**AGENDA ITEM** | **DESCRIPTION** | **SUPPORTING DOCUMENTS**
---|---|---
**CALL TO ORDER** | Introductions  
Roll Call *(Cook)* |  
**APPROVAL OF MINUTES** | Meetings: November 10, 2020 *(Schultz)* | Minutes (attached)
**PUBLIC SESSION** | Any person wishing to address the Advisory Board on a matter not on this Agenda may do so at this time. *(Schultz)* |  
**CURRENT BUSINESS**  
– Action Items | None. |  
**CURRENT BUSINESS**  
– Information Items | A. Air Quality Civil Penalty Policy Discussion *(Bergstrom)* | (see attachments)
**ANNOUNCEMENTS** | Next Scheduled Meeting Dates: *(Schultz)*  
• May 4, 2021  
• August 3, 2021 |  
**ADJOURNMENT** | *(Schultz)* |  

This agenda will be kept continually current and will be available for public inspection within the Lincoln-Lancaster County Health Department during normal working hours. A copy of the Open Meetings Law is posted at the meeting site.

The City of Lincoln complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public’s access to and participating in public meetings is a priority for the City of Lincoln. In the event you are in need of a reasonable accommodation in order to attend or participate in a public meeting conducted by the City of Lincoln please contact Marcia Huenink at the Lincoln-Lancaster County Health Department at 402-441-8634 as soon as possible before the scheduled meeting date in order to make your request.
Minutes of the 
Air Pollution Control Advisory Board 
November 10, 2020

I. Roll Call - Cook
Members Presents: Deb McGuire, Lucas Sabalka, Tim Schultz, Piyush Srivastav, and Brian Wertz

Members on Zoom: Rick Dickey and Joselyn Luedtke

Members Absent: Phil Nalley and Elizabeth Vanwormer

Staff: Gary Bergstrom, Tyler Thayer and Lori Cook

Staff on Zoom: Amy Dirks and Peter Zach

II. Approval of Minutes - Schultz
Deb McGuire made a motion to approve the February 4, 2020 minutes. Seconded by Lucas Sabalka. Motion carried by a 5-0 roll call vote.

III. Public Session
Tim Schultz addressed this item.

IV. Current Business - Action Items - Bergstrom
A. Officer Elections
   Piyush Srivastav made a motion to nominate Tim Schultz as President. Seconded by Deb McGuire. Motion carried by a 5-0 roll call vote.

   Piyush Srivastav made a motion to nominate Lucas Sabalka as Vice-President. Seconded by Deb McGuire. Motion carried by a 5-0 roll call vote.

V. Current Business - Information Items - Bergstrom
A. Air Quality Civil Penalty Policy Discussion
   Mr. Bergstrom talked about what needs to be included in the policy to be consistent with EPA’s Civil Penalty Policy like economic benefit, gravity component, litigation risk, ability to pay, supplemental environment projects, multiple types of violations, offsetting for penalties paid to state/local governments or citizen groups and apportionment among multiple defendants. Mr. Bergstrom explained the style that Missouri, Kansas and Iowa use for their civil penalty policy and some considerations for our policy. Discussion was held.

B. Spring Burning Discussion
   Mr. Bergstrom talked about the fact that Lancaster County has maintained or is very close to maintaining the “Good” Air Quality at least 90% of days measured in the last 5 years. Flint Hills area burned 2,649,203 acres in 2020, more this year than in 2019. The impacts of air quality are the more days they burn the more
days with our AQI moderate or above, Lincoln sees the impact about 12 to 18 hours following the peak burning of the Kansas and Oklahoma areas, and Lincoln and Bellevue monitors recorded exceedances on April 11, 2020. On April 10, 2020 heavy smoke was observed in the Flint Hills Region of Kansas and Oklahoma. Winds were out of the south at 5 to 10 mph. High concentration of PM2.5 began appearing in Lincoln around 9:00 PM. High concentrations remained into morning of April 11, 2020 then started dropping down but rose as north winds returned the old smoke back into the area.

On February 27, 2020, there was a stakeholder roundtable meeting including DHHS, NDEE, Douglas County Health Department, Kansas Department of Health & Environment, USEPA and LLCHD held for the Flint Hills Burn Season preparation. Efforts were made between the agencies to improved communication, predictive modeling, air quality forecasts and smoke advisories put out.

Discussion was held.

VI. Announcements
Tim Schultz announced that the next two meetings will be February 2, 2021 and May 4, 2021.

VII. Adjournment

Deb McGuire made a motion to adjourn. Seconded by Lucas Sabalka. Motion carried by a 5-0 roll call vote.

Adjourned at 4:25 PM.

APCAB Minutes 11-10-20.doc
units shall maintain a file (hard copy or electronic version) of the following information for a minimum of two (2) years from the date the data was collected:

1. All information reported in the quarterly summaries; and
2. All six (6)-minute opacity averages and daily Quality Assurance (QA)/Quality Control (QC) records.

(5) Test Methods.

(A) Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources of 40 CFR 60, Appendix A-4, as specified in 10 CSR 10-6.030(22).

(B) Photogrammetric opacity measurement in accordance with EPA Alternative Test Method Decision Letter Number ALT-082, dated May 15, 2012 as published by EPA and hereby incorporated by reference in this rule.

Copies can be obtained from the Office of Air Quality Planning and Standards, Measurement Technology Group, Mail Drop: E143-02, Research Triangle Park, NC 27711.

This rule does not incorporate any subsequent amendments or additions.

(C) A modification of the test methods listed in subsections (5)(A) or (5)(B) of this rule. Any modification of a test method listed in subsections (5)(A) or (5)(B) of this rule must be approved by the director and the EPA; and incorporated into this rule and the SIP prior to implementation.

AUTHORITY: section 643.050, RSMo 2016.*

10 CSR 10-6.230 Administrative Penalties

PURPOSE: This rule establishes the procedures for assessment of administrative penalties.

(1) Applicability. This rule applies to installations and individuals throughout Missouri that are subject to sections 643.010–643.250, RSMo or any rule of the Missouri Air Conservation Commission or any site that is permitted by the Missouri Air Pollution Control Program.

(2) Definitions.

(A) Definitions for key words used in this rule may be found in 10 CSR 10-6.020(2).

(B) Additional definitions specific to this rule are as follows:

1. Conference, conciliation and persuasion—A process of verbal or written communications, including but not limited to meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

2. Economic benefit—Any monetary gain which accrues to a violator as a result of noncompliance;

3. Gravity-based assessment—The degree of seriousness of a violation taking into consideration the risk to human health and the environment posed by the violation and considering the extent of deviation from sections 643.010–643.250, RSMo;

4. Minor violation—A violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

5. Multi-day violation—A violation which has occurred on or continued for two (2) or more consecutive or nonconsecutive days; and

6. Multiple violation penalty—The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action.

(3) General Provisions.

(A) Pursuant to section 643.085, RSMo, and in addition to any other remedy provided by law, upon determination by the department that a provision of sections 643.010–643.250, RSMo, or a standard, limitation, order or rule promulgated, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator. The amount of the administrative penalty will be determined according to section (6) of this rule. In no event may the total penalty assessed per day of violation exceed the statutory maximum specified in section 643.151, RSMo.

(B) An administrative penalty shall not be imposed until the department has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or had the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is not a minor violation.

(C) An order assessing an administrative penalty shall be served upon the operator, owner or appropriate representative through United States Postal Service certified mail, return receipt requested, a private courier or messenger service which provides verification of delivery or by hand delivery to the operator’s or owner’s residence or place of business. An order assessing an administrative penalty shall be considered served if verified receipt is made by the operator, owner or appropriate representative. A refusal to accept, or a rejection of certified mail, private courier or messenger service delivery or by hand delivery of an order assessing an administrative penalty constitutes service of the order.

(D) The director may at any time withdraw without prejudice any administrative penalty order.

(E) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty being assessed and the basis of the penalty calculation.

(4) Reporting and Record Keeping. (Not Applicable)

(5) Test Methods. (Not Applicable)

(6) Determination of Penalties. The amount of an administrative penalty will involve the application of a gravity-based assessment under subsection (6)(A) and may involve additional factors for multiple violations, (6)(B), multi-day violations, (6)(C) and economic benefit resulting from noncompliance, (6)(D). The resulting administrative penalty may be further adjusted as specified under (6)(E).

(A) Gravity-Based Assessment. The gravity-based assessment is determined by evaluating the potential for harm posed by the violation and the extent to which the violation deviates from the requirements of the Missouri Air Conservation Law.

1. Potential for harm. The potential for harm posed by a violation is based on the risk to human health, safety or the environment or to the purposes of implementing the Missouri Air Conservation Law and associated rules or permits.

A. The risk of exposure is dependent on both the likelihood that humans or the environment may be exposed to contaminants and the degree of potential exposure. Penalties will reflect the probability the violation either did result in or could have resulted in a release of contaminants in the environment, and the harm which either did occur or would have occurred if the release had in fact occurred.

B. Violations which may or may not
pose a potential threat to human health or the environment, but which have an adverse effect upon the purposes of or procedures for implementing the Missouri Air Conservation Law and associated rules or permits may be assessed a penalty.

C. The potential for harm shall be evaluated according to the following degrees of severity:

(I) Major. The violation poses or may pose a substantial risk to human health and safety or to the environment, or has or may have a significant adverse effect on the purposes of or procedures for implementing the Missouri Air Conservation Law and associated rules and/or permits;

(II) Moderate. The violation poses or may pose a significant risk to human health and safety or to the environment, or has or may have a significant adverse effect on the purposes of or procedures for implementing the Missouri Air Conservation Law and associated rules and/or permits; and

(III) Minor. The violation does not pose significant or substantial risk to human health and safety or to the environment, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor.

2. Extent of deviation. The extent of deviation may range from slight to total disregard of the requirements of the Missouri Air Conservation Law and associated rules and/or permits. The assessment will reflect this range and will be evaluated according to the following degrees of severity:

A. Major. The violator has deviated substantially from the requirements of the Missouri Air Conservation Law, associated rules, or permits resulting in substantial noncompliance;

B. Moderate. The violator has deviated significantly from the requirements of the Missouri Air Conservation Law, associated rules, or permits resulting in significant noncompliance; and

C. Minor. The violator has deviated slightly from the requirements of the Missouri Air Conservation Law, associated rules, or permits that does not result in substantial or significant noncompliance; most provisions were implemented as intended; the violation was not knowingly committed; and is not defined by the United States Environmental Protection Agency as other than minor.

3. Gravity-based penalty assessment matrix. The matrix that follows will be used to determine the gravity-based assessment portion of the administrative penalty. Potential for harm and extent of deviation form the axes of the matrix. The penalty range selected may be adapted to the circumstances of a particular violation.

Gravity-Based Penalty Assessment Matrix

<table>
<thead>
<tr>
<th>Potential for Harm</th>
<th>Extent of Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Major</td>
</tr>
<tr>
<td>Major</td>
<td>$10,000 to $8,750</td>
</tr>
<tr>
<td>Moderate</td>
<td>$6,250 to $5,000</td>
</tr>
<tr>
<td>Minor</td>
<td>$2,500 to $1,250</td>
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</tbody>
</table>

(B) Multiple Violation Penalty. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation. The director may order a separate administrative penalty for that violation as set forth in this rule.

(C) Multi-Day Penalty. Penalties for multi-day violations may be determined when the director has concluded that a violation(s) has continued or occurred for more than one (1) day. Multi-day penalty assessments will be determined by using the Gravity-Based Assessment Matrix in paragraph (6)(A)(3). The director may seek penalties for each day of noncompliance not to exceed the amount of the civil penalty specified in section 643.151, RSMo.

(D) Economic Benefit. Any economic benefits, including delayed and avoided costs that have accrued to the violator as a result of noncompliance, will be added to the penalty amount. The department using an economic benefit formula that provides a reasonable estimate of the economic benefit of noncompliance will make determination. Economic benefits may be excluded from the administrative penalty if—

1. The economic benefit is an insignificant amount;

2. There are compelling public concerns that would not be served by taking a case to trial; or

3. It is unlikely that the department would be able to recover the economic benefit in litigation based on the particular case.

(E) Adjustments. The department may add to or subtract from the total amount of the penalty after consideration of the following adjustments:

1. Recalculation of penalty amount. After the issuance of an order by the director, if new information about a violation becomes available which indicates that the original penalty calculation may have been incorrect, the department may recalculate the penalty;

2. Good faith efforts to comply. The department may adjust a penalty amount downward if good faith efforts have been adequately documented by the violator. Good faith efforts include, but are not limited to, documentation that the violator has reported noncompliance or instituted measures to remedy the violation prior to detection by the department. However, good faith efforts to achieve compliance after agency detection are assumed and are not grounds for decreasing the penalty amount;

3. Culpability. In cases of heightened culpability which do not meet the standard of criminal activity, the penalty may be increased at the department’s discretion, within the ranges of the matrix. Likewise, in cases where there is a demonstrable absence of culpability, the department may decrease the penalty. Lack of knowledge of the Missouri Air Conservation Law and any associated rule and/or permit shall not be a basis of decreased culpability. The following criteria will be used to determine culpability:

A. How much control the violator had over the events constituting the violation;

B. The foreseeability of the events constituting the violation;

C. Whether the violator took reasonable precautions against the events constituting the violation;

D. Whether the violator knew or should have known of the hazards associated with the conduct; and

E. Whether the violator knew or should have known of the legal requirement which was violated. This criteria shall be used only to increase a penalty, not to decrease it;

4. History of noncompliance. Where there has been a history of noncompliance with the Missouri Air Conservation Law or any associated rule or permit, to a degree deemed significant due to frequency, similarity or seriousness of past violations, and considering the violator’s response to previous enforcement actions, the department may increase the administrative penalty. No downward adjustment is allowed because of this factor;

5. Ability to pay. When a violator has adequately documented that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out important remedial measures, the department may—

A. Waive any of the administrative penalty; or

B. Negotiate a delayed payment schedule, installment plan or penalty reductions with stipulated penalties; and

6. Other adjustment factors. This rule allows for other penalty adjustments based on fairness and equity not mentioned in this rule which may arise on a case-by-case basis.

(7) Proceeds from Administrative Penalties. The proceeds from any administrative penalty assessed in accordance with this rule shall be
paid to the county treasurer of the county in which the violation(s) occurred for the use and benefit of the county schools within that county.

(8) Natural Resource Damages. Nothing in this rule shall be construed as satisfying any claim by the state for natural resource damages.


10 CSR 10-6.240 Asbestos Abatement Projects—Registration, Notification and Performance Requirements

(Rescinded September 30, 2004)


Corvera Abatement Technologies, Inc. v. Air Conservation Commission and Missouri Department of Natural Resources, Case No. CV 197-985 CC. An action for declaratory judgment and injunctive relief to challenge the final rulemaking decision of the commission was taken to the Cole County Circuit Court. After a hearing conducted January 30, 1998, the circuit court issued an order on February 3, 1998, finding that 10 CSR 10-6.240 is void from its inception. The Missouri Department of Natural Resources was permanently enjoined from enforcing 10 CSR 10-6.240. A notice of appeal for this case was filed February 10, 1998.

10 CSR 10-6.241 Asbestos Projects—Registration, Abatement, Notification, Inspection, Demolition, and Performance Requirements

PURPOSE: This rule requires asbestos contractors to register with the department, to notify the department of each asbestos project, to allow the department to inspect asbestos projects, and to pay inspection fees. Each person who intends to perform asbestos projects in Missouri must register annually with the Missouri Department of Natural Resources’ Air Pollution Control Program. Any person undertaking a demolition or asbestos project must submit a notification to the appropriate agency of the department for each asbestos project and each notification must be accompanied by a fee. Asbestos contractors must allow representatives of the department to conduct inspections of projects and must pay inspection fees.

(1) Applicability.
(A) This rule applies to—
1. All persons that authorize, design, conduct, and work in asbestos projects; and
2. All persons that undertake demolitions or monitor air-borne asbestos and dispose of asbestos waste as a result of asbestos projects.
(B) Exemptions. The department may exempt a person from registration, certification, and certain notification requirements provided the person conducts asbestos projects solely at the person’s own place of business as part of normal operations in the facility and also is subject to the requirements and applicable standards of the United States Environmental Protection Agency (EPA) and United States Occupational Safety and Health Administration (OSHA) 29 CFR 1926.1101 promulgated as of July 1, 2018 and are hereby incorporated by reference as published by the Office of the Federal Register. Copies can be obtained from the U.S. Publishing Office, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. This rule does not incorporate any subsequent amendments or additions. This exemption shall not apply to asbestos contractors, to those subject to the requirements of the Asbestos Hazard Emergence Response Act (AHERA), and to those persons who provide a service to the public in their place(s) of business as the economic foundation of the facility. These shall include, but not be limited to, child daycare centers, restaurants, nursing homes, retail outlets, medical care facilities, hotels, and theaters. Business entities that have received state approved exemption status shall comply with all federal air sampling requirements for their planned renovation operations. The Asbestos Hazard Emergency Response Act as published by the Department of Commerce and Trade October 1986 is incorporated by reference in this rule. Copies can be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.
(A) Asbestos—The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocido-lite), cummingtonite-grunerite, anthophyllite, and actinolitetremolite.
(B) Asbestos abatement—The encapsulation, enclosure, or removal of asbestos-containing materials, in or from a facility, or air contaminant source; or preparation of regulated asbestos-containing material prior to demolition or renovation.
(C) Asbestos inspector—An individual who collects and assimilates information used to determine the presence and condition of asbestos-containing material in a facility or other air contaminant source. An asbestos inspector has to hold a diploma from a fully-approved EPA or Missouri-accredited AHERA inspector course and a high school diploma or its equivalent.
(D) Demolition—The wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
(E) Regulated asbestos-containing material (RACM)—Defined as follows:
1. Friable asbestos material;
2. Category I nonfriable ACM that has become friable;
3. Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or
4. Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this paragraph.
(F) Definitions. Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.
(A) Registration.
1. Any person that conducts an asbestos project shall register with the department. Business entities that qualify for exemption status from the state must reapply for exemption from registration.
2. The person shall apply for registration renewal on an annual basis, and two (2) months before the expiration date shall send the application to the department for processing. The contractor registration application or business examination information shall be submitted on the forms provided by the department.
3. Annually, the person submitting a registration application to the department shall remit a nonrefundable fee of one thousand dollars ($1,000) to the department. Effective January 1, 2017, the registration fee is two thousand six hundred fifty dollars ($2,650).
4. To determine eligibility for registration and registration renewal, the department may consider the compliance history of the applicant as well as that of all management employees and officers. The department may also consider the compliance record of any other entity of which those individuals were officers and management employees.
5. Registration may be denied for any one (1) or more of the following reasons:
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I. INTRODUCTION

The Kansas Air Quality Act ("KAQA") establishes a framework for the control of air pollutant emission in Kansas, including authority for regulations to implement the KAQA. Kansas Statutes Annotated ("K.S.A") 65-3025 makes it unlawful to violate any statute, regulation, permit, or order under the authority of KAQA. K.S.A. 65.3018 authorizes the Secretary of the Kansas Department of Health and Environment ("KDHE") to impose administrative fines not to exceed $10,000 per day per violation of the KAQA, or regulations, permits, or orders issued thereunder. The statute further states that the penalty imposed "will constitute an actual substantial economic deterrent to the violation for which it is assessed." K.S.A. 65-3011 authorizes the Secretary or Director of Environment to issue an order directing corrective action to address a violation of KAQA.

