

# Air Regulatory Enforcement Practice



**NDEP**

Nevada Division of Environmental Protection  
Bureau of Air Quality Planning

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## **1. Introduction**

Nevada Revised Statutes (NRS) 445B.640, authorizes the Nevada Division of Environmental Protection (Division) and the State Environmental Commission (Commission) to assess an administrative fine (penalty) not exceeding \$10,000 per day per violation for violations of Nevada Air Pollution Control law pursuant to NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive or any regulation in force pursuant thereto except NRS 445B.570 as it pertains to confidential information. This Air Regulatory Enforcement Practice (Practice) provides the Division's day-to-day business processes in establishing a penalty assessment framework that provides consistency and efficiency in enforcement actions in which the Division does not seek the statutory maximum penalty. This Practice takes into consideration the United States Environmental Protection Agency (EPA) Clean Air Act Stationary Source Civil Penalty Policy and other guidance in the EPA Air Enforcement Policy, Guidance, and Publications.

This Practice is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any litigation with the State of Nevada. The Division may revise, amend, supplement, or revoke all or part of the Practice at any time.

## **2. Effective Date**

The Practice is effective thirty (30) days following signature by the Bureau of Air Quality Planning Chief (Section 11). This Practice supersedes all previous enforcement guidance and applies to all alleged violations for which penalties have not been settled or agreed to by the Division and the alleged violator as of the effective date of this Practice.

## **3. Purpose, Objectives, and Usage**

Pursuant to NRS 445B.100, it is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State.

More specifically to this practice, a stationary source cannot operate in manner that will not demonstrate attainment of the Nevada or National Ambient Air Quality Standards (NAQQS); nor discharge into the atmosphere any hazardous air pollutant that threatens the health and safety of the general public, as determined by the Director.

### 3.1 NAAQS

The Clean Air Act, which was last amended in 1990, requires EPA to set National Ambient Air Quality Standards (40 CFR part 50) for six principal pollutants ("criteria" air pollutants) which can be harmful to public health and the environment. The Clean Air Act identifies two types of national ambient air quality standards. Primary standards provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings.

| NAAQS           | Harmful Effects                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| Carbon Monoxide | <p>Breathing air with a high concentration of CO reduces the amount of oxygen that can be transported in the blood stream to critical organs like the heart and brain.</p> <p>At very high levels, which are possible indoors or in other enclosed environments, CO can cause dizziness, confusion, unconsciousness and death.</p> <p>Very high levels of CO are not likely to occur outdoors. However, when CO levels are elevated outdoors, they can be of particular concern for people with some types of heart disease. These people already have a reduced ability for getting oxygenated blood to their hearts in situations where the heart needs more oxygen than usual. They are especially vulnerable to the effects of CO when exercising or under increased stress. In these situations, short-term exposure to elevated CO may result in reduced oxygen to the heart accompanied by chest pain also known as angina.</p> |
| Lead            | <p>Once taken into the body, lead distributes throughout the body in the blood and is accumulated in the bones. Depending on the level of exposure, lead can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. Lead exposure also affects the oxygen carrying capacity of the blood. The lead effects most likely to be encountered in current populations are neurological effects in children. Infants and young children are especially sensitive to lead exposures, which may contribute to behavioral problems, learning deficits and lowered IQ.</p>                                                                                                                                                                                                                                                                                    |

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|                  | <p>Lead is persistent in the environment and can be added to soil and sediments through deposition from sources of lead air pollution. Other sources of lead to ecosystems include direct discharge of waste streams to water bodies and mining. Elevated lead in the environment can result in decreased growth and reproduction in plants and animals, and neurological effects in vertebrates.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Nitrogen Dioxide | <p>Breathing air with a high concentration of NO<sub>2</sub> can irritate airways in the human respiratory system. Such exposures over short periods can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty breathing), hospital admissions and visits to emergency rooms. Longer exposures to elevated concentrations of NO<sub>2</sub> may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of NO<sub>2</sub>.</p> <p>NO<sub>2</sub> along with other NO<sub>x</sub> reacts with other chemicals in the air to form both particulate matter and ozone. Both of these are also harmful when inhaled due to effects on the respiratory system.</p>                                                                                                                                                                                                                                                                                         |
| Ozone            | <p>Ozone in the air we breathe can harm our health, especially on hot sunny days when ozone can reach unhealthy levels. People at greatest risk of harm from breathing air containing ozone include people with asthma. Depending on the level of exposure, ozone can: Cause coughing and sore or scratchy throat; Make it more difficult to breathe deeply and vigorously and cause pain when taking a deep breath; Inflammation and damage the airways; Make the lungs more susceptible to infection; Aggravate lung diseases such as asthma, emphysema, and chronic bronchitis; and increase the frequency of asthma attacks.</p> <p>Elevated exposures to ozone can affect sensitive vegetation and ecosystems, including forests, parks, wildlife refuges and wilderness areas. In particular, ozone can harm sensitive vegetation during the growing season. When sufficient ozone enters the leaves of a sensitive plant, it can: Reduce photosynthesis, which is the process that plants use to convert sunlight to energy to live and grow; Slow the plant's growth; and increase sensitive plants' risk of: disease, damage from insects, effects of other pollutants, and harm</p> |

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|                    | <p>from severe weather. Also, some plants can show visible marks on their leaves when ozone is present under certain conditions.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Particle Pollution | <p>Particulate matter contains microscopic solids or liquid droplets that are so small that they can be inhaled and cause serious health problems. Some particles less than 10 micrometers in diameter can get deep into your lungs and some may even get into your bloodstream. Of these, particles less than 2.5 micrometers in diameter, also known as fine particles or PM<sub>2.5</sub>, pose the greatest risk to health. Fine particles are also the main cause of reduced visibility (haze) in parts of the United States, including many of our treasured national parks and wilderness areas.</p> <p>The size of particles is directly linked to their potential for causing health problems. Small particles less than 10 micrometers in diameter pose the greatest problems, because they can get deep into your lungs, and some may even get into your bloodstream. Exposure to such particles can affect both your lungs and your heart. Numerous scientific studies have linked particle pollution exposure to a variety of problems, including: premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.</p> <p>Particles can be carried over long distances by wind and then settle on ground or water. Depending on their chemical composition, the effects of this settling may include: making lakes and streams acidic; changing the nutrient balance in coastal waters and large river basins; depleting the nutrients in soil; damaging sensitive forests and farm crops; affecting the diversity of ecosystems; and contributing to acid rain effects.</p> |
| Sulfur Dioxide     | <p>Short-term exposures to SO<sub>2</sub> can harm the human respiratory system and make breathing difficult. People with asthma, particularly children, are sensitive to these effects of SO<sub>2</sub>. SO<sub>2</sub> emissions that lead to high concentrations of SO<sub>2</sub> in the air generally also lead to the formation of other sulfur oxides (SO<sub>x</sub>). SO<sub>x</sub> can react with other compounds in the atmosphere to form small particles. These particles contribute to particulate matter (PM) pollution. Small</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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|                  | <p>particles may penetrate deeply into the lungs and in sufficient quantity can contribute to health problems.</p> <p>At high concentrations, gaseous SO<sub>x</sub> can harm trees and plants by damaging foliage and decreasing growth.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Hydrogen Sulfide | <p>Breathing hydrogen sulfide even at low concentrations can cause eye, nose, and throat irritation, headaches, nausea, dizziness, and fatigue. At slightly higher levels, exposure may lead to coughing, respiratory tract irritation, and loss of smell due to olfactory fatigue. Prolonged exposure to moderate concentrations can result in difficulty breathing, drowsiness, and altered mental status.</p> <p>Repeated or prolonged exposure to lower levels of hydrogen sulfide may lead to persistent headaches, poor memory, irritability, fatigue, and sleep disturbances. Some individuals, particularly those with asthma, young children, older adults, or chemical sensitivities, may experience more severe respiratory or neurological effects even at lower concentrations.</p> |

### 3.2 HAPs

Hazardous air pollutants (HAPs), also known as air toxics, are chemicals that are known to cause cancer, respiratory issues, and other serious health problems.

### 3.3 Purpose

The primary purpose of this Practice is to deter future noncompliance and to mitigate economic advantages of noncompliance to ensure a level playing field for economic competitors.

### 3.4 Objectives

The specific objectives of the Practice are to:

- Ensure the fair and consistent determination of penalties;
- Impose penalties proportional to the gravity of the violation;
- Provide a defensible basis for penalties in enforcement actions; and
- Mitigate the economic benefit of noncompliance.

### 3.5 Usage

The Division will use this Practice to determine the appropriate penalty, justified by the statement of facts, in enforcement actions unless the Division seeks the statutory maximum

civil penalty. The Division will seek a penalty that includes a gravity component commensurate with the seriousness of the violation plus the economic benefit of noncompliance; however, at this time, the Division has not incorporated the economic benefit portion of the penalty. Economic benefit may include avoided costs, delayed costs, or receiving profit from the violating act. A penalty may be adjusted up or down as new facts come to light, or as negotiations for settlement indicate such a need. Penalties may not exceed the statutory maximum of \$10,000 per day per violation, pursuant to NRS 445B.640.1.

