

# Exhibit CX74



**REGION 4**

ATLANTA, GA 30303

MEMORANDUM

**SUBJECT:** Penalty Justification  
Bluestone Coke, LLC  
3500 35<sup>th</sup> Avenue North  
Birmingham, Alabama 35207

**FROM:** Brooke York  
Environmental Engineer  
RCRA Enforcement Section

**BROOKE  
YORK**

Digitally signed by  
BROOKE YORK  
Date: 2024.09.27  
13:17:50 -04'00'

Joan Redleaf Durbin  
Senior Attorney

**JOAN  
DURBIN**

Digitally signed by  
JOAN DURBIN  
Date: 2024.09.27  
13:08:34 -04'00'

**THRU:** Araceli Chavez, Chief for  
RCRA Enforcement Section

**BROOKE YORK**

Digitally signed by BROOKE  
YORK  
Date: 2024.09.27 13:18:19  
-04'00'

Colleen Michuda, Chief for  
RCRA/FIFRA/TSCA Law Office

**JOAN  
DURBIN**

Digitally signed by JOAN  
DURBIN  
Date: 2024.09.27 13:09:06  
-04'00'

**TO:** Alan A. Annicella, Acting Chief  
Chemical Safety and Land Enforcement Branch

**I. Purpose**

The purpose of this memorandum is to obtain approval for the proposed penalty to be assessed against Bluestone Coke, LLC (Bluestone) for its violations of the 2016 Administrative Order on Consent, Docket Number RCRA-04-2016-4250 (the 2016 Order), issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). The 2016 Order was issued on August 11, 2016, to address corrective action requirements at Bluestone’s facility located at 3500 35<sup>th</sup> Avenue North, Birmingham, Alabama (the Facility).

**II. Case Background**

On September 17, 2012, pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), the EPA issued an Administrative Order on Consent (Docket No. RCRA-04-2012-4255) to Walter Coke, Inc. (the 2012 Order), an owner and operator of the Facility prior to Respondent. The 2012 Order became effective September 24, 2012. The 2012 Order required a Corrective Measures Study (CMS) to identify and evaluate alternatives for corrective measures (also referred to as remedies) to address releases of

hazardous waste from solid waste management units (which the Facility grouped into solid waste management areas (SMAs) to facilitate cleanup), to implement the approved remedies, to perform any other activities necessary, including interim measures, and to implement and maintain appropriate institutional controls. The 2012 Order also required cost estimates to be completed and financial assurance to be demonstrated once remedies were selected. The cost estimates and financial assurance were required to be updated annually thereafter. The first two SMAs that had approved remedies and therefore required a demonstration of financial assurance under the Order are SMA 5 (Former Pig Iron Foundry) and SMA 4 (Former Chemical Plant).

In February of 2016, Respondent, under its prior name, ERP Compliant Coke, LLC, acquired the Facility. The 2012 Order was thereafter amended and reissued as the 2016 Order to reflect this change in ownership and expressly state that Respondent is subject to its requirements.

On July 11, 2019, the EPA approved the Corrective Measures Implementation Work Plan for the remedy for SMA 5 (Former Pig Iron Foundry) which included a cost estimate for corrective measures in the amount of \$121,294.80. Financial assurance was required for SMA 5 on or before September 9, 2019.

On December 18, 2019, the EPA approved the Corrective Measures Implementation Work Plan for the remedy for SMA 4 (Former Chemical Plant) which included a cost estimate for corrective measures in the amount of \$4,043,516. Financial assurance was required for SMA 4 on or before February 16, 2020.

On March 2, 2021, Bluestone Resources, Inc., on behalf of Respondent, submitted a Financial Test and Corporate Guarantee (Bluestone Corporate Guarantee) providing financial assurance coverage for SMAs 4 and 5 based on information from Bluestone Resources, Inc.'s fiscal year 2019 financial statements. The Bluestone Corporate Guarantee promised that Bluestone Resources, Inc. will fulfill the requirements of the 2016 Order in the event that the Respondent is unable to. This submittal demonstrated sufficient financial assurance coverage for SMA 5 and SMA 4 only until March 30, 2021, at which time the annual re-submission was due.

Beginning April 1, 2021, the EPA began notifying the Respondent and Bluestone Resources, Inc. of their obligations and failure to submit adequate financial assurance, including numerous emails, a Notice of Violation, and a formal letter of notification of accrual of stipulated penalties. These correspondences were mostly ignored. The EPA has continued its efforts to obtain financial assurance. However, no acceptable financial assurance has since been provided.

On April 10, 2024, the EPA filed a unilateral Complaint, Compliance Order and Opportunity to Request a Hearing pursuant to RCRA Section 3008(a) and (h) (42 U.S.C. §6928(a) and (h)) (Complaint), alleging Respondent violated the 2016 Order by failing to demonstrate financial assurance for the remedies for SMAs 4 and 5, and for failing to update the cost estimates for SMAs 4 and 5 for inflation. In its Complaint, the EPA sought a penalty up to the statutory maximum authorized by Section 3008(h) of RCRA, which is, adjusted for inflation, \$73,045 per day of violation for each violation.

**III. Penalty**

In accordance with the June 23, 2003, Revisions to the 1990 RCRA Civil Penalty Policy, the EPA calculated an initial penalty of **\$13,696,087** as detailed in the attached Penalty Calculation Worksheets and Penalty Calculation Narratives.

