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

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MEMORANDUM

SUBJECT: Final UIC Program Administrative Order Settlement Policy -- Underground Injection Control Guidance No. 75

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TO: Water Management Division Directors
Regions I - X

Regional Counsels
Regions I - X

We have completed the Final Underground Injection Control (UIC) Program Administrative Order Settlement Policy. The Settlement Policy has been developed jointly by the Office of Ground Water and Drinking Water and the Office of Enforcement. The regional offices have also been instrumental in shaping the final policy.

The UIC Administrative Order Settlement Policy consists of a gravity and economic component. The economic component is designed to assess any economic benefit an operator gains from violating the Safe Drinking Water Act (SDWA). The gravity component should be assessed based on the seriousness of the violation.

The economic component is calculated using the BEN model which is the Agency's accepted economic model. The gravity component consists of four variables: Seriousness of Violation; Economic Impact (Business Size); Duration of Violation; and Number of Wells. These four factors are formulated together for all violations and the adjustment factors are applied to increase or decrease the penalty.

Use of Settlement Policy

The settlement amount derived using the UIC Program Administrative Order Settlement Policy is the bottom line figure below which a case should not be compromised, except for documented extenuating situations, such as ability to pay. The settlement amount derived using the Settlement Policy should not be confused with the appropriate penalty amount included in a proposed administrative order (PAO). The penalty amount in the PAO should be the highest amount, up to the statutory cap, that the Region is able to defend before a Presiding Officer. The cover letter transmitting the PAO to the respondent may include a penalty amount lower than that in the PAO which is weighed for an expeditious conclusion of the case. In place of an actual penalty amount in the cover letter the Regions may also use a statement to indicate that a reduced penalty will be considered if the case is concluded expeditiously. In no case, however, may the penalty amount in the proposed or final AO or the cover letter be below the settlement amount derived using the UIC Program Administrative Order Settlement Policy, except for documented extenuating situations. Of course, the UIC Administrative Order Settlement Policy does not preclude a settlement from being calculated and assessed for the statutory maximum, without a reduction for expeditious compliance, at any time it is deemed necessary by the enforcement case team.

Regional Training

Training workshops are being developed and we expect to offer them in Regions IV, VIII and IX. The training course will include economic and gravity component work, case studies, litigation concerns, negotiating strategies, role play, etc. The training courses will be scheduled for January and February 1992.

We would like to thank the Regions for all their helpful comments, with special thanks to Regions III, IV and VI for contributing staff time to meet with Headquarters staff in helping to develop the UIC Settlement Policy.

Attachment

cc: Bob Blanco
Ramona Trovato
Francoise Brasier
Alan Morrissey
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Final UIC Program Administrative Order Settlement Policy

January 1992

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I. Introduction

Background

Part C of the Safe Drinking Water Act (SDWA) establishes guidelines for protecting underground sources of drinking water through control of underground injection wells. In the 1986 SDWA amendments, Congress authorized the EPA to issue administrative orders as an enforcement tool to promote compliance with the Act and its associated regulations. The revised Act authorized administrative penalties of up to $125,000.

The SDWA provides EPA with three avenues for assessing penalties for violations of UIC regulations: administrative actions, civil judicial actions, and criminal judicial actions. Guidance for choosing among the different enforcement avenues can be found in the December 22, 1986 memorandum from then Office of Drinking Water Director Michael Cook, "Transmittal of PWS and UIC Administrative Order Issuance Guidance -- ACTION MEMORANDUM." Refer to this December 1986 memorandum when deciding which enforcement route is most appropriate for a given violation.

This document sets forth the Agency's policy for determining administrative order settlement amounts. This policy is intended for administrative order **settlements only** and is not to be used to calculate amounts in proposed penalty orders nor is it intended to be used by Presiding Officers. No matter which enforcement avenue is selected, the case team should keep a **detailed case file** including all correspondence and records. The file is particularly significant should the case ever reach the courts. This settlement policy will be used by EPA Regional offices to calculate the minimum acceptable settlement amount in UIC regulation violation cases. Attorneys from the Regional Office must be involved with the penalty calculation. The penalty settlement calculations including worksheets for the calculation of the economic benefit are confidential attorney work products and enforcement sensitive and are not releasable pursuant to Freedom of Information Act requests.

