

## Handout #3:

### Examples of Some Alternatives to the Penalty Matrix

- Set penalties for Common violations:  
Example: Old DTSC field orders Page 2-3
- Two or more separate penalty matrices: The State Water Board have separate matrices for discharge and non-discharge violations. Page 4-6
- Penalty Matrix Weighted for Potential for Harm: The penalty matrix (p. 2) of the US EPA RCRA Civil Penalty Policy has a non-linear increase in penalty amounts with increase in potential for harm and a close to linear increase in penalty amounts with increase in extent of deviation. Page 7-9

STATE OF CALIFORNIA  
HEALTH AND WELFARE AGENCY  
DEPARTMENT OF HEALTH SERVICES  
TOXIC SUBSTANCES CONTROL PROGRAM

In the Matter of: \_\_\_\_\_

Name: \_\_\_\_\_  
Status: \_\_\_\_\_  
Address: \_\_\_\_\_  
EPA ID # \_\_\_\_\_  
Respondent

) Docket No. FO \_\_\_\_\_  
)  
) CORRECTIVE ACTION ORDER AND  
) COMPLAINT FOR PENALTY  
)  
)  
) Health and Safety Code  
) Sections 25187 and 25189.2

1. On \_\_\_\_\_, the Department of Health Services (Department) inspected \_\_\_\_\_, which is owned or operated by Respondent.

2. The Department hereby determines that Respondent violated the Hazardous Waste Control Act (Health & Safety Code section 25100 et seq.) and related requirements and assesses a penalty of \$ \_\_\_\_\_, as specified on page 2 et seq., Determination of Violations and Penalties.

3. Respondent shall begin to correct the violations immediately. Respondent shall complete corrective action and send a signed Certification of Compliance to the person who issued this Order within 30 days of the date of issuance.

Date of Issuance: \_\_\_\_\_.

\_\_\_\_\_  
(Signature)  
Name and Title: \_\_\_\_\_  
Toxic Substances Control Program  
Department of Health Services  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_

ACKNOWLEDGMENT OF RECEIPT

Without admitting the violations, I acknowledge receipt of this Corrective Action Order and Complaint for Penalty, Statement to Respondent, Certification of Compliance form, and two copies of the form entitled Notice of Defense.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name and Title

DETERMINATION OF VIOLATIONS AND PENALTIES

Respondent: \_\_\_\_\_

Docket Number: \_\_\_\_\_

1. /  Health and Safety Code, section 25160(d):  
On or about \_\_\_\_\_, Respondent violated Health and Safety Code, section 25160(d) in that Respondent did not have a manifest in his or her possession while transporting hazardous waste, to wit: \_\_\_\_\_  
\_\_\_\_\_  
(PENALTY: \$500)
2. /  Health and Safety Code, section 25160(f):  
On or about \_\_\_\_\_, Respondent violated Health and Safety Code, section 25160(f) in that Respondent transported hazardous waste and did not transfer a copy of the manifest to the next transporter or disposal site, to wit: \_\_\_\_\_  
\_\_\_\_\_  
(PENALTY: \$500 per manifest  
\$500 x \_\_\_\_\_ = \$\_\_\_\_\_)
3. /  Health and Safety Code, section 25160(g):  
On or about \_\_\_\_\_, Respondent violated Health and Safety Code, section 25160(g) in that Respondent did not submit a copy of the manifest to the Department within thirty days after receiving hazardous waste, to wit: \_\_\_\_\_  
\_\_\_\_\_  
(PENALTY: \$200 per manifest,  
\$200 x \_\_\_\_\_ = \$\_\_\_\_\_)
4. /  Health and Safety Code, section 25163(a)(1):  
On or about \_\_\_\_\_, Respondent violated Health and Safety Code, section 25163(a)(1) in that Respondent did not hold a valid registration issued by the Department while transporting hazardous waste and/or transferred custody of a hazardous waste to a transporter who did not hold a valid registration, to wit: \_\_\_\_\_  
\_\_\_\_\_  
(PENALTY: \$500)
5. /  Health and Safety Code, section 25163(a)(2):  
On or about \_\_\_\_\_, Respondent violated Health and Safety Code, section 25163(a)(2) in that Respondent did not have a valid registration issued by the Department in his or her possession while transporting hazardous waste, to wit: \_\_\_\_\_  
\_\_\_\_\_  
(PENALTY: \$300)