#### **4. Definitions & Acronyms**

1. Aggravating Factor – Any factor that increases the seriousness of a violation and justifies a higher penalty amount. It is part of the gravity component in the calculation of a penalty.
2. Base Multiplier – Used to adjust the base penalty based on factors associated with the specific violation considered. Base multipliers consider factors such as number of occurrences, number of pollutants and emission systems involved, frequency (per day, per week, etc.), and exceedance over limits (e.g., fraction or percentage). Violations may include more than one type of base multiplier.
3. Base Penalty – The base penalty amount determined for a specific type of violation before any additional considerations or adjustments such as base multiplier, aggravating or mitigation factor, and compliance history.
4. Best available control technology (BACT) – For a stationary source that is subject to the provisions of 40 C.F.R. Part 60 52.21, “best available control technology” has the meaning ascribed to it in 40 C.F.R. Part 60 52.21. (NAC 445B.028)
5. Best available retrofit technology (BART). (NAC 445BB.22096)
6. Class I Source (NAC 445B. 036) – Class I source means any stationary source:
  - Which is subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive;
  - For which the owner or operator has proposed the construction of a major modification; or
  - Which is a major stationary source.
7. Class II General Source – Class II general source means a stationary source for which an operating permit has been issued by the Director to cover certain operations or activities that are substantially similar in nature and are performed by numerous similar stationary sources.
8. Class II Source (NAC 445B.037) – Class II source means any stationary source which:

- Is not subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive, but which is otherwise subject to the requirements of NAC 445B.001 to 445B.390, inclusive;
  - Is not a Class I source; and
  - Has a potential to emit equal to or greater than the following levels for any listed pollutant:
    - PM<sub>2.5</sub> – 5 tons per year
    - PM<sub>10</sub> – 5 tons per year
    - Carbon Monoxide – 50 tons per year
    - VOC – 20 tons per year
    - NO<sub>x</sub> – 5 tons per year
    - SO<sub>2</sub> – 5 tons per year
    - Lead – 0.3 tons per year
    - H<sub>2</sub>S – 1 ton per year
9. Compliance History – Any previous finalized violations for a facility in the previous 60 months. Compliance history is part of the gravity component and may be used as a multiplier to adjust the penalty amount.
  10. Economic Benefit – the economic advantage due to avoided or delayed financial cost of compliance. It is used in the calculation of a penalty.
  11. Event – Any single occurrence of a particular violation type as measured by the timeline basis for that violation type.
  12. Facility – any groups of activities which emit regulated air pollutants, are located on one or more contiguous properties, and are owned, operated or controlled by the same person. (NAC 445B.068)
  13. Finalized Violation – Any written notice of violation issued by the Division for which a hearing with the Commission was not requested within 10 calendar days or if a violation was upheld by the Commission after a hearing.
  14. Hazardous Air Pollutants (HAPs) – Pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. These are determined by the EPA “Initial List of Hazardous Air Pollutants with Modifications.” (NAC 445B.2201)
  15. Lowest Achievable Emission Rate (LAER) – “Lowest achievable emission rate” has the meaning ascribed to it in 40 C.F.R. § 51.165. (NAC 445B.0915)
  16. Major Violation – Except as otherwise provided in NAC 445B.001 to 445B.390, inclusive, any violation of the provisions of those sections is classified as a major violation, and a fine up to \$10,000 per day per violation may be levied (NAC 445B.281).

17. Minor Violation – For Class II sources, violations of NAC 445B.22037, 445B.22067, 445B.2207, subsections 3 and 4 of NAC 445B.232, subsection 8 of NAC 445B.252, subsection 2 of NAC 445B.265, paragraph (e) of subsection 1 of NAC 445B.275 and NAC 445B.331 are classified as minor or lesser violations, unless there are four or more violations of any one of those sections by a person, occurring within a period of 60 consecutive months (NAC 445B.281).
18. Mitigating Factor – Any factor that serves to mitigate the seriousness of a violation and may be considered in the reduction of a penalty. It is part of the gravity component in the calculation of a penalty.
19. NAAQS – National Ambient Air Quality Standards
20. NOAV – Notice of Alleged Violation
21. NSPS – New Source Performance Standards
22. Operating Permit – A legally-enforceable document designed to improve compliance by clarifying what facilities (sources) must do to control air pollution. These are required by Title V of the Clean Air Act (CAA) and are issued to all major and a limited number of minor sources. These permits include pollution control requirements from federal or State laws and regulations that apply to the source. (NRS 445B.145 and NAC 445B.123)
23. Order – Orders are formal documents issued by the Division with items that a facility needs to comply with within a specified time period to remain in compliance with the purposes of NRS 445B.100 to 445B.640. (NRS 445B.230)
24. PSD – Prevention of Significant Deterioration. The PSD program is an EPA regulatory framework that ensures new or modified major pollution sources in clean air areas use the best available control technology and do not significantly degrade air quality.
25. Responsible Official – The individual designated by the facility as their authorized representative, meeting the definition ascribed in NAC 445B.156. The responsible official is the person designated to represent the facility in regulatory filings, compliance certifications, and other official documents.
26. RFI – Request for Information
27. SAD – Surface Area Disturbance Permit
28. SM-80 – Facility whose uncontrolled potential to emit (PTE) is above major source threshold but controlled PTE is at or within 80% of the major source threshold. Emissions can be controlled by air pollution control devices or enforceable restrictions to limit emissions.
29. Violation – A failure to comply with any of the provisions of NRS 445B.100 to 445B.640 and NAC 445B.001 to 445B.390, inclusive, including any applicable requirement or any condition of an operating permit. (NAC 445B.200)

## **5. Determining Noncompliance**

The enforcement process begins once an event of alleged noncompliance has been brought to the attention of the Enforcement Branch. The identification of alleged noncompliance can come in many forms and are often specific to the issue at hand. The following are some of the more common ways noncompliance is determined:

### **5.1 Inspection**

Inspectors regularly inspect permitted facilities, and follow-up on complaints, to determine compliance with permit conditions and State and federal requirements. If a facility is alleged to be out of compliance, the inspector will include that in the final inspection report that is sent to both the facility and the enforcement branch. This report includes a summary of alleged noncompliance items. The inspector will also provide any evidence collected to the enforcement branch. Common examples of inspection related issues are recordkeeping issues, air pollution control issues, and unpermitted equipment.

### **5.2 Testing**

Many operating permits require testing to demonstrate compliance with permitted emission limits (i.e. Compliance testing). Engineering tests (as opposed to compliance tests) will only be considered for violations if they were not properly noticed as required by the compliance branch; however, results from engineering tests may prompt further compliance investigation which could in turn lead to enforcement action. Compliance tests showing an exceedance of a permitted limit may be forwarded to the Enforcement Branch for further action.

### **5.3 Off Site Review**

The Division may require a facility to submit information for an off-site review which is often called a partial compliance evaluation. These reviews are typically for recordkeeping or monitoring where the facility must provide the records required under the operating permit. Missing records or monitoring, and identified permit deviations, including exceedances, may be forwarded to the Enforcement Branch.

### **5.4 Facility-Reporting**

Under the conditions of an operating permit, there are a variety of scenarios where a facility may be required to submit reports or records to the Division. Some common examples include Annual Emissions Reports, Semi-annual Reports, or Compliance Certifications. If these reports are not submitted timely, or indicate instances of noncompliance, they may be forwarded to the Enforcement Branch for further review.

## **6. General Enforcement Process**

### **6.1 Letter Of Alleged Findings**

In general, once an event of noncompliance has been forwarded to the enforcement branch, staff will evaluate the available information (statement of facts) for validity, consistency with the permit, supporting evidence, and compliance with state and federal requirements. If further action is supported, then the Division will send out a Letter of Alleged Findings (LOAF) to the facility. The LOAF contains brief summaries of the alleged findings of noncompliance that the Division may issue violations for, references applicable state and federal requirements, and may provide the data or evidence being considered. It will also contain an invitation to the Responsible Official (RO) to attend an enforcement conference at a specified date and time.

### **6.2 Enforcement Conference**

The enforcement conference is an informal meeting between the facility and the Division. At the enforcement conference, the Division will typically be represented by Division staff consisting of the enforcement supervisor, enforcement staff, the compliance supervisor, and the compliance officer assigned to the facility in question. Division management, legal, and other Division staff may also be present. The RO is the only representative from the facility that is required to attend the enforcement conference, but the facility may bring any additional representatives at their discretion. If the facility intends to bring legal counsel, then the Division will need to be notified so that its legal counsel can also be present. During the enforcement conference, the facility is given the opportunity to discuss the alleged violations, provide additional evidence, ask questions, and let the Division know what the facility has done to return to compliance. Additional information may be requested by the Division during and following the enforcement conference. Should additional alleged violations be discovered during or after the enforcement conference, the Division may pursue enforcement through a simplified process for the newly identified issues where the facility is given the opportunity to respond either through written correspondence or through another meeting.

### **6.3 Final Decisions**

Following the enforcement conference and after any subsequent information from the facility is received, the Division will evaluate all available information and reach a determination on how to move forward. If an alleged violation is found to have not occurred, then it will be dismissed. If some or all the violations are found to have occurred, the Division will then issue a Notice of Alleged Violation (NOAV) as described in NRS 445B.450. Once the NOAV is issued and the violation is finalized, there are several resolutions the Division may

pursue as detailed in Section 7. NOAV's may be appealed (NRS 445B.360) within 10 calendar days after the date of receipt of notice of action of the Division, except as otherwise provided by law (See Section 7.7). If no appeal is received by the Commission, then the violation is final after the ten calendar days have elapsed.

The general process does not preclude the Division from issuing NOAVs without going through the LOAF and enforcement conference steps if it is in the public interest, as determined by the Chief of the Bureau of Air Quality Planning.

## **7. Final Decision Routes**

All finalized violations in the previous 60 months will be used in calculating compliance history (see Section 8.5).

Before NOAVs are issued, the Division will inform the facility of the decision except under extenuating circumstances and in the case of field NOAVs.

### **7.1 Dismissal**

Dismissals are when it has been demonstrated that an alleged violation did not occur. In this case, a NOAV is not issued. Partial dismissals are common after the enforcement conference if new information is provided by the facility. For example, regarding an alleged violation there may have been 50 separate issues listed, but the facility is able to provide further information showing that a violation did not occur in 20 of those issues; the Division would partially dismiss those leaving only the remaining 30 issues available for violation. A dismissal could also occur as a result of an appeal of a NOAV and further discussion with the facility. Dismissals do not count towards compliance history.

### **7.2 Minor Violations**

Minor violations are determined by NAC 445B.281 for Class II facilities only, including SM-80 facilities. In the NAC, these specific types of violations have a predetermined penalty associated with the first, second, and third offense. Upon a facility's receipt of a minor violation NOAV, the facility has ten calendar days to pay the prescribed monetary penalty or submit an appeal to the State Environmental Commission (Commission). The minor violation becomes final after the ten-calendar day period and counts as one-third of a major violation in compliance history considerations in future enforcement actions. Once an eligible facility has received the first, second, and third minor offense for a minor violation within the last 60 months, the next violation of that type becomes a major violation subject to this Practice for penalty calculations.

