

**STATE OF HAWAII
DEPARTMENT OF HEALTH
SOLID AND HAZARDOUS WASTE BRANCH
SOLID WASTE PROGRAMS**

ADMINISTRATIVE AND CIVIL PENALTY POLICY

May 30, 2014

The policies set out in this policy do not represent final agency action and are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the State of Hawaii. Department of Health officials may decide to follow the guidance provided in this policy or to act at variance with the guidance, based on an analysis of specific factual circumstances. The Department also reserves the right to change this guidance at any time without any notice or hearing.

ADMINISTRATIVE AND CIVIL PENALTY POLICY
SOLID AND HAZARDOUS WASTE BRANCH
SOLID WASTE PROGRAMS
DEPARTMENT OF HEALTH
STATE OF HAWAII

May 30, 2014

The solid waste programs of the Department of Health's Solid and Hazardous Waste Branch (Department) are authorized to enforce State integrated solid waste management regulations within statutory limits set by the State of Hawaii Legislature. This document provides the program the means to develop a fair, defensible penalty to protect human health and the environment.

A. OBJECTIVES

This administrative and civil penalty policy logically and systematically guides the assessment and settlement of solid waste enforcement cases. The policy seeks to be generally consistent with Federal EPA policies, and State regulations. Its objectives are to recover penalties which:

1. are appropriate with respect to the gravity of the violation;
2. are large enough to deter violations and ensure compliance;
3. remove any economic benefits due to noncompliance;
4. consider the violator's socio-economic conditions with respect to community needs;
5. provide equitable treatment of the regulated community as a whole;
6. account for litigation considerations;
7. encourage voluntary compliance when reasonable and appropriate; and
8. offer violators a chance to perform supplemental environmental projects (SEPS), upon certain conditions, as partial or total payment of a cash penalty.

B. STATUTORY BASIS

For Solid Waste Management Facilities such as Landfills, Incinerators, Transfer Stations, Materials Recovery, Composting, Remediation and Salvage Facilities:

- HRS Section 342H-9(a) provides for penalties of up to \$10,000 for each separate solid waste offense, for any person who violates Chapter 342H or any rule adopted pursuant to Chapter 342H. Each day of each violation constitutes a separate offense.
- HRS Section 342H-9(b) sets penalties up to \$500 for those who deny, obstruct or hamper the Department's efforts to enter and inspect any building, place and vehicle that the Department is authorized to enter and inspect.
- HRS Section 342H-10 authorizes the Director to impose by order penalties specified in Sections 342H-9(a) and (b).
- HRS Section 342H-10 lists the factors to consider when imposing an administrative penalty:
 1. The nature and history of the violation and of any prior violations;
 2. The economic benefit, if any, resulting from the violation;
 3. The opportunity, difficulty, and history of corrective action;

4. Good faith efforts to comply; and
5. Any other matters that justice may require.

It is presumed that the violator's economic and financial condition allow payment of the penalty. The burden of proof of the contrary shall be on the violator.

- HRS Section 342H-11 also allows the Director to institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, without the necessity of prior revocation of the permit. The Director may also institute a civil action to impose and collect administrative or civil penalties or to obtain other relief. The court has the power to grant relief in accordance with the Hawaii rules of civil procedure, which are set forth separately and are not a part of this policy.

Lead Acid Battery Management:

- HRS Section 342I-8(a) establishes civil penalties of up to \$10,000 for each separate offense for illegal lead acid battery collection or recycling. Each improperly disposed or accepted battery is a separate offense.
- Failure to post the required notice, following a warning issued by the Department, is a \$2,000 fine for each separate offense.
- Fines imposed shall be cumulative.

Motor Vehicle Tire Recovery:

- HRS Section 342I-34 establishes penalties of up to \$10,000 for each separate offense. Each tire improperly disposed shall constitute a separate offense.
- Failure to post the required notice, following a warning issued by an authorized employee of the Department, is a \$1,000 fine for each separate offense.
- Fines imposed shall be cumulative.
- HRS Section 342I-33 states that authorized employees of the department may issue warnings, citations, or administrative orders, or commence civil action in circuit court against persons who fail to comply with the requirements.
- Remedies include citations, civil action or as provided by HRS Sections 342H-10 and 11.