**STATE WATER RESOURCES CONTROL BOARD**

**WATER QUALITY  
ENFORCEMENT POLICY**

Adopted April 4, 2017  
Effective October 5, 2017

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**TABLE 1 – Per Gallon Factor for Discharges**

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.01	0.02	0.04	0.08	0.14	0.2	0.3	0.35
Moderate	0.007	0.013	0.025	0.05	0.1	0.15	0.27	0.4	0.5	0.6
Major	0.01	0.02	0.04	0.08	0.15	0.28	0.41	0.6	0.8	1.0

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

- Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).
- Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).
- Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

**High Volume Discharges**

In most cases, the Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under the California Water Code for the violations involved. However, recognizing that the volume of certain discharges can be very high, the Water Boards may elect to use a value between \$2.00 per gallon and \$10.00 per gallon with the above factor to determine the per gallon amount for discharges that are between 100,000 gallons and 2,000,000 gallons for each discharge event, whether it occurs on one or more days. For discharges in excess of 2,000,000 gallons, or for discharges of recycled water that has been treated for reuse, the Water Boards may elect to use a maximum of \$1.00 per gallon with the above factor to determine the per gallon amount. These provisions are advisory and intended to provide a basis for achieving consistency and substantial justice in setting appropriate civil liabilities. Where electing to use a maximum of \$1.00 per gallon or \$2.00 per gallon would result in an inappropriately small civil liability based on the severity of impacts to beneficial uses, the discharger's degree of culpability, and/or other considerations, a higher amount, up to the statutory maximum, should be used. Examples of discharges that could be subject to a reduction include, but are not limited to, wet weather sewage spills, partially-treated sewage spills, discharges from irrigated agricultural operations, potable water discharges, and construction or municipal stormwater discharges.

**Per Day Assessments for Discharge Violations**

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Where deemed appropriate, such as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385.

**TABLE 3 – Per Day Factor for Non-Discharge Violations**

Deviation from Requirement	Potential for Harm		
	Minor	Moderate	Major
Minor	0.1 (0.15)	0.2 (0.25)	0.3 (0.35)
	0.2	0.3	0.4
Moderate	0.2 (0.25)	0.3 (0.35)	0.4 (0.55)
	0.3	0.4	0.7
Major	0.3 (0.35)	0.4 (0.55)	0.7 (0.85)
	0.4	0.7	1

The categories for **Potential for Harm** in Table 3 are defined as follows:

- Minor – The characteristics of the violation have little or no potential to impair the Water Boards’ ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.
- Moderate – The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.
- Major – The characteristics of the violation have wholly impaired the Water Boards’ ability to perform their statutory or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major.

The categories for **Deviation from Requirement** in Table 3 are defined as follows:

- Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).
- Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).
- Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement. For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan, or has not conducted required monitoring, submitted a required monitoring report, characterization report, or corrective action plan, the deviation would be major. If a facility has prepared a required plan, or submitted the required monitoring report, but significant elements are omitted or materially deficient, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing and/or minor deficiencies, the deviation would be minor.