### **7.2.1 Field NOAV**

A Field NOAV is the issuance of a minor violation during the inspection process by the Division's compliance staff. The Field NOAV is only issued for minor violations per NAC 445B.281. The Division typically issues a Field NOAV when the facility does not have the first, second, or third minor offensive for a qualifying violation within the last 60 months. These can be issued by the Division's compliance staff on-site or off-site during the drafting of the inspection report. Because Field NOAVs are intended to address alleged minor violations in an expedited manner, LOAFs and enforcement conferences are not usually issued or held.

### **7.3 Warning**

A warning is the resolution of a final violation but with no monetary penalty or other remedies. A warning is typically issued by the Division as NOAV when the alleged violation did occur, but the Division has determined the circumstances do not warrant a monetary penalty especially if the facility had mitigating factors (Section 8.4). Warnings may be issued without going through the typical enforcement route provided that the facility was notified of the decision before issuance and does not want to proceed down the formal enforcement route. Warnings may be appealed to the Commission within 10 days of receipt. A warning becomes final ten calendar days after receipt if not appealed and counts towards compliance history considerations in future enforcement actions.

### **7.4 State Environmental Commission**

The State Environmental Commission (Commission) hears and levies monetary penalties associated with finalized violations issued by the Division during a formal hearing. The Division will use this Practice to determine the penalty amount to be recommended to the Commission. It is common practice for the Division to inform the facility of its decision to recommend a penalty and the amount before issuing the NOAVs. NOAVs may be appealed to the Commission within 10 days of receipt. NOAVs become final ten calendar days after receipt if not appealed and count towards compliance history considerations in future enforcement actions. The Commission then hears the case at the next scheduled Commission Hearing and approves, denies, or modifies the recommended penalties. Any final penalties levied by the Commission are due within 30 days of the Commission hearing.

### **7.5 Other Remedies - Settlement**

The Division may enforce the provisions of NRS 445B.100 to 445B.450 by injunction or other appropriate remedy, including consideration of a Settlement or Supplemental Environmental Project (SEP) at the discretion of the Administrator (NRS 445B.640(3)). Under these circumstances, the Division will still use this Practice to establish an initial monetary resolution, although the final outcome may be different depending on the specific issues of

the enforcement case. Settlements may include non-monetary resolutions, such as installing and maintaining additional emission controls not required by the permit or third-party audits of records, in addition to a monetary resolution. Issuance of the NOAVs may be delayed relative to a non-settlement resolution while negotiating. Once a settlement is reached, the NOAVs will be issued and the violation considered final on the date the settlement agreement is signed by all parties (one of the stipulations in the settlement is that the facility agrees to no appeal the associated NOAVs). The Division reserves the right to exit settlement discussions, issue NOAVs, and recommend the full penalty to the Commission at any time.

#### **7.5.1 Supplemental Environmental Project**

A supplemental environmental project (SEP) is a type of settlement requiring the facility to propose a project that is environmentally beneficial, preferably in their local community, and conducted by the facility to account for all or some of the recommended penalty amount. One of the purposes of the SEP is to partially or fully offset the impact of the excess emissions associated with the violations through mitigation actions. It is practice for a SEP to be valued at 125% of the recommended penalty. The minimum recommended penalty to propose a SEP is \$15,000. SEPs will be offered after violations are finalized. A facility who would like to complete a SEP must propose a SEP to the Division. The project must meet the requirements listed in the SEP Guidelines (See Attachment B) and be accepted by the Division. The Division reserves the right to exit SEP discussions and propose the recommended penalty to the Commission at any time. Once the Division has determined a project meets the SEP Guidelines and is acceptable, the Division will propose the SEP to the Commission in lieu of, or as partial alternative of, a monetary penalty.

#### **7.5.2 Tolling Agreements**

A tolling agreement is a legal agreement between the Division and the facility to temporarily pause the statute of limitations. Tolling agreements are put into place to give both parties the time necessary to try and come to a mutual agreement that satisfactorily addresses the violations.

#### **7.6 Administrative Order on Consent**

An Administrative Order on Consent (AOC) is a specific type of consensual legal agreement between the Division and the facility to address and resolve a violation. It does not require approval or signature by a court, but it is legally enforceable. An AOC may contain stipulations for corrective actions, payments, and agreed-upon penalties in case AOC's stipulations are not met by the facility.

## 7.7 Consent Decree

A consent decree is a settlement that is legally binding through a court. Many of the same elements of a settlement and AOC apply with monetary and/or non-monetary stipulations, but all the stipulations are filed with the court approved by a judge. Conditions of a consent decree are enforceable through the court and failure to comply with a consent decree can result in penalties, and the party failing to comply with the consent can be held in contempt.

## 7.8 Appeal Process

Appeals of NOAVs must be based on the following grounds:

- Final decision was beyond the statutory authority of the Division
- Final decision was in violation of constitutional or statutory provision
- Final decision was made upon unlawful procedure
- Final decision was affected by other error of law
- Final decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record
- Final decision was arbitrary or capricious or characterized by abuse of discretion

Each of these listed are the basis for appealing the NOAV and must be supported by NRS and NAC as well as a statement of the facts. Appeals should not be submitted because the facility disagrees with the recommended penalty. Appeals must be received by the Commission within 10 calendar days.

Appeals must be heard by the Commission within 20 days of submittal unless both the Division and the facility agree to an extension. If the Commission upholds the Division's violation decision, then the penalty will be heard at the next full Commission Hearing for a final penalty amount. If the Commission does not uphold the Division's violation decision, then the violation will be dismissed.

## 8. Determining The Recommended Penalty Amount

The Practice establishes a process for determining penalty amounts for each violation (Section 9):

1. Determine the Base Penalty (BP)- Section 8.1
2. Determine the base multiplier (BM) number of events, time component, and/or exceedance ratio- Section 8.2
3. Determine the Aggravating Factors (AF) and Mitigating Factors (MF)- Sections 8.3 and 8.4
4. Determine the Compliance History (CH)- Section 8.5

5. Calculate the Gravity Component (from steps 1-4) of the penalty
6. Apply any applicable max caps to determine the final Gravity Component of the penalty amount- Section 8.6
7. Calculate and add the economic benefit of noncompliance- Section 8.7
8. The final penalty is the gravity component plus the economic benefit

$$\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - \text{MF} + \text{CH})$$

$$\text{Final Penalty} = \text{Gravity Component} + \text{Economic Benefit}$$

The penalty shall not exceed the statutory maximum (\$10,000 per violation per day) as specified by NRS 445B.640.1.

In general, each violation of a requirement (e.g., federal rule or regulations, state statute or regulation, permit conditions, or order) that results from a discrete act or failure to act will be assessed as a separate penalty. For example, failure to test an engine may be a permit condition and a requirement in federal or state regulation. However, this would only be one violation because the condition to test is the same for both the permit and the regulation; thus, it is one violation with one corresponding penalty. If a violated requirement is distinguishable from another violated requirement, both will be assessed as separate penalties. For example, failure to submit an engine test notification is a separate violation from failure to submit the engine test report.

Some requirements may be violated more than once. For example, failure to complete quarterly testing for one engine over the course of two years would result in eight (8) claims (one for each quarter missed). If more than one emissions unit missed the quarterly testing, the 8 claims would be multiplied by the number of units for which testing was required but did not occur.

The Division will not consider separate penalties for the following:

- Violation of duplicative requirements found in more than one place within a permit, federal rule or regulation, or NRS/NAC;
- Violation of additional requirements in federal rules or regulations, NRS/NAC, or permits which impose the same legal duty as a violation already alleged; or
- Violation of one requirement which guarantees the violation of a second requirement. For example, failing to conduct a visible emission observation will always result in failing to keep the record for the visible emission observation; therefore, these are not considered separate violations.

## 8.1 Base Penalty

$$\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - \text{MF} + \text{CH})$$

The base penalty is determined for each violation based on the type of violation and the operating permit class/source. The operating permit classes/sources that will be considered are Class I, SM-80, Mercury, Class II, Class II General/General Temporary, and SAD. For some violations (e.g., failed test, excess emissions, etc.), if the violations move the facility's emissions up in class from the current permit, then the penalty for the facility will be recommended at the higher permit class. This will be called out in the specific violation in Section 9. Once the base penalty has been determined, it may be further modified by the base multipliers as indicated in the violation's base penalty subsection. The statutory maximum may constitute the appropriate penalty for violations considering actual harm to human health or environment, willful violations, and other violations with significant noncompliance as determined by the Division and will override the base penalty.

## 8.2 Base Multipliers

$$\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - \text{MF} + \text{CH})$$

Base multipliers are used to increase the penalty based on specific factors, which are outlined in the individual type of violation (Section 9). Base multipliers can include a time basis (per day, per week, etc.), per event, ratio multiplier, per pollutant, per system, etc. Violations may include more than one type of base multiplier and will be outlined in the base penalty subsection of the violation. Base multipliers are determined case-by-case based on the specific details of the noncompliance constituting the violation.

