

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**AIR QUALITY BUREAU**

**CIVIL PENALTY POLICY**

**REVISION DATE 10-20-2005**

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## **I. INTRODUCTION**

The Air Quality Control Act Section 74-2-12.A, authorizes the Secretary of Environment to assess a civil penalty for violation of the Air Quality Control Act (AQCA) or Air Quality Control Regulations (AQCR). The Civil Penalty Policy provides guidance to the Air Quality Bureau (AQB) in determining the amount of a civil penalty. The Policy is consistent with the EPA Clean Air Act Stationary Source Civil Penalty Policy and other guidance in the EPA Clean Air Act Enforcement Compendium. The AQB may use any policy in the Enforcement Compendium in calculating a civil penalty under this Policy.

## **II. EFFECTIVE DATE**

The Policy is effective upon signature by the AQB Chief. The Policy is used to determine the civil penalty in enforcement actions (including the settlement of such actions), except in enforcement actions in which the AQB seeks the statutory maximum civil penalty. See Section VI.A.

## **III. OBJECTIVES**

A primary purpose of enforcement is to deter noncompliance. Deterrence of noncompliance is achieved by:

- (1) a credible likelihood of detection of noncompliance;
- (2) a timely enforcement response;
- (3) the likelihood and appropriateness of sanctions, including injunctions and civil penalties; and
- (4) a perception of these factors in the regulated community.

The Policy is intended to ensure the appropriateness of sanctions in light of this purpose.

The specific objectives of the Policy are:

- (1) to ensure the fair and consistent determination of civil penalties;
- (2) to impose civil penalties proportional to the gravity of the violation;
- (3) to recover the economic benefit of noncompliance with the AQCA and

AQCR;

- (4) to ensure a level playing field for economic competitors;
- (5) to provide a defensible basis for civil penalties in enforcement actions;

and

- (6) to provide a basis for the calculation of civil penalties by administrative and judicial tribunals.

#### **IV. PRINCIPLES FOR APPLICATION**

The AQB applies the Policy in accordance with the following principles:

- (1) The AQB uses the Policy to determine the civil penalty in enforcement actions, except when the AQB seeks the statutory maximum civil penalty;

- (2) The AQB uses the Policy to argue for the highest civil penalty justified by the facts, except when the AQB seeks the statutory maximum civil penalty;<sup>1</sup>

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<sup>1</sup> The AQB should make the most aggressive assumptions regarding noncompliance warranted by the facts. The AQB may revise these assumptions on the basis of facts discovered during the enforcement action.

(3) The AQB uses the Policy to recover the preliminary deterrent amount and the economic benefit of noncompliance; and

(4) The AQB does not adjust downward the civil penalty calculation except as authorized by the Policy.

## **V. DISCLAIMER**

The Policy guides the AQB in determining the amount of a civil penalty for violation of the AQCA and AQCR. The Policy does not create any right, duty, obligation, or defense in any person. The AQB may revise, amend, supplement, or revoke all or part of the Policy without public notice or comment.

## **VI. CALCULATION OF CIVIL PENALTIES**

### **A. OVERVIEW**

The Policy establishes a four-step process for determining the amount of a civil penalty:

- (1) determine the gravity-based penalty amount;
- (2) add the multiple day component;
- (3) adjust the sum of the gravity-based penalty amount and the multiple day component (preliminary deterrent amount) to account for case-specific factors; and
- (4) add the economic benefit of noncompliance.

The civil penalty shall not exceed the statutory maximum per violation per day (\$15,000) as specified by the AQCA Section 74-2-12.B. The statutory maximum may constitute the appropriate civil penalty for violations involving actual harm to human health or environment, willful violations, and other violations as determined in the sole discretion of the AQB.

### **B. MULTIPLE VIOLATIONS**

Some sources may violate more than one requirement or violate the same requirement more than one time. The AQB assesses a separate civil penalty for each violation that results from an independent act or failure to act, and for each violation that is distinguishable from another violation.

A violation results from an independent act or failure to act or is distinguishable from another violation when the violation requires at least one element of proof not

required to prove the other violation. For instance, the AQB assesses a separate civil penalty for each violation and add the amounts to determine the total civil penalty when:

- (1) the source violates a different requirement of the AQCA or AQCR;
- (2) the source violates the same requirement of the AQCA or AQCR on more than one occasion;
- (3) the owner or operator violates the same or different requirement of the AQCA or AQCR at different sources.

Notwithstanding the above discussion, the AQB may decline to assess separate civil penalties for the following types of related violations:

- (1) violation of a regulation and violation of a permit condition which repeats the regulation;
- (2) violation of more than one permit condition which imposes the same legal duty; and
- (3) violation of a NSPS, state regulation, and permit condition which impose the same legal duty.

Notwithstanding the above discussion, the AQB may decline to calculate a separate civil penalty when the violation of one requirement results in the violation of a second requirement. For example, the failure to perform a compliance test results in the failure to timely submit compliance test report. A related example involves the construction and operation of a source without submitting a NOI or obtaining a construction permit. In this example, the Department may assess a civil penalty for the failure to obtain a construction permit, but decline to assess a civil penalty for the failure to submit a NOI.

## **C. CALCULATION METHOD**

### **1. GRAVITY-BASED PENALTY AMOUNT**

The gravity-based penalty amount is the measure of the seriousness of a violation. The gravity-based penalty amount consists of two components:

- (1) the potential for harm; and
- (2) the extent of deviation from the AQCA or AQCR.

Appendices B and C contain more specific information for evaluating the gravity of a violation.

#### **a. POTENTIAL FOR HARM**

The AQCA and AQCR are intended to prevent harm to human health or environment. Some violations of the AQCA or AQCR create the potential for direct harm to human health or environment (e.g., the violation of emission limits or air quality standards). Other violations of the AQCA or AQCR create the potential for direct harm to human health or environment by jeopardizing the integrity of the regulatory program (e.g., monitoring, reporting, and recordkeeping). Finally, some violations of the AQCA or AQCR create the potential for both types of harm to human health or environment (e.g., failure to obtain a permit or conduct a compliance test).

The AQB evaluates the potential for harm to human health or environment by considering the following factors:

#### **1) Harm to Human Health or Environment**

The potential for harm to human health or environment depends on the probability and seriousness of exposure of a human or environmental receptor to a

pollutant. Actual harm is not required. A violator cannot always control whether the violation will result in actual harm. A violator who, by chance, does not cause actual harm should not be rewarded with a lower civil penalty.

