2004
OhioEPA

OHIO EPA

Division of Solid and Infectious Waste Management

DSIWM Civil Penalties

DIVISION OF SOLID AND INFECTIOUS WASTE MANAGEMENT

Civil Penalty Guidance

Ohio EPA
Division of Solid and Infectious Waste Management
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049
Phone 614.644.2621 • Fax 614.728.5315

Table of Contents

CHAPTER 1

Introduction 1

CHAPTER 2

Base Penalty 5

CHAPTER 3

Adjusting Factors 13

CHAPTER 4

First Time Open Dumping Penalty Initiative 17

CHAPTER 5

Consistent Application of Civil Penalty 19

APPENDIX A

Civil Penalty Scoring Worksheet

APPENDIX B

Civil Penalty Guidance Document Mathematics

APPENDIX C

Information Request for Ability-to-Pay Cases

DSIWM Civil Penalty Guidance

04-22-04

Chapter I
Introduction

Key Concepts: Chapter I

A New Approach:

- Maintained core principles of RCRA Penalty Policy - Director maintains his discretion as to how to implement RCRA Penalty Policy
- Guidance is within statutory provisions for civil penalties
- Application is designed to improve consistency - Scoring system developed to evaluate extent of deviation and harm (actual and potential)
- Guidance is designed to improve efficiency of negotiations by serving as a basis for discussion of an appropriate penalty

A. Background

Ohio EPA's authority to assess and collect civil penalties for violations of Ohio Revised Code ("ORC") Chapters 3734 and 3714 and the rules promulgated thereunder is derived from ORC §§3734.13(C), 3714.11(B), and Subtitle D of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.§ 6921 et seq. Pursuant to ORC § 3734.13(C), the Director of Environmental Protection ("Director") may seek to recover a civil penalty of up to $10,000 for each day of violation of any law regulating solid and infectious waste. For the violation of any provision of ORC Chapter 3734 governing scrap tires (except for a violation involving the open burning or open dumping of scrap tires, which is subject to a civil penalty of $10,000 for each day), the Director may seek to recover a civil penalty of up to $5,000 for each day of violation. ORC §3714.11(B) authorizes the Director to seek the recovery of a civil penalty of up to $10,000 per day for each day of violation of the laws regulating construction and demolition debris.

While the Director has the authority to seek the maximum penalties authorized by the Ohio Revised Code, Ohio EPA has routinely calculated the specific amount of a civil penalty appropriate in an individual case by reference to the U.S. EPA's RCRA Civil Penalty Policy ("RCRA Policy"). The RCRA Policy is designed to ensure that RCRA civil penalties are assessed in a fair and consistent manner, that penalties are appropriate for the gravity of

the violation committed, that economic incentives for noncompliance are eliminated, that penalties are sufficient to deter persons from committing RCRA violations, and that compliance is expeditiously achieved and maintained. Like the federal RCRA Policy, the Ohio EPA Division of Solid and Infectious Waste Management's ("DSIWM") penalty guidance is intended to further define and identify the basis and rationale for civil penalties proposed by Ohio EPA in civil and administrative enforcement actions. In addition, this guidance is intended to tie civil penalties to the actual and potential threats to human health and the environment, and harm to programmatic integrity, caused by violations of ORC Chapters 3734 and 3714. The goal of the civil penalty guidance is to make the calculation of civil penalties for violations of ORC Chapters 3734 and 3714 consistent, fair, equitable, and predictable.

This guidance does not address whether assessment of a civil penalty is the correct enforcement response to a particular violation. Rather, this document focuses on determining the proper civil penalty amount that Ohio EPA should obtain once a decision has been made that a civil penalty is the proper enforcement remedy to pursue.

The procedures set out in this document are intended solely for guidance of government personnel. The procedures are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the Ohio EPA. The Ohio EPA reserves the right to vary this guidance and to change it at any time without public notice. The Director may deviate from this guidance and seek to recover the maximum civil penalty authorized by the ORC, in any case where the Director determines, in his sole discretion, that the civil penalty guidance would be inadequate to address the violations of Ohio law or would not result in a civil penalty that would be sufficient to deter further violations of Ohio law.

B. Basis and Purpose of Civil Penalty Guidance

This penalty guidance should be used as a tool to assist enforcement staff in calculating a fair and equitable civil penalty that will accomplish the goals of encouraging compliance with the law and removing any economic incentives for noncompliance. While designed to reduce the subjectivity from the penalty calculation process, this penalty guidance should not be viewed as a penalty "calculator." There are too many factors which are inherently subjective that make the development and use of this guidance as a penalty calculator impractical and unworkable. Therefore, under this penalty guidance, the Director will retain the ability to exercise discretion in determining the amount of the civil penalty; however, the exercise of that discretion will generally be constrained by criteria and guidelines set forth in this guidance.

This guidance is designed to evaluate violations of ORC Chapters 3734 and 3714, and the rules promulgated thereunder, to determine a civil penalty that is appropriate under the specific factual circumstances of each case. Ohio EPA's solid waste program is based,

in part, on Subtitle D of RCRA. In order to maintain authorization to operate the Subtitle D program in the State of Ohio, Ohio EPA is expected to satisfy certain minimum federal standards, which include the implementation of an effective enforcement program, a component of which is the civil penalty.

The US EPA adopted the RCRA Civil Penalty Policy in October 1990. In order to maintain consistency with the US EPA's delegated Subtitle D solid waste program and to encourage consistency among all of the programs that Ohio EPA's Division of Solid and Infectious Waste ("DSIWM") administers, this civil penalty guidance is based, in part, upon the US EPA's RCRA Civil Penalty Policy.

While DSIWM's civil penalty guidance draws extensively from the federal version, it is not identical to US EPA's Policy. In order to take into account some of the unique programs that are administered by DSIWM and that are not necessarily regulated by the federal government under Subtitle D (such as construction and demolition debris ["C&DD"], scrap tires and infectious waste), it was necessary to build upon the federal approach. In addition, US EPA's RCRA Penalty Policy was primarily (although not wholly) designed to apply to violations of Subtitle C of RCRA (hazardous waste) and history has shown that the literal application of the penalty policy to certain programs administered by DSIWM could lead to some inequitable results. Thus, it is appropriate to reference the US EPA's RCRA civil penalty Policy for assistance in applying this guidance; however, Ohio EPA will use the DSIWM Civil Penalty Guidance to calculate appropriate civil penalties in solid waste, infectious waste, and construction and demolition debris enforcement cases.

