

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

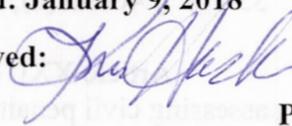
POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

Reviewed: January 8, 2018

Revised: January 9, 2018

CIVIL PENALTY POLICY

Approved: 

Page 1  
of 17

**PURPOSE**

The mission of the Allegheny County Health Department is to protect, promote, and preserve the health and well-being of all Allegheny County residents, particularly the most vulnerable. The purpose of this policy is to further this mission by establishing procedures to assure that civil penalties for violations of the Allegheny County Health Department's Article XXI, "Air Pollution Control" (hereinafter "Article XXI"), regulations are assessed in a uniform and fair manner and are sufficient to deter future violations, especially those violations that pose the greatest harm to the public.

**POLICY**

Outlines the procedures to be followed for assessing civil penalties for violations of the Article XXI regulations.

**DISCLAIMER**

The policies and procedures herein are not an adjudication or a regulation or intended to supplement any existing regulations. There is no intent on the part of the Allegheny County Health Department ("Department") to give the procedures in this policy that weight or deference. This document establishes the framework within which the Department will exercise its administrative discretion with respect to civil penalties. The Department reserves the discretion to deviate from this policy if circumstances warrant and may change this policy at any time in accordance with the procedures set forth in HPA #360.

**PROCEDURE**

**I. INTRODUCTION**

**A. Assessment of Penalties under the Air Pollution Control Act and Article XXI**

The primary purpose for assessing civil penalties is to deter future violations not only at the specific facilities that are involved in the enforcement actions taken by the Department, but also at all the facilities within Allegheny County that are subject to the Article XXI regulations. In order to achieve the goal of deterrence, a civil penalty should remove any significant economic benefit resulting from noncompliance and include an amount beyond recovery of the economic benefit to reflect the seriousness of the violation.

In order to ensure that civil penalties for air pollution violations are uniform throughout Pennsylvania, the Air Pollution Control Act (APCA) requires that the Department apply the penalty provisions under the APCA. 35 P.S. § 4012(g). Pursuant to the APCA, a

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

CIVIL PENALTY POLICY

Page 2 of 17

civil penalty may never exceed the statutory maximum of \$25,000 per day for each violation. 35 P.S. § 4009.1(a); Article XXI, § 2109.06.a.1.

Article XXI, § 2109.06.b.1., requires that the following factors be considered in assessing civil penalties. The “Civil Penalty Calculation Procedure” in Section V sets forth the specific procedures on how to apply the following factors when calculating a civil penalty:

1. the willfulness of the violation;
2. the actual and potential harm to the public health, safety, and welfare;
3. the damage to the air, soil, water, and other natural resources of the County and their uses;
4. the economic benefit gained by such person by failing to comply with this Article;
5. the deterrence of future violations;
6. the costs of the Department;
7. the size of the source or facility;
8. the compliance history of the source;
9. the nature, frequency, severity, and duration of the violation;
10. the degree of cooperation in resolving the violation;
11. the speed with which compliance is ultimately achieved;
12. whether or not the violation was voluntarily reported;
13. other factors unique to the owners, operators, or other responsible parties of the source or facility; and
14. other relevant factors.

**B. Relationship with the EPA and PA DEP Civil Penalty Policy**

This policy is based, in part, on the EPA’s “Clean Air Act Stationary Source Civil Penalty Policy,” issued October 25, 1991, and the PA DEP’s “Guidance for the Application of Regional Civil Assessment Procedures,” dated June 2, 2012. The Department’s Civil Penalty Policy should be used when calculating a civil penalty for a violation of Article XXI.

**C. Approval of Penalty Assessment**

This policy may be used by any Department staff to calculate a civil penalty amount. Before a penalty is issued, the penalty calculation must be reviewed by the Air Quality Program Enforcement Section Chief and the Legal Department and final approval must be obtained by either the Director, the Deputy Director of the Bureau of Environmental Health,

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 3 of 17**

or the Manager of the Air Quality Program.

