



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

FEB 12 2008

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: EPA Region 10 Clean Air Act Civil Penalty Guidelines for Indian Reservations

FROM: Granta Y. Nakayama *Granta Y. Nakayama*
Assistant Administrator

TO: Elin D. Miller
Regional Administrator, Region X

I have reviewed the enclosed penalty guidelines entitled "EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington," and concur that the penalty guidelines should be implemented. The penalty guidelines provide a well-reasoned approach for assessing penalties for regulatory violations in these areas.

One of the issues which the penalty guidelines address is how to determine the appropriate enforcement response for violations related to the open-burning of biomass on agricultural and forestry lands. The penalty guidelines apply to penalties for the burning of areas up to 300 acres. Therefore, if the Region encounters a violation involving 300 acres or more, then please coordinate the Region's enforcement response with the Director of the Air Enforcement Division (AED). Similarly, if the Region encounters other violations that require penalty assessments that are not applicable to or in accordance with the penalty guidelines, then please coordinate with the AED Director to determine an appropriate penalty amount.

I commend your staff for their considerable efforts in preparing the penalty guidelines and their diligence in involving AED and interested Tribal members during its development.

Enclosure

cc: Adam Kushner
Donald Dossett
Juliane Matthews



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue
Seattle, Washington 98101

**EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans
under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington.**
40 C.F.R. Part 49

These guidelines are for the U.S. Environmental Protection Agency, Region 10 (EPA) to use in addressing and responding to violations of the Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian Reservations in Idaho, Oregon and Washington. These FIPs are also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon and Washington (FARR). The guidelines will be used in conjunction with compliance assistance to the regulated entities on the reservations that are subject to the FARR (40 C.F.R. §§ 49.121 - 49.139). The guidelines are part of a broader EPA compliance assurance and enforcement program for the FARR that includes compliance assistance, compliance incentives, compliance monitoring, and enforcement activities. In developing these guidelines, EPA Region 10 considered the penalty assessment criteria specified in Section 113(e) of the CAA and existing EPA guidance, including the 1991 Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy) and the Timely and Appropriate Enforcement Response to High Priority Violations Policy, December 22, 1998 (HPV Policy). The guidelines recommend civil penalties appropriate for addressing violations of the FARR at minor and major air pollution sources that do not meet the HPV Policy criteria. The guidelines are intended for use by EPA personnel as internal guidance and do not create any rights, procedural or otherwise, concerning EPA's enforcement action in any given case under the FARR.

The FARR

The FARR establishes emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington to ensure a basic level of air pollution control and to protect human health and welfare. The FARR requirements apply to a variety of types and sizes of sources, including residences in some cases. Sources within Indian Reservations in Idaho, Oregon, and Washington that were previously unregulated for air pollutant emissions are now subject to rules including: restrictions on open burning; submission of registration information; limitations on visible emissions and fugitive particulate emissions; and restrictions on sulfur in fuels (40 C.F.R. §§ 49.124 - 49.139). Sources that are currently subject to national emission standards or the CAA Title V air operating permit program for major sources are also now subject to the FARR. The types and extent of noncompliance that may occur at the many diverse types and sizes of sources covered by the FARR warrant a broad range of compliance and enforcement responses.

Penalty Assessment Principles and Consultation

Prior to taking civil enforcement actions in Indian country, EPA looks to the procedures and principles in the national *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)*, (www.epa.gov/compliance/resources/policies/index.html) and the procedures outlined in the *Region 10 Enforcement Procedures in Indian Country (May 28, 1998)* (<http://yosemite.epa.gov/r10/enforce.NSF/Program+Management/Region+10+Enforcement+Procedures+in+Indian+Country>). These documents describe how EPA implements the enforcement principles outlined in the 1984 Indian Policy (www.epa.gov/indian/policyintitvs.htm) and clarify EPA's internal coordination process and government-to-government consultation with the tribes in such matters.

High Priority Violations

High priority violations (HPV) that occur at major sources are responded to in accordance with EPA's HPV Policy (www.epa.gov/compliance/resources/policies/civil/caa/stationary/issue-ta-rpt.pdf). The policy, implemented on December 22, 1998, aligns and prioritizes CAA enforcement efforts for ten categories of violations that have the greatest impact on the environment. The HPV Policy also applies to "synthetic minor" (SM) sources and to minor sources if EPA believes that their violations are egregious, chronic, or serious enough to be addressed as an HPV. The HPV Policy applies to all CAA enforcement authorities, including EPA, States, Locals, Territories, and Tribes. In the case of sources on Tribal lands where the Tribal governments are not delegated to enforce the CAA, enforcement under the HPV Policy has been EPA's sole responsibility.

To address HPVs, Region 10 will take appropriate action to compel compliance with the underlying requirements and assess penalties pursuant to the CAA Penalty Policy, which calculates a penalty based on factors specified in Section 113(e) of the CAA. Penalties will include both the economic benefit of noncompliance and a gravity component reflecting the seriousness and other facts specific to the violation. EPA currently has statutory authority to recover a civil penalty of up to \$32,500 per day per violation for violations which occur after March 15, 2004. (See 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation)

Non-HPV Violations

Violations of the FARR at major sources that do not meet the criteria as an HPV, or that occur at minor sources, are more appropriately addressed with compliance assistance, a warning letter, a notice of violation, an administrative order, or an administrative penalty in an amount less than that prescribed in the CAA Penalty Policy. For minor violations that can be corrected quickly, have no documented environmental or health impacts, and resulted in minimal or no economic benefit, a written warning to the facility may be appropriate. For more serious violations, a notice of violation may be issued, which will cite the alleged violations and request a response from the alleged violator. Depending on the response to the notice of violation and/or the circumstances surrounding the violation, EPA may issue a compliance order, assess penalties, or take other action, pursuant to Section 113 of the CAA.

