Guidelines for Characterizing Air Violations

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Acronym List

AC – Code for an air construction permit

AF – Code for a Federally Enforceable State Operation Permit (FESOP)

AG – Code for an air general permit

AO – Code for an air operation permit

AOR – Annual operating report

AV – Code for a Title V air operation permit

BACT – Best available control technology

BAR – (Florida DEP) Bureau of Air Regulation

C&E – Compliance and enforcement

CAM – Compliance assurance monitoring

CEMS – Continuous emission monitoring system

CFR – Code of Federal Regulations

COMS – Continuous opacity monitoring system

DARM – (Florida DEP) Division of Air Resource Management

DEP – Florida Department of Environmental Protection

ELRA – Environmental Litigation Reform Act

EPA – U.S. Environmental Protection Agency

Fla. Admin. Code – Florida Administrative Code

Fla. Stat. – Florida Statutes

LAER – Lowest achievable emission rate

NESHAP – National Emission Standards for Hazardous Air Pollutants

NOV – Notice of Violation

NO_X – Nitrogen oxides

NSPS – New Source Performance Standards

OGC – (Florida DEP) Office of General Counsel

PEMS – Predictive emission monitoring system

PSD – Prevention of Significant Deterioration

RACM – Regulated Asbestos-Containing Material

SO_2 – Sulfur dioxide

VOC – Volatile organic compounds

Introduction

Why does the department use penalty guidelines?

The overall goal of assessing penalties in an enforcement action is to deter future noncompliance by the violator – and by others similarly situated. The intent of these guidelines is to help department staff meet this goal by outlining an approach to calculating penalties for use in settlement negotiations for air violations.

Following the guidelines helps foster a *consistent* and *documented* enforcement approach that treats the regulated community fairly while ensuring a level playing field. Facilities that operate in noncompliance should not have a competitive advantage over those that make good faith efforts to comply. But at the same time, facilities with similar noncompliance issues should be assessed similar penalties.

Who should be using these guidelines?

These guidelines are written for you, the enforcement coordinator or other staff member responsible for calculating penalties for air violations. They apply to all of the department's district offices and to those local programs that have adopted the department's guidelines through their specific operating agreements.

How do these guidelines relate to DEP Directive 923?

These guidelines for characterizing air violations document how the air program implements DEP Directive 923 (July 17, 2007 version). The procedures in these guidelines complement the directive by providing program specific guidance and by outlining the penalty calculation approach for air violations.

When do I have to follow these guidelines?

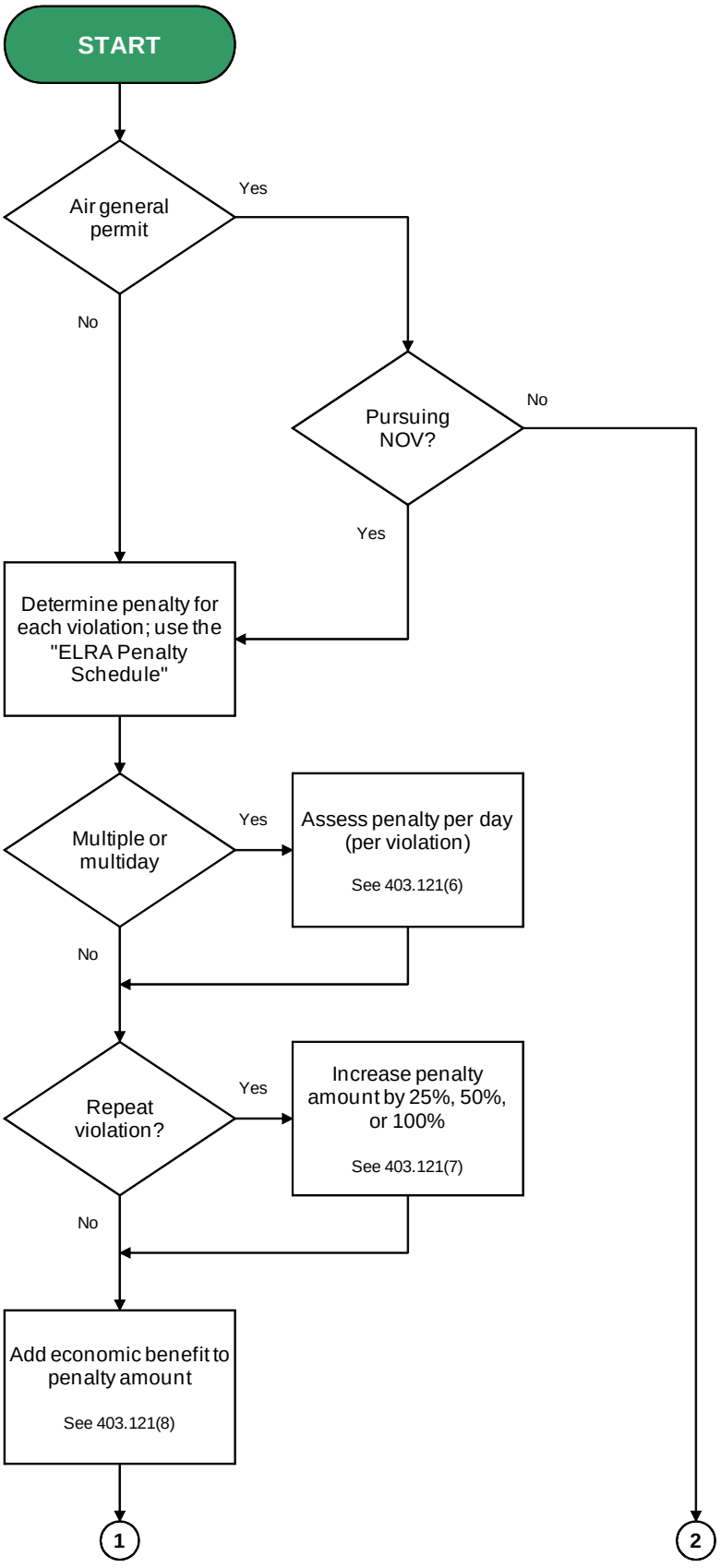
Follow these guidelines when calculating penalties for purposes of initial settlement discussions for all air violations. Doing so will result in a common starting point for negotiation. Adjustments to the penalties can always be made during the negotiation process to reflect case-specific factors. As per DEP Directive 923, the district directors "are authorized to deviate from these guidelines consistent with state law in raising or lowering the penalties when doing so will result in better compliance and better capability for carrying out the mission of the agency."

Flowchart

What is the penalty calculation process?

In summary, the first step in calculating a penalty for purposes of settlement negotiations is to follow the ELRA penalty schedule. If the ELRA penalty schedule results in a penalty greater than $10,000, then re-calculate using the penalty calculation matrix from DEP Directive 923.

A detailed flowchart outlining the full process follows:



Flowchart for Characterizing Air Violations

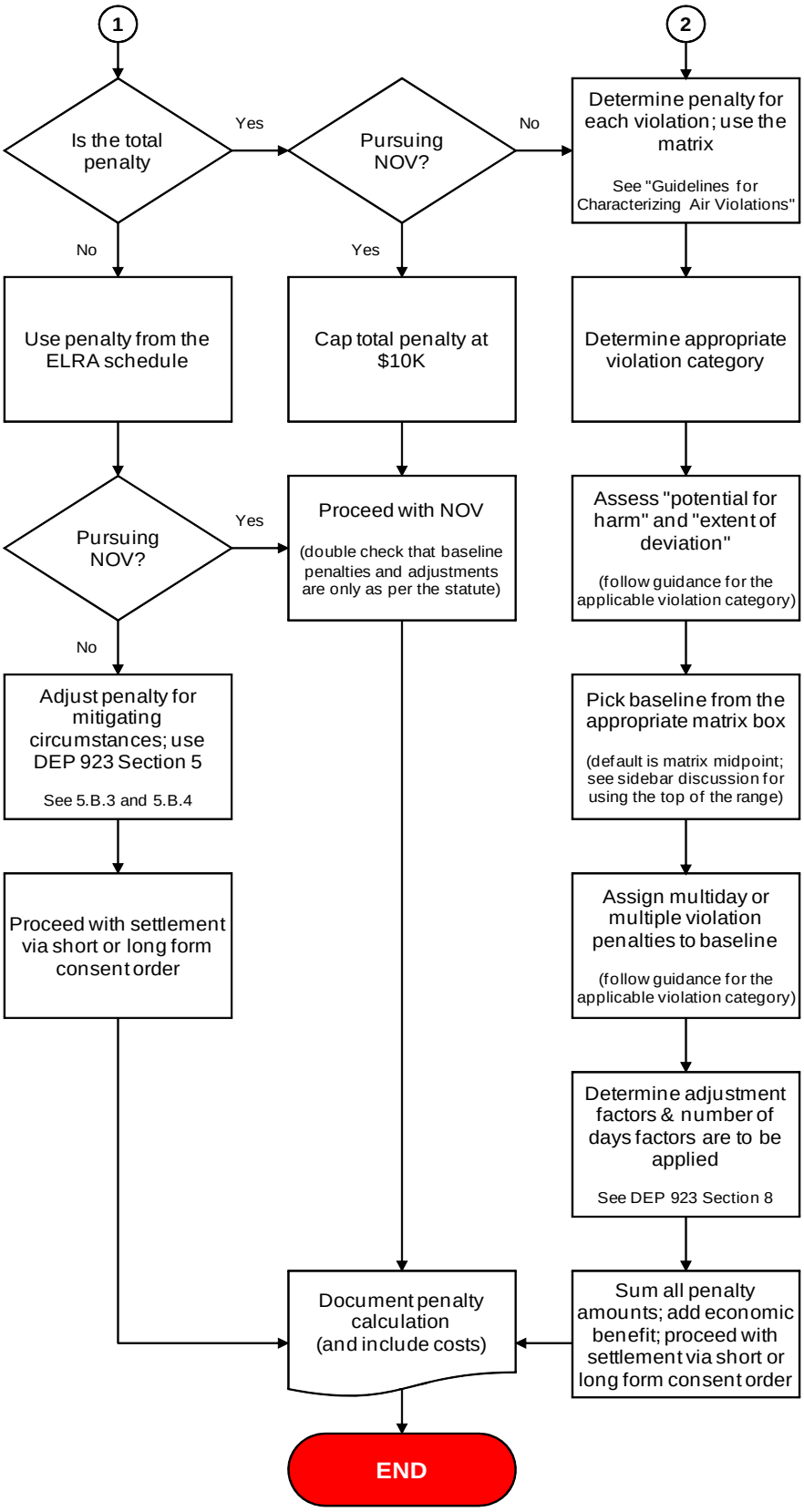
Notes and comments about using the flowchart follow.

"NOV" in this flowchart refers to an administrative proceeding pursuant to Section 403.121 Fla. Stat. (ELRA). If you are pursuing an ELRA-based NOV, then your penalty calculation must be as per the statute, with no adjustments except those allowed by statute.

If the total obtained via the ELRA penalty schedule is $10,000 or less, then use that total. Add the costs of the investigation and proceed with settlement.

If your initial ELRA penalty schedule calculation (without costs added in) exceeds $10,000, then do not use the ELRA penalty schedule. Use the matrix instead.

The penalty matrix is a three-by-three grid of nine penalty ranges ("boxes"). Each box corresponds to the varying degrees (minor, moderate or major) of a violation's *potential for harm* and *extent of deviation* from a requirement.



These guidelines discuss how to determine the appropriate matrix box for each of 13 separate categories of violations.

Each box in the penalty matrix contains a range of penalty amounts; the default baseline penalty is the midpoint of the range.

For knowing, deliberate or chronic violations, penalties should be calculated by using the top of the ranges.

The top of the ranges can also be applied for any business or individual for any violation if the seriousness of the violation or the history of noncompliance requires a higher penalty to achieve deterrence.

Adjustment factors can be applied per violation or applied to the total penalty.

Costs of the investigation should be included after you have determined the penalty amount. You can use the general cost figure from the OGC enforcement manual without documentation. If you want to use any other cost figure, you must include detailed documentation.

Violation Categories

What are ELRA penalty schedule "rows"?

One of the first steps in using either the ELRA penalty schedule or the matrix is to characterize the violation and determine the correct ELRA penalty schedule row or matrix violation category. Rows and categories are broad classes of violations with similar characteristics.

The ELRA penalty schedule rows essentially follow the violation classification scheme from the ELRA statute, Section 403.121, Fla. Stat. These guidelines characterize each row by defining key terms, identifying what types of violations are included, and suggesting alternate rows for related but different violations. The description for each row also includes multi-day penalty considerations (i.e., how to calculate multi-day penalties for the given type of violation).

Table 1 lists the ELRA penalty schedule rows. Each row includes a baseline penalty amount as specified by the ELRA penalty schedule for that type of violation. If the initial penalty calculation using the ELRA penalty schedule exceeds $10,000, then instead of using the ELRA penalty schedule, re-calculate the penalty using the matrix. If the calculation is for inclusion in an ELRA administrative proceeding (NOV) under Section 403.121, Fla. Stat., then cap the penalty at $10,000 instead of using the matrix.