Outline of the UIC Settlement Policy

This policy incorporates, directly or indirectly, each of the statutory concepts listed under Section 1423(c)(4)(B) of the Safe Drinking Water Act, which outlines the factors the Administrator must take into account when assessing an administrative penalty. In addition, this policy maintains conformity with EPA's Civil Penalty framework, GM-21 and GM-22.

The remainder of this policy provides step-by-step guidance for calculating settlement amounts. A separate calculation should be performed for each violation. The first step is to calculate the statutory maximum. For Class II wells, this is $5,000 per day per violation up to a $125,000 maximum. For other well classes, the statutory maximum is $10,000 per day per violation up to a $125,000 maximum. The statutory maximum serves as a limit which

the settlement amount cannot exceed; the case team can always choose to assess the statutory maximum penalty if the circumstances of the case warrant such action. The next step is to calculate the economic benefit of the violation, a process described in Chapter II. The third step, covered in Chapter III, is calculation of the gravity component. The final step, described in Chapter IV, is applying adjustment factors to the combined economic benefit and gravity components.

The appendices provide material to support the settlement penalty calculation process. Appendix A provides a list of common UIC program violations by level of seriousness; this list is a guideline for categorizing violations when calculating the gravity component. Appendix B provides an example worksheet to use for calculating settlement amounts with this policy. A separate worksheet calculation should be carried out for each violation. Appendix C is a Glossary of Terms.

II. Economic Benefit Component

Agency civil penalty policy mandates recapturing the economic benefit accrued to the violator as a result of noncompliance. EPA policy states that "penalties generally should, at a minimum, remove any significant economic benefits resulting from failure to comply with the law." (GM-21). These benefits accrued to a violator as a result of noncompliance are referred to as the Economic Benefit Component. This component serves as the base settlement amount to which the Gravity Component is added. The calculation of economic benefit must be in writing and retained in the case file. It is enforcement privileged material and may only be disclosed upon decision of the case team.

EPA has a standard policy and methodology for calculating economic benefit. This methodology, based on calculation of avoided and delayed costs of noncompliance, is described in detail in the "BEN User's Manual" and in the "BEN User's Guide" (revised July, 1990).[1] Case teams should calculate economic benefit of noncompliance using the BEN model.

The BEN model methodology incorporates three types of costs: initial capital investments, either one-time or recurring; one-time nondepreciable expenditures, either tax deductible or not; and avoided annual expenses. The following paragraphs give examples of each of these costs relevant to the UIC program. For detailed guidance, refer to the "BEN User's Manual," beginning on page III-7.

Initial Capital Investments

Delayed capital investments are either one-time or recurring depreciable expenditures which have been deferred by the violator's failure to comply promptly with regulatory requirements. The violator eventually will have to spend the money in order to achieve compliance, but has accrued economic benefit by using the money for other purposes during the noncompliance period. Depreciable capital expenditures are typically for physical plant or heavy equipment with a limited useful life. Examples of violations which result in savings from delayed capital investments are:

- Delay in installing monitoring equipment
- Delay in properly constructing a well

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[1] Ben is a computer model used across EPA programs to calculate the economic benefit of noncompliance in settlement calculation amounts. Detailed information about BEN and copies of the "User's Manual" and the "User's Guide" can be obtained from the EPA's Office of Enforcement Policy.

Capital investments can be either one time or recurring. An example of a recurring capital investment would be a monitoring system, with a predetermined useful life, that must always be replaced at the end of the predetermined period.

If the violator does not just delay capital investments but rather fails to make them altogether, the initial capital investments become avoided rather than delayed costs. The initial investments should then be treated in the economic benefit calculation as avoided costs.

