

## AIR QUALITY DIVISION PENALTY GUIDANCE

This guidance is to be used by enforcement personnel in the Air Quality Division (AQD) to assist in determining if an administrative penalty is justified for an air quality violation and in determining the amount of the proposed penalty. The framework should help assure consistent responses by the AQD to similar violations. Escalating enforcement for continued noncompliance is essential to an effective program.

The DEQ's Standard Operating Procedure for Enforcement (SOP) signed December 2016 sets forth the goals guiding DEQ enforcement efforts. AQD enforcement actions are guided by the requirements of the SOP, together with the provisions of this guidance. This guidance also meets the SOP requirement that: "Each Division is responsible for creating an internal guidance document ... for each of its regulatory programs to help provide reasonable objectivity in determining penalty amounts." (SOP at Section II.F.3.).

*The procedures set out in this document are intended solely for the guidance of Air Quality personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in any litigation with the State of Oklahoma. The DEQ reserves the right to act at variance with this guidance and to change it at any time without public notice.*

### PROCEDURE:

#### I. Determining significance

The SOP requires that the significance of violations be determined in accordance with the general criteria set forth in Section II.A, as Level 1 and Non-Level 1 violations. According to the SOP, Non-Level 1 violations may be classified into separate categories. AQD has classified Non-Level 1 violations into Level 2 and Level 3 violations. In addition, AQD makes every reasonable effort to meet the standards established by EPA for prioritizing which violations receive the highest scrutiny and oversight. EPA's standards are set forth in *The Timely and Appropriate Enforcement Response to High Priority Violations - Revised 2014*. **High Priority Violations (HPVs) are usually considered Level 1 violations. However, if the pollutant in violation is minor or synthetic minor less than 80% of major source levels (SM<80), then it may be designated as a Level 2 HPV violation.** AQD has also designated some Level 1 violations that are based on state criteria. Level 1 violations are summarized in Appendix A.

AQD will not normally seek penalties for Level 2 and Level 3 violations provided the source takes immediate corrective action. However, Level 2 violations may be escalated to Level 1 in the event of protracted failure to comply or if their cumulative effect meets the general criteria described for Level 1 violations.

## **II. Proposed penalty calculation.**

Once a decision has been made that an administrative penalty is appropriate, the assigned Environmental Programs Specialist will calculate the “proposed penalty.” The proposed penalty is the amount to be inserted in a Consent Order (CO) or an Administrative Compliance Order (ACO) if necessary. It consists of two primary components: the “*economic benefit*” gained through non-compliance and the “*gravity-based penalty*.”

### **A. Economic benefit component**

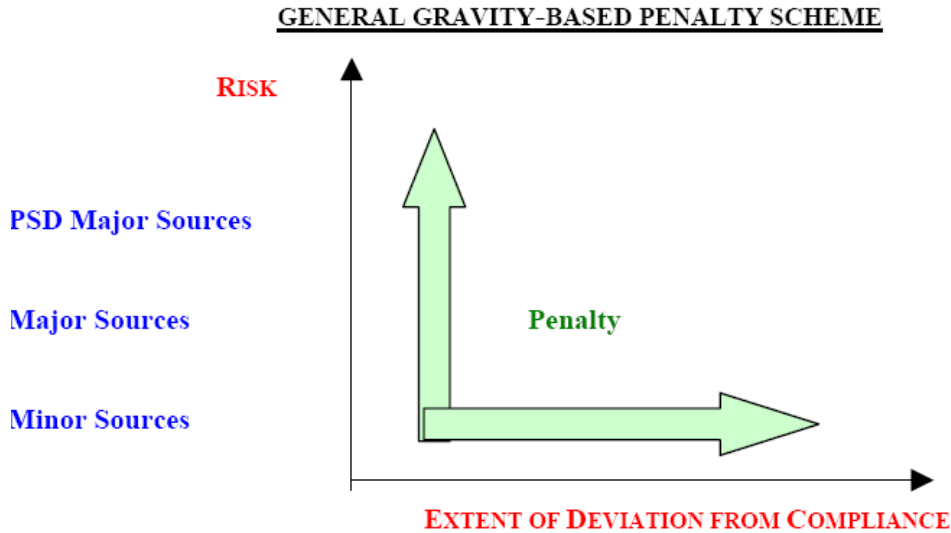
Economic benefit represents the financial gains that a violator accrues by delaying and/or avoiding compliance with applicable requirements. Recovery of the economic benefit from violators protects sources that choose to operate in compliance with air quality regulations; therefore the BEN amount is typically not subject to reduction for good faith, fast track, etc.