**a) Probability of Exposure**

The civil penalty reflects that the violation caused or could have caused the release of a pollutant. A violation caused or could have caused the release of a pollutant when the integrity of a procedure, process, or facility is compromised. Evidence of an actual or potential release of a pollutant includes:

- (1) detection of a pollutant in environmental media ; or
- (2) inadequate provisions for the detection of a release of a pollutant (e.g., inadequate or improper maintenance of monitoring equipment, and incomplete or inaccurate records).

**b) Seriousness of Exposure**

The potential for harm to human health or environment reflects the seriousness of exposure to the pollutant. In determining the seriousness of exposure, the AQB considers the following factors:

- (1) the emission rate, amount, and toxicity of the pollutant;
- (2) the likelihood of transport by environmental media; and
- (3) the proximity and sensitivity of human or environmental receptors, such as human populations, domestic animals, fish, wildlife, crops, vegetation, Class I visibility areas, and PSD increment or nonattainment areas.

## 2) Harm to Regulatory Program

Every requirement of the AQCA and AQCR is fundamental to the integrity of the regulatory program. The violation of these requirements undermines the AQCA and AQCR, and may preclude the AQB from determining whether a violator is complying with other applicable requirements.

## 3) Classification of Potential for Harm

### a) Minimal

(1) the violation poses a relatively low potential for harm to human or environmental receptors; or

(2) the violation does not undermine or minimally undermines the regulatory program.

### b) Significant

(1) the violation poses a significant potential for harm to human or environmental receptors; or

(2) the violation significantly undermines the regulatory program.

### c) Severe

(1) the violation poses a substantial potential for harm to human or environmental receptors; or

(2) the violation substantially undermines the regulatory program.

## b. EXTENT OF DEVIATION

The extent of deviation considers the degree that a violation deviates from or renders inoperative a requirement of the AQCA or AQCR.

1) **Minor.** The violator deviates from the requirement, or the emission rate or other violation is no more than 25 percent greater than the emission limitation, permit condition, or other applicable requirement.

2) **Moderate.** The violator significantly deviates from the requirement, or the emission rate or other violation is between 25 and 100 percent greater than the emission limitation, permit condition, or other applicable requirement.

3) **Major.** The violator substantially violates the requirement, violates more than one element of the requirement, or the emission rate or other violation is more than 100 percent greater than the emission limitation, permit condition, or other applicable requirement.

## 2. **MULTIPLE DAY COMPONENT**

The multiple day component accounts for the duration of a violation. The duration of the violation is the number of continuous hours or days of violation minus one hour or day. The deduction of one hour or day accounts for the first hour or day of violation, which is assessed the gravity-based penalty amount. The AQB decides in its sole discretion whether a violation is continuous.

The AQB assesses a civil penalty for the number of hours or days of violation supported by credible evidence. The AQB may determine that a source continuously violated a requirement from the first provable hour or day of violation until the source demonstrates compliance through credible evidence. After establishing the number of hours or days of violation, the AQB determines whether the multiple day penalty is

mandatory, presumptive, or discretionary, and selects the appropriate multiplier from the multiple day penalty matrices.

a. **Mandatory.** A multiple day penalty is mandatory for days 2-60 for a violation with the following gravity-based classifications:

- (1) Severe-Major
- (2) Severe-Moderate
- (3) Significant-Major

b. **Presumptive.** A multiple day penalty is presumptive for days 2-60 for a violation with the following gravity-based classifications:

- (1) Severe-Minor
- (2) Significant-Moderate
- (3) Minimal-Major

A source may overcome the presumption by submitting admissible evidence demonstrating that the violation did not continue for days 2-60. Based on such demonstration, the AQB may abate the presumption by one or more days.

c. **Discretionary.** A multiple day penalty is discretionary for all days for a violation with the following gravity-based classifications:

- (1) Significant-Minor
- (2) Minimal-Moderate
- (3) Minimal-Minor

A multiple day penalty is discretionary for days 61+ for any violation.

### 3. ADJUSTMENT FACTORS

Adjustment factors allow the AQB to adjust the civil penalty to reflect legitimate differences between violations of the same requirement by different violators. The AQB applies the adjustment factors to the preliminary deterrent amount. The range for each adjustment factor is specified on the penalty calculation worksheet.

#### a. EFFORT TO COMPLY

Effort to Comply refers to the violator's response to the violation once detected or brought to its attention. The AQB may apply a downward adjustment for a violator's good faith effort to comply with the requirement or to mitigate or prevent harm from the violation. The AQB may apply an upward adjustment for a violator's delay or refusal to take such action. Such delay or refusal may constitute bad faith when the violator knew or should have known about the violation or when the violation poses a threat to human health or environment. For violations involving bad faith, the AQB may apply an upward adjustment larger than specified by the penalty calculation worksheet.

#### b. NEGLIGENCE/WILLFULNESS

Negligence/Willfulness refers to the violator's culpability for violation of the requirement. Negligence means an action that results from the failure to use such care as a reasonable and prudent person would use in similar circumstances. The AQB may apply an upward adjustment for a violation that is negligent or willful. The AQB determines the upward adjustment by evaluating the following factors:

- (1) the violator's degree of control over the event giving rise to the violation;
- (2) the foreseeability of the event giving rise to the violation;

(3) the reasonable precautions that the violator could have undertaken to prevent or mitigate the event giving rise to the violation;

(4) the violator's knowledge, or obligation to obtain knowledge, regarding the requirement;

(5) the violator's knowledge, or obligation to obtain knowledge, regarding the possibility of violating the requirement;

(6) the violator's level of sophistication; and

(7) the level of sophistication in the industry regarding compliance with the requirement.

Prior notice regarding the same or similar requirement, including a prior notice of violation, is evidence of knowledge regarding the requirement. Prior notice to the violator's parent company, sister company, subsidiary, or other person or entity with ownership interest, responsibility, or control may constitute prior notice to the violator. A violator who disputes an upward adjustment based on prior notice to its parent company, sister company, subsidiary, or other person or entity with ownership interest, responsibility, or control bears the burden to demonstrate the absence or immateriality of such relationship.

The violator's knowledge regarding the requirement may result in an upward adjustment, but the violator's lack of knowledge regarding the requirement does not excuse the violation because ignorance of the law is not a defense to liability. The AQB may refer for criminal prosecution any violation for which there is evidence of a willful violation or reckless disregard for human health or environment.

**c. HISTORY OF NONCOMPLIANCE**

History of Noncompliance refers to the violator's previous compliance with environmental laws during the preceding five (5) years. The AQB may apply an upward adjustment for a history of noncompliance. The AQB determines the upward adjustment by evaluating the following factors:

- (1) previous violation of the same or similar requirement;
- (2) previous violation of requirement of the air quality program;
- (3) previous violation of requirement of another environmental regulatory program;
- (4) the frequency, recency, and severity of the previous violation; and
- (5) the violator's response to the previous violation.

