



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

SEP 06 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revised Penalty Matrix for RCRA § 7003 Civil Penalty Policy

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

A handwritten signature in blue ink, appearing to read "Kenneth Patterson", written over the "FROM:" line.

TO: RCRA Senior Policy Advisors, Region I-X
RCRA Enforcement Managers, Regions I-X
RCRA Key Contacts, Regions I-X

This memorandum transmits a revised matrix for the Resource Conservation and Recovery Act (RCRA) § 7003 Penalty Policy as found in the "Guidance on the Use of Section 7003 of RCRA" (October 1997).¹

On July 1, 2016, EPA published its Interim Final Rule in the Federal Register entitled, "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 \$7,500 to \$14,023.²

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/guidance-use-administrative-orders-under-rcra-section-7003>.

² The first adjustment took effect in 1997 (raising the maximum daily RCRA § 7003 penalty from \$5,000 to \$5,500), the second took effect in 2004 (raising this maximum from \$5,500 to \$6,500), and the third took effect in 2009 (raising this daily maximum from \$6,500 to \$7,500).

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 RCRA § 7003 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 (\$14,023) by the statutory maximum used in the 1997 policy (\$5,500). This yielded a multiplier of 2.54964. 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 RCRA § 7003 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 \$5,500 maximum used in the 1997 policy and then applying that multiplier to the other amounts in the 1997 policy.

For questions regarding the RCRA § 7003 penalty adjustments, please contact the following RSD staff: Tina Skaar (202-564-0895) or Mike Northridge (202-564-4263). For other questions regarding RCRA § 7003 penalties, please contact Peter Neves (202-564-6072).

cc: Cyndy Mackey, Director, OSRE
Bruce S. Gelber, EES, DOJ
Gary Jonesi, OCE
John Michaud, SWERLO/OCG
Rosemarie Kelley, OCE/OECA
Barnes Johnson, Director, ORCR/OLEM

For violations that occur after November 2, 2015, the following table replaces the table found on page 43 of the “Guidance on the Use of Section 7003 of RCRA.” 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-2009-penalty-matrix-rcra-7003-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 RCRA § 7003

Extent of Deviation				
Potential For Harm		MAJOR	MODERATE	MINOR
	MAJOR	\$2,805 to \$14,023	\$2,103 to \$11,218	\$1,543 to \$8,414
	MODERATE	\$1,122 to \$6,170	\$701 to \$4,487	\$421 to \$2,805
	MINOR	\$280 to \$1,683	\$280 to \$841	\$280

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