Open Dump Prohibition:

- Section 342H-30(a), HRS states that no person including any public body shall operate an open dump.
- Section 342H-30(b), HRS also prohibits the operation of any solid waste management system without first securing approval in writing from the director.
- Section 342H-30(c), HRS prohibits disposal of solid waste greater than one cubic yard in volume from being discarded, disposed, deposited, discharged, or dumped anywhere other than a permitted solid waste management system without the prior written approval of the director.

Integrated Solid Waste Management; Glass Container Recovery and the Deposit Beverage Container Program

- HRS Section 342G-71 establishes fines of up to \$10,000 for each separate offense of any provision of HRS-Chapter 342G or any rule adopted pursuant to this chapter. Each day of each violation shall constitute a separate offense.
- Any action to impose or collect a penalty provided in Section 342G-71, HRS shall be made through administrative or civil actions.

The penalties stipulated in HRS Chapters 342G, 342H and 342I are interpreted as statutory limits. Simply identifying and confirming a discharge or other related violation does not automatically warrant a fine of \$10,000 for that violation. Penalties are consistently determined, calculated and applied on a case-by-case basis.

C. APPLICABILITY

This penalty policy applies to the Department's enforcement of the solid waste statutes and rules, particularly HRS Chapters 342G, 342H and 342I, as amended, HAR 11-58.1, "Solid Waste Management Control", as amended, and HAR 11-282, "Deposit Beverage Container Recycling", as amended. This includes:

1. Violations of Solid Waste Management permit conditions and Deposit Beverage Container certification conditions;
2. Open dumping or illegal storage of solid waste at unpermitted sites;
3. Operation of a solid waste management facility without a permit;
4. Violations of solid waste handling, processing, transport, treatment and storage requirements; and
5. Monitoring and reporting violations

The policies and procedures set forth in this document are only for guidance of Department personnel. This policy is not intended, and cannot be relied upon, to create rights, substantive or procedural, enforceable by any party in litigation with, or in any administrative proceedings with, the Department or the State of Hawaii. The Department reserves the right to act at variance with this policy and to change it at any time without public notice or hearing.

D. PENALTY

The penalty should recover all economic benefits accrued by the violator resulting from noncompliance, and should be enough to deter violators from noncompliant behavior. As several violations may occur concurrently at some sites, the penalty shall also consider the cumulative effects of all the violations.

1. FORMULA

The Department will calculate a penalty based on the following formula:

$$\text{Penalty} = \text{Economic Benefit Component} + \text{Gravity Component} + \text{Multi-Day Component} \pm \text{Adjustments}$$

Updating the Penalty

This policy is intended to identify reasonable penalties for the Department to seek in administrative and civil cases. As more information becomes available, the penalty calculation shall be modified to reflect relevant, new information. In those cases which proceed to administrative hearing or trial, the State may seek a penalty higher than what it was originally willing to settle for, considering factors such as continuing noncompliance and the extra burden placed on the State by protracted litigation. The penalty may also be updated to include percentage-based Adjustments, which may also be applied to the penalty calculation after the complaint or Notice of Violation is issued.

Multiple Violations

Violations of different provisions of the law are treated as independent offenses. For cases with more than one independent and substantially distinguishable violation, the Department will calculate penalties for each violation separately, and total the amounts to arrive at the combined Penalty. Consideration of multiple violations may include the following situations.

- a. A given charge is independent of, and substantially distinguishable from, any other charge when it requires an element of proof not needed by the others.
- b. In many cases, violations of different sections of the regulations constitute independent and substantially distinguishable violations. For example, a site that fails to implement a groundwater monitoring program, and fails to develop a closure plan, are generally two violations resulting from different sets of circumstances. For litigation or settlement purposes, each of the violations should be assessed separately and the amounts added to determine a total penalty to pursue.
- c. It is also possible that different violations of the same section of the regulations could constitute independent and substantially distinguishable violations. For example, a remediation facility which has inadequate drainage to prevent standing water, HAR 11-58.1-42(b)(2)(C), and which does not control litter, HAR 11-58.1-42(b)(2)(D), has committed two independent acts. Two counts with two separate penalties would be appropriate. Each violation should be assessed separately and the amounts totaled.
- d. Penalties for multiple violations also should be sought where one company has violated the same requirement in substantially different locations. In these situations the separate locations present separate and distinct risks to public health and the environment. Thus, separate penalty assessments are justified.
- e. Similarly, penalties for multiple violations are appropriate when a company violates the same requirement on separate occasions not cognizable as Multi-Day violations. An example would be the case where a facility fails for a year to take required quarterly groundwater monitoring samples.
- f. Treat each violation of a permit parameter as a separate violation. For example, a co-composting facility commits two violations if it markets compost not meeting a vector attraction reduction requirement, and also exceeds a sewage sludge metal concentration threshold.

