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X. APPENDIX

A. PENALTY COMPUTATION WORKSHEETS

PENALTY AMOUNT FOR HEARING¹

Company Name: _____

Address: _____

Requirement Violated: _____

1. Gravity based penalty from matrix _____
 - (a) Potential for harm _____
 - (b) Extent of Deviation _____
2. Select an amount from the appropriate multi-day matrix cell . _____
3. Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)] . _____
4. Add line 1 and line 3 _____
5. Percent increase/decrease for good faith _____
6. Percent increase for willfulness/ negligence _____
7. Percent increase for history of noncompliance _____
8. Total lines 5 thru 7² _____
9. Multiply line 4 by line 8 _____

¹In those cases where a specific penalty amount will be set forth in the complaint, the worksheet heading can indicate the penalty calculation is for that purpose. Otherwise, the more generic heading shown here can be used which can cover both complaints and submission of a specific penalty after the prehearing exchange.

²Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

- 10. Calculate economic benefit _____
- 11. Add lines 4, 9 and 10 for proposed penalty amount
to be sought at hearing _____

SETTLEMENT PENALTY AMOUNT

Company Name: _____

Address: _____

Requirement Violated: _____

1. Gravity based penalty from matrix _____
 - (a) Potential for harm _____
 - (b) Extent of deviation _____
2. Select an amount from the appropriate multi-day matrix cell .. _____
3. Multiply line 2 by number of days of violation minus 1 [or other number as appropriate (provide narrative explanation)] _____
4. Add line 1 and line 3 _____
5. Percent increase/decrease for good faith _____
6. Percent increase for willfulness/negligence. _____
7. Percent increase for history of noncompliance _____
8. Percent increase/decrease for other unique factors (except litigation risk) _____
9. Add lines 5, 6, 7, and 8 _____
10. Multiply line 4 by line 9 _____
11. Add lines 4 and 10 _____
12. Adjustment amount for environmental project _____
13. Subtract line 12 from line 11 _____
14. Calculate economic benefit _____
15. Add lines 13 and 14 _____

- 16. Adjustment amount for ability-to-pay _____
- 17. Adjustment amount for litigation risk _____
- 18. Add lines 16 and 17 _____
- 19. Subtract line 18 from line 15 for final settlement amount _____

This procedure should be repeated for each violation.

NARRATIVE EXPLANATION³

1. Gravity Based Penalty

(a) Potential for Harm: _____

_____ (attach additional sheets if necessary)

(b) Extent of Deviation: _____

_____ (attach additional sheets if necessary)

(c) Multiple/Multi-day: _____

_____ (attach additional sheets if necessary)

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

(a) Good Faith: _____

³ A separate "Narrative Explanation" should be attached to the Penalty Computation Worksheets for both the hearing amount and settlement amount. Where the discussion of a given element of a penalty to be included in the Narrative Explanation supporting the settlement amount will duplicate that appearing in the Narrative Explanation supporting the hearing amount, the earlier discussion may simply be incorporated by reference.

_____ (attach additional sheets if necessary)

(b) willfulness/Negligence: _____

_____ (attach additional sheets if necessary)

(c) History of Compliance: _____

_____ (attach additional sheets if necessary)

(d) Ability to pay: _____

_____ (attach additional sheets if necessary)

(e) Environmental Project: _____

_____ (attach additional sheets if necessary)

(f) Other Unique Factors (e.g., cooperative attitude): _____

_____ (attach additional sheets if necessary)

3. Economic Benefit: _____

_____ (attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: _____

_____ (attach additional sheets if necessary)

BEN WORKSHEET ⁴

- 1. Case Name _____
Requirement Violated _____
- 2* Initial Capital Investment/Year Dollars _____
_____ Check here if costs were avoided,
not delayed.
- 3. One Time Expenditure/Year Dollars _____
_____ Check here if costs were avoided,
not delayed.
a.. Tax Deductible? YES _____ NO _____
- 4. Annual Operating and Maintenance
(O&M) Expenses Year Dollars _____
- 5. Date of Noncompliance _____
- 6. Date of Compliance _____
- 7. Anticipated Date of Penalty Payment _____
- 8.* Useful Life of Pollution Control Equipment _____
- 9* Marginal Income Tax Rate _____
- 10. State Where Facility is Located _____
- 11.* Inflation Rate _____
- 12.* Discount Rate _____
- 13. Economic Benefit Penalty Component _____

* See standard value from BEN model

⁴A separate "BEN Worksheet" should be attached to the Penalty Computation Worksheets for both the amount proposed for hearing and settlement amount.

