

The statute does not provide for an agency to assess punitive damages as part of an administrative order. We find NVI's interpretation without merit, and find that the ODEQ is authorized by statute and regulation to assess penalties against NVI in this matter without a showing of reckless disregard.

II. THE CALCULATION OF THE PENALTY

¶22 NVI's next arguments revolve around the provisions of 27A O.S.2011 §§ 2-3-504 and 2-3-502.

¶23 Section 2-3-504 (emphasis added) provides that:

a. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Environmental Quality Code or who violates any order, permit or license issued by the Department of Environmental Quality or rule promulgated by the Environmental Quality Board pursuant to this Code:

...

3. May be assessed an administrative penalty pursuant to Section 2-3-502 of this title not to exceed Ten Thousand Dollars (\$10,000.00) *per day of noncompliance*; or [may be subject to injunctive relief].

¶24 Section 2-3-502(K)(1) (emphasis added) provides that:

Unless specified otherwise in this Code, any penalty assessed or proposed in an order shall not exceed Ten Thousand Dollars (\$10,000.00) *per day of noncompliance*.

¶25 NVI argues that a licensee may not be assessed a penalty of over \$10,000 *per day* of noncompliance. ODEQ argues that we should interpret § 2-3-504 and 2-3-502, as providing for a penalty of "\$10,000 *per violation per day*." We find no case law addressing this question. However, in circumstances where the Legislature wishes penalties to be accrued on a "per violation per day" basis, it specifically states so. *See e.g.*, 21 O.S.2011 § 842.3(F) (administrative fine not to exceed \$5,000 *per violation per day* for breach of tattooing regulations); 52 O.S.2011 § 318.22 (seismic exploration without permit subject to \$1,000 penalty *per violation per day*); O.A.C. 165:30-3-104 (\$500 penalty for breach of motor vehicle regulations *per violation per day*). To interpret the phrase "per day"

as also meaning "per violation, per day" renders part of the language of these statutes superfluous, and undoes the legislatively created distinction.

¶26 Therefore, we find that § 2-3-504 caps total daily penalties at \$10,000, and NVI may be assessed a maximum penalty of \$10,000 per day of noncompliance. The only violation that may have occurred or continued after September 2, 2008, is the failure to notify the ODEQ within 24 hours of Roberts' suspected exposure, pursuant to O.A.C. 252:410-20-1(c)(13)(B), which was partially mitigated by the weather Act of God.

A. Was There a Violation of the Reporting Requirement?

1. *Loss of control*

¶27 NVI initially argues that there was no violation of O.A.C. 252:410-20-1(c)(13)(B). Subsection (c)(13)(B) references 10 C.F.R. § 20.2202, which, in turn delineates two different reporting standards, dependent upon the suspected exposure. The applicable standard states:

(b) **Twenty-four hour notification.** Each licensee shall, within 24 hours of discovery of the event, report any event involving loss of control of licensed material possessed by the licensee that may have caused, or threatens to cause, any of the following conditions:

(1) An individual to receive, in a period of 24 hours —

(i) A total effective dose equivalent exceeding 5 rems . . .

¶28 NVI argues that, because the nuclear pellet in question was not "lost," i.e., not out of the possession of its employees, there was no "loss of control," and § 20.2202(b) does not apply.⁷ However it does not disagree that for a period of time the operator did not know the true location of the pellet. Neither party cites, nor do we find, case law from state or federal courts interpreting the phrase "loss of control of licensed material" as used in § 20.2202(b). However, O.A.C. 252:410-1-4 separately regulates "lost or stolen" sources of radiation (citing 10 C.F.R. § 20.2201) and exposure that results from a loss of control (citing 10 C.F.R. § 20.2202), indicating that a "loss of control" of material differs from material being "lost . . . or stolen."