When there appears to be an economic benefit associated with a violation, AQD uses the latest version of EPA’s BEN computer model to determine the amount of economic benefit (economic benefit can be referred to as BEN). The model can be downloaded from the EPA’s web site at the following address: <https://www.epa.gov/enforcement/penalty-and-financial-models>. The use of the model by enforcement staff assures consistency and fairness regarding economic benefit calculations.

*Note: The BEN portion of the penalty is not included in the total penalty unless the BEN itself equals or exceeds \$5,000. Certain violations are assumed to be below this threshold and will not require a BEN analysis. Those where a BEN may apply are noted in each Criteria below.*

### **B. Gravity-based penalty**

The gravity-based penalty is that amount which is deemed appropriate based solely on the seriousness of the violation. The seriousness of the violation involves two components: 1) the extent of deviation from compliance with statutory and regulatory requirements, and 2) the relative risk to human health and the environment caused by the violation(s). Whenever possible, this guidance considers both components when determining gravity-based penalty amounts. In general, the risk to human health and the environment increases with the size of the emission source and the length of time a source fails to comply with applicable requirements. Penalties increase with the size of the emission unit, the extent of deviation from compliance, and the length of time out of compliance. The following matrix is used to calculate the gravity-based penalty.



A gravity-based penalty calculation guide for all Level 1 violations is set forth at Appendix B. When applicable, adjustments to the gravity-based penalty should be made before finalizing the penalty. Adjustment factors are compliance history and good faith efforts to comply.

**C. Compliance history.** This factor may only be used to increase the amount of the penalty. Evidence that the owner/operator has violated an air quality requirement in the past clearly indicates that the party was not deterred by a previous enforcement response. On the third Notice of Violation (NOV) or Alternate Enforcement Letter (AEL) issued within the previous twenty-four (24) months for a similar violation, the gravity-based penalty may be increased by up to 20 percent. The gravity-based penalty may be increased by up to 35 percent if more than three similar notices were issued within the last five years. The same criteria may be used to elevate a violation from a Level 2 to a Level 1 violation. Similar violations may include the following:

- (i) Violation of the same permit
- (ii) Violation of the same emission standard
- (iii) Violation of the same statutory or regulatory provision
- (iv) A similar act or omission.

If the violator has previously been fined for a similar violation, the final figure may be adjusted upward by an order of magnitude (not to exceed the statutory maximum). A prior violation by the violator's parent company, sister company, subsidiary, or other person or entity with ownership interest, responsibility, or control, may constitute a history of noncompliance. It is up to the owner/operator to demonstrate to AQD that these types of previous violations are not valid or material.

**D. Good faith efforts to comply.** As stated in the SOP, the gravity-based portion of the penalty may be adjusted downward by up to 25 percent based on the violator's response to the violation once detected or brought to its attention. The amount of the reduction will be based upon the respondent's efforts to bring the facility into complete compliance with all

applicable rules and regulations. Both the timeliness and the quality of the response will be considered. Maximum reductions apply to situations in which the respondent takes action before an NOV or AEL is issued. Moderate reductions are warranted when the facility expeditiously takes steps to correct the violation upon receipt of the NOV or AEL, or in the case of self-disclosures that do not meet all criteria for full penalty mitigation.

**E. Credits (i.e. Supplemental Environmental Projects)**

In lieu of a portion of any cash penalty assessed using this policy, AQD may extend penalty credit to a source for costs associated with *voluntary* improvements and upgrades in its process equipment and/or air pollution control equipment and/or continuous monitoring systems, as outlined in Section III of DEQ’s Enforcement SOP. However, no penalty credit shall be given to any source for costs incurred in correcting problems resulting from deficient or negligent operating and maintenance practices.