| Type of Violation                                        | Section | Base Multipliers                                                                                                                                                                                                                             |
|----------------------------------------------------------|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to Conduct Required Monitoring and Recordkeeping | 9.1     | per event per recordkeeping requirement as described in the permit                                                                                                                                                                           |
| Failure to Conduct Required Reporting                    | 9.2     | per event per reporting basis as described in the permit                                                                                                                                                                                     |
| Fugitive Dust                                            | 9.3     | per event                                                                                                                                                                                                                                    |
| Failed Opacity- EPA Method 9                             | 9.4     | per event per valid EPA Method 9 reading                                                                                                                                                                                                     |
| Failure to Comply with a Permitted Operating Parameter   | 9.5     | per monitoring requirement as described in the permit                                                                                                                                                                                        |
| Constructing or Operating Without a Permit               | 9.6     | per emission unit or system (Division discretion) multiplied by how many months since construction began on the unpermitted emission unit until a permit including the emission unit is issued or the emission unit is removed from the site |

|                                                                              |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                              |      | For SADs, the base penalty will have an extra \$50 added per acre of planned disturbance. If unpermitted emission unit has been constructed and/or operated for less than a month, the time will be considered as 1 month                                                                                                                                                                                                                                                                                                                          |
| Failure to Maintain Process or Air Pollution Equipment                       | 9.7  | per event                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Failure to Install Required Air Pollution Control Equipment                  | 9.8  | per emission unit or system (Division discretion) per month per missing control. Months will be determined by the Division from the earliest date of the air pollution equipment missing to installation of the missing equipment or removal of the missing equipment in an issued permit                                                                                                                                                                                                                                                          |
| Failure to Provide Required Notification                                     | 9.9  | per notification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Failed Source Test                                                           | 9.10 | There are no base multipliers for this violation per failed pollutant up to 120% of the limit. Above 120% of the limit, the base multiplier will be per failed pollutant, and the percent of the limit will be converted to a ratio by which the base penalty will be multiplied. For example, a source that failed for PM2.5 by 236%. Base penalty will be multiplied by 2.36. This violation will be considered to have occurred since the day after the last valid source test with passing results to the date of the next passing source test |
| Late Test or Failure to Test                                                 | 9.11 | per system per month                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Falsification or Manipulation of a Source Test                               | 9.12 | per system per source test run                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Continuous Monitoring Systems                                                | 9.13 | per monitoring or recording standard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Failure to Allow Access to a Facility                                        | 9.14 | per denial event. Should access be denied to a whole facility, the penalty will be \$10,000 per day until access is granted with no max cap                                                                                                                                                                                                                                                                                                                                                                                                        |
| Failure to Comply with an Order or Any Provision of a Schedule of Compliance | 9.15 | per order condition, per standard, or basis of the order condition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| General Violation                                                            | 9.16 | per event basis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## 8.3 Aggravating Factors

$$\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - \text{MF} + \text{CH})$$

Aggravating factors are circumstances surrounding a violation that increase its severity, facility's culpability, or the resulting harm. Outlined here are general aggravating factors and the potential increase to the penalty. Some types of violation will have specific aggravating factors that only apply to that type of violation (Section 9). The Division reserves discretion to use professional judgement on when to apply aggravating factors to a final penalty calculation recommendation.

### 8.3.1 Negligence/Willfulness

Negligence means failing to take reasonable care to prevent the occurrence and reoccurrence of violations. It includes when there exist actions that a reasonable person could have taken to prevent the violation from happening including, but not limited to maintenance, stopping work, or training.

Willfulness is when the facility is knowingly violating the permit, rule, statute, or regulation. It implies a voluntary act done with conscious disregard of the law or duty. If a violation is found to have been willful, then the max cap may not apply to the total penalty.

| Scale                    | Increase |
|--------------------------|----------|
| Not negligent or willful | 0        |
| Negligent                | 0.25     |
| Willful                  | 1        |

### 8.3.2 Environmental Risk

Environmental risk includes injury to plant and animal life, damage to property, and impacts to visibility and scenic, esthetic and historic values of the State, including, but not limited to, a monument, state park, or national park. Each violation found to cause environmental risk can carry an increase of 0.3.

### 8.3.3 Public Health Risk

Public health risk considers sensitive receptors or sensitive receptor gathering locations. This violation has evidence that higher levels of emissions were present that could potentially harm sensitive receptors health and safety.

Sensitive Receptors include people among the general population who are at higher risk of negative health outcomes due to exposure to air pollution. This includes children, elderly, and chronically ill people. Sensitive receptor locations are locations where people in these groups congregate including, but not limited to, schools, daycares, hospitals, parks, and neighborhoods.

Additionally, if there are credible reports or complaints received by the Division reporting health effects such as respiratory irritation or distress, burning eyes, or other common air pollution health effects, the Division reserves the right to assess this factor.

When a violation causes an exceedance of the NAAQS, it is considered a public health risk. Each violation found to cause a public health risk can carry an increase of 0.5.

#### **8.3.4 Hazardous Air Pollutants (HAPs)**

HAPs, also called air toxics, are of greater concern to the Division based on their potential to cause serious health problems even at low concentrations and their toxic effects on the environment. Mercury permit violations will not receive a HAPs multiplier as it already has a higher base penalty which accounts for the fact that the regulated pollutant in mercury permits is a HAP. Each violation involving a HAP can carry an increase of 0.5.

#### **8.3.5 Failing a Federal Limit**

When a violation causes an exceedance of a federal limit including, but not limited to exceedances of applicable subparts, NSPS, BACT, and LAER an increase will be applied. In instances where the state and federal limit for a pollutant differ, the increase will only be applied when the federal limit is exceeded. Exceedance of the NAAQS is addressed in public health risk. Each exceedance can carry an increase of 0.3.

#### **8.3.6 Falsification of Information Used to Demonstrate Compliance**

Any instance where a facility knowingly and willfully records, reports, or uses for the purposes of compliance demonstration any information that is known to be false or inaccurate will have an increase applied. This includes, but is not limited to, falsification of any material statement, representation or certification in any notice or report, or render inaccurate any monitoring device or method. (NRS 445B.470) Falsification of information used to demonstrate compliance can carry an increase of 1 and can eliminate the max cap on a penalty.

### **8.4 Mitigating Factors**

**Gravity Component = BP x BM x (1 + AF – MF + CH)**

Mitigating factors are circumstances surrounding a violation that helped to reduce its severity, facility's culpability, or resulting harm. Outlined here are general mitigating factors and the decrease to the penalty that they could apply. The Division reserves discretion to use professional judgement on when to apply mitigating factors to a final penalty calculation recommendation. Effort to comply and self-reporting are individually capped at 0.25 with no penalty being reduced by more than 0.5 when both effort to comply and self-reporting apply.

#### 8.4.1 Effort to Comply

The effort to comply is when a facility attempts to regain compliance and to help ensure noncompliance does not happen again.

- Before the event
  - The facility took reasonable actions to prevent the event (0.1)
- After the event
  - The facility took reasonable actions quickly to mitigate the impact/duration of the event (0.1)
  - Response was prior to identification and intervention by the Division (0.1)
  - The facility identified the root cause of the event and took steps to ensure the event does not happen again (0.2)

#### 8.4.2 Self-Reporting

The facility is required to self-report deviations from permit conditions, excess emissions events, and any scheduled maintenance or repair that may result in excess emissions. Self-reporting shows that the facility is attentive to their permit and processes, especially when coupled with detailed root cause investigations and attempts to prevent reoccurrence. If there are multiple issues that could have been self-reported, the Division can apply the reduction if 90% or more were appropriately reported.

- The facility submitted to the Division the appropriate forms, thoroughly completed including corrective actions taken and a detailed root cause analysis, meeting the timing requirements in regulations and without Division prompting (0.25)
- Even if the event does not fit into one of the normal reportable issues the facility still initiated contact with the Division for assistance prior to the violation being discovered by the Division (0.25)

### 8.5 Compliance History

**Gravity Component = BP x BM x (1 + AF – MF + CH)**

It is important that the Division take into consideration a facility's compliance history when determining penalties. The Division looks at two components of compliance history in the past 60 months when determining the total compliance history, previous violations not of the same type and previous violations of the same type. These violations must be issued and finalized to count as compliance history. Once determined, the two components will be added together to get the total compliance history multiplier.

### 8.5.1 Previous violations not of the same type

Included in this is any violation not of the same type as outlined in Section 9 of this Practice. Previous violations not of the same type will add a 0.05 increase per violation.

### 8.5.2 Previous violations of the same type

Included in this is any violation of the same type as outlined in Section 9 of this Practice. Previous violations of the same type will be considered as outlined below.

| Violations of the same type   | Increase |
|-------------------------------|----------|
| 0 previous violations         | 0        |
| 1 previous violation          | 0.5      |
| 2 previous violations         | 1        |
| 3 previous violations         | 1.5      |
| 4 or more previous violations | 3        |

## 8.6 Max Cap

Each violation type will have a max cap for the gravity component as defined in the specific violation. In general, the max cap will increase with each same violation type issued in the past 60 months, with no max cap after the fourth violation of the same type. For violations which represent significant noncompliance, the Division may recommend the maximum penalty allowable by statute and will not limit the gravity portion of the penalty with a max cap.

## 8.7 Economic Benefit-Not Currently Incorporated

## 9. Penalty Amounts by Violation Type

All violations may also be subject to general multipliers from section 8 in addition to any multipliers specifically called out in the Violation Type.

### 9.1 Failure to Conduct Required Monitoring and Recordkeeping

#### 9.1.1 What is covered-Including, but not limited to:

This violation covers permit required inspections, visible emissions observations, initial opacity compliance demonstrations (IOCD), EPA Method 9s, monitoring differential pressures, temperatures, flow rates, and any other monitoring-type activities. These monitoring activities must be properly documented.

Additionally, this violation covers any instance where records required by the permit were not kept. This includes instances where required records cannot be reviewed during an inspection, as contemporaneous records must be kept and made available during an inspection. Additionally, any instance where the method of recordkeeping produced an inaccurate or erroneous result. For example, the record was back calculated and not based on real data.

#### 9.1.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.281 Violations: Classification; administrative fines.

#### 9.1.3 Why it matters

Air pollution control devices protect human health by limiting harmful emissions. It is important for facilities to check pollution control devices, for example silo bin vents and water sprayers, on a regular basis to ensure they are working properly. Periodic visible emission observations help ensure controls like baghouses, wet scrubbers, and water sprayers are working properly. For example, high visible emissions from a stack controlled by a baghouse could indicate baghouse filter bags need to be replaced; and elevated visible emissions from a stack controlled by wet scrubber could indicate a water pump or water nozzle in the scrubber needs repair. The various monitoring activities and their records help ensure the facility operates under the permit conditions and allows the Division to properly manage air resources for the state.

Permit conditions require facilities to maintain records to demonstrate their compliance with emission limits. Permits may also require facilities to maintain records demonstrating monthly visible emission observations, required maintenance, and that air pollution control equipment checks were conducted. Without accurate and detailed recordkeeping, a facility cannot demonstrate it is complying with permit conditions and the NAAQS. Additionally,

without accurate and complete records, it is impossible to know whether a facility is exceeding or deviating from permit limits and conditions which interferes with the Division's ability to manage air resources for the state.