**D. Relationship to Settlement Offers**

This policy is used to calculate the civil penalty that is assessed by the Department. It may be appropriate to update a penalty calculation prior to final settlement to take into account additional and/or continuing violations or new information obtained during the investigation or from the violator that affects the appropriateness of the initial penalty calculation. All settlement amounts must be approved by either the Director, the Deputy Director of the Bureau of Environmental Health, or the Manager of the Air Quality Program.

**E. Confidentiality**

This policy is a public record available for public review under the Pennsylvania Right to Know Law. Any documents related to a penalty calculation or settlement negotiations are not public records and should not be produced under the Right to Know Law on the basis that the documents are considered confidential settlement negotiations, predecisional deliberations by the Department and/or relate to a noncriminal investigation conducted by the Department. A final settlement agreement would be a public record once it has been executed by all parties.

**II. SUMMARY OF THE CIVIL PENALTY POLICY**

A civil penalty is calculated by first determining the gravity based component which reflects the severity of the violation and the potential harm to the public or environment from the violation. The gravity based component is then adjusted for factors and circumstances unique to the violator. The economic benefit of noncompliance and any additional costs to the Department should be added to the penalty calculation. The specific procedures for calculating a civil penalty are set forth in Section V, below.

**A. Determining the Number of Violations**

A penalty should be calculated for every violation that constitutes an independent and substantially distinguishable violation. One activity or omission can result in more than one violation.

Successive or separate violations exist at the same facility when there is evidence of violations on separate days, but no evidence (or presumption) that the violations were continuing during the intervening days. For example, where there has been more than one inspection and no evidence of a continuing violation, violations uncovered at each inspection should be calculated as separate successive violations.

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

CIVIL PENALTY POLICY

Page 4 of 17

If a violation continued for more than one day, the Department may apply a continuing violation penalty at an appropriate frequency, such as a per-day or per-month basis, as applicable to the duration or continuance of the violation under consideration. A violation should be assumed to be continuous from the first provable date of violation until the source demonstrates compliance. If the source has affirmative evidence to show that the violation was not continuous, appropriate adjustments should be made. When there is evidence of an ongoing violation and facts do not indicate when compliance was achieved, presume the longest period of noncompliance for which there is any credible evidence and calculate the duration of the violation based on that date. The Department retains full discretion to seek up to the maximum penalty of \$25,000 for each day a continued violation existed.

**B. Compliance History**

An adjustment factor used for the gravity based penalty component is the compliance history of the violator. For most sources,<sup>1</sup> a history of noncompliance means one or more prior violations within the last two years. A “prior violation” includes any act or omission resulting in an enforcement response (e.g., notice of violation, warning letter, administrative order, field citation, complaint, consent decree, consent agreement, or judicial order) under Article XXI enforced by the Department unless subsequently dismissed or withdrawn on the grounds that the party was not liable. It also includes any act or omission for which the violator has previously been given written notification, however informal, that the Department believes a violation exists. A violation of an administrative order will generally be considered an additional violation and should be assessed a separate penalty. Further, when determining compliance history, the Department has the discretion to consider violations that occurred at other facilities owned by the violator or violations that occurred by the violator’s parent corporation or subsidiary corporations.

**III. ECONOMIC BENEFIT COMPONENT**

This component is a measure of the economic benefit gained by the violator as a result of noncompliance with the regulatory, statutory, or permit requirements. Information on actual economic benefit should be used if available. Such savings or benefits would include the value of delaying or avoiding expenditures for: fuel, power, control equipment, process modification, testing, etc. When calculating the economic benefit from noncompliance, the EPA’s BEN economic model may be consulted. The BEN model calculates a violator’s economic benefit of noncompliance from delaying or avoiding pollution control expenditures. If appropriate, the Department may also consider economic benefits that results from the following illegal competitive advantages:

- Violator gains additional market share;

---

<sup>1</sup> For coke battery violations, compliance rate is based on the coke batteries’ total compliance rate for the quarter subject to the present enforcement action and prior quarter using the Department’s inspections, including those performed by its Method 303 contractors, and comparing the inspections to the Department’s standards. High opacity door inspections are not to be used in the compliance rate calculation.