**PENALTY CALCULATION SUMMARY**

<b>Count Number</b>	<b>Alleged Violation</b>	<b>Gravity Penalty Calculation</b>	<b>Multiday Penalty Calculation</b>	<b>Economic Benefit</b>
1	Failure to Demonstrate Financial Assurance	\$52,752	\$13,440,700	\$44,379
2	Failure to Update Cost Estimates	\$158,256	\$0	--
	<b>subtotals</b>	<b>\$211,008</b>	<b>\$13,440,700</b>	<b>\$44,379</b>
	<b>TOTAL</b>		<b>\$13,696,087</b>	

**IV. Concurrence**

**ALAN**

**ANNICELLA**

Digitally signed by ALAN ANNICELLA  
Date: 2024.09.27 13:28:51 -04'00'

Alan A. Annicella, Acting Chief  
Chemical Safety and Land Enforcement Branch

**ATTACHMENT:**

PENALTY CALCULATION WORKSHEETS &  
PENALTY CALCULATION NARRATIVES

**PENALTY CALCULATION WORKSHEET**

September 27, 2024

COUNT #1

**Regulation(s) violated:      Failure to demonstrate financial assurance in accordance with the Order.**

1.	Gravity-based penalty from matrix	\$52,752
	(a) Potential for harm	MAJOR
	(b) Extent of deviation	MAJOR
	(c) Instances of Violation	1
	Multiple line 1 and 1(c)	\$52,752
2.	Select an amount from appropriate multi-day matrix cell	\$10,550
3.	Number of days of violation used for multi-day/multiple penalty	1,274*
	Multiply line 2 by line 3	\$13,440,700
4.	Add line 1 and line 3	\$13,493,452
5.	Percent decrease for good faith	0%
6.	Percent increase for willfulness/negligence	0%
7.	Percent increase for history of noncompliance	0%
8.	Total lines 5 through 7	0%
9.	Multiply line 4 by line 8	\$0
10.	Calculate economic benefit	\$44,379
11.	Add lines 4, 9 and 10 (proposed penalty amount)	\$13,537,831

\* Respondent has been in violation for a total of 1,275 days, however, the first day of violation is accounted for in the gravity-based penalty in line 1(c).

**PENALTY CALCULATION WORKSHEET NARRATIVE**

September 27, 2024

COUNT #1

---

**Regulation(s) violated:**        **Failure to demonstrate financial assurance in accordance with the 2016 Order.**

**Violation Narrative:**

In July of 2019, the EPA approved the Corrective Measures Implementation Work Plan for SMA 5, and in December of 2019, it approved the Corrective Measures Implementation Work Plans for SMA 4. The combined Estimated Cost of Corrective Measures Work for SMA 4 and SMA 5 was determined to be \$4,164,811.21 at that time.

Since April 1, 2021, neither Respondent nor its parent company, Bluestone Resources, Inc., has provided the documents required by Paragraph 2 of Attachment C of the 2016 Order to establish financial assurance for these estimated costs by using a corporate guarantee. As a result, Respondent’s purported corporate guarantee is insufficient to act as the mechanism for assuring financial responsibility for completing corrective action at the Facility.

The EPA notified Respondent with emails throughout March, April, and May of 2021, and with a Notice of Violation on June 28, 2021 (the NOV), that neither Respondent nor its parent company had met the financial test criteria as of April 1, 2021. In the NOV, Respondent was given until July 28, 2021, to establish financial assurance by alternate means. As of September 27, 2024, Respondent has yet to do so.

Therefore, Respondent has violated Paragraph 34 and Attachment C of the 2016 Order by failing to demonstrate financial assurance for completing the approved remedies at the estimated cost of \$4,164,811.21.

**1. Gravity-Based Penalty:**

**a. Potential for harm: MAJOR**

Potential for harm is determined by considering (1) the risk of exposure based on the likelihood of exposure to hazardous waste and/or hazardous constituents and the degree of such likelihood of exposure by non-compliance; and/or (2) the adverse effect that non-compliance has on the statutory or regulatory purposes or procedures for implementing the RCRA program. The potential for harm analysis must include an evaluation of environmental receptors and regulatory impact. EPA commonly refers to these factors as “harm to human health and the environment” and “harm to the RCRA program.” Each element of the potential for harm analysis is discussed in the appropriate subsection below. ***Based on risk of exposure to hazardous waste and the harm to the RCRA regulatory program, the potential for harm in this case has been determined to be major.***

**i. Probability/Risk of Exposure: Major**

The Order requires financial assurance to ensure funds are available for corrective action. Respondent’s failure to demonstrate financial assurance poses

a substantial risk of exposure to humans and other environmental receptors because it prevents funds from being available to perform corrective action. This failure substantially increases the likelihood that the work will either not be completed at all or will not be completed in a timely fashion, at which point the Facility could potentially become another abandoned hazardous waste site thereby increasing the risk that receptors may be exposed to hazardous waste or hazardous waste constituents.

ii. **Harm to the RCRA Regulatory Program: Major**

Respondent's actions have had a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA Program. The overall goal of the RCRA Program is to ensure that hazardous wastes are not managed, disposed, or otherwise handled in a way that would pose a threat to human health or the environment. In this case, Respondent's failure to demonstrate financial assurance substantially increases the likelihood that the required corrective measures will either not be completed at all or will not be completed in a timely fashion, thereby increasing the risk of exposure or further release of the hazardous wastes involved and of resulting harm to human health and the environment.

b. **Extent of deviation: MAJOR:**

By failing to demonstrate financial assurance at all, Respondent deviates from the financial assurance requirements of the 2016 Order to such an extent that most (or important) aspects of the requirements are not met, resulting in substantial noncompliance. ***As a result, the extent of deviation from the requirement is major.***

c. **Summary of the gravity-based penalty: MAJOR - MAJOR**

The gravity-based cell matrix for major - major violations ranges from \$42,202 to \$52,752. The high point of this range was selected due to the seriousness of the violation and to account for Respondent's lack of good faith efforts to comply. This results in a gravity-based penalty of **\$52,752**.

2. **Multi-day/Multiple Penalties:**

Multi-day penalties are mandatory, for all instances of violations with major - major gravity-based designations. In this case, Respondent initially failed to provide financial assurance on April 1, 2021, and it continues to be in violation of this requirement. Therefore, as of September 27, 2024, Respondent has been in violation of this requirement for 1,275 days.

3. **Adjustment Factors:**

a. **Good faith/lack of good faith efforts: 0%**

Respondent has not made a good faith effort to comply with the requirement since April 1, 2021.

- b. Willfulness/negligence** 0%  
At this time, the EPA has no knowledge or relevant information to make an adjustment for willfulness or negligence.
- c. History of non-compliance:** 0%  
At this time, the EPA has no knowledge or relevant information to make an adjustment for history of non-compliance.
- d. Other unique factors:** 0%  
At this time, the EPA has no knowledge or relevant information to make an adjustment.
- e. Subtotal percentage of adjustments:** 0%

**4. Economic Benefit: \$44,379.00**

Economic benefit represents the financial gains that Respondent realized by delaying and/or avoiding expenditures through its noncompliance. In this case, Respondent has failed to provide the EPA with a valid financial assurance instrument since April 1, 2021, and has realized an economic benefit by failing to satisfy this financial obligation.