#### 9.1.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

#### 9.1.5 Mitigating Factors

$$\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - (\text{MF}_{\text{general}} + \text{MF}_{\text{specific}}) + \text{CH})$$

Factors will be added together to provide a total decrease to the base penalty. General mitigating factors can be found in section 8.4. Specific mitigating factors for this penalty can be found below.

- The facility can provide an alternative demonstration of compliance at time of inspection (0.2)

#### 9.1.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per event per recordkeeping requirement as described in the permit. For those permit classes subject to minor violations, this table will be used once the facility has had three minor violations issued per NAC 445B.281(2) and 445B.281(3). Initial compliance demonstrations are not minor violations.

| Recordkeeping basis          | Class I | SM-80   | Mercury | Class II | Class II General/General Temp & SAD |
|------------------------------|---------|---------|---------|----------|-------------------------------------|
| Daily                        | \$600   | \$400   | \$400   | \$250    | \$200                               |
| Weekly                       | \$700   | \$500   | \$500   | \$350    | \$300                               |
| Monthly                      | \$900   | \$750   | \$750   | \$500    | \$400                               |
| Quarterly                    | \$1,500 | \$1,000 | \$1,000 | \$750    | \$500                               |
| Annual/Initial Demonstration | \$3,000 | \$2,000 | \$2,000 | \$1,000  | \$800                               |

#### 9.1.7 Total Cap

Max amount assessed in one enforcement action. Failure to conduct required recordkeeping or monitoring and failure to conduct required reporting will have a combined cap as shown below. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous instances of Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II General/General Temp &amp; SAD</b> |
|--------------------------------------------|----------------|--------------|----------------|-----------------|------------------------------------------------|
| 0                                          | \$100,000      | \$75,000     | \$75,000       | \$40,000        | \$25,000                                       |
| 1                                          | \$150,000      | \$112,500    | \$112,500      | \$60,000        | \$37,500                                       |
| 2                                          | \$200,000      | \$150,000    | \$150,000      | \$80,000        | \$50,000                                       |
| 3                                          | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                         |

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## **9.2 Failure to Conduct Required Reporting**

### **9.2.1 What is covered-Including, but not limited to:**

This violation covers any instance where report(s) required under the permit were not received by the Division. This may include Annual Compliance Certifications (ACC), Semi-Annual Monitoring Reports (SAMR), Annual Emissions Reports (AER), Source Test Report (STR), or any other report required by the permit or regulation. It also covers any instance where reports required under the permit were incomplete or insufficient to demonstrate compliance or any instance where the report in question reported an inaccurate or erroneous result.

### **9.2.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

### **9.2.3 Why it matters**

Permit conditions require facilities to submit various reports. If a facility does not submit all the required reports, the Division cannot determine if the facility is operating within its permitted emission, operational hours, or throughput limits. If a facility is operating above its permitted emission or throughput limits, the facility could be adversely affecting human health and the environment.

### **9.2.4 Aggravating Factors**

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### **9.2.5 Mitigating Factors**

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### **9.2.6 Base Penalty and Base Multipliers**

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per event per reporting basis as described in the permit. For those permit classes subject to minor violations, this table will be used once the facility has had three minor violations issued per NAC 445B.281(2) and 445B.281(3).

| Report Type | Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|-------------|---------|---------|---------|----------|-------------------------------------------|
| ACC/Annual  | \$3,000 | \$2,250 | \$2,250 | N/A      | N/A                                       |
| SAMR        | \$1,750 | \$1,250 | \$1,250 | \$1,250  | N/A                                       |
| AER         | \$3,000 | \$2,250 | \$2,500 | \$2,000  | \$1,250                                   |
| STR         | \$1,750 | \$1,250 | \$1,250 | \$1,250  | \$1,250                                   |
| Other       | \$1,500 | \$1,250 | \$1,250 | \$1,250  | \$1,250                                   |

### 9.2.7 Total Cap

Max amount assessed in one enforcement action. Failure to conduct required recordkeeping or monitoring and failure to conduct required reporting will have a combined cap as shown below. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| Previous<br>instances of<br>Noncompliance | Class I   | SM-80     | Mercury   | Class II | Class II<br>General/General<br>Temp & SAD |
|-------------------------------------------|-----------|-----------|-----------|----------|-------------------------------------------|
| 0                                         | \$100,000 | \$75,000  | \$75,000  | \$40,000 | \$25,000                                  |
| 1                                         | \$150,000 | \$112,500 | \$112,500 | \$60,000 | \$37,500                                  |
| 2                                         | \$200,000 | \$150,000 | \$150,000 | \$80,000 | \$50,000                                  |
| 3                                         | No Cap    | No Cap    | No Cap    | No Cap   | No Cap                                    |

## 9.3 Fugitive Dust

### 9.3.1 What is covered-Including, but not limited to:

Fugitive dust covers particulate matter that becomes airborne from the handling, transporting, or storing of any material per NAC 445B.22037. This includes dust coming from material running on a conveyor belt, loading or unloading silos, dust from storage piles, or loading crushing and screening equipment.

### 9.3.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.281 Violations: Classification; administrative fines.

NAC 445B.22037 Emissions of particulate matter: Fugitive dust.

### 9.3.3 Why it matters

Fugitive dust can contain fine Particulate Matter (PM<sub>10</sub> and PM<sub>2.5</sub>). The Division requires an ongoing program using “best practical methods” to prevent particulate matter from becoming airborne which includes, but is not limited to, paving, chemical stabilization, watering, phased constructions, and revegetation. When fugitive dust becomes airborne, the Division cannot verify that the facility is in compliance with air regulations due to the emissions being fugitive which are not accounted for in air permit modeling.

### 9.3.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.3.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.3.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per event. For those permit classes subject to minor violations, this table will be used once the facility has had three minor violations issued per NAC 445B.281.2-3.

| Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|---------|---------|---------|----------|-------------------------------------------|
| \$3,000 | \$2,500 | N/A     | \$2,500  | \$2,500                                   |

### 9.3.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous instances of Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II General/General Temp &amp; SAD</b> |
|--------------------------------------------|----------------|--------------|----------------|-----------------|------------------------------------------------|
| 0                                          | \$72,000       | \$60,000     | N/A            | \$60,000        | \$60,000                                       |
| 1                                          | \$108,000      | \$90,000     | N/A            | \$90,000        | \$90,000                                       |
| 2                                          | \$144,000      | \$120,000    | N/A            | \$120,000       | \$120,000                                      |
| 3                                          | No Cap         | No Cap       | N/A            | No Cap          | No Cap                                         |

## 9.4 Failed Opacity- EPA Method 9

### 9.4.1 What is covered-Including, but not limited to:

Failed opacity standards or limits based on an EPA Method 9 observation. This pertains to a Method 9 reading conducted by a certified EPA method 9 observer.

### 9.4.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.22017 Visible emissions: Maximum opacity; determination and monitoring of opacity.

### 9.4.3 Why it matters

Opacity is important for air quality because it offers a direct, visual, and regulatory-compliant surrogate to monitor particulate emissions from sources. It ensures that facilities are meeting permit conditions. Additionally, opacity gives the Division a standard for potential emissions that are unaccounted for by a permit or emission estimations.

### 9.4.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.4.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.4.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per event per valid EPA Method 9 reading.

| Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|---------|---------|---------|----------|-------------------------------------------|
| \$1,500 | \$1,250 | N/A     | \$1,000  | \$1,000                                   |

### 9.4.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous instances of Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II General, General Temporary, &amp; SAD</b> |
|--------------------------------------------|----------------|--------------|----------------|-----------------|-------------------------------------------------------|
| 0                                          | \$36,000       | \$30,000     | N/A            | \$24,000        | \$24,000                                              |
| 1                                          | \$54,000       | \$45,000     | N/A            | \$36,000        | \$36,000                                              |
| 2                                          | \$72,000       | \$60,000     | N/A            | \$48,000        | \$48,000                                              |
| 3                                          | No Cap         | No Cap       | N/A            | No Cap          | No Cap                                                |

## 9.5 Failure to Comply with a Permitted Operating Parameter

### 9.5.1 What is covered-Including, but not limited to:

A facility exceeds or deviates from a permitted operating limit. This includes exceedance of throughput limit, control devices operating outside flow or temperature range, monthly emission calculations, failed EPA Method 9, or hours of operation.

### 9.5.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

### 9.5.3 Why it matters

Operating parameters are used as a surrogate to determine if a facility is in compliance with the emission limits for regulated and hazardous air pollutants. When emission limits are set, they are correlated to material throughput and/or fuel usage depending on applicability. It is also assumed that the equipment and air pollution controls are always in good working order. To confirm emission limits are being met, compliance is determined through recordkeeping to confirm that the facility is maintaining the equipment and controls, and that the material throughput and/or fuel usage are not exceeding the allowable operating parameters. If any of the permit conditions are not met, there is a potential that the emission unit is exceeding the permitted emission limits which would be a detriment to human health and the environment. Additionally, exceeding or deviating from permit limits and conditions interferes with the Division's ability to manage air resources for the state.

### 9.5.4 Aggravating Factors

Gravity Component =  $BP \times BM \times (1 + (AF_{\text{general}} + AF_{\text{specific}}) - MF + CH)$

Aggravating factors will be added together to provide a total increase to the base penalty. General aggravating factors still apply can be found in section 8.3. Specific aggravating factors for this penalty can be found below.

