



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 RCRA § 7003 Civil Penalty Policy

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

**TO:** RCRA Enforcement Managers, Regions I-X

This memorandum transmits the most recently updated matrix for the Resource Conservation and Recovery Act (RCRA) § 7003 Civil Penalty Policy as found in the “Guidance on the Use of Section 7003 of RCRA” (October 1997).<sup>1</sup>

**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).<sup>2</sup> 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 RCRA §7003(b) penalty from \$5,000 to \$5,500. The second, third, and fourth adjustments took effect in 2004 (increased to \$6,500), 2009 (increased to \$7,500), 2016 (increased to \$14,023), respectively. The 2015 Act required EPA to make the penalty inflation adjustments annually. Beginning in 2017, the fifth adjustment (to \$14,252) went into effect,

<sup>1</sup> This 1997 policy can be found at <https://www.epa.gov/enforcement/guidance-use-administrative-orders-under-rcra-section-7003>.

<sup>2</sup> 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>.

followed by the sixth adjustment (to \$14,543) took effect in 2018, and now the seventh adjustment (to \$14,910).

Under the 2019 Rule, the current maximum daily amount of the statutory civil penalty that a court can assess for a RCRA § 7003(a) order violation that occurred after November 2, 2015 is \$14,910.

### **Background on increases of the dollar amounts in policies on settlements of penalty claims**

Consistent with the increases of the maximum penalty amount, EPA has typically exercised 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.<sup>3</sup> This included increasing the dollar amounts in EPA's policy for settling RCRA § 7003(b) penalty claims.<sup>4</sup>

In updating the penalty matrix in the RCRA § 7003 guidance, the Office of Site Remediation Enforcement's (OSRE) adjustments begin with the 1997 policy's statutory maximum of \$5,500. OSRE calculates a multiplier by dividing the new statutory maximum penalty by the maximum amount used in the 1997 policy (\$5,500). OSRE has historically 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 RCRA § 7003 guidance**

For the latest penalty inflation increases, OSRE divided the new statutory maximum (\$14,910) by the 1997 policy's statutory maximum (\$5,500), yielding a multiplier of 2.7109, which was then applied to the dollar amounts in the 1997 matrix. The attached revised matrix presents the increased dollar amounts that case teams should use when negotiating settlements of penalty claims for violations that occurred 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 RCRA § 7003(b) penalty adjustments, please contact Mike Northridge in OSRE (202-564-4263; northridge.michael@epa.gov). For other questions regarding RCRA § 7003(b) penalties, please contact Mike Northridge or Peter Neves in OSRE (202-564-6072; neves.peter@epa.gov).

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<sup>3</sup> 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>.

<sup>4</sup> The January 11, 2018 memorandum effectively superseded the September 6, 2016 memorandum, "Revised Penalty Matrix for RCRA § 7003 Civil Penalty Policy," signed by Kenneth Patterson.

Attachment

cc: Cyndy Mackey, Director, OSRE, OECA  
David Smith-Watts, OCE, OECA  
Rosemarie Kelley, OCE, OECA  
Barnes Johnson, ORCR, OLEM

## Attachment

For violations that occur after November 2, 2015, the table below replaces the table found on page 43 of the 1997 “[Guidance on the Use of Section 7003 of RCRA](#).”

For violations that occurred on or before November 2, 2015 and a penalty has not yet been assessed, practitioners should refer to the 2009 Revised Penalty Matrix for RCRA § 7003, available on the Agency’s website at <https://www.epa.gov/enforcement/guidance-penalty-matrix-rcra-section-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.<sup>5</sup>

### 2019 Revised Penalty Matrix for RCRA § 7003

Extent of Deviation				
Potential For Harm		MAJOR	MODERATE	MINOR
	MAJOR	\$2,982 to \$14,910	\$2,236 to \$11,928	\$1,640 to \$8,946
	MODERATE	\$1,193 to \$6,560	\$745 to \$4,771	\$447 to \$2,982
	MINOR	\$298 to \$1,789	\$298 to \$895	\$298

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<sup>5</sup> 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](#).