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Rule: 17.30.622

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Rule Title: A-1 CLASSIFICATION STANDARDS

Department: ENVIRONMENTAL QUALITY, DEPARTMENT OF
 Chapter: WATER QUALITY
 Subchapter: Surface Water Quality Standards and Procedures

COMPLAINANT'S
 EXHIBIT NO. 6



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

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17.30.622 A-1 CLASSIFICATION STANDARDS

(1) Waters classified A-1 are to be maintained suitable for drinking, culinary and food processing purposes after conventional treatment for removal of naturally present impurities.

(2) Water quality must be maintained suitable for bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(3) No person may violate the following specific water quality standards for waters classified A-1:

(a) The geometric mean number of Escherichia coli bacteria may not exceed 32 colony forming units per 100 milliliters and 10% of the samples may not exceed 64 colony forming units per 100 milliliters during any 30-day period if resulting from domestic sewage.

(b) Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular DEQ-7.

(c) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 must be less than 0.5 pH unit. Natural pH outside this range must be maintained without change. Natural pH above 7.0 must be maintained above 7.0.

(d) No increase above naturally occurring turbidity or suspended sediment is allowed except as permitted in 75-5-318, MCA.

(e) A 1°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 66°F; within the naturally occurring range of 66°F to 66.5°F, no discharge is allowed which will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F-per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) True color must not be increased more than two color units above naturally occurring color.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient or harmful parameters may not exceed the applicable standards set forth in department Circular DEQ-7.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards contained in department Circular DEQ-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

(j) If site-specific criteria for aquatic life are adopted using the procedures given in 75-5-310, MCA, the criteria shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards in department Circular DEQ-7.

(k) In accordance with 75-5-306 (1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to 75-5-305, MCA, are met.

History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1984 MAR p. 1802, Eff. 12/14/84; AMD, 1988 MAR p. 1191, Eff. 6/10/88; AMD, 1994 MAR p. 2136, Eff. 8/12/94; AMD, 1995 MAR p. 1798, Eff. 9/15/95; AMD, 1996 MAR p. 555, Eff. 2/23/96; TRANS, from DHES, and AMD, 1996 MAR p. 1499, Eff. 6/7/96; AMD, 1999 MAR p. 94, Eff. 1/15/99; AMD, 1999 MAR p. 2257, Eff. 10/8/99; AMD, 1999 MAR p. 2275, Eff. 10/8/99; AMD, 2002 MAR p. 1089, Eff. 2/15/02; AMD, 2006 MAR p. 528, Eff. 2/24/06.

Effective rule versions existed in ARM on or after March 31, 2007

MAR Notices	Effective From	Effective To	History Notes
	2/24/2006	Current	History: 75-5-201, 75-5-301 , MCA; IMP, 75-5-301 , MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1984 MAR p. 1802, Eff. 12/14/84; AMD, 1988 MAR p. 1191, Eff. 6/10/88; AMD, 1994 MAR p. 2136, Eff. 8/12/94; AMD, 1995 MAR p. 1798, Eff. 9/15/95; AMD, 1996 MAR p. 555, Eff. 2/23/96; TRANS, from DHES, and AMD, 1996 MAR p. 1499, Eff. 6/7/96; AMD, 1999 MAR p. 94, Eff. 1/15/99; AMD, 1999 MAR p. 2257, Eff. 10/8/99; AMD, 1999 MAR p. 2275, Eff. 10/8/99; AMD, 2002 MAR p. 1089, Eff. 2/15/02; AMD, 2006 MAR p. 528, Eff. 2/24/06.

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For questions about the organization of the ARM or this web site, contact sosarm@mt.gov.



Clean Water Act Information Center

2010 Water Quality Integrated Report

This document and supporting files constitutes the State of Montana's FINAL water quality Integrated Report submission to the US EPA for the 2010 reporting cycle. This report includes both the section 303(d) List and section 305(b) Report as required under the federal Clean Water Act. The 303(d) list is defined by EPA as waters with Category 5 designations, i.e. "Waters where one or more applicable beneficial uses have been assessed as being impaired or threatened, and a TMDL is required to address the factors causing the impairment or threat." The information contained in this report, appendices, maps, GIS files, and database also cover other waters in the state that are in Montana's Water Quality Assessment Database. These include waters that are fully supporting all beneficial uses (Category 1), waters where available data and/or information indicate that some, but not all of the beneficial uses are supported (Category 2A), waters where available data and/or information indicate that a water quality standard is exceeded due to an apparent natural source in the absence of any identified anthropogenic sources (Category 2B), waters that have not been assessed or have insufficient data to evaluate their use support levels (Category 3), and waters where one or more beneficial uses have been assessed as being impaired or threatened, however, either all necessary TMDLs have been completed (Category 4A) or are not required (Category 4C).

U.S. Environmental Protection Agency (EPA) approval letter for Montana's 2010 Section 303 (d) List

Full Report (PDF 9.5 MB) - download Adobe Acrobat

Errata: (PDF 252 KB)

- SECTION 1. INTRODUCTION
- SECTION 2. BACKGROUND INFORMATION
 - 2.1 State Overview
 - 2.2 Description of Surface Waters
- SECTION 3. WATER POLLUTION CONTROL PROGRAMS
 - 3.1 Water Quality Standards
 - 3.2 Total Maximum Daily Load Program
- SECTION 4. SURFACE WATER MONITORING AND ASSESSMENT
 - 4.1 Monitoring and Assessment Program
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 - 4.5 Public Health Issues
- SECTION 5. ASSESSMENT DATA CONTROL ACTIVITIES
 - 5.1 Data Management Activities in the Assessment Data Base (ADB)
- SECTION 6. PUBLIC PARTICIPATION
 - 6.1 Public Consultation for 2010 303(d) List Development
 - 6.2 Public Comment for 2010 Integrated Report
- REPORT APPENDICIES
 - Appendix A: Impaired Waters (PDF 21.7 MB)
 - Appendix B: Waters in need of TMDLs [303(d) list] and TMDL Priority Schedule (PDF 310 KB)
 - Appendix C: Waters with Use Support Assessments during the 2010 Reporting Cycle (PDF 8 KB)
 - Appendix D: Impairment Causes De-Listed from the 2008 303(d) List (Category 5) (PDF 63 KB)
 - Appendix E: Beneficial Use Designation Changes during the 2010 Reporting Cycle (PDF 20 KB)
 - Appendix F: EPA-Approved TMDLs (PDF 177 KB)
 - Appendix G: Monitoring and Assessment Schedule for 2010 - 2012 (PDF 14 KB)

