



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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

JAN 23 2020

MEMORANDUM

SUBJECT: 2020 Revised Penalty Matrix for RCRA § 7003 Civil Penalty Policy

FROM: Kenneth Patterson, Director
Regional Support Division
Office of Site Remediation Enforcement

A handwritten signature in black ink, appearing to read "Kenneth Patterson", is written over the printed name and title.

TO: RCRA Enforcement Managers, Regions I-X

This memorandum transmits the recently updated matrix for the Resource Conservation and Recovery Act (RCRA) Section 7003 Civil Penalty Policy as found in the "Guidance on the Use of Section 7003 of RCRA" (October 1997).¹

Background on increases of maximum amount of statutory penalty

On January 13, 2020, the U.S. Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, "Civil Monetary Penalty Inflation Adjustment Rule" (85 Fed. Reg. 1751) ("2020 Rule"), as mandated by the 1990 Federal Civil Penalties Inflation Adjustment Act, as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act).² The purpose of the 2020 Rule is to adjust the maximum civil monetary penalties to keep pace with inflation so that these penalties maintain their deterrent effect. As detailed in the rule, the inflation adjustment was based on the relevant increase in the Consumer Price Index for all Urban Consumers (CPI-U).

This is the eighth penalty inflation adjustment. The first took effect in 1997 (raising the maximum daily RCRA §7003(b) penalty from \$5,000 to \$5,500. The second, third, and fourth adjustments took effect in 2004 (increased to \$6,500), 2009 (increased to \$7,500), and 2016 (increased to \$14,023), respectively. The 2015 Act required the EPA to make the penalty

¹ This 1997 policy can be found at <https://www.epa.gov/enforcement/guidance-use-administrative-orders-under-rcra-section-7003>.

² Headquarters transmitted this rulemaking to the Regions via the memorandum, "Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule," dated January 15, 2020 and signed by Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance, ("2020 OECA Memorandum") <https://www.epa.gov/enforcement/2020-penalty-inflation-rule-adjustments>.

inflation adjustments annually. Beginning in 2017, the fifth adjustment (to \$14,252) went into effect, followed by the sixth adjustment (to \$14,543) in 2018, the seventh adjustment (to \$14,910) in 2019, and now the eighth adjustment (to \$15,173).

Under the 2020 Rule, the current maximum daily amount of the statutory civil penalty that a court can assess for a RCRA § 7003(a) order violation that occurred after November 2, 2015 is \$15,173.

Background on increases of the dollar amounts in policies on settlements of penalty claims

Consistent with the increases of the maximum penalty amount, the EPA has typically exercised its discretion to make corresponding increases of the dollar amounts in the policies it uses when negotiating settlements of penalty claims. The Office of Enforcement and Compliance Assurance (OECA) recently issued a memorandum exercising the Agency's discretion to amend all of its civil penalty policies to account for inflation.³ This included increasing the dollar amounts in the EPA's policy for settling RCRA § 7003(b) penalty claims.⁴

In updating the penalty matrix in the RCRA § 7003 policy, the Office of Site Remediation Enforcement's (OSRE) adjustments begin with the 1997 policy's statutory maximum of \$5,500. OSRE calculates a multiplier by dividing the new statutory maximum penalty by the maximum amount used in the 1997 policy (\$5,500). OSRE has historically used this approach to avoid having the highest amount in the matrix be less than the statutory maximum. OSRE's intent is to maintain the matrix's deterrent effect for all violations, including the most serious ones.

Latest increase of dollar amounts in RCRA § 7003 policy

For the latest penalty inflation increases, OSRE divided the new statutory maximum (\$15,173) by the 1997 policy's statutory maximum (\$5,500), yielding a multiplier of 2.75873 which was then applied to the dollar amounts in the 1997 matrix. The attached revised matrix presents the increased dollar amounts that case teams should use when negotiating settlements of penalty claims for violations that occurred after November 2, 2015.

OSRE plans to make the next modification to this matrix in early 2021 and will use the same approach of calculating a multiplier and applying it to the other amounts in the 1997 policy.

For questions regarding the RCRA § 7003(b) penalty adjustments, please contact Mike Northridge in OSRE (202-564-4263; northridge.michael@epa.gov). For other questions regarding RCRA §7003(b) penalties, please contact Mike Northridge or Peter Neves in OSRE (202-564-6072; neves.peter@epa.gov).

Attachment

cc: Cyndy Mackey, Director, OSRE, OECA

³ *Ibid.*

⁴ The January 15, 2020 memorandum effectively superseded the April 11, 2019 memorandum, "2019 Revised Penalty Matrix for RCRA § 7003 Civil Penalty Policy," signed by Kenneth Patterson.

Rosemarie Kelley, Director, Office of Civil Enforcement (OCE), OECA
David Smith-Watts, OCE, OECA
Barnes Johnson, Director, Office of Resource Conservation and Recovery (ORCR),
Office of Land and Emergency Management (OLEM)

2020 Penalty Matrix for RCRA § 7003

For violations that occur after November 2, 2015, the table below replaces the table found on page 43 of the 1997 “[Guidance on the Use of Section 7003 of RCRA.](#)”

For violations that occurred on or before November 2, 2015 and a penalty has not yet been assessed, practitioners should refer to the 2009 Revised Penalty Matrix for RCRA § 7003, available on the Agency’s website at <https://www.epa.gov/enforcement/guidance-penalty-matrix-rcra-section-7003-civil-penalty-policy>.

In cases where a violation began before November 2, 2015 and continued after that date, practitioners should use both matrices, as appropriate.⁵

Extent of Deviation				
		MAJOR	MODERATE	MINOR
Potential For Harm	MAJOR	\$3,035 to \$15,173	\$2,276 to \$12,138	\$1,669 to \$9,104
	MODERATE	\$1,214 to \$6,676	\$759 to \$4,855	\$455 to \$3,035
	MINOR	\$303 to \$1,821	\$303 to \$910	\$303

⁵ For additional details regarding how to address violations spanning dates of different penalty adjustment policies, see the discussion on page 6 of the 2020 OECA Memorandum.