



## Contents

Page 1: November Newsletter Article (Author: K. Livengood)

Page 2: Overview: *Civil Penalty Increase Revision* (Author: S. Wood)

Page 3: July 27, 2016 US EPA Memorandum Summary Page (Author: EPA)

Pages 4-9 Inflation Adjustment Multipliers (Author: EPA)



---

## **EPA Doubles Monetary Penalties for Noncompliance**

### **A Brief Overview of the 2016 Civil Monetary Penalty Inflation Adjustment Rule<sup>1</sup>**

As of August 1st of this year, in order to improve their effect as a deterrent, the EPA has revised<sup>2</sup> over 66 statutory penalties to account for what the Agency refers to as a “catch-up adjustment” related to inflation.

These adjustments vary based on violation, but affected sources should plan on an across-the-board increase of over 200%. For example, daily maximums for violating required implementation plans or permits for major emitting facilities under the Clean Air Act have increased from \$37,500 to over \$93,000 per-day.

The costs associated with noncompliance have never been greater.

---

<sup>1</sup> US EPA Memorandum, July 27<sup>th</sup> 2016

<sup>2</sup> In accordance with the Federal Civil Penalties Inflation Adjustment Act



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

JUL 27 2016

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)

**FROM:** Cynthia Giles  
Assistant Administrator 

**TO:** Regional Administrators  
Deputy Regional Administrators

Attached is the 2016 Civil Monetary Penalty Inflation Adjustment Rule (2016 Rule), which was published on July 1, 2016, and is effective on August 1, 2016. 81 Fed. Reg. 43,091 (July 1, 2016). This memorandum amends our civil penalty policies to implement the 2016 Rule. Specifically, this memorandum:

- (1) supersedes previous inflation-based amendments to our penalty policies issued in 1997, 2004, and 2008, and partially supersedes our 2013 policy amendments;<sup>1</sup>
- (2) summarizes the Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act);<sup>2</sup>
- (3) describes how EPA is amending its civil penalty policies to increase penalties by the amount of inflation accrued since the effective date of the applicable penalty policy; and
- (4) provides guidance to case teams.

This memorandum does not modify EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies (such as the definition of what is an "insignificant" or "de minimis" economic benefit of noncompliance).

---

<sup>1</sup> As noted in Section I of this memorandum, EPA's 2013 guidance still applies to cases with violations occurring on or before November 2, 2015.

<sup>2</sup> 28 U.S.C. § 2461 note, Pub. L. 114-74 (*see* <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>).

**Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers**

Applicable Penalty Policy	Year Issued	Inflation Adjustment Multiplier as of August 1, 2016
<b>CWA</b>		
<a href="#"><u>Interim Clean Water Act Settlement Penalty Policy</u></a>	1995	1.54742
<a href="#"><u>Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act</u></a>	1998	1.45023 <sup>11</sup>
<a href="#"><u>CWA Section 404 Settlement Penalty Policy</u></a>	2001	1.33842
<a href="#"><u>Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements</u></a>	2008	1.09819
<b>SDWA</b>		
<a href="#"><u>UIC Program Judicial and Administrative Order Settlement Penalty Policy</u></a>	1993	1.63238
<a href="#"><u>New Public Water System Supervision Program Settlement Penalty Policy</u></a>	1994	1.59089
<b>CAA – Accidental Release Prevention/Risk Management Program</b>		
<a href="#"><u>Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68</u></a>	2012	1.02819
<b>CAA – Stationary Source</b>		
<a href="#"><u>Clean Air Act Stationary Source Civil Penalty Policy</u></a>	1991	1.73099

<sup>11</sup> Case teams should apply the 1990 CPI multiplier of 1.78156 to the per-barrel discharge penalty amounts in the last column of the penalty matrix on page 11. This is an appropriate multiplier because such civil penalties under CWA § 311(b)(7)(A) & (D) concern environmental exposure (*i.e.*, the discharge of oil and hazardous substances), and because this 1998 penalty policy based the per-barrel penalty matrix column on the statutory maximum penalty amounts in effect when this penalty authority was enacted in 1990. It is important for the penalty matrix to retain a maximum per-barrel penalty policy amount that equals the current statutory maximum and to increase the other penalty policy matrix cells proportionally by the same inflation adjustment multiplier.