Montana's Water Quality Assessment Database

This menu item leads to a query page accessing the databases containing Montana surface waters included in the state's water quality Assessment Database (ADB). You will be able to query water quality assessment information by Year, Waterbody Name, TMDL Planning Area (2006 and later only), County, 4th Field Hydrologic Unit Code, Water Quality Category, Designated Use, Probable Cause, and/or Probable Source in steps 1 and 2 and then also by Waterbody Type or Use Support Level in step 3. Each assessed waterbody will have its own summary report containing geographic, beneficial use support, impairment (if assessed as impaired), and assessment information. Maps and links to assessment record sheets are also available for all assessed waters.

Data Files

- FAQ
- Instructions
- Feedback

Water Quality Information

- | 305(b) Reports | 303(d) Lists |
|----------------|--------------|
| • 2010 | • 2010 |
| • 2008 | • 2008 |
| • 2006 | • 2006 |
| • 2004 | • 2004 |
| • 2002 | • 2002 |
| • 2000 | • 2000 |
| • 1998 | • 1998 |
| • 1996 | • 1996 |

Public Comment & Call for Data

- View Final 2010 Water Quality Integrated Report
- Comment DRAFT report - The comment period ended at 5 PM 11/20/2010
- Important Information about Mailing Lists

Related Information

Federal Clean Water Act

Montana Water Quality Laws

Montana DEQ Water Quality Information

- Data Management
 - MT-eWQX & STORET Support
- Quality Assurance Program
- Water Quality Standards
- Surface Water Monitoring
- Point Source-Discharge Permits
- Nonpoint Source
- Source Water Protection
- Water Pollution Control
- Total Maximum Daily Loads (TMDL)

Sign Up to Receive Electronic Notifications

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- WQP Data Management Data Providers

3.0 WATER POLLUTION CONTROL PROGRAMS

DEQ is the delegated authority implementing several federal Clean Water Act (CWA) programs in Montana. Collectively, these programs are designed to achieve the CWA's broad goal of maintaining fishable and swimmable waters, i.e., attaining water quality standards. **Section 3** of the 2010 Integrated Report provides only an overview of the status of water quality standards and Total Maximum Daily Load (TMDL) programs.

3.1 Water Quality Standards

States adopt water quality standards to protect public health and welfare, to maintain or improve water quality, and to comply with the CWA. Water quality standards define the quality goals of a waterbody, or portion thereof, by 1) designating the use or uses that the water is expected to support; 2) setting criteria that define the quality necessary to protect the uses; and 3) preventing degradation of water quality through non-degradation provisions.

3.1.1 Montana Water Classification System

3.1.1.1 Beneficial Uses

In the 1950s Montana classified its waterbodies according to the present and future beneficial uses they should be capable of supporting (75-5-301 MCA). The State Water-Use Classification System (ARM 17.30.604-629) identifies the following beneficial uses:

- Drinking, culinary, and food processing
- Support for fishes and aquatic life, waterfowl, and furbearers
- Bathing, swimming, recreation, and aesthetics
- Agricultural water supply
- Industrial water supply

3.1.1.1.1 Drinking Water, Culinary, and Food Processing

Human health criteria address toxins and carcinogens. Criteria for carcinogens, such as arsenic, are set to a specific level of increased cancer risk resulting from lifelong exposure by drinking contaminated water and consuming the fish it supports. For all carcinogens except arsenic, the Montana Legislature has determined the acceptable risk as one case of cancer per 100,000 persons exposed. For arsenic the acceptable risk is one cancer per 1,000 persons exposed (MCA 75-5-301(2)(b)).

3.1.1.1.2 Aquatic Life and Fishes

Broadly, support of aquatic life means the protection of fish and other aquatic animals and plants normally associated with a healthy ecosystem. Aquatic life can be impaired by chemical pollutants, sediments, temperature changes, riparian habitat degradation, stream channel modifications, excessive water withdrawal, irrigation return flows, and other actions that disrupt the waterbody's naturally occurring hydrological conditions or biological integrity.

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In August 2003 Montana added four additional classes: D, E, F, and G. The classes include ephemeral streams (E-1, E-2), ditches (D-1, D-2), seasonal or semi-permanent lakes and ponds (E-3, E-4, E-5), and waters with low or sporadic flow (F-1). G-1 waters must be maintained for watering wildlife and livestock and supporting secondary contact recreation and aquatic life, not including fish. These waters are marginally suitable for irrigation after treatment or with mitigation measures and includes “holding water” from coal bed methane development.

Note: The classification system designated uses for waterbodies as present at the time of classification in 1955. Waterbodies may now have other realized uses that are not officially designated. In such cases, a waterbody may be reclassified to officially recognize these other uses. Conversely, designated uses *cannot* be removed from a waterbody without a formal Use Attainability Analysis and approval under rulemaking by the Montana Board of Environmental Review. To date Montana has not added any waters in these four new classes; rather they are placeholders for future use.

Table 3-1. Montana Surface Water Classifications

Classification	Description
A-CLOSED	Suitable for drinking, culinary and food processing purposes after simple disinfection.
A-1	Suitable for drinking, culinary and food processing purposes after conventional treatment for removal of naturally present impurities.
B-1	Suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; agricultural/industrial water supply.
B-2	Suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; agricultural/industrial water supply.
B-3	Suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; agricultural/industrial water supply.
C-1	Suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; agricultural/industrial water supply.
C-2	Suitable for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; agricultural/industrial water supply.
C-3	Suitable for bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl, and furbearers. Quality is naturally marginal for drinking, culinary and food processing purposes, agricultural/industrial water supply. Degradation that impacts existing or established uses is prohibited.
I	The goal for these waters is to fully support the following uses: drinking, culinary and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of fishes and associated aquatic life, waterfowl, and furbearers; agricultural/industrial water supply.
D-1	Suitable for agricultural purposes and secondary contact recreation.
D-2	Suitable for agricultural purposes and secondary contact recreation. Because of conditions resulting from flow regulation, maintenance of the ditch, or geomorphological and riparian habitat conditions, quality is marginally suitable for aquatic life.
E-1	Suitable for agricultural purposes, secondary contact recreation, and wildlife.
E-2	Suitable for agricultural purposes, secondary contact recreation, and wildlife. Because of habitat, low flow, hydro-geomorphic, and other physical conditions, waters are marginally suitable for aquatic life.
E-3	Suitable for agricultural purposes, secondary contact recreation, and wildlife.
E-4	Suitable for aquatic life, agricultural purposes, secondary contact recreation, and wildlife.