Delayed One-Time Nondepreciable Costs

Delayed one-time costs are nondepreciable expenditures which have been deferred by the violator's failure to comply promptly with regulatory requirements. The violator eventually will have to spend the money in order to achieve compliance, but has accrued economic benefit by using the money for other purposes during the noncompliance period. With the exception of land, most one-time nondepreciable costs are tax deductible. Examples of violations which result in savings from delayed one-time, nondepreciable costs are:

- Delay in contracting for brine removal
- Delay in setting up a record-keeping system
- Delay in purchase of land required for compliance
- Delay in repairing a well lacking mechanical integrity
- Delay of plugging and abandonment in accordance with an approved plan
- Initial training of employees (regularly occurring training must be classified as an annual cost, not a one-time cost)

Many of the costs associated with violation of UIC program regulations are one-time nondepreciable expenditures.

If the violator does not just delay one-time nondepreciable expenditures but rather fails to make them altogether, the expenditures become avoided rather than delayed costs. The one-time nondepreciable expenditures should then be treated in the economic benefit calculation as avoided costs.

Annual Expenses

Annual expenses are recurring expenditures that the violator completely avoided through noncompliance. These costs will never be incurred. Annual expenses are the equivalent of operating and maintenance (O&M) costs. Examples of violations which result in savings from avoided annual expenses are:

- Failure to monitor
- Failure to retain records
- Failure to carry out regular training of employees
- Failure to perform required operation and maintenance activities

The case team will often find that the most appropriate avoided annual expense is the cost of alternative (proper) disposal. This is treated as an annual expense or operating cost since it is a necessary cost of a legal operation if the underground injection well may not lawfully be used for injection. To use BEN to calculate alternative cost of disposal, the case team should input this alternative cost as an annual expense in the appropriate year. The actual O&M costs for operating the noncomplying well should be subtracted from this annual expense in each year, since these actual O&M costs would not have been incurred had the violator used the alternative, off-site disposal.

Wrongful Profits

Finally, BEN can be used to calculate the present value of wrongful profits. This method of calculating economic benefit should only be used if calculation of an economic benefit from delayed and avoided costs is not possible because the necessary information is unobtainable; estimates of wrongful profits are typically very imprecise and this is not the preferred alternative. To determine wrongful profits in each year, the case team calculates either revenue from sales less cost of goods sold or calculates revenue from sales times profit margin. All three of these figures (sales revenue, cost of goods sold, and profit margin) are difficult to determine, making this calculation of economic benefit a last resort. The wrongful profit from each year is then entered into BEN as an annual expense, and BEN will calculate the present value of these wrongful profits.

Challenges to Economic Benefit Calculation

Responsibility for disputing case team calculations of economic benefit lies with the violator. If a violator believes the Economic Benefit the firm actually derived from noncompliance differs from the estimated amount, the firm should present information documenting its actual savings to the case team during settlement negotiations. In the

absence of contradictory evidence supplied by the violator, the case team should use the Economic Benefit calculation provided by BEN.

This BEN calculation is for settlement purposes only. Should the case be litigated, a separate economic analysis should be provided by an expert witness.

III. Gravity Component

Introduction

This section of the policy describes the methodology for calculating the gravity component of administrative settlements for violations of UIC regulations. A separate gravity component should be calculated for each violation. Case teams will first calculate an unadjusted gravity component and will then apply the Gravity Component Adjustment Factor to determine the final gravity component.

Calculating the Unadjusted Gravity Component

The unadjusted gravity component incorporates the following variables:

(A) Seriousness of violation

(B) Economic impact on the violator

(C) Duration of violation

(D) Number of wells in violation

The formula incorporating these factors is included on Chart 1 on page 9, the "Unadjusted Gravity Component Calculation Formula." Each of the four component variables is described in more detail below.