The EPA has used BEN Version 2024.0.0. (April 2024), software developed under the direction of the EPA’s Office of Enforcement and Compliance Assurance, which is available for download at <https://www.epa.gov/enforcement/penalty-and-financial-models>, to calculate the economic benefit in this case. The detailed output from BEN for this case is appended hereto as **Appendix A**.

In the absence of available actual costs, the EPA has taken a very conservative approach in making the necessary assumptions to calculate the economic benefit in this case. The calculation requires an estimation of the cost to obtain an acceptable financial assurance mechanism. To make this estimate, the EPA assumed that Respondent may have been able to provide a corporate guarantee from Respondent’s parent company up until April 1, 2022—an assumption that is based on the EPA’s review of the unaudited financial documents that were recently provided to the EPA by Respondent during settlement discussions. Respondent did not provide this documentation until August of 2024, so at the time the financial assurance was due, Respondent failed to show that its parent company potentially could have passed the financial test. For the limited purpose of this economic benefit calculation, however, the EPA has assumed that Respondent *could* have met the requirements by using a corporate guarantee until April 1, 2022, and that therefore only de minimis additional costs would have been incurred during that time period.

For the time period from April 1, 2022, until the present day, however, the financial documents Respondent recently submitted do not provide sufficient information for the EPA to determine whether Respondent could have used a corporate guarantee even if the appropriate documentation had been timely provided. The EPA has therefore assumed that in order to demonstrate financial assurance during this period, Respondent would have had

to secure a third-party financial assurance instrument (such as a trust fund, insurance policy, surety bond, or letter of credit) pursuant to the Paragraph 1.d of Attachment C to the 2016 Order. It is impossible for the EPA to know which instrument(s) would have been available and most affordable for the Respondent in 2022, so for the purposes of calculating economic benefit, the EPA has assumed that a letter of credit, which is often the lowest cost alternative, would have been used.

To calculate the cost of obtaining a letter of credit in this case, the EPA used the RCRA Subtitle C Financial Assurance Instrument Fact Sheet: Letter of Credit, which is available at [https://www.epa.gov/sites/default/files/2015-08/documents/loc-fs\\_0.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/loc-fs_0.pdf), and which has been appended hereto as **Appendix B**. This Fact Sheet states that to secure a letter of credit:

. . .the Company likely will have to pay the financial institution a fee equal to a percentage of the value of the [letter of credit]. This fee may range from 0.5 to 1.0 percent, depending on the Company's credit worthiness (or financial solvency). The better the Company's overall credit worthiness, the lower the fee the financial institution is likely to charge the Company. The financial institution often will also require the Company to set aside cash and/or non-cash collateral to secure the [letter of credit]. In general, a financially healthy company will pay less to post a [letter of credit] than a company facing possible financial distress.

On April 1, 2022, Respondent would have needed \$4,366,012 in financial assurance coverage for SMA 4 and SMA 5 (adjusting approved cost estimates for inflation based on the Bureau of Economic Analysis Table previously submitted by Complainant as Exhibit CX46). The EPA's Financial Assurance Specialist, Mrs. Corey Hendrix, believes that, based on her experience, the listed range in the Fact Sheet from 2015 is lower than that which would be available in the marketplace today. Therefore, the EPA has assumed that a conservative estimate of the cost of the establishment and maintenance of the letter of credit would be at least 1.0% of the total coverage, or \$43,660.

Pursuant to Paragraph 3 of Attachment C to the 2016 Order, when using a letter of credit for financial assurance coverage, Respondent was required to simultaneously establish, and thereafter maintain, a standby trust fund meeting the requirements of 40 C.F.R. § 264.151 into which funds from the letter of credit could be deposited. For the purposes of this specific economic benefit calculation, the EPA has assumed, based on the experience of Mrs. Hendrix, that the costs associated with the establishment and maintenance of a standby trust fund would be approximately \$3,000 per year. This estimate represents what is believed to be the lowest likely cost of such a standby trust agreement for financial assurance purposes.

Using the assumptions outlined above, the economic benefit Respondent gained by failing to obtain financial assurance is \$44,379.

5. **Total Penalty for Count #1: \$13,537,831**

## **APPENDIX A:**

**Detailed Output From**

**BEN Version 2024.0.0. (April 2024)**

**Run Name = Count #1**

<u>Present Values as of Noncompliance Date (NCD).</u>	<u>01-Apr-2021</u>
A) On-Time Capital & One-Time Costs	\$26,750
B) Delayed Capital & One-Time Costs	\$0
C) Avoided Annually Recurring Costs	\$6,624
D) Initial Economic Benefit (A-B+C)	\$33,375
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
	<b><u>27-Sep-2024</u></b>
	<b><u>\$44,379</u></b>

*C-Corporation w/ AL tax rates*

Discount/Compound Rate	8.5%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	27-Sep-2024

Capital Investment:

Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)

One-Time, Nondepreciable Expenditure:

	<b>Avoided</b>
Cost Estimate	\$43,660
Cost Estimate Date	01-Apr-2022
Cost Index for Inflation	PCI
Tax Deductible?	y

Annually Recurring Costs:

Cost Estimate	\$3,000
Cost Estimate Date	20-Sep-2024
Cost Index for Inflation	PCI

User-Customized Specific Cost Estimates:

	<u>N/A</u>
On-Time Capital Investment	
Delayed Capital Investment	
On-Time Nondepreciable Expenditure	
<u>Delayed Nondepreciable Expenditure</u>	

