DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF OIL AND GAS MANAGEMENT

DOCUMENT NUMBER: 550-4180-001

TITLE: Civil Penalty Assessments in the Oil and Gas Management Program

EFFECTIVE DATE: January 12, 2002

AUTHORITY: The Oil and Gas Act (P.L. 1140, No. 223) (58 P.S. Section 601.101 et seq.)
Coal and Gas Resource Coordination Act (P.L. 1069, No. 214) (58 P.S. Section 501.1 et seq.)
Oil and Gas Conservation Law (P.L. 825, No. 359) (58 P.S. Section 401.1 et seq.)
The Clean Streams Law (P.L. 1987, No. 394) (35 P.S. Section 691.1 et seq.)
Solid Waste Management Act (P.L. 380, No. 97) (35 P.S. Section 6018.101 et seq.)
Dam Safety and Encroachments Act (32 P. S. Section 693.1, et seq.)
The Administrative Code (P.L. 177, No. 175) (71 P.S. Section 510-1 et seq.)
25 Pa. Code Chapters 78, 79, 91, 92, 95, 102, 105, 106, 261a, 287, 288, 289, 291, 293, and 299

POLICY: In assessing civil penalties in unilateral penalty actions, and in calculating appropriate penalties in negotiated settlements, DEP's Oil and Gas Management Program will follow the policies stated and referenced herein when pursuing a settlement of complaints for violations or a penalty action.

PURPOSE: The purpose of this document is to provide procedural guidance to DEP's Oil and Gas Management staff in calculating civil penalty amounts to seek in settlements, or to assess in penalty actions for violations, and to provide advisory information to the regulated industry.

APPLICABILITY: The policies herein provide guidance to DEP personnel and the public concerning penalty assessments negotiated with or imposed by DEP's Oil and Gas Management Program.

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

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules 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: 11

LOCATION: Volume 11, Tab 10

Commonwealth of Pennsylvania
Department of Environmental Protection
Oil and Gas Management Program

Civil Penalty Assessments in the Oil and Gas Management Program

DEP Technical Guidance Document ID No. 550-4180-001

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Civil Penalty Assessments in the Oil and Gas Management Program

I. INTRODUCTION

Purpose

The policies in this document are intended to assist regional staff in applying reasonable interpretations of the various factors to be considered in assessing civil penalties. While the guidance promotes consistency in penalty assessment, a particular case may encompass unique factors that warrant a penalty assessment different from what would be arrived at by applying these guidelines. That is, these civil penalty assessment guidelines are a statement of policy, not regulation. Oil and Gas Management Program staff may deviate from this policy when circumstances warrant, acting with the Department's administrative discretion.

Statutory Authorities

Pennsylvania's Department of Environmental Protection administers many laws that authorize civil penalties for violations. The Oil and Gas Management Program would seek penalties mainly under the Oil and Gas Act (58 P.S. Section 601.506) and the Clean Streams Law (35 P.S. Section 691.605). Occasionally, the Program may assess a penalty under a law with similar provisions, such as the Solid Waste Management Act (35 P.S. Section 6018.605) or the Dam Safety and Encroachments Act (35 P.S. Section 693.21). Also, on occasion the Department may need to invoke the Oil and Gas Conservation Law (58 P.S. Section 401 et seq.) and the Coal and Gas Resource Coordination Act (58 P.S. Section 501 et seq.), or other environmental laws of the Commonwealth.

As directed by the laws cited above, when assessing a civil penalty, the Department must consider factors such as (but not limited to):

- Danger to public health and welfare.
- Damage to air, water, land or other natural resources of the Commonwealth.
- Willfulness or culpability of the violator.
- Costs incurred by the Commonwealth as a result of the violation.
- Savings resultant to the violator.

This policy considers danger to public health and safety, and damage to resources in the general category of impact of the violation. The good faith or cooperation of the offender in response to the violation and the violation history are also evaluated as relevant factors.

An assessed penalty may never exceed the statutory maximum.

Stipulated Penalties in Consent Orders

This procedure need not be used to calculate stipulated penalties for purposes of a Consent Order and Agreement, or an operating permit containing stipulated penalties. This policy addresses violations of law; stipulated penalties apply to violations of a consent order.

Consent Assessment of Civil Penalty (Settlement)

This policy is used to calculate a penalty to be assessed unilaterally by the Department. If after achieving compliance, the violator and the Department can agree in a Consent Assessment of Civil Penalty (settlement), a lesser amount may be appropriate. This settlement amount would reflect the value of avoiding litigation, but not at the cost of continuing environmental harm. While a consent assessment should result in a significant fraction of the amount calculated for a unilateral penalty assessment, each consent assessment will be considered on its particulars. The Oil and Gas Management Program has not established a specific policy on what is a usual fraction or percentage for a penalty in a consent assessment compared to the penalty calculated for a unilateral assessment.