A. Seriousness of Violation

The seriousness of violation is the basic factor from which the gravity component is calculated. The seriousness of violation incorporates both the potential or actual harm resulting from the violation and the extent of deviation from UIC program requirements. Violations are placed in one of three levels. Level III infractions are less serious; they are typically reporting violations that do not threaten the integrity of the program and pose little or no direct threat to the environment. Level II violations may be either reporting or other types of infractions; they are more serious than Level III violations but do not seriously threaten the environment and would not be classified as Significant Noncompliance.[1] Level I violations are the most serious violations; these are violations that threaten human health or the environment and/or that violate crucial provisions of the UIC program. These Level I

[1] Guidance for determining whether violations represent Significant Noncompliance can be found in: (1) "UIC Program Definition of Significant Noncompliance," December 4, 1986, (2) UIC Guidance Number 58, September 9, 1987; (3) "UIC Program SNC Definition," September 16, 1987, and (4) "Clarification of Procedures for Determining Significant Noncompliance - Addendum to UIC Program Guidance #58," February 16, 1990

violations would be defined as Significant Noncompliance. Appendix A contains lists of common UIC program violations broken down into the three levels. The lists in Appendix A are *intended to serve as guides only* since specific circumstances may dictate that a violation listed in one category may be more or less serious in the particular case under review.

B. Economic Impact on the Violator

Economic impact on the violator is a statutory consideration, from the Safe Drinking Water Act, in UIC penalty cases. To account for different impacts on violators of varying financial capability, the UIC settlement policy incorporates this provision to distinguish between different sized businesses. Firms are placed in one of three categories based on their net sales. Net sales is the first line on any corporate tax form and equals gross sales less returns, allowances, and discounts. Case teams should attempt to get reliable information as to violator business size (e.g., Dunn & Bradstreet reports, tax forms, audited financial statements); in the absence of specific information, case teams should use their judgment based on available information and conservative estimates.

The economic impact on the violator factor accounts for varying financial capability among firms of different sizes. It is intended to relegate the Ability to Pay factor (see p. 10) to a secondary consideration, invoked only when violators conclusively prove that they are unable to pay the calculated penalty.

In cases where small firms are very profitable and where the proposed penalty (without the Economic Impact on the Violator adjustment) will not adversely affect the violator, this provision may be discounted. The case team has the discretion to use a value of "1" under this factor regardless of the violator's business size.

C. Duration of Violation

This penalty policy accounts for ongoing violations by escalating the calculated penalty as the length of violation increases. The duration of violation is defined as the time from the first known day of noncompliance until the compliance date (the day the violator brings the well into compliance). For the purpose of calculating the length of ongoing violations, a month is defined as 30 days and a partial month beyond the last full month is counted as an additional month (e.g., a 32-day violation is a two-month violation).

D. Number of Wells in Violation

This factor accounts for the fact that a number of wells owned by a single operator may be in violation of the identical UIC requirement; this provision is only to be used when multiple wells are in violation of the *identical requirement*. In these instances, the case team may either calculate a separate penalty for each well or use this multi-well provision to calculate a single penalty. For identical violations at 25 or fewer wells, this factor is equal

Chart 1
Unadjusted Gravity Component
Calculation Formula: (A X B) X (C + D)

Input Factors

A. Seriousness of Violation

	Multiplier	
Violation Category	Class II	Class I, III-V
Level III	$100-400	$100-400
Level II	401-1,000	401-1,000
Level I	1,001-5,000	1,001-10,000

B. Economic Impact on the Violator

Business Size	Multiplier
Less than $1 Million	0.3
$1 Million - $10 Million	0.7
Greater than $10 Million	1.0

C. Duration of Violation

Length of Violation	Factor
1 day	0
2 days - 1 month	0 - 2
2 - 3 months	2 - 5
4 - 7 months	4 -10
8 - 12 months	8 -15
13 - 18 months	13 - 25
19 - 36 months	19 -40
37 - 60 months	37- 75
60+ months	60 - 125+

D. Number of Wells in Violation

Number	Factor
1-25	Actual number of wells
26 - 50	26 - 50
51 - 100	36 - 100
100+	50 - 100+

to the number of wells; only when there are a large number of wells in violation does this factor have an effect.

Adjustment Factor for the Gravity Component

The gravity component adjustment factor permits increases or decreases in the gravity component to account for a violator's compliance history; good or bad faith; unjustified delay in preventing, correcting or mitigating the violation; failure to provide appropriate or requested information; other attempts to delay or complicate correction of the violation or of the penalty settlement; level of cooperation/noncooperation; extraordinary attempts to mitigate damage from the violation; and other relevant issues not captured in the calculation of the unadjusted gravity component.