C. Use of Civil Penalty Guidance

This civil penalty guidance is intended to serve as tool to be used by DSIWM's enforcement staff in calculating an appropriate civil penalty. This guidance is also intended to provide to the public a better understanding of the procedure used by DSIWM to calculate civil penalties and to make the regulated public aware of the criteria and factors considered by DSIWM in arriving at a particular civil penalty. It is important that the basis and methodology used to calculate civil penalties be made available to the regulated public and that the public has an understanding of the criteria that are relevant to the calculation of a civil penalty for several reasons. First, to the extent that if the public is aware of the considerations used by Ohio EPA in calculating a civil penalty, then the deterrent effect of the civil penalty will be better served. To the extent that if the public understands the factors that impact the amount of a civil penalty, then, presumably, they will be more apt to avoid specific conduct that would cause them greater harm in the form of a higher penalty. Secondly, it is important that the public understand the basis and methodology for calculating a civil penalty. If Ohio EPA proposes a civil penalty assessment in an administrative enforcement proceeding, any negotiations concerning the amount of the civil penalty must take place within the context of the methodology and criteria set forth in this civil penalty guidance. In other words, in response to any civil penalty proposed pursuant

to this guidance, Ohio EPA will not entertain arguments that the guidance itself should be disregarded and a civil penalty should be calculated pursuant to some other process or formula. Nor will Ohio EPA be receptive to arguments that the methodology or criteria applied in the penalty guidance are flawed or not relevant in a particular case. Instead, Ohio EPA may agree to reduce the amount of a civil penalty only if the respondent/defendant can demonstrate that Ohio EPA has misapplied some portion of the penalty guidance, that facts or circumstances relied upon by Ohio EPA in calculating the civil penalty were erroneous or that Ohio EPA erroneously applied the penalty guidance to the facts of the specific case. It is strongly encouraged that anyone engaged in administrative enforcement proceedings with DSIWM become thoroughly familiar with this guidance and the facts of the enforcement case.

Chapter II
Base Penalty

Key Concepts: Chapter II

Civil Penalty = Base Penalty +/- Adjusting Factors

The "Base Penalty" of a particular violation is a function of:
- Classification of the violation
- Duration/Frequency
- Deviation
- Harm
- Mitigating circumstances
- Aggravating circumstances

Civil penalties assessed pursuant to this guidance are calculated by determining a "base penalty" and then adding and subtracting certain adjusting factors to the base penalty to result in a final civil penalty proposal. The base penalty is a function of several factors, including: (1) the priority classification for the violation alleged; (2) the duration and/or frequency of the violation(s); (3) the degree to which the violator deviated from the regulatory requirement; (4) the harm to human health, the environment and to the regulatory program caused by the violation; and (5) any aggravating or mitigating circumstances. Each of these factors is evaluated separately, and a numerical score is assigned to the violation, which is then translated into a base penalty amount expressed in terms of dollars. This analysis is accomplished through the application of a civil penalty worksheet.

The base penalty is considered the foundation of the penalty calculation process. This portion of the penalty takes into account a number of context-specific factors so that the base penalty reflects the penalty that is appropriate given the circumstances in which the violation took place. This civil penalty guidance will address each of the components of the base penalty in more detail, as follows.

A. Violation Priority Classification

This penalty guidance has identified four different penalty classification categories. Each separate violation of Ohio's solid waste, infectious waste and construction and demolition debris laws has been assigned to a separate category to reflect the priority of the violation type within DSIWM's regulatory scheme. Ohio EPA has classified all violations of the solid waste, infectious waste and construction and demolition debris laws as either Category 1, Category 2, Category 3, or Category 4. The categories are based on the following:

Category 1 violations: These are high priority violations of a type which are directly related to the protection of human health, safety, or the environment. Such violations include, but are not necessarily limited to, acts which pose an actual or potential for harm to human health, safety, or the environment; acts or failures to act which are of major importance to the regulatory program; any failure to obtain a required permit, license, or approval from the Director; and any failure to comply with an order of the Director which is presently enforceable. Examples of Category 1 violations include overfills, failure to obtain or follow authorizing documents, acceptance of hazardous waste at a solid waste or C&DD facility, failure to close, failure to control fire, failure to control explosive gas, and other violations of a very high priority nature.

Category 2 violations: These are violations of moderate priority which are important, but only indirectly related to the protection of human health, safety, or the environment. Such violations include, but are not necessarily limited to, acts which pose an indirect actual or potential for harm to human health, safety, or the environment; acts or failures to act which are of moderate importance to the regulatory program; and failure to comply with any procedure required by any law administered by the Director, or by a rule adopted pursuant to the Director's authority for the prevention of harm to human health, safety, or the environment. Examples of Category 2 violations include high priority operational violations, such as failing to place intermediate & daily cover, failing to submit required documents, and other moderate priority violations of authorizing documents.

Category 3 violations: These violations are of a lower priority and include violations which are important, but incidental to, the protection of human health, safety, or the environment. Such violations include, but are not limited to, acts of noncompliance with routine sampling schedules or reporting requirements which are incidental to Ohio EPA's ability and obligation to enforce the laws administered by the Director. Examples of Category 3 violations include lower priority operational violations such as blowing litter, allowing scavenging, allowing domestic farm animals in the operating area, and most types of paper work violations, such as a late submission of an annual report.

Category 4 violations: All open dumping and open burning violations and any other violation of ORC Chapters 3734 and 3714 by an individual or entity who does not hold a valid permit, registration, and license to dispose of the waste would fall within this category. From a historical perspective, most open dumping violations-- whether it be of solid waste, scrap tires or illegal disposal of C&DD-- are committed by individuals, small businesses, or other entities with limited financial means. In addition, open dumps ordinarily involve the disposal of relatively small quantities of waste compared to the amount of waste materials disposed in regulated facilities. On the other hand, open dumps are not subjected to regulatory controls, and therefore, even though they may be of a relatively smaller size, they may present serious environmental or human health concerns. Therefore, because open dumping violations present unique concerns to Ohio EPA's regulatory program, this penalty guidance seeks to respond to those concerns in a way that is fair and equitable, while at the same time creating a deterrent to prevent future violations of Ohio's solid waste law.