This document has been prepared to provide guidance to KDHE personnel in developing proposed corrective action and administrative penalties for consideration by management of KDHE for violations of the state and federal air quality regulations. Criminal enforcement cases are not covered by this enforcement policy.

Once enforcement by KDHE has begun, the alleged violator may have the opportunity to resolve the case through a settlement agreement with KDHE. The settlement will be in the form of a Consent Agreement and Final Order of the Secretary ("CAO") for the resolution of the enforcement action, and will include an agreed civil penalty to be paid by the alleged violator. Supplemental environmental projects ("SEPs") may be considered in lieu of portions of the penalty. For more information about SEPs, review the KDHE Bureau of Air, SEP Policy. In the alternative, KDHE may proceed with a unilateral Administrative Order ("AO").

The procedures contained in this document are intended to be used solely as guidance for KDHE personnel in conjunction with the overall Division of Environment Enforcement strategy and other KDHE guidance as part of a comprehensive Bureau of Air ("BOA") compliance and enforcement program. The Director of BOA, the Director of Environment, and the Secretary of KDHE must approve each proposed enforcement action and/or administrative penalty before it is final.

This policy is intended to serve only as guidance, with final decisions made by KDHE management. This policy document is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any in litigation with the State of Kansas. KDHE reserves the right vary from this policy.
II. GOALS

This policy has been prepared to accomplish multiple goals:

- To ensure that any administrative penalty assessed by KDHE will have the deterrent effect required by the statute;

- To recognize facilities that have shown exemplary effort to comply with existing environmental regulatory requirements by investing in environmental improvements beyond the minimum required. This may be accomplished by including such expenditures in the calculation of penalties;

- To ensure consistent, equitable treatment in the calculation of penalties for comparable violations;

- To ensure the appropriate use of limited program resources by developing an easy-to-follow formal process which can be readily applied to most circumstances.

To achieve these goals, this policy outlines procedures to ensure factors specific to the facility, operator, and violation(s) are considered in developing the penalty amount.

III. DETERMINING COMPLIANCE

A. Methods

There are several different ways that BOA might discover non-compliance. KDHE representatives observe performance tests and Relative Accuracy Testing Audit ("RATA"). Local agencies and KDHE district inspectors conduct routine compliance inspections. The purpose of an inspection is to assess the source’s compliance with applicable state and federal air quality regulations and permit conditions. The same inspectors also investigate complaints and issues referred by partner agencies. BOA reviews reports required by state and federal regulations, permits, and CAOs or AOs as well as self-discovery reports. If these methods reveal that non-compliance exists, then BOA must address the issue.

B. Types of Response

If non-compliance is discovered, BOA will respond in one or more of the following ways:

1. Non-compliance Actions (these actions may be completed by either BOA staff or by district or local agency inspectors)
   
   - Review and discussion

   - Notice of Non-compliance ("NON"), Letter or Warning ("LOW"), or Bureau Director’s Letter ("BDL")

   - Follow-up inspections after issuance of a NON, LOW, or BDL
• Referral to K-State’s Small Business Environmental Assistance Program (“SBEAP”) for assistance
• Referral to BOA compliance or permitting staff for assistance

2. Enforcement Responses

• Administrative Order (“AO”)
• Consent Agreement and Final Order of the Secretary (“CAO”)

3. Civil Enforcement

• Referral to State Attorney General (“AG”) office for district court filing
• Referral to AG office for emergency cease and desist orders- (decisions to refer are made at the Bureau Director level or above, unless there is an emergency)

4. Criminal Enforcement

• Referral to AG office
• Referral to federal criminal enforcement agencies (U.S. EPA and/or Department of Justice)- (decisions to refer are made at the Bureau Director level or above, unless there is an emergency)

IV. DETERMINING THE PENALTY

A. The Base Penalty

The first step in determining the proposed administrative penalty is to establish the base penalty. The base penalty is determined by using the table in Appendix A. This table lists various violations grouped by functional categories such as permitting, reporting, emissions, monitoring, testing, and record keeping. Where appropriate, each functional category is further subdivide into three categories of air pollutant sources. Within each of these categories is a base penalty for a functional category of violations.

For the purposes of this policy, air pollution sources are divided into three categories based on actual or potential for air pollutant emission from the source:

• Class I or Major stationary air pollutant emission source;
• Class II or Synthetic Minor (“SM”) air pollutant emission source, includes portable SM sources.
• B Sources, which are not required to obtain Class I, Class II, or any air construction permits. These include non-major sources, portable sources, other facilities without required permits or approvals, and exceptions to the state or federal air quality control rules.
Major sources have a higher potential to affect public health or the environment and the penalties for such sources should reflect this fact. The table in Appendix A has separate columns for each emission source type. A separate base penalty amount is established for each type of source in each of the functional categories of violations, as applicable.

Note: Penalties for B sources or Class II sources will be assessed at the appropriate category for its level of actual operation or emissions if they are exceeding operational or emissions limits.

Facility-specific and violation-specific factors affect the final proposed penalty amounts. Subsection B, Modifying the Base Penalty, describes various factors related to the violations that are reviewed and may be taken into consideration for penalty amount determination.

The Penalty Calculation Worksheet contained in Appendix B will be used to develop the proposed penalty amount. The base penalty for a specific violation is entered into the Penalty Calculation Sheet and is the starting point for the development of the proposed penalty amount.

B. Modifying the Base Penalty

To promote equity, the system for penalty assessment must have enough flexibility to account for the unique and specific facts of each case, yet still produce consistent results to ensure similar violations among similar violators are treated with consistency. This is accomplished in this policy by identifying many of the legitimate differences between cases and providing guidelines for adjusting the base penalty amount when some of these conditions occur. This section of the policy will address how the administrative penalty development will take into consideration the factors related to the facility, violator, and violation(s). The following factors regarding the facility will be evaluated for each case:

- The violator and facility’s full compliance history
- The violator’s good faith efforts to comply, or negligence complying
- Facility emission levels

The factors designed to measure the seriousness of the violations are as follows:

- Actual or potential harm to the public health or environment
- Number or duration of violations
- Importance to the success of a particular regulatory strategy

These factors are then evaluated and used to modify the base penalty amount obtained from the table in Appendix A. The starting penalty amount can be adjusted as a result of the consideration of the factors listed above. Both groups of factors will be discussed in detail in the following subsections 1 and 2.
1. Facility-Specific Factors

The evaluation of the facility specific factors will be performed one time for all of the violations covered by a specific administrative action. Each of these factors described below will be evaluated as it applies to a specific case. In those cases where a factor is not relevant, the Penalty Calculation Worksheet should be marked to indicate non-relevancy. For all others, evaluate the factor and document the result on the worksheet. The procedures and criteria to be used in evaluating each of the above factors are described below:

a. The Compliance History

The first factor to be evaluated is the violator and facility’s full compliance history. This factor rates the facility’s past environmental compliance history, including past notices of non-compliance, administrative orders, penalties, and civil or criminal actions. The primary focus of the compliance history evaluation will be for violations related to the air quality control program, but past enforcement actions in other environmental programs may also be taken into consideration in the determination of the compliance history multiplier factor. The compliance history will be evaluated by conducting a file review within the Bureau of Air, by accessing the departmental databases to review past administrative or civil actions against the company or facility, and by contacting compliance sections from other bureaus within the Division of Environment to determine whether current violations are being addressed. Criteria that will be evaluated include:

- Existence of administrative, civil, or criminal environmental actions against the company or facility issued by KDHE or another governmental agency.
- The level of penalties that were assessed in past administrative, civil, or criminal actions against the company or facility.
- The number of notices of non-compliance issued to the company or facility in the past.
- Whether or not past agency actions were taken for similar violations as contained in the current proposed action.

In the evaluation of the above criteria, greater emphasis should be placed on actions or notices of non-compliance that have occurred within the past five years. If the facility has had previous enforcement actions with KDHE, or the violation(s) have persisted 12 months or more, the facility will be required to pay the full penalty amount plus an additional percentage based on the number of previous enforcement actions, up to the statutory maximum. There will be no penalty reduction. Actions that are older than five years may not be indicative of current operating or management practices.

- If there is one previous civil or administrative enforcement action, 1.1 times the starting penalty amount will be assessed.
b. Violator’s Good Faith Efforts to Comply

The second set of factors to be evaluated is the violator’s good-faith efforts or negligence in complying with the KAQA. The following components should be evaluated when assessing this factor.

- The degree of control the violator had over the events constituting the violation.
- The foreseeability of the events constituting the violation.
- The level of sophistication within the industry in dealing with compliance issues or the accessibility of appropriate control technology (if this information is readily available).

Degree of cooperation: The degree of cooperation from the violator in remedying the violation is an appropriate factor to consider in adjusting the penalty. Cooperation by a violator includes activities such as promptly self-reporting non-compliance, instituting comprehensive corrective action after discovery of the violation, cooperating during any investigation of the violation, and working in good faith toward a negotiated settlement agreement. In evaluating the degree of cooperation by a source, agency staff will review the timeliness of the response by the facility and the quality of the response.

The base penalty amounts in Appendix A were established assuming the source was not willful or negligent and cooperated with the agency to resolve the violations. If the evaluation of the facility shows signs of willfulness or negligence or the facility has not been cooperative in resolving violations, the starting penalty amount will be increased. The starting penalty amount can be increased by up to an additional 50% above base level. For those cases where the facility has shown a very timely response along with a very high-quality response, the base penalty amount can be decreased up to 50%.
2. **Violation Specific Factors**

The first three factors considered in modifying the starting penalty amount, focus on historical and current conditions related to the facility or company that is the subject of the enforcement action. The next group of factors that will be considered relate to the nature and severity of the violations. The evaluation of the actual violations will be performed on each separate violation and an appropriate adjustment made for each violation. Each of the factors described below will be evaluated as it applies to each violation. In those cases where a factor is not relevant to the violation, the penalty worksheet should be marked as such. For all other factors, the personnel calculating the penalty should complete the evaluation of the factor and document the result on the worksheet. The procedures and criteria to be used in evaluating each violation are described in further detail below.

a. **Actual or Potential Harm to Public Health or the Environment**

This factor evaluates whether, and to what extent, the violation actually resulted, or was likely to result, in the emission of pollutants that cause harm to the public health or the environment. The starting penalty (Appendix A) establishes lower penalty amounts for potential emission than actual emissions. These starting penalty amounts are also based on the assumption that an actual release did not cause harm to the public health or to the environment. In those cases where documented health or environmental effects occurred as a result of a release, the starting penalty amount should be increased, by up to an additional 100% of the base penalty amount or to the allowable statutory maximum penalty, depending on the severity of the harm. The highest documented level of an emission violation may be considered when evaluating this factor. If a high level is not representative of the violation time period, a more representative level may be used.

b. **Number and Duration of Violations**

KAQA authorizes the assessment of penalties for each day of each violation. Assessment on a per-day basis may not be appropriate in all cases and can lead to high total penalties; therefore, to properly account for the gravity of either repeat violations, or extended-term violations, a reasonable basis must be applied. Violations are either one-time ("discrete") or extended ("continuous").
Other violations are considered to be continuing in nature. These violations exist until the source performs the required actions needed to bring the facility into compliance. Examples of continuing violation include, but are not limited to: operating without a required permit, failure to conduct a performance test when required, and emissions violations that are documented through continuous emissions monitoring systems, or through performance tests that show a facility out of compliance with an emission standard or limitation for a period of time.

The base penalty amounts contained in Appendix A were established for discrete violations that are addressed promptly. To determine the number of events that should be attributed to a continuing violation, the violations will be characterized by the type and severity of violation. In regard to type, each violation will be designated as actual release, potential release, or programmatic. In regard to severity, each violation will be characterized as either major or minor. After characterizing the type and severity of a continuing violation, Table A will be used to determine the number of events that should be attributed to the violation. The source’s efforts and timeliness in eliminating an emissions violation will be considered in determining the number of events that will be used for those continuous violations that are not treated as single events in Table A. The base penalties, as adjusted, may be multiplied by the time factors listed in lieu of the authorized daily multiplier.

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Severity of Violations</th>
<th>Number of Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual Release</td>
<td>Major</td>
<td>Up to daily</td>
</tr>
<tr>
<td></td>
<td>Minor</td>
<td>Up to daily</td>
</tr>
<tr>
<td>Potential Release</td>
<td>Major</td>
<td>Up to weekly</td>
</tr>
<tr>
<td></td>
<td>Minor</td>
<td>Up to weekly</td>
</tr>
<tr>
<td>Programmatic</td>
<td>Major</td>
<td>Up to weekly</td>
</tr>
<tr>
<td></td>
<td>Minor</td>
<td>Up to weekly</td>
</tr>
</tbody>
</table>

**c. Importance to the Regulatory Strategy**

This factor focuses on the importance of the requirement in achieving the goals of KAQA and the federal Clean Air Act (“CAA”) and implementing regulations. For example, the New Source Performance Standard (“NSPS”) regulations contained in 40 CFR Part 60 may require owners and operators of new sources to conduct emissions testing and to report the test results within a certain time after startup. If a source owner or operator does not report the test results, KDHE would have no way of knowing whether that source is complying with the applicable NSPS emission limits. Non-emission related violations are considered to be programmatic in nature.
C. Calculating the Economic Benefit of Non-compliance

An important goal of this policy is the equitable treatment of the regulated community. One mechanism for promoting equitable treatment is to recover the economic benefit of non-compliance in an administrative penalty assessment. This approach prevents violators from benefiting from their non-compliance relative to parties who have complied with environmental requirements. In order to ensure that penalties recover any significant economic benefit of non-compliance, it is necessary to have reliable methods to calculate that benefit. The existence of reliable methods also strengthens KDHE's position in both litigation and negotiation of assessing civil penalties.

This section sets out guidelines for computing the economic benefit components. It first addresses costs that are delayed by non-compliance. Then it addresses costs that are avoided by completely, or in part, by non-compliance. It also identifies issues to be considered when computing the economic benefit component for those violations where the benefit of non-compliance results from factors other than cost savings. The section concludes with a discussion of the circumstances where the economic benefit component may be mitigated.

1. Delayed and Avoided Cost

In many instances, the economic advantage to be derived from non-compliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a facility that fails to install a scrubber will eventually have spent the money needed to install the scrubber in order to achieve compliance. An economic advantage can also result from avoiding costs entirely. Avoided costs are associated with activities that should have taken place in the past, that will not or cannot be performed when the violation is discovered. This could be because conducting the activity would not be possible or would no longer serve any purpose. An example of avoided costs is where operations and maintenance expenses were not incurred for an air pollution control device that was not installed when required by an applicable regulation. The following items will be evaluated for each violation to determine whether a source has gained economic benefit through delayed or avoided costs during the period of time of the violation:

- Did the source avoid or delay capital outlay for air pollution control equipment, process changes needed to reduce air pollution, or air pollution monitoring equipment required by a permit or rule applicable to the facility or unit that is subject of the violation?

- Did the source accrue any interest by avoiding or delaying capital outlay for air pollution control or monitoring equipment that is applicable to the facility or unit that is the subject of the violation?

- Did the source avoid or delay maintenance or operating costs for existing air pollution control or monitoring equipment or required equipment or that was not installed?
• Did the source avoid or delay contractual costs by failing to conduct or delay performance tests or other required activities normally conducted by third parties?

• Did the source avoid operation and maintenance costs by disconnecting or failing to properly operate and maintain air pollution control or monitoring equipment?

• Did the entity receive revenue due to non-compliance?

If the answer is “yes” to any of the above questions, the BOA compliance staff will estimate the economic benefit gained from non-compliance. In the Kansas air quality program, the most likely cases where a source will realize significant economic benefit from non-compliance are in Prevention of Significant Deterioration ("PSD") program and implementing Reasonably Available Control Technology ("RACT") rules in the Kansas City metropolitan area. In cases where the economic benefit of non-compliance is moderate, BOA compliance staff will use a simplified version of determining economic benefit where only capital expenditures, one-time non-depreciable expenditures, and periodic costs such as maintenance and operational costs will be evaluated to perform the calculation of economic benefit.

