

(b) Willfulness/Negligence: No evidence relative to this factor was presented for consideration.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

(c) History of Compliance: No new information relevant to this adjustment factor came to light after issuance of the proposed penalty.  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

(d) Ability to Pay: Company A raised and documented that it has cash flow problems. It did not convince EPA that the penalty should be mitigated. An installment plan was accepted by the Agency.  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

(e) Environmental Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ N/A  
\_\_\_\_\_ (attach additional sheets if necessary)

(f) Other Unique Factors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ N/A  
\_\_\_\_\_ (attach additional sheets if necessary)

3. Economic Benefit: By failing to obtain interim status (the least expensive option available to it under the statute) Company A avoided or delayed the costs of filing a Part A permit application and complying with the regulatory requirements relative to storage of hazardous wastes in containers. In a BEN analysis (copy omitted for purposes of this example) the Region found that these costs amounted to \$9,000.  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ N/A  
\_\_\_\_\_ (attach additional sheets if necessary)

B. EXAMPLE 2(1) Violation:

Company B failed to prevent entry of persons onto the active portion of its surface impoundment facility located in Seattle, Washington. A portion of the fence surrounding the area had been accidentally knocked down during construction on the new wing of the facility on October 30, 1998, and had never been replaced. Several children have entered the active portion of the facility. An inspection by EPA on March 15, 1999, revealed that the damaged area of the fence still needed to be replaced. The complaint issued to Company B assessed penalties for the violation of failing to provide adequate security pursuant to 40 CFR §265.14. Below is a discussion of the methodology used to calculate the penalty amount proposed in the complaint, followed by a discussion of the methodology used to calculate the penalty amount to be accepted in settlement.

(2) Seriousness

Potential for Harm: Major - Some children already have entered the area; potential for harm due to exposure to waste is substantial because of the lack of adequate security around the site.

Extent of Deviation: Moderate - There is a fence, but a portion of it has been knocked down. Significant degree of deviation, but part of the requirement was implemented.

(3) Gravity-based Penalty: Major potential for harm and moderate extent of deviation yield the penalty range of \$16,500 to \$21,999. The midpoint is \$19,250

(4) Multi-Day Penalty Assessment

(a) Failure to provide security: Major potential for harm and moderate extent of deviation result in mandatory multi-day penalties. The applicable cell ranges from \$825 to \$4,400. The midpoint is \$2,613. [Based on an assessment of relevant factors (e.g., the seriousness of the violation relative to others falling within the same matrix cell, the degree of cooperation evidenced by the facility, the number of days of violation) the mid-point in the range of available multi-day penalty amounts was selected.] EPA documented that the violation continued from October 30, 1998, to March 15, 1999, a total of 136 days (minus 1st day).

Penalty Subtotal:  $\$2,613 \times 135 = \$352,755$ .

Penalty Total:  $\$19,250 + 352,755 = 372,005$

(5) Economic Benefit of noncompliance:

Since Company B reaped an economic benefit by failing to repair the fence, a BEN worksheet should be completed. For purposes of the above violation, the following input data should be furnished:

- (EPA v. Company B). the case name
- (\$100,000), the initial capital investment of Replacing the fence (cost estimate from 2/1/2000)
- -0-, there are no one time expenditures
- -0-, no annual operating and maintenance (O&M) expenses have been identified

- 3/1999, the date of the inspection
- 4/2000, the date of compliance
- 6/2000, the anticipated date of penalty payment

The above data was entered into the BEN model which yielded an economic benefit amount of \$9,767 (see attached BEN worksheet and printout).

**(6) Application of Adjustment Factors For Computation of the Complaint Amount**

(a) Good faith efforts to comply: At the time of computation of the amount of the penalty to be proposed in the complaint no information (i) relative to the violator's good faith efforts to comply or (ii) indicative of lack of good faith was available.

(b) Degree of willfulness and/or negligence: Little evidence as to application of this factor was available.

