

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Air Quality**

DOCUMENT NUMBER: 273-4130-003

TITLE: Guidance for the Application of Regional Civil Penalty Assessment Procedures

EFFECTIVE DATE: 2026 June 2, 2012

AUTHORITY: Act of January 8, 1960, P.L. (1959) 2119, No 787, ~~as amended~~, known as The Air Pollution Control ~~Act~~, (35 P.S. § 4001 et seq.) (APCA)

POLICY: Outlines the procedures to be followed for ~~assessing~~ civil penalties for various violations under Section 9.1 of the APCA.

PURPOSE: The purpose of this document is to provide uniformity for the assessment of ~~civil~~ penalties for various violations pursuant to Section 9.1 of the APCA.

APPLICABILITY: This guidance is applicable to DEP regional air quality program staff's assessment of a civil penalty for various violations by owners and operators of air contamination sources under Section 9.1 of the APCA. Staff/Regulated Public

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect statutory or regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give this document, which establishes the framework within which DEP will exercise its administrative discretion in the future, the rules in these policies that weight or deference. ~~This document establishes the framework within which DEP will exercise its administrative discretion in the future.~~ DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 2216~~14~~ pages

CIVIL PENALTY ASSESSMENT PROCEDURES

TABLE OF CONTENTS

	Page
I. Introduction	1
A. Assessment of Penalties under the Air Pollution Control Act	1
B. Relationship to Stipulated Penalties in Consent Orders	1
C. Relationship to Settlement Offers and Agreements	12
D. Effective Date	2
E. Inflation Adjustment	2
II. Violations of <u>Air Quality Regulations or Conditions of an</u> , Operating Permits <u>or</u> Plan Approvals, <u>or Orders</u>	2
A. Late, Absent, Inaccurate or Incomplete Reports/Notifications	34
B. Failure to Conduct Required Monitoring or Recordkeeping	4
C. Operating a Source in a Manner Inconsistent with Good Operating Practices	54
D. Late Permit Fees	45
E. Other	5
III. <u>Source Testing</u> Emission Violations	45
A. Penalty Derivation	65
B. Alternate Penalty Derivation for Hazardous Air Pollutants	76
IV. <u>Emission Violations</u>	58
IV. 12-Month Rolling Sum Emission Limit Violations	67
VI. Air Pollutant Release Violations	68
VII. Visible/Fugitive/Malodor Violations	78
VIII. Open Burning Violations	79
IX. Small Source NOX Violations	89
IX. <u>Installation/Operation Without Plan Approval/Operating Permit</u>	10
X. <u>Penalty Calculation Worksheet</u>	811
XI. <u>Installation/Operation w/o Plan Approval/Operating Permit</u>	11

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I. INTRODUCTION

A. Assessment of Penalties under the Air Pollution Control Act

Section 9.1(a) of the 1992 Amendments to the Pennsylvania Air Pollution Control Act (APCA or Act) authorizes the Department of Environmental Protection (Department or DEP) to assess civil penalties for violations of provisions of the Act, regulations adopted under the APCA or violations of any order, plan approval or permit issued pursuant to the Act (35 P.S. § 4009.1(a)). ~~The APCA provides for assessment of a penalty of \$25,000 per day for each violation.~~ Section 9.1(a) of the APCA ~~provides~~requires that:

~~In~~In determining the amount of the penalty, the Department shall consider ~~the~~:

- ~~willfulness~~ of the violation;
- damage to air, soil, water or other natural resources of the Commonwealth or their uses;
- financial benefit to the person in consequence of the violation;
- ~~deterrence~~ of future violations;
- cost to the ~~De~~partment;
- the size of the source or facility;
- the compliance history of the source;
- the severity and duration of the violation;
- degree of cooperation in resolving the violation;
- the speed with which compliance is ultimately achieved;
- whether the violation was voluntarily reported;
- other factors unique to the owners or operator of the source or facility; and
- other relevant factors.

35 P.S. § 4009.1

The procedures set forth in this Guidance for the Application of Regional Civil Penalty Assessment Procedures (Guidance) ~~document~~ are designed to assist regional staff in applying the Section 9.1(a) factors in assessing civil penalties. Each of the listed factors must be considered in ~~assessing a civil penalty. This document provides guidance for incorporation of those factors into~~ the assessment.

While the ~~G~~guidance is intended to promote consistency in the assessment of penalties, a particular case may involve unique factors that warrant a penalty different from that indicated by the ~~G~~guidance. The penalty calculated may never exceed the statutory maximum. ~~As of the effective date of this Guidance, the statutory maximum is of~~ \$25,000 per day for each violation.

This ~~Guidance policy~~ was originally published October 1992; and revised in May 1996, ~~and~~ September 2002 and June 2012.

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B. Relationship to Stipulated Penalties in Consent Orders

The procedures in this ~~policy~~ Guidance should not be used to calculate stipulated penalties for purposes of a Consent Order and Agreement or operating permit containing stipulated penalties. This ~~Guidance policy~~ addresses violations of the Act and regulations adopted thereunder and any other order, plan approval, or operating permit.