**The maximum penalty allowed by the Oklahoma Clean Air Act is \$10,000 per day per violation. If the sum of the economic benefit and the gravity-based penalty exceeds the statutory maximum, the proposed penalty must be adjusted downward.**

**APPENDIX A - LEVEL 1 VIOLATIONS**

A) High Priority Violations: These criteria have been revised based on EPA’s “Timely and Appropriate Enforcement Response to High Priority Violations – Revised 2014.” Under the revised policy the violation is an HPV if it occurs at a *facility* that is a (1) Title V Major Source, or (2), a non-Title V major source that is part of DEQ’s Compliance Monitoring Strategy (CMS) plan (i.e. SM 80). Where this policy differs significantly from the previous versions is that rather than analyzing just pollutants for which the facility is major or SM 80, we are required to look at the following criteria for *all* pollutants at these sources. BEN may apply to each HPV Criterion.

**HPV Criterion 1** – Failure to obtain a New Source Review (NSR) permit (for either attainment, under Prevention of Significant Deterioration (PSD) or non-attainment areas) and/or install Best Available Control Technology (BACT) or Lowest Achievable Emission Reductions (LAER) (and/or obtain offsets) for any new major source or major modification. This criterion includes a violation by a PSD/NSR synthetic minor source of an emission limit or permit condition such that the source’s actual annual emissions exceed (or are expected to exceed) the major source thresholds as defined in the applicable NSR regulations.

**HPV Criterion 2** - A violation of any federally enforceable emission limitation, emissions standard, or operating parameter, which is a surrogate for emissions, that was issued pursuant to Title I, Part C (*PSD*) or D (*non-attainment plans*), of the Clean Air Act (CAA) and the implementing regulations, or the equivalent provision(s) in an EPA-approved implementation plan (i.e. OAC 252:100-8, Part 7 and Part 9) where such violation continued (or is expected to continue) for seven or more *consecutive* days. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least

seven consecutive days. EPA presumes that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.

**HPV Criterion 3** – A violation of any emission limitation, emission standard or parameter that is a surrogate for emissions in an applicable Standards of Performance for New Sources (NSPS) (Part 60) relating to a pollutant where such violation continued (or is expected to continue) for seven or more *consecutive* days. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven days. EPA presumes that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.

**HPV Criterion 4** – A violation of any emission limitation, emission standard or surrogate parameter (emission or operating) of an applicable major source National Emission Standards for Hazardous Air Pollutants (NESHAP) (Parts 61 and Parts 63) where such violation continued (or is expected to continue) for seven or more *consecutive* days. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven consecutive days. The EPA presumes that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur. *Note: While Part 61 does not designate major and area source NESHAPs, this criterion only applies to major sources of HAPs.*

**HPV Criterion 5** – A violation that involves federally enforceable work practices, testing requirements, monitoring requirements, recordkeeping or reporting that substantially interferes with enforcement of a requirement or a determination of the source's compliance. This applies to the above requirements in an applicable NSR/PSD permit, NSPS Subpart, or major source NESHAP Subpart (Part 61 or 63). The determination of what is substantial shall be part of a case-by-case analysis/discussion between the EPA Region and the enforcement agency. *Note: Does not include Leak Detection and Repair (LDAR) monitoring violations, which are handled as Level 1 Non-HPV violations, discussed in Section 3.*

**HPV Criterion 6** – Any other violations specifically identified and communicated to enforcement agencies from time to time by the Director, Air Enforcement Division, U.S. EPA (general applicability) or as mutually agreed upon between the enforcement agency and corresponding EPA Region (case-by-case). For example, an enforcement agency believes an emission violation warrants designation as an HPV even though the violation lasted (or will last) for less than seven days.