(c) History of non-compliance: Company B had on two previous occasions been cited in writing for failure to prevent public access to the active portion of this facility. While such previous violations had been corrected, they indicate that Company B had not been adequately deterred by prior notice of violations. The sum of the gravity/multi-day penalty components is adjusted upwards by 15% because of the company's history of noncompliance.

$$(\$19,250 + \$352,755) \times 15\% = \$55,801$$

(d) Other adjustment factors: Consistent with the general policy of delaying consideration of downward adjustment factors (other than that relating to good faith effort to comply) until the settlement stage, the Region reviewed available information only to see if it supported further upward adjustment of the penalty amount. No information supporting further upward adjustment was uncovered.

**(7) Final Complaint Penalty Amount:**

Gravity	+	Multi-day	+	Economic Benefit	+	Upward Adjustment	=	Total Penalty
\$19,250	+	\$352,755	+	\$9,767	+	\$55,801	=	\$437,573

**(8) Settlement Adjustments:**

During settlement discussions Company B presented information which it felt warranted adjustment of the penalty. After issuance of the complaint no new information came to light which supported recalculation of the gravity-based, multi-day, or economic benefit components of the penalty proposed in the complaint.

(a) Good faith efforts to comply: Company B gave evidence at settlement of labor problems with security officers and reordering and delivery delays for a new fence. After issuance of the complaint, Company B was very cooperative and stated that a new fence would be installed and that security would be provided for by another company in the near future. Even though the company was very cooperative, its efforts to comply were only those required under

the regulations. No justification for mitigation for good faith efforts to comply exists. No change in penalty.

(b) Degree of willfulness and/or negligence: If the evidence presented by Company B with respect to reordering delays had been convincing, it might arguably have served as a basis for finding that the company acted without willful disregard of the regulation (or should not have been charged multi-day penalties at a rate so high as that established during computation of the complaint amount). However, such claims of unavoidable delay are easily made and must be viewed with skepticism. The company's evidence on this point was unconvincing since the security and fencing could have been easily provided by other suppliers.

While the fact that the fence was knocked down accidentally might indicate a lack of willfulness, the company's failure to take remedial action for 136 days argues against a downward adjustment. The violation may even have become a willful one when left uncorrected. But in the absence of more information about precautionary steps the company took prior to the accident and the extent of the violators knowledge of the regulations, no adjustment was made.

(c) History of non-compliance: The Region was confronted with no reason to rethink the previous upward-adjustment of the penalty based on past violations.

(d) Ability to pay: The Company made no claims regarding ability to pay.

(e) Environmental projects: The company did not propose any environmental projects

(f) Other unique factors: During EPA's inspection and subsequent settlement discussions, Company B was very cooperative. Company B provided additional documents and other information on several occasions as a result of verbal requests from EPA (thus eliminating the need for the Region to issue a Section 3007 letter). While Company B's efforts to remedy the violation consisted merely of compliance with the requirements (and no downward adjustment was warranted for "good faith efforts to comply"), the Region did decide that Company B's cooperative attitude did warrant a 5% downward adjustment.

(9) Final Settlement Penalty Amount:

Gravity	+	Multi-Day	+	Upward	+	Downward	+	Economic	=	Total
Base				Adjustment		Adjustment		Benefit		Penalty
9,250	+	\$352,755	+	55,801	-	\$18,600	+	\$9,767	=	\$418,973

**PENALTY AMOUNT FOR HEARING**

Company Name: Company B

Address: 1201 Sixth Avenue, Seattle, Washington 98101

Requirement Violated: 40 CFR §265.14, Failure to prevent entry

1.	Gravity based penalty from matrix .....	<u>\$19,250</u>
	(a) Potential for harm .....	<u>Major</u>
	(b) Extent of Deviation .....	<u>Moderate</u>
2.	Select an amount from the appropriate multi-day matrix cell .	<u>\$2,613</u>
3.	Multiply line 2 by number of days of violation minus 1 [\$2,613 x (136-1)]. .....	<u>\$352,755</u>
4.	Add line 1 and line 3 .....	<u>\$372,005</u>
5.	Percent increase/decrease for good faith .....	<u>N/A</u>
6.	Percent increase for willfulness/ negligence .....	<u>N/A</u>
7.	Percent increase for history of noncompliance .....	<u>15%</u>
8.	* Total lines 5 thru 7 .....	<u>15%</u>
9.	Multiply line 4 by line 8 .....	<u>\$55,801</u>
10.	Calculate Economic Benefit .....	<u>\$9,767</u>
11.	Add lines 4, 9 and 10 for penalty amount to be proposed for hearing .....	<u>\$437,573</u>

