

{Copy. Signed July 23, 1995, Janet Bearden for Kathie Stein}
MEMORANDUM

SUBJECT: Clarification of the Use of Appendix I of the Clean
Air Act Stationary Source Civil Penalty Policy

FROM: Kathie A. Stein (2242-A)
Air Enforcement Division
Office of Enforcement and Compliance Assurance

TO: Regional Division Directors

Region IV recently raised questions concerning the Clean Air Act Stationary Source Civil Penalty Policy (general policy). Specifically, the Region asked whether the Gravity Component in Appendix I ("The Permit Penalty Policy") should be used in addition to the general policy's gravity component when calculating the penalty amount, and specifically, whether "size of the violator" is included in addition to the penalty amount as calculated using the appendix. The policy may be confusing because of a clerical error on page 3 of Appendix I, which reads as follows:

The economic benefit component and the gravity component are added together to determine the preliminary deterrence amount. This initial amount should then be adjusted, using the general stationary source civil penalty policy factors which take into consideration individual equitable considerations (Part III of the general policy).

This paragraph applied to Part III of September 12, 1984 general Clean Air Act policy, Adjusting the Gravity Component, and to the later policy revision in March 1987. The error occurred when the table of contents was changed during the 1991 revision of the general policy. Part III became Parts II.B.4. and IV, but the reference was inadvertently left unchanged in the above passage in Appendix I. The paragraph should read as follows:

The economic benefit component and the gravity component are added together to determine the preliminary deterrence amount. This initial amount should then be adjusted, using the general stationary source civil penalty policy Part II.B.4., Adjusting the Gravity Component, Part III, Litigation Risk, Part IV, Ability to Pay, and other relevant adjustments.

Therefore, Appendix I is to be used instead of Parts II.B.1. through Part II.B.3., which include the calculations for actual or possible harm, importance to the regulatory scheme, and size of violator. However, the adjustments to the gravity component contained in Part II.B.4. (which was Part III of the 1984 and 1987 policies), still apply when Appendix I is used. These adjustments include degree of willfulness or negligence, degree of cooperation, history of noncompliance, and environmental damage.

As stated on page 2 of Appendix I, the gravity component is calculated based on the matrix in the appendix, which assesses a penalty based on an estimate of the total cost of air pollution control at the source, times the number of months of violation. If there are no other violations for which the gravity component of the general policy applies, then you do not add the size of the violator component from Part II.B.3. of the general policy. The reason is that Appendix I of the policy provides larger penalties for larger violators, under the assumption that they will have larger (and more expensive) control equipment involved in the violation. The Appendix I matrix, in addition to the economic benefit component, is intended to provide a sufficient penalty to deter violations. However, if there are other violations for which the general policy applies (e.g., emissions violations), then "size of violator" is factored in as a one-time addition to the proposed penalty.

If you have any questions concerning this or any other penalty policy matter, you may direct them to Mr. Cary Secrest of my staff at (202) 564-8661.