A prior violation demonstrates that the violator was not deterred by enforcement action. To avoid an upward adjustment, the violator must demonstrate, through admissible evidence, that the notice of violation was rescinded or the violation was beyond the control of the violator (e.g., lightning striking a baghouse).

A prior violation by the violator's parent company, sister company, subsidiary, or other person or entity with ownership interest, responsibility, or control may constitute a history of noncompliance. A violator who disputes an upward adjustment based on history of noncompliance of its parent company, sister company, subsidiary, or other person or entity with ownership interest, responsibility, or control bears the burden to demonstrate the absence or immateriality of such relationship.

d. **FINANCIAL CONDITION**

Financial Condition refers to a violator's ability to pay a civil penalty, taking into account its size and solvency. To be an effective deterrent, a civil penalty should be matched to the size of the violator, with larger violators being assessed a larger penalty. In essence, the civil penalty should be large enough to change the violator's perception of the risk attendant in violating the law. The AQB may consider the parent corporation's size when assessing a civil penalty to its subsidiary.

In cases where the civil penalty may force a violator out of business or preclude a violator from implementing a measure to achieve compliance or to prevent or mitigate harm to human health or environment, the AQB may consider installment payments, delayed payments (including delayed payments contingent on improved financial condition), and abatement.

However, the AQB must ensure that the regulated community does not perceive installment or delayed payments or abatement as methods for operating a financially troubled business. Accordingly, the AQB may seek a civil penalty that puts a violator out of business, including the following circumstances:

- (1) the violator refuses to correct a violation;
- (2) the violator has a significant history of noncompliance;
- (3) the violation is willful or created a serious threat to human health or environment; or
- (4) when warranted by the circumstances.

In some cases, it may be better to close down a violator meeting one or more of these circumstances rather than allowing it to continue to violate the law or harm public health or environment.

A violator claiming financial hardship bears the burden of demonstrating a lack of ability to pay the civil penalty or to implement a remedial measure to achieve compliance or to prevent or mitigate harm to human health or environment. Accordingly, the AQB will not consider such information until the settlement phase. The AQB may use the EPA ABEL model or any other method within its sole discretion to verify financial data information provided by a violator regarding its ability to pay a civil penalty.

e. **RELATED ENFORCEMENT POLICY**

The AQB may adjust a civil penalty in light of the following enforcement policy:

**Audit Policy**

The Department has adopted an audit policy for violations detected during voluntary environmental self-evaluations. Appendix D.

f. **UNIQUE FACTORS**

The AQB may consider other factors not specifically addressed by the Policy, such as wrongful profit and economic competitiveness.

4. **ECONOMIC BENEFIT OF NONCOMPLIANCE**

The AQB must obtain a civil penalty that recovers the economic benefit of noncompliance. The economic benefit of noncompliance includes delayed and avoided

costs. The AQB adds the economic benefit of noncompliance to the adjusted preliminary deterrent amount to determine the total civil penalty.

a. **DELAYED COST**

A delayed cost is an expenditure that the violator has deferred by violating the requirement. The economic benefit of a delayed cost is the interest on the dollar amount of the deferred expenditure for the length of time of the violation. For instance, a source that fails to install air pollution control equipment eventually will have to pay the cost of installation. By delaying the cost of installation, the source achieves an economic benefit equal to the interest on the deferred expenditure. Examples include: failure to install equipment to meet emission or technology standards; failure to change industrial processes to reduce emissions; failure to conduct compliance tests; failure to install monitoring equipment; and failure to submit permit applications.

b. **AVOIDED COST**

An avoided cost is an expenditure that the violator will never incur by violating the requirement. The economic benefit of an avoided cost is the expenditure that the violator would have incurred to comply with the requirement, plus the interest on the dollar amount of the deferred expenditure for the length of time of the violation. For instance, a source that fails to install (or installs and then disconnects) air pollution control equipment will never have to pay the cost of operating and maintaining the equipment, and will achieve an economic benefit equal to the interest on the deferred expenditure. Examples include: failure to employ a sufficient number of trained

employees; failure to conduct a compliance test; and failure to monitor, keep records, and report data.

**c. WRONGFUL PROFIT**

A wrongful profit is a profit (or additional profit) earned by violating the requirement. For instance, a violator may earn a profit by constructing or operating a source without a permit, violating an emission limitation, or failing to install air pollution control equipment.

The current method for calculating the economic benefit of noncompliance does not account for wrongful profit. However, the AQB may calculate and consider wrongful profit as a unique factor under Section VI.C.3.f.

**d. CALCULATION OF ECONOMIC BENEFIT**

The economic benefit of delayed and avoided costs should be calculated on the penalty calculation worksheet. The AQB may use the EPA BEN Model, as appropriate.

**e. EXEMPTION FROM CALCULATION OF ECONOMIC BENEFIT**

Some violations have no or minimal economic benefit to the violator. In the interest of simplifying and expediting enforcement, the AQB may decline to calculate the economic benefit of noncompliance for such violations.

## **VII. SETTLEMENT**

### **A. INTRODUCTION**

The Policy encourages settlement at any time during an enforcement action, provided the settlement is consistent with the objectives and requirements of the AQCA and CAA. The violator may request a settlement conference to provide information regarding liability for the violation or the amount of the civil penalty.

The AQB may adjust the civil penalty on the basis of such information. However, the AQB should ensure that the settlement penalty recovers the economic benefit of noncompliance and a significant portion of the preliminary deterrent amount. The violator and the regulated community must perceive that the civil penalty places the violator in a worse position than a person who complies with the requirement. A civil penalty lower than the economic benefit of noncompliance punishes a person who complies with the requirement by placing him at a competitive disadvantage. A civil penalty lower than the preliminary deterrent amount undermines the deterrent effect of the civil penalty.

The settlement process does not affect or delay the violator's obligation to comply fully and promptly with the requirement. In the event that the settlement conference affects or delays full and prompt compliance with the requirement, the AQB may apply an upward adjustment to the civil penalty.

