

Appendix XIII
Landfills Penalty Policy
December 2024

Part I: General

A. Overview and Applicability

The Clean Air Act Stationary Source Civil Penalty Policy (“the General Policy”) provides general guidance for determining the amount of civil penalties EPA will seek in settlement of enforcement actions (whether administrative or judicial) under Title I of the Clean Air Act (“CAA” or “the Act”). The General Policy does not, however, specifically address how penalties for violations at landfills, particularly violations of surface emissions monitoring (“SEM”) requirements (40 C.F.R. Parts 60, 62, and 63), should be calculated.¹ Landfills are required to use SEM to detect fugitive emissions at the facility to ensure that these harmful emissions are properly collected and controlled. Amongst other requirements, landfill owners or operators must conduct SEM, record and report exceedances that are found, and take corrective action(s) to address each exceedance. This Appendix outlines a standard approach for calculating civil penalties for the following categories of landfill violations in addition to SEM-inspection related violations:

1. Failure to correct exceedances on time or at all;
2. Recordkeeping violations; and
3. Reporting violations.

B. Scope

The General Policy provides guidance for assessing penalties for administrative and civil judicial enforcement actions under Title I of the Clean Air Act. Under the General Policy, penalties are assessed, in part, based on the economic benefit of non-compliance and the gravity of the violation. This Appendix does not address the economic benefit component of penalty calculations; economic benefit should be calculated in accordance with the General Policy.

Consistent with the General Policy, the gravity component of a penalty has four parts: (1) actual or possible harm; (2) the importance to the regulatory scheme; (3) size of the violator; and (4) adjusting the gravity component. This Appendix provides the methods for calculating the first two parts of the gravity component, *i.e.*, actual or possible harm and importance to the regulatory scheme. The third and fourth parts of the gravity component, *i.e.*, size of violator and adjustments, should be calculated according to the General Policy.

Amounts in this Appendix should be adjusted using the same inflation factor applied to the General Policy.

¹ The landfill regulations include NSPS Subparts XXX, WWW; Federal Plan OOO; and NESHAP AAAA; and State Plans Implementing Emission Guidelines Cf.

This Appendix is intended to provide additional guidance in assessing penalties in cases involving violations of the landfill regulations. For non-landfill violations, case teams should use the General Policy or other appendices to the General Policy, as appropriate.

Part II: Penalty Assessment of Actual or Possible Harm

A. Toxicity of the Pollutant & Sensitivity of Environment

The actual or possible harm to the environment from violations of emissions-related regulations, including SEM-related inspection and Method 21 monitoring violations, are more severe if the predominant fugitive emissions are hazardous air pollutants (HAPs) and, for volatile organic compounds (VOC), if the facility is located in an ozone non-attainment area rather than an ozone attainment area.

HAPs: Landfill gas emissions are regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAP) for HAPs included under Nonmethane Organic Compounds (NMOC). The penalty amounts listed in Section III.A already include an upward adjustment to reflect this greater severity of emissions-related SEM violations involving HAPs. Case teams do not need to apply an additional toxicity adjustment for these violations. For non-SEM emissions-related violations covered by this Appendix, the toxicity component should be assessed at \$15,000 for the combined HAP constituents of the NMOC.

VOCs: If the facility is located in an ozone non-attainment area, the case team should also add one of the listed values on top of the calculated penalty per the General Policy, to reflect the greater severity of emissions-related violations when they are located in nonattainment areas:

TABLE 1. SENSITIVITY ADJUSTMENT FOR OZONE ATTAINMENT STATUS

Ozone Nonattainment Classification	Sensitivity Penalty Component
Extreme	\$18,000
Severe	\$16,000
Serious	\$14,000
Moderate	\$12,000
Marginal	\$10,000
Ozone Attainment Classification	Sensitivity Penalty Component
Attainment – PSD Class I	\$10,000
Attainment – PSD Class II	\$5,000
Attainment – PSD Class III	\$5,000

B. Length of Time of Violation

For non-SEM claims, use the General Policy to assess the length of time of the violation. When non-SEM claims involve multiple violations (*e.g.*, exceedances at multiple wellheads at the same facility), case teams should combine like instances of noncompliance as one claim. Combining instances of noncompliance as “like instances” is a fact-specific decision. Case teams should assess the violations’ toxicity and sensitivity only once for that single claim but may combine the durations of the individual instances of noncompliance. For example, if ten wells were improperly shut down for two months, the case team should assess the noncompliance as one single violation lasting 20 months (two months for each of the ten wells). For violations affecting broad areas of collection, the case team may at its discretion instead multiply the time in noncompliance by the acreage of the affected area rather than the number of wells, given that one well per acre is an approximation of median well density. This total month value is then used to identify a penalty amount for this component according to the General Policy. For totals exceeding 60 months, teams can extrapolate from the General Policy by the following equation:

$$\text{Length of time penalty component} = \$55,000 / 60 \text{ months} * [\text{total \# of months}]$$

For SEM claims, length of time of the violation is already addressed in the importance to the regulatory scheme amounts listed in Part III of this Appendix, and should not be assessed separately.

