

HAZARDOUS WASTE ACT CIVIL PENALTY POLICY

**HAZARDOUS WASTE BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT**



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CONTENTS

I. INTRODUCTION	2
II. EFFECTIVE DATE	2
III. OBJECTIVE	2
IV. PRINCIPLES FOR APPLICATION	3
V. DISCLAIMER	3
VI. CALCULATION OF CIVIL PENALTIES	3
A. GRAVITY-BASED COMPONENT	5
B. MULTIPLE-DAY COMPONENT	8
C. ADJUSTMENT FACTORS	9
D. FINANCIAL CONDITION	11
E. ECONOMIC BENEFIT OF NONCOMPLIANCE	11
VII. SETTLEMENT	12
A. SETTLEMENT PROCESS	13
1. ESTABLISHING A SETTLEMENT POSITION	13
2. RECALCULATING THE PENALTY	13
B. DOCUMENTATION OF PENALTY SETTLEMENT AMOUNT	13
VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS	14
A. DEFINITIONS	14
B. SEP CRITERIA	14
C. SEP CATEGORIES	15
D. PENALTY MITIGATION	16
IX. RELEASE OF INFORMATION	18
X. POLICY APPROVAL	19
APPENDIX A	20
APPENDIX B	23
APPENDIX C	27
APPENDIX D	28

HAZARDOUS WASTE ACT CIVIL PENALTY POLICY

I. INTRODUCTION

The New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to -14, authorizes the Secretary of Environment to assess a civil penalty for violation of the HWA, the Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC, provisions of hazardous waste permits issued under the HWA and HWMR, and orders issued by the New Mexico Environment Department (NMED) under the authority of the HWA and HWMR. Pursuant to Section 74-4-10(B) of the HWA, NMED may assess a civil penalty of up to \$10,000 per day of noncompliance for each past, current or threatened violation of any requirement of the HWA, any rule adopted and promulgated pursuant to that act or any condition of a permit issued pursuant to that act. Pursuant to section 74-4-10(C) of the HWA, NMED may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with a compliance order issued pursuant to the HWA. Pursuant to section 74-4-13(B) of the HWA, NMED may assess a civil penalty of not more than \$5,000 for each day of noncompliance with an imminent hazard order issued pursuant to the HWA or for each day the failure to comply with such an order continues.

This HWA Civil Penalty Policy (Policy) is intended to provide guidance to NMED's Hazardous Waste Bureau (HWB) in determining the amount of a civil penalty to be issued, and provide guidance to regulated entities and the general public as to how civil penalties are determined by the HWB. This Policy is consistent with the U.S. Environmental Protection Agency's (EPA) June 2003 Resource Conservation and Recovery Act (RCRA) Civil Penalty Policy. HWB may use any policy or guidance in the EPA's RCRA Enforcement Policy and Guidance Compendium in calculating a civil penalty under this Policy (<http://cfpub.epa.gov/compliance/resources/policies/civil/rcra/>).

II. EFFECTIVE DATE

This Policy is effective upon signature by the HWB Chief. This Policy supersedes all previous Hazardous Waste Act Civil Penalty Policies.

III. OBJECTIVE

A primary purpose of enforcement is to deter noncompliance. Deterrence of noncompliance is achieved by: a credible likelihood of detection of noncompliance; a timely enforcement response; the likelihood and appropriateness of sanctions, including injunctions and civil penalties; and a perception of these factors in the regulated community.

This Policy is intended to ensure the appropriateness of sanctions in light of this purpose. Some specific objectives of the Policy are:

- Ensure the fair and consistent determination of civil penalties;
- Ensure imposition of civil penalties proportional to the gravity of the violation;
- Recover the economic benefit of noncompliance with the HWA and HWMR; and

- Provide a defensible basis for civil penalties in enforcement actions.

IV. PRINCIPLES FOR APPLICATION

HWB applies this Policy in accordance with the following principles:

- To determine the civil penalty in enforcement actions (including the settlement of such actions), except when HWB seeks the statutory maximum civil penalty for extenuating circumstances, e.g. hazardous waste release, treatment without a permit or major permit violation;
- To argue for the highest, yet reasonable, civil penalty justified by the facts, except when HWB seeks the statutory maximum civil penalty;
- To recover the preliminary deterrent amount (see Section VI) and the economic benefit of noncompliance; and
- The downward adjustment of civil penalty calculations will only occur as authorized by the Policy.

HWB makes assumptions regarding noncompliance based on the facts available at the time of the initial enforcement response. HWB may revise these assumptions on the basis of facts discovered during the enforcement action.

V. DISCLAIMER

This Policy guides HWB in determining the amount of a civil penalty for violation of the HWA and HWMR and is not binding on HWB. The Policy does not create any right, duty, obligation, or defense in any person. HWB may revise, amend, supplement, or revoke all or part of the Policy without public notice or comment.

VI. CALCULATION OF CIVIL PENALTIES

The civil penalty shall not exceed the statutory maximum specified in the HWA. The statutory maximum may constitute the appropriate civil penalty for violations involving actual harm to human health or environment, willful violations, and other violations as determined in the sole discretion of HWB. In assessing the penalty, HWB shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

A civil penalty that is lower than the preliminary deterrent amount undermines the deterrent effect of the civil penalty. HWB shall apply this Policy to arrive at a final civil penalty that achieves deterrence.

To aid inspectors in consistently evaluating potential violations, violation spreadsheets are available that provide supplemental details on classifying specific violations in relation to statutory, regulatory citations or permit conditions. The following NMED penalty guides (collectively referred to as “guides”) provide guidance to determine the gravity-based component (potential for harm and extent of deviation):

- NMED RCRA Penalty Guide, New Mexico Environment Department Hazardous Waste Bureau, current revision; and
- NMED Used Oil Penalty Guide, New Mexico Environment Department Hazardous Waste Bureau, current revision.

These guides were created considering the impact of each violation on human health and the environment. The guides are maintained by HWB and may be updated and revised without revising this Policy.

Some facilities violate more than one requirement or violate the same requirement more than one time. HWB assesses a separate civil penalty for each violation that results from an independent act or failure to act, and for each violation that is distinguishable from another violation.

A violation results from an independent act or failure to act or is distinguishable from another violation when the violation requires at least one element of proof not required to prove the other violation. For instance, HWB may assess a separate civil penalty for each violation and add the amounts to determine the total civil penalty when:

- A person, as defined by the HWA, violates a different requirement of the HWA or HWMR;
- A person violates the same requirement of the HWA or HWMR on more than one occasion; or
- A person violates the same or different requirement of the HWA or HWMR at different places/facilities.

Notwithstanding the above, HWB may decline to assess separate civil penalties for the following types of related violations:

- Violation of a state or federal regulation and of a permit condition which duplicates the regulation; and
- Violation of more than one permit condition which imposes similar legal duty.

HWB may also decline to calculate a separate civil penalty for a derivative violation, (i.e., when the violation of one requirement directly results in the violation of a second requirement). For example, the failure to perform weekly inspections also results in the failure to maintain an inspection log. Another example involves the accumulation of hazardous waste for longer than 90 days without a permit. In this case, HWB may assess a civil penalty for storing hazardous waste without a permit, but decline to assess a civil penalty for the failure to submit a permit application.

The Policy establishes a four-step process for determining the amount of a civil penalty:

1. Determine the gravity-based penalty amount;
2. Add the multiple-day component;
3. Adjust the sum of the gravity-based penalty amount and the multiple-day component (preliminary deterrent amount) to account for case-specific factors; and

4. Add the economic benefit of noncompliance.

A. GRAVITY-BASED COMPONENT - The gravity-based component is the measure of the seriousness of a violation. The gravity-based penalty amount consists of two components: Potential for Harm and Extent of Deviation from the HWA or HWMR.