B. Grouping of Violations

All enforcement referrals from the district offices must contain a "compliance report card." This document sets forth a summary of the violations which precipitated the enforcement action, identifies the dates of the inspections where the violations were observed, and identifies when the Notice of Violation (NOV) letters were sent to the violator. Violations are broken down by specific violation type. That is, the violation of each separate statute or regulatory requirement is listed separately and the citations for each violation are tallied on the compliance report card. A separate civil penalty will be calculated for each violation type. For example, if the compliance report card indicated that the violator had been issued four NOVs for failing to submit a ground water sampling and analysis plan under Ohio Administrative Code ("OAC") Rule 3745-27-10 (C)(1), four NOVs for failure to install an appropriate ground water monitoring system under OAC Rule 3745-27-10(B)(1), and two NOVs for failure to apply daily cover under Rule OAC 3745-27-19(F), a separate civil penalty will be calculated for each of the three separate types of violations cited in the NOVs (i.e., OAC Rules 3745-27-10 (C)(1), 3745-27-10(B)(1) and 3745-27-19(F)). Each regulatory requirement contains independent standards which must be satisfied by the violator, and so the violator's failure to comply with each standard constitutes an independent violation that is subject to a separate civil penalty.

C. Multi-day and per observation violations

Multi-day: Under ORC Chapters 3734 and 3714, a violator may be assessed a separate civil penalty for each violation of the statute or for each violation of any rule adopted thereunder, for each day that the violator remains out of compliance up to the maximum of 1825 days (5 years). A civil penalty which is based on the number of days of noncompliance is known as a "multi-day" penalty and may be assessed for "continuing violations." Continuing violations are those that remain unresolved over a

period of time, rather than recurring multiple times in discrete events. For example, if Ohio EPA issues a NOV to a facility on January 1, 2002 for violation of OAC Rule 3745-27-19(E)(8)(c) for disposing of hazardous waste at a solid waste facility, and the inspector determines that the violation has not been remedied when he returns to the site on October 1, 2003 and November 1, 2003, the inspector could reasonably conclude that the facility has been out of compliance for 59 consecutive days. In these types of situations, it is apparent that the violation continued beyond the date of the original inspection. And even though the inspector did not return to the facility on each day between October 1st and November 1st, it is unlikely that the violation was remedied in the interim. Assuming that the inspector followed each of these two inspections with separate NOV's citing a violation of OAC Rule 3745-27-19(E)(8)(c), the facility could be assessed a civil penalty (in an amount up to $10,000) for each day of violation. In this example, the total amount of the penalty authorized by statute would be $590,000.

Per Observation: Whenever possible, enforcement staff should calculate a civil penalty on a multi-day basis. In some cases, however, a multi-day penalty may not be applicable, and penalties will have to be assessed on some other basis. In cases where each violation is a discrete event, a penalty will be sought for each event for which Ohio EPA has documented evidence that the violation occurred. Discrete violations are violations that are observed and documented during an inspection–a discrete interval in time up to a maximum of 5 years. These violations involve practices or actions that do not occur or cannot be determined to occur continuously. If they recur, they do so in individual instances that are separate in time. For example, for certain violations, such as failure to contain litter or failure to use daily cover, it is only possible to prove that the violations exist, or not, on the day that the inspector visits the site. If the inspector observes violations at that time, a NOV will be issued citing the facility for those particular violations on that day. If the inspector returns one week later, and again observes blowing litter or the facility failing to use daily cover, the facility will again be cited for those violations on that particular day. However, because these inspections are separate and discrete occurrences, it cannot be assumed that the violations continued to exist on each day in between the dates of the inspections. In these types of situations the possibility exists that the violations could be corrected subsequent to the inspector's initial visit, and would not necessarily be continuing violations. Therefore, instead of calculating the civil penalty on a multi-day basis, the civil penalty should be calculated based on the number of separate events observed by the inspector. In instances where the inspector can provide evidence that the violation actually continued on each day between the dates of the inspections, violations that are typically calculated based on separate occurrences may be calculated on a multi-day basis instead.

D. Extent of Deviation and Harm (Actual and Potential)

The priority classifications discussed above assign to each violation a range of potential civil penalties. In general, Category 1 violations have a higher range of potential civil penalties than Category 2 violations, in order to reflect the greater significance of Category 1 violations. Category 2 violations, in turn, have a higher range of potential penalties than Category 3 violations. The range of penalties for Category 4 violations are unique and unrelated to Categories 1 through 3.

In order to identify the precise civil penalty that is applicable in a particular case, it is necessary to evaluate each violation in context of how it occurred to determine the potential for harm and extent of deviation represented by the violation. The concepts of "potential for harm" and "extent of deviation" are derived from the US EPA's RCRA Civil Penalty Policy and will be used by Ohio EPA to pinpoint the amount of civil penalty that would be appropriate under the unique circumstances of each case.

Extent of Deviation from a Requirement: The "extent of deviation" from ORC Chapters 3734 are 3714 and their regulatory requirements relates to the degree to which the violation defeats the purpose of the requirement violated. As with any violation, there is a range of potential noncompliance with the requirement. A violator may be substantially in compliance with the requirement or it may have totally disregarded the requirement, or be at some point in between. Regulatory requirements often contain multiple obligations. For example, OAC Rule 3745-27-19(M) requires a facility to submit an annual operational report. The annual operational report is required to contain certain information, such as topographic maps, daily logs, an estimate of remaining facility life, summary of the quantity and characteristics of leachate collected, an updated final closure cost estimate, and other information. If the facility submitted the operational report, but the report was incomplete because it failed to include one or two of the required items, then the deviation may be considered minor. If the facility submitted an annual report that only contained the summary of daily logs and topographic maps, but failed to include the remaining information, then the deviation may be moderate. If the facility completely failed to submit the annual report, the deviation would be major because the facility ignored all of the requirements of the rule.

Harm (Actual and Potential): ORC Chapters 3734 and 3714 were designed, in part, to prevent harm to human health and the environment. Thus, noncompliance with any requirement of ORC Chapters 3734 and 3714 can result in a situation where there is a potential for harm to human health or the environment. Even violations such as record keeping violations create a threat of harm to the environment or human health by jeopardizing the integrity and effectiveness of Ohio EPA's regulatory program. Accordingly, the assessment of the potential for harm

resulting from a violation should be based on two factors: (a) the threat of human or environmental exposure to wastes that may be posed by the noncompliance and (b) the adverse effect noncompliance may have on statutory or regulatory purposes or procedures for implementing the solid waste and C&DD programs.