- g. If a series of violations at a facility directly follow from a facility's failure to comply with one rule or statutory requirement, a penalty should only be pursued for the one primary violation (e.g., if a facility failed to install a groundwater monitoring system, it should be penalized for that failure and not also for failing to submit a groundwater monitoring report).

Each component comprising the penalty is described below.

2. ECONOMIC BENEFIT COMPONENT

The Economic Benefit Component is the amount of money that the violator saved through noncompliance, either by delaying the expenditures necessary to achieve compliance, or by avoiding the costs associated with compliance. In calculating Economic Benefit for a violator, the basic assumption is that the violator did realize some Economic Benefit, by either delaying or avoiding compliance. Although delayed and avoided costs are calculated differently, both calculations involve the use of an interest factor to account for use of money over time.

The interest factor may be derived from: 1) the use of interest earned if the violator put the necessary money for compliance in a bank, 2) in the form of profit if the money was invested, or 3) if the violator had no capital to comply, the benefit would be in the form of not paying the interest on a loan to pay for compliance.

For avoided costs, the Economic Benefit equals the cost of complying with the requirement, adjusted to reflect the anticipated rate of return and income tax effects on the company. Avoided costs are expenditures that the violator avoids by failing to comply with facility requirements. For example, one type of avoided cost would be when a facility fails to pay necessary operating and maintenance costs, which may also include periodic costs (such as leasing monitoring equipment). Examples of violations that result in savings from avoided costs are:

- Failure to perform routine gas monitoring;
- Failure to apply daily cover.

For delayed costs, the Economic Benefit does not equal the cost of complying with the requirements, since the violator will eventually have to spend the money to achieve compliance. The economic benefit for delayed costs consists of the amount of interest on the unspent money that reasonably could have been earned by the violator during noncompliance. For example, if noncompliance has continued for more than a year, enforcement staff should calculate the economic benefit of both the delayed and avoided costs for each year. These are expenditures that have been deferred by failing to comply with facility requirements. The violator will eventually have to spend the money in order to achieve compliance but has the benefit of having the money prior to that time. For example, by delaying a \$50,000 expenditure for one year, at an investment rate of 5%, the violator has realized a \$2,500 Economic Benefit. Examples of violations that result in savings of delayed costs are:

- Failure to remediate existing gas control violation as required;
- Failure to install an adequate groundwater monitoring system.

The Department uses an EPA-approved computer program, "BEN", to assist in estimating Economic Benefits of delayed compliance, and any avoided expenses. If a computer

program is not appropriate, a similar methodology will be developed on a case-by-case basis. The exact methodology will be determined by the factors that make the program unusable, but the theory behind the program will be consistent.

3. GRAVITY COMPONENT

The Gravity Component reflects the seriousness of the violation. The Gravity Component adds an additional amount to the Economic Benefit to ensure that the violator is also punitively assessed for non-compliance. Assessment of only the Economic Benefit component would only place the violator in the same position as if compliance were achieved on time.

Depending on the specifics of a case, a Gravity Component is determined for each violation. A violation of a permit parameter is treated as a separate violation.

The Gravity calculation is based on two factors: the **Potential for Harm** to human health and the environment; and **Extent of Deviation** from statutory or regulatory requirements.

The monetary penalty is derived from assessing the two factors listed above and then assigning the appropriate penalty based upon the following Penalty Assessment Matrix.

PENALTY ASSESSMENT MATRIX

For penalties for which the maximum amount is \$10,000:

EXTENT OF DEVIATION FROM REQUIREMENT				
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM				
	MAJOR	\$10,000 to \$8,000	\$7,999 to \$6,000	\$5,999 to \$4,400
	MODERATE	\$7,999 to \$3,200	\$5,999 to \$2,000	\$4,399 to \$1,200
	MINOR	\$3,199 to \$600	\$1,999 to \$200	\$1,199 to \$40

a. Potential for Harm

The solid waste laws were promulgated to prevent harm to human health and the environment. Thus, noncompliance with these laws could result in a situation where there is a potential for harm. The potential for harm resulting from a violation may be determined by:

- (1) the likelihood of harm to human health or the environment posed by

- noncompliance;
- (2) the adverse effect noncompliance has on the statutory or regulatory purposes or procedures for implementing the solid waste program.

