DEPARTMENT OF ENVIRONMENTAL PROTECTION
Air Quality

DOCUMENT NUMBER: 273-4130-001

TITLE: DEP/EPA Asbestos Demolition/Renovation Civil Penalty Policy

AUTHORITY: Act of January 8, 1960, P.L. (1959) 2119, No 787, as amended, known as The Air Pollution Control Act, (35 P.S. § 4001 et seq.)

POLICY: Outlines the procedures to be followed for assessing civil penalties for asbestos violations.

PURPOSE: Provides guidance for Regional personnel in assessment of penalties for asbestos violations.

APPLICABILITY: Staff/Regulated Public

DISCLAIMER:

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect applicable statutory or regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework for the exercise of DEP's administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 15 pages

LOCATION: Vol 02, Tab 27

DEP/EPA ASBESTOS DEMOLITION AND RENOVATION CIVIL PENALTY POLICY

The Clean Air Act Stationary Source Civil Penalty Policy ("General Penalty Policy") provides guidance for determining the amount of civil penalties the Department of Environmental Protection (DEP) will seek in pre-trial settlement of civil judicial actions under Section 113 (b) of the Clean Air Act ("the Act"). In addition, the General Penalty Policy is used by the DEP in determining an appropriate penalty in administrative penalty actions brought under Section 113 (d)(1) of the Act. Due to certain unique aspects of asbestos demolition and renovation cases, the following policy provides separate guidance for determining the gravity and economic benefit components of the penalty. Adjustment factors should be treated in accordance with the General Penalty Policy.

This policy is to be used for settlement purposes in civil judicial cases involving asbestos NESHAP demolition and renovation violations, but the DEP retains the discretion to seek the full statutory maximum penalty in all civil judicial cases which do not settle. In addition, for administrative penalty cases, the policy is to be used in conjunction with the U.S. Environmental Protection Agency ‘s (EPA) General Penalty Policy to determine an appropriate penalty to be pled in the administrative complaint, as well as serving as guidance for settlement amounts in such cases. If the Region is referring a civil action under Section 113(b) of the Clean Air Act against a demolition or renovation source, it should recommend a minimum civil penalty settlement amount in the referral. For administrative penalty cases under Section 113 (d)(1), the Region will plead the calculated penalty in its complaint. In both instances, consistent with the EPA’s General Penalty Policy, the Region should determine a "preliminary deterrence amount" by assessing an economic benefit component and a gravity component. This amount may then be adjusted upward or downward by consideration of other factors, such as degree of willfulness and/or negligence, history of noncompliance,[1] ability to pay, and litigation risk.

The "gravity" component should account for statutory criteria such as the environmental harm resulting from the violation, the importance of the requirement to the regulatory scheme, the duration of the violation, and the size of the violator. Since asbestos is a hazardous air pollutant, the penalty policy generates an appropriately high gravity factor associated with substantive violations (i.e., failure to adhere to work practices or to prevent visible emissions from waste disposal). Also, since notification is essential to DEP enforcement, a notification violation may also warrant a high gravity component, except for minor violations as set forth in the chart for notification violations on page 15.

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[1] As discussed in EPA's General Penalty Policy, history of noncompliance takes into account prior violations of all environmental statutes. In addition, the litigation team should consider the extent to which the gravity component has already been increased for prior violations by application of this policy.

I. GRAVITY COMPONENT

The chart on pages 13-14 sets forth penalty amounts to be assessed for notification and waste shipment violations as part of the gravity component of the penalty settlement figure. A matrix for calculating penalties for work-practice, emission and other violations of the asbestos NESHAP also is found on page 15.

A. Notice Violations

1. No Notice

The figures in the first line of the Notification and Waste Shipment Violations chart (pp. 14) apply as a general rule to failure to notify, including those situations in which substantive violations occurred and those instances in which DEP has been unable to determine if substantive violations occurred

If DEP does not know whether substantive violations occurred, additional information, such as confirmation of the amount of asbestos in the facility obtained from owners, operators, or unsuccessful bidders, may be obtained by using Section 114 requests for information or administrative subpoenas. If there has been a recent purchase of the facility, there may have been a pre-sale audit of environmental liabilities that might prove useful. Failure to respond to such a request should be assessed an additional penalty in accordance with the General Penalty Policy. The reduced amounts in the second line of the chart apply only if the DEP can conclude from its own inspection, or other reliable information, that the source probably achieved compliance with all substantive requirements.

