



Policy No. 2022-XX Month XX, 2022

SRBC CIVIL PENALTY MATRIX

Commission regulation 18 CFR § 808.16 controls the assessment and calculation of civil penalties. The primary goal of civil penalties is to provide incentive for the project sponsor to not have repeat violations. Because civil penalties are designed to prevent repeat violations rather than correct an existing violation, they should be assessed after issuing a notice of violation (NOV), compliance order, or consent order and agreement (COA) and should be based on the violator's willingness to comply with the corrective actions set forth in the NOV, compliance order, or COA. The process is designed to protect the water resources of the basin, make evident the will of the Commission to enforce its regulations, evince cooperation and, wherever possible, provide educational value to violators. Penalty assessments should be conducted according to the guiding principle of proportionality. The assessment of any penalty should include, but not be limited to, consideration of the following factors derived from § 808.16(a) (see also Commission Policy No. 2022-XX, regarding the settlement of civil penalties):

1. The ***willfulness of the violation***, including the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;
2. The ***cooperativeness*** of the violator;
3. ***Consideration of any previous violations***, if any exist;
4. The extent to which the current violation is part of a ***recurrent pattern*** of the same or similar type of violation committed by the violator, including the extent to which the violator reaped any ***economic benefit*** from the violation; and
5. Any ***actual harm to the environment***, including injury to or impairment of the water resources of the basin and any ***negative impacts to human health and the environment***, with a heightened focus on ***environmental justice*** areas.

This document is intended to provide transparency and explanation with regard to the Commission’s assessment of civil penalties. To further ensure that the factors mentioned above are equitably applied to every civil penalty calculation, guidelines in the form of a Civil Penalty Matrix (Matrix) have been included. The Matrix should address most situations in which a civil penalty would be calculated. However, in those situations where it may not, the factors listed above are intended to assist in the calculation of a civil penalty consistent with the Matrix’s output, relevant Commission regulations, and the principles provided in Commission Policy No 2022-XX. The Matrix may be used for all negotiated or unilateral assessments:

PENALTIES PER DAY OF VIOLATION*

***	Minor: \$50-\$250	Moderate: \$251-\$750	Severe: \$751-\$1,000
Previous Violations	No previous violations	One previous violation	Multiple previous violations
Intent	Non-willful, non-negligent	Non-willful, negligent	Willful
Adverse Impacts to Human Health and the Environment**	No adverse environmental or health impacts	Limited adverse environmental or health impacts	Major adverse environmental or health impacts
Cooperation	Excellent cooperation/quick response	General cooperation/some delay in response	Little or no cooperation/slow response
Economic Benefit	No economic benefit	Minor economic benefit	Substantial economic benefit
Enforcement Cost	Standard investment of staff time and effort	Increased investment of staff time and effort	Substantial investment of staff time and effort
<p>* §15.17 of the Compact specifies that “... in the event of a continuing offense, each day of such violation, attempt, or conspiracy <u>shall</u> constitute a separate offense.” In most cases, violations discovered by staff have continued for a substantial number of days, thus forcing the Commission to impose relatively high penalties in most cases, even where the violation resulted in virtually no other harm. Thus, in practice, the Commission would generally look to offer a violator a settlement by agreement in lieu of penalty as authorized under 18 CFR § 808.18. This would avoid the imposition of an unrealistically high penalty. Nevertheless, the above matrix can serve as a guide when we are faced with a case where the imposition of a penalty is appropriate.</p> <p>** Environmental Justice Impacts assessed as an element of Adverse Impacts to Human Health and the Environment</p> <p>*** Tied directly to the penalty amounts specified in the Compact; i.e. \$50-\$1,000 per violation.</p>			

**DESCRIPTIONS OF MINOR, MODERATE, AND SEVERE VIOLATIONS
AS CLASSIFIED IN THE SRBC PENALTY MATRIX**

Previous Violations

Minor – No previous violations

Moderate – One previous violation; potentially two previous violations if both resulted from the same incident and were subsequently remedied

Severe – Multiple previous violations

Intent

Minor – Neither intent nor negligence displayed in causing adverse impacts; unintentional and not reckless actions

Moderate – No intent displayed in causing adverse impacts, but negligence displayed in causing adverse impacts; unintentional but potentially reckless actions

Severe – Intent displayed in causing adverse impacts or awareness that adverse impacts were being caused and negligence or reckless disregard displayed in causing adverse impacts; intentional and reckless actions

Adverse Environmental Impacts

Minor – (Examples) Minimal impact on fauna or flora with potentially observable but negligible effect on habitat; no impairment of a neighboring source of water; no threat or harm to public health, safety or welfare

Moderate – (Examples) Some impact on fauna or flora with an effect on habitat; small and temporary impairment of a neighboring source of water; small and temporary threat or harm to public health, safety or welfare

Severe – (Examples) Major impact on flora and fauna such as fish kill or destruction of habitat; large or permanent impairment of a neighboring source of water; large or permanent threat or harm to public health, safety or welfare

Cooperation

Minor – Highly cooperative; quick to respond and comply; this level of cooperation probably involves self-reporting

Moderate – Generally cooperative; minor delays in response and compliance; this level of cooperation probably involves self-reporting, Commission discovery or third-party reporting of an alleged violation unknown to the alleged violator

Severe – Generally uncooperative; slow to respond and comply, or simply unresponsive and noncompliant; this level of uncooperativeness probably involves a willful or knowing alleged violation potentially committed to realize an economic benefit

Economic Benefit to Violator

Minor – No or minimal economic benefit; this scenario likely involves an unintentional alleged violation that produces no economic benefit

Moderate – Limited economic benefit; this scenario likely involves an unintentional, but potentially negligent, alleged violation that produces limited economic benefit

Severe – Substantial economic benefit; this scenario likely involves an intentional or knowing alleged violation committed to realize a substantial economic benefit

Enforcement Cost

Minor – Standard enforcement costs; no or minimal additional time or effort expended in standard compliance action

Moderate – Increased enforcement costs; limited increase in time or effort expended in expanded compliance action, potentially requiring activity beyond the scope of relevant budget allotments

Severe – Substantial enforcement costs; significant increase in time or effort expended in major compliance action, requiring activity beyond the scope of relevant budget allotments