

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

<b>IN RE:</b>	)	DOCKET NO. TSCA-03-2019-0058
	)	
Bottos Construction, Inc.	)	MOTION FOR DEFAULT ORDER
1005 Sussex Boulevard	)	
Broomall, PA 19008	)	
	)	
<b>Respondent,</b>	)	Proceeding Under Section 16(a) of
	)	the Toxic Substances Control Act
822 S. 5th Street, Philadelphia, PA	)	15 U.S.C. § 2615(a).
815 N. Woodbine Ave, Narberth, PA	)	
1602 Bainbridge Street, Philadelphia, PA	)	
2023-25 Rittenhouse Square, Philadelphia, PA	)	
	)	
<b>Target Housing,</b>	)	

**I. MOTION FOR DEFAULT**

On March 28, 2019 an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) was issued by the United States Environmental Protection Agency (“EPA”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart E (“RRP Rule”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The respondent in the Complaint is Bottos Construction, Inc. (“Respondent”). A copy of the Complaint is attached as Exhibit A.

The Consolidated Rules of Practice permit service of a complaint to made by certified mail with return receipt requested, and require a copy of the complaint (together with a copy of the Consolidated Rules of Practice) to be served on respondent or a representative authorized to receive service on respondent’s behalf, which for domestic or foreign corporations, partnerships,

or unincorporated association is an officer, partner, a managing or general agent, or any other person by appointment of by Federal or State law to receive service of process. 40 C.F.R. §§ 22.5(b)(1)(i) and (ii)(A). Copies of the Complaint in this matter were served on “Constantinos Bottos, President, Bottos Construction, Inc., 1005 Sussex Boulevard, Broomall, PA 19008” (i.e., Respondent) and on “Robert S. Clewell, Clewell Law Firm, 1617 JFK Blvd., Philadelphia, PA 19103” (i.e., Respondent’s Counsel) by certified mail with return receipt requested. As evidenced by the attached copies of the certified mail return receipt “green cards” and USPS tracking receipt which were filed in connection with EPA’s Proof of Service on April 12, 2019, the copies of the Complaint were received by Respondent on April 8, 2019, and by Respondent’s Counsel on April 3, 2019. *See* Exhibit B.

EPA recognizes that the return receipt “green card” associated with its service of the Complaint on Respondent was signed by “Melissa Welsh” and not the addressee, Respondent’s president Constantinos Bottos. However, the Environmental Appeals Board has made clear that under Sections 22.5(b)(1)(i) and (ii)(A) of the Consolidated Rules of Practice, service to a corporation is complete if – as is the case here – EPA properly addresses and mails the complaint by certified mail and an individual at that address signs the return receipt. *See In re: Peace Industry Groups (USA) Inc.*, 17 E.A.D. 348, 362-365 (EAB 2016). The Complaint was accompanied by a cover letter addressed to Constantinos Bottos, Respondent’s President *See* Exhibit C. Both the Complaint and the cover letter specifically informed Respondent of the requirement, found in Section 22.15(a) of the Consolidated Rules of Practice, that an Answer to the Complaint be filed within 30 days after service of the Complaint. As of the date of this Motion, Respondent has not filed an Answer to the Complaint. EPA, therefore, moves for an Order holding Respondent in default and imposing a penalty of \$9,573.

## II. DISCUSSION

Pursuant to 40 C.F.R. § 22.17(a), a party may be found to be in default, in relevant part, upon failing to file a timely answer to the complaint. Pursuant to 40 C.F.R. § 22.17(a), default by a respondent constitutes an admission of all facts alleged in the complaint. Pursuant to 40 C.F.R. § 22.17(b), a motion for default must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

### A. Violations Deemed Admitted as a Result of Default

The law and facts with regard to Respondent's violations of TSCA are set forth in detail in the Complaint, and this recitation is incorporated herein by reference. As detailed in the Complaint, Respondent failed to comply with a number of regulatory requirements in connection with four (4) renovations performed in target housing in 2015 and 2016. By virtue of Respondent's default, the factual allegations supporting these alleged violations are deemed to be admitted. These violations include the following:

**Count 1:** Failure to obtain initial firm certification from EPA under § 745.89 prior to performing renovations at target housing located at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016; 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016; 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016; and 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015, constituting a violation of 40 C.F.R. § 745.81(a)(2)(ii) and of Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689.

**Count 2:** Failure to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016, constituting a

violation of 40 C.F.R. § 745.84(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 3:** Failure to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016, constituting a violation of 40 C.F.R. § 745.84(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 4:** Failure to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016, constituting a violation of 40 C.F.R. § 745.84(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 5:** Failure to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015, constituting a violation of 40 C.F.R. § 745.84(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 6:** Failure to retain records documenting compliance with the RRP Rule, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016, constituting a violation of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 7:** Failure to retain records documenting compliance with the RRP Rule, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016, constituting a violation of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 8:** Failure to retain records documenting compliance with the RRP Rule, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016, constituting a violation of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count 9:** Failure to retain records documenting compliance with the RRP Rule, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015, constituting a violation of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

B. Civil Penalty

The authority for a civil penalty is found in Section 16(a) of TSCA, 15 U.S.C. § 2615(a)(1), and 40 C.F.R. § 745.87(d), which authorize the assessment of a civil penalty for violations of Section 15 or 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, in the maximum amount of \$25,000 per day per violation of the RRP Rule. This amount has been adjusted pursuant to the

Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015 by implementing Civil Monetary Penalty Inflation Adjustment Rules codified at 40 C.F.R. Part 19 such that violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), that occur on or before November 2, 2015 are subject to a civil penalty not to exceed \$37,500 per day per violation, and violations that occur after November 2, 2015 are subject to a civil penalty not to exceed \$39,873 per day per violation. *See* 78 Fed. Reg. 66643, 66648 (November 6, 2013) and 84 Fed. Reg. 2056, 2058 (February 6, 2019).

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require (“statutory factors”). In developing the proposed penalty, EPA has taken into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA, 15 U.S.C. § 2615; EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, revised April 2013 (“ERP”); EPA’s January 11, 2018 *Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* (“2018 Inflation Adjustment Policy”), and EPA’s December 6, 2013 *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* (“2013 Inflation Adjustment Policy”). Copies of the ERP, 2018 Inflation Adjustment Policy, and

2013 Inflation Adjustment Policy are attached as Exhibits D, E, and F, respectively. The ERP provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases. Therefore, EPA has followed the suggested calculations and methodology in the ERP to the maximum extent possible consistent with the statutory penalty factors and the specific circumstances of this case.

It should be noted that with respect to ability to pay, there is no current information to support a belief that Respondent cannot pay the full penalty. While EPA has the ultimate burden of persuasion regarding ability to pay, information regarding a respondent's ability to pay is normally within the control of that respondent, and therefore "where a respondent does not raise its ability to pay as an issue in its answer . . . [EPA] may properly argue and the presiding officer may conclude that any objection to the penalty based upon ability to pay has been waived." *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 542 (E.A.B. 1994). In this case Respondent, by defaulting, has failed to raise its ability to pay as an issue or introduce any evidence whatsoever to support its burden of production regarding ability to pay. Therefore, no further consideration of the issue is warranted.

The penalty calculation under the ERP relies primarily on two factors. The "Extent" represents the degree, range, or scope of a violation's potential for harm, with the highest levels being assigned where the most vulnerable persons -- children under the age of six (6) and/or pregnant women -- occupy the premises. *See* Exhibit D, pages 16-17. The "Circumstance" level represents the probability of harm associated with the failure to provide information on lead-based paint hazards prior to renovations, or with the exposure to lead during a renovation resulting from a particular violation. *See* Exhibit D, page 15. These levels range from Level 1 to Level 6, with Level 1 being the highest probability of harm. *See* Exhibit D, page 16.

At the time of the violations alleged in the Complaint, Respondent's firm employed three individuals, and no individuals younger than eighteen were residing in residential properties (i.e., target housing) located at 822 S. 5th Street, Philadelphia, Pennsylvania; 815 N. Woodbine Ave, Narberth, Pennsylvania; 1602 Bainbridge Street, Philadelphia, Pennsylvania; and 2023-25 Rittenhouse Square, Philadelphia, Pennsylvania. *See* Exhibits G and H<sup>1</sup>. Consequently and in accordance with the ERP, the violations alleged in Counts 1-9 are assessed as "Minor Extent" violations. *See* Exhibit D, Appendix A, page A-3, footnote 49 and Appendix B, page B-2.

The assessed circumstance level varies with the type of violation. The following circumstance levels are proposed in this case:

**Violation of 40 C.F.R. § 745.81(a)(2)(ii):** Violations of the requirement to obtain initial firm certification prior to performing renovations at target housing are deemed to represent a medium probability of impacting human health and the environment, and have been designated as a Circumstance Level 3a violation in the ERP. *See* Exhibit D, page 16 and Appendix A, page A-3. The failure to obtain prior certification reduces the likelihood that firms will ensure that all individuals performing activities that disturb painted surfaces on behalf of the firm are either certified renovators or have been trained by a certified renovator, that all renovations performed by the firm are performed in accordance with the work practice standards of the RRP Rule, or that the lead hazard information pamphlet is distributed to owners and acknowledgment of receipt is obtained prior to commencing renovations. As a result, the violation in Count 1 of the Complaint has been assessed as a Circumstance Level 3a violation. Under the ERP, a Circumstance Level 3a violation with a Minor Extent level is assessed a \$4,500 penalty. *See* Exhibit D, Appendix B, page B-2.

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<sup>1</sup> Information about the age of children residing in the target housing at issue was provided after the Complaint was filed, explaining the why the Complaint assessed Counts 2-9 as "Significant Extent" violations.

**Violations of 40 C.F.R. § 745.84(a)(1):** Violations of the requirement to obtain either a written acknowledgement of receipt from the owner, or a certificate of mailing, of the lead hazard information pamphlet prior to the time renovation activities begin at target housing are deemed to represent a medium probability of impacting human health and the environment, and have been designated as Circumstance Level 4b violations in the ERP. *See* Exhibit D, page 16 and Appendix A, page A-2. Failure to comply with requirements for acknowledging receipt or certifying mailing of the lead hazard information pamphlet leaves open the question of whether information necessary for owners to make informed decisions - such as basic facts about lead and health, considerations in choosing a contractor and preparing for a renovation, what to look for during the job and after the job is completed, and where to get more information about lead - was actually provided. (An electronic version of EPA's lead hazard information pamphlet can be found at: <https://www.epa.gov/sites/production/files/documents/renovaterightbrochure.pdf>.) As a result, the violations in Counts 2-5 of the Complaint have been assessed as Circumstance Level 4b violations. Under the ERP, Circumstance Level 4b violations with a Minor Extent levels are assessed a \$580 penalty. *See* Exhibit D, Appendix B, page B-2.

**Violations of 40 C.F.R. § 745.86(a):** Violations of the requirement to retain records documenting compliance with the RRP Rule are deemed to represent a low probability of impacting human health and the environment, and have been designated as Circumstance Level 6a violations in the ERP. *See* Exhibit D, page 16 and Appendix A, page A-3. Failure to retain records leaves open the question as to whether the essential work practice standards set forth at 40 C.F.R. § 745.85(a) and post renovation cleaning verification requirements set forth at 40 C.F.R. § 745.85(b) for minimizing risk of harm to human health and the environment were actually complied with. As a result, the violations in Counts 6-9 of the Complaint have been

assessed as Circumstance Level 6a violations. Under the ERP, Circumstance Level 6a violations with a Minor Extent levels are assessed a \$600 penalty. *See* Exhibit D, Appendix B, page B-2.

Adjustments to the penalty values under the ERP due to inflation under the 2018 Inflation Adjustment Policy and 2013 Inflation Adjustment Policy are determined based, in part, on whether the violation occurred on or before November 2, 2015, or after November 2, 2015. *See* Exhibits E, page 3. As the violations in Counts 1-4 and 6-8 occurred after November 2, 2015, the applicable inflationary adjustment multiplier is 1.03711. *See* Exhibit E, Table A, page 13. As the violations in Counts 5 and 9 occurred before November 2, 2015, the applicable inflationary adjustment multiplier is 1.0487. *See* Exhibit F, page 6.

EPA does not propose to make any adjustments to the penalty under the adjustment factors set forth in the ERP. EPA is not aware of any past violations of the RRP rule, and is not aware of any circumstances from which to conclude that Respondent's level of culpability was either greater or lesser than the normal. EPA is unaware of any extraordinary factors, either aggravating or mitigating.

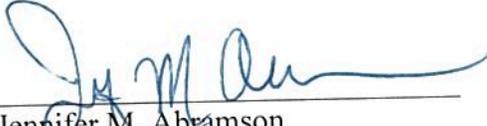
The total proposed penalty for the violations set forth in the Complaint is \$9,573. A summary of the penalty calculation for each of the properties is set forth in Exhibit I.

### III. CONCLUSION

For the forgoing reasons the Regional Judicial Officer should issue a Default Order against Respondent ordering Respondent to pay a civil penalty of \$9,573.

Respectfully submitted,

9/17/19  
Date

  
Jennifer M. Abramson  
Senior Assistant Regional Counsel

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019AM10:19

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

**IN RE:**

Bottos Construction, Inc.  
1005 Sussex Boulevard  
Broomall, PA 19008

**Respondent,**

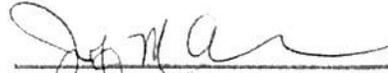
822 S. 5th Street, Philadelphia, PA  
815 N. Woodbine Ave, Narberth, PA  
1602 Bainbridge Street, Philadelphia, PA  
2023-25 Rittenhouse Square, Philadelphia, PA

**Target Housing.**

) DOCKET NO. TSCA-03-2019-0058  
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) ADMINISTRATIVE COMPLAINT  
) AND NOTICE OF OPPORTUNITY  
) FOR HEARING  
)

) Proceeding Under Section 16(a) of  
) the Toxic Substances Control Act  
) 15 U.S.C. § 2615(a).

) I hereby certify that the  
) within is a true and correct copy  
) of the original Complaint  
) filed in this matter.  
)

)   
)  
) Attorney for EPA

ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency, (“EPA” or the “Agency”) by Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators, and this authority has been further delegated in the U.S. EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A.

The Respondent in this action is Bottos Construction, Inc. of Broomall, Pennsylvania (“Respondent”). This Complaint alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* in connection with renovations conducted at target housing, described more fully in paragraphs 1 through 85 of this Complaint.

Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or to refuse to comply with a provision of Section 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, or with any rule issued thereunder. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689 shall be liable for a civil penalty.

## II. JURISDICTION, BACKGROUND AND DEFINITIONS

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. § 745.87, and 40 C.F.R. §§ 22.1(a)(5) and 22.4.
2. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding *Subchapter IV - Lead Exposure Reduction*, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, which provides authority for the Administrator of EPA to promulgate implementing regulations. EPA’s 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* regulations (“RRP Rule”) were promulgated under the authority of TSCA *Subchapter IV - Lead Exposure Reduction* in rulemaking actions published on June 1, 1998 (63

Fed. Reg. 29919), April 22, 2008 (73 Fed. Reg. 21758), March 20, 2009 (74 Fed. Reg. 11869), May 6, 2010 (75 Fed. Reg. 24818), and August 5, 2011 (76 Fed. Reg. 47938).

3. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, except as described in 40 C.F.R. §§ 745.82(a) and (b).

4. Pursuant to 40 C.F.R. § 745.83, the term “person” means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

5. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

6. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

7. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air condition work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surfaces.
8. Pursuant to 40 C.F.R § 745.83, the term “renovator” means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.
9. Pursuant to 40 C.F.R. § 745.103 and Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.
10. Pursuant to 40 C.F.R. § 745.103, the term “housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.
11. Pursuant to 40 C.F.R. § 745.103, the term “0-bedroom dwelling” means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

### III. GENERAL ALLEGATIONS

12. At all times relevant to the violations alleged in this Complaint, Respondent was a Pennsylvania corporation with a principle place of business located at 1005 Sussex Boulevard in Broomall, Pennsylvania.
13. At all times relevant to the violations alleged in this Complaint, Respondent was a "person" as that term is defined at 40 C.F.R. § 745.83.
14. At all times relevant to the violations alleged in this Complaint, Respondent was a "firm" as that term is defined by 40 C.F.R. § 745.83.
15. On May 19, 2017, duly designated representatives of EPA conducted an inspection to determine Respondent's level of compliance with the RRP Rule pursuant to Section 11 of TSCA, 15 U.S.C. § 2610.
16. Prior to the May 19, 2017 inspection, EPA sent an inspection confirmation letter dated April 26, 2017 requesting that Respondent have available for review and collection specified documents including *inter alia* "[a] list of all residential properties or child occupied facilities built before 1978 where renovation, remodeling, or other work which disturbed more than 6 square feet of paint for interior renovations or more than 20 square feet of paint for exterior renovations was conducted by you, employees of your company or contracted" from January 1, 2016 to present; and "[c]opies of all contracts [pertaining to the renovations on the list], including any attachments and contract modifications/addendums, receipts and copies of permits."
17. During the May 19, 2017 inspection, Respondent made available for review and EPA inspectors collected documentation in connection with work conducted or subcontracted by Respondent at the following residential properties:
  - a. 822 S. 5th Street, Philadelphia, Pennsylvania;
  - b. 815 N. Woodbine Ave, Narberth, Pennsylvania;

- c. 1602 Bainbridge Street, Philadelphia, Pennsylvania; and
- d. 2023-25 Rittenhouse Square, Philadelphia, Pennsylvania.

822 S. 5th Street, Philadelphia, Pennsylvania

18. The information collected in connection with the work conducted at 822 S. 5th Street in Philadelphia, Pennsylvania included an invoice dated September 22, 2016 billed to Respondent's customer, and an invoice dated October 12, 2016 billed to Respondent by its subcontractor.
19. Respondent's September 22, 2016 invoice specifies a dollar amount due to Respondent for activities enumerated as "Demo", "Windows & Trim", "Interior Walls" as well as other activities conducted or subcontracted by Respondent; and also includes a hand-written estimate of "1000 sf" by Respondent as the approximate amount of painted surface disturbed.
20. The October 12, 2016 invoice of Respondent's subcontractor describes activities conducted by Respondent's subcontractor as including the removal of 5.74 tons of debris.
21. The work conducted or subcontracted by Respondent at 822 S. 5th Street in Philadelphia, Pennsylvania was a "renovation" as that term is defined by 40 C.F.R. § 745.83.
22. The residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was built prior to 1978.
23. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was not "housing for the elderly" as that term is defined by 40 C.F.R. § 745.103.
24. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was not housing for persons with disabilities.
25. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was not a "0-bedroom dwelling" as

that term is defined by 40 C.F.R. § 745.103.

26. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

27. The work conducted or subcontracted by Respondent at 822 S. 5th Street in Philadelphia, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.

28. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 822 S. 5th Street in Philadelphia, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

29. The renovation at 822 S. 5th Street in Philadelphia, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

815 N. Woodbine Ave, Narberth, Pennsylvania

30. The information collected in connection with the work conducted at 815 N. Woodbine Ave in Narberth, Pennsylvania included an invoice dated March 4, 2016 billed to Respondent’s customer, and an invoice dated June 8, 2016 billed to Respondent by its subcontractor.

31. Respondent’s March 4, 2016 invoice specifies a dollar amount due to Respondent for activities enumerated as “GENERAL DEMOLITION”, “open ceiling/walls” as well as other activities conducted or subcontracted by Respondent; and also includes a hand-written estimate of “500 sf” by Respondent as the approximate amount of painted surface disturbed.

32. The June 8, 2016 invoice of Respondent’s subcontractor describes activities conducted by Respondent’s subcontractor as including bathroom demolition work involving 3.68 tons (debris).

33. The work conducted or subcontracted by Respondent at 815 N. Woodbine Ave in Narberth, Pennsylvania was a “renovation” as that term is defined by 40 C.F.R. § 745.83.
34. The residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was built prior to 1978.
35. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was not “housing for the elderly” as that term is defined by 40 C.F.R. § 745.103.
36. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was not housing for persons with disabilities.
37. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was not a “0-bedroom dwelling” as that term is defined by 40 C.F.R. § 745.103.
38. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.
39. The work conducted or subcontracted by Respondent at 815 N. Woodbine Ave in Narberth, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.
40. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

41. The renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

1602 Bainbridge Street, Philadelphia, Pennsylvania

42. The information collected in connection with the work conducted at 1602 Bainbridge Street in Philadelphia, Pennsylvania included an invoice dated October 16, 2016 billed to Respondent's customer, and an invoice dated October 12, 2016 billed to Respondent by its subcontractor.

43. Respondent's October 16, 2016 invoice specifies a dollar amount due to Respondent for activities enumerated as "Demo Bathroom and wall to Closet", "Patch and paint walls and ceilings in entire house", "Remove kitchen window with AC unit" as well as other activities conducted or subcontracted by Respondent; and also includes a hand-written estimate of "350 sf" by Respondent as the approximate amount of painted surface disturbed.

44. The October 12, 2016 invoice of Respondent's subcontractor describes work conducted by Respondent's subcontractor as a demo of the bathroom involving 2.19 tons.

45. The work conducted or subcontracted by Respondent at 1602 Bainbridge Street in Philadelphia, Pennsylvania was a "renovation" as that term is defined by 40 C.F.R. § 745.83.

46. The residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was built prior to 1978.

47. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not "housing for the elderly" as that term is defined by 40 C.F.R. § 745.103.

48. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not housing for persons with disabilities.

49. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not a "0-bedroom dwelling" as that term is defined by 40 C.F.R. § 745.103.

50. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was "target housing" as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

51. The work conducted or subcontracted by Respondent at 1602 Bainbridge Street in Philadelphia, Pennsylvania was a 'renovation performed for compensation at target housing' as described in 40 C.F.R. § 745.82.

52. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

53. The renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

2023-25 Rittenhouse Square, Philadelphia, Pennsylvania

54. The information collected in connection with the work conducted at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania included an agreement dated June 18, 2015 entered into by Respondent and the owner of the property, a Building Permit dated June 18, 2015 issued by the

City of Philadelphia Department of Licenses and Inspections, and a subcontract dated July 15, 2015 entered into by Respondent and Respondent's subcontractor.

55. The June 18, 2015 agreement includes a specified contract sum due to Respondent for work to be conducted or subcontracted by Respondent described generally as the "Carriage House Renovation Project."

56. The June 18, 2015 Building Permit issued by the City of Philadelphia Department of Licenses and Inspections describes the authorized work, in part, as:

FOR THE PARTIAL DEMOLITION OF THE EXISITNG STRUCTURE TO REMOVE EXISITNG ROOF AND FLOOR. FOR THE ADDITION OF 2<sup>ND</sup>-4<sup>TH</sup> FLOORS WITH ROOF DECKS ON THE 4<sup>TH</sup> FLOOR AND FOR THE CREATION OF A BASEMENT. STRUCTURE FOR USED [*sic*] AS MULTI-FAMILY HOUSEHOLD LIVING (SIX(6) FAMILIES).

57. The July 15, 2015 subcontract describes work to be conducted by Respondent's subcontractor as including removing interior walls (Approx. 143 SF (1<sup>st</sup> Floor), 88 SF (2<sup>nd</sup> Floor)), masonry walls, existing stairs, door & frame; saw cutting exterior for new openings; as well as other activities.

58. The work conducted or subcontracted by Respondent at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was a "renovation" as that term is defined by 40 C.F.R. § 745.83.

59. The residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was built prior to 1978.

60. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was not "housing for the elderly" as that term is defined by 40 C.F.R. § 745.103.

61. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania as not housing for persons

with disabilities.

62. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was not a “0-bedroom dwelling” as that term is defined by 40 C.F.R. § 745.103.

63. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

64. The work conducted or subcontracted by Respondent at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.

65. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

66. The renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

#### IV. VIOLATIONS

##### **Count 1 – Failure to Obtain Initial Firm Certification**

67. The allegations contained in paragraphs 1 through 66 of this Complaint are incorporated by reference herein as though fully set forth at length.

68. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms are required to obtain initial certification from EPA under § 745.89 prior to performing or offering or claiming to perform renovations at target housing unless excepted.

69. Respondent was not EPA certified under § 745.89 prior to dates the renovations at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016; 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016; 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016; or 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015 were performed and was not excepted.

70. Respondent's acts or omissions described in paragraph 69 constitute a violation of 40 C.F.R. § 745.81(a)(2)(ii) and of Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689.

**Counts 2-5 – Failure to Document Compliance with Information Distribution Requirement**

71. The allegations contained in paragraphs 1 through 70 of this Complaint are incorporated by reference herein as though fully set forth at length.

72. Pursuant to 40 C.F.R. § 745.84(a)(1), firms are required to provide EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers* pamphlet to owners of target housing, and obtain either a written acknowledgement of receipt from the owner or a certificate of mailing before beginning renovation activities.

73. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016.

74. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016.

75. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016.

76. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015.

77. Respondent's acts or omissions described in paragraphs 73 through 76 constitute four (4) violations of 40 C.F.R. § 745.84(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Counts 6-9—Failure to Retain Records Demonstrating Compliance with Work Practices**

78. The allegations contained in paragraphs 1 through 77 of this Complaint are incorporated by reference herein as though fully set forth at length.

79. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations are required to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, for a period of 3 years following completion of the renovation.

80. Section 40 C.F.R. §745.86(b) specifies the types of records required to be retained pursuant to 40 C.F.R. § 745.86(a) and includes, but is not limited to, records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) and post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b). *See* 40 C.F.R. § 745.86(b)(6).

81. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or

post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016.

82. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016.

83. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016.

84. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015.

85. Respondent's acts or omissions described in paragraphs 81 through 84 constitute four violations of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

#### V. PROPOSED CIVIL PENALTY

Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. This amount has been adjusted pursuant to the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015 by implementing Civil Monetary Penalty Inflation Adjustment Rules codified at 40 C.F.R. Part 19 such that violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), that occur on or before November 2, 2015 are subject to a civil penalty not to exceed \$37,500 per day per violation, and violations that occur after November 2, 2015 are subject to a civil penalty not to exceed \$39,873 per day per violation. *See* 78 Fed. Reg. 66643, 66648 (November 6, 2013) and 84 Fed. Reg. 2056, 2058 (February 6, 2019).

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require ("statutory factors"). In developing the proposed penalty, Complainant has taken into account the particular facts and circumstances

of this case with specific reference to the statutory factors set forth in Section 16 of TSCA, 15 U.S.C. § 2615; EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("ERP"), revised April 2013; EPA's January 11, 2018 *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018)* and *Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* ("2018 Inflation Adjustment Policy"), and EPA's December 6, 2013 *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* ("2013 Inflation Adjustment Policy"). Copies of the ERP, 2018 Inflation Adjustment Policy, and 2013 Inflation Adjustment Policy are enclosed with this Complaint.