2. Late Incomplete or Inaccurate Notice

Where notification is late, incomplete or inaccurate, the Region should use the figures in the chart, but has discretion to insert appropriate figures in circumstances not addressed in the matrix. The important factor is the impact the company's action has on the DEP's ability to monitor substantive compliance.

B. Work-Practice Emission and Other Violations

Penalties for work-practice, emissions and other violations are based on the particular regulatory requirements violated. The figures on the chart (page 15) are for each day of documented

violations, and each additional day of violation in the case of continuing violations. The total figure is the sum of the penalty assigned to a violation of each requirement. Apply the matrix for each distinct violation of sub-paragraphs of the regulation that would constitute a separate claim for relief if applicable (e.q.,§ 61.145 (c)(6)(i), (ii) and {iii)).

The gravity component also depends on the amount of asbestos involved in the operation, which relates to the potential for environmental harm associated with improper removal and disposal. There are three categories based on the amount of asbestos, expressed in "units," a unit being the threshold for applicability of the substantive requirements.[2] If a job involves friable asbestos on pipes and other facility components, the amounts of linear feet and square feet should each be separately converted to units, and the numbers of units should be added together to arrive at a total. Where the only information on the amount of asbestos involved in a particular demolition or renovation is in cubic dimensions (volume), 35 cubic feet is the applicability limit which is specified in § 61.145(a)(1)(ii).

Where the facility has been reduced to rubble prior to the inspection, information on the amount of asbestos can be sought from the notice, the contract for removal or demolition, unsuccessful bidders, depositions of the owners and operators or maintenance personnel, or from blueprints if available. The Region may also make use of § 114 requests and § 307 subpoenas to gather information regarding the amount of asbestos at the facility. If the Region is unable to obtain specific information on the amount of asbestos involved at the site from the source, the Region should use the maximum unit range for which it has adequate evidence.

Where there is evidence indicating that only part of a demolition or renovation project involved improper stripping, removal, disposal or handling, the Region may calculate the number of units based upon the amount of asbestos reasonably related to such improper practice. For example, if improper removal is observed in one room of a facility, but it is apparent that the removal activities in the remainder of the facility are done in full compliance with the NESHAP, the Region may calculate the number of units for the room, rather than the entire facility.

C. Gravity Component Adjustments

1. Second and Subsequent Violations

Gravity components are adjusted based on whether the violation is a first, second, or subsequent (i.e., third, fourth, fifth, etc.) offense.[3] A "second" or "subsequent" violation should be determined to have occurred if, after being notified of a violation

by the local agency, State or EPA at a prior demolition or renovation project, the owner or operator violates the Asbestos NESHAP regulations during

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[2] This applicability threshold is prescribed in 61.14S(a)(1) as the combined amount of regulated-asbestos containing material (RACM) on at least 80 linear meters (260 linear feet) of pipes, or at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components.

[3] Continuing violations are treated differently than second or subsequent violations. See, Duration of Violation, below.

another project, even if different provisions of the NESHAP are violated. This prior notification could range from simply an oral or written warning to the filing of a judicial enforcement action. Such prior notification of a violation is sufficient to trigger treatment of any future violations as second or subsequent violations; there is no need to have an admission or judicial determination of liability.

Violations should be treated as second or subsequent offenses only if the new violations occur at a different time and/or a different jobsite. Escalation of the penalty to the second or subsequent category should not occur within the context of a single demolition or renovation project unless the project is accomplished in distinct phases or is unusually long in duration. Escalation of the violation to the second or subsequent category is required, even if the first violation is deemed to be ”minor".