XI. HYPOTHETICAL APPLICATIONS OF THE PENALTY POLICY

A. EXAMPLE 1

(1) Violation

Company A operated a facility at which it was generating one waste and storing a different waste generated by a since discontinued process. These wastes which company A had managed at its facility for years were first listed as hazardous wastes under RCRA in 1997. As a result, Company A became subject to regulation under Subtitle C of RCRA on the effective date of the regulation which was November 5, 1997. In a notification timely provided to EPA pursuant to RCRA Section 3010(a), Company A indicated that it only generated hazardous waste, without mentioning storage. This notification was never amended or supplemented. During an inspection on January 10, 1999, an employee revealed that Company A had also been storing another kind of waste in containers, on site for years. RCRA Section 3010 (a) provides that notification of waste management activities must be provided to EPA within 90 days of the promulgation of regulations listing a substance as a hazardous waste subject to Subtitle C of RCRA. 40 CFR § 262.34 provides that a generator may only store hazardous waste on-site for 90 days without obtaining a permit or interim status. Thus, beginning on February 3, 1998 (90 days after November 5, 1997), Company A was in violation of (1) the requirement that it notify the Agency pursuant to RCRA Section 3010(a) of its activity as a storer of hazardous waste, and (2) the requirement imposed by RCRA Section 3005 that it obtain interim status or a permit for its storage activity. Failure to notify and operating without a permit or interim status constitute independent or substantially distinguishable violations. Each violation would be assessed separately and the amounts totaled. The inspectors indicated that Company A's storage area was secured and that, in general, the facility was well managed. However, there were a number of violations of the interim status standards. The complaint issued to Company A set forth Part 265 violations as well as the statutory violations. Regional enforcement personnel conducted preliminary research into Company A's financial condition and discovered indications of financial instability. Therefore, the complaint contained the statutory maximum and the Region prepared a proposed penalty to submit after the prehearing exchange. For simplification, this example will discuss the §3005 and §3010 violations only. Below is a discussion of the methodology used to calculate the amount of the penalty proposed for the hearing, followed by a discussion of the methodology used to calculate the amount of the penalty to be accepted in settlement.

(2) Seriousness

(a) Failure to Notify

Potential for Harm: Moderate - EPA was prevented from knowing that hazardous waste was being stored at the facility. However because Company A notified EPA that it was a generator, EPA did know that hazardous waste was handled at the facility, but was unaware of the extent of those activities and the risks posed by them. The violation may have a significant adverse effect on the statutory purposes or procedures for implementing the RCRA program.

Extent of Deviation: Moderate - Although Company A did notify the EPA it was a generator, it did not notify EPA that it stored hazardous waste, and it did not notify EPA as to all of its activities. Company A significantly deviated from the requirement.

(b) Operating without a permit

Potential for Harm: Major - The fact that the facility generally was well-managed is irrelevant as to the potential for harm for operating without a permit. This situation may pose a substantial risk of exposure, and may have a substantial adverse effect on the statutory purposes for implementing the RCRA program.

Extent of Deviation: Major - Substantial noncompliance with the requirement because Company A did not notify EPA that it stored hazardous waste, and did not submit a Part A application.

(3) Gravity-based Penalty

- Failure to notify: Moderate potential for harm and moderate extent of deviation lead one to the cell with the range of \$5,500 to \$8,799. Enforcement personnel selected the mid-point, which is \$7,150.
- Operating without a permit: Major potential for harm and major extent of deviation lead one to the cell with the range of \$22,000 to \$27,500. Taking into account case-specific factors, enforcement personnel selected the midpoint, which is \$24,750.
- Penalty Subtotal: $\$7,150 + \$24,750 = \$31,900$

(4) Multi-day Penalty Assessment

(a) Failure to notify: Moderate potential for harm and moderate extent of deviation lead one to presume that multi-day penalties are appropriate. The applicable cell ranges from \$275 to \$1,760. The mid-point is \$1,018. [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 midpoint in the range of available multi-day penalty amounts was selected.] EPA was able to document that the violation continued from February 2, 1998, to the date of the inspection on January 10, 1999, for a total of 343 days (minus 1st day). [The inspection prompted the Company to immediately file a Section 3010(a) notification and Part A permit application.] The Region elected not to place a 180 day cap on multi-day penalties. Penalty Subtotal: $\$1,018 \times 342 = \$348,156$.