<a href="#"><u>Appendix I – Penalty Policy for Violation of Permit Requirements</u></a>	1987	2.06278
<a href="#"><u>Appendix II - Vinyl Chloride Civil Penalty Policy</u></a>	1985	2.18802
<a href="#"><u>Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy</u></a>	1992	1.67728
<a href="#"><u>Appendix IV - Clean Air Act Penalty Policy as Applied to Stationary Sources of Volatile Organic Compounds (VOC) Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance</u></a>	1987	1.73099 <sup>12</sup>
<a href="#"><u>Appendix VI - Leak Detection and Repair Penalty Policy</u></a>	2012	1.02819
<a href="#"><u>Appendix VII – Penalty Policy for New Residential Wood Heaters</u></a>	1989	1.89361
<a href="#"><u>Appendix VIII - Clean Air Act Civil Penalty Policy Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone</u></a>	1990	1.78156
<a href="#"><u>Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners</u></a>	1993	1.63238
<a href="#"><u>Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant</u></a>	1994	1.59089
<a href="#"><u>Appendix XI - National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements</u></a>	2007	1.13833

<sup>12</sup> For violations governed by Appendix IV, EPA is using the same multiplier that applies to the 1991 “*Clean Air Act Stationary Source Civil Penalty Policy*” because the gravity-based component of such violations is calculated using the 1991 policy.

<a href="#">EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington. 40 C.F.R. Part 49</a>	2008	1.09819
<b>CAA – Mobile Source</b>		
<a href="#">Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements</a>	2009	1.10020
<a href="#">Clean Air Act Mobile Source Fuels Civil Penalty Policy Title II of the Clean Air Act --40 C.F.R. Part 80 Fuels Standards Requirements</a>	2016	1.00000
<a href="#">North American and U.S. Caribbean Sea Emissions Control Areas Penalty Policy for Violations by Ships of the Sulfur in Fuel Standard and Related Provisions</a>	2015	1.00000
<a href="#">Civil Penalty Policy for Administrative Hearings</a>	1993	1.63238
<b>RCRA</b>		
<a href="#">RCRA Civil Penalty Policy</a>	2003	1.48287 <sup>13</sup>
<a href="#">Guidance on the Use of Section 7003 of RCRA</a>	1997	2.54964 <sup>14</sup>

<sup>13</sup> EPA last modified the RCRA civil penalty policy amounts in a memorandum dated April 6, 2010, but did not revise the 2003 RCRA civil penalty policy. The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use (enforcement practitioners should no longer use the April 2010 memorandum in calculating penalties). But, applying the 2003 CPI inflation multiplier of 1.28561 to the \$27,500 maximum penalty amount in the 2003 policy would have yielded a penalty policy maximum amount of \$35,354, which is *lower* than the current penalty policy maximum amount of \$37,500. EPA believes it would be inappropriate to reduce RCRA penalty policy amounts, particularly given that the 2016 Rule increases RCRA statutory maximum amounts from \$37,500 to \$93,750 pursuant to the 2015 Act's inflation adjustment methodology. To avoid a reduction in the RCRA penalty policy amounts, we used the 2010 RCRA penalty policy amounts as a baseline and determined that using the 2010 CPI multiplier of 1.08745 would yield a maximum penalty policy amount of \$40,779. For purposes of this policy, this is an appropriate upward inflation adjustment from the \$37,500 amount because it reflects inflation since 2010 as measured by the CPI. In order to arrive at that penalty amount using the 2003 RCRA policy, we increased the RCRA penalty policy multiplier to 1.48287.