1. **POTENTIAL FOR HARM** - The HWA and HWMR are intended to prevent harm to human health or environment. Some violations of the HWA or HWMR create the potential for direct harm (risk of exposure) to human health or environment (e.g., the violation of prohibitions on land disposal). Other violations create the potential for harm to human health or environment by jeopardizing the integrity of the regulatory program (e.g. prepare land disposal restriction notifications, maintain records, obtain permits). Finally, some violations create the potential for both types of harm (e.g., failure to follow a permit or conduct inspections).

HWB evaluates the potential for harm to human health or environment consistent with the EPA RCRA Civil Penalty Policy (Ref. 1) by considering the risk of exposure and harm to the regulatory program as described below.

For certain violations, the guides refer to Appendix A *Potential for Harm*, containing the “Potential for Harm Ranking System” and “Used Oil/Potential for Harm Ranking System,” for determining potential for harm.

a. Risk of Exposure - The potential for harm to human health or environment depends on the probability and seriousness of exposure of a human or environmental receptor to a pollutant. Actual harm is not necessary. A violator cannot always control whether the violation will result in actual harm. A violator who, by chance, does not cause actual harm should not be rewarded with a lower civil penalty.

i. **Probability of Exposure** - Where a violation involves the actual management of waste, the penalty should reflect the probability that the violation caused or could have caused a release of hazardous waste or constituents or hazardous conditions posing a threat of exposure to hazardous waste or constituents. In determining the likelihood of exposure, HWB considers whether the violation compromised or could have compromised the integrity of a procedure, process, or facility. Evidence of an actual or potential exposure includes:

- Detection of a hazardous waste or constituent in environmental media;
- Mismanagement of hazardous waste (e.g., rusting or open drums); and
- Inadequate provisions for the detection of a release of a pollutant (e.g., Inadequate, or lack of, inspections or monitoring equipment).

ii. **Seriousness of Exposure** - The penalty should reflect the seriousness of exposure that would result if the hazardous waste or constituents were in fact released to the environment. In determining the seriousness of exposure, HWB considers the following factors:

- The amount and toxicity of the waste actually or potentially released, including the synergistic effect of multiple pollutants;
- The mobility of the pollutant(s) or the likelihood of transport by environmental media; and
- The proximity and sensitivity of actual or potential receptors (e.g., human populations, domestic animals, fish, wildlife, crops, vegetation) and sensitive environmental media (e.g., wetlands, drinking water supplies, useable groundwater).

b. Harm To Regulatory Program - Every requirement of the HWA and HWMR is fundamental to the integrity of the regulatory program. The violation of these requirements has the potential to undermine the HWA and HWMR, and may have an adverse effect on the statutory or regulatory purposes or procedures for implementing the hazardous waste program and preclude HWB from determining whether a violator is complying with other applicable requirements. Such violations may have serious implications and merit substantial penalties where the violation undermines the regulatory program. Some examples of regulatory harm violations that are fundamental to the overall program goals of safe and responsible hazardous waste management include:

- Failure to make a notification of hazardous waste activity;
- Failure to obtain a permit;
- Failure to ensure delivery of hazardous waste to an appropriate facility;
- Failure to retain required records; and
- Failure to comply with land disposal restrictions.

c. Evaluating the Potential for Harm - HWB evaluates each violation to determine the degree of potential harm by each category: exposure risk and regulatory harm. HWB uses the following categories when evaluating the potential for harm:

MINOR: The violation: 1) poses or may pose a relatively low potential for exposure to human or environmental receptors; and/or 2) does not undermine or minimally undermines the regulatory program.

MODERATE: The violation: 1) poses or may pose a significant potential for harm to human or environmental receptors; and/or 2) significantly undermines the regulatory program.

MAJOR: The violation: 1) poses or may pose a substantial potential for harm to human or environmental receptors; and/or 2) substantially undermines the regulatory program.

If a violation has differing degrees of severity for exposure risk and regulatory harm, the violation will be placed in the greater of both categories. In addition to the guidance provided above, HWB may also utilize Appendix A, Potential for Harm

Worksheets, when directed by the guides. The worksheets measure the potential for harm (i.e., major, moderate, and minor) by considering the nature and volume of the waste, discharge potential, and the potential exposure to receptors.

2. EXTENT OF DEVIATION - HWB considers the degree that a violation deviates from or renders inoperative a requirement of the HWA or HWMR. For any violation, the extent of potential noncompliance may range from substantial compliance with the requirement to total disregard of the provisions of the requirement. When evaluating the extent of deviation, HWB may evaluate the violated condition in relation to the scope and intent of the specific section of the statute or regulation rather than just the condition itself. HWB uses the following categories when evaluating the extent of deviation:

MINOR: The violation deviates somewhat from a regulatory or statutory requirement but the violator substantially complies with the most (or all) important aspects of the overall regulatory or statutory requirements.

MODERATE: The violation significantly deviates from an important aspect of a regulatory or statutory requirement but the violator implements most of the important aspects of the overall regulatory or statutory requirements.

MAJOR: The violation substantially deviates from the regulatory or statutory requirement, violates multiple elements of the requirement, or violates the most important element(s) of the overall regulatory or statutory requirements to such an extent that substantial noncompliance results.

Generally where a single fact or set of facts results in multiple violations or counts, HWB may consider adjusting the extent of deviation upward rather than assessing penalties for multiple violations or counts. An example involves noncompliant containers at a large storage area. If a few containers lack accumulation start dates, the extent of deviation might be considered minor; but, if most of the containers are open or not in good condition and improperly marked and labeled, the extent of deviation from the container management requirements would be considered major. In this instance, HWB would not also assess a multiple count penalty based on the number of noncompliant containers.

3. GRAVITY-BASED PENALTY ASSESSMENT MATRICES - HWB uses the appropriate Gravity-Based Penalty Assessment Matrix in Appendix B to determine the gravity-based penalty. Each matrix has nine cells, each containing a penalty amount based on the civil penalty maximum. After determining the potential for harm and the extent of deviation, the penalty amount is selected from the appropriate cell in the matrix.

4. MULTIPLE VIOLATIONS AND MULTIPLE COUNTS - When a person, as defined by the HWA, violates the same requirement multiple times during the same inspection, HWB may, in its discretion, assess a separate civil penalty for each violation or may use the number of violations as a multiplier for the gravity-based component. When deciding whether to adjust the penalty for multiple violations rather than multiple counts, HWB will consider whether each violation results from an independent act (or failure to act) and is substantially distinguishable from another violation for which a penalty is to be

assessed. That is, a separate set of facts supports different but similar acts. HWB also seeks penalties for multiple violations or counts when the same requirement was violated at substantially different locations or on separate occasions. For example, if multiple open hazardous waste containers managed by different individuals are found throughout a facility, separate penalties might be more appropriate than multiple counts especially if other factors such as potential for harm or duration differ significantly. However, if numerous open containers are found at one location controlled by a single individual, it may be more appropriate to adjust the extent of deviation upward rather than applying multiple counts of the regulatory violation.

When evaluating the gravity-based penalty, HWB will attempt to assure that multiple counts are not used in addition to upward adjustments to the potential for harm or extent of deviation components without appropriate justification. HWB may, in its sole discretion, choose to not calculate penalties (or increase counts) for recently discovered violations that occurred more than five years before discovery.