Part III: Penalty Assessment of Importance to the Regulatory Scheme

This Part includes guidance for assessing the importance to the regulatory scheme for the following landfill violations:

1. SEM-related inspection and Method 21 monitoring violations;
2. Failure to correct exceedances on time or at all;
3. Recordkeeping violations; and
4. Reporting violations.

The importance to the regulatory scheme for all other violations should be calculated according to the General Policy.

For cases involving multiple violations (*e.g.*, failure to correct multiple exceedances at the same facility), case teams should combine like instances of noncompliance as one claim. Combining instances of noncompliance as “like instances” is a fact-specific decision. Case teams should assess the violations’ importance to the regulatory scheme only once for that single claim.

A. SEM-Related Inspection and Method 21 Monitoring Violations

Monitoring and inspection of the landfill is required at regular intervals to detect exceedances of the surface methane standards. In addition, re-monitoring is required after an

exceedance has been corrected. Monitoring and inspection must be done according to the instructions of Method 21 (or any subsequent alternative or revision).

Missed Monitoring and Inspection Events. Common monitoring and inspection violations include, but are not limited to, the following: (i) a complete failure to monitor all of the landfill subject to the monitoring requirements of the landfill regulations; (ii) failure to monitor areas of the landfill because the facility incorrectly excluded the area(s) from surface testing, for example by improperly identifying the area(s) as “dangerous areas”; or (iii) failure to re-monitor after an exceedance correction.

Table 2, below, should be used to assess penalties for missed monitoring and inspection events, including instances where the landfill, or portions of the landfill, was not monitored because it was incorrectly identified as not subject to the landfill regulations.

TABLE 2. MISSED MONITORING AND INSPECTION EVENTS

Complete failure to monitor (<i>e.g.</i> , facility does not monitor any area of the landfill)	\$12,000 per quarter
Partial failure to monitor (<i>e.g.</i> , facility monitors some, but not all of the landfill)	\$1,000-\$11,000 per quarter Penalties should be assessed within this range depending on the percentage of the landfill that the facility failed to monitor. Facilities that fail to monitor a larger portion of their landfill should be assessed a penalty on the higher end of the range; facilities that fail to monitor a smaller portion of their landfill should be assessed a penalty on the lower end of the range.
Failure to monitor an individual exceedance (<i>e.g.</i> , failure to re-monitor after identifying an exceedance)	\$475 per exceedance

Method 21 Calibration Violations. Table 2 is used to assess penalties when certain requirements of Method 21 were not followed during monitoring events, and the failure to follow those requirements is equivalent to a failure to monitor. Such a failure to monitor may occur when, for example, the instrument used to perform monitoring by Method 21 is not calibrated, or the instrument does not pass a calibration check. For example, 40 C.F.R. § 63.180(b)(3) requires that, in the performance of Method 21, “the instrument shall be calibrated before use on each day of its use. . . .” A failure to calibrate the instrument before monitoring is equivalent to a failure to monitor because there is no information to validate the data collected on that day. In another example, Method 21, Section 10.0, *Calibration and Standardization*, states that “if the meter readout cannot be adjusted to the proper value, a malfunction of the analyzer is indicated and corrective actions are necessary before use.” Using such an instrument to perform monitoring is equivalent to a failure to monitor.

A failure to monitor may also occur when an instrument is calibrated correctly but is not used in accordance with Method 21. For example, Method 21, Section 7.4, provides that

“calibrations may be performed using a compound other than the reference compound . . . [however] . . . a conversion factor must be determined for the alternative compound such that the resulting meter readings during source surveys can be converted to the reference compound (*i.e.*, n-hexane) results.” If monitoring is conducted using an instrument calibrated with an alternative gas and a conversion factor is not used to adjust the reading to the reference gas, then a failure to monitor may be indicated.