- B) State Criteria **Level 1 violations**. Only major sources and SM 80s qualify for Level 1 violations, except in the case of asbestos violations, or Chronic/Recalcitrant violations. (The pollutant in violation must be one for which the facility is major or SM 80, as applicable.)
- a) Failure to obtain a construction permit prior to construction, or a modification permit for a significant modification at a major source (non-PSD).
  - b) Late submittal of an *initial* Title V operating permit application (>60 days late), or allowing a TV operating permit to expire prior to submittal of a renewal application.
  - c) Failure to install BACT and/or operate it correctly at a major source (non-PSD). (OAC 252:100-8-5(d)(1)(A))
  - d) Any failure to install, and/or operate correctly, emission controls required by the Oklahoma Administrative Code that is not covered elsewhere in the guidance for seven or more consecutive days. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven consecutive days.
  - e) Emission violation (non-NSPS or NESHAP) at a major or SM 80 source, that continues, or is presumed to have continued, for seven or more consecutive days and is detected by any test method used to determine compliance (e.g. PEA Test). (The *pollutant* must be one for which the source is a major or SM 80.) This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for seven or more consecutive days. DEQ presumes that the violation is continuing unless the source can demonstrate sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.
  - f) Exceedance of a Synthetic Minor emission limit or permit condition such that the source's actual 12-month rolling or calendar year emissions exceed (or are expected to exceed) the major source thresholds.
  - g) A violation that involves testing requirements, monitoring requirements, recordkeeping or reporting that substantially interferes with enforcement of a requirement or a determination of the source's compliance and is not subject to an NSPS or major source NESHAP. The determination of what is substantial shall be determined on a case-by-case analysis and discussion by the DEQ. (The *pollutant* must be one for which the source is a major or SM 80.)
  - h) Asbestos – Substantial failure to provide timely and accurate notice, failure to adhere to work practices and visible emission limitations, failure to properly

dispose of asbestos containing material, and/or failure to conduct an inspection as required by 40 C.F.R. 61, Subpart M.

- i) Leak Detection and Repair- Failure to seal open ended lines, and/or failure to monitor components, as required by New Source Performance (NSPS) Subpart VV or VVa (Referenced via NSPS Subpart GGG, GGGa, KKK, OOOO, or OOOOa as well as 40 C.F.R. 63, Subparts CC and HH. This is a non-exhaustive list of subparts). Also includes failure to monitor at Compressor Stations and Well Sites using Optical Gas Imaging.
- j) Substantial violation of a consent decree or consent order that results in stipulated penalties.
- k) Chronic and/or Recalcitrant – A consistent, long trend of violations not otherwise meeting Level 1 thresholds; or extreme stubbornness or failure to cooperate with DEQ in correcting violations. The same criteria may be used to elevate a violation from a Level 2 to a Level 1 violation.

**APPENDIX B - AQD GRAVITY-BASED PENALTY CALCULATION GUIDE**

**LEVEL 1 HPV**

**HPV Criterion 1: Failure to obtain a PSD/NSR permit, and/or install Best Available Control Technology (BACT) or Lowest Available Emission Reductions (LAER) for any new major stationary source, or major modification at a major stationary source. Also includes a violation by a PSD/NSR synthetic minor source, of an emission limit or permit condition that causes the source’s actual annual emission to exceed (or expected to exceed) the major source thresholds as defined in the applicable PSD/NSR regulations.**

**A.** The failure to obtain a pre-construction PSD/NSR permit, or a construction permit for a major modification, is a one-time violation.

Failure to obtain a PSD/NSR construction permit for a new major source	<b>\$12,000</b>
Failure to obtain a permit for a major modification to a PSD/NSR major source	<b>\$9,000</b>

**B.** Failure to install Best Available Control Technology (BACT) or Lowest Achievable Emission Reductions (LAER) begins when the facility commences operation. The potential damage to the environment increases with time and with the size of the emission unit. Therefore, the penalty increases with the length of time the source operates without control equipment. Failure to operate BACT is addressed in HPV Criterion 2.

<b><u>PSD Major Emission Unit</u></b>	<b><u>\$6,000</u></b>	<b><u>(number of days)(100)</u></b>	<b><u>\$160,000</u></b>
<b><u>Major Emission Unit</u></b>	<b><u>\$3,000</u></b>	<b><u>(number of days)(50)</u></b>	<b><u>\$80,000</u></b>
<b><u>Minor Emission Unit</u></b>	<b><u>\$1,500</u></b>	<b><u>(number of days)(25)</u></b>	<b><u>\$40,000</u></b>
	<b><u>Base Penalty</u></b>	<b><u>Up to 1825 days (5 years)</u></b>	<b><u>Maximum Penalty</u></b>

$$\text{Base} + (\text{number of days})(50)$$

$$\text{Gravity based penalty} = A + B$$

**C.** Violation by a PSD or NSR synthetic minor source of an emission limit or permit condition such that the source’s actual annual emissions exceed (or are expected to exceed) the major source thresholds as defined in the applicable PSD/NSR regulations.