(b) Operating without a permit: Major potential for harm and major extent of deviation result in mandatory multi-day penalties. The applicable cell ranges from \$1,100 to \$5,500. The mid-point is \$3,300. [Based on an assessment of such relevant factors as those noted in (4) (a), above, the mid-point in the range of available multi-day penalty amounts was selected.] The violation continued from February 2, 1998, to January 10, 1999, for a total of 343 days (minus 1st day). The Region elected not to place a 180 day cap on multi-day penalties.

Total Penalty Subtotal: $\$3,300 \times 342 = \$1,128,600$.

(5) Economic Benefit of Noncompliance

The economic benefit obtained by Company A through its failure to notify pursuant to RCRA Section 3010(a) consists of savings on mailing and personnel costs which are negligible. However, the economic benefit the company obtained as a result of its failure to obtain a permit or interim status is not insignificant. This violation allowed the company to avoid or delay the costs of filing a Part A permit application and the costs of complying with regulatory requirements regarding storage of hazardous wastes in containers. In a BEN analysis (copy omitted for purposes of this example), the Region calculated the economic benefit to Company A at \$9,000.⁵

(6) Application of Adjustment Factors for Computation of the Proposed Penalty Amount

- (a) Good faith efforts to comply: Prior to issuing the complaint, EPA had only limited discussions with the facility. Since neither these discussions nor the inspector's observations indicated any effort had been made to correct the violations prior to notification of violations by EPA, no downward adjustment for good faith efforts to comply was made. Similarly no evidence of lack of good faith was apparent.
- (b) Degree of willfulness and/or negligence: In the absence of any affirmative presentation by the facility warranting downward adjustment (and consistent with the policy of resolving any uncertainty about the application of downward adjustment factors against the violator when computing the complaint amount), the Region only considered information which might support an upward adjustment. Available information did not support an upward adjustment.
- (c) History of noncompliance: No evidence has been produced thus far that Company A has had any previous violations at this site. The facility in question is the only facility owned or operated by Company A. Therefore, no upward adjustment shall be made for the violations cited above.
- (d) Other adjustment factors: Since this computation was designed to produce a penalty figure to be sought at hearing, the Region did not consider any other downward adjustment factors. No additional basis for upward adjustment was uncovered.

(7) Final Proposed Penalty Amount

$$\begin{array}{r} \text{Gravity base} + \text{Multi-day} + \text{Economic Benefit} = \text{Penalty} \\ \$31,900 + \$1,476,756 + \$9,000 = \$1,517,656 \end{array}$$

(8) Settlement Adjustments

⁵ In this case, the Region could have used the "rule of thumb" approach to calculate the EBN given the size of the EBN penalty. Of course, as shown here, BEN can be used for any size EBN penalty.

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

After consideration of the seriousness of the violations and in order to set penalties at a level which would allow it to achieve compliance quickly (but nevertheless deter future similar violations), the Region elected to place a 180 day cap on multi-day penalties. Multi-day Penalty Subtotal: $(\$1,018 + \$3,300) \times 179 = \$772,922$.

(a) Good faith efforts to comply: At settlement negotiations, Company A presented a written but explicitly non-binding opinion dated October 30, 1997, from the Director of EPA's Office of Solid Waste (OSW) indicating that the waste which Company A stored did not come within the ambit of the regulation listing new wastes, which became effective on November 5, 1997. Other Information indicated that six months later the Assistant Administrator for Solid Waste and Emergency Response formally renounced the view contained in the Director's opinion, that Company A probably was aware of this action, and that the company had failed to provide EPA with either a Section 3010(a) notification or a Part A permit application even after it likely knew that its storage activities were subject to Subtitle C regulation. In view of these unusual facts - *i.e.*, that the company had for roughly a third of the duration of the violation acted in apparent good faith reliance on the opinion of the Director of OSW indicating its stored wastes were not subject to regulation - the Region decided to adjust the penalty for both violations downward by 30%.
 $(\$31,900 + \$772,922) \times 30\% = \$241,447$.

(b) Degree of willfulness and/or negligence: No evidence relative to this factor was presented for consideration.

(c) History of non-compliance: No new information relevant to this adjustment factor came to light after issuance of the proposed penalty.

(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 both parties as a means of payment. Total penalty remained unchanged.

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

(f) Other unique factors: No other unique factors existed in this case.

(9) Final settlement penalty amount:

Gravity base	Multi-day	Downward Adjustment	Economic Benefit	= Total Penalty
\$31,900 +	\$772,922 -	\$241,447 +	\$9,000	= \$572,375

PENALTY AMOUNT FOR HEARING

Company Name: Company A

Address: 123 Main Street, Anytown, Anystate

Requirement Violated: 42 U.S.C. § 6930(a), Failure to notify of hazardous waste management activities

1.	Gravity based penalty from matrix	<u>\$7,150</u>
	(a) Potential for harm	<u>Moderate</u>
	(b) Extent of Deviation	<u>Moderate</u>
2.	Select an amount from the appropriate multi-day matrix cell .	<u>\$1,018</u>
3.	Multiply line 2 by number of days of violation minus 1 (\$1,018 x 342).....	<u>\$348,156</u>
4.	Add line 1 and line 3	<u>\$355,306</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>N/A</u>
8.	* Total lines 5 thru 7	<u>N/A</u>
9.	Multiply line 4 by line 8	<u>N/A</u>
10.	Calculate Economic Benefit	<u>N/A</u>
11.	Add lines 4, 9 and 10 for penalty amount to be proposed for hearing	<u>\$355,306</u>

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

NARRATIVE EXPLANATION TO SUPPORT HEARING AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Moderate - EPA was prevented from knowing that hazardous waste was being stored at the facility. However, because Company A notified EPA that it was a generator, EPA did know that hazardous waste was handled at the facility, but was unaware of the extent of those activities and the risk posed by them. The violation may have a significant adverse effect on the statutory purposes or procedures for implementing the RCRA program.

(attach additional sheets if necessary)

(b) Extent of Deviation: Moderate - Although Company A did notify the Agency that it was a generator, it did not notify EPA that it stored hazardous waste. While there was partial compliance, Company A significantly deviated from the requirement.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Moderate potential for harm and moderate extent of deviation lead one to presume that multi-day penalties are appropriate. There are no case-specific facts which would overcome the presumption. The applicable cell ranges from \$275 to \$1,760. The midpoint is \$1,018. 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 day of violation), the mid-point in the available range was selected. The violation persisted for 343 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 applicable.)

(a) Good Faith: Neither discussions with the facility nor the inspector's observations indicated any effort had been made to correct violations prior to notification of violations by EPA. Thus no downward adjustment for good faith efforts to comply was made. Similarly, no evidence of lack of good faith was apparent.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence relative to this factor was presented for consideration.

(attach additional sheets if necessary)

(c) History of Compliance: No evidence relative to this adjustment factor was presented for consideration. There is no evidence of previous violations at this (the Company's only) facility.

(attach additional sheets if necessary)

(d) Ability to pay: Although the Region initially suspected inability to pay problems (and thus cited only the statutory maximum in the complaint), Company A did not submit any information to support any downward adjustment for this.

(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: Although there is some economic benefit gained from the above cited violation (i.e., personnel costs and postage for notification forms), such costs are negligible enough not to include in the calculation.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: _____

(attach additional sheets if necessary)

SETTLEMENT PENALTY AMOUNT

Company Name: Company A

Address: 123 Main Street, Anytown, Anystate

Requirement Violated: 40 U.S.C § 6930(a), Failure to notify of waste management activities

1.	Gravity based penalty from matrix	\$7,150
	(a) Potential for harm	<u>Moderate</u>
	(b) Extent of Deviation	<u>Moderate</u>
2.	Select an amount from the appropriate multi-day matrix cell	<u>\$1,018</u>
3.	Multiply line 2 by number of days of violation minus 1. [$\$1,018 \times (180-1)$]	<u>\$182,222</u>
4.	Add line 1 and line 3	<u>\$189,372</u>
5.	Percent increase/decrease for good faith	<u>-30%</u>
6.	Percent increase/decrease for willfulness/negligence	<u>N/A</u>
7.	Percent increase for history of noncompliance	<u>N/A</u>
8.	Percent increase/decrease for other unique factors	<u>N/A</u>
9.	Add lines 5, 6, 7, and 8	<u>-30%</u>
10.	Multiply line 4 by line 9	<u>\$56,812</u>
11.	Add lines 4 and 10	<u>\$132,560</u>
12.	Adjustment amount for environmental project	<u>0</u>
13.	Subtract line 12 from 11	<u>\$132,560</u>
14.	Calculate economic benefit	<u>0</u>
15.	Add lines 13 and 14	<u>\$132,560</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>\$132,560</u> |

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Moderate - EPA was prevented from knowing that hazardous waste was being stored at the facility. However, because Company A notified EPA that it was a generator, EPA did know that hazardous waste was handled at the facility, but was unaware of the extent of those activities and the risk posed by them. The violation may have a significant adverse effect on the statutory purposes or procedures for implementing the RCRA program.

(attach additional sheets if necessary)

(b) Extent of Deviation: Moderate - Although Company A did notify the Agency that it was a generator, it did not notify EPA that it stored hazardous waste. While there was partial compliance, Company A significantly deviated from the requirement.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Moderate potential for harm and moderate extent of deviation lead one to presume that multi-day penalties are appropriate. There are no case-specific facts which would overcome the presumption. The applicable cell ranges from \$275 to \$ 1,760. The midpoint is \$1,018. 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 midpoint in the available range was selected. The violation persisted for 343 days. The Region determined that the total penalty would have sufficient deterrent impact if multi-day penalties were assessed only for the minimum 180 day period presumed under the penalty policy, rather than for the full 343 (minus 1) days of violation.

(attach additional sheets if necessary)

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

(a) Good Faith: At settlement negotiations Company A presented a written but explicitly non-binding opinion dated October 30, 1997, from the Director of EPA's Office of Solid Waste (OSW), indicating that the waste which Company A stored did not come within the ambit of the regulation listing new wastes, which became effective on November 5, 1999. Other information indicated that 6 months later the Assistant Administrator for Solid Waste and Emergency Response formally renounced the view contained in the Director's opinion, that Company A was probably aware of this action, and that the Company had failed to provide EPA with either a §3010(a) notification or a Part A permit application even after it likely knew that its storage activities were subject to Subtitle C regulation. In view of these unusual facts - i.e., that the company had for roughly a third of the duration of the violation acted in apparent good faith reliance on the opinion of the Director of OSW indicating its stored wastes were not subject to regulation - a downward adjustment of 30% in the amount of the penalty is appropriate.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: Evidence that Company A knowingly failed to comply with notification/permitting requirements after the Agency had clarified its regulatory interpretation was not deemed so persuasive as to warrant a finding that the company had acted willfully.

(attach additional sheets if necessary)

(c) History of Compliance: No new information relevant to this adjustment factor came to light after issuance of the complaint. There is no evidence of previous violations at this (the company's only) facility.

(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 Factor: _____

N/A

(attach additional sheets if necessary)

3. Economic Benefit: Although there is some economic benefit gained from the above cited violation (i.e., personnel costs and postage for notification forms), such costs are negligible enough not to include in the calculation.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: _____

N/A

(attach additional sheets if necessary)

PENALTY AMOUNT FOR PROPOSED FOR HEARING

Company Name: Company A

Address: 101 Water Street, Somecity, Somestate

Requirement Violated: 42 U.S.C. § 6925, Operating without a permit or interim status.

1.	Gravity based penalty from matrix	<u>\$24,750</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>\$3,300</u>
3.	Multiply line 2 by number of days of violation minus 1 [\$3,300 x (343-1)]	<u>\$1,128,600</u>
4.	Add line 1 and line 3	<u>\$1,153,350</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>N/A</u>
8.*	Total lines 5 thru 7	<u>N/A</u>
9.	Multiply line 4 by line 8	<u>N/A</u>
10.	Calculate Economic Benefit	<u>\$9,000</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint	<u>\$1,162,350</u>

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

NARRATIVE EXPLANATION TO SUPPORT PROPOSED PENALTY AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - The fact that the facility generally was well managed is irrelevant as to the potential for harm for operating without a permit. This situation may pose a substantial risk of exposure and may have a substantially adverse effect on the statutory purposes for implementing the RCRA Program.