II. PENALTY CALCULATION

Relationship of Factors

The base amount of a penalty calculation is assessed according to the impact of the offense, as determined by the resultant harm or risk of harm to people, property, and the environment. The willfulness or culpability of the offender is then evaluated to determine an additional penalty. The direct costs to the Commonwealth for investigation, response, and remediation, as well as any savings realized by the violator as a result of the penalized behavior, are added to arrive at a subtotal penalty amount. The violator's history is also considered, as a potential punitive additional amount, a percentage of the subtotal. The good faith and cooperation exhibited by the violator in clean-up, abatement, and restoration is rated as a mitigating factor. A favorable cooperation rating earns a percentage deduction from the previous subtotal resulting in the final penalty amount.

Penalty Formula

The full penalty calculation formula is:

Penalty Amount = Impact $ + Willfulness $ + Commonwealth's Costs
+ Violator's Savings + Viol History $ - Cooperation $.

Continuing Violations

Penalties for the duration of a continuing violation should apply only to discharges, damage, or conditions observed to be continuous over time; for example, a monitored effluent discharge from a wastewater treatment plant, or an unplugged abandoned well. Singular incidents or conditions that are not yet corrected, but not continually causing pollution or damage (e.g., erosion and sedimentation controls), should be considered single events, or possibly multiple events, but should not have a daily penalty assessed for continuing in violation.

Worksheet

A penalty assessment worksheet is shown as Appendix 1.

III. IMPACT OF VIOLATIONS

Base penalty amounts are determined by evaluating the impact of violations.

A. Violation of Oil and Gas Act that Endangered Health or Safety of Persons.

1. **Severe:** Base penalty = $5,000 to $25,000 if any of the following conditions occurred:

   - Physical injury, illness or death of a person.
   - Major damage to private or public property that reflects an endangerment of the safety of others.
   - Widespread evacuation or evacuation for a long period of time.
   - Loss of a source of a public water supply due to the explosive nature of gas contamination.

2. **Significant**: Base penalty = $1,000 to $5,000 if any of the following conditions occurred:

   - Minor physical injury of individuals.
   - Verifiable damage to public or private property that reflects an endangerment of the safety of others.
   - Short term evacuation or evacuation over a limited area.
   - Moderate, but significant public nuisance.
   - Interruption or diminution of a public or private water supply that is sufficient to discontinue use of the water supply due to the explosive nature of gas contamination.

3. **Moderate to low:** Base penalty = up to $1,000 if effects other than those above are produced.

B. Damage from Violations Affecting Waters of the Commonwealth
(Clean Streams Law)

The severity of violations impacting water quality, or with the potential for such impacts, is rated according to protected uses of the stream or water body as described in 25 Pa. Code Chapter 93.

1. **Special Protection** – Waters designated Exceptional Value or High Quality.

2. **High Use** - Public water supply sources and/or extensive use as private water supplies, game fisheries not identified as special protection, and waters of considerable recreational or economic value.

3. **Moderate Use** - Waters with significant use as private water supplies, non-game fisheries not identified as special protection waters, and waters of considerable recreational or economic value.

4. **Low Use** - No significant water supply use exists, no known recreational or economic use exists, or waters polluted by other sources.

Resource damage to waters of the Commonwealth is rated in one of five categories:

1. **Severe** - Extensive damage to the resource or extensive impairment of one or more water uses.

2. **Significant** - Considerable damage to the resource or considerable impairment of one or more water uses.

3. **Moderate** - Minor damage to the resource or impairment of one or more water uses to the extent that there is some inconvenience to water users.

4. **Low** - Minimal damage to the resource and minimal inconvenience to water users.

5. **Negligible** - Violations that did not result in any detectable damage or inconvenience, but are considered because of the preventative intent of the act.

From the water's designated use and the rating of resource damage, assess a penalty for the impact of the violation up to the maximum amounts shown in Table 1.

Table 1. Penalty Amounts for Impact of Violations under Clean Streams Law

	Use			
Damage	**Special Protection**	**High Use**	**Moderate Use**	**Low Use**
Severe	$ 10,000	$ 8,000	$ 6,000	$ 4,000
Significant	8,000	6,000	4,000	2,000
Moderate	6,000	4,000	2,000	1,000
Low	4,000	2,000	1,000	500
Negligible	2,000	1,000	500	250

C. Damage from violations NOT affecting waters of the Commonwealth
(Oil and Gas Act, Solid Waste Management Act, Dam Safety and Encroachment Act)

The impact of violations of laws other than the Clean Streams Law that caused or risked resource damage are rated according the following descriptions:

1. **Severe**

   - Destruction, or contamination of critical habitat of threatened or endangered species.
   - Destruction of significant areas or acreage of state parks, state forests, state game lands.
   - Major impact on land use (agriculture, recreation, etc.).
   - Damage to resources requiring long-term or artificial recovery.