Capital expenditures include all depreciable investment outlays necessary to achieve compliance with the environmental regulations or permit conditions. Depreciable capital investments are usually made for items that eventually wear out, such as buildings, equipment, or other long lived assets. Examples of typical capital investments that would be evaluated are baghouses, scrubbers, or other air pollution control equipment. One-time, non-depreciable expenditures include delayed costs the facility would have made earlier in order to prevent the violation. Such costs are for items that need only be made one time and do not wear out. Examples of these costs may include purchasing land or setting up a data monitoring system. Periodic costs are those recurring costs that are associated with operating and maintaining required pollution control or monitoring equipment.

BOA reserves the right to utilize the BEN. The BEN model calculates a violator’s economic benefit of noncompliance from delaying or avoiding pollution control expenditures.
2. Adjustments to the Economic Benefit Calculation

This policy will take into consideration the facility’s proactive environmental status to adjust the economic benefit calculation portion of a proposed penalty. The intent is to encourage facility management to perform activities conducive to environmental protection that are above and beyond those required by federal, state, and local environmental, safety or public health regulations. Activities that meet these criteria would include, but are not limited to, pollution prevention expenditures, implementation of an environmental management system (“EMS”), and environmental related plant improvements and ISO 14,000 certifications. Expenditures for all environmental media and programs may be considered during the preparation of the AO or CAO, if KDHE has information available regarding such activities. In addition, such a program may be considered during settlement negotiations in the case where a facility can document expenditures for such activities after receipt of the administrative order. The policy allows for a consideration of up to a one-on-one reduction in the economic benefit calculation for those documented activities.

The following factors will be afforded consideration by BOA compliance staff in evaluating whether an activity or expenditure qualifies to be considered in reducing the economic benefit calculation:

- What was the improvement or change the adoption of an innovative pollution prevention technology that resulted in a significant environmental benefit?
- Facilities that have received grants from KDHE or other governmental agencies will not be able to consider the grant expenditures as dollars spend on proactive environmental projects.
- Was the improvement or change required in a federal, state, or local air quality, safety, or public health regulations, such as a Maximum Achievable Control Technology (“MACT”) standard or RACT rule?
- Did the improvement or change result in a quantified and measureable reduction in the release of pollutant into the environment?

There are two additional circumstances where mitigating the economic benefit component of the proposed penalty may be appropriate. The first of these is when the economic benefit component involves an insignificant amount. Assessing the economic benefit component and subsequent negotiations will often represent a substantial commitment of resources. Such a commitment may not be warranted in the case where the magnitude of the economic benefit component is not likely to be significant, and because it is not likely to have substantial financial impact on the violator. For this reason, KDHE will generally use its discretion not to seek the economic benefit where it is estimated at less than $5,000.
Compelling public concerns may result in KDHE not seeking to recover the economic benefit component. This will be done only in cases where it is absolutely necessary to preserve the countervailing public interests. Such a settlement might be appropriate where the recovery would result in plant closings, bankruptcy, or their extreme financial burden, and there is an important public interest in allowing the facility to continue operating. Alternative payment plans, such as installment payments, should be fully explored before considering this option. This exemption does not apply to institutions where there is a likelihood of a continual harmful non-compliance. The economic benefit component may also be mitigated in enforcement actions against non-profit public entities, such as municipalities and publicly owned utilities, where profit motivations do not apply and assessment threatens to disrupt continued provision of essential public services. BOA will use the ABEL, INDIPAY, or MUNIPAY models prepared by EPA in any case it deems necessary. This route may also be taken into consideration for those facilities that do not agree with BOA’s determinations for the penalty matrix.—The ABEL model evaluates a corporation’s or partnership’s ability to afford compliance costs, cleanup costs, or civil penalties. The INDIPAY model evaluates an individual’s ability to afford the costs of compliance, cleanups, and/or civil penalties. Finally, MUNIPAY model evaluates a municipality’s or regional utility’s ability to afford the costs of compliance, cleanup, and/or civil penalties. Information needed for these models includes, but is not limited to, costs of compliance and the year the costs were estimated, multiple dates, and multiple years of federal tax returns.

After adjusting the economic benefit component for any above circumstances, the final economic benefit amount is added to the proposed base penalty on the Penalty Calculation Worksheet to reach the proposed penalty amount. The proposed penalty amount may then be adjusted as described in the following section. On the penalty calculation worksheet for each AO or CAO, economic benefit will be addressed, whether the penalty is increased due to large economic benefit, or when no increase for economic benefit, or when no increase for economic benefit was assessed by KDHE, including being less than $5,000 estimated in economic benefit.

V. FACILITY OPTIONS

There are two ways a facility can offset a portion of a civil penalty associated with a formal enforcement action.

A. Supplemental Environmental Projects (“SEPs”)

1. SEPs are an opportunity to improve the community and environment through projects; educated and raise awareness of environmental concerns; and prevent, remediate, or reduce emissions of pollutants that adversely affect public health or the environment. For more information, please see the BOA’s SEP policy.

2. SEPs will only be available to facilities with a penalty of $4,000 or more.

B. Abeyance

1. Abeyance allows for a temporary hold on a portion of the penalty payment. Below is a list of conditions for abeyance:
a. Abeyance will only be available to those facilities with clean compliance record for the past five years.

b. The violator is required to pay a minimum of fifty percent of the final penalty amount. The remaining amount will be held in abeyance for a minimum of two years, but KDHE may require longer. During the period of abeyance, KDHE will conduct a minimum of one compliance inspection per year. During each inspection the facility must demonstrate “significant compliance”. Significant compliance includes:

- No violations found during a full inspection.
- In the case of repeat violations, the facility must demonstrate substantial improvement on every violation that was cited in the CAO. Determination of the term “substantial” shall be at the sole discretion of KDHE.

c. Should the facility fail to remain in significant compliance during the abeyance period, the remaining penalty amount will become immediately due.

VI. CONCLUSION

Treating similar cases in a similar fashion is central to the credibility of the enforcement effort and to the success of achieving the goal of equitable treatment of the regulated community. This document has established several mechanisms to promote such consistency. The document also sets out guidance on uniform approaches for applying adjustment factors to arrive at an initial amount prior to beginning settlement negotiations or an adjusted amount after negotiations have begun. Nevertheless, if KDHE is to promote consistency, it is essential that each case file contain a complete description of how each penalty was developed for a specific case. The Penalty Calculation worksheet form is the primary means to accomplish this agenda. In those cases where economic benefit has been calculated a worksheet summarizing calculations will be included in the case file. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process. During the process of developing enforcement actions and penalties, agency management may revise the proposed action at any time.
VII. APPROVAL

Rick Brunetti, Director
Bureau of Air
# Appendix A: Penalty Matrix

<table>
<thead>
<tr>
<th>Violation</th>
<th>Regulation Citation</th>
<th>B Source</th>
<th>Class II</th>
<th>Class I</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Emission Violations</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excess emissions in a non-attainment or maintenance area of the pollutant(s) for which the area is designated non-attainment or maintenance:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant Violation</td>
<td>Various</td>
<td>N/A</td>
<td>$6,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Moderate Violation</td>
<td>Various</td>
<td>N/A</td>
<td>$4,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Minor Violation</td>
<td>Various</td>
<td>N/A</td>
<td>$2,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Excess emissions other than in a non-attainment or maintenance area:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant Violation</td>
<td>Various</td>
<td>N/A</td>
<td>$4,000</td>
<td>$8,000</td>
</tr>
<tr>
<td>Moderate Violation</td>
<td>Various</td>
<td>N/A</td>
<td>$3,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Minor Violation</td>
<td>Various</td>
<td>N/A</td>
<td>$1,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Exceeding the limitations in a permit, including operating, throughput, or materials limitations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant Violation</td>
<td></td>
<td></td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Moderate Violation</td>
<td></td>
<td></td>
<td>$750</td>
<td>$1,000</td>
</tr>
<tr>
<td>Minor Violation</td>
<td></td>
<td></td>
<td>$500</td>
<td>$750</td>
</tr>
<tr>
<td>Excess emissions resulting in breaching the PSD permitting threshold</td>
<td></td>
<td></td>
<td></td>
<td>$5,000 $5,000 $10,000</td>
</tr>
<tr>
<td>Unauthorized open burning by an organization or failure to comply with conditions of an open burning approval K.A.R. 28-19-645 K.A.R. 28-19-647</td>
<td></td>
<td></td>
<td>$1,000 $1,000 $2,000</td>
<td></td>
</tr>
<tr>
<td>Unauthorized open burning by an individual or failure to comply with conditions of an open burning approval K.A.R. 28-19-645 K.A.R. 28-19-647</td>
<td></td>
<td></td>
<td>$1,000 N/A N/A</td>
<td></td>
</tr>
<tr>
<td>Permit/Application Violations</td>
<td>K.A.R. 28-19-300</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------------</td>
<td>------------------</td>
<td>-------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>Commencing construction, operation or modification of an emissions unit without timely obtaining a construction approval</td>
<td>K.A.R. 28-19-300</td>
<td>$750</td>
<td>$1,500</td>
<td>$3,000</td>
</tr>
<tr>
<td>Commencing construction, operation or modification of an emissions unit without timely obtaining a construction permit</td>
<td>K.A.R. 28-19-350</td>
<td>$4,000</td>
<td>$4,000</td>
<td>$6,000</td>
</tr>
<tr>
<td>Failure to submit a timely Class I operating permit application or renewal</td>
<td>K.A.R. 28-19-500</td>
<td>$5,000</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Failure to submit a timely Class II operating permit application</td>
<td>K.A.R. 28-19-540</td>
<td>$2,500</td>
<td>$2,500</td>
<td>N/A</td>
</tr>
<tr>
<td>Submitting false information in a permit application</td>
<td>K.S.A. 65-3025</td>
<td>$1,000</td>
<td>$2,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Any other permit/application violation not listed</td>
<td>N/A</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

| Reporting Violations                                                                         | Various          | $500  | $1,000 | $2,000 |
| Failure to submit a timely report or notification including annual certifications, semi-annual summary reports, excess emission reports, annual emissions inventory, etc. | Various          | $250  | $500   | $1,000 |
| Incomplete report or notification                                                          | Various          | $1,000 | $2,000 | $4,000 |
| Submittal of an incorrect report by failing to disclose an instance of non-compliance. Violations include NSPS, MACT, PSD, record keeping, emission violations, or other document violations. | K.A.R. 28-19-512 | $500  | $1,000 | $2,000 |
| Any other reporting violations not listed                                                   | N/A              | $500  | $1,000 | $2,000 |

<p>| Record Keeping Violations                                                                 | Various          | $500  | $1,000 | $2,000 |
| Failure to maintain required records or maintaining records which are incomplete           | Various          | $1,000 | $2,000 | $4,000 |
| Falsification of records                                                                   | Various          | $500  | $1,000 | $2,000 |
| Any other record keeping violations not listed                                             | N/A              | $500  | $1,000 | $2,000 |</p>
<table>
<thead>
<tr>
<th>Testing Violations</th>
<th>Various</th>
<th>$500</th>
<th>$1,000</th>
<th>$2,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testing with an improper test method or procedure</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to conduct a timely performance test</td>
<td>Various</td>
<td>$1,000</td>
<td>$2,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Failure to conduct a timely Method 9 for Stationary Equipment (single event)</td>
<td>Various</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Failure to conduct a timely Method 9 for Portable Equipment (per permitted unit)</td>
<td>Various</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Failure to timely submit performance test protocol</td>
<td>Various</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Failure to timely submit performance test report</td>
<td>Various</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Falsification or manipulation of test results</td>
<td>Various</td>
<td>$1,500</td>
<td>$3,000</td>
<td>$6,000</td>
</tr>
<tr>
<td>Any other testing violations not listed</td>
<td>N/A</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Monitoring/Title V Periodic Monitoring Violations</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to install, operate or maintain monitoring equipment required by the Clean Air Act, its implementing regulations or a permit</td>
<td>Various</td>
<td>$1000</td>
<td>$2000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Failure to conduct monthly qualitative assessments as required by a Title V permit</td>
<td>Various</td>
<td>N/A</td>
<td>N/A</td>
<td>$1,000</td>
</tr>
<tr>
<td>Opacity violation</td>
<td>K.A.R. 28-19-650</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Any other monitoring/Title V periodic monitoring violations not listed</td>
<td>N/A</td>
<td>$500</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
</tbody>
</table>
Appendix B: Penalty Calculation Sheet
Bureau of Air
Penalty Assessment Worksheet

Facility Name: 
Facility Street Address: 
City, State, Zip Code: 

Source ID No: 
Case No: 
Date: 

<table>
<thead>
<tr>
<th>Citation</th>
<th>Violation Summary</th>
<th>Penalty Range/Calculation</th>
<th>Penalty Assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEP (if applicable)</td>
<td>Penalty off set</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty Mitigation* (if applicable)</td>
<td>Penalty off set</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abeyance* (if applicable)</td>
<td>Abeyance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Penalty</td>
<td>Civil Penalty Adjustments</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
AIR QUALITY

CIVIL PENALTY MANUAL

Air Quality Bureau
Iowa Department of Natural Resources

February 2012
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# Glossary

**ACM** - Asbestos-containing Material  
**ACO** - Administrative Consent Order  
**AGO** - Attorney General’s Office  
**ACWM** - Asbestos-containing Waste Material  
**BACT** - Best Available Control Technology  
**CAA** - Clean Air Act  
**CFR** - Code of Federal Regulations  
**IDNR** - Iowa Department of Natural Resources  
**EPA** - Environmental Protection Agency  
**IAC** - Iowa Administrative Code  
**LAER** - Lowest Achievable Emission Rate  
**MACT** - Maximum Achievable Control Technology  
**NESHAP** - National Emission Standards for Hazardous Air Pollutants  
**NOV** - Notice of Violation  
**NPV** - Net Present Value  
**NSPS** - New Source Performance Standards  
**NSR** - New Source Review
**PSD** - Prevention of Significant Deterioration

**RACM** - Regulated Asbestos-Containing Material

**SIP** - State Implementation Plan

**VOC** - Volatile Organic Compound

**VOP** - Voluntary Operating Permit
INTRODUCTION

Section 120 of the Clean Air Act provides the states with the authority to assess and collect a non-compliance penalty against every person who owns or operates:

- A major stationary source which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

- A stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under Sections 111, 112, 167, or 303 of the Act, or

- A stationary source which is not in compliance with any requirement of title IV, V, or VI of the Act.

In addition, Iowa Code section 455B.109 authorizes the assessment of administrative penalties for violations of Iowa Code Chapter 455B or rules, permits, and orders promulgated or issued pursuant to 455B of not more than ten thousand dollars.

The Iowa Code section 455B.109 indicates that in adopting a schedule or range of penalties and in proposing or assessing a penalty, the following factors shall be considered:

1. The costs saved or likely to be saved due to the violator's non-compliance
2. The gravity of the violation
3. The degree of culpability of the violator

The purpose of this document is to provide reasonable and supportable assumptions in calculating the penalty amount which should be sought in an air quality administrative complaint so that a fair and equitable penalty will result.
DETERMINATION OF NON-COMPLIANCE PENALTIES

Any penalty should, at a minimum, recover any significant economic benefit resulting from non-compliance. In addition, it should include an amount beyond recovery of the economic benefit to reflect the seriousness of the violation.

That portion of the penalty which recovers the economic benefit of non-compliance is referred to as the "economic benefit component" and that part of the penalty which reflects the seriousness of the violation is referred to as the "gravity component." Whenever applicable, the penalty should include an additional amount reflecting the degree of culpability of the violator.

Sections 1 and 2 provide guidelines for calculating the economic benefit component and the gravity component for both air quality violations and asbestos demolition and renovation violations.

Section 4 will discuss how to assess the degree of culpability of the violator and Section 5 will explain the limited circumstances which justify adjusting the penalty up or down.

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1 All consent agreements should state that penalties paid pursuant to this manual are not deductible for federal tax purposes under 28 U.S.C. § 162(f).
1. AIR QUALITY VIOLATIONS

For purposes of this document, air quality violations will be divided into four categories:

✓ Air Emission Violations
✓ Air Program and/or Permit Violations
✓ Procedural Requirement Violations
✓ Administrative Order, Compliance Plan, and Variance Violations

1.1 The Economic Benefit Component

Economic benefit represents the financial or other economic benefit or advantage the violator has gained due to:

✓ Delayed compliance costs
✓ Avoided compliance costs
✓ Illegal competitive advantage

Where the violator obtains an economic benefit attributable to a violation or by failure to undertake timely compliance or corrective measures, the Department shall take enforcement action, which at a minimum, includes penalties which offset the economic benefit.

1.1.1 Economic Benefit from Delayed Compliance Costs

Delayed compliance costs are those that must be incurred in order to remedy a violation and which have been delayed due to non-compliance. For example, a facility which fails to install a scrubber will eventually have to spend the money needed to install the scrubber in order to achieve compliance. However, by deferring these capital costs until the Department takes an enforcement action, that facility has achieved an economic benefit. Among the types of violations which may result in savings from deferred costs may include the following:

✓ Failure to install equipment needed to meet emission control standards.
✓ Failure to complete process changes needed to reduce pollution.
✓ Failure to test where the test still must be performed.
✓ Failure to install required monitoring equipment.
1.1.2 Economic Benefit from Avoided Compliance Costs

Many types of violations enable a violator to permanently avoid certain costs associated with compliance.

Avoided costs may include savings for:

✓ Disconnecting or failing to properly operate and maintain existing pollution control equipment (or other equipment if it affects pollution control).
✓ Failure to employ a sufficient number of adequately trained staff.
✓ Failure to establish or follow precautionary methods required by regulations or permits.
✓ Removal of pollution equipment resulting in process, operational, or maintenance savings.
✓ Disconnecting or failing to properly operate and maintain required monitoring equipment.
✓ Operation and maintenance of equipment that the violator failed to install.