**Discount/Compound Rate Calculation**

- Notes: (1) Corporate bond yields averaged across all industries (average of Aaa & Baa); Federal Reserve Statistical Release H.15.  
 (2) Combined state/federal marginal tax rates: federal+(state (1-federal)), Federation of Tax Administrators.  
 (3) Calculated as: (1) \* (100%-(2)). [Adjusts for tax-deductibility of interest payments.]  
 (4) Average corporate debt weight; Standard & Poor's Analysts' Handbook then Kroll U.S. Industry Benchmarking.  
 (5) Federal Reserve Statistical Release H.15. [Used as a proxy for the risk-free rate in the Capital Asset Pricing Model (CAPM)].  
 (6) Beta measures risk relative to overall stock market, with a value of 1.00 therefore setting risk at overall market.  
 (7) Differences of average returns between stock market vs long-term Treasuries, 1926-PriorYear; Ibbotson then Kroll.  
 (8) Calculated as (6) \* (7). [Also equal to (7), since (6) is equal to 1.00 for a company of average risk.]  
 (9) Calculated as (5) + (8). [Reflects risk-free rate of return plus the company risk premium.]  
 (10) Calculated as 100% - (4). [Reflects: total financing - debt = equity financing.]  
 (11) Calculated as (3) \* (4) + (9) \* (10). [Reflects: (debt cost x debt weight) + (equity cost x equity weight).]

	average from: <b>2021</b> to: <b>2023</b> = <u><i>Final rate:</i></u> <b>8.5%</b>										
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Cost of Debt	Tax Rate	After-Tax Debt Cost	Debt Weight	Long-Term Treasury Notes	Beta	Long-Horizon Risk Prem	Company Risk Premium	Equity Cost	Equity Weight	Discount/Compound Rate
1987	9.98%	37.3%	6.26%	42.4%	8.49%	1.00	7.4%	7.4%	15.9%	57.6%	
1988	10.27%	37.3%	6.44%	46.3%	8.91%	1.00	7.2%	7.2%	16.1%	53.7%	
1989	9.72%	37.3%	6.09%	42.7%	8.47%	1.00	7.2%	7.2%	15.7%	57.3%	
1990	9.84%	37.3%	6.17%	46.0%	8.58%	1.00	7.5%	7.5%	16.1%	54.0%	
1991	9.29%	37.3%	5.82%	41.1%	8.00%	1.00	7.2%	7.2%	15.2%	58.9%	
1992	8.56%	37.3%	5.37%	49.3%	7.34%	1.00	7.4%	7.4%	14.7%	50.7%	
1993	7.58%	38.3%	4.68%	44.0%	6.29%	1.00	7.3%	7.3%	13.6%	56.0%	
1994	8.29%	38.3%	5.11%	48.0%	7.49%	1.00	7.2%	7.2%	14.7%	52.0%	
1995	7.90%	38.3%	4.87%	41.3%	6.95%	1.00	7.0%	7.0%	14.0%	58.7%	
1996	7.71%	38.3%	4.76%	37.0%	6.83%	1.00	7.4%	7.4%	14.2%	63.0%	
1997	7.56%	38.3%	4.66%	32.1%	6.69%	1.00	7.5%	7.5%	14.2%	67.9%	
1998	6.88%	38.3%	4.24%	27.8%	5.72%	1.00	7.8%	7.8%	13.5%	72.2%	
1999	7.46%	38.3%	4.60%	26.1%	6.20%	1.00	8.0%	8.0%	14.2%	73.9%	
2000	7.99%	38.3%	4.93%	29.3%	6.23%	1.00	8.1%	8.1%	14.3%	70.7%	
2001	7.52%	38.3%	4.64%	33.5%	5.63%	1.00	7.8%	7.8%	13.4%	66.5%	
2002	7.15%	39.2%	4.35%	41.3%	5.43%	1.00	7.4%	7.4%	12.8%	58.7%	
2003	6.22%	39.2%	3.78%	36.8%	4.96%	1.00	7.0%	7.0%	12.0%	63.2%	
2004	6.01%	39.2%	3.65%	37.3%	5.04%	1.00	7.2%	7.2%	12.2%	62.7%	

2005	5.65%	39.2%	3.44%	35.9%	4.64%	1.00	7.2%	7.2%	11.8%	64.1%	
2006	6.04%	39.2%	3.67%	32.8%	5.00%	1.00	7.1%	7.1%	12.1%	67.2%	
2007	6.02%	39.2%	3.66%	33.7%	4.91%	1.00	7.1%	7.1%	12.0%	66.3%	
2008	6.54%	39.2%	3.98%	45.0%	4.36%	1.00	7.1%	7.1%	11.5%	55.0%	
2009	6.31%	39.2%	3.84%	38.6%	4.11%	1.00	6.5%	6.5%	10.6%	61.4%	
2010	5.49%	39.2%	3.34%	36.7%	4.03%	1.00	6.7%	6.7%	10.7%	63.3%	
2011	5.15%	39.2%	3.13%	37.0%	3.62%	1.00	6.7%	6.7%	10.3%	63.0%	
2012	4.31%	39.2%	2.62%	35.9%	2.54%	1.00	6.6%	6.6%	9.1%	64.1%	
2013	4.67%	39.2%	2.84%	30.9%	3.12%	1.00	6.7%	6.7%	9.8%	69.1%	
2014	4.51%	39.2%	2.74%	30.9%	3.07%	1.00	7.0%	7.0%	10.1%	69.1%	
2015	4.45%	39.2%	2.71%	32.2%	2.55%	1.00	7.0%	7.0%	9.6%	67.8%	
2016	4.20%	39.2%	2.55%	32.0%	2.22%	1.00	6.9%	6.9%	9.1%	68.0%	
2017	4.09%	39.2%	2.49%	29.6%	2.65%	1.00	6.9%	6.9%	9.6%	70.4%	
2018	4.37%	26.1%	3.23%	29.9%	3.02%	1.00	7.1%	7.1%	10.1%	70.1%	
2019	3.89%	26.1%	2.87%	26.7%	2.40%	1.00	6.9%	6.9%	9.3%	73.3%	
2020	3.04%	26.1%	2.25%	29.8%	1.35%	1.00	7.2%	7.2%	8.6%	70.2%	
2021	3.05%	26.1%	2.25%	26.0%	1.98%	1.00	7.3%	7.3%	9.3%	74.0%	<b>7.5%</b>
2022	4.57%	26.1%	3.38%	29.7%	3.30%	1.00	7.5%	7.5%	10.8%	70.3%	<b>8.6%</b>
2023	5.34%	26.1%	3.95%	26.8%	4.26%	1.00	7.2%	7.2%	11.5%	73.2%	<b>9.5%</b>