B. MULTIPLE-DAY COMPONENT - The multiple-day component accounts for the duration of a violation. The duration of the violation is the number of continuous days of violation minus one day. The deduction of one day accounts for the first day of violation, which is assessed as the gravity-based penalty amount. HWB decides, in its sole discretion, whether a violation is continuous.

HWB assesses a civil penalty for the number of days in which a violation occurred, as supported by credible evidence, including statements by facility employees. For a violation that persists beyond the day it is identified, HWB may determine that a person or facility continuously violated a requirement from the first day of violation until the person or facility demonstrates compliance through credible evidence. Where there is a lack of physical documentation, admission by a facility employee that a violation existed for a certain number of days may constitute credible evidence of a violation's duration.

Where HWB determines that a violation occurred for more than one day, the penalty may be calculated for a period ending: (1) on the date of the inspection, (2) on the date of compliance, or (3) on the date of the enforcement action. After establishing the number of days of violation, HWB will determine whether the multiple-day penalty is mandatory, appropriate, or discretionary for a given gravity-based classification (potential for harm vs. extent of deviation), and then select the appropriate multiplier from the multiple-day penalty matrix.

Multiple-Day Penalty Application - When evaluating whether to apply a multiple-day penalty, HWB will consider the impact on the overall penalty. The factors for evaluation are:

- Will the penalty deter the violator from future violations? and
- Is the penalty appropriate for the violation?

A multiple-day penalty is mandatory for days 2-60 for a violation with the following

gravity-based classifications: (1) Major-Major; and (2) Major-Moderate. In these cases, multiple-day penalties will be sought for all or a portion of the time the violation existed.

A multiple-day penalty is presumed appropriate for days 2 through 60 for a violation with the following gravity-based classifications: (1) Major-Minor; (2) Moderate-Moderate; Moderate-Major; and (3) Minor-Major. In these cases, multiple-day penalties should be sought unless case-specific evidence demonstrates that the violation did not continue for days 2 through 60.

A multiple-day penalty is discretionary for a violation with the following other gravity-based classifications: (1) Minor-Minor and (2) Minor-Moderate and (3) Moderate-Minor.

The Multiple-Day Penalty Application Matrix in Appendix B summarizes this general guidance for the first 60 days of a violation. A multiple-day penalty is discretionary for days 61 and beyond for any violation. HWB may, in its sole discretion, choose to assess a multiple-day penalty for each day a violation occurred or for a portion of the total days.

The Multiple-Day Penalty Assessment Matrix in Appendix B determines additional penalties for multiple-day violations. The dollar figure to be multiplied by the number of days of violation will generally be selected from the range provided in the appropriate provided. Selections of a dollar figure from the range of penalty amounts can be made in HWB's discretion based on an assessment of case-specific factors. For example, when assessing a multiple-day penalty for a moderate-major violation of a HWMR requirement that lasted 60 days, HWB may choose to assess a penalty of \$2,400 per day for days 2 through 10 and \$1,000 per day for days 11 through 30 and \$600 per day for the next 30 days. HWB also retains discretion to impose multiple-day penalties of up to the applicable statutory maximum for each day, when appropriate under the circumstances to achieve deterrence.

C. ADJUSTMENT FACTORS - HWB, in its discretion, considers various factors which allow adjustments to a civil penalty to reflect legitimate differences between violations of the same requirement by different violators. HWB applies the adjustment factors to the preliminary deterrent amount. The default range for each adjustment factor is specified in Appendix C. When adjustment factors result in a calculated penalty in excess of the statutory maximum, the statutory maximum shall be assessed.

1. **EFFORT TO COMPLY** - refers to the violator's response to the violation once detected or brought to its attention. HWB may apply a downward adjustment for a violator's good faith effort to comply with the requirement, to mitigate or prevent harm from the violation, or for self-reporting the violation and voluntarily implementing corrective actions. HWB may apply an upward adjustment for a violator's delay or refusal to take such action. Such delay or refusal may constitute bad faith when the violator knew or should have known about the violation or when the violation poses a threat to human health or environment. For violations involving bad faith, HWB may apply an upward adjustment larger than specified by the penalty calculation worksheet.

2. NEGLIGENCE/WILLFULNESS - HWB may apply an upward adjustment for a violation that is negligent or willful. HWB determines the upward adjustment by evaluating the following factors:

- The violator's degree of control over the event giving rise to the violation;
- The foreseeability of the event giving rise to the violation;
- The reasonable precautions that the violator could have undertaken to prevent or mitigate the event giving rise to the violation;
- The violator's knowledge, or obligation to obtain knowledge, regarding the requirement;
- The violator's knowledge, or obligation to obtain knowledge, regarding the possibility of violating the requirement;
- The violator's level of sophistication regarding compliance with the requirement; and
- The level of sophistication in the industry regarding compliance with the requirement.

The violator's knowledge regarding the requirement may result in an upward adjustment, but the violator's lack of knowledge regarding the requirement does not excuse the violation because ignorance of the law is not a defense to liability. HWB may refer for criminal prosecution any violation for which there is evidence of a willful violation or reckless disregard for human health or environment.

3. HISTORY OF NONCOMPLIANCE - refers to the violator's previous compliance with environmental laws during the preceding ten years. HWB may apply an upward adjustment for a history of noncompliance. HWB determines the upward adjustment by evaluating the following factors:

- Repeat violations of the same or similar requirement;
- Previous violations of any requirement of the HWA and HWMR, including permit and order requirements;
- The frequency and severity of the previous violations; and
- The violator's response to the previous violations in regard to correction of the problem.

To avoid an upward adjustment, the violator must demonstrate, through credible evidence, that the prior notice of violation or compliance order was rescinded or the violation was beyond the control of the violator (e.g., a tornado resulted in a release).

For the purposes of this Policy, HWB considers a repeat violation to be one that has occurred at the same facility within the past five years. HWB may, in its discretion, also consider previous violations of a requirement of another environmental regulatory program when assessing an adjustment for history of noncompliance.

4. OTHER FACTORS:

- a. **Self-Reporting** - HWB may adjust a civil penalty for environmental violations detected during voluntary self-evaluation, disclosure, correction and prevention. Under this discretionary factor, regulated entities are sometimes eligible for a reduction or total elimination of the gravity-based component of the civil penalty depending on a case-specific evaluation by HWB. This factor may be used to increase the default downward effort-to-comply adjustment for self-reported violations, or be applied separately. However, a downward adjustment generally will not be applied if self-reporting is required by the HWA, HWMR, or other enforceable requirement.
- b. **Small Businesses** - HWB may adjust or decline to assess a civil penalty against a small business when there has been a good faith effort to correct the violation, the violation does not involve criminal action, or the violation does not create a serious or immediate threat to human health or environment.
- c. **Unique Factors** - HWB may adjust or decline to assess a civil penalty when other unique factors are present.

D. FINANCIAL CONDITION - HWB may consider the violator's financial condition to achieve a deterrent civil penalty. Financial condition refers to a violator's ability to pay a civil penalty, taking into account its size and solvency. A violator's inability or limited ability to pay must be demonstrated with auditable financial documents.

To be an effective deterrent, a civil penalty should be matched to the size of the violator, with larger violators being assessed a larger penalty. In essence, the civil penalty should be large enough to change the violator's perception of the risk attendant in violating the law. HWB may consider the parent corporation's size when assessing a civil penalty to its subsidiary. HWB may use its discretion in choosing an appropriate method for calculating the ability to pay, including the EPA ABLE Model.