Synthetic minor source exceeded PSD or NSR limits	\$12,000
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**HPV Criteria 2, 3, and 4 use similar language for similar violations in the different air programs; therefore, the calculations will be the same and will be covered under the table after HPV Criterion 4.**



**HPV Criterion 2: Violation of PSD or NSR permit requirements**

Violation of a federally enforceable emission limitation, emissions standard, or operating parameter, which is a surrogate for emissions, that was issued pursuant to Title I, Part C (PSD) or D (non-attainment plans), of the Clean Air Act (CAA) and the implementing regulations, or the equivalent provision(s) in an EPA-approved implementation plan (i.e. OAC 252:100-8, Part 7 and Part 9) where such violation continued (or is expected to continue) for at least seven consecutive days. This may also include failure to operate BACT.

**HPV Criterion 3: Violation of NSPS requirements**

Violation of a emission limitation, emission standard or operating parameter that is a surrogate for emissions, pursuant to NSPS, that continues for seven or more consecutive days.

Note that if a company does not identify NSPS applicability for an affected source and operates without the proper emission controls or standard for the required time threshold, the emissions from the source are considered excess emissions and the source is considered an HPV.

**HPV Criterion 4: Violation of Major Source NESHAP requirements (Part 61 or Part 63)**

A violation of any emission limitation, emission standard or surrogate parameter (emission or operating) of an applicable major source National Emission Standards for Hazardous Air Pollutants (NESHAP) (Parts 61 and Parts 63) where such violation is a continuing violation that occurred (or is expected to occur) for seven or more consecutive days.

Note that if a company does not identify Part 61 or Part 63 NESHAP applicability for an affected source and operates without the proper emission controls or standards, for the required time threshold, the emissions from the source are considered excess emissions and the source is considered an HPV.

**Penalty Table for HPV Criteria 2, 3, and 4:**

**The potential damage to the environment and human health increases with the size of the emission unit and the length of time for the deviation from compliance. If the emission exceeds the limit or standard by 100% or more, the penalty may be doubled, but no greater than the maximum allowed penalty.**

<b><u>PSD Major Emission Unit</u></b>	<b><u>\$6,000</u></b>	<b><u>(number of days)(100)</u></b>	<b><u>\$160,000</u></b>
<b><u>Major Emission Unit</u></b>	<b><u>\$3,000</u></b>	<b><u>(number of days)(50)</u></b>	<b><u>\$80,000</u></b>
<b><u>Minor Emission Unit</u></b>	<b><u>\$1,500</u></b>	<b><u>(number of days)(25)</u></b>	<b><u>\$40,000</u></b>
	<b><u>Base Penalty</u></b>		<b><u>Maximum Penalty</u></b>

**(1)Note: A penalty should not be assessed if the total exceedance is less than ten (10) percent of the applicable limit or standard, and it is less than two hundred (200) pounds of a single pollutant (both situations must apply to mitigate the penalty).**

**Percent deviation from the limit or standard is calculated as (actual emission-limitation/limitation) \* 100.**

**HPV Criterion 5** – A violation that involves federally enforceable work practices, testing requirements, monitoring requirements, recordkeeping or reporting that substantially interferes with enforcement of a requirement or a determination of the source’s compliance. This applies to the above requirements in an applicable NSR/PSD permit, NSPS Subpart, or a major source of HAPs subject to NESHAP Part 61 or Part 63. The determination of what is substantial shall be part of a case-by-case analysis/discussion between the EPA Region and the enforcement agency.

The size of the emission **unit** is considered when determining the penalty.

