice penalties.

- 5.3.1 13 NCAC 13 .0302 states, in part, that a certificate will be issued only after payment of all outstanding fees.
- 5.3.2 If an owner does not pay the fees, they are deemed to be operating without an inspection certificate, in violation of 95-69.18(a), and are subject to a penalty.
- 5.3.3 Unpaid invoice penalties shall be processed per 5.1 and 5.2 above, and using the flowchart, Attachment 1 to this procedure.

5.4 Safety violation penalties.

- 5.4.1 13 NCAC 13 .0303(a) states, in part, that an owner has 60 days to correct any violations. This does not apply to imminent danger situations, whereas the use of the object shall be discontinued immediately.
- 5.4.2 If an owner does not correct a violation or contact the BSB to request more time for repairs, they are in violation of 95-69.18(b), and are subject to a penalty.
- 5.4.3 Safety violation penalties shall be processed per 5.1 and 5.2 above, and using the flowchart, Attachment 2 to this procedure.
- 5.4.4 Safety violation penalties shall only be assessed after the time allowed for repairs has passed, and after the owner has acknowledged the violation. The acknowledgement shall be made when the BSB receives a USPS return receipt (green card) for the overdue violation letter (at 60-days), or when the BSB receives a signed receipt from a Violation Notice card (see Attachment 7), or when the BSB receives a proof-of-service by hand-delivery notice (see Attachment 6).

5.5 Penalty consideration and reduction.

- 5.5.1 Pursuant to 95-69.19(c), penalties shall be reduced by considering the following factors;
 - Size of the business. This may be calculated based upon how many employees a reasonable person would expect to be employed by the business. For businesses with 1-25 employees, a 20% penalty reduction shall be calculated. For businesses with greater than 25 employees, no reduction shall be calculated.
 - Gravity of the violation. There shall be two factors in determining gravity of the violation. For non-serious violations, such as non-payment of fees, a 10% penalty reduction shall be calculated. For serious violations, such as safety violations considered to be a menace to public safety or imminent danger, no reduction shall be calculated.
 - Good faith. If evidence exists that the owner subject to the penalty has actively cooperated with the BSB to rectify the situation, a 10% penalty reduction shall be calculated. If evidence of good faith does not exist, no reduction shall be calculated.
 - Record of previous violations. If the owner subject to the penalty does not have a history of receiving penalties, a 10% penalty reduction shall be calculated. If a history of assessed penalties exists, no reduction shall be calculated.

5.6 A penalty may be issued for other violations not listed in this procedure, following the guidelines in this procedure.

5.7 Penalty amounts may be amended due to errors made during penalty calculations, or any evidence discovered after the penalty was issued.

5.8 A penalty may be voided by, or with the permission of, the Bureau Chief. Examples for voiding a penalty may be;

- A penalty was issued in error by the BSB.
- The circumstances leading to the penalty were invalid or inappropriate.
- The owner subject to the penalty provides evidence that would lead a reasonable person to believe that the owner was incapable of rectifying the situation leading to the penalty, due to exigent circumstances beyond their control, and the owner is actively working to make the necessary corrections.
- ***Written documentation must be provided by the owner and maintained by the Bureau for any voided penalty.***

5.8.1 A voided penalty may be re-issued if false evidence was provided for the purpose of voiding the penalty.

5.8.2 When voiding a penalty invoice, comments shall be entered into JO as to the reason for voiding the penalty, along with the name of the person voiding the penalty.

5.9 An owner may appeal a penalty pursuant to 95-69.19(d) within 15 days of receipt of said penalty.

6.0 Customer Service Requirements

6.1 This procedure is intended to provide the customer, be it the public, employees of the Bureau, or other State agencies, with the most efficient service, information, training and assistance possible. It is also intended to provide the public with equitable and fair treatment when penalties are issued.

7.0 Data and Record Management

7.1 All documents referenced in this procedure shall be maintained in accordance with the Functional Schedule for North Carolina State Agencies as adopted by State Archives, a Division of the North Carolina Department of Natural and Cultural Resources.

7.2 Documents shall be processed and filed in accordance with the flowchart, Attachment 3 to this procedure.