## **B. SETTLEMENT PROCESS**

### **1. THE AQB ESTABLISHES A SETTLEMENT POSITION**

The AQB may establish a settlement position lower than the civil penalty calculated under the Policy. The AQB establishes a settlement position by evaluating the following factors:

- (1) the maximum civil penalty likely to be awarded by the administrative or judicial tribunal;
- (2) any information obtained by the AQB, including any new information provided by the violator; and
- (3) the risk of litigation:
  - (a) the legal basis for a violation;
  - (b) the violator's legal and equitable defenses;
  - (c) the availability, reliability, and admissibility of evidence of a violation;
  - (d) the availability and credibility of witnesses;
  - (e) the records and decisions in similar enforcement actions;
  - (f) the possibility of precedent from prosecution of the violation;
  - (g) the enforcement message to the regulated community;
  - (h) the effect on third parties of different resolutions of a violation;
  - (i) unusual expense, delay, or personnel commitment to prosecute the violation (see discussion below); and
  - (j) the public interest.

The AQB does not consider the following factors in determining the risk of litigation:

- (1) the desire or philosophy to avoid litigation or precedential issues;
- (2) existing environmental contamination;
- (3) delay in the AQB's enforcement action;
- (4) the AQB's past decision to forego enforcement or civil penalty for the

same or similar violation.

## **2. THE AQB RECALCULATES THE CIVIL PENALTY**

The AQB recalculates the civil penalty whenever it obtains new information affecting the basis for the civil penalty, including the following types of information:

- (1) the violation is more or less serious than previously believed;
- (2) additional violations or multiple days of violation have occurred;
- (3) the violator's remedial measures are inadequate or ineffective;
- (4) the violator's history of noncompliance is more extensive than previously believed;
- (5) the violator is more sophisticated than previously believed; or
- (6) the violation was willful.

## **3. THE AQB ESTABLISHES A NEW SETTLEMENT POSITION**

The AQB documents the recalculated civil penalty.

## VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

The AQB encourages the use of a supplemental environmental project (SEP) in lieu of a portion of a civil penalty, when such project achieves a significant protection or improvement for public health or environment.

### A. DEFINITIONS

1. SUPPLEMENTAL ENVIRONMENTAL PROJECT means an environmentally beneficial project which a violator voluntarily agrees to undertake in settlement of an enforcement action, but which is not otherwise legally required by law.
2. ENVIRONMENTALLY BENEFICIAL means to improve, protect, or reduce risk to public health or environment. A SEP must primarily benefit public health or environment.
3. IN SETTLEMENT OF AN ENFORCEMENT ACTION means the violator did not commence the project before the AQB commenced the enforcement action, and the AQB had an opportunity to determine the scope of the project before it commenced.
4. NOT OTHERWISE LEGALLY REQUIRED BY LAW means the project is not required by federal, state, or local law or regulation, except that a SEP may include a project which the violator may be legally obligated to perform two or more years in the future, unless early compliance provides a benefit to the violator; the project has not commenced; the project is not required as injunctive relief in the enforcement action; and the project is not required as part of an order or settlement in another enforcement action.

**B. SEP CRITERIA**

The AQB uses the following criteria to determine whether to accept a project in settlement of an enforcement action:

- (1) The project satisfies the SEP definition;
- (2) The project advances the objectives of the AQCA and CAA;
- (3) The project is consistent with the requirements of the AQCA and CAA;
- (4) The project is not an action that the AQB is required to perform by law;
- (5) The project does not directly or indirectly implement or expand an existing air program administered by the AQB;
- (6) The project falls within one or more SEP categories described below;
- (7) The project has an adequate nexus to the violation;<sup>2</sup>
- (8) The project achieves a significant environmental benefit;
- (9) The project is fully described (including a schedule of completion and evaluation) in a binding and enforceable settlement document signed by the violator;
- (10) The project does not involve the management or administration of the project or funds by the AQB; and
- (11) The AQB-calculated civil penalty exceeds \$25,000.

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<sup>2</sup> The determination of adequate nexus is within the sole discretion of the AQB. The AQB may approve a cross-media project when the violator cannot reduce emissions at the facility where the violation occurred. The AQB must ensure that a cross-media project satisfies the other SEP criteria in this Policy and other applicable environmental programs.

The AQB reserves the right to reject a project without regard to these criteria. Further, the AQB reserves the right to rely on a violator's past history of noncompliance to reject a project.

For Renewable Energy SEPs only, the criteria (except the criteria in subsections C(4), (5), and (10)) may be deemed satisfied or may be waived in the discretion of the AQB.

**C. SEP CATEGORIES**

**1. PUBLIC HEALTH**

A Public Health SEP provides diagnostic, preventative, or remedial action to a human population harmed or potentially harmed by the violation. A Public Health SEP is acceptable *only* if the primary beneficiary of the SEP is the human population harmed or potentially harmed by the violation. Examples include:

- (1) collection and analysis of epidemiological data;
- (2) medical examination of potentially affected persons;
- (3) collection and analysis of blood, fluid, or tissue samples; and
- (4) medical treatment and rehabilitation therapy.

**2. POLLUTION PREVENTION**

A Pollution Prevention SEP prevents the generation of pollution by reducing the amount or toxicity of an air pollutant during the production process. A Pollution Prevention SEP cannot transfer pollution to another medium. Examples include:

- (1) equipment modifications;
- (2) process modifications;

- (3) redesign or reformulation of products;
- (4) operation and maintenance;
- (5) inventory control; and
- (6) training.

### **3. POLLUTION REDUCTION**

A Pollution Reduction SEP reduces pollution by decreasing the amount or toxicity of an air pollutant already generated before emission (e.g., air pollution control equipment).

### **4. RENEWABLE ENERGY**

A Renewable Energy SEP is a project that utilizes applications, methodologies, technologies and/or practices that ultimately reduce the need for energy generated from conventional fuels or reduce or eliminate dependency upon traditional energy sources and consequently reduce emissions associated with conventional power production. Examples include, but are not limited to wind, solar, biomass and geothermal powered generation of electricity, ethanol-based ("E-85") fuels for vehicles and sustainable building engineering.

### **5. ENVIRONMENTAL RESTORATION**

An Environmental Restoration SEP enhances the condition of the ecosystem or geographic area adversely affected by the violation, provided the project exceeds the violator's existing obligation to restore the ecosystem or geographic area.

### **6. ENVIRONMENTAL COMPLIANCE PROMOTION**

An Environmental Compliance Promotion SEP provides training or technical support to other members of the regulated community regarding the same requirement of the violation to:

- (1) identify, achieve, and maintain compliance with the requirement;
- (2) avoid committing a violation of the requirement; or
- (3) reduce pollution beyond the requirement.

**7. ASSESSMENT/AUDIT**

**a. POLLUTION PREVENTION ASSESSMENT**

A Pollution Prevention Assessment is a systematic, internal review of a specific process or operation designed to identify and provide information about opportunities to reduce the emission of air pollutants. A Pollution Prevention Assessment must be conducted using a recognized, AQB-approved pollution prevention assessment or waste minimization procedure.

