



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

APR 11 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: 2019 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, Regions I-X

This memorandum transmits the recently updated matrix for the Comprehensive Environmental Response, Compensation, and Liability Act (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).¹

Background on increases of maximum amount of statutory penalty

On February 6, 2019, EPA published a final rule in the Federal Register titled, “Civil Monetary Penalty Inflation Adjustment Rule” (84 Fed. Reg. 2056; technical correction, 84 Fed. Reg. 5955, 2/25/2019) (“2019 Rule”), as 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).² The purpose of the 2019 Rule was to adjust the maximum civil monetary penalties to keep pace with inflation so that these penalties maintain their deterrent effect. As detailed in the rule, the inflation adjustment was based on the relevant increase in the Consumer Price Index for all Urban Consumers (CPI-U).

This was the seventh penalty inflation adjustment. The first took effect in 1997 (raising the maximum daily CERCLA §106(b)(1) penalty from \$25,000 to \$27,500. The second, third, and

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

² Headquarters transmitted this rulemaking to the Regions via the memorandum, “Transmittal of the 2019 Annual Civil Monetary Penalty Inflation Adjustment Rule,” dated March 4, 2019 and signed by Rosemarie Kelly, Director, Office of Civil Enforcement/OECA, <https://www.epa.gov/enforcement/transmittal-2019-annual-civil-monetary-penalty-inflation-adjustment-rule>.

fourth adjustments took effect in 2004 (increased to \$32,500), 2009 (increased to \$37,500), 2016 (increased to \$53,907), respectively. The 2015 Act required EPA to make the penalty inflation adjustments annually. Beginning in 2017, the fifth adjustment (to \$54,789) went into effect, followed by the sixth adjustment (to \$55,907) in 2018, and now the seventh adjustment (to \$57,317).

Under the 2019 Rule, the current maximum daily amount of the statutory civil penalty that a court can assess for a CERCLA § 106(b)(1) violation that occurred after November 2, 2015 is \$57,317.

Increases of the dollar amounts in policies on settlements of penalty claims

Consistent with the increases of the maximum penalty amount, EPA typically exercises its discretion to make corresponding increases of the dollar amounts in the policies it uses when negotiating settlements of penalty claims. The Office of Enforcement and Compliance Assurance (OECA) issued a revised memorandum in 2018 exercising the Agency's discretion to amend all of its civil penalty policies to account for inflation.³ This included increasing the dollar amounts in EPA's policy for settling CERCLA § 106(b)(1) penalty claims.⁴

In updating the penalty matrix in the CERCLA § 106(b)(1) Civil Penalty Policy, the Office of Site Remediation Enforcement's (OSRE) adjustments begin with the 1997 policy's statutory maximum of \$27,500. OSRE calculates a multiplier by dividing the new statutory maximum penalty by \$27,500. OSRE routinely used this approach to avoid having the highest amount in the matrix be less than the statutory maximum. OSRE's intent is to maintain the matrix's deterrent effect for all violations, including the most serious ones.

Latest increase of dollar amounts in CERCLA § 106(b)(1) settlement policy

For the latest penalty inflation increases, OSRE divided the new statutory maximum (\$57,317) by the 1997 policy's statutory maximum (\$27,500), yielding a multiplier of 2.08425, which was then applied to the dollar amounts in the 1997 matrix. The revised matrix, which follows, presents the increased dollar amounts that case teams should use when negotiating settlements of penalty claims for violations that occur after November 2, 2015.

OSRE plans to make the next modification to this matrix in early 2020 and will use the same approach of calculating a multiplier and applying it to the other amounts in the 1997 policy.

For questions regarding the CERCLA §106(b)(1) penalty adjustments, please contact Mike Northridge in OSRE (202-564-4263; northridge.michael@epa.gov). For other questions

³ Memorandum, "Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule," signed by Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance, and dated January 11, 2018 (OECA 2018 Memorandum). This memorandum can be found at <https://www.epa.gov/enforcement/amendments-epas-civil-penalty-policies-account-inflation-effective-january-15-2018-and>.

⁴ The January 11, 2018 memorandum effectively superseded the September 6, 2016 memorandum, "Revised Penalty Matrix for CERCLA § 106(b)(1) Civil Penalty Policy," signed by Kenneth Patterson.

regarding CERCLA § 106(b)(1) penalties, please contact Mike Northridge or Doug Dixon in OSRE (202-564-4232; dixon.douglas@epa.gov).

Attachment

cc: Cyndy Mackey, Director, OSRE, OECA
David Smith-Watts, OCE, OECA
James Woolford, Director, OSRTI, OLEM

Attachment

For violations that occur after November 2, 2015, the table below 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](#) (September 1997).”

For violations that occurred on or before November 2, 2015, and a penalty has not yet been assessed, refer to the 2009 Revised Penalty Matrix for CERCLA § 106(b)(1) Civil Penalty Policy, available on the Agency’s website at <https://www.epa.gov/enforcement/guidance-penalty-matrix-cercla-section-106b1-civil-penalty-policy>.

In cases where a violation began before November 2, 2015 and continued after that date, use both matrices, as appropriate.⁵

2019 Revised Penalty Matrix for CERCLA § 106(b)(1)

Recalcitrance				
Harm		Recalcitrance I	Recalcitrance II	Recalcitrance III
	Harm A	\$36,683 to \$57,317	\$18,341 to \$36,683	\$5,732 to \$18,341
	Harm B	\$18,341 to \$36,683	\$5,732 to \$18,341	\$1,146 to \$5,732
	Harm C	\$5,732 to \$18,341	\$1,146 to \$5,732	\$229 to \$1,146

⁵ For additional details regarding how to address violations spanning dates of different penalty adjustment policies, see the discussion on pages 5-6 of the [2018 OECA Memorandum](#).