\* Additional downward adjustments where substantiated by reliable information may be accounted for here.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**

1. Gravity Based Penalty

(a) Potential for Harm: Major - Some children have already entered the area; potential for harm due to exposure to waste is substantial because of the lack of adequate security around the site.

(attach additional sheets if necessary)

(b) Extent of Deviation Moderate: There is a fence, but a substantial portion of it has been knocked down. There is a significant degree of deviation, but part of the requirement has been implemented.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Multi-day penalties are mandatory for major-moderate violations. Based on consideration of relevant factors (e.g., number of days of violation and degree of cooperation evidenced by the facility) the mid-point in the available range in the multi-day matrix was selected. The violation can be shown to have persisted for 135 days.

(attach additional sheets if necessary)

2. Adjustment Factors: (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

(a) Good Faith: No information indicating a lack of good faith or of good faith efforts by the violator to comply is available.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: N/A

(attach additional sheets if necessary)

(c) History of Compliance: Company B had on two previous occasions been cited in writing for failure to prevent public access to the active portion of the facility. While such previous violations had been corrected, they indicate that Company B has not been adequately deterred by prior notice of similar violations. Hence, the penalty is adjusted upward 15% .

(attach additional sheets if necessary)

(d) Ability to pay: \_\_\_\_\_ N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

(e) Environmental Project: \_\_\_\_\_ N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

(f) Other Unique Factors: \_\_\_\_\_ N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

3. Economic Benefit: Company B has gained an economic benefit from failing to install a new fence. See the BEN Worksheet for the data input into the BEN model which calculated an economic benefit of \$9,767.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: \_\_\_\_\_ N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (attach additional sheets if necessary)

**BEN WORKSHEET <sup>6</sup>**

1. Case Name: Company B
- Requirement Violated: 40 CFR §265.14
- 2\* Initial Capital Investment/Year Dollars \$100,000  
 \_\_\_\_\_ Check here if costs were avoided,  
 not delayed.
3. One Time Expenditure/Year Dollars 0  
 \_\_\_\_\_ Check here if costs were avoided,  
 not delayed.
- a.. Tax Deductible? YES \_\_\_\_\_ NO \_\_\_\_\_
4. Annual Operating and Maintenance  
 (O&M) Expenses Year Dollars 0
5. Date of Noncompliance 3/1/1999
6. Date of Compliance 4/1/2000
7. Anticipated Date of Penalty Payment 6/1/2000
- 8.\* Useful Life of Pollution Control Equipment 15 years
- 9\*. Marginal Income Tax Rate Washington
10. State Where Facility is Located Washington
- 11.\* Inflation Rate \_\_\_\_\_
- 12.\* Discount Rate 11.0%
13. Economic Benefit Penalty Component \_\_\_\_\_

\* See standard value from BEN model

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<sup>6</sup> A separate "BEN Worksheet" should be attached to the Penalty Computation Worksheets for both the amount proposed for hearing and settlement amount.



## BEN RUN PRINTOUT

Run Name =	Initial Run
<u>Present Values as of Noncompliance Date (NCD)</u>	<u>01-Mar-1999</u>
A) On-Time Capital & One-Time Costs	\$92,817
B) Delay Capital & One-Time Costs	\$84,249
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$8,568
E) Final Econ. Ben. at Penalty Payment Date,	
<u>01-Jun-2000</u>	<u>\$9,767</u>
<i>C- Corporation w/ WA tax rates</i>	
Discount/Compound Rate	11.0%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	01-Apr-2000
<u>Capital Investment</u>	
Cost Estimate	\$100,000
Cost Estimate Date	01-Feb-2000
Cost Index for Inflation	PCI
# of Replacement Cycles; Useful Life	1; 15
Projected Rate for Future Inflation	N/A
<u>One-Time, Nondepreciable Expenditure:</u>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
<u>Annual Recurring Costs</u>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<u>User-Customized Specific Cost Estimates</u>	<u>N/A</u>
On-Time Compliance Capital Investment	
Delay Compliance Capital Investment	
On-Time Compliance Replacement Capital	
Delay Compliance Replacement Capital	
One-Time Compliance Nondepreciable	