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

CIVIL PENALTY POLICY

Page 5 of 17

- Violator sells products or services prohibited by law;
- Violator initiates construction or operation prior to government approval; and
- Violator operated at higher capacity than it should have.

In the interest of simplifying and expediting an enforcement action, the Department may forego calculating economic benefit in cases where it appears that the total economic benefit for all alleged violations is likely to be less than \$5,000 or if the Department is unable to calculate a specific economic benefit amount.

**For asbestos violations:** In the absence of reliable information regarding a violator's actual expenses, the Department may assess an economic benefit of up to \$20.00 per linear or square foot of asbestos for the costs of stripping, removing, disposing of, and handling asbestos. The figures are based on rough cost estimates of asbestos removal nationwide. If any portion of the job is done in compliance, the economic benefit should be based only on the asbestos improperly handled. It should be assumed, unless there is convincing evidence to the contrary, that all stripping, removal, disposal and handling was done improperly if such improper practices are observed by the inspector.

#### IV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS<sup>2</sup>

The Department encourages the inclusion of appropriate Supplemental Environmental Projects (SEP) in any consent decree or settlement agreement. A SEP is defined as a project or activity that improves, protects, or reduces the risk to public health or the environment, and that is not otherwise required by law. An agreement by the violator to undertake a SEP, in addition to all actions required for the facility to come into compliance, may result in the mitigation of all or part of the civil penalty. The Department will look favorably on any proposed SEP, but is not obligated to accept such a project. The Department can negotiate the terms of the project, or reject it outright.

##### A. Criteria for a SEP

The Department will consider the following criteria when determining whether to approve a proposed SEP:

1. The SEP must improve, protect, or reduce the risk to public health or the environment. In keeping with the multi-media nature of pollution prevention, the SEP need not be air quality-related, as long as an environmental and/or public health benefit can be recognized. While the SEP may provide the violator with some benefits, the project must primarily benefit the public health and/or the environment.
2. The SEP cannot be a project that the violator is legally required to perform by a federal, state, or Department law or regulation or a permit

---

<sup>2</sup> The Department's policy titled "Pollution Prevention in Enforcement & Compliance" (HPA #262) has been revised and incorporated into the Department's "Civil Penalty Policy".

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

CIVIL PENALTY POLICY

Page 6 of 17

condition. A SEP does not alter a violator's obligation to remedy a violation expeditiously and return to compliance.

3. The SEP should be performed in the same geographic area where the violation occurred unless the SEP is intended to benefit the entire County. The SEP can affect either the facility itself, the surrounding community, or both.
4. There must be a reasonable probability that the SEP will be successful. However, if the agreed-upon SEP is carried out faithfully, the facility will not be penalized if the expected environmental or public health benefits are not realized.
5. The SEP must be incorporated into the terms of a legally enforceable settlement document such as a consent decree or settlement agreement.

**B. Mitigation of the Penalty When SEPs are Included in Settlement**

During the settlement of an enforcement action, the Department and the violator will agree upon an appropriate civil penalty amount. The violator may propose a SEP to mitigate all or a portion of the civil penalty. The amount of penalty mitigation allowed for a SEP should be equivalent to a percentage of the estimated cost to implement the SEP. The Department will determine the amount of penalty mitigation based on the following criteria, as well as factors specific to the violator and the enforcement action:

1. The SEP will provide significant, quantifiable benefits to public health or the environment;
2. The SEP will provide environmental or public health benefits to a community that may have been disproportionately exposed to pollution or is at environmental risk;
3. The SEP was developed with active solicitation and consideration of community input;
4. The SEP will further the development, implementation, or dissemination of innovative processes, technologies, and/or methods which will improve the public health or environment;
5. The SEP will reduce emissions to one or more mediums; and
6. The SEP will develop and implement pollution prevention techniques and practices that reduce the generation of a pollutant.