<b>Size of emission unit (based on PTE)</b>	Work practice violation	Improper testing or monitoring	Failure to conduct test or required monitoring <sup>(1), (2)</sup>	Recordkeeping violations	Reporting violations
PSD major	<b>\$3,000</b>	<b>\$6,000</b>	<b>\$9,000</b>	<b>\$3,000</b>	<b>\$3,000</b>
Major	<b>\$2,100</b>	<b>\$3,000</b>	<b>\$6,000</b>	<b>\$2,100</b>	<b>\$2,100</b>
Minor	<b>\$1,000</b>	<b>\$1,000</b>	<b>\$3,000</b>	<b>\$1,000</b>	<b>\$1,000</b>

(1)Note: Does not include LDAR monitoring violations, which are handled as Level I Non-HPV, Section 3.  
 (2) The penalty for a failure to conduct testing is calculated on a per pollutant basis.

**HPV Criterion 6** – Any other violations specifically identified and communicated to enforcement agencies from time to time by the Director, Air Enforcement Division, U.S. EPA (general applicability), or as mutually agreed upon between the enforcement agency and corresponding EPA Region (case-by-case).

To determine the penalty under this Criterion, refer to similar violations in the above tables and apply the penalty as appropriate.

**LEVEL 1 NON-HPV**

Only major sources and SM 80s qualify for Level 1 violations, except in the case of asbestos violations, or chronic or recalcitrant violations.

**1. State Criteria Level 1 Violations not covered by the HPV policy**

Use the appropriate penalty scale(s) to calculate the gravity-based penalty for Level 1 violations that are not considered HPVs.

**A.**

Failure to obtain a construction permit (major source, non-PSD)	<b>\$6,000</b>
Failure to install/operate BACT (non-PSD major source)	<b>\$3,000</b>
Failure to install/operate control equipment required by permit or OAC	<b>\$3,000</b>

**B.**

<b>Major emission unit</b>	<b>\$2,500</b>	<b>\$25,000</b>
<b>Minor emission unit</b>	<b>\$1,000</b>	<b>\$10,000</b>
Months	1          12          24          36          48          60	

<b>Major Emission Unit</b>	(Number of months)(\$416.67)	\$2,500 minimum
<b>Minor Emission Unit</b>	(Number of months)(\$166.67)	\$1,000 minimum
Months*	1          12          24          36          48          60	

\*Any portion of a month is considered 1 month.

<b>Major Emission Unit</b>	<b>\$3,000</b>	<b>(number of days)(50)</b>	<b>\$80,000</b>
<b>Minor Emission Unit</b>	<b>\$1,500</b>	<b>(number of days)(25)</b>	<b>\$40,000</b>
	<b>Base Penalty</b>	<b>Up to 1825 days (5 years)</b>	<b>Maximum Penalty</b>

Base + (number of days)(50)

**C.**

<b>Size of emission unit (based on PTE)</b>	<b>Improper testing or monitoring</b>	<b>Failure to conduct testing or required monitoring</b>	<b>Recordkeeping or Reporting violations</b>
PSD major	<b>\$6,000</b>	<b>\$9,000</b>	<b>\$3,000</b>
Major	<b>\$3,000</b>	<b>\$6,000</b>	<b>\$2,100</b>
Synthetic Minor	<b>\$1,800</b>	<b>\$4,000</b>	<b>\$1,800</b>
Minor	<b>\$1,200</b>	<b>\$3,000</b>	<b>\$1,200</b>

\* Note: This section does not include LDAR monitoring violations, which are handled as Level I Non-HPV, Section 3.

\*\*Note: If failure to conduct testing is for a state required engine test (i.e. PEA Test), penalty will not be calculated on a per pollutant basis.