When considering an appropriate figure for gravity component adjustment factor, the case team should -- at a minimum -- consider the following specific factors:

- Number of previous violations
- Similarity of any previous violations
- Time lapsed since the previous violation(s)
- Violator's response to previous violations and enforcement actions
- The rapidity with which this violation was corrected or damage was mitigated
- The level of effort put forth by the violator to correct the violation and respond to the enforcement action
- Whether the violator delayed release of information or employed other delaying tactics

Based on these and other appropriate factors, the case team may decide on a gravity component adjustment factor ranging from minus 30 to plus 200 percent. Case teams may not consider a *reduction* of the gravity component based on a history of compliance. The unadjusted gravity component is then multiplied by the adjustment factor and the resulting amount is added to or subtracted from the unadjusted gravity component to yield the final (adjusted) gravity component.

IV. Determining the Final Settlement Amount

The preliminary settlement amount is the sum of the Gravity and Economic Benefit Components. However, two factors may be used to adjust the preliminary settlement amount: ability to pay and litigation considerations. Both of these factors are external to benefit derived through noncompliance and to the seriousness of the violation and both factors may be used only to adjust proposed settlement amounts downward. Any adjustment must be fully documented and retained in the case file. This chapter describes the use of the ability to pay and litigation considerations adjustment factors. In addition, this chapter discusses the use of Supplemental Environmental Projects to reduce penalty amounts.

Ability to Pay

The Agency will not request penalty settlements that are clearly beyond the means of the violator. The case team typically should seek to settle for as high an amount as the violator can afford without seriously jeopardizing the violator's ability to continue operations and to bring the well(s) into compliance. Therefore, EPA may consider the ability to pay a penalty when arriving at a specific final penalty assessment. However, the more serious the violation the greater risk EPA should accept that imposition of a penalty will result in closure of a violator's business. According to the Agency's penalty framework, GM-22, "EPA reserves the option, in appropriate circumstances, of seeking a penalty that might put a company out of business" (p. 23). Also, where the case team believes the violator will not be able to bring the well operation into compliance no matter what the penalty assessment, the penalty should not be adjusted downward based on ability to pay.

The burden to demonstrate inability to pay, as with the burden of demonstrating the presence of any mitigating circumstances, rests on the violator. In addition, if the violator fails to provide sufficient information to support a claim of inability to pay a penalty, then the case development team should disregard this factor in adjusting the penalty. At a minimum, the violator must provide three years of Federal tax returns. Where possible, the case team should also have the violator provide a certified financial statement prepared by a Certified Public Accountant. The Agency has developed a computer model called "ABEL" which helps determine the ability of a violator to afford a penalty. If the Region is still unable to judge the validity of the claim, evaluation by an outside expert consultant may be necessary.

When it is determined that a violator cannot afford the penalty prescribed by this policy, the following options may be considered:

- An installment payment schedule with appropriate interest accruing to delayed payments. The first payment must be received within 60 days of final settlement.

- A penalty reduction.

- A suit against the individual violator(s) if the company has no assets.

A reduction in the penalty amount is a less desirable alternative than a delayed payment schedule.

Litigation Considerations

Litigation considerations may serve to decrease the settlement amount. The case team should evaluate every penalty with a view toward the possibility that the violator will fight the decision in court. Therefore, the case team should consider assessing the maximum defendable administrative penalty if the case proceeds to an administrative hearing. Issues that may affect the Presiding Officer's penalty decision include:

- The strength of evidence proving the duration of violation

- The strength of evidence proving disputed violations

- Statutory considerations

- The presence or absence of legal precedents on which to base the case against the violator

- The strength of the violator's equity arguments

An example of an equity argument that may lead to a lower Presiding Officer award is if the violator can show that he reasonably, conclusively, and detrimentally relied on EPA's or a state or local agency's representations or actions. The case team should select a value for litigation considerations between zero and 100 percent, where 100 percent represents the belief that EPA has a strong case and the Presiding Officer is unlikely to reduce the award based on the factors outlined in this section. A low percent rating would indicate that the case team believes a Presiding Officer would grant a very modest award. Justification for choosing any value other than 100 percent must be documented and included in the case file. The value should then be included in the Settlement Policy Calculation Worksheet (Appendix B) under Step 4, letter (J).