Table 3-1. Montana Surface Water Classifications

Classification	Description
E-5	Suitable for agricultural purposes, secondary contact recreation, saline tolerant aquatic life, and wildlife.
F-1	Suitable for secondary contact recreation, wildlife, and aquatic life, not including fish.
G-1	To be maintained suitable for watering wildlife and livestock, aquatic life not including fish, secondary contact recreation, and marginally suitable for irrigation after treatment or with mitigation measures.

Table 3-2. Designated Beneficial Uses by Waterbody Class

Beneficial Uses	Water Use Classification							
	A-Closed	A-1 B	-1	B-2	B-3	C-1	C-2	C-3
Aquatic Life	X	X	X	X	X	X	X	X
Fishes (salmonid)	X	X	X	X		X	X	
Fishes (non-salmonid)					X			X
Agriculture	X	X	X	X	X	X	X	M
Industry	X	X	X	X	X	X	X	M
Drinking Water (human health)	X	X	X	X	X			M
Recreation	X	X	X	X	X	X	X	X

X = Beneficial use

M = Marginal Use (may exist)

3.1.1.2.1 Waters in need of Water Use Classification Review

DEQ believes that waterbody segments identified in **Table 3-3** need to be reviewed for appropriate classification. When the use-classification system was established in 1955, these waters were so impacted that uses typical of otherwise similar waters were not supported. The state's goal is to improve the quality of these waterbodies so that they fully support all appropriate beneficial uses.

Table 3-3. Montana Surface Waters with Unique Use Classifications

Waterbody	Classification
Rainy Creek (mainstem from the W.R. Grace Company water supply intake to the Kootenai River)	C-1
Clark Fork River (from Warm Springs Creek to Cottonwood Creek)	C-2
Clark Fork River (from Cottonwood Creek to the Little Blackfoot River)	C-1
Ashley Creek (mainstem from bridge crossing on Airport Road to the Flathead River)	C-2
Prickly Pear Creek (below East Helena – Upper Missouri Basin)	I
Silver Bow Creek (Upper Clark Fork Basin)	I
Muddy Creek (Sun River Basin)	I

3.1.1.3 Groundwater Classification System

Groundwater is classified according to its actual quality and use as of October 1982 and is broken into four classes: I, II, III, and IV (**Table 3-4**).

Appendix A: Impaired Waters

HUC 17010208 Flathead Lake Watershed Flathead

TMDL Planning Area	ID305B	Waterbody Name/Location	Category	Size	Units	Use Class	AL	CWF	WWF	AG	Ind	DW	Rec	Cause Name	Source Name
Flathead Lake	MT79C003_010	FLATHEAD LAKE	5	6.42	ACRES	A-1	P	F	F	F	F	F	F	Mercury	Atmospheric Deposition - Nitrogen
														Nitrogen (Total)	Impacts from Hydrostructure Flow
														Phosphorus (Total)	Regulation/Modification
														Polychlorinated biphenyls	Municipal Point Source Discharges
														Sedimentation/Siltation	Silviculture Harvesting
														Source Unknown	Unspecified Urban Stormwater
														Upstream Impoundments (e.g., Pt-566 NRCS Structures)	Agriculture
Flathead - Stillwater	MT79C004_020	LAKE MARY ROMAN	4C	6.84	ACRES	A-1	T	T	F	F	X	F	F	Chlorophyll-a	Grazing in Riparian or Shoreline Zones
															Silviculture Activities

F=Full Support P=Partial Support T=Threatened N=Not Supporting I=Insufficient Information X=Not Assessed

Appendix B: Waters in need of TMDLs [303(d) list] and TMDL Priority Schedule

TMDL Planning Area	Watershed	HUC	ID3058	WaterbodyName/Location	Pollutant	Cycle First Listed	TMDL Status	TMDL Priority (2010-2012)
Flathead - Stillwater	Flathead	17010210	MT76P003_010	WHITFISH RIVER, Whiterfish Lake to mouth, confluence with the Stillwater River	Lead	2000	Scheduled	L
Flathead - Stillwater	Flathead	17010210	MT76P003_010	WHITFISH RIVER, Whiterfish Lake to mouth, confluence with the Stillwater River	Nitrogen (Total)	1988	In Progress	H
Flathead - Stillwater	Flathead	17010210	MT76P003_010	WHITFISH RIVER, Whiterfish Lake to mouth, confluence with the Stillwater River	Oil and Grease	2000	Scheduled	L
Flathead - Stillwater	Flathead	17010210	MT76P003_010	WHITFISH RIVER, Whiterfish Lake to mouth, confluence with the Stillwater River	PCB in Water Column	2000	Scheduled	L
Flathead - Stillwater	Flathead	17010210	MT76P003_010	WHITFISH RIVER, Whiterfish Lake to mouth, confluence with the Stillwater River	Temperature, water	1988	In Progress	H
Flathead - Stillwater	Flathead	17010210	MT76P003_020	SWIFT CREEK, headwaters (East and West Forks) to mouth (Whiterfish Lake)	Phosphorus (Total)	1990	In Progress	H
Flathead - Stillwater	Flathead	17010210	MT76P004_010	WHITFISH LAKE	Mercury	2000	Scheduled	L
Flathead - Stillwater	Flathead	17010210	MT76P004_010	WHITFISH LAKE	Polychlorinated biphenyls	2000	Scheduled	L
Flathead - Stillwater	Flathead	17010210	MT76P004_010	WHITFISH LAKE	Sedimentation/Station	1996	In Progress	H
Flathead Headwaters	Flathead	17010207	MT76I002_040	CHALLENGE CREEK, headwaters to mouth (Granite Creek)	Phosphorus (Total)	2006	Scheduled	L
Flathead Lake	Flathead	17010208	MT76O003_010	FLATHEAD LAKE	Mercury	2000	Scheduled	L
Flathead Lake	Flathead	17010208	MT76O003_010	FLATHEAD LAKE	Polychlorinated biphenyls	2000	Scheduled	L
Flathead Lake	Flathead	17010208	MT76O003_010	FLATHEAD LAKE	Sedimentation/Station	1996	In Progress	H
Flatwillow - Box Elder	Musselshell	10040203	MT40B001_021	FLATWILLOW CREEK, headwaters to Highway 87 bridge	Sedimentation/Station	2000	Scheduled	L
Flatwillow - Box Elder	Musselshell	10040203	MT40B001_022	FLATWILLOW CREEK, Highway 87 bridge to mouth (Musselshell River)	Mercury	2004	Scheduled	L
Flatwillow - Box Elder	Musselshell	10040203	MT40B001_022	FLATWILLOW CREEK, Highway 87 bridge to mouth (Musselshell River)	Nitrogen, Nitrate	2004	Unassigned	L
Flatwillow - Box Elder	Musselshell	10040203	MT40B001_022	FLATWILLOW CREEK, Highway 87 bridge to mouth (Musselshell River)	Sedimentation/Station	2000	Scheduled	L
Flatwillow - Box Elder	Musselshell	10040203	MT40B001_040	NORTH FORK FLATWILLOW CREEK, headwaters to confluence with South Fork	Sedimentation/Station	2002	Scheduled	L
Flatwillow - Box Elder	Musselshell	10040204	MT40B002_010	MCDONALD CREEK, North and South Forks to mouth (Box Elder Creek)	Sedimentation/Station	1988	Scheduled	M
Flatwillow - Box Elder	Musselshell	10040204	MT40B002_010	MCDONALD CREEK, North and South Forks to mouth (Box Elder Creek)	Specific Conductance	2006	Scheduled	L

L = Low M = Medium H = High / "L" if CFI > 1996 and not "H"; "M" if CFI < 1996 and not "H"; "H" if Status = In Progress, AB Evaluation, EPA Submitted, or EPA Approved (Assumes a 2012 completion goal)



Montana Department of
ENVIRONMENTAL QUALITY

COMPLAINANT'S
EXHIBIT NO. 8

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

November 17, 2008

Brett McCrumb
Flathead Dock & Pile, Inc.
749 Finley Point
Polson, MT 59860

CERTIFIED MAIL #7006 2150 0001 5294 9869
Return Receipt Requested

SUBJECT: Violation of Montana Water Quality Act, Flathead Lake, Flathead County,
Montana (CVID #11767)

Dear Mr. McCrumb:

This letter is to document that an activity by Flathead Dock & Pile, Inc. (FD&P) constituted violations of Sections 75-5-605(1)(a) and 75-5-605(2)(c) Montana Code Annotated (MCA), of the Montana Water Quality Act (Act). These sections of the Act forbid polluting and causing wastes to be placed in state waters. On November 8, 2007, Flathead County notified the Department of Environmental Quality that FD&P had directed Dockmaster, Inc. to dump soil material, gravel, and rocks from a barge into Flathead Lake. The county's notification included photos of the dumping and a copy of a signed, hand-written note that documented your directions to Dockmaster. As Flathead Lake is considered a state water, the dumping represented violations of the Act.

Because removal of the material from Flathead Lake is not feasible, the Department is requiring no further corrective action.

This incident of pollution and placement of waste has been entered into the Department's database for tracking purposes. Another such incident may trigger a Department enforcement action. This notice letter fulfills the requirements of Section 75-5-617(2), MCA, and does not create a right of appeal pursuant to Section 75-5-611(4), MCA.

You may contact me if you have any questions or concerns about the Department's investigation or this letter.

Sincerely,

Scott A. McCollough, Enforcement Specialist
Enforcement Division
Phone: 406-444-4202; Fax: 406-444-1923
E-mail: smccollough@mt.gov

cc: Glenda Walton, Dockmaster, Inc., P.O. Box 362, Polson, MT 59860
George Smith, Flathead County Health Dept., 1035 1st Ave. W., Kalispell, MT 59901



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

COMPLAINANT'S
EXHIBIT NO. 9

MAY 16 2011

Ref: 8ENF-L

By Certified Mail, Return Receipt Requested

No. 7009 3410 0000 2593 0829

Glenda Walton, Registered Agent
Dockmaster Inc.
517 Cleveland Street, SW
Polson, MT 59860

By Certified Mail, Return Receipt Requested

No. 7009 3410 0000 2593 0836

Glenda Walton, Registered Agent
Dockmaster Inc.
517 Cleveland Street, SW
Ronan, MT 59864-2906

Re: Administrative Penalty Proceeding
Docket No. CWA-08-2011-0002

Dear Ms. Walton:

On March 8, 2011, the Regional Judicial Officer of Region 8 of the U.S. Environmental Protection Agency (EPA) issued a Default Initial Decision and Order finding Dockmaster Inc. (Dockmaster) liable as a matter of law for discharging dredged and fill material into Flathead Lake on November 7-9, 2007, in violation of the Clean Water Act.

Our office intends to ask the Regional Judicial Officer to assess a penalty of \$10,000, as proposed in EPA's complaint. Before doing so, however, we would like to find out whether you wish to claim that Dockmaster is unable to afford the \$10,000 penalty that EPA has proposed. If you would like to make this claim, please fill out and return the enclosed Request for Financial Information for Dockmaster Inc., Form 4506-T, and Financial Statement for Businesses no later than Friday, June 10, 2011.

Please note that the only reason EPA is asking for this information is to provide Dockmaster the opportunity to submit documentation that it is unable to pay the proposed penalty of \$10,000. If Dockmaster is not claiming that it is unable to pay this amount, then there is no need to submit this information to EPA.



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If you have questions, please contact Kenneth Champagne at 800/227-8917, extension 6608 or me at 800/227-8917, extension 6858. If you hire an attorney, please ask your attorney to contact me.

Sincerely,

Margaret J. Livingston
 Margaret J. (Peggy) Livingston
 Enforcement Attorney

Enclosures

cc: Kenneth Champagne, 8ENF-W

7009 3410 0000 2593 0836

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com ®	
OFFICIAL USE	
Postage	\$
Certified Fee	<i>Mailed</i>
Return Receipt Fee (Endorsement Required)	<i>5/16/11</i>
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Glenda Walton, Registered Agent	
Dockmaster Inc.	
517 Cleveland Street, SW	
Ronan, MT 59864-2906	
PS Form 3800, August 2008 See Reverse for Instructions	

Postmark Here
ms

7009 3410 0000 2593 0829

U.S. Postal Service™	
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For delivery information visit our website at www.usps.com ®	
OFFICIAL USE	
Postage	\$
Certified Fee	<i>Mailed JW</i>
Return Receipt Fee (Endorsement Required)	<i>5/16/11</i>
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Glenda Walton, Registered Agent	
Dockmaster Inc.	
517 Cleveland Street, SW	
Polson, MT 59860	
PS Form 3800, August 2008 See Reverse for Instructions	

Postmark Here

**Request for Financial Information
from Dockmaster Inc.**

1. Please provide a written statement and documentation supporting the claim that Dockmaster Inc. is unable to pay a \$10,000 penalty.
2. Please provide complete and signed copies of the U.S. Federal Income Tax Returns (Forms 1120, 1120S, 1041, or 1065) that Dockmaster Inc. has submitted to the Internal Revenue Service, including all schedules and attachments, for the last five (5) years.
3. Please provide the most recent five (5) years of audited year-end financial statements, including balance sheets, income statements, statements of cash flow, supplemental notes and auditor's opinion for Dockmaster Inc. If audited statements are not available, please submit unaudited financial statements. Please submit current year-to-date financial information such as a balance sheet and an income statement.
4. Please sign and date the enclosed IRS Form 4506-T "Request for Transcript of Tax Return." This authorizes EPA to request information from the Internal Revenue Service regarding the federal income tax returns for Dockmaster Inc.
5. Please complete, sign and date the questionnaire entitled "Financial Statement for Businesses."
6. Please describe all related party transactions, as set forth below, that apply to Dockmaster Inc. This is to include all transactions between this corporation and any and all of the following:
 - a. Any affiliated corporations, affiliated partnerships or other business entity that although it is not owned by Dockmaster Inc. may have the same owner/investor as does Dockmaster Inc..
 - b. The parent corporate entity, all subsidiary entities of the parent corporation and all subsidiaries of Dockmaster Inc..
 - c. The stockholders of Dockmaster Inc.
7. Complete, sign and date the notarized certificate by an authorized person or officer of Dockmaster Inc. The notarized signature must state that all responses and information submitted are complete and accurate.

NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age, hereby state:

- 1. I am the person authorized by Dockmaster Inc. to respond to the Environmental Protection Agency's ("EPA") Request for Additional Financial Information regarding Dockmaster Inc.
- 2. I have made a complete and thorough review of all documents, information and sources relevant to the request.
- 3. I hereby certify that the attached response to EPA's request is complete and contains all information and documents responsive to the request.

(Signature)

(Print Name)

(Title)

Subscribed and sworn to me on this _____ day of _____.

[SEAL]

Notary Public

My Commission Expires _____

My address is:

Department of the Treasury
Internal Revenue Service

▶ Request may be rejected if the form is incomplete or illegible.

Tip. Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can also call 1-800-829-1040 to order a transcript. If you need a copy of your return, use **Form 4506, Request for Copy of Tax Return**. There is a fee to get a copy of your return.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return.	2b Second social security number if joint tax return
3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code	
4 Previous address shown on the last return filed if different from line 3	

5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information.

DANIELA GOLDEN, MAIL CODE: 8ENF-RC	1595 WYNKOOP STREET
U.S. ENVIRONMENTAL PROTECTION AGENCY	DENVER, COLORADO 80202-1129

Caution. If the transcript is being mailed to a third party, ensure that you have filled in line 6 and line 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy.

- 6 Transcript requested. Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ▶ 1120 or 1120S OR 1065
- a Return Transcript, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days
 - b Account Transcript, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days.
 - c Record of Account, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days
 - 7 Verification of Nonfiling, which is proof from the IRS that you did not file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days
 - 8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript. The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2007, filed in 2008, will not be available from the IRS until 2009. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days

Caution. If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

<u>12/31/2006</u>	<u>12/31/2007</u>	<u>12/31/2008</u>	<u>12/31/2009</u>
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Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. Note. For transcripts being sent to a third party, this form must be received within 120 days of signature date.

Telephone number of taxpayer on line 1a or 2a

Sign Here	Signature (see instructions)	Date
	Title (if line 1a above is a corporation, partnership, estate, or trust)	
	Spouse's signature	Date



U.S. Environmental Protection Agency, Region VIII
Financial Statement for Businesses *

(If additional space is needed, attach a separate sheet)

1. Your name and address <i>(including zipcode and county)</i>	1a. Business name and address <i>(including zipcode and county)</i>	2. Business phone number ()
3. Name and address of registered agent <i>(including zipcode and county)</i>		4. <i>(Check appropriate box)</i> <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Corporation
		7a. Type of business 7b. SIC Code
5. State of Incorporation (or country if foreign)	5a. Employer Identification Number	6. Date of Incorporation

8. Information about owner, partners, officers, directors, major shareholder (5% or more stock ownership), other holders of more than 5% equity interest, holders of rights to purchase more than equity interest and other persons with an ability to control.

Name and Title	Effective Date	Home Address	Social Security Number (optional)	Phone Number	Total Shares or Interest

Section I General Financial Information

9. Last three years Federal and state income tax returns	Forms Filed	Tax Years ended	Net income before taxes
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10. Bank accounts *(List all types of accounts including checking, savings, certificates of deposit, etc.)*

Name of Institution	Address	Type of Account	Account No.	Balance
Total <i>(Enter in Item 19)</i>				

11. Bank Credit available *(Lines of credit, etc.)*

Name of Institution	Address	Credit Limit	Amount Owed	Credit Available	Month
Totals					

12. Location, box number, and contents of all safe deposit boxes rented or accessed

* This information is requested pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604, and is not subject to approval of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

13. Real property

Brief Description and Type of Ownership	Address (include county, state and parcel number)
a.	
b.	
c.	