**b. SITE ASSESSMENT**

A Site Assessment is an investigation of the condition or threat to public health or environment at a site adversely affected by the violator, regardless whether the site is adversely affected by the violation. Examples include:

- (1) investigation of the nature, degree, and extent of contamination;
- (2) investigation of the emission of air pollutants in a geographic area;
- (3) ecological surveys;
- (4) natural resource damage assessments; and
- (5) risk assessments.

**c. ENVIRONMENTAL MANAGEMENT SYSTEM AUDIT**

An Environmental Management System Audit is an independent evaluation of a violator's environmental infrastructure:

- (1) formal and informal corporate environmental compliance policies, practices and procedures;
- (2) formal and informal corporate policies, practices, and procedures which affect environmental compliance;
- (3) educational and training programs for managers and employees;
- (4) equipment purchase, operation and maintenance, and inventory control programs;
- (5) policies, practices, and procedures regarding communication and coordination between production and environmental compliance personnel;
- (6) environmental compliance officer programs;
- (7) budgeting and planning systems for environmental compliance;
- (8) monitoring, record keeping, and reporting systems;
- (9) in-plant and community emergency plans;
- (10) other internal communication and control systems; and
- (11) systems for hazard identification and risk assessment.

**d. ENVIRONMENTAL COMPLIANCE AUDIT**

An Environmental Compliance Audit is an independent evaluation of a violator's compliance with all environmental requirements. The violator may receive credit only

for the cost of conducting the audit. The violator receives no credit for resolving any violation discovered during the audit.

**D. PENALTY MITIGATION**

**1. INTRODUCTION**

The AQB follows a three-step process to determine whether a violator is entitled to penalty mitigation for a SEP. First, the AQB calculates the net-present after-tax cost of the SEP (SEP Cost). Second, the AQB evaluates the benefits of the SEP (SEP Benefit) to determine the percentage of the SEP Cost to be applied against the preliminary deterrent amount. Third, the AQB applies the percentage against the preliminary deterrent amount and calculates the amount of the settlement penalty.

**2. CALCULATING THE SEP COST**

The AQB calculates the SEP Cost based on the following costs associated with the performance of a SEP:

- (1) capital costs (e.g., new equipment or modifications, air pollution control equipment, buildings);
- (2) one-time nondepreciable costs (e.g., removing contaminated materials, purchasing land, developing a compliance promotion seminar, purchasing audit software); and
- (3) annual operation and maintenance costs or savings for the number of years that such costs will be expended to perform the SEP (e.g., labor, power, water, chemicals, raw materials).

The AQB may use the EPA PROJECT model to calculate the SEP Cost. If the violator waives the right to claim a tax deduction for the SEP, the AQB adjusts the marginal tax rate in the PROJECT model. If the PROJECT model indicates a negative cost for the project, the AQB will not accept the project as a SEP.<sup>3</sup>

For Renewable Energy SEPs, the AQB uses the grant value or contract cost approved by the New Mexico Department of Energy, Minerals, and Natural Resources or the Strategic Environmental Project Pipeline (StEPP) Foundation.

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<sup>3</sup> A negative cost indicates a positive cash flow (e.g., profit) for the violator. A violator should implement a profitable project based on economic interest. While the AQB encourages violators to undertake an environmentally beneficial project, violators should not receive a bonus in the form of penalty mitigation for undertaking such projects to settle enforcement actions.

### 3. EVALUATING THE SEP BENEFIT

The AQB evaluates the SEP Benefit in light of:

(1) Benefits to Public Health or Environment. Whether the SEP results in a significant and quantifiable reduction in the emission of air pollutants or the risk to public health or environment, or in measurable progress in the protection or restoration of ecosystems.

(2) Innovativeness. Whether the SEP furthers the development and implementation of innovative processes, technologies, or methods which:

(a) reduce the production or emission of air pollutants;

(b) develop or evaluate new technology which may establish a new regulatory benchmark;

(c) protect or restore ecosystems; or

(d) promote compliance.

(3) Environmental Justice. Whether the SEP mitigates damage or reduces risk to minority or low income populations which may have been disproportionately exposed to the emission of air pollutants or other environmental risks.

(4) Multimedia Impacts. Whether the SEP reduces the emission or discharge of pollutants to more than one medium.

(5) Pollution Prevention. Whether the SEP develops and implements pollution prevention equipment, techniques, or practices. The mitigation percentage should not exceed eighty percent of the SEP Cost, except that the AQB may allow one hundred percent for Renewable Energy SEPs.

The AQB may reduce the mitigation percentage for any project if the AQB must allocate significant resources to monitor or review the implementation of the SEP. For governmental agencies, political subdivisions, or nonprofit organizations, the mitigation percentage may equal one hundred percent of the SEP Cost.

#### 4. CALCULATING THE SETTLEMENT PENALTY

In settlements involving a SEP, the AQB should collect a civil penalty that recovers:

- (1) the economic benefit of noncompliance; and
- (2) the greater of:
  - (a) 10 percent of the preliminary deterrent amount; or
  - (b) 25 percent of the gravity-based penalty amount.

For governmental agencies, political subdivisions, or nonprofit organizations, the AQB may collect, based on the circumstances and the proposed SEP, a civil penalty less than the economic benefit of noncompliance.

#### 5. STIPULATED PENALTIES FOR SEP FAILURE

The settlement document must contain a provision for stipulated penalties in the event of SEP failure. The AQB will determine, in its sole discretion, the type of provision required for settlement, including but not limited to flat rates, graduated schedules, and cash payments for partial or full SEP Costs.

**IX. FIELD CITATIONS**

RESERVED.

**X. RELEASE OF INFORMATION**

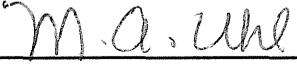
The Inspection of Public Records Act (IPRA), NMSA 1978 Section 14-2-1 *et seq.*, and the NMED Inspection of Public Records Policy govern the release of public records relating to civil penalties to any person. Public records relating to civil penalties include this Policy, Penalty Calculation Worksheets, and supporting documentation.