E. ECONOMIC BENEFIT OF NONCOMPLIANCE - HWB considers the economic benefit of noncompliance, when appropriate under the circumstances, to achieve deterrence. The economic benefit of noncompliance includes delayed and avoided costs. HWB adds the economic benefit of noncompliance to the adjusted preliminary deterrent amount to determine the total civil penalty.

1. **DELAYED COST** is an expenditure that the violator has deferred by violating the requirement. The economic benefit of a delayed cost is the interest on the dollar amount of the deferred expenditure for the length of time of the violation. For instance, a person or facility that fails to install emergency equipment eventually will have to pay the cost of installation. By delaying the cost of installation, the person or facility achieves an economic benefit equal to the interest on the deferred expenditure. Examples include: failure to prepare contingency plans, failure to train employees, failure to implement permit requirements, failure to perform hazardous waste determinations, failure to install

decontamination equipment; and failure to submit permit applications.

2. AVOIDED COST is an expenditure that the violator will never incur by violating the requirement. The economic benefit of an avoided cost is the expenditure that the violator would have incurred to comply with the requirement, plus the interest on the dollar amount of the deferred expenditure for the length of time of the violation. For instance, a person or facility that fails to install (or installs and then disconnects or does not maintain) emergency equipment will never have to pay the cost of maintaining the equipment, and will achieve an economic benefit equal to the avoided cost and the interest on any deferred expenditure. Examples include: failure to properly treat and dispose of hazardous waste, failure to employ a sufficient number of trained employees; failure to conduct waste analyses; failure to conduct required environmental monitoring; and failure to keep records and report data.

3. WRONGFUL PROFIT is a profit (or additional profit) earned by violating the requirement. For instance, a violator may earn a profit by disposing of untreated hazardous wastes in a municipal landfill rather than sending the wastes to treatment and disposal facilities permitted to manage hazardous waste, yet bill customers for a hazardous waste management surcharge.

4. CALCULATION OF ECONOMIC BENEFIT - HWB may use its discretion in choosing an appropriate method for calculating the economic benefit of noncompliance, including the EPA BEN Model. Regardless of the method used, the basis for the calculation of the economic benefit of delayed and avoided costs or wrongful profit must be documented.

Some violations have no or minimal economic benefit to the violator. In the interest of simplifying and expediting enforcement, HWB may decline to calculate the economic benefit of noncompliance for such violations. HWB does not usually add the economic benefit adjustment if the violation resulted in a benefit of less than \$2,500.

VII. SETTLEMENT

The Policy encourages settlement at any time during an enforcement action, provided the settlement is consistent with the objectives and requirements of the HWA and RCRA and the provisions of this Policy. The violator may request a settlement conference to provide information regarding liability for the violation or the amount of the civil penalty. HWB may adjust the civil penalty on the basis of such information. However, HWB should ensure that the settlement penalty recovers the economic benefit of noncompliance and a significant portion of the preliminary deterrent amount.

The violator and the regulated community must perceive that the civil penalty places the violator in a worse position than a person who complies with the requirement. When adjusting a civil penalty to arrive at a final settlement, HWB must consider that a civil penalty that is lower than the economic benefit of noncompliance punishes a person who complies with the requirement by placing him at a competitive disadvantage. Moreover, a penalty that is lower than the

preliminary deterrent amount undermines the deterrent effect of the civil penalty.

The settlement process does not affect or delay the violator's obligation to comply fully and promptly with the requirement. In the event that the settlement conference affects or delays full and prompt compliance with the requirement, HWB may apply an upward adjustment to the civil penalty.

A. SETTLEMENT PROCESS

1. ESTABLISHING A SETTLEMENT POSITION - HWB may establish a settlement position lower than the civil penalty calculated under the Policy. HWB establishes a settlement position by evaluating the following factors:

- The maximum civil penalty likely to be awarded by an administrative or judicial tribunal;
- Any information obtained by HWB, including any new information provided by the violator; and
- The risk of litigation.

2. RECALCULATING THE PENALTY - HWB recalculates the civil penalty whenever it obtains new information affecting the basis for the civil penalty. HWB may, in arriving at a final settlement penalty, deviate significantly from the penalty amount, provided such discretion is exercised in accordance with the provisions of this Policy.

While new information often is mitigative and leads to a lower penalty, the following types of information may lead to an increased penalty:

- The violation is more serious than previously believed;
- Additional violations or multiple days of violation have occurred;
- The violator's remedial measures are inadequate or ineffective;
- The violator's history of noncompliance is more extensive than previously believed;
- The violator is more sophisticated regarding compliance with the requirement than previously believed; or
- The violation was found to be willful.

B. DOCUMENTATION OF PENALTY SETTLEMENT AMOUNT

HWB uses penalty calculation worksheets to document all penalties (for examples, see Appendix C). Until settlement discussions or the pre-hearing information exchanges occur with the violator, mitigating and equitable factors and overall strength of the Department's enforcement case may be difficult to assess. HWB considers such penalty calculation documents its initial settlement position. Once the violator has presented HWB with its best arguments relative to penalty mitigation, HWB may, in its discretion, document a final penalty settlement amount using a revised worksheet and Settlement Letter, which provides

the rationale for the final settlement amount to be included in the case file.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

With prior approval from the Cabinet Secretary, the HWB will allow the use of a supplemental environmental project in lieu of a portion of a civil penalty, when the HWB determines that such a project aligns with the mission statement of the New Mexico Environment Department, which is “to protect and restore the environment, and to foster a healthy and prosperous New Mexico for present and future generations.” No member of the New Mexico Environment Department, including any members of the HWB, may propose a supplemental environmental project. Violators may propose a supplemental environmental project to the HWB, which shall evaluate and, if appropriate, approve the project provided it meets the criteria established below:

A. DEFINITIONS

- SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) means an environmentally beneficial project that a violator voluntarily agrees to undertake in settlement of an enforcement action, but which is not otherwise legally required by law.
- ENVIRONMENTALLY BENEFICIAL means to improve, protect, or reduce risk to public health or environment. A SEP must primarily benefit public health or environment.
- IN SETTLEMENT OF AN ENFORCEMENT ACTION means the violator did not initiate the project before the HWB commenced the enforcement action at issue, and the HWB had an opportunity to consider and approve the scope of the project before it is initiated.
- NOT OTHERWISE REQUIRED BY LAW means the project is not required by federal, state, or local law or regulation, except that a SEP
 - may include a project which the violator may be legally obligated to perform two or more years in the future, unless early compliance provides a benefit to the violator;
 - the project has not commenced; the project is not required as injunctive relief in the enforcement action; and the project is not required as part of an order or settlement in another enforcement action.

B. SEP CRITERIA

The HWB uses the following criteria to determine whether to accept a project in settlement of an enforcement action:¹

- The project satisfies the SEP definition;
- The project advances the objectives of the HWA and HWMR;
- The project is consistent with the requirements of the HWA and RCRA;
- The project is not an action that the HWB or violator is required to perform by law;
- The project does not directly or indirectly implement or expand an existing hazardous waste program administered by the HWB;
- The project does not involve any donation or gift of any kind to any individual or

¹ The HWB reserves the right to reject a project without regard to these criteria. Further, the HWB reserves the right to rely on a violator's past history of noncompliance to reject a project.

entity, including a non-profit organization, or a federal, state or local government entity;

- The project falls within one or more SEP categories described below;
- The project has a nexus to the violation. Determination of a nexus is within the sole discretion of the HWB. Geographical proximity is not a factor considered in evaluating nexus due to the fence line requirement of paragraph 12 below. Projects must relate to the underlying violations at issue in the enforcement action. The project must demonstrate that it is designed to reduce:
 - the likelihood that similar violations will occur in the future;
 - the adverse impact to public health and/or the environment to which the violation at issue contributes; or
 - the overall risk to public health and/or the environment potentially affected by the violation at issue.
- The project achieves a significant environmental benefit;
- The project is fully described (including a schedule of completion and evaluation) in a binding and enforceable settlement document signed by the violator;
- The project does not involve the management or administration of the project or funds by the HWB;
- The project occurs within the fence line of the violator's facility, or at facilities that are functionally related to the violating facility and under common operational control, and
- The settled civil penalty exceeds \$25,000.