**D. Source emissions**

Actual emissions equal or exceed the major source threshold (MST).	<b>\$12,000</b>
Actual emissions were below the MST each of the last three years.	<b>\$9,000</b>
Actual emissions were below 50 percent of the MST each of the last three years.	<b>\$6,000</b>

**Length of violation**

*\*Any portion of a month is considered 1 month.  
 Note: See example calculation under (b) below.*

Emissions >=MST	(Number of months)(\$600)
Emissions <MST	(Number of months)(\$400)
Emissions <50% of MST	(Number of months)(\$200)
Months	60-month maximum

*\*Any portion of a month is considered 1 month.  
 Note: See example calculation under (b) below .*

- a) Failure to obtain a construction permit at a major source (non-PSD) prior to commencing construction. This is a one-time violation

**Gravity-based penalty = (A)**

- b) Late submittal of an initial Title V operating permit application (>60 days late), or allowing an existing TV operating permit to expire prior to submitting a renewal application. *(Example calculation below)*

**Gravity-based penalty = (D)**

**Example Calculation:**

Calculate the penalty by adding the emission-based component to the time-based component. For example, if the sources’ annual emissions were 80 percent of the major source threshold or less for each of the last three years and the source operated without a Title V permit for 21 months, the gravity based penalty would be calculated as follows:

$$\$7,500 + (21 \text{ months})(\$333.33 \text{ per month}) = \$7,500 + 7,000 = \$14,500$$

If the permit application is submitted by the source before the violation is discovered by the DEQ, a downward adjustment of up to 50% may be applied to the gravity-based penalty. If this 50% downward adjustment is applied, the penalty should not also include an additional 25% good faith reduction.

- c) Failure to install BACT and/or operate it correctly at a major source (non-PSD). Failure to operate BACT may be considered an ongoing violation. (BEN may apply)

**Gravity-based penalty = (A+B)**

d) Any failure to install, and/or operate properly, emission controls required by the Oklahoma Administrative Code that is not covered elsewhere in the guidance. (The pollutant must be one for which the source is a major.) (BEN may apply)

**Gravity-based penalty = (A+B)**

e) Emission violation at a major or SM 80 source detected by any test method that is used to demonstrate compliance (e.g. PEA Test), that continues for seven or more consecutive days. (The *pollutant* must be one for which the source is a major or SM 80.) This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven consecutive days. DEQ presumes that the violation is continuing unless the source can demonstrate sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur. (BEN may apply)

**Use Penalty Table from HPV Criteria 2, 3, and 4**

f) Exceedance of a Synthetic Minor emission limit or permit condition such that the source's actual 12-month rolling or calendar year emissions exceed (or are expected to exceed) the major source thresholds. (BEN may apply)

**Gravity-based penalty = \$6,000**

g) A violation that involves work practices, testing requirements, monitoring requirements, recordkeeping or reporting that substantially interferes with enforcement of a requirement or a determination of the source's compliance. The determination of what is substantial shall be determined on a case-by-case analysis and discussion by the DEQ. (The *pollutant* must be one for which the source is a major or SM 80.) (BEN may apply)

**Gravity-based penalty = C**

h) Asbestos – Substantial failure to provide timely and accurate notice, to adhere to work practices and visible emission limitations, failure to properly dispose of asbestos, and/or failure to conduct an inspection as required by 40 C.F.R. 61, Subpart M. (*Note: the penalty for this part is under Section 2, below.*)

i) Leak Detection and Repair- Failure to seal open ended lines, and/or failure to monitor components, as required by NSPS Subpart VV or VVa (Referenced via NSPS Subpart GGG, GGGa, KKK, OOOO, or OOOOa as well as 40 C.F.R. 63, Subparts CC and HH. This is a non-exhaustive list). Also includes failure to monitor at Compressor Stations and Well Sites using Optical Gas Imaging. BEN may apply. (*Note: the penalty for this part is under Section 3, below.*)

j) Substantial violation of a consent decree or consent order that results in stipulated penalties.

k) Chronic and/or Recalcitrant – A consistent, long trend of violations not otherwise meeting Level 1 thresholds; or extreme stubbornness or failure to cooperate with DEQ in correcting violations. The same criteria may be used to elevate a violation from a Level 2 to a Level 1 violation. *(Note: the penalty for this part is under Section 4, below.)*

**2. Asbestos: Notice and Work Practice Violations**

(Facility does not have to be a major source of asbestos for these penalties to apply.)