Compliance Assistance Period for the Open Burning Rules

Initially EPA (or a Tribe if a Delegation Agreement is in place) will generally use compliance assistance to address residential noncompliance with the open burning rules (40 C.F.R. §§ 49.131 and 49.132), if determined appropriate. When EPA determines it is appropriate to assess a penalty for open burning violations, these guidelines may be utilized. Penalty assessment for violations of the FARR for agricultural burning permits, 40 C.F.R. § 49.133, and forestry and silvicultural burning permits, 40 C.F.R. § 49.134, may also be calculated in accordance with these guidelines.

Agency Response to FARR Noncompliance

- 1) compliance assistance (may also be conducted by a Tribe if a Delegation Agreement is in place)
- 2) warning letter
- 3) notice of noncompliance / notice of violation
- 4) administrative compliance order
- 5) administrative penalty order
- 6) civil action for injunctive relief and/or the assessment of civil penalties
- 7) criminal action

Violations not Addressed by these Guidelines

The following types of violations are not addressed by these guidelines: 1) National Emission Standard for Asbestos (40 C.F.R. Part 61), including the standard for demolition and renovation; 2) excess emissions during startup, shutdown, maintenance, and malfunctions; 3) New Source Performance Standards (NSPS, Part 60); 4) National Emission Standards for Hazardous Air Pollutants (NESHAP, Parts 61 and 63); and 5) Prevention of Significant Deterioration (PSD, Part 52.21). These types of violations are addressed using existing national guidance and policies. Additionally, as mentioned above, HPVs will be addressed in accordance with the HPV Policy and EPA's Indian Policies, Guidance, and Procedures.

Consultation with OECA and Tribal Governments

Because penalty guidelines for the FARR deviate from the recommended penalty amounts in the CAA Penalty Policy, these guidelines have been developed in coordination with EPA's Office of Enforcement and Compliance Assurance (OECA) and shared with the tribal governments whose reservations are covered by the FARR. The following sections include a general civil penalty worksheet and an outdoor burning civil penalty worksheet with recommended guidelines for EPA to use when assessing penalties for violations of the FARR. The worksheets incorporate factors reflecting the seriousness of the violation, the responsiveness of the violator, economic benefit of noncompliance, and other factors enumerated in Section 113(e) of the CAA.

GENERAL CIVIL PENALTY WORKSHEET & GUIDELINES

(Not applicable to the outdoor burning rules, 40 C.F.R. §§ 49.131, 49.132, 49.133, and 49.134)

Source Name (or Owner/Operator/Lessee): _____
 Location (Street address or Lat./Long.): _____
 Is this a Tribal facility? (i.e., owned or managed by a Tribal Government or a facility in which a Tribal Government has a "substantial proprietary interest" or has "control") Yes _____ No _____
 Permit/Registration # (if applicable) _____ Docket # _____
 Violation(s): _____
 Violation Date(s): _____

This worksheet may be used to calculate a civil penalty for violations of the FARR that do not meet the criteria as high priority violations under EPA's HPV Policy. Refer to the worksheet guide following the table below for direction in determining appropriate penalty factor amounts.

Penalty assessment factors to consider	Each Violation					
	(a)	(b)	(c)	(d)	(e)	(f)
1. Seriousness of the violation	+					
2. Duration of the violation	+					
3. Size of the violator *	+					
Gravity Sub-Total: add all entries from columns above and put the sum in column (a)	+					
4. Compliance history *	+					
5. Good faith efforts to comply *	+/-					
Adjusted Gravity:	+					
6. Economic benefit (for each violation)	+					
* apply once for the case	Total: Add total of economic benefits to the Adjusted Gravity amount.				\$	

Worksheet Guide: (Provide brief explanation for each violation. Attach more sheets if needed)

1. Seriousness of the violation (for each violation cited)

- For an administrative violation (e.g., failure to register or notify EPA, maintain records, submit reports, conduct fugitive particulate matter survey or prepare a written plan): Insert \$50.
- For an emission or monitoring violation, use the following penalties: DUST: For fugitive particulate emissions violations: Insert \$200. OPACITY: For opacity violations: Insert \$300. ALL OTHERS (e.g., particulate matter, sulfur dioxide, sulfur in fuels): Insert \$400.
- For an emission violation that directly caused an actual adverse health effect or damage to property or the environment: Insert \$1000.

Provide a brief summary of each violation (a)-(f) to differentiate between them:

2. Duration of the violation (for each violation cited)

- If 1 day or less in violation, add \$0.
- If > 1 day administrative violation, add \$50 per month of violation, with \$50 being the minimum added.
- If > 1 day emission or monitoring violation, add \$250 per week of violation, with \$250 being the minimum added.

Explain:

3. Size of the violator

- If exempted from the registration rule, 40 C.F.R. § 49.138, add \$0.
- If subject to the registration rule and is a minor source, add \$50.
- If subject to the registration rule and is a synthetic minor source, add \$200.
- If subject to the registration rule and is a major source, add \$500.

