Guidelines for Characterizing Air Violations

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Introduction

Department of Environmental Protection (DEP) Directive 923 is the Department's controlling enforcement document. These guidelines are intended to complement Directive 923 to determine the appropriate civil and administrative penalties to seek when settling enforcement actions; and to provide a rational, fair, and consistent method to determine the appropriate enforcement response for air violations.

Generally, the first approach to calculating a penalty for the purposes of settlement negotiations is to follow the penalty schedule under the Environmental Litigation and Reform Act (ELRA), Section 403.121, Florida Statutes (F.S.). Pursuant to 403.121(9), F.S., if staff are pursuing enforcement under an ELRA administrative proceeding and issuing a Notice of Violation (NOV), then the penalty assessed for any one violation may not exceed $10,000 unless the violator has a history of noncompliance, the economic benefit of the violation exceeds $10,000, or there are multi-day violations. Additionally, the total administrative penalties for all violations may not exceed $50,000. If the initial penalty calculation using the ELRA penalty schedule exceeds $50,000, then staff may choose to cap the penalty at $50,000 if they wish to proceed administratively via an NOV or re-calculate the penalty using the Penalty Matrix established in these guidelines. For additional details on administrative proceedings under ELRA, see DEP Directive 923 and Section 403.121, F.S.

Directive 923 also addresses the assessment of multi-day penalties and outlines various adjustment factors that can be considered when calculating penalties. These factors include:

- Knowing, deliberate, or chronic violations.
- Good faith efforts to comply (or lack of good faith efforts to comply) either prior to or after Department discovery of the violation.
- *History of noncompliance.
- **Economic benefit of noncompliance.
- Ability to pay.
- Other unique factors.

*Florida Statute 403.121(7) provides: "The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of $3,000 or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years before the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years before the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years before the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty."

**Florida Statute 403.121(8) provides: "The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, must be added to the scheduled

administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, may not exceed $15,000." See the "Economic Benefit Guidance for Air Violations" at the end of this document for more information.

One of the first steps in using either the ELRA Penalty Schedule or the Penalty Matrix is to characterize the violation and determine the corresponding ELRA violation type or Matrix violation category.

ELRA Penalty Schedule Rows

Table 1 provides the ELRA penalty amounts as specified in Section 403.121, F.S., for certain types of violations listed in 12 rows. The ELRA penalty schedule rows essentially follow the violation classification scheme from the ELRA statute. These guidelines characterize each ELRA 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).

Under the ELRA penalty schedule, the full penalty may be assigned per day per violation. Fractions of the full penalty may be assigned as multi-day penalties if the case is being settled via a consent order, but not for penalties listed in a NOV under ELRA. However, check with the Office of General Counsel if multi-day penalties are being considered as part of an NOV. Chapter 5 of the DEP Enforcement Manual explains the ELRA NOV process and penalty calculation.

Table 1. ELRA Penalty Schedule for Air Violations

Row	ELRA Violation Type	Penalty	Citation (F.S.)
1	Air emission permit exceedance, or unpermitted/unauthorized air emission	$1,500	403.121(3)(f)
	Add-0n 1 – If the emission was from a major source and the source was major for the pollutant in violation, add $4,500	+$4,500	
	Add-0n 2 – If the emission was more than 150% of the allowable level, add $1,500	+$1,500	
2	Failure to install, maintain, or use a required pollution control system or device	$6,000	403.121(4)(b)
3	Failure to obtain a required permit before construction or modification	$4,500	403.121(4)(c)
4	Failure to conduct required monitoring or testing	$3,000	403.121(4)(d)
5	Failure to construct in compliance with a permit	$3,000	403.121(4)(d)
6	Failure to conduct required training	$1,500	403.121(4)(e)
7	Failure to maintain required staff to respond to emergencies	$1,500	403.121(4)(e)

Row	ELRA Violation Type	Penalty	Citation (F.S.)
8	Failure to prepare, maintain, or update required contingency plans	$1,500	403.121(4)(e)
9	Failure to adequately respond to emergencies to bring an emergency situation under control	$1,500	403.121(4)(e)
10	Failure to submit required notification to the Department	$1,500	403.121(4)(e)
11	Failure to prepare, submit, maintain, or use required reports or other required documentation	$750	403.121(4)(f)
12	Failure to comply with any other Departmental regulatory statute or rule requirement	$1,000	403.121(5)

