

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Bureau of Environmental Cleanup and Brownfields**

**DOCUMENT NUMBER:** 263-4180-001

**TITLE:** Penalty Assessment Matrix

**EFFECTIVE DATE:** September 8, 2012

**AUTHORITY:** Act 32, Section 1307

**POLICY:** In assessing a civil penalty under Act 32, Section 1307, the Department of Environmental Protection (Department or DEP) shall consider the willfulness; damage to the air, water, land or other natural resources; cost of restoration and abatement; savings; deterrence of future violations and duration.

**PURPOSE:** The previous penalty matrix used for calculating penalty amounts for violations of the “Storage Tank and Spill Prevention Act” placed the basic dollar amount of the penalty on willfulness. The willfulness value when challenged was sometimes difficult to defend and the calculated penalty dollar amount could not always be supported. When savings were used to calculate penalties, the dollar amounts were also difficult to defend. To strengthen the penalty calculation process and make the process easier to use, the penalty matrix needed to be modified to place the basic penalty dollar amount on violation seriousness and better guidelines were needed for staff when using the penalty matrix

**APPLICABILITY:** The previous penalty matrix included the above considerations but this revision was necessary to place more emphasis on violation seriousness and to provide staff with a more easily usable penalty matrix that is legally defensible

**DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 8 pages

**PENALTY ASSESSMENT MATRIX  
DIVISION OF STORAGE TANKS**

The Penalty Assessment Matrix is available in two versions, spreadsheet file on diskette and the Penalty Assessment Matrix Worksheet. The diskette is a self-prompting “fill-in-the-blank” version of the matrix which will automatically calculate the penalty after the data is input. The Penalty Assessment Matrix Worksheet (Attachment A) is the manual tool for assessing a penalty and accommodates the calculations for up to three violations. An optional tool that may be helpful in documenting case and penalty assessment facts is the “Penalty Assessment Matrix Action Worksheet.” This worksheet and its instructions are found in Attachment B.

When using the Penalty Assessment Matrix, either computerized or manual version, be sure to provide accurate and complete information. The following instructions and guidelines are designed to assist you in completing the Penalty Assessment Matrix:

Header Information

Case No: Enter the case number, made up of the following elements:

- a. one digit region code (1, 2, 3, etc.)
- b. calendar year (93, 94, etc.)
- c. sequential number (starting with 001 at the beginning of each calendar year)

Example: 194001 = Region 1, Year 94, & sequential number 001

ID No: Enter appropriate ID Number assigned to the violator which can be the STDS assigned Facility ID Number, the Installer or Inspector Number, Client Number, Company Number, etc. If none exists, use the assigned case Number.

Date: Date the penalty is calculated.

Violator: Enter the violator’s name; i.e., facility, corporation or individual’s name.

Violation Description: Enter a description of the violation(s) for which the penalty is being assessed. Up to three violations can be accommodated on the form; add additional pages as needed.

Penalty Calculation:

$$\begin{aligned} \text{Penalty \$} &= (\text{Violation Seriousness} \times \text{Duration} \times \text{Willfulness}) + \text{Environmental} \\ &\quad \text{Damage} + \text{Savings/Profit} + \text{Cost of Restoration} \\ &= (\text{VS} \times \text{D} \times \text{W}) + \text{ED} + \text{S/P} + \text{CR} \end{aligned}$$

When calculating penalties, the ED, S/P, and CR factors are optional. In most cases, the penalty matrix becomes:

$$\text{Penalty \$} = (\text{VS} \times \text{D} \times \text{W})$$

\*\*\*\*\*Explanation of the Penalty Matrix values \*\*\*\*\*

**VIOLATION SERIOUSNESS (VS):** Violation seriousness addresses the relative priority of violations in terms of the potential or actual impact (risk) to the environment and/or human health. The dollar ranges provide flexibility for DEP to establish appropriate penalties on a case-by-case basis while providing some degree of statewide uniformity.

Low Risk Violation	=	\$100-\$1,500
Medium Risk Violation	=	\$1,000-\$3,000
High Risk Violation	=	\$2,000-\$5,000

Low Risk Violations: Violations not associated with a release or potential release to the environment.

Low Risk Violations include but are not limited to: failure to register tanks, failure to submit closure reports, and failure to maintain records/documents, etc.

Medium Risk Violations: Violations associated with any release or potential release to the environment.

Medium Risk Violations include but are not limited to: failure to install or maintain equipment (i.e., leak detection, spill and overflow prevention, etc.), failure to complete tank upgrades or other activities that could be characterized as “preventive maintenance,” and violations that include acts and omissions that increase the risk of a release or increase the degree and extent of harm that could result from a release.

High Risk Violations: Violations associated with a significant release to the environment.

Items to consider in determining whether a release is significant include but are not limited to: the aerial extent of the contamination, whether the contamination has moved offsite, impact on water resources, public exposure, explosion potential, quantity, mobility, characteristics of the substance, etc.

Examples of High Risk violations include but are not limited to: failure to initiate Interim Remedial Action when a substantive threat to public safety, health and environment exists. Violations could also include: failure to initiate additional corrective action activities (i.e., site characterization, replacing potable water, remedial action, etc.) or continuing to maintain remedial action activities when there continues to be a substantive safety, health or environmental threat.

**DURATION (D):** Duration addresses the longevity of a specific violation in terms of time or the number of occurrences. A duration factor may be in number of days, months, weeks, years or occurrences. Regardless of the unit used, the duration factor must be linked in a relevant way to the case.