**Calculations for Specific Cost Estimates**

---

Date:	<u>On-Time</u> 01-Apr-2021	<u>Delayed</u> 27-Sep-2024
<u>Capital Investment:</u>		
Original Cost Estimate	\$0	N/A
	÷	÷
<i>PCI Value as of Cost Estimate Date, 01-Jan-2017</i>	N/A	N/A
	x	x
<i>PCI Value as of Specific Estimate Date</i>	N/A	N/A
	=	=
<b>Specific Cost Estimate,</b> reflecting implicit annualized inflation rate of:	<b>\$0</b> N/A	<b>N/A</b> N/A
 <u>One-Time, Nondepreciable Expenditure:</u>		
Original Cost Estimate	\$43,660	N/A
	÷	÷
<i>PCI Value as of Cost Estimate Date, 01-Apr-2022</i>	816.300	N/A
	x	x
<i>PCI Value as of Specific Estimate Date</i>	677.100	N/A
	=	=
<b>Specific Cost Estimate,</b> reflecting implicit annualized inflation rate of:	<b>\$36,215</b> 20.6%	<b>N/A</b> N/A

<b>A) On-Time Capital &amp; One-Time Costs</b>	01-Apr-2021	01-Oct-2021	01-Oct-2022	01-Oct-2023	01-Oct-2024	01-Oct-2025	01-Oct-2026	01-Oct-2027	01-Oct-2028
One-Time, Nondepreciable Expenditure	(36,215)								
Capital Investment- Initial Installation	0								
Depreciation- Federal	0	0	0	0	0	0	0	0	0
Marginal Tax Rate (MTR)- Federal	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%
Tax Liability Offset- Federal	7,605	0	0	0	0	0	0	0	0
Depreciation- State (AL)	0	0	0	0	0	0	0	0	0
MTR- State (AL), adj. for fed. deductibility	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Tax Liability Offset- State (AL)	1,860	0	0	0	0	0	0	0	0
Net After-Tax Cash Flow	(26,750)	0	0	0	0	0	0	0	0
PV Factor: Adjusts Cash Flow to NCD	1.0000	0.9599	0.8847	0.8154	0.7514	0.6925	0.6383	0.5882	0.5420
<b>PV Cash Flow as of NCD</b>	<b>(26,750)</b>	<b>0</b>							
Federal Utilized Depreciation Schedule:		100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
State Utilized Depreciation Schedule:		100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

<u>Imputed Lease Cost for Interim Period When On-Time (But Not Delayed) Equipment Would Need Replacement</u>	Start Date:	End Date:	Years:	Capital Cost:	Annual Lease:		
<i>Applicable Only w/ Default Values of Delayed (Not Avoided) Capital and Considered Future Replacement</i>	01-Apr-2036	27-Sep-2039	3.5	0	0		
Total Imputed Lease Cost:	0	x	MTR- Federal/State Combined:	26.1%	=	Net After-Tax Cash Flow:	0
PV Factor: Adjusts Cash Flow to NCD:	0.2549						
<u>PV Cash Flow as of NCD: 0</u>		+	<u>Initial Install. NPV (see above): (26,750)</u>		=	<u>On-Time Total NPV, Install+Lease: (26,750)</u>	

<b>B) Delayed Capital &amp; One-Time Costs</b>	27-Sep-2024	27-Mar-2025	27-Mar-2026	27-Mar-2027	27-Mar-2028	27-Mar-2029	27-Mar-2030	27-Mar-2031	27-Mar-2032
One-Time, Nondepreciable Expenditure	0								
Capital Investment	0								
Depreciation- Federal	0	0	0	0	0	0	0	0	0
Marginal Tax Rate (MTR)- Federal	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%
Tax Liability Offset- Federal	0	0	0	0	0	0	0	0	0
Depreciation- State (AL)	0	0	0	0	0	0	0	0	0
MTR- State (AL), adj. for fed. deductibility	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Tax Liability Offset- State (AL)	0	0	0	0	0	0	0	0	0
Net After-Tax Cash Flow	0	0	0	0	0	0	0	0	0
PV Factor: Adjusts Cash Flow to NCD	0.7520	0.7222	0.6656	0.6135	0.5653	0.5210	0.4802	0.4426	0.4078
<b>PV Cash Flow as of NCD</b>	<b>0</b>								
Federal Utilized Depreciation Schedule:		65.72%	9.80%	7.00%	5.00%	3.57%	3.57%	3.57%	1.78%
State Utilized Depreciation Schedule:		65.72%	9.80%	7.00%	5.00%	3.57%	3.57%	3.57%	1.78%

PV Cash Flow as of NCD: 0

C) Avoided Annually Recurring Costs

*PCI value as of cost estimate date= 807.000*

	<i>PCI mid-point value:</i>	735.200	829.800	798.700	799.800
Period of Avoided Annual Costs; From:	01-Apr-2021	01-Jan-2022	01-Jan-2023	01-Jan-2024	
To:	31-Dec-2021	31-Dec-2022	31-Dec-2023	27-Sep-2024	
Annual Costs Avoided	(2,059)	(3,085)	(2,969)	(2,208)	
Marginal Tax Rate	26.1%	26.1%	26.1%	26.1%	
Net After-Tax Cash Flow	(1,522)	(2,280)	(2,194)	(1,631)	
PV Factor: Adjusts Cash Flow to NCD	0.9698	0.9029	0.8322	0.7751	
PV Cash Flow as of NCD	(1,476)	(2,058)	(1,826)	(1,264)	

NPV of Avoided Annual Costs as of NCD: (6,624)

## **APPENDIX B:**

### **RCRA Subtitle C Financial Assurance Instrument Fact Sheet:**

#### **Letter of Credit**



# RCRA Subtitle C Financial Assurance Instrument Fact Sheet

## LETTER OF CREDIT

**Instrument Summary:** A Letter of Credit (LC) is a document issued by a financial institution (e.g., a bank) that guarantees the payment of a customer's obligations up to a stated amount for a specified period of time.