Supplemental Environmental Projects

Supplemental environmental projects are pollution prevention, recycling, or related projects which are not required to bring a violator into compliance but which will result in significant environmental benefit if undertaken. If carried out correctly, these projects can lead to reduction of minimum settlement amounts. EPA's Office of Enforcement has issued guidance addressing the use of supplemental enforcement projects in EPA settlements. The first policy, "Policy on the Use of Supplemental Enforcement Projects in EPA Settlements," was issued on February 12, 1991. A related document, "Interim Policy on the Inclusion of Pollution Prevention and Recycling Provisions in Enforcement Actions," was issued soon after as a preliminary document. Final guidance is being prepared by the Office of Enforcement.

Case teams considering the use of supplemental environmental projects to mitigate settlement amounts should follow the policies outlined in these documents. The policies describe the circumstances under which supplemental environmental projects can be considered in settlement calculations and how they should be treated when calculating settlement amounts. Note that any administrative order that has the cash payment amount reduced by inclusion of a Supplemental Environmental Project which involves substitute performance or has a "horizontal" nexus, as that term is defined in the policy, must be approved by the Office of Enforcement. Supplemental Environmental Projects can be used to reduce the cash payments but not to a value below the Economic Benefit component. This reduction can not reduce the total value of the violator's settlement (cash payment plus value of Supplemental Environmental Project) to a value below the Final Settlement Amount calculated using this policy.

Appendix A

Level I, Level II, and Level III Violations

Level I Violations[1]: Potential for Significant Environmental Contamination

Violation	SDWA or Regulatory Citation
Failure to demonstrate mechanical integrity with potential or actual contamination of a USDW	144.52(a)(8), 146.8, 144.51(p), 144.28(g), and 144.12(a)
Unauthorized injection	144.11, 144.13, 144.14(b), 144.21(a), 144.23(a), and 144.27
Failure to construct well properly (casing and cementing)	144.28(e), Part 146, and relevant parts of 147
Failure to operate properly (e.g., overpressure)	144.28(f), 144.51(e), 144.52(a), and Part 146
Failure to plug and abandon in accordance with an approved plan	144.23(b), 144.28(c), 144.51(o), 144.52(a)(6), and 146.10
Failure to prevent movement into a USDW of fluids that may cause a violation of an MCL	144.12(a) and 1431
Failure to comply with a compliance schedule in a permit	144.53 and 144.51(l)(5)
Failure to comply with an Administrative Order	1423(c)
Unauthorized plugging of a well in an unauthorized manner	144.28(c), 146.10 and 144.51(o)
Falsifying information[2]	144.51(o), 1445(c), and 1431

[1]This list of violations is intended only as guidance. Unique circumstances of individual cases may lead case teams to classify violations not listed here as Level I violations or to classify a violation listed here at a different level.

[2]A unique violation that, although not directly linked to environmental harm, is considered a serious, Level I violation. Case teams should consider criminal prosecution for this violation.

Level II Violations[3]: Critical Program Elements

Violation	SDWA or Regulatory Citation
Failure to show evidence of or to maintain financial responsibility	144.28(d), 144.52(a)(7) and 144.60-144.70
Failure to monitor	144.28(g), Part 146 and 144.51(a) and (j)
Substantial failure to comply with operating requirements	144.28(f), 144.51(a) and (e), and Part 146
Failure to conduct an MIT upon lawful request of the Agency or within legal deadlines and thereby demonstrate Mechanical Integrity	144.28(g)
Failure to submit a plugging and abandonment plan	144.23(b)(2) and 144.28(c)
Failure to allow inspection and entry	144.51(i)
Failure to apply for a permit	144.25, and 144.31
Failure to submit an annual report	144.28(h)
Failure to transfer a permit properly	144.38
Failure to submit 24-Hour report and/or written follow-up	144.28(b) and 144.51(l)(6)
Failure to submit information	144.27

[3]This list of violations is intended only as guidance. Unique circumstances of individual cases may lead case teams to classify violations not listed here as Level II violations or to classify a violation listed here at a different level.