A violation of a § 113(a) administrative order (AO) will generally be considered a "second violation" given the length of time usually taken before issuing an AO and should be assessed a separate penalty in accordance with the General Penalty Policy.

If the case involves multiple potential defendants and any one of them is involved in a second or subsequent offense, the penalty should be derived based on the second or subsequent offense. In such instance, the Government should try to get the prior-offending party to pay the extra penalties attributable to this factor. (See discussion below on apportionment of the penalty).

2. Duration of the Violation

The Region should enhance the gravity component of the penalty according to the chart (p. 14) to reflect the duration of the violation. Where the Region has evidence of the duration of a violation or can invoke the benefit of the presumption of continuing violation pursuant to Section 113(e)(2) of the Act, the

gravity component of the penalty should be increased by the number of additional days of violation multiplied by the corresponding number on the chart.

In order for the presumption of continuing noncompliance to apply, the Act requires that the owner or operator has been notified of the violation by EPA or the DEP and that a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice. When these requirements have been met, the length of violation should include the date of notice and each day thereafter until the violator establishes the date upon which continuous compliance was achieved.

When there is evidence of an ongoing violation and facts do not indicate when compliance was achieved, presume the longest period of noncompliance for which there is any credible evidence and calculate the duration of the violation based on that date. This period should include any violations which occurred prior to the notification date if there is evidence to support such violations. However, if the violations are based upon the statutory presumption of continuing violation, only those dates after notification may be included. When the presumption of continuing noncompliance can be invoked and there is no evidence of compliance, the date of completion of the demolition or renovation should be used as the date of compliance.(U.S. v. Tzavah Urban Renewal Corp., 696 F. Supp. 1013 (D.N.J. 1988)) [4.] Where there has been no compliance and the demolition or renovation activities are ongoing, the penalty should be calculated as of the date of the referral and revised upon a completion date or the date upon which correction of the violation occurs.

Successive violations exist at the same facility when there is evidence of violations on separate days, but no evidence (or presumption) that the violations were continuing during the intervening days. For example, where there has been more than one inspection and no evidence of a continuing violation, violations uncovered at each inspection should be calculated as separate successive violations. As discussed in Section C (1) above, successive violations occurring at a single demolition or renovation project will each be treated as first violations, unless they are initially treated as second or subsequent violations based upon a finding of prior violations at a different jobsite or because they warrant escalation based upon the fact that the current job is done in distinct phases or is unusually long in duration. The chart on page 16 reflects that additional days of violation for which there is inspection evidence are assessed the full substantive penalty amount while additional days based upon the presumption of continuing violation are assessed only ten percent of the substantive penalty per day.

Since asbestos projects are usually short-lived, any correction of substantive violations must be prompt to be effective. Therefore, DEP expects that work practice violations brought to the attention of an owner or operator will be corrected promptly, thus ending the presumption of continuing violation. This correction should not be a mitigating factor, rather this policy recognizes that the failure to promptly correct the environmental harm and the attendant human health risk implicitly increases the gravity of the violation. In particularly egregious cases the Region should consider enhancing the penalty based on the factors set forth in the General Penalty Policy.

3. Size of the Violator

An increase in the gravity component based upon the size of the violator's business should be calculated in accordance with the General Penalty Policy. Where there are multiple defendants, the Region has discretion to base the size of the violator calculation

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[4] The court in Tzavah held that for purposes of asbestos NESHAP requirements, a demolition or renovation project has not been completed until the NESHAP has been complied with and all asbestos waste has been properly disposed. 696 F. Supp. at 1019.

on any one or all of the defendants' assets. The Region may choose to use the size of the more culpable defendant if such determination is warranted by the facts of the case or it may choose to calculate each defendant's size separately and apportion this part of the penalty (see discussion of apportionment below).