Threat of exposure presented by a violation depends upon both the likelihood that human or other environmental receptors may be exposed to waste and the degree of potential exposure. In considering the threat of exposure, emphasis is placed on the potential for harm posed by a violation, rather than on whether harm actually occurred.

Even if a violation would not likely give rise directly or immediately to a significant threat of contamination, all regulatory requirements are fundamental to the continued integrity of the solid waste and C&DD programs. Violations of such requirements may have serious implications and merit substantial penalties where the violations undermine the statutory and regulatory purposes or procedures for implementing the solid waste and C&DD programs. For example, the failure to submit required reports to Ohio EPA may not directly lead to an environmental or human health threat, but the facility's failure to submit the report would undermine Ohio EPA's ability to exercise regulatory oversight of the facility and may cause a significant harm to DSIWM's ability to regulate that facility in a manner consistent with other similar facilities.

E. Worksheet Scoring

The civil penalty worksheet (the "Worksheet"), attached hereto as Appendix A, attempts to quantify the degree of harm and extent of deviation presented by each specific violation. The Worksheet evaluates criteria related to the following categories: Degree of Harm, Extent of Deviation, Aggravating Circumstances, and Mitigating Circumstances. The Worksheet divides the Degree of Harm into three broad categories: Harm to Human Health, Harm to the Environment, and Harm to the Regulatory Program. Within the first two categories, the Worksheet is designed to evaluate each violation to determine both the actual harm to human health or the environment caused by the violation, and the potential for harm to human health or the environment presented by the violation. The Worksheet also evaluates the harm caused by the violation to Ohio EPA's regulatory program. The Extent of Deviation criteria evaluate the violator's effort to discover and remedy the violation, the violator's responsiveness once notified of the violation, and the relative degree of deviation from the requirement. Finally, the Worksheet evaluates the effects of any aggravating circumstances, such as the violator's intent or willfulness, reckless indifference to the law, and any mitigating circumstances.

DSIWM's Compliance Monitoring and Enforcement Unit ("CMEU") staff will assign points for each of the criteria evaluated under the Worksheet, and the points for each violation will be totaled. The total points will then be used by CMEU staff to determine which penalty equation is appropriate within the range of possible penalties within each violation Category. The precise penalty is determined by applying the appropriate mathematical equation that has been developed for each violation Category. The appropriate equation is a function of the degree of harm to human health and the environment and the extent of deviation score as calculated by applying the Worksheet.

Penalty Equations: Within each violation Category (Category 1, Category 2, Category 3, and Category 4) there exists four separate civil penalty equations, attached hereto as Appendix B. The first equation (Equation 1) is a linear (or nearly linear) equation based upon the maximum penalty for that Category. Except in Category 1 violations, the three remaining equations are designed to increase the penalty at decreasing rates over time or per event observed.

Category 1 violations are calculated on either a multi-day or gravity basis. All Category 1 violations (except for Category 1, Equation 1) use equations designed to increase at a low gain linear rate for the first 24 months, then they increase at a faster rate for a brief period after 24 months, and then they begin to increase at an increasing rate. These equations have been designed to more accurately depict the nature of Category 1 violations. Often times, Ohio EPA and/or the facility do not discover these types of violations until months after they began. This equation seeks to hold the entity responsible for the violation during this time; however, it does so at a reduced rate. Likewise, this approach serves to benefit the facility by encouraging the timely discovery of a serious Category 1 violation and implementation of steps to correct that violation in the early stages. After 24 months, the equation begins to grow quickly as this represents the period in which the entity needs to take prompt action to redress the violation. Failure to take such action outside of the 24 month window subjects the entity to a much higher penalty figure because of the potential harm that these types of violations pose to the program.

Category 2 and Category 3 violations can be either multi-day or gravity based, depending upon the nature of the violations and the circumstances. Category 3 violations are usually associated with an enforcement referral that contains other Category 1 or Category 2 violations.

Factors of Equity: Each of the four Equations further contains a mathematical equity factor. These equity factors are designed to influence the penalty calculation by fairly calculating the final base penalty as a function of the violation's Worksheet score. Hypothetically, without this concept, a violation of the same category that scores 32 points would receive the same calculated base penalty as a violation that

scored 70 points. Because the Worksheet is designed to assess and measure the extent of deviation, actual and potential harm to human health or the environment, program harm, and aggravating circumstances on a point by point basis, it would be inequitable to penalize low scores the same as higher scores simply because they are within the same range used to establish an appropriate equation.

Once enforcement staff calculate a penalty amount for each violation, those penalty amounts are added together to result in a Base Penalty. The Base Penalty, as determined by the foregoing procedure, is subject to additional adjustments, as discussed in the following chapter.

Chapter III
Adjusting Factors

Key Concepts: Chapter III

Civil Penalty = Base Penalty +/- Adjusting Factors

"Adjusting factors" recognize the Director is not bound to this guidance and may utililize all or parts of it.

- Recalcitrance (considers enforcement history)
- Economic benefit (considers $ realized from noncompliance)
- Ability to pay
- Attorney General referral (considers increase if administrative negotiations fail and case is referred to AGO)
- Litigation risk

Once the Base Penalty is calculated, it is subject to the following adjustment factors, any or all of which may not be applicable in a particular case.

A. Entity Recalcitrance

The Base Penalty amount may be adjusted upward to reflect an entity's recalcitrance or history of prior enforcement actions. If a violator has been subject to formal enforcement by Ohio EPA, an approved health district or the Attorney General's office for violation of any environmental law in the past, either at the same or at a different facility owned by the same entity, then that may be an indication that the entity was not deterred by the previous enforcement response. Prior enforcement actions would include Negotiated Findings & Orders, Unilateral Findings & Orders, administrative orders issued by a local health district or any order issued under the jurisdiction of any state or federal court. Using this adjustment factor, enforcement staff should assess a greater increase in the penalty amount where the prior enforcement action involved similar violations than if the prior enforcement action concerned other, unrelated, violations of solid waste laws or other environmental obligations.

If a review of the compliance history reveals that the regulated entity has been subject to a previous enforcement action within the past five (5) years the current Base Penalty may be increased by up to 10% for each prior enforcement action.