The ERP represents an analysis of the statutory factors listed above, as well as guidance on their application to particular cases. The ERP also provides a rational, consistent, and equitable calculation methodology for applying these factors to particular cases. Calculated pursuant to the ERP and adjusted appropriately for inflation pursuant to the 2018 Inflation Adjustment Policy and 2013 Inflation Adjustment Policy, EPA proposes to assess a civil penalty of twenty-seven thousand eight hundred and seventy-nine dollars (\$27,879) against the Respondent for the nine (9) violations alleged herein as illustrated below:

<b>Count 1: Regulatory Requirement: 745.81(a)(2)(ii)</b>	
<i>Extent Level: Minor</i>	
(ERP, Appendix A, page A-3, fn 49 (i.e., <4 employees))	
<i>Circumstance Level: 3a</i>	
(ERP, Appendix A, page A-3)	
<i>(Unadjusted)Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$4,500
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	\$4,667

<b><u>Counts 2-5: Regulatory Requirement: 745.84(a)(1)</u></b>	
<i>Extent Level: Significant</i> (ERP, page 17 (i.e., age of the youngest individual is not known))	
<i>Circumstance Level: 4b</i> (ERP, Appendix A, page A-2)	
<i>(Unadjusted) Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$3,540
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	
822 S. 5th Street, Philadelphia, Pennsylvania	\$3,671
815 N. Woodbine Ave, Narberth, Pennsylvania	\$3,671
1602 Bainbridge Street, Philadelphia, Pennsylvania	\$3,671
<i>On or before 11/2/2015 Inflation Multiplier</i> (2013 Inflation Adjustment Policy, page 6)	1.0487
<i>Inflation Adjusted proposed penalty:</i>	
2023-25 Rittenhouse Square, Philadelphia, Pennsylvania	\$3,712
 <b><u>Counts 6 - 9: Regulatory Requirement: 745.86(a)</u></b>	
<i>Extent Level: Significant</i> (ERP, page 17 (i.e., age of the youngest individual is not known))	
<i>Circumstance Level: 6a</i> (ERP, Appendix A, page A-3)	
<i>(Unadjusted) Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$2,040
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	
822 S. 5th Street, Philadelphia, Pennsylvania	\$2,116
815 N. Woodbine Ave, Narberth, Pennsylvania	\$2,116
1602 Bainbridge Street, Philadelphia, Pennsylvania	\$2,116
<i>On or before 11/2/2015 Inflation Multiplier</i> (2013 Inflation Adjustment Policy, page 6)	1.0487
<i>Inflation Adjusted proposed penalty:</i>	
2023-25 Rittenhouse Square, Philadelphia, Pennsylvania	\$2,139
 <b>TOTAL PROPOSED PENALTY</b>	 <b>\$27,879</b>

EPA's proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the

issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in this Complaint.

EPA's penalty policies represent an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

#### VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. The failure of Respondent

to admit, deny or explain any material factual allegation contained in this Complaint constitutes an admission of such allegation.

Failure to file a written Answer may result in the filing of a Motion for a Default Order. Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and waives Respondent's right to contest such factual allegations. Issuance of a Default Order may result in the imposition of the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, at:

Jennifer M. Abramson (3RC30)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

#### VII. SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order

signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Ms. Abramson at (215) 814-2066 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

#### VIII. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules of Practice, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules of Practice, no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules of Practice, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Jennifer M. Abramson (3RC30), Senior Assistant Regional Counsel,

U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules of Practice, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

Payment of the penalty shall be made sending a certified or cashier's check made payable to the "United States Treasury," as follows:

- a. by Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO, 63197-9000.  
Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

- b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

- c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- d. By electronic funds transfer (“EFT”) to the following account:
- Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045
- (Field tag 4200 of Fedwire message should read “D 68010727  
Environmental Protection Agency”)
- e. By automatic clearinghouse (“ACH”) to the following account:
- U.S. Treasury REX/Cashlink ACH Receiver  
ABA 051036706  
Account No. 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 – checking  
Contact: John Schmid  
202-874-7026
- f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.
- g. Additional payment guidance is available at:  
<http://www2.epa.gov/financial/makepayment>

Each payment shall also reference the above case caption and docket number (Docket No.: TSCA-03-2019-0058). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

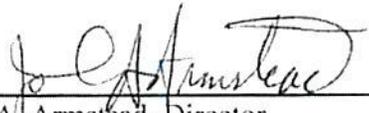
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Jennifer M. Abramson Senior Asst. Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

IX. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Land and Chemicals Division (prior to regional realignment) and the Region III Enforcement and Compliance Assurance Division (following regional realignment); the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Judicial Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

3.28.19  
Date

  
\_\_\_\_\_  
John A. Armstead, Director  
Land and Chemicals Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

<b>IN RE:</b>	)	DOCKET NO. TSCA-03-2019-0058
	)	
Bottos Construction, Inc.	)	ADMINISTRATIVE COMPLAINT
1005 Sussex Boulevard	)	AND NOTICE OF OPPORTUNITY
Broomall, PA 19008	)	FOR HEARING
	)	
<b>Respondent,</b>	)	Proceeding Under Section 16(a) of
	)	the Toxic Substances Control Act
822 S. 5th Street, Philadelphia, PA	)	15 U.S.C. § 2615(a).
815 N. Woodbine Ave, Narberth, PA	)	
1602 Bainbridge Street, Philadelphia, PA	)	
2023-25 Rittenhouse Square, Philadelphia, PA	)	
	)	
<b>Target Housing.</b>	)	

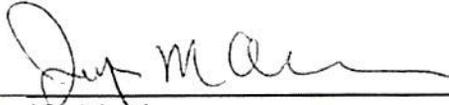
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Administrative Complaint and Notice of Opportunity for Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Administrative Complaint and Notice of Opportunity for Hearing, was sent by Certified Mail Return Receipt Requested, to the following:

Constantinos Bottos, President  
Bottos Construction, Inc.  
1005 Sussex Boulevard  
Broomall, PA 19008

Robert S. Clewell  
Clewell Law Firm  
1617 JFK Blvd.  
Philadelphia, PA 19103

3/28/2019  
Date

  
\_\_\_\_\_  
Jennifer M. Abramson  
Senior Assistant Regional Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

<b>IN RE:</b>	)	DOCKET NO. TSCA-03-2019-0058
	)	
Bottos Construction, Inc.	)	CERTIFICATE AND PROOF OF
1005 Sussex Boulevard	)	SERVICE
Broomall, PA 19008	)	
	)	
<b>Respondent,</b>	)	Proceeding Under Section 16(a) of
	)	the Toxic Substances Control Act
822 S. 5th Street, Philadelphia, PA	)	15 U.S.C. § 2615(a).
815 N. Woodbine Ave, Narberth, PA	)	
1602 Bainbridge Street, Philadelphia, PA	)	
2023-25 Rittenhouse Square, Philadelphia, PA	)	
	)	
<b>Target Housing.</b>	)	

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019AM10:19

**CERTIFICATE AND PROOF OF SERVICE**

I hereby certify that on April 12, 2019, I caused to be hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region III, the originals and one (1) set of copies of the certified mail return receipt "green" cards and associated printout from the USPS online tracking system which evidence delivery and service of the Complaint in the above-captioned matter on April 8, 2019, upon:

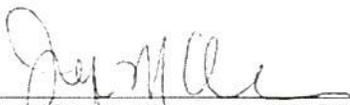
Constantinos Bottos, President  
Bottos Construction, Inc.  
1005 Sussex Boulevard  
Broomall, PA 19008,

and on April 3, 2019, upon:

Robert S. Clewell  
Clewell Law Firm  
1617 JFK Blvd.  
Philadelphia, PA 19103

I further certify that true and correct copies of the same were placed in EPA counsel's case file.

4/12/19  
Date

  
Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

**Constantinos Bottos, President**  
**Bottos Construction, Inc.**  
**1005 Sussex Boulevard**  
**Broomall, PA 19008**

4a. Article Number  
**7002 0860 0007 8008 3249**

- 4b. Service Type
- Registered  Certified
  - Express Mail  Insured
  - Return Receipt for Merchandise  COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

Is your RETU

*Melissa Walsh*  
 6. Signature (Addressee or Agent)

PS Form **3811**, December 1994

102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

**Robert S. Clewell**  
**Clewell Law Firm**  
**1617 JFK Blvd.**  
**Philadelphia, PA 19103**

7009 8320 0006 1220 0040

- 4b. Service Type
- Registered  Certified
  - Express Mail  Insured
  - Return Receipt for Merchandise  COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

Is your RETU

5. Received by: *Robert S. Clewell*  
 6. Signature (Addressee or Agent)

PS Form **3811**, December 1994

102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.



[FAQs > \(https://www.usps.com/faqs/uspstracking-faqs.htm\)](https://www.usps.com/faqs/uspstracking-faqs.htm)

**Track Another Package +**

**Tracking Number:** 70020860000780083249

Remove X

Your item was delivered to an individual at the address at 2:55 pm on April 8, 2019 in BROOMALL, PA 19008.

 **Delivered**

April 8, 2019 at 2:55 pm  
Delivered, Left with Individual  
BROOMALL, PA 19008

Get Updates 

Feedback

---

**Text & Email Updates**



---

**Tracking History**



---

**Product Information**



---

See Less 

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**

## The easiest tracking number is the one you don't have to know.

With Informed Delivery<sup>®</sup>, you never have to type in another tracking number. Sign up to:

- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions<sup>™</sup> for your mail carrier.

Feedback

### Sign Up

**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)**

**\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

MAR 20 2019

In Reply Refer To Mail Code: 3RC30

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Constantinos Bottos, President  
Bottos Construction, Inc.  
1005 Sussex Boulevard  
Broomall, PA 19008

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019AM10:19

Re: Complaint and Notice of Opportunity for Hearing under the Toxic Substances Control Act  
EPA Docket No. TSCA-03-2019-0058

Dear Mr. Bottos:

Enclosed please find a copy of the Complaint and Notice of Opportunity for Hearing filed today with the Regional Hearing Clerk concerning alleged violations by Bottos Construction, Inc. ("Bottos") of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.* The Complaint is based on alleged violations of Section 409 of TSCA, 15 U.S.C. § 2689, and implementing regulations codified at 40 C.F.R. Part 745, Subpart E, in connection with renovations conducted at target housing in 2015 and 2016. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to Bottos in responding to the alleged violations.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to file an Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing a penalty proposed by the U.S. Environmental Protection Agency ("EPA") without further proceedings.

Bottos may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in the Answer to this Complaint. Whether or not a hearing is requested, Bottos may request an informal settlement conference to discuss resolution of this case. The attorney assigned to this case is Jennifer M. Abramson, Senior Assistant Regional Counsel. Bottos may have its counsel contact Ms. Abramson on its behalf:

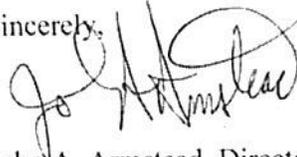


Jennifer M. Abramson (3RC30)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Ms. Abramson can be reached by telephone at (215) 814-2066.

Please see the enclosed "U.S. EPA Small Business Resources Information Sheet," which provides information on compliance assistance and on contacting the Small Business Regulatory Enforcement and Fairness Act ("SBREFA") Ombudsman to comment on federal enforcement and compliance activities. Any decision to participate in such program or to seek compliance assistance does not constitute a request for a settlement conference, relieve Bottos of its obligation to file a timely answer to the Complaint, or create any new rights or defenses under law. Nor will such an action affect EPA's enforcement of the Complaint. To preserve Bottos' legal rights, it must comply with all rules governing the administrative enforcement process, as set forth in the Consolidated Rules of Practice in 40 C.F.R. Part 22. The SBREFA Ombudsman does not participate in the resolution of EPA's enforcement action.

Sincerely,



John A. Armstead, Director  
Land and Chemicals Division

Enclosures

cc: Robert Clewell, Esq.  
Annie Hoyt, EPA  
Jennifer M. Abramson, EPA



## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Office of Small and Disadvantaged Business Utilization (OSDBU)

[www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu](http://www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu)

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman (ASBO)

[www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman](http://www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman) or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

### EPA's Compliance Assistance Homepage

[www.epa.gov/compliance](http://www.epa.gov/compliance)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### Compliance Assistance Centers [www.complianceassistance.net](http://www.complianceassistance.net)

EPA sponsored Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

#### Agriculture

[www.epa.gov/agriculture](http://www.epa.gov/agriculture)

#### Automotive Recycling

[www.eearcenter.org](http://www.eearcenter.org)

#### Automotive Service and Repair

[www.eear-greenlink.org](http://www.eear-greenlink.org) or 1-888-GRN-LINK

#### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

#### Construction

[www.cicacenter.org](http://www.cicacenter.org)

#### Education

[www.campuserc.org](http://www.campuserc.org)

#### Food Processing

[www.lfpeac.org](http://www.lfpeac.org)

#### Healthcare

[www.herecenter.org](http://www.herecenter.org)

#### Local Government

[www.lgean.org](http://www.lgean.org)

#### Surface Finishing

<http://www.sterc.org>

#### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

#### Printing

[www.pneac.org](http://www.pneac.org)

#### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines and Clearinghouses

[www.epa.gov/home/epa-hotlines](http://www.epa.gov/home/epa-hotlines)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/cate](http://www.epa.gov/cate) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 1-734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu](http://www.npic.orst.edu) or 1-800-858-7378

**National Response Center Hotline** to report oil and hazardous substance spills - <http://nrc.useg.mil> or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/p2/pollution-prevention-resources#ppic](http://www.epa.gov/p2/pollution-prevention-resources#ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline](http://www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline) or 1-800-426-4791

### Toxic Substances Control Act (TSCA) Hotline

[tsc hotline@epa.gov](mailto:tsc hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 304 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

[www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons](http://www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons)

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.enveap.org/statetools](http://www.enveap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states/list>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal](http://www.epa.gov/tribalportal)

The Portal helps users locate tribal-related information within EPA and other federal agencies.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

#### EPA's Small Business Compliance Policy

[www.epa.gov/enforcement/small-businesses-and-enforcement](http://www.epa.gov/enforcement/small-businesses-and-enforcement)

#### EPA's Audit Policy

[www.epa.gov/compliance/epas-audit-policy](http://www.epa.gov/compliance/epas-audit-policy)

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*



U.S. EPA-REGION 3-RHC  
FILED-17SEP2019am10:19

**Consolidated Enforcement Response  
and Penalty Policy  
for the  
Pre-Renovation Education Rule;  
Renovation, Repair and Painting Rule; and  
Lead-Based Paint Activities Rule  
(LBP Consolidated ERPP)**

**Interim Final Policy**

**August, 2010**

**United States Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office of Civil Enforcement  
Waste and Chemical Enforcement Division**

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# Section 1: Introduction, Overview and Background

## I. Introduction

This document sets forth guidance for the U.S. Environmental Protection Agency (EPA or the Agency) to use in determining the appropriate enforcement response and penalty amount for violations of Title IV of the Toxic Substances Control Act (TSCA) which gives the Agency the authority to address lead-based paint (LBP) and LBP hazards in target housing, and other buildings and structures. The goal of this consolidated Enforcement Response and Penalty Policy (ERPP) is to provide fair and equitable treatment of the regulated community, predictable enforcement responses, and comparable penalty assessments for comparable violations, with flexibility to allow for individual facts and circumstances of a particular case. The Renovation, Repair, and Painting Rule (RRP Rule),<sup>1</sup> Pre-Renovation Education Rule (PRE Rule),<sup>2</sup> and Lead-Based Paint Activities, Certification, and Training Rule (LBP Activities Rule)<sup>3</sup> were each promulgated under the authority of Title IV of TSCA and are addressed in this ERPP.<sup>4</sup>

This guidance applies only to violations of EPA's civil regulatory programs. It does not apply to enforcement pursuant to criminal provisions of laws or regulations that are enforced by EPA. The procedures set forth in this document are intended solely for the guidance of government professionals. They are not intended and cannot be relied on to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice. This policy is not binding on the Agency. Enforcement staff should continue to make appropriate case-by-case enforcement judgments, guided by, but not restricted or limited to, the policies contained in this document.

This Policy is immediately effective and applicable, and it supersedes any enforcement response or penalty guidance previously drafted or issued for the PRE Rule or LBP Activities Rule.

## II. Overview of the Policy

This ERPP is divided into four main sections. The first section, "Introduction, Overview and Background" provides the statutory and regulatory setting for this policy. The second section, "Determining the Level of Enforcement Response," describes the Agency's options for

---

<sup>1</sup> 40 C.F.R. Part 745, Subparts E, L and Q (73 Fed. Reg. 21692; April 22, 2008) (amending the PRE Rule, LBP Activities Rule, and State/Tribal Programs Rule, respectively, at §§ 745.80-745.91, § 745.220, § 745.225, § 745.320, § 745.324, § 745.326, § 745.327, § 745.339). [www.epa.gov/lead/pubs/renovation.htm#tenants](http://www.epa.gov/lead/pubs/renovation.htm#tenants), or [www.gpoaccess.gov](http://www.gpoaccess.gov).

<sup>2</sup> 40 C.F.R. Part 745, Subpart E (§§ 745.80-745.88) (63 Fed. Reg. 29907; June 1, 1998).

<sup>3</sup> 40 C.F.R. Part 745, Subpart L (§§ 745.220 – 745.239) (61 Fed. Reg. 45778; August 29, 1996, as amended 64 Fed. Reg. 42849; August. 6, 1999).

<sup>4</sup> The § 1018 Disclosure Rule is addressed in a separate ERPP available in Appendix C at TSCA Enforcement Policy and Guidance Documents.

## Section 1: Introduction, Overview and Background

responding to violations of TSCA. The third section, “Assessing Civil Administrative Penalties,” elaborates on EPA’s policy and procedures for calculating civil penalties against persons who violate section 409 of TSCA by failing or refusing to comply with the regulatory requirements of the PRE, RRP and LBP Activities Rules. The fourth section, the appendices, contains, among other things, tables to be used in calculating civil penalties for this policy. The appendices to this ERPP are: Appendix A - Violations and Circumstance Levels; Appendix B - Gravity-Based Penalty Matrices; Appendix C - References for Policy Documents; Appendix D - List of Supplemental Environmental Projects (SEPs).

### III. Background

In 1992, the United States Congress enacted Title X - Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 United States Code (U.S.C.) § 4851 (enacted as Title X of the Housing and Community Development Act of 1992). Section 1021 of Title X amended the Toxic Substances Control Act to add Title IV, entitled “Lead Exposure Reduction.”

Pursuant to Section 406(b) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, residential property renovations, requiring, among other things, persons who perform for compensation a renovation of pre-1978 housing (“target housing”) to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.

Pursuant to Section 402(a) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, Lead-Based Paint Activities, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, work practice standards for performing such activities, and delegation of programs.

Pursuant to Section 402(c)(3) of TSCA, EPA promulgated regulations amending at 40 C.F.R. Part 745, Subparts E and L, residential property renovations, prescribing procedures and requirements for the accreditation of training programs, certification of individuals and firms, work practice standards for renovation, repair and painting activities in target housing and child occupied facilities, and delegation of programs (Subpart Q) under Section 404.

Pursuant to Section 408 of TSCA, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government is subject to all federal, state, interstate, and local requirements, both substantive and procedural, regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.<sup>5</sup>

---

<sup>5</sup> Therefore, federal agencies are subject to the PRE, RRP, and LBP Activities Rules ERPP and EPA has statutory penalty authority over federal agencies for violations of the LBP, LBP activities and LBP hazard requirements (15 U.S.C. § 2688). Regions generally must notify and consult with OECA’s Federal Facilities Enforcement Office prior to bringing an enforcement action against a federal agency. See, Appendix C, Memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*.

## Section 2: Determining the Level of Enforcement Response

The failure or refusal to comply with any requirement of the PRE, RRP, or LBP Activities Rules is a prohibited act under Section 409 of TSCA (15 U.S.C. § 2689) and civil penalties can be assessed to address such violations pursuant to Section 16 of TSCA (15 U.S.C. § 2615) for each violation of Section 409. A civil penalty action is the preferred enforcement response for most violations.

Once the Agency finds that a violation of TSCA has occurred, it will need to determine the appropriate level of enforcement response for the violation.<sup>6</sup> EPA can respond with a range of enforcement response options. These options include:

- Civil Administrative Complaints
- Notices of Noncompliance
- Civil Judicial Referrals
- Criminal Proceedings

### I. Civil Administrative Complaints

A civil administrative complaint<sup>7</sup> is the appropriate response to violations of the PRE, RRP, and LBP Activities Rules or failure to comply with a Notice of Noncompliance. Violators may be subject to civil administrative action including the assessment of civil penalties, with or without conditions, pursuant to 15 U.S.C. § 2615(a). Civil penalties are to be assessed by the Administrator by an order made on the record, after the violator is given a written notice and opportunity to request a hearing on the order, within 15 days of the date the notice is received by the violator.

A civil administrative complaint may include a proposed penalty that has been calculated pursuant to this policy. Alternatively, the complaint may specify the number of violations for which a penalty is sought, a brief explanation of the severity of each violation alleged, and a recitation of the statutory penalty authority applicable for each violation in the complaint.<sup>8</sup> This latter approach would not eliminate the need for EPA to specify a proposed penalty during the course of the administrative litigation and explain in writing how the proposed penalty was calculated in accordance with 15 U.S.C. § 2615, but would postpone the requirement until after the filing of pre-hearing information exchanges, at which time each party shall have exchanged all factual information considered relevant to the assessment of a penalty.<sup>9</sup>

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<sup>6</sup> See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Final List of Nationally Significant Issues and Process for Raising Issues to TPED*; November 1, 1994 or current revision. The NSI guidance was developed as implementation guidance to a memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*, Steven A. Herman, July 11, 1994.

<sup>7</sup> A pre-filing notice or letter may be issued prior to the filing of a civil administrative complaint.

<sup>8</sup> See, 40 C.F.R. § 22.14(a)(4).

<sup>9</sup> See, 40 C.F.R. § 22.19(a)(4).

## Section 2: Determining the Level of Enforcement Response

A civil administrative action can result in an enforceable agreement and the assessment of a penalty or a decision rendered by an Administrative Law Judge.<sup>10</sup> Before an administrative penalty order becomes final, the Administrator must provide each Respondent, including federal agencies, with notice and an opportunity for a formal hearing, on the record,<sup>11</sup> in accordance with the Administrative Procedures Act. EPA's general rules of administrative practice are set forth in 40 C.F.R. Part 22, entitled "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

### II. Notices of Noncompliance

On a case-by-case basis, EPA may determine that the issuance of a notice of noncompliance (NON),<sup>12</sup> rather than a civil administrative complaint is the most appropriate enforcement response to a violation.<sup>13</sup> A NON should be issued to address violations in the following circumstances:

- i. Where a first time violator's violation has low probability of re-occurrence<sup>14</sup> and low potential for harm; or
- ii. When a violator is in substantial compliance with the requirement as the specific facts and circumstances support.

A NON should, when necessary:

- i. Require corrective action by a specified date to return the violator to full compliance and resolve the violation(s);
- ii. Specify the type and nature of the corrective action necessary to return the violator to full compliance.

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<sup>10</sup> EPA may, at its discretion, issue a press release or advisory to notify the public of the filing of an enforcement action, settlement, or adjudication concerning a person's violation of TSCA. A press release can be a useful tool to notify the public of Agency actions for TSCA noncompliance and specifically, to educate the public on the requirements of LBP Program. The issuance of a press release or advisory as well as the nature of their contents are within the sole discretion of the Agency and shall not be subject to negotiation with the violator. See, *Restrictions on Communicating with Outside Parties Regarding Enforcement Actions*, March 8, 2006.

<sup>11</sup> See, 15 U.S.C. § 2615(a)(2)(A).

<sup>12</sup> A NON is not a formal enforcement action since there is no opportunity to respond to the notice on the record.

<sup>13</sup> Supplementary guidance on this issuance of NONs in lieu of complaints may be provided for specific situations.

<sup>14</sup> For example, if the same violation occurred on several occasions (e.g., a renovation firm failed to comply with the PRE Rule at 3 separate renovations including 3 units in a multi-unit renovation project), a NON should not be issued because the renovation firm demonstrated a pattern and practice of repeated violations.

## Section 2: Determining the Level of Enforcement Response

- iii. Require proof that the corrective action was taken by the specified date to demonstrate to the Agency's satisfaction that further action is not necessary to resolve the violation(s) and prevent recurrence; and
- iv. Be placed in the violator's inspection, case development report record, or other file to document the Agency's response.

A NON should not:

- i. Be issued to a violator for a subsequent violation of a provision of the same rule (e.g., the RRP Rule) reoccurring within 5 years; or
- ii. Impose a monetary penalty.

### III. Civil Judicial Referrals

EPA may ask the United States Department of Justice (DOJ) to seek injunctive relief in United States District Court under Section 17(a) of TSCA, 15 U.S.C. § 2616(a), to direct a violator to comply with the PRE, RRP, or LBP Activities Rules.

**Civil Administrative Penalty and Injunction Relief:** There may be instances in which the concurrent filing of a civil administrative complaint for penalty and a request for civil judicial injunctive relief under TSCA is appropriate.

### IV. Criminal Proceedings

This ERPP does not address criminal violations of TSCA. However, if the civil case team has reason to believe that a violator knowingly violated any provision of TSCA, it should promptly refer the matter to the Criminal Investigation Division (CID). TSCA's criminal penalties are found in Section 16(b).<sup>15</sup> In addition, pursuant to 18 U.S.C. Section 1001, it is a criminal violation to knowingly and willfully make a false or fraudulent statement in any matter within EPA's jurisdiction. In addition, it may be considered a criminal violation to knowingly or willfully falsify information provided to the Agency.

### V. Parallel Criminal and Civil Proceedings

Although the majority of EPA's enforcement actions are brought as either a civil action or a criminal action, there are instances when it is appropriate to bring both a civil and a criminal action. These include situations where the violations merit the deterrent and retributive effects of

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<sup>15</sup> See, 15 U.S.C. § 2615(b).

## Section 2: Determining the Level of Enforcement Response

criminal enforcement, yet a civil action is also necessary to obtain an appropriate remedial result, and where the magnitude or range of the environmental violations and the available sanctions make both criminal and civil enforcement appropriate.