A. Notice:

Failure to provide notice	\$1,500
Substantially late, inaccurate or incomplete notice	\$1,000

*(Note: If the contractor confirms to AQD’s satisfaction that no regulated asbestos was present, these will be considered Level 2 violations.)*

B. Inspections:

Failure to conduct inspection (no asbestos confirmation necessary)	\$1,500
Late or incomplete inspection, where asbestos is confirmed.	\$1,000

C. Work Practice:

Substantive violations have the potential to cause serious bodily harm, property damage or environmental damage. Each substantive violation is considered a separate offense.

Work Practices	\$3,000 per violation
Visible Emissions	\$3,000 per violation
Failure to abate	\$3,000 per violation

D. Disposal:

Failure to properly handle, store or transport friable asbestos	\$1,200
Failure to provide disposal manifest upon request	\$1,200
Failure to properly dispose of RACM at a licensed landfill	\$12,000

**3. Leak Detection and Repair\***

(These criteria apply to SM 80 and major sources.)

**A. Open ended lines (OEL)**

The number of OELs found within an associated process unit will trigger a Level 1 violation as reported or discovered during one reporting period. Valve count per process unit is calculated based on the total number of valves excluding those valves without regular instrument monitoring requirements. If DEQ discovers a single leaking OEL during a walkthrough, it will be considered a Level 1 violation regardless of the number of OELs discovered.

≤ 100 valves	2 OEL
101-500 valves	3 OEL
501-1000 valves	4 OEL
> 1000 valves	5 OEL

<b>Violation</b>	<b>Major Source</b>	<b>SM 80 Source</b>
Per Leaking OEL	\$3,000	\$1,200
Per Non-leaking OEL	\$1,200	\$600

*Note: Penalty is per OEL*

**B. Failure to Monitor**

This violation will be a Level 1 if the facility fails to monitor five (5) components, subject to instrument monitoring, in the facility (not in a process unit) during a reporting period. If this threshold is met, the penalty will be calculated using the formula in the table below. Failure to monitor components at a well site or compressor station is discussed in “C” below. BEN may apply.

Penalties will be assessed per non-monitored component, multiplied by the monitoring frequency required for that component, up to a maximum of \$50,000.

Major Source (facility wide)	(No. of components)(\$36)(No. of monitoring periods)	\$2,400 Minimum
Synthetic Minor 80 Source (facility wide, based on permit limits)	(No. of components)(\$18)(No. of monitoring periods)	\$1,200 Minimum

\*Note: If the facility discovers the OELs or failures-to-monitor on its own and reports the violations in an ACC, SAR or Periodic Report, the amount may be reduced by *up to 25%*. Even though these reports may be required, this saves the Department time and effort needed to discover them, and expedites the enforcement process.

**C. Failure to Monitor at Compressor Stations and Well Sites subject to fugitive monitoring requirements.**

This penalty calculation applies when a Compressor Station or Well Site fails to conduct any Optical Gas Imaging for the monitoring survey period. Penalty will not be calculated on a per component basis.

Major Source Compressor Station or Well Site	\$2,400 per monitoring survey
Synthetic Minor Compressor Station	\$1,800 per monitoring survey
Synthetic Minor Well Site	\$1,200 per monitoring survey

**4. Chronic or Recalcitrant Violation**

If a source has a consistent, long trend of violations not otherwise meeting Level 1 thresholds (HPV or non-HPV), that source may be assessed a penalty. In addition, if the source fails to cooperate with the Division during the investigation of specific violations, or fails to make good faith efforts to rectify problems causing excess emissions, a penalty may be assessed.

On the third Notice of Violation (NOV) or Alternate Enforcement Letter (AEL) issued within the previous twenty-four (24) months for a similar violation, the gravity-based penalty may be increased by up to 20 percent. The gravity-based penalty may be increased by up to 35 percent if more than three similar notices were issued within the last five years.

This criterion may also be applied for substantial failure or refusal to respond to an enforcement document issued by the AQD (i.e. AEL, NOV or RFI), or a substantial failure to meet timelines submitted in a compliance plan.

To calculate the penalty, use the underlying violation and the corresponding criterion that would apply. If there is not an applicable criterion, use the following:

True Minor	\$1,200
Synthetic Minor <80%	\$1,800
Synthetic Minor 80%	\$2,400
Major Source (non-PSD)	\$3,000
PSD Major Source	\$6,000