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 7 of 17**

If the violator can demonstrate that the SEP is of outstanding quality, the Department has the discretion to set the penalty mitigation amount as high as 100% of the estimated SEP cost.

Generally, for settlements that include a SEP, the Department will require the violator to pay a monetary penalty amount as part of the settlement. However, the Department has the discretion to allow a 100% mitigation of the penalty amount if the SEP will provide an exceptional public health or environmental benefit.

**C. Procedure for Approval and Implementing a SEP**

1. The Department calculates the civil penalty pursuant to this policy and initiates an enforcement action against the violator.
2. During the settlement of an enforcement action, the Department and the violator will agree on an appropriate settlement amount. The violator has the option to propose any SEP, although the Department may, upon request, suggest potential areas for SEPs.
3. The SEP proposal must be in writing and include the following information:
  - a. Project description;
  - b. Location of project;
  - c. Implementation and reporting schedule;
  - d. Costs of the project with supporting documentation<sup>3</sup>;
  - e. Expected benefits to the public health and/or environment;
  - f. The area that will benefit from the project;
  - g. Resources that will be necessary to ensure project completion; and
  - h. Identify any partners involved in the project.
4. If the SEP is approved, the Department will determine the amount of the civil penalty that will be mitigated by the SEP. All SEPs and settlement amounts must be approved by either the Director, the Deputy Director of the Bureau of Environmental Health, or the Manager of the Air Quality Program. The Director, or her designee, must approve any settlement that will result in a 100% mitigation of the penalty amount.

---

<sup>3</sup> Documentation such as appraisals, bid proposals, invoices, contracts, and third-party cost estimates may be submitted to establish the estimated cost of the SEP.

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

CIVIL PENALTY POLICY

Page 8 of 17

5. The details of any SEP, including schedules and interim reporting schedules, shall be agreed to by all parties and be made a part of the legally enforceable settlement document. The settlement document should include stipulated penalties and other provisions to ensure that the violator complies satisfactorily with the terms of the SEP. The settlement document should also include a provision stating that if the violator fails to expend the full amount of the proposed SEP, the violator may, at the Department's discretion, be liable for an amount that the civil penalty was reduced.
6. The Department will monitor progress in carrying out the SEP. The settlement document should require that the violator submit a report to the Department after the SEP has been completed. The report should include an itemized list of all eligible SEP costs and a certification from a corporate officer or responsible official of the violator stating that the SEP has been fully implemented pursuant to the settlement document.
7. The Department will notify the violator if the SEP has been completed satisfactorily and if stipulated penalties are required. If the Department is satisfied that the violator has carried out the SEP, as it was conceived and agreed to, then there will be no additional penalties if the anticipated environmental benefits are not fully realized.

V. CIVIL PENALTY CALCULATION PROCEDURE

The following calculation is used to assess the civil penalty:

**Civil Penalty = (Gravity Based Component x Adjustment Factor) + Economic Benefit + Cost to the Department + Additional Deterrent Penalty**

**NOTE:** The maximum penalty that the Department may assess is \$25,000 per day for each violation. This civil penalty policy requires a determination of the Gravity Based Component ("Step 1") and the Adjustment Factor ("Step 2"). **After these two determinations have been made, the preliminary penalty amount for major violations may increase to \$33,000.** The Department may then add to the penalty amount any economic benefit from noncompliance ("Step 3") and any additional costs to the Department ("Step 4"). The Department also has the discretion to include an additional deterrence amount ("Step 5"), if appropriate. **If the calculated civil penalty amount exceeds the statutory maximum of \$25,000 per day for each violation, then the final civil penalty amount must be reduced to \$25,000.**

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 9 of 17**

**Step 1 – Calculate the Gravity Based Component:** The first step in assessing a civil penalty is to determine the gravity based component. A gravity based component reflects the potential harm that the violation may have on the public or environment and the severity of the violation. Table 1 should be used to determine the penalty range for the gravity based component for each violation. Table 1 requires a determination of whether the “Potential for Harm” and the “Severity of Violation” is “major,” “moderate,” or “low.” Table 2 in Section V.A and Table 3 in Section V.B provide guidance on this determination. **The gravity based component for each violation should be an amount within the penalty range that would be most effective in deterring future violations.**