II. ECONOMIC BENEFIT COMPONENT

This component is a measure of the economic benefit accruing to the operator (usually a contractor), the facility owner, or both, as a result of noncompliance with the asbestos regulations. Information on actual economic benefit should be used if available. It is difficult to determine actual economic benefit, but a comparison of unsuccessful bids with the successful bid may provide an initial point of departure. A comparison of the operator's actual expenses with the contract price is another indicator. In the absence of reliable information regarding a defendant's actual expenses, the attached chart provides figures which may be used as a "rule of thumb" to determine the costs of stripping, removing, disposing of and handling asbestos in compliance with § 61.145(c) and §61.150. The figures are based on rough cost estimates of asbestos removal nationwide. If any portion of the job is done in compliance, the economic benefit should be based only on the asbestos improperly handled. It should be assumed, unless there is convincing evidence to the contrary, that all stripping, removal,

disposal and handling was done improperly if such improper practices are observed by the inspector.

III. APPORTIONMENT OF THE PENALTY

This policy is intended to yield a minimum settlement penalty figure for the case as a whole. In many cases, more than one contractor and/or the facility owner will be named as defendants. In such instances, the DEP should generally take the position of seeking a sum for the case as a whole, which the multiple defendants can allocate among themselves as they wish. On the other hand, if one party is particularly deserving of punishment so as to deter future violations, separate settlements may ensure that the offending party pays the appropriate penalty.

It is not necessary in applying this penalty policy to allocate the economic benefit to each of the parties precisely. The total benefit accruing to the parties should be used for this component. Depending on the circumstances, the economic benefit may actually be split among the parties in any combination. For example, if the contractor charges the owner fair market value for compliance with asbestos removal requirements and fails to comply, the contractor has derived an economic benefit and the owner has not. If the contractor underbids because it does not factor in compliance with asbestos requirements, the facility owner has realized the full amount of the financial savings. (In such an instance, the contractor may have also received a benefit which is harder to quantify - obtaining the contract by virtue of the low bid.)

There are circumstances in which the DEP may try to influence apportionment of the penalty. For example, if one party is a second offender, the DEP may try to assure that such party pays the portion of the penalty attributable to the second offense. If one party is known to have realized all or most of the economic benefit, that party may be asked to pay for that amount. Other circumstances may arise in which one party appears more culpable than others. We realize, however, that it may be impractical to dictate allocation of the penalties in negotiating a settlement with multiple defendants. The DEP should therefore adopt a single “bottom line" sum for the case and should not reject a settlement which meets the bottom line because of the way the amount is apportioned.

Apportionment of the penalty in a multi-defendant case may be required if one party is willing to settle and others are not. In such circumstances, the DEP should take the position that if certain portions of the penalty are attributable to such party (such as economic benefit or second offense), that party should pay those amounts and a reasonable portion of the amounts not directly

assigned to any single party. However, the DEP should also be flexible enough to mitigate the penalty for cooperativeness in accordance with the General Penalty Policy. If a case is settled as to one defendant, a penalty not less than the balance of the settlement figure for the case as a whole should be sought from the remaining defendants. This remainder can be adjusted upward, in accordance with the general Civil Penalty Policy, if the circumstances warrant it. Of course, the case can also be litigated against the remaining defendants for the maximum attainable penalty. In order to assure that the full penalty amount can be collected from separate settlements, it is recommended that the litigation team use ABEL calculations, tax returns, audited financial statements and other reliable financial documents for all defendants prior to making settlement offers.

IV. OTHER CONSIDERATIONS

The policy seeks substantial penalties for substantive violations and repeat violations. Penalties should generally be sought for all violations which fit these categories. If a company knowingly violates the regulations, particularly if the violations are severe or the company has a prior history of violations, the Region should consider initiating a criminal enforcement action.

The best way to prevent future violations of notice and work practice requirements is to ensure that management procedures and training programs are in place to maintain compliance. Such injunctive relief, in the nature of environmental auditing and compliance certification or internal asbestos control programs, are desirable provisions to include in consent decrees settling asbestos violations.

V. EXAMPLES

Following are two examples of application of this policy[5].