What are matrix violation categories?

The penalty matrix is a three-by-three grid of nine penalty ranges or "boxes" (see Table 2). Each box corresponds to the varying degrees (minor, moderate or major) of a violation's *potential for harm* and *extent of deviation* from a requirement. These guidelines discuss how to determine the appropriate matrix box for each of 13 separate categories of violations (see Table 3).

Each box in the penalty matrix contains a range of penalty amounts; the default baseline penalty is the midpoint of the range. For knowing, deliberate or chronic violations, penalties should be calculated by using the top of the ranges. The top of the ranges can also be applied for any business or individual for any violation if the seriousness of the violation or the history of noncompliance requires a higher penalty to achieve deterrence.

The discussion under each matrix violation category is broken into five parts.

1. Other Categories – describes which violations belong in that category, and defines the relationship between that category and similar categories.
2. Potential for Harm – defines "major," "moderate" and "minor" for that category.
3. Extent of Deviation from Requirement – defines "major," "moderate" and "minor" for that category.
4. Multi-day or Multiple Violations – outlines how to calculate multi-day and multiple violations for that category.
5. Economic Benefit – discusses economic benefit considerations for that category.

Tables 4 and 5 provide cross-references between ELRA penalty schedule rows and matrix violation categories.

Table 1. ELRA Penalty Schedule for Air Violations

Row	**ELRA Penalty Schedule** *(Penalty Schedule for Air Violations)*	*Penalty*	*Citation (Fla. Stat.)*	*Page Number*
1	Air-emission-permit exceedance, or unpermitted / unauthorized air emission	$1000	403.121(3)(f)	12
	• *Add-on 1* – If the emission results in an air quality violation, add $1000	+ $1000		
	• *Add-on 2* – If the emission was from a major source and the source was major for the pollutant in violation, add $3000	+ $3000		
	• *Add-on 3* – If the emission was more than 150 percent of the allowable level, add $1000	+ $1000		
2	Failure to install, maintain or use a required pollution control system or device	$4000	403.121(4)(b)	14
3	Failure to obtain a required permit before construction or modification	$3000	403.121(4)(c)	15
4	Failure to construct in compliance with a permit	$2000	403.121(4)(d)	16
5	Failure to conduct required monitoring or testing	$2000	403.121(4)(d)	17
6	Failure to conduct required training	$1000	403.121(4)(e)	18
7	• Failure to maintain required staff to respond to emergencies	$1000	403.121(4)(e)	18
	• Failure to prepare, maintain or update required contingency plans	$1000		
	• Failure to adequately respond to emergencies to bring an emergency situation under control	$1000		
8	Failure to submit required notification to the department	$1000	403.121(4)(e)	19
9	Failure to prepare, submit, maintain or use required reports or other required documentation	$500	403.121(4)(f)	19
10	Failure to comply with any other departmental regulatory statute or rule requirement not specifically identified by this ELRA penalty schedule	$500	403.121(5)	20

Table 2. Penalty Calculation Matrix for Air Violations

Potential for Harm	Extent of Deviation from Requirement: *Major*	*Moderate*	*Minor*
Major	$8000 – $10,000 [$9000]	$6000 – $8000 [$7000]	$4600 – $6000 [$5300]
Moderate	$3200 – $4600 [$3900]	$2000 – $3200 [$2600]	$1200 – $2000 [$1600]
Minor	$500 – $1200 [$850]	$500	$500

Table 3. Matrix Categories for Air Violations

Category	Description	Page Number
A	Emission Standard Exceedances	23
B	Visible Emission Violations	27
C	Construction or Operation Without a Permit	28
D	Monitoring Performance Violations	31
E	Testing Violations	32
F	Recordkeeping Violations	34
G	Reporting and Notification Violations	35
H	Permit Conditions Limiting Capacity	36
I	Improper Operation or Maintenance	37
J	Circumvention	39
K	Open Burning Violations	41
L	Odor, Fugitive Dust and Nuisance Violations	42
M	Asbestos	43
N	Miscellaneous (Other) Violations	46

Table 4. Cross Reference – ELRA Penalty Schedule to Matrix Violation Category

ELRA Row	**Violation Category**	
	ELRA Penalty Schedule	*Matrix*
1	Air-emission-permit exceedance, or unpermitted / unauthorized air emission	*A.* Emission Standard Exceedances *B.* Visible Emission Violations *C.* Operation Without a Permit *H.* Permit Conditions Limiting Capacity *K.* Open Burning Violations *L.* Odor and Fugitive Dust Violations *M.* Asbestos
2	Failure to install, maintain or use a required pollution control system or device	*I.* Improper Operation or Maintenance *J.* Circumvention *M.* Asbestos
3	Failure to obtain a required permit before construction or modification	*C.* Construction Without a Permit *M.* Asbestos
4	Failure to construct in compliance with a permit	*C.* Construction Without a Permit
5	Failure to conduct required monitoring or testing	*D.* Monitoring Performance Violations *E.* Testing Violations *M.* Asbestos
6	Failure to conduct required training	*M.* Asbestos *N.* Miscellaneous (Other) Violation
7	• Failure to maintain required staff to respond to emergencies	*N.* Miscellaneous (Other) Violations
	• Failure to prepare, maintain or update required contingency plans	*N.* Miscellaneous (Other) Violations
	• Failure to adequately respond to emergencies to bring an emergency situation under control	*N.* Miscellaneous (Other) Violations
8	Failure to submit required notification to the department	*G.* Reporting and Notification Violations *M.* Asbestos
9	Failure to prepare, submit, maintain or use required reports or other required documentation	*F.* Recordkeeping Violations *G.* Reporting and Notification Violations *M.* Asbestos
10	Failure to comply with any other departmental regulatory statute or rule requirement not specifically identified by this ELRA penalty schedule	*N.* Miscellaneous (Other) Violations

Table 5. Cross Reference – Matrix Violation Category to ELRA Penalty Schedule

Matrix Category	**Violation Category**	
	Matrix	*ELRA Penalty Schedule*
A	Emission Standard Exceedances	*Row 1.* Air-emission-permit exceedance, or unpermitted / unauthorized air emission
B	Visible Emission Violations	*Row 1.* Air-emission-permit exceedance, or unpermitted / unauthorized air emission
C	Construction Without a Permit	*Row 3.* Failure to obtain a required permit before construction or modification *Row 4.* Failure to construct in compliance with a permit
	Operation Without a Permit	*Row 1.* Unpermitted / unauthorized air emission
D	Monitoring Performance Violations	*Row 5.* Failure to conduct required monitoring or testing
E	Testing Violations	*Row 5.* Failure to conduct required monitoring or testing
F	Recordkeeping Violations	*Row 9.* Failure to prepare, submit, maintain or use required reports or other required documentation
G	Notification Violations	*Row 9.* Failure to prepare, submit, maintain or use required reports or other required documentation
	Reporting Violations	*Row 8.* Failure to submit required notification to the department
H	Permit Conditions Limiting Capacity	*Row 1.* Air-emission-permit exceedance
I	Improper Operation or Maintenance	*Row 2.* Failure to install, maintain or use a required pollution control system or device
J	Circumvention	*Row 2.* Failure to install, maintain or use a required pollution control system or device
K	Open Burning Violations	*Row 1.* Air-emission-permit exceedance, or unpermitted / unauthorized air emission
L	Odor, Fugitive Dust and Nuisance Violations	*Row 1.* Air-emission-permit exceedance, or unpermitted / unauthorized air emission
M	Asbestos	See discussion on page 22.
N	Miscellaneous (Other) Violations	*Row 6.* Failure to conduct required training *Row 10.* Failure to comply with any other departmental regulatory statute or rule requirement not specifically identified by this ELRA penalty schedule (see also *Row 7*)

ELRA Penalty Schedule Rows

ELRA Penalty Schedule – Row 1	$1000

Air-emission-permit exceedance, or
unpermitted / unauthorized air emission

- *Add-on 1* – If the emission results in an air quality violation, add $1,000
- *Add-on 2* – If the emission was from a major source and the source was major for the pollutant in violation, add $3,000
- *Add-on 3* – If the emission was more than 150 percent of the allowable level, add $1,000

Discussion of terms

"Air-emission-permit exceedance" applies to the following types of violations:

- Air emissions exceeding an emission limiting standard contained in an air permit. "Air-emission-permit" in this context includes all air permits (AC/AO/AV/AF) as well as facilities operating under an air general permit (AG).
- Violations of permit conditions limiting opacity, including permit conditions based on the general opacity rule. See Rule 62-296.320(4)(b), Fla. Admin. Code, and the general conditions of most permits.
- Violations of permit conditions limiting capacity – such as those to avoid Title V or PSD major source status – if the conditions are directly related to emissions. Examples include limits on fuel sulfur content, hours of operation, production rates, process weight rates, heat input rates, charging rates or material throughput or handling rates.

"Unpermitted / unauthorized air emission" applies to the following types of violations:

- Air emissions exceeding an emission limiting standard contained in a rule, consent order or other enforceable mechanism besides a permit.
- Violations of the general opacity rule, if there is no permit.
- Operation without a permit.
- Open burning violations.
- Emissions of objectionable odors or fugitive dust.
- (Some) known but unquantifiable air emissions.

Add-on 1. "Air quality violation" refers to a violation of state or federal ambient air quality standards.

Add-on 2. "Major source" refers to major sources of air pollution (or Title V sources, see Rule 62-210.200, Fla. Admin. Code). A source is major for the pollutant in violation if it emits or has the potential to emit that pollutant at a level greater than the applicable major source threshold – i.e., the source is major because of the pollutant in violation.

Under state rules, a source cannot be "major" for visible emissions. Do not apply *add-on 2* for opacity violations, even if the source is major for particulate matter.

Add-on 2 only applies to a synthetic minor or minor source if both of the following criteria are met: (1) an air-emission-permit exceedance results in annual facility emissions above the thresholds requiring a Title V permit, and (2) you are also pursuing enforcement for operating without a (Title V) permit because of the exceedance. For example, if a synthetic minor facility violates its production capacity limits and emits 300 tons per year of VOC, then *add-on 2* would apply if you have decided that the facility is actually a major facility and should have been operating under a Title V permit.

Add-on 3. "The emission was more than 150 percent of the allowable level" means the air-emission-permit exceedance or the unpermitted / unauthorized air emission was more than 1.5 times the allowable level. *Add-on 3* does apply to opacity violations. For example, if the opacity limit is 20 percent, apply *add-on 3* for opacity readings above 30 percent (30 percent is 1.5 times the allowable level).

Relationship to other rows of the ELRA Penalty Schedule

Some rules require a compliance test and then limit operation such that a surrogate parameter must remain above or below its measured level during the compliance test. A temperature limit based on a thermocouple's readings during a dioxin/furan test might be an example of such a limit. Violations of parametric limits, when those limits are surrogates for regulated pollutant emissions, are examples of a "known but unquantifiable air emission" and should be assessed as "unpermitted / unauthorized air emissions." (The "emission was more than 150 percent" add-on is not appropriate in this case, even if the parameter is more than 150 percent of its allowable level, since the *emissions* are unquantifiable.) Violations of parametric limits that are *not* directly related to emissions should be assessed as "improper operation" under Row 2 or "other permit violations" under Row 10.

Under Title V, CAM is a program that demonstrates continuous compliance through measuring parameters related to emissions. An "excursion" under CAM is a period of time when the monitored parameters are outside an established range. An excursion is considered a "deviation" from the Title V permit, but the excursion is not necessarily a violation. Failure to take whatever action the permit requires following an excursion is a violation – address as an "other permit violation" under Row 10. If you can demonstrate an emissions violation through credible (i.e., compelling) evidence, then assess the emissions violation under Row 1. In almost all cases, to assert an emission violation, the CAM excursion will need to be supplemented by other data, such as monitor results, stack tests, formulation and usage records, engineering calculations, etc.

Some permit conditions limit capacity but are not directly related to emissions or to avoidance of Title V or PSD. For example, a permit may have a production capacity limit established to document the authorized size of the facility, but that limit only indirectly impacts

emissions and is not intended to exempt the facility from any regulatory program. Violations of these permit conditions should be assessed as "other permit violations" under Row 10.

Open burning of asbestos-containing material or hazardous waste is excluded from the ELRA penalty schedule. Assess these open burning violations as per the matrix.

Multi-day considerations for Row 1

Noncompliant Period. For failed stack tests, consider the emission unit to be in violation for each day of operation between the date the stack test demonstrates an exceedance and the date a follow-up stack test demonstrates compliance. For tests that take more than one day to complete, the period of noncompliance is each operating day between the last day of the failing test and the last day of the passing test. Absent other credible evidence of an emission standard exceedance, do not assess a multi-day penalty for any days that *precede* the failed stack test.

For failed visible emission readings or COMS results, identify each individual 6-minute average visible emission exceedance, but assess one penalty for each day during which there is a demonstrated visible emission violation.