The AQB releases public records relating to civil penalties as follows:

- (1) The AQB provides, without charge, a copy of this Policy, upon oral or written request;
- (2) Except as exempted by the IPRA, the AQB releases, upon receipt of the fee authorized by the IPRA, public records relating to civil penalties upon written request;
- (3) In determining whether public records relating to civil penalties are exempted by the IPRA, the AQB consults with the Office of General Counsel;

- (4) As authorized by the IPRA, the AQB may withhold public records:
- (a) containing evidence received or compiled in connection with a criminal investigation or prosecution; or
  - (b) protected by the attorney-client<sup>4</sup>, attorney-work product<sup>5</sup>, or deliberative process<sup>6</sup> privileges; and

(5) The AQB may waive any exemption and release exempted public records if the public interest outweighs the harm to the AQB. Such discretionary waiver will be made on a case-by-case basis and does not affect the AQB's right to claim an exemption for other public records.

  
\_\_\_\_\_  
**MARY UHL, ACTING CHIEF**  
**AIR QUALITY BUREAU**

DATE: 10/27/05

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<sup>4</sup> The attorney work product privilege protects analyses, recommendations, or decisions regarding enforcement made in anticipation of litigation by or at the direction of an attorney. The AQB anticipates litigation when it consults the OGC regarding enforcement, regardless whether the AQB has initiated an enforcement action.

<sup>5</sup> The attorney-client privilege protects communications between attorney and client regarding enforcement, regardless whether the AQB has initiated an enforcement action.

<sup>6</sup> The deliberative process privilege encourages honest and frank discussions regarding enforcement by protecting public records prepared during the decision making process.

## APPENDIX A: SAMPLE PENALTY CALCULATION WORKSHEET

Company:	Sample Company	Calculations by:	Staff
Facility:	Sample Facility	Reviewed by:	Manager
NOV #:	SAM-0000-0501	Date of Calculation:	Sample Date
Permit #:	None	Source Class:	Minor

### Sample Penalty Calculation

20.2.72.200.A and 200.E NMAC, Construction Permits: Operating a 225 TPH portable rock crusher facility without a permit.

#### VIOLATION 1

##### A. Gravity Component

	Potential for Harm	Extent of Deviation	Quantity	Penalty
	Significant	Major	1	\$4,000.00
Basis:	The Potential for Harm is Significant and the Extent of Deviation is Major, as detailed in the Bureau's Civil Penalty Policy Sections C.1.a, C.1.b, and Appendix F.			
	(More specific details about the gravity component of the violation can be included here.)			

##### B. Multi-Day Component

	Number of Days	Multiplier	Quantity	Penalty
	60	220.00	1	\$13,200.00
Basis:	The violation continued between January 01, 2004 and January 10, 2005 for a total of 375 days. At the Bureau's discretion, 60 days were used for calculating the multi-day component of the penalty. (More specific details about the multi-day component of the violation can be included here.)			

##### C. Adjustment Factors

Basis:	I. Effort to Comply	Cooperation		0.0
	The Bureau has no information to aggravate or mitigate this adjustment factor.			
Basis:	II. Negligence/Willfulness	Negligent		0.2
	The company violated a clear condition of the New Mexico Administrative Code (NMAC) and/or Permit None. The Department considers such a violation to be negligent in that the company is reasonably presumed to have knowledge of these conditions.			
Basis:	III. History of Non-Compliance	No History of Non-Compliance		0.0
	No history of non-compliance within the most recent five (5) years.			
Basis:	IV. Financial Condition	Gross Sales Between \$1,000,000-\$5,000,000		0.2
	Most Recent Reference USA Report			
Basis:	V. Unique Adjustment			1.0
	N/A			

Factor Total = (1+ I+II+III+IV) \* V =                      1.4

##### D. Economic Benefit

		\$0.00
Basis:	The Bureau reserves the right to assess an economic benefit if one is found to exist.	

<b>Violation Total:</b>	<b>\$24,080.00</b>
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Company: Sample Company  
Facility: Sample Facility  
NOV #: SAM-0000-0501  
Permit #: None

Calculations by: Staff  
Reviewed by: Manager  
Date of Calculation: Sample Date  
Source Class: Minor

## Sample Penalty Calculation

### TOTAL CALCULATED PENALTY

<u>Violation 1</u>	20.2.72.200.A and 200.E NMAC, Construction Permits : Operating a 225 TPH portable rock crusher facility without a permit.
A. Gravity Component	\$4,000.00
B. Multi-Day Component	\$13,200.00
Adjustments (Gravity + Multiday) x Factors	\$24,080.00
C. Economic Benefit	\$0.00
<b>D. Total Penalty</b>	<b>\$24,080.00</b>

<b>Combined Total</b>	<b>\$24,080.00</b>
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**APPENDIX B: GRAVITY-BASED AND MULTIPLE DAY PENALTY MATRICES AND  
ADJUSTMENT FACTOR MATRIX**

Potential for Harm Vs. Extent of Deviation from Requirements

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENTS		
	MAJOR 100+% Greater than Emission Limitation, Permit Condition, or Other Applicable Requirement	MODERATE 25 – 100% Greater than Emission Limitation, Permit Condition, or Other Applicable Requirement	MINOR 0 – 25% Greater than Emission Limitation, Permit Condition, or Other Applicable Requirement
Severe	\$6,000	\$5,000	\$4,000
Significant	\$4,000	\$3,000	\$2,000
Minimal	\$2,000	\$1,500	\$1,000

MULTI-DAY PENALTY MATRIX  
Extent of Deviation from Requirements  
MAJOR SOURCE

POTENTIAL FOR HARM	MAJOR	MODERATE	MINOR
Severe	\$800	\$640	\$560
Significant	\$480	\$400	\$320
Minimal	\$240	\$160	\$100

MULTI-DAY PENALTY MATRIX  
Extent of Deviation from Requirements  
MINOR SOURCE

POTENTIAL FOR HARM	MAJOR	MODERATE	MINOR
Severe	\$320	\$280	\$240
Significant	\$220	\$200	\$180
Minimal	\$160	\$80	\$40

## ADJUSTMENT FACTOR MATRIX

### A. Effort to Comply (Range -0.4 to 0.4)

Self-Reported Violation	-0.4
Excellent Cooperation / Exceeds Compliance	-0.2
Cooperation	0.0
Minimal Cooperation / Minimal Compliance	0.2
No Cooperation / No Compliance	0.4

### B. Negligence / Willfulness (Range 0.0 to 0.6)

Not Negligent or Willful	0.0
Negligent	0.2
Very Negligent	0.4
Probably Willful	0.6

### C. History of Noncompliance (Range 0.0 to 0.6)

No history of noncompliance	0.0
History of noncompliance with different regulation(s)	0.2
History of noncompliance with same or similar regulation(s)	0.4
Substantial history of noncompliance with any regulation(s)	0.6