Explain:

4. Compliance history

- If no prior violation of environmental law, add \$0.
- If there were prior environmental violations, add 20% of the gravity sub-total multiplied by the number of prior violations. A “prior violation” includes any act or omission resulting in an enforcement response (e.g., notice of violation, warning letter, administrative order, etc.)

Explain:

5. Good faith efforts to comply

- Reduce gravity sub-total by up to 30% if the violator took extraordinary efforts to prevent or extraordinary efforts to correct the problem as soon as they learned of it, such as paying for extra work shifts or a premium on a contract to have control equipment installed sooner, or shutting down the facility until it is operating in compliance, etc.
- Add \$0 if the violator attempted to correct the problem or did correct the problem, but did so in a less timely fashion [Also applies if violation can not be corrected (e.g., has already occurred)].
- Increase gravity component by up to 30% if the violator is not making efforts to come into compliance or is negotiating with EPA in bad faith or refusing to negotiate.

Explain:

6. Economic Benefit (EB)(including delayed and avoided costs for each violation cited)

Did the violator economically benefit from the violation? YES ____, NO ____. If "Yes", the estimated or actual economic benefit is: \$_____. Attach any calculations, reports, or other pertinent information. EPA has discretion not to seek the EB component if the estimated or actual economic benefit is less than \$50.00.

Explain:

Comments and Special Considerations:

Total Recommended Civil Penalty = \$_____ (sum of Adjusted Gravity and EB)

(Note: This figure may be adjusted as appropriate in settlement when considering litigation risk, ability to pay the penalty, and such other factors as justice may require)

Evaluator: _____ Date: _____

Unit Manager Concurrence: _____ Date: _____

OUTDOOR BURNING CIVIL PENALTY WORKSHEET & GUIDELINES

(Applicable to the outdoor burning rules, 40 C.F.R. §§ 49.131, 49.132, 49.133, and 49.134)

Source Name (or Owner/Operator/Lessee): _____
 Location (Street address or Lat./Long.): _____
 Is this a Tribal facility? (i.e., owned or managed by a Tribal Government or a facility in which a Tribal Government has a "substantial proprietary interest" or has "control") Yes _____ No _____
 Permit/Registration # (if applicable) _____ Docket# _____
 Violation(s): _____
 Violation Date(s): _____

This worksheet may be used to calculate a civil penalty for violations of the FARR general open burning rule (40 C.F.R. §§ 49.131 and 49.132), agricultural burning rule (40 C.F.R. § 49.133), and forestry and silvicultural burning rule (40 C.F.R. § 49.134). Refer to the worksheet guide following the table below for direction in determining appropriate penalty factor amounts.

Penalty assessment factors to consider	Each Violation					
	(a)	(b)	(c)	(d)	(e)	(f)
1. Seriousness of the violation	+					
2. Duration of the violation	+					
3. Size of the violator *	+					
Gravity Sub-Total: add all entries from columns above and put the sum in column (a)	+					
4. Compliance history *	+					
5. Good faith efforts to comply *	+/-					
Adjusted Gravity:	+					
6. Economic benefit (for each violation)	+					
* apply once for the case	Total: Add total of economic benefits to the Adjusted Gravity amount.				\$	

Worksheet Guide: (Provide brief explanation for each violation. Attach more sheets if needed.)

1. Seriousness of the violation (factors to be applied once)

- For a burn resulting in emissions that directly caused an actual adverse health effect or damage to property or the environment: Insert \$1000.
- Size of material or area to be burned: [Choose one] Insert \$25 for burns under 6 feet in diameter or for ditch bank and fence line burns of less than 30 feet in length; \$50 for burns at least 6 feet in diameter, at least 30 feet of ditch bank or fence line, and less than 1 acre; \$100 for burns at least 1 acre and less than 10 acres; \$1000 for burns at least 10 acres and less than 100 acres; \$5000 for burns at least 100 acres and less than 300 acres. For burns at least 300 acres and greater use the Clean Air Act Stationary Source Civil Penalty Policy.

- For burning prohibited items: Penalty ranges from \$25 to \$200 depending on the material. [If multiple items, choose the highest one] For example: Insert \$25 for garbage, \$50 for animals, \$100 for construction debris, \$150 for a structure, \$200 for hazardous waste.
- For burning during a burn ban: Insert \$100 if residential; insert \$1000 if commercial.
- For failure to shut down a burn when requested by EPA or its delegated authority: Insert \$100 if residential; insert \$500 if commercial.

If burn permit rules also apply:

- For a permit violation (e.g. failure to obtain a permit, incomplete permit application, inaccurate permit application, failure to follow permit procedures or conditions, failure to present permit upon request): Insert \$50 per violation if residential; insert \$100 per violation if commercial.
 - o Example permit violations:
 - Burning without approval from EPA or its delegated authority
 - Burning outside of approved burn times
 - Burning on a no burn day
 - Failure to conduct a test burn
 - Failure to have flaggers stationed for burns affecting roadways
 - Failure to file a post burn report with EPA or its delegated authority

Provide a brief summary of each violation (a) – (f) to differentiate between them:

2. Duration of the violation

- If 1 day or less in violation, add \$0.
- If > 1 day administrative violation, add \$50 per month of violation, with \$50 being the minimum added.
- If > 1 day burn violation, add \$250 per day of violation, with \$250 being the minimum added.

Explain: _____

3. Size of the violator

- If residential burn, add \$25.
- If commercial burn (e.g. businesses, farming/ranching/forestry operations, governmental agencies, nonprofit organizations), add \$100.