For continuous monitoring systems installed to demonstrate compliance with an emission limit, the data from the CEMS, PEMS or parametric monitoring will indicate the period(s) of noncompliance. Recall that many permits provide for excluding some portion of continuous monitoring system data from compliance calculations. Also, be sure to appropriately evaluate the continuous data against the averaging time of the applicable standard before alleging an emission standard exceedance.

Multi-day Penalties. Under the ELRA penalty schedule, the full penalty (baseline of $1000 plus any add-ons) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

For failed stack tests, multi-day penalties are appropriate for each day of operation during the noncompliance period, except for no more than 15 consecutive days for the purpose of additional compliance testing. For example, consider a stack test that takes three days to perform. If 30 days pass between the end of a failed test and the end of the passing test – and if the facility operated each of those days – then multi-day penalties are appropriate for 27 days. Exercise enforcement discretion for the three days of operation needed for the purpose of performing the follow-up compliance test.

ELRA Penalty Schedule – Row 2	$4000
Failure to install, maintain or use a required pollution control system or device	

Discussion of terms

"Failure to install" includes failure to timely install or implement the device or system.

"Failure to maintain or use" applies to the following types of violations:

- Circumvention (i.e., violations of Rule 62-210.650, Fla. Admin. Code).

- Not following good air pollution control practices to minimize emissions at all times (for example, as required by NSPS and NESHAP general provisions at § 60.11(d) and § 63.6(e) of 40 CFR).
- Failure to implement a required pollution control system. (Pollution control system can include operation, maintenance, and work practice requirements.)
- (Some) improper operation or maintenance.
- (Some) violations of work practice standards.
- Failure to maintain or use the air curtain on an air curtain incinerator.

"Failure to use" also includes using the pollution control system or device at a reduced efficiency (i.e., at an efficiency lower than that required by permit, rule, order, etc.).

Relationship to other rows of the ELRA Penalty Schedule

"Pollution control system or device" refers not only to air pollution control devices but also to work practice requirements intended to reduce pollution. For example, a rule or permit may require good combustion practices to limit carbon monoxide emissions, or it may specify that solvent tanks be closed when not in use. Most operation, maintenance, and work practice requirements in a permit are related to air emissions and are therefore considered to be part of a "pollution control system." Use Row 2 to assess violations of these requirements. If, however, the operation, maintenance or work practice requirement is clearly not related to a pollution control system, assess the violation as "other permit violation" under Row 10.

If there is a known (i.e., provable and documented) violation of an emission limiting standard resulting from the improper operation and maintenance, then assess the violation as an "air-emission-permit exceedance" or "unpermitted / unauthorized air emission" under Row 1.

Use Row 1 ("unpermitted / unauthorized air emission") if there are known (i.e., provable and documented) air emissions resulting from the improper operation and maintenance, but you cannot quantify the air emissions. An example of improper maintenance resulting in known but unquantifiable air emissions might be documented fugitive emissions from holes in the ductwork between the process and the control device.

If you cannot document and prove that the improper operation and maintenance resulted in air emissions, then assess the improper operation and maintenance under Row 2.

Multi-day considerations for Row 2

Under the ELRA penalty schedule, the full penalty ($4000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

"Failure to install" includes failure to timely install equipment or to timely implement practices, but multi-day penalties are not appropriate. Violations of "failure to maintain or use" or "circumvention" of a pollution control system or device, however, can be assessed as multi-day penalties.

ELRA Penalty Schedule – Row 3	$3000
Failure to obtain a required permit before construction or modification	

Discussion of terms

"Failure to obtain a required permit" refers to *issuance* of a final permit, not to *application* for a permit. Use Row 3 for any and all violations of failure to obtain a required permit before construction or modification. Row 3 is applicable to violations related to federal (e.g., NSPS or PSD) or state definitions of construction or modification.

Some activity can be performed on-site prior to issuance of the final permit (e.g., preparatory activities such as site clearing or grading, or planning and design work). See the definitions of "commence construction" and "commence operation" in Rule 62-210.200, Fla. Admin. Code as well as document control numbers CO05, 0100049, and 0300031 from the EPA applicability determination index web page (http://cfpub.epa.gov/adi/).

Multi-day considerations for Row 3

Under the ELRA penalty schedule, the full penalty ($3000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

The "failure to obtain a required permit" only occurs once, so multi-day penalties are not appropriate. Violations of "operation without a permit," however, can be assessed as multi-day penalties ("unpermitted / unauthorized air emission" under Row 1).

ELRA Penalty Schedule – Row 4	$2000
Failure to construct in compliance with a permit	

Discussion of terms

Permits issued by the department are valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits (Rule 62-4.160(2), Fla. Admin. Code). Row 4 applies to any enforcement actions taken for constructing with unauthorized variations from the approved drawings, exhibits, specifications, or conditions of the applicable air permit.

Most unauthorized variations are insignificant and do not result in air emissions. Examples of insignificant unauthorized variations might include locating a spray booth along the west wall instead of the east wall, or installing a baghouse with a different model number than that included in the permit attachments. Unless the unauthorized construction could reasonably be expected to negatively impact air emissions, enforcement discretion should be used (i.e., do not assess a penalty).

Some examples of unauthorized variations that should be assessed as "failure to construct in compliance with a permit" include not installing a control device that is indicated in the application, or installing a baghouse with reduced efficiency compared to what was indicated.

If the construction is *severely* different from what was authorized by the permit, consider assessing for construction or operation without a permit. In other words, what was built might require a different type of permit than what was issued, so the facility was constructed and is operating without (the appropriate) authority. For example, consider a permit issued for a boat manufacturing facility, but the permittee builds a plastic parts coating facility. Or a facility receives a synthetic minor permit, but builds and operates a facility with a much higher capacity, triggering Title V, PSD, or both.

Relationship to other rows of the ELRA Penalty Schedule

Operation, maintenance or work practices contrary to any procedures outlined in the permit application (through drawings, exhibits, specifications, attachments, etc.) should be assessed as "improper operation or maintenance" under Row 2.

Multi-day considerations for Row 4

Under the ELRA penalty schedule, the full penalty ($2000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

The "failure to construct in compliance with a permit" only occurs once, so multi-day penalties are not appropriate. Violations of "operation without a permit" or "improper operation or maintenance," however, can be assessed as multi-day penalties (under Row 1 or Row 2, respectively).

ELRA Penalty Schedule – Row 5	$2000
Failure to conduct required monitoring or testing	

Discussion of terms

"Failure to conduct required monitoring or testing" encompasses all violations related to *performance* of monitoring or testing, including the following:

- Failure to install, calibrate, operate or maintain continuous monitoring systems, such as CEMS, COMS, PEMS or parametric monitors (e.g., temperature, pH, pressure drop).
- Failure to maintain minimum monitor availability criteria.
- Failure to conduct required testing, including compliance tests.
- Failure to timely conduct required monitoring or testing.

Relationship to other rows of the ELRA Penalty Schedule

Use Row 5 if the stack test or other required testing or monitoring is performed late. Assess late stack test reports or late quarterly monitoring reports as "reporting and notification violations" under Row 8 (notifications) or Row 9 (reports). Assess failure to maintain monitor data as required by the permit as a "recordkeeping violation" under Row 9.

Multi-day considerations for Row 5

Under the ELRA penalty schedule, the full penalty ($2000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

Failure to install a required monitor includes failure to timely install the monitor. The failure to install only occurs once, so multi-day penalties are not appropriate. Penalties for multiple violations may be appropriate if more than one required monitor was not installed. But, following the failure to install, multi-day penalties for "failure to *conduct* required monitoring" are appropriate.

"Failure to conduct required testing" includes failure to timely conduct the required test. The "failure to conduct required testing" only occurs once, so multi-day penalties are not appropriate. Penalties for multiple violations may be appropriate if more than one testing requirement was not conducted.

ELRA Penalty Schedule – Row 6	$1000
Failure to conduct required training	

Discussion of terms

Some rules and permits require facilities to conduct specific employee training. "Failure to conduct required training" includes failure to timely conduct the training.

The rule or permit may also require operation by trained staff (or with trained staff on-site or otherwise available). Violations of operation by untrained staff should be assessed as "improper operation" under Row 2 in most cases. Assess the violation as "other permit violation" under Row 10 only if the required training is not related to air emissions (i.e., not related to proper operation of the process or pollution control system or device).

Multi-day considerations for Row 6

Under the ELRA penalty schedule, the full penalty ($1000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

Multi-day penalties are not appropriate for "failure to conduct required training." Penalties for multiple violations may be appropriate if more than one training requirement was not met.

The permit may require operation by trained staff; violations of "improper operation" or "other permit violations" in this case can be assessed as multi-day penalties (under Row 2 or Row 10).

ELRA Penalty Schedule – Row 7	$1000

- Failure to maintain required staff to respond to emergencies; or
- Failure to prepare, maintain or update required contingency plans; or
- Failure to adequately respond to emergencies to bring an emergency situation under control

Multi-day considerations for Row 7

Under the ELRA penalty schedule, the full penalty ($1000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties. Failures to prepare, update or respond are most likely single occurrences, for which a multi-day penalty is not appropriate. Multiple violations may be appropriate if more than one requirement was not met. Multi-day penalties, however, are likely to be appropriate for failure to maintain.

ELRA Penalty Schedule – Row 8	$1000

Failure to submit required notification to the department

Discussion of terms

"Failure to submit required notification" applies to any required notifications, including malfunction notifications and noncompliance notifications. (See Rule 62-4.160(8), Fla. Admin. Code and the general conditions included in all air permits.)

"Failure to submit" includes failure to timely submit.

"Notifications" are typically brief submittals required in response to an activity or event. For example, following a malfunction, the owner or operator might be required to submit a malfunction notification. Notifications are different from "reports." Reports typically have more data than notifications, and they are usually submitted on a routine basis (such as quarterly, semiannually, or annually) or after an infrequent but scheduled event (such as a stack test). Assess failure to submit reports under Row 9.

Multi-day considerations for Row 8

Under the ELRA penalty schedule, the full penalty ($1000) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

Multi-day penalties are not appropriate for "failure to submit required notification." Penalties for multiple violations may be appropriate if more than one notification was not submitted.

ELRA Penalty Schedule – Row 9	$500
Failure to prepare, submit, maintain or use required reports or other required documentation	

Discussion of terms

"Reports" are different from notifications. Reports typically have more data than notifications, and they are usually submitted on a routine basis (such as quarterly, semiannually, or annually) or after an infrequent but scheduled event (such as a stack test). "Notifications" are typically brief submittals required in response to an activity or event. For example, following a malfunction, the owner or operator might be required to submit a malfunction notification. Assess failure to submit notifications under Row 8.

Assess recordkeeping violations under Row 9 as failure to "maintain or use … other required documentation." This includes CEMS data maintenance violations.

Assess reporting violations as "failure to prepare [or] submit," which includes failure to timely prepare or submit. "Required reports" includes the AOR, annual statements of compliance, stack test results, monitoring reports and any other required report.

Multi-day considerations for Row 9

Under the ELRA penalty schedule, the full penalty ($500) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties.

Multi-day penalties are not appropriate for "failure to prepare or submit required reports or other required documentation." Penalties for multiple violations may be appropriate if more than one report was not submitted or if there was more than one recordkeeping violation. Multi-day penalties for "failure to maintain or use" are appropriate for violations of not keeping required records, not maintaining CEMS data or other recordkeeping violations of a continuous nature.

ELRA Penalty Schedule – Row 10	$500
Failure to comply with any other departmental regulatory statute or rule requirement not specifically identified by this ELRA penalty schedule	

Discussion of terms

Row 10 applies to permit or rule violations not specifically addressed elsewhere by the ELRA penalty schedule.

Multi-day considerations for Row 10

Under the ELRA penalty schedule, the full penalty ($500) *may* be assigned per day per violation. Fractions of the full penalty may *not* be assigned as multi-day penalties. Decide on a case-by-case basis whether to pursue multi-day or multiple violation penalties.

Other ELRA Penalty Schedule Considerations

What is different about a penalty calculation for an ELRA NOV?

The procedure and discussion in these guidelines assume you are using the ELRA penalty schedule for purposes of calculating an initial penalty pursuant to a settlement agreement. The same procedure and discussion are applicable to penalty calculations for purposes of an administrative proceeding under Section 403.121, Fla. Stat., with some exceptions.

First, there is a $5000 cap for each individual violation. This $5000 cap applies unless one of the following three conditions is met:

1. The violator has a history of noncompliance.
2. The economic benefit associated with the violation is greater than $5000.
3. There are multi-day violations.

Second, the total administrative penalty cannot exceed $10,000. When calculating a penalty for an ELRA NOV, if the initial penalty is greater than $10,000, cap the penalty at $10,000 (instead of re-calculating the penalty using the matrix.)

Third, an itemization and documentation of all costs and expenses must be maintained in the case file in order to support a claim for costs in administrative or court litigation. You can settle a case using the approximate, default amounts for costs and expenses from the OGC enforcement manual. But you cannot use approximate costs for an NOV that is going to a final hearing.