### D. Financial Condition (Range 0.0 to 0.6)

Gross Sales Less than \$500,000	0.0
Gross Sales between \$500,000 - \$1,000,000	0.1
Gross Sales between \$1,000,000 - \$5,000,000	0.2
Gross Sales between \$5,000,000 - \$10,000,000	0.3
Gross Sales between \$10,000,000 - \$50,000,000	0.4
Gross Sales between \$50,000,000 - \$100,000,000	0.5
Gross Sales More than \$100,000,000	0.6

TOTAL ADJUSTMENT = SUM OF ADJUSTMENT FACTORS + 1

**APPENDIX C: ASBESTOS GRAVITY COMPONENT TABLE**

VIOLATION	FIRST VIOLATION	SECOND VIOLATION	THIRD VIOLATION
FAILURE TO PERFORM THOROUGH INSPECTION	1000	2000	3000
FAILURE TO SUBMIT NOTICE	2025	4000	7000
SUBMITTAL OF NOTICE AFTER JOB START	2025	4000	7000
SUBMITTAL OF LATE NOTICE PRIOR TO SCHEDULED START DATE	800	800	800
FAILURE TO START ON SCHEDULED START DATE	800	800	800
FAILURE TO IDENTIFY JOB LOCATION IN NOTICE	750	750	750
FAILURE TO IDENTIFY START DATE IN NOTICE	750	750	750
SUBMITTAL OF INSUFFICIENT OR INCORRECT INFORMATION	750	750	750
FAILURE TO MAINTAIN TRAINING CERTIFICATE(S) AT JOB SITE	750	750	750
ABSENCE OF TRAINED PERSON AT JOB SITE	1000	1000	1000
FAILURE TO LABEL RACM CONTAINER	900	900	900
FAILURE TO MARK HAULAGE UNIT	750	750	750
FAILURE TO MAINTAIN RACM SHIPPING MANIFEST	750	750	750
FAILURE TO PROPERLY DISPOSE RACM	1000	1000	1000
SUBSTANTIVE VIOLATION -- FRIABLE ASBESTOS LESS THAN 10 ASBESTOS UNITS	900	1000	1100
SUBSTANTIVE VIOLATION -- FRIABLE ASBESTOS BETWEEN 10-50 ASBESTOS UNITS	1050	1150	1200
SUBSTANTIVE VIOLATION -- FRIABLE ASBESTOS GREATER THAN 50 ASBESTOS UNITS	2000	5000	8000
SUBSTANTIVE VIOLATION -- RACM LESS THAN 10 ASBESTOS UNITS	750	900	1050
SUBSTANTIVE VIOLATION -- RACM BETWEEN 10-50 ASBESTOS UNITS	900	1050	1100
SUBSTANTIVE VIOLATION -- RACM GREATER THAN 50 ASBESTOS UNITS	1050	1100	1100

## APPENDIX D: VOLUNTARY ENVIRONMENTAL SELF-EVALUATION POLICY

A. **PURPOSE.** This policy sets forth internal guidelines designed to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of state environmental laws. This policy restates the New Mexico Environment Department's (NMED) long-standing practice of not requesting voluntary self audit reports to trigger enforcement investigations. This policy amends, but does not supersede, NMED's penalty policies to assist NMED personnel in proposing appropriate penalties or negotiating settlements in administrative and judicial enforcement actions involving voluntary self-evaluation, disclosure, correction and prevention.

B. **APPLICABILITY.** This policy is applicable to all NMED programs that utilize a penalty policy to serve NMED personnel in proposing penalties and negotiating settlements in administrative and judicial enforcement actions, with the exception of the Occupational Health and Safety Bureau. This policy may be applied at NMED's discretion to the settlement of administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this policy. This policy is not a final agency action, and is intended as guidance. It does not create any rights, duties or obligations, or defenses, implied or otherwise, in any third parties.

### C. **DEFINITIONS.**

For purposes of this policy, the following definitions apply:

1. **Environmental audit** means a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

2. **Due diligence** means the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correct violations through all of the following:

a. Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits and other sources of authority for environmental requirements;

b. Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

c. Mechanisms for systematically assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to be effective to detect and correct violations, periodic evaluation of the

overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;

d. Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

e. Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, including consistent enforcement through appropriate disciplinary mechanisms; and

f. Procedures for the prompt and appropriate corrections of any violations, and any necessary modifications to the regulated entity's program to prevent future violations.

3. **Regulated entity** means any entity, including a federal, state, and municipal facility, regulated under state environmental laws.

4. **Violation** means noncompliance with a requirement of a statute, regulation or permit including a reportable discharge.

5. **Voluntary** means an act or action not required by statute, regulation, permit, order or agreement.

D. **CONDITIONS.** The conditions for reducing civil penalties and not making criminal referrals in accordance with Sections E and F of this policy are as follows:

1. **Systematic Discovery.** The violation was discovered through an environmental audit or a systematic procedure or practice that reflects the regulated entity's due diligence in preventing, detecting, and correcting violations;

2. **Voluntary Discovery.** The violation was identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement;

3. **Prompt Disclosure.** The regulated entity voluntarily and fully discloses a specific violation within ten (10) days (or such shorter period provided by law) after it has discovered that the violation has occurred, or may have occurred, in writing to NMED and all appropriate federal, state and local agencies, and prior to (a) the commencement of a federal, state or local agency inspection, investigation or information request; (b) notice of a citizen suit; (c) the filing of a complaint by a third party; or (d) the regulated entity's knowledge that the discovery of the violation by NMED or a third person or entity was imminent;

4. **Prompt Correction and Remediation.** The regulated entity corrects the violation

expeditiously and in no event later than within sixty (60) days, certifies in writing that violations have been corrected, and takes appropriate prompt measures as determined by NMED to remedy any environmental or human harm due to the violation. If more than sixty (60) days will be needed to correct the violation(s), the regulated entity must notify NMED in writing before the 60-day period has passed;

**5. Remediation of Imminent and Substantial Endangerment.** The regulated entity immediately remedies any condition that has created or may create an imminent and substantial endangerment to human health or the environment;

**6. Prevention of Recurrence.** The regulated entity implements appropriate measures to prevent a recurrence of the violation, which may include improvements to its environmental auditing or due diligence efforts. The implementation of measures should be completed within a reasonable amount of time given the nature of the violation and type of measure;

**7. No Repeat Violations.** The specific violation, by type not location, has not occurred previously within the past three years at the same facility or is not part of a series of federal, state or local violations by the facility's parent organization, which have occurred within the past five years. For purposes of this section, a "violation" includes:

(a) any violation of a federal, state or local environmental law identified in a civil or administrative order, consent agreement, stipulated final order, conviction or plea agreement, except for violations which are determined to be without basis by a court or administrative entity with competent jurisdiction; or

(b) any act or omission for which the regulated entity has previously received penalty mitigation from the EPA or NMED;

**8. Cooperation.** The regulated entity cooperates and provides such information as is reasonably necessary and required by NMED to determine the applicability of this policy. Cooperation includes, at a minimum, providing all requested documents and access to employees and assistance in any further investigations into the violation and other related compliance problems of the regulated entity;

**9. Written Agreement.** "Where appropriate, NMED may require that to satisfy any of these conditions, a regulated entity must enter into a written agreement, stipulated final order, administrative consent order or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required; and

**10. Excluded Violations.** The violation is not one which (i) resulted in serious actual harm, or may have presented an imminent and substantial endangerment to human health or the environment, or (ii) violates the specific terms of any judicial or

administrative order, or consent agreement.