<sup>14</sup> For RCRA section 7003(b) penalties, EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$14,023.

<a href="#">Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements</a>	2010	Use the 2009 FIFRA ERP and multiplier
<a href="#">Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard</a>	1997	Use the 2009 FIFRA ERP and multiplier
<a href="#">Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations</a>	1991	Use the 2009 FIFRA ERP and multiplier
<a href="#">Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations</a>	2012	Use the 2009 FIFRA ERP and multiplier
<b>TSCA</b>		
<a href="#">Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act</a>	1980	1.50000 <sup>18</sup>
<a href="#">Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13</a>	1999	1.50000 <sup>19</sup>
<a href="#">Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions</a>	1993	1.50000
<a href="#">Enforcement Response Policy for TSCA §4 Test Rules</a>	1986	1.50000
<a href="#">Final TSCA GLP Enforcement Response Policy</a>	1985	1.50000

of those Appendices are assessed using the 2009 FIFRA ERP and, therefore, all should use the 2009 FIFRA ERP multiplier of 1.10020.

<sup>18</sup> We harmonized seven TSCA penalty policy multipliers because all such policies implement the TSCA § 16 penalty authority and the statutory penalty maximum amount for all penalties sought pursuant to TSCA § 16 was amended to be \$37,500 on June 22, 2016. P.L. No: 114-182. Since \$37,500 is 150% of the \$25,000 maximum penalty in the 1980 TSCA § 16 penalty assessment guidance, the harmonized multiplier is 1.50000.

<sup>19</sup> The “Penalty Matrix For Violations Occurring After January 30, 1997” on page 8 of this policy should be ignored. For all violations governed by this policy, the multiplier should be applied to the penalty amounts in the “Penalty Matrix For Violations Occurring On or Before January 30, 1997” found on the same page.

<b>TSCA – Asbestos</b>		
<a href="#">Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP</a>	1998	1.45023
<a href="#">Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act</a>	1989	1.89361
<a href="#">Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule</a>	1989	1.50000
<b>TSCA – Lead-Based Paint</b>		
<a href="#">Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education (PRE) Rule; Renovation, Repair and Painting (RRP) Rule; and Lead-Based Paint Activities (LBPA) Rule</a>	2010	1.00000 <sup>20</sup>
<a href="#">Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy</a>	2007	1.52482 <sup>21</sup>
<b>TSCA – PCBs</b>		
<a href="#">Polychlorinated Biphenyls (PCB) Penalty Policy</a>	1990	1.50000

<sup>20</sup> This 1.00000 multiplier applies only to the RRP and LBPA penalty amounts in this policy, and is adopted because the existing penalty matrices in this recently-issued policy are appropriately proportional and already provide sufficient deterrence.

<sup>21</sup> The 2010 “*Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*” and the 2007 “*Section 1018 – Disclosure Response and Penalty Policy*” both penalize violators who fail to provide certain information related to the presence or risk of lead-based paint. Instead of having differing penalty amounts for essentially the same type of deficiency, we have adopted the penalty matrix from the 2007 Section 1018 Disclosure Rule penalty policy in the Pre-Renovation Education Rule component of the 2010 Consolidated Lead-Based Paint penalty. Applying the 2007 CPI inflation multiplier of 1.13833 to the \$11,000 maximum penalty amount in the 2007 policy would have yielded a penalty policy maximum amount of \$12,522, which is *lower* than the current Section 1018 penalty policy maximum amount of \$16,000. EPA believes it would be inappropriate to reduce lead-based paint penalty policy amounts. To avoid a reduction in the lead-based paint penalty policy amounts and arrive at consistent penalty amounts in the two policies, we increased the penalty multiplier for the 2007 penalty policy to 1.52482 (which yields a maximum penalty policy amount equal to the \$16,773 statutory maximum).