- Ratio of Actual to Permitted Limits, applied to each violation. The ratio of actual to permitted limits will be determined by taking the average of the exceedance or deviation from the permit requirements for a group of events.
  - Exceedances
    - 1.01-1.50 (0)
    - 1.51 - 2.5 (0.1)
    - 2.51- 3.5 (0.2)
    - 3.51 or greater (0.3)
  - Deviations
    - +/- 10% (0)

- +/- 10-20% (0.1)
- +/-20-30% (0.2)
- >30% (0.3)

### 9.5.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.5.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per monitoring requirement as described in the permit.

| Monitoring Basis | Class I | SM-80   | Mercury | Class II | Class II General/General Temp & SAD |
|------------------|---------|---------|---------|----------|-------------------------------------|
| Daily            | \$400   | \$350   | \$350   | \$300    | \$300                               |
| Weekly           | \$600   | \$550   | \$550   | \$400    | \$400                               |
| Monthly          | \$1,000 | \$750   | \$750   | \$500    | \$500                               |
| Quarterly        | \$1,500 | \$1,250 | \$1,250 | \$750    | \$750                               |
| Annual           | \$3,000 | \$2,500 | \$2,500 | \$1,500  | \$1,500                             |

### 9.5.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| Previous instances of Noncompliance | Class I   | SM-80     | Mercury   | Class II  | Class II General/General Temp & SAD |
|-------------------------------------|-----------|-----------|-----------|-----------|-------------------------------------|
| 0                                   | \$150,000 | \$125,000 | \$125,000 | \$100,000 | \$50,000                            |
| 1                                   | \$225,000 | \$187,500 | \$187,500 | \$150,000 | \$75,000                            |
| 2                                   | \$300,000 | \$250,000 | \$250,000 | \$200,000 | \$100,000                           |
| 3                                   | No Cap    | No Cap    | No Cap    | No Cap    | No Cap                              |

## **9.6 Constructing or Operating Without a Permit**

### **9.6.1 What is covered-Including, but not limited to:**

Emission units, systems, and/or facilities that are in the process of being constructed or have been constructed and/or have been operated without an issued Air Quality Operating Permit that authorizes the construction and/or operation of the specific emission units, systems, or facility. This includes when a facility has submitted a permit application including the emission units or systems and that permit action has not been issued, unless the Division has authorized the construction. This can apply to a whole facility or individual emission units. Should the unpermitted units move the facility's emissions up in class from the current permit, then the facility will be fined at the higher permit class.

### **9.6.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

### **9.6.3 Why it matters**

Prior to an emission unit being constructed, the agency inventories emissions from all emission units to confirm that the air quality is being managed appropriately. When a facility constructs and/or operates a unit without receiving an air quality operating permit, they bypass that check and may adversely affect public health and the environment.

### **9.6.4 Aggravating Factors**

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### **9.6.5 Mitigating Factors**

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### **9.6.6 Base Penalty and Base Multipliers**

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per emission unit or system (Division discretion) multiplied by how many months since construction began on the unpermitted emission unit or system until a permit including the emission unit or system is issued or the emission unit or system is removed from the site. For SADs, the base penalty will have an extra \$50 added per acre of planned disturbance. If unpermitted emission unit has been constructed and/or operated for less than a month, the time will be considered as 1 month.

| <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| \$10,000       | \$7,500      | \$5,000        | \$3,000         | \$1,000                                                |

#### 9.6.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous<br/>instances of<br/>Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------------------------------------------|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| 0                                                  | \$240,000      | \$180,000    | \$120,000      | \$72,000        | \$24,000                                               |
| 1                                                  | \$360,000      | \$270,000    | \$180,000      | \$108,000       | \$36,000                                               |
| 2                                                  | \$480,000      | \$360,000    | \$240,000      | \$144,000       | \$48,000                                               |
| 3                                                  | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                                 |

## **9.7 Failure to Maintain Process or Air Pollution Equipment**

### **9.7.1 What is covered-Including, but not limited to:**

These are events in which air emissions are generated or routed improperly according to the air quality operating permit. This includes air pollution control equipment not operating or operating ineffectively due to poor maintenance and emissions bypassing controls, including due to stack or piping leaks. Another example may be poorly placed or designed water sprays that are operating, but not in a way that meets permit conditions. Additionally, this includes emissions generated by the standard process being deviated from or emissions occurring in the process where they are not intended. For example, throughput material being improperly handled and releasing on a conveyor instead of the permitted process of releasing in an enclosure or controlled stack. This violation does not include emissions designated as fugitive dust.

### **9.7.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

### **9.7.3 Why it matters**

Air pollution control devices help protect human health and the environment. Permitted emission limits are determined on the assumption that system process equipment and air pollution control devices are properly installed and maintained. If a system's process equipment and air pollution control devices are not maintained at a facility, it cannot be assumed the facility is effectively controlling emissions. Thus, the facility may exceed permitted emission limits. Additionally, the Division is unable to properly manage air resources for the state if the process or equipment is not maintained leading to higher than accounted for levels of pollutants.

### **9.7.4 Aggravating Factors**

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### **9.7.5 Mitigating Factors**

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.7.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per event.

| <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| \$5,000        | \$4,000      | \$3,000        | \$1,500         | \$1,000                                                |

### 9.7.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous<br/>instances of<br/>Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------------------------------------------|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| 0                                                  | \$120,000      | \$96,000     | \$72,000       | \$36,000        | \$24,000                                               |
| 1                                                  | \$180,000      | \$144,000    | \$108,000      | \$54,000        | \$36,000                                               |
| 2                                                  | \$240,000      | \$192,000    | \$144,000      | \$72,000        | \$48,000                                               |
| 3                                                  | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                                 |

## 9.8 Failure to Install Required Air Pollution Control Equipment

### 9.8.1 What is covered-Including, but not limited to:

Any instance where an emission unit permitted by the Division was operated without the air pollution control equipment, specified by that permit or required by any applicable state or federal requirement, having not been constructed or installed, in whole or in part. Any instance where air pollution control equipment was constructed or installed in a manner inconsistent with manufacturers specifications or in such a manner that the control is ineffective. Should the unpermitted units move the facility's emissions up in class from the current permit, then the penalty will be recommended at the higher permit class.

### 9.8.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

### 9.8.3 Why it matters

Air pollution control devices help protect human health and the environment. Additionally, the Division is unable to properly manage air resources for the state if controls are not installed leading to higher than accounted for levels of pollutants.

### 9.8.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.8.5 Mitigating Factors

Gravity Component =  $BP \times BM \times (1 + AF - (MF_{\text{general}} + MF_{\text{specific}}) + CH)$

Factors will be added together to provide a total decrease to the base penalty. General mitigating factors still apply can be found in section 8.4. Specific aggravating factors for this penalty can be found below.

- Source test, modeling, or other methods approved by the Division show that emissions are under the permit emission limits without the control installed (0.1)

### 9.8.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per emission unit or system (Division discretion) per month per missing control. Months will be determined by the Division from the earliest date of the air pollution equipment missing to installation of the missing equipment or removal of the missing equipment in an issued permit.

| <b>Class 1</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class 2</b> | <b>Class 2<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------|--------------|----------------|----------------|-------------------------------------------------------|
| \$6,250        | \$4,200      | \$3,100        | \$2,000        | \$1,000                                               |

### 9.8.7 Total Cap

Max amount assessed per emission unit or system (Division discretion). Each system with missing controls will be added together for the final penalty with no total max cap. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous<br/>instances of<br/>Noncompliance</b> | <b>Class 1</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class 2</b> | <b>Class 2<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------------------------------------------|----------------|--------------|----------------|----------------|-------------------------------------------------------|
| 0                                                  | \$150,000      | \$100,000    | \$75,000       | \$50,000       | \$25,000                                              |
| 1                                                  | \$225,000      | \$150,000    | \$112,500      | \$75,000       | \$37,500                                              |
| 2                                                  | \$300,000      | \$200,000    | \$150,000      | \$100,000      | \$50,000                                              |
| 3                                                  | No Cap         | No Cap       | No Cap         | No Cap         | No Cap                                                |

## **9.9 Failure to Provide Required Notification**

### **9.9.1 What is covered-Including, but not limited to:**

An owner or operator fails to provide the Division with required notification within the regulatory timeframe. Some examples include an owner or operator failing to notify the Division, providing incomplete information in a notification, or providing a notification outside of the regulatory timeframe.

### **9.9.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.252 Testing and sampling.

NAC 445B.232 Excess emissions: Scheduled maintenance, testing or repairs; notification of Director; malfunction, upset, start-up, shutdown or human error.

NAC 445B.250 Notification of Director: Construction, reconstruction and initial start-up; demonstration of continuous monitoring system performance.

### **9.9.3 Why it matters**

Communication between a facility and the Division is key to achieving the common goal of clean air. It is important that facilities notify the Division when they are performing an action that may result in excess emissions, deviations, or other events requiring notification.

If a deviation, excess emission, or other event requiring notification occurs, it is important that the facility follow the notification requirements so the agency can determine the potential impact on public health and the environment.

Source testing is a very important factor in determining whether a facility is in compliance. The test methods used to determine compliance are complex and intricate. The purpose of prior notification is so agency staff can observe the testing and make every effort to ensure the test methods are being conducted correctly.

### **9.9.4 Aggravating Factors**

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### **9.9.5 Mitigating Factors**

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.9.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per notification.

| Notification Type                                                                                                                    | Class I | SM-80   | Mercury | Class II | Class II General/General Temp & SAD |
|--------------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|----------|-------------------------------------|
| 30-day Source Test Protocol and Notification                                                                                         | \$2,000 | \$1,500 | \$1,500 | \$1,000  | \$600                               |
| 24-Hour or 15-Day Post Notification of Excess Emission                                                                               | \$1,250 | \$800   | \$800   | \$600    | \$300                               |
| 15- Day Deviation Report                                                                                                             | \$1,250 | \$800   | \$800   | \$600    | \$300                               |
| 30-Day Scheduled Maintenance Notification                                                                                            | \$2,000 | \$1,500 | \$1,500 | \$1,000  | \$600                               |
| 30- Day Construction Notification, 30-Day anticipated initial start-up notification, and 15-Day actual initial start-up notification | \$1,000 | \$750   | \$750   | \$600    | \$500                               |

|              |         |       |       |       |       |
|--------------|---------|-------|-------|-------|-------|
| <b>Other</b> | \$1,000 | \$750 | \$750 | \$600 | \$500 |
|--------------|---------|-------|-------|-------|-------|

### 9.9.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous same issued NOAVs</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II General/General Temp &amp; SAD</b> |
|-----------------------------------|----------------|--------------|----------------|-----------------|------------------------------------------------|
| 0                                 | \$50,000       | \$40,000     | \$35,000       | \$30,000        | \$15,000                                       |
| 1                                 | \$75,000       | \$60,000     | \$52,500       | \$45,000        | \$22,500                                       |
| 2                                 | \$100,000      | \$80,000     | \$70,000       | \$60,000        | \$30,000                                       |
| 3                                 | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                         |

## **9.10 Failed Source Test**

### **9.10.1 What is covered-Including, but not limited to:**

A source test that exceeds an allowable emission limit or if a facility stops source testing due to potentially failing results. The emission limits can be state or federal emission limits. Source tests are a demonstration of compliance and until a facility shows they are back in compliance, they are assumed to be in continuing noncompliance.