For purposes of financial assurance, the owner/operator of a Subtitle C facility ("the Company") arranges with a financial institution to issue an LC. The LC provides assurance to the Regulator that closure and post-closure will be paid for as required by RCRA. Essentially, an LC substitutes the bank's credit for the Company's, eliminating much of the risk to the Regulator. Use of an LC also requires the Company to establish a standby trust fund.

To secure an LC, the Company likely will have to pay the financial institution a fee equal to a percentage of the value of the LC. This fee may range from 0.5 to 1.0 percent, depending on the Company's credit worthiness (or financial solvency). The better the Company's overall credit worthiness, the lower the fee the financial institution is likely to charge the Company. The financial institution often will also require the Company to set aside cash and/or non-cash collateral to secure the LC. In general, a financially healthy company will pay less to post an LC than a company facing possible financial distress.

If the Regulator determines that the Company has failed to perform closure/post-closure as required, or has not provided adequate alternative financial assurance, and therefore needs to draw on the LC to pay for these costs, the Regulator may direct the bank to deposit cash into the standby trust fund. Usually this is done as a lump sum draw on the total amount of the LC, but can sometimes be done as a partial draw (just paying current expenses as they are incurred). The Regulator directs payment of the requisite moneys from the standby trust fund to pay for closure/post-closure activities. The Regulator also will draw on the LC in certain instances where the issuing institution decides not to extend the LC (see §264.143(d)(10) and/or §264.145(d)(10)).

**Regulatory Requirements:** The RCRA hazardous waste regulations prescribe the requirements for the use of an LC by a Company demonstrating financial assurance for closure and post-closure at §264.143(d) and §264.145(d), respectively. Key regulatory requirements include:

- The Company must submit to the Regional Administrator an original signed LC that matches the federal regulatory wording specified in §264.151(d) or the authorized, equivalent state regulatory wording (see §264.143(d)(2) and/or §264.145(d)(2)).
- The LC must be: (see §264.143(d)(5) and/or §264.145(d)(5))
  - Issued for at least one year;
  - Irrevocable; and
  - Evergreen (i.e., automatically renewable). The issuing institution could decide not to extend the LC past the one year date of expiration and automatic renewal if the institution notifies the Company and the Regulator at least 120 days prior to that date (see §264.143(d)(5) and/or §264.145(d)(5)).
- The LC shall be accompanied by:
  - An original signed copy of the standby trust agreement, including all the necessary schedules and exhibits (see §264.143(d)(3) and/or §264.145(d)(3)); and
  - A letter from the Company that: (see §264.143(d)(4) and/or §264.145(d)(4))

This document is not a complete representation of RCRA or of EPA's regulations or views and is not intended to replace or supplement the requirements in the regulation. It does not create any right or benefit, substantive or procedural. EPA may revise the views in this document without notice.

This fact sheet is based on the RCRA regulations for closure and post closure as detailed in Title 40 of the Code of Federal Regulations (CFR) Parts 264 through 265, with a focus on Part 264, Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities. Generally the Part 264 requirements are mirrored in Part 265, but there are some differences. As appropriate, reference is made to situations where the requirements for interim status facilities (Part 265) differ from the requirements for permitted facilities.

### Regulatory Resources:

- [Code of Federal Regulations, Title 40, Volume 22, Chapter 1, Part 264](#)
- [Code of Federal Regulations, Title 40, Volume 22, Chapter 1, Part 265](#)
- [Federal Register](#)

### EPA Resources:

- [RCRA Financial Assurance Training Module](#)
- [RCRA Financial Assurance for TSDFs](#)
- [RCRA Online: Financial Assurance](#)



# RCRA Subtitle C Financial Assurance Instrument Fact Sheet

## LETTER OF CREDIT

- f* Refers to the LC by number;
  - f* Lists the issuing institution and date;
  - f* Provides the facility's EPA identification number;
  - f* Lists the name and address of the Company; and
  - f* Lists the amount of funds secured by the LC.
- The face value of the LC must be at least equal to the current closure/post-closure cost estimate. Whenever the closure/post-closure cost estimate increases to an amount greater than the value of the LC during the operating life of the facility, Companies must increase the value of the LC to an amount at least equal to the current cost estimate or obtain alternate financial assurance using one or more of the financial assurance mechanisms allowed to cover the increase (see §§264.143(d)(6) and (d)(7) and/or §§264.145(d)(6) and (d)(7)).
  - To draw upon the LC, the issuing institution requires a "sight draft" bearing reference to the LC (see §264.151(d)).
  - The Company must maintain accurate and current cost estimates and are required to adjust cost estimates for inflation within 60 days prior to the anniversary of the establishment of the LC (see §264.142(b) and/or §264.144(b)).
  - The financial institution issuing the standby trust fund must have the authority to act as Trustee and be regulated/examined by an appropriate federal or state agency (see §264.143(a)(1) and/or §264.145(a)(1)).

**Recommended Best Practices:** Note: The following best practices are not required under the regulations.

- LCs are cash instruments. The LC itself gives the Regulator access to the funds. The Regulator must present the original LC to direct payment from the LC into the standby trust fund. As such, it is important to place the original, signed document(s) in a safe place (e.g., a fire-proof safe) with no public access.
- Proofread all documents to ensure that the language conforms to the stipulated regulatory wording.
- Be aware of name changes due to mergers and acquisitions.
- Establish and maintain contact with the "LC department" of the financial institution issuing the LC. Note the federal regulations do not require that the LC and the standby trust fund be issued by the same institution.
- Financial institutions often increase or decrease the face value of an LC through an amendment to the LC which requires the Regulator's acceptance or rejection of the submitted amendment. Although not a regulatory requirement, the Regulator should give notification of acceptance or rejection of the LC amendment to the financial institution upon receipt.
- Verify with the issuing institution that only the Regulator, and not the Company, is authorized to draw on or reduce the amount of the LC.
- Contact the financial institution to establish the form and format of the sight draft required for withdrawal.
- In cases where the Regulator needs to draw on the LC to pay for closure/postclosure costs, the Regulator should consider drawing on the entire face value of the LC. Partial withdrawal may trigger cancellation of the Company's LC and credit at that financial institution. Specifically, after partial withdrawal, the issuing institution could decide not to extend the LC past the one year date of expiration

This document is not a complete representation of RCRA or of EPA's regulations or views and is not intended to replace or supplement the requirements in the regulation. It does not create any right or benefit, substantive or procedural. EPA may revise the views in this document without notice.

