

applies to all such actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the amount of the civil penalty.

This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil settlement penalty for violations by small businesses. This Policy is to be used for settlement purposes and is not intended for use in pleading, or at hearing or trial. To the extent that this Policy may differ from the terms of applicable enforcement response policies under media-specific programs, this document supersedes those policies. This Policy supplements, but does not supplant the August 12, 1994 *Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs*.

E. Criteria for Civil Penalty Mitigation

EPA will eliminate or mitigate its settlement penalty demands against small businesses based on the following criteria:

(1) For purposes of sections F(1) and F(2), *the small business has made a good faith effort to comply with applicable environmental requirements as demonstrated by receiving compliance assistance* from a non-confidential government or government supported program that offers services to small businesses (such as a SBAP or state university), and the violations are detected during the compliance assistance.²

Good faith does not exist if an agency specifically offered a compliance assistance program concerning the relevant regulated activities to the business and it failed to participate in such program.

(2) *This is the small business's first violation of this requirement.* This Policy applies to businesses that have not previously been subject to a warning letter, notice of violation, field citation,

or other enforcement action by a government agency for a violation of that requirement within the past five years. If a business has been subject to multiple enforcement actions for violations of environmental requirements in the past five years, this Policy does not apply even if this is the first violation of this particular requirement.

(3) The policy does not apply if:

(a) The violation has caused actual serious harm to public health, safety, or the environment; or

(b) The violation may present an imminent and substantial endangerment to public health or the environment; or

(c) The violation presents a significant health, safety or environmental threat (e.g., violations involving hazardous or toxic substances may present such threats).

(4) *The violation does not involve criminal conduct.*

(5) *The business corrects the violation within the corrections period set forth below.*

Small businesses are expected to remedy the violations within the shortest practicable period of time. Small businesses may take up to 90 days following detection of the violation to correct the violation, or to take substantial steps to correct the violations (e.g., apply for necessary permits, secure financing, order equipment). For violations that cannot be corrected within 90 days, the correction period may be extended for an additional period not to exceed 90 days, so long as the business enters into a written agreement that sets forth the additional correction period and any additional steps to be undertaken by the business to achieve compliance. The schedule may extend for an additional period of 180 days, i.e., up to a period of one year from the date the violation is detected, only if necessary where the small business corrects the violation by implementing pollution prevention measures. Correcting the violation includes remediating any environmental harm associated with the violation.³ Any corrections period longer than 180 days should be incorporated into an enforceable order. The requirements of the correction period should be made clear to the small business prior to offering compliance assistance.

F. Penalty Mitigation Guidelines

EPA will exercise its enforcement discretion to eliminate or mitigate civil settlement penalties as follows.

1. EPA will eliminate the civil settlement penalty in any enforcement action if a small business satisfies all of the criteria in section E.

2. If the small business meets all of the criteria, except it needs a longer corrections period than provided by criterion 5 (i.e., more than 180 days for non-pollution prevention remedies, or 360 days for pollution prevention remedies), EPA will waive up to 100% of the gravity component of the penalty, but may seek the full amount of any economic benefit associated with the violations.⁴

3. If a small business has not met all the criteria above, but has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable policies, to refrain from filing an enforcement action seeking civil penalties or to mitigate its demand for penalties to the maximum extent appropriate. These policies generally recognize good faith efforts to comply and allow for mitigation of the penalty where there is a documented inability to pay all or a portion of the penalty, thereby placing emphasis on enabling the small business to finance compliance.

G. Other Factors

To ensure that this Policy enhances and does not compromise public health and the environment, the following conditions apply:

1. Violations detected through federal, state, or local enforcement inspections or reported to an agency as required by applicable regulations or permits remain fully enforceable.

2. A business is subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that had been detected through compliance assistance and were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

3. A business's good faith efforts to correct violations detected during compliance assistance should be considered as a mitigating factor in determining an appropriate enforcement response or penalty in a subsequent enforcement action. However, a State's or EPA's actions in providing

SDWA § 1431) because these programs are primarily remedial in nature and generally do not seek penalties. This Policy does not apply to the Public Water System Supervision Program because EPA is developing another policy which addresses compliance by small communities.

² If the compliance or technical assistance program keeps the information obtained confidential (i.e., does not share or disclose facility specific information on compliance status with a regulatory agency), this Policy does not apply. However, if a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential program, the business need only disclose the violations to the appropriate regulatory agency pursuant to criterion 1 and comply with the other provisions of this Policy.

³ If significant efforts will be required to remediate the harm, criterion 3 is likely not to have been satisfied.

⁴ In determining how much of the gravity component of the penalty is appropriate, EPA should consider the nature of the violations, the duration of the violations, the environmental or public health impacts of the violations, good faith efforts by the small business to promptly remedy the violation, and the facility's overall record of compliance with environmental requirements.