B. Economic Benefit

Enforcement personnel should attempt to recapture any significant economic benefit of noncompliance that accrues in favor of a violator. If a violator is permitted to profit by violating the law, there is little incentive to comply; therefore, economic benefit to the violator should be eliminated whenever possible. There are two types of economic benefit: (1) the benefit from delayed costs and (2) the benefit from avoided costs. Delayed costs are expenditures which have been deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. Delayed costs are the equivalent of capital costs. Examples of violations which result in savings from delayed costs are: failure to timely install ground water monitoring equipment, failure to timely install a cap, or failure to install a Best Available Technology ("BAT") liner. If the violator has not complied at the time of the enforcement action, then one goal of the enforcement action would be to require the violator to incur the economic obligations that are necessary to attain compliance. However, that violator would have, in the interim, benefitted from the time value of money.

It is first necessary for enforcement staff to estimate the dollar value of the delayed costs in order to determine the financial benefit received by the violator. For open dumping situations, delayed costs can be estimated using US EPA's IDEA model.

Avoided costs, on the other hand, are expenditures which are nullified by the violator's failure to comply. These costs will never be incurred. Avoided costs include usual operating and maintenance costs, including but not limited to: failure to perform annual and semi-annual ground water monitoring and analysis, failure to use daily cover, and failure to inspect waste loads at the unloading zone before placing it at the working face.

Because the savings that are derived from delayed costs differ from those derived from avoided costs, the economic benefit from delayed and avoided costs are calculated differently. For delayed costs, the economic benefit does not equal the cost of complying with the requirements, since the violator will eventually have to spend the money to achieve compliance. The economic benefit for delayed costs consists of the amount of interest on the unspent money that reasonably could have been earned by the violator during the noncompliance. For avoided costs, the economic benefit equals the cost of complying with the requirements, adjusted to reflect the anticipated rate of return and income tax effects on the violator.

Since 1984, the US EPA has used the BEN computer model to calculate the economic benefit of noncompliance. The model can perform a calculation of economic benefit based on delayed/avoided costs with the use of certain data inputs. Enforcement personnel should follow the US EPA's BEN User's Manual (May 1987). The manual describes how

to use BEN, a computer program that calculates the economic benefit for any type of entity. It is designed to aid enforcement personnel with procedures for entering data in BEN, and to explain the program's results.[1]

The Director reserves the right to assess and collect the economic benefit portion of a civil penalty in addition to the amount of the civil penalty calculated pursuant to this Guidance (hereafter referred to as the "gravity" portion of the civil penalty). Often, because the delay costs associated with remedying a solid waste violation can be significant, the resulting economic benefit component of the civil penalty can be sizeable. In most cases, Ohio EPA will seek to recover either the larger of the economic benefit portion or the gravity portion of the civil penalty. This guidance assures that violators will not gain any economic advantage from their noncompliant behavior. However, in cases where fairness or equity require the Director may attempt to recover both the economic benefit and the gravity portions of the penalty. The decision to recover economic benefit and/or the gravity portion of the penalty is a discretionary decision of the Director.

C. Ability to Pay

Ohio EPA generally will not assess penalties that are clearly beyond the financial means of the violator. Therefore, Ohio EPA has historically considered the ability of the violator to pay a penalty. At the same time, it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially troubled business. It is unlikely, for example, that Ohio EPA 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 were ineffective.

The burden to demonstrate inability to pay rests with the violator, as it does with any mitigating circumstance. Thus a company's inability to pay will usually be considered at the settlement stage, and then only if the issue is raised by the violator. If the violator fails to provide sufficient information substantiating the claim of inability to pay, then enforcement personnel should disregard this factor in adjusting the penalty. In order for Ohio EPA to consider a violator's claim of inability to pay, the violator must submit to Ohio EPA all of the documentation identified in Appendix C, attached hereto.

If Ohio EPA determines that a violator cannot afford the penalty prescribed by this guidance, or that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which Ohio EPA deems to

---

1 In entering delayed/avoided cost estimates into the BEN model, enforcement personnel should use any documentation that is available to calculate compliance costs. If it is disputed, the burden will then shift to the violator to present cost documentation to the contrary to be entered into the BEN model. Data provided by the violator relating to economic benefit should not be run in BEN unless the accuracy and legitimacy of the data have been verified.

be more important than the deterrence effect of the penalty, the following options should be considered: (1) the use of an installment payment plan with interest; (2) a delayed payment schedule with interest; (3) a straight reduction of the amount of the civil penalty.

As indicated above, the amount of any downward adjustment of the penalty is dependent on the individual facts of the case regarding the financial capability of the violator and the nature of the violations at issue.

D. Referral to Attorney General

In the event that Ohio EPA is unable to reach agreement on the terms of administrative enforcement orders with a violator, including an appropriate civil penalty settlement, Ohio EPA may decide to refer the enforcement case to the Ohio Attorney General's office for judicial enforcement. Depending upon the complexity of the issues involved in the enforcement case, it may take 18 months to as long as two years to reach a point in the negotiating process where it can be determined that administrative resolution is no longer feasible and a referral to the Attorney General for judicial enforcement is necessary to obtain compliance. Because the original civil penalty was calculated up to the time that the original administrative enforcement case was initiated, and because the amount of any civil penalty increases over time, if Ohio EPA determines that referral to the Attorney General is the proper course of action, DSIWM will recalculate the civil penalty to reflect the additional civil penalty amounts which accumulated from the date of commencing the original administrative enforcement action through the date of referral to the Attorney General. In addition, Ohio EPA reserves the right to increase the civil penalty associated with the enforcement case referred to the Attorney General by up to 25% to reflect the additional recalcitrance demonstrated by the violator by refusing to negotiate an administrative resolution to the enforcement case.

E. Litigation Risk

This guidance allows an adjustment for factors which may arise on a case-by-case basis. When developing its settlement position, DSIWM should evaluate every penalty with a view toward the potential for litigation and attempt to ascertain the maximum civil penalty a court would likely award if the case proceeds to trial. Where Ohio EPA determines that there are significant risks of litigation, it may also take into account the resource outlay involved in litigating a case that it might avoid by entering into a settlement. Downward adjustments of the proposed penalty for settlement purposes may be warranted, depending on Ohio EPA's assessment of these litigation considerations. The extent of the adjustments will depend on the specific litigation considerations presented in any particular case.

