



## **VIOLATION PENALTY POLICY**

### **TABLE OF CONTENTS**

I.	Introduction .....	3
II.	Gravity Component .....	3
III.	Economic Benefit Component .....	9
IV.	Cost Recovery for Enforcement Efforts .....	10
V.	Mitigating Factors .....	11
VI.	Multiple Violations .....	12
VII.	Documentation of Calculations .....	12
VIII.	Settlement Discussions .....	12

**I. Introduction**

The primary goal of this policy is to deter future violations of air quality requirements. Deterrence will be achieved by recovering the economic benefit of noncompliance plus an additional deterrence amount beyond the economic benefit to reflect the seriousness of the violation. This policy shall be used for settlement purposes only. In the event that settlement is not possible and litigation is necessary to bring an alleged violator into compliance and collect penalties, this policy may no longer be used. In the event of litigation, the Department may seek the statutory maximum for all alleged violations, mitigated only by the considerations set forth in Arizona Revised Statute § 49-513.

Arizona Revised Statute § 49-513 provides authority for the County Attorney to file an action in Superior Court to recover penalties of up to \$10,000.00 per day per violation of air quality requirements set forth in Title 49 of Arizona Revised Statutes and Maricopa County Air Pollution Control Regulations. This policy was established to assure that penalties are developed in a consistent manner utilizing factors listed in Arizona Revised Statute § 49-513. In addition, this policy is consistent, where possible, with the EPA Clean Air Act Civil Penalty Policy.

Penalties are extremely important to the success of the Department’s air quality program. Environmental requirements in statutes, regulations, permits, and orders exist in order to prevent harm to the environment and public health. Department enforcement action is initiated to correct violations in a timely manner and to encourage continuous compliance in the future. Penalties are an essential component of the enforcement process. Penalties are imposed to take away the economic benefit and enticement to operate in violation of requirements by recouping any money a violator saved by operating out of compliance. Penalties also create an additional incentive to comply by adding a gravity-based penalty amount which makes noncompliance cost more than staying in compliance with requirements.

The penalty calculation system contained in this policy consists of the following elements: 1) determining a gravity component dependent on the severity of a violation which may be adjusted based on factors and circumstances unique to each particular case, 2) determining a violators economic benefit of noncompliance, 3) determining the Department’s enforcement action costs, and 4) consideration of mitigating factors.

$$\text{Total Penalty} = \text{Gravity Component} + \text{Economic Benefit Component} + \text{Cost Recovery} + \text{Mitigating Factors}$$

**II. Gravity Component**

The first step in calculating a penalty is to determine the gravity component. A gravity component is calculated by assessing both a potential for harm posed by the violation and a violator’s extent of deviation from legal requirements. These two factors measure the seriousness of a violation, and are incorporated in the penalty matrix from which an amount of gravity component is selected. This amount may then be adjusted to account for multi-day violations and for unique factors of each case.

$$\text{Gravity Component} = \text{Potential for Harm} + \text{Extent of Deviation} + \text{Multi-day Component} + \text{or - Adjustments}$$

**A. Potential for Harm**

Potential for harm relates to risk of human or environmental exposure to pollutants in the air, water, or soil that may be imposed by a violation; or the risk of harm to natural resources from

regulated activities; or the adverse effect a violation may have on statutory or regulatory purpose, intent, or objective.

Each and every requirement in enforceable statutes, regulations, permits, and orders was adopted or imposed in order to prevent, in some manner, harm to human health and the environment. Therefore, noncompliance with any requirement could result in a potential for environmental or human health impacts. It is not appropriate to refer to any violation as just a “paperwork” violation. Even violations of record keeping requirements create a risk of harm through a lack of information necessary to monitor and assure compliance with more substantive standards.

This section emphasizes a potential for harm rather than if harm actually occurred. Whether harm actually results from a violation is something over which a violator may have no control. A violator should not be rewarded with lower penalties simply because a violation failed to cause actual harm.

Instructions: On the calculation worksheet circle a score for each of the five factors contributing to “Potential for Harm”. Add the five scores together and enter total on line marked “Total Score”. This number will correspond to a degree of potential for harm (major, moderate, or minor) for a violation. Circle the appropriate degree on the worksheet.

1. Level of violation Quantity of the discharge, emission, or waste involved in that portion of an operation to which a violation applies.

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

2. Toxicity of pollutant Nature and characteristics of the discharge, emission, or waste involved in that portion of an operation to which a violation applies, including pollutant concentration, toxicity, and fire or explosion hazard from direct contact.