Therefore, the Department evaluates solid waste violations with respect to three degrees of potential harm:

- MAJOR: (1) The violation poses or may pose a significant risk of exposure of solid waste or constituents to people or the environment; and/or
(2) The actions have or may have a significant adverse effect on the statutory or regulatory purposes or procedures for implementing the solid waste programs.
- MODERATE: (1) The violation poses or may pose a moderate risk of exposure of solid waste or constituents to people or the environment; and/or
(2) The actions have or may have a moderate adverse effect on the statutory or regulatory purposes or procedures for implementing the solid waste programs.
- MINOR: (1) The violation poses or may pose a relatively low likelihood of exposure of solid waste or constituents to people or the environment; and/or
(2) The actions have or may have a less than moderate or an insignificant adverse effect on the statutory or regulatory purposes or procedures for implementing the solid waste programs.

b. Extent of Deviation from Statutory or Regulatory Requirement

The "extent of deviation" from the State solid waste laws relates to the degree to which the violation occurs with respect to the requirement violated. In any violative situation, a range of potential noncompliance with the subject requirements exists. In other words, a violator may be substantially in compliance with the provisions of the requirement or it may have totally disregarded the requirement (or a point in between).

As with potential for harm, extent of deviation may either be **major**, **moderate**, or **minor**. In determining the extent of deviation, the following definitions should be used:

- MAJOR the violator significantly deviates from the requirements of the regulation or statute to such an extent that *most of the requirements are not met* resulting in substantial noncompliance.
- MODERATE the violator deviates to a moderate extent from the regulatory requirements of the regulation or statute but *some of the requirements are met*.
- MINOR the violator deviates somewhat from the regulatory or statutory requirements but most of the requirements are met.

4. MULTI-DAY COMPONENT

The duration for each separate violation is the number of days the violation persists, minus one day to account for the first day the violation occurred. After determining the duration of the violation, an appropriate daily penalty will be chosen using the Multi-Day Matrix:

MULTI-DAY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT				
POTENTIAL FOR HARM		MAJOR	MODERATE	MINOR
	MAJOR	\$2000 to \$200	\$1600 to \$160	\$1200 to \$120
	MODERATE	\$880 to \$90	\$640 to \$60	\$400 to \$40
	MINOR	\$240 to \$20	\$120 to \$20	\$40 to \$20

When appropriate, calculate Multi-Day penalties for the first 180 days. Assessing Multi-Day penalties beyond day 180 is a discretionary action.

5. ADJUSTMENTS

The adjustment factors can increase, reduce or have no effect on the penalty amount obtained from the violator. Adjustments should be applied to the sum of the gravity-based and multi-day components of the penalty for a given violation. Adjustment factors include the degree of willfulness/negligence, history of noncompliance, and other unique factors.

Application of the adjustment factors is cumulative, i.e., more than one factor may apply in a case. If the base penalty derived from the Penalty Assessment Matrix is being increased by 10% for both history of noncompliance and degree of willfulness/negligence, the total adjusted penalty equals the derived base penalty plus 20% (10% + 10%).

With proper documentation, enforcement staff can raise or lower the sum of the gravity-based and multi-day penalty components for any adjustment factor: (1) by as much as 25% in ordinary circumstances; or (2) from 26% to 40% in unusual circumstances.

After all adjustment factors have been applied, the resultant penalty shall not exceed the statutory maximum, which is typically \$10,000 per day per violation.

a. Good Faith

A violator may show good faith through self-initiated, prompt reporting of noncompliance prior to its detection by the Department. If such self-reporting is not required by permit conditions or regulations, this behavior may result in mitigation or a reduced penalty. Any prompt correction may also be construed as good faith, provided that corrections occur prior to detection by the Department. Cooperation with investigations such as providing assistance that exceeds legally required reporting and disclosure is also considered to

be a good faith effort. Lack of good faith, on the other hand, can result in an increased penalty. Lack of good faith includes not reporting violations; inadequate reasons for failure to answer formal or informal notices, whether verbally or in writing; postponement of violation notification; and hindering any investigation effort by the Department.

b. Degree of Willfulness / Negligence

Violators who hide, or attempt to hide, distort or deny knowledge of noncompliant activity are generally found to be intentionally disregarding public health and the environment. The Department may, through inspection of records, staff interviews or other standard investigation methods discover the violator had prior knowledge of the law and the proper actions required, and failed to address the issue. This ranks as a high degree of willful neglect and increases the penalty.