C. SEP CATEGORIES

1. POLLUTION PREVENTION

A Pollution Prevention SEP prevents the generation of pollution by reducing the amount or toxicity of a hazardous substance during the production process. A Pollution Prevention SEP cannot transfer pollution to another medium. Examples of acceptable Pollution Prevention SEPs include:

- equipment modifications;
- process modifications;
- redesign or reformulation of products;
- operation and maintenance;
- inventory control; and
- training.

2. POLLUTION REDUCTION

A Pollution Reduction SEP reduces waste by source reduction and/or recycling of generated hazardous wastes. If the pollutant or waste stream already has been generated or released, a pollution reduction approach which employs recycling, treatment, containment or disposal techniques may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention."

3. ASSESSMENT/AUDIT

- a. **Pollution Prevention and Pollution Reduction** is a systematic, internal review of a specific process or operation designed to identify and provide information about opportunities to reduce the amount of hazardous substances and wastes. A Pollution prevention/Pollution Reduction Assessment must be conducted using a recognized, HWB-approved pollution prevention assessment or waste minimization procedure.
- b. **Environmental Management System Audit** is an independent evaluation of a violator's environmental infrastructure, including:
 - formal and informal corporate environmental compliance policies, practices and procedures;
 - formal and informal corporate policies, practices, and procedures that affect environmental compliance;
 - educational and training programs for managers and employees;
 - equipment purchase, operation and maintenance, and inventory control programs;
 - policies, practices, and procedures regarding communication and coordination between production and environmental compliance personnel;
 - environmental compliance officer programs;
 - budgeting and planning systems for environmental compliance;
 - monitoring, record keeping, and reporting systems;
 - in-plant and community emergency plans;
 - other internal communication and control systems; and
 - systems for hazard identification and risk assessment.
- c. **Environmental Compliance Audit** is an independent evaluation of a violator's compliance with all environmental requirements by a third party. The violator may receive credit only for the cost of conducting the audit. The violator receives no credit for resolving any violation discovered during the audit.

D. PENALTY MITIGATION

1. INTRODUCTION

The HWB follows a three-step process to determine whether a violator is entitled to penalty mitigation for a SEP. First, the HWB calculates the net-present after-tax cost of the SEP (SEP Cost). Second, the HWB evaluates the benefits of the SEP (SEP Benefit) to determine the percentage of the SEP Cost to be applied against the Gravity Component. Third, the HWB applies the percentage against the Gravity Component and calculates the amount of the settlement penalty.

2. CALCULATING THE SEP COST

The HWB calculates the SEP Cost based on the following costs associated with the performance of a SEP:

- capital costs (e.g., new equipment or modifications, pollution control equipment, buildings);
- one-time, non-depreciable costs (e.g., removing contaminated materials, purchasing land, developing a compliance promotion seminar, purchasing audit software); and
- annual operation and maintenance costs or savings for the number of years that such costs will be expended to perform the SEP (e.g., labor, power, water, chemicals, raw materials). The HWB may use the EPA PROJECT model to calculate the SEP Cost. If the violator waives the right to claim a tax deduction for the SEP, the HWB adjusts the marginal tax rate in the PROJECT model. If the PROJECT model indicates a negative cost for the project, the HWB will not accept the project as a SEP.²

3. EVALUATING THE SEP BENEFIT

The HWB evaluates the SEP Benefit in light of:

- (1) **Benefits to Public Health or Environment.** Whether the SEP results in a significant and quantifiable reduction in risk to public health or environment.
- (2) **Innovativeness.** Whether the SEP furthers the development and implementation of innovative processes, technologies, or methods which:
 - reduce the amount or toxicity of hazardous substances and wastes;
 - develop or evaluate new technology which may establish a new regulatory benchmark;
 - promote compliance.
- (3) **Environmental Justice.** Whether the SEP mitigates damage or reduces risk to minority or low income populations that may have been disproportionately exposed to hazardous substances or other environmental risks.
- (4) **Multimedia Impacts.** Whether the SEP reduces the amount or reduces the toxicity of hazardous substances to more than one medium.
- (5) **Pollution Prevention.** Whether the SEP develops and implements pollution prevention equipment, techniques, or practices.
- (6) The mitigation percentage should not exceed eighty percent (80%) of the SEP Cost.

The HWB may reduce the mitigation percentage for any project if the HWB must allocate significant resources to monitor or review the implementation of the SEP. For governmental agencies, political subdivisions, or nonprofit organizations, the mitigation percentage may equal one hundred percent (100%) of the SEP Cost.

² A negative cost indicates a positive cash flow (e.g., profit) for the violator. A violator should implement a profitable project based on economic interest. However, though the HWB encourages businesses to undertake environmentally beneficial projects, violators should not receive a bonus in the form of penalty mitigation for undertaking such projects to settle enforcement actions.

4. CALCULATING THE SETTLEMENT PENALTY

In settlements involving a SEP, the HWB should collect a civil penalty that equals or exceeds either:

- The economic benefit of noncompliance plus ten percent (10%) of the Gravity Component; or
- Twenty-five percent (25%) of the Gravity Component, whichever is greater

For governmental agencies, political subdivisions, or nonprofit organizations, the HWB may collect, based on the circumstances and the proposed SEP, a civil penalty less than the economic benefit of noncompliance.

5. STIPULATED PENALTIES FOR SEP FAILURE

The settlement document must contain a provision for stipulated penalties in the event of SEP failure. The HWB will determine, in its sole discretion, the type of provision required for settlement, including but not limited to flat rates, graduated schedules, and cash payments for partial or full SEP Costs.

IX. RELEASE OF INFORMATION

The Inspection of Public Records Act (IPRA), NMSA 1978 §§ 14-2-1 to -12, and NMED's *Inspection of Public Records Policy* 01-06 govern the release of public records relating to civil penalties to any person. Public records relating to civil penalties include this Policy and documentation supporting the violations. In determining whether public records relating to civil penalties are exempted by the IPRA, HWB consults with NMED's Office of General Counsel.

As authorized by the IPRA, NMED may withhold public records containing evidence received or compiled in connection with a criminal investigation or prosecution; or protected by the attorney-client, attorney-work product, or settlement privileges.

