



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

July 17, 2009

**MEMORANDUM**

**SUBJECT:** Revised Penalty Matrix for CERCLA §106(b)(1) Civil Penalty Policy

**FROM:** Kenneth Patterson, Director /s/  
Regional Support Division

**TO:** Regional Superfund Legal Branch Chiefs, Regions I-X  
Superfund Division Directors, Regions I-X

This memorandum transmits the most recently updated matrix for the CERCLA Section 106(b)(1) Penalty Policy as found in the “Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders” (September 1997). This 1997 policy can be found at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interm-sec106-rpt.pdf>.

On December 11, 2008, EPA published a final rule in the Federal Register entitled, “Civil Monetary Penalty Inflation Adjustment Rule” (73 Fed. Reg. 75340), as mandated by the Debt Collection Improvement Act of 1996. The purpose of the rule was to again adjust the maximum civil monetary penalties to keep pace with inflation so that these penalties maintain their deterrent effect. This was the third adjustment thus far. The first took effect in 1997 (raising the maximum daily CERCLA §106(b)(1) penalty from \$25,000 to \$27,500) and the second took effect in 2004 (raising this maximum from \$27,500 to \$32,500). This third adjustment raised this daily maximum from \$32,500 to \$37,500, and took effect on January 12, 2009.

In addition to adjusting the maximums via Federal Register notices over the years, EPA has been concurrently adjusting the other dollar figures in its penalty policy matrices via memoranda. To match the most recent adjustment of the maximums, Assistant Administrator Granta Nakayama issued a memorandum on December 28, 2008, that effectively increased each other dollar figure in EPA’s various penalty matrices by 9.83%. This percentage figure reflects the inflationary increase between June 2004 and June 2007, as measured by the Consumer Price Index for urban consumers. Thus, for example, the lowest figure in the CERCLA §106(b)(1) penalty matrix cell C-III (for very minor violations) increased by 9.83% from \$130 to \$143.

The December 28, 2008, memorandum also continued the Agency’s policy of rounding the total gravity component of a penalty to the nearest \$100 unit. To illustrate, in a situation involving ten days of noncompliance being settled for the lowest rate in the C-III matrix cell, the

case team would round the initial \$1,430 gravity figure (= ten days times \$143 daily rate) down to \$1,400.

Please bear in mind that the updated penalty figures are effective only for violations that occurred after January 12, 2009. For any violations that took place on or before that date, the previous penalty matrix should be used. (The prior matrix was transmitted by my memorandum dated April 20, 2005, which can be found at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/106-matrix-rev.pdf>.)

Any questions regarding CERCLA §106 penalty adjustments can be directed to Mike Northridge (202-564-4263). Other questions regarding CERCLA §106 penalties should be directed to Doug Dixon (202-564-4232).

cc: Bruce Gelber, EES, DOJ  
Elliott Gilberg, Acting Director, OSRE

For violations that occur after January 12, 2009, the following table replaces the table found on page 3 of the “Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders.”

**Recalcitrance**

	Recalcitrance I	Recalcitrance II	Recalcitrance III
<b>Harm</b> Harm A	\$22,659 to \$37,500	\$11,330 to \$22,658	\$3,543 to \$11,329
Harm B	\$11,330 to \$22,658	\$3,543 to \$11,329	\$710 to \$3,542
Harm C	\$3,543 to \$11,329	\$710 to \$3,542	\$143 to \$708

Note: According to the September 21, 2004 memorandum from Thomas Skinner (then AA for OECA), the final gravity-based portion of the penalty should be rounded to the nearest unit of \$100. This rounding approach was continued by Grant Nakayama’s December 11, 2008 memorandum.