Assessment of willfulness or negligence considers the following:

- i. The control the violator had over the events constituting the violation;
- ii. The ability of the violator to foresee the events constituting the violation;
- iii. Any reasonable precautions taken by the violator to prevent such violations;
- iv. The violator's knowledge of the outcomes associated with the conduct; or
- v. The violator's knowledge of the legal requirements that were violated.

Alleged lack of knowledge of legal requirements is not a basis for penalty mitigation.

Staff may also refer the case to the Department of the Attorney General for criminal investigation if the violation(s) appear intentional.

c. History of Noncompliance

If the defendant was cited for similar violations in the past, and the statutory basis for this enforcement case is similar or identical to those of past cases, this usually is evidence that the violator was not deterred by previous enforcement actions. The penalty should be increased, unless the previous violation was caused by factors beyond the defendant's control.

d. Unique Factors

i. Ability to Pay

A violator's ability-to-pay is a separate, internal determination that is not included in calculating a Penalty amount. While not necessarily a downward adjustment of the Penalty amount, the Department will consider ability-to-pay on a case-by-case basis. The Department may use EPA-approved computer programs that take into account the violator's adjusted gross income, the expenses needed for the business to operate normally, the type of corporation, its current tax bracket, its tax filing history, and its ability to qualify for loans necessary to pay the Penalty. The Department may also use other resources to assist in the evaluation of the violator's ability-to-pay.

The violator must bear the burden of proof establishing his inability to pay the Penalty. If a violator objects to the Penalty amount, the Department may utilize the opinion of a third-party finance consultant. Defendants should provide documented

evidence such as tax returns or statements by independent auditors. Defendants must show they cannot afford the Penalty prescribed by this policy, or that total or partial payment will prevent the violator from implementation of remedial measures which the Department considers more important than deterrence (e.g., payment of Penalty would preclude proper closure/post closure).

When a defendant has met the burden of proof requirement, the following options may be considered in the order presented:

- An installment payment plan with interest;
- A delayed payment schedule with interest. Using a delayed payment schedule may also be contingent upon an increase in sales or some other indicator of improved business activity; or
- Straight penalty reductions as a last resort.

Any decision to grant relief under ability to pay must be reviewed and approved by the Department of the Attorney General after reviewing the factors of the case and the legal precedents involved.

ii. Other Unique Factors

Equitable consideration may be given to a violator who reasonably, conclusively, and detrimentally relied on a State, Federal or county agency's representation or actions, thus causing the violations. (This could result in settling for less than the Economic Benefit).

Equitable consideration may also be given if the defendant's compliance has been delayed in an unusual or unreasonable manner by other State, Federal or county actions through no fault of the defendant. (This could result in settling for less than the Economic Benefit).

Adjustments may also be considered and given when it is overwhelmingly in the public interest to keep a failing enterprise afloat due to the community services it provides. Again, this would involve alternative payment plans first. Adjustment considerations will not apply if the firm was likely to close anyway, or if there is a continued harmful effect. (This could result in settling for less than the Economic Benefit.)

E. SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

The following considerations will guide the Department in deciding whether to allow a project to substitute for or be credited against a cash penalty, and if so, how much substitution or credit will be allowed. SEPs will only be allowed in settlement agreements, except in extraordinary circumstances.

1. Projects must advance at least one of the objectives of the environmental statutes forming the basis of the enforcement action, and have adequate **nexus**. The **nexus** is the relationship between the violation and the proposed project. This relationship may exist if:

- The project is designed to reduce the likelihood that similar violations will occur in the future; or
- The project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or
- The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.

The cost of a project is not relevant to whether there is adequate nexus.