This fact sheet is based on the RCRA regulations for closure and post closure as detailed in Title 40 of the Code of Federal Regulations (CFR) Parts 264 through 265, with a focus on Part 264, Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities. Generally the Part 264 requirements are mirrored in Part 265, but there are some differences. As appropriate, reference is made to situations where the requirements for interim status facilities (Part 265) differ from the requirements for permitted facilities.



# RCRA Subtitle C Financial Assurance Instrument Fact Sheet

## LETTER OF CREDIT

and automatic renewal if the institution notifies the owner operator and the Regulator at least 120 days prior to that date (see §264.143(d)(5) and/or §264.145(d)(5)).

### Frequently Asked Questions:

**1. What if the financial institution changes its name?**

In the event the Company (or Issuing Institution) changes its name, experiences a merger, or is sold, the Regulator should contact the Company to ensure that the financial documents reflect the current legal name of both the Company and Issuing Institution.

**2. What if the financial institution decides not to extend the expiration date of the LC?**

In accordance with §264.143(d)(5) and/or §264.145(d)(5) the LC must be automatically renewable after the expiration date. However, if the issuing institution notifies both the Company and the Regulator in writing that it has decided not to extend the expiration date, the Company has 90 days from receipt of that notification to obtain alternate financial assurance using one or more of the financial assurance mechanisms allowed. If the Company does not establish alternate, approved financial assurance within 90 days, the Regulator should promptly draw on the LC and deposit the funds into the standby trust fund. If the Regulator does not act within 120 days after receiving notice, the LC may lapse and those funds may be unavailable to the Regulator (see §264.143(d)(9) and/or §264.145(d)(10)).

**3. What if the cost estimates change?**

If the cost estimates increase to an amount greater than the present value of the LC, the Company shall either: 1) increase the value of the LC, or 2) obtain alternate financial assurance using one or more of the financial assurance mechanisms allowed to make up the shortfall. This shall be done within 60 days of the change in cost estimates. If the cost estimates decrease, the Regulator may direct the bank to reduce the LC by an appropriate amount upon the Regulator's review and written approval (see §264.143(d)(7) and/or §264.145(d)(7)).

**4. What if the facility is sold or transferred?**

Changes in the ownership or operational control of a facility may be made as a Class 1 permit modification with prior written approval of the Regulator in accordance with §270.42. In the case of facility transfer, the LC does not automatically transfer to the new owner. The old Company will not be released from the financial assurance requirements until the successor company has provided alternate financial assurance using one or more of the available financial assurance mechanisms, is in compliance with §264 Subpart H, and the Regulator has notified the old Company that it no longer needs to provide financial assurance. The successor Company must demonstrate compliance within six (6) months of the date of the change in ownership or operational control of the Company (§§270.40, 270.72(a)(4)). If the old Company or Issuing Institution attempts to cancel the LC, the Regulator should draw on the LC and deposit it into the standby trust fund until such time as the successor Company complies with all applicable financial assurance requirements (see §§270.40(b) and 270.72(a)(4)).

**5. Who is responsible for paying administrative fees to the financial institution?**

While Section 9 of the Trust Agreement wording allows the Trustee to disburse funds directly from the Trust to pay for Trustee administrative fees (see §264.151(a)), all fees are the responsibility of the Company.

### For More Information:

- **U.S. Department of the Treasury**
  - Comptroller of the Currency, Trust Division regulates nationally-chartered commercial banks, nationally-licensed foreign banks, and Washington D.C. banks. [www.occ.treas.gov](http://www.occ.treas.gov)

This document is not a complete representation of RCRA or of EPA's regulations or views and is not intended to replace or supplement the requirements in the regulation. It does not create any right or benefit, substantive or procedural. EPA may revise the views in this document without notice.

This fact sheet is based on the RCRA regulations for closure and post closure as detailed in Title 40 of the Code of Federal Regulations (CFR) Parts 264 through 265, with a focus on Part 264, Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities. Generally the Part 264 requirements are mirrored in Part 265, but there are some differences. As appropriate, reference is made to situations where the requirements for interim status facilities (Part 265) differ from the requirements for permitted facilities.



# RCRA Subtitle C Financial Assurance Instrument Fact Sheet

## LETTER OF CREDIT

- Office of Thrift Supervision regulates nationally-chartered savings and loans institutions, as well as nationally-chartered mutual savings banks. [www.ots.treas.gov](http://www.ots.treas.gov)
- National Credit Union Administration regulates nationally-chartered credit unions. [www.ncua.gov](http://www.ncua.gov)
- **Various State Authorities**
  - Regulate state-chartered financial institutions, including commercial banks, savings and loans, mutual savings banks, credit unions, and state licensed foreign banks.
- **Links to State Banking Agencies**
  - [http://dir.yahoo.com/Business\\_and\\_Economy/Finance\\_and\\_Investment/Banking/Government Agencies/U S State Agencies/](http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Banking/Government_Agencies/U_S_State_Agencies/)
- **National Trade Associations/Organizations**
  - American Bankers Association [www.aba.com](http://www.aba.com)
  - Conference of State Bank Supervisors [www.csbs.org](http://www.csbs.org)
  - Links to other banking organizations  
[dir.yahoo.com/Business\\_and\\_Economy/Finance\\_and\\_Investment/Banking/Organizations/](http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Banking/Organizations/)
- **Other Sources**
  - FDIC Bank Data <http://www.fdic.gov/bank/index.html>
  - National Information Center Bank Directory (<http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx>)

This document is not a complete representation of RCRA or of EPA's regulations or views and is not intended to replace or supplement the requirements in the regulation. It does not create any right or benefit, substantive or procedural. EPA may revise the views in this document without notice.