X. POLICY APPROVAL

I hereby approve this Hazardous Waste Act Civil Penalty Policy:



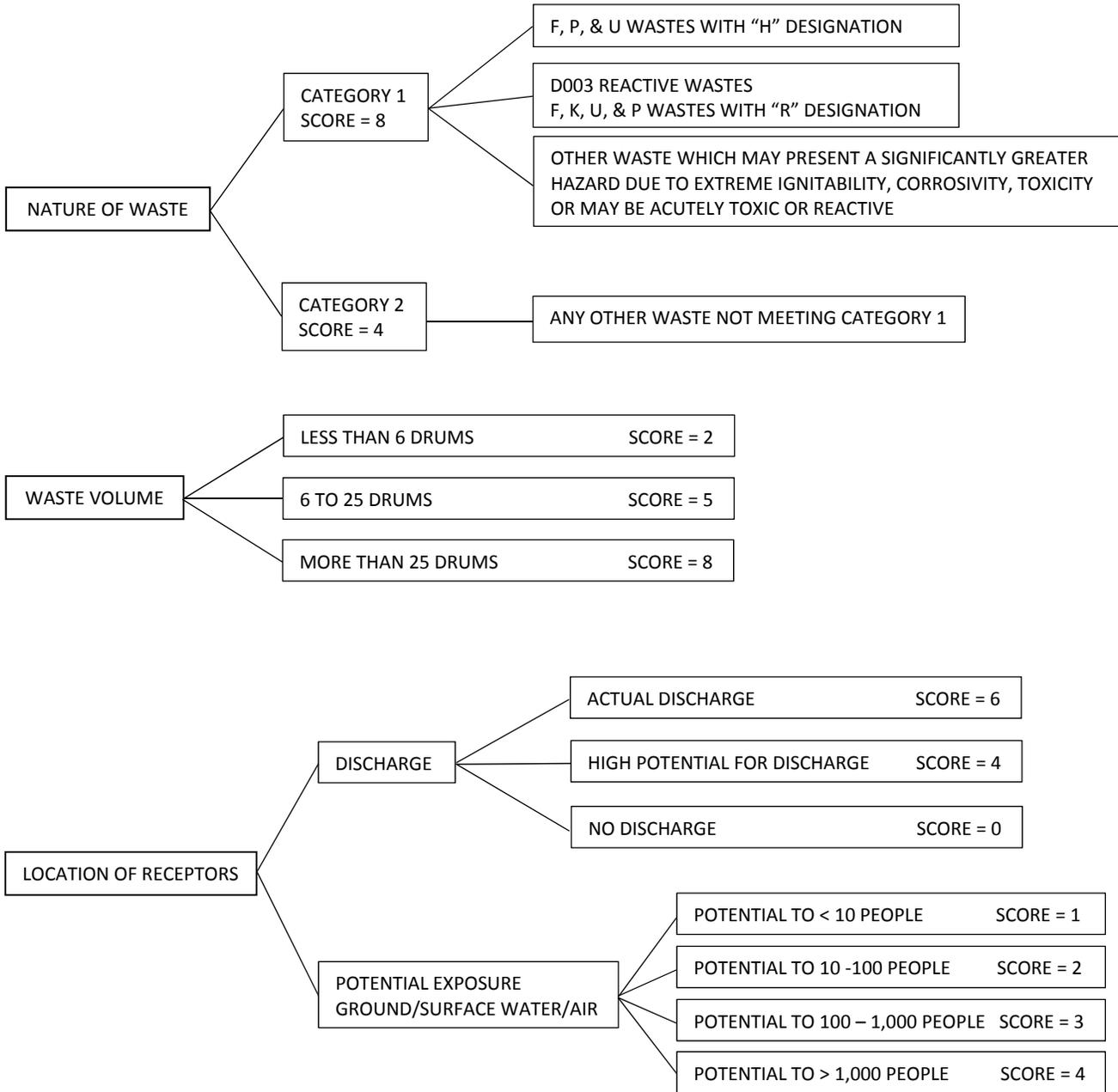
John Kieling
Hazardous Waste Bureau Chief

3/14/2017

Date

APPENDIX A
POTENTIAL FOR HARM WORKSHEETS

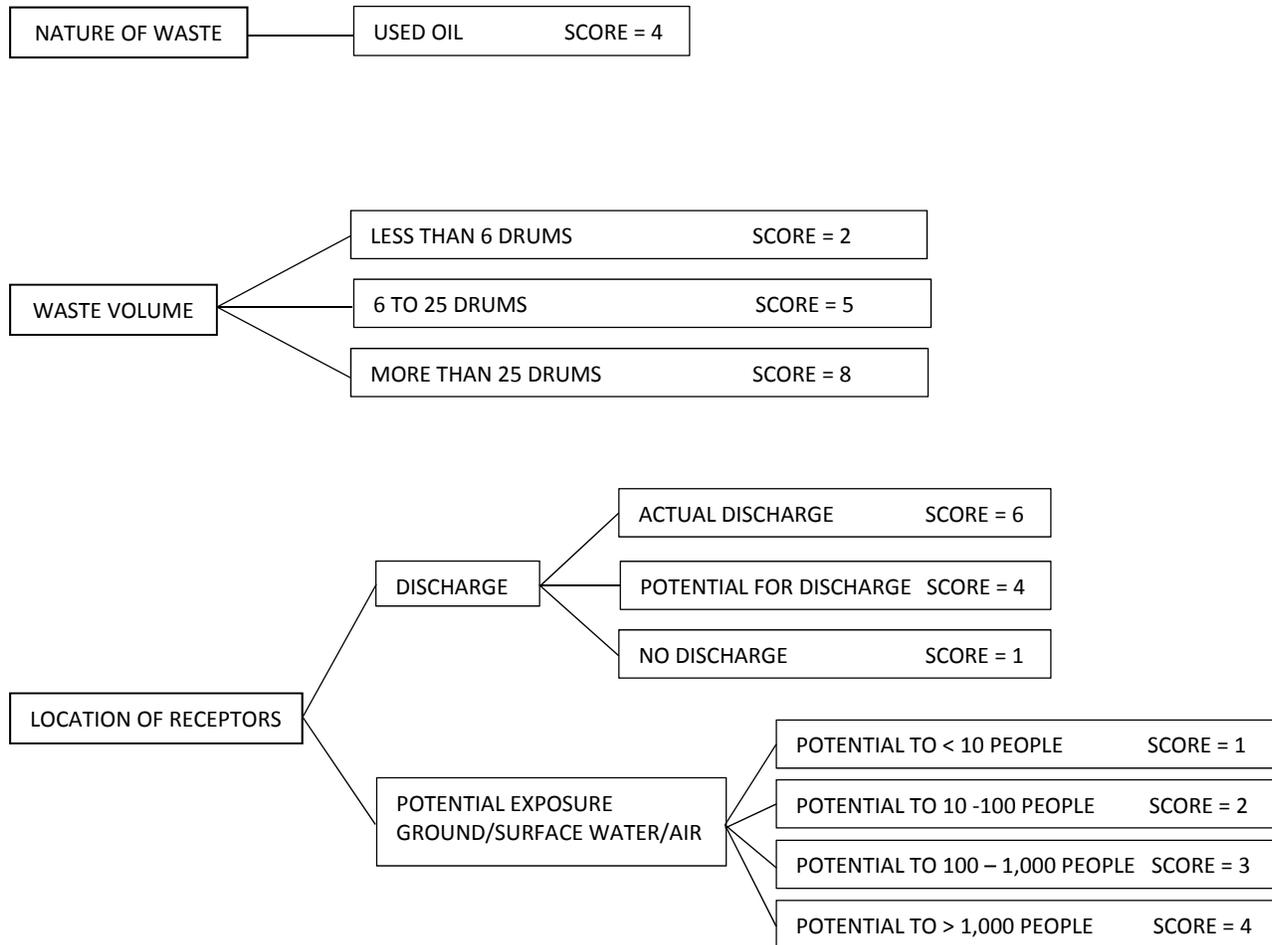
POTENTIAL FOR HARM RANKING SYSTEM



TOTAL POTENTIAL FOR HARM:

19 – 24	MAJOR
13 – 18	MODERATE
8 – 12	MINOR

USED OIL POTENTIAL FOR HARM RANKING SYSTEM



TOTAL POTENTIAL FOR HARM:

19 – 24	MAJOR
13 – 18	MODERATE
6 – 12	MINOR

APPENDIX B

**DEFAULT GRAVITY-BASED PENALTY ASSESSMENT MATRIX
FOR HWA, HWMR, PERMIT VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$10,000	\$9,000	\$7,500
	Moderate	\$6,000	\$5,000	\$3,500
	Minor	\$2,000	\$1,300	\$600

**MULTIPLE-DAY PENALTY APPLICATION MATRIX
FOR HWA, HWMR, PERMIT VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	Mandatory	Mandatory	Appropriate
	Moderate	Appropriate	Appropriate	Discretionary
	Minor	Appropriate	Discretionary	Discretionary

**DEFAULT MULTIPLE-DAY PENALTY ASSESSMENT MATRIX
FOR HWA, HWMR, PERMIT VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$5,000 to 1,000	\$4,500 to 900	\$3,750 to 700
	Moderate	\$2,400 to 600	\$2,000 to 500	\$1,400 to 350
	Minor	\$600 to 200	\$390 to 130	\$180 to 100

**GRAVITY-BASED PENALTY ASSESSMENT MATRIX
FOR COMPLIANCE ORDER VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$25,000	\$22,500	\$18,750
	Moderate	\$15,000	\$12,500	\$8,750
	Minor	\$5,000	\$3,250	\$1,500

**MULTIPLE-DAY PENALTY APPLICATION MATRIX
FOR COMPLIANCE ORDER VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	Mandatory	Mandatory	Appropriate
	Moderate	Appropriate	Appropriate	Discretionary
	Minor	Appropriate	Discretionary	Discretionary

**MULTIPLE-DAY PENALTY ASSESSMENT MATRIX
FOR COMPLIANCE ORDER VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$12,500 to 2,500	\$11,250 to 2,250	\$9,375 to 1,750
	Moderate	\$6,000 to 1,500	\$5,000 to 1,250	\$3,500 to 875
	Minor	\$1,500 to 500	\$975 to 325	\$450 to 250

**GRAVITY-BASED PENALTY ASSESSMENT MATRIX
FOR IMMEDIATE HAZARD ORDER VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$5,000	\$4,500	\$4,000
	Moderate	\$3,500	\$3,000	\$2,500
	Minor	\$2,000	\$1,500	\$1,000

**MULTIPLE-DAY PENALTY APPLICATION MATRIX
FOR IMMEDIATE HAZARD ORDER VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	Mandatory	Mandatory	Appropriate
	Moderate	Appropriate	Appropriate	Discretionary
	Minor	Appropriate	Discretionary	Discretionary

**MULTIPLE-DAY PENALTY ASSESSMENT MATRIX
FOR IMMEDIATE HAZARD ORDER VIOLATIONS**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$2,500 to 500	\$2,250 to 450	\$2,000 to 400
	Moderate	\$1,750 to 350	\$1,500 to 300	\$1,250 to 250
	Minor	\$1,000 to 200	\$750 to 150	\$500 to 100

USED OIL AND UNIVERSAL WASTE PENALTY ASSESSMENT MATRIX

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$8,000	\$6,000	\$4,000
	Moderate	\$3,000	\$2,000	\$1,000
	Minor	\$500	\$400	\$300

**MULTIPLE-DAY PENALTY APPLICATION MATRIX
FOR USED OIL AND UNIVERSAL WASTE**

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	Mandatory	Mandatory	Appropriate
	Moderate	Appropriate	Appropriate	Discretionary
	Minor	Appropriate	Discretionary	Discretionary

MULTI DAY PENALTY FOR USED OIL AND UNIVERSAL WASTE

		Extent of Deviation		
		Major	Moderate	Minor
Potential for Harm	Major	\$1,000	\$900	\$700
	Moderate	\$600	\$500	\$300
	Minor	\$200	\$150	\$100

APPENDIX C

DEFAULT ADJUSTMENT FACTOR MATRIX

The Hazardous Waste Bureau (HWB) may consider the percentages in the following matrix to determine appropriate adjustments under the *Hazardous Waste Civil Penalty Policy* for violations of the Hazardous Waste Management Regulations (HWMR). The percentages listed are intended as guidelines. HWB, in its discretion, may select an adjustment within the general ranges listed below depending on case-specific circumstances. In adjusting the civil penalty based on effort to comply, negligence/willfulness, and history of noncompliance, HWB shall have the discretion to adjust the civil penalty in accordance with the provisions of the Policy.

Adjustment Factors	Default Adjustment
A. Effort to Comply	
Self-Reported and Corrected Violation	-25 to -50%
Excellent Cooperation	-15%
Good Cooperation	-5%
Cooperation	0
Recalcitrant Cooperation	+5%
No Cooperation	+15%
B. Negligence / Willfulness	
Not Negligent or Willful	0
Minor /Minor; Minor/Moderate; Moderate Minor violations	+5%
Minor/Major; Moderate/Moderate; and Major/Minor violations	+10%
Moderate/Major and Major/Moderate violations	+15%
Major/Major case by case basis	+15-25%
C. History of Noncompliance	
No History of Noncompliance with HWMR	0
Minor History of Noncompliance with any other HWMR ¹	+5%
Minor History of Noncompliance with Same HWMR ²	+10%
Significant History of Noncompliance with any other HWMR ¹	+15%
Significant History of Noncompliance with Same HWMR ²	+20%
Substantial History of Noncompliance with HWMR ¹	+25%

1. Generally only violations within the past 10 years are considered.
2. Generally only the same within the past 5 years are considered.

APPENDIX D

EXAMPLE PENALTY CALCULATION WORKSHEET AND NARRATIVE

Violation # 1

Facility: XYZ Corp Santa Fe Waste Management Center

Date violation observed: 7/1/2006

Citation/Violation: permit condition 5.2.3, incorporating 40 CFR 264.195(b)(1)

Failure to inspect cathodic protection of UST annually

Location: permitted storage facility

PENALTY AMOUNT:

1.	Gravity based penalty from matrix	\$ 5,000
	(a) Potential for harm	moderate
	(b) Extent of deviation	moderate
	(c) Number of counts	3
2.	Multiple count adjustment (multiply line 1 by counts).....	\$ 15,000
3a	Multiday penalty from matrix	\$ 2,000
3b	Days of noncompliance (or other appropriate number)	10
3c	Multiday adjustment (multiply line 3b minus 1 by line 3a).....	\$ 18,000
4a	Multiday penalty from matrix	\$ 500
4b	Days of noncompliance (or other appropriate number)	20
4c	Multiday adjustment (multiply line 4b by line 4a)	\$ 10,000
5a	Multiday penalty from matrix	
5b	Days of noncompliance (or other appropriate number)	
5c	Multiday adjustment (multiply line 5b by line 5a)	\$ -
6.	Add lines 2, 3c, 4c, and 5c.....	\$ 43,000
7.	Percent increase/decrease for good faith	0%
8.	Percent increase for willfulness/negligence	15%
9.	Percent increase for history of noncompliance	15%
10.	Total percentage (add lines 7 through 9)	30%
11.	Multiply line 6 by line 10	\$ 12,900
12.	Economic benefit penalty	\$ -
13.	Add lines 6, 11, and 12 for total penalty amount for this violation	\$ 55,900

EXAMPLE 1:

Violation # 1: XYZ Corp. failed to perform the annual cathodic protection testing requirements on a hazardous waste storage tank. XYZ Corp. was unable to document in the facility operating record that annual inspections were performed to ensure the cathodic protection system was properly operating to detect any corrosion or releases of waste solvent from a 15,000-gal underground storage tank since 2002. This is a violation of Permit Condition 5.2.3, referring to 40 CFR 264.195(c)(1).