1.1.3 Economic Benefit from Illegal Competitive Advantage

A violator may obtain illegal competitive advantage from non-compliance if any of the following situations can be demonstrated to have occurred as a result of said non-compliance.

✓ Violator gains additional market share;
✓ Violator sells products or services prohibited by law;
✓ Violator initiates construction or operation prior to government approval; or
✓ Violator operates at higher capacity than it should have.

1.1.4 Calculating the Economic Benefit Component

In order to ensure that penalties remove any significant economic benefit of non-compliance, it is necessary to have reliable methods to calculate that benefit. The existence of reliable methods also strengthens the Department’s position in both litigation and negotiation.
Determining Delayed and Avoided Compliance Costs

The benefit from delayed and avoided compliance costs can both be calculated by using the EPA’s BEN Model\(^2\), which computes the economic benefit of non-compliance with pollution control requirements, based on modern and generally accepted financial principles. Air pollution control cost estimates for the BEN Model, can be calculated using the “EPA Air Pollution Control Cost Manual”, which is found at:
http://www.epa.gov//ttn/catc/products.html

Appendix I shows how to calculate the economic benefit of non-compliance using the BEN methodology and an alternate method.

Determining Illegal Competitive Advantage

The BEN Model, or any computer model, cannot calculate illegal competitive advantage; therefore, in order to determine if illegal competitive advantage has occurred as a result of the violator’s non-compliance, several screening questions should be considered:

1. Did non-compliance create a cost advantage that allowed market share gains?

   A violator might sell products at a lower price than its compliant competitors, because it does not incur environmental compliance costs. By under-pricing its competitors while in non-compliance, it can gain additional market share. This additional market share allows the company to generate additional revenue that it would not have been able to generate had it complied. The additional market share could even persist to some extent into the future once the company has come into compliance. \([\text{Noncompliance scenario cash flow} = \text{actual revenue} - \text{variable costs} + \text{projected revenues for remaining project/contract life} - \text{projected variable costs}]\)

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\(^2\) The BEN Model can be found at these web URLs: 1) www.indecon.com/iec_web/practice/models.asp and 2) www.epa.gov/compliance/civil/econmodels/index.html
2. Did the violator sell prohibited products/services that no additional costs could have made legal?

This question identifies compliance scenarios requiring the violator to abstain entirely from the economic activity associated with non-compliance. This includes violations prohibited products or activities where no legal alternative would have produced the same revenues. The key consideration in answering this question is determining whether a traditional, alternative compliance scenario (typically entailing additional production costs) was available. [Noncompliance scenario cash flow = actual revenue - variable costs]

3. Did non-compliance allow start of production/sales earlier than under hypothetical compliance? Would permitting have affected operations so significantly as to alter gross revenues?

The first question presents a simple screen for identifying violators who may gain by being an “early mover” as a result of avoiding regulatory or permitting processes. While BEN captures the delayed and/or avoided costs associated with obtaining a permit or installing equipment, the model does not address the potential advantage of a violator who has started operations ahead of a legal timetable. One key consideration in answering these questions is determining whether the company realistically could have started the permit process earlier and then still proceeded on the same operations schedule. [Noncompliance scenario cash flow = present value of net cash flow over life of the actual project - present value of net cash flow over life of the hypothetically compliant project]

4. Did compliance require a reduction in throughput/output?

This question identifies situations where a company has violated regulations by exceeding mandated output or throughput levels, either because the regulations specifically require a certain level, or because the economically rational compliance option dictates such a level. The violator did not avoid any additional compliance costs by producing the additional output, but the company benefited from the higher revenues associated with the illegal increment output. Addressing
this question requires determining whether traditional compliance alternatives to lower production existed at the time that were technologically, legally, and economically feasible. If such alternatives were available, then their higher compliance costs are amenable to a traditional BEN analysis. [Noncompliance scenario cash flow = avoided compliance costs (calculated by BEN) + value of incremental cash flows from additional production]

**Penalty Assessment Criterion Number 1**
Penalty amount will be proportional to the cash flow resulting from illegal competitive advantage, as indicated in Table 1.

**TABLE 1**

<table>
<thead>
<tr>
<th>ILLEGAL COMPETITIVE ADVANTAGE</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Flow resulting from</td>
<td></td>
</tr>
<tr>
<td>Illegal Competitive</td>
<td></td>
</tr>
<tr>
<td>Advantage</td>
<td></td>
</tr>
<tr>
<td>Under $100,000</td>
<td>$1,120</td>
</tr>
<tr>
<td>$100,001 - $1,000,000</td>
<td>$3,360</td>
</tr>
<tr>
<td>$1,000,001 - $5,000,000</td>
<td>$5,600</td>
</tr>
<tr>
<td>$5,000,000 - $20,000,000</td>
<td>$7,840</td>
</tr>
<tr>
<td>$20,000,001 - $40,000,000</td>
<td>$10,080</td>
</tr>
<tr>
<td>$40,000,001 - $70,000,000</td>
<td>$14,320</td>
</tr>
<tr>
<td>$70,000,001 - $100,000,000</td>
<td>$18,560</td>
</tr>
<tr>
<td>Over 100,000,000</td>
<td>$18,560 + 2,240 for every additional $30,000,000 or fraction thereof</td>
</tr>
</tbody>
</table>

The information necessary to determine illegal competitive advantage may be obtained through:
- ✓ Discovery for evidence of violator’s actions: daily logs, consultant reports, emissions monitoring reports, model interrogatories, request for production
- ✓ Administrative subpoena
- ✓ Engineering experts, both in-house, and contractors, or even similar companies
- ✓ EPA Air Pollution Control Cost Manual
1.2 The Gravity Component

As noted above, in addition to an economic benefit component, a penalty should also include an amount reflecting the seriousness of the violation.

Assigning a dollar figure to represent the gravity of violations is a process which must, of necessity, involve the consideration of a variety of factors and circumstances. Linking the dollar amount of the gravity component to these objective factors is a useful way of insuring that violations of approximately equal seriousness are treated the same way.

These specific factors are designed to measure the seriousness of the violation and reflect the considerations listed in the CAA. They include the actual and potential harm arising from the violation and the violation's threat to the integrity of the regulatory program.

1.2.1 Actual and Potential for Harm to Human Health, Safety, and the Environment

In order to evaluate the actual and potential harm arising from a violation, only air emissions violations are considered in assessing this penalty, because these violations directly affect human health, safety, and the environment.

For purposes of determining how serious a given violation is, it is possible to distinguish air emission violations based on certain considerations, such as the amount of pollutant emitted above the emission standard and/or limit, the sensitivity of the environment, and the toxicity of the pollutant.

(a) Amount of Pollutant Emitted above the Emission Standard and/or Limit

This factor focuses in the emission of a pollutant in violation of the level allowed by a permit and/or NSPS, NESHAP, MACT, and SIP regulations.
Applicable IAC 567 Subrules:

➢ Chapter 22 - Controlling Pollution
  o Subrule 22.3(3) Conditions of approval
    • Permit Condition 7 - Excess Emissions
    • Permit Condition 10 - Emission Limits
    • Permit Condition 14 - Operating Limits
  o Subrule 22.3(4) Limits on Hazardous Air Pollutants
  o Subrule 22.108 (1) Enforceable Emission Limitations and Standards (Title V Permit)
  o Subrule 22.125(3)“a“(2) Sulfur Dioxide Emissions Limitation (Acid Rain Permit)
  o Subrule 22.154(4) Nitrogen Oxides Emissions Limitation (Acid Rain Permit)
  o Enforceable emission limits as required in a Construction Permit to maintain the facility's synthetic minor status for purposes of PSD, NSR, or Title V

➢ Chapter 23 - Emission Standards for Contaminants
  o Subrule 23.1(2) New Source Performance Standards (40 CFR Part 60)
  o Subrule 23.3(2) Particulate Matter Emission Standards (not including fugitive dust)
  o Subrule 23.3(3) Sulfur Compounds Emission Standards
  o Subrule 23.4 Specific Processes Emission Standards (including asphalt batching plants, cement kilns, cupolas for metallurgical melting, electric furnaces for metallurgical melting, sand handling and surface finishing operations in metal processing, grain handling and processing plants, lime kilns, meat smokehouses, phosphate processing plants, Portland cement concrete batching plants, incinerators, painting and surface-coating operations)
Subrule 24.1(4) - Excess emissions (other than during startup, shutdown, or cleaning of control equipment)

**Penalty Assessment Criterion Number 2**

Penalty amount will be proportional to the percent of pollutant emitted above the emission standard and/or limit, as indicated in Table 2.

**TABLE 2**

<table>
<thead>
<tr>
<th>Percent above emission standard and/or limit</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 30%</td>
<td>$300</td>
</tr>
<tr>
<td>&gt;30%</td>
<td>$300 + $10 per 1% increase</td>
</tr>
</tbody>
</table>

The penalty shown in the table above should be assessed for each emission violation.

Example:

XYZ Company emits particulate matter and its permit indicates that EP-1 is subject to a 40% opacity standard, a 0.1 grain per dry standard cubic foot of exhaust gas, and a plant-wide emission limit of 80 tons per year of particulate matter.

During the last compliance inspection, visible emission from EP-1 reached 45% opacity. Review of the plant’s records indicated emissions equal to 95 tons of particulate matter for the previous twelve months.

A stack test was conducted the day after the compliance inspection. The results of the EP-1 stack test indicated an emission rate of 0.2 grain/dscf. The Department decided to pursue enforcement action against this facility and found that:

The opacity was 12.5%\(^3\) above standard.

*Penalty amount from Table 2 = $300*

a. The yearly emissions were 18.8%\(^4\) above emission limit.

*Penalty amount from Table 2 = $300*

b. The emission rate was 100%\(^5\) above emission standard.

\[^3\] \([(45 - 40) ÷ 40] × 100 = 12.5\%
\[^4\] \([(95 - 80) ÷ 80] × 100 = 18.8\%
\[^5\] \([(0.2 – 0.1) ÷ 0.1] × 100 = 100\%
Penalty amount from Table 2= $1000

Total penalty amount for these air emissions violations:
\[ a + b + c = $1600 \]

**Penalty Assessment Criterion Number 3**
As depicted in Table 3 below, the penalty amount for fugitive dust violations (IAC 567 - Subrule 23.3(2)“c”) will be assessed in proportion to the number of times the Department verifies that the facility is in violation of this rule.

**TABLE 3**

<table>
<thead>
<tr>
<th>FUGITIVE DUST VIOLATIONS</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of times violations have occurred</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>2</td>
<td>$560</td>
</tr>
<tr>
<td>3</td>
<td>$1120</td>
</tr>
<tr>
<td>Over 3</td>
<td>$1680</td>
</tr>
</tbody>
</table>

(b) **Sensitivity of the Environment**

This factor focuses on where the violation occurred. For example, excessive emissions in a non-attainment area are usually more serious than excessive emissions in an attainment area.

Applicable CAA Parts:

- Part C - Prevention of Significant Deterioration of Air Quality
- Part D - Plan Requirements for Non-Attainment Areas

**Penalty Assessment Criterion Number 4:**

- **Attainment or Non-Classified Areas:** $280
- **Non-attainment Areas**
  - Ozone

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6 Only applicable to violations involving criteria pollutants, i.e., sulfur dioxide, particulate matter, carbon monoxide, ozone (volatile organic compounds), nitrogen dioxide, and lead.
- **Severe:** $900
- **Serious:** $780
- **Moderate:** $670
- **Marginal:** $560

- **Carbon Monoxide and Particulate Matter**
  - **Serious:** $790
  - **Moderate:** $680

- **All Other Criteria Pollutants:** $560

### (c) Toxicity of the Pollutant

Violations involving toxic pollutants are more serious and should result in larger penalties.

Applicable pollutants are those listed under these regulations and statute:

- 40 CFR Subpart 61 - National Emission Standards for Hazardous Air Pollutants (See Appendix II)
- 40 CFR Subpart 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories (See Appendix III)
- Section 112(b)(1) of the CAA (See Appendix IV)

**Penalty Assessment Criterion Number 5:**
The penalty amount will be equal to $1,120 for each hazardous air pollutant for which there is a violation.

### 1.2.2. Threat to the Integrity of the Regulatory Program

This portion of the gravity component will be assessed for each of the following air quality violation categories.

- Air Program and/or Permit Violations
- Procedural Requirement Violations
➢ Administrative Order, Compliance Plan, and Variance Violations

These violations are considered significant enough as to threaten achieving the goals of the Clean Air Act and its implementing regulations and therefore require the assessment of penalties.

For example, NSPS regulations require owners and operators of new sources to conduct emissions testing and report the results within a certain time after start-up. If a source owner or operator does not report the test results, the Department would have no way of knowing whether that source is complying with the NSPS emissions limits.

(a) Air Program and/or Permit Violations

These violations include the failure to comply with permitting, monitoring, emission testing, operating, maintenance, and repairing requirements by a permit and/or NSPS, NESHAP, MACT, and SIP regulations.

*Penalty Assessment Criterion Number 6*

Violations of Subrule 21.4 – Circumvention of rules

Any facility that violates this rule will be imposed a penalty of $1,680.

*Penalty Assessment Criterion Number 7*

Penalty amount for permitting violations by sources not subject to PSD, Non-attainment or MACT requirements will be assessed as depicted on Table 4.

<table>
<thead>
<tr>
<th>TABLE 4</th>
<th>PERMITTING VIOLATIONS – SOURCES NOT SUBJECT TO PSD, NON-ATTAINMENT OR MACT REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of times violations have occurred</strong></td>
<td>Penalty amounts for violations of</td>
</tr>
<tr>
<td>✓ Subrule 22.1 – Permits required for new or existing stationary source</td>
<td></td>
</tr>
<tr>
<td>✓ Subrule 22.3(3)“e” – Requirement to obtain a</td>
<td></td>
</tr>
</tbody>
</table>
supplemental permit

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>2</td>
<td>$225 per every required permit</td>
</tr>
</tbody>
</table>

**Penalty Assessment Criterion Number 8**
The penalty amount for PSD permitting violations by major sources in attainment or non-classified areas will be proportional to the total cost of implementing BACT at the facility. See Table 5.

**TABLE 5**

| PSD PERMITTING VIOLATIONS - MAJOR SOURCES IN ATTAINMENT OR NON-CLASSIFIED AREAS |
|---|---|---|
| Total cost of implementing BACT at new or modified sources ($ Thousands) | Penalty amounts for violations of ✓ Subrule 22.4 - Requirement to obtain a PSD permit | Penalty amounts for violations of PSD permit increments |
| Less than 50 | $225 | $790 |
| 50 - less than 150 | $450 | $1230 |
| 150 - less than 500 | $790 | $1800 |
| 500 - less than 1,500 | $1230 | $2050 |
| 1,500 - less than 5,000 | $1800 | $2240 |
| 5,000 - less than 15,000 | $2460 | $2800 |
| 15,000 - less than 50,000 | $3250 | $3470 |
| Over 50,000 | $4150 | $4370 |

**Penalty Assessment Criterion Number 9**
The penalty amount for permitting violations by major sources in non-attainment areas will be proportional to the total cost of implementing LAER at the facility. See Table 6.
**TABLE 6**

<table>
<thead>
<tr>
<th>NSR PERMITTING VIOLATIONS - MAJOR SOURCES IN NON-ATTAINMENT AREAS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cost of implementing LAER at new or modified sources</td>
</tr>
<tr>
<td>($ Thousands)</td>
</tr>
<tr>
<td>Less than 50</td>
</tr>
<tr>
<td>50 - less than 150</td>
</tr>
<tr>
<td>150 - less than 500</td>
</tr>
<tr>
<td>500 - less than 1,500</td>
</tr>
<tr>
<td>1,500 - less than 5,000</td>
</tr>
<tr>
<td>5,000 - less than 15,000</td>
</tr>
<tr>
<td>15,000 - less than 50,000</td>
</tr>
<tr>
<td>Over 50,000</td>
</tr>
</tbody>
</table>

**Penalty Assessment Criterion Number 10**

Penalty amount for permitting violations by MACT sources will be assessed as depicted on Table 7.

**TABLE 7**

<table>
<thead>
<tr>
<th>PERMITTING VIOLATIONS - MACT SOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicable Subrules</td>
</tr>
<tr>
<td>✓ Subrule 22.1 - Permits required for new or existing stationary source</td>
</tr>
<tr>
<td>✓ Subrule 22.3(3)“e” - Requirement to obtain a supplemental permit</td>
</tr>
</tbody>
</table>

**Penalty Assessment Criterion Number 11**

Penalty amounts for permitting violations by Title V and Acid Rain sources are shown in Table 8.
TABLE 8

<table>
<thead>
<tr>
<th>Applicable Subrules</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Subrules 22.104 and 22.202 - Requirement to have a Title V permit</td>
<td>$2,800</td>
</tr>
<tr>
<td>✓ Subrule 22.105 - Title V permit applications</td>
<td></td>
</tr>
<tr>
<td>Subrule 22.107(3) - Duty to supplement or correct application</td>
<td>$840</td>
</tr>
<tr>
<td>Subrule 22.113 - Significant Title V permit modifications</td>
<td>$1,680</td>
</tr>
<tr>
<td>Subrule 22.116 - Title V permit renewals</td>
<td>$2,800</td>
</tr>
<tr>
<td>Subrules 22.125(1) and 22.128(1) - Requirement to obtain an Acid Rain permit</td>
<td>$2,800</td>
</tr>
<tr>
<td>Subrule 22.203 - Voluntary operating permit requirements</td>
<td>$1,120</td>
</tr>
</tbody>
</table>

Penalty Assessment Criterion Number 12
Penalty amounts for Permit-by-rule violations are shown in the Table 9.