Active consultation and cooperation between EPA's civil and criminal programs, in conformance with all legal requirements, including OECA's policy on parallel proceedings,<sup>16</sup> are critical to the success of EPA's overall enforcement program. The success of any parallel proceedings depends upon coordinated decisions by the civil and criminal programs as to the timing and scope of their activities. For example, it will often be important for the criminal program to notify civil enforcement managers that an investigation is about to become overt or known to the subject. Similarly, the civil program should notify the criminal program when there are significant developments that might change the scope of the relief. In every parallel proceeding, communication and coordination should be initiated at both the staff and management levels and should continue until resolution of all parallel matters.

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<sup>16</sup> See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Parallel Proceedings Policy*, Granta Y. Nakayama, September 24, 2007.

## Section 3: Assessing Civil Administrative Penalties

### I. Computation of the Penalty

In determining the amount of any civil penalty for violations of the PRE, RRP, or LBP Activities Rules, "...the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require."<sup>17</sup> On September 10, 1980, EPA published "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy"<sup>18</sup> which describes in greater detail the "civil penalty system" under TSCA. The purpose of this system is to ensure that civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that economic incentives for violating TSCA are eliminated and the penalty is a sufficient deterrent to future violations. The TSCA civil penalty system provides standard definitions and a calculation methodology for application of the statutory penalty factors that TSCA requires the Administrator to consider in assessing a civil penalty. The TSCA civil penalty system also states that as regulations are developed, specific penalty guidelines, such as this ERPP, will be developed adopting in detail the application of the general civil penalty system to the new regulation. In developing a proposed penalty, EPA will take into account the particular facts and circumstances of each case, with specific reference to the TSCA statutory penalty factors. This ERPP follows the general framework described in the 1980 "Guidelines" for applying the TSCA statutory penalty factors to violations in civil administrative enforcement cases.<sup>19</sup>

For each violation, the penalty amount is determined in a multi-step process:

1. Determine the number of independently assessable violations.
2. Determine the economic benefit.<sup>20</sup> One component of the total penalty is the estimated amount of economic benefit the respondent realized from non-compliance. This calculation is also subject to adjustment based on the violator's ability to pay/ability to continue in business. Considerations for calculating economic benefit are discussed in Item III "Economic Benefit of Noncompliance" and Item V "Ability to Pay/Continue in Business," of this Section.<sup>21</sup>

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<sup>17</sup> See, 15 U.S.C. 2615(a)(2)(B)

<sup>18</sup> See, Appendix C, TSCA Enforcement Policy and Guidance Documents, *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59771, September 10, 1980. The Guidelines focus on what the proper civil penalty should be if a decision is made that a civil penalty is the proper enforcement remedy. The Guidelines do not discuss whether the assessment of a civil penalty is the correct enforcement response to a specific violation.

<sup>19</sup> EPA will not apply civil administrative penalty policies in civil judicial context, but rather will apply statutory factors.

<sup>20</sup> Determining economic benefit is not specifically required by the Act, but is authorized under the "as justice may require" factor of 15 U.S. C. § 2615(a)(2)(B). See, 45 Fed. Reg. 59771, September 10, 1980.

<sup>21</sup> See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

### Section 3: Assessing Civil Administrative Penalties

3. Determine the gravity-based penalty. The other component of the total penalty is the gravity-based penalty. Under the TSCA Civil Penalty Guidelines, gravity-based penalties are determined in two stages:
  - a. The first stage is the determination of a gravity-based penalty (GBP) (gravity refers to the overall seriousness of the violation). To determine the gravity-based penalty, the following factors are considered:
    - i. The nature of the violation;
    - ii. The circumstances of the violation; and
    - iii. The extent of harm that may result from a given violation.

These factors are incorporated into the penalty matrices in Appendix B that specify the appropriate gravity-based penalty<sup>22</sup> and are discussed in more detail in Item IV of this section.

The penalty amounts in the gravity based penalty matrices in Appendix B have been increased pursuant to the Debt Collection Improvement Act of 1996, which requires federal agencies to periodically adjust the statutory maximum penalties to account for inflation. EPA has thus increased the maximum penalty amounts for TSCA violations to \$37,500.<sup>23</sup> Additional penalty inflation increases occur periodically and are incorporated by reference into this ERPP.

- b. The second stage involves adjusting the gravity-based penalty upward or downward. Adjustments to the penalty amount are made by considering several factors including the following:
  - i. The violator's ability to pay/ability to continue in business;
  - ii. The violator's history of prior violations;
  - iii. The violator's degree of culpability; and
  - iv. Such other matters as justice may require.

These adjustments are discussed in more detail in Item V of this Section.<sup>24</sup>

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<sup>22</sup> See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

<sup>23</sup> See, *Civil Monetary Inflation Adjustment Rule*, 73 Fed. Reg. 75340, December 11, 2008.

<sup>24</sup> See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

## Section 3: Assessing Civil Administrative Penalties

### II. Independently Assessable Violations

A separate civil penalty, up to the statutory maximum, can be assessed for each independent violation of TSCA. A violation is considered independent if it results from an act (or failure to act) which is not the result of any other violation for which a civil penalty is being assessed or if at least one of the elements of proof is different from any other violation.

Each requirement of the PRE, RRP, and LBP Activities Rules is a separate and distinct requirement and a failure to comply with any requirement is a violation of the PRE, RRP, or LBP Activities Rules. To determine whether a violation of the PRE, RRP, or LBP Activities Rules has occurred, the applicable requirements must be reviewed to determine which regulatory provisions have been violated.

Examples of the training provider requirements:

- Employ a training manager who has the requisite experience, education, and/or training.
- Meet the minimum training curriculum requirements for each of the disciplines.

Examples of the pre-renovation education requirements:

- Deliver pamphlet to the owner and adult occupant before renovation begins (but not more than 60 days before work begins) **or** mail pamphlet to owner at least 7 days before renovation begins.
- Obtain from the owner and adult occupant, written acknowledgement that they received the pamphlet or obtain a certificate of mailing at least 7 days before the renovation begins.

Examples of a renovation/abatement project:

- Retain all records for 3 years following completion of a project to demonstrate compliance with the PRE, RRP, or LBP Activities Rules.
- Follow work practice standards in each unit of a multi-family housing building.

After identifying each applicable regulatory requirement, the next step is to determine the number of renovations that took place or the number of affected persons to which information was required to be distributed or training provided. The total number of violations depends in part on the number of renovations or on the number of affected entities to which information was required to be distributed. For example:

## **Section 3: Assessing Civil Administrative Penalties**

1. A renovator contracts with a homeowner for renovation activities within the homeowner's one owner-occupied unit. Even if several renovation activities were conducted at that location, the activity is considered one renovation for purposes of determining whether violations of the PRE Rule occurred, since only one person needs to be notified – the homeowner.
2. A renovator contracted with an owner of a multi-unit apartment building for 20 units to undergo renovation. This resulted in 20 separate requirements to comply with the PRE Rule for purposes of determining the number of violations because each unit had a separate adult occupant that the renovator needed to contact.
3. In another example, if there are three unrelated children under the age of 6 at a child-occupied facility undergoing renovation and the renovator fails to notify the parents/guardians of all 3 children, the total number of violations for failure to provide the pamphlet is 3.

Similar calculations can be performed for applicable requirements for other parts of the PRE, RRP, and LBP Activities Rules to determine which regulatory provisions have been violated. A detailed list of some, but not all, potential violations of the PRE, RRP, and LBP Activities Rules is provided in Appendix A.

### **III. Economic Benefit of Noncompliance**

An individual renovator, renovation or abatement contractor, training firm, or any other entity that has violated the PRE, RRP, or LBP Activities Rule(s) and Section 409 of TSCA should not profit from their actions.

The Agency's Policy on Civil Penalties (EPA General Enforcement Policy #GM-21), dated February 16, 1984, mandates the recapture of any significant economic benefit (EBN) that accrues to a violator from noncompliance with the law. Economic benefit can result from a violator delaying or avoiding compliance costs or when a violator otherwise realizes illegal profits through its noncompliance. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, enforcement professionals should always evaluate the economic benefit of noncompliance in calculating penalties. Note that economic benefit can not exceed the statutory maximum penalty amount.

An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator. "Significant" is defined as an economic benefit that totals more than \$50 per room renovated per

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renovation project<sup>25</sup> for all applicable violations alleged in the complaint. In the interest of simplifying and expediting an enforcement action, enforcement professionals may use the “rules of thumb” (discussed in Section 3. IV. b., below) to determine if the economic benefit will be significant.

EPA generally will not settle cases for an amount less than the economic benefit of noncompliance. However, the Agency’s 1984 Policy on Civil Penalties explicitly sets out three general areas where settling for less than the economic benefit may be appropriate. Since issuance of the 1984 Policy, the Agency has added a fourth exception for cases where ability to pay is a factor. The four exceptions are:

- The economic benefit component is an insignificant amount (defined for purposes of this policy as less than \$50 per room renovated per renovation project);
- There are compelling public concerns that would not be served by taking a case to trial;
- It is unlikely, based on the facts of the particular case as a whole, that EPA will be able to recover the economic benefit in litigation; and
- The company has documented an inability to pay the total proposed penalty.<sup>26</sup>

### a. Economic Benefit from Delayed Costs and Avoided Costs

Delayed costs are expenditures that have been deferred by the violator’s failure to comply with the requirements. The violator eventually will spend the money to achieve compliance. Delayed costs are either capital costs (i.e., equipment), if any, or one-time non-depreciable costs (e.g., certification fees for renovation firms, tuition fees for courses for certification).

Avoided costs are expenditures that will never be incurred, as in the case of a failure to implement renovation or abatement work practices. In this example, avoided costs include all the costs associated with procuring supplies and implementing engineering controls for dust or using banned practices for LBP removal. Those costs were never and will never be incurred.

### b. Calculation of Economic Benefit from Delayed and Avoided Costs

Since 1984, it has been Agency policy to use either the BEN computer model or “rules of thumb” to calculate the economic benefit of noncompliance. The “rules of thumb” are straight-

<sup>25</sup> Alternatively, cost information can be derived from the *Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child-Occupied Facilities*; Economic and Policy Analysis Branch, Exposure and Technology Division, Office of Pollution Prevention and Toxics. March, 2008.

<sup>26</sup> See, Section 3, Item V; Modification of Penalty, for a discussion of ability to pay/continue in business.

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forward methods to calculate economic savings from delayed and avoided compliance expenditures. They are discussed more fully in the Agency's General Enforcement Policy #GM-22, entitled "A Framework for Statute-Specific Approaches to Penalty Assessments," issued on February 16, 1984, at pages 7-9. The "rule of thumb" methodology is available in a Lotus spreadsheet available to EPA enforcement professionals from the Special Litigation and Projects Division of the Office of Civil Enforcement. Enforcement professionals may use the "rules of thumb" whenever the economic benefit penalty is not substantial (generally under \$50 per room renovated per renovation project) and use of an expert financial witness may not be warranted. If the "rules of thumb" yield an amount over \$50 per room renovated per renovation project, the case developer should use the BEN model and/or an expert financial witness to calculate the higher economic benefit penalty. Using the "rules of thumb," the economic benefit of delayed compliance may be estimated at: 5% per year of the delayed one-time capital costs, if any, and/or one-time non-depreciable costs for the period from the date the violation began until compliance was or is expected to be achieved. For avoided annual costs, the "rule of thumb" is the annual expenses avoided until the date compliance is achieved less any tax savings. These rules of thumb do not apply to avoided one-time or avoided capital costs. Enforcement professionals should calculate the economic benefit of avoided one-time and avoided capital costs, if any, by using the BEN model.

The primary purpose of the BEN model is to calculate economic savings for settlement purposes. The model can perform a calculation of economic benefit from delayed or avoided costs based on data inputs, including optional data items and standard values already contained in the program. Enforcement professionals wishing to use the BEN model should take the Basic BEN training course offered by the Special Litigation and Projects Division in cooperation with NETI. Enforcement professionals who have questions while running the model can access the model's help system which contains information on how to: use BEN, understand the data needed, and understand the model's outputs.

The economic benefit component should be calculated for the entire period for which there is evidence of noncompliance, i.e., all time periods for which there is evidence to support the conclusions that the respondent was violating TSCA and thereby gained an economic benefit. Such evidence should be considered in the assessment of the penalty proposed for the violations alleged or proven, up to the statutory maximum for those violations. In certain cases, credible evidence may demonstrate that a respondent received an economic benefit for noncompliance for a period longer than the period of the violations for which a penalty is sought. In such cases, it may be appropriate to consider all of the economic benefit evidence in determining the appropriate penalty for the violations for which the respondent is liable. For example, the economic benefit component of a penalty for failure to comply with work practice standards at a large, multi-year renovation project during which EPA conducted compliance monitoring for only one year should be based on a consideration of the economic benefit gained for the entire period of the renovation, but the total penalty is limited to the statutory maximum for the specific violations alleged and proven.

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In most cases, the violator will have the funds gained through non-compliance available for its continued use or competitive advantage until it pays the penalty. Therefore, for cases in which economic benefit is calculated by using BEN or by a financial expert, the economic benefit should be calculated through the anticipated date a consent agreement would be entered. If the matter goes to hearing, this calculation should be based on a penalty payment date corresponding with the relevant hearing date. It should be noted that the respondent will continue to accrue additional economic benefits after the hearing date, until the assessed penalty is paid. However, there are exceptions for determining the period of economic benefit when using a “rule of thumb.” In those instances, the economic benefit is calculated in the manner described in the first paragraph of this subsection.

### **IV. Gravity-Based Penalty**

Lead poisoning in children, including poisoning in-utero, causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems. In severe cases it may lead to seizures, coma, and death. In as many as 38 million homes in the United States, children’s health is endangered by lead-based paint and/or lead-based paint hazards. Lead in housing and child-occupied facilities remains the most important source of lead exposure for young children and pregnant women. Providing information about the dangers from lead exposures and controlling exposures to lead is the focus of the PRE, RRP, and LBP Activates Rules. The nature and circumstance of a violation of these rules and the extent to which the violation poses a potential for harm are incorporated into the matrices that specify the appropriate gravity-based penalty for that specific or similar violations.

#### **Nature**

The TSCA Civil Penalty Guidelines define the nature of a violation as the essential character of the violation, and incorporates the concept of whether the violation is of a “chemical control,” “control-associated data gathering,” or “hazard assessment” nature. With respect to both the RRP and LBP Activities Rules, the requirements are best characterized as “chemical control” in nature because they are aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors. In contrast, the requirements of the PRE Rule are best characterized as “hazard assessment” in nature. The PRE Rule requirements are designed to provide owners and occupants of target housing, owners and proprietors of child-occupied facilities, and parents and/or guardians of children under the age of 6 in child-occupied facilities, with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid the hazards. This information is vital to occupants of target housing and child-occupied facilities undergoing renovations or abatements to enable them to take proper precautions to avoid unnecessary exposure, especially to children under the age of 6 and pregnant women, that may be created during a renovation or abatement activity. The “nature” of the violation will have a

## Section 3: Assessing Civil Administrative Penalties

direct effect on the measure used to determine the appropriate “circumstance” and “extent” categories are selected on the GBP Matrix in Appendix B.

### Circumstance

The term “circumstance” represents the probability of harm resulting from a particular type of violation. The PRE, RRP, and LBP Activities Rules constitute a comprehensive lead-based paint regulatory program. The PRE Rule requirements provide a warning of dangers from lead associated with pending renovations or abatements. The RRP Rule and LBP Activities Rule requirements provide for engineering controls to limit exposures to lead during renovation and abatements and the cleanup procedures to reduce exposures to lead following renovations and abatements. Post-cleanup sampling provides for verification of the effectiveness of the engineering controls and cleanup procedures by testing for residual exposures, if any, to lead.

Therefore, the greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposures will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed.

Under the TSCA Penalty Guidelines, “Circumstances” are categorized as *High*, *Medium*, and *Low* and each category has two levels, for a total of six Circumstance levels. Consequently, the ERPP ranks potential violations using 6 levels that factor in compliance with the requirements of the PRE, RRP, or LBP Activities Rules. These requirements are associated with lack of knowledge of lead-based paint and lead-based paint hazards, increased exposure to lead or lead hazards, and verification of lead or lead hazard reduction after the actual renovation/abatement work is completed. For example:

1. For a PRE Rule violation, the harm is associated with the failure to provide information on LBP hazards prior to renovations (a “hazard assessment” activity by its nature under this policy). Therefore, the primary circumstance to be considered is the occupant’s ability to assess and weigh, via the PRE Rule notification process, the factors associated with the risk to their health from the planned renovation, so they can take proper precautions to avoid any lead hazards.
2. For a RRP Rule violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation (i.e., a “chemical control” activity by its nature under this policy). Therefore, the primary Circumstance to be considered is whether the specific violation has a high, medium, or low probability of impacting human health.

For purposes of this policy, specific violations of the PRE, RRP, and LBP Activities Rules have been categorized as follows:

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Levels 1 and 2:	Violations having a high probability of impacting human health and the environment.
Levels 3 and 4:	Violations having a medium probability of impacting human health and the environment.
Levels 5 and 6:	Violations having a low probability of impacting human health and the environment.

### Extent

The term “extent” represents the degree, range, or scope of a violation’s potential for harm. The TSCA Penalty Guidelines provide three “extent” categories: *Major*, *Significant*, and *Minor*. In the context of the PRE, RRP, and LBP Activities Rules, the measure of the “extent” of harm focuses on the overall intent of the rules and the amount of harm the rules are designed to prevent (e.g., serious health effects from childhood lead poisoning). For example, the potential for harm due to the failure of the renovator to provide the *Renovate Right* pamphlet could be considered “Major” if risk factors are high for exposure. In the example of an RRP violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation. Therefore, the primary consideration for determining the extent of harm to be considered is whether the specific violation could have a serious or significant or minor impact on human health, with the greatest concern being for the health of a child under 6 years of age and a pregnant woman in target housing. Even in the absence of harm in the form of direct exposures to lead hazards, the gravity component of the penalty should reflect the seriousness of the violation in terms of its effect on the regulatory program. For example, course completion certificates are used by inspectors to identify individuals at worksites who must perform key renovation activities under the RRP Rule. This allows inspectors to efficiently identify those individuals excluded from regulated renovation activities that require certified renovators and to document that each renovation firm employs and uses a certified renovator. TSCA Civil Penalty Guidelines provide the following definitions for the 3 Extent categories:

- Major: Potential for serious damage to human health or the environment.
- Significant: Potential for significant damage to human health or the environment.
- Minor: Potential for lesser amount of damage to human health or the environment.

Under these categories, the appropriate extent category for failure or refusal to comply with the provisions of the Rules is based upon 3 determinable facts:

- The age of any children who occupy target housing;

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- Whether a pregnant woman occupies target housing; and
- Whether a child or children under six had access to the child-occupied facility during renovations/abatement.

**Age of child(ren) occupying target housing:** Age will be determined by the age of the youngest child residing in the target housing at the time the violation occurred or at the time the renovation occurred. However, any individual can be adversely affected by exposure to lead. Children under the age of 6 are most likely to be adversely affected by the presence of lead-based paint and/or lead-based paint hazards based on habits (particularly hand-to-mouth activity) and vulnerability due to their physical development.

If EPA knows or has reason to believe that a child under the age of 6 is present, then for purposes of proposing a gravity-based penalty, the Major extent category should be used. Where the age of the youngest individual is not known, or a respondent is able to demonstrate to EPA's satisfaction that the youngest individual residing in the target housing at the time of the violation was at least 6 years of age and less than eighteen, then a Significant extent factor should be used. Where a respondent is able to demonstrate to EPA's satisfaction that no individuals younger than eighteen were residing in the target housing at the time of the violation, then a Minor extent factor should be used.

**Pregnant women living in target housing:** Lead exposure before or during pregnancy can alter fetal development and cause miscarriages. If EPA determines that a pregnant woman occupied the target housing at the time a violation occurred, then a Major extent should be used.

**Child-occupied facilities:** Child-occupied facilities are, by definition, regularly visited by the same child(ren) under the age of 6. EPA will generally consider failures by renovation/abatement firms to notify parents or guardians of children under 6 as Major in extent. Where a respondent demonstrates to EPA's satisfaction that no children under 6 visited the facility during the renovation (*i.e.*, from the beginning of the renovation through the final cleaning verification), such as during an elementary school's summer break, then an extent factor other than Major should be used.

## V. Modification of the Penalty

In addition to the factors discussed in Subsection IV Gravity-Based Penalty above, EPA shall also consider regarding the violations which are the subject of the specific action, with respect to the violator:

- The degree of culpability;
- Any history of prior such violations;

## Section 3: Assessing Civil Administrative Penalties

- The ability to pay/ability to continue to do business; and
- Such other matters as justice may require.<sup>27</sup>

All appropriate upward adjustments of the gravity-based penalty amount should be made prior to the issuance of the proposed penalty, while downward adjustments<sup>28</sup> generally should not be made until after the proposed penalty has been issued, at which time these factors may be considered either during settlement negotiations or litigation.

### Degree of Culpability

This factor may be used to increase or decrease the gravity-based penalty. TSCA is a strict liability statute for civil actions, so that culpability is irrelevant to the determination of legal liability. However, this does not render the violator's culpability irrelevant in assessing an appropriate penalty. Knowing or willful violations generally reflect an increased culpability on the part of the violator and may even give rise to criminal liability. The culpability of the violator should be reflected in the amount of the penalty, which may be adjusted upward or downward by up to 25% for this factor. In assessing the degree of culpability, all of the following points should be considered:

- Amount of control the violator had over the events constituting the violation;
- Level of sophistication (knowledge of the regulations) of the violator in dealing with compliance issues; and
- Extent to which the violator knew, or should have known, of the legal requirement that was violated. (For example, was the violator previously informed of the federal requirement to provide the "*Renovate Right*" pamphlet in a prior notice of a local code violation from a local building permit or code office?)

### History of Prior Violations

A prior history of violations of the PRE, RRP, or LBP Activities Rules should be reflected in the amount of the penalty. The gravity-based penalty matrices are designed to apply to "first offenders." Where a violator has demonstrated a similar history of "such violations" the Act requires the penalty to be adjusted upward by as much as 25% under the *Guidelines for Assessment of Civil Penalties under Section 16 of TSCA*. The need for such an upward adjustment is usually justified because the violator has not been sufficiently motivated to comply

<sup>27</sup> See, 15 U.S.C. § 2615(a)(2)(B). Under unusual circumstances there may be other factors not specified herein that must be considered to reach a just resolution.

<sup>28</sup> See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

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with the PRE, RRP, or LBP Activities Rules by the penalty assessed for the previous violation(s).

For the purpose of this policy, EPA interprets “prior such violations” to mean any prior violation(s) of the PRE, RRP, or LBP Activities Rules. For example, the following guidelines apply in evaluating the history of such violations to the PRE Rule:

To constitute a prior violation:

1. The prior violation must have resulted in a consent agreement and final order or consent order (CAFO), consent decree, default judgment (judicial decision), or criminal conviction; and
  2. The resulting order/judgment/conviction was entered or executed within five calendar years prior to the date the subsequent violation occurred. Receipt of payment made to the U.S. Treasury can be used as evidence constituting a prior violation, regardless of whether a respondent admits to the violation and/or enters into a CAFO. Issuance of a NON does not constitute a prior violation for purposes of this policy since no violation is formally found and no opportunity to contest the notice is provided. In order to constitute a prior violation, a prior violation must have resulted in a final order. Violations litigated in Federal courts under the Act’s imminent hazard (§ 7), specific enforcement and seizure (§ 17), and criminal (§ 16(b)) provisions, are also part of a violators history for penalty assessment purposes.
- Two or more corporations or business entities owned by, or affiliated with, the same parent corporation or business entity may not necessarily affect each other’s history (such as with independently-owned franchises) if they are substantially independent of one another in their management and in the functioning of their Boards of Directors. EPA reserves the right to request, obtain, and review all underlying and supporting financial documents that elucidate relationships between entities to verify their accuracy. If the violator fails to provide the necessary information, and the information is not readily available through other sources, then EPA is entitled to rely on the information it does have in its control or possession.
  - In the case of wholly-owned subsidiaries, the parent corporation’s history of violation will apply to all of its subsidiaries. Similarly, the history of violation for a wholly-owned subsidiary will apply to the parent corporation.

## Section 3: Assessing Civil Administrative Penalties

### Ability to Pay/Continue in Business

Section 16(a)(2)(B) of TSCA requires that the violator's ability to pay the proposed civil penalty be considered as a statutory factor in determining the amount of the penalty. Absent proof to the contrary, EPA can establish a respondent's ability to pay with circumstantial evidence relating to a company's size and annual revenue. Once this is done, the burden is on the respondent to demonstrate an inability to pay all or a portion of the calculated civil penalty.<sup>29</sup>

To determine the appropriateness of the proposed penalty in relation to a person's ability to pay, the case team should review publicly-available information, such as Dun and Bradstreet reports, a company's filings with the Securities and Exchange Commission (when appropriate), or other available financial reports before issuing the complaint. In determining the amount of a penalty for a violator when financial information is not publicly-available, relevant facts obtained concerning the number of renovation contracts signed by a violator and the total revenues generated from such renovation contracts may offer insight regarding the violator's ability to pay the penalty.

The Agency will notify the respondent of its right under the statute to have EPA consider its ability to continue in business in determining the amount of the penalty. Any respondent may raise the issue of ability to pay/ability to continue in business in its answer to the complaint or during the course of settlement negotiations. If a respondent raises "inability to pay" as a defense in its answer or in the course of settlement negotiations, the Agency should ask the respondent to present appropriate documentation, such as tax returns and financial statements. The respondent should provide records that conform to generally accepted accounting principles and procedures at its expense. EPA generally should request the following types of information:

- The last three to five years of tax returns;
- Balance sheets;
- Income statements;
- Statements of changes in financial position;

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<sup>29</sup> Note that under the Environmental Appeals Board ruling in *In re: New Waterbury, LTD*, 5 E.A.D. 529 (EAB 1994), in administrative enforcement actions for violations under statutes that specify ability to pay (which is analogous to ability to continue in business) as a factor to be considered in determining the penalty amount, EPA must prove it adequately considered the appropriateness of the penalty in light of all of the statutory factors. Accordingly, enforcement professionals should be prepared to demonstrate that they considered the respondent's ability to continue in business as well as the other statutory penalty factors and that their recommended penalty is supported by their analysis of those factors. EPA may obtain information regarding a respondent's ability to continue in business from the respondent, independent commercial financial reports, or other credible sources.

### Section 3: Assessing Civil Administrative Penalties

- Statement of operations;
- Information on business and corporate structure;
- Retained earnings statements;
- Loan applications, financing agreements, security agreements;
- Annual and quarterly reports to shareholders and the SEC, including 10K reports; and
- Statements of assets and liabilities.