2. **Significant**

   - Limited impact on wildlife or significant habitat.
   - Limited impact on areas or acreage of state parks, state forests, state game lands.
   - Significant but limited or short term impact on land use.
   - Damage to resources requiring a short-term recovery.

3. **Moderate to Low**

   The rating for violations where effects other than those described above are produced.

4. **De minimus**

A violation of the law existed, but resulted in no damage or risk of adverse effect on natural resources or property or others.

The base penalty amount in consideration of damage to resources would be determined by reference to Table 2.

Table 2. Base Penalty Amounts for Impact or Resource Damage

	Applicable Law		
Impact	**Oil & Gas Act**	**Solid Waste Management Act**	**Dam Safety & Encroachment Act**
Severe	$5,000 - $25,000	$5,000 - $25,000	$2,000 - $10,000
Significant	$1,000 - $5,000	$1,000 - $5,000	$500 - $2,000
Moderate/Low	$500 - $1,000	$500 - $1,000	$250 - $500
De Minimus	Up to $500	Up to $500	Up to $250
Daily Maximum for Continuing	$1,000	$25,000	$500

IV. WILLFULNESS OF VIOLATOR'S ACTIONS

Regardless of the law under which a penalty is assessed, consideration of the violator's willfulness or degree of culpability in committing the violations exerts a profound influence in determining the total amount of a penalty.

Willfulness is rated in one of four degrees: deliberate, reckless, negligent, or accidental.

- **Deliberate -** An intentional action or intentional lack of action; a deliberate predetermined action with prior knowledge that the action constituted a violation of law, regulations, permit conditions, or a deliberate attempt to circumvent or avoid compliance.

- **Reckless -** A conscious disregard of consequences, proceeding with risk in mind; a violation resulting from the disregard of an obvious risk, the existence, nature, and possible consequences of which are known, or of which prior warning had been given.

- **Negligent -** Failure to prevent the occurrence of a violation due to indifference or lack of diligence; a violation resulting from the failure to recognize, correct or prevent a condition which the violator should have recognized carried a certain degree of risk.

- **Accidental -** A violation resulting from factors beyond the control of the violator and, therefore, could not reasonably have been prevented.

To determine the amount of penalty to assess for the violator's willfulness, refer to Table 3.

Table 3. Penalty Amounts for Willfulness

	Applicable Law			
Degree of Willfulness	**Oil & Gas Act**	**Clean Streams Law**	**Solid Waste Management Act**	**Dam Safety & Encroachment Act**
Deliberate	$4,000 - $25,000	$2,000 - $10,000	$4,000 - $25,000	$2,000 - $10,000
Reckless	$2,000 - $4,000	$500 - $2,000	$2,000 - $4,000	$500 - $2,000
Negligent	$100 - $2,000	$100 - $500	$100 - $2,000	$100 - $500
Accidental	None	None	None	None
Daily Maximum for Continuing	$1,000	$10,000	$25,000	$500

V. COSTS TO THE COMMONWEALTH

A penalty assessment may include consideration of costs incurred by the Commonwealth as a result of the violation. In the penalty calculation formula, costs are added to the penalty subtotal that results from application of the willfulness and cooperation factors.

All costs related to the investigation and abatement of the incident or case may be included, such as costs of:

- Emergency response.
- Abatement, remedial, and preventive actions taken by Commonwealth agencies.
- Salaries and benefits.
- Travel expenses for staff.
- Legal staff costs.
- Cost of contracts awarded to Commonwealth subcontractors.
- Sampling and laboratory analyses.

Costs incurred by personnel from all Commonwealth agencies involved should be included.

Cost estimates for the Commonwealth's efforts necessary for abatement or for a long-term environmental restoration must also be considered. Estimates for the cost of restoration or abatement may be based on a competitive procurement process when feasible.

VI. SAVINGS TO THE VIOLATOR

A penalty assessment may include an amount equal to the savings or economic benefit realized by the violator as a result of the violation, had it not been penalized. As with costs to the Commonwealth, this amount for violator's savings is added to the penalty subtotal resulting from application of the willfulness and cooperation factors.

The economic benefit resulting from failure to comply includes costs avoided and expenditures delayed. This amount is determined by estimating the costs of actions that should have been taken by the violator; the omission of which directly or indirectly caused the incident to occur.