Since very few NOVs go to final hearing, if you maintain sufficient information to reconstruct costs later, you can save time and resources by using approximate costs in the initial stages. Even if you eventually end up not being able to collect costs because of an inability to reconstruct them later, the Department will still likely benefit from not having to itemize costs for each NOV that is prepared.

Can asbestos violations be assessed under the ELRA penalty schedule?

Yes. See examples below.

Row 1. Air-emission-permit exceedance, or unpermitted / unauthorized air emission

- Visible emissions to the outside air during collection, processing, packaging or transportation

Row 2. Failure to install, maintain or use a required pollution control system or device

- Failure to adequately wet a facility being demolished under an order of a state or local government agency
- Work practice violations
- Improper removal
- Improper disposal

Row 3. Failure to obtain a required permit before construction or modification

- No notification

- Rendering non-regulated material regulated

Row 5. Failure to conduct required monitoring or testing

- No thorough inspection

Row 6. Failure to conduct required training

- No trained supervisor on site

Row 8. Failure to submit required notification to the department

- No notification or late notification

Row 9. Failure to prepare, submit, maintain or use required reports or other required documentation

- Failure to maintain records
- Failure to timely send waste shipment records to the waste generator
- Failure to mark waste shipment vehicle during loading or unloading

Row 10. Failure to comply with any other departmental regulatory statute or rule requirement not specifically identified by this ELRA penalty schedule

What types of ELRA penalties are not included in these guidelines?

There are two ELRA penalties that rarely, if ever, are applicable to air violations. The first is failure to satisfy financial responsibility requirements or for a violation of Section 377.371(1), Fla. Stat. This is a $5000 penalty. Contact the BAR C&E Section for assistance in taking enforcement for this type of violation.

The other is failure to conduct required release detection, a $2000 penalty under ELRA. Some air permits and rules require monitoring for leaking equipment or evaluating air emissions from monitoring wells. Assess these types of air violations as failure to conduct required monitoring or testing ($2000 penalty) under Row 5.

Matrix Violation Categories

Category A
Emission Standard Exceedances

This category applies to exceedances of emission limiting standards contained in a rule, permit, consent order or other enforceable document. "Permit" in this context includes all air permits (AC/AO/AV/AF) as well as facilities operating under an air general permit (AG). These violations are typically alleged based on failed stack tests, CEMS readings or other credible evidence. Be sure to factor in units, basis (e.g., percent oxygen) and averaging time when alleging an emission standard exceedance.

Other Categories

Occasionally, emissions data from a stack test or monitor will indicate that a facility should have had a permit and has therefore been operating without a permit (or with the incorrect type of permit). For example, the facility may be emitting above the permitting exemption threshold, but the owner or operator believed it was emitting at exempt levels. Do not use this category for emissions above permit exemption thresholds – such thresholds are not enforceable limits. Instead, assess for "operating without a permit" under Category C.

Under state and federal "excess emissions" rules, some portion of CEMS data is allowed to exceed otherwise applicable emission limiting standards. Significant amounts of such allowable excess emissions *may* be evidence of improper operation and maintenance of the facility (see Category I). If CEMS data indicates an emissions standard exceedance, however, assess the violation as an "emission standard exceedance" instead of "improper operation and maintenance."

Some rules require a compliance test and then limit operation such that a surrogate parameter must remain above or below its measured level during the compliance test. A temperature limit based on a thermocouple's readings during a dioxin/furan test might be an example of such a limit. Violations of parametric limits, when those limits directly related to emissions and are regulatory surrogates for pollutant emissions, should be assessed as emission standard exceedances. Violations of parametric limits that are *not* directly related to emissions should be assessed as "improper operation" under Category I or "miscellaneous violations" under Category N.

Under Title V, CAM is a program that demonstrates continuous compliance through measuring parameters related to emissions. An "excursion" under CAM is a period of time when the monitored parameters are outside an established range. An excursion is considered a "deviation" from the Title V permit, but the excursion is not necessarily a violation. Failure to take whatever action the permit requires following an excursion is a violation – address as a "miscellaneous violation" under Category N. If you can demonstrate an emissions violation through credible (i.e., compelling) evidence, then assess the emissions violation under Category A. In almost all cases, to assert an emission violation, the CAM excursion will need to be supplemented by other data, such as monitor results, stack tests, formulation and usage records, engineering calculations, etc.

For visible emission violations, use Category B. Failure to conduct monitoring, monitor installation, monitor maintenance and monitor availability (percent downtime) violations should all be assessed under Category D. For exceeding a permit condition limiting capacity (such as those to avoid Title V or PSD major source status), use Category H. For open burning violations, use Category K. For odor and fugitive dust violations, use Category L. Assess other unquantifiable or unauthorized air emissions under Category N.

Potential for Harm

Major	1. Major or synthetic minor sources. (When discussing potential for harm, synthetic minor sources means sources with limits taken to avoid Title V, PSD or both.)
	2. Minor sources subject to NSPS or NESHAP emission limiting standards for the specific pollutant in violation.
	3. Minor sources with emission limits established by a BACT or LAER determination for the specific pollutant in violation.
Moderate	1. Other minor sources.
Minor	1. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Emissions greater than or equal to 150 percent of allowable.
Moderate	1. Emissions greater than or equal to 115 percent of allowable, but less than 150 percent of allowable.
Minor	1. Emissions greater than 100 percent of allowable, but less than 115 percent of allowable.

Multi-day or Multiple Violations

Noncompliant Period. For failed stack tests, consider the emission unit to be in violation for each day of operation between the date the stack test demonstrates an exceedance and the date a follow-up stack test demonstrates compliance. For tests that take more than one day to complete, the period of noncompliance is each operating day between the last day of the failing test and the last day of the passing test. Absent other credible evidence of an emission standard exceedance, do not assess a multi-day penalty for any days that *precede* the failed stack test.

For failed visible emission readings or COMS results, identify each individual 6-minute average visible emission exceedance, but assess one penalty for each day during which there is a demonstrated visible emission violation.

For continuous monitoring systems installed to demonstrate compliance with an emission limit, the data from the CEMS, PEMS or parametric monitoring will indicate the period(s) of noncompliance. Recall that many permits provide for excluding some portion of continuous monitoring system data from compliance calculations. Also, be sure to appropriately evaluate the continuous data against the averaging time of the applicable standard before alleging an emission standard exceedance.

Multi-day Penalties. For failed stack tests, multi-day penalties are appropriate for each day of operation during the noncompliance period, except for no more than 15 consecutive days for the purpose of additional compliance testing. For example, consider a stack test that takes three days to perform. If 30 days pass between the end of a failed test and the end of the passing test – and if the facility operated each of those days – then multi-day penalties are appropriate for 27 days. Exercise enforcement discretion for the three days of operation needed for the purpose of performing the follow-up compliance test.

For exceedances documented by continuous monitoring system data, it is possible to have more than one violation per day. For example, an emission unit may have a 3-hour block standard. There could be up to eight violations of this standard per day. Emission units with 3-hour rolling standards or 24-hour rolling standards could have up to 24 violations of the standard per day. Identify all the violations – but do not (necessarily) assess each distinct violation at the full penalty amount. See "Other Matrix Considerations" for guidance on how to assess multi-day penalties.

Significantly detrimental – For emission standard exceedances, the following violations are considered to be significantly detrimental to the environment:

1. For emissions of a pollutant with an ambient air quality standard: Emission standard exceedances causing or contributing to a monitored or modeled ambient air quality violation.
2. For emissions of a pollutant that has no ambient air quality standard: It has been demonstrated that the emissions standard exceedance caused severe harm or destruction to life or the environment.

Economic Benefit

For emission standard exceedances resulting from using noncompliant fuels or raw materials, you should estimate economic benefit by determining the cost difference between the noncompliant and compliant fuels or raw materials. For example, a facility may have saved *x* dollars per thousand gallons by purchasing fuel oil with a sulfur content of 1.5 percent, when its permit requires operation with 0.5 percent sulfur fuel oil. If this results in an SO_2 emissions violation, include the cost difference between the fuels as the economic benefit component of your penalty.

For other emission standard exceedances, you may sometimes be able to calculate an economic benefit for the following:

- Costs saved by not operating an installed air pollution control device, or operating the device at a reduced pollution control efficiency. (For example, costs saved by not operating an electrostatic precipitator, or operating it at reduced efficiency.)
- Costs of operation or maintenance that would have avoided emissions.

Category B
Visible Emission Violations

This category applies to violations of visible emission standards, either the general opacity standard under Rule 62-296.320(4)(b), Fla. Admin. Code, or facility-specific opacity standards. It applies to VE violations as evidenced by COMS results or Method 9 visible emission evaluations.

Other Categories

Method 9 is the approach used to determine a percent opacity. Some permits and rules required Method 22 instead, which only determines if there are visible emissions present or not.

Method 22 does not provide a percent opacity. Violations of conditions or requirements related to Method 22 should be assessed as "improper operation or maintenance" under Category I.

Potential for Harm

Major	[Reserved]
Moderate	1. Major or synthetic minor sources.
Minor	1. Minor sources. 2. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Percent opacity greater than or equal to 150 percent of allowable. 2. Percent opacity greater than or equal to 115 percent of allowable, but less than 150 percent of allowable, for more than 3 hours during an operating day.
Moderate	1. Percent opacity greater than or equal to 115 percent of allowable, but less than 150 percent of allowable, for 3 hours or less during an operating day. 2. Percent opacity greater than 100 percent of allowable, but less than 115 percent of allowable, for more than 3 hours during an operating day.
Minor	1. Percent opacity greater than 100 percent of allowable, but less than 115 percent of allowable, for 3 hours or less during an operating day.

Multi-day or Multiple Violations

For failed visible emission readings or COMS results, identify each individual 6-minute average visible emission exceedance, but assess one penalty for each day during which there is a demonstrated visible emission violation.

Economic Benefit

For visible emission violations resulting from using noncompliant fuels or raw materials, you should estimate economic benefit by determining the cost difference between the noncompliant and compliant fuels or raw materials. For example, a facility may have saved *x* dollars by starting up on coal when the permit specifies using natural gas. If this results in a visible emissions violation, include the cost difference between the fuels as the economic benefit component of your penalty.

For other visible emission violations, you may sometimes be able to calculate an economic benefit for the following:

- Costs saved by not operating an installed air pollution control device, or operating the device at a reduced pollution control efficiency. (For example, costs saved by not operating an electrostatic precipitator, or operating it at reduced efficiency.)
- Costs of operation or maintenance that would have avoided emissions.

Category C
Construction or Operation Without a Permit

This category applies to construction or operation without a required permit. "Permit" in this context includes all air permits (AC/AO/AV/AF) as well as facilities operating under an air general permit (AG). "Construction" includes "modification," and this category is appropriate. Category C is applicable to violations related to federal (e.g., NSPS or PSD) or state definitions of construction or modification.

Permits issued by the department are valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits (Rule 62-4.160(2), Fla. Admin. Code). Category C applies to any enforcement actions taken for construction with unauthorized variations from the approved drawings, exhibits, specifications or conditions of the applicable air permit.

Most unauthorized variations, however, are insignificant and do not result in air emissions. Examples of insignificant unauthorized variations might include locating a spray booth along the west wall instead of the east wall, or installing a baghouse with a different model number than that included in the permit attachments. Unless the unauthorized construction could reasonably be expected to negatively impact air emissions, enforcement discretion should be used (i.e., do not assess a penalty).

Some examples of unauthorized variations that should be assessed as "construction without a permit" include not installing a control device that is indicated in the application, or installing a baghouse with reduced efficiency compared to what was indicated.

If the construction is *severely* different from what was authorized by the permit, consider assessing for construction or operation without a permit. In other words, what was built might require a different type of permit than what was issued, so the facility was constructed and is operating without (the appropriate) authority. For example, consider a permit issued for a boat manufacturing facility, but the permittee builds a plastic parts coating facility. Or a facility receives a synthetic minor permit, but builds and operates a facility with a much higher capacity, triggering Title V, PSD, or both.

Operating without a valid permit applies to any facility operating without authority. This includes operating without obtaining a permit, operating with an expired permit, operating with an inappropriate permit, operating without air general permit entitlement and operating above permit exemption levels.

Other Categories

Some permits contain conditions that limit the facility's capacity so as to keep the facility's potential to emit below a regulatory threshold. Minor source construction and operation permits, for example, can limit a facility's potential emissions to keep that facility from becoming subject to the Title V program. Exceedances of these limits should generally be assessed as violations of "permit conditions limiting capacity" under Category H.

On occasion, however, the violation of the capacity-limiting permit condition is severe enough that the facility should be considered to have been operating without an appropriate

permit. For example, the synthetic minor limits were ignored, the facility emitted at Title V levels and the facility should have been operating under a Title V permit.

Decide whether to treat a capacity-limiting permit condition exceedance as a violation of operating without a permit by evaluating the following characteristics of the violation:

- Nature: What type of violation occurred? Was it an emissions, recordkeeping or work practice violation? What is the potential for harm from the pollutant?
- Extent: How far over the standard was the facility? What was the magnitude of the violation? Did the short term exceedance (i.e., 24-hour standard violation) impact the long term emission level (i.e., tons per year)?
- Cause: Was there improper operation, poor training or a lack of spare parts? Was the company acting in a reasonable manner to minimize emissions? Was there any intent or negligence behind the noncompliance?
- Frequency: What is the compliance history at the facility? Has this specific violation occurred before? How often?
- Duration: How long did the violation last? Did the noncompliant time period (i.e., the period during which the facility operated above its permit limits) result in annual emissions over the applicable threshold?

Potential for Harm

Major	1. Construction of a major source without obtaining a PSD or nonattainment area NSR permit.
	2. Operation of a major source without obtaining a Title V permit.
	3. Synthetic minor or minor sources, operating without a (Title V) permit, if emissions are above major source thresholds.
Moderate	1. Major or synthetic minor sources, constructing without a permit.
	2. Minor sources, operating without a permit.
	3. Air curtain incinerators requiring a permit, but operating without one.
Minor	1. Minor sources, constructing without a permit.
	2. Facilities eligible for an air general permit, operating or constructing without entitlement.

Extent of Deviation from Requirement

Major	1. Construction or operation of a source prior to obtaining required permit.
Moderate	1. Continued construction or operation of a source following permit expiration.
	2. Constructing with unauthorized variations from a permit, and the variance directly impacts emissions.
Minor	1. Constructing with unauthorized variations from a permit, and the variance does not directly impact emissions.

Multi-day or Multiple Violations

Violations of construction or modification without a permit should not be assessed as multi-day penalties. Penalties for multiple violations are appropriate if there are several instances of construction or modification without a permit (i.e., more than one violation). For operation without a permit, multi-day penalties may be assigned.

Economic Benefit

For construction or operation without a permit, you should almost always assess economic benefit for permit application or emission fees avoided or postponed (if applicable). For example, a facility may have constructed without an air construction permit, failed to obtain a Title V air operation permit and avoided four years worth of Title V fees. As part of the corrective actions, if you are requiring the facility to obtain an air construction permit and a Title V air operation permit, then include the costs saved by delaying the permit applications by four years. The economic benefit component should also include the avoided emission fees, as adjusted for delayed costs savings from having postponed paying the fees.

Category D
Monitoring Performance Violations

This category applies to violations related to the *performance* of monitoring (i.e., installation, calibration, certification, operation, and maintenance). It does *not* apply to any emission standard exceedances as documented by the *results* of the monitoring. (Assess emission standard exceedances under Category A.)

Category D applies to all continuous monitoring systems, such as CEMS, COMS, PEMS or parametric monitors (e.g., temperature, pH, pressure drop), that are required to be installed by permit, rule, condition, etc. This category is applicable to monitors measuring emissions, visible emissions or an operating parameter that is related to emissions or capacity. It applies if the monitor is the compliance method. It also applies if the monitor is specified to be an "indicator of compliance" (or other similar language), even if the monitor is explicitly not the compliance method. Assess violations of minimum monitor availability (i.e., too much monitor downtime) under this category.

Other Categories

Category D also applies to failure to *timely* or *correctly* install, calibrate, operate or maintain the continuous monitoring system, but this category does not apply to recordkeeping violations. Assess failure to maintain CEMS data, for example, under Category F. Assess late or missing reports of monitor performance under Category G. Finally, if you are alleging an improper operation and maintenance violation for the *facility* based on a significant amount of excess emissions as evidenced by the *monitor*, use Category I. In these cases, the monitor is performing as required, but the facility has other operating issues.

Under Title V, CAM is a monitoring program designed to help a facility assure compliance through monitoring parameters related to emissions. Category D applies to failure to install, calibrate, operate and maintain monitors associated with CAM, but this category does not apply to CAM excursions. An *excursion* under CAM is a period of time when the monitored parameters are outside an established range. An excursion is considered a *deviation* from the Title V permit, but the excursion is not necessarily a violation. Failure to take whatever action the permit requires following an excursion is a violation – address as an "other permit violation" under Category N. If you can demonstrate an emissions violation through credible (i.e., compelling) evidence, then assess the emissions violation under Category A. In almost all cases, to assert an emission violation, the CAM excursion will need to be supplemented by other data, such as monitor results, stack tests, formulation and usage records, engineering calculations, etc.

Potential for Harm

Major	1. Monitors required to be installed for purposes of demonstrating compliance with an emission limiting standard.
	2. Monitors required to be installed as an indicator of compliance with an emission limiting standard.
	3. Monitors required to be installed as per a facility's CAM plan.
Moderate	1. Monitors required to be installed for purposes of demonstrating compliance with a permit condition limiting capacity.
Minor	1. Monitors at facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Monitors not installed, calibrated, or certified.
	2. Monitors installed, but not operated (i.e., no attempt to operate monitor).
	3. Monitors not properly maintained.
Moderate	1. Failure to meet minimum monitor availability requirements, and no other estimate or testing of emissions is performed.
Minor	1. Failure to meet minimum monitor availability requirements, but emissions are estimated or testing is performed.

Multi-day or Multiple Violations

Failure to install a monitor should not be assessed as a multi-day penalty. Penalties for multiple violations are appropriate if there are several monitors that were not installed (i.e., if there is more than one violation).

Failures to calibrate, maintain or certify can be assessed as multi-day or multiple penalties, depending on the required frequency of the event. Assess per missed calibration, per required incident, etc.

Economic Benefit

For monitoring performance violations, you may sometimes be able to calculate an economic benefit for costs of any quality assurance activities that were not performed or maintenance activities that were avoided.

Category E
Testing Violations

This category applies to failure to conduct or timely conduct stack tests or other required testing at a facility. It applies to emissions tests as well as visible emission evaluations.

Other Categories

Assess late submittal of a test report under Category G. Assess exceedances of emissions or visible emissions standards under Category A or Category B, respectively.

Potential for Harm

Major	1. Emissions-related compliance tests at a major or synthetic minor source.
Moderate	1. Emissions-related compliance tests at a minor source.
Minor	1. Visible emissions tests
	2. Tests not directly related to emissions.
	3. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Tests not conducted, or conducted 60 days or more after the due date.
Moderate	1. Tests conducted 30 days or more after, but less than 60 days after the due date.
Minor	1. Tests conducted less than 30 days after the due date.

Multi-day or Multiple Violations

Failure to conduct a required test should not be assessed as a multi-day penalty. Penalties for multiple violations are appropriate if there are several tests that were not conducted (i.e., if there is more than one violation).

Economic Benefit

For failure to conduct a required test, and the facility will not be conducting a make-up test, you should almost always assess economic benefit for the costs saved by not performing the test. For example, a facility may have missed several visible emission tests and your consent order requires a single make-up test along with a frequency for future tests. For each missing test that is not going to be made up, you should include the economic benefit of not performing the test. Include the delayed costs savings for both the missing and the made-up tests.

If the consent order requires all the missing tests to be made up, then be sure to include the delayed costs savings for having postponed the tests.

Category F
Recordkeeping Violations

This category applies to all types of records required by permit, rule, order, etc. It includes failure to maintain data obtained from continuous monitoring systems. It includes records of activities related to operation, maintenance, and work practices. It includes records of production levels. And it applies not only to failure to keep records (at all), but also to failure to keep complete records, failure to keep records onsite, failure to keep records in a manner that is accessible, etc.

Other Categories

Recordkeeping violations refer to the generation, maintenance and storage of data required by an applicable permit, order, rule, etc. Required submissions to the Department are either a report or a notification. Assess violations related to late or missing reports or notifications under Category G.

Potential for Harm

Major	[Reserved]
Moderate	[Reserved]
Minor	1. Major or synthetic minor sources. 2. Minor sources. 3. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Records not maintained or incompletely maintained for 10 percent or greater of the time in any calendar quarter. 2. Records not maintained or incompletely maintained for 5 percent or greater of the time, but less than 10 percent of the time, in two consecutive quarters.
Moderate	1. Records not maintained or incompletely maintained for 5 percent or greater of the time, but less than 10 percent of the time, in any calendar quarter.
Minor	1. Records are not maintained or incompletely maintained for less than 5 percent of the time in any calendar quarter. 2. Complete records maintained, but maintained in the wrong format.

Multi-day or Multiple Violations

Recordkeeping violations can be assessed as multi-day or multiple penalties, depending on the required frequency of the event and the nature of the specific violation. Assess per type of record not maintained, per incomplete recordkeeping item, per calendar quarter of missing records, etc.

Economic Benefit

For recordkeeping violations, you may sometimes be able to calculate an economic benefit for costs avoided by not implementing and maintaining a recordkeeping system, costs avoided by not purchasing necessary recordkeeping equipment or costs avoided (labor and materials) by not generating or maintaining records.

Category G
Reporting and Notification Violations

This category applies to reporting and notification violations such as failure to submit, failure to timely submit, incomplete submittals and inaccurate submittals.

"Notifications" are typically brief submittals required in response to an activity or event. For example, following a malfunction, the owner or operator might be required to submit a malfunction notification. Notifications also include noncompliance notifications, as per Rule 62-4.160(8), Fla. Admin. Code and the general conditions included in all air permits.

Notifications are different from "reports." Reports typically have more data than notifications, and they are usually submitted on a routine basis (such as quarterly, semiannually, or annually) or after an infrequent but scheduled event (such as a stack test). Reports include the AOR, annual statements of compliance, stack test results and monitoring reports.

Other Categories

Reporting and notification violations refer to late or missing submissions required by an applicable permit, order, rule, etc. Assess violations related to any required generation, maintenance, and storage of data as a recordkeeping violation under Category F.

Potential for Harm

Major	[Reserved]
Moderate	[Reserved]
Minor	1. Major or synthetic minor sources. 2. Minor sources. 3. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Report or notification not submitted, or submitted 60 days or more after the due date. 2. Incomplete or inaccurate annual statement of compliance.
Moderate	1. Report or notification submitted 30 days or more after, but less than 60 days after the due date.
Minor	1. Report or notification submitted less than 30 days after the due date.

Multi-day or Multiple Violations

Failure to submit a required report or notification should not be assessed as a multi-day penalty. Penalties for multiple violations are appropriate if there are multiple late or incomplete reports or notifications (i.e., if there is more than one violation).

Economic Benefit

For reporting violations, and the facility will not be submitting a make-up report, you should almost always assess economic benefit for the costs saved by not submitting the report. For example, a facility may have missed several quarterly reports and cannot recreate the missing data. For each missing report that is not going to be submitted, you should include the economic benefit of not submitting the report. Include the delayed costs savings for not submitting the report on time.

If the consent order requires all the missing reports to be submitted, then be sure to include the delayed costs savings for having submitted the reports late.

Category H
Permit Conditions Limiting Capacity

This category applies to violations of *permit* conditions limiting capacity (such as those to avoid Title V or PSD major source status). Examples include limits on fuel sulfur content, hours of operation, production rates, process weight rates, heat input rates, charging rates or material throughput or handling rates.

Other Categories

Assess exceedances of emission limiting standards under Category A.

Under state rules, facilities that operate below certain levels are considered conditionally exempt from permitting. One example is petroleum dry cleaners, which are exempt from permitting provided annual solvent consumption is less than 3250 gallons. Exemption levels are not enforceable conditions. Instead, operation above an exemption level may trigger enforcement for operating without a permit. In the dry cleaner example, a facility using 4000 gallons of solvent in a given year should have been permitted during that year. But it would be incorrect to enforce for using more than 3250 gallons of solvent. (Assess the operation without a permit, when warranted, under Category C.)

Potential for Harm

Major	1. Capacity limiting conditions of permit violated, and permit conditions are related to emissions. (Examples include synthetic minor limits to avoid Title V or PSD major source status.)
Moderate	1. Capacity limiting conditions of permit violated, and permit conditions are not directly related to emissions. (Examples include production or heat input limits that are not based on avoiding a regulatory program.)
Minor	1. Capacity limiting conditions of an air general permit violated.

Extent of Deviation from Requirement

Major	1. Operation greater than or equal to 150 percent of allowable.
Moderate	1. Operation greater than or equal to 115 percent of allowable, but less than 150 percent of allowable.
Minor	1. Operation greater than 100 percent of allowable, but less than 115 percent of allowable.

Multi-day or Multiple Violations

Violations of permit conditions limiting capacity can be assessed as multi-day or multiple penalties, depending on the required frequency of the compliance determination and the nature of the specific violation. Assess per noncompliant period. For example, some facilities have rolling 12-month limits on raw material usage; each month the facility must calculate how much material they used in the past 12 months. There is one compliance determination per month in this example.

Economic Benefit

For violations of permit conditions limiting capacity, when the violation results from using noncompliant fuels or raw materials, you should estimate economic benefit by determining the cost difference between the noncompliant and compliant fuels or raw materials. For example, a facility may have saved *x* dollars per thousand gallons by purchasing fuel oil with a sulfur content of 1.5 percent, when its permit requires operation with 0.5 percent sulfur fuel oil. Include the cost difference between the fuels as the economic benefit component of your penalty.

For other types of capacity-limiting permit condition violations, you may sometimes be able to calculate an economic benefit associated with the noncompliant operation.

Category I
Improper Operation or Maintenance

This category applies to improper operation or maintenance of the facility, its air pollution control equipment or both. It includes the following types of violations:

- Not following good air pollution control practices to minimize emissions at all times (for example, as required by NSPS and NESHAP general provisions at § 60.11(d) and § 63.6(e) of 40 CFR).
- Failure to implement a required pollution control system or device (including operation, maintenance, and work practice requirements).
- Using a pollution control system or device at a lower efficiency than required by permit or rule.
- Violations of work practice standards.

- Operation by untrained staff, if the facility is required to be operated by trained employees.
- Failure to maintain or use the air curtain on an air curtain incinerator.

"Pollution control system or device" refers not only to air pollution control devices but also to work practice requirements intended to reduce pollution. For example, a rule or permit may require good combustion practices to limit carbon monoxide emissions, or it may specify that solvent tanks be closed when not in use.

Other Categories

Most operation, maintenance and work practice requirements in a permit are related to air emissions and are therefore considered to be part of a "pollution control system or device." If, however, the operation, maintenance or work practice requirement is clearly *not* related to the pollution control system or device, assess the violation as an "other permit violation" under Category N.

Improper operation or maintenance of the facility might result in an emission standard exceedance. Instead of assessing improper operation and maintenance, assess any documented (i.e., provable) air emission exceedance under Category A.

Under state and federal "excess emissions" rules, some portion of CEMS data is allowed to exceed otherwise applicable emission limiting standards. There may be a great number or significant duration of exceedances of a state or federal emission standard, but each exceedance might be allowable under the respective state or federal excess emissions rule. Significant amounts of such allowable excess emissions *may* be evidence of improper operation and maintenance of the facility.

Category I applies to violations of improper operation and maintenance *of the facility* based on the number or duration of CEMS excess emissions events. Improper operation and maintenance *of the CEMS itself* should be assessed under Category D. Assess CEMS not meeting their minimum availability requirements (i.e., too much CEMS downtime) under Category D, too.

Assess failure to conduct any required training as a "miscellaneous violation" under Category N.

Potential for Harm

Major	1. Major or synthetic minor sources.
Moderate	1. Minor sources.
Minor	1. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Equipment installed but totally inoperative.
	2. Very poor operation or maintenance such that control device is considered to be completely bypassed.
	3. Operation, maintenance, or work practice measures not implemented.
Moderate	1. Equipment installed but operating at reduced efficiency as evidenced by data collected from inspections or tests.
	2. Poor operation or maintenance such that the control device is considered to be partially bypassed.
	3. Operation, maintenance, or work practice measures partially implemented as evidenced by records showing performance of some but not all required activities.
Minor	1. Operation, maintenance, or work practice measures are implemented that are effective and equivalent to – but different from – the required measures.

Multi-day or Multiple Violations

Improper operation and maintenance violations can be assessed as multi-day or multiple penalties, depending on the required frequency of the event and the nature of the specific violation. Assess per type of maintenance activity not performed, per day of improper operation, per calendar of inappropriate work practice activities, etc.

Economic Benefit

For improper operation and maintenance, you may sometimes be able to calculate an economic benefit associated with avoiding required operation, maintenance or work practices. You may be able to obtain maintenance records, expense logs or work practice sign-off sheets from compliant and noncompliant periods. Using average hourly labor rates typical for the given industry, you can estimate an economic benefit associated with reduced maintenance or inadequate work practices. You may also be able to use fuel costs or costs of operation to calculate an economic benefit resulting from bypassing some or all of the pollution controls.

Category J
Circumvention

This category applies to failure to use a pollution control device, including failure to install, failure to operate, bypassing or disabling, etc. Rule 62-210.650, Fla. Admin. Code, reads, "No person shall circumvent any air pollution control device, or allow the emission of air pollutants without the applicable air pollution control device operating properly."

Other Categories

Circumvention is distinguished from improper operation and maintenance mainly by the degree of seriousness of the violation. Venting emissions with a totally inoperative control device is either a circumvention violation or a (major extent of deviation from requirement) improper operation violation. Venting emissions with an improperly operating control device is either a circumvention violation or a (moderate extent of deviation from requirement) improper operation violation. Decide whether to treat a violation as circumvention by evaluating the following characteristics:

- Nature: Was the bypassing intentional or planned? Was the control device bypass a deliberate decision, or was it part of the design of the process (such as a pressure relief valve)? Did the operator know (or should the operator have known) that emissions were circumventing the control device or that the control device was operating at a reduced efficiency? Was there a clear cost savings from not running the control device, or from running it at a reduced efficiency?
- Extent: Was the control device totally or partially inoperative? Did all or a portion of the emissions bypass the control device?
- Cause: Was the control device bypass a result of negligence? Was the maintenance of the facility so poor that the control device was considered to be wholly or partially bypassed (e.g., holes in the ductwork)?
- Frequency: What is the compliance history at the facility? Has this specific violation occurred before? How often?
- Duration: How long did the violation last?

Assess circumvention under this category, but assess improper operation and maintenance under Category I.

Potential for Harm

Major	1.	Major or synthetic minor sources.
Moderate	1.	Minor sources.
Minor	1.	Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1.	Deliberate, willful, or wanton.
Moderate	1.	Negligent.
Minor		[Not applicable]

Multi-day or Multiple Violations

For circumvention, multi-day penalties are appropriate for each day of operation during which the owner or operator circumvented any air pollution control device or allowed the emission of air pollutants without the applicable air pollution control device operating properly. Recall that most improper operation and maintenance is not circumvention and should be assessed under Category I.

Economic Benefit

For circumvention, you may sometimes be able to calculate an economic benefit associated with bypassing or not installing some or all of the pollution controls.

Category K
Open Burning Violations

This category applies to open burning violations.

Potential for Harm

Major	1.	Open burning of asbestos-containing materials or hazardous waste.
	2.	Open burning violations in a nonattainment or an air quality maintenance area for particulate matter.
	3.	Open burning during an open burning ban.
Moderate	1.	Open burning of prohibited or synthetic (non-vegetative) materials.
Minor	1.	All other open burning violations.

Extent of Deviation from Requirement

Major	1.	Total amount of material exceeds approximately two truck loads.
	2.	Open burning of a structure larger than a simple shed or small out-building (such as a mobile home, residential home or larger structure).
Moderate	1.	Total amount of material exceeds a burn barrel or small pile, but is less than approximately two truckloads of material.
	2.	Open burning of a structure of the size of a simple shed or small out-building.
Minor	1.	Total amount of material does not exceed a burn barrel or small pile.

Multi-day or Multiple Violations

For open burning violations, multi-day penalties are appropriate for each day of operation during the noncompliance period. The noncompliance period consists of each day there is a violation of the open burning rules.

Significantly detrimental – For Category K, significantly detrimental means open burning of asbestos-containing materials or hazardous waste.

Economic Benefit

For open burning violations, you should estimate economic benefit by determining the costs saved by not hauling the material to – and disposing the material in – an appropriate manner.

If applicable, you may sometimes be able to calculate an economic benefit associated with not obtaining and properly operating an air curtain incinerator. There also may be labor costs associated with not locating the burn piles in such a way as to maintain appropriate setbacks.

Category L
Odor, Fugitive Dust and Nuisance Violations

This category applies to odor, fugitive dust, and other nuisance violations.

Potential for Harm

Major	[Reserved]
Moderate	[Reserved]
Minor	1. Major or synthetic minor sources. 2. Minor sources. 3. Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1. Multiple complaints validated by air staff or other complaint response staff.
Moderate	1. Single complaint validated by air staff or other complaint response staff.
Minor	1. All other odor, fugitive dust or nuisance violations.

Multi-day or Multiple Violations

Odor, fugitive dust and other nuisance violations should not be assessed as multi-day penalties. Penalties for multiple violations are appropriate if there are several days of operation with odor, fugitive dust or other nuisance violations (i.e., if there is more than one violation).

Economic Benefit

Eliminating as much of the economic benefit of noncompliance as the statute will allow helps ensure future compliance. For odor, fugitive dust and nuisance violations, unless insignificant or incalculable, estimate the economic benefit and add it to the penalty calculation.

For fugitive dust violations, the costs of paving roads or parking lots, using a water truck or adding a chemical dust suppressant might be included as part of the economic benefit component. If the consent order requires corrective actions, include and delayed costs saved in the economic benefit component. For example, if you determine that the facility should have been paved to comply with reasonable precautions to prevent fugitive dust, and the consent order signed by the facility includes paving, then the economic benefit component consists of the delayed costs saved by having postponed paving.

Category M
Asbestos Violations

This category applies to violations of the asbestos NESHAP, 40 CFR part 61, subpart M. This outlines the default approach using the penalty matrix. You may pursue an ELRA NOV. However, if you do, then you must use the ELRA penalty schedule. Although the same penalty calculation matrix is used, calculating penalties for asbestos NESHAP violations is done in a slightly different manner than calculating penalties for other types of violations. Also, for clarity, the Extent of Deviation from Requirement section is split into three subsets corresponding to the most common types of asbestos violations. Extent of Deviation from Requirement is described separately for notification violations, waste shipment violations, and work practice violations. This is not an exhaustive list. Other violations can be considered.

Other Categories

For open burning of asbestos-containing material, assess under Category K. This includes burning structures in place, burning debris piles containing asbestos, or other burning violations.

Potential for Harm – All Asbestos Violations

Major	1. Total amount of asbestos involved greater than 50 units.
Moderate	1. Total amount of asbestos involved greater than 10 units, but less than or equal to 50 units.
Minor	1. Total amount of asbestos involved less than or equal to 10 units, or quantity above the threshold amount cannot be determined.

A "unit" of asbestos is equivalent to 260 linear feet, 160 square feet or 35 cubic feet of asbestos-containing material. If more than one type of asbestos-containing material is involved, convert each amount to the equivalent units and then add the units to get a total.

Extent of Deviation from Requirement - Notification Violations

Major	1. No notification – failure to provide notification at least ten days before start date of project and compliance with other aspects of the regulation is not demonstrated. 40 CFR 61.145(b)(3)(i).
Moderate	1. No notification – failure to provide notification at least ten days before start date of project and compliance with other aspects of the regulation is demonstrated. 40 CFR 61.145(b)(3)(i).

Minor

1. Inaccurate notification – failure to accurately estimate the amount of asbestos-containing material affected by the renovation or demolition. 40 CFR 61.145(b)(4)(vi).
2. Inaccurate notification – failure to update notification as necessary when circumstances change, including, but not limited to, when the amount of asbestos-containing material affected by the renovation or demolition changes by 20 percent or more. 40 CFR 61.145(b)(2).
3. Other notification violations, such as failing to accurately complete the notification, or omitting required information from the notification.

Each owner or operator of a demolition or renovation activity must mail or hand-deliver a hard copy Notification Form 62-257.900 to the appropriate district or local program. Submitting such Notification via email or fax in lieu of mailing or hand delivering a hard copy is still a violation, but may mitigate the penalty amount. Notification via email or fax must clearly mark and identify the date sent.

Demonstrating compliance with the other aspects of the asbestos NESHAP regulation (40 CFR 61 Subpart M) includes, but is not limited to, documentation of the following:

- Regulated asbestos was not present in amounts above the applicable thresholds.
- The removal and disposal techniques of the regulation were followed.
- The only regulation applicable to the renovation or demolition was the notification requirement.
- Materials were deposited in an approved landfill.

Extent of Deviation from Requirement – Waste Shipment Violations

Major

1. Improper disposal (violations of multiple provisions of 40 CFR 61.150).
2. Discharge of visible emissions to the outside air during collection, processing, packaging, or transportation. 40 CFR 61.150(a).

Moderate

1. Taking waste shipment to a landfill not classified for receiving asbestos-containing material. 40 CFR 61.150(b).

Minor

1. Failure to mark waste shipment vehicle during loading and unloading. 40 CFR 61.150(c).
2. Failure to maintain records, failure to timely send waste shipment records to the waste generator, improperly labeling bags or other recordkeeping violations. 40 CFR 61.150(d).

Extent of Deviation from Requirement – Work Practice Violations

Major	1. Thorough inspection not performed. 40 CFR 61.145(a).
	2. Failure to keep asbestos-containing material adequately wet. 40 CFR 61.145(c).
	3. Improper removal methods. 40 CFR 61.145(c).
	4. Disturbing non-regulated asbestos-containing material – rendering it regulated – and not using proper removal methods. 40 CFR 61.145(c).
Moderate	1. Failure to have a trained representative on site. 40 CFR 61.145(c)(8).
	2. Disturbing non-regulated asbestos-containing material – rendering it regulated – and subsequent, proper removal methods were used. 40 CFR 61.145(c).
	3. Failure to adequately wet a facility being demolished under an order of a state or local government agency. 40 CFR 61.145(c)(9).
	4. Improper removal methods. 40 CFR 61.145(c).
Minor	1. Failure to post evidence of required training. 40 CFR 61.145(c)(8).
	2. Improper removal methods. 40 CFR 61.145(c).