C. Relationship to Settlement Offers and Agreements

This ~~Guidance policy~~ is used to calculate the penalty that is or would be assessed unilaterally by the Department. If the Department and the violator are able to reach agreement on a penalty assessment, a lower figure may be appropriate to reflect the value of avoiding litigation. There is no policy dictating a particular relationship between the penalty indicated by this ~~Guidance policy~~ and a reasonable settlement value.

D. Effective Date

The 2026 version of the Guidance should be used to calculate all penalty assessments beginning [EFFECTIVE DATE OF REVISED GUIDANCE].

E. Inflation Adjustment

For penalty calculations occurring after [EFFECTIVE DATE OF REVISED GUIDANCE], use the 2026 Guidance to calculate an initial penalty assessment for each violation. Sum the assessments and multiply the total of the Part I penalty assessments for all violations by the current inflation adjustment multiplier. The inflation adjustment multiplier will be 1 through December 31, 2027.

Beginning January 1, 2028, and every 2 years thereafter, an inflation adjustment multiplier will be calculated by the Department based on the Consumer Price Index for All-Urban Consumers (CPI-U) to account for inflation from [EFFECTIVE DATE OF REVISED GUIDANCE].

The penalty adjustment factor is not applied to the economic benefit of noncompliance or the cost to the Department portions of the penalty because the calculations for those factors under Section 9.1(a) already take inflation into account.

Note: The penalty calculated may not exceed the statutory maximum per day for each violation under Section 9.1 of the APCA.

II. VIOLATIONS OF AIR QUALITY REGULATIONS, AN OPERATING PERMITS, OR PLAN APPROVALS, OR ORDERS

This section provides guidance for violations of air quality regulations-25 Pa. Code §§ 127.25- and 127.444 operating permits, plan approvals, or orders that are not addressed elsewhere in this ~~Guidance policy~~. This section may also be used in lieu of other sections of this ~~Guidance policy~~ for permit violations, but it should be used only in the event that the other applicable sections yield an assessment amount that is that appears obviously inappropriate based on the unique factors of a case.

This section is applicable to violations of state or federal requirements occurring at a site with an air contamination source that is not authorized by an air quality permit or plan approval. Examples include, but are not limited to: drycleaners, mobile equipment refinishing and repair (MERR) facilities, residential outdoor wood-fired boilers and gasoline dispensing facilities.

This section may also be used as a resource for evaluating penalties for violations involving sources ~~subject to in operation that were determined to be exemptions from a plan approval or operating permit~~ under the ~~Clean Air Act~~ federal CAA, Air Pollution Control Act/APCA and the regulations ~~(i.e., 25 Pa. Code § 127.14 (relating to exemptions))~~ adopted ~~thereunder under the Acts~~, in the event that no other section of this ~~Guidance policy~~ is applicable to those violations.

This section does not apply to construction, installation or modification of a source without a Plan Approval or Operating Permit, 25 Pa. Code §§ 127.11 and §127.443. Civil penalties for such unauthorized installation, modification and/or operation should be calculated in accordance with Section IX, Installation/Operation without Plan Approval/Operating Permit.

~~Sections 127.25 and 127.444 of Title 25 of the Pennsylvania Code require that the source and air cleaning devices must be “operated and maintained in accordance with specifications in the application and conditions in the plan approval or operating permit issued by the Department. No person may cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.”~~

The range of possible violations of air quality regulations, permits, and plan approvals ~~this provision~~ is virtually infinite, due to the large number of sources and source types, large number of and varieties of air cleaning devices and variety of permit conditions and source specifications. Accordingly, guidance for civil penalty assessment for these violations of 25 Pa. Code §§ 127.25 and 127.444 ~~will be~~ less quantifiable and ~~will require~~ the user to use exercise more judgment and discretion on a case-by-case basis.

~~For violations of 25 Pa. Code §§ 127.25 and 127.444, penalties should range from \$100140 to \$25,000 per day for each violation. The civil penalty should be calculated using the following process:~~

Penalty Derivation

Step 1: ~~The Use the following guidance in Sections A through D below should generally be followed~~ for the specific types of violations listed.:

Step 2: Calculate a penalty for each incident or case.

Step 3: Calculate the Adjustment (F) Factor and remainder of penalty for each incident or case using relevant sections of the Penalty Calculation Worksheet in Section X of this Guidance policy, omitting any factors already considered in setting the penalty within the range.

A. Late, Absent, Inaccurate or Incomplete Reports/Notifications

The table set forth below is a guide for assessing base penalties for violations involving reports and notifications. **Degree of Willfulness** and **Compliance History**, as defined in Section X., Penalty Calculation Worksheet, should be used as the primary criteria for setting the penalty in the ranges. These factors would then be excluded from consideration when calculating the Adjustment (F) Factor for Step 3 in the Section X., Penalty Calculation Worksheet.