Example 1 (This example illustrates calculations involving proof of continuing violations based on the inferences drawn from the evidence)

XYZ Associates hires America's Best Demolition Contractors to demolish a dilapidated abandoned building containing 1300 linear feet of pipe covered with friable asbestos, and 1600 square feet of siding and roofing sprayed with asbestos. Neither company notifies EPA or State officials prior to commencing demolition of the

building on November 1. Tipped off by a citizen complaint, DEP inspects the site on November 5 and finds that the contractor has not been wetting the suspected asbestos removed from the building, in violation of 40 C.F.R. § 61.145(c)(3). In addition, the contractor has piled dry asbestos waste material on a plastic sheet in the work area pending its disposal, in violation of 40 C.F.R § 61.14S(c)(6)(i). There is no evidence of any visible emissions from this pile. During the inspection, the site supervisor professes complete ignorance of asbestos NESHAP requirements. An employee tells the inspector that workers were never told the material on-site contained asbestos and states "since this job began we've just been scraping the pipe coverings off with our hammers." The inspector observes there is no water at the site. The inspector takes samples and sends them to an EPA approved lab which later confirms that the material is asbestos. Work is stopped until the next day when a water tank truck is brought to the facility for use in wetting during removal and storage.

On November 12 the inspector returns to the site only to find that the workers are dry stripping the siding and roofing because the water supply had been exhausted and the tank truck removed. A worker reports that the water supply had lasted four days before it ran out at the close of the November 9 work day. The inspector observes a new pile of dry asbestos containing debris in tall grass at the back of the property. Unlike the pile observed inside the facility during the first inspection, this pile is presumed to have produced visible emissions. At the time of the second inspection 75% of the asbestos had been removed from the building 50% of which is deemed to have been improperly removed[6].

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[5] The examples are intended to illustrate application of the civil penalty policy. For purposes of this policy, any criminal conduct that may be implied in the examples hasbeen ignored. Of course, in appropriate cases, prosecution for criminal violations should be pursued through appropriate channels.

[6] America's Best completed 75% of the work over a 12 day period. For 4 of the 12 days (Nov.6-9) there is evidence that water was used and asbestos properly handled. Assume that equal amounts of asbestos were removed each day. Thus, 50% of the asbestos was properly removed (25% by America's Best, 25% by the new contractor.)
After discussion with DEP officials, work is halted at the site and XYZ Associates hires another contractor to properly dispose of the asbestos wastes and to remove the remaining 25% of the asbestos in compliance with the asbestos NESHAP. The new contractor completes disposal of the illegal waste pile on November 18.

Neither XYZ Associates nor America's Best Demolition Contractors has ever been cited for asbestos violations by EPA or

the State. Both companies have assets of approximately $5,000,000.00 and have sufficient resources to pay a substantial penalty.

The defendants committed the following violations: one violation of the notice provision (§ 61.145(b)(1)); one violation for failure to wet during stripping (§61.145(c)(3)) and failure to keep wet until disposal (§ 61.145(c)(6)(i)), each detected at the first inspection and lasting a duration of five days (Nov. 15); a second separate dry stripping violation (§ 61.145(c)(3)), observed at the second inspection and lasting for three days (Nov. 10-12); an improper disposal violation (§ 61.150(b)), discovered during the second inspection, lasting a duration of nine days (the violation began on November 10 and continued to November 18 per Tzavah) and a visible emissions violation (§61.150(a)) discovered during the second inspection, lasting a duration of seven days (Nov. 12-18). Thus, the defendants are liable for a statutory maximum of $750,000 (29 days of work practice violations x $25,000 (statutory maximum Penalty per day of each separate substantive violation) + $25,000 [7] for the notice violation = $750,000).

The penalty is computed as follows:

Gravity Component

Notice violation, § 61.145(b) (first time)	$15,000
--First Inspection Violations	
Violation of § 61.145(c)(3) (10 + 5 = 15 units of asbestos) (1 x $10,000)	$10,000
Additional days of violation) ($1,000 x 4 days of violations)	$ 4,000
Violation of § 61.145(c)(6) (i) (1 x $10,000)	$10,000
Additional days of violation ($l,000 x 4 days of violations)	$ 4,000

[7] Arguably, for purposes of calculating the statutory maximum, the notice violation can be construed to have lasted at least until the EPA or DEP has actual notice of the demolition (or renovation, as the case may be).