TABLE 9

<table>
<thead>
<tr>
<th>Applicable Subrules</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subrule 22.8 - Permit by rule for spray booths (registration requirement)</td>
<td>$225</td>
</tr>
<tr>
<td>Subrule 22.300 - Operating permit by rule for small sources (registration requirement)</td>
<td>$225</td>
</tr>
</tbody>
</table>

Penalty Assessment Criterion Number 13
Penalty amount for monitoring, emission testing, operating, maintenance, and repairing violations will be proportional to the number of times that the
Department verifies that the facility is in violation of any Subrule, Permit condition, and/or a federal regulation included in Table 10.

**TABLE 10**

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Subrule 22.3(3) - Conditions of approval</td>
<td>Subrule 22.3(3) - Conditions of approval</td>
<td>Subrule 22.3(3) - Conditions of approval</td>
</tr>
<tr>
<td></td>
<td>✓ Permit Condition 5 - Owner responsibility</td>
<td>✓ Permit Condition 12 - Initial Performance Testing Requirements</td>
<td>✓ Permit Condition 16 - Continuous emission monitoring</td>
</tr>
<tr>
<td></td>
<td>✓ Permit Condition 6 - Disposal of contaminants</td>
<td>Subrule 25.1(7)“b” and “c” - Emission Tests</td>
<td>Subrule 22.108(3) - Title V monitoring requirements</td>
</tr>
<tr>
<td></td>
<td>✓ Permit Condition 11 - Emission Point Characteristics</td>
<td>Subrule 25.1(9) - Emission Tests Methods and Procedures</td>
<td>Subrule 25.1(1) - Continuous monitoring of opacity from coal-fired steam generating units</td>
</tr>
<tr>
<td></td>
<td>Subrule 22.108 - Title V Permit content</td>
<td>Permit Condition 69 - General Maintenance and Repair Duties</td>
<td>Subrule 25.1(4) - Continuous monitoring of sulfur dioxide from sulfuric plants</td>
</tr>
<tr>
<td></td>
<td>Permit Condition 69 - General Maintenance and Repair Duties</td>
<td>Subrule 24.2 - Maintenance and repair requirements</td>
<td>Subrule 25.1(12) - Continuous monitoring of sulfur dioxide from emission points involved in an alternative emission control program</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>IDNR will provide technical assistance</th>
<th>IDNR will provide technical assistance</th>
<th>IDNR will provide technical assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>2</td>
<td>$280</td>
<td>$560</td>
<td>$560</td>
</tr>
<tr>
<td>3</td>
<td>$560</td>
<td>$1120</td>
<td>$1120</td>
</tr>
<tr>
<td>Over 3</td>
<td>$840</td>
<td>$1680</td>
<td>$1680</td>
</tr>
</tbody>
</table>
(b) Procedural Requirement Violations

These violations include fee payment, notification, reporting, and record keeping violations.

**Penalty Assessment Criterion Number 14:**

Penalty amount for violations of notification, reporting, Title V fee payment, and record keeping requirements will be proportional to the number times the Department verifies that the facility is in violation of any Subrule, Permit condition, and/or a federal regulation included in Tables 11-A and 11-B.

**TABLE 11-A**

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✓ Subrule 21.1(3) - Emissions inventory</td>
<td>✓ Subrule 22.3(3) - Conditions of approval (Permit Condition 8 - Reporting)</td>
<td>Subrules 21.1(6) - Maintenance of record</td>
</tr>
<tr>
<td></td>
<td>✓ Subrule 22.1(1)(c)(4) Construction/reconstruction notifications</td>
<td>Subrules 22.106(3)(a) and 22.108(10) - Title V Permit Annual Fees (TV Permit Condition G6)</td>
<td>Subrule 22.3(3) - Conditions of approval</td>
</tr>
<tr>
<td></td>
<td>✓ Subrule 22.1(2) - Permitting exemptions record keeping</td>
<td>Subrules 22.106(3)(a) and 22.108(10) - Title V Permit Annual Fees (TV Permit Condition G6)</td>
<td>✓ Permit Condition 8 - Recordkeeping</td>
</tr>
<tr>
<td></td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>1</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>2</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>3</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>Over 3</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$170</td>
<td>$560</td>
<td>$560</td>
</tr>
<tr>
<td>2</td>
<td>$340</td>
<td>$1120</td>
<td>$1120</td>
</tr>
<tr>
<td>Over 3</td>
<td>$680</td>
<td>$1680</td>
<td>$1680</td>
</tr>
</tbody>
</table>
### TABLE 11-B

**NOTIFICATION, REPORTING, FEE PAYMENT, AND RECORD KEEPING VIOLATIONS**

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit Condition 8 - Notification</td>
<td>Subrule 22.106(3)'b' - Title V annual actual emissions reporting (TV Permit Condition G6)</td>
<td>Subrule 22.108(4) - Title V record keeping requirements</td>
<td>Subrule 22.126(6)'a' - Acid Rain record keeping requirements</td>
</tr>
<tr>
<td>Subrule 22.3(3) - Conditions of approval</td>
<td>Subrule 22.108(5)'a' - Title V semi-annual reporting (TV Permit Condition G5)</td>
<td>Permit Condition G10 - Recordkeeping requirements for compliance monitoring</td>
<td>Subrule 25.1(5) - Continuous monitors recordkeeping</td>
</tr>
<tr>
<td>✓ Permit Condition 8 - Notification</td>
<td>Subrule 22.108(5)'b' - Title V Permit Deviation Reporting (TV Permit Condition G15)</td>
<td>Subrule 22.108(15)'e' - Title V annual compliance certification reporting (TV Permit Condition G4)</td>
<td>Subrule 22.125(6)'b' - Acid Rain reporting requirements</td>
</tr>
<tr>
<td>✓ Permit Condition 8 - Notification</td>
<td>Subrule 22.108(16) - Excess emission reporting (TV Permit Condition G14)</td>
<td>Subrule 22.108(16) - Excess emission reporting (TV Permit Condition G14)</td>
<td>Subrule 22.125(6)'b' - Acid Rain reporting requirements</td>
</tr>
<tr>
<td>✓ Permit Condition 8 - Notification</td>
<td>Subrule 22.126(6)'b' - Acid Rain annual compliance certification reporting</td>
<td>Subrule 25.1(6) - Continuous monitoring information reporting</td>
<td>Subrule 25.1(6) - Continuous monitoring information reporting</td>
</tr>
<tr>
<td>✓ Permit Condition 8 - Notification</td>
<td>Subrule 24.1 - Excess emission reporting</td>
<td>Subrule 25.1(6) - Continuous monitoring information reporting</td>
<td></td>
</tr>
<tr>
<td>✓ Permit Condition 8 - Notification</td>
<td>Subrule 25.1(6) - Continuous monitoring information reporting</td>
<td>Subrule 25.1(6) - Continuous monitoring information reporting</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>IDNR will provide technical assistance</th>
<th>IDNR will provide technical assistance</th>
<th>IDNR will provide technical assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>2</td>
<td>$170</td>
<td>$560</td>
<td>$560</td>
</tr>
<tr>
<td>3</td>
<td>$340</td>
<td>$1120</td>
<td>$1120</td>
</tr>
<tr>
<td>Over 3</td>
<td>$680</td>
<td>$1680</td>
<td>$1680</td>
</tr>
</tbody>
</table>

**Administrative Order, Compliance Plan, and Variance Violations**

Administrative orders are issued pursuant to the provisions of Iowa Code Section 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division II (Air Quality), and the rules promulgated and permits issued pursuant thereto.
Compliance plans may be required by administrative orders or Title V permits for sources that are not in compliance with all applicable requirements at the time of issuance of the order or permit. Compliance plans contain an enforceable sequence of actions with milestones leading to compliance with applicable requirements.

Variances from applicable rules or standards pursuant to Iowa Code Chapter 455B, Division II (Air Quality) may be granted by the Department provided that the emissions involved will not endanger human health; or create safety hazards; or damage livestock, plant life, and property.

**Penalty Assessment Criterion Number 15:**

As shown in Table 12, the penalty amount for violations of administrative orders, compliance plans, and variance conditions will be proportional to the number of times the Department verifies that the facility violated any provision or condition of these documents.

### TABLE 12

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of any provision required by administrative orders</th>
<th>Penalty amounts for violations of any requirement of compliance plans required by:</th>
<th>Penalty amounts for violations of any condition in Variances granted pursuant to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$1120</td>
<td>$1120</td>
<td>Subrule 21.1(4)”a” - Variance Conditions</td>
</tr>
<tr>
<td>2</td>
<td>$2240</td>
<td>$2240</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>$3360</td>
<td>$3360</td>
<td></td>
</tr>
<tr>
<td>Over 3</td>
<td>$4480</td>
<td>$4480</td>
<td></td>
</tr>
</tbody>
</table>
2. ASBESTOS DEMOLITION AND RENOVATION VIOLATIONS

Due to certain aspects of asbestos demolition and renovation violation cases, this section provides separate guidance for determining the economic benefit and the gravity components of the penalty. The degree of culpability and the adjustment factors (Sections 4 and 5) are applicable to both air quality violations and asbestos demolition and renovation violations.

In a facility being demolished or renovated, all the penalty calculations in this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:

1. At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

2. At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

2.1 The Economic Benefit Component

This component is a measure of the economic benefit accruing to the operator (usually a contractor), the facility owner, or both, as a result of non-compliance with the following sections of the NESHAP asbestos regulations.7

⇒ § 61.145 Standard for demolition and renovation

⇒ § 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

⇒ § 61.154 Standard for active waste disposal sites.

---

It is difficult to determine actual economic benefit, but a comparison of unsuccessful bids with the successful bid may provide an initial point of departure. A comparison of the operator's actual expenses with the contract price is another indicator.

If any portion of the job is done in compliance with the applicable NESHAP asbestos regulations, the economic benefit should be based only on the asbestos improperly handled.

The following multiplier may be used to determine the costs of stripping, removing, disposing of, and handling asbestos in compliance with the NESHAP asbestos regulations. This figure is based on rough cost estimates of asbestos removal nationwide.

For asbestos on pipes or other facility components: $25 per linear, square, or cubic foot of asbestos.

In order to determine the violator's economic benefit of non-compliance with the NESHAP asbestos requirements, the following formula may be used:

\[
\text{Economic Benefit} = 25 \times \text{amount of asbestos (linear, square, or cubic foot)} \times \text{percent of asbestos improperly handled}
\]

2.2 The Gravity Component

The gravity component should account for statutory criteria such as the environmental harm resulting from the violation and the violation's threat to the integrity of the regulatory program.

---

\[8\text{If the violator incurs in additional expenses to comply with the NESHAP asbestos requirements, the economic benefit component should be reduced by this amount.}\]
2.2.1 Actual and Potential for Harm to Human Health, Safety, and the Environment

Toxicity of the Pollutant

Since asbestos is a hazardous air pollutant, a high gravity factor should be associated with substantive violations of NESHAP asbestos requirements.

Penalty Assessment Criterion Number 16:

As indicated in Section 1.2.1, the penalty assessment for a violation which involves a hazardous air pollutant will be equal to $1,000.

2.2.2. Threat to the Integrity of the Regulatory Program

(a) NESHAP Asbestos Management Requirements

Penalty Assessment Criterion Number 17:

Penalty amount for violations of the NESHAP asbestos management requirements will be proportional to the number of times the Department verifies that the contractor/owner/operator violated any of these requirements. This is shown on Table 13.

TABLE 13

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✓ 40 CFR 61.145(a) - Inspecting for asbestos-containing material</td>
<td>✓ 40 CFR 61.145(c) - Emission control procedures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ 40 CFR 61.150 and 61.154 - Disposal of asbestos-containing waste material</td>
</tr>
<tr>
<td>1</td>
<td>560</td>
<td>560</td>
</tr>
<tr>
<td>2</td>
<td>$1160</td>
<td>$1160</td>
</tr>
<tr>
<td>3</td>
<td>$1680</td>
<td>$1680</td>
</tr>
<tr>
<td>Over 3</td>
<td>$2240</td>
<td>$2240</td>
</tr>
</tbody>
</table>
(b) Administrative Order Violations

**Penalty Assessment Criterion Number 18:**
Penalty amount for violations of administrative orders will be proportional to the number of times the Department verifies that the facility violated any of the provisions as shown in Table 14.

**TABLE 14**

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of any provision required by administrative orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$1120</td>
</tr>
<tr>
<td>2</td>
<td>$2240</td>
</tr>
<tr>
<td>3</td>
<td>$3360</td>
</tr>
<tr>
<td>Over 3</td>
<td>$4480</td>
</tr>
</tbody>
</table>

(c) NESHAP Asbestos Procedural Requirement Violations

**Penalty Assessment Criterion Number 19:**
Penalty amount for violations of these NESHAP asbestos procedural requirements will be proportional to the number of times the Department verifies that the contractor/owner/operator violated any of these requirements. This is shown in Table 15.

**TABLE 15**

<table>
<thead>
<tr>
<th>Number of times violations have occurred</th>
<th>Penalty amounts for violations of:</th>
<th>Penalty amounts for violations of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✓ 40 CFR 61.145(b) - Submittal of the required notice</td>
<td>✓ 40 CFR 61.145(b)(4) - Notification information requirements (including late notification)</td>
</tr>
<tr>
<td>1</td>
<td>IDNR will provide technical assistance</td>
<td>IDNR will provide technical assistance</td>
</tr>
<tr>
<td>2</td>
<td>$280</td>
<td>$280</td>
</tr>
<tr>
<td>3</td>
<td>$560</td>
<td>$560</td>
</tr>
<tr>
<td>Over 3</td>
<td>$840</td>
<td>$840</td>
</tr>
</tbody>
</table>
3. Apportionment of the Penalty

The penalty arrived at using this document is intended to yield a minimum amount for the case as whole. In many cases, there may be more than one violator.

In such instances, the DNR may take the position of seeking a sum for the case as whole, which the multiple violators can allocate among themselves as they wish. On the other hand, if one party is particularly deserving of punishment so as to deter future violations, separate settlements may ensure that the offending party pays the appropriate penalty.

In certain asbestos demolition/renovation violation cases, the economic benefit may actually be split among the parties in any combination. For example, if a contractor charges the owner/operator fair market value for compliance with asbestos removal requirements and fails to comply, the contractor has derived an economic benefit and the owner has not. If the contractor underbids because compliance with asbestos requirements was not factored in, the owner/operator has realized the full amount of the financial savings.\(^9\)

There are circumstances in which the DNR may try to influence apportionment of the penalty. For example, if one party is a second offender, the DNR may try to assure that such party pays the portion of the penalty attributable to the second offense. If one party is known to have realized all or most of the economic benefit, that party may be asked to pay for that amount.

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\(^9\) In such an instance, the contractor may have also received a benefit which is harder to quantify, i.e., obtaining the contract by virtue of the low bid.
Apportionment of the penalty in a multi-violator case may be required if one party is willing to settle and others are not. In such circumstances, the DNR should take the position that if certain portions of the penalty are attributable to such party (such as economic benefit or second offense), that party should pay those amounts and a reasonable portion of the amounts not directly assigned to any single party.

However, the DNR should also be flexible enough to mitigate the penalty for cooperativeness in accordance with Section 5.2 of this manual. If a case is settled as to one violator, the DNR should seek from the remaining violators a penalty not less than the balance of the settlement figure for the case as whole.
4. Degree of Culpability

The degree of culpability can be determined by evaluating the following factors:

1. The time the violator allowed the violation to continue
2. The violator’s falsification of required information
3. The violator’s degree of control over the events constituting the violation
4. The violator’s ability to foresee the events constituting the violation
5. The violator’s level of knowledge of the legal requirement which was violated

Once the degree of culpability is determined, this information may be used only to raise a penalty.

4.1 The time the violator allowed the violation to continue

Generally, the longer a violation continues uncorrected, the greater the risk of harm. Violations should be assumed to be continuous from the first provable date of violation until the source demonstrates compliance if there have been no significant process or operational changes. If the source has affirmative evidence, such as continuous emission monitoring data or facility operating records to show that the violation was not continuous, appropriate adjustments should be made.

The length of time should be assessed separately for each violation, including procedural violations such as monitoring, recordkeeping, and reporting violations. For example, if a source violated an emission standard, a testing requirement, and a reporting requirement, a separate length of time should be assessed for each violation.
Penalty Assessment Criterion Number 20:
For Air Quality Violations, Table 16 shows that the penalty amount will be calculated based on the number of days that the violator allowed the violation to continue.

<table>
<thead>
<tr>
<th>DURATION OF VIOLATION - AIR QUALITY VIOLATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Days</td>
</tr>
<tr>
<td>---------------------</td>
</tr>
<tr>
<td>1 - 30</td>
</tr>
<tr>
<td>&gt;30</td>
</tr>
</tbody>
</table>

Penalty Assessment Criterion Number 21:
For Asbestos Demolition and Renovation Violations, Table 17 shows that the penalty amount will be calculated based on the number of days that the violator allowed the violation to continue.

<table>
<thead>
<tr>
<th>DURATION OF VIOLATION - ASBESTOS DEMOLITION AND RENOVATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Days</td>
</tr>
<tr>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6 - 10</td>
</tr>
<tr>
<td>11 - 15</td>
</tr>
<tr>
<td>16 - 20</td>
</tr>
<tr>
<td>21 - 25</td>
</tr>
<tr>
<td>26 - 30</td>
</tr>
<tr>
<td>Over 30</td>
</tr>
</tbody>
</table>

4.2 The violator’s falsification of required information

This is a willful and intentional action by the violator who acted with the conscious objective to falsify required information and who knew that this action was not lawful. This is a criminal action subject to referral to the Attorney General’s Office.
4.3 Factors 3 through 5:

- The violator's degree of control over the events constituting the violation
- The violator's ability to foresee the events constituting the violation
- The violator's level of knowledge of the legal requirement which was violated

These factors will be evaluated based on the violator's negligence, gross negligence, or willful negligence.