There are several sources available to assist enforcement professionals in determining a respondent's ability to pay. Enforcement professionals considering a respondent's ability to continue in business should consult "A Framework for Statute-Specific Approaches to Penalty Assessments" (cited above) and EPA General Enforcement Policy PT.2-1 (previously codified as GM-#56), entitled "Guidance on Determining a Violator's Ability to Pay a Civil Penalty" (December 16, 1986). In addition, the Agency has three computer models available to help assess whether violators can afford compliance costs and/or civil penalties: ABEL, INDIPAY and MUNIPAY. INDIPAY analyzes individual taxpayers' claims about inability to pay. MUNIPAY analyzes ability to pay for cities, towns, and villages. These models are designed for settlement purposes only.

ABEL is an EPA computer model that is designed to assess inability to pay claims from corporations and partnerships. The evaluation is based on the firm's excess cash flow. ABEL looks at the money coming into the entity and the money going out. It then looks at whether the excess cash flow is sufficient to cover the firm's environmental responsibilities (i.e., compliance costs) and the proposed civil penalty. Because the program only focuses on a violator's cash flow, there are other sources of revenue that should also be considered to determine if a firm or individual is unable to pay the full penalty. These include:

- Certificates of deposit, money market funds, or other liquid assets;
- Reduction in business expenses such as advertising, entertainment, or compensation of corporate officers;
- Sale or mortgage of non-liquid assets such as company cars, aircraft, or land; and
- Related entities (e.g., the violator is a wholly owned subsidiary of Fortune 500 company).

## Section 3: Assessing Civil Administrative Penalties

A respondent may argue that it cannot afford to pay the proposed penalty even though the penalty as adjusted does not exceed EPA's assessment of its ability to pay. In such cases, EPA may consider a delayed payment schedule calculated in accordance with Agency installment payment guidance and regulations.<sup>30</sup> In exceptional circumstances, EPA may also consider further adjustment below the calculated ability to pay.

Finally, EPA will generally not collect a civil penalty that exceeds a violator's ability to pay as evidenced by a detailed tax, accounting, and financial analysis.<sup>31</sup> However, it is important that the regulated community not choose noncompliance as a way of aiding financially troubled businesses. Therefore, EPA reserves the option, in appropriate circumstances, of seeking a penalty that might exceed the respondent's ability to pay, cause bankruptcy, or result in a respondent's inability to continue in business. Such circumstances may exist where the violations are egregious<sup>32</sup> or the violator refuses to pay the penalty. However, if the case is generated out of an EPA regional office, the case file must contain a written explanation, signed by the regional authority duly delegated to issue and settle administrative penalty orders under TSCA, which explains the reasons for exceeding the "ability to pay" guidelines. To ensure full and consistent consideration of penalties that may cause bankruptcy or closure of a business, the regions should consult with the Waste and Chemical Enforcement Division (WCED).<sup>33</sup>

**Size of Violator:** EPA estimated<sup>34</sup> that about 394,000 firms supply renovation services nationwide including 82,800 small residential remodeling firms that employ less than 4 people. An additional 1.2 million people are self-employed contractors covered under the RRP Rule, including 194,000 residential remodelers. The general presumption is that small, independent renovation firms lack the level of knowledge and awareness of the LBP rules shared by larger renovators with more employees and more extensive involvement in the renovation industry. Therefore, this factor should be considered when considering economic benefit from noncompliance, ability to pay/continue in business<sup>35</sup> for very small firms and the self-employed.

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<sup>30</sup> See, 40 C.F.R. § 13.18.

<sup>31</sup> See, TSCA Penalty Guidelines, 45 Fed. Reg. 59775, September 1, 1980. Each financial analysis of a respondent's ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent's obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint.

<sup>32</sup> An example of an egregious situation would be where a firm or individual renovator failed to follow any work practice standard, including containment, cleanup, or post-cleanup verification, or used prohibited or restricted practices which resulted in a paint, dust, or soil lead hazard in target housing where a pregnant woman or child under 6 resided or in a child occupied facility.

<sup>33</sup> See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

<sup>34</sup> See, Footnote 25, pages 2-16 through 2-20.

<sup>35</sup> See, Footnote 31, concerning reinforcing a respondent's obligation to comply.

## Section 3: Assessing Civil Administrative Penalties

### Other Factors as Justice May Require

This provision allows an adjustment to the gravity-based component of a penalty for other factors which may arise on a case-by-case basis. The factors discussed in this section may or may not be known at the time a pre-filing letter is sent or a complaint is issued. To the extent that these and other relevant factors become known, adjustments to gravity-based penalties calculated using the factors in Section 3. IV. above, may be made prior to issuing a complaint or at any time thereafter.

### Voluntary Disclosure of Violations prior to an Inspection, Investigation, or Tip/Complaint

Violations must be disclosed to EPA before the Agency receives any information about the violations or initiates an inspection or investigation of the firm or individual. No penalty reductions should be given under the Audit Policy, Small Business Policy, or for other voluntary disclosures where the penalties are based on inspections or other investigations.

**Audit Policy:** A renovator who conducts an audit and voluntarily self-discloses any violations of the PRE, RRP, or LBP Activities Rules under the “Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations” (65 FR 19618, April 11, 2000 (Audit Policy)), may be eligible for a reduction of the gravity-based penalty if all the criteria established in the audit policy are met.<sup>36</sup> Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

**Small Business Policy:** A business with fewer than 100 employees may be eligible for a reduction of a gravity-based penalty under the EPA’s Policy on Compliance Incentives for Small Business (Small Business Policy, June 10, 1996).<sup>37</sup> Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

**Voluntary Disclosures:** If a firm or individual self-discloses a violation of the PRE, RRP, or LBP Activities Rules but does not qualify for consideration under either the Audit Policy or the Small Business Policy, the proposed civil penalty amount may still be reduced for such voluntary disclosure. To encourage voluntary disclosures of violations, EPA may make a reduction of up to 10% of the gravity-based penalty. An additional reduction up to 10% (for a total reduction of up to 20%) may be given to those violators who report the potential violation to EPA within 30 days of self-discovery of the violation(s).

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<sup>36</sup> See, Appendix C, Audit Policy

<sup>37</sup> See, Appendix C, Small Business Policy.

## Section 3: Assessing Civil Administrative Penalties

### Attitude

In cases where a settlement is negotiated prior to a hearing, after other factors have been applied as appropriate, EPA may reduce the resulting adjusted proposed gravity-based penalty up to a total of 30%, but not more than the calculated economic benefit from non-compliance for attitude,<sup>38</sup> if the circumstances warrant. In addition to creating an incentive for cooperative behavior during the compliance evaluation and enforcement process, this adjustment factor further reinforces the concept that respondents face a significant risk of higher penalties in litigation than in settlement. The attitude adjustment has 3 components: cooperation, immediate steps taken to comply with the LBP rules, and early settlement:

- EPA may reduce the adjusted proposed penalty up to 10% based on a respondent's cooperation throughout the entire compliance monitoring, case development, and settlement process.
- EPA may reduce the adjusted proposed penalty up to 10% for a respondent's immediate good faith efforts to comply with the violated regulation and the speed and completeness with which it comes into compliance.
- EPA may reduce the adjusted proposed penalty up to 10% if the case is settled before the filing of pre-hearing exchange documents.

### Special Circumstances/Extraordinary Adjustments

A case may present other factors that the case team believes justify a further reduction of the penalty.<sup>39</sup> For example, a case may have particular litigation strengths or weaknesses that have not been adequately captured in other areas of this ERPP. If the facts of the case or the nature of the violation(s) at issue reduce the strength of the Agency's case, then an additional penalty reduction may be appropriate. In such circumstances, the case team should contact OECA to discuss.<sup>40</sup> If after careful consideration, the case team determines that an additional reduction of the penalty is warranted, it should ensure the case file includes substantive reasons why the extraordinary reduction of the civil penalty is appropriate, including: (1) why the penalty derived from the TSCA civil penalty matrices and gravity adjustment is inequitable; (2) how all other methods for adjusting or revising the proposed penalty would not adequately resolve the inequity; (3) the manner in which the adjustment of the penalty effectuated the purposes of the Act; and (4) documentation of management concurrence in the extraordinary reduction. EPA should still obtain a penalty sufficient to remove any economic incentive for violating applicable TSCA requirements.

<sup>38</sup> See, TSCA Civil Penalty Guidance, attitude of the violator. 45 Fed. Reg. 59773; September 10, 1980

<sup>39</sup> See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Documenting Penalty Calculations and Justifications of EPA Enforcement Actions*, James Strock, August 9, 1990.

<sup>40</sup> See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

## Section 3: Assessing Civil Administrative Penalties

### VI. Adjusting Proposed Penalties in Settlement

Certain circumstances may justify adjustment of the proposed penalty. These circumstances may come to EPA's attention when a respondent files an answer to a civil complaint or during pre-filing settlement discussions under the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties*, 40 C.F.R. Part 22.

#### 1) Factual Changes

EPA will recalculate the proposed penalty if the respondent can demonstrate that facts material to the initial calculation are different. For example:

- The owner of a property undergoing renovation/abatement provides appropriate documentation<sup>41</sup> that the portion of the property undergoing renovation/abatement is lead-based paint free;
- A renovator or renovation firm provides appropriate documentation that it was renovating/abating a portion of property previously demonstrated to them to be LBP free; or
- A renovator or renovation firm provides appropriate documentation that it had renovated/abated a portion of property subsequently demonstrated to them to be LBP free.

In every case, the burden is on the respondent to raise those new factors which may justify the recalculation, consistent with the new facts.

#### 2) Remittance of Penalty

The statute authorizes the Administrator to compromise, modify or remit, with or without condition, any civil penalty which may be imposed under this section.<sup>42</sup> EPA has issued a policy on implementing this subsection.<sup>43</sup> An example of the application of this policy would be the remittance of a portion of the unadjusted gravity-based penalty developed for violations of the RRP Rule in consideration of acceptance of a suspension or revocation of the violator's LBP certification or training authorization. The violator would still be liable for a penalty for any economic benefit accrued as a result of the violation(s). The terms of the remittance and suspension or revocation must be incorporated into a Compliance Agreement and Final Order.<sup>44</sup>

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<sup>41</sup> "Appropriate documentation" or "demonstration" such as reports of lead inspections conducted in accordance with HUD's Guidelines for Assessment of Lead-Based Paint and Lead-Based Paint Hazards.

<sup>42</sup> See, 15 U.S.C. 2615(a)(2)(C), Section 16(a)(2)(C) of TSCA.

<sup>43</sup> See, Appendix C, TSCA Enforcement Policy and Guidance Documents; Memorandum, *Settlement with Conditions*, A. E. Conroy II, November 16, 1983.

<sup>44</sup> This provision may also be used to remit penalties in exchange for the completion of projects similar to those projects implemented under the Supplemental Environmental Projects program.

## Section 3: Assessing Civil Administrative Penalties

The Chief of the Chemical Risk and Reporting Branch must concur before an offer to remit is made under this ERPP.<sup>45</sup>

### 3) Supplemental Environmental Projects

Supplemental Environmental Projects (SEPs) are environmentally beneficial projects that a respondent agrees to undertake in settlement of an environmental enforcement action, but that the respondent is not otherwise legally required to perform. In return, the cost of the SEP reduces the amount of the final penalty paid by the respondent. SEPs are only available in negotiated settlements.

EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform the proposed SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The SEP Policy,<sup>46</sup> defines categories of projects that may qualify as SEPs, procedures for calculating the cost of the SEP, and the percentage of that cost which may be applied as a mitigating factor in establishing an appropriate settlement amount. EPA should ensure that the inclusion of any SEP in settlement of an enforcement action is consistent with the SEP Policy in effect at the time of the settlement. Examples of potential SEPs are listed in Appendix D.

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<sup>45</sup> See, Footnote 6. Please consult the current document for any additional or more recent guidance or requirement for consultation or concurrence.

<sup>46</sup> See, Appendix C for links to SEP Policies.

# **APPENDICES**

## CIRCUMSTANCE LEVEL

<sup>48</sup> Circumstance Level	Rule Violation
<b>Section I Information Distribution Requirements</b>	
Level 1b	<u>1-Renovation in Dwelling Unit</u> : Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(1)
Level 1b	<u>2-Renovation in Dwelling Unit</u> : Failure to provide the adult occupant of the unit (if not the owner) with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(2)
Level 1b	<u>3-Renovation in Common Area</u> : Failure to provide the owner of the multi-family housing with the EPA-approved lead hazard information/pamphlet or to post informational signs pursuant to 40 C.F.R. § 745.84(b)(1)
Level 1b	<u>4-Renovation in Common Area</u> : Failure to notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of the renovation, or to post informational signs pursuant to 40 C.F.R. §745.84(b)(2)
Level 1b	<u>5-Renovation in Child-Occupied Facility</u> : Failure to provide the owner of the building in which the child-occupied facility is located with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 1b	<u>6-Renovation in Child-Occupied Facility</u> : Failure to provide an adult representative of the child-occupied facility with the pamphlet, if the owner is not the operator of the child-occupied facility, pursuant to 40 C.F.R. §745.84(c)(1)(ii)
Level 1b	<u>7-Renovation in Child-Occupied Facility</u> : Failure to provide the parents and/or guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date, by mailing or hand-delivering the pamphlet and renovation information, or by posting informational signs describing the general nature and locations of the renovation and the anticipated completion date, posted in areas where they can be seen by parents or guardians of the children frequenting the child-occupied facility, and accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians, pursuant to 40 C.F.R. §745.84(c)(2)
Level 1b	<u>8-All Renovations</u> : Failure of firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed, pursuant to 40 C.F.R. §745.85 (1).
<b>Section II Test Kits</b>	
Level 1a	<u>1-All Renovations</u> : Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit result provided a false negative result for lead (i.e., no lead)
Level 5a	<u>2-All Renovations</u> : Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit provided an accurate result for the presence of lead

<sup>48</sup> The matrices in Appendix A on pages B-1 through B-9 contain 2 tiers. Circumstance Level “b” is for PRE Rule requirements which are “hazard assessment” in Nature. Circumstance Level “a” is for LBP Activities Rule and RRP Rule requirements which are “chemical control” in Nature, and all combinations of “a” and “b” violations.

## Appendix A Violations and Circumstance Levels

48 Circumstance Level	Rule Violation
<b>Section III Failure to Allow Access to Records, or Refusal of An Inspection</b>	
Level 2a	<u>1-All Renovations:</u> Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.87(c), which states that such failure or refusal to permit entry or inspection is also a violation of TSCA §15 and TSCA §409
Level 2a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.235(c), as required by §745.237 and section 11 of TSCA (15 U.S.C. § 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. § 2614, 2689)
<b>Section IV Failure to Establish and Maintain Records, Failure or Refusal to Make Records Available</b>	
Level 3a	<u>1-All Renovations:</u> Failure or refusal to establish and maintain records, or to make available such records, pursuant to 40 C.F.R. §745.87(b), which states that such failure or refusal is a violation of TSCA §409
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish maintain, provide, copy, or permit access to records or reports, pursuant to 40 C.F.R. §745.225, § 745.226, and/or §745.227
<b>Section V Acknowledgment and Certification Statement Requirements</b>	
Level 4b	<u>1-Renovation in Dwelling Unit:</u> Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(1)
Level 4b	<u>2-Renovation in Dwelling Unit:</u> Failure to obtain, from the adult occupant, a written acknowledgment that the adult occupant has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(2)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(2)
Level 4b	<u>3-Renovation in Common Area:</u> Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, or that information signs have been posted, pursuant to 40 C.F.R. § 745.84(b)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(b)(1)
Level 4b	<u>4-Renovation in Common Area:</u> Failure to prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet, pursuant to 40 C.F.R. §745.84(b)(3)
Level 5b	<u>5-Renovation in Common Area:</u> Failure to notify, in writing, the owners and occupants if the scope, locations or expected starting and ending dates of the planned renovation activities change after the initial notification, before the renovator initiates work beyond that which was described in the original notice, pursuant to 40 C.F.R. § 745.84(b)(4)
Level 4b	<u>6-Renovation in Child-Occupied Facility:</u> Failure to obtain, from the owner of the building, a written acknowledgment that the owner has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 4b	<u>7-Renovation in Child-Occupied Facility:</u> Failure to obtain from an adult representative of the child-occupied facility, if the operator of the child-occupied facility is not the owner of the building, a written acknowledgment that the operator has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(c)(1)(ii)
Level 4b	<u>8-Renovation in Child-Occupied Facility:</u> Failure to prepare, sign and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet pursuant to 40 C.F.R. §745.84(c)(3)
Level 5b	<u>9-All Renovations:</u> Failure to include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of the renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature, pursuant to 40 C.F.R. § 745.84(d)(1)
Level 5b	<u>10-All Renovations:</u> Failure to provide the written acknowledgment of receipt on either a separate sheet or as part of any written contract or service agreement for the renovation, and be written in the same language as the text of the contract or agreement or lease or pamphlet, pursuant to 40 C.F.R. § 745.84(d)(2) and (3)

# Appendix A

# Violations and Circumstance Levels

<sup>48</sup> Circumstance Level	Rule Violation
<b>Section VI Record Retention Requirements</b>	
Level 6a	<u>1-All Renovations:</u> Failure to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities pursuant to 40 C.F.R. § 745.86
Level 6a	<u>2-All Renovations:</u> Failure of a training program to maintain and make available to EPA upon request, records for a period of 3 years and 6 months, pursuant to 40 C.F.R. § 745.225 (i)
Level 6a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§745.225, 745.226, or 745.227, pursuant to 40 C.F.R. § 745.235 (b)
<b>Section VII Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements</b>	
Level 3a <sup>49</sup>	<u>1-All Renovations:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.89(a) pursuant to 40 CFR § 745.81(a)(2)(ii)
Level 5a	<u>2-All Renovations:</u> Failure of an EPA-certified firm to stop renovations or dust sampling if it does not obtain recertification under 40 CFR § 745.89(a), pursuant to 40 C.F.R. §745.89(b)(1)(iii)
Level 5a	<u>3-All Renovations:</u> Failure of an EPA-certified firm to amend its certification within 90 days of the date a change occurs to information included in the firm's most recent applications, pursuant to 40 C.F.R. §745.89(b). Failure of a firm to halt renovations or dust sampling until its certification is amended, pursuant to 40 C.F.R. §745.89(c)
Level 3a	<u>4-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(1) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>5-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(2) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>6-All Renovations:</u> Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to obtain a course completion certificate (proof of certification) under 40 CFR § 745.90(a) ), pursuant to 40 C.F.R. §745.81(a)(3)
Level 4a	<u>7-All Renovations:</u> Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to maintain copies of their course completion certificate(s) (proof of certification) at the work site pursuant to 40 CFR § 745.90(b)(7)
Level 1a	<u>8-All Renovations:</u> Failure of an individual to perform responsibilities for ensuring compliance with 40 C.F.R. §745.85 at all renovations to which they are assigned, pursuant to 40 C.F.R. § 745.90(b) or (c)
Level 1a	<u>9-All Renovations:</u> Failure of a dust sampling technician to perform optional dust clearance sampling under §745.85(c), pursuant to 40 C.F.R. § 745.90(c)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop directing renovations if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(3)
Level 5a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop renovations or dust sampling if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(4)
<b>Section VIII Training Providers: Accreditation and Operation of Training Programs</b>	
Level 3a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure of a training program that performs, offers or claims to provide EPA-accredited lead-based paint activities courses, or renovator or dust sampling courses to apply for accreditation to EPA under 40 CFR §745.225(b) and receive accreditation from EPA under 40 CFR § 225(b)(2) pursuant to 40 CFR § 745.225(a)(3)

<sup>49</sup> For a self-employed renovator or very small firm (<4 employees), the “Extent” category is usually “minor” for “offering to perform” renovations. For larger firms, such as those acting as general contractors, the “Extent” category is usually “major” because the potential impact is greater in the number and size of renovations.

## Appendix A      Violations and Circumstance Levels

<b><sup>48</sup>Circumstance Level</b>	<b>Rule Violation</b>
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure by a training program to employ a training manager who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(1)
Level 3a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure by a training program to designate a qualified principal instructor for each course who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(2)
Level 3a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure of a training program's principal instructor and/or training manager to perform the assigned responsibilities, pursuant to 40 C.F.R. §745.225(c)(3)
Level 6a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure of a training program to submit or retain the EPA-recognized documents as evidence that the training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, pursuant to 40 C.F.R. §745.225(c)(4)
Level 5a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities, including the provision of training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed, pursuant to 40 C.F.R. §745.225(c)(5)
Level 3a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure of a training program to provide the training courses that meet the training hour requirements to ensure accreditation in the relevant disciplines, pursuant to 40 C.F.R. §745.225(c)(6)
Level 4a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure of a training program to conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline to evaluate successful completion of the course, pursuant to 40 C.F.R. §745.225(c)(7)
Level 6a	<u>9-Target Housing and Child-occupied Facilities:</u> Failure of a training program to issue unique course completion certificates containing the required information to each individual who passes the training course, pursuant to 40 C.F.R. §745.225(c)(8)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of a training program to develop and implement a quality control plan that contains at least the minimum elements, pursuant to 40 C.F.R. §745.225(c)(9)
Level 3a	<u>Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure that courses offered by the training program teach the work practice standards contained in §745.85 or §745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting, pursuant to 40 C.F.R. §745.225(c)(10)
Level 3a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of 40 C.F.R. §745.225, pursuant to 40 C.F.R. §745.225(c)(12)
Level 6a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification of renovator, dust sampling technician, or renovator, dust sampling technician, or lead-based paint activities offered, pursuant to 40 C.F.R. §745.22(c)(13)
Level 6a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure by training manager to provide EPA with notification of all lead-based paint activities courses offered at least 7 business days prior to the start date of any lead-based paint activities course, pursuant to 40 C.F.R. §745.225(c)((13)(i)
Level 5a	<u>14-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses, pursuant to 40 C.F.R. §745.225(c)(14)
Level 3a	<u>15-Target Housing and Child-occupied Facilities:</u> Failure by a training program to meet the minimum training curriculum requirements for each of the disciplines, pursuant to 40 C.F.R. §745.225(d)

# Appendix A

# Violations and Circumstance Levels

48 Circumstance Level	Rule Violation
<b>Section IX Work Practice Standards for Conducting Renovations in Target Housing and Child-Occupied Facilities</b>	
Level 2a	<u>1-Interior Renovations:</u> Failure by the renovation firm to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed, pursuant to 40 C.F.R. §745.85(a)(2)(i)(A)
Level 2a	<u>2-Interior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material, pursuant to 40 C.F.R. §745.85(a)(2)(i)(B)
Level 2a	<u>3-Interior Renovations:</u> Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(C)
Level 2a	<u>4-Interior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, pursuant to 40 C.F.R. §745.85(a)(2)(i)(D)
Level 2a	<u>5-Interior Renovations:</u> Failure by the renovation firm to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(E)
Level 2a	<u>6-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to close all doors and windows within 20 feet of the renovation, close all doors and windows within 20 feet of the renovation on the same floor as the renovation on multi-story buildings, and/or close all doors and windows on all floors below that are the same horizontal distance from the renovation, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(A)
Level 2a	<u>7-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(B)
Level 2a	<u>8-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(C)
Level 2a	<u>9-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovations in certain situations, to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(D)
Level 1a	<u>10-Prohibited and restricted practices:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during renovations, pursuant to 40 C.F.R. §745.85(a)(3)(i)
Level 1a	<u>11-Prohibited and restricted practices:</u> Failure to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control, pursuant to 40 C.F.R. §745.85(a)(3)(ii)
Level 1a	<u>12-Prohibited and restricted practices:</u> Failure to restrict the operating of a heat gun on lead-based paint to temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.85(a)(3)(iii)
Level 2a	<u>Waste from renovations:</u> Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal and/or failure to cover a chute if it is used to remove waste from the work area, pursuant to 40 C.F.R. §745.85(a)(4)(i)

## Appendix A Violations and Circumstance Levels

<sup>48</sup> Circumstance Level	Rule Violation
Level 2a	<u>13-Waste from renovations</u> : Failure at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, pursuant to 40 C.F.R. §745.85(a)(4)(ii)
Level 2a	<u>14-Waste from renovations</u> : Failure by the renovation firm to contain the waste to prevent release of dust and debris during the transport of waste from renovation activities, pursuant to 40 C.F.R. §745.85(a)(4)(iii)
Level 1a	<u>15-Cleaning the work area</u> : Failure by the renovation firm to clean the work area until no dust, debris or residue remains after the renovation has been completed, pursuant to 40 C.F.R. §745.85(a)(5)
Level 1a	<u>16-Cleaning the work area</u> : Failure by the renovation firm to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, pursuant to 40 C.F.R. §745.85(a)(5)(i)(A)
Level 1a	<u>17-Cleaning the work area</u> : Failure by the renovation firm to remove the protective sheeting by misting the sheeting before folding it, folding the dirty side inward, and/or either taping shut to seal or sealing it in heavy-duty bags, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>18-Cleaning the work area</u> : Failure by the renovation firm to keep in place the plastic sheeting used to isolate contaminated rooms from non-contaminated rooms until after the cleaning and removal of other sheeting, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>19-Cleaning the work area</u> : Failure by the renovation firm to dispose of the plastic sheeting, used as occupant protection at the renovation site, as waste, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B).
Level 1a	<u>20-Cleaning the work area</u> : Failure by the renovation firm to clean all objects and surfaces in the work area and within 2 feet of the work area, cleaning from higher to lower, pursuant to 40 C.F.R. §745.85(a)(5)(ii)
Level 1a	<u>21-Cleaning the work area</u> : Failure by the renovation firm to clean walls in the work area, starting at the ceiling and working down to the floor, by either vacuuming with a HEPA vacuum or wiping with a damp cloth, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(A)
Level 1a	<u>22-Cleaning the work area</u> : Failure by the renovation firm to thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum and/or failure to use a HEPA vacuum equipped with a beater bar when vacuuming carpets and rugs, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(B).
Level 1a	<u>23-Cleaning the work area</u> : Failure by the renovation firm to wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth and/or failure to mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(C)
Level 1a	<u>24-Standards for post-renovation cleaning verification</u> : Failure by a renovator to perform a visual inspection of the interior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(1)(i)
Level 1a	<u>25-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior windowsill in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures, pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (A) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(A)
Level 1a	<u>26-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior floor in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (B) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(B)
Level 1a	<u>27-Standards for post-renovation cleaning verification</u> : Failure by a renovator to wait until interior work area passes post-renovation cleaning verification before removing signs, pursuant to 40 C.F.R. §745.85(b)(1)(iii)