This fact sheet is based on the RCRA regulations for closure and post closure as detailed in Title 40 of the Code of Federal Regulations (CFR) Parts 264 through 265, with a focus on Part 264, Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities. Generally the Part 264 requirements are mirrored in Part 265, but there are some differences. As appropriate, reference is made to situations where the requirements for interim status facilities (Part 265) differ from the requirements for permitted facilities.

**PENALTY CALCULATION WORKSHEET**

September 27, 2024

COUNT #2

**Regulation(s) violated:      Failure to demonstrate financial assurance in accordance with the Order.**

1.	Gravity-based penalty from matrix	\$52,752
	(a) Potential for harm	MAJOR
	(b) Extent of deviation	MAJOR
	(c) Instances of Violation	3
	Multiple line 1 and 1(c)	\$158,256
2.	Select an amount from appropriate multi-day matrix cell	\$10,550
3.	Number of days of violation used for multi-day/multiple penalty	0
	Multiply line 2 by line 3	\$0
4.	Add line 1 and line 3	\$0
5.	Percent decrease for good faith	0%
6.	Percent increase for willfulness/negligence	0%
7.	Percent increase for history of noncompliance	0%
8.	Total lines 5 through 7	0%
9.	Multiply line 4 by line 8	\$0
10.	Calculate economic benefit	\$0
11.	Add lines 4, 9 and 10 (proposed penalty amount)	\$158,256

## PENALTY CALCULATION NARRATIVE

September 27, 2024

COUNT #2

---

**Regulation(s) violated:**      **Failure to update cost estimates for inflation.**

### **Violation Narrative:**

Paragraph 34 of the 2016 Order requires Respondent to provide an inflation-adjusted revised cost estimate (Estimated Cost of Corrective Measures Work) annually for each approved remedy. There are approved remedies for both SMA 4 and SMA 5.

Paragraph 1.b. of Attachment C to the 2016 Order states that until the approved remedy required by the 2016 Order is completed, Respondent shall annually adjust the Estimated Cost of Corrective Measures Work for inflation—either within 30 days after the close of Respondent’s fiscal year if the financial test and corporate guarantee is used, or within 60 days prior to the anniversary date of the establishment of any other financial assurance instrument.

As of September 27, 2024, Respondent has failed to provide the EPA with inflation-adjusted revised cost estimates for the years of 2022, 2023, or 2024.

Therefore, Respondent has violated Paragraph 34 and Attachment C of the 2016 Order by failing to revise the cost estimate annually for each approved remedy for SMA 4 and SMA 5.

### **1. Gravity-Based Penalty:**

#### **a. Potential for harm: MAJOR**

Potential for harm is determined by considering (1) the risk of exposure based on the likelihood of exposure to hazardous waste and/or hazardous constituents and the degree of such likelihood of exposure by non-compliance; and/or (2) the adverse effect that non-compliance has on the statutory or regulatory purposes or procedures for implementing the RCRA program. The potential for harm analysis must include an evaluation of environmental receptors and regulatory impact. EPA commonly refers to these factors as “harm to human health and the environment” and “harm to the RCRA program.” Each element of the potential for harm analysis is discussed in the appropriate subsection below. ***Based on risk of exposure to hazardous waste and the harm to the RCRA regulatory program, the potential for harm in this case has been determined to be major.***

#### **i. Probability/Risk of Exposure: Major**

The Order requires updates to the cost estimates for inflation to ensure sufficient funds are available for corrective action. Respondent’s failure to update its cost estimates and thereby provide sufficient financial assurance poses a substantial risk of exposure to humans and other environmental receptors because it prevents sufficient funds from being available to perform corrective action. This failure substantially increases the likelihood that the work will either not be completed at all or will not be completed in a timely fashion, at

which point the Facility could potentially become another abandoned hazardous waste site thereby increasing the risk that receptors may be exposed to hazardous waste or hazardous waste constituents.

ii. **Harm to the RCRA Regulatory Program: Major**

Respondent's actions have had a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA Program. The overall goal of the RCRA Program is to ensure that hazardous wastes are not managed, disposed, or otherwise handled in a way that would pose threat to human health or the environment. In this case, Respondent's failure to update the estimated costs of remedy implementation for inflation substantially increases the likelihood that the required corrective measures will either not be completed at all or will not be completed in a timely fashion, thereby increasing the risk of improper management of the hazardous wastes involved and of resulting harm to human health and the environment.

b. **Extent of deviation: MAJOR:**

By failing to update the estimates at all, Respondent deviates from the requirements of the 2016 Order to such an extent that most (or important) aspects of the requirements are not met, resulting in substantial noncompliance. ***As a result, the extent of deviation from the requirement is major.***

c. **Summary of gravity-based penalty: MAJOR - MAJOR**

The gravity-based cell matrix for major - major violations ranges from \$42,202 to \$52,752. The high point of this range was selected due to the seriousness of the violation and to account for Respondent's lack of good faith efforts to comply. This results in a gravity-based penalty of **\$52,752**.

The Respondent failed to update the cost estimates for inflation as required in 2022, 2023, and 2024. These are three distinct instances of this violation. Therefore, the gravity-based penalty should be multiplied by three, resulting in a gravity-based penalty of **\$158,256**.

2. **Multi-day/Multiple Penalties:**

As noted above, the gravity-based penalty treats each instance of annual failure to submit inflation-adjusted updates as a separate violation. As a result, there is no multi-day penalty needed.

3. **Adjustment Factors:**

a. **Good faith/lack of good faith efforts: 0%**

Respondent did not make any effort to update the cost estimates for inflation as required in 2022, 2023, and 2024.

**b. Willfulness/negligence** 0%  
At this time, the EPA has no knowledge or relevant information to make an adjustment for willfulness or negligence.

**c. History of non-compliance:** 0%  
At this time, the EPA has no knowledge or relevant information to make an adjustment for history of non-compliance.

**d. Other unique factors:** 0%  
At this time, the EPA has no knowledge or relevant information to make an adjustment.

**e. Subtotal percentage of adjustments:** 0%

**4. Economic Benefit:** \$0  
The EPA has determined that the economic benefit realized by Respondent by failing to update the cost estimates for inflation would have been less than \$3,000 and is therefore negligible.

**5. Total Penalty for Count #2:** **\$158,256**