4. Compliance history

- If no prior violation of environmental law, add \$0.
- If there were prior environmental violations, add 20% of the gravity sub-total multiplied by the number of prior violations. A "prior violation" includes any act or omission resulting in an enforcement response (e.g., notice of violation, warning letter, administrative order, etc.)

Explain: _____

5. Good faith efforts to comply

- Reduce gravity component by up to 30% if the violator took extraordinary efforts to prevent or correct the problem as soon as they learned of it.
- Add \$0 if the violator attempted to correct the problem, or corrected the problem in a less timely fashion. Also applies if violation can not be corrected (e.g., has already occurred).
- Increase gravity component by up to 30% if the violator is not making efforts to come into compliance or is negotiating with EPA in bad faith or refusing to negotiate.

Explain: (Show adjusted gravity component of the penalty)

6. Economic Benefit (EB)(including delayed and avoided costs):

Did the violator economically benefit from the violation? YES ____, NO ____. If "Yes", the estimated or actual economic benefit is: \$_____. Attach any calculations, reports, or other pertinent information. EPA has discretion not to seek the EB component if the estimated or actual economic benefit is less than \$50.00.

Explain: _____

Comments and Special Considerations: _____

Total Recommended Civil Penalty = \$_____ (sum of Adjusted Gravity and EB)

(Note: This figure may be adjusted as appropriate in settlement when considering litigation risk, ability to pay the penalty, and such other factors as justice may require)

Evaluator: _____ Date: _____

Unit Manager Concurrence: _____ Date: _____

EXAMPLES:

Case Scenario #1

I) Facts: The FARR burn permit rules are on effect on the Nez Perce Reservation, and the Tribe administers the burn permit program through a Delegation Agreement with EPA (40 C.F.R. §§ 49.131, 49.132, 49.133, and 49.134 apply). The Tribe received several complaints on October 10, 2006, a No Burn Day, regarding smoke inundating a town on the Nez Perce Reservation. Callers complained of difficulty breathing, impacts felt inside the hospital, poor visibility over roadways, and having to stay indoors with their windows shut. Upon investigation, smoke from a wheat stubble field burning at Adam's Farm (Commercial) was found to be drifting into the town one mile away. Adam had applied for a permit with all the required information, but was not approved to burn on this day. The permit terms and conditions include requirements to have flaggers stationed for burns affecting roadways and submit a post burn report. There was not a Burn Ban in effect. Adam was notified to halt burning and responded promptly. 100 acres of the 250 acre field were burned. No prohibited items were burned. No flaggers were stationed during this burn. Adam filed a post burn report. There was one day of violation documented, and this was Adam's first environmental violation. EPA's case development officer determined the economic benefit (EB) to be \$3000.

II) Computation of Penalty:

Penalty Assessment Factors (for each violation, except where noted)

1. **Seriousness of the violation** – The first violation was for failure to obtain approval of the permit on the day of the burn (40 C.F.R. § 49.133(c)(1)). The unapproved burn caused emissions that directly caused adverse health effects (\$1000); the size of the burn was proposed to be 250 acres (\$5000) (insert the sum of \$6000 in column (a)). The following violations are all failures to conduct the burn in accordance with the terms and conditions of the permit (40 C.F.R. § 49.133(c)(1)): Burning on a no-burn day (\$100) (insert \$100 in column (b)); Failure to conduct a test burn (insert \$100 in column (c)); Failure to have flaggers stationed for burns affecting roadways (insert \$100 in column (d)). Subtotal = \$6,300.
2. **Duration of the violation** – The burn and smoke impacts were documented for three hours on one day. Violations of the terms and conditions of the permit occurred in one day (add \$0 to each violation column).
3. **Size of the violator** – Adam's Farm is a commercial operation (add \$100 to column (a)).

Gravity Sub-Total (add all entries from above and enter in column (a)) = \$6,400

Adjustments to gravity component:

4. **Compliance history** (applied once) - This was Adam's first violation (add \$0).
5. **Good faith efforts to comply** (applied once) - Although Adam shut down burning when notified by the Tribe, this is not considered an extraordinary effort (add \$0).

Adjusted gravity component = \$6,400

6. **Economic benefit** - From available information, EPA calculated EB to be \$3,000. (add \$3,000 to column (a)).

Total Penalty = adjusted gravity component (\$6,400) + economic benefit (\$3,000)

Total Recommended Civil Penalty = \$9,400

OUTDOOR BURNING CIVIL PENALTY WORKSHEET & GUIDELINES

(Applicable to the outdoor burning rules, 40 C.F.R. §§ 49.131, 49.132, 49.133, and 49.134)
(Case #1 Example)

Name (or Owner/Operator/Lessee): Adam's Farm
 Location (Street address or Lat./Long.): 200 Willows Road, Craigmont, Idaho (Nez Perce Res.)
 Is this a Tribal facility? (i.e., owned or managed by a Tribal Government or a facility in which a Tribal Government has a "substantial proprietary interest" or has "control") Yes No X
 Permit/Registration # (if applicable) FARR #8154 Docket# CAA5678-10
 Violation(s): 40 C.F.R. § 49.133(c)(1) – 5 violations (explained below)
 Violation Date(s): October 10, 2006

This worksheet may be used to calculate a civil penalty for violations of the FARR general open burning rule (40 C.F.R. §§ 49.131 and 49.132), agricultural burning rule (40 C.F.R. § 49.133), and forestry and silvicultural burning rule (40 C.F.R. § 49.134). Refer to the worksheet guide following the table below for direction in determining appropriate penalty factor amounts.