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# Violations and Circumstance Levels

48 Circumstance Level	Rule Violation
Level 1a	<u>28-Standards for post-renovation cleaning verification:</u> Failure by a renovator to perform a visual inspection of the exterior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>29-Standards for post-renovation cleaning verification:</u> Failure by a renovator to wait until exterior work area passes visual inspection before removing signs, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>30-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to arrange for the performance of optional dust clearance testing at the conclusion of the renovation if required to do so by the person contracting for the renovation, a Federal, State, Territorial, Tribal, or local law or regulation, pursuant to 40 C.F.R. §745.85(c)
Level 1a	<u>31-Standards for post-renovation cleaning verification:</u> Failure to have the optional dust clearance testing performed by a certified inspector, risk assessor or dust sampling technician at the conclusion of the renovation, pursuant to 40 C.F.R. §745.85(c)(2)
Level 1a	<u>32-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to re-clean the work area until dust clearance results are below clearance standards, pursuant to 40 C.F.R. §745.85(c)(3)
<b>Section X Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities</b>	
Level 1a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure to perform all lead-based paint activities pursuant to the work practice standards, appropriate requirements, methodologies and clearance levels specified and referenced, pursuant to 40 C.F.R. §745.227(a)(1)
Level 2a	<u>2- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, is performed by a certified individual in compliance with the appropriate requirements, pursuant to 40 C.F.R. §745.227(a)(2)
Level 2a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an inspection is conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(b)(1)
Level 1a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure in an inspection to select locations according to documented methodologies to be tested for the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(b)(2)
Level 3a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a residential dwelling and/or child-occupied facility, pursuant to 40 C.F.R. §745.227(b)(2)(i)
Level 3a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a multi-family dwelling, pursuant to 40 C.F.R. §745.227(b)(2)(ii)
Level 5a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure to ensure that paint sampled for analysis to determine the presence of lead was conducted using documented methodologies which incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(b)(3)(i)
Level 3a	<u>8- Target Housing and Child-occupied Facilities:</u> Failure to ensure that all collected paint chip samples were analyzed according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(b)(3)(ii)
Level 3a	<u>9- Target Housing and Child-occupied Facilities:</u> Failure of an inspector or risk assessor to prepare an inspection report that includes the required information, pursuant to 40 C.F.R. §745.227(b)(4)
Level 2a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(c)(1)
Level 3a	<u>11- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(c)(2)(i)

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<sup>48</sup> Circumstance Level	Rule Violation
Level 3a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to determine the presence of deteriorated paint, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(A)
Level 3a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to locate at least two dust samples performed according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(B)
Level 3a	<u>14-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of dust samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(3)
Level 3	<u>15-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of paint samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(4)
Level 3a	<u>16-Target Housing and Child-occupied Facilities:</u> Failure of a risk assessor to prepare a lead hazard screen report that includes the required information, pursuant to 40 C.F.R. §745.227(c)(5)
Level 3a	<u>17-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 3a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment includes a visual inspection of the residential dwelling or child-occupied facility to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)
Level 3a	<u>19-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(d)(3)
Level 3a	<u>20-Target Housing and Child-occupied Facilities:</u> Failure to test for the presence of lead on each surface determined to have a distinct painting history, pursuant to 40 C.F.R. §745.227(d)(4)
Level 3a	<u>21-Residential Dwellings:</u> Failure to collect and analyze for lead concentration dust samples (either composite or single-surface samples) from the interior window sill(s) and floor(s) in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust, pursuant to 40 C.F.R. §745.227(d)(5)
Level 3a	<u>22-Multi-family Dwellings and Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration from the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(6)
Level 3a	<u>23-Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility pursuant to 40 C.F.R. §745.227(d)(7)
Level 3a	<u>24-Target Housing and Child-occupied Facilities:</u> Failure to collect and analyze soil samples for lead concentrations in the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(8)
Level 3a	<u>25-Target Housing and Child-occupied Facilities:</u> Failure to conduct all paint, dust, or soil sampling or testing using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(d)(9)
Level 3a	<u>26-Target Housing and Child-occupied Facilities:</u> Failure to analyze any collected paint chip, dust, or soil samples according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(d)(10)
Level 3a	<u>27-Target Housing and Child-occupied Facilities:</u> Failure of risk assessor to prepare a risk assessment report that includes the required information, pursuant to 40 C.F.R. §745.227(d)(11)
Level 1a	<u>28-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an abatement is conducted only by a person certified by EPA, and, if conducted, is conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(1)

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48 Circumstance Level	Rule Violation
Level 3a	<u>29- Target Housing and Child-occupied Facilities:</u> Failure of a supervisor to be onsite for each abatement project during all work site preparation, during the post-abatement cleanup of work areas, and to be onsite at other times during the abatement or available by telephone, pager or answering service and able to be present at the work site in no more than 2 hours, pursuant to 40 C.F.R. §745.227(e)(2)
Level 3a	<u>30- Target Housing and Child-occupied Facilities:</u> Failure of a supervisor and the certified firm employing that supervisor to ensure that all abatement activities are conducted according to the requirements of 40 C.F.R. §745.227(e) and all other Federal, State and local requirements, pursuant to 40 C.F.R. §745.227(e)(3)
Level 3a	<u>31-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to notify EPA of lead-based paint abatement activities or to update notification as prescribed and by the designated deadline, pursuant to 40 C.F.R. §745.227(e)(4)(i-v)
Level 3a	<u>32-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to include the designated information in each notification, pursuant to 40 C.F.R. §745.227(e)(4)(vi)
Level 2a	<u>33-Target Housing and Child-occupied Facilities:</u> Failure by a certified firm to accomplish written or electronic notification via one of the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(4)(vii)
Level 4a	<u>34-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to begin lead-based paint abatement activities on the date and at the location specified in either the original or updated notification, pursuant to 40 C.F.R. §745.227(e)(4)(viii)
Level 2a	<u>35-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to notify EPA before engaging in lead-based paint abatement activities defined in 40 C.F.R. §745.223, pursuant to 40 C.F.R. §745.227(e)(4)(ix)
Level 3a	<u>36-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to develop a written occupant protection plan for all abatement projects and in accordance with the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(5)
Level 2a	<u>37-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during abatement activities pursuant to 40 C.F.R. §745.227(e)(6)(i)
Level 2a	<u>38-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of machines that remove lead-based paint through sanding, grinding, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency, pursuant to 40 C.F.R. §745.227(e)(6)(ii)
Level 2a	<u>39-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the dry scraping of lead-based paint unless it is used in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 6 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces, pursuant to 40 C.F.R. §745.227(e)(6)(iii)
Level 2a	<u>40-Target Housing and Child-occupied Facilities:</u> Failure to restrict the operating of a heat gun on lead-based paint at temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.227(e)(6)(iv)
Level 3a	<u>41-Target Housing and Child-occupied Facilities:</u> Failure to conduct soil abatement, when necessary, according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(7)
Level 3a	<u>42-Target Housing and Child-occupied Facilities:</u> Failure to have a certified inspector or risk assessor perform the post-abatement clearance procedures, pursuant to 40 C.F.R. §745.227(e)(8)
Level 3a	<u>43-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to perform a visual inspection after abatement to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present and to remove any hazards that still remain, pursuant to 40 C.F.R. §745.227(e)(8)(i)
Level 4a	<u>44-Target Housing and Child-occupied Facilities:</u> Failure to wait until the required visual inspection and any necessary post-abatement cleanups are completed before performing clearance sampling for lead in dust, pursuant to 40 C.F.R. §745.227(e)(8)(ii)
Level 1a	<u>45-Target Housing and Child-occupied Facilities:</u> Failure to take dust samples for clearance purposes using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(e)(8)(iii)

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<sup>48</sup> Circumstance Level	Rule Violation
Level 4a	<u>46-Target Housing and Child-occupied Facilities:</u> Failure to wait a minimum of 1 hour after completion of final post-abatement cleanup activities to collect dust samples for clearance purposes, pursuant to 40 C.F.R. §745.227(e)(8)(iv)
Level 4a	<u>47-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with containment between abated and unabated areas, pursuant to 40 C.F.R. §745.227(e)(8)(v)(A)
Level 4a	<u>48-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with no containment, pursuant to 40 C.F.R. §745.227(e)(8)(v)(B)
Level 4a	<u>49-Target Housing and Child-occupied Facilities:</u> Failure to conduct a visual inspection and clean horizontal, outdoor surfaces of visible dust and debris, perform visual inspection for paint chips on the dripline and remove and properly dispose of any paint chips found following an exterior paint abatement, pursuant to 40 C.F.R. §745.227(e)(8)(v)(C)
Level 4a	<u>50-Target Housing and Child-occupied Facilities:</u> Failure to select the rooms, hallways or stairwells for sampling according to documented methodologies, pursuant to 40 C.F.R. §745.227(e)(8)(vi)
Level 3a	<u>51-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to compare the residual lead level from dust samples with clearance levels to determine if level exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 2a	<u>52-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to reclean and retest the surface of components that were determined to have failed clearance testing after abatement, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 3a	<u>53-Target Housing and Child-occupied Facilities:</u> Failure to use the standard clearance levels for lead in dust of 40 µg/ft <sup>2</sup> for floors, 250 µg/ft <sup>2</sup> for interior window sills, and 400 µg/ft <sup>2</sup> for window troughs to determine if a level in a sample exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(viii)
Level 4a	<u>54-Target Housing and Child-occupied Facilities:</u> Failure to perform random sampling in a multi-family dwelling with similarly constructed and maintained residential dwellings according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(9)
Level 4a	<u>55-Target Housing and Child-occupied Facilities:</u> Failure by a supervisor or project designer to prepare an abatement report that includes the required information, pursuant to 40 C.F.R. §745.227(e)(10)
Level 3a	<u>56-Target Housing and Child-occupied Facilities:</u> Failure to ensure that all paint chip, dust, or soil samples obtained are collected by a certified risk assessor or paint inspector and analyzed by an EPA-recognized laboratory, pursuant to 40 C.F.R. §745.227(f)
Level 5a	<u>57-Target Housing and Child-occupied Facilities:</u> Failure to limit composite dust sampling to only those situations specified, pursuant to 40 C.F.R. §745.227(g)
Level 3a	<u>58-Target Housing and Child-occupied Facilities:</u> Failure to make a determination on the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(h)
Level 1a	<u>59-Target Housing and Child-occupied Facilities:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.226 pursuant to 40 CFR § 745.233
<b>Section XI Lead-Based Paint Risk Assessments</b>	
Level 2a	1-Failure of a person performing a risk assessment to be certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 2a	2-Failure to conduct visual inspection for risk assessment or child-occupied facility to locate existence of deteriorated paint, assess extent and causes of deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)

# Appendix B

# Gravity-Based Penalty Matrices

## GRAVITY-BASED PENALTY MATRIX FOR PRE, RRP, & LBP ACTIVITIES RULES<sup>49</sup>

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:	one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18	
Child-Occupied Facilities:	one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (e.g., as summer vacation) and there is no continuity of enrollment (i.e., the same children are not returning after the break). <sup>50</sup>	
For Violations Occurring On or Before 1/12/2009: <sup>51</sup>				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,500
	Level 1b	\$ 11,000	\$ 7,740	\$ 2,580
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
	Level 2b	\$ 10,320	\$ 6,450	\$ 1,550
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 3b	\$ 7,740	\$ 5,160	\$ 780
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
	Level 4b	\$ 5,160	\$ 3,220	\$ 520
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 650
	Level 5b	\$ 2,680	\$ 1,800	\$ 260
	Level 6a	\$ 6580	\$ 1,680	\$ 260
	Level 6b	\$ 1,290	\$ 640	\$ 130

<sup>49</sup> Since the “nature” of violations for training providers is unique, separate matrices are provided on page B3.

<sup>50</sup> In a situation where there is “no continuity of enrollment,” there are no children’s parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

<sup>51</sup> The maximum civil monetary penalty for TSCA is \$32,500 and \$11,000, respectively, for violations occurring after 3/15/2004 through 1/12/2009.

## Appendix B

## Gravity-Based Penalty Matrices

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:	one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18	
Child-Occupied Facilities:	one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility ( <i>e.g.</i> , as summer vacation) and there is no continuity of enrollment ( <i>i.e.</i> , the same children are not returning after the break). <sup>52</sup>	
For Violations Occurring After 1/12/2009: <sup>53</sup>				
<b>HIGH</b>	<b>Level 1a</b>	\$ 37,500	\$ 25,500	\$ 7,500
	<b>Level 1b</b>	\$ 16,000	\$ 8,500	\$ 2,840
	<b>Level 2a</b>	\$ 30,000	\$ 20,400	\$ 6,000
	<b>Level 2b</b>	\$ 11,340	\$ 7,090	\$ 1,710
<b>MEDIUM</b>	<b>Level 3a</b>	\$ 22,500	\$ 15,300	\$ 4,500
	<b>Level 3b</b>	\$ 8,500	\$ 5,670	\$ 850
	<b>Level 4a</b>	\$ 15,000	\$ 10,200	\$ 3,000
	<b>Level 4b</b>	\$ 5,670	\$ 3,540	\$ 580
<b>LOW</b>	<b>Level 5a</b>	\$ 7,500	\$ 5,100	\$ 1,500
	<b>Level 5b</b>	\$ 2,840	\$ 1,850	\$ 290
	<b>Level 6a</b>	\$ 3,000	\$ 2,040	\$ 600
	<b>Level 6b</b>	\$ 1,420	\$ 710	\$ 150

<sup>52</sup> In a situation where there is “no continuity of enrollment,” there are no children’s parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

<sup>53</sup> The maximum civil monetary penalty for TSCA is \$37,500 and \$16,000, respectively, for violations occurring after 1/12/2009. Adjustments to the individual “a” levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

## Appendix B

## Gravity-Based Penalty Matrices

### GRAVITY-BASED PENALTY MATRIX FOR TRAINING VIOLATIONS

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Potential that the trainer's violations will affect human health by impairing the student's ability to learn:		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring On or Before 1/12/2009: <sup>54</sup>				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,450
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 640
	Level 6a	\$ 2,580	\$ 1,680	\$ 260

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Potential that the trainer's violations will affect human health by impairing the students ability to learn:		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring After 1/12/2009: <sup>55</sup>				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 6a	\$ 3,000	\$ 2,040	\$ 600

<sup>54</sup> The maximum civil monetary penalty is \$32,500 for violations occurring after 3/15/2004 through 1/12/2009.

<sup>55</sup> The maximum civil monetary penalty is \$37,500 for violations occurring after 1/12/2009. Adjustments to the individual levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

## **Appendix C      Internet References for Policy Documents**

The EPA website for information on the TSCA 406(b) Pre-Renovation Education Rule is:  
<http://www.epa.gov/lead/pubs/leadrenf.htm>

The EPA website also maintains copies of applicable policies and other useful information:

EPA Home Page: <http://www.epa.gov>

Compliance and Enforcement Home Page: <http://www.epa.gov/compliance/>

TSCA Enforcement Policy and Guidance Documents:  
<http://cfpub.epa.gov/compliance/resources/policies/civil/tsc/>

Supplemental Environmental Projects:  
<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

Final Supplemental Environmental Projects Policy (1998):  
<http://www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>

Treatment of Lead-based Paint Abatement Work as a Supplemental Environmental Project in  
Administrative Settlements (Jan 2004):  
<http://www.epa.gov/compliance/resources/policies/civil/seps/leadbasedabatement-sep012204.pdf>

Audit Policy: <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>

Small Business Policy:  
<http://www.epa.gov/compliance/incentives/smallbusiness/index.html>

Redelegation of Authority:  
<http://www.epa.gov/compliance/resources/policies/civil/rcra/hqregenfcases-mem.pdf>

HUD Technical Guidelines for the Evaluation and Control of Lead Based Paint Hazards in  
Housing: <http://www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm>

Documenting Penalty Calculations and Justifications of EPA Enforcement Actions, (Aug 1990):  
<http://www.epa.gov/compliance/resources/policies/civil/rcra/caljus-strock-mem.pdf>

Amendments to Penalty Policies to Implement Penalty Inflation Rule 2008  
<http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>

## Appendix D List of Supplemental Environmental Projects (SEPs)

The following list of potential Supplemental Environmental Projects (SEPs) is not exhaustive, but is intended to offer some examples.<sup>56</sup>

- Abatement of lead-based paint and/or lead-based paint hazards in target housing or child-occupied facilities in compliance with requirements of 40 C.F.R. § 227(e).
- Renovation (such as window or door replacement) that includes removal of components containing lead-based paint and/or lead-based paint hazards from target housing or child-occupied facilities, followed by clearance testing as defined in 40 C.F.R. § 227(e)(8).
- Risk assessment of target housing or child-occupied facilities to identify lead-based paint hazards, followed by correction of any hazards identified.
- Purchase of an XRF for a local health organization.
- Blood-lead level screening and/or treatment for children where Medicaid coverage is not available. (Blood-lead level screening and/or treatment for children underserved by Medicaid may also be appropriate, with approval from the Special Litigation and Projects Division in OECA.)
- Purchase and operate a mobile health clinic, including outfitting the mobile units (*e.g.*, blood lead level testing and treatment for children in public housing).
- Purchase and donate lead health screening equipment to schools, public health departments, clinics, *etc.*
- Provide free lab tests for lead in dust, soil and paint chip samples; make testing available to low-income homeowners, small rental property owners, and community-based organizations.

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<sup>56</sup> Whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. (*See, Supplemental Environmental Projects Policy, May 1, 1998, page 3.*)



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

U.S. EPA-REGION 3-RHC  
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JAN 11 2018

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule

**FROM:** Susan Parker Bodine *Susan Parker Bodine*  
Assistant Administrator

**TO:** Regional Administrators  
Deputy Regional Administrators  
Director, Office of Civil Enforcement

The purpose of this memorandum is twofold: (1) to amend all existing civil penalty policies to account for inflation and (2) to transmit the recently promulgated 2018 Civil Monetary Penalty Adjustment Rule (2018 Rule).<sup>1</sup> The 2018 Rule amends 40 C.F.R. § 19.4 to adjust the statutory civil penalties under the various environmental laws implemented by the EPA to account for inflation. The 2018 Rule was published on January 10, 2018, is effective on January 15, 2018, and is attached to this memorandum. The amendments to the EPA's penalty policies are also effective on January 15, 2018. This memorandum also clarifies the differences between the EPA's statutory maximum and minimum civil penalties and the EPA's penalty policies.

**I. Background**

The Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act)<sup>2</sup> was signed into law on November 2, 2015, to improve the effectiveness of statutory maximum and minimum civil monetary penalties and to maintain their deterrent effect, thereby promoting compliance with the law. The 2015 Act instructed the EPA and other federal agencies to: (1) adjust the level of statutory maximum and minimum civil penalties with an initial "catch-up" rule; and (2) make subsequent annual adjustments for

<sup>1</sup> 83 Fed. Reg. 1190 (Jan. 10, 2018).

<sup>2</sup> 28 U.S.C. § 2461 note, Pub. L. 114-74 (see <https://www.congress.gov/114/plaws/publ74/PLAW-114-publ74.pdf>).

inflation beginning in January 2017. The 2015 Act also prescribed the formula that federal agencies must follow in making these adjustments.

To fulfill the initial catch-up requirement, the EPA promulgated the 2016 Civil Monetary Penalty Inflation Adjustment Rule on August 1, 2016 (2016 Rule), which increased the EPA's statutory maximum and minimum civil penalties.<sup>3</sup> To fulfill the second requirement of the 2015 Act requiring annual adjustments, the EPA made the first annual adjustment by promulgating the 2017 Civil Monetary Penalty Inflation Adjustment Rule, effective on January 15, 2017.<sup>4</sup> The 2018 Rule, effective January 15, 2018, and transmitted herewith, makes the second annual adjustment.

Although not required by the 2015 Act, the EPA decided to amend its penalty policies in 2016 to better account for inflation going forward. While consistent with the purposes of the 2015 Act, these amendments and the methodology used in making these amendments are not governed by, and are distinct from, the 2015 Act and the 2018 Rule. To make these policy amendments, on July 27, 2016, the EPA's Office of Enforcement and Compliance Assurance (OECA) issued a memorandum that amended the EPA's penalty policies to account for inflation.<sup>5</sup> That memorandum was effective on August 1, 2016. Because the subsequent increase in inflation was minimal from August 2016 to January 2017, the EPA decided to defer further modifying the penalty policies until January 2018. This memorandum thus amends the EPA's penalty policies to account for inflation to date. Looking ahead, the EPA plans to again amend its penalty policies to account for inflation in January 2020, barring any significant changes in inflation.

## **II. Applicability of this Memorandum**

This memorandum supersedes the inflation-based amendments to the EPA's penalty policies made in the 2016 memorandum, but is not intended to change the methodology used in that memorandum. This memorandum partially supersedes the EPA's 2013 inflation amendments memorandum because the multipliers contained in the 2013 memorandum should still be used for violations that occurred on or before November 2, 2015.

This memorandum does not modify the EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies, such as the amounts deemed "insignificant" or "de minimis" that apply when calculating economic benefit of noncompliance.

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<sup>3</sup> The 2016 Rule was published on July 1, 2016, and became effective on August 1, 2016. 81 Fed. Reg. 43,091.

<sup>4</sup> The Rule was published on January 12, 2017, and became effective on January 15, 2017. 82 Fed. Reg. 3633. The Office of Civil Enforcement within OECA issued a memorandum on January 13, 2017 transmitting the rule; that memorandum is titled *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule*.

<sup>5</sup> The July 27, 2016 memorandum is titled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*. Past inflation adjustment memoranda on the EPA's statutory maximum and minimum amounts and the EPA's penalty policies can be found here: <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>.

The penalty policies listed in Table A are the most recent narrative versions of each policy. The “narrative version” is the applicable media-specific penalty policy that comprehensively explains how the EPA enforcement practitioners should calculate penalties for purposes of administrative actions or settlements. This memorandum does not change or alter the narrative version of the media-specific penalty policies; this memorandum only alters the numerical gravity-based penalty amounts that are calculated under those policies to account for inflation.

Media enforcement programs may modify their penalty policies individually, and any such modifications may supersede application of this memorandum for that program. Practitioners should rely on the multipliers in Table A until the applicable penalty policy is modified or civil penalty policy amounts are adjusted by subsequent memorandum in accordance with inflation.

### III. Amendments to the EPA’s Civil Penalty Policies

Consistent with the methodology used in the July 27, 2016, penalty policy inflation amendments memorandum, the EPA is amending its penalty policies through the use of multipliers listed in Table A of this memorandum. Please note that the multipliers listed in Table A should be used for violations occurring after November 2, 2015. **For violations occurring on or before November 2, 2015, use the multipliers listed in the December 6, 2013, inflation adjustment memorandum titled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.**<sup>6</sup>

#### A. Application of Inflation Multiplier to Gravity-Based Portion of Penalty

For each violation occurring after November 2, 2015, find the applicable penalty policy in Table A and use the policy to determine the initial calculated gravity-based penalty for your case.<sup>7</sup> This initial gravity-based penalty will not be adjusted for inflation to reflect present value of the dollar. To adjust the penalty figure into present value, multiply the gravity-based portion of the penalty by the multiplier associated with the applicable penalty policy in Table A. Next, round the calculated gravity-based portion of the penalty amount to the nearest dollar.<sup>8</sup> Then, if applicable, calculate the gravity-based portion of the penalty for each violation occurring on or before November 2, 2015, using the applicable

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<sup>6</sup> The December 6, 2013, memorandum can be found here: <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf>.

<sup>7</sup> Most media specific penalty policies define “gravity” as the “seriousness of the violation.” Each media specific penalty policy uses specific factors to calculate the gravity component. Many of these factors are taken from their respective statutes and some factors are unique to that specific penalty policy. Therefore, it is important for case teams to review each specific penalty policy to understand how the gravity component is defined and how it is calculated.

<sup>8</sup> We are instructing case teams to round to the nearest dollar because this was the approach taken in the 2015 Act, the EPA’s last penalty inflation memorandum from July 27, 2016, and the Office of Management and Budget’s (OMB) [February 24, 2016](#), and [December 15, 2017](#), memoranda that instructed federal agencies how to implement the 2016 Rule and 2018 Rule, respectively.

inflation multiplier from the guidance memorandum dated December 6, 2013. Add the gravity-based portion of the penalty for pre-November 3, 2015, violations to the gravity-based portion of the penalty for post-November 2, 2015, violations to calculate the total gravity-based penalty. Once the total gravity-based penalty has been calculated, incorporate economic benefit<sup>9</sup> and any other factors (e.g., ability to pay, litigation considerations, etc.) that apply as instructed by the penalty policy to arrive at the total penalty.<sup>10</sup>

Enforcement practitioners should apply the multipliers in Table A only to the penalty amounts adopted within the “narrative” penalty policies listed in Table A. The multipliers in Table A should not be applied to penalty policies issued after the date of this memorandum unless expressly stated in the subsequent penalty policy.

## **B. Derivation of the Inflation Multipliers**

Because the purpose of amending the EPA’s penalty policies is to account for inflation since the penalty policies were last amended for inflation in the July 27, 2016, memorandum, the majority of multipliers listed in Table A were calculated by multiplying the multipliers listed in the July 27, 2016 memorandum by the inflation increase that has occurred since the July 27, 2016 memorandum.<sup>11</sup>

## **IV. 2018 Rule and the Newly Adjusted Statutory Maximum and Minimum Amounts**

The 2018 Rule was promulgated to fulfill the annual statutory maximum and minimum inflation adjustment requirement in the 2015 Act. As instructed by the 2015 Act and as explained in the 2018

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<sup>9</sup> We are not modifying the long-standing approach of calculating economic benefit separately from the gravity-based amount, because economic benefit calculations already take inflation into account. The inflation adjustments in this guidance only apply to the gravity-based portion of the penalty.

<sup>10</sup> If the total penalty amount calculated is greater than the statutory maximum amount, then the statutory maximum amount would apply. Similarly, the entire penalty sought (including economic benefit) in an administrative enforcement action cannot exceed any applicable administrative penalty caps. Note that penalty amounts greater than those calculated using the EPA penalty policies and this memorandum may be appropriate in limited circumstances. For example, in a formal administrative enforcement context, the EPA may seek, and presiding officers or the Environmental Appeals Board may assess, higher penalties provided such amounts do not exceed the statutory maximum, are in accordance with statutory civil penalty factors, and consider applicable civil penalty guidelines, and provided that any deviations from applicable penalty policies are persuasively and convincingly explained. *See, e.g.*, 40 C.F.R. § 22.27(b) and *In Re Morton L. Friedman & Schmitt Construction Company*, 11 E.A.D. 302 (EAB 2004).