-- Second Inspection Violations	
New violation of § 61.145(c) (3) (1 x $10,000)	$10,000

Additional days of violation
($1,000 x 2 days of violations) $ 2,000

Violation of §61.150(a)
(1 x $10,000) $10,000

Additional days of violation
($1,000 x 6 days of violations) $ 6,000

Violation of § 61.150(b)
(1 x $10,000) $10,000

Additional days of violation
($1,000 x 8 days of violations) $ 8,000
$109,000

-- Size of Violator
(size of both defendants combined) $20,000

Total Gravity Component
$129,000

Economic Benefit Component

$20/sq. foot x 1600 sq. feet $32,000
$20/linear foot x 1300 linear feet + 26,000
$58,000

$58,000 x 50%
(% of asbestos improperly handled) $ 29,000

Preliminary Deterrence Amount
$158,000

Adjustment factors - No adjustment for prompt correction of environmental problem because that is what the defendant is supposed to do.

Minimum Penalty settlement amount
$158.000

NOTE: If the statutory maximum had been smaller than this sum, then the minimum penalty would have to be adjusted accordingly. Also, for the dry stripping violations, no additional days were added for the period between the two inspections because there was no evidence that the dry stripping had continued in the interim period.

Example 2 (This example illustrates calculations involving proof of continuing violations based on the statutory inference drawn from the notice of violation)

Consolidated Conglomerates, Inc. hires Bert and Ernie's Trucking Company to demolish a building which contains 1,000 linear feet of friable asbestos on pipes. Neither party gives notice to EPA or to the state prior to commencement of demolition. A DEP inspector acting on a tip, visits the site on April 1, the first day of the building demolition. During the inspection he observes workers removing pipe coverings dry. Further inquiry reveals there is no water available on site. He also finds a large uncontained pile of what appears to be dry asbestos-containing waste material at the bottom of an embankment behind the building. He takes samples and issues an oral notice of violation citing to 40 C.F.R. §§ 61.145(c)(3) (dry removal), 61.145(c)(6)(i) (failure to keep wet until disposal), and 61.150(a) (visible emissions)[8], and gives the job supervisor a copy of the asbestos NESHAP. Test results confirm the samples contain a substantial percentage of asbestos.

On April 12, the inspector receives information from a reliable source that the pile of dry asbestos debris has not been properly disposed of and there is still no access to water at the facility. This information supports a new violation of §61.150(b) (improper disposal). The inspector revisits the site on April 22 and determines that the waste pile has been removed. A representative of Consolidated Conglomerates, Inc. gives the inspector documents showing that actual work at the demolition site concluded on April 17, but the contractor cannot document when the debris pile was removed. Thus, there are at least 61 days of violation (17 days of dry removal in violation of § 61.145(c)(3) 22 days of failure to keep wet until disposal in violation of §61.145(c)(6)(i), 11 days of visible emissions in violation of §61.150(a) and 11 days of improper disposal in violation of § 61.150(b)) times $25,000 per day, plus $25,000 for the notice violation[9], or a statutory maximum of $1,550,000.

Consolidated Conglomerates is a corporation with assets of over $100 million and annual sales in excess of $10 million. Bert and Ernie's Trucking is a limited partnership of two brothers who own tow trucks and have less than $2S,000 worth of business each year. This contract was for $50,000. Bert and Ernie's was once previously cited by the State Department of Environmental Protection for violations of asbestos regulations. As a result. all violations are deemed to be second violations.

[8] Regardless of whether the inspector observes emissions of asbestos during a site inspection, where there is circumstantial evidence (such as uncontained, dry asbestos piles outside), that supports a conclusion that visible emissions were present, the Region has discretion to include this violation.

[9] See footnote 3.