Penalty assessment factors to consider	Each Violation					
	(a)	(b)	(c)	(d)	(e)	(f)
1. Seriousness of the violation	+ \$6,000.	\$100.	\$100.	\$100.		
2. Duration of the violation	+ \$0.	\$0.	\$0.	\$0.		
3. Size of the violator *	+ \$100.					
Gravity Sub-Total: add all entries from columns above and put the sum in column (a)	+ \$6,400.					
4. Compliance history *	+ \$0.					
5. Good faith efforts to comply *	+ \$0.					
Adjusted Gravity:	+ \$6,400.					
6. Economic benefit (for each violation)	+ \$3,000.					
* apply once for the case	Total: Add total of economic benefits to the Adjusted Gravity amount.				\$ 9,400.	

Worksheet Guide: (Provide brief explanation for each violation. Attach more sheets if needed.)

1. Seriousness of the violation (factors to be applied once)

- X For a burn resulting in emissions that directly caused an actual adverse health effect or damage to property or the environment: Insert \$1000.
- X Size of material or area to be burned: [Choose one] Insert \$25 for burns under 6 feet in diameter or for ditch bank and fence line burns of less than 30 feet in length; \$50 for burns at least 6 feet in diameter, at least 30 feet of ditch bank or fence line, and less than 1 acre; \$100 for burns at least 1 acre and less than 10 acres; \$1000 for burns at least 10 acres and less than 100 acres; \$5000 for burns at least 100 acres and less than 300 acres. For burns at least 300 acres and greater use the CAA Penalty Policy.
- For burning prohibited items: Penalty ranges from \$25 to \$200 depending on the material. [If multiple items, choose the highest one] For example: Insert \$25 for garbage, \$50 for animals, \$100 for construction debris, \$150 for a structure, \$200 for hazardous waste.
- For burning during a burn ban: Insert \$100 if residential; insert \$1000 if commercial.
- For failure to shut down a burn when requested by EPA or its delegated authority: Insert \$100 if residential; insert \$500 if commercial.

If burn permit rules also apply:

- X For a permit violation (e.g. failure to obtain a permit, incomplete permit application, inaccurate permit application, failure to follow permit procedures or conditions, failure to present permit upon request): Insert \$50 per violation if residential; insert \$100 per violation if commercial.
 - o Example permit violations:
 - X Burning without approval from EPA or its delegated authority
 - Burning outside of approved burn times
 - X Burning on a no burn day
 - X Failure to conduct a test burn
 - X Failure to have flaggers stationed for burns affecting roadways
 - Failure to file a post burn report with EPA or its delegated authority

Provide a brief summary of each violation (a) – (f) to differentiate between them:

(a) Failure to obtain approval of the permit on the day of the burn (40 C.F.R. § 49.133(c)(1)) _____

(b) Burning on a no-burn day (permit viol.) _____

(c) Failure to conduct a test burn (permit viol.) _____

(d) Failure to have flaggers stationed for burns affecting roadways (permit viol.) _____

Note: All permit violations fall under 40 C.F.R. § 49.133(c)(1) _____

2. Duration of the violation

- If 1 day or less in violation, add \$0.
- If > 1 day administrative violation, add \$50 per month of violation, with \$50 being the minimum added.
- If > 1 day burn violation, add \$250 per day of violation, with \$250 being the minimum added.

Explain:

3. Size of the violator

- If residential burn, add \$25.
- If commercial burn (e.g. businesses, farming/ranching/forestry operations, governmental agencies, nonprofit organizations), add \$100.

4. Compliance history

- If no prior violation of environmental law, add \$0.
- If there were prior environmental violations, add 20% of the gravity sub-total multiplied by the number of prior violations. A "prior violation" includes any act or omission resulting in an enforcement response (e.g., notice of violation, warning letter, administrative order, etc.)

Explain:

5. Good faith efforts to comply

- Reduce gravity component by up to 30% if the violator took extraordinary efforts to prevent or correct the problem as soon as they learned of it.
- Add \$0 if the violator attempted to correct the problem, or corrected the problem in a less timely fashion. Also applies if violation can not be corrected (e.g., has already occurred).
- Increase gravity component by up to 30% if the violator is not making efforts to come into compliance or is negotiating with EPA in bad faith or refusing to negotiate.

Explain: (Show adjusted gravity component of the penalty)

6. Economic Benefit (EB)(including delayed and avoided costs):

Did the violator economically benefit from the violation? YES X, NO _____. If "Yes", the estimated or actual economic benefit is: \$ 3,000. _____. Attach any calculations, reports, or other pertinent information. EPA has discretion not to seek the EB component if the estimated or actual economic benefit is less than \$50.00.

Explain:

Comments and Special Considerations: _____

Total Recommended Civil Penalty = \$ 9,400. (sum of Adjusted Gravity and EB)

(Note: This figure may be adjusted as appropriate in settlement when considering litigation risk, ability to pay the penalty, and such other factors as justice may require)

Evaluator: Charlie Brown Date: 12/6/06

Unit Manager Concurrence: _____ Date: _____

Case Scenario #2

I) Facts: A resident on the Colville Indian Reservation was discovered burning construction debris and a dead animal in an open burn pile on their property on July 25, 2006. The Tribe's FIP does include the General Rule for Open Burning (40 C.F.R. § 49.131), but does not include the burn permit rules (40 C.F.R. §§ 49.132, 49.133, and 49.134). This resident was provided direct compliance assistance in October 2005. The burn pile was less than 6 feet in diameter. There was one day of violation and this was the first cited violation. No other additional requirements for open burning were violated. It would have cost the resident \$45 to properly dispose of the material. By the time the inspector arrived on site that same day, the burn was almost complete, but upon request the resident did extinguish the smoldering remains with a garden hose. The burn was not shown to have directly caused an actual adverse health effect or damage to property or the environment. A burn ban was not in effect.