0	1	2	3	4
negligible toxicity	relatively low toxicity	medium toxicity	relatively high toxicity	extremely high toxicity

3. Risk to environment Actual harm and the character and degree of actual or potential injury to or interference with public trust in the County’s air quality program which is caused or can reasonably be expected to be caused by a violation.

0	1	2	3	4
negligible risk	relatively low risk	medium risk	relatively high risk	extremely high risk

4. Risk to population Actual harm and the character and degree of actual or potential injury to be caused by a violation; proximity to areas of population centers, schools, recreational areas, or other areas used by the public; and potential migration pathways from the violation site.

0	1	2	3	4
negligible risk	relatively low risk	medium risk	relatively high risk	extremely high risk

5. Size of the violator The size and sophistication of the violator including, but not limited to, physical size of the facility, number of employees, net worth, and existence of internal environmental compliance personnel.

0	1	2	3	4
negligible size	relatively small size	medium size	relatively large size	extremely large size

Total Score	Potential for Harm
14-20	Major
7-13	Moderate
0-6	Minor

**B. Extent of Deviation from the Requirement**

The extent of deviation is the degree to which the violator has deviated from the substance and intent of a requirement. A violator may be substantially in compliance or may have totally disregarded the requirement, or some point in between. The extent of deviation should be determined without regard to any hazards posed by the violation; factors regarding the potential impact on the environment or public health are evaluated when determining potential for harm. In determining the extent of deviation, consider the scope of the violation in the context of the violator’s operations as a whole in the subject area of the violation.

Instructions: On the calculation worksheet, circle the degree of “Extent of Deviation” from a requirement (major, moderate, minor) that most appropriately describes the violation.

1. Major - Failure to comply Complete or significant noncompliance, includes where a violator deviates from a requirement to such an extent that most (or most of the important aspects) of the components of the requirement are not met, or are met after serious delay; or a requirement is seriously exceeded (such as an emission limit or opacity standard).
2. Moderate - Incomplete or incorrect compliance Substantial noncompliance, where a violator deviates from a requirement but some of the important components of the requirement are implemented as intended; or requirements are met after significant delay; or a requirement is significantly exceeded (such as an emission limit or opacity standard).
3. Minor - Late compliance Minimal noncompliance, where a violator deviates somewhat from a requirement but most (or all important aspects) of the components of the requirement are met, or are met after minimal delay; or a requirement is minimally exceeded (such as an emission limit or opacity standard).

**C. Gravity Component Matrix**

Each of the above factors, potential for harm and extent of deviation from the requirement, form an axis in the gravity component matrix. The matrix has nine cells each containing a penalty range. A specific cell is determined by the degree chosen for potential for harm and degree chosen for extent of deviation.

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM	MAJOR	10,000-8,000	8,000-6,000	6,000-4,400
	MODERATE	4,400-3,200	3,200-2,000	2,000-1,200
	MINOR	1,200-600	600-200	200-0

It may be noted that potential for harm is weighted more heavily than extent of deviation in the penalty matrix. This is because potential for harm is directly related to protecting public health and the environment. Penalties therefore increase more rapidly as potential for harm increases.

Instructions: Within the “Penalty Matrix” section of the calculation worksheet, circle the cell indicated by the selected degrees for “Potential for Harm” and “Extent of Deviation”.

Within each cell exists a range of values for the gravity-based penalty component. Determine a specific value within selected cell based on the total score calculated for potential for harm and increase or decrease amount within a matrix cell accordingly. For example, if the total score for

potential for harm is 13 (Moderate Degree), select the highest value within the cell; or if the total score for potential for harm is 7 (still Moderate Degree), select the lowest value within the cell. For scores between 7 and 13 pro-rate values proportionately. This methodology for determining a gravity-based penalty amount will consistently reflect a violations degree of seriousness within a Major, Moderate, or Minor potential for harm rating.

Instructions: Using paragraph above as a guide, determine specific dollar amount from cell selected and enter amount on worksheet line marked "Dollar amount from within range".

#### D. Multi-day Violations

Multi-day component of gravity-based portion of a penalty applies to a violation which continued for more than one day. Arizona Revised Statutes provide penalties for each day that a violation continues. Determination of the duration of a violation is based on various types of evidence such as observations by a Department representative of a violation over a number of days, violator or violator's representative admitting a multi-day violation occurred, and information contained in records maintained by a violator.

A discount factor is applied to the gravity component for each violation day except the first day.

Day(s)	Discount
0-1	0%
2-15	15%
16-30	30%
>30	50%

Instructions: Under the "Multi-day violations" section of the calculation worksheet enter the number of days that a violation occurred in the "# of Days" column for each range specified. For example, a violation that continued for 10 days will have one (1) day in the first range, nine (9) days in the 2-15 range, and zero for the last 2 ranges. Next multiply the dollar amount from the "Penalty Matrix" by the "Rate" and "# of Days" for each range and enter the product in the "Subtotal" column for each of the 4 ranges. Total these products and enter it on the line marked "Total".

Penalty calculations are always prepared before a settlement is reached. Therefore, it is important that both the Department and the County Attorney are aware that the penalty calculation must be updated during negotiations to account for any continuation of the violation. The violator should be notified early in any settlement discussions that for any continuing violations the penalty amount will increase.

#### E. Adjustments

Any system for calculating penalties must have flexibility to allow adjustments for case-by-case differences in both the violators response and reaction to the violation. Adjustments are made only to the gravity component of a penalty. The adjustment factors can increase, decrease or have no effect on the penalty amount assessed. After all adjustment factors have been applied, the resulting penalty can not exceed the maximum penalty per day provided by statute. When adjusting a penalty, always keep in mind the purpose of assessing a penalty. Penalties are intended to eliminate economic incentives for noncompliance, insure immediate and continued compliance, and deter the violator and the regulated community as a whole from committing violations in the future. In order to do this, the penalty must be high enough that it clearly convinces the violator and the regulated community that violators will be in a significantly worse

position than those who comply with the law. The following factors are evaluated to determine appropriate adjustments.

1. Degree of Willfulness or Negligence A case that involves knowing, willful, or negligent behavior warrants a substantial increase in the penalty assessed. The degree of willfulness and/or negligence both prior to and after discovery of the of violation should be considered in determining the appropriate penalty. The following factors should be considered as well as any others deemed appropriate: (1) how much control the violator had over the events constituting the violation; (2) were the events constituting the violation foreseeable; (3) whether reasonable precautions were taken to prevent the events which caused the violation; and (4) whether the violator knew or should have known about the events which caused the violation. It may also be appropriate to consider whether the violator knew or should have known of the requirement or standard which was violated. This factor however should never be used as a basis to reduce the penalty because to do so would encourage ignorance of the law. While ignorance of the law is never a basis for downward adjustment, knowledge of the law is a basis for increasing a penalty.

Instructions: From the three statements that follow, choose the one that best fits the violator's degree of willfulness and/or negligence and circle the corresponding percentage adjustment on the calculation worksheet under "Degree of willfulness or negligence".

- a. The source knowingly violated an avoidable situation = + 25%.
- b. The source unknowingly violated an avoidable situation = + 10%.
- c. The source violated an unavoidable situation = 0%.

2. Degree of Cooperation and Good Faith In assessing a penalty consider whether a violator followed all feasible and reasonable procedures to comply or to correct the violation. The presence or absence of good faith may be used as a basis for either increasing or decreasing the penalty. No downward adjustment should be made if the efforts to comply primarily consist of coming into compliance, (unless such efforts are highly unusual in their speed or comprehensiveness); or because the violator lacks knowledge concerning either applicable requirements or the violations. Failure to take reasonable and prompt measures to come into compliance is cause for upward adjustment for lack of cooperation and good faith. The degree of cooperation and good faith or lack thereof is considered for the periods both before and after discovery of the violation.

a. Before Discovery

Instructions: From the three statements that follow choose the one that best fits the violator's degree of cooperation/good faith before discovery of the violation and circle its corresponding percentage adjustment on the calculation worksheet under "Degree of cooperation before discovery".

- (1) The source promptly reported its noncompliance when there was no legal obligation to report a problem = - 15%.
- (2) The source reported its noncompliance when there was no legal obligation to do so, but there was an unnecessary delay in reporting = - 5%.
- (3) Noncompliance was documented prior to any report from the source or the source had a legal obligation to report noncompliance = 0%.

b. After Discovery

Instructions: From the three statements that follow choose the one that best fits the violator's degree of cooperation/good faith after discovery of the violation and circle the corresponding

percentage adjustment on the calculation worksheet under “Degree of cooperation/good faith after discovery”.

- (1) The source makes extraordinary voluntary efforts to successfully achieve compliance after learning of a violation, (such efforts may include paying for extra work shifts, paying a premium on a contract to have control equipment installed sooner, or shutting down until compliance was achieved) = - 15%.
- (2) The source makes voluntary efforts to successfully come into compliance after learning of a violation, but these efforts are not extraordinary = - 5%.
- (3) The source makes voluntary efforts which fail to bring them into compliance = 0%.