### **9.10.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.252 Testing and sampling.

### **9.10.3 Why it matters**

Source testing is the primary way the agency determines if a facility exceeds the permitted emission limits. That in turn protects the air quality of the State by giving the Division real data to manage air resources. The purpose of source testing is to directly assess the extent of air pollution emitted and to evaluate the effectiveness of emission control strategies. It is a real time snapshot of exactly what the system being tested is releasing when it operates.

### **9.10.4 Aggravating Factors**

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### **9.10.5 Mitigating Factors**

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### **9.10.6 Base Penalty and Base Multipliers**

Base penalty amount by source is listed in the table below. There are no base multipliers for this violation per failed pollutant up to 120% of the limit. Above 120% of the limit, the base multiplier will be per failed pollutant, and the percent of the limit will be converted to a ratio by which the base penalty will be multiplied. For example, a source that failed for PM<sub>2.5</sub> by 236%. Base penalty will be multiplied by 2.36. This violation will be considered to have occurred since the day after the last valid source test with passing results to the date of the next passing source test for the purposes of the max statutory penalty.

| <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| \$6,000        | \$5,000      | \$4,000        | \$3,000         | \$1,000                                                |

#### 9.10.7 Total Cap

Max amount assessed per failed pollutant per test event. Each failed pollutant will be added together for the final penalty with no total max cap. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous<br/>instances of<br/>Noncompliance</b> | <b>Class 1</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class 2</b> | <b>Class 2<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------------------------------------------|----------------|--------------|----------------|----------------|-------------------------------------------------------|
| 0                                                  | \$36,000       | \$30,000     | \$24,000       | \$18,000       | \$6,000                                               |
| 1                                                  | \$54,000       | \$45,000     | \$36,000       | \$27,000       | \$9,000                                               |
| 2                                                  | \$72,000       | \$60,000     | \$48,000       | \$36,000       | \$12,000                                              |
| 3                                                  | No Cap         | No Cap       | No Cap         | No Cap         | No Cap                                                |

## 9.11 Late Test or Failure to Test

### 9.11.1 What is covered-Including, but not limited to:

Any instance where testing required under the operating permit was not conducted or conducted outside the timeframe required by the operating permit. Any instance where additional testing or retesting as required by the Division or regulation was not conducted or was conducted outside the timeframe provided by the Division or regulation.

Note- This does not include failure to conduct Initial Opacity Compliance Demonstrations (IOCDs)

### 9.11.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

### 9.11.3 Why it matters

Source testing is a snapshot to directly demonstrate compliance with permitted emissions. Initial and continued testing allows the Division to ensure that controls are and continue to be effective at reducing emissions. When testing is late or not done, the Division cannot adequately manage air resources.

### 9.11.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.11.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.11.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per system per month.

| Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|---------|---------|---------|----------|-------------------------------------------|
| \$1,500 | \$1,000 | \$1,000 | \$600    | \$600                                     |

### 9.11.7 Total Cap

Max amount assessed per system. Each system with missing or late test(s) will be added together for the final penalty with no total max cap. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| Previous instances of Noncompliance | Class I  | SM-80    | Mercury  | Class II | Class II General/General Temp & SAD |
|-------------------------------------|----------|----------|----------|----------|-------------------------------------|
| 0                                   | \$24,000 | \$24,000 | \$24,000 | \$14,400 | \$14,400                            |
| 1                                   | \$36,000 | \$36,000 | \$36,000 | \$21,600 | \$21,600                            |
| 2                                   | \$48,000 | \$48,000 | \$48,000 | \$28,800 | \$28,800                            |
| 3                                   | No Cap   | No Cap   | No Cap   | No Cap   | No Cap                              |

## **9.12 Falsification or Manipulation of a Source Test**

### **9.12.1 What is covered-Including, but not limited to:**

Performance testing was conducted in an intentional manner to produce test results that deviate from normal operations of the permitted system, without the pre-approval by the Division. This includes, but is not limited to, processing throughput that is not representative of standard throughput, reducing throughput from average typical operating amount, or changing process or controls only for the testing period. It also includes stopping a source test because the facility is failing or thinks they may be failing a permitted limit.

Note: This violation can be assessed concurrently with a failed source test violation.

### **9.12.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.252 Testing and sampling.

### **9.12.3 Why it matters**

When a facility believes there is a potential or high likelihood that a source test under normal operating conditions will result in emissions that exceed the permitted limits, the facility may manipulate the operating conditions during source testing to have a high level of confidence the results will pass permitted emission limits. A facility may even request that the third-party stack testing company conduct testing in a method that provides inaccurate emission measurements. If a facility chooses to do any of these, it eliminates the Division's ability to directly confirm if a facility meets the permitted emission limits.

### **9.12.4 Aggravating Factors**

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### **9.12.5 Mitigating Factors**

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### **9.12.6 Base Penalty and Base Multipliers**

Base penalty amount by source is listed in the table below. The base multipliers for this violation are per system per source test run.

| <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| \$7,500        | \$3,000      | \$3,000        | \$2,500         | \$2,000                                                |

#### 9.12.7 Total Cap

Max amount assessed per system. Each falsified run per system will be added together for the final penalty with no total max cap. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous<br/>same NOAVs<br/>issued</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|-------------------------------------------|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| 0                                         | \$37,500       | \$15,000     | \$15,000       | \$12,500        | \$10,000                                               |
| 1                                         | \$56,250       | \$22,500     | \$22,500       | \$18,750        | \$15,000                                               |
| 2                                         | \$75,000       | \$30,000     | \$30,000       | \$25,000        | \$20,000                                               |
| 3                                         | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                                 |

## 9.13 Continuous Monitoring Systems

### 9.13.1 What is covered-Including, but not limited to:

This violation includes exceedances of emission limits shown by continuous monitoring systems (CMS) data, improperly maintaining any part of the CMS unit, improperly reporting CMS monitoring/reporting requirements to the Division, or having excessive CMS downtime or out-of-control periods. CMS can include Continuous Emissions Monitoring Systems (CEMS), Continuous Opacity Monitoring Systems (COMS), and Continuous Parametric Monitoring System (CPMS).

### 9.13.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.22017 Visible emissions: Maximum opacity; determination and monitoring of opacity.

NAC 445B.256 - 265 Monitoring systems.

### 9.13.3 Why it matters

Continuous monitoring systems are required in very limited circumstances and usually in cases that are determined by federal requirements. When these systems are required, they can directly measure emissions for most, if not the entire time a unit operates. In these cases, these systems are the most accurate and direct way to determine if emissions can meet the permitted emission limits. To have a high level of confidence, they require daily calibration and quarterly audits. If a facility that is required to have a continuous monitoring system doesn't install, operate, and maintain it, then the Division has no way to directly determine if emissions are meeting the permitted limits.

### 9.13.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. General aggravating factors still apply and can be found in section 8.3. Specific aggravating factors for this penalty can be found below.

- Ratio of Emissions to Permitted Emission Limits or standards, applied to each violation. Enforcement discretion can be exercised by determining the ratio of emissions to permitted emission limits applied to a violation by taking the average of excursion for a group of events if they exist.
  - Exceedances of 1.01-1.50 (0)
  - Exceedances of 1.51 - 2.5 (0.1)
  - Exceedances of 2.51- 3.5 (0.2)

- o Exceedances of 3.51 or greater (0.3)

### 9.13.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation-specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.13.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per monitoring or recording standard as specified in the permit.

| <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| \$1,250        | \$1,000      | N/A            | \$750           | N/A                                                    |

### 9.13.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous<br/>instances of<br/>Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II<br/>General/General<br/>Temp &amp; SAD</b> |
|----------------------------------------------------|----------------|--------------|----------------|-----------------|--------------------------------------------------------|
| 0                                                  | \$200,000      | \$150,000    | N/A            | \$100,000       | N/A                                                    |
| 1                                                  | \$300,000      | \$225,000    | N/A            | \$150,000       | N/A                                                    |
| 2                                                  | \$400,000      | \$300,000    | N/A            | \$200,000       | N/A                                                    |
| 3                                                  | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                                 |

## 9.14 Failure to Allow Access to a Facility

### 9.14.1 What is covered-Including, but not limited to:

Any person or owner/operator who does not allow the Division access to a stationary source, activities related to emissions, or records during normal business hours. This includes, but is not limited to, denying access to specific emission units, denying unannounced inspections, or denying access to unpermitted equipment that has the potential to generate air emissions. (NRS 445B.240 and NRS 445B.580)

### 9.14.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.315 Contents of operating permits: Exception for operating permits to construct; required conditions.

### 9.14.3 Why it matters

The Division requires access to facilities to confirm on-site status of emission units and air pollution controls in their air quality permits. If the Division cannot investigate permit compliance onsite, then it could lead to an inaccurate assessment of the facility's potential to emit and lead to impacts on public health and the environment.

### 9.14.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.14.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation-specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.14.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per denial event. Should access be denied to a whole facility, the penalty can be \$10,000 per day until access is granted with no max cap.

| Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|---------|---------|---------|----------|-------------------------------------------|
| \$2,500 | \$2,000 | \$2,000 | \$1,500  | \$1,000                                   |

#### 9.14.7 Total Cap

Max amount assessed in one enforcement action. Cap does not apply if access to the whole facility is denied. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous instances of Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II General/General Temp &amp; SAD</b> |
|--------------------------------------------|----------------|--------------|----------------|-----------------|------------------------------------------------|
| 0                                          | \$60,000       | \$48,000     | \$48,000       | \$36,000        | \$24,000                                       |
| 1                                          | \$90,000       | \$72,000     | \$72,000       | \$54,000        | \$36,000                                       |
| 2                                          | \$120,000      | \$96,000     | \$96,000       | \$72,000        | \$48,000                                       |
| 3                                          | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                         |

## 9.15 Failure to Comply with an Order or Any Provision of a Schedule of Compliance

### 9.15.1 What is covered-Including, but not limited to:

This violation covers noncompliance with any order issued by the Division such as compliance orders, stop orders, enforcement orders, and schedules of compliance (Order).