## SETTLEMENT PENALTY AMOUNT

Company Name: Company BAddress: 1201 Sixth Avenue, Seattle, Washington 98101Requirement Violated: 40 CFR § 265.14, Failure to Prevent Entry

1.	Gravity based penalty from matrix .....	<u>\$19,250</u>
	(a) Potential for harm .....	<u>Major</u>
	(b) Extent of Deviation .....	<u>Moderate</u>
2.	Select an amount from the appropriate multi-day matrix cell .	<u>\$2,613</u>
3.	Multiply line 2 by number of days of violation minus 1 [\$2,613 x (136-1)]. .....	<u>\$352,755</u>
4.	Add line 1 and line 3 .....	<u>\$372,005</u>
5.	Percent increase/decrease for good faith .....	<u>N/A</u>
6.	Percent increase/decrease for willfulness/negligence .....	<u>N/A</u>
7.	Percent increase for history of noncompliance .....	<u>15%</u>
8.	Percent increase/decrease for other unique factors .....	<u>-5%</u>
	(except litigation risk)	
9.	Add lines 5, 6, 7, and 8 .....	<u>10%</u>
10.	Multiply line 4 by line 9 .....	<u>\$37,200</u>
11.	Add lines 4 and 10 .....	<u>\$409,205</u>
12.	Adjustment amount for environmental project .....	<u>0</u>
13.	Subtract line 12 from line 11 .....	<u>\$409,205</u>
14.	Calculate economic benefit .....	<u>\$9,767</u>
15.	Add lines 13 and 14 .....	<u>\$418,972</u>
16.	Adjustment amount for ability-to-pay .....	<u>0</u>
17.	Adjustment amount for litigation risk .....	<u>0</u>

18.	Add lines 16 and 17 .....	<u>0</u>
19.	Subtract line 18 from line 15 for final settlement amount ....	<u>\$418,972</u>

**NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT**

1. Gravity Based Penalty

(a) Potential for Harm: Major - Some children have already entered the area; potential for harm due to exposure to waste is substantial because of the lack of adequate security around the site.

(attach additional sheets if necessary)

(b) Extent of Deviation: Moderate - There is a fence, but a substantial portion of it has been knocked down. There is a significant degree of deviation, but part of the requirement has been implemented.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Multi-day penalties are mandatory for major-moderate violations. Based on consideration of relevant factors (e.g., number of days of violation and degree of cooperation evidenced by the facility) the mid-point in the available range the multi-day matrix was selected. The violation can be shown to have persisted for 135 days.

(attach additional sheets if necessary)

2. Adjustment Factors: (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits and other unique factors must be justified, if applied.)

(a) Good Faith: Company B gave evidence of labor problems with security officer and reordering and delivery delays in obtaining a new fence. After issuing the complaint, Company B stated that a new fence would be installed and that security would be provided by another company in the near future. Even though the Company was very cooperative, its actions were only those required under the regulations. No justification for mitigation for good faith efforts to comply exists.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: While the fact that the fence was knocked down accidentally might indicate a lack of willfulness, the Company's failure to take remedial action for 136 days argues against a downward adjustment. The violation may even have become a willful one when left uncorrected. But in the absence of more information about precautionary steps the company may have taken prior to the accident and the extent of the violator's knowledge of the regulations, no adjustment was made.

(additional sheets at necessary)

(c) History of Compliance: Company B had on two previous occasions been cited in writing for failure to prevent public access to the active portion of the facility. While such previous violations had been corrected, they indicate that Company B has not been adequately deterred by prior notice of similar violations. Hence, the penalty is adjusted upward 15%.