II) Computation of Penalty:

Penalty Assessment Factors (for each violation, except where noted)

1. **Seriousness of the violation** – The violation was openly burning prohibited material (40 C.F.R. § 49.131(d)(1)). The size of the burn was less than 6 ft in diam. (\$25). Demolition debris and an animal were burned (\$100). Insert the sum of \$125 in column (a).
2. **Duration of the violation** – The burn of prohibited substances was documented for one day (add \$0 to column (a)).
3. **Size of the violator** (applied once) – The burn was residential (add \$25 to column (a)).

Gravity Sub-Total (add all entries from above and enter in column (a) = \$150

Adjustments to gravity component:

4. **Compliance history** (applied once) - This was the resident's first violation (add \$0).
5. **Good faith efforts to comply** (applied once) - Although the resident extinguished the fire when requested by the inspector, this is not considered an extraordinary effort (add \$0).

Adjusted gravity component = \$150

6. **Economic benefit** – The economic benefit was estimated to be \$45, which was not added to the penalty using EPA's discretion for minimal economic benefit amounts.

Total Penalty = adjusted gravity component + economic benefit

Total Recommended Civil Penalty = \$150.

OUTDOOR BURNING CIVIL PENALTY WORKSHEET & GUIDELINES

(Applicable to the outdoor burning rules, 40 C.F.R. §§ 49.131, 49.132, 49.133, and 49.134)
(Case #2 Example)

Name (or Owner/Operator/Lessee): A resident living on the Colville Indian Reservation
 Location (Street address or Lat./Long.): 12345 Wisteria Lane, Nespelem, WA (Colville Res.)
 Is this a Tribal facility? (i.e., owned or managed by a Tribal Government or a facility in which a Tribal Government has a "substantial proprietary interest" or has "control") Yes _____ No X
 Permit/Registration # (if applicable) N/A Docket# CAA1234-10
 Violation(s): FARR - 40 C.F.R. § 49.131(d)(1) - Openly burning prohibited material
 Violation Date(s): July 25, 2006

This worksheet may be used to calculate a civil penalty for violations of the FARR general open burning rules (40 C.F.R. §§ 49.131 and 49.132), agricultural burning rule (40 C.F.R. § 49.133), and forestry and silvicultural burning rule (40 C.F.R. § 49.134). Refer to the worksheet guide following the table below for direction in determining appropriate penalty factor amounts.

Penalty assessment factors to consider	Each Violation					
	(a)	(b)	(c)	(d)	(e)	(f)
1. Seriousness of the violation	+ \$125.					
2. Duration of the violation	+ \$0.					
3. Size of the violator *	+ \$25.					
Gravity Sub-Total: add all entries from columns above and put the sum in column (a)	+ \$150.					
4. Compliance history *	+ \$0.					
5. Good faith efforts to comply *	+/- \$0.					
Adjusted Gravity:	+ \$150.					
6. Economic benefit (for each violation)	+ \$0. (mitigated the \$45.)					
* apply once for the case	Total: Add total of economic benefits to the Adjusted Gravity amount.				\$ 150.	

Worksheet Guide: (Provide brief explanation for each violation. Attach more sheets if needed.)

1. Seriousness of the violation (for each violation cited)

- For a burn resulting in emissions that directly caused an actual adverse health effect or damage to property or the environment: Insert \$1000.
- Size of material or area to be burned: [Choose one] Insert \$25 for burns under 6 feet in diameter or for ditch bank and fence line burns of less than 30 feet in length; \$50 for burns at least 6 feet in diameter, at least 30 feet of ditch bank or fence line, and less than 1 acre; \$100 for burns at least 1 acre and less than 10 acres; \$1000 for burns at least 10 acres and

less than 100 acres; \$5000 for burns at least 100 acres and less than 300 acres. For burns at least 300 acres and greater use the CAA Penalty Policy.

- X For burning prohibited items: Penalty ranges from \$25 to \$200 depending on the material. [If multiple items, choose the highest one] For example: Insert \$25 for garbage, \$50 for animals, \$100 for construction debris, \$150 for a structure, \$200 for hazardous waste.
- For burning during a burn ban: Insert \$100 if residential; insert \$1000 if commercial.
- For failure to shut down a burn when requested by EPA or its delegated authority: Insert \$100 if residential; insert \$500 if commercial.

If burn permit rules also apply:

- For a permit violation (e.g. failure to obtain a permit, incomplete permit application, inaccurate permit application, failure to follow permit procedures or conditions, failure to present permit upon request): Insert \$50 per violation if residential; insert \$100 per violation if commercial.
 - o Example permit violations:
 - Burning without approval from EPA or its delegated authority
 - Burning outside of approved burn times
 - Burning on a no burn day
 - Failure to conduct a test burn
 - Failure to have flaggers stationed for burns affecting roadways
 - Failure to file a post burn report with EPA or its delegated authority

Provide a brief summary of each violation (a) – (f) to differentiate between them:

(a) Resident openly burned prohibited material. The seriousness factor includes a penalty of \$25 for size of the burn (less than 6 feet in diameter) and \$100 for the highest value for the type of prohibited material (i.e., construction debris)

2. Duration of the violation

- X If 1 day or less in violation, add \$0.
- If > 1 day administrative violation, add \$50 per month of violation, with \$50 being the minimum added.
- If > 1 day burn violation, add \$250 per day of violation, with \$250 being the minimum added.