# **RCRA CIVIL PENALTY POLICY**

**RCRA Enforcement Division  
Office of Regulatory Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. EPA**

**June 2003**

## I. SUMMARY OF THE POLICY

The penalty calculation system established through U.S. Environmental Protection Agency's RCRA Civil Penalty Policy ("Penalty Policy" or "Policy") is based upon Section 3008 of RCRA, 42 U.S.C. § 6928. Under this section, the seriousness of the violation and any good faith efforts to comply with applicable requirements are to be considered in assessing a penalty. Consistent with this statutory direction, this Penalty Policy consists of: (1) determining a gravity-based penalty for a particular violation, from a penalty assessment matrix, (2) adding a "multi-day" component, as appropriate, to account for a violation's duration, (3) adjusting the sum of the gravity-based and multi-day components, up or down, for case specific circumstances, and (4) adding to this amount the appropriate economic benefit gained through non-compliance. More specifically, the revised RCRA Civil Penalty Policy establishes the following penalty calculation methodology:

$$\text{Penalty Amount} = \text{gravity-based component} + \text{multi-day component} \pm \text{adjustments} + \text{economic benefit}$$

In administrative civil penalty cases, EPA will perform two separate calculations under this Policy: (1) to determine an appropriate amount to seek in the administrative complaint and subsequent litigation, and (2) to explain and document the process by which the Agency arrived at the penalty figure it has agreed to accept in settlement. The methodology for these calculations will differ only in that no downward adjustments (other than those reflecting a violator's good faith efforts to comply with applicable requirements) will usually be included in the calculation of the proposed penalty for the administrative complaint. In those instances where the respondent or reliable information demonstrates prior to the issuance of the complaint that applying further downward adjustment factors (over and above those reflecting a violator's good faith efforts to comply) is appropriate, enforcement personnel may in their discretion (but are not required to) make such further downward adjustments in the amount of the penalty proposed in the complaint.

In determining the amount of the penalty to be included in the complaint, enforcement personnel should consider all possible ramifications posed by the violation and resolve any doubts (*e.g.*, as to the application of adjustment factors or the assumptions underlying the amount of the economic benefit enjoyed by the violator) against the violator in a manner consistent with the facts and findings so as to preserve EPA's ability to litigate for the strongest penalty possible. It should be noted that assumptions underlying any upward adjustments or refusal to apply downward adjustments in the penalty amount are subject to revision later as new information becomes available.

In civil judicial cases, EPA will use the narrative penalty assessment criteria set forth in the Policy to explain the penalty amount agreed to in settlement. In litigation, the penalty that is sought should be based on the statutory factors set forth in Section 3008, 42 U.S.C. § 6928 as well as relevant case law.

Under this Policy, two factors are considered in determining the gravity-based penalty component:

- potential for harm; and
- extent of deviation from a statutory or regulatory requirement.

These two factors constitute the seriousness of a violation under RCRA, and have been incorporated into the following penalty matrix from which the gravity-based component will be chosen.

MATRIX<sup>1</sup>

Extent of Deviation from Requirement

Potential for Harm		MAJOR	MODERATE	MINOR
	MAJOR	\$27,500 to 22,000	\$21,999 to 16,500	\$16,499 to 12,100
	MODERATE	\$12,099 to 8800	\$8,799 to 5,500	\$5,499 to 3,300
	MINOR	\$3,299 to 1,650	\$1,649 to 550	\$549 to 110

The Policy also explains how to factor into the calculation of the gravity-based component the presence of multiple and multi-day (continuing) violations. The Policy provides that for days 2 through 180 of multi-day violations, the calculation of penalties using a multi-day component is mandatory, presumed, or discretionary, depending on the "potential for harm" and "extent of deviation" of the violations. For each day for which multi-day penalties are sought, the penalty amounts should be determined using the multi-day penalty matrix. The penalty amounts in the multi-day penalty matrix range from 5% to 20% (with a minimum of \$110 per day) of the penalty amounts in the corresponding gravity-based matrix cells. Enforcement personnel also retain discretion to impose multi-day penalties: (1) of up to \$27,500 per day, when appropriate under

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<sup>1</sup>Although the upper end of the penalty range exceeds the statutory maximum found in RCRA Section 3008, 42 U.S.C. § 6928, a 10% increase in the statutory penalty amount was authorized by Congress in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See footnote 3 for further discussion.