3. History of Noncompliance Repeated violations (even if minor in themselves) or the failure of a violator to quickly correct violations will increase a penalty during the adjustment phase of penalty calculation. Consider any prior violations by the violator of statutes, regulations, orders, or permits. Every person has the obligation to comply with requirements and continuous compliance is expected, therefore, a penalty will not be decreased if the violator has no history of noncompliance.

In determining whether a violator has a history of noncompliance, consider the compliance history of the violator in all aspects of the air quality program. In addition, if a violator is a business which has undergone a merger, consolidation, transfer of assets, or other business change, the compliance history of the old business may be attributable to the new business.

Where an individual, corporation, or other entity owns several facilities in Maricopa County, all such facilities should be considered in determining whether a violator has a history of noncompliance. The compliance history of any parent or subsidiary corporation should also be considered. Take into account the extent and degree to which the facility in violation and these other facilities and entities are controlled by the same management team. If the extent of control is unknown, assume that there is an overlap of control until the violator satisfactorily demonstrates otherwise.

A violator may have a history of noncompliance even though no previous inspections were performed or no previous written notices of violations were issued. For many types of violations, records maintained by a violator will provide evidence that violations occurred previously.

The following factors are considered when increasing the penalty for a history of noncompliance: (1) the similarity of the violation in question to prior violations; (2) the time elapsed since the prior violation(s); (3) the number of prior violations; (4) and the violator’s response to the prior violation(s) with regard to correcting the previous problem and attempts to avoid future violations.

Instructions: For each of the following considerations choose the situation that best fits the violator and circle the corresponding percentage adjustment on the calculation worksheet under “History of noncompliance”. (For c., multiply the number of previous violations by 5% and enter the product on the line marked percentage.)

- a. Was one or more of the prior violations the same as or very similar to the current violation.
  - (1) Yes = +5%
  - (2) No = 0%
  
- b. The most recent prior violation was:
  - (1) within the last year = + 10%
  - (2) within the last 5 years = + 5%
  - (3) within the last 10 years = 0%
- c. The number of prior violations = + 5% for each violation.

4. Response to Violations The violator’s response to prior violations can best be described as:

- (1) The source immediately remedied the problem = 0%.
- (2) The source remedied the problem after a short delay = + 5%.
- (3) The source remedied the problem after a long delay or not at all = + 10%.

Instructions: Add all of the adjustment percentages together and enter the total on the line marked "Total adjustments". Complete the equation on the penalty calculation worksheet and enter the result on the line marked "Gravity Component".

### **III. Economic Benefit Component**

The economic benefit component should be calculated and included in the penalty whenever a violator has realized savings or profits in the form of delayed costs, avoided costs, or illegal profits by its failure to comply. The economic benefit should not be adjusted downward and therefore a penalty will never be less than the amount a violator saved and/or gained through noncompliance. This eliminates any economic incentive for noncompliance by assuring that a violator does not profit from violating the law. Furthermore, an economic benefit penalty is essential to prevent situations in which those who have complied with the law are at a competitive disadvantage.

$$\text{Economic Benefit} = \text{Delayed Costs} + \text{Avoided Costs} + \text{Illegal Profits}$$

#### **A. Delayed Costs**

Delayed costs are expenditures deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. The economic benefit for delayed costs consists of the amount of interest earned on money the violator reasonably could have saved or deferred during the period of noncompliance. The "rule of thumb" for calculating the economic benefit of delayed compliance is: 5% per year of the delayed one-time only capital cost for the period from the date the violation began until the date compliance was or is expected to be achieved. A more detailed analysis may be appropriate to defend or support the agency's position. EPA's BEN Model is an option available to determine a violator's economic savings from delaying and/or avoiding pollution control expenditures.

Instructions: Enter the dollar amount for all costs which were delayed by noncompliance on the calculation worksheet under "Delayed Costs". Multiply this number by .05 to determine the violator's economic benefit of delayed costs.

#### **B. Avoided Costs**

Avoided costs are expenditures nullified by the violator's failure to comply. These costs will never be incurred. By avoiding these expenditures permanently, the violator has accrued an economic benefit. The economic benefit equals the cost of complying with the requirement from the date the violation commenced until the date compliance was or is expected to be achieved less any tax savings.

