MEMORANDUM

SUBJECT: 2022 Revised Penalty Matrix for CERCLA § 106(b)(1) Civil Penalty Policy

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

TO: Regional Superfund Legal Branch Chiefs, Regions 1-10

This memorandum transmits the updated matrix for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) §106(b)(1) penalty policy as found in the “Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders” (September 1997).1

Background on increases of maximum amount of statutory penalty

On January 12, 2022, the U.S. Environmental Protection Agency (EPA) issued a final rule titled “Civil Monetary Penalty Inflation Adjustment” (87 Fed. Reg. 1676), 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 rule is to adjust the civil monetary penalty maximums 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 tenth inflation adjustment of the maximum daily CERCLA § 106(b)(1) penalty. The first adjustment took effect in 1997 (raising the maximum daily penalty from $25,000 to $27,500). The second, third, and fourth adjustments took effect in 2004 ($32,500), 2009 ($37,500), and 2016 ($53,907), respectively. The 2015 Act required the EPA to make the penalty inflation adjustments

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1 This 1997 policy is available on the Agency’s website at https://www.epa.gov/enforcement/interim-guidance-settling-civil-penalty-and-punitive-damage-claims-noncompliance.
annually. Beginning in 2017, the fifth adjustment ($54,789) went into effect, followed by the sixth
adjustment ($55,907) in 2018, the seventh adjustment ($57,317) in 2019, the eighth adjustment
($58,328) in early 2020, and the ninth adjustment ($59,017) in 2021.

Under the January 2022 final rule, resulting in the tenth adjustment, the current maximum daily amount
of the statutory civil penalty that a court can assess for a CERCLA § 106(b)(1) violation that occurred
after November 2, 2015 is $62,689

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

Consistent with the increases of the maximum penalty amount, EPA typically exercises its discretion to
make corresponding increases of the dollar amounts in the policies it uses when negotiating settlements
of penalty claims. The Office of Site Remediation Enforcement (OSRE) is issuing this memorandum to
increase the dollar amounts in the Agency’s policy for settling CERCLA § 106(b)(1) penalty claims.³

In updating the penalty matrix in the CERCLA § 106(b)(1) Civil Penalty Policy, OSRE adjustments
begin with the 1997 policy’s statutory maximum of $27,500. OSRE calculates a multiplier by dividing
the new statutory maximum penalty by $27,500. OSRE has routinely used this approach to avoid having
the highest amount in the matrix be less than the statutory maximum. In using this approach, 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 CERCLA § 106(b)(1) settlement policy**

For the latest penalty inflation increases, OSRE divided the new statutory maximum ($62,689) by the
1997 policy’s statutory maximum ($27,500), yielding a multiplier of 2.27960, 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 occur after
November 2, 2015.

OSRE plans to make the next modification to this matrix in early 2023 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 CERCLA §106(b)(1) penalty adjustments or other aspects of CERCLA
§ 106(b)(1) penalties, please contact Mike Northridge in OSRE (202-564-4263;
northridge.michael@epa.gov).

Attachment

cc: Cyndy Mackey, Director, OSRE, OECA
    David Smith-Watts, Office of Civil Enforcement, OECA
    Lawrence Douchand, Director, Office of Superfund Response and Technology Innovation,
    Office of Land and Emergency Management (OLEM)

³ Today’s memorandum effectively supersedes the April 6, 2021, memorandum, “2021 Revised Penalty Matrix for CERCLA
§ 106(b)(1) Civil Penalty Policy” signed by Kenneth Patterson.
Attachment

For violations that occur after November 2, 2015, the table below replaces the table found on page 3 of the “Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders (September 1997).”

For violations that occurred on or before November 2, 2015, and a penalty has not yet been assessed, refer to the 2009 Revised Penalty Matrix for CERCLA § 106(b)(1) Civil Penalty Policy, available on the Agency’s website at https://www.epa.gov/enforcement/guidance-penalty-matrix-cercla-section-106b1-civil-penalty-policy.

In cases where a violation began before November 2, 2015 and continued after that date, use both matrices, as appropriate.4

### 2022 Revised Penalty Matrix for CERCLA § 106(b)(1)

<table>
<thead>
<tr>
<th>Harm</th>
<th>Recalcitrance I</th>
<th>Recalcitrance II</th>
<th>Recalcitrance III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harm A</td>
<td>$40,121 to $62,689</td>
<td>$20,060 to $40,121</td>
<td>$6,269 to $20,060</td>
</tr>
<tr>
<td>Harm B</td>
<td>$20,060 to $40,121</td>
<td>$6,269 to $20,060</td>
<td>$1,254 to $6,269</td>
</tr>
<tr>
<td>Harm C</td>
<td>$6,269 to $20,060</td>
<td>$1,254 to $6,269</td>
<td>$251 to $1,254</td>
</tr>
</tbody>
</table>

4 For additional details regarding how to address violations spanning dates of different penalty adjustment policies, please contact the designated Headquarters contact.