14. Insurance policies owned with business as beneficiary

Name Insured	Company	Policy Number	Type	Face Amount	Available Loan Value
Total (Enter in Item 21)					

15. Additional Information (Court and administrative proceedings by or against the business, settlement agreements, agreements to purchase or sell tangible or financial assets other than in the ordinary course of business, legal claims [whether asserted or not], bankruptcies, repossessions, recent transfers of assets for less than value, anticipated increases in income, options to buy or sell real or personal property, real or personal property being purchased under contract, real or personal property being held on behalf of the business).

15a. List all subsidiaries owned, joint ventures, partnerships and other entities controlled by the business. Provide current market value of the business' interest in such subsidiary or other entity.

16. Federal government departments or agencies with whom you have a contract for payment of goods or services

Agency Name	Address	Contract No.	Amount to be Received	Payment Due Date

16a. Federal government departments or agencies that have extended or given the business loans, grants or assistance, or to which you have applied (or anticipated applying for any loan, grant, or assistance) in the past 5 years.

17. Accounts/Notes receivable (Include loans to stockholders, officers, partners, etc.)

Agency Name	Address	Amount Due	Due Date	Status
Total (Enter in Item 20)				

Section II.

Asset and Liability Analysis

Description (a)		Cur. Mkt Value (b)	Liabilities Bal. Due (c)	Equity in Asset (d)	Amount of Mo. Pymt. (e)	Name and Address of Lien/Note Holder/Obligee (f)	Date Pledged (g)	Date of Final Pymt. (h)
18. Cash on hand								
19. Bank accounts								
19a. Securities and other financial assets owned								
20. Accounts/Notes receivable								
21. Insurance Loan Value								
22. Real property (from item 13)	a.							
	b.							
	c.							
	d.							
23. Vehicles (Model, year, license)	a.							
	b.							
	c.							
24. Machinery and equipment (Specify)	a.							
	b.							
	c.							
25. Merchandise inventory (Specify)	a.							
	b.							
26. Other Assets (including permits, licenses, tax loss carry forwards, agreements not to compete, other contracts) (Specify)	a.							
	b.							
	c.							
	d.							
27. Other Liabilities (Include judgements, notes, tax liens, etc.)	a.							
	b.							
	c.							
	d.							
	e.							
28. Federal & State Taxes Owed								
29. Totals								

Section III.

Income and Expense Analysis

The following information applies to income and expenses during a one year period:

Accounting method used

_____ to _____

Income		Expenses	
30. Gross receipts from sales, services, etc.	\$	36. Materials purchased	\$
31. Gross rental income		37. Wages and salaries of employees	
32. Interest		38. Wages/salaries/bonuses for officers, directors and stockholders	
33. Dividends		39. Rent	
34. Other income (Specify)		40. Installment payments (from line 29)	
		41. Supplies	
		42. Utilities / Telephone	
		43. Gasoline / Oil	
		44. Repairs and maintenance	
		45. Insurance	
		46. Current taxes	
		47. Other, including fees paid for services (Specify)	
35. Total	\$	48. Total	\$
		49. Net difference	\$

50. List all transferred real & personal property, including cash (by gift; by loan that was not at fair market terms; by sale for less than fair market value or made outside the normal course of business, etc.) that was made within the last 3 years (items of \$3,000.00 or more):

Date	Amount	Property Transferred	To Whom	Conditions of Transfer
			(Indicate any relationship to business or its partners, directors, stockholders, or other controlling persons)	

Certification

Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

51. Signature	52. Print Name / Title	53. Date
---------------	------------------------	----------

REGION 8

1595 Wynkoop Street

Denver, CO 80202-1129

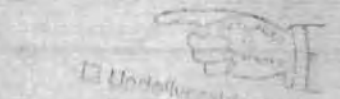
8ENF-L-P.L.



7009 3410 0000 2593 0829

US POSTAGE
03/16/2011
MAIL PERMIT NO. 2593
DENVER, CO

USINESS - PENALTY FOR PRIVATE USE - \$300



- Undeliverable as Addressed
- Moved, Left No Address
- Unclaimed
- Refused
- Attempted, Not Known
- No Such Street
- No Such Number
- No Postoffice
- Vacant

Glenda Walton, Registered Agent
 Dockmaster Inc.
 517 Cleveland Street, SW
 Polson, MT 59860

COMPLAINANT'S
EXHIBIT NO. 10

SCANNED

RETURN RECEIPT
REQUESTED

CERTIFIED
MAIL

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

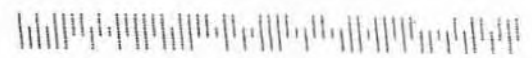
1. Article Addressed to:

Glenda Walton, Registered Agent
 Dockmaster Inc.
 517 Cleveland Street, SW
 Polson, MT 59860

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
- B. Received by (Printed Name) Addressee
- C. Date of Delivery
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
- Certified Mail
 - Express Mail
 - Return Receipt for Merchandise



COMPLAINANT'S
EXHIBIT NO. 11

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAY 18 2011
Glenda Walton, Registered Agent
Dockmaster Inc.
517 Cleveland Street, SW
Ronan, MT 59864-2906

2. Article Number
(Transfer from service label)

F
7009 3410 0000 2593 0836

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Glennie Bump* Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

5-18-11

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Domestic Return Receipt

102595-02-M-1540

EPA Environmental Protection Agency

REGION 8

1595 Wynkoop Street

Denver, CO 80202-1129

8ENF-L-P.L.