(attach additional sheets if necessary)

(b) Extent of Deviation: Major - Substantial noncompliance with the requirement was found because Company A did not notify EPA that it stored hazardous waste, and did not submit a Part A application.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Major potential for harm and major extent of deviation result in mandatory multi-day penalties. The applicable cell ranges from \$1,100 to \$5,500. The midpoint is \$3,300. 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, and the number of days of violation) the mid point in the available range was selected. The violation persisted for 343 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 applicable.)

(a) Good Faith: Neither discussions with the facility nor the inspector's observations indicate any effort had been made to correct violations prior to notification of violations by EPA. Thus, no downward adjustment for good faith efforts to comply was made. There was also no evidence of a lack of good faith.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence relative to this factor was presented for consideration.

(attach additional sheets if necessary)

(c) History of Compliance: No evidence has been produced thus far that Company A has had any previous violations at this site. The facility in question is the only facility owned or operated by Company A. Therefore, no upward adjustment shall be made on the basis of past compliance history.

(attach additional sheets if necessary)

(d) Ability to pay: No evidence relative to this factor was presented for consideration.

(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)

SETTLEMENT PENALTY AMOUNTCompany Name: Company A

Address: _____

Requirement Violated: 40 U.S.C. § 6925, Operating with a permit or
interim status

1.	Gravity based penalty from matrix	<u>\$24,750</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>\$3,300</u>
3.	Multiply line 2 by number of days of violation minus 1 [\$3,300 x (180-1)].	<u>\$590,700</u>
4.	Add line 1 and line 3	<u>\$615,450</u>
5.	Percent increase/decrease for good faith	<u>-30%</u>
6.	Percent increase/decrease for willfulness/negligence	<u>N/A</u>
7.	Percent increase for history of noncompliance	<u>N/A</u>
8.	Percent increase/decrease for other unique factors	<u>N/A</u>
	(except litigation risk)	
9.	Add lines 5, 6, 7, and 8	<u>-30%</u>
10.	Multiply line 4 by line 9	<u>-\$184,635</u>
11.	Add lines 4 and 10	<u>\$430,815</u>
12.	Adjustment amount for environmental project	<u>0</u>
13.	Subtract line 12 from line 11	<u>\$430,815</u>
14.	Calculate economic benefit	<u>\$9,000</u>
15.	Add lines 13 and 14	<u>\$439,815</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>\$439,815</u>

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - The fact that the facility generally was well managed is irrelevant as to the potential for harm for operating without a permit. This situation may pose a substantial risk of exposure and may have a substantially adverse effect on the statutory purposes for implementing the RCRA Program.

(attach additional sheets if necessary)

(b) Extent of Deviation: Major - Substantial noncompliance with the requirement was found because Company A did not notify EPA that it stored hazardous waste, and did not submit a Part A application.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Major potential for harm and major extent of deviation result in mandatory multi-day penalties. The applicable cell ranges from \$1,100 to \$5,500. The midpoint is \$3,300. 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, and the number of days of violation) the mid point in the available range was selected. The violation persisted for 342 days. The Region determined that the total penalty would have sufficient deterrent impact if multi-day penalties were assessed only for the minimum 180 day period mandated by the penalty policy rather than the full 343 days of violation.

(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 applicable.)

(a) Good Faith: At settlement negotiations Company A presented a written but explicitly non-binding opinion dated October 30, 1997, from the Director of EPA's Office of Solid Waste (OSW), indicating that the waste which Company A stored did not come within the ambit of the regulation listing new wastes, which became effective on November 5, 1997. Other information indicated that 6 months later the Assistant Administrator for Solid Waste and Emergency Response formally renounced the view contained in the Director's opinion, that Company A was probably aware of this action, and that the company had failed to provide EPA with either a §3010(a) notification or a Part A permit application even after it likely knew that its storage activities were subject to Subtitle C regulation. In view of these unusual facts -i.e. that the company had for roughly a third of the duration of the violation acted in apparent good faith reliance on the opinion of the Director of OSW indicating its stored wastes were not subject to regulation - it is appropriate to adjust the penalty for this violation downward by 30%.

(attach additional sheets if necessary)