2. The actual cost of the project plus the cash penalty paid shall equal or exceed the value of the penalty. If a project qualifies for favorable tax treatment in comparison to cash penalties, the value of the projects should be increased to offset the tax effect. No tax deduction will be allowed for the cost of a SEP.
3. The project must not be part of the company's normal business practice, nor something the company already intended to do. Timing may be a difficult issue if the violator is already planning or doing a project when the enforcement case formally starts. Projects committed to, or started before a settlement is finally agreed upon may, at least partially, be eligible for credit. However, these projects must be carefully examined to determine the extent to which they resulted from the enforcement case, or were due to other factors, or prior plans or commitments. In some cases partial credit may be appropriate.
4. The project also shall not include any actions that will merely correct the violation and bring non-compliant issues back into compliance with legal requirements.
5. The project must provide real environmental benefit. Waste treatment in excess of legal requirements may not receive credit as a SEP if the super-treated waste is just as environmentally beneficial as what is legally required. Each proposed project shall be examined carefully.
6. The respondent is responsible for management of the approved SEP. The SEP should minimize oversight or monitoring by the Department.
7. The following types of projects are generally eligible for credit as a SEP.

a. **Pollution prevention.**

Pollution prevention projects reduce pollution or solid waste generation through "source reduction," i.e., any practice, which reduces the amount of any hazardous substance, contaminant or solid waste entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. After the pollutant or solid waste has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, or disposal.

Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes projects, which protect natural resources through conservation or increase efficiency in the use of energy, water or other materials. "In-process

recycling,” wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution or solid waste released to the environment, not merely a transfer of pollution among media.

b. **Pollution reduction.**

If the pollutant or waste stream already has been generated or released, a pollution reduction approach—which employs recycling, treatment, containment or disposal techniques—may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as “pollution prevention.” This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes “out-of-process recycling,” wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

The project shall not include any actions that are necessary to correct violations or bring non-compliant issues back into compliance with legal requirements.

c. **Assessments and audits.**

There are three types, any of which may be acceptable provided that the violator commits to implement all or part of the report, and the Department receives a copy of the report:

- *pollution prevention assessments* - systematic reviews of specific processes, identifying opportunities to reduce the use and generation of solid wastes.
- *environmental quality assessments* - investigating contamination levels and sources at a site, or monitoring air, soil or water quality surrounding the site.
- *environmental compliance audits* - evaluating a respondent’s compliance status with legal requirements.

d. **Environmental compliance promotion.**

An environmental compliance promotion project provides training or technical support to other members of the regulated community to (1) identify, achieve and maintain compliance with applicable statutory and regulatory requirements, or (2) go beyond compliance by reducing the generation, release or disposal of pollutants or solid waste beyond legal requirements. As the respondent may lack the experience, knowledge or ability to implement the project itself, the respondent may be required to contract with an appropriate expert to develop and implement the compliance promotion project (e.g., conducting a seminar directly related to correcting widespread or prevalent violations within the respondent’s economic sector).

e. **Clean-up of areas for which the violator is not responsible.**

8. The following projects are generally not acceptable as SEPs:
- a. **General educational or public environmental awareness projects.** This includes those projects that sponsor public seminars, conduct tours of environmental controls at a facility, or promote recycling in a community.
 - b. **Contributions for academic research.** This includes those projects that contribute to general environmental research at a college or university.
 - c. **No implementation commitment.** This includes projects involving studies or assessments without a commitment to implement the results, except as discussed previously under the assessments and audits category.
 - d. **Projects funded from outside sources.** This includes projects funded by low-interest federal, state or local government loans, contracts or grants.
9. The net costs incurred by a violator in performance of a SEP may be considered as one factor in determining an appropriate settlement amount. **If a settlement includes a SEP, the penalty should recover the economic benefit of noncompliance plus 10 percent of the gravity component or 25 percent of the gravity component only, whichever is greater.**

F. SETTLING CASES FOR AN AMOUNT LESS THAN THE ECONOMIC BENEFIT


To deter future misconduct, a penalty must convince both the violator and the public that it places the violator in a worse position than those who were already complying with the law. Violators should not be allowed to benefit from noncompliance because their acts indirectly punish those who have complied, placing the latter at a competitive disadvantage, as well as undermining the Department's goal of deterring noncompliant behavior. For these reasons, the Department should not settle for a penalty less than the Economic Benefit.