OFFICIAL BUSINESS - PENALTY FOR PRIVATE USE - \$300

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



7009 3410 0000 2593 0836

Refused

- Undeliverable as Addressed
- Moved, Left No Address
- Returned
- Refused
- Attempted, Not Known
- No Such Street
- No Such Number
- No Receipts
- Deceased
- Vacant

Glenda Walton, Registered Agent
 Dockmaster Inc.
 517 Cleveland Street, SW
 Ronan, MT 59864-2906

- Undeliverable as Addressed
- Moved, Left No Address
- Unclaimed
- Returned
- Attempted, Not Known
- No Such Street
- No Such Number
- No Receipts
- Deceased
- Vacant

COMPLAINANT'S EXHIBIT NO. 12

RETURN RECEIPT REQUESTED

CERTIFIED MAIL

POLICY ON CIVIL PENALTIES

EPA GENERAL ENFORCEMENT POLICY #GM - 21

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

EFFECTIVE DATE: FEB 16 1984

Introduction

This document, Policy on Civil Penalties, establishes a single set of goals for penalty assessment in EPA administrative and judicial enforcement actions. These goals - deterrence, fair and equitable treatment of the regulated community, and swift resolution of environmental problems - are presented here in general terms. An outline of the general process for the assessment of penalties is contained in Attachment A.

A companion document, A Framework for Statute-Specific Approaches to Penalty Assessments, will also be issued today. This document provides guidance to the user of the policy on how to write penalty assessment guidance specific to the user's particular program. The first part of the Framework provides general guidance on developing program-specific guidance; the second part contains a detailed appendix which explains the basis for that guidance. Thus, the user need only refer to the appendix when he wants an explanation of the guidance in the first part of the Framework.

In order to achieve the above Agency policy goals, all administratively imposed penalties and settlements of civil penalty actions should, where possible, be consistent with the guidance contained in the Framework document. Deviations from the Framework's methodology, where merited, are authorized as long as the reasons for the deviations are documented. Documentation for deviations from the Framework in program-specific guidance should be located in that guidance. Documentation for deviations from the program-specific guidance in calculating individual penalties should be contained in both the case files and in any memoranda that accompany the settlements.

The Agency will make every effort to urge administrative law judges to impose penalties consistent with this policy and any medium-specific implementing guidance. For cases that go to court, the Agency will request the statutory maximum penalty in the filed complaint. And, as proceedings warrant, EPA will continue to pursue a penalty no less than that supported by the applicable program policy. Of course, all penalties must be consistent with applicable statutory provisions, based upon the number and duration of the violations at issue.

Applicability

This policy statement does not attempt to address the specific mechanisms for achieving the goals set out for penalty assessment. Nor does it prescribe a negotiation strategy to achieve the penalty target figures. Similarly, it does not address differences between statutes or between priorities of different programs. Accordingly, it cannot be used, by itself, as a basis for determining an appropriate penalty in a specific

action. Each EPA program office, in a joint effort with the Office of Enforcement and Compliance Monitoring, will revise existing policies, or write new policies as needed. These policies will guide the assessment of penalties under each statute in a manner consistent with this document and, to the extent reasonable, the accompanying Framework.

Until new program-specific policies are issued, the current penalty policies will remain in effect. Once new program-specific policies are issued, the Agency should calculate penalties as follows:

- ° For cases that are substantially settled, apply the old policy.
- ° For cases that will require further substantial negotiation, apply the new policy if that will not be too disruptive.

Because of the unique issues associated with civil penalties in certain types of cases, this policy does not apply to the following areas:

- ° CERCLA §107. This is an area in which Congress has directed a particular kind of response explicitly oriented toward recovering the cost of Government cleanup activity and natural resource damage.
- ° Clean Water Act §311(f) and (g). This also is cost recovery in nature. As in CERCLA §107 actions, the penalty assessment approach is inappropriate.
- ° Clean Air Act §120. Congress has set out in considerable detail the level of recovery under this section. It has been implemented with regulations which, as required by law, prescribe a non-exclusive remedy which focuses on recovery of the economic benefit of noncompliance. It should be noted, however, that this general penalty policy builds upon, and is consistent with the approach Congress took in that section.

Much of the rationale supporting this policy generally applies to non-profit institutions, including government entities. In applying this policy to such entities, EPA must exercise judgment case-by-case in deciding, for example, how to apply the economic benefit and ability to pay sanctions, if at all. Further guidance on the issue of seeking penalties against non-profit entities will be forthcoming.

Deterrence

The first goal of penalty assessment is to deter people from violating the law. Specifically, the penalty should persuade the violator to take precautions against falling into noncompliance again (specific deterrence) and dissuade others from violating the law (general deterrence). Successful deterrence is important because it provides the best protection for the environment. In addition, it reduces the resources necessary to administer the laws by addressing noncompliance before it occurs.

If a penalty is to achieve deterrence, both the violator and the general public must be convinced that the penalty places the violator in a worse position than those who have complied in a timely fashion. Neither the violator nor the general public is likely to believe this if the violator is able to retain an overall advantage from noncompliance. Moreover, allowing a violator to benefit from noncompliance punishes those who have complied by placing them at a competitive disadvantage. This creates a disincentive for compliance. For these reasons, it is Agency policy that penalties generally should, at a minimum, remove any significant economic benefits resulting from failure to comply with the law. This amount will be referred to as the "benefit component" of the penalty.

Where the penalty fails to remove the significant economic benefit, as defined by the program-specific guidance, the case development team must explain in the case file why it fails to do so. The case development team must then include this explanation in the memorandum accompanying each settlement for the signature of the Assistant Administrator of Enforcement and Compliance Monitoring, or the appropriate Regional official.

The removal of the economic benefit of noncompliance only places the violator in the same position as he would have been if compliance had been achieved on time. Both deterrence and fundamental fairness require that the penalty include an additional amount to ensure that the violator is economically worse off than if it had obeyed the law. This additional amount should reflect the seriousness of the violation. In doing so, the penalty will be perceived as fair. In addition the penalty's size will tend to deter other potential violators.

In some classes of cases, the normal gravity calculation may be insufficient to effect general deterrence. This could happen if, for example, there was extensive noncompliance with certain regulatory programs in specific areas of the United States. This would demonstrate that the normal penalty assessments had not been achieving general deterrence. In such cases, the case development team should consider increasing the gravity component sufficient to

achieve general deterrence. These extra assessments should balance the other goals of this policy, particularly equitable treatment of the regulated community.