Explain: _____

3. Size of the violator

- X If residential burn, add \$25.
- If commercial burn (e.g. businesses, farming/ranching/forestry operations, governmental agencies, nonprofit organizations), add \$100.

4. Compliance history

- If no prior violation of environmental law, add \$0.
- If there were prior environmental violations, add 20% of the gravity sub-total multiplied by the number of prior violations. A "prior violation" includes any act or omission resulting in an enforcement response (e.g., notice of violation, warning letter, administrative order, etc.)

Explain:

5. Good faith efforts to comply

- Reduce gravity component by up to 30% if the violator took extraordinary efforts to prevent or correct the problem as soon as they learned of it.
- Add \$0 if the violator attempted to correct the problem, or corrected the problem in a less timely fashion. Also applies if violation can not be corrected (e.g., has already occurred).
- Increase gravity component by up to 30% if the violator is not making efforts to come into compliance or is negotiating with EPA in bad faith or refusing to negotiate.

Explain:

The violation had already occurred by the time the resident extinguished the burn. Also, no extraordinary efforts were made to correct the violation.

6. Economic Benefit (EB)(including delayed and avoided costs):

Did the violator economically benefit from the violation? YES , NO . If "Yes", the estimated or actual economic benefit is: \$ 45.. Attach any calculations, reports, or other pertinent information. EPA has discretion not to seek the EB component if the estimated or actual economic benefit is less than \$50.00.

Explain: Because the EB component is less than \$50, EPA decided not to seek this component in the penalty calculation.

Comments and Special Considerations: _____

Total Recommended Civil Penalty = \$ 150. (sum of Adjusted Gravity and EB)

(Note: This figure may be adjusted as appropriate in settlement when considering litigation risk, ability to pay the penalty, and such other factors as justice may require)

Evaluator: Joe Smith Date: 12/6/06

Unit Manager Concurrence: _____ Date: _____

Case Scenario #3

I) Facts: An EPA-credentialed tribal air inspector observed the Flintstone's Rock Crushing Company in Cayuse, Oregon (Umatilla Indian Reservation) emitting fugitive particulate matter emissions without taking reasonable precautions, as required in 40 C.F.R. § 49.126(d)(1), during a one-day inspection on August 1, 2006. The operation began on May 1, 2006. The company also failed to conduct an annual survey (40 C.F.R. § 49.126(e)(1)(i)) and failed to prepare a written plan of reasonable precautions and procedures to prevent fugitive emissions (40 C.F.R. § 49.126(e)(1)(iii)), which results in a total of 3 violations. The company is a registered minor source in accordance with EPA's FARR. This was the first time they've been cited for violations. When notified by the inspector of the violations, the company promised to get a water truck on site the next day and promised to comply with the requirements to conduct a survey and prepare a written plan. The next day, the water truck was on site and a consultant had been hired to conduct a survey and prepare a plan. Economic benefit was estimated to be \$2,500 (delayed costs for the survey and written plan, and avoided cost for the use of a water truck since May 1). Emissions were not shown to directly cause adverse health effects or damage to property or the environment.

II) Computation of Penalty:

Penalty Assessment Factors (for each violation, except where noted):

1. **Seriousness of the violation** – The facility had an emission violation of fugitive particulate matter (insert \$200 in column (a)). The second violation was failing to conduct an annual survey (insert \$50 in column (b)). The third violation was failing to prepare a written plan (insert \$50 in column (c)).
2. **Duration of the violation** – The emission violation was documented on one day (add \$0 to column (a)). For failing to conduct an annual survey within 30 days of commencing operation and for 3 continuous months, add \$150 to column (b). For failing to prepare a written plan for 2 months, add \$100 to column (c).
3. **Size of the violator** (applied once) – The facility is a registered minor source (add \$50).

Gravity Sub-Total (add all entries from above and enter in column (a)) = \$600.

Adjustments to gravity component:

4. **Compliance history** (applied once) – This was the company's first violation (add \$0).
5. **Good faith efforts to comply** (applied once) – The company corrected the violation the next day, but did not take extraordinary efforts to comply (add \$0).

Adjusted gravity component = \$600.

6. **Economic benefit** – From available information, EPA calculated EB to be **\$2500.**

Total Penalty = adjusted gravity component (\$600) + economic benefit (\$2500)

Total Recommended Civil Penalty = \$3,100.

GENERAL CIVIL PENALTY WORKSHEET & GUIDELINES

(Not applicable to the outdoor burning rules, 40 C.F.R. §§ 49.131, 49.132, 49.133, and 49.134)
(Case #3 Example)

Source Name (Owner/Operator/Lessee): Flintstone's Rock Crushing Company
 Location (Street address or Lat./Long.): 5089 Windy Drive, Cayuse, OR (Umatilla Res.)
 Is this a Tribal facility? (i.e., owned or managed by a Tribal Government or a facility in which a Tribal Government has a "substantial proprietary interest" or has "control") Yes No
 Permit/Registration # (if applicable) Registration #1234 Docket # CAA345-10
 Violation(s): FARR - 40 C.F.R. §§ 49.126(d)(1), 49.126(e)(1)(i), 49.126(e)(1)(iii)
 Violation Date(s): August 1, 2006 (emissions observed), May-Aug. (Survey), June-Aug. (Plan)

This worksheet may be used to calculate a civil penalty for violations of the FARR that do not meet the criteria as high priority violations under EPA's HPV Policy. Refer to the worksheet guide following the table below for direction in determining appropriate penalty factor amounts.