VIOLATION TYPE	Severe/Moderate Environmental Impact	No/Low Environmental Impact
Failure to Report or Notify	The failure to report or notify impacted the Department's timely awareness of violations with moderate or severe environmental impact, and/or influenced the Department's decision to conduct an inspection or observation.*	Reports would have revealed violations with no or low environmental impact, and did not influence the Department's decision to conduct an inspection or observation.*
	\$11,2008,000 – 35,00025,000 /month/report**	\$1,4001,000 – 11,2008,000 /year/report***
Late Reports	The late report impacted the Department's timely awareness of violations with moderate or severe environmental impact.*	The late report revealed no violations, or violations with low environmental impact.*
	\$1,4001,000 – \$11,2008,000 /month/report**	\$1,4001,000 – \$11,2008,000 /year/report***
Incomplete or <u>Inaccurate</u> Report or Notifications	The incomplete or <u>inaccurate</u> report failed to reveal violations with moderate or severe environmental impact.*	No violations occurred during the time period of the incomplete or <u>inaccurate</u> report or the report failed to reveal violations with low environmental impact.*
	\$11,2008,000 – \$35,00025,000 /month/report**	\$1,4001,000 – \$11,2008,000 /year/report***

* If a facility owner or operator fails to submit a required report, despite documented reminders from DEP, it should be presumed that the un-submitted report would have revealed significant violations unless and until the report is actually submitted and shows otherwise.

** Or part of month if ~~the lateness was~~ <1 month late

*** Or part of year if ~~the lateness was~~ <1 year late

B. Failure to Conduct Required Monitoring or Recordkeeping

Recordkeeping/monitoring violations determined to be significant enough to warrant a penalty should be assessed a base penalty of ~~\$140100~~–~~\$1,4001,000~~ per recordkeeping/monitoring increment. The increment used should not be more frequent than daily. For instance, failure to conduct weekly pressure drop monitoring would have a weekly penalty increment.

Environmental Impact, Willfulness and Compliance History should be used as the primary criteria for setting the penalty in the range. ~~Omit (T) These factors would then be excluded~~ from consideration in the Penalty Calculation Worksheet provided in Section X of this ~~Guidance~~~~policy~~.

Failure to conduct required ~~source~~~~taek~~ testing should be viewed as a monitoring violation and may be assessed a weekly or daily penalty increment depending on purpose and environmental significance of the testing. The results of the next ~~source~~~~taek~~ test ~~actually~~ completed ~~successfully~~ may be relevant in assessing the likely environmental impact of late ~~source~~~~taek~~ testing.

C. **Operating a Source in a Manner Inconsistent with Good Operating Practices**

There are many possible varieties of this type of violation. The penalty time increment chosen ~~would normally may~~ be daily, unless some other time increment is appropriate. A penalty range of \$~~280200~~ ~~— 8,000 up to the statutory maximum~~ per penalty time increment (or per incident, as applicable), should ~~generally~~ be used.

Environmental Impact, Willfulness and Compliance History should be used as the primary criteria for setting the penalty in the range. These factors would then be excluded from consideration in the Penalty Calculation Worksheet ~~provided in Section X~~.

~~The user should assess penalties for other violations (not described above) of 25 Pa. Code §§ 127.25 and 127.444 considering all facts available and the criteria described above.~~

~~Step 2: Calculate a penalty for each incident or case.~~

~~Step 3: Calculate the Adjustment (F) Factor and remainder of penalty for each incident or case using relevant sections of the Penalty Calculation Worksheet in Section X of this policy.~~

D. **Late Permit Fees**

This includes but is not limited to: the annual maintenance fees for State Only and Title V operating permits; and annual administration fees for general permits.

For any permit fee that is received after the due date, a penalty should be assessed at 50% of the fee amount due plus interest for the **Duration of the Violation**. Calculate the interest on the fee due with US CODE: Title 26 6621. Determination of Rate of Interest

E. **Other**

The user should assess penalties for other violations (not described above) considering all facts available and the criteria described above.

~~Step 2: Calculate a penalty for each incident or case, as described above.~~

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Step 3: Calculate the **Adjustment (F) Factor** and remainder of penalty for each incident or case using relevant sections of the Penalty Calculation Worksheet in Section **XXI** of this policy.

III. **SOURCE TESTING****EMISSION** VIOLATIONS

A. Penalty Derivation

Step 1: Establish the **Duration of the Violation**~~time period of the violation.~~

For a failed source test:

Duration of the Violation~~(This reflects the duration of the violation.)~~

Time Period = Days of operation from the date of the failed source test to the date of the next compliant source test, or other appropriate compliance date (such as permanent source shutdown).

Step 2: Determine the **Environmental Impact**~~environmental impact~~ by calculating the actual excess emissions over the duration of the violation~~based on the source test results.~~

Actual Emissions – Allowable Emissions = Excess Emissions (Convert the Excess Emissions to pounds (lbs))

Example: If a control device is required to achieve 98% overall efficiency and ~~a the stack source~~ test reveals that it is only reaching 90%, calculate the excess emissions caused by the 8% reduction of overall efficiency from the date of the failed source test to the date of the next compliant source test.

