

Commission Response Document—Policy and Guidance for the Settlement of Civil Penalties/Enforcement Actions and SRBC Civil Penalty Matrix

During the official comment period, the Commission received one comment from EFMR Monitoring, Inc. The Commission provides the following responses to the comments received.

Comment: Define “cooperativeness”.

Response: Cooperativeness is defined as a penalty assessment factor in the “Description of Minor, Moderate, and Severe Violations as Classified in the SRBC Penalty Matrix” section of the SRBC Penalty Matrix. The definition includes an explanation of the various degrees of cooperativeness. Because the Settlement Policy and the Penalty Matrix were designed as companion policies, any instance of the word “cooperativeness” occurring in either policy may be read with the specific definition provided in the Penalty Matrix.

Comment: Commenter provided a series of questions and comments related to the practice of reviewing the previous five years of compliance history of an alleged violator for a given enforcement action; specifically, the commenter expressed concern that reviewing the previous five years of compliance history would be insufficient for many enforcement actions.

Response: The Settlement Policy explains the Commission’s general practice of basing a penalty amount on the number of violation within the previous five years as well as the total consumptive use fees avoided by non-compliance for the five years preceding the enforcement action. As a general principle, more recent violations are more relevant factors when considering the size of a penalty assessment or settlement. However, the Policy also states that the “Commission reserves the right to review the potential economic benefit that may have accrued and compliance history that may have accumulated previous to the 5-year period preceding the enforcement action in determining the appropriate penalty amount.” Accordingly, this Policy does not limit the Commission’s ability to look back beyond five years.

Comment: If the economic benefits exceed the penalty, how is the change in corporate behavior measured?

Response: Whether a violator gains an economic benefit is an important factor to consider and assess when calculating a civil penalty or settlement, because in some instances the economic benefit may also be relevant to the motivation behind the violation. The Compact limits the amount of a civil penalty to \$1,000 per violation, so it is possible that the economic benefit of a violation may exceed the maximum allowable penalty. In those instances, the Commission would have to rely on other enforcement tools at its disposal other than civil penalties and assessments, which could include the issuance of compliance orders or suspending, modifying or revoking approval of a project sponsor’s docket in order to change non-compliant behavior. 18 CFR § 808.14.

Comment: I request that you include Amish and Mennonite communities under the definition of environmental justice.

Response: The Commission defers to its member jurisdictions' designations of Environmental Justice areas and communities. SRBC Resolution 2021-05. The Commission monitors the member jurisdictions' designations for any updates.

Comment: Commenter provided additional comments relating to the regulation of the nuclear power industry.

Response: The Commission is authorized to regulate water withdrawals and the consumptive use of water involved in the generation of nuclear power; the Commission has no regulatory authority over any other aspect of nuclear power generation.

Comment: Commenter provided questions and comments that expressed a general theme of concern that the updated policies displayed a heightened focus on cooperation and education and an insufficient focus on more stringent enforcement measures, including the imposition of penalties.

Response: As stated in the introductory materials for the "Policy and Guidance Statement for the Settlement of Civil Penalties/Enforcement Actions", the policies are intended to explain to the public the practices and procedures employed by the Commission in negotiating settlements and assessing penalties in an effort to enhance the transparency of the regulatory process and to foster a more cooperative and educational compliance experience. This posture represents both the evolution of the Commission's approach to enforcement actions over the past twenty years and a growing state and national trend toward more open, cooperative and educational compliance engagement. The goal of this movement is to preempt future noncompliance through education and thus avoid the types of violations that require significant penalties. The Commission has seen this proactive, educational compliance approach be successful as the number and severity of the violations of its regulations and docket approvals has decreased. The Commission stands vigilant and ready to manage and protect the water resources of the Susquehanna River Basin Commission.

Dated: August 24, 2022