Level III Violations[4]: Other Violations

Violation	SDWA or Regulatory Citation
Failure to retain records	144.28(i) and 144.51(j)(2)
Failure to make required notification	144.23(b)(3), 144.28(j)(1)&(2), 144.28(l), 144.28(g) 144.51(l)&(n), and 144.14(c)(1)
Failure to submit a report, to submit a complete report, to submit a timely report, to submit an accurate report	144.28(h) and 144.28(k)
Failure to submit inventory information in a timely fashion	144.26(d)
Failure to submit information	144.14(c), 144.26, and 146.52

[4]This list of violations is intended only as guidance. Unique circumstances of individual cases may lead case teams to classify violations not listed here as Level III violations or to classify a violation listed here at a different level.

Appendix B

UIC Administrative Settlement Policy Calculation Worksheet

UIC Administrative Settlement Policy
Individual Violation Settlement Calculation Worksheet

Preliminary Information

Name of Person Filling out Form: _____

Date: _____

Operator/Facility Name: _____

Class of Well: _____

Violation: _____

Step 1: Calculate Statutory Maximum (Civil and Administrative)

(a) Length of violation (in days): _____

(b) Maximum administrative penalty per day: $5,000 (Class II wells) or $10,000 (Class I, III-V)

(c) Number of wells in violation: _____

Civil Statutory Maximum: (a) * (25,000) * (c) =

_____ * 25,000 * _____ = _____

Administrative Statutory Maximum: (a) * (b) * (c) =

_____ * _____ * _____ = _____

Step 2: Calculate Economic Benefit Component

Determine present value of avoided and delayed costs, using BEN model.

_____

Step 3: Calculate Gravity Component

Refer to Chart 1, Unadjusted Gravity Component Calculation Formula (p. 9 in policy) to determine appropriate value for each of the four factors (A) through (D).

(A) Seriousness of Violation: $_____
(Class II: $100-5,000; Class I, III-V: $100-10,000)

(B) Economic Impact on the Violator (0.3, 0.7, or 1.0): _____

(C) Duration of Violation (0 - 125+): _____

(D) Number of Wells in Violation (1 - 125+): _____

(E) Unadjusted Gravity Component: (A) * (B) * [(C) + (D)] =

_____*_____* (_____+_____) = _____

(F) Gravity Component Adjustment Factor (-30 to +200%): _____

Gravity Component: (E) + {[(F)/100]*(E)} =

_____+[(_____/100)*_____] = _____

Step 4: Apply Adjustment Factors to Sum of All Economic Benefit and Gravity Components

(G) Calculate Preliminary Settlement Amount:
Economic Benefit Components + Gravity Components = _____

(H) Maximum Ability to Pay: _____

(I) Adjustment for Ability to Pay: If (H) < (G), then (G) - (H), else zero =

_____

(J) Litigation Considerations (0 to 100%): _____
(0 = very weak case, 100 = good case)

Final Settlement Amount: [(G) - (I)] * [(J)/100]: (_____-_____)*(_____/100) =

_____

Adjustment Factor for the Gravity Component Calculation Worksheet

Violator or Case Name: _____

Case Team Member Name/Date: _____/_____

Factor	Value or Comment	Adjustment (+/-)
Mandatory Considerations		
Number of previous violations	_____	_____%
Similarity of previous violations	_____	_____%
Time since previous violation	_____	_____%
Response to previous violations and enforcement actions	_____	_____%
Rapidity of violation correction and of damage mitigation	_____	_____%
Effort put forth by violator to correct violation and respond to enforcement action	_____	_____%
Use of delaying tactics	_____	_____%
Optional Considerations		
Other:_____	_____	_____%
Other:_____	_____	_____%
	TOTAL:	_____%