(attach additional sheets if necessary)

(d) Ability to pay: \_\_\_\_\_ N/A

(attach additional sheets if necessary)

(e) Environmental Project: \_\_\_\_\_ N/A

(attach additional sheets if necessary)

(f) Other Unique Factors: During EPA's inspection and subsequent settlement discussions, Company B was very cooperative. Company B provided additional documents and other information on several occasions as a result of verbal requests. While Company B's efforts to remedy the violation consisted merely of compliance with the requirements (and no downward adjustment was warranted for "good faith efforts to comply"), Company B's cooperative attitude did warrant a 5% downward adjustment.

(attach additional sheets if necessary)

3. Economic Benefit: Company B has gained an economic benefit from failing to install a new fence. See the BEN Worksheet for the data input into the BEN model which calculated an economic benefit of \$9,767

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: \_\_\_\_\_

N/A

(attach additional sheets if necessary)

C. EXAMPLE 3(1) Violation

Company C, an owner/operator of several permitted commercial treatment facilities, regularly receives a large volume of diverse types of RCRA hazardous wastes at its Evanston facility. Upon receipt of the wastes, Company C's Evanston facility immediately treats them and sends the treatment residues off-site for land disposal at another company's facility, Company Z.

Between December 16, 1998, and December 18, 1999, Company C's Evanston facility received one shipment per month of liquid F002 spent solvent wastes from various generators. Each shipment consisted of two 55-gallon drums, but the composition and concentration level of hazardous constituents in each drum was different due to the highly variable process that generated the waste. The Evanston facility did not test the wastes before or after treating them, and its existing waste analysis plan did not require any such testing or other analysis to determine if wastes are restricted. The Evanston facility properly manifested the 12 monthly shipments of wastes sent off-site to Company Z, but it did not know until June 18, 1999, that it was required by 40 C.F.R. § 268.7 to send a land disposal restrictions (LDR) notification and certification with each shipment of waste. At that time, it began sending § 268.7 forms routinely stating that the treatment residues were eligible for land disposal.

On October 30, 1999, an EPA inspector at Company Z found that 24 drums of Company C's F002 solvents were unlawfully disposed in Company Z's landfill. EPA determined that the unlawfully disposed wastes had been sent to Company Z in 1989 from the Evanston facility. Company Z's landfill did not meet minimum technological requirements and was leaking hazardous constituents into the ground water, the only source of drinking water for the area. The unlawfully disposed drums contained concentration of F002 solvents in excess of the applicable Part 268 LDR treatment standards.

Although four separate violations are identified in (a) through (d) below, only the first two violations (in (2) (a) and (b) below) are discussed for purposes of this Example. Below is a discussion of the methodology used to calculate the penalty amount for the complaint followed by a discussion of the methodology used to calculate the settlement amount.

(2) Seriousness:(a) Failure to Send Accurate § 268.7(b) Notifications and Certifications:

Potential for Harm: Major - Because Company C did not notify the receiving facility, Company Z, that the waste was prohibited from land disposal, Company Z was unaware that the waste were required to be further treated before land disposal. The violation may have a substantial adverse effect on the purposes or procedures for implementing the RCRA program. The violation may also pose a substantial risk of exposure to hazardous waste.

Extent of Deviation: Major - Initially, Company C did not merely prepare and send deficient § 268.7 notifications/certifications. Rather, it completely failed to prepare and send such forms for the first six months. During the next six months, Company C sent unverified certifications. In each instance, Company C substantially deviated from the applicable requirement.

(b) Failure to Test Restricted Wastes as Required by §§ 268.7(b) and 264.13(a):

Potential for Harm: Major - Company C's complete failure to test the wastes prevented it from determining that the wastes were ineligible for land disposal, which contributed to the actual disposal in a leaking unit above the area's sole source of drinking water. The violation has a substantial adverse effect on the procedures for implementing the LDR program because testing to assure compliance is critically important. The violation may also pose a substantial risk of exposure to hazardous waste.