Instructions: Enter the dollar amount for all costs which were avoided by the violator for noncompliance on the calculation worksheet on the line for "Avoided Costs".

#### **C. Illegal Profits**

Profits from illegal activities are also an economic benefit to the violator. The present value of these illegal profits should be added to the delayed and avoided costs to calculate the total

economic benefit. Care must be taken to insure that any calculation of profits from illegal activities does not include profits attributable to lawful operations at a facility.

Instructions: Enter the dollar amount for all illegal profits earned by the violator during the noncompliance period on the line for "Illegal Profits". Total the three types of economic benefits and enter amount on the line marked "Total Economic Benefit".

#### **IV. Cost Recovery for Enforcement Efforts**

Pursuit of an enforcement action involves the expenditure of varying amounts of staff time and frequently requires collection of special data or information. A penalty will be increased to include all special costs incurred that are unique to a particular enforcement action. These costs include: special sampling and analysis costs; research time for collecting other specialized information; and other costs associated with above average staff time for collecting evidence and pursuing settlement of the violation.

Instructions: Enter the total cost of enforcement efforts on the calculation worksheet on the line marked "Cost Recovery".

#### **V. Mitigating Factors**

##### **A. Ability to Pay**

This factor will be considered after commencement of settlement negotiations only if raised by a violator and only if the violator provides all necessary financial information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the violator. Disregard this factor if a violator fails to provide sufficient financial information.

When it is determined that a violator cannot afford the penalty prescribed by this policy, or that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which are more important than the deterrence effect of the penalty, the following options may be considered: 1) a delayed payment schedule; 2) an installment payment plan with interest; or 3) straight penalty reductions only as a last recourse.

Instructions: Please note the above conditions which must be met or considered before using this factor to mitigate the penalty. Enter the dollar amount on the calculation worksheet on the line for "Ability to Pay".

##### **B. Litigation Risks**

The penalty amount may also be mitigated in appropriate circumstances based on litigation risk. The following factors influence a decision to pursue a specific penalty in court or to agree to a lower penalty in settlement discussions. First, never demand more in civil penalties than the statutory maximum of \$10,000 per violation per day even though penalty policy calculations yield exceed this amount. Adverse legal precedent is also a valid litigation risk. Cases raising legal issues of first impression must be carefully selected in order to present the issue fairly in a factual context. Compelling public concerns or the message being sent to the regulated community and the public at large should also be considered. Additionally, the strength of the overall case including the evidence and the available witnesses, the strength of the violator's defenses, and any adverse indications from the court which would encourage a lower penalty must be considered.

Instructions: Enter the dollar amount by which to reduce the penalty for litigation risks on the calculation worksheet on the line for "Litigation risks". Add the amounts for "Ability to pay" and "Litigation risks" and enter the total on the line marked "Total Mitigating Factors".

To complete the calculation worksheet, carry down the totals for each of the four components, found in the shaded areas, and enter them on the corresponding lines within the final equation. Add together the "Gravity Component", the "Economic Benefit" and the "Cost Recovery" figures and subtract the "Mitigating Factors" figure. This is the penalty that should be sought in proceedings against the violator. Be sure that every choice on the calculation worksheet has been documented on the lines provided.

## ***VI. Multiple violations***

In certain situations, several violations may have been committed. Separate rule violations may be grouped for the purpose of applying this policy. A separate worksheet should be completed for each violation or group of violations. In general, each violation or group of violations should be considered as a separate violation for the purpose of calculating a penalty if they result from independent acts or compliance problems and are distinguishable from any other rule violation. The total penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated to be consistent with this policy.

## ***VII. Documentation of Calculations***

Complete an Air Quality Penalty Calculation Worksheet for each violation by carefully following the instructions located in each section of this policy. Provide a brief description next to each factor on the Air Quality Penalty Calculation Worksheet indicating how each factor of the penalty was developed.

This Penalty Policy is a public record which will not be kept confidential. However, any documentation which contains or supports a penalty calculation for a particular case will generally be held confidential. Therefore, Air Quality Penalty Calculation Worksheets are classified as confidential documents and will not be released unless the Department Director determines it is in the public's best interest to make the record available.

## ***VIII. Settlement Discussions***

When settlement negotiations commence, always mention to an alleged violator that the use of this guidance is limited to pre-trial settlement and is not meant to control a penalty amount requested when a case goes to trial. If discussions fail to produce an out of court settlement, prosecutors may find it relevant and helpful to introduce a penalty calculated under this policy as a point of reference during their demand for a court imposed penalty.