UIC Settlement Policy Calculations

Duration:

Start Date of Violation: _____

End Date of Violation: _____

Duration of Violation: _____

Economic Impact:

Economic Impact of the Violator (.3, .7, 1.0) _____

Gross Sales Value: _____

Source of Information: _____

_____

Other Calculations:

Appendix C

Glossary of Terms

Glossary

Adjusted Gravity Component The end product of applying the Adjustment Factors to the **Unadjusted Gravity Component.**

Adjustment Factors (Preliminary Settlement) These factors are Ability to Pay and Litigation Considerations. The case team has the ability to adjust the **Preliminary Settlement Amount** up or down based on details of the specific violation in the two Adjustment Factor categories.

Annual Expenses Pollution control costs, typically operation and maintenance costs, that the violator completely avoided by delaying compliance or by ignoring the regulatory requirement. Annual expenses are one input used in the EPA's BEN computer model and are a portion of the **Economic Benefit Component.**

Current Dollars The benefit, in current dollars (i.e., dollars at the time the penalty is paid), of violations that have taken place in the past. **Annual Expenses, Delayed One-Time Nondepreciable Costs,** and **Initial Capital Investments** must be escalated to Current Dollars. This calculation is performed by the BEN computer model.

Delayed One-Time Nondepreciable Costs These are nondepreciable expenses that have been delayed by the violator's failure to comply promptly with regulatory requirements. Many of the delayed costs associated with UIC violations will fall into this category which includes land purchase and well repairs. Most of these costs are tax-deductible, although land is not.

Economic Benefit Component The sum of the present, tax-adjusted values of **Initial Capital Investments, Delayed One-Time Nondepreciable Costs,** and **Annual Expenses.** It is calculated using EPA's BEN computer model.

Final Settlement Amount The **Preliminary Settlement Amount** after adjustment according to the **Adjustment Factors (Preliminary Settlement).**

Gravity Component Adjustment Factor The elements incorporated in this factor include the degree of willfulness, good faith efforts to comply, history of violation, and other elements not incorporated into the **Unadjusted Gravity Component.** The case team has the ability to adjust the **Unadjusted Gravity Component** up or down within a fixed range based on details of the specific violation.

Independently Assessable Violations These are dissimilar violations. A separate **Adjusted Gravity Component** and **Economic Benefit Component** must be calculated for each of these violations.

Initial Capital Investments Pollution control costs, typically capital costs, that the violator has delayed expending. Delayed capital investments can be either one-time or recurring

and are depreciable expenditures. Capital investments are typically made for physical plant or machinery with a limited useful life. The benefit the violator accrues by delaying these expenses (and thereby retaining use of the money during the delay period) are one component of the **Economic Benefit Component.**

Preliminary Settlement Amount The sum of the **Economic Benefit** and **Adjusted Gravity** components.

Size of Business Category One of three categories into which all violators are placed. The categories are based on annual revenues, and a violator's category is one factor used in calculating the **Unadjusted Gravity Component.**

Unadjusted Gravity Component The portion of the settlement amount determined using the Settlement Calculation Formula.

Violation Level UIC program violations are classified as Level I, Level II, or Level III violations. Level I violations are those that have resulted in or could result in environmental harm and generally are violations of Significant Noncompliance. Level II violations are those that, although not likely to result in environmental harm, are violations of critical components of the UIC regulatory program. Level III violation are other violations of program requirements that will not result in direct harm to the environment and that do not undermine the effectiveness of the UIC program. Guidance for deciding whether to classify a violation as Level I or II can be found in the "UIC Program Definition of Significant Noncompliance" (December 4, 1986), in UIC Guidance #58 (September 9, 1987), in the "UIC Program Significant Noncompliance Definition" (September 16, 1987), and in the "Clarification of Procedures for Determining Significant Noncompliance: Addendum to UIC Program Guidance #58" (February 16, 1990).

Wrongful Profits Profits earned while a well is not in compliance. Calculating the present value of wrongful profits is an alternative method of determining economic benefit of noncompliance when the benefit from delayed and avoided costs cannot be determined.