**Table 1: Gravity Based Component**

<b>POTENTIAL FOR HARM</b>	<b>SEVERITY OF VIOLATION</b>		
	<b>Major</b>	<b>Moderate</b>	<b>Low</b>
<b>Major</b>	\$12,000-\$6,000	\$6,000-\$3,500	\$3,500-\$2,000
<b>Moderate</b>	\$5,000-\$2,500	\$2,500-\$1,300	\$1,300-\$900
<b>Low</b>	\$2,500-\$1,300	\$1,300-\$900	\$900-\$400

**A. Potential for Harm**

The following five factors are used to evaluate the potential harm to the public or environment that may result from the violation. For each factor, select a number based on the condition that most appropriately describes the violation. After calculating a total score from all five factors, use Table 2, below, to determine whether the “Potential for Harm” is “major,” “moderate,” or “low”:

**Table 2: Potential for Harm**

<b>POTENTIAL FOR HARM</b>	<b>TOTAL SCORE</b>
<b>Major</b>	8-10
<b>Moderate</b>	4-7
<b>Low</b>	0-3

**1. Toxicity of the Pollutants**

<b>2</b>	The violations involved Hazardous Air Pollutants, an emission point subject to NESHAPs or MACT standards, or a toxic substance. All asbestos violations.
<b>1</b>	Opacity violations, criteria pollutants, and all other pollutants.
<b>0</b>	Procedural violation.

ALLEGHENY COUNTY HEALTH DEPARTMENT

Air Quality Program

POLICY & PROCEDURE HPA #363

Effective: January 10, 2018

CIVIL PENALTY POLICY

Page 10 of 17

**2. Amount of Pollutant**

<b>2</b>	The violations involved a significant amount of pollutant when compared to standard or permit limit. The total amount of asbestos involved in the violation is > 50 units*. For coke battery violations – emissions determined to be heavy.
<b>1</b>	The violations involved a moderate amount of pollutant when compared to standard or permit limit. The total amount of asbestos involved in the violation is > 10 units but ≤ 50 units*. For coke battery violations – emissions determined to be moderate.
<b>0</b>	Only a minimal amount of pollutant or no pollution was involved in the violation. The total amount of asbestos involved in the violation is ≤ 10 units*. Procedural. For coke battery violations – emissions determined to be light.

[\*Unit = 160 square feet]

**3. Duration of Violation**

<b>2</b>	The violator had the ability to correct the violation well before it was corrected.
<b>1</b>	The violator had the ability to correct the violation somewhat before it was corrected.
<b>0</b>	Violation was corrected promptly or lasted less than thirty minutes.

**4. Impact on Public**

<b>2</b>	The violation may have exposed many members of the public to pollution. Any Department monitor exceeds a short-term ambient air quality standard for the emitted pollutant on the day of the violation. An asbestos violation that occurred in an area of a facility where individual(s) living, working, or visiting may have been exposed. Asbestos notification/survey violations.
<b>1</b>	A few nearby residents or members of the public may have been exposed to the pollution. Any Department monitor exceeds a short-term ambient air standard on the day of the violation.
<b>0</b>	Emissions in an isolated area with virtually no impact or exposure on the public. Procedural violation.

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 11 of 17**

**5. Sensitivity of the Environment**

<b>2</b>	Violation includes emitting a pollutant in a location with more than 2 non-attainment areas. <sup>4</sup>
<b>1</b>	Violation includes emitting a pollutant in a location with 1 to 2 non-attainment areas. <sup>4</sup>
<b>0</b>	Violation includes emitting pollutants located in an attainment area. <sup>4</sup> Procedural violation.

**B. Severity of the Violation**

Table 3, below, should be used to determine whether the “Severity of Violation” is “major,” “moderate,” or “low.” Violations not covered by this chart should be determined on a case-by-case basis.