<sup>11</sup> In the July 27, 2016 memorandum, most of the multipliers were calculated using the increase established by the Consumer Price Index for all Urban Consumers (CPI-U) from the date the penalty policy was issued through October 2015. For the multipliers listed in Table A of this memorandum, we multiplied these figures from the July 27, 2016 memorandum by the CPI-U increase from October 2015 to October 2017. We used the October 2017 figure because this figure was used for calculating the statutory increases in the 2018 Rule. The October 2017 CPI-U was 246.663 and the October 2015 CPI-U was 237.838, yielding an increase of 1.03711. The only multiplier that does not follow this calculation framework is the EPCRA Enforcement Response Policy, which was amended on February 24, 2017 and uses 1.03711 as the multiplier in Table A of this memorandum. *See infra* note 21.

Rule, the EPA calculated the new penalty amounts by multiplying the cost-of-living multiplier<sup>12</sup> by the previous statutory penalty amount as adjusted by the 2017 Rule. The result is the amount listed in the farthest column on the right in Table 2 of 40 C.F.R. § 19.4 and the 2018 Rule. This amount applies to violations occurring after November 2, 2015.

#### **A. Penalty Pleading in Administrative Litigation**

Where the EPA decides to cite the statutory maximum and/or minimum penalty amount in an administrative pleading (such as in an administrative complaint), the applicable statutory maximum and/or minimum penalty amount in effect for the violations should be used.<sup>13</sup> The EPA should cite the statutory maximum and minimum penalty provisions and 40 C.F.R. § 19.4, along with the applicable inflation-adjusted penalty maximum levels set forth in 40 C.F.R. § 19.4. Multiple penalty-adjustment cycles should only be used when violations occurred on or before November 2, 2015 and after November 2, 2015. If this arises, the EPA should cite each applicable penalty-adjustment cycle and the corresponding penalty amount. Particularly where violations have occurred both after November 2, 2015, and before such date, case teams also may find it helpful to state that the statutory maximum and minimum civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

#### **B. Statutory Administrative Penalty Caps**

Note that, effective January 15, 2018, where the EPA seeks administrative penalties in a complaint, amended complaint, or through a 40 C.F.R. § 22.18 settlement, the increased administrative penalty caps in Table 2 of § 19.4 in the attached 2018 Rule apply if *some or all* of the violations occurred after November 2, 2015. The lower administrative penalty caps in Table 1 of § 19.4 apply if *all* violations occurred on or before November 2, 2015.

#### **V. Multiple Penalty Cycles – Case Team Discretion**

If the time period between seeking a penalty (through settlement or litigation) and the final penalty assessment<sup>14</sup> covers more than one penalty-adjustment cycle (for example, where a complaint is filed on

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<sup>12</sup> The statutory cost-of-living adjustment multiplier is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016. The October 2017 CPI-U was 246.663 and the October 2016 CPI-U was 241.729, yielding an increase of 1.02041.

<sup>13</sup> If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Office of Civil Enforcement of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

<sup>14</sup> Note that enforcement personnel can only *seek* penalties. *Assessment* of penalties is effective in a formal administrative action once a final penalty order is filed with the Hearing Clerk, 40 C.F.R. §§ 22.31 and 22.6, or in civil judicial cases once the court enters a consent decree or issues a judgment awarding penalties.

December 15, 2016, but the final penalty order is not filed with the Hearing Clerk until April 1, 2018), the case team would have discretion to modify the penalty amount sought (for example, to be consistent with the penalty amounts in the most recent annual inflation adjustment rule or guidance). But such modifications would *not* be expected where doing so would be:

- a. unnecessary to achieve sufficient deterrence; and
- b. *either* inappropriately disruptive<sup>15</sup> *or* contrary to principles of judicial economy (for example, where the case has already gone to hearing based on previous penalty amounts).

In a settlement context, if defendants or respondents have signed a consent decree or consent agreement, the EPA would not expect the case team to renegotiate the penalty amount due to subsequent inflation adjustments. Prior to any such formal written settlement commitment (for example, where the parties may have reached an agreement in principle), case teams have discretion to decide whether to modify their penalty demand due to subsequent inflation adjustments (for example, depending on how far along the negotiations have progressed, the likely impact of an increased penalty on negotiations, the case team's evaluation of the likelihood that any informal agreements will not be consummated, and/or other factors).

## **VI. Further Information**

Our goal in issuing this guidance is to make these penalty policy modifications easy to implement, but if you have any questions concerning this memorandum, please contact David Smith-Watts of the Office of Civil Enforcement at (202) 564-4083 or by email at [smith-watts.david@epa.gov](mailto:smith-watts.david@epa.gov).

cc: Lawrence Starfield, Principal Deputy Assistant Administrator, OECA  
Patrick Traylor, Deputy Assistant Administrator, OECA  
Regional Counsels  
Director, Office of Environmental Stewardship, Region I  
Director, Division of Enforcement and Compliance Assurance, Region II  
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III  
Director, Air, Pesticides and Toxics Management Division, Region IV  
Director, Office of Enforcement and Compliance Assurance, Region V  
Director, Compliance Assurance and Enforcement Division, Region VI  
Director, Enforcement Coordination Office, Region VII

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<sup>15</sup> Such disruption could be to settlement negotiations, or to other case efforts such as creating an undue burden on the EPA's resources. If the EPA has not made a penalty demand or offer, a disruptive impact on negotiations is less likely where the penalty is recalculated to be consistent with the most recent inflation-adjustment amounts. It is possible, however, that a recalculation would be unduly burdensome and disruptive to the case team's efforts where, for example, there are an extremely large number of violations, the penalty calculation is complex, and/or where contractor resources are needed to perform such a calculation. In such circumstances, the case team would have discretion to determine that recalculating the penalty is not warranted even though the EPA has not yet made a penalty demand or offer.

Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII  
Director, Enforcement Division, Region IX  
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X  
Regional Media Division Directors  
Regional Superfund Enforcement Directors  
Regional Enforcement Coordinators  
All OECA Employees  
Tom Mariani, Chief, DOJ-EES  
Deputy and Assistant Chiefs, DOJ-EES  
Kathie Stein, Environmental Appeals Judge  
Susan Biro, Chief Administrative Law Judge  
Regional Judicial Officers

Attachments (2)

1. Table A: Chart Reflecting Inflation Adjustment Multipliers
2. Rule promulgated in the *Federal Register* on January 10, 2018

**Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers**

Applicable Penalty Policy	Year Issued	Inflation Adjustment Multiplier as of January 15, 2018
<b>CWA</b>		
<u>Interim Clean Water Act Settlement Penalty Policy</u>	1995	1.60484
<u>Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act</u>	1998	1.50405 <sup>16</sup>
<u>CWA Section 404 Settlement Penalty Policy</u>	2001	1.38809
<u>Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements</u>	2008	1.13894
<b>SDWA</b>		
<u>UIC Program Judicial and Administrative Order Settlement Penalty Policy</u>	1993	1.69296
<u>New Public Water System Supervision Program Settlement Penalty Policy</u>	1994	1.64993

<sup>16</sup> Case teams should apply the multiplier of 1.84767 to the per-barrel discharge penalty amounts in the last column of the penalty matrix on page 11. This is an appropriate multiplier because such civil penalties under CWA § 311(b)(7)(A) & (D) concern environmental exposure (*i.e.*, the discharge of oil and hazardous substances), and because the per-barrel penalty matrix column contained in the 1998 penalty policy reflects the statutory maximum penalty amounts in effect when this penalty authority was enacted in 1990. It is important for the penalty matrix to retain a maximum per-barrel penalty policy amount that equals the current statutory maximum and to increase the other penalty policy matrix cells proportionally by the same inflation adjustment multiplier.

<b>CAA – Accidental Release Prevention/Risk Management Program</b>		
<u>Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68</u>	2012	1.06635
<b>CAA – Stationary Source</b>		
<u>Clean Air Act Stationary Source Civil Penalty Policy</u>	1991	1.79523
<u>Appendix I – Penalty Policy for Violation of Permit Requirements</u>	1987	2.13933
<u>Appendix II - Vinyl Chloride Civil Penalty Policy</u>	1985	2.26922
<u>Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy</u>	1992	1.73952
<u>Appendix IV - Clean Air Act Penalty Policy as Applied to Stationary Sources of Volatile Organic Compounds (VOC) Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance</u>	1987	1.79523 <sup>17</sup>
<u>Appendix VI - Leak Detection and Repair Penalty Policy</u>	2012	1.06635
<u>Appendix VII – Penalty Policy for New Residential Wood Heaters</u>	1989	1.96388

<sup>17</sup> For violations governed by Appendix IV, the EPA is using the same multiplier that applies to the 1991 “*Clean Air Act Stationary Source Civil Penalty Policy*” because the gravity-based component of such violations is calculated using the 1991 policy.

<u>Appendix VIII - Clean Air Act Civil Penalty Policy Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone</u>	1990	1.84767
<u>Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners</u>	1993	1.69296
<u>Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant</u>	1994	1.64993
<u>Appendix XI - National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements</u>	2007	1.18057
<u>EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington. 40 C.F.R. Part 49</u>	2008	1.13894
<b>CAA – Mobile Source</b>		
<u>Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements</u>	2009	1.14103
<u>Clean Air Act Mobile Source Fuels Civil Penalty Policy Title II of the Clean Air Act --40 C.F.R. Part 80 Fuels Standards Requirements</u>	2016	1.03711

<u>North American and U.S. Caribbean Sea Emissions Control Areas Penalty Policy for Violations by Ships of the Sulfur in Fuel Standard and Related Provisions</u>	2015	1.03711
<u>Civil Penalty Policy for Administrative Hearings</u>	1993	1.69296
<b>RCRA</b>		
<u>RCRA Civil Penalty Policy</u>	2003	1.53790 <sup>18</sup>
<u>Guidance on the Use of Section 7003 of RCRA</u>	1997	2.64426 <sup>19</sup>
<u>Guidance for Federal Field Citation Enforcement</u>	1993	1.69296
<u>U.S. EPA Penalty Guidance for Violations of UST Regulations</u>	1990	1.84767
<b>CERCLA</b>		
<u>Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders</u>	1997	2.03299 <sup>20</sup>
<b>CERCLA &amp; EPCRA</b>		
<u>Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act</u>	1999	1.46649

<sup>18</sup> The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use.

<sup>19</sup> For RCRA section 7003(b) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$14,543.

<sup>20</sup> For CERCLA section 106(b)(1) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$55,907.

<b>EPCRA</b>		
<u>Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990), February 24, 2017 (Amended)</u>	2017	1.03711 <sup>21</sup>
<b>FIFRA</b>		
<u>FIFRA Enforcement Response Policy (FIFRA ERP)</u>	2009	1.14103
<u>Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements</u>	2010	Use the 2009 FIFRA ERP and the 1.14103 multiplier
<u>Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard</u>	1997	Use the 2009 FIFRA ERP and the 1.14103 multiplier
<u>Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations</u>	1991	Use the 2009 FIFRA ERP and the 1.14103 multiplier
<u>Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations</u>	2012	Use the 2009 FIFRA ERP and the 1.14103 multiplier
<b>TSCA</b>		
<u>Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act</u>	1980	1.55567

<sup>21</sup> On February 24, 2017, the EPCRA Enforcement Response Policy was amended in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule. The current penalty policy maximum amount of \$40,779 is multiplied by 1.03711 (the CPI-U adjustment from October 2015 to October 2017) to yield a new maximum amount of \$42,292.

<u>Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13</u>	1999	1.55567 <sup>22</sup>
<u>Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions</u>	1993	1.55567
<u>Enforcement Response Policy for TSCA §4 Test Rules</u>	1986	1.55567
<u>Final TSCA GLP Enforcement Response Policy</u>	1985	1.55567
<b>TSCA – Asbestos</b>		
<u>Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP</u>	1998	1.50405
<u>Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act</u>	1989	1.96388
<u>Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule</u>	1989	1.55567
<b>TSCA – Lead-Based Paint</b>		
<u>Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education (PRE) Rule; Renovation, Repair and Painting (RRP) Rule; and Lead-Based Paint Activities (LBPA) Rule</u>	2010	1.03711

<sup>22</sup> The “Penalty Matrix For Violations Occurring After January 30, 1997” on page 8 of this policy should be ignored. For all violations governed by this policy, the multiplier should be applied to the penalty amounts in the “Penalty Matrix For Violations Occurring On or Before January 30, 1997” found on the same page.

<u>Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy</u>	2007	1.58136
<b>TSCA – PCBs</b>		
<u>Polychlorinated Biphenyls (PCB) Penalty Policy</u>	1990	1.55567

is incorporated by reference in the Code of Federal Regulations, and thus more effective in supporting USPS efforts related to compliance and enforcement. The Postal Service expects that incorporation by reference of Publication 52 in the *Code of Federal Regulations*, will increase the visibility of the mailing standards contained in Publication 52 and thereby maximize their effectiveness and usefulness.

Since their removal from the DMM, the mailing standards provided in Publication 52 have undergone few changes of significance; indeed, several of those changes have expanded the options available to HAZMAT mailers. With regard to changes having a wider impact on mailers, such as those required to conform Publication 52 to the revised standards for the shipment of lithium batteries established by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the International Civil Aviation Organization (ICAO), the Postal Service has been careful to provide advance notice to interested parties, with an opportunity to comment, and to shape the final standards in response to the comments received. *See, e.g.* 82 FR 11372 (February 22, 2017), and 82 FR 34712 (July 26, 2017). Relating to violations of mailing standards for hazardous materials, the Postal Service currently has civil enforcement authority granted by the Postal Accountability and Enhancement Act of 2006, and authority to assess criminal penalties under 18 U.S.C. 1716. As a result, the Postal Service believes that the incorporation by reference of Publication 52 should have little or no impact on mailers of hazardous, restricted, or perishable materials, and the Postal Service would expect few comments in response to a proposed rule. Accordingly, the Postal Service has chosen to publish only a final rule in support of this action.

The Postal Service further believes that incorporation by reference of Publication 52 is justified in view of the unique qualities of the publication, including its length, the detailed description of conditions relating to the mailing of hazardous, restricted, or perishable materials, and the presence of numerous color figures and images in the document. In addition, the potential for serious injury to Postal Service employees and the general public, as well as the potential for damage to USPS equipment and other assets resulting from improperly prepared, packaged, or marked hazardous materials, provide support for the incorporation by reference of a separate

publication dealing specifically with such matters.

#### List of Subjects in 39 CFR Part 113

Hazardous, restricted, and perishable mail, Incorporation by reference.

■ In consideration of the matters discussed above, the Postal Service adds new 39 CFR part 113 as follows:

#### PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

Sec.

113.1 Scope and purpose.

113.2 Incorporation by reference.

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

##### § 113.1 Scope and purpose.

This part applies to the mailing and shipment of hazardous, restricted, and perishable materials. In order to mail hazardous, restricted, and perishable materials, mailers must properly prepare their mailings in accordance with the standards contained in USPS Publication 52 (incorporated by reference, see § 113.2).

##### § 113.2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection by appointment only, during normal hours of operation, at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW, Washington, DC 20260–1641 (call 202–268–2906), and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(b) United States Postal Service, Product Classification Office, USPS Headquarters, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5013: <http://pe.usps.com/text/pub52/welcome.htm>.

(1) *Publication 52, Hazardous, Restricted and Perishable Mail, dated August 2017, IBR approved for § 113.1.*

(2) [Reserved]

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2018–00266 Filed 1–9–18; 8:45 am]

BILLING CODE 7710–12–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 19

[FRL–9972–92–OECA]

##### Civil Monetary Penalty Inflation Adjustment Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of statutory civil monetary penalty amounts under the statutes EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“the 2015 Act”). The 2015 Act prescribes a formula for annually adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA’s civil penalty policies, which guide enforcement personnel in how to exercise EPA’s statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.*, the seriousness of the violation, the violator’s good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator’s ability to pay.

**DATES:** This final rule is effective on January 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564–4083; [smith-watts.david@epa.gov](mailto:smith-watts.david@epa.gov).

##### SUPPLEMENTARY INFORMATION:

##### I. Background

Since 1990, federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties<sup>1</sup> that can be imposed under

<sup>1</sup> The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461 note, defines “civil monetary penalty” as “any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.”

the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643).

The 2015 Act<sup>2</sup> requires agencies to: (1) Adjust the level of statutory civil penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, EPA issued a catch up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091), and EPA made its first annual adjustment on January 12, 2017, which was effective January 15, 2017 (82 FR 3633). Today's rule implements the second annual penalty inflation adjustments mandated by the 2015 Act. Section 4 of the 2015 Act requires each federal agency to publish annual adjustments to all civil penalties under the laws implemented by that agency. These annual adjustments are required to be published by January 15 of each year. The 2015 Act describes the method for calculating the adjustments. Each statutory maximum civil monetary penalty is multiplied by the cost-of-living adjustment, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016.

With this rule, the new statutory maximum (or minimum<sup>3</sup>) penalty levels

listed in the sixth column of Table 2 of 40 CFR 19.4 will apply to all civil penalties assessed on or after January 15, 2018, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The former maximum statutory civil penalty levels, which are in the fifth column of Table 2 to 40 CFR 19.4, will now apply only to violations that occurred after November 2, 2015, where the penalties were assessed on or after January 15, 2017 but before January 15, 2018. The statutory penalty levels for violations that occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 but before January 15, 2017, are codified in the fourth column of Table 2 to 40 CFR 19.4. The statutory civil penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 1 to 40 CFR 19.4.

The formula for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following steps:

*Step 1:* The cost-of-living adjustment multiplier for 2018, based on the CPI-U of October 2017, is 1.02041.<sup>4</sup> Multiply 1.02041 by the current penalty amount. This is the raw adjusted penalty value.

*Step 2:* Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of \$1. The result is the final penalty value for the year.

## II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedures Act

Section 4 of the 2015 Act directs federal agencies to publish the second annual adjustments no later than January 15, 2018. In accordance with section 553 of the Administrative Procedures Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, Section 4(b)(2) of the 2015 Act provides that each agency shall make

the annual inflation adjustments "notwithstanding section 553" of the APA. According to OMB guidance issued to Federal agencies on the implementation of the 2018 annual adjustment,<sup>5</sup> the phrase "notwithstanding section 553" means that "the public procedure the APA generally provides—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment." Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

## III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil penalties that can be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

### D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

<sup>2</sup> The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) was signed into law on Nov. 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

<sup>3</sup> Under Section 3(2)(A) of the 2015 Act, "civil monetary penalty" means "a specific monetary amount as provided by Federal law"; or "has a maximum amount provided for by Federal law." EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of "not less than \$100,000 . . ."; Section

104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of \$600 "[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992 . . ."; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of \$25,000 for each frivolous trade secret claim.

<sup>4</sup> Office of Management and Budget Memorandum, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum M-18-03) at p. 1 (December 15, 2017).

<sup>5</sup> See OMB Memorandum M-18-03 at p. 4.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, EPA has no policy discretion to vary the amount of the adjustment.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

The rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. Rather, this action is mandated by the 2015 Act, which prescribes a formula for adjusting statutory civil penalties on an annual basis to reflect inflation.

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments “notwithstanding section 553 [of the APA].” Because OMB has instructed Federal agencies that this provision means that “notice, an opportunity for comment, and a delay in the effective date” are not required for agencies to issue regulations implementing the annual adjustment,<sup>6</sup> EPA finds that the APA’s notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest.

**List of Subjects in 40 CFR Part 19**

Environmental protection, Administrative practice and procedure, Penalties.

Dated: January 3, 2018.

**E. Scott Pruitt,**  
Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter I, part 19 of the Code of Federal Regulations as follows:

<sup>6</sup> See OMB Memorandum M–18–03 at p. 4.

**PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

■ 1. The authority citation for part 19 continues to read as follows:

**Authority:** Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

**§ 19.2 Effective date.**

The statutory penalty levels in the last column of Table 1 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil penalty levels set forth in the fourth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 and before January 15, 2017. The statutory civil penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed after January 15, 2017 but before January 15, 2018. The statutory civil penalty levels set forth in the sixth and last column of Table 2 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed after January 15, 2018.

■ 3. In § 19.4, revise the introductory text and table 2 to read as follows:

**§ 19.4 Statutory civil penalties, as adjusted for inflation, and tables.**

Table 1 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, and the operative statutory civil penalty levels, as adjusted for inflation, for violations that occurred on or before November 2, 2015, and for violations that occurred after November 2, 2015, where penalties were assessed before August 1, 2016. Table 2 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the third column displaying the original statutory civil penalty levels, as enacted. The fourth column of Table 2 displays the operative statutory civil penalty levels where penalties were assessed on or after August 1, 2016 but before January 15, 2017, for violations that occurred after November 2, 2015. The fifth column displays the operative statutory civil penalty levels

where penalties are assessed on or after January 15, 2017 but before January 15, 2018, for violations that occur or occurred after November 2, 2015. The sixth and last column displays the operative statutory civil penalty levels where penalties are assessed on or after January 15, 2018, for violations that occur or occurred after November 2, 2015.

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018
7 U.S.C. 136l(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$5,000	\$18,750	\$19,057	\$19,446
7 U.S.C. 136l(a)(2) <sup>1</sup>	FIFRA	1,000/500/1,000	2,750/1,772/2,750	2,795/1,801/2,795	2,852/1,838/2,795
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	25,000	37,500	38,114	38,892
15 U.S.C. 2647(a)	TSCA	5,000	10,781	10,957	11,181
15 U.S.C. 2647(g)	TSCA	5,000	8,908	9,054	9,239
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	5,000	10,781	10,957	11,181
31 U.S.C. 3802(a)(2)	PFCRA	5,000	10,781	10,957	11,181
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	25,000	51,570	52,414	53,484
33 U.S.C. 1319(g)(2)(A)	CWA	10,000/25,000	20,628/51,570	20,965/52,414	21,393/53,484
33 U.S.C. 1319(g)(2)(B)	CWA	10,000/125,000	20,628/257,848	20,965/262,066	21,393/267,415
33 U.S.C. 1321(b)(6)(B)(i)	CWA	10,000/25,000	17,816/44,539	18,107/45,268	18,477/46,192
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	10,000/125,000	17,816/222,695	18,107/226,338	18,477/230,958
33 U.S.C. 1321(b)(7)(A)	CWA	25,000/1,000	44,539/1,782	45,268/1,811	46,192/1,848
33 U.S.C. 1321(b)(7)(B)	CWA	25,000	44,539	45,268	46,192
33 U.S.C. 1321(b)(7)(C)	CWA	25,000	44,539	45,268	46,192
33 U.S.C. 1321(b)(7)(D)	CWA	100,000/3,000	178,156/5,345	181,071/5,432	184,767/5,543
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	600	1,187	1,206	1,231
33 U.S.C. 1415(a)	MPRSA	50,000/125,000	187,500/247,336	190,568/251,382	194,457/256,513
33 U.S.C. 1901 note (see 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	10,000/25,000	13,669/34,172	13,893/34,731	14,177/35,440
33 U.S.C. 1901 note (see 1409(a)(2)(B)).	CACSO	10,000/125,000	13,669/170,861	13,893/173,656	14,177/177,200
33 U.S.C. 1901 note (see 1409(b)(1)).	CACSO	25,000	34,172	34,731	35,440
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	25,000	70,117	71,264	72,718
33 U.S.C. 1908(b)(2)	APPS	5,000	14,023	14,252	14,543
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA)	25,000	53,907	54,789	55,907
42 U.S.C. 300g-3(g)(3)(A)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300g-3(g)(3)(B)	SDWA	5,000/25,000	10,781/37,561	10,957/38,175	11,181/38,954
42 U.S.C. 300g-3(g)(3)(C)	SDWA	25,000	37,561	38,175	38,954
42 U.S.C. 300h-2(b)(1)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300h-2(c)(1)	SDWA	10,000/125,000	21,563/269,535	21,916/273,945	22,363/279,536
42 U.S.C. 300h-2(c)(2)	SDWA	5,000/125,000	10,781/269,535	10,957/273,945	11,181/279,536
42 U.S.C. 300h-3(c)	SDWA	5,000/10,000	18,750/40,000	19,057/40,654	19,446/41,484
42 U.S.C. 300i(b)	SDWA	15,000	22,537	22,906	23,374
42 U.S.C. 300i-1(c)	SDWA	100,000/1,000,000	131,185/1,311,850	133,331/1,333,312	136,052/1,360,525
42 U.S.C. 300j(e)(2)	SDWA	2,500	9,375	9,528	9,722
42 U.S.C. 300j-4(c)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300j-6(b)(2)	SDWA	25,000	37,561	38,175	38,954
42 U.S.C. 300j-23(d)	SDWA	5,000/50,000	9,893/98,935	10,055/100,554	10,260/102,606
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	10,000	16,773	17,047	17,395
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	10,000	35,445	36,025	36,760
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	25,000	93,750	95,284	97,229
42 U.S.C. 6928(c)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6928(g)	RCRA	25,000	70,117	71,264	72,718
42 U.S.C. 6928(h)(2)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6934(e)	RCRA	5,000	14,023	14,252	14,543
42 U.S.C. 6973(b)	RCRA	5,000	14,023	14,252	14,543
42 U.S.C. 6991e(a)(3)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6991e(d)(1)	RCRA	10,000	22,587	22,957	23,426
42 U.S.C. 6991e(d)(2)	RCRA	10,000	22,587	22,957	23,426
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	25,000	93,750	95,284	97,229
42 U.S.C. 7413(d)(1)	CAA	25,000/200,000	44,539/356,312	45,268/362,141	46,192/369,532
42 U.S.C. 7413(d)(3)	CAA	5,000	9,908	9,054	9,239
42 U.S.C. 7524(a)	CAA	25,000/2,500	44,539/4,454	45,268/4,527	46,192/4,619
42 U.S.C. 7524(c)(1)	CAA	200,000	356,312	362,141	369,532
42 U.S.C. 7545(d)(1)	CAA	25,000	44,539	45,268	46,192
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	25,000	53,907	54,789	55,907
42 U.S.C. 9606(b)(1)	CERCLA	25,000	53,907	54,789	55,907
42 U.S.C. 9609(a)(1)	CERCLA	25,000	53,907	54,789	55,907

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018
42 U.S.C. 9609(b)	CERCLA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 9609(c)	CERCLA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	25,000	53,907	54,789	55,907
42 U.S.C. 11045(b)(1)(A)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 11045(b)(2)	EPCRA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(b)(3)	EPCRA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(c)(1)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 11045(c)(2)	EPCRA	10,000	21,563	21,916	22,363
42 U.S.C. 11045(d)(1)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	10,000	15,025	15,271	15,583
42 U.S.C. 14304(g)	BATTERY ACT	10,000	15,025	15,271	15,583

<sup>1</sup> Note that 7 U.S.C. 1361(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of \$1,000 and the \$500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of \$1,000 was enacted in 1972 (Pub. L. 92–516).