This approach is consistent with the civil penalty provisions in the environmental laws. Almost all of them require consideration of the seriousness of the violation. This additional amount which reflects the seriousness of the violation is referred to as the "gravity component". The combination of the benefit and gravity components yields the "preliminary deterrence figure."

As explained later in this policy, the case development team will adjust this figure as appropriate. Nevertheless, EPA typically should seek to recover, at a minimum, a penalty which includes the benefit component plus some non-trivial gravity component. This is important because otherwise, regulated parties would have a general economic incentive to delay compliance until the Agency commenced an enforcement action. Once the Agency brought the action, the violator could then settle for a penalty less than their economic benefit of noncompliance. This incentive would directly undermine the goal of deterrence.

Fair and Equitable Treatment of the Regulated Community

The second goal of penalty assessment is the fair and equitable treatment of the regulated community. Fair and equitable treatment requires that the Agency's penalties must display both consistency and flexibility. The consistent application of a penalty policy is important because otherwise the resulting penalties might be seen as being arbitrarily assessed. Thus violators would be more inclined to litigate over those penalties. This would consume Agency resources and make swift resolution of environmental problems less likely.

But any system for calculating penalties must have enough flexibility to make adjustments to reflect legitimate differences between similar violations. Otherwise the policy might be viewed as unfair. Again, the result would be to undermine the goals of the Agency to achieve swift and equitable resolutions of environmental problems.

Methods for quantifying the benefit and gravity components are explained in the Framework guidance. These methods significantly further the goal of equitable treatment of violators. To begin with, the benefit component promotes equity by removing the unfair economic advantage which a violator may have gained over complying parties. Furthermore, because the benefit and gravity components are generated systematically, they

will exhibit relative consistency from case to case. Because the methodologies account for a wide range of relevant factors, the penalties generated will be responsive to legitimate differences between cases.

However, not all the possibly relevant differences between cases are accounted for in generating the preliminary deterrence amount. Accordingly, all preliminary deterrence amounts should be increased or mitigated for the following factors to account for differences between cases:

- ° Degree of willfulness and/or negligence
- ° History of noncompliance.
- ° Ability to pay.
- ° Degree of cooperation/noncooperation.
- ° Other unique factors specific to the violator or the case.

Mitigation based on these factors is appropriate to the extent the violator clearly demonstrates that it is entitled to mitigation.

The preliminary deterrence amount adjusted prior to the start of settlement negotiations yields the "initial penalty target figure". In administrative actions, this figure generally is the penalty assessed in the complaint. In judicial actions, EPA will use this figure as the first settlement goal. This settlement goal is an internal target and should not be revealed to the violator unless the case development team feels that it is appropriate. The initial penalty target may be further adjusted as negotiations proceed and additional information becomes available or as the original information is reassessed.

Swift Resolution of Environmental Problems

The third goal of penalty assessment is swift resolution of environmental problems. The Agency's primary mission is to protect the environment. As long as an environmental violation continues, precious natural resources, and possibly public health, are at risk. For this reason, swift correction of identified environmental problems must be an important goal of any enforcement action. In addition, swift compliance conserves Agency personnel and resources.

The Agency will pursue two basic approaches to promoting quick settlements which include swift resolution of environmental problems without undermining deterrence. Those two approaches are as follows:

1. Provide incentives to settle and institute prompt remedial action.

EPA policy will be to provide specific incentives to settle, including the following:

- ° The Agency will consider reducing the gravity component of the penalty for settlements in which the violator already has instituted expeditious remedies to the identified violations prior to the commencement of litigation.^{1/} This would be considered in the adjustment factor called degree of cooperation/noncooperation discussed above.
- ° The Agency will consider accepting additional environmental cleanup, and mitigating the penalty figures accordingly. But normally, the Agency will only accept this arrangement if agreed to in pre-litigation settlement.

Other incentives can be used, as long as they do not result in allowing the violator to retain a significant economic benefit.

2. Provide disincentives to delaying compliance.

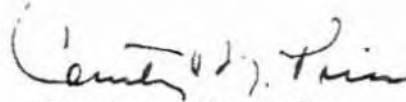
The preliminary deterrence amount is based in part upon the expected duration of the violation. If that projected period of time is extended during the course of settlement negotiations due to the defendant's actions, the case development team should adjust that figure upward. The case development team should consider making this fact known to the violator early in the negotiation process. This will provide a strong disincentive to delay compliance.

^{1/} For the purposes of this document, litigation is deemed to begin:

- ° for administrative actions - when the respondent files a response to an administrative complaint or when the time to file expires or
- ° for judicial actions - when an Assistant United States Attorney files a complaint in court.

Intent of Policy and Information Requests for Penalty Calculations

The policies and procedures set out in this document and in the Framework for Statute-Specific Approaches to Penalty Assessment are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice. In addition, any penalty calculations under this policy made in anticipation of litigation are exempt from disclosure under the Freedom of Information Act. Nevertheless as a matter of public interest, the Agency may elect to release this information in some cases.



Courtney M. Price
Assistant Administrator for
Enforcement and Compliance Monitoring

Attachment

ATTACHMENT A

Outline of Civil Penalty Assessment

I. Calculate Preliminary Deterrence Amount

- A. Economic benefit component and
- B. Gravity component

(This yields the preliminary deterrence amount.)

II. Apply Adjustment Factors

- A. Degree of cooperation/noncooperation (indicated through pre-settlement action.)
- B. Degree of willfulness and/or negligence.
- C. History of noncompliance.
- D. Ability to pay (optional at this stage.)
- E. Other unique factors (including strength of case, competing public policy concerns.)

(This yields the initial penalty target figure.)

III. Adjustments to Initial Penalty Target Figure After Negotiations Have Begun

- A. Ability to pay (to the extent not considered in calculating initial penalty target.)
- B. Reassess adjustments used in calculating initial penalty target. (Agency may want to reexamine evidence used as a basis for the penalty in the light of new information.)
- C. Reassess preliminary deterrence amount to reflect continued periods of noncompliance not reflected in the original calculation.
- D. Alternative payments agreed upon prior to the commencement of litigation.

(This yields the adjusted penalty target figure.)