1. Gravity-Based Penalty:

(a) Potential for Harm: Moderate. The potential for harm to the human health and environment for this violation would normally be substantial due to the following facts: a) depth to ground water is shallow at this location (less than 100 ft.); b) tank system, if it leaked, could potentially release 15,000 gallons of hazardous waste solvents into the soil and eventually into the ground water; c) the soil in this area is known to be extremely corrosive; d) the design of this tank is single-walled steel, and, therefore, much more susceptible to corrosion if the corrosion protection system were to fail, e) the tank was installed in October 1997, and f) the cathodic protection system was last tested in September 2002, i.e., it had been approximately 4 years at the time of the inspection since system was tested. However, NMED acknowledges that the following mitigating circumstances existed: a) the system was designed with a fiberglass-reinforced plastic coating to aid in preventing corrosion as well as the sacrificial anode system; b) XYZ Corp. also installed an automatic tank gauge system that would alarm if there were a sudden release above a certain leak rate; and c) the staff conduct all required inspections of the tank system. While these mitigating conditions help reduce to potential for harm somewhat, the potential for a release, especially a slow release over an extended period of time, is still significant.

In addition to the potential for harm to humans or the environment, NMED finds that failure to follow a permit condition directly intended to protect against releases of large quantities of liquid hazardous waste causes significant the harm to the regulatory program.

(b) Extent of Deviation: Moderate. XYZ Corp.'s operating permit requires compliance with 40 CFR 264 subpart J requirements for the hazardous waste tank. XYZ Corp. installed the cathodic protection system at the recommendation of a corrosion expert. The requirement for a cathodic protection system to be an integral element of the tank requirements especially considering the amount and nature of the hazardous waste being stored in the tank and the other concerns noted above. Consequently, the requirement for testing the cathodic protection system is a key quality assurance mechanism to ensure that the system continues to operate properly. NMED finds that XYZ Co.'s disregard for this testing requirement for the last 4 years is a significant deviation from the tank requirements in the permit.

(c) Counts: Three. The cathodic protection system testing should have been conducted annual. At the time of the inspection in July 2006, XYZ Co. was unable to demonstrate that this testing had been performed since 2002. Since this violation was repeated for 3 years (2003-2005; 2006 was not counted since the year had not yet ended at the time of the

inspection), NMED assesses a penalty for 3 counts in this case.

2. **Multiday Penalty:** Forty days. A multiday penalty is appropriate for a moderate-moderate gravity-based penalty. For the purposes of this violation, NMED counts each missed annual testing as one day. Even though the cathodic protection system has not been tested for almost 4 years, NMED has determined that a multiday penalty for the full time is not warranted in this case. The applicable multiday penalty matrix cell ranges from \$500 to \$2000 per day. Considering other factors used to derive the penalty for this violation, NMED has determined that a multiday penalty based on using the maximum amount (\$2000/day) for 10 days (minus 1) and the minimum amount (\$500/day) for an additional 30 days would result in a total penalty with sufficient deterrent impact.
3. **Good Faith:** None. XYZ Corp. is a nationwide waste management company that holds a hazardous waste permit from the NMED. As a result, XYZ Corp. should be well aware of the hazardous waste regulations and its permit conditions. Since XYZ Corp. did not identify this violation, there is no adjustment of the penalty downward based on good faith.
4. **Willfulness/Negligence:** 15%. XYZ Corp. was aware of the regulatory requirements to insure the tanks are operating according to its design. Yet XYZ Corp. failed to perform annual cathodic protection system for 3 years. In addition, XYZ Corp.'s QA program failed to identify this oversight of a permit condition. As a result, NMED finds that XYZ Corp. exhibited substantial negligence in this case.
5. **History of Noncompliance:** 15%. A review of XYZ Corp.'s compliance history showed that XYZ Corp. has not been cited for a similar underground storage tank violation in the past. However, NMED has cited XYZ Corp. for numerous other hazardous waste violations, including other permit conditions, during the past 10 years. As a result, NMED finds that XYZ Corp. has some significant history of noncompliance with hazardous waste regulations.
6. **Economic Benefit:** Insignificant. XYZ Corp. avoided the cost of annually testing the hazardous waste storage tank for 3 years. Using an estimated cost of \$150 per test, NMED estimates that XYZ Co. obtained an economic benefit of approximately \$450 in avoided costs plus interest. However, NMED chose not to assess an economic benefit adjustment in this case.

Violation # 2

Facility: ABC Company

Date violation observed: March 23, 2025

Citation/Violation: 40 CFR § 262.34(a)(2) Failure to label hazardous waste containers with accumulation start dates

Location: N/A

PENALTY AMOUNT:

1.	Gravity based penalty from matrix	\$	3,500
	(a) Potential for harm		moderate
	(b) Extent of deviation		minor
	(c) Number of counts		0
2.	Multiple count adjustment (multiply line 1 by counts)	\$	3,500
3a	Multiday penalty from matrix	\$	350
3b	Days of noncompliance (or other appropriate number)		35
3c	Multiday adjustment (multiply line 3b minus 1 by line 3a)	\$	11,900
4a	Multiday penalty from matrix		
4b	Days of noncompliance (or other appropriate number)		0
4c	Multiday adjustment (multiply line 4b by line 4a)	\$	-
5a	Multiday penalty from matrix		
5b	Days of noncompliance (or other appropriate number)		0
5c	Multiday adjustment (multiply line 5b by line 5a)	\$	-
6.	Add lines 2, 3c, 4c, and 5c	\$	15,400
7.	Percent increase/decrease for good faith		0%
8.	Percent increase for willfulness/negligence		5%
9.	Percent increase for history of noncompliance		5%
10.	Total percentage (add lines 7 through 9)		10%
11.	Multiply line 6 by line 10	\$	1,540
12.	Economic benefit penalty	\$	-
13.	Add lines 6, 11, and 12 for total penalty amount for this violation	\$	16,940

EXAMPLE 2:

Violation 1: 40 CFR § 262.34(a)(2): Failure to label containers with an accumulation start date. Specifically, ABC Company failed to label numerous hazardous waste containers with accumulation start dates located in the laboratories and the 90-day storage area. Additionally, hazardous waste located in the 90-day storage area was dated “2/168/16”.

Potential for Harm: Moderate

See Potential for Harm Ranking System score sheet at end of document.

Extent of Deviation from the regulation: Minor

Refer to line 19 RCRA Penalty Guidance June 2014 spreadsheet.

Counts: 1-Potential for Harm already takes into consideration the quantity.

Multi-day Penalty Justification: Although the multi-day penalty for a moderate/minor I discretionary, hazardous waste was brought to the 90-day storage on February 16, 2016 and had not been labeled or dated 35 days later. The low end of the range was selected since it is discretionary.

Economic Benefit: Economic benefit could not be determined.

History of Noncompliance: Due to previously being cited for different hazardous waste violations in 2006 and 2011, NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 5%.

Willfulness/Negligence: Due to ABC Company having a high degree of control over the circumstances leading to this violation (e.g., the obligation to label containers with an accumulation start date), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 5%.