Extent of Deviation: Major - Company C's waste analysis plan is deficient in not explicitly requiring any testing to determine if wastes are restricted, as evidenced by the resulting shipments from Company C which failed to identify the waste as restricted. Such deficiency is particularly significant where the wastes are very diverse, as is the case here, because in the absence of reliable test results it is very difficult, if not impossible, for Company C to comply with the § 264.13 requirement that the operator obtain "all the information which must be known to [manage] the waste in accordance with . . . Part 268."

(c) Treating Hazardous Waste Prior to Obtaining Adequate Waste Analysis Data as Required by 40 CFR § 264.13(a):

Potential for Harm: Major

Extent of Deviation: Major

(d) Failure to Maintain § 268.7 Paperwork in Operating Record as Required by 40 CFR § 264.73(b):

Potential for Harm: Moderate

Extent of Deviation: Major.

3 Gravity-based Penalty

(a) Failure to Send Accurate 40 CFR § 268.7(b) Notifications and Certifications: Major potential for harm and major extent of deviation leads one to the cell with the range of \$22,000 to \$27,500. The mid-point is \$24,750.

(b) Failure to Test Restricted Wastes as Required by §§ 268.7(b) and 264.13(a): Major potential for harm and major extent of deviation leads one to the cell with the range of \$22,000 to \$27,500. The mid-point is \$24,750.

Total Penalty Per Shipment:  $\$24,750 + \$24,750 = \$49,500$ .

Since these violations were repeated once every month for 12 months, the above penalty figure should be multiplied by 12, to yield a total penalty (prior to application of adjustment factors, addition of multi-day component, and addition of economic benefit component) as follows:

Penalty Subtotal:  $\$49,500 \times 12 = \$594,000$



(4.) Multi-day Penalty Assessment: Because each violation is viewed as independent and noncontinuous, no multi-day assessment was made.

(5) Economic Benefit of Noncompliance: Company C avoided a number of costs in committing the violations noted in (2)(a) and (b) above. These included (i) the costs of forms and labor necessary to complete the forms notifying and certifying to Company Z that the wastes were or were not appropriate for land disposal, and (ii) the costs of waste analysis necessary to determine the eligibility of the wastes for land disposal. A BEN analysis (copy omitted for purposes of this example) of these avoided costs was performed and indicated that Company C reaped an economic benefit of \$12,500 from its failure to comply with the two requirements in question (\$2,500 for the violations specified in (2) (a) and \$10,000 for the violations noted in (2)(b)).<sup>7</sup>

(6) Application of Adjustment Factors for Computation of the Complaint Amount

(a) Good faith efforts to comply: As soon as company C's Evanston facility learned of its obligation to submit 40 CFR § 268.7 forms, it began submitting such forms. However, evidence demonstrates that efforts to comply were weak because Company C made no effort to ensure the accuracy of such submissions. Even if such submissions had been accurate, Company C's actions would have been only those required by the regulations. No justification for mitigation for good faith efforts to comply exists. No change in the \$594,000 penalty.

(b) Degree of wilfulness and/or negligence: The prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the company's other facilities recently had been found liable for similar violations. Based on these facts, an upward adjustment in the amount of the penalty of 10% is justified.

$$\$594,000 \times 10\% = \$59,400$$

(c) History of noncompliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violations. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in (6)(b) above, such adjustment will not be duplicated here.

In addition, there was evidence that Company C's Evanston facility received one year earlier a notice of violation from the State Environmental Protection Department regarding violations of the State's authorized Clean Air Act program. The violations related to units used to treat the waste involved in this RCRA action. Based on this prior notice, an upward adjustment of 5% is justified.  $\$594,000 \times 5\% = \$29,700$

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<sup>7</sup> Company C was not itself under a legal obligation to treat the wastes in question to the BDAT levels mandated by the land disposal restrictions, but it nevertheless reaped an economic benefit by misrepresenting to Company Z that these wastes were eligible for land disposal when they were not. Had Company C accurately represented to Company Z the truth - that the wastes needed to be treated before being landfilled - Company Z would undoubtedly have imposed a higher disposal fee on Company C. Enforcement personnel should give serious consideration to the inclusion in the economic benefit calculation those amounts Company C saved in reduced disposal fees as a result of the violations specified in 2(a) and 2(b).