Note: To determine excess VOC emissions (lbs over the limit) from GRAPHIC ARTS facilities (25 Pa. Code Section 129.67) use the following equations:

~~publication rotogravure~~ actual emissions* x 25%

~~other rotogravure~~ actual emissions x 35%

~~flexographic~~ actual emissions x 40%

~~*as determined from VOC content of ink and actual usage~~

Step 3: Determine base penalty by multiplying pounds (lbs) of excess emissions ~~over the limit~~ by the appropriate amount below:

Volatile Organic Compound (VOC) and Nitrogen Oxides (NOX)		
Attainment Classification	Ozone Season	Non-Ozone Season
Severe	\$3.75/lb	\$3.00/lb
Serious/Moderate	\$3.00/lb	\$2.25/lb
Marginal/Attainment	\$2.25/lb	\$1.50/lb

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PM 2.5 and Sulfur Oxides (SOX)	
Attainment Classification	
Non-attainment	\$3.75/lb
Attainment	\$2.25/lb

Hazardous Air Pollutants (HAPs) and Air Toxics
\$6.00/lb

All Other Pollutants
1.50/lb

Attainment Classification	VOC & NOx	PM/PM10/PM2.5 & SOx	HAP ¹	CO & All Other Pollutants
Ozone	-	-	-	-
Severe	\$5.25/lb	-	-	-
Serious/Moderate	\$4.20/lb	-	-	-
Marginal/Attainment/Unclassified/Maintenance	\$3.15/lb	-	-	-
Non-Attainment	-	\$5.25/lb	-	\$4.25/lb
Attainment/Unclassified/Maintenance	-	\$3.15/lb	-	\$2.10/lb
N/A	-	-	\$8.40/lb	-

Step 4: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of the Penalty Calculation Worksheet provided in Section X of this [Guidance policy](#).

B. Alternate Penalty Derivation for Hazardous Air Pollutants (HAP)

For sources with low HAP emission limits, the methodology in A may not be appropriate. In such cases, DEP regional staff may use this alternate penalty calculation.

Low HAP emission limits are generally either annual limits lower than 5 tons per year (tpy) or short-term emission limits such as parts per million (ppm); pounds per hour (lb/hr); microgram per dry standard cubic meter (ug/dscm) which are equivalent to 5 tpy or lower when expressed on an annual basis

Step 1: Establish the **Duration of the Violation**. List each appropriate time increment of the violation, the actual emission rate and the allowable emission rate.

¹ (HAP)-Hazardous air pollutants, also known as toxic air pollutants or air toxics, are known or suspected to cause cancer and other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. The term hazardous air pollutant is defined in Section 112(a) of the Clean Air Act (CAA), 42 U.S.C. § 7412(a).

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Step 2: Determine the **Environmental Impact** by calculating the percent the actual emission rate exceeds the allowable emission rate for each time increment of the violation using the following equation:

$$\% \text{ Over Standard} = \frac{(\text{Actual Emission Rate} - \text{Allowable Emission Rate})}{\text{Allowable Emission Rate}} \times 100$$

Step 3: Determine the base penalty by multiplying by the appropriate penalty number of time increments for the violation fell in each of the categories below by the penalty amount selected from the range for the category and summing the penalty amounts:

<u>% Over Standard</u>	<u>Penalty (\$/time increment)</u>
<u>< 20%</u>	<u>\$250 - \$1,250</u>
<u>20% to < 60%</u>	<u>\$750 - \$2,500</u>
<u>60% to < 100%</u>	<u>\$1,250 - \$5,000</u>
<u>> 100%</u>	<u>\$2,500 up to the statutory maximum</u>

Step 4: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of the Penalty Calculation Worksheet provided in Section X of this Guidance.

IV. EMISSION VIOLATIONS

Penalty Derivation

Step 1: Determine excess emissions using the equations below:

(Actual Emissions – Emission Limit = pounds (lbs) over the limit)

Note: To determine excess VOC emissions (lbs over the limit) from GRAPHIC ARTS facilities (Section 129.67) use the following equations:

publication rotogravure	actual emissions* x 25%
other rotogravure	actual emissions x 35%
flexographic	actual emissions X 40%

*as determined from VOC content of ink and actual usage

Step 2: Determine base penalty by multiplying lbs of emissions over the limit by the appropriate amount below:

VOC and NOx		
Attainment Classification	Ozone Season	Non-Ozone Season
Severe	\$3.75/lb	\$3.00/lb
Serious/Moderate	\$3.00/lb	\$2.25/lb
Marginal/Attainment	\$2.25/lb	\$1.50/lb

PM 2.5 and SOX	
Attainment Classification	
Non-attainment	\$3.75/lb
Attainment	\$2.25/lb

HAPs and Air Toxics
\$6.00/lb

All Other Pollutants
\$1.50/lb

Step 3: Calculate the Adjustment (F) Factor and remainder of the penalty using relevant sections of the Penalty Calculation Worksheet in Section X of this policy.

IV. 12-MONTH ROLLING SUM EMISSION LIMIT VIOLATIONS

Violations of a 12-month rolling total emission limit, such as that set by permit condition and/or the limits for a synthetic minor source, may not be suitable for settlement utilizing the penalty scheme set forth in Section III-V. (relating to Emission Violations).

Penalty Derivation

Step 1: Determine how many months exceeded the total number of exceedances of the 12-month rolling total emission limit.

Step 2: Determine which exceedance of month exceeded the 12-month rolling sum limit was to the greatest extent. Calculate the excess pounds over the allowable for that month.

Step 3: Calculate the Environmental Impact.

Use the criteria in Section III-V., Emission Violations, Step 2 to determine the Excess Emission Penalty. (This reflects environmental impact.)

Example: The greatest exceedance of the limit determined in Steps 1 and 2 was 5,000 lbs of a VOC in an Attainment area. Excess Emission Penalty = lbs of emissions over the limit * VOC Attainment penalty rate = 5,000 * \$3.15 = \$15,750

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Step 4: Calculate the Duration of the Violation. Add 1/12 (8.3%) of the base penalty for each month that exceeded the 12-month rolling sum emission limit. (This reflects the duration of the violation.)

Example: The facility exceeded the 12-month rolling sum VOC emission limit for 7 months. Duration of Violation = 1 + (7 months * 0.083) = 1.581 The facility exceeded the 12-month rolling sum CO emission limit for 7 months. The month with the highest exceedance was 2.5 tons over the limit. Base penalty = [5,000 pounds * penalty per pound] * [1 + (7 months * 0.083)].

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Step 5: Calculate the Base Penalty by multiplying the Excess Emission Penalty determined in Step 3 and the Duration of the Violation determined in Step 4.

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Example: Base Penalty = Excess Emission Penalty * Duration of Violation = \$15,750 * 1.581 = \$24,900.75

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Step 6: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of the Section X., Penalty Calculation Worksheet.

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Step 7: Calculate the total adjusted penalty by multiplying the Base Penalty determined in Step 5 and the Adjustment (F) Factor from Step 6.

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V. AIR POLLUTANT RELEASE VIOLATIONS

This section applies to an “accidental release,” an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source as that term is defined in Section 112(r)(2)(A) of the CAA, of air emissions and hazardous air pollutants (except for asbestos). Emissions that are released over a longer time period should be addressed under Section III., Emission Violations. Violations involving asbestos should be addressed using the asbestos penalty policy.

Penalty Derivation

Step 1: Categorize the **Environmental Impact** of the release using the definitions found in the Section X., Penalty Calculation Worksheet. In placing a release in the moderate or severe category, one should consider the toxicity of the pollutant(s), the amount released, and the duration of the release.

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Step 2: Once a release is categorized, a daily base penalty should be determined from the following:

Base Penalty:	Severe:	\$14,000 <u>10,000</u> -- statutory maximum <u>25,000</u>
	Moderate:	\$4,200 <u>3,000</u> -- <u>\$21,000</u> <u>15,000</u>
	Low:	\$1,400 <u>1,000</u> -- <u>\$7,000</u> <u>5,000</u>

Step 3: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of Section X., Penalty Calculation Worksheet. Omit step (A) because the Environmental Impact has already been considered.

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VI. VISIBLE/FUGITIVE/MALODOR VIOLATIONS

Penalty Derivation

Step 1: Determine **Environmental Impact** of the violation and **Degree of Willfulness** using the definitions found in the Section X., Penalty Calculation Worksheet.

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Step 2: Establish daily penalty range according to this Table:

Degree of Willfulness	ENVIRONMENTAL IMPACT		
	Severe	Moderate	Low

Intentional or Reckless	\$ 6,300 3,750+	\$ 4,200 2,250 – \$6,300 3,750	\$ 2,625 1,875 – \$4,200 2,250
Negligent	\$ 4,200 2,250 – \$6,300 3,750	\$ 2,625 1,875 – \$4,200 2,250	\$ 2,100 1,500 – \$2,625 1,875
Accidental	\$ 2,625 1,875 – \$4,200 2,250	\$ 2,100 1,500 – \$2,625 1,875	\$ 1,400 1,000 – \$2,100 1,500

Step 3: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of the Section X., Penalty Calculation Worksheet. (Omit steps (A) and (E) as they have already been considered).

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VIII. OPEN BURNING VIOLATIONS

Penalty Derivation

Step 1: Determine the **Environmental Impact** of the violation using the definitions found in the Section X., Penalty Calculation Worksheet. The severity determination of an open burning operation should also consider the materials being burned, the size of the fire, the location of the fire and the fire's potential to pollute and endanger life and property.

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Step 2: Establish the penalty range per occurrence. Select the appropriate daily penalty from within the prescribed penalty range on the basis of any factors relevant to the violation not evaluated elsewhere under this section, as listed in APCA Section 9.1(a) ~~of the Act~~.

NON-AIR BASIN OPEN BURNING				Air Basin – Add to Amount
History	Severe	Moderate	Low	
None	\$ 2,100 1,500 +	\$ 1,050 750 – \$2,100 1,500	\$ 350 250 – \$1,050 750	\$ 1,050 750
Second	\$ 4,200 3,000 +	\$ 1,050 750 – \$4,200 3,000	\$ 1,050 750	\$ 1,575 1,125
Third +	\$ 6,300 4,500 +	\$ 1,575 –1,125 – \$6,300 4,500	\$ 1,575 1,125	\$ 2,100 1,500

Step 3: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of the Section X., Penalty Calculation Worksheet. (Omit steps (A) and (D), as they have already been considered). When considering the savings or financial benefit from non-compliance, include the avoided cost of waste disposal of the burned portion of the material.

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IX. SMALL SOURCE NO_x VIOLATIONS

In accordance with APCA Section 9.1(a) ~~of the APCA~~, this procedure should be used to calculate a civil penalty whenever the owner or operator fails to surrender the required NO_x allowances, for sources subject to the provisions of 25 Pa. Code Sections 129.201-204, by December 31 of any year in which actual NO_x emissions exceeded the allowable.

Penalty Derivation

Step 1: Calculate a base penalty by multiplying 50% of the total amount paid for the allowances. (Note that this reflects **eEnvironmental iImpact**).

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Step 2: Calculate the interest on the total amount paid for the allowances in accordance with 26 U.S.C.A. Section 6621(a)(2). **US CODE: Title 26 6621. Determination of Rate of Interest** Add this to the base penalty. [This acknowledges the **Dduration** of the violation (i.e., how late the company was in retiring the allowances), and **Eeconomic bBenefit**].

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Step 3: Evaluate the **Ddegree of Ccooperation**. No adjustment should be made to the base penalty unless there is poor response from the owner or operator upon discovery of the violation by the Department. In this case, up to 30% should be added to the base penalty calculated in step 1 depending on the facts in the case.

Step 4: Calculate the **Adjustment (F) Factor** and remainder of the penalty using relevant sections of the Section X., Penalty Calculation Worksheet.

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IXI. INSTALLATION/OPERATION WITHOUT PLAN APPROVAL/OPERATING PERMIT

Applicability

This **section policy** is applicable to situations where a source or control device requiring a Plan Approval and/or Operating Permit is installed and/or operated without the required Plan Approval and/or Operating Permit.

General Approach

Using the penalty assessment procedures in Section IX: Definitions for Degrees of “Willfulness” Pertaining to Section IX and ENVIRONMENTAL IMPACT TABLE IX-A discussed below, determine the range of appropriate penalty from the Penalty Table **PENALTY TABLE IX-B**.

Penalty Assessment

Sources Installed without a Plan Approval:

Determine the **Ddegree of Wwillfulness** associated with the installation of the source or control device. Determine installation penalty range from the **PENALTY TABLE IX-B** ~~Penalty Table~~. A substantial penalty should be assessed when a significant source is installed in a non-attainment area, when that pollutant is emitted, or in a PSD situation.

Operation without a Plan Approval or Operating Permit:

Determine the **dDegree of wWillfulness** associated with the operation of the source. Determine the **Environmental Impact** related to the operation of the source. Determine the penalty range to coincide with the appropriate period of noncompliance. The degree of willfulness may change during the operation; i.e. operation may initially be **not willful** ~~unaware~~ or negligent and subsequently, after a NOV, be **intentional or reckless** ~~willful~~.

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Other considerations:

Consider the company's previous record, their degree of cooperation, and other assessments, to set the penalty within the range. Add any operating cost savings the company incurred by not having to operate a pollution control device when one should have been installed.

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**Definitions for
Degree of "Willfulness Pertaining to Section IX"**

Not Willful/Accidental: ——— Company had no prior knowledge of Chapter 127 requirements.

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Negligent: ——— Failure to recognize the need for a Plan Approval and/or Operating Permit coupled with failure to inquire. The company should have known about requirements due to previous Chapter 127 experience.

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Intentional or Reckless: Deliberate action with prior knowledge that the act constituted a violation of environmental statutes, regulation, etc., or a deliberate attempt to avoid or circumvent compliance with same, (i.e., action or continued action after receipt of NOV).

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<u>Accidental:</u>	<u>Company had no prior knowledge of Chapter 127 requirements.</u>
<u>Negligent:</u>	<u>Failure to recognize the need for a Plan Approval and/or Operating Permit coupled with failure to inquire. The company should have known about requirements due to previous Chapter 127 experience.</u>
<u>Intentional or Reckless:</u>	<u>Deliberate action with prior knowledge that the act constituted a violation of environmental statutes, regulation, etc., or a deliberate attempt to avoid or circumvent compliance with same, (i.e., action or continued action after receipt of NOV).</u>

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ENVIRONMENTAL IMPACT TABLE IX-A		
<u>Severe</u>	<u>Moderate</u>	<u>Low</u>
<u>Non-complying major stationary source</u>	<u>Exceeding of an emission standard</u>	<u>Operation resulting in emissions which would be in compliance for any source</u>
<u>Environmental damage or Property damage</u>	<u>Opacity violations</u>	
<u>Emissions of Air Toxic compounds in excess of guidance</u>	<u>Emissions of Air Toxic Compounds</u>	<u>Exceeding of an emission standard for source of low environmental significance</u>
<u>Failure to provide emission offsets</u>	<u>Citizen complaints due to source operation</u>	
<u>Contributing to exceeding an ambient air quality standard</u>	<u>Emissions not in compliance with BAT requirements</u>	<u>Non-compliance with BAT for source of low environmental significance</u>
<u>Source located in a designated non-attainment area and emitting a pollutant for which that area is non-attainment</u>		

PENALTY TABLE IX-B

<u>Degree of Willfulness</u>	<u>Environmental Impact</u>			<u>Installation Only</u>
	<u>Severe</u>	<u>Moderate</u>	<u>Low</u>	
<u>Intentional or Reckless</u>	\$5,250 – \$52,500 3,750 – 37,500 per week	\$5,250 – \$52,500 3,750 – 37,500 per month	\$5,250 – \$52,500 3,750 – 37,500 per year*	\$5,250 – \$75,000 3,750 – 75,000 **
<u>Negligent</u>	\$2,100 – \$10,500 750 – 7,500 per week	\$2,100 – \$10,500 750 – 7,500 per month	\$2,100 – \$10,500 750 – 7,500 per year*	\$2,100 – \$5,250 1,500 – 3,750
<u>Not Willful</u> <u>Accidental</u>	\$1,050 – \$4,200 750 – 3,000 per week	\$1,050 – \$4,200 750 – 3,000 per month	\$1,050 – \$4,200 750 – 3,000 per year	\$1,050 – \$2,100 750 – 1,500

If installation and operation violations occur, calculate a penalty for both and combine.

* Total if less than a year

** To assess the entire \$75,000, there must have been at least three (3) days of construction without Plan Approval.

XI. PENALTY CALCULATION WORKSHEET

Part I - Adjustment (F) Factor Calculation: Calculate the F Factor beginning with F = 1.0, as follows:

- (A) **Degree of Environmental Impact** (see definitions ~~in this section on page 15~~): low, moderate, severe (0, +0.1, +0.2). If more than one component of the severe category tests is present, the escalator may exceed +0.2.
- (B) **Degree of Cooperation:**
- Violator promptly notifies the Department: -0.1
 - Violator immediately corrects the violation: -0.1
 - Department discovers the violation: 0
 - ~~Inadequate~~ ~~Poor~~ response upon receipt of NOV from the DEP: +0.1
- (C) Remedial Action and/or Emission Control results in lower emissions than the applicable standard (-0.1, if well beyond Department requirements).
- (D) **Compliance History:** If relevant, consider air quality violations committed by the same owner/operator at other sites within Pennsylvania. Use the following factors to increase the penalty:
- Number ~~and status~~ of other violations
 - Frequency of the violation

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- These considerations are used only to raise a penalty. The total compliance history adjustment may reach +0.3.

(E) **Degree of “Willfulness”** (see definitions [in this section on page 15](#)):

- ~~Accidental~~**Not Willful**: -0.2
- Negligent: 0
- Intentional or Reckless: +0.3

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(F) **Attainment Classification** (if relevant)

- Attainment/~~Maintenance~~/**Unclassified**
- +0.1 Non-attainment or Transport Region
(For example: VOC, ~~NOX~~**NO_x**, PM_{2.5}, ~~SOX~~**SO_x**)
- +0.2 Severe Ozone Non-attainment

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(G) **Size of Facility**

- Small Business²: up to -0.1
- May be addressed in “other relevant factors”

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Environmental Impact		
SEVERE	MODERATE	LOW
Threat to public health or safety	Opacity violations	
Direct E environmental damage to air, soil, water or other natural resources	Exceeding of an emission standard	Exceeding an emission standard for a source of low environmental significance as indicated by factors below:
Property damage	Emission of hazardous air pollutants	Short duration
Contribute to exceeding of an ambient air quality standard	On-going violations Citizens' complaints	No hazardous air pollutants

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Definitions for Degree of “Willfulness”	
Accidental Not Willful :	A violation resulting from factors beyond the control of the responsible person or entity; a violation which occurred despite the responsible person or entity's exercise of due care, caution or diligence.
Negligent :	A violation resulting from ignorance of legal or regulatory requirements or from the failure to exercise due care, caution or diligence.

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² (1) is owned or operated by a person that employs one hundred (100) or fewer individuals; (2) is a small business as defined in the Small Business Act (Public Law 85-536, 15 U.S.C. § 78a et seq.); (3) is not a major stationary source; (4) does not emit fifty (50) tons per year of any regulated pollutant; and (5) emits less than seventy-five (75) tons per year of all regulated pollutants.

Intentional or Reckless:	A violation that was intentional or that was done with knowledge that the relevant conduct or omission was unlawful or that resulted from a reckless disregard of applicable regulatory or legal requirement or good operating practices.
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The term “hazardous air pollutant,” as defined in Section 112(a) of the 1990 Amendments of the Clean Air Act (CAA), means any air pollutant listed pursuant to subsection (b) of this section.

Part II - Savings or Financial Benefit from Non-Compliance: Such savings or benefits would include the value of delaying or avoiding expenditures for: fuel, power, control equipment, process modification, testing, etc. Add in the cost of borrowing money at 1.5% above the prime interest rate. The following EPA economic models can be consulted:

- **BENBEN** - Calculates a violator’s economic savings from delaying or avoiding pollution control expenditures.
- **Beyond BEN Benefit** - Previously known as illegal competitive advantage (ICA) refers to four categories of cases that go beyond the benefits derived from delaying or avoiding compliance costs. These four categories are:
 - Violator gains additional market share.
 - Violator sells products or services prohibited by law.
 - Violator initiates construction or operation prior to government approval.
 - Violator operated at higher capacity than it should have.