**Table 3: Severity of Violation**

<b>MAJOR</b>	<b>MODERATE</b>	<b>LOW</b>
> 50% over the first non-compliant value*	20-50% over the first non-compliant value*	Less than 20% over the first non-compliant value*
> 60% opacity	40%-60% opacity	< 40% opacity
Open burning in violation of material, size, and distance requirements.	Open burning in violation of 2 of: material, size, or distance requirements.	Open burning in violation of 1 of: material, size, or distance requirements.
Failure to conduct required stack testing, monitoring or recordkeeping.	> 3 months over the reporting deadline and/or not self-reported	< 3 months over the reporting deadline and/or self-reported
Strong or very strong odors as determined by Department source testing method.	Moderate odors as determined by Department source testing method.	Slight odors as determined by Department source testing method.
A Title V or Synthetic Minor source installing equipment without required permit.	A minor source installing equipment without required permit.	
Report which did not disclose emission non-compliant conditions.	Report which did not disclose procedural non-compliant conditions.	Reports with minor inaccuracies or incompleteness.
For asbestos violations only, use the table in Appendix “A.”	For asbestos violations only, use the table in Appendix “A.”	For asbestos violations only, use the table in Appendix “A.”

[\*Use this factor for determination of high-opacity door violations on coke batteries.]

<sup>4</sup> Attainment areas are based on current EPA designations found at <https://www.epa.gov/green-book>.

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 12 of 17**

**Step 2 – Calculate the Adjustment Factor:**

$\text{Adjustment Factor} = 1.0 + (\text{sum of (A) through (D)})$
--

**(A) Degree of Cooperation:**

0.25	Belligerent; refused to cooperate.
0.1	Reluctantly cooperated, was slow to act, or took some corrective action, but not all.
0	Cooperative; took prompt corrective action.
-0.3	Voluntarily self-reported violation and took prompt action or submitted adequate corrective plan.

**(B) Compliance History:**

1.0	Four or more prior violations within last 2 years. For coke battery violations - compliance rate of < 97.00%*.
0.5	Two or three prior violations within last 2 years. For coke battery violations - compliance rate of 97.00% – 97.99%*.
0.25	One prior violation within last 2 years. For coke battery violations - compliance rate of 98.00% – 99.00%*.
0	No prior violations within the last 2 years. For coke battery violations - compliance rate of > 99.00%*; high opacity door violations.

**\*Note for coke battery violations:** Compliance rate is based on the coke batteries' total compliance rate for the quarter subject to the present enforcement action and prior quarter using the Department's inspections, including those performed by its Method 303 contractors, and comparing the inspections to the Department's standards. High opacity door inspections are not to be used in the compliance rate calculation.

**(C) Degree of Willfulness:**

0.3	Intentional or Reckless: A violation that was intentional or that was done with knowledge that the relevant conduct or omission was unlawful or that resulted from a reckless disregard of applicable regulatory or legal requirement or good operating practices.
0	Negligent: A violation resulting from ignorance of legal or regulatory requirements or from the failure to exercise due care, caution or diligence.
-0.2	Accidental: A violation resulting from factors beyond the control of the responsible person or entity; a violation which occurred despite the responsible person or entity's exercise of due care, caution or diligence.

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 13 of 17**

**(D) Size of Violator:**

0	>200 employees; Net worth or net current assets > \$5,000,000
-0.1	51-200 employees; Net worth or net current assets between \$1,000,000-\$5,000,000
-0.25	11-50 employees; Net worth or net current assets between \$500,000-\$999,999
-0.45	1-10 employees; Net worth or net current assets < \$500,000 / Government Facility
+ 0.2	Add 0.2 if source is a Title V source or a Synthetic Minor source.

**Note:** For non-government violators, if the size of the violator falls into more than one category, apply the highest factor. In the case of a company with more than one facility, the size of the violator is determined based on the company’s entire operation, not just the violating facility. With regard to parent and subsidiary corporations, only the size of the entity subject to the enforcement action should be considered.

**Step 3 – Determine the economic benefit from non-compliance:** See Section III (“Economic Benefit Component”), above, for determining the economic benefit gained by such person, source, or facility by failing to comply with Article XXI.