(d) Other adjustment factors: Since this computation was for purposes of determining the amount of the penalty to propose in the complaint, no further consideration was given to possible down adjustments. At the same time no reason to adjust the penalty amount upward based on the remaining adjustment factors was evident.

(7) Final Complaint Penalty Amount:

Gravity Base	+ Upward Adjustment	+ Upward Adjustment	+	Economic Benefit	=	Total Penalty
\$594,000	+ \$59,400	+ \$29,700	+	\$12,500	=	\$695,600

Since a penalty of \$695,600 would exceed the statutory maximum for 24 violations (24 x 27,500 = 660,000), the penalty amount to be sought in the complaint was adjusted downward to \$660,000.

(8) Settlement Adjustments:

After issuance of the complaint the Region uncovered no basis for recalculating the gravity-based, multi-day, or economic benefit components of the penalty sought in the complaint. However, based on information available to it (including that provided by Company C) the Region did consider certain downward adjustments in the penalty amount.

(a) Good faith efforts to comply: The company did not present and the Region did not find any grounds for reconsidering its initial conclusion that downward adjustment based on the company's good faith efforts at compliance was not justified.

(b) Degree of willfulness and/or negligence: Although the company argued that its lack of knowledge regarding land ban requirements indicated a lack of willfulness during the first 6 months the violations continued, the Region declined to adjust the penalty downward because to do so would encourage or reward ignorance of the law.

(c) History of non-compliance: No reason was presented to address this issue differently than it had been in computing the complaint amount of the penalty.

(d) Ability to pay: Company C made no claims regarding ability to pay.

(e) Environmental projects: Company C did not propose any environmental projects.

(f) Other Unique Factors: In reviewing its liability case against Company C the Region determined that there were major weaknesses in its ability (i) to tie a number of the 24 drums discovered at Company Z's landfill to Company C, and (ii) to show that all the drums contained F002 solvent. The Region concluded that in light of these evidentiary weaknesses it was unlikely that it would be able to obtain through litigation the amount of the penalty it had sought in the complaint. Since these evidentiary difficulties adversely affected the Region's ability to prove violations related to 4 of the 12 (or one-third of the) monthly shipments, the Region decided that for settlement purposes it was willing to forego roughly one-third of the total proposed penalty amount. Accordingly, the Region decided to adjust the amount of the penalties sought for the violations identified in 2(a) and (b) above downward by \$110,000 each based on litigative risk.

(9) Final Settlement Penalty amount:

Gravity	+ Upward	+ Upward	+ Economic	- Downward	=	Total
Base	Adjustment	Adjustment	Benefit	Adjustment		Penalty
\$594,000	+ \$59,400	+\$29,700	+ \$12,500	- \$220,000	=	\$475,600

**PENALTY AMOUNT FOR PROPOSED FOR HEARING**

Company Name: Company C

Address: 101 Yourstreet, Evanston, Illinois

Requirement Violated: 42 CFR § 268.7(b) Failure to send accurate notification and certification.

1.	Gravity based penalty from matrix (\$24,750 X 12) .....	<u>\$297,000</u>
	(a) Potential for harm .....	<u>Major</u>
	(b) Extent of Deviation .....	<u>Major</u>
2.	Select an amount from the appropriate multi-day matrix cell ..	<u>N/A</u>
3.	Multiply line 2 by number of days of violation minus 1 [\$3,300 x (343-1)] .....	<u>N/A</u>
4.	Add line 1 and line 3 .....	<u>\$297,000</u>
5.	Percent increase/decrease for good faith .....	<u>N/A</u>
6.	Percent increase for willfulness/ negligence .....	<u>10%</u>
7.	Percent increase for history of noncompliance .....	<u>5%</u>
8.*	Total lines 5 thru 7 .....	<u>15%</u>
9.	Multiply line 4 by line 8 .....	<u>\$44,550</u>
10.	Calculate Economic Benefit .....	<u>\$2,500</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint .....	<u>\$344,050</u>

\* Additional downward adjustments where substantiated by reliable information may be accounted for here.