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

ELRA Violation Type (Row 1)	Penalty	Citation (F.S.)
Air emission permit exceedance, or unpermitted/unauthorized air emission	$1,500	403.121(3)(f)
Add-0n 1 – If the emission was from a major source and the source was major for the pollutant in violation, add $4,500	+$4,500	
Add-0n 2 – If the emission was more than 150% of the allowable level, add $1,500	+$1,500	

"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 Prevention of Significant Deterioration (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. "Major source" refers to major sources of air pollution (or Title V sources, see Rule 62-210.200, F.A.C.). 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 1 for opacity violations, even if the source is major for particulate matter.

Add-on 1 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 1 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 2. "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 2 does apply to opacity violations. For example, if the opacity limit is 20 percent, apply add-on 2 for opacity readings above 30 percent (30 percent is 1.5 times the allowable level).

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 12.

Under Title V, Compliance Assurance Monitoring (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 12. 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 12.

Open burning of asbestos-containing material or hazardous waste is excluded from the ELRA

penalty schedule. Assess these open burning violations under Category K of the Penalty 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. 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 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.

For failed visible emission readings or continuous opacity monitoring system (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 continuous emissions monitoring system (CEMS), parametric emissions monitoring system (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 may be appropriate for each day of operation following the completion of a passing retest. During the noncompliance period, no more than 15 consecutive days used for the purpose of additional compliance testing may be subtracted from the multi-day penalties calculation. 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.

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

ELRA Violation Type (Row 2)	Penalty	Citation (F.S.)
Failure to install, maintain, or use a required pollution control system or device	$6,000	403.121(4)(b)

"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, F.A.C).
- Not following good air pollution control practices to minimize emissions at all times (for example, as required by New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (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.).

"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 12.

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 ($6000) may be assigned per day per violation. "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.

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

ELRA Violation Type (Row 3)	Penalty	Citation (F.S.)
Failure to obtain a required permit before construction or modification	$4,500	403.121(4)(c)

"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, F.A.C., 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 ($4,500) may be assigned per day per violation. The "failure to obtain a required permit" only occurs once, so multi-day penalties are not appropriate. Operation without a permit can be assessed as multi-day penalties ("unpermitted / unauthorized air emission" under Row 1).

Row 4: Failure to conduct required monitoring or testing

ELRA Violation Type (Row 4)	Penalty	Citation (F.S.)
Failure to conduct required monitoring or testing	$3,000	403.121(4)(d)

"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.

Use Row 4 if the stack test or other required testing or monitoring is performed late. Assess late submittal of stack test reports or quarterly monitoring reports as "reporting violations" under Row 11. Also assess failure to maintain monitor data as required by the permit as a "recordkeeping violation" under Row 11.

Multi-day considerations for Row 4

Under the ELRA penalty schedule, the full penalty ($3,000) may be assigned per day per violation. 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.

Row 5: Failure to construct in compliance with a permit

ELRA Violation Type (Row 5)	Penalty	Citation (F.S.)
Failure to construct in compliance with a permit	$3,000	403.121(4)(d)

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), F.A.C.). Row 5 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.

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 5

Under the ELRA penalty schedule, the full penalty ($3,000) may be assigned per day per violation. The "failure to construct in compliance with a permit" only occurs once, so multi-day penalties are not appropriate. However, violations of "operation without a permit" or "improper operation or maintenance," can be assessed as multi-day penalties (under Row 3 or Row 2, respectively).

Row 6: Failure to conduct required training

ELRA Violation Type (Row 6)	Penalty	Citation (F.S.)
Failure to conduct required training	$1,500	403.121(4)(e)

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 12 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 ($1,500) may be assigned per day per violation. 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 12, respectively).

Rows 7-9: Failure to maintain required staff to respond to emergencies, Failure to prepare, maintain, or update required contingency plans, Failure to adequately respond to emergencies to bring an emergency situation under control

ELRA Violation Type (Rows 7-9)	Penalty	Citation (F.S.)
Failure to maintain required staff to respond to emergencies	$1,500	403.121(4)(e)
Failure to prepare, maintain, or update required contingency plans	$1,500	403.121(4)(e)
Failure to adequately respond to emergencies to bring an emergency situation under control	$1,500	403.121(4)(e)

No discussion of terms or relationships for Rows 7-9

Multi-day considerations for Rows 7-9

Under the ELRA penalty schedule, the full penalty ($1,500) may be assigned per day per violation. 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.