Penalty assessment factors to consider	Each Violation					
	(a)	(b)	(c)	(d)	(e)	(f)
1. Seriousness of the violation	+ \$200.	\$50.	\$50.			
2. Duration of the violation	+ \$0.	\$150.	\$100.			
3. Size of the violator *	+ \$50.					
Gravity Sub-Total: add all entries from columns above and put the sum in column (a)	+ \$600.					
4. Compliance history *	+ \$0.					
5. Good faith efforts to comply *	+/- \$0.					
Adjusted Gravity:	+ \$600.					
6. Economic benefit (for each violation)	+ \$1500.	\$300.	\$700.			
* apply once for the case	Total: Add total of economic benefits to the Adjusted Gravity amount.				\$ 3,100.	

Worksheet Guide: (Provide brief explanation for each violation. Attach more sheets if needed)

1. Seriousness of the violation (for each violation cited)

- X For an administrative violation (e.g., failure to register or notify EPA, maintain records, submit reports, conduct fugitive particulate matter survey or prepare a written plan): Insert \$50.
- X For an emission or monitoring violation, use the following penalties: DUST: For fugitive particulate emissions violations: Insert \$200. OPACITY: For opacity violations: Insert \$300. ALL OTHERS (e.g., particulate matter, sulfur dioxide, sulfur in fuels): Insert \$400.
- For an emission violation that directly caused an actual adverse health effect or damage to property or the environment: Insert \$1000.

Provide a brief summary of each violation (a)-(f) to differentiate between them:

(a) Emitting fugitive particulate matter emissions without taking reasonable precautions, 40 C.F.R. § 49.126(d)(1)

(b) Failure to conduct an annual survey, 40 C.F.R. § 49.126(e)(1)(i)

(c) Failure to prepare a written plan of reasonable precautions and procedures to prevent fugitive emissions, 40 C.F.R. § 49.126(e)(1)(iii)

7. Duration of the violation (for each violation cited)

X If 1 day or less in violation, add \$0.

X If > 1 day administrative violation, add \$50 per month of violation, with \$50 being the minimum added.

If > 1 day emission or monitoring violation, add \$250 per week of violation, with \$250 being the minimum added.

Explain:

The emissions of fugitive particulate matter without taking reasonable precautions was witnessed on one day, so no increased penalty for duration for this violation. The failure to conduct an annual survey lasted for 3 months, therefore \$150 was added (3 x \$50 per month of violation). The failure to prepare a written plan following completion of the survey occurred for 2 months (since the company had the first 30 days after commencing operation to conduct the annual survey), therefore \$100 was added (2 x \$50 per month of violation).

8. Size of the violator

If exempted from the registration rule, 40 C.F.R. § 49.138, add \$0.

X If subject to the registration rule and is a minor source, add \$50.

If subject to the registration rule and is a synthetic minor source, add \$200.

If subject to the registration rule and is a major source, add \$500.

Explain:

9. Compliance history

X If no prior violation of environmental law, add \$0.

If there were prior environmental violations, add 20% of the gravity sub-total multiplied by the number of prior violations. A "prior violation" includes any act or omission resulting in an enforcement response (e.g., notice of violation, warning letter, administrative order, etc.)

Explain:

10. Good faith efforts to comply

- Reduce gravity sub-total by up to 30% if the violator took extraordinary efforts to prevent or extraordinary efforts to correct the problem as soon as they learned of it, such as paying for extra work shifts or a premium on a contract to have control equipment installed sooner, or shutting down the facility until it is operating in compliance, etc.
- X Add \$0 if the violator attempted to correct the problem or did correct the problem, but did so in a less timely fashion [Also applies if violation can not be corrected (e.g., has already occurred)].
- Increase gravity component by up to 30% if the violator is not making efforts to come into compliance or is negotiating with EPA in bad faith or refusing to negotiate.

Explain:

The company corrected the violations upon notification, but did not take any extraordinary efforts to comply as soon as possible, therefore there is no adjustment to the penalty for this factor.

11. Economic Benefit (EB)(including delayed and avoided costs for each violation cited)

Did the violator economically benefit from the violation? YES X, NO _____. If "Yes", the estimated or actual economic benefit is: \$ 2,500. Attach any calculations, reports, or other pertinent information. EPA has discretion not to seek the EB component if the estimated or actual economic benefit is less than \$50.00.

Explain:

The delayed costs for the annual survey and the written plan of reasonable precautions were calculated to be \$300 and \$700 respectively. The avoided cost of leasing a water truck for 3 months was calculated to be \$1500. Therefore, the total economic benefit was \$2500.

Comments and Special Considerations: _____

Total Recommended Civil Penalty = \$ 3,100. (sum of Adjusted Gravity and EB)

(Note: This figure may be adjusted as appropriate in settlement when considering litigation risk, ability to pay the penalty, and such other factors as justice may require)

Evaluator: John Doe Date: 12/6/06

Unit Manager Concurrence: _____ Date: _____