Negligence means a failure to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

Gross negligence means a conscious, voluntary act or omission which is taken in reckless disregard of regulatory duties.

Willful negligence means an action or failure to act with a conscious objective to cause the result of the conduct and the knowledge that the act or failure to act is unlawful.
Penalty Assessment Criterion Number 22:
Table 18 shows that the penalty amount will be assessed based on the violator's degree of intent regarding the degree of control over the violation events, the ability to foresee the violation events, and the level of knowledge of the violated legal requirement.

**TABLE 18**

<table>
<thead>
<tr>
<th>Degree of Intent</th>
<th>Penalty amounts ascribed to the violator's degree of control over the events constituting the violation</th>
<th>Penalty amounts ascribed to the violator's ability to foresee the events constituting the violation</th>
<th>Penalty amounts ascribed to the violator's level of knowledge of the legal requirement which was violated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligence</td>
<td>$280</td>
<td>$280</td>
<td>$280</td>
</tr>
<tr>
<td>Gross Negligence</td>
<td>$1120</td>
<td>$1120</td>
<td>$1120</td>
</tr>
<tr>
<td>Willful Negligence</td>
<td>$2240</td>
<td>$2240</td>
<td>$2240</td>
</tr>
</tbody>
</table>
5. Adjusting the Gravity Component

In order to promote equity, the system for penalty assessment must have enough flexibility to account for the unique facts of each case. Yet it still must produce consistent enough results to ensure similarly-situated violators are treated similarly.

This is accomplished by identifying many of the legitimate differences between cases and providing guidelines for how to adjust the gravity component amount when those facts occur.

The application of these adjustments to the gravity component prior to the commencement of negotiation yields the initial minimum settlement amount. During the course of negotiation, the enforcement team¹⁰ may further adjust this figure based on new information learned during negotiations and discovery to yield the adjusted minimum settlement amount.

The purpose of this section is to establish adjustment factors which promote flexibility while maintaining state-wide consistency. It sets guidelines for adjusting the gravity component which account for aggravating or mitigating factors that frequently distinguish different cases. These adjustment factors apply only to the gravity component and not to the economic benefit component.

The enforcement team is required to base any adjustment of the gravity component on these factors and to carefully document the reasons justifying its application in each particular case. The entire enforcement team must agree to any adjustments to the proposed penalty.

5.1 Aggravating Factors

Aggravating factors include the degree of cooperation, the history of non-compliance, and the environmental damage caused by the violation. The penalty amount may be increased by up to $1,000 due to aggravating factors. A percentage of this amount (0 – 100%) must be allocated to each aggravating factor.

¹⁰ The enforcement team will generally include the Field Office Specialist and/or the Program Area Specialist, the Field Office Supervisor or the Program Area Supervisor, the Enforcement Coordinator, and the DNR Staff Attorney.
5.1.1 Degree of Cooperation

The degree of cooperation of the violator in remedying the violation is an appropriate factor to consider in adjusting the penalty. In some cases, this factor may justify aggravation of the gravity component because the source is not making efforts to come into compliance or is refusing to negotiate.

5.1.2 History of Non-compliance

A history of non-compliance may be used to raise a penalty, unless the majority of previous violations were caused by factors entirely out of the control of the violator.

In determining the size of this adjustment, the enforcement team should consider the following points:

- Similarity of the violation in question to prior violations.
- Time elapsed since the prior violation.
- The number of prior violations.
- Violator's response to prior violation(s) with regard to correcting the previous problem and attempts to avoid future violations.
- The extent to which the gravity component has already been increased due to a repeat violation.
- The number of emission units affected by the violation.

A violation should generally be considered "similar" if a previous enforcement response should have alerted the source to a particular type of compliance problem. Some facts indicating a "similar violation" are:

- Violation of the same permit.
- Violation of the same emissions standard.
- Violation at the same process points of a source.
- Violation of the same statutory or regulatory provision.
- A similar act or omission.

For purposes of this section, a "prior violation" includes any act or omission resulting in an enforcement response (e.g., notice of violation letter, administrative order, field citation, complaint, consent decree, consent
agreement, or judicial order), unless subsequently dismissed or withdrawn on the grounds that the source was not liable.

In the case of large corporations with many divisions or wholly-owned subsidiaries, it is sometimes difficult to determine whether a prior violation by the parent corporation should trigger the adjustments described in this section. New ownership often raises similar problems.

In making this determination, the enforcement team should ascertain who in the organization exercised or had authority to exercise control or oversight responsibility over the non-compliant conduct. The parent corporation's violations should be considered part of the subsidiary or division's compliance history.

In general, the enforcement team should begin with the assumption that if the same corporation was involved, the adjustment for history of noncompliance should apply. In addition, the team should be wary of a party changing operations or shifting responsibility for compliance to different groups as a way of avoiding increased penalties.

The Department may find a consistent pattern of non-compliance by many divisions or subsidiaries of a corporation even though the facilities are at different geographic locations. This often reflects, at best, a corporate-wide indifference to environmental protection.

Consequently, the adjustment for history of non-compliance should apply unless the violator can demonstrate that the other violating corporate facilities are under totally independent control.

5.1.3 Environmental Damage

Although the gravity component already reflects the amount of environmental damage a violation causes, the enforcement team may further increase the gravity component based on severe environmental damage.

As calculated, the gravity component takes into account such factors as the toxicity of the pollutant, the attainment status of the area of violation, and the degree to which the source has exceeded an emission limit.
However, there may be cases where the environmental damage caused by the violation is so severe that the gravity component alone is not a sufficient deterrent, such as a significant release of a toxic air pollutant in a populated area. In these cases, aggravation of the gravity component may be warranted.

5.2 Mitigating Factors

Mitigating factors include the violator's degree of cooperation and the violator's ability to pay. The penalty amount may be decreased by up to $1,000 due to mitigating factors. A percentage of this amount (0 - 100%) must be allocated to each mitigating factor.

5.2.1 Degree of Cooperation

This factor may justify mitigation of the gravity component in the circumstances specified below where the violator institutes comprehensive corrective action after discovery of the violation. Prompt correction of violations will be encouraged if the violator clearly sees that it will be financially disadvantageous to litigate without remedying non-compliance. The Department expects all sources in violation to come into compliance expeditiously and to negotiate in good faith.

Therefore, this mitigation factor is allowed only in the following three situations:

1. Prompt reporting of non-compliance where there is no legal obligation to do so.

2. Prompt correction of environmental problems. The gravity component may also be mitigated where a source makes extraordinary efforts to avoid violating an imminent requirement or to come into compliance after learning of a violation. Such efforts may include paying for extra work shifts or a premium on a contract to have control equipment installed sooner or shutting down the facility until it is operating in compliance.
3. Cooperation during the Department’s pre-enforcement investigation of the source’s compliance status or a particular incident.

5.2.2 Violator’s Ability to Pay

The enforcement team should assess this factor after commencement of negotiations only if the source raises it as an issue and only if the source provides the necessary financial information to evaluate the source’s claim. The burden to demonstrate inability to pay, as with the burden of demonstrating the presence of any other mitigating circumstances, rests on the violator.

There are several EPA computer models, which are helpful in evaluating the violator’s ability to pay. ABEL, INDIPAY, and MUNIPAY assess the ability to afford environmental expenditures of corporations, individuals (including owners of partnerships and sole proprietorships), and municipalities, respectively. These models can be found at this web URL: www.epa.gov/compliance/civil/econmodels/index.html

It is unlikely that the Department would reduce a penalty where a facility refuses to correct a serious violation. The same could be said for a violator with a long history of previous violations. That long history would demonstrate that less severe measures are ineffective.
6. Second and Subsequent Violations

A “second” or “subsequent” violation should be determined to have occurred if, after being notified of a violation by the DNR, a facility or a contractor/owner/operator violates the air quality regulations again, even if different provisions of the regulations are violated.

This prior notification could range from simply an oral or written warning to the filing of a judicial enforcement action. Such prior notification of a violation is sufficient to trigger treatment of any future violations as second or subsequent violations; there is no need to have an admission or judicial determination of liability.

Violations should be treated as second or subsequent offenses only if the new violations occur at a different time and/or at a different job-site. In regards to asbestos violations, escalation of the penalty to the second or subsequent category should not occur within the context of a single demolition or renovation project, unless the project is accomplished in distinct phases.

If the case involves multiple violators and any one of them is involved in a second or subsequent offense, the penalty should be derived based on the second or subsequent offense. In such instance, the DNR should try to get the prior-offending party to pay the extra penalties attributable to this factor.\textsuperscript{11}

\textsuperscript{11} See Section 3: Apportionment of the Penalty
REFERENCES

1. Clean Air Act Stationary Source Civil Penalty Policy

2. Appendix I of the CAA Stationary Source Civil Penalty - Penalty Policy for Violations of Certain Clean Air Act Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution

3. Appendix III of the CAA Stationary Source Civil Penalty - Asbestos Demolition and Renovation Civil Penalty Policy

4. Clean Air Act Amendments of 1990, Title I - Air Pollution Prevention and Control
   a. Part A - Air Quality and Emission Limitations
      i. Section 111 Standards of performance for new stationary sources
      ii. Section 112 National emission standards for hazardous air pollutants
      iii. Section 120 Noncompliance penalty
   b. Part C - Prevention of Significant Deterioration
      i. Section 162 Initial classifications
      ii. Section 165 Pre-construction requirements
      iii. Section 167 Enforcement
   c. Part D - Plan Requirements for Non-Attainment Areas
      i. Section 172 Non-attainment plan provisions

5. CFR, Title 40: Protection of Environment, Chapter 1- Environmental Protection Agency [Subchapter C - Air Programs]
   a. Part 60 Standards of Performance for New Stationary Sources
   b. Part 61 National Emission Standards for Hazardous Air Pollutants
   c. Part 63 National Emission Standards for Hazardous Air Pollutants for Source Categories
   d. Part 70 State Operating Permit Programs
6. Iowa Code: Section 455B.109 Schedules of fines - violations

7. Iowa Administrative Code: Environmental Protection [567]:
   a. Chapter 10 - Administrative Penalties
   b. Chapter 21 - Compliance
   c. Chapter 22 - Controlling Pollution
   d. Chapter 23 - Emission Standards for Contaminants
   e. Chapter 24 - Excess Emission
   f. Chapter 25 - Measurement of Emissions

8. BEN: A model to calculate the economic benefit of non-compliance
A P P E N D I X  I

CALCULATING THE ECONOMIC BENEFIT OF NON-COMPLIANCE

1.0 The BEN Methodology

The economic benefit due to delayed or avoided costs of compliance can be calculated using EPA’s BEN Model, which computes the economic benefit of non-compliance for the period from the first provable date of violation until the date of compliance.

There are instances in which the BEN methodology either cannot compute or will fail to capture the actual economic benefit of non-compliance. In those instances, it will be appropriate for the Department to include in its penalty analysis a calculation of the economic benefit in a manner other than that provided for in the BEN methodology.

A violator that delays complying with federal/state air regulation requirements, such as the installation of pollution control equipment, saves money. These savings can come from:

✓ Delaying purchase of equipment; and
✓ Avoiding annual recurring costs of operating and maintaining the control equipment over the period of non-compliance

In addition, the violator can use the saved money to invest in other revenue-producing activities, thus gaining an economic advantage over other regulated entities who comply on time.

The BEN methodology addresses the economic benefit from three types of compliance costs:

✓ Capital investments. These include all costs of assets that depreciate over time, such as the purchase of a thermal oxidizer and its accessories.
✓ One-time non-depreciable expenditures. These costs occur once and do not depreciate, such as consultant costs.
✓ Annual recurring costs. These include costs for periodic actions necessary for compliance, such as equipment operating and maintenance costs.

In order to calculate the economic benefit of non-compliance, the BEN Model requires the following inputs:

✓ Type of business (C-Corporation, For-Profit (not C-Corp), or Municipality)
✓ Estimated date of penalty payment
✓ Estimated date that non-compliance started
✓ Estimated date that the facility returned or is expected to return to compliance
✓ Estimated capital investment
✓ Earliest estimated date that capital investment should have happened (generally this date is the same as the date when non-compliance started)
✓ Estimated one-time non-depreciable expenditures
✓ Earliest estimated date that one-time non-depreciable expenditures should have happened (generally this date is the same as the date when non-compliance started)
✓ Annual recurring costs
✓ Estimated date of when the annual recurring costs started or are expected to start

These input requirements will be illustrated in the following example:

XYZ Company started operation on February 12, 2003. Due to a citizen's complaint, the IDNR conducted a site inspection on September 25, 2003 and discovered that this facility had been constructed without a pre-construction permit. Construction started on June 18, 2002.


During the permitting process, it was determined that the facility's VOC emissions were significant enough as to require a PSD permit, thus making this facility a Title V source.
The facility agreed to install BACT which was found to be a thermal oxidizer and received its PSD construction permit on July 19, 2004.

Due to the gravity of the violations (PSD and Title V), the IDNR decided to pursue enforcement action against XYZ Company.

An administrative consent order was signed on March 30, 2004. This order required the facility to install a thermal oxidizer by March 30, 2005, and to comply with the Title V operating permit application requirements by June 30, 2004. It also required XYZ Company to pay a civil penalty within 30 days of the date the order was signed.

XYZ Company paid the penalty on April 25, 2004; submitted a Title V permit application on June 1, 2004; and completed installation of the thermal oxidizer on January 14, 2005. Additionally, the facility incurred a one-time non-depreciable expense of $3,000 related to the Title V application submittal.

Estimate the economic benefit gained by this facility's non-compliance.

BEN Model Inputs for PSD violation:

1. Type of business: **C-Corporation**
2. Date of penalty payment: **April 25, 2004**
3. Date non-compliance started: **June 18, 2002**
4. Date facility returned to compliance: **January 14, 2005**
5. Estimated capital investment: **$850,000**
6. Earliest estimated date that capital investment should have happened: **June 18, 2002**
7. Estimated one-time non-depreciable expenditures: **$96,000**
8. Earliest estimated date that one-time non-depreciable expenditures should have happened: **June 18, 2002**
9. Estimated annual recurring costs: **$63,000**
10. Estimated date of when the annual recurring costs started: **February 12, 2004 (a year after the facility started operation)**

As shown in the table below, the BEN Model found the final economic benefit for the PSD violation to be **$239,465** at the penalty payment date.
**BEN’s Summary**

<table>
<thead>
<tr>
<th></th>
<th>Run Name = XYZ Company – Run 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present Values as of Noncompliance Date (NCD), 18-Jun-2002</td>
<td></td>
</tr>
<tr>
<td>A) On-Time Capital &amp; One-Time Costs</td>
<td>$799,397</td>
</tr>
<tr>
<td>B) Delay Capital &amp; One-Time Costs</td>
<td>$681,778</td>
</tr>
<tr>
<td>C) Avoided Annually Recurring Costs</td>
<td>$81,030</td>
</tr>
<tr>
<td>D) Initial Economic Benefit (A-B+C)</td>
<td>$198,649</td>
</tr>
<tr>
<td>E) Final Econ. Ben. at Penalty Payment Date, 25-Apr-2004</td>
<td>$239,465</td>
</tr>
</tbody>
</table>

**C-Corporation w/ IA tax rates**

Discount/Compound Rate: 10.6%

Discount/Compound Rate Calculated By: BEN

Compliance Date: 14-Jan-2005

Capital Investment:

Cost Estimate: $850,000

Cost Estimate Date: 18-Jun-2002

Cost Index for Inflation: PCI

# of Replacement Cycles; Useful Life: 1; 15

Projected Rate for Future Inflation: N/A

One-Time, Non-depreciable Expenditure:

Cost Estimate: $96,000

Cost Estimate Date: 18-Jun-2002

Cost Index for Inflation: PCI

Tax Deductible?: Y

Annually Recurring Costs:

Cost Estimate: $63,000

Cost Estimate Date: 12-Feb-2004

Cost Index for Inflation: PCI
BEN Model Inputs for Title V violation:

1. Type of business: *C-Corporation*
2. Date of penalty payment: *April 25, 2004*
3. Date non-compliance started: *February 12, 2004*
4. Date facility returned to compliance: *June 1, 2004*
5. Estimated one-time non-depreciable expenditures: *$3,000*
6. Earliest estimated date that one-time non-depreciable expenditures should have happened: *February 12, 2004*

The BEN Model found the economic benefit from delaying the submittal of the Title V permit application to be insignificant ($37).

### 2.0 Alternate Method

The Alternate Method uses a key financial concept: time-value of money.

The time-value of money is quantified by “discounting” or “compounding” compliance-related-after-tax “cash flows” from different years to “net present value” as of some common date. This allows comparison of cash flows from different years on the same basis.

Before we can discount or compound any cash flows, we must determine “on-time” and “delay or avoided” scenarios, i.e., what actions and associated costs were necessary for on-time compliance and for delayed or avoided compliance. The economic benefit is the difference between NPVs of the two scenarios.

