



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

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

JAN 23 2020

**MEMORANDUM**

**SUBJECT:** 2020 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).<sup>1</sup>

**Background on increases of maximum amount of statutory penalty**

On January 13, 2020, the U.S. Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, "Civil Monetary Penalty Inflation Adjustment Rule" (85 Fed. Reg. 1751) ("2020 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 2020 Rule is 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).

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

<sup>2</sup> Headquarters transmitted this rulemaking to the Regions via the memorandum, "Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule," dated January 15, 2020 and signed by Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance, ("2020 OECA Memorandum") <https://www.epa.gov/enforcement/2020-penalty-inflation-rule-adjustments>.

This is the eighth 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 fourth adjustments took effect in 2004 (increased to \$32,500), 2009 (increased to \$37,500), and 2016 (increased to \$53,907), respectively. The 2015 Act required the 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, the seventh adjustment (to \$57,317), and now the eighth adjustment (to \$58,328).

Under the 2020 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 \$58,328.

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

Consistent with the increases of the maximum penalty amount, the 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) recently issued a memorandum 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 the EPA's policy for settling CERCLA § 106(b)(1) penalty claims.<sup>4</sup>

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 has 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 (\$58,328) by the 1997 policy's statutory maximum (\$27,500), yielding a multiplier of 2.12102, 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 2021 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 regarding CERCLA § 106(b)(1) penalties, please contact Mike Northridge or Doug Dixon in OSRE (202-564-4232; dixon.douglas@epa.gov).

---

<sup>3</sup> *Ibid.*

<sup>4</sup> The January 15, 2020 memorandum effectively superseded the April 11, 2019 memorandum, "2019 Revised Penalty Matrix for CERCLA § 106(b)(1) Civil Penalty Policy," signed by Kenneth Patterson.

Attachment

cc: Cyndy Mackey, Director, OSRE, OECA  
David Smith-Watts, Office of Civil Enforcement, OECA  
James Woolford, Director, Office of Superfund Response and Technology Innovation,  
Office of Land and Emergency Management (OLEM)

## 2020 Penalty Matrix for CERCLA § 106(b)(1)

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.<sup>5</sup>

Recalcitrance				
		Recalcitrance I	Recalcitrance II	Recalcitrance III
<b>Harm</b>	Harm A	\$37,330 to \$58,328	\$18,665 to \$37,330	\$5,833 to \$18,665
	Harm B	\$18,665 to \$37,330	\$5,833 to \$18,665	\$1,167 to \$5,833
	Harm C	\$5,833 to \$18,665	\$1,167 to \$5,833	\$233 to \$1,167

---

<sup>5</sup> For additional details regarding how to address violations spanning dates of different penalty adjustment policies, see the discussion on page 6 of the 2020 OECA Memorandum.