**Step 4 – Determine the cost to the Department:** Extra monetary costs for the investigation and preparation of the case, such as source sampling costs and laboratory costs, may be identified and added to the adjusted civil penalty. All costs recovered by the Department shall be paid into the Department’s Air Pollution Control Fund. Article XXI, § 2109.08.b.

**Step 5 – Determine whether an additional deterrent penalty should be assessed:** If additional deterrent effect is justified by the circumstances of the case, an appropriate deterrent penalty should also be added to the adjusted civil penalty.

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 14 of 17**

**APPENDIX “A”  
(Asbestos Violations)**

<b>Article XXI Section</b>	<b>Violation Description</b>	<b>Severity of Violation</b>
2101.11.a	Failure to comply with permit condition and/or causing potential danger to public health, safety or welfare.	Major
2105.60	The removal, encasing, or encapsulating of ACM without a valid Asbestos Abatement Contractor License issued by the Department.	Major
2105.61.a	Failure to meet accreditation requirements under the federal Toxic Substances Control Act and the Pennsylvania Asbestos Occupations Accreditation and Certification Act.	Major
2105.61.b	Failure to have photocard issued by DOLI or course certificate available for inspection.	Low
2105.62.b; 40 C.F.R. § 61.145(a)	Failure to perform an asbestos survey prior to demolition or renovation.	Major
2105.62.f-g; 40 C.F.R. § 61.145(b).	Failure to submit an Asbestos Notification Form prior to demolition or renovation work starting.	Major
2105.62.f-g; 40 C.F.R. § 61.145(b).	Asbestos Notification Form submitted late, but prior to asbestos removal or demolition starting date.	Low
2105.62.f.1 2105.62.g 2105.62.h.3.A	Asbestos Notification Form or Permit Application lacks required information or documentation.	Low
2105.62.f.2 2105.62.h	The removal of asbestos without a permit or failure to comply with permit requirements.	Major
2105.62.h.1.B.i	Failure to submit permit application prior to asbestos abatement.	Major
2105.62.h.1.B.ii	Performing asbestos abatement prior to permit being issued.	Moderate
2105.62.h.1.B.iii	Failure to perform abatement in compliance with permit requirements.	Major
2105.62.h.2	Failure to post abatement permit at the work area.	Low
2105.62.h.3	Submitting an application less than 10 days from proposed start of abatement and failure to submit a complete permit application and application fee.	Low
2105.62.h.4	Failure to submit application fee with the permit application.	Low
2105.62.h.7	Performing asbestos abatement after the expiration date on the permit.	Low

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 15 of 17**

2105.62.h.8.A	Failure to submit a permit amendment prior to the removal of ACM that differs from the ACM identified by type, amount, or specific location in the permit.	Moderate
2105.62.h.8.D.i	Failure to timely submit permit amendment after amendment conditionally approved in the field or verbally of the phone.	Low
2105.62.h.9	Performing abatement after permit has been rejected, suspended, or revoked.	Major
2105.62.h.10.A	Failure to follow permit conditions. Information provided as part of permit application constitutes permit condition and must be complied with during abatement.	Major
2105.62.h.10.B	After permit issuance – removal of ACM that differs from the ACM identified by type, amount, or specific location in the permit.	Moderate
2105.62.i.2	Requesting a waiver of 10-day notification when no emergency exists.	Low
2105.62.j.3	Failure to submit a timely and complete written quarterly report following the approval of an Operating & Maintenance Plan.	Moderate
2105.62.k	Failure to submit a notification to the Department of completion of the full set-up and preparation of work site prior to commencement of abatement.	Low
2105.63.b.1	Failure to post warning signs at all approaches to the work area as required.	Moderate
2105.63.b.2	Failure to maintain negative air pressure in the work area at all times.	Major
2105.63.c.1	Failure to “immediately” decontaminate any area outside work area which has become contaminated.	Major
2105.63.c.2	Failure to notify the Department within 60 minutes of the contamination of an area outside the work area as a result of asbestos abatement. Failure to provide written notice to the Department within 7 days.	Moderate
2105.63.d	Failure to properly cover and enclose all fixed objects, openings, floor and wall surfaces with minimum six mil plastic sheeting sealed with tape.	Moderate
2105.63.d.1	Failure to shut down HVAC systems prior to abatement.	Major
2105.63.d.2	Failure to remove all moveable objects from work area prior to abatement.	Low
2105.63.d.3	Failure to cover and enclose a fixed object in work area with minimum six mil plastic sheeting sealed with tape.	Low
2105.63.d.4	Failure to cover all openings (e.g. windows doorway, ducts) with minimum six mil plastic sheeting sealed with tape.	Moderate
2105.63.d.5	Failure to properly cover all floors and wall surfaces with minimum six mil plastic sheeting sealed with tape.	Moderate

