United States Environmental Protection Agency
Washington, D.C. 20460

FACT SHEET

1990 REVISED RCRA CIVIL PENALTY POLICY

Prepared by the U.S. EPA Office of Enforcement - RCRA Division, and the Office of Solid Waste and Emergency Response - Office of Waste Programs Enforcement

EPA ACTION: EPA is issuing the revised RCRA Civil Penalty Policy (RCPP or the Policy).

PURPOSE. EPA is issuing the revised RCPP to ensure that civil penalties in both civil judicial and administrative cases reflect the gravity of RCRA violations, deter non-compliance, eliminate economic incentives to violate the law, and are well documented.

BACKGROUND: The first RCRA penalty policy, issued in 1984, applied to administrative penalties only. The 1984 policy was intended, among other things, to ensure that RCRA civil penalties were fair, consistent, and appropriate to the gravity (seriousness) of the violation. These goals are continued in the new RCPP, which EPA revised based on six years of experience implementing the 1984 policy.

Both the Inspector General's September 18, 1989 Consolidated Report on RCRA penalties, and the Agency's own 1990 RCRA Implementation Study concluded that the RCRA program must propose and collect higher penalties. The new RCPP addresses this concern by providing for increased, but fair penalties.

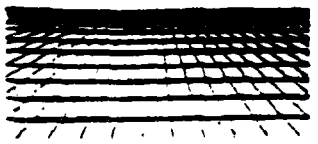
CALCULATING THE PENALTY: Pursuant to the new RCPP, the penalty for a violation is calculated in four steps. They are:

1) determining the appropriate gravity-based penalty based on the "probability of harm" posed by the violations, and its "extent of deviation from regulatory requirements";
2) calculating a multiday component to address the violation's duration (in accordance with the policy);
3) adjusting the overall gravity-based penalty based on individual factors; and
4) calculating and recapturing the "economic benefits from non-compliance" obtained by the violator.

MAJOR CHANGES IN THE 1990 POLICY:

- The most significant changes in the new RCPP concern how multiday penalties are calculated. The Policy establishes three classifications of violations for multiday penalties based on the relative gravity of the violations. These categories, which apply to days 3-180 of continuing violations, are "mandatory", "presumed", and "discretionary" (case assessment). When multiday penalties are presumed to be appropriate, they must be imposed unless case-specific factors supporting the decision not to assess multiday penalties are documented. Multiday penalties for days 180 + of all violations are discretionary.
- For the first time, the RCPP will apply to civil judicial settlements. It will continue to apply to both administrative complaints and settlements, as well.

- The RCPP requires enforcement personnel to document their penalty calculations and supporting evidence for both proposed penalties and settlement amounts in the case files. The Regions will be required to send their penalty calculation worksheets to EPA Headquarters for periodic review and analysis. This will help ensure that the RCPP is being implemented properly.



- Where a multiday penalty is sought, the Policy requires it to be calculated using a multiday penalty matrix. The dollar amounts in each cell in the multiday matrix range from 5% to 20% of the corresponding cell in the gravity-based penalty matrix.

- The RCPP contains explicit guidance on how to select the appropriate cell in the gravity-based matrix, how to calculate economic benefit, when to require multiday penalties and how to apply mitigating factors to reduce/increase a penalty. The policy also includes several detailed sample penalty calculations as guidance. Persons interested in knowing more about these topics are encouraged to review the RCPP itself.

Attachment

- MULTIDAY PENALTIES -

MULTIDAY GRAVITY-BASED PENALTY MATRIX

Extent of Deviation

From Regulatory Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	M.	M.	Pr.
MODERATE	M.	Pr.	Dis .
MINOR	Pr.	Dis.	Dis.

Key: "M" means, "Mandatory"

"Pr." means, "Presumed"

"Dis." means, "Discretionary"