Violations of the Method 21 calibration requirements that do not result in a failure to monitor may also occur. For example, Method 21, Section 7.2, *Cylinder Gases*, requires that the gas mixtures used for calibrations be certified to a two percent accuracy standard by the manufacturer, and have a specified shelf life. Cylinder standards must be either re-analyzed (“recertified”) or replaced at the end of the specified shelf life. If, for example, an expired gas cylinder was used for calibration, but the cylinder was subsequently recertified and the gas standard concentration was acceptable, then the measurement values collected during the monitoring are likely to be valid. As another example, if the Method 21 instrument was calibrated with a gas cylinder that had a lower accuracy (*e.g.*, five percent accuracy), then the measurement values collected during the monitoring event are less accurate, but the data may indicate that no leaks were missed due to the less accurate calibration. A penalty of \$300 may be assessed for violating Method 21 calibration requirements when the violations do not appear to invalidate the monitoring event. However, if an expired gas cylinder was used for calibration and the recertified concentration was not acceptable, or the cylinder was not recertified, then the penalty is assessed in the same manner as for a missed monitoring event in accordance with Table 2.

Failure to Properly Conduct Adequate Surface Emissions Monitoring. Violations include the failure to follow the monitoring procedures described in 40 C.F.R. Part 63, Subpart AAAA, and the parallel provisions under NSPS Subparts XXX or WWW and Federal Plan Subpart OOO (*e.g.*, failing to deviate from the initial SEM route to monitor where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover). A \$5,900 penalty should be assessed for each monitoring event where the landfill failed to perform monitoring in accordance with the landfill regulations and Method 21, Section 8.3.1.

Failure to properly conduct adequate SEM may also include the systematic failure to perform the monitoring in accordance with 40 C.F.R. Part 60, Appendix A, Reference Method 21, Section 8.3.1, and as prescribed by the applicable regulations. A systematic failure to perform SEM/Method 21 correctly may be indicated when comparative monitoring at the landfill shows a higher exceedance rate than the company’s monitoring records.

If comparative monitoring suggests that a facility incorrectly determined that it had no exceedances and therefore reduced the frequency of its monitoring to annual monitoring, the penalty should be assessed for each quarter that should have included proper monitoring (*i.e.*, four quarters).

B. Failure to Correct Exceedances on Time or at All

The landfill regulations require landfill owners or operators to make a first attempt at correction within 10 days of identifying an exceedance. Owners or operators must re-monitor within 10 days of the initial detection and, if the re-monitoring shows a second exceedance, additional corrective action must be taken and the location must be monitored again within another 10 days. If the second attempt is also ineffective, and the monitored methane concentration exceeds the standard three times within a quarterly period, a new well or other collection device (or an approved alternative remedy) must be installed within 120 days of the initial exceedance.

Use “Work Practice Standard Violations” in the General Policy to calculate the penalty for failures to correct exceedances on time or at all. Include the proper adjustments under “Actual or Possible Harm” for toxicity (assessed at \$15,000 for the combined HAP constituents of the NMOC), sensitivity, and length of time.

C. Recordkeeping Violations

Recordkeeping requirements ensure that the regulations are enforceable. Use “Recordkeeping Violations” in the General Policy to calculate the penalty for failures to keep proper records.

A complete failure to keep records should generally be assessed a penalty in the upper end of the range. Penalties in the upper range are particularly appropriate where the failure to keep records adversely affects other regulatory requirements. Incomplete records can generally be assessed lower penalties, provided that the objective of the recordkeeping requirement is still served. The case team may use its discretion in determining an appropriate penalty adjustment as the nature and circumstances of the violation(s) requires. Specific penalties for an incomplete record violation should be determined based on factors such as the following:

- Quantity of information missing;
- Overall importance of the missing information to the regulatory requirements; and
- Relative importance of the missing information compared to information that is present.

D. Reporting Violations

Reporting requirements are instrumental for assessing compliance. There are several reporting requirements found in the landfill regulations. Violations of reporting requirements include: (1) failure to submit a report, (2) submitting an incomplete report, and (3) late submission of a report. Use “Reporting and Notification Violations” in the General Policy to calculate the penalty for reporting violations.

Incomplete reports include reports submitted pursuant to a regulatory section that are missing certain information required by that section. The case team will evaluate numerous

factors in order to determine an appropriate penalty amount within the range listed in the General Policy. The factors include but are not limited to: the quantity of missing information; the overall importance of the missing information to EPA's ability to evaluate the company's compliance with the regulations; the relative importance of the missing information compared to the information that is present; and the degree of inattention to the regulatory requirements that the company manifests in failing to record the missing information. Based on these factors, the case team may develop a method for determining the percentage of the total information that is missing from the report, and that percentage can be used in developing the final figure.