### 9.15.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.252 Testing and sampling.

NAC 445B.277 Stop orders.

NAC 445B.229 Hazardous emissions: Order for reduction or discontinuance.

NAC 445B.3368 Additional requirements for application; exception.

### 9.15.3 Why it matters

Orders may be issued to correct a past or ongoing violation. For example, orders may require a facility to perform source testing, conduct recordkeeping, repair or add pollution control equipment, reduce throughput to limit emissions, or implement monitoring. Orders are a chance for facilities to come back into compliance in a timely manner and failure to meet Order requirements causes the Division to be unable to manage air resources.

### 9.15.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.15.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.15.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is per order condition, per standard, or basis of the order condition.

| Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|---------|---------|---------|----------|-------------------------------------------|
| \$7,500 | \$6,500 | \$5,000 | \$3,000  | \$2,000                                   |

### 9.15.7 Total Cap

Max amount assessed in one enforcement action. Increases as shown below for each previous noncompliance of a similar type in the previous 60 months until the fourth violation is reached at which point there is no cap.

| <b>Previous instances of Noncompliance</b> | <b>Class I</b> | <b>SM-80</b> | <b>Mercury</b> | <b>Class II</b> | <b>Class II General/General Temp &amp; SAD</b> |
|--------------------------------------------|----------------|--------------|----------------|-----------------|------------------------------------------------|
| 0                                          | \$180,000      | \$156,000    | \$120,000      | \$72,000        | \$48,000                                       |
| 1                                          | \$270,000      | \$234,000    | \$180,000      | \$108,000       | \$72,000                                       |
| 2                                          | \$360,000      | \$312,000    | \$240,000      | \$144,000       | \$96,000                                       |
| 3                                          | No Cap         | No Cap       | No Cap         | No Cap          | No Cap                                         |

## 9.16 General Violation

### 9.16.1 What is covered-Including, but not limited to:

A facility that does not comply with a regulation in NAC 445B, any applicable federal rule or regulation under the Clean Air Act, or law under NRS 445B that has not already been specifically called out in the penalty system.

### 9.16.2 NAC(s) Related to Violation-Including, but not limited to:

NAC 445B.275 Violations: Acts constituting; notice.

### 9.16.3 Why it matters

The agency is required to confirm that facilities comply with all applicable laws and regulations. The Environmental Protection Agency has granted delegation to the Division to enforce certain federal rules regulations; in addition to the Division's authority under the NRS and NAC.

### 9.16.4 Aggravating Factors

Aggravating factors will be added together to provide a total increase to the base penalty. There are no violation specific aggravating factors for this violation; general aggravating factors still apply. General aggravating factors can be found in section 8.3.

### 9.16.5 Mitigating Factors

Mitigating factors will be added together to provide a total increase to the base penalty. There are no violation specific mitigating factors for this violation; general mitigating factors still apply. General aggravating factors can be found in section 8.4.

### 9.16.6 Base Penalty and Base Multipliers

Base penalty amount by source is listed in the table below. The base multiplier for this violation is on a per event basis.

| Class I | SM-80   | Mercury | Class II | Class II<br>General/General<br>Temp & SAD |
|---------|---------|---------|----------|-------------------------------------------|
| \$2,000 | \$1,500 | \$1,500 | \$1,000  | \$1,000                                   |

### 9.16.7 Total Cap

There is no total cap for this type of penalty.

## **10. Nonmonetary Penalties**

### **10.1 Failure to Pay a Fee**

#### **10.1.1 What is covered-Including, but not limited to:**

Failure to pay annual maintenance, renewal fees, or administrative fines by the regulatory deadline.

#### **10.1.2 NAC(s) Related to Violation-Including, but not limited to:**

NAC 445B.275 Violations: Acts constituting; notice.

NAC 445B.327 Fees; late penalty.

#### **10.1.3 Why it matters**

When a facility doesn't pay their fees, the Division cannot meet and implement legal rules and requirements regarding compliance, permitting, enforcement, and planning.

#### **10.1.4 Consequences**

As per NAC 445B.327(12), a late fee payment already incurs in a late penalty in the amount of 25 percent of the amount due. The consequence of not paying a fee at all will result in the permit being administratively terminated after a certain length of time and proper notification. Any operation after the permit has been terminated will be subject to violations for operating without a permit.

## 11. Issuance

This Practice is effective thirty (30) days following signature by the Bureau of Air Quality Planning Chief. This Practice supersedes all previous enforcement guidance and applies to all alleged violations for which penalties have not been settled or agreed to by the Division and the alleged violator as of the effective date of this Practice.

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Andrew Tucker  
Bureau of Air Quality Planning,  
Chief

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Date

DRAFT

## 12. Appendix A: Penalty Calculations Worksheet

| Facility                                                                                                                                                                                                   | Facility Name      |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------------------|----------------------|-----------------------|---|---|---|------|---|--------------|---|------|---|---|---------|
| FIN                                                                                                                                                                                                        | AXXXX              |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| Source Type                                                                                                                                                                                                | Source Type        |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| Violation                                                                                                                                                                                                  | Violation Type     |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| NOAV #                                                                                                                                                                                                     | XXXX               |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| $\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - \text{MF} + \text{CH})$                                                                                                     |                    |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| BP=Base Penalty                                                                                                                                                                                            | BM=Base Multiplier | AF=Aggravating Factor | MF=Mitigating Factor | CH=Compliance History |   |   |   |      |   |              |   |      |   |   |         |
| <p>There are multiple components in aggravating factors and to get the total aggravating factor all the components are added together. This is the same for mitigating factors and compliance history.</p> |                    |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| NOAV 9999A                                                                                                                                                                                                 |                    |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| Item                                                                                                                                                                                                       | Explanation        |                       |                      |                       |   |   |   |      |   | Amount/Ratio |   |      |   |   |         |
| Base Penalty (BP)                                                                                                                                                                                          | Explanation        |                       |                      |                       |   |   |   |      |   | \$X.XX       |   |      |   |   |         |
| Base Multiplier(s) (BM)                                                                                                                                                                                    | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Negligence/ Willfulness (AF)                                                                                                                                                                               | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Public Health Risk (AF)                                                                                                                                                                                    | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Environmental Risk (AF)                                                                                                                                                                                    | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Hazardous Air Pollutants (AF)                                                                                                                                                                              | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Failing a Federal Limit (AF)                                                                                                                                                                               | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Falsification (AF)                                                                                                                                                                                         | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Effort to Comply (MF)                                                                                                                                                                                      | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Self-Reporting (MF)                                                                                                                                                                                        | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Violation not of the same type (CH)                                                                                                                                                                        | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| Violation of the same type (CH)                                                                                                                                                                            | Explanation        |                       |                      |                       |   |   |   |      |   | #            |   |      |   |   |         |
| $\text{Gravity Component} = \text{BP} \times \text{BM} \times (1 + \text{AF} - \text{MF} + \text{CH})$                                                                                                     |                    |                       |                      |                       |   |   |   |      |   |              |   |      |   |   |         |
| Gravity Component =                                                                                                                                                                                        | \$X.XX             | x                     | #                    | x                     | ( | 1 | + | #### | - | ####         | + | #### | ) | = | #VALUE! |
| Max Cap                                                                                                                                                                                                    | Explanation        |                       |                      |                       |   |   |   |      |   | N/A          |   |      |   |   |         |

### 13. Appendix B: Supplemental Environmental Project Guidelines

1. Supplemental Environmental Projects (SEPs) are defined by US EPA as "environmentally beneficial projects which a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform." The Division's approach to SEPs is intended to be similar to US EPA's Revised SEP Policy, May 1995.
2. The Division has discretion to settle enforcement cases out of court, including the discretion to include a SEP as part of the settlement.
3. The Bureau Chief, under the guidance of the Administrator, shall determine the acceptability of a proposed SEP. In general, the following types of projects may qualify, provided all other requirements of this guidance are met:
  - a. Public Health. A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation.
  - b. Pollution Prevention. A pollution prevention project is one which reduces the generation of pollution through "source reduction", i.e., prior to generation of the pollutant or waste.
  - c. Pollution Reduction. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment.
  - d. Environmental Restoration and Protection. An environmental restoration project is one which goes beyond repairing damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected.
  - e. Assessments and Audits. This category includes pollution prevention assessments, site assessments, environmental management system audits and, where the defendant/respondent is a small business, compliance audits. The resulting recommendations from the assessment/audit must be implemented to qualify as an acceptable SEP.
  - f. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to other members of the regulated community. The project must be focused on the same regulatory requirements which were violated.
4. Environmental Justice. The Division encourages SEPs that benefit low-income and/or minority populations.
5. The following are types of projects that are not acceptable as SEPs:

- a. A project which is unrelated to environmental protection.
  - b. A project which the defendant/respondent is already legally required to perform.
  - c. A project for corrective or preventive measures that would otherwise be required to prevent recurrence of the violation.
  - d. A project that provides the Division with additional resources to perform an activity for which the Legislature has specifically appropriated funds.
6. The value of the SEP shall equal at least 125% of the penalty to be mitigated. For example, if the calculated penalty is \$10,000, then a SEP with a value of at least \$12,500 is required for 100% mitigation of the penalty.
7. To implement the SEP, a settlement agreement shall be established between the Division and the defendant. The scope of work, associated cost estimate and schedule of performance must be specified. Criteria to determine successful completion of the SEP and consequences for failure to comply with the settlement agreement shall also be included.
- a. The Division will determine what costs are allowed in assessing the value of the SEP. Only costs directly related to accomplishment of the SEP will be considered.
  - b. The Division should not directly manage or control funds that are set aside or escrowed for performance of a SEP.
  - c. The Division should provide oversight to ensure that the SEP is implemented in accordance with the settlement agreement.
8. There are two ways for the defendant to demonstrate that the full value of the SEP has been achieved. The method to be used shall be described in the settlement agreement. The defendant may either:
- a. Demonstrate satisfactory completion of the scope of work as described in the approved settlement agreement without regard to actual cost; or
  - b. Submit invoices for qualified expenses after completion of the SEP that add up to the SEP amount or greater.
9. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement or an enforcement action.