The penalty is computed as follows:

Gravity component

No notice (2nd violation)	$ 20,000
Violation of §61.145(c)(3) (approx. 3.85 units) (second violation)	$ 15,000
Additional days of violation (per presumption) (16 x $1,500)	$ 24,000
Violation of §61.145(c)(6)(i) (second violation)	$ 15,000
Additional days of violation (per presumption) (21 x $1,500)	$ 31,500
Violation of §61.150(a) (second violation)	$ 15,000
Additional days of violation (per presumption) (10 x $1,500)	$ 15,000
Violation of §61.150(b) (second violation)	$ 15,000
Additional days of violation (per presumption) (10 x $1,500)	$ 15.000
	$180.500
Size of Violator (based on Bert and Ernie's size only)	$ 2,000
Total Gravity Component	$182.500

Economic Benefit Component

$20/linear foot x-1,000 linear feet $ 20,000

Preliminary Deterrence Amount $202,500

Adjustment factors - 10% increase for willfulness $ 18,250

Minimum Settlement Penalty Amount $220,750

NOTE: Since this example assumes there was a proper factual basis for invoking the statutory presumption of continuing noncompliance, the duration of the §61.150(a) visible emissions and § 61.150(b) disposal violation runs to April 21 and the §61.145(c)(3) dry removal violation runs to April 17, the longest periods for which noncompliance can be presumed.

Apportionment of the Penalty

The calculation of the gravity component of the penalty in this case reflects a $5,000 increase in the notice penalty and a $48,500 increase in the penalty for substantive violations because it involves a second violation by the contractor. Ordinarily, the DEP should try to get Bert and Ernie's to pay at least these additional penalty amounts. However, Consolidated Conglomerate's financial size compared to the contractor's may dictate that Consolidated pay most of the penalty.

Notification and Waste Shipment Record Violations

Notification Violations	1st Violation	2nd Violation	Subsequent
No notice	$15,000	$20,000	$25,000
No notice but probable substantive compliance	$ 5,000	$15,000	$25,000

Late, Incomplete or Inaccurate notice.

For each notice, select the single largest dollar figure that applies from the following table. These violations are assessed a one-time penalty except for waste shipment vehicle marking which should be assessed a penalty per day of shipment. Add the dollar figures for each notice or waste shipment violation:

Notice submitted after asbestos removal $15,000

completed tantamount to no notice.

Notice lacks both job location and asbestos removal starting and completion dates.	4,000
Notice submitted while asbestos removal. is in progress	2,000
Notice lacks either job location or asbestos removal starting and completion dates.	2,000
Failure to update notice when amount of asbestos changes by at least 20%	2,000
Failure to provide telephone and written notice when start date changes	2,000
Notice lacks either asbestos removal starting or completion dates, but not both.	1,000
Amount of asbestos in notice is missing, improperly dimensioned, or for multiple facilities.	500
Notice lacks any other required information.	200
Notice submitted late, but still prior to asbestos removal starting date.	200

Waste Shipment Violations

Failure to maintain records which precludes discovery of waste disposal activity	2,000
Failure to maintain records but other information regarding waste disposal available	1,000
Failure to mark waste transport vehicles during loading and unloading (assess for each day of shipment)	1,000

Work-Practice, Emission and Other Violations

Gravity Component

Total amount of asbestos involved in the operation	First violation	Each add. day of violation	Second violation	Each add. day of violation	subsequent violations	Each add. day of violation
< or = 10 units	$ 5,000	$ 500	$15,000	$ 1,500	$25,000	$ 2,500

> 10 units but < or = 50 units	$10,000	$ 1,000	$20,000	$ 2,000	$25,000	$ 2,500
> 50 units	$15,000	$ 1,500	$25,000	$ 2,500	$25,000	$ 2,000

Unit = 260 linear feet, 160 square feet or 35 cubic feet - if more than one is involved, convert each amount to units and add together

Apply matrix separately to each violation of §61.145(a) and each sub-paragraph of § 61.145(c) and § 61.150, except §61.150(d) (waste shipment records) which is treated as a one time violation and §61.150(c) (vehicle marking) (see chart on pages 15-16); calculate additional days of violation, when applicable, for each sub-paragraph - add together

Benefit Component

For asbestos on pipes or other facility components:

$20 per linear, square or cubic foot of asbestos for any substantive violation.