Example: A severe erosion and sedimentation problem results from an operator's failure to implement surface runoff control measures and failure to restore the well site as called for in the erosion and sedimentation plan. Calculate the savings resulting from the failure to re-grade, seed, and mulch the site, and to install and maintain necessary control features.

VII. VIOLATOR'S HISTORY

A violator's recent past record of similar incidents is another punitive factor to consider in penalty assessments. If the offender has a record of recent similar incidents at any other sites, add a percentage of the subtotal of all punitive and cost factors described above before applying any discount for cooperation. The add-on for the violator's history may not exceed 10% of the subtotal.

VIII. COOPERATION

The Department may consider how promptly a violation is corrected as an indication of good faith on the part of the offender. Good faith can also be manifested by the violator's prompt self-reporting of non-compliance. In order to recognize and reward prompt pro-active response to spills or pollution incidents, a discount is offered for above-average cooperation. A deduction will be given based on the violator's attempt to attain compliance after the violation became known.

However, when self-reporting of the violation is required by law, or where the violator demonstrates a lack of good faith in taking corrective action, the Department will not consider a reduction in the proposed penalty assessment. Likewise, there will be no good faith adjustment for willful or reckless violations.

Rating Cooperation

Cooperation is included in penalty calculation as a percentage discount for a favorable rating. Ratings and percentage deductions are: Excellent, 20%; Good, 10%: and Poor, 0.

Excellent Cooperation

Excellent cooperation occurs when the violator quickly admits responsibility for the incident, cooperates fully during the investigation, and promptly cleans up or corrects the situation to the greatest extent possible. The violator would promptly notify the Department and immediately correct the violation after discovering it. The civil penalty assessment may be adjusted based on the violator's demonstration of good faith in complying with statutory or regulatory requirements. Good faith can also be manifested by the violator's prompt self-reporting of noncompliance. Other proactive measures by the violator may also be

considered, such as providing laboratory facilities or bringing experts from other locations to assist. These actions must be voluntary and taken on the violator's own initiative.

Good Cooperation

Good cooperation occurs when the violator does what he has to in the investigation and/or cleanup of the incident. The violator immediately corrects the violation after being notified of it by DEP. One difference between excellent and good cooperation is the degree of the violator's proactive response. Good cooperation describes the violator promptly carrying out corrective action after being informed of what to do by the Department.

Poor Cooperation

Poor cooperation occurs when the violator is reluctant to admit responsibility, fails to promptly clean up a spill or correct a violation situation, or fails to cooperate in a subsequent investigation. Cooperation is rated "poor" if a violator must be persuaded or ordered to take appropriate action, or where the violator fails to pursue adequate corrective or remedial actions after the Department identifies deficiencies in previous efforts.

IX. DOCUMENTATION

Oil and Gas Management staff involved in calculating penalty assessments will keep records and evidence to document penalty ratings and the assessment process. These records will include, as applicable: inspection reports, complaint investigation reports, photographs, laboratory reports, notices of violation, notes and memos summarizing conferences with the violator and compliance assistance offers extended by DEP, and penalty calculation worksheets.

Appendix 1 shows a penalty calculation worksheet to be used by Oil and Gas Management personnel in documenting the application of this policy for penalty assessment.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OIL AND GAS MANAGEMENT PROGRAM

Civil Penalty Calculation Worksheet
(for DEP use only)

eFACTS Enf ID
Date Initiated
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Responsible Party (Violator)	ID or OGO #	Evaluator	Description of violations and applicable laws.
Site / Well Name and #		Prior Related Enforcement Actions Type: Enf ID: Date:	
API # or Permit #	eFACTS PF Id #	Type: Enf ID: Date:	
Location: County	Municipality	Type: Enf ID: Date:	
Inspection Dates:			

Penalty Calculation, Factors

$	***Endangering Public Safety or Health*** Severe Significant Moderate/Low None	
$	***Damage to Natural Resources*** **Not W.Q. related** Severe Significant Moderate Low Negligible	**Water Quality Related** **Use:** Special Protection High Moderate Low **Damage:** Severe Significant Moderate Low Negligible
$	***Willfulness*** Deliberate Reckless Negligent Accidental	
$	***Commonwealth Costs*** Samples $ Photos $ Mileage $ Hours $ Other $ *Notes:*	
$	***Violator's Savings***	
$	***Violator's History*** Amount for violator's history, add % of the sum of amounts in the first five rows.	
$	***Subtotal Amounts Above***	
- $	***Cooperation Discount*** Subtract % of subtotal.	
$	***Total***	Ratings and procedure reviewed / approved by: Date: