NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - Because Company C did not notify the receiving facility, Company Z, that the waste was prohibited from land disposal, Company Z was unaware that the wastes were required to be further treated before land disposal. The violation may have a substantial adverse affect on the purposes or procedures for implementing the RCRA program. In addition, the violation creates a potential for harm because it hinders Company Z's ability to adequately characterize the waste in order to assure that it is properly managed. (Note, however, that Company Z has an independent regulatory obligation to characterize and properly manage wastes it receives. Thus, Company C's violation is one factor contributing to the potential for harm, rather than the sole factor creating such risks.)

(attach additional sheets if necessary)

(b) Extent of Deviation: Major - Initially, Company C did not merely prepare and send deficient 40 CFR § 268.7 notifications/certifications. Rather, it completely failed to prepare and send such forms for the first six months. During the next six months Company C sent unverified certifications. In each instance, Company C substantially deviated from the applicable requirement.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Because each violation is properly viewed as independent and noncontinuous, no multi-day assessment is warranted. Because the violation was repeated 12 times, the gravity-based penalty amount is multiplied by 12.

(attach additional sheets if necessary)

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

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

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence of willfulness has been presented but the prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the Company's other facilities recently had been found liable for similar violations. Based on these facts, an upward adjustment in the amount of 10% is justified.

(c) History of Compliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violations. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in 2.(b) above, we will not duplicate such adjustment here. The Evanston facility did, however, recently receive a notice of violation from the State Environmental Protection Department regarding violations of the State's air pollution program. The violations concerned treatment units that are utilized for the same waste that Company C was sending to Company Z. An upward adjustment of 5% is warranted.

(attach additional sheets if necessary)

(d) Ability to pay:

N/A

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors:

N/A

(attach additional sheets if necessary)

3. Economic Benefit: Company C has reaped an economic benefit by avoiding the costs of materials and labor necessary to send proper notifications/certifications to Company Z. A BEN analysis (copy omitted for purposes of this example) indicates the economic benefit of this violations amounted to $2,500.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information:

N/A

(attach additional sheets if necessary)

SETTLEMENT PENALTY AMOUNT

Company Name: Company C - Evanston Facility

Address: 1001 Yourstreet, Evanston, Illinois 12345

Requirement Violated: 40 CFR § 268.7(b): Failure to send accurate notification and certification.

1.	Gravity based penalty from matrix ($24,750 X 12)	$297,000
	(a) Potential for harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	N/A
3.	Multiply line 2 by number of days of violation minus 1	N/A
4.	Add line 1 and line 3	$297,000
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase/decrease for willfulness/negligence	10%
7.	Percent increase for history of noncompliance	5%
8.	Percent increase/decrease for other unique factors	N/A
9.	Add lines 5, 6, 7, and 8	15%
10.	Multiply line 4 by line 9	$44,500
11.	Add lines 4 and 10	$341,550
12.	Adjustment amount for environmental project	N/A
13.	Subtract line 12 from line 11	$341,550
14.	Calculate economic benefit	$2,500
15.	Add lines 13 and 14	$344,050
16.	Adjustment amount for ability-to-pay	N/A
17.	Adjustment amount for litigation risk	-$110,000
18.	Add lines 16 and 17	-$110,000
19.	Subtract line 18 from line 15 for final settlement amount	$234,050

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - Because Company C did not notify the receiving facility, Company Z, that the waste was prohibited from land disposal, Company Z was unaware that the wastes were required to be further treated before land disposal. The violation may have a substantial adverse affect on the purposes or procedures for implementing the RCRA program. In addition, the violation creates a potential for harm because it hinders Company Z's ability to adequately characterize the waste in order to assure that it is properly managed. (Note, however, that Company Z has an independent regulatory obligation to characterize and properly manage wastes it receives. Thus, Company C's violation is one factor contributing to the potential for harm, rather than the sole factor creating such risks.)

(attach additional sheets if necessary)

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

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Because each violation is properly viewed as independent and noncontinuous, no multi-day assessment is warranted. Because the violation was repeated 12 times, the gravity-based penalty amount is multiplied by 12.

(attach additional sheets if necessary)

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

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

(attach additional sheets if necessary)

(b) Willfulness/Negligence: As indicated above, lack of knowledge of the legal requirement is not a basis for reducing the penalty. To do so would encourage ignorance of the law. No evidence of willfulness has been presented but the prior knowledge of the §268.7 requirements by Company c's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the Company's other facilities recently had been found liable for similar violations. Based on these facts, an upward adjustment in the amount of 10% is justified.

(c) History of Compliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violations. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in 2.(b) above, we will not duplicate such adjustment here. The Evanston facility did however recently receive a notice of violation from the State Environmental Protection Department regarding violations of the State's air pollution program. The violations concerned treatment units that are utilized for the same waste that Company C was sending to Company Z. An upward adjustment of 5% is warranted.

(attach additional sheets if necessary)

(d) Ability to pay:

N/A

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors: Based on the litigation risk posed by (1) the Agency's inability to show (i) that all 24 drums were Company C's and (ii) that all drums contained F002 solvent, the Region decided to accept in settlement a smaller penalty than that proposed in the complaint. Since the aforementioned evidentiary weaknesses adversely affected one third of the 12 counts in the complaint, the Region reduced the proposed penalty amount by roughly one third or $110,000

(attach additional sheets if necessary)

3. Economic Benefit: Company C has reaped an economic benefit by avoiding the costs of materials and labor necessary to send proper notifications/certifications to Company Z. A BEN analysis (copy omitted for purposes of this example) indicates the economic benefit of this violation amounted to $2,500.

(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 C

Address: 101 Yourstreet, Evanston, Illinois

Requirement Violated: 42 CFR § 264.13(a). Failure to test restricted wastes.

1.	Gravity based penalty from matrix ($24,750 X 12)	$297,000
	(a) Potential for harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	N/A
3.	Multiply line 2 by number of days of violation minus 1 [$3,300 x (343-1)]	N/A
4.	Add line 1 and line 3	$297,000
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase for willfulness/ negligence	10%
7.	Percent increase for history of noncompliance	5%
8.*	Total lines 5 thru 7	15%
9.	Multiply line 4 by line 8	$44,550
10.	Calculate Economic Benefit	$10,000
11.	Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint	$351,550

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

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

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

(attach additional sheets if necessary)

(b) Extent of Deviation: Major - Company C's waste analysis plan is substantially deficient in not explicitly requiring any testing to determine wastes are restricted, as evidenced by the resulting shipments from Company C which failed to identify their waste as restricted. Such deficiency is particularly significant where the wastes are very diverse as is the case here, because it is very difficult, if not impossible, to comply with the 40 CFR § 264.13 requirement that the operation obtain "all of the information which must be known to [manage] the waste in accordance with... Part 268."

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Because each violation is properly viewed as independent and noncontinuous, no multi-day assessment is warranted. Because the violation was repeated 12 times, the gravity-based penalty amount is multiplied by 12.

(attach additional sheets if necessary)

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

(a) Good Faith: No good faith efforts to comply have been made.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence of willfulness has been presented, but the prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the company's other facilities recently had been found liable for similar violations. Based on these factors, an upward adjustment in the amount of 10% is justified.

(c) History of Compliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violation. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in 2.(b) above, we will not duplicate such adjustment here. The Evanston facility did, however, recently receive a notice of violation

from the State Environmental Protection Department regarding violations of the State's air pollution program. The violations concerned treatment units that are utilized for the same waste that Company C was sending to Company Z. An upward adjustment of 5% is warranted.

(attach additional sheets if necessary)

(d) Ability to pay:

N/A

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors:

N/A

(attach additional sheets if necessary)

3. Economic Benefit: Company C reaped an economic benefit by avoiding the costs of waste analysis needed to determine the eligibility of the wastes for land disposal. A BEN analysis (copy omitted for purposes of this example) indicates the economic benefit attributable to these violations is $10,000.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information:

N/A

(attach additional sheets if necessary)

SETTLEMENT PENALTY AMOUNT

Company Name: Company C - Evanston Facility

Address: 1001 Yourstreet, Evanston, Illinois 12345

Requirement Violated: 40 CFR § 264.13(a): Failure to test restricted waste.

1.	Gravity based penalty from matrix ($24,750 X 12)	$297,000
	(a) Potential for harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	N/A
3.	Multiply line 2 by number of days of violation minus 1	N/A
4.	Add line 1 and line 3	$297,000
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase/decrease for willfulness/negligence	10%
7.	Percent increase for history of noncompliance	5%
8.	Percent increase/decrease for other unique factors	N/A
9.	Add lines 5, 6, 7, and 8	15%
10.	Multiply line 4 by line 9	$44,550
11.	Add lines 4 and 10	$341,550
12.	Adjustment amount for environmental project	N/A
13.	Subtract line 12 from line 11	$341,550
14.	Calculate economic benefit	$10,000
15.	Add lines 13 and 14	$351,550
16.	Adjustment amount for ability-to-pay	N/A
17.	Adjustment amount for litigation risk	-$110,000
18.	Add lines 16 and 17	-$110,000
19.	Subtract line 18 from line 15 for final settlement amount	$241,550

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT

1. Gravity Based Penalty

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

(attach additional sheets if necessary)

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

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Because each violation is properly viewed as independent and noncontinuous, no multi-day assessment is warranted. Because the violation was repeated 12 times, the gravity-based penalty amount is multiplied by 12.

(attach additional sheets if necessary)

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

(a) Good Faith: No good faith efforts to comply have been made.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: As indicated above, lack of knowledge of the legal requirement is not a basis for reducing the penalty. To do so would encourage ignorance of the law. No evidence of willfulness has been presented, but the prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the company's other facilities recently had been found liable for similar violations. Based on these factors, an upward adjustment in the amount of 10% is justified.

(attach additional sheets if necessary)

(c) History of Compliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violations. Based on these factors, an upward adjustment in the penalty is justified.

However, because the upward adjustment is accounted for in 2(b) above, we will not duplicate such adjustment here. The Evanston facility did, however, recently receive a notice of violation from the State Environmental Protection Department regarding violations of the State's air pollution program. The violations concerned treatment units that are utilized for the same waste that Company C was sending to Company Z. An upward adjustment of 5% is warranted.

(attach additional sheets if necessary)

(d) Ability to pay:

N/A

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors: Based on the litigation risk posed by the Agency's inability to show (i) that all 24 drums were Company C's and (ii) that all drums contained F002 solvent, the Region decided to accept in settlement a smaller penalty than had been proposed in the complaint. Since the aforementioned evidentiary weaknesses adversely affected the Agency's ability to prove one third of the 12 counts in our complaint, the Region reduced the proposed penalty by roughly one third or $110,000

(attach additional sheets if necessary)

3. Economic Benefit: Company C reaped an economic benefit by avoiding the costs of waste analysis needed to determine the eligibility of the wastes for land disposal. A BEN analysis (copy omitted for purposes of this example) indicates the economic benefit attributable to these violations is $10,000.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information:

N/A

(attach additional sheets if necessary)

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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

JAN 11 2005

MEMORANDUM

SUBJECT: Revised Penalty Matrices for the RCRA Civil Penalty Policy

FROM: Rosemarie Kelley, Director
RCRA Enforcement Division
Office of Regulatory Enforcement

TO: Addressees List

This memorandum transmits updated penalty matrices for the 2003 RCRA Civil Penalty Policy ("RCRA Policy"). The matrices were updated to reflect the change to the RCRA Policy made by the Memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Inflation Adjustment Rule which was effective on March 15, 2004.

The rule adjusted the maximum civil penalties that can be imposed by the Agency by 17.23%. The Skinner Memorandum adjusted all the Agency's penalty policies by that same amount, effective October 1, 2004. The attached matrices reflect that adjustment. It is important to remember that the attached matrices apply to penalties calculated for violations that occur after March 15, 2004. For violations that occurred before that date, the Regions should use the matrices that were provided in the RCRA Policy issued on June 23, 2003.

Any questions concerning this matter can be directed to Pete Raack of the RCRA Enforcement Division at (202) 564-4075 or by email at raack.pete@epa.gov.

Addressees List:

Region I:	Andrea Simpson
	Ken Rota
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Office of Compliance:	Emily Chow
	Walter Derieux
	Tom Ripp
	James Edward

Office of Site Remediation Enforcement: Peter Neves

Office of General Counsel: Mary Beth Gleaves

GRAVITY MATRIX

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$32,500 to 25,791	$25,790 to 19,343	$19,342 to 14,185
MODERATE	$14,184 to 10,316	$10,315 to 6,448	$6,447 to 3,869
MINOR	$3,868 to 1,934	$1,933 to 645	$644 to 129

Note: The total applicable gravity-based penalty should be rounded to the nearest unit of 100 as required by the Memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Inflation Adjustment Rule.

MULTI-DAY MATRIX OF MINIMUM DAILY PENALTIES

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$6,448 to 1,290	$5,158 to 967	$3,869 to 709
MODERATE	$2,837 to 516	$2,063 to 322	$1,290 to 193
MINOR	$774 to 129	$387 to 129	$129

Note: The total applicable gravity-based penalty should be rounded to the nearest unit of 100 as required by the Memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Inflation Adjustment Rule.