Chapter IV

First Time Open Dumping Penalty Initiative

Key Concepts: Chapter IV

- No enforcement in past 5 years
- Only Category 4 violations
- Less than 10 employees
- Agreement to remedy violations
- Total penalty = $2,500

As recognized above, open dumping violations are usually committed by persons with limited financial means and are frequently caused by a third party without any contribution or fault of the landowner. Of course, this is not always the case, but experience suggests that the majority of open dumping occurs in economically disadvantaged regions, or rural areas where there are absentee landowners and where knowledge of proper solid waste disposal practices is limited.[2] In those types of cases, the landowner may be eligible for a one-time civil penalty that is designed to discourage future violations while at the same time recognizing that the citizens of Ohio benefit first and foremost from getting the open dump cleaned up.

For Category 4 violations only, where a landowner or other responsible party has never been subject to formal enforcement by Ohio EPA in the past, and where the violator is considered to be a individual or "small business," Ohio EPA may choose to assess a one-time flat-rate civil penalty in the amount of $2,500. For the purposes of this guidance, a "small business" is defined as an independently owned and operated business employing fewer than ten (10) individuals. Facilities that are permitted, licensed or registered under ORC Chapter 3734 or 3714 are not eligible to participate in this initiative because facilities that have voluntarily submitted to regulatory oversight by Ohio EPA or a health district in exchange for authorization to conduct a regulated activity are, as a matter of law, charged with knowing and understanding the law. The reduced civil penalty is designed to allow individuals and small businesses who have limited financial resources and who have never been subject to formal enforcement in the past to devote their limited resources to achieving environmental compliance.

Irrespective of the foregoing, Ohio EPA reserves the right to decline to apply this flat-rate civil penalty in any cases where it determines that the application of the reduced civil penalty amount would not be fair or equitable or would jeopardize the integrity of the

---

[2] See U.S. EPA Region 5, Illegal Dumping Prevention Guidebook, http://www.p2pays.org/ref/01/text/0076910.htm.

DSIWM regulatory programs. Furthermore, the $2,500 civil penalty is expressly conditioned upon the property owner completing the remedy set forth in the findings and orders resolving the enforcement action. If the property owner does not comply with the injunctive relief in the findings and orders by, for example, removing the waste and disposing it in a licensed landfill, and a referral to the Attorney General's office is necessary to obtain compliance, then Ohio EPA reserves the right to pursue the violator for the full amount of the civil penalty that would have been applicable in the absence of this initiative.

Chapter V

Consistent Application of Civil Penalty

Upon implementation of this guidance, DSIWM will hold civil penalty committee meetings to ensure CMEU staff consistently apply this guidance as it was intended. The civil penalty committee will consist of standing members of the DSIWM civil penalty committee and will include appropriate case staff (CMEU staff, legal counsel, district office inspectors). The function of the DSIWM civil penalty committee will be to review the initial civil penalty calculation prepared by CMEU staff to ensure that the civil penalty as proposed is the result of an accurate application of the civil penalty guidance to the facts of the case, and that the civil penalty is consistent with civil penalties proposed in similar cases. If the proposed civil penalty is acceptable, the DSIWM civil penalty committee will recommend that it be proposed to the Director for his approval.

APPENDIX A

DSIWM Civil Penalty Policy
Scoring Worksheet
Last Updated: 010904

I. Extent of Deviation (max. 45 points)			
Points (Choose One)		Section	Description
		A.	**Effort to Discover and Remedy Violation**: Before the inspector cited the individual/facility for the violation, which statement most accurately describes the individual/facility's effort to discover and remedy the violation on its own?
	10	1.	Respondent made no effort to discover violation.
	5	2.	Respondent discovered violation, but did not attempt remedy. This includes self reported violations that were not corrected.
	0	3.	Respondent discovered violation and remedy completed. This includes self reported violations that were corrected.

I. Extent of Deviation (Continued - max. 45 points)			
Points (Choose One)		Section	Description
		B.	**Responsiveness to Resolve a Violation after Notice:** Once the individual/facility was notified of the existence of a violation, which statement most accurately describes the individual/facility's responsiveness to the notice of violation:
	15	1.	No response-individual/facility took no action in response to a notice of violation and the violation is unresolved.
	8	2.	Some Response – individual/facility responded to NOV, but failed to take action to resolve violation or they took action to resolve the violation but did so after multiple NOVs.
	0	3.	Prompt Response – Upon notification of a violation, individual/facility worked with inspector to resolve violation (only 1 NOV).

I. Extent of Deviation (Continued - max. 45 points)			
Points (Choose One)		Section	Description
		C.	**Relative Degree of Deviation:** This criteria attempts to measure the degree or magnitude to which an individual/facility is in violation of the law or a regulatory requirement. PLEASE DO NOT confuse this with any HARM posed by the violation, that will be addressed in Section II. This category seeks to measure the scale of the violation. For example, in any situation, there is a range of potential noncompliance with the law. A violator may have slightly violated the requirements (small overfill, one piece of blowing litter) or they may have grossly disregarded the regulatory requirements (massive overfill, acres of blowing litter) or they some point in between. In determining the appropriate degree of deviation, the following categories should be used as a guide: (Choose one)
	20	1.	**Major**: the violator deviates from requirements of the statute or rule to such an extent that most (or important aspects) of the requirements are not met resulting in substantial noncompliance. Examples: • Failure to perform anything required by rule • HW acceptance > 1000 kg • Overfills >1% of Facility's Total Capacity • Documented Damage to majority of Engineered Components and Unrepaired • Failure to Cap: Observed exposed waste, no cover whatsoever • No statistical analysis of GW data at all • Massive number, volume, flow, ect. of leachate discharges and is un-contained to such an extent that it is observed entering waters of the state • Failure to install any required component of design - LCS, Barrier Layer, EGMS, GWDMS • Failure to apply and obtain authorizations prior to conducting work • Open Dumps > 2 acres • Tire Dumps > 50,000 STEs • Failure to obtain 27-13 authorization
	10	2.	**Moderate**: the violator significantly deviates from the requirements of the statute or rule but some of the requirements are implemented as intended. This can also include a partial failure to comply with rule requirement. Examples: • HW acceptance: < 1000 kg but > 100 kg • Overfills: <1% of Facility's Total Capacity but > 0.25% • Documented or Potential Damage to some of Engineered Components • Failure to Cap: Area received Daily Cover only • Statistical analysis of GW partially completed or used wrong stat method • Moderate number, volume, flow, etc. of leachate and has left the limits of waste placement • Applied for authorizations, but began work prior to obtaining approval • Open Dumps (0.5<2 acres) • Tire Dumps (> 10,000 to 50,000 STEs)
	0	3.	**Minor**: the violator deviates somewhat from the statute or rule but many or most important aspects of the requirement are met. Examples: • HW acceptance: < 100 kg • Overfills: < 0.25% of Facility's Total Capacity • Documented or Potential Damage to one Engineered Component • Failure to Cap: Intermediate Cover in place • Used wrong statistical method, but method is appropriate if approved • Minor number of leachate seeps with no discernable flow or volume and is within footprint of landfill • Authorization obtained, but work not conducted per authorization • Open Dumps (< 0.5 acres) • Tire Dumps (< 10,000 STEs)