Row 10: Failure to submit required notification to the Department

ELRA Violation Type (Row 10)	Penalty	Citation (F.S.)
Failure to submit required notification to the Department	$1,500	403.121(4)(e)

"Failure to submit required notification" applies to any required notifications, including malfunction notifications and noncompliance notifications. (See Rule 62-4.160(8), F.A.C, and the general conditions included in all air permits.) "Failure to submit" also 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 11.

Multi-day considerations for Row 10

Under the ELRA penalty schedule, the full penalty ($1,500) may be assigned per day per violation. 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.

Row 11: Failure to prepare, submit, maintain, or use required reports or other required documentation

ELRA Violation Type (Row 11)	Penalty	Citation (F.S.)
Failure to prepare, submit, maintain, or use required reports or other required documentation	$750	403.121(4)(f)

"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 10.

Assess recordkeeping violations under Row 11 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 11

Under the ELRA penalty schedule, the full penalty ($750) may be assigned per day per violation. 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.

Row 12: Failure to comply with any other Departmental regulatory statute or rule requirement

ELRA Violation Type (Row 12)	Penalty	Citation (F.S.)
Failure to comply with any other Departmental regulatory statute or rule requirement	$1,000	403.121(5)

Row 12 applies to permit or rule violations not specifically addressed elsewhere by the ELRA penalty schedule.

Multi-day considerations for Row 12

Under the ELRA penalty schedule, the full penalty ($1,000) may be assigned per day per violation. 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, F.S., with some exceptions.

First, there is a $10,000 cap for each individual violation. This $10,000 cap applies unless one of the following three conditions is met:

- The violator has a history of noncompliance.
- The economic benefit associated with the violation is greater than $10,000.
- There are multi-day violations.

Second, the total administrative penalty cannot exceed $50,000. When calculating a penalty for an ELRA NOV, if the initial penalty is greater than $50,000, cap the penalty at $50,000 (instead of re-calculating the penalty using the matrix).

Third, 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 4. Failure to conduct required monitoring or testing

- No thorough inspection

Row 7. Failure to conduct required training
- No trained supervisor on site

Row 10. Failure to submit required notification to the Department
- No notification or late notification

Row 11. 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 12. Failure to comply with any other departmental regulatory statute or rule requirement not specifically identified by this ELRA penalty schedule.

Matrix Violation Categories

Table 2 shows the Penalty Calculation Matrix in a three-by-three grid of nine penalty ranges or "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 box for each of the 13 Matrix violation categories, which are outlined in **Table 3**.

Each box in the 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.

It is important to remember when placing a violation in the 'Major' category for Environmental Harm, the violation must have actually resulted in pollution in a manner that represents a substantial threat to human health or the environment. Moderate violations are those violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment. Minor violations are those violations that actually or are reasonably expected to result in a minimal threat to human health or the environment.

The discussion under each Matrix violation category is broken into four parts.

Matrix Factors – defines major, moderate, and minor for potential for environmental harm and extent of deviation from requirement.

Other Categories – describes which violations belong in that category and defines the relationship between that category and similar categories.

Multi-day or Multiple Violations – outlines how to calculate multi-day and multiple violations for that category.

Economic Benefit – discusses economic benefit considerations for that category.

Table 4 provides a cross-reference between the Matrix violation categories and the ELRA penalty schedule rows.

Table 2. Penalty Calculation Matrix for Air Violations

ENVIRONMENTAL HARM	EXTENT OF DEVIATION FROM REQUIREMENT			
		MAJOR	MODERATE	MINOR
	MAJOR	$15,000 to $13,000	$12,999 to $11,000	$10,999 to $9,000
	MODERATE	$8,999 to $7,000	$6,999 to $5,000	$4,999 to $3,000
	MINOR	$2,999 to $2,000	$1,999 to $1,000*	$1,000*

* Environmental Education may be an acceptable substitute to offset penalties on a one-time basis.