The following three tables are necessary when the Alternate Method is used for calculating the economic benefit of non-compliance.
**TABLE 19**

<table>
<thead>
<tr>
<th>MARGINAL TAX RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Business</strong></td>
</tr>
<tr>
<td>C-Corporation</td>
</tr>
<tr>
<td>For-Profit (not C-Corp)</td>
</tr>
<tr>
<td>Municipality</td>
</tr>
</tbody>
</table>

**TABLE 20**

<table>
<thead>
<tr>
<th>DISCOUNT/COMPOUND RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1990</td>
</tr>
<tr>
<td>1991</td>
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<td>1993</td>
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<td>2003</td>
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<tr>
<td>2004</td>
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<tr>
<td>2005</td>
</tr>
</tbody>
</table>
### TABLE 21

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Inflation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>5.4%</td>
</tr>
<tr>
<td>1991</td>
<td>4.2%</td>
</tr>
<tr>
<td>1992</td>
<td>3.0%</td>
</tr>
<tr>
<td>1993</td>
<td>3.0%</td>
</tr>
<tr>
<td>1994</td>
<td>2.6%</td>
</tr>
<tr>
<td>1995</td>
<td>2.8%</td>
</tr>
<tr>
<td>1996</td>
<td>2.9%</td>
</tr>
<tr>
<td>1997</td>
<td>2.3%</td>
</tr>
<tr>
<td>1998</td>
<td>1.6%</td>
</tr>
<tr>
<td>1999</td>
<td>2.2%</td>
</tr>
<tr>
<td>2000</td>
<td>3.4%</td>
</tr>
<tr>
<td>2001</td>
<td>2.8%</td>
</tr>
<tr>
<td>2002</td>
<td>1.6%</td>
</tr>
<tr>
<td>2003</td>
<td>2.3%</td>
</tr>
<tr>
<td>2004</td>
<td>2.7%</td>
</tr>
<tr>
<td>2005</td>
<td>3.0%</td>
</tr>
</tbody>
</table>

The Alternate Method easily calculates the economic benefit from delayed or avoided one-time non-depreciable expenditures.\(^{12}\) From the example above, the one-time non-depreciable expenditures are estimated to be $96,000.

To calculate the economic benefit from delayed or avoided one-time non-depreciable expenditures, we need to compare what should have happened for on-time compliance with what actually happened for delayed or avoided compliance.

1. Calculate the discount/compound rate for the period starting on June 18, 2002 through January 14, 2005. From Table 20, the average discount/compound rate for year 2002 through year 2005 is 10.6%
2. Adjust for inflation:
   a. Cost of complying on-time (June 18, 2002) is $96,000, represented by $x$

\(^{12}\) Determining the economic benefit of non-compliance from capital investment requires calculating equipment-depreciation NPVs for both the initial and replacement cycles for each applicable year. These extensive calculations are beyond the scope of this Appendix. Similarly, calculating the economic benefit from avoiding annually recurring costs involves a vast number of iterations which are best calculated through BEN.
b. Cost of complying late (January 14, 2005) is calculated as follows:
   i. \( x (1 + \text{inflation rate})^n \)
      Where \( n \) = number of days in applicable period/365

\[
$96,000(1 + 0.03^{13})^{940/365} = $103,593
\]

3. Calculate the net after-tax cash flows using the appropriate marginal tax rate from Table 1 (C- Corporation):

   a. \$96,000 - ($96,000 \times 0.428) = $54,912 (on-time compliance)
   b. \$103,593 - ($103,593 \times 0.428) = $59,255 (delay compliance)

4. Calculate the NPVs of these figures as of the non-compliance date (June 18, 2002).

   1. The on-time scenario of $54,912 is already expressed as of June 18, 2002.
   2. We need to discount the delay scenario cost of $59,255 back to June 18, 2002.
      a. \$59,255 / (1 + 0.106^{940/365}) = $45,713

5. Calculate the economic benefit as of June 18, 2002:

\[
$54,912 - $45,713 = $9,199
\]

6. Calculate the economic benefit as of when Company XYZ paid the penalty (April 25, 2004). Using the same 10.6% rate, we compound the initial economic benefit of $9,199 forward from June 18, 2002 to April 25, 2004.

   The calculation is therefore:

\[
$9,199 (1 + 0.106)^{677/365} = $11,089
\]

The final economic benefit from delaying or avoiding the one-time depreciable expenditure of $96,000 is $11,089

---

13 From Table 20, the average inflation rate for 2005 is 3%.

14 The average discount/compound rate is 10.6% (from Table 19)
As shown below, BEN calculated this penalty to be $11,417.

**BEN’s Summary**

<table>
<thead>
<tr>
<th>Present Values as of Noncompliance Date (NCD),</th>
<th>18-Jun-2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) On-Time Capital &amp; One-Time Costs</td>
<td>$54,912</td>
</tr>
<tr>
<td>B) Delay Capital &amp; One-Time Costs</td>
<td>$45,441</td>
</tr>
<tr>
<td>C) Avoided Annually Recurring Costs</td>
<td>$0</td>
</tr>
<tr>
<td>D) Initial Economic Benefit (A-B+C)</td>
<td>$9,471</td>
</tr>
<tr>
<td>E) Final Econ. Ben. at Penalty Payment Date,</td>
<td>$11,417</td>
</tr>
<tr>
<td>25-Apr-2004</td>
<td></td>
</tr>
</tbody>
</table>

*C-Corporation w/ IA tax rates*

- Discount/Compound Rate: 10.6%
- Discount/Compound Rate Calculated By: BEN
- Compliance Date: 14-Jan-2005

**Capital Investment:**

- Cost Estimate: $0
- Cost Estimate Date: N/A
- Cost Index for Inflation: N/A
- # of Replacement Cycles; Useful Life: N/A; N/A
- Projected Rate for Future Inflation: N/A

**One-Time, Non-depreciable Expenditure:**

- Cost Estimate: $96,000
- Cost Estimate Date: 18-Jun-2002
- Cost Index for Inflation: PCI
- Tax Deductible?: Y

**Annually Recurring Costs:**

- Cost Estimate: $0
- Cost Estimate Date: N/A
- Cost Index for Inflation: PCI
APPENDIX II

40 CFR SUBPART 61 - NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

B RADON FROM UNDERGROUND URANIUM MINES
BB BENZENE EMISS FROM BENZENE TRANSFR OPER
C BERYLLIUM
D BERYLLIUM ROCKET MOTOR FIRING
E MERCURY
F VINYL CHLORIDE
FF BENZENE WASTE OPERATIONS
H RADIONUCS OTR THN RADON FROM DPT OF ENGY
I RADIONUCS NRC LICNSD OR FEDRL, NOT SUB-H
J EQUIP LEAK (FUGITIVE EMISS SRC) BENZENE
K RADIONUCS FROM ELEMENTAL PHOSPHORUS PLNT
L BENZENE FROM COKE BY-PRODUCT RECOVERY
M ASBESTOS N INORGANIC ARSENIC, FROM GLASS MANUFACT
O INORG ARSENIC FROM PRIMARY COPPER SMLTR
P INORG ARSENIC, ARS TRIOXIDE, METAL ARS
Q  RADON FROM DOE FACILITIES
R  RADON FROM PHOSPHOGYMSUM STACKS
T  RADON, DISPOSAL OF URANIUM MILL TAILINGS
V  EQUIPMENT LEAKS (FUGITIVE EMISSIONS SRC)
W  RADON FROM OPERATING MILL TAILINGS
Y  BENZENE EMISS FROM BNZN STORAGE VESSELS
APPENDIX III

40 CFR SUBPART 63 - NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

A GENERAL PROVISIONS

AA TSDF & DISPOSAL FACILITIES & HAZ. WASTE GENERATORS

AAAA MUNICIPAL SOLID WASTE LANDFILLS

AAAAA LIME MANUFACTURING

B REQ FOR CONTROL TECHNOLOGY DETERMINATIONS FOR MAJOR SOURCES

BB PHOSPHATE FERTILIZERS

BBBBB SEMICONDUCTOR MANUFACTURING

C DE-LISTINGS

CC PETROLEUM REFINERIES

CCC WASTEWATER STEEL PICKLING

CCCC MANUFACTURING OF NUTRITIONAL YEAST

CCCCC COKE OVENS: PUSHING, QUENCHING AND BATTERY STACKS

D COMPLIANCE EXTENSION, EARLY HAP REDUCTION

DD OFF-SITE WASTE AND RECOVERY OPERATIONS

DDD MINERAL WOOL PRODUCTION
PLYWOOD AND COMPOSITE WOOD PRODUCTS

INDUSTRIAL/COMMERCIAL/INSTITUTIONAL BOILERS & PROCESS HEATER

APPROVAL OF STATE PROGRAMS & DELEGATION OF AUTHORITY

MAGNETIC TAPE MFG. OPERATIONS

ALL HAZARDOUS WASTE INCINERATORS

ORGANIC LIQUIDS DISTRIBUTION (NON-GASOLINE)

IRON AND STEEL FOUNDRIES

SYNTHETIC HAZARDOUS ORGANICS

MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING (MON)

INTEGRATED IRON AND STEEL MANUFACTURING

STORAGE OF HAZARDOUS ORGANICS

AEROSPACE MFG. & REWORK

PHARMACEUTICAL MANUFACTURING

SOLVENT VEGETABLE OIL EXTRACTION

SITE REMEDIATION

EQUIPMENT LEAKS OF HAZARDOUS ORGANICS

OIL AND NATURAL GAS PRODUCTION FACILITIES

NATURAL GAS TRANSMISSION & STORAGE FACILITIES

WET FORMED FIBERGLASS MAT PRODUCTION
HHHHH MISCELLANEOUS COATING MANUFACTURING FACILITIES

I NEGOTIATED REGS: EQUIP LEAKS, HAZ-ORNCS

II SHIPBUILDING & SHIP REPAIR

III FLEXIBLE POLYURETHANE FOAM PRODUCTION

III SURFACE COATING OF AUTO AND LIGHT DUTY TRUCKS

IIII MERCURY CELL CHLOR-ALKALI PLANTS

J POLYVINYL CHLORIDE AND COPOLYMERS PRODUCTION

JJ WOOD FURNITURE

JJJ GROUP IV POLYMERS AND RESINS

JJJJ NESHAP FOR PAPER & OTHER WEB SURFACE COATINGS

JJJJJ BRICK & STRUCTURAL CLAY PRODUCTS

KK PRINTING & PUBLISHING

KKKK METAL CAN

KKKKK CLAY CERAMICS MANUFACTURING

L COKE OVEN BATTERIES

LL PRIMARY ALUMINUM REDUCTION PLANTS

LLL PORTLAND CEMENT PLANTS

LLLL ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING

M DRY CLEANERS
Pulp Mill Chemical Recovery Boiler

PESTICIDE ACTIVE INGREDIENT PRODUCTION

Misc. Metal Parts and Products Surface Coating Operations

Flexible Polyurethane Foam Fabrication Operations

Chromium Electroplating

Wool Fiberglass Manufacturing

Surface Coating of Large Appliances

Hydrochloric Acid Production

Ethylene Oxide Sterilizers

Off-Site Waste and Recovery Operations - Tank Standards

Manufacture of Amino/Phenolic Resins 40 CFR 63.1419

Printing, Coating and Dyeing of Fabrics and Other Textiles

Off-Site Waste and Recovery Operations Container Standards

Polyether Polyols Production - MACT NESHAP

Plastic Parts (Surface Coating)

Engine Test Cells/Stands

Industrial Process Cooling Towers
OFF-SITE WASTE AND RECOVERY OPERATIONS SURFACE IMPOUNDMENT

PRIMARY COPPER

SURFACE COATING OF WOOD BUILDING PRODUCTS

FRICITION MATERIALS MANUFACTURING FACILITIES

GASOLINE DISTRIBUTION

OFF-SITE WASTE AND RECOVERY OPERATIONS INDIVIDUAL DRAIN SY

SECONDARY ALUMINUM PRODUCTION

SURFACE COATING OF METAL FURNITURE

TACONITE IRON ORE PRODUCTION

PULP AND PAPER SS NATL EMISS STD- CLOSED VENT SYS/CTRL DEVICES, 40 CFR 63.980

METAL COIL

REFRACTORY PRODUCTS MANUFACTURING

HALOGENATED SOLVENT CLEANING

EQUIPMENT LEAKS - CONTROL LEVEL 1

PRIMARY LEAD SMELTERS

LEATHER FINISHING OPERATIONS

PRIMARY MAGNESIUM
U ELASTOMERS & SYNTHETIC RUBBER PRODUCTION  
(POLYMERS/RESINS G1)

UU NTL EMISS. STD FOR EQUIP LEAKS-CONTROL 2 STD, 40 CFR 63.1019

UUU NESHAP FOR PETROLEUM REFINERIES: CCU'S, CRU'S & SRU'S

UUUU CELLULOSE PRODUCT MANUFACTURING

UUUUU ELECTRIC UTILITY STEAM GENERATING UNITS

VV OFF-SITE WASTE & RECOVERY - OIL-WATER & ORGANIC-WATER SEPARA

VVV PUBLICLY OWNED TREATMENT WORKS - MACT NESHAP

VVVV NEW AND EXISTING BOAT MANUFACTURING FACILITIES

W EPOXY RESINS & NON-NYLON POLYAMIDES PRODUCTION

WW NATL EMIS STD - STORAGE VESSELS (TANKS), 40 CFR 63.1060

WWW REINFORCED PLASTIC COMPOSITES PRODUCTION

X SECONDARY LEAD SMELTERS

XXX FERROALLOY PRODUCTION

XXXX RUBBER TIRE MANUFACTURING

Y MARINE TANK VESSEL LOADING & UNLOADING_OPERATIONS

YY GENERIC MACT STANDARDS

YYYY COMBUSTION TURBINES

ZZZZZ RECIPROCATING INTERNAL COMBUSTION ENGINES (RICE)
### APPENDIX IV

**CAA - § 112(b) (1) - LIST OF HAZARDOUS AIR POLLUTANTS**

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<thead>
<tr>
<th>CAS Number</th>
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APPENDIX V

CIVIL PENALTY WORKSHEET FOR AIR QUALITY VIOLATIONS
Iowa Department of Natural Resources
Civil Penalty Worksheet for Air Quality Violations
Iowa Department of Natural Resources

Case Name: ______________________________________

A. Economic Benefit Component

1. Delayed Costs
   ________________________________

2. Avoided Costs
   ________________________________

3. Illegal Competitive Advantage ________________________________

Economic Benefit Component → Total Amount ________________________________

B. Gravity Component

1. Actual or Potential Harm

   a. Amount of pollutant above standard and/or limit ______________

   b. Fugitive dust violations ________________________________

   c. Sensitivity of the environment ________________________________

   d. Toxicity of the pollutant ________________________________

2. Threat to the integrity of the regulatory program

   Air Program and/or Permit Violations

   i. Any Source Classification ________________________________

   ii. PSD Sources (attainment or non-classified) __________________

   iii. NSR Sources (non-attainment) ________________________________

   iv. MACT Sources ________________________________
v. Title V, Acid Rain, VOP Sources _______________________

vi. Permits by Rule _________________________________

vii. Operation, Maintenance, and Repair _______________________

viii. Performance tests _______________________________

ix. Monitoring _____________________________________

Administrative Order, Compliance Plan, and Variance Violations

i. Administrative Order _______________________________

ii. Compliance Plan ___________________________________

iii. Variance _______________________________________

Procedural Requirement Violations

i. Notification ______________________________________

ii. Reporting _______________________________________

iii. Late Title V fee payment ____________________________

iv. Record keeping ___________________________________

Gravity Component → Total Amount _________________________________

C. Degree of Culpability

1. Duration of violation _________________________________

2. Degree of intent
   a. Degree of control _________________________________
   b. Ability to foresee the events _________________________
   c. Level of knowledge _________________________________

Degree of Culpability → Total Amount _________________________________
D. Aggravating Factors (cannot exceed $1,000)

1. Degree of cooperation __________________________
2. History of Non-compliance ____________________
3. Environmental Damage _______________________

Aggravating Factors → Total Amount _________________________________

E. Mitigating Factors (cannot exceed $1,000)

1. Degree of Cooperation __________________________
2. Ability to pay ________________________________

Mitigating Factors → Total Amount _________________________________

Preliminary Penalty Amount = A + B + C + D - E = __________

Recommended Administrative Penalty Amount = __________

OR

Recommended AGO Referral Penalty Amount = __________

APPENDIX VI

AIR QUALITY VIOLATIONS

PENALTY ASSESSMENT EXAMPLE ONE:

Facts:
1. On May 2, 2001, the IDNR issued an NOV to BC for failure to submit their Year 2000 TV Emissions Inventory by the March 31, 2001 due date.
   • BC submitted the Year 2000 TV Emissions Inventory (EI) on May 3, 2001.
     i. First TV EI violation

2. On November 2, 2001, the DNR issued a non-compliance letter to BC for failure to submit the Semi-Annual Monitoring Report (SAMR) by the September 30, 2001 due date.
   • BC submitted the SAMR on December 13, 2001.
     i. First SAMR violation

3. On April 29, 2002, BC submitted the Annual Compliance Certification (ACC) for year 2001, the SAMR for the last half of year 2001, and the Year 2001 TV EI. These reports were due on March 31, 2002.
   • The IDNR issued NOVs on May 6, 2002, and on May 10, 2002, to BC for the late submittal of these reports.
     i. First ACC violation
     ii. Second SAMR violation - Duration of violation = 29 days
     iii. Second TV EI violation - Duration of violation = 29 days

4. On April 16, 2003, the IDNR issued an NOV to BC for failure to submit the ACC for year 2002 and the SAMR for the last half of year 2002.
   • BC submitted the ACC for year 2002 and the SAMR for the last half of year 2002, on April 30, 2003.
     i. Second ACC violation - Duration of violation = 30 days
     ii. Third SAMR violation - Duration of violation = 30 days

5. On May 9, 2003, the IDNR issued an NOV to BC for failure to submit the Year 2002 TV EI by the March 31, 2003 due date.
   • BC submitted the Inventory on May 30, 2003.
     i. Third TV EI violation - Duration of violation = 60 days

Determine the preliminary penalty amount.
Civil Penalty Worksheet for Air Quality Violations
Iowa Department of Natural Resources

Case Name: **Example One**

**A. Economic Benefit Component**

1. Delayed Costs __________ N/A________________________
2. Avoided Costs __________ N/A________________________
3. Illegal Competitive Advantage __________ N/A___________________

**Economic Benefit Component → Total Amount __________ N/A________________**

**B. Gravity Component**

1. Actual or Potential Harm
   
   a. Amount of pollutant above standard and/or limit __________ N/A________
   
   b. Fugitive dust violations __________ N/A________________________
   
   c. Sensitivity of the environment __________ N/A________________________
   
   d. Toxicity of the pollutant __________ N/A________________________

2. Threat to the integrity of the regulatory program

   **Air Program and/or Permit Violations**

   i. Any Source Classification __________ N/A________________________
   
   ii. PSD Sources (attainment or non-classified) __________ N/A________
   
   iii. NSR Sources (non-attainment) __________ N/A________________________
   
   iv. MACT Sources __________ N/A________________________
   
   v. Title V, Acid Rain, VOP Sources __________ N/A________________________
vi. Permits by Rule __________ N/A ___________________

vii. Operation, Maintenance, and Repair ____ N/A _____________

viii. Performance tests __________ N/A ___________________

ix. Monitoring __________ N/A __________________

Administrative Order, Compliance Plan, and Variance Violations

i. Administrative Order _______ NA _________________________

ii. Compliance Plan ________ N/A __________________________

iii. Variance ______________ N/A __________________________

Procedural Requirement Violations

i. Notification __________ N/A _____________________________

ii. Reporting __________________ $1,960 ____________________

   From Table 11-B: Late TV Emissions Inventory (twice) - $560
   From Table 11-B: Late SAMR (three times) - $840
   From Table 11-B: Late ACC (twice) - $560

iii. Late Title V fee payment _____ N/A ______________________

iv. Record keeping __________ N/A __________________________

Gravity Component → Total Amount ______ $1,960 __________________

C. Degree of Culpability

1. Duration of violation ___ $840 ____________________________

   From Table 16 - 178 days of violation

2. Degree of intent

   From Table 18

   a. Degree of control ______ $280 __________________________

   b. Ability to foresee the events ______ $280 __________________

   c. Level of knowledge _______ $280 ________________________

Degree of Culpability → Total Amount ______ $1,680 __________________

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D. Aggravating Factors (cannot exceed $1,000)

1. Degree of cooperation _________ N/A ____________
2. History of Non-compliance ______ N/A ____________
3. Environmental Damage ______ N/A ____________

Aggravating Factors → Total Amount ______ N/A ______________

E. Mitigating Factors (cannot exceed $1,000)

1. Degree of Cooperation _________ N/A ____________
2. Ability to pay _______________ N/A ____________

Mitigating Factors → Total Amount ______ N/A ______________

Preliminary Penalty Amount = A + B + C + D - E = $3,640

Recommended Administrative Penalty Amount = $3,640

OR

Recommended AGO Referral Penalty Amount = N/A
AIR QUALITY VIOLATIONS PENALTY ASSESSMENT
EXAMPLE TWO:

Determine the preliminary penalty amount for the Appendix I example.