II. Degree of Harm (max. of 55 points)			
Points (Choose all that apply)		Section	Description
		A.	**Harm to Human Health**
		1.	**Documented Impacts to Human Health** (select all that apply):
	3	a.	Contaminated Drinking Water Resource Is there direct evidence from any local, state, federal or private parties indicating that drinking water wells, or surface waters designated as "public water supply" pursuant to 3745-1-07(B)(3) have been polluted; documentation from a regulatory authority indicating that the waters, impacted by an entity, are unsafe due to a release into those waters (e.g. above M.C.L) as a result of this violation.
	2	b.	Contaminated Recreational Use Waters Is there direct evidence from any local, state, federal or private parties indicating that the recreational use waters (e.g. bathing waters, primary contact and secondary contact) have been contaminated as a result of the violation as defined in OAC Rule 3745-1-07(B)(4).
	3	c.	Illnesses Is there direct evidence from any local, state, federal or private parties indicating human health illnesses as a result of the violation. Example: Documented human case of encephalitis within 2 mile radius of site and there exists site specific documentation that virus is present at the site or specie of mosquito is present at site that can transmit that virus.
	2	d.	Health Advisory(ies) Issued Is there direct evidence from any local, state, federal or private parties indicating health advisories have been issued as a result of the violation (e.g. nuisance declared or an advisory issued by a local health department, Ohio Department of Health or The Centers for Disease Control).
	2	e.	Caused/contributed to a Fire/explosion Is there direct evidence from any local, state, federal or private parties indicating the violation caused or contributed to a documented fire or explosion.
	2	f.	Exposure to Air Contaminants from Burning Waste Is there direct evidence from any local, state, federal or private parties indicating that a human population has been exposed to air contaminants from burning waste as a result of this violation.
	2	g.	Vectors Is there direct evidence from any local, state, federal or private parties indicating that a human population has been exposed to vectors capable of transmitting a disease.

II. Degree of Harm (continued - max. of 55 points)			
Points (Choose all that apply)		Section	Description
		A.	**Harm to Human Health** (continued)
		2.	**Potential Impacts to Human Health** (select all that apply):
	1	a.	Potential Impact to Drinking Water Resources Does the violation result in the potential to impact a public or private water supply well within its five year time of travel or does the violation exist within 1000 feet from a public water supply or impact any aquifer that may be used for human consumption in the future, or impact any surface water designated as "public water supply" under OAC 3745-1-07(B)(3).
	1	b.	Potential Impact to Recreational Use Waters Does the violation result in potential contamination that may have the capability of moving toward recreational use waters (e.g. bathing waters, primary contact, secondary contact) as defined in OAC Rule 3745-1-07(B)(4).
	1	c.	Vector to Transmit Illness Does the violation result in potential for illnesses transmission as a result of the violation. Example: mosquito with encephalitis or species of mosquito capable of transmitting virus even though it does not harbor the virus
	1	d.	Caused/contributed to a Fire/explosion Does the violation result in potentially causing or contributing to a fire or explosion.
	1	e.	Potential Exposure to Air Contaminants from Burning Waste Does the violation have the capability of potentially exposing a human population to air contaminants from combustion.
	1	f.	Vector Habitat Does the violation potentially create conditions for populations of mosquitoes or other vectors because of Respondent's failure to implement adequate control activities.

II. Degree of Harm (continued - max. of 55 points)			
Points (Choose all that apply)		Section	Description
		B.	**Harm to the Environment**
		1.	**<u>Documented</u> Impacts to the Environment** (select all that apply):
	5	a.	<u>Documented Release to Surface Water And/or Ground Water</u> Is there direct evidence from any local, state, federal or private parties indicating that the violation resulted in a release to waters of the state. (Sampling results or photos of visible impacts)
	5	b.	<u>Documented Release to Air</u> Is there direct evidence from any local, state, federal or private parties indicating that the violation resulted in a release to air. Examples include: open burning and nuisance odors.

II. Degree of Harm (continued - max. of 55 points)			
Points (Choose all that apply)		Section	Description
		B.	**Harm to the Environment** (continued)
		2.	**<u>Potential</u> Impacts to the Environment** (select all that apply):
	1	a.	<u>Violation Exists Within 1000 Feet from Any Natural Areas</u> Does the violation exist within areas designated by Ohio Department of Natural Resources, as a state nature preserve, wildlife area, state scenic river, areas owned by Ohio historical society as a nature preserve, areas designated by the U.S. Department of the Interior as a national wildlife refuge or natural scenic river; areas designated byU.S.G.S. National Forest Service as a special interest area or research area in Wayne County; stream segments designated by Ohio EPA as a state resource water, cold water habitat or exceptional warm water habitat.
	2	b.	<u>Violation Exists 200 Feet or less from Surface Waters (Streams, Lakes, Wetlands, etc.)</u> Does the violation exist within 200 feet or less from surface waters and have the potential to impact those surface waters.
	1	c.	<u>Violation Exists Within the Boundaries of a 100 Year Flood Plain</u> Does the violation exist within the boundaries of a 100 year flood plain and have the potential to impact this area.