**E. REDUCTION OF CIVIL PENALTIES.** Regulated entities will be eligible for the following reductions in civil penalties:

1. **Elimination of Gravity-Based Penalties.** If a regulated entity satisfies all of the conditions of Section D, NMED will eliminate the gravity component from the penalty policy.

2. **Reduction of Gravity-Based Penalties.** NMED may reduce by 75% of the gravity-based component of the penalty in cases in which all of the conditions in Section D 2 through 10 are met.

**F. NO CRIMINAL RECOMMENDATIONS.**

1. NMED may not recommend to the Attorney General or USEPA that criminal charges be brought against a regulated entity where NMED determines that Conditions I through 9 in Section D above for reduction of civil penalties are met, and the violation does not demonstrate or involve:

a. a prevalent management philosophy or practice that concealed or condoned environmental violations; or

b. high-level officials' or managers' conscious involvement in or willful blindness to the violation.

2. This policy does not apply to criminal acts of individual officials, managers or employees.

3. Where NMED determines pursuant to this Section that criminal referral to the Attorney General or the United States Protection Agency is unwarranted, NMED may nonetheless proceed with civil enforcement in accordance with Section D of this policy or other applicable enforcement response and penalty policies.

**G. ECONOMIC BENEFIT.** NMED retains its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage through noncompliance.

**H. NO ROUTINE REQUESTS FOR AUDITS.**

1. NMED will not request a voluntary environmental audit report to trigger a civil or criminal investigation. For example, NMED will not request an audit in routine inspections. If NMED has independent reason to believe a violation has occurred, NMED may seek any information relevant to identifying violations or determining liability or extent of harm including any existing audits.

2. With respect to federal, state or municipal facilities, although governmental facility environmental audit reports may be accessible to the public under the federal Freedom of Information Act (FOIA) or the state Inspection of Public Records Act in certain circumstances, NMED will not utilize FOIA or the State Inspection of Public Records Act to request information from governmental agencies. NMED will apply this policy on requests for audit reports to federal, state and municipal facilities the same as it does for other regulated entities.

#### **I. PUBLIC PROCESS.**

NMED recognizes that achieving compliance also requires the cooperation of regulated entities subject to environmental requirements. This policy incorporates public comment received by NMED and may, at the Secretary's discretion, be reviewed three years from the effective date of the policy.

**APPENDIX E: RESERVED**

**APPENDIX F: GRAVITY COMPONENT TABLE**

**GRAVITY COMPONENT – EXAMPLES**

		<b>Table 1: PSD/HAP/MAJOR/NON-ATTAINMENT/SYNTHETIC MINOR SOURCES</b>		
		<b>EXTENT OF DEVIATION</b>		
		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
<b>POTENTIAL FOR HARM</b>	<b>SEVERE</b>	<ul style="list-style-type: none"> <li>▪ Construction/operation without a permit</li> <li>▪ Failure to submit application to modify permit</li> <li>▪ Failure to install/maintain control equipment</li> <li>▪ Failure to comply with operational limit(s): Hours of operation/production rate</li> <li>▪ Failure to conduct compliance test(s)</li> <li>▪ Hazardous Air Pollutants (HAPs): Any violation of emission limitation(s)</li> <li>▪ Failure to submit Annual Title V Compliance Certification: 1 day/report missed</li> <li>▪ Criteria Pollutants: 2X or more emission limitation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Failure to correctly conduct a compliance test(s)</li> <li>▪ Failure to provide safe sampling platform</li> <li>▪ Failure to submit excess emission report(s)</li> <li>▪ Criteria Pollutants: 1.5-2X emission limitation</li> <li>▪ Failure to submit emissions inventory</li> </ul>	<ul style="list-style-type: none"> <li>▪ Criteria Pollutants: 1-1.5X emission limitation</li> </ul>
	<b>SIGNIFICANT</b>	<ul style="list-style-type: none"> <li>▪ New Source Performance Standard (NSPS) violation(s)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Failure to control fugitive emissions</li> <li>▪ Relocation without a permit</li> <li>▪ Failure to submit semi-annual and/or quarterly report(s): 1 day/report missed</li> <li>▪ Failure to comply with monitoring, record-keeping, and reporting</li> </ul>	
	<b>MINIMAL</b>		<ul style="list-style-type: none"> <li>▪ Failure to submit notification of substitution</li> </ul>	<ul style="list-style-type: none"> <li>▪ Failure to post permit</li> <li>▪ Late report(s): Less than 2 weeks, non-federal</li> </ul>

**Table 2: MINOR SOURCES**

**EXTENT OF DEVIATION**

**MAJOR**

**MODERATE**

**MINOR**

**SEVERE**

**SIGNIFICANT**

**INIMAL**

- Construction/operation without a permit
- Failure to submit application to modify permit
- Failure to install/maintain control equipment
- Failure to comply with operational limit(s):  
Hours of operation/production rate
- Failure to conduct compliance test(s)
- Any Pollutant: 2X or more emission limitation
- Failure to control fugitive emissions

- Failure to correctly conduct a compliance test(s)
- Failure to provide a safe sampling platform
- Failure to file excess emission report(s)
- Criteria Pollutants: 1.5-2X emission limitation
- Failure to install/certify/maintain monitoring equipment
- Failure to comply with monitoring, record-keeping, or reporting
- Requirement related to compliance with a standard or emission limitation
- Failure to supply required or requested information
- Failure to control fugitive emissions
- Relocation without a permit
- Failure to submit semi-annual and/or quarterly reports (1 day/report missed)

- Criteria Pollutants: 1-1.5X emission limitation

- Construction/operation without a Notice of Intent (NOI)

- Failure to submit notification of substitution

- Failure to post permit
- Late reports (less than 2 weeks, non-federal)