Although 40 CFR 61.145(a) does not explicitly require that the owner or operator prepare a written building survey or inspection report, it does not relieve the owner or operator from his legal obligation to perform a thorough inspection. The purpose of the thorough inspection is to determine the presence, location and amount of asbestos in the area subject to the renovation or demolition. A thorough inspection includes inspection of every accessible area of an affected facility or part of the facility where the demolition or renovation will take place (see 40 CFR 61.145(a) and other EPA Guidance). In the case of demolitions, a thorough inspection should identify the locations and amounts of all asbestos-containing materials, including asbestos-containing materials in inaccessible areas, which will be rendered regulated asbestos-containing materials (RACM) by the demolition process.

Multi-day or Multiple Violations

Multi-day Penalties. Notification violations should not be assessed as multi-day penalties. Penalties for multiple violations are appropriate for notification violations if there are several instances of failure to submit or failure to update a required notification (e.g., if there was more than one renovation or demolition project).

Waste shipment violations should not be assessed as multi-day penalties, with the exception of waste shipment vehicle marking. Assess a penalty for each day of the shipment for which the vehicle marking was missing or inadequate.

Most work practice violations can be assessed as multi-day penalties, depending on the nature of the renovation or demolition and the specific violation. Failure to perform a thorough inspection should not be assessed as a multi-day penalty. Some work practice violations are more appropriately addressed through one penalty per renovation or demolition project. For more serious work practice violations, penalties per day of improper work practices may be

warranted. An example of an improper work practices violation that may warrant multi-day penalties is a contractor that refuses to stop working under conditions that violate the NESHAP.

Multiple Violations. A penalty should be calculated for every violation that constitutes an independent and substantially distinguishable violation, or when the same person has violated the same requirement in substantially different locations. One activity or omission can result in more than one violation. For example, a contractor may demolish a building, which could result in violations such as failure to provide notification, no thorough inspection, inappropriate work practices, and disposal violations. Each is a separate violation.

On the other hand, if there is only one activity or omission that serves as the basis for several violations, but the violations are essentially of the same nature or have the same or potentially the same impact on the environment, but prohibited by different rules regulating that same activity, only one penalty should be calculated. For example, a contractor may demolish a building by burning it, without removal of asbestos-containing material, which results in a violation for improper work practices. The burning is also a violation of the department's open burning regulations. If one violation results in violations of related rules bearing on basically the same subject, only one penalty should be calculated.

Economic Benefit

For asbestos violations, you should estimate economic benefit by determining the costs saved by not following a Department rule, e.g. not performing a thorough inspection, not using proper removal methods, etc. If actual costs are not available, use the Economic Benefit Reference document for estimating the cost of a renovation or demolition project. The costs included are statewide averages.

Category N
Miscellaneous (Other) Violations

This category applies to violations not specifically listed elsewhere.

Potential for Harm

Major	1.	Major or synthetic minor sources.
Moderate	1.	Minor sources.
Minor	1.	Facilities operating under an air general permit.

Extent of Deviation from Requirement

Major	1.	Exceedance of applicable condition by greater than 150 percent of allowable.
	2.	Equipment totally inoperative or procedures not implemented.
Moderate	1.	Exceedance of applicable condition by greater than 115 percent of allowable, but less than or equal to 150 percent of allowable.
	2.	Equipment partially inoperative or procedures partially implemented.

Minor

1. Exceedance of applicable condition by less than or equal to 115 percent of allowable.
2. The equipment installed or procedures implemented are not what was required, but there is no negative impact on emissions.

Multi-day or Multiple Violations

Multi-day penalties may be appropriate for each day of operation during the noncompliance period, depending on the type of violation.

Economic Benefit

Eliminating as much of the economic benefit of noncompliance as the statute will allow helps ensure future compliance. For miscellaneous violations, unless insignificant or incalculable, estimate the economic benefit and add it to the penalty calculation.

Multi-day or Multiple Violations

This section outlines the preferred approach for assessing multi-day or multiple violations. Note that these suggestions are intended to produce a reasonable and consistent penalty calculation for purposes of settlement only; the statutory maximum remains $10,000 per violation (per day).

How should multi-day violations be assessed?

The statutory authority for assessing air violations is $10,000 per violation, and each day of a continuing violation is considered a separate violation. There may even be some days with more than one violation. For example, an emission unit may have a 3-hour rolling average emission limit. There could be 24 separate emission violations on any given day. On the other hand, some violations occur once, but they can lead to extended periods of noncompliance. For example, operating a facility without a permit is a single act, but each day of operation is considered a separate violation.

Each violation should have a consequence. This principle is accomplished through properly identifying and documenting the full noncompliance period in the enforcement documents. Assessing a penalty for each possible violation during the noncompliance period, however, will generally result in astronomical and unrealistic penalty amounts. Some violation types are therefore best addressed through a quarterly or annual assessment.

Daily calculation. For multi-day violations, the preferred calculation is to assess the full matrix amount for the first day of the noncompliance period. Then, for each additional day beyond the first, assess the default fraction (5 percent) of the full matrix amount. Raise or lower the multi-day fraction to reflect aggravating or mitigating factors. For example, if there is substantial economic benefit associated with a violation, increase the multi-day factor as necessary to ensure that the penalty captures the economic benefit.

The daily calculation is best suited for emission standard exceedances, visible emission violations, some improper operation or maintenance violations, circumvention and open burning violations.

Quarterly calculation. For some multi-day violations, it makes logical sense to assess penalties on a quarterly basis. Continuous monitoring system violations are a good example.

Although there are typically some daily operation and maintenance requirements for continuous monitoring systems, review of monitor performance is required on a quarterly basis. For many monitors, a quarterly performance report must be submitted and quarterly quality assurance activities must be performed.

Work practice standards and operation and maintenance requirements are also commonly based on a quarterly frequency. Permits or rules can require quarterly records to be maintained or quarterly reports to be submitted. Review of quarterly excess emission reports can also help the compliance authority to allege violations of improper operation or maintenance.

The preferred penalty calculation for violating a quarterly-based rule or permit condition is to assess the full matrix amount for the first quarter of the violation. Then, for each additional quarter of the noncompliance period, assess the default fraction (5 percent) of the full matrix amount. Raise or lower the multi-day fraction to reflect aggravating or mitigating factors. For example, if there is substantial economic benefit associated with a violation, increase the multi-day factor as necessary to ensure that the penalty captures the economic benefit.

The quarterly calculation is best suited for monitoring performance violations, most recordkeeping violations, some capacity-limiting permit condition violations and most improper operation or maintenance violations. (This calculation approach could also be applied on a monthly or semiannual basis, depending on the specific rule or permit condition.)

Annual calculation. For some long-term multi-day violations, assessing on an annual basis can result in the best penalty calculation number for entering settlement negotiations. Operating without a permit is a good example. Permits typically feature annual emission reports, and permit applicability thresholds are tied to annual (potential) emission levels. Permit capacity limits are often established on an annual basis. Title V permits require annual statements of compliance.

In some cases, complaint investigations, compliance inspections or test reviews will reveal that a facility should have had a permit years ago. Instead of assessing each individual violation (365 days per year), it is usually better to assess on an annual basis.

The preferred penalty calculation for violating an annual rule or permit condition is to assess the full matrix amount for the first year and each subsequent year of the violation. Lower the penalty amount for the subsequent years to reflect any mitigating factors. For example, if the noncompliance period is 5.5 years, assess the first five years at the full matrix amount and the final year at 50 percent of the matrix amount (to reflect the length of the noncompliance period during that final year).

The annual calculation is best suited for operating without a permit, most capacity-limiting permit condition violations, and some long-term emission exceedances (such as annually-based compliant coating usage or annual emission limits).

How should multiple violations be assessed?

A penalty should be calculated for every violation which constitutes an independent and substantially distinguishable violation, or when the same person has violated the same requirement in substantially different locations. One activity or omission can result in more than one violation. For example, failure to perform a particulate matter stack test is a single omission that will often include failure to submit the stack test notification prior to the test, the actual failure to perform the stack test and failure to submit a stack test report following the test.

The preferred penalty calculation for multiple violations stemming from the same incident is to assess the full matrix amount for the first such violation. Then, for each additional violation, assess the default fraction (5 percent) of the full matrix amount. Raise or lower the multiple violation fraction to reflect aggravating or mitigating factors.

On the other hand, one activity or omission can sometimes result in several related violations (i.e., the activity or omission is prohibited by multiple rules, such as state and federal standards). If the single activity or omission results in multiple violations that (1) are essentially of the same nature, (2) have the same or potentially the same impact on the environment or (3) are of related rules bearing on basically the same subject, then only one penalty should be calculated. For example, for nitrogen oxide emissions at a facility that exceed both an NSPS and a PSD emission limit, just assess one emission violation.

Significantly Detrimental

If applicable, each violation category identifies which violations are considered to be significantly detrimental to the environment; these are the worst of the worst violations. Multi-day violations that are significantly detrimental should be assessed at the full matrix amount for the first 30 days. Then, assess the remainder of the noncompliance period as good judgment dictates. (See example below.) Assessing the statutory maximum for the first 30 days implements the department's general settlement guidelines (DEP Directive 923). Note that the statutory maximum penalty is still $10,000 per day per violation for the entire period of noncompliance. You are not prohibited from the statutory maximum in court or while pursuing settlement in a rare enforcement case.

Example of significantly detrimental penalty calculation.

Daily calculation example (for Category A) – A major source that is major for the pollutant in violation failed a stack test. Emissions were three times higher than the applicable standard, causing or contributing to a monitored or modeled ambient air quality violation. The passing stack test was 40 days later and the facility operated in the noncompliant mode of operation for the full 40 days. The noncompliance period is therefore 40 days, and this violation is significantly detrimental. For the first 30 days, assess the full matrix amount ($10,000) per day. For the remaining 10 days, considering mitigating factors, you could assess the default fraction (5 percent) of the full matrix amount. The total penalty would then be $305,000.

Other Matrix Considerations

What are "delayed costs"?

In relation to economic benefit calculations for settlement purposes, delayed costs refer to the time value of money and the savings the violator realized by delaying an expense. For example, if the facility should have paid $5000 in Title V fees in 2002, then the penalty assessment in 2007 should reflect an economic benefit of $5707. (Using the Bureau of Labor Statistics Consumer Price Index to adjust for inflation, $5000 in 2002 dollars is equivalent to $5707 in 2007 dollars.)

Simple delayed costs savings can be calculated at the Bureau of Labor Statistics web page (http://data.bls.gov/cgi-bin/cpicalc.pl). The Department's economist can assist with complex economic benefit calculations, such as those involving major pieces of control equipment, costing millions of dollars, installed years too late.

How does number of violations relate to economic benefit calculations?

Properly identifying and documenting the full noncompliance period is important to economic benefit calculations. The total number of distinct violations sets a cap for the total civil penalty plus economic benefit:

Civil Penalty + Economic Benefit $\leq$ $10,000 * Total Number of Violations

Each day of a continuing violation is counted separately. For example, if there is a violation that occurs over four days at a facility, and you assess each violation $2000, the maximum economic benefit you could assess would be $32,000. ($32,000 economic benefit + $8,000 civil penalty = $40,000 statutory maximum.)

Economic benefit does not have to be specifically linked to a particular violation.

What are appropriate penalty adjustment factors?

Section 8 of DEP Directive 923 lists the adjustment factors to be considered when assessing an air violation. The penalty adjustment factors recognize that every case is unique – while the matrix is useful for an initial calculation, individual characteristics of a violation may warrant adjusting the penalty down to zero or up to the statutory maximum.

Penalty adjustment factors are always optional. They can be applied to individual violations or to the resulting total penalty amount. They cannot increase the total penalty beyond the statutory maximum ($10,000 per day per violation). Some appropriate penalty adjustment factors are listed below:

- Good faith efforts to comply prior to discovery (-25 to -50 percent)
- Good faith efforts to comply after informed (-10 to -25 percent)
- Lack of good faith prior to discovery (+10 to +25 percent)
- Lack of good faith after informed (+25 to +50 percent)
- Repeat violation – previous violations of the same requirement at the same facility
    - One prior violation (+100 percent, i.e., 2x base penalty)
    - Two or more prior violations (+200 percent, i.e., 3x base penalty)
- History of noncompliance – includes previous violations of other requirements at the same facility as well as previous violations of the same or other requirements at other facilities owned by the violator
    - One prior violation (+25 percent)
    - Two prior violations (+50 percent)
    - Three or more prior violations (+100 percent)
- Other unique factors (-50 to +50 percent)

How should violations of general permits be assessed?

These guidelines incorporate air general permit violations into the main penalty calculation scheme. Violations at facilities operating under an air general permit entitlement are considered minor potential for harm.