However, due to unique socioeconomic factors beyond the Department's control, it is probable some cases will settle for less than the Economic Benefit, for reasons previously discussed.

G. FORMAL RECOMMENDATION OF PENALTY

Administrative or civil penalties shall be recommended to the Deputy Director for Environmental Health, prior to the issuance of a Notice of Violation and Order, or Consent Agreement.

ADOPTED: 6/18/14, at Honolulu, Hawaii.



Gary L. Gill
Deputy Director for Environmental Health

PENALTY RECOMMENDATION

VIOLATOR: _____

_____ Docket #

FACILITY: _____

CASE DESCRIPTION: (what, how much, #/dates, from where to where; risks/harms; why; other)

1. GRAVITY
 - (a) Potential for Harm (e.g., Major) _____
 - (b) Extent of Deviation (e.g., Moderate) _____
 - (c) Gravity-based penalty from matrix (e.g., \$500) _____
2. MULTI-DAY
 - (a) select amount from Multi-Day matrix cell: \$ _____
 - (b) multiply 2a by number of days of violation minus 1
((#days - 1 = _____) * line 2a) = _____
3. Add line 2b and line 1c _____
4. ADJUSTMENTS TO GRAVITY AND MULTI-DAY
 - (a) % decrease for good faith and/or cooperation _____ %
 - (b) % increase for negligence or willful disregard _____ %
 - (c) % increase for history of noncompliance _____ %
 - (d) % increase/decrease for unique factors _____ %
 - (e) total percentage increase/decrease (add 4a thru 4d) = _____ %
5. Multiply 4e by line 3 above (if penalty reduction expected, enclose dollar amount in parenthesis) _____
6. Add line 5 and line 3 _____
7. ECONOMIC BENEFIT _____
8. PENALTY AMOUNT (add lines 6 and 7) \$ _____

COUNT ____

FACILITY:
ADDRESS:

REGULATION VIOLATED:

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. **Gravity Based Penalty**
 - (a) **Potential for Harm:**
 - (b) **Extent of Deviation:**
 - (c) **Multiple/Multi-day:**
2. **Adjustment Factors** (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applicable).
 - (a) **Good Faith:**
 - (b) **Willfulness/Negligence:**
 - (c) **History of Compliance:**
 - (d) **Ability to Pay:**
 - (e) **Environmental Project:**
 - (f) **Other Unique Factors:**
3. **Economic Benefit:**
4. **Recalculation of Penalty Based on New Information:**

PENALTY RECOMMENDATION, MULTIPLE VIOLATIONS

VIOLATOR: _____
 FACILITY: _____
 CASE DESCRIPTION: (what, how much, #/dates, from where to where; risks/harms; why; other)

Docket # _____

1. GRAVITY					
(a) Potential for Harm (e.g., Major)	_____	_____	_____	_____	_____
(b) Extent of Deviation (e.g., Moderate)	_____	_____	_____	_____	_____
(c) Gravity-based penalty from matrix (e.g., \$500)	_____	_____	_____	_____	_____
2. MULTI-DAY					
(a) select amount from Multi-Day matrix cell: \$ _____					
(b) multiply 2a by number of days of violation minus 1 ((#days - 1 = _____) * line 2a) =	_____	_____	_____	_____	_____
3. Add line 2b and line 1c	_____	_____	_____	_____	_____
4. ADJUSTMENTS TO GRAVITY AND MULTI-DAY					
(a) % decrease for good faith and/or cooperation	_____ %	_____ %	_____ %	_____ %	_____ %
(b) % increase for negligence or willful disregard	_____ %	_____ %	_____ %	_____ %	_____ %
(c) % increase for history of noncompliance	_____ %	_____ %	_____ %	_____ %	_____ %
(d) % increase/decrease for unique factors	_____ %	_____ %	_____ %	_____ %	_____ %
(e) total percentage increase/decrease (add 4a thru 4d)	_____ %	_____ %	_____ %	_____ %	_____ %
Multiply 4e by line 3 above (if penalty reduction expected, enclose dollar amount in parenthesis)	_____	_____	_____	_____	_____
6. Add line 5 and line 3	_____	_____	_____	_____	_____
7. ECONOMIC BENEFIT	_____	_____	_____	_____	_____
8. PENALTY (add lines 6 and 7)	_____	_____	_____	_____	\$ _____