Table 3. Matrix Categories for Air Violations

Category	Description
A	Emission Standard Exceedances
B	Visible Emission Violations
C	Construction or Operation Without a Permit
D	Monitoring Performance Violations
E	Testing Violations
F	Recordkeeping Violations
G	Reporting and Notification Violations
H	Permit Conditions Limiting Capacity
I	Improper Operation or Maintenance
J	Circumvention
K	Open Burning Violations
L	Odor, Fugitive Dust and Nuisance Violations
M	Asbestos
N	Miscellaneous (Other) Violations

Table 4. Cross Reference – Matrix Categories to ELRA Penalty Schedule Rows

Matrix Violation Categories		ELRA Penalty Schedule Rows
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 5. Failure to construct in compliance with a permit
	Operation Without a Permit	Row 1. Unpermitted / unauthorized air emission
D	Monitoring Performance Violations	Row 4. Failure to conduct required monitoring or testing
E	Testing Violations	Row 4. Failure to conduct required monitoring or testing
F	Recordkeeping Violations	Row 11. Failure to prepare, submit, maintain or use required reports or other required documentation
G	Notification Violations	Row 10. Failure to submit required notification to the Department
	Reporting Violations	Row 11. Failure to prepare, submit, maintain or use required reports or other required documentation
H	Permit Conditions Limiting Capacity	Row 1. Air-emission-permit exceedance, or unpermitted / unauthorized air emission
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. Unpermitted / unauthorized air emission
L	Odor, Fugitive Dust and Nuisance Violations	Row 1. Unpermitted / unauthorized air emission
M	Asbestos	See discussion under “Other ELRA Penalty Schedule Considerations”
N	Miscellaneous (Other) Violations	Row 10. Failure to comply with any other Departmental regulatory statute or rule requirement not specifically identified by the ELRA penalty schedule

Category A: Emission Standard Exceedances

Category	Description
A	Emission Standard Exceedances

This category applies to exceedances of emission limiting standards contained in a rule, permit condition, 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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major or synthetic minor source exceedances of emissions standards that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Emissions greater than or equal to 200 percent of allowable.
Moderate	1. Major, synthetic minor, or minor source exceedances of emissions standards that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment	1. Emissions greater than or equal to 150 percent of allowable, but less than 200 percent of allowable.
Minor	1. Major, synthetic minor, or minor source exceedances of emissions standards that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Emission standard exceedances at facilities operating under an air general permit.	1. Emissions greater than 100 percent of allowable, but less than 150 percent of allowable.

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.

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 may be 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.

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 SO2 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

Category	Description
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), F.A.C., or facility-specific opacity standards. It applies to visible emissions violations as evidenced by COMS results or Method 9 visible emission evaluations.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	1. Percent opacity greater than or equal to 200 percent of allowable. 2. Percent opacity greater than or equal to 150 percent of allowable, but less than 200 percent of allowable, for more than 3 hours during an operating day.
Moderate	1. Major, synthetic minor, or minor source violations that actually or are reasonably expected to result in	1. Percent opacity greater than or equal to 150 percent of allowable, but less than 200 percent of allowable, for 3 hours or less during an operating day.

	pollution in a manner that represents a significant threat to human health or the environment.	2. Percent opacity greater than 100 percent of allowable, but less than 150 percent of allowable, for more than 3 hours during an operating day.
Minor	1. Major, synthetic minor, or minor source violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Facilities operating under an air general permit	1. Percent opacity greater than 100 percent of allowable, but less than 150 percent of allowable, for 3 hours or less during an operating day.

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.

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

Category	Description
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), F.A.C.). 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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major or synthetic minor source operating without a permit in a manner that actually results in pollution that represents a substantial threat to human health or the environment.	1. Construction or operation of a source prior to obtaining required permit.
Moderate	1. Major, synthetic minor, or minor source operating without a permit in a manner that actually or is reasonably expected to result in pollution that represents a significant threat to human health or the environment.	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. Major, synthetic minor, or minor source operating without a permit in a manner that actually or is reasonably expected to result in pollution that represents a minimal threat to human health or the environment. 2. Major, synthetic minor, or minor source constructing without a permit or registration. 3. Air general permit facility operating or constructing without registration.	1. Constructing with unauthorized variations from a permit, and the variance does not directly impact emissions.

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?