**Facts:**

1. XYZ Company started construction of its facility on June 18, 2002, without previous Department approval and commenced operation on February 12, 2003.


3. During the permitting process, it was determined that the facility's VOC emissions were significant enough as to require a PSD permit, thus making this facility a Title V source.

4. The facility agreed to install BACT which was found to be a thermal oxidizer and received its PSD construction permit on July 19, 2004.
   - First PSD permitting violations are not exempted from penalty assessment. Duration of this violation (from June 18, 2002, through July 19, 2004) = 762 days

5. The ACO signed on March 30, 2004, required the facility to install a thermal oxidizer, submit a Title V permit application, and pay a civil penalty.

6. XYZ Company paid the penalty on April 25, 2004; submitted a Title V permit application on June 1, 2004; and completed installation of the thermal oxidizer on January 14, 2005.
   - Duration of the Title V permitting violation (February 12, 2004, through June 1, 2004) = 109 days
Civil Penalty Worksheet for Air Quality Violations
Iowa Department of Natural Resources

Case Name:  Example Two

A. Economic Benefit Component:  $242,465

For this case, the BEN Model found the economic benefit from delayed and avoided costs to be $239,465.
It was determined that this company gained $750,000 in additional revenues due to this non-compliance; therefore, from Table 1, the penalty amount is $3,000

B. Gravity Component

1. Actual or Potential Harm
   a. Amount of pollutant above standard and/or limit ______N/A_____
   b. Fugitive dust violations ______N/A_____
   c. Sensitivity of the environment ______N/A_____
   d. Toxicity of the pollutant ______N/A_____

2. Threat to the integrity of the regulatory program

Air Program and/or Permit Violations
   i. Any Source Classification ______N/A_____
   ii. PSD Sources (attainment or non-classified) ______$1,230_____
       From Table 5
   iii. NSR Sources (non-attainment) ______N/A_____
   iv. MACT Sources ______N/A_____
   v. Title V, Acid Rain, VOP Sources ______$2,800_____
       From Table 8
vi. Permits by Rule ____________ N/A ______________________

vii. Operation, Maintenance, and Repair _____ N/A __________________

viii. Performance tests ______ N/A ______________________

ix. Monitoring ________________ N/A ______________________

Administrative Order, Compliance Plan, and Variance Violations

i. Administrative Order _______ NA ______________________

ii. Compliance Plan __________ N/A ______________________

iii. Variance __________________ N/A ______________________

Procedural Requirement Violations

i. Notification ____________ N/A ______________________

ii. Reporting ______________ N/A ______________________

iii. Late Title V fee payment ______ N/A ________________

iv. Record keeping __________ N/A ______________________

**Gravity Component → Total Amount ______ $4,030________________**

**C. Degree of Culpability**

1. Duration of violation ______ $3,080________________________
   
   *From Table 16 - 871 days of violation*

2. Degree of intent
   
   a. Degree of control ______ $560________________________
      
      *From Table 18*

   b. Ability to foresee the events ______ N/A ______________

   c. Level of knowledge __________ N/A __________________

**Degree of Culpability → Total Amount ______ $3,640________________**
D. Aggravating Factors (cannot exceed $1,000)

1. Degree of cooperation __________ N/A _____________
2. History of Non-compliance ______ N/A _____________
3. Environmental Damage ______ N/A _______________

Aggravating Factors → Total Amount __________ N/A _______________

E. Mitigating Factors (cannot exceed $1,000)

1. Degree of Cooperation __________ $N/A _________________
2. Ability to pay _________________ N/A _________________

Mitigating Factors → Total Amount __________ N/A _______________

Preliminary Penalty Amount = A + B + C + D - E = $250,135

Recommended Administrative Penalty Amount = ___ N/A ___

OR

Recommended AGO Referral Penalty Amount = $250,135
APPENDIX VII

CIVIL PENALTY WORKSHEET FOR ASBESTOS DEMOLITION AND RENOVATION VIOLATIONS
Iowa Department of Natural Resources
Civil Penalty Worksheet for Asbestos Demolition and Renovation Violations
Iowa Department of Natural Resources

Case Name: ____________________________________________

A. Economic Benefit Component Penalty Amount __________________

B. Gravity Component

1. Actual or Potential Harm

   Toxicity of the pollutant ___________________________________

2. Threat to the integrity of the regulatory program

   a. NESHAP Asbestos Requirement Violations

      i. ACM inspections _________________________

      ii. Emission Control Procedures _______________________

      iii. ACWM disposal _________________________

   b. Administrative Order Violations ___________________________

   c. Procedural Requirement Violations

      i. Submittal of required notice _________________________

      ii. Notification information requirements _______________________

Gravity Component → Total Amount ____________________________
C. Degree of Culpability

1. Duration of violation ______________________________

2. Degree of intent
   a. Degree of control ______________________________
   b. Ability to foresee the events _________________________
   c. Level of knowledge ________________________________

Degree of Culpability → Total Amount ________________________________

D. Aggravating Factors (cannot exceed $1,000)

1. Degree of cooperation ______________________________

2. History of Non-compliance __________________________

3. Environmental Damage ______________________________

Aggravating Factors → Total Amount ________________________________

E. Mitigating Factors (cannot exceed $1,000)

1. Degree of Cooperation ______________________________

2. Ability to pay ______________________________

Mitigating Factors → Total Amount ________________________________

Preliminary Penalty Amount = A + B + C +D - E = ____________

Recommended Administrative Penalty Amount = __________

OR

Recommended AGO Referral Penalty Amount = ____________
APPENDIX VIII

ASBESTOS DEMOLITION AND RENOVATION VIOLATIONS

PENALTY ASSESSMENT EXAMPLE ONE:15

ABC Company hires Cool Demolition Contractors to demolish a dilapidated and abandoned building containing 400 linear feet of pipe covered with friable asbestos, and 600 square feet of siding and roofing sprayed with asbestos. Neither company notifies the DNR prior to commencing demolition of the building on July 1, 2005.

Tipped off by a citizen complaint, the DNR inspects the site on July 5, 2005, and finds that the contractor has not been wetting the suspected asbestos removed from the building. In addition, the contractor has piled dry asbestos waste material on a plastic sheet in the work area pending its disposal. There is no evidence of any visible emission from the pile.

An employee tells the inspector that workers were never told the material on-site contained asbestos and states “since this job began we’ve just been scraping the pipe coverings off with our hammers.”

The DNR inspector observes there is no water at the site. Work is stopped until the next day when a water tank truck is brought to the facility for use in wetting during removal and storage. The inspector takes samples and sends them to a State approved lab which later confirms that the material is asbestos.

On July 12, 2005, the inspector returns to the site only to find that the workers are dry stripping the siding and roofing because the water supply had been exhausted and the tank truck removed.

A worker reports that the water supply lasted four days before it ran out at the close of the July 9 work day. The inspector observes a new pile of dry asbestos containing debris in

15 This example is intended to illustrate application of the civil penalty described in this manual. For the purposes of this document, any criminal conduct that may be implied in this example has been ignored. Of course, in appropriate cases, prosecution for criminal violations should be pursued through appropriate channels.
tall grass at the back of the property. Unlike the pile observed inside the facility during the first inspection, this pile is presumed to have produced visible emissions.\footnote{Regardless of whether the inspector observes emissions of asbestos during a site inspection, where there is circumstantial evidence (such as unconstrained, dry asbestos piles outside), that supports a conclusion that visible emissions were present, the DNR has the discretion to include this violation.}

At the time of the second inspection, 70% of the asbestos had been removed from the building, 50% of which is deemed to have been improperly removed.

After discussion with DNR officials, work is halted at the site and ABC Company hires another contractor to properly dispose of the asbestos wastes and to remove the remaining 25% of the asbestos in compliance with the NESHAP asbestos requirements. The new contractor completes disposal of the illegal waste pile on July 18, 2005.

ABC Company has never been cited for asbestos violations by the DNR, but Cool Demolition Contractors had similar violations in 2003. As a result, all violations in this case are deemed to be second violations.

**Determine the Preliminary Penalty Amount.**

Cool Demolition Contractors completed 75% of the work over a 12-day period. We will assume that equal amounts of asbestos were removed each day, which means that 50% of the asbestos was properly removed (25% by Cool Demolition Contractors and 25% by the new contractor).

**First Inspection Violations:**
1. One violation for failure to wet during stripping [§ 61.145(c) (3)].
   a. Duration of this violation: five days (July 1 - 5).
2. One violation for failure to keep wet until disposal [§ 61.145(c) (6) (I)].
   a. Duration of this violation: five days (July 1 - 5).

**Second Inspection Violations**
1. New violation for failure to wet during stripping [§ 61.145(c) (3)].
   a. Duration of this violation: three days (July 10 - 12)
2. One visible emission violation [§ 61.150(a)].
   a. Duration of this violation: seven days (July 12 - 18).
3. One improper disposal violation [§ 61.150(b)].
   a. Duration of this violation: nine days (July 10 - 18).

**Total days of violation: Twenty-nine days**

The penalty assessment takes into account the part that each contractor, owner, and operator plays in the particular case.
Civil Penalty Worksheet for Asbestos Demolition and Renovation Violations
Iowa Department of Natural Resources

Case Name: Example One- Asbestos

A. Economic Benefit Component Penalty Amount $10,000

Economic = [$20 × 600 sq. feet + $20 × 400 linear foot] × 50% (% of asbestos Benefit improperly handled)

= $10,000

This economic benefit should be allocated to Cool Demolition Contractors, since ABC Company hired a new contractor to properly complete the asbestos removal and the disposal of ACWM, thus reducing 100% of its portion of the economic benefit.

B. Gravity Component

1. Actual or Potential Harm

   Toxicity of the pollutant $1,120

2. Threat to the integrity of the regulatory program

   a. NESHAP Asbestos Requirement Violations

      i. ACM inspections N/A

      ii. Emission Control Procedures $1,680

         From Table 13 - There were three separate second-time violations (500 × 3)

      iii. ACWM disposal $1,120

         From Table 13 - There were two separate second-time violations (500 × 2)

   b. Administrative Order Violations N/A
d. Procedural Requirement Violations

i. Submittal of required notice __________ $280___________

From Table 15 - This was a second-time violation

ii. Notification information requirements __N/A_________

Gravity Component → Total Amount __________ $4,200

C. Degree of Culpability

1. Duration of violation __________ $3,080

From Table 17 - 29 days of violation

2. Degree of intent

From Table 18 - Gross Negligence for all three factors

   a. Degree of control __________ $560

   b. Ability to foresee the events __________ $560

   c. Level of knowledge __________ $560

Degree of Culpability → Total Amount __________ $4,760

D. Aggravating Factors (cannot exceed $1,000)

1. Degree of cooperation __________ N/A

2. History of Non-compliance __________ $100 (Second violation)

3. Environmental Damage __________ N/A

Aggravating Factors → Total Amount __________ $100

E. Mitigating Factors (cannot exceed $1,000)

1. Degree of Cooperation __________ N/A

No mitigation for prompt correction of asbestos problem because this is what the violator is supposed to do.

2. Ability to pay __________ N/A

Mitigating Factors → Total Amount __________ None
Preliminary Penalty Amount = \( A + B + C + D - E = \) $18,100

Recommended Administrative Penalty Amount = $10,000

OR

Recommended AGO Referral Penalty Amount = $18,960
ASBESTOS DEMOLITION AND RENOVATION VIOLATIONS
PENALTY ASSESSMENT EXAMPLE TWO:

Rich & Famous, Inc. hires Luke Skywalker's Trucking Company to demolish a building which was found to contain 735 linear foot of friable asbestos on pipes. Neither party gives the DNR notice prior to commencement of demolition. A DNR inspector, acting on a tip, visits the site on April 1, 2005, the first day of the building demolition.

During the inspection, the inspector observes workers removing pipe coverings dry. Further inquiry reveals there is no water available on-site.

The inspector also finds a large unconstrained pile of what appears to be dry asbestos-containing waste material at the bottom of an embankment behind the building and takes samples of this pile. Test results confirm the samples contain a substantial percentage of asbestos.

On April 12, the inspector receives information from a reliable source that the pile of dry asbestos debris has not been properly disposed of and there is still no access to water at the facility. The inspector revisits the site on April 22 and determines that the waste pile has been removed.

A representative of Rich & Famous, Inc. gives the inspector documents showing that actual work at the demolition site concluded on April 17, but the contractor cannot document when the debris pile was removed.

Rich & Famous, Inc. has never been cited for asbestos violations by the DNR, but Luke Skywalker's Trucking Company had similar violations two other times in 2001 and 2004, respectively. As a result, all violations in this case are deemed to be third violations.

Determine the Preliminary Penalty Amount.

Due to the circumstances surrounding this case, we will assume that 100% of the asbestos was improperly removed.

There are at least sixty-one days of violation:
1. Seventeen days of dry removal. Violation of § 61.145(c) (3)
2. Twenty-two days of failure to keep wet until disposal. Violation of § 61.145(c) (6)
3. Eleven days of visible emissions. Violation of § 61.150(a)
4. Eleven days of improper disposal. Violation of § 61.150(b)

The penalty assessment takes into account the part that each contractor, owner, and operator plays in the particular case.
Civil Penalty Worksheet for Asbestos Demolition and Renovation Violations  
Iowa Department of Natural Resources

**Case Name:** Example Two - Asbestos

**A. Economic Benefit Component Penalty Amount**

$14,700

\[
\text{Economic } = \left[ \$20 \times 735 \text{ linear foot} \right] \times 100\% \left( \% \text{ of asbestos improperly handled} \right) \\
\text{Benefit } = \$14,700
\]

**B. Gravity Component**

1. **Actual or Potential Harm**
   - Toxicity of the pollutant $1,120

2. **Threat to the integrity of the regulatory program**
   a. **NESHAP Asbestos Requirement Violations**
      i. ACM inspections N/A
      ii. Emission Control Procedures $1,680
         
         *From Table 13 - There were two separate third-time violations (750 × 2)*
      iii. ACWM disposal $1,680
         
         *From Table 13 - There were two separate third-time violations (750 × 2)*
   b. **Administrative Order Violations** N/A
   e. **Procedural Requirement Violations**
      i. Submittal of required notice $560
         
         *From Table 15 - This was a third-time violation*
      ii. Notification information requirements N/A

**Gravity Component → Total Amount** $5,040

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C. Degree of Culpability

1. Duration of violation $4,820
   \[\text{From Table 17 - 61 days of violation}\]

2. Falsification of required information N/A

3. Degree of intent
   \[\text{From Table 18 - Gross Negligence for all three factors}\]
   d. Degree of control $560
   e. Ability to foresee the events $560
   f. Level of knowledge $560

Degree of Culpability → Total Amount $6,500

D. Aggravating Factors (cannot exceed $1,000)

1. Degree of cooperation N/A

2. History of Non-compliance $200 (Third violation)

3. Environmental Damage N/A

Aggravating Factors → Total Amount $200

E. Mitigating Factors (cannot exceed $1,000)

1. Degree of Cooperation N/A

2. Ability to pay N/A

Mitigating Factors → Total Amount None

Preliminary Penalty Amount = A + B + C + D - E = $26,240

Recommended Administrative Penalty Amount = $10,000

OR

Recommended AGO Referral Penalty Amount = $26,240