Issues that may be raised by an alleged violator include they believe that specific circumstances justify mitigation of the penalty, or they are not responsible for the violation and payment of a penalty. The burden of proof to justify any mitigation of a penalty is invariably an alleged violator's responsibility. Therefore, require a violator to provide detailed documentation which must support their claims. Any penalty relief resulting from the submittal of new information by a violator shall follow the guidelines in the adjustment factors section of this policy.

Procedures contained in this policy are intended solely for the guidance of Maricopa County Air Quality Department personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any person. The Department reserves the right to act at variance with this policy. Nothing in this policy is intended to preclude the Department from imposing a penalty using an alternative approach or requires the Department to impose a penalty for a violation. This policy may be changed at any time without public notice.

**AIR QUALITY VIOLATION PENALTY CALCULATION WORKSHEET**

Source Name/Permit # \_\_\_\_\_ NOV# \_\_\_\_\_ Description \_\_\_\_\_

**II. GRAVITY COMPONENT**

**A. POTENTIAL FOR HARM**

1. Level of Violation:

0	1	2	3	4
negligible	relatively low	medium	relatively high	extremely high
amount	amount	amount	amount	amount

2. Toxicity of Pollutant:

0	1	2	3	4
negligible	relatively low	medium	relatively high	extremely high
amount	amount	amount	amount	amount

3. Risk to Environment:

0	1	2	3	4
negligible	relatively low	medium	relatively high	extremely high
amount	amount	amount	amount	amount

4. Risk to Population:

0	1	2	3	4
negligible	relatively low	medium	relatively high	extremely high
amount	amount	amount	amount	amount

5. Size of the Violator:

0	1	2	3	4
negligible	relatively low	medium	relatively high	extremely high
amount	amount	amount	amount	amount

Total Score \_\_\_\_\_

14-20  
MAJOR

7-13  
MODERATE

0-6  
MINOR

**B. EXTENT OF DEVIATION**

MAJOR  
failure to  
comply

MODERATE  
incomplete or  
incorrect  
compliance

MINOR  
late  
compliance

**C. GRAVITY COMPONENT MATRIX**

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM	MAJOR	10,000-8,000	8,000-6,000	6,000-4,400
	MODERATE	4,400-3,200	3,200-2,000	2,000-1,200
	MINOR	1,200-600	600-200	200-0

Dollar Amount from within Range \_\_\_\_\_

Enforcement Officer \_\_\_\_\_

Date \_\_\_\_\_

**CONFIDENTIAL WHEN COMPLETED**

**D. MULTI-DAY VIOLATIONS**

DAY	DISCOUNT	RATE	# of DAYS	SUBTOTAL
0-1	0%	1.00		
2-15	15%	0.85		
16-30	30%	0.70		
>30	50%	0.50		

Total Amount \_\_\_\_\_

**E. ADJUSTMENTS**

1. Degree of Willfulness or Negligence:

+25% +10% +0%

2. Degree of Cooperation:

a. Before Discovery?

-15% -5% -0%

b. After Discovery?

-15% -5% -0%

3. History of Non-compliance:

a. Similar Violations?

+5% +0%

yes no

b. Most Recent Violation?

+10% +5% +0%

1 year 5 year 10 year

c. Number of Prior Violations?

+5% X = \_\_\_\_\_ %

d. Response to Prior Violations?

+0% +5% +10%  
 immediate short delay long delay

Total Adjustments %

X (1+ \_\_\_\_\_) = \_\_\_\_\_

Total Amount Total Adjustments Gravity Component

**III. ECONOMIC BENEFIT COMPONENT**

A. DELAYED COSTS:

\_\_\_\_\_ X 0.05 = \_\_\_\_\_

B. AVOIDED COSTS:

\_\_\_\_\_

C. ILLEGAL PROFITS:

\_\_\_\_\_ + \_\_\_\_\_

Total Economic Benefit \_\_\_\_\_

**IV. COST RECOVERY FOR ENFORCEMENT EFFORTS**

Total Cost Recovery \_\_\_\_\_

**V. MITIGATING FACTORS**

A. ABILITY TO PAY:

\_\_\_\_\_

B. LITIGATION RISKS:

+ \_\_\_\_\_

Total Mitigating Factors \_\_\_\_\_

\_\_\_\_\_ + \_\_\_\_\_ + \_\_\_\_\_ - \_\_\_\_\_ = \_\_\_\_\_  
 Gravity Component Economic Benefit Cost Recovery Mitigating Factors Total

## NOTES