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 require 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

Category	Description
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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	1. Monitors not installed, calibrated, or certified. 2. Monitors installed, but not operated (i.e., no attempt to operate monitor).
Moderate	1. Monitoring violations at a major or synthetic minor source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Failure to meet minimum monitor availability requirements, and no other estimate or testing of emissions is performed. 2. Monitors not properly maintained.
Minor	1. Monitoring violations at a major, synthetic minor, or minor source that are reasonably expected to result in	1. Failure to meet minimum monitor availability requirements, but emissions

	pollution in a manner that represents a minimal threat to human health or the environment. 2. Monitoring violations at an air general permit facility.	are estimated or testing is performed.

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.

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

Category	Description
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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	1. Tests not conducted or conducted 60 days or more after the due date.
Moderate	1. Testing requirement violations at a major, synthetic minor, or minor source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Tests conducted 30 days or more after, but less than 60 days after the due date.
Minor	1. Testing requirement violations at a major, synthetic minor, or minor source that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Testing requirement violations at an air general permit facility.	1. Test conducted less than 30 days after the due date.

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.

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

Category	Description
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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	1. Records not maintained or incompletely maintained for 50 percent or greater of the time in any calendar quarter.
Moderate	1. Recordkeeping violations at a major or synthetic minor source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Records not maintained or incompletely maintained for 25 percent or greater of the time, but less than 50 percent of the time, in any calendar quarter.
Minor	1. Recordkeeping violations at a major or synthetic minor source that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Recordkeeping violations at a minor source or an air general permit facility.	1. Records not maintained or incompletely maintained for less than 25 percent of the time in any calendar quarter. 2. Complete records maintained, but maintained in the wrong format.

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.

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

Category	Description
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), F.A.C., 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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	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. Reporting or notification violations at a major or synthetic minor source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Report or notification submitted 30 days or more after, but less than 60 days after the due date.
Minor	1. Reporting or notification violations at a major or synthetic minor source that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Reporting or notification violations at a minor source or an air general permit facility.	1. Report or notification submitted less than 30 days after the due date.

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.

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

Category	Description
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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major or synthetic minor source limiting capacity violations that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Operation greater than or equal to 150 percent of allowable.
Moderate	1. Major, synthetic minor, or minor source limiting capacity violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Operation greater than or equal to 115 percent of allowable, but less than 150 percent of allowable.
Minor	1. Major, synthetic minor, or minor source limiting capacity violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Limiting capacity violations at an air general permit facility.	1. Operation greater than 100 percent of allowable, but less than 115 percent of allowable.

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.)

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

Category	Description
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.
- 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.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major or synthetic minor source violations that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Equipment installed but totally inoperative. 2. Very poor operation or maintenance such that control device is considered to be completely by passed. 3. Operation, maintenance, or work practice measures not implemented.
Moderate	1. Major or synthetic minor source violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	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. Major or synthetic minor source violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Violations at a minor source or an air general permit facility.	1. Operation, maintenance, or work practice measures are implemented that are effective and equivalent to – but different from – the required measures.

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.

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

Category	Description
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, F.A.C., 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."

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major or synthetic minor source violations that actually result in pollution in a manner that represents a substantial threat to human	1. Deliberate, willful, or wanton.

	health or the environment.	
Moderate	1. Major, synthetic minor source, or minor source violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Negligent
Minor	1. Major, synthetic minor, or minor source violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Violations at an air general permit facility.	[Not applicable]

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.

Multi-day or Multiple Violations

For circumvention, multi-day penalties may be 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

Category	Description
K	Open Burning Violations

This category applies to open burning violations.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
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.	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. Open burning of prohibited or synthetic (non-vegetative) materials.	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. All other open burning violations.	1. Total amount of material does not exceed a burn barrel or small pile.

Other Categories – N/A

Multi-day or Multiple Violations

For open burning violations, multi-day penalties may be 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.

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

Category	Description
L	Odor, Fugitive Dust and Nuisance Violations

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

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	1. Multiple complaints validated by air staff or other complaint response staff.
Moderate	[Reserved]	1. Single complaint validated by air staff or other complaint response staff.
Minor	1. Major or synthetic minor sources. 2. Minor sources. 3. Facilities operating under an air general permit.	1. All other odor, fugitive dust or nuisance violations.

Other Categories – N/A

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). Each day of operation with odor, fugitive dust or other nuisance violations needs to be confirmed by a government agent.

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

Category	Description
M	Asbestos

This category applies to violations of the asbestos NESHAP, 40 CFR part 61, subpart M. This

outlines the default approach using the penalty matrix. 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.

The following are example violations only. There may be situations where violations listed would be more appropriate in a different category based on extenuating circumstances. There may also be other violations that fit into the categories that are not listed. Determinations should be made on a case-by-case basis using best judgement, or in consultation with DARM.

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.

Matrix Factors

	Extent of Deviation from Requirement			
	Category	**Major**	**Moderate**	**Minor**
Environmental Harm	**Major**	1. Visible emissions of asbestos or asbestos-containing materials. 2. No notification provided, and work practices not followed. 3. Asbestos-containing waste material was "dumped."	1. Asbestos-containing waste material was disposed of at a landfill not permitted to accept asbestos.	1. Asbestos emission control procedures were attempted, but not adequately conducted (for example, failure to keep asbestos-containing materials adequately wet).
	Moderate	1. No survey or through inspection conducted prior	1. Treating Category 1 or Category 2 non-friable materials in a way	1. Bags of asbestos-containing waste material not labeled

		to demolition or asbestos project.	that causes them to become regulated asbestos-containing material (friable).	as asbestos-containing.
	Minor	1. Untrained person conducting asbestos removal. 2. No notification provided, but work practices were followed and visible emissions of asbestos or asbestos-containing materials did not occur.	1. Failure to use asbestos emission control procedures, but no visible emissions of asbestos containing material. 2. Notification was incomplete or inaccurate, and project proceeded.	1. Late notification. 2. Waste shipment vehicle was not properly marked during loading and unloading. 3. Bags of asbestos-containing waste material improperly labeled (labeled as asbestos-containing, but not following the labeling requirements in the asbestos NESHAP).

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.

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.

Category N: Miscellaneous (Other) Violations

Category	Description
N	Miscellaneous (Other) Violations

This category applies to violations not specifically listed elsewhere.

Matrix Factors

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major or synthetic minor sources.	1. Exceedance of applicable condition by greater than 150 percent of allowable. 2. Equipment totally inoperative or procedures not implemented.
Moderate	1. Minor sources.	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. Facilities operating under an air general permit.	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.

Other Categories – N/A

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.

Economic Benefit Guidance for Air Violations

The economic benefit component of penalty assessments focuses on the source's economic gain from noncompliance. Economic benefit penalties help to discourage noncompliance and level the economic playing field, preventing sources from obtaining an unfair financial advantage over their competitors who made timely and necessary investments in environmental compliance. Economic gain from noncompliance may occur from delayed and/or avoided expenditures.

Economic Benefit from Delayed Costs

A delayed cost is an expenditure that, through current noncompliance, can be put off until sometime in the future. By delaying these expenditures, the violator could potentially earn interest on the unspent money or use the money for other revenue-producing activities, thereby gaining an economic benefit.

Examples of *delayed costs* include, but are not limited to:

- Failure to install equipment needed to meet emission control standards;
- Failure to effect process changes needed to reduce pollutants;
- Failure to conduct a compliance test where the test must still be performed; and
- Failure to install required monitoring equipment.

Economic Benefit from Avoided Costs

An avoided cost is an expenditure not made, resulting in noncompliance. Many types of violations enable a violator to avoid permanently certain costs associated with compliance.

Examples *of avoided costs* include, but are not limited to:

- Failure to employ a sufficient number of staff or adequately train staff;
- Disconnecting or failing to properly operate or maintain existing pollution control equipment;
- Failure to establish or follow precautionary methods required by regulations or permits;
- Removal of pollution equipment resulting in operational or maintenance savings;
- Disconnecting or failing to properly operate or maintain required monitoring equipment;
- Failure to conduct a compliance test which is no longer required; and
- Operation and maintenance of equipment that the source failed to install.

The benefit from delayed and avoided costs is calculated together, using EPA's BEN Model (or other acceptable calculation method such as the one outlined in the DEP RCRA Economic Benefit Guidance), to arrive at an amount that reflects the economic gain of noncompliance for the period from the first provable date of the violation until the date of compliance. Some key pieces of information needed to calculate economic benefit include the date the violation

occurred, the date of compliance, the date the penalty will be paid, and the costs of compliance and the year the costs were estimated.

Dates	Description
Cost Estimate Dates	When the reported compliance costs were estimated
Noncompliance Date	When the Respondent should have made the investments to comply
Compliance Date	When the Respondent actually made the investments to comply
Penalty Payment Date	When the Respondent will actually pay the penalty

Types of Compliance Costs	Description	Examples
Capital Investments	The cost of designing, purchasing, and installing the pollution control or monitoring equipment (things that wear out)	• Buildings • Equipment
One-Time Non-Depreciable Expenditures	Expenditures that need to be made only once and are non-depreciable (things that don't wear out)	• Land • Disposal • Staff Costs
Annually Recurring Costs	The average annual incremental cost of operating and/or maintaining the required pollution control measures	• Labor • Materials

Considerations for Pursuing or Adjusting the Economic Benefit Component

Each violation should be evaluated to determine if an economic benefit was gained from a source's noncompliance. When there is evidence that an economic benefit exists, based on delayed or avoided costs, a preliminary estimate should be made to determine if the amount is significant. In general, if the amount is less than $5,000, the enforcement authority may use discretion to forego pursuing the economic benefit component. However, if the gravity component of the penalty is relatively small and not sufficient enough to deter future noncompliance, then it is recommended to include the economic benefit component.

If it is determined that economic benefit may represent a significant amount, the enforcement authority should formally calculate the amount using EPA's BEN Model (or other acceptable calculation method such as that outlined in the DEP RCRA Economic Benefit Guidance) and pursue recovery of this component in the penalty assessment. While it is general policy to not adjust economic benefit, below are circumstances where it may be appropriate for an enforcement authority to use discretion on pursuing or mitigating the economic benefit component.

- There are compelling public concerns mitigating against taking a case to trial;
- It is unlikely, based on the facts of the case, the agency will be able to recover the economic benefit in litigation; and
- The company has successfully documented an inability to pay the total proposed penalty.

Guidance on Economic Benefit Determinations for Common Air Violations

Assessing economic benefit often represents a substantial commitment of resources. It is important to first determine if there is a perceived significant economic gain resulting from the noncompliance. If determined by best professional judgment that the noncompliance was caused beyond the company's control and/or little to no economic benefit was gained, it is reasonable to

not proceed with formal economic benefit calculations. Below are some guidelines for making these judgement calls for common air violations. If it decided not to pursue economic benefit penalties, this rationale must be documented in the final penalty assessment.

- Emission limit exceedances as determined by compliance tests or CEMS
  - Was the exceedance attributed to circumvention, poor maintenance/operation of control equipment, or using off specification materials, etc.?
  - If yes, such negligent activities should be identified and the expenses associated with them investigated to calculate economic benefit.

- Missed pollutant tests
  - Is it a newly permitted facility?
  - Is it the first time the company missed a test?
  - Is the company a small business stationary source as defined is 62-210.200(259), F.A.C.?
  - Is the cost of the missed test less than $5,000?
  - Can the test be conducted within a reasonably timeframe from the date it was missed?
  - If yes to all of the above, an economic benefit assessment may not be warranted. However, the facility should be required to conduct the test as soon as possible.
  - If the criteria above are not met, economic benefit for delayed and/or avoided costs should be assessed for the missed test(s).

- Construction or operation without a permit
  - Is the company a small business stationary source as defined is 62-210.200(259), F.A.C.?
  - Is it the first time the company constructed without a permit?
  - Was the violation recent such that the delayed costs of obtaining the permit or required installations/work practices would be considered insignificant?
  - If yes to all of the above, an economic benefit assessment may not be warranted. However, the facility should be required to obtain the appropriate permit as soon as possible.
  - Where the violation appears to be due to blatant disregard and the permitting action would have required installation of pollution control equipment and/or work practices, then economic benefit for delayed and/or avoided costs should be assessed over the period of noncompliance.

- Failure to implement required work practices
  - If the work practice(s) is significant in nature, or failure to perform the work practice(s) is from negligence and substantially interferes with the ability to determine compliance, then economic benefit for avoided costs should be assessed over the period of noncompliance.

- Failure to install or operate pollution control equipment
  - Economic benefit for delayed and/or avoided costs should always be assessed for violations involving failure to install or operate pollution control equipment.