For more information on these models, refer to [Penalty and Financial Models | US EPA](#):

<https://www.epa.gov/enforcement/penalty-and-financial-models><http://www.epa.gov/compliance/civil/econmodels/index.html>

- http://www.indecon.com/icc_web/practice/models.asp

Part III - Cost to the Department: Extra monetary costs for the investigation and preparation of the case, such as source sampling costs, and laboratory costs, and DEP hourly rate + overhead/benefits, should be identified.

Part IV - Deterrent Penalty: If additional deterrent effect is justified by the circumstances of the case, an appropriate deterrent penalty should also be added to the adjusted penalty.

Consider whether the violation has the potential to have negative impacts to sensitive areas, including schools, hospitals, and Environmental Justice -Areas³.

Part V - Penalty Calculation: Use the following equation to determine the applicable penalties.

Adjusted Penalty = (Base Penalty x F x Inflation Factor) + Savings from Non-Compliance + Cost to the Department + Deterrent Penalty

³ See: DEP Technical Guidance Document, Environmental Justice Policy, Doc. ID No. 015-0501-002.

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Other Relevant Factors: Other factors unique to the owners or operator of the source or facility and other relevant factors, such as size of the facility, should also be considered on a case-by-case basis. "Size of facility" relates to financial ability of an entity to pay a penalty. You may consult with a variety of sources, such as Dunn & Bradstreet or the following EPA models:

- ~~ABEL~~~~ABEL~~ - Evaluates a corporation's or partnership's ability to afford compliance costs, cleanup costs or civil penalties.
- ~~INDIPAY~~~~INDIPAY~~ and ~~INDIPAY~~~~+~~ - Evaluates an individual's ability to afford compliance costs, cleanup costs or civil penalties.
- ~~MUNIPAY~~~~MUNIPAY~~ - Evaluates a municipality's or regional utility's ability to afford compliance costs, cleanup costs or civil penalties.

For more information on these models, refer to [Penalty and Financial Models | US EPA: https://www.epa.gov/enforcement/penalty-and-financial-models](https://www.epa.gov/enforcement/penalty-and-financial-models)

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<http://www.epa.gov/compliance/civil/econmodels/index.html>

- http://www.indecon.com/icc_web/practice/models.asp

~~XI. INSTALLATION/OPERATION WITHOUT PLAN APPROVAL/OPERATING PERMIT~~

~~Applicability~~

~~This policy is applicable to situations where a source or control device requiring a Plan Approval and/or Operating Permit is installed and/or operated without the required Plan Approval and/or Operating Permit.~~

~~General Approach~~

~~Using the penalty assessment procedures discussed below, determine the range of appropriate penalty from the Penalty Table.~~

~~Penalty Assessment~~

~~Sources Installed without a Plan Approval:~~

~~Determine the degree of willfulness associated with the installation of the source or control device. Determine installation penalty range from the Penalty Table. A substantial penalty should be assessed when a significant source is installed in a non-attainment area, when that pollutant is emitted, or in a PSD situation.~~

~~Operation without a Plan Approval or Operating Permit:~~

~~Determine the degree of willfulness associated with the operation of the source. Determine the Environmental Impact related to the operation of the source. Determine the penalty range to coincide with the appropriate period of noncompliance. The degree of willfulness may change during the operation; i.e. operation may initially be unaware or negligent and subsequently, after a NOV, be willful.~~

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Other considerations:

Consider the company's previous record, their degree of cooperation, and other assessments, to set the penalty within the range. Add any operating cost savings the company incurred by not having to operate a pollution control device when one should have been installed.

**Definitions for
Degree of "Willfulness"**

Accidental:	Company had no prior knowledge of Chapter 127 requirements.
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Intentional or Reckless:	Deliberate action with prior knowledge that the act constituted a violation of environmental statutes, regulation, etc., or a deliberate attempt to avoid or circumvent compliance with same, (i.e., action or continued action after receipt of NOV).

ENVIRONMENTAL IMPACT

Severe	Moderate	Low
Non-complying major stationary source	Exceeding of an emission standard	Operation resulting in emissions which would be in compliance for any source
Environmental damage or Property damage	Opacity violations	
Emissions of Air Toxic compounds in excess of guidance	Emissions of Air Toxic Compounds	Exceeding of an emission standard for source of low environmental significance
Failure to provide emission offsets	Citizen complaints due to source operation	
Contributing to exceeding an ambient air quality standard	Emissions not in compliance with BAT requirements	Non-compliance with BAT for source of low environmental significance
Source located in a designated non attainment area and emitting a pollutant for which that area is non attainment		

PENALTY TABLE

Degree of Willfulness	Environmental Impact			Installation Only
	Severe	Moderate	Low	
Intentional or Reckless	\$3,750 - 37,500 per week	\$3,750 - 37,500 per month	\$3,750 - 37,500 per year*	\$3,750 - 75,000**
Negligent	\$1,500 - 7,500 per week	\$1,500 - 7,500 per month	\$1,500 - 7,500 per year*	\$1,500 - 3,750
Accidental	\$750 - 3,000 per week	\$750 - 3,000 per month	\$750 - 3,000 per year	\$750 - 1,500

~~If installation and operation violations occur, calculate a penalty for both and combine.~~

~~* Total if less than a year~~

~~** To assess the entire \$75,000, there must have been at least three (3) days of construction without Plan Approval.~~

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