**WILLFULNESS (W):** Willfulness addresses whether the person recognized that their conduct or action violates the law. It goes to the extent of the person’s knowledge of the law and knowledge of the consequences of violating the law.

Basic Liability	=	1
Negligent/Reckless	=	2
Deliberate	=	3

Basic Liability: No level of willfulness needs to be established. Regardless of whether the person knew the legal requirements, statutory liability has been incurred for an act or omission which resulted in a violation of the Act, the regulations, an order issued by the Department, or any condition or term of a permit issued pursuant to the Act.

Negligent/Reckless: The person should have known the legal requirements and acted in such manner that the person’s actions or omissions violated these requirements.

Deliberate: The person has actual knowledge of the legal requirements, duties and obligations and makes a conscious decision to act with knowledge that the act is a violation. The person acts with “conscious disregard for the law or consequence.”

The following are optional factors that even though not routinely used can be included in the penalty. As with all of the Penalty Assessment Matrix values, these optional ones when used need to be documented and retained in the event of an appeal or litigation.

**ENVIRONMENTAL DAMAGE (ED):** The dollar amount of environmental damage as a result of the contamination. In order to use this factor, evidence that demonstrates the environmental harm must be presented by the Department.

\*\*\*\*This will be the hardest value to assign as natural resources do not come with a precise dollar value. This will require case-by-case decision making. Field offices are urged to contact their respective regional attorneys when determining whether to use this factor and, if so, to develop a dollar value using established procedures. Also, in cases where there is substantial damage to natural resources, a separate natural resources claim may be assessed. This should also involve consultation with the regional attorneys.

**SAVINGS/PROFIT (S/P):** Savings/profit addresses the actual dollar savings or profit (gross margin) realized by the violator by not complying with the law.

For example, when a distributor makes a delivery to an unregistered tank, this value would equal the distributor’s profit. For the tank owner in this case, the savings might be the unpaid registration fees.

**COST OF RESTORATION (CR):** This factor reflects such restoration costs incurred by the Department in taking corrective action; i.e., contractual costs for cleanup.

- Note:
- 1) Each regional office may have civil penalty approval limits that require the approval of a manager or director prior to issuance of a civil penalty over a specified dollar amount.
  - 2) Notify central office prior to issuing high profile civil penalties so that staff can effectively answer questions from legislators and administration.

**ATTACHMENT A**

**Department of Environmental Protection  
Bureau of Environmental Cleanup and Brownfields  
Storage Tank Program**

**PENALTY ASSESSMENT MATRIX WORKSHEET**

Case No.: \_\_\_\_\_

Violator ID #: \_\_\_\_\_ Date: \_\_\_\_\_

Violator: \_\_\_\_\_

Violation Description: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<b>Penalty Calculation:</b> <b>\$ = (VSxDxW) + ED + S/P + CR</b>	<b>Violation No.</b> _____	<b>Violation No.</b> _____	<b>Violation No.</b> _____
Violation Seriousness VS Low Risk (100-1,500) Medium Risk (1,000-3,000) High Risk (2,000-5,000)	----- -----	----- -----	----- -----
Duration (minimum 1) (D)			
Willfulness (W) Basic Liability (1) Negligent/Reckless (2) Deliberate (3)			
Environmental Damage (ED)			
Savings/Profit (S/P)			
Cost of Restoration (CR)			
<b>Penalty Subtotal</b>	\$	\$	\$
<b>Penalty Total</b>	\$		

## ATTACHMENT B

The “Penalty Assessment Matrix Action Worksheet” is a suggested form to be used to document specific information for defending penalty factors used and the calculated penalty. This information may be extremely useful in those cases when penalty actions are appealed. Most of the form is self-explanatory, however, the following minimal instructions are necessary:

- Violator: Enter the violator’s name, i.e., facility, corporation or individual’s name.
- ID No: Enter appropriate ID number assigned to the violator. If none exists, use the case number assigned to the violator.
- Case No: Enter the case number, made up of the following elements:
- a. one digit region code (1, 2, 3, etc.)
  - b. calendar year (93, 94, etc.)
  - c. sequential number (starting with 001 at the beginning of each calendar year)
- Example: 194001 = Region 1, Year 94, & sequential number 001
- Date: Date the penalty is calculated.
- 1 Violation Activity: Enter a description of the violation(s) for which the penalty is being assessed.
- 2-7 Provide the documentation to support the position taken for each of the factors used in the penalty calculation.

**Department of Environmental Protection  
Bureau of Environmental Cleanup and Brownfields  
Storage Tank Program**

**PENALTY ASSESSMENT MATRIX ACTION WORKSHEET**

Identification:

Penalty Action:

Violator: _____	Calculated Amount: _____	Date: _____
_____	Proposed Assess. Notice Date: _____	_____
_____	Assess. Conference Date: _____	_____
ID No.: _____	Recalculated Amt.: \$ _____	_____
Municipality: _____	Settlement: \$ _____	_____
County: _____	Consent Assess. Amt.: \$ _____	Date: _____
_____	Assess. Notice Amt.: \$ _____	Date: _____
Case No.: _____	Collection Amount: \$ _____	Date: _____
_____	Appeal: _____	_____

Violation Description:

1. Violation Activity \_\_\_\_\_  
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2. Violation Seriousness \_\_\_\_\_  
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3. Duration \_\_\_\_\_  
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4. Willfulness \_\_\_\_\_  
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5. Environmental Damage \_\_\_\_\_  
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6. Savings/Profit \_\_\_\_\_  
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7. Cost of Restoration \_\_\_\_\_  
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