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BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2007–0085; FRL–9972–85–Region 4]

### Air Plan Approval; NC; Open Burning and Miscellaneous Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Due to adverse comments received, the Environmental Protection Agency (EPA) is amending the North Carolina State Implementation Plan (SIP) to remove some provisions made effective through the direct final rule that was published on July 18, 2017. EPA stated that if adverse comments were received by the close of the comment period, the rule would be withdrawn and not take effect, or if adverse comments were received on an amendment, paragraph, or section of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. EPA received adverse comments on two specific SIP revisions. Therefore, EPA is removing only the portions of the SIP related to those two revisions.

**DATES:** This rule is effective January 10, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0085. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov)

website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can be reached via telephone at (404) 562–9140, or via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 18, 2017, EPA published a direct final rule (82 FR 32767) approving several revisions to the North Carolina SIP. The revisions consisted of changes to or the addition of the following regulations: 15A NCAC Subchapter 2D—Air

Pollution Control Requirements, Section .0101, *Definitions*; Section .0103, *Copies of Referenced Federal Regulations*; Section .1901 *Purpose, Scope, and Impermissible Open Burning Section*; .1902, *Definitions*; Section .1903, *Permissible Open Burning Without An Air Quality Permit*; Section .2001, *Purpose, Scope, and Applicability*; and 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0103, *Definitions*; Section .0105, *Copies of Referenced Documents*; Section .0304, *Applications*; Section .0305, *Application Submittal Content*; Section .0806, *Cotton Gins*; Section .0808, *Peak Shaving Generators*; and Section .0810, *Air Curtain Burners*. On the same day, EPA published proposed rule (82 FR 32782), proposing approval of those same revisions to the North Carolina SIP and providing a 30-day comment period for both the direct final rule and the proposed rule.<sup>1</sup> The direct final rule explained that if EPA received adverse comments, the Agency would withdraw the relevant portion(s) of the direct final action. EPA received adverse comments on the portions of the rulemaking related to the North Carolina regulations 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0808, *Peak Shaving Generators*, and Section .0810, *Air Curtain Burners*, only. However, EPA was not able to withdraw these portions of the direct final action before the action became effective. Therefore, EPA is amending § 52.1770 by removing the portions of the SIP related to these two North Carolina regulations. EPA is not

<sup>1</sup> On September 6, 2017 (82 FR 42055), EPA reopened the comment period for the proposed rule, with comments due on or before September 21, 2017.



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

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019AM10:20

DEC - 6 2013

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

## MEMORANDUM

**SUBJECT:** Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)

**FROM:** Cynthia Giles  
Assistant Administrator *Cynthia Giles*

**TO:** Regional Administrators  
Deputy Regional Administrators

The purpose of this memorandum is to amend the EPA's existing civil penalty policies to account for inflation. Specifically, with the exception of penalties assessed under expedited settlement agreement (ESA) programs, this memorandum amends all existing penalty policies to increase the initial gravity-based penalties by 4.87 percent for violations that occur after December 6, 2013, the effective date of the 2013 Civil Monetary Penalty Inflation Adjustment Rule (2013 Penalty Inflation Rule or Rule). The 4.87 percent represents the cost-of-living adjustment, calculated pursuant to the formula prescribed in Section 5(b) of the Debt Collection Improvement Act (DCIA),<sup>1</sup> which was applied in developing the 2013 Rule.

This memorandum also provides guidance on pleading civil penalties for violations that occur before and after the effective date of the Rule, and when to apply the new maximum civil penalty amounts that may be sought in certain administrative enforcement actions brought under the Clean Water Act (CWA), Certain Alaskan Cruise Ship Operations Act (CACSOA), Safe Drinking Water Act (SDWA), Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right-to-Know Act (EPCRA).

### **I. Background**

The DCIA requires each federal agency to issue regulations adjusting for inflation the statutory civil penalties that can be imposed under the laws administered by that agency. On November 6, 2013, the EPA promulgated the 2013 Penalty Inflation Rule pursuant to Section 4 of the DCIA; the Rule is effective December 6, 2013. (A copy of the Rule, as published at 78 Fed. Reg. 66643-48 (Nov. 6, 2013), is attached.) Under the Rule, only 20 out of 88 statutory penalty amounts are being increased for two reasons: (1) since 2008, when the last Penalty Inflation Adjustment Rule was promulgated, the rate of inflation has been low, resulting in a cost-of-living adjustment of only 4.87 percent for those penalties

<sup>1</sup> See the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note.

that were last adjusted in 2008; and (2) when the DCIA's mandatory rounding rules were applied to the inflation adjusted increment, the inflation adjusted amounts were, in most cases, insufficient to warrant an increase under the 2013 Rule. All violations occurring after December 6, 2013, the effective date of the Rule, are subject to the new, inflation-adjusted, statutory penalties.<sup>2</sup>

## II. The DCIA's Formula for Calculating Cost-of-Living Adjustments to Civil Penalties

Pursuant to the DCIA, each federal agency is required to issue regulations adjusting for inflation all statutory civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these inflation adjustments is to maintain the deterrent effect of civil penalties, thereby promoting compliance with the law. Section 5 of the DCIA requires each agency to apply a specific formula and statutorily prescribed rounding rules to determine whether and to what extent statutory civil penalties should be increased to account for any changes in the cost-of-living. Under the DCIA, the cost-of-living adjustment (COLA) is determined by calculating the percentage increase, if any, by which the Consumer Price Index for all-urban consumers (CPI-U) for the month of June of the calendar year preceding the current adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. Accordingly, the COLA applied under the 2013 Rule equals the percentage by which the CPI-U for June 2012 (*i.e.*, June of the year preceding 2013, the year the Rule was published), exceeds the CPI-U for June of the year in which the amount of a specific penalty was last adjusted (*i.e.*, 2008, 2004 or 1996, as the case may be).

## III. Amendments to the EPA's Civil Penalty Policies

By this memorandum, the Office of Enforcement and Compliance Assurance (OECA) is amending the EPA's existing civil penalty policies to increase the initial gravity component of the penalty calculation by 4.87 percent for those violations subject to the new Rule, *i.e.*, violations occurring after December 6, 2013. As further discussed below, this memorandum does not increase penalty amounts that may be assessed under any of the EPA's ESA programs.

While not required specifically by the Act, we believe revising our civil penalty policies to account for inflation is consistent with the Congressional intent in passing the DCIA and is necessary to implement effectively the mandated penalty increases set forth in 40 C.F.R. Part 19. In addition, this is consistent with the practice we have been implementing since 1997, when we first amended the EPA's civil penalty policies to reflect the COLA applied under the 1996 Civil Monetary Penalty Inflation Adjustment Rule.<sup>3</sup> Accordingly, each non-ESA civil penalty policy is now modified to apply the appropriate guidelines set forth below. These new guidelines apply to civil penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or for determining a bottom-line settlement amount.

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<sup>2</sup> Section 6 of the DCIA provides that "[a]ny increase under this Act in a civil monetary penalty shall apply only to violations that occur *after* the date the increase takes effect." [Emphasis added.]

<sup>3</sup> See Memorandum dated May 9, 1997, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance (OECA), "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule;" Memorandum dated September 21, 2004, from Thomas V. Skinner, Acting Assistant Administrator of OECA, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Adjustment Rule" (2004 Memorandum); and Memorandum dated December 29, 2008, from Granta Y. Nakayama, Assistant Administrator for OECA, "Amendments to EPA Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Rule (Effective January 12, 2009)" (2008 Memorandum).

A complete list of all of the EPA's non-ESA penalty policies is provided at the end of this memorandum. Subsequent to the issuance of this memorandum, the division directors in the Office of Civil Enforcement and the Office of Site Remediation Enforcement may issue revised penalty matrices under program-specific penalty policies to reflect the following guidelines, as summarized in the chart at pages 5-6.

A. If all of the violations in a particular case occurred on or before the effective date of the 2013 Rule, penalty policy calculations should be consistent with the 2008 Memorandum.

B. For those judicial and administrative cases in which some or all of the violations occurred *after* the effective date of the 2013 Rule, the penalty policy calculations are modified by following these three steps:

1. Perform the economic benefit calculation for the entire period of the violation. Do not apply any mitigation for ability to pay or litigation considerations at this point.
2. Apply the gravity component of the penalty policy in the standard way for all violations according to the provisions of subparagraph 3 below. Do not apply any mitigation or adjustment factors at this point.
- 3.(a) ***For those penalty policies that were issued prior to January 31, 1997:*** Calculate the gravity component according to the penalty policy. For violations that occurred after January 30, 1997 through March 15, 2004, multiply the gravity component by 1.1, reflecting the 10% first-time adjustment. For violations that occurred after March 15, 2004 through January 12, 2009, multiply the gravity component by 1.2895, reflecting both the 10% first-time adjustment and the 17.23% COLA [ $1.10 \times 1.1723 = 1.2895$ ]. For violations that occur after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.4163, reflecting the 10% first-time adjustment, the 17.23% and the 9.83% COLAs [ $1.10 \times 1.1723 \times 1.0983 = 1.4163$ ]. For violations that occur after December 6, 2013, multiply the gravity component by 1.4853, reflecting the 10% first-time adjustment, the 17.23%, the 9.83% and the 4.87% COLAs [ $1.10 \times 1.1723 \times 1.0983 \times 1.0487 = 1.4853$ ].

*Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If the violations occurred for a total of 10 days during the period after January 30, 1997 through March 15, 2004, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.1 = \$11,000$ . If the violations occurred for 10 days during the period after March 15, 2004 through January 12, 2009, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.2895 = \$12,895$ . If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.4163 = \$14,163$ . If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.4853 = \$14,853$ .*

(b) **For those penalty policies that were issued or revised after January 30, 1997, through March 15, 2004:** Calculate the gravity component according to the penalty policy. For violations that occurred after January 30, 1997 through March 15, 2004, use the gravity component set forth in the penalty policy, as the 10% first-time adjustment is reflected in those policies. For violations that occurred after March 15, 2004 through January 12, 2009, multiply the gravity component by 1.1723, reflecting the 17.23% COLA. For violations occurring after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.2875, reflecting both the 17.23% and the 9.83% COLAs [ $1.1723 \times 1.0983 = 1.2875$ ]. For violations that occur after December 6, 2013, multiply the gravity component by 1.3502, reflecting the 17.23% COLA, the 9.83% and the 4.87% COLAs [ $1.1723 \times 1.0983 \times 1.0487 = 1.3502$ ].

*Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If the violations occurred for 10 days during the period after March 15, 2004 through January 12, 2009, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.1723 = \$11,723$ . If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.2875 = \$12,875$ . If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.3502 = \$13,502$ .*

(c) **For those penalty policies that were issued or revised after March 15, 2004, through January 12, 2009:** Calculate the gravity component according to the penalty policy. For violations that occurred after March 15, 2004 through January 12, 2009, use the gravity component set forth in the penalty policy, as the 10% first-time adjustment and 17.23% COLA are reflected in those policies. For violations occurring after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.0983, reflecting the 9.83% COLA. For violations occurring after December 6, 2013, multiply the gravity component by 1.1518, reflecting both the 9.83% and the 4.87% COLAs [ $1.0983 \times 1.0487 = 1.1518$ ].

*Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.0983 = \$10,983$ . If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.1518 = \$11,518$ .*

(d) **For those penalty policies that were issued or revised after January 12, 2009, through December 6, 2013:** Calculate the gravity component according to the penalty policy. For violations that occurred after January 12, 2009 through December 6, 2013, use the gravity component set forth in the penalty policy, as the 9.83% COLA is reflected in these policies. For violations occurring after December 6, 2013, multiply the gravity component by 1.0487, reflecting the 4.87% COLA. Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.0487 = \$10,487$ .

### Chart Reflecting Inflation Adjustment Multipliers

Penalty Policy Issued Prior to January 31, 1997		
Date(s) of violation	Inflation Adjustment Multiplier	Calculation Explanation
January 31, 1997 through March 15, 2004	1.1	This value reflects the 10% first-time adjustment ( <i>i.e.</i> , 1.1).
March 16, 2004 through January 12, 2009	1.2895	This value is adjusted by the COLA of 17.23% applied in the 2004 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 = 1.2895$ ).
January 13, 2009 through December 6, 2013	1.4163	This value is adjusted by the COLA of 9.83% applied in the 2008 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 \times 1.0983 = 1.4163$ ).
After December 6, 2013	1.4853	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 \times 1.0983 \times 1.0487 = 1.4853$ ).
Penalty Policy Issued or Revised after January 30, 1997 through March 15, 2004		
Date(s) of violation	Inflation Adjustment Multiplier	Calculation Explanation
January 31, 1997 through March 15, 2004	None - use gravity component in penalty policy	There is no multiplier here because the 10% first-time adjustment is already reflected in the penalties.
March 16, 2004 through January 12, 2009	1.1723	This value reflects the COLA of 17.23% applied in the 2004 Memorandum, or 1.1723.
January 13, 2009 through December 6, 2013	1.2875	This value is adjusted by the COLA of 9.83% applied in the 2008 Memorandum ( <i>i.e.</i> , $1.1723 \times 1.0983 = 1.2875$ ).
After December 6, 2013	1.3502	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1723 \times 1.0983 \times 1.0487 = 1.3502$ ).

<b>Penalty Policy Issued or Revised after March 15, 2004 through January 12, 2009</b>		
<b>Date(s) of violation</b>	<b>Inflation Adjustment Multiplier</b>	<b>Calculation Explanation</b>
<b>March 16, 2004 through January 12, 2009</b>	<b>None - use gravity component in penalty policy</b>	There is no multiplier here because the 10% first-time adjustment and 17.23% COLA is already reflected in the penalties.
<b>January 13, 2009 through December 6, 2013</b>	<b>1.0983</b>	This value reflects the COLA of 9.83% applied in the 2008 Memorandum, or 1.0983.
<b>After December 6, 2013</b>	<b>1.1518</b>	This value is adjusted by the COLA of 4.87% applied in the 2013 Memorandum ( <i>i.e.</i> , $1.0983 \times 1.0487 = 1.1518$ ).
<b>Penalty Policy Issued or Revised after January 12, 2009 through December 6, 2013</b>		
<b>Date(s) of violation</b>	<b>Inflation Adjustment Multiplier</b>	<b>Calculation Explanation</b>
<b>January 13, 2009 through December 6, 2013</b>	<b>None - use gravity component in penalty policy</b>	There is no multiplier here because the COLA of 9.83% applied in the 2008 Memorandum is already reflected in the penalties.
<b>After December 6, 2013</b>	<b>1.0487</b>	This value reflects the COLA of 4.87% applied in this 2013 Memorandum.
<b>All Violations Occurred after December 6, 2013</b>		
<b>Date of Penalty Policy Revision or Issuance</b>	<b>Inflation Adjustment Multiplier</b>	<b>Calculation Explanation</b>
<b>Issued Prior to January 31, 1997</b>	<b>1.4853</b>	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 \times 1.0983 \times 1.0487 = 1.4853$ ).
<b>January 31, 1997 through March 15, 2004</b>	<b>1.3502</b>	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1723 \times 1.0983 \times 1.0487 = 1.3502$ ).
<b>March 16, 2004 through January 12, 2009</b>	<b>1.1518</b>	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.0983 \times 1.0487 = 1.1518$ ).
<b>January 13, 2009 through December 6, 2013</b>	<b>1.0487</b>	This value reflects the COLA of 4.87% applied in this 2013 Memorandum.

#### **IV. Penalty Pleading**

If all of the violations in a particular case occurred on or before the effective date of the 2013 Rule, the pleading practices set forth in the 2008 Memorandum should be applied. If some of the violations in a particular case occurred after the effective date of the 2013 Rule, then any penalty amount sought should reflect the newly adjusted civil penalty amounts for those violations.

For example, if a person tampered with a public water system on November 7, 2013, the maximum statutory penalty under SDWA Section 1432(c) would be \$1,100,000. The prayer for relief under such facts would be written as follows:

*Pursuant to Section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. § 300i-1(c), and 40 C.F.R. Part 19, assess civil penalties against [name of Defendant] of not more than \$1,100,000 for tampering with the public water supply on November 7, 2013.*

If violations occur after the effective date of the 2013 Rule (*i.e.*, after December 6, 2013), then any penalty amount pled should use the newly adjusted maximum amount, if any. For example, if an act of tampering occurs on December 7, 2013, the prayer for relief in a civil judicial complaint alleging a violation of Section 1432(c) of the SDWA would be written as follows:

*Pursuant to Section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. § 300i-1(c), and 40 C.F.R. Part 19, assess civil penalties against [name of Defendant] of not more than \$1,150,000 for tampering with the public water supply on December 7, 2013.*

#### **V. Administrative Penalty Caps for the CWA, CACSOA, SDWA, CAA, CERCLA and EPCRA**

The 2013 Rule increases the statutory penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in a single administrative enforcement action under the CWA, the CACSOA, the SDWA, the CAA, the CERCLA and the EPCRA (commonly called “penalty caps”).<sup>4</sup> For example, prior to the 2013 Rule, the EPA was authorized under CAA Section 205(c)(1) to assess administrative penalties not to exceed \$295,000 for tampering with a vehicle or engine. After the effective date of the 2013 Rule, the EPA may assess an administrative penalty not to exceed \$320,000 under CAA Section 205(c)(1). Note that the adjusted penalty caps apply if an action is filed or a complaint is amended after December 6, 2013, even if some or all of the violations occurred on or before December 6, 2013.

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<sup>4</sup> *E.g.*, the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(1), 42 U.S.C. § 300h-2(c)(1), will increase from \$177,500 to \$187,500; the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(2), 42 U.S.C. § 300h-2(c)(2), will increase from \$177,500 to \$187,500; the statutory maximum amount of administrative penalties that can be assessed under CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), will increase from \$295,000 to \$320,000; the statutory maximum amount of administrative penalties that can be assessed under CAA Section 205(c)(1), 42 U.S.C. § 7524(c)(1), will increase from \$295,000 to \$320,000.

## **VI. Expedited Settlements**

Expedited settlements offer “real time” enforcement in situations where violations are corrected and a penalty is obtained in a short amount of time, generally within 30-45 days of the issuance of an expedited settlement offer. Expedited settlements serve to achieve compliance while reducing transaction costs for both the EPA and the violator, as long as the violator comes into compliance promptly and pays the expedited penalty amount. Rather than apply the inflation factors across the board to expedited penalty amounts at this time, national program managers within OECA should review expedited penalty amounts periodically to determine whether they need to be adjusted to reflect inflation.

## **VII. Challenges in the Course of Enforcement Proceedings**

If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Special Litigation and Projects Division of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

## **VIII. Further Information**

Any questions concerning the 2013 Rule and its implementation can be directed to Caroline Hermann of OCE’s Special Litigation and Projects Division at (202) 564-2876 or by email at [hermann.caroline@epa.gov](mailto:hermann.caroline@epa.gov).

## List of Existing Civil Penalty Policies Modified by this Memorandum

### General

- Policy on Civil Penalties and A Framework for Statute-Specific Approaches to Penalty Assessments (2/16/84)
- Guidance on Use of Penalty Policies in Administrative Litigation (12/15/95)

### Clean Air Act - Stationary Sources

- Clean Air Act Stationary Source Civil Penalty Policy (10/25/91)
- Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)
- Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (6/20/12)
- National Petroleum Refinery Initiative Implementation: Application of Clean Air Act Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements (11/08/07)
- Appendix I - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Revised 3/25/87)
- Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy (7/23/95)
- Appendix II - Vinyl Chloride Civil Penalty Policy (Revised 2/8/85)
- Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)
- Appendix IV - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Revised 3/25/87)
- Appendix V - Air Civil Penalty Worksheet (3/25/87)
- Appendix VI - Volatile Hazardous Air Pollutant Penalty Policy (Revised 9/12)
- Appendix VII - Residential Wood Heaters (5/18/99)
- Appendix VIII - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone (11/2/90)
- Appendix IX - Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82 (7/19/93)
- Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)
- Appendix XI - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

### **Clean Air Act - Mobile Sources**

- Volatility Civil Penalty Policy (12/1/89)
- Interim Diesel Civil Penalty Policy (2/8/94)
- Clean Air Act Mobile Source Penalty Policy: Vehicle and Engine Emissions Certification Requirements (1/16/09)

### **Clean Water Act**

- Interim Clean Water Act Settlement Penalty Policy (3/1/95)
- Clean Water Act Section 404 Settlement Penalty Policy (12/21/01)
- Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (8/1/98)
- Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Storm Water Requirements (2/5/08)

### **Comprehensive Environmental Response, Compensation, and Liability Act**

- Interim Policy on Settlement of CERCLA Section 106(b)(1) and Section 107(c)(3) -- Punitive Damage Claims for Noncompliance with Administrative Orders (9/30/97)
- Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (9/30/99)

### **Emergency Planning and Community Right-to-Know Act**

- Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (9/30/99)
- Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (Amended)(4/12/01)

### **Federal Insecticide, Fungicide, and Rodenticide Act**

- FIFRA Enforcement Response Policy (12/09)
- Enforcement Response Policy for FIFRA Section 7(c) (5/10)
- Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act: Good Laboratory Practice (GLP) Regulations (9/30/91)
- FIFRA Worker Protection Standard Penalty Policy – Enforcement Interim Final (9/97)
- Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations (Appendix H)(3/12)

### **Resource Conservation and Recovery Act, Subtitle C**

- RCRA Civil Penalty Policy (6/23/03)
- Guidance on the Use of Section 7003 of RCRA (10/97)

### **RCRA, Subtitle I – UST**

- U.S. EPA Penalty Guidance for Violations of UST Regulations, OSWER Directive 9610.12 (November 14, 1990)
- Guidance of Federal Field Citation Enforcement, OSWER Directive 9610.16 (October 6, 1993)

### **Safe Drinking Water Act - UIC**

- Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy - Underground Injection Control Guidance No. 79 (9/27/93)

### **Safe Drinking Water Act - PWS**

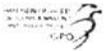
- New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)

### **Toxic Substances Control Act**

- Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80) (Published in *Federal Register* on 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete.)
- Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13 (3/31/1999)
- PCB Penalty Policy (4/9/90)
- TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)
- TSCA Good Laboratory Practices Regulations Enforcement Response Policy (4/9/85)
- Enforcement Response Policy for Test Rules Under Section 4 of the Toxic Substances Control Act (5/28/1986)
- Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89)
- Enforcement Response Policy for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)
- Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, December 2007
- Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, Interim Final Policy, August 2010

Attachment (2013 Penalty Inflation Rule)

cc: (w/attachment)  
Steven Chester, OECA  
Lawrence Starfield, OECA  
Regional Counsel, Regions I - X  
Director, Office of Environmental Stewardship, Region I  
Director, Division of Enforcement and Compliance Assurance, Region II  
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III  
Director, Office of Enforcement and Compliance Assurance, Region V  
Director, Compliance Assurance and Enforcement Division, Region VI  
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII  
Director, Enforcement Division, Region IX  
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X  
Regional Media Division Directors  
Regional Enforcement Coordinators, Regions I - X  
OECA  
W. Benjamin Fisherow, Chief, EES, DOJ  
Deputy and Assistant Chiefs, EES, DOJ



and amended citations in two provisions of the construction standards to show the correct incorporation-by-reference section.

In the DFR, OSHA stated that it would confirm the effective date of the DFR if it received no significant adverse comments. OSHA received eight favorable and no adverse comments on the DFR (see ID: OSHA-2013-0005-0008 thru -0015 in the docket for this rulemaking). Accordingly, OSHA is confirming the effective date of the final rule.

In addition to explicitly supporting the DFR, several of the commenters provided supplemental information. Mr. Charles Johnson of AltairStrickland stated that as a result of "[OSHA's] incorporating both the 1968 and the [2011] versions of the ANSI Z535 standard by reference[,] both manufacturers and employers will likely migrate to the newer versions and the older versions will likely fade away as demand declines" (ID: OSHA-2013-0005-0011). Mr. Johnson also commented that "[h]ad OSHA deleted the reference to the ANSI Z35.1-1968 language, these signs would require replacement at considerable and unnecessary cost to employers." *Id.*

A second commenter, Mr. Blair Brewster of MySafetySign.com, described several advantages and limitations of the updated ANSI signage standards, concluding that "[i]t would be arrogant to assume that a single standard is best. The ANSI Z535 designs, the traditional safety sign and tag designs, as well as the countless other designs to come, will all have their place and will all coexist" (ID: OSHA-2013-0005-0014).

A third commenter, Mr. Kyle Pitsor of the National Electrical Manufacturers Association (NEMA) stated that "[w]hile we would have preferred that the references to the outdated standards be removed entirely from OSHA's regulations, NEMA agrees that giving employers the option of using signs and tags that meet either the 1967-1968 or the most recent versions of the standards will provide the greatest flexibility without imposing additional costs" (ID: OSHA-2013-0005-0013). Mr. Pitsor also helpfully noted that, contrary to proposed §§ 1910.6(e)(66) and (e)(67) and 1926.6(h)(28)-(h)(30), the International Safety Equipment Association (ISEA) is not authorized to sell the ANSI Z535 standards proposed for incorporation by reference, and these standards are not sold on the ISEA Web site, [www.safetysign.com](http://www.safetysign.com). In response to Mr. Pitsor's comment, OSHA is correcting the incorporation-by-reference provisions in question in

29 CFR 1910.6 and 1926.6 in a separate Federal Register notice identifying the three locations where the public can purchase the updated ANSI Z535 standards.

Finally, OSHA received an email from Jonathan Stewart, Manager, Government Relations, NEMA, after the comment period ended (ID: OSHA-2013-0005-0015). In his email, Mr. Stewart mentioned NEMA's earlier comments to the docket (ID: OSHA-2013-0005-0013), and stated that "[w]hile reflective of NEMA's position, those comments did not include a clarification regarding the language that the NRPM used in Sec. 1926.200 Accident prevention signs and tags." He further indicated that "[t]he language, while not inaccurate, was unclear regarding which figure(s) it intended to reference in the ANSI Z535.2-2011 standard." Although this comment was late, OSHA considered it because it was a purely technical comment, pointing out an ambiguity in the cited provision's reference to figures in the updated version of the national consensus standard, ANSI Z535.2-2011. OSHA finds that the comment has merit, and accordingly is clarifying the language in 29 CFR 1926.200(b) and (c) specifying which figures employers must follow in ANSI Z535.2-2011.

