



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

SEP 06 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

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

FROM: Kenneth Patterson, Director
Regional Support Division
Office of Site Remediation Enforcement

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

This memorandum transmits a revised matrix for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 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).¹

On July 1, 2016, EPA published its Interim Final Rule in the Federal Register titled, “Civil Monetary Penalty Inflation Adjustment Rule” (81 Fed. Reg. 43,091) (2016 Rule). Mandated by the 1990 Federal Civil Penalties Inflation Adjustment Act, as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act), the 2016 Rule took effect on August 1, 2016.

As in past penalty adjustments, the purpose of EPA’s rule is to adjust the maximum civil monetary penalties to keep pace with inflation so that these penalties maintain their deterrent effect. This is the fourth adjustment since the 1990 Act and raises the daily maximum penalty from \$37,500 to \$53,907.²

On July 27, 2016, the Office of Enforcement and Compliance Assurance (OECA) issued guidance to implement the 2016 Rule and to amend existing civil penalty policies. The guidance, titled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation” (2016 OECA Guidance), explains that the 2015 Act requires an initial

¹ This 1997 policy can be found at <https://www.epa.gov/enforcement/interim-guidance-settling-civil-penalty-and-punitive-damage-claims-noncompliance>.

² The first adjustment took effect in 1997 (raising the maximum daily CERCLA § 106(b)(1) penalty from \$25,000 to \$27,500), the second took effect in 2004 (raising this maximum from \$27,500 to \$32,500), and the third took effect in 2009 (raising this daily maximum from \$32,500 to \$37,500).

catch-up adjustment to accurately account for inflation accrued since the effective date of the applicable penalty policy. The 2015 Act also requires federal agencies to annually issue rules adjusting their maximum civil penalty amounts by January 15 of each year. The OECA guidance was effective August 1, 2016.

To update the Penalty Matrix for the CERCLA § 106(b)(1) Civil Penalty Policy, the Office of Site Remediation Enforcement (OSRE) used the inflation-based adjustment of the statutory maximum used in the 1997 narrative penalty policy. Specifically, OSRE calculated the multiplier by dividing the new statutory maximum (\$53,907) by the statutory maximum used in the 1997 policy (\$27,500). This yielded a multiplier of 1.96025. The 2016 Revised Penalty Matrix reflects this multiplier and is effective upon the date of this memo (see revised matrix on the following page).

Consistent with the 2016 OECA Guidance, in order to provide stability in the penalty policy amounts in the near term, OSRE does not plan to modify the CERCLA § 106(b)(1) penalty policy matrix in early 2017. Instead, OSRE plans to make the next modification to the matrix in early 2018 (and then annually thereafter). OSRE anticipates using the same calculation method in the future, i.e., calculate a multiplier by dividing the newly adjusted maximum by the \$27,500 maximum used in the 1997 policy and then applying that multiplier to the other amounts in the 1997 policy.

For questions regarding the CERCLA § 106 penalty adjustments, please contact the following RSD staff: Tina Skaar (202-564-0895) or Mike Northridge (202-564-4263). For other questions regarding CERCLA § 106 penalties, please contact Mike Northridge or Doug Dixon (202-564-4232).

cc: Cyndy Mackey, Director, OSRE
Bruce S. Gelber, EES, DOJ
Gary Jones, OCE

For violations that occur after November 2, 2015, 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.” For violations that occurred on or before November 2, 2015, practitioners should refer to the 2009 Revised Penalty Matrix available at <https://www.epa.gov/enforcement/guidance-updated-penalty-matrix-cercla-section-106b1-civil-penalty-policy>. In cases where a violation began before November 2, 2015 and continued after that date, practitioners should use both matrices, as appropriate.³

2016 Revised Penalty Matrix for CERCLA § 106(b)(1)

Recalcitrance				
Harm		Recalcitrance I	Recalcitrance II	Recalcitrance III
	Harm A	\$34,500 to \$53,907	\$17,250 to \$34,500	\$5,391 to \$17,250
	Harm B	\$17,250 to \$34,500	\$5,391 to \$17,250	\$1,078 to \$5,391
	Harm C	\$5,391 to \$17,250	\$1,078 to \$5,391	\$216 to \$1,078

³ For additional details regarding violations spanning dates of different penalty adjustment policies, see the 2016 OECA Policy.