II. Degree of Harm (continued - max. of 55 points)			
Points (Choose one)		Section	Description
		B.	**Harm to the Environment** (continued)
		3.	**Facility Type** (select all that apply):
	8	a.	• Violation occurred outside a licensed, regulated and lined area of a solid waste facility. • Violation occurred within a licensed, regulated and lined facility, however, the violation caused the facility to fail to attain or maintain BAT. • All open dumps or illegal disposal of C&DD • Failure to obtain a 27-13 authorization at a regulated facility
	1	b.	• Violation occurred within a licensed, regulated and lined area of a facility. • Failure to obtain a 27-13 authorization at an open dump.
	0	c.	Violation is completely unaffected by Facility Type. (Annual Report)

II. Degree of Harm (continued - max. of 55 points)			
Points (Choose one)		Section	Description
		C.	**Harm to the Regulatory Program** There are some requirements of the Solid and Infectious Waste program which, if violated, may not be likely to give rise directly or immediately to a significant risk of environmental or human health harm. Nonetheless, all regulatory requirements are fundamental to the continued integrity of the Solid and Infectious Waste program. Violations of such requirements may have serious implications and merit substantial penalties where the violation undermines the statutory or regulatory purposes or procedures for implementing the Solid and Infectious Waste program on a consistent basis. In determining the harm to the regulatory program, the following categories should be used to guide the appropriate selections: (Choose one)
	11	1.	Major Violations which substantially undermine integrity of program • All Category I Violations • No FA • No Daily Logs Completed - Key Info. Omitted • Failure To Install Component • Open dumps or illegal C&DD disposal • Solid waste disposed of (in working face) at C&DD facility • Tire dump with no effort to comply with 27-60 requirements
	6	2.	Moderate Violations which have a moderate impact on integrity of program • Failure to conduct groundwater sampling • Conducting an action without authorization even though an alternative mechanism is in provided • Acceptance of infectious waste at C&DD site • Improper Leachate Storage • No unloading zone at C&DD facility
	0	3.	Minor Violations which have a minor impact on integrity of program • All Category II & III's unless noted above

III. Aggravating Circumstances

Points (Choose one)		Section	Description
			Were violations intentional, willful, grossly negligent or with reckless indifference to the law?
	30	1.	Yes-Violation was the result of intentional, willful or grossly negligent conduct or the result of conduct that was recklessly indifferent to a law or other regulatory requirement.
	0	2.	No-Violation was not the result of intentional, willful or grossly negligent conduct or the result of conduct that was recklessly indifferent to a law or regulatory requirement.

IV. Mitigating Circumstances

Points (Choose one)		Section	Description
			Was the violation caused, in whole or in part, by an occurrence which could not have been reasonably foreseen and prevented (e.g., acts of God, certain violations caused by unrelated third parties, etc.)?
	-30	1.	Yes
	0	2.	No

Score Sub Totals		Score	Total Possible
I.	Extent of Deviation		45
II.	Potential for Harm		55
III.	Aggravating Circumstances		30
IV	Mitigating Circumstances		-30
Total Potential Points			130

Score Key

Score	Equation
0-30	4
31- 70	3
71-100	2
101-130	1

APPENDIX B

DSIWM Civil Penalty Guidance Document
Mathematics

Days	Category 1, Equation 1	$f(\$) = 329(D)\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 1, Equation 2	$f(\$) = \left[37.2(D)^{1.2} + 290\right]\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 1, Equation 3	$f(\$) = \left[25.2(D)^{1.2} + 250\right]\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 1, Equation 4	$f(\$) = \left[11.7(D)^{1.2} + 200\right]\left(1-\left(\frac{30-p}{100}\right)\right)$
Observ.	Category 1, Equation 1	$f(\$) = 10{,}007(X)\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 1, Equation 2	$f(\$) = \left[2{,}240(X)^{1.2} + 255\right]\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 1, Equation 3	$f(\$) = \left[1{,}518(X)^{1.2} + 225\right]\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 1, Equation 4	$f(\$) = \left[704(X)^{1.2} + 190\right]\left(1-\left(\frac{30-p}{100}\right)\right)$
Days	Category 2, Equation 1	$f(\$) = 220(D)\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 2, Equation 2	$f(\$) = \left[263(D)^{0.8} - 50\right]\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 2, Equation 3	$f(\$) = 181(D)^{0.8}\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 2, Equation 4	$f(\$) = 83(D)^{0.8}\left(1-\left(\frac{30-p}{100}\right)\right)$
Observ.	Category 2, Equation 1	$f(\$) = 6{,}700(X)\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 2, Equation 2	$f(\$) = 4{,}040(X)^{0.8}\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 2, Equation 3	$f(\$) = 2{,}780(X)^{0.8}\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 2, Equation 4	$f(\$) = 1{,}275(X)^{0.8}\left(1-\left(\frac{30-p}{100}\right)\right)$

Days	Category 3, Equation 1	$f(\$) = 133(D)\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 3, Equation 2	$f(\$) = \left[53(D)^{0.8}+67\right]\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 3, Equation 3	$f(\$) = \left[37(D)^{0.8}+30\right]\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 3, Equation 4	$f(\$) = \left[18(D)^{0.8}-13\right]\left(1-\left(\frac{30-p}{100}\right)\right)$
Observ.	Category 3, Equation 1	$f(\$) = 4{,}000(X)\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 3, Equation 2	$f(\$) = \left[1{,}580(X)^{0.8}+2000\right]\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 3, Equation 3	$f(\$) = \left[1{,}110(X)^{0.8}+900\right]\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 3, Equation 4	$f(\$) = \left[535(X)^{0.8}-400\right]\left(1-\left(\frac{30-p}{100}\right)\right)$
Days	Category 4, Equation 1	$f(\$) = 713(D)^{0.8}\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 4, Equation 2	$f(\$) = 428(D)^{0.8}\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 4, Equation 3	$f(\$) = 198(D)^{0.8}\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 4, Equation 4	$f(\$) = 32.5(D)^{0.8}\left(1-\left(\frac{30-p}{100}\right)\right)$
Observ.	Category 4, Equation 1	$f(\$) = 21{,}400(X)^{0.8}\left(1-\left(\frac{130-p}{100}\right)\right)$
	Category 4, Equation 2	$f(\$) = 12{,}850(X)^{0.8}\left(1-\left(\frac{100-p}{100}\right)\right)$
	Category 4, Equation 3	$f(\$) = 5{,}950(X)^{0.8}\left(1-\left(\frac{70-p}{100}\right)\right)$
	Category 4, Equation 4	$f(\$) = 975(X)^{0.8}\left(1-\left(\frac{30-p}{100}\right)\right)$

D = Number of days from when the first NOV was sent to when the Enforcement Committee heard the case.

X = Number of documented occurrences for a violation to when the Enforcement Committee heard the case.

P = Number of points determined by the penalty worksheet.