**List of Subjects in 29 CFR Parts 1910 and 1926**

Signage, Incorporation by reference, Occupational safety and health, Safety.

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this final rule. OSHA is issuing this final rule pursuant to 29 U.S.C. 653, 655, and 657, 5 U.S.C. 553, Secretary of Labor's Order 1-2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on October 30, 2013.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2013-26336 Filed 11-5-13; 8:45 am]

BILLING CODE 4510-26-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 19**

[FRL-9901-98-OECA]

RIN 2020-AA49

**Civil Monetary Penalty Inflation Adjustment Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** With this action, EPA is promulgating a final rule that amends the Civil Monetary Penalty Inflation Adjustment Rule. This action is mandated by the Debt Collection Improvement Act of 1996 (DCIA) to adjust for inflation certain statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations. The Agency is required to review the civil monetary penalties under the statutes it administers at least once every four years and to adjust such penalties as necessary for inflation according to a formula prescribed by the DCIA. The regulations contain a list of all civil monetary penalty authorities under EPA-administered statutes and the applicable statutory amounts, as adjusted for inflation, since 1996.

**DATES:** This rule is effective December 6, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Caroline Hermann, Special Litigation and Projects Division (2248A), Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564-2876.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, each federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties<sup>1</sup> ("civil penalties" or "penalties") that can be imposed under the laws administered by that agency. The purpose of these adjustments is to

<sup>1</sup> Section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, defines "civil monetary penalty" to mean "any penalty, fine or other sanction that—(A)(i) is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law. . . ."

maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. EPA's initial adjustment to each statutory civil penalty amount was published in the *Federal Register* on December 31, 1996 (61 FR 69360), and became effective on January 30, 1997 ("the 1996 Rule"). EPA's second adjustment to civil penalty amounts was published in the *Federal Register* on February 13, 2004 (69 FR 7121), and became effective on March 15, 2004 ("the 2004 Rule"). EPA's third adjustment to civil penalty amounts was published in the *Federal Register* on December 11, 2008 (73 FR 75340), as corrected in the *Federal Register* on January 7, 2009 (74 FR 626), and became effective on January 12, 2009 ("the 2008 Rule").

Where necessary under the DCIA, this rule, specifically Table 1 in 40 CFR 19.4, adjusts for inflation the maximum and, in some cases, the minimum amount of the statutory civil penalty that may be imposed for violations of EPA-administered statutes and their implementing regulations. Table 1 of 40 CFR 19.4 identifies the applicable EPA-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision after the effective dates of the 1996, 2004 and 2008 rules. Where required under the DCIA formula, this rule amends the adjusted penalty amounts in Table 1 of 40 CFR 19.4 for those violations that occur after the effective date of this rule.

The formula prescribed by the DCIA for determining the inflation adjustment, if any, to statutory civil penalties consists of the following four-step process:

1. *Determine the Cost-of-Living Adjustment (COLA).* The COLA is determined by calculating the percentage increase, if any, by which the Consumer Price Index<sup>2</sup> for all-urban consumers (CPI-U) for the month of June of the calendar year preceding the adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted.<sup>3</sup> Accordingly, the COLA

applied under this rule equals the percentage by which the CPI-U for June 2012 (*i.e.*, June of the year preceding this year), exceeds the CPI-U for June of the year in which the amount of a specific penalty was last adjusted (*i.e.*, 2008, 2004 or 1996, as the case may be). Given that the last inflation adjustment was published on December 11, 2008, the COLA for most civil penalties set forth in this rule was calculated by determining the percentage by which the CPI-U for June 2012 (229.478) exceeds the CPI-U for June 2008 (218.815), resulting in a COLA of 4.87 percent. For those few civil penalty amounts that were last adjusted under the 2004 Rule, the COLA equals 20.97 percent, calculated by determining the percentage by which the CPI-U for June 2012 (229.478) exceeds the CPI-U for June 2004 (189.7). In the case of the maximum civil penalty that can be imposed under section 311(b)(7)(A) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(A), which is the sole civil penalty last adjusted under the 1996 Rule, the COLA is 46.45 percent, determined by calculating the percentage by which the CPI-U for June 2012 (229.478) exceeds the CPI-U for June 1996 (156.7).

2. *Calculate the Raw Inflation Increase.* Once the COLA is determined, the second step is to multiply the COLA by the current civil penalty amount to determine the raw inflation increase.

3. *Apply the DCIA's Rounding Rule to the Raw Inflation Increase.* The third step is to round this raw inflation increase according to section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note. The DCIA's rounding rules require that any increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. (See section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of

1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.)

4. *Add the Rounded Inflation Increase, if any, to the Current Penalty Amount.* Once the inflation increase has been rounded pursuant to the DCIA, the fourth step is to add the rounded inflation increase to the current civil penalty amount to obtain the new, inflation-adjusted civil penalty amount. For example, in this rule, the current statutory maximum penalty amounts that may be imposed under Clean Air Act (CAA) section 113(d)(1), 42 U.S.C. 7413(d)(1), and CAA section 205(c)(1), 42 U.S.C. 7524(c)(1), are increasing from \$295,000 to \$320,000. These penalty amounts were last adjusted with the promulgation of the 2008 Rule, when these penalties were adjusted for inflation from \$270,000 to \$295,000. Applying the COLA adjustment to the current penalty amount of \$295,000 results in a raw inflation increase of \$14,376 for both penalties. As stated above, the DCIA rounding rule requires the raw inflation increase to be rounded to the nearest multiple of \$25,000 for penalties greater than \$200,000. Rounding \$14,376 to the nearest multiple of \$25,000 equals \$25,000. That rounded increase increment of \$25,000 is then added to the \$295,000 penalty amount to arrive at a total inflation adjusted penalty amount of \$320,000. Accordingly, once this rule is effective, the statutory maximum amounts of these penalties will increase to \$320,000.

In contrast, this rule does not adjust those civil penalty amounts where the raw inflation amounts are not high enough to round up to the required multiple stated in the DCIA. For example, under section 3008(a)(3) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a)(3), the Administrator may assess a civil penalty of up to \$37,500 per day of noncompliance for each violation. This penalty was last adjusted for inflation under the 2008 Rule. Multiplying the applicable 4.87 percent COLA to the statutory civil penalty amount of \$37,500, the raw inflation increase equals only \$1,827.40; the DCIA rounding rule requires a raw inflation increase increment to be rounded to the nearest multiple of \$5,000 for penalties greater than \$10,000 but less than or equal to \$100,000. Because this raw inflation increase is not sufficient to be rounded up to a multiple of \$5,000, in accordance with the DCIA's rounding rule, this rule does not increase the \$37,500 penalty amount. However, if during the development of EPA's next Civil Monetary Penalty Inflation Adjustment Rule, anticipated to be

<sup>2</sup> Section 3 of the DCIA defines "Consumer Price Index" to mean "the Consumer Price Index for all-urban consumers published by the Department of Labor." Interested parties may find the relevant Consumer Price Index, published by the Department of Labor's Bureau of Labor Statistics, on the Internet. To access this information, go to the CPI Home Page at: [ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpi.txt).

<sup>3</sup> Section 5(b) of the DCIA defines the term "cost-of-living adjustment" to mean "the percentage (if

any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law."

promulgated in 2017, the raw inflation increase can be rounded up to the next multiple of \$5,000, statutory maximum penalty amounts currently at \$37,500 will be increased to \$42,500.

Because of the low rate of inflation since 2008, coupled with the application of the DCIA's rounding rules, only 20 of the 88 statutory civil penalty provisions implemented by EPA are being adjusted for inflation under this rule. Assuming there are no changes to the mandate imposed by the DCIA, EPA intends to review all statutory penalty amounts and adjust them as necessary to account for inflation in the year 2017 and every four years thereafter.

## II. Technical Revision to Table 1 of 40 CFR 19.4 To Break Out Each of the Statutory Penalty Authorities Under Section 325(b) of the Emergency Planning and Community Right-To-Know Act (EPCRA)

EPA is revising the row of Table 1 of 40 CFR 19.4, which lists the statutory maximum penalty amounts that can be imposed under section 325(b) of EPCRA, 42 U.S.C. 11045(b), to break out separately the three penalty authorities contained in subsection (b). Since 1996, EPA has been adjusting for inflation all of the statutory maximum penalty amounts specified under EPCRA section 325(b), 42 U.S.C. 11045(b). Under past rules, the Agency has grouped the maximum penalty amounts that may be assessed under section 325(b) under the heading of 42 U.S.C. 11045(b) in Table 1 of 40 CFR 19.4. For example, under the 2008 Rule, Table 1 of 40 CFR 19.4 reflects that the statutory maximum penalties that can be imposed under any subparagraph of EPCRA section 325(b) are \$37,500 and \$107,500. Consistent with how the other penalty authorities are displayed under Part 19.4, Table 1 now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (*i.e.*, 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)). That is, upon the effective date of this rule, the statutory maximum penalty that can be imposed under section 325(b)(1)(A) is \$37,500; the statutory maximum penalties that can be imposed under section 325(b)(2) are \$37,500 and \$117,500; and the statutory maximum penalties that can be imposed under section 325(b)(3) are \$37,500 and \$117,500.

## III. Effective Date

Section 6 of the DCIA provides that "any increase under [the DCIA] in a civil monetary penalty shall apply only to violations which occur after the date

the increase takes effect." (*See* section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Thus, the new inflation-adjusted civil penalty amounts may be applied only to violations that occur after the effective date of this rule.

## IV. Good Cause

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for public comment. EPA finds that there is good cause to promulgate this rule without providing for public comment. The primary purpose of this final rule is merely to implement the statutory directive in the DCIA to make periodic increases in civil penalty amounts by applying the adjustment formula and rounding rules established by the statute. Because the calculation of the increases is formula-driven and prescribed by statute, EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule. Thus, notice and public comment is unnecessary.

In addition, EPA is making the technical revisions discussed above without notice and public comment. Because the technical revisions to Table 1 of 40 CFR 19.4 more accurately reflect the statutory provisions under each of the subparagraphs of section 325(b) (*i.e.*, under 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)) and do not constitute substantive revisions to the rule, these changes do not require notice and comment.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review under the Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act of 1995, 44 U.S.C. 3501–3521. Burden is defined at 5 CFR 1320.3(b). This rule merely increases the amount of civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

### C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirements.

### D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action implements mandates specifically and explicitly set forth by Congress in the DCIA without the exercise of any policy discretion by EPA. By applying the adjustment formula and rounding rules prescribed by the DCIA, this rule adjusts for inflation the statutory maximum and, in some cases, the minimum, amount of civil penalties that can be assessed by EPA in an administrative enforcement action, or by the U.S. Attorney General in a civil judicial case, for violations of EPA-administered statutes and their implementing regulations. Because the calculation of any increase is formula-driven, EPA has no policy discretion to vary the amount of the adjustment. Given that the Agency has made a "good cause" finding that this rule is not subject to notice and comment requirements under the APA or any other statute (*see* Section IV of this notice), it is not subject to sections 202 and 205 of UMRA. EPA has also determined that this action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule merely increases

the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

#### *E. Executive Order 13132 (Federalism)*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely increases the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule merely increases the amount of civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations. This final rule will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the U.S. Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this final rulemaking. The primary purpose of this final rule is merely to apply the DCIA's inflation adjustment formula to make periodic increases in the civil penalties that may be imposed for violations of EPA-administered statutes and their implementing regulations. Thus, because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula.

Since there is no discretion under the DCIA in determining the statutory civil penalty amount, EPA cannot vary the amount of the civil penalty adjustment to address other issues, including environmental justice issues.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801-808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 19**

Environmental protection,  
Administrative practice and procedure,  
Penalties.

Dated: October 29, 2013.

**Gina McCarthy,**

*Administrator, Environmental Protection Agency.*

For the reasons set out in the preamble, title 40, chapter I, part 19 of the Code of Federal Regulations is amended as follows:

#### **PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

■ 1. The authority citation for part 19 continues to read as follows:

**Authority:** Pub. L. 101-410, 28 U.S.C. 2461 note; Public Law 104-134, 31 U.S.C. 3701 note.

■ 2. Revise § 19.2 to read as follows:

#### **§ 19.2 Effective date.**

The increased penalty amounts set forth in the seventh and last column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations which occur after December 6, 2013. The penalty amounts in the sixth column of Table 1 to § 19.4 apply to violations under the applicable statutes and regulations which occurred after January 12, 2009, through December 6, 2013. The penalty amounts in the fifth column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations

which occurred after March 15, 2004, through January 12, 2009. The penalty amounts in the fourth column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations

which occurred after January 30, 1997, through March 15, 2004.

■ 3. Revise § 19.4 to read as follows:

**§ 19.4 Penalty adjustment and table.**

The adjusted statutory penalty provisions and their applicable amounts are set out in Table 1. The last column in the table provides the newly effective statutory civil penalty amounts.

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code Citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009 through December 6, 2013	Penalties effective after December 6, 2013
7 U.S.C. 136l(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
7 U.S.C. 136l(a)(2)	FIFRA	\$500/\$1,000	\$550/\$1,000	\$650/\$1,100	\$750/\$1,100	\$750/\$1,100
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
15 U.S.C. 2647(a)	TSCA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
15 U.S.C. 2647(g)	TSCA	\$5,000	\$5,000	\$5,500	\$7,500	\$7,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
31 U.S.C. 3802(a)(2)	PFCRA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
33 U.S.C. 1319(g)(2)(A)	CWA	\$10,000/\$25,000	\$11,000/\$27,500	\$11,000/\$32,500	\$16,000/\$37,500	\$16,000/\$37,500
33 U.S.C. 1319(g)(2)(B)	CWA	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$157,500	\$16,000/\$177,500	\$16,000/\$187,500
33 U.S.C. 1321(b)(6)(B)(i)	CWA	\$10,000/\$25,000	\$11,000/\$27,500	\$11,000/\$32,500	\$16,000/\$37,500	\$16,000/\$37,500
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$157,500	\$16,000/\$177,500	\$16,000/\$187,500
33 U.S.C. 1321(b)(7)(A)	CWA	\$25,000/\$1,000	\$27,500/\$1,100	\$32,500/\$1,100	\$37,500/\$1,100	\$37,500/\$2,100
33 U.S.C. 1321(b)(7)(B)	CWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
33 U.S.C. 1321(b)(7)(C)	CWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
33 U.S.C. 1321(b)(7)(D)	CWA	\$100,000/\$3,000	\$110,000/\$3,300	\$130,000/\$4,300	\$140,000/\$4,300	\$150,000/\$5,300
33 U.S.C. 1414b(d)(1) <sup>1</sup>	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	\$600	\$660	\$760	\$860	\$860
33 U.S.C. 1415(a)	MPRSA	\$50,000/\$125,000	\$55,000/\$137,500	\$65,000/\$157,500	\$70,000/\$177,500	\$75,000/\$187,500
33 U.S.C. 1901 note (see 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO)	\$10,000/\$25,000	\$10,000/\$25,000 <sup>2</sup>	\$10,000/\$25,000	\$11,000/\$27,500	\$11,000/\$27,500
33 U.S.C. 1901 note (see 1409(a)(2)(B)).	CACSO	\$10,000/\$125,000	\$10,000/\$125,000	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$147,500
33 U.S.C. 1901 note (see 1409(b)(1)).	CACSO	\$25,000	\$25,000	\$25,000	\$27,500	\$27,500
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300g-3(g)(3)(A)	SDWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300g-3(g)(3)(B)	SDWA	\$5,000/\$25,000	\$5,000/\$25,000	\$6,000/\$27,500	\$7,000/\$32,500	\$7,000/\$32,500
42 U.S.C. 300g-3(g)(3)(C)	SDWA	\$25,000	\$25,000	\$27,500	\$32,500	\$32,500
42 U.S.C. 300h-2(b)(1)	SDWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300h-2(c)(1)	SDWA	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$157,500	\$16,000/\$177,500	\$16,000/\$187,500
42 U.S.C. 300h-2(c)(2)	SDWA	\$5,000/\$125,000	\$5,500/\$137,500	\$6,500/\$157,500	\$7,500/\$177,500	\$7,500/\$187,500
42 U.S.C. 300h-3(c)	SDWA	\$5,000/\$10,000	\$5,500/\$11,000	\$6,500/\$11,000	\$7,500/\$16,000	\$7,500/\$16,000
42 U.S.C. 300i(b)	SDWA	\$15,000	\$15,000	\$16,500	\$16,500	\$21,500
42 U.S.C. 300i-1(c)	SDWA	\$20,000/\$50,000	\$22,000/\$55,000 <sup>3</sup>	\$100,000/\$1,000,000	\$110,000/\$1,100,000	\$120,000/\$1,150,000
42 U.S.C. 300j(e)(2)	SDWA	\$2,500	\$2,750	\$2,750	\$3,750	\$3,750
42 U.S.C. 300j-4(c)	SDWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300j-6(b)(2)	SDWA	\$25,000	\$25,000	\$27,500	\$32,500	\$32,500
42 U.S.C. 300j-23(d)	SDWA	\$5,000/\$50,000	\$5,500/\$55,000	\$6,500/\$65,000	\$7,500/\$70,000	\$7,500/\$75,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972.	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6928(c)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6928(g)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6928(h)(2)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6934(e)	RCRA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
42 U.S.C. 6973(b)	RCRA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code Citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009 through December 6, 2013	Penalties effective after December 6, 2013
42 U.S.C. 6991e(a)(3)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6991e(d)(1)	RCRA	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 6991e(d)(2)	RCRA	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 7413(d)(1)	CAA	\$25,000/\$200,000	\$27,500/\$220,000	\$32,500/\$270,000	\$37,500/\$295,000	\$37,500/\$320,000
42 U.S.C. 7413(d)(3)	CAA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
42 U.S.C. 7524(a)	CAA	\$2,500/\$25,000	\$2,750/\$27,500	\$2,750/\$32,500	\$3,750/\$37,500	\$3,750/\$37,500
42 U.S.C. 7524(c)(1)	CAA	\$200,000	\$220,000	\$270,000	\$295,000	\$320,000
42 U.S.C. 7545(d)(1)	CAA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9606(b)(1)	CERCLA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9609(a)(1)	CERCLA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9609(b)	CERCLA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 9609(c)	CERCLA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 11045(b)(1)(A) <sup>4</sup>	EPCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 11045(b)(2)	EPCRA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 11045(b)(3)	EPCRA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 11045(c)(1)	EPCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 11045(c)(2)	EPCRA	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 11045(d)(1)	EPCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 14304(a)(1)	MERCURY CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT)	\$10,000	\$10,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 14304(g)	BATTERY ACT	\$10,000	\$10,000	\$11,000	\$16,000	\$16,000

<sup>1</sup> Note that 33 U.S.C. 1414b (d)(1)(B) contains additional penalty escalation provisions that must be applied to the penalty amounts set forth in this Table. The amounts set forth in this Table reflect an inflation adjustment to the calendar year 1992 penalty amount expressed in section 104B(d)(1)(A), which is used to calculate the applicable penalty amount under MPRSA section 104B(d)(1)(B) for violations that occur in any subsequent calendar year.

<sup>2</sup> CACSO was passed on December 21, 2000 as part of Title XIV of the Consolidated Appropriations Act of 2001, Pub. L. 106-554, 33 U.S.C. 1901 note.

<sup>3</sup> The original statutory penalty amounts of \$20,000 and \$50,000 under section 1432(c) of the SDWA, 42 U.S.C. 300i-1(c), were subsequently increased by Congress pursuant to section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law No. 107-188 (June 12, 2002), to \$100,000 and \$1,000,000, respectively. EPA did not adjust these new penalty amounts in its 2004 Civil Monetary Penalty Inflation Adjustment Rule ("2004 Rule"), 69 FR 7121 (February 13, 2004), because they had gone into effect less than two years prior to the 2004 Rule.

<sup>4</sup> Consistent with how the EPA's other penalty authorities are displayed under Part 19.4, this Table now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (i.e., 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)).

[FR Doc. 2013-26648 Filed 11-5-13; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2010-0335; FRL-9902-50-Region 6]

**Approval and Promulgation of Implementation Plans; Texas; Procedures for Stringency Determinations and Minor Permit Revisions for Federal Operating Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On September 10, 2013, EPA published a direct final rule approving portions of three revisions to the Texas

State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if we received relevant, adverse comments by October 10, 2013, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received timely adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval and will proceed to respond to all relevant, adverse comments in a subsequent action based on the parallel proposal published on September 10, 2013. As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on September 10, 2013 (78 FR 55221), is withdrawn as of November 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 28, 2013.

Ron Curry,

Regional Administrator, Region 6.

Accordingly, the amendments to 40 CFR 52.2270 published in the **Federal Register** on September 10, 2013 (78 FR

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019am10:20

**BOTTOS CONSTRUCTION**  
Record Family Tree Report  
Return to Search Results

**BOTTOS CONSTRUCTION**  
1005 SUSSEX BLVD  
BROOMALL PA 19008-4011  
(610) 804-6520

**Location of Incorporation:** PENNSYLVANIA  
**Primary SIC Code:** 152144  
**DUNS:** 01-119-8352  
**Website Address:** www.bottosconstruction.com  
**Number of Employees:** 1 TO 4  
**Filing Date:** 4/29/2015  
**Filing Number:** 4351467  
**Officers/Directors/Contacts:** CONSTANTINOS BOTTOS, PRINCIPAL  
DINO BOTTOS, PRESIDENT  
DINO BOTTOS, OWNER



**QUICK ANALYSIS FLAGS**  
OFAC: No  
Global Sanctions: No  
Bankruptcy Debtor or Creditor: No  
MSB: No  
Other Listings Linked to Business: Yes  
Phone:

**AFFIDAVIT OF BOTTOS CONSTRUCTION, INC.**

Bottos Construction, Inc. was cited by the EPA for violations of the Toxic Substances Control Act / RRP on or about February 2, 2018, pertaining to the following properties:

- a. 822 S. 5th Street, Philadelphia, Pennsylvania (2016);
- b. 815 N. Woodbine Ave, Narberth, Pennsylvania (2016);
- c. 1602 Bainbridge Street, Philadelphia, Pennsylvania (2106); and
- d. 2023-25 Rittenhouse Square, Philadelphia, Pennsylvania (2015).

At no time during the construction or renovation of these properties were there any children under the age of eighteen (18) present. At no time during the construction or renovation of these properties were any children under the age of eighteen (18) exposed to any toxic substances as defined by the Act.

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019AM10:20

Under penalty of perjury, I, Dino Bottos, an authorized representative of Bottos Construction, Inc. hereby DECLARES and CERTIFIES that the foregoing information is true, correct and complete to the best of my knowledge and belief. I understand that providing false, fictitious, or fraudulent statements or representations may subject me to criminal penalties under 18 U.S.C. § 1001.

  
Dino Bottos  
Bottos Construction, Inc.

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019am10:20

<b>Count 1: Regulatory Requirement: 745.81(a)(2)(ii)</b>	
<i>Extent Level: Minor</i> (ERP, Appendix A, page A-3, fn 49 (i.e., <4 employees))	
<i>Circumstance Level: 3a</i> (ERP, Appendix A, page A-3)	
<i>(Unadjusted) Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$4,500
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	<b>\$4,667</b>
<b>Counts 2-5: Regulatory Requirement: 745.84(a)(1)</b>	
<i>Extent Level: Minor</i> (ERP, page 17 (i.e., no individuals younger than 18 residing))	
<i>Circumstance Level: 4b</i> (ERP, Appendix A, page A-2)	
<i>(Unadjusted) Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$580
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	
822 S. 5th Street, Philadelphia, Pennsylvania	\$601
815 N. Woodbine Ave, Narberth, Pennsylvania	\$601
1602 Bainbridge Street, Philadelphia, Pennsylvania	\$601
<i>On or before 11/2/2015 Inflation Multiplier</i> (2013 Inflation Adjustment Policy, page 6)	1.0487
<i>Inflation Adjusted proposed penalty:</i>	
2023-25 Rittenhouse Square, Philadelphia, Pennsylvania	\$608
<b>Counts 6 - 9: Regulatory Requirement: 745.86(a)</b>	
<i>Extent Level: Minor</i> (ERP, page 17 (i.e., no individuals younger than 18 residing))	
<i>Circumstance Level: 6a</i> (ERP, Appendix A, page A-3)	
<i>(Unadjusted) Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$600
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	
822 S. 5th Street, Philadelphia, Pennsylvania	\$622
815 N. Woodbine Ave, Narberth, Pennsylvania	\$622
1602 Bainbridge Street, Philadelphia, Pennsylvania	\$622
<i>On or before 11/2/2015 Inflation Multiplier</i> (2013 Inflation Adjustment Policy, page 6)	1.0487
<i>Inflation Adjusted proposed penalty:</i>	
2023-25 Rittenhouse Square, Philadelphia, Pennsylvania	\$629
 <b>TOTAL PROPOSED PENALTY</b>	 <b>\$9,573</b>

UNITED STATES  
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ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN RE: ) DOCKET NO. TSCA-03-2019-0058  
)  
Bottos Construction, Inc. )  
1005 Sussex Boulevard )  
Broomall, PA 19008 )  
)  
**Respondent,** )  
)  
822 S. 5th Street, Philadelphia, PA )  
815 N. Woodbine Ave, Narberth, PA )  
1602 Bainbridge Street, Philadelphia, PA )  
2023-25 Rittenhouse Square, Philadelphia, PA )  
)  
**Target Housing.** )

U.S. EPA-REGION 3-RHC  
FILED-17SEP2019AM10:20

CERTIFICATE OF SERVICE

I hereby certify that a copy of the MOTION FOR DEFAULT ORDER filed with the EPA Region III Regional Hearing Clerk on September 17, 2019 in the above-referenced matter, Docket No. TSCA-03-2019-0058, was sent today to the following recipients:

Via hand delivery: Joseph J. Lisa, Regional Judicial Officer/Presiding Officer  
U.S. Environmental Protection Agency, Region III (3RC00)  
1650 Arch Street  
Philadelphia, PA 19103

Via UPS Overnight: Constantinos Bottos, President                      Robert S. Clewell  
Bottos Construction, Inc.    Clewell Law Firm  
1005 Sussex Boulevard    1617 JFK Blvd.  
Broomall, PA 19008    Philadelphia, PA 19103  
(Respondent)    (Respondent's Counsel)

9/17/19  
Date

  
Jennifer M. Abramson (3RC50), Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street, Philadelphia, PA 19103  
(215) 814-2066