The only likely exception is under Category C (Operation Without a Permit). For a facility found to be operating at levels well in excess of applicable air general permit conditions, you may decide that the facility was never eligible for the air general permit and that it should have been operating under an air operation or Title V air operation permit. In such cases, determine the violation's potential for harm based on the size under which the facility should have been classified – i.e., not based on the facility's (inaccurate) air general permit classification.

How should violations in nonattainment areas be assessed?

Violations at major or synthetic minor facilities involving pollutant emissions either in or significantly impacting a nonattainment area that is in nonattainment for that pollutant should be considered major potential for harm, regardless of their designation under the matrix violation categories. Such violations should also be considered significantly detrimental to the environment for purposes of calculating penalties for multi-day or multiple violations.

Documentation

How should I document my penalty calculation?

Appropriate documentation of your penalty calculation is important. It shows that the penalty was systematically calculated and is not an arbitrary decision. It also documents your approach so you can be consistent on future calculations for similar violations.

There are several worksheets you can use to help calculate your penalty while also documenting your process and your result. Use any of the following:

- The multimedia penalty computation worksheet included as Attachment V to DEP Directive 923.
- The electronic Air Violations Penalty Calculation Worksheet, a Microsoft Excel spreadsheet. The spreadsheet is available on the compliance and enforcement intranet (http://depnet/darm/reference/CompEnforce) and extranet web pages (http://appprod.dep.state.fl.us/extranetdarm/reference/CompEnforce).
- A hard-copy printout of the Air Violations Penalty Calculation Worksheet, with your calculations manually entered. (A hard-copy of a blank worksheet follows on the next several pages.)
- Your own penalty computation worksheet format (hard-copy, Microsoft Word format, etc.).

In addition to containing your original penalty calculation, your enforcement files should include any revisions to the penalty that result from settlement negotiation. This can be as simple as including hand-written notations on your original calculation worksheet. But the file should reflect the original amount, any changes to the original amount and at least a brief rationale for the changes.

Air Violations

Penalty Computation Worksheet

Violator Name	AIRS ID	Facility Name

Calculation 1 (ELRA Penalty Schedule)

(•) This calculation uses the ELRA penalty schedule for purposes of settlement (via a consent order).
( ) This calculation is in support of an administrative penalty action (via an ELRA Notice of Violation).

Date	Penalty Calculation Prepared By

	ELRA Penalty Schedule "Row" Matching the Violation	ELRA Penalty Schedule	"Add-ons" for Row 1 Penalties	Number of Violations	Number of Previous Violations	History of Noncompliance Adjustment	Economic Benefit	Other Adjustments	Total	Violation Description and Adjustment Comments
1		$ -	$ -				$ -	$ -	$ -	
2		$ -	$ -				$ -	$ -	$ -	
3		$ -	$ -				$ -	$ -	$ -	
4		$ -	$ -				$ -	$ -	$ -	
5		$ -	$ -				$ -	$ -	$ -	
6		$ -	$ -				$ -	$ -	$ -	
7		$ -	$ -				$ -	$ -	$ -	
8		$ -	$ -				$ -	$ -	$ -	
9		$ -	$ -				$ -	$ -	$ -	

Additional comments

Economic benefit not associated with a specific violation	$ -	
SUB-TOTAL	$ -	☐ Check this box to cap the total penalty at $10,000
Costs and expenses of investigating the violation	$ -	
TOTAL	$ -	

District Director

Date

Penalty computation worksheet version date: April 2007

Air Violations

Penalty Computation Worksheet

Violator Name	AIRS ID	Facility Name

Calculation 2 (Penalty Calculation Matrix)

☐ This calculation is for purposes of settlement, and the ELRA penalty schedule calculation exceeds $

Date	Penalty Calculation Prepared By

	Potential for Harm	Extent of Deviation from Requirement	Matrix (Baseline) Penalty Amount	Number of Violations at Matrix Amount	Multi-day Penalty Amount	Number of Violations at Multi-day Amount	Number of Previous Violations	History of Noncompliance Adjustment	Economic Benefit	Other Adjustments	Total	Violation Description and Adjustment Comments
1			$ -		$ - 5 %				$ -	$ -	$ -	
2			$ -		$ - 5 %				$ -	$ -	$ -	
3			$ -		$ - 5 %				$ -	$ -	$ -	
4			$ -		$ - 5 %				$ -	$ -	$ -	
5			$ -		$ - 5 %				$ -	$ -	$ -	
6			$ -		$ - 5 %				$ -	$ -	$ -	
7			$ -		$ - 5 %				$ -	$ -	$ -	
8			$ -		$ - 5 %				$ -	$ -	$ -	
9			$ -		$ - 5 %				$ -	$ -	$ -	

Additional comments

Economic benefit not associated with a specific violation	$ -	
SUB-TOTAL	$ -	
Costs and expenses of investigating the violation	$ -	
TOTAL	$ -	

District Director

Date

Penalty computation worksheet version date: April 2007

Examples

Some penalty calculation examples follow. Note that the examples assume you are using a documentation format similar to the electronic penalty computation worksheet. "Calculation 1" refers to using the ELRA penalty schedule rows to determine a penalty, and "Calculation 2" refers to using the air violation matrix.

(1) A source is major for SO_2, and the facility has taken a limit to avoid PSD (it can only use fuel oil with 0.5 percent sulfur). For six consecutive days in the past quarter as a result of a bad fuel oil shipment, the facility fired fuel oil with 2.0 percent sulfur.

Calculation 1, using the ELRA penalty schedule:

– Appropriate row is Row 1, "air-emission-permit exceedance" because this is a permit condition limiting capacity that is directly related to emissions (of SO_2).

– Baseline penalty is $1000.

– Do not apply *add-on 2* (+ $3000), because there is no evidence of SO_2 emissions (only evidence that the sulfur content limit was violated). *Add-on 2* only applies to emissions, not permit conditions limiting capacity.

– Do not apply *add-on 3* (+ $1000). *Add-on 3* applies to emissions, not permit conditions limiting capacity.

– Number of violations = 6. Total penalty is $1000 * 6 = $6000.

Do not proceed with Calculation 2, because Calculation 1 is less than $10,000.

Economic benefit – If the facility saved money by purchasing the 2.0 percent sulfur fuel, then assess the cost difference between 2.0 percent and 0.5 percent sulfur fuel oil for the six days.

Investigative costs – Assume one site visit and one settlement meeting occurred in addition to the usual amount of enforcement paperwork associated with a short form consent order. Use the default costs from the Department's enforcement manual, $300 ($100 to $500 for a minimal enforcement case).

(2) Same violation as (1), but for 12 days.

Calculation 1, using the ELRA penalty schedule, yields $1000 * 12 = $12,000.

Greater than $10,000, so proceed with Calculation 2, using the matrix:

– Appropriate category is Category H, "permit conditions limiting capacity." There is no evidence of an emissions violation, so Category A is not applicable.

– Potential for harm = major (synthetic minor limit to avoid PSD).

– Extent of deviation from requirement = major (2.0 percent sulfur fuel oil used, and the limit was 0.5 percent, so operation was greater than 150 percent of allowable).

– Major/Major (with no aggravating or mitigating factors). No aggravating or mitigating factors, so select the penalty range midpoint as the baseline ($9000).

– Since this is a single incident that led to multiple violations, assess the first day at $9000 and each subsequent day at 5 percent of $9000 (i.e., $450).

– Total penalty is $9000 + 11 * $450 = $13,950.

Economic benefit – If the facility saved money by purchasing the 2.0 percent sulfur fuel, then assess the cost difference between 2.0 percent and 0.5 percent sulfur fuel oil for the 12 days.

Investigative costs – Assume one site visit and one settlement meeting occurred in addition to the usual amount of enforcement paperwork associated with a short form consent order. Since the penalty was over $10,000, also assume a BAR peer review of the penalty calculation. Use the default costs from the Department's enforcement manual, $500 ($100 to $500 for a minimal enforcement case).

(3) A facility constructs an asphalt plant without a permit. You discover the plant through a complaint investigation. You review the plant's records, and it never exceeded the limits of the conditional exemption from Title V permitting contained at Rule 62-210.300(3)(c)2., Fla. Admin. Code. You decide to issue a non-Title V air operation permit (i.e., minor source permit) to the facility. Although you signed a consent order with the facility sooner, by the time the facility submits a complete permit application, it has been operating without a permit for two years and four months.

Calculation 1, using the ELRA penalty schedule:

– One violation of Row 3, "failure to obtain a required permit before construction or modification," for not getting a construction permit before building the asphalt plant. $3000.

– Multi-day violation of Row 1, "unpermitted / unauthorized air emission," for the ongoing operation without a permit violation. No add-ons apply. $1000 per day for two years and four months. (Enforcement discretion for the period of operation following submittal of the complete application for permit.)

– Total penalty exceeds $10,000, so proceed with Calculation 2.

Calculation 2, using the penalty calculation matrix:

– One violation of construction without a permit (Category C) for the failure to get the initial air construction permit. This violation is minor potential for harm (minor source constructing without a permit) and major extent of deviation from requirement (construction without obtaining required permit). Matrix amount = $850.

– Ongoing violation of operation without a permit (Category C). This violation is moderate potential for harm (minor source operating without a permit) and major extent of deviation from requirement (operation without obtaining required permit). Matrix amount = $3900.

– Assess the multi-day violation using the annual approach. $3900 for each of the first two years. $3900 * (4 / 12) for the four months of the third year.

– Total penalty = $850 + $3900 * 2 + $3900 * (4 / 12) = $9,950.

Economic benefit – As part of the consent order, the facility agrees to obtain an air construction permit and a non-Title V (minor source) air operation permit. Since the facility is incurring these costs, the economic benefit consists of the delayed costs saved by postponing the applications. If the applications are submitted in 2007 when they were due in 2004, then your economic benefit calculation might look like this:

Air construction permit cost = $2000 (2004 dollars) = $2201 (2007 dollars)

Air operation permit cost = $1000 (2004 dollars) = $1100 (2007 dollars)

Economic benefit = ($2201 – $2000) + ($1100 – $1000) = $301

Investigative costs – Assume two site visits in response to the complaints, two more site visits to fully investigate the need for a permit and a full consent order instead of a short form consent order. Use the default costs from the Department's enforcement manual, $1000 ($500 to $1000 for an average enforcement case).

(4) A Title V facility is required to install and begin operating a continuous emission monitoring system by September 2005 to demonstrate compliance with an emission limit for NO_X. The facility is a major source of NO_X. They do not install and begin using the NO_X CEMS until September 2008 (i.e., three years, or 12 quarters, late).

Calculation 1, using the ELRA penalty schedule:

– Appropriate row is Row 5, "failure to conduct required monitoring or testing." One violation for the failure to install the monitor, and three years of violations for failure to conduct the required monitoring. Total penalty exceeds $10,000, so proceed with Calculation 2.

Calculation 2, using the penalty calculation matrix:

– Appropriate category is Category D, "monitoring performance violations."

– The failure to timely install the CEMS is major potential for harm (monitors installed for purposes of demonstrating compliance with an emission limiting standard) and major extent of deviation from requirement (monitor not installed).

– The failure to operate the CEMS is major potential for harm (monitors installed for purposes of demonstrating compliance with an emission limiting standard) and major extent of deviation from requirement (monitor not operated for 10 percent or greater of the time in any calendar quarter).

– The facility's knowledge of the air regulations and the clear permit language requiring the CEMS installation are considered to be aggravating factors. Full matrix amount is selected as the baseline ($10,000, the upper range of the major/major box).

– One violation of $10,000 for failure to timely install the monitor.

– Ongoing violation assessed quarterly for failure to operate the monitor. $10,000 for the first quarter, plus 5 percent ($500) for each of the 11 following quarters.

– Total penalty = $10,000 + $10,000 + $500 * 11 = $25,500.

Economic benefit – Include the delayed cost savings for postponing CEMS installation for three years, and if possible, estimate and include the ongoing operation and maintenance costs that the facility avoided. If the CEMS was installed in 2007 when it should have been installed in 2004, then your economic benefit calculation might look like this:

CEMS installation = $50,000 (2004 dollars) = $55,034 (2007 dollars)

CEMS operation and maintenance = $1500 per quarter

$1500 (2004 dollars) = $1651 (2007 dollars)

$1500 (2005 dollars) = $1597 (2007 dollars)

$1500 (2006 dollars) = $1547 (2007 dollars)

Economic benefit = ($55,034 – $50,000) + ($1651 * 4) + ($1597 * 4) + ($1547 * 4)

= $24,214

Investigative costs – Assume numerous site visits, multiple meetings before the facility agreed to install the CEMS, BAR peer review of the penalty calculation and a complicated consent order. Use the default costs from the Department's enforcement manual, $5000 ($1000 to $5000 for a complex enforcement case).

Heavy-Duty Vehicle Idling

How should violations of the heavy-duty vehicle idling reduction rule (62-285.420, F.A.C.) be assessed?

- First violation – compliance assistance/educational outreach
- Repeat violations - $100 increments to a max of $500 per violation
  - 2nd violation: $100
  - 3rd violation: $200
  - 4th violation: $300
  - 5th violation: $400
  - 6th violation or more: $500 per violation