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 16 of 17**

2105.63.e	Failure to provide, maintain and/or utilize a decontamination enclosure system at all exits and entrances to work area.	Major
2105.63.f.1	ACM not properly wetted or kept wet during removal.	Major
2105.63.f.2	Failure to properly remove ACM in a manner so as to prevent the release of any fibers during removal and/or disposal.	Major
2105.63.f.3	Failure to remove ACM in manageable sections capable of containerization in six mil poly bags or drums.	Moderate
2105.63.f.4	Failure to carefully lower to the floor ACM during removal.	Moderate
2105.63.f.5	Failure to properly bag, seal, place in drums, and label all removed ACM.	Major
2105.63.f.6	Failure to properly wrap and seal oversized components that do not fit into drums.	Major
2105.63.f.7	Failure to properly wet clean all surfaces from which ACM has been removed.	Moderate
2105.63.g	Failure to properly encapsulate ACM.	Moderate
2105.63.h.1	Failure to properly remove and containerize all visible accumulations of ACM and asbestos containing debris.	Moderate
2105.63.h.2	Failure to properly wet clean, dry, and vacuum all objects and surfaces in the work area.	Moderate
2105.63.h.2	Failure to properly dispose of all rags, mops, and sponges used in clean-up.	Moderate
2105.63.h.2	Commencing clearance air sampling and/or contacting the Department to arrange for final clearance inspection prior to achieving no visible residue remaining on any surfaces or objects in the work area.	Moderate
2105.63.i	Applying a non-clear encapsulant to any object or surface in a work area prior to final inspection.	Moderate
2105.63.j	Failure to conduct final clearance air sampling, take proper number of samples, attain clearance standard, and/or conduct sampling and analysis as required under 2105.63.j.1-8.	Moderate
2105.63.j.8	Clearance air sampling laboratory results not on site for review.	Low
2105.63.k.1	The unauthorized removal of containment barriers or reopening of the work area to the public and/or failure to maintain negative air pressure until the final clearance inspection results were deemed acceptable.	Major
2105.63.k.5-6	Failure to pass a final clearance inspection or reinspection.	Low
2105.63.l	Failure to properly dispose of ACM.	Major
2105.63.l.1	Failure to properly containerize and seal all ACM at least once per 8-hour work shift and prior to removal from work area.	Major
2105.63.l.2	Failure to properly label leak tight containers.	Major

**ALLEGHENY COUNTY HEALTH DEPARTMENT**

**Air Quality Program**

**POLICY & PROCEDURE HPA #363**

**Effective: January 10, 2018**

**CIVIL PENALTY POLICY**

**Page 17 of 17**

2105.63.1.6	Failure to properly wet, wrap, seal, and/or transport ACM which cannot be placed in leak-tight containers.	Major
2105.63.1.8	Failure to transport ACM directly to landfill or temporary storage of ACM outside the work area for more than 8 hrs.	Moderate
2105.63.1.9	Failure to maintain and/or produce all transportation and disposal documentation upon request by the Department.	Major
2105.63.m.3	Failure to obtain approval from the Department for an alternative procedure to be followed on an abatement project.	Major
2105.63.m.5	Improper use of heating equipment or high-pressure air, liquid, or solids for the removal, wetting, or clean-up.	Major