

ATTACHMENT 1
Penalty Calculation Worksheet
Out of Calibration Odorometer

The following penalty calculation worksheet shall be used in the assessment of all penalties in order to provide for consistency between assessments. A separate calculation shall be made for each separate violation.

SECTION I - ESTABLISH THE MAXIMUM PENALTY

Step 1 - Severity Classification: Establish the severity classification as Class III, Class II, or Class I with appropriate percentages to reflect the severity of the violation; this will determine the maximum penalty that can be assessed. The maximum penalty assessed of any violation may not exceed \$100,000 a day.

Severity:	Class I		Class II	7.5%	Class III		Class IV
	Number of Documented Violations: 1						
	Absolute Penalty: $\frac{\$100,000}{\text{ }}$						
	Maximum Penalty: $(\text{Violations}) \times (\$100,000/\text{day}) \times (\text{Severity})$						
	<u>\$7,500</u>						

Guidance

Class IA -Minor violation(s) which involve failure to comply with record-keeping and report filing requirements. Failure to submit required reports in a timely manner in accordance with pertinent regulations. This is considered a Class IA violation. such violations do not result in property damages, exceedance of regulatory standards, or pose an imminent hazard to public health and safety. A range of 0-1% of the allowable maximum penalty per violation per day shall be assessed.

Class IE -Minor violation(s) which do not result in damage or do not pose an imminent hazard to public safety. Minor compliance plan procedure violations or minor line marker deficiencies shall be considered as Class IE violations. operation without a permit or failure to report shall be considered at least as Class IE violations. Failure to prepare or produce documentation to show proper regulator station maintenance, or cathodic protection records shall also be considered a Class IE violation. A range of 1-3.5% of the allowable maximum penalty per violation per day shall be assessed.

Class II Moderate violation(s) which may or has resulted in property damage, or an imminent hazard to public safety. Welding procedure violations or joining procedure violations are considered as Class II violations. A range of 3.5-7.5% of the allowable maximum penalty per violation per day shall be assessed.

Class III -Severe violation (s) which has resulted in property damage or an imminent hazard to public safety, i.e. a reportable incident. A range of 7.5-10% of maximum violation per day shall be assessed.

Class IV - Egregious violation which is conspicuously bad, flagrant or offensive. A range of 10-100 % of violation per day shall be assessed.

- 10-25: a violation that THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN ABOUT AND FAILED TO ACT UPON THAT IS severe enough and with circumstances such that loss of property was possible.**
- 25-50: a violation that THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN AND FAILED TO ACT UPON ABOUT THAT IS severe enough and with circumstances such that loss of life was possible.**
- 50-75: a violation that THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN ABOUT AND FAILED TO ACT UPON THAT ultimately results in loss of property.**
- 75-100: a violation THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN ABOUT AND FAILED TO ACT UPON THAT ultimately results in loss of life.**

SECTION II - ESTABLISH THE BASIC PENALTY

Step 2 - Damage: Using 65% of the maximum penalty from Step 1, apply the percentage associated with the chosen damage category to determine the "Damage" assessment.

Damage: Extreme High 37.5% Moderate Low

$$\text{Damage: } (0.65) \times \text{Maximum Penalty} \times (\%)$$

$$\underline{\quad\quad\quad \$1,828 \quad\quad\quad}$$

Guidance:

Damage -A range up to 100% of the maximum penalty for each day of violation can be assessed for damage. Since damage is a difficult area to assess, the following categories determine the value of the affected resources before the damage occurred rather than actual damage itself.

Extreme -Apply 37.5-50% of the maximum penalty assessable under "Damage". Documented damage which may cause permanent or long range impacts to property or to public safety

High -Apply 25-37.5% of the maximum penalty assessable under "Damage". Situations which may create significant impacts to property or to public safety (i.e. recuperative or mitigative losses).

Moderate Apply 12.5-25% of the maximum penalty assessable under "Damage". Situations which may create moderate impacts to property or to public safety (i.e. short term impacts).

Low -Apply up to 12.5% of the maximum penalty assessable under "Damage". Situations which likely cause low or no impacts to property or to public safety (i.e. permit violations, standard violations, reporting violations).

Step 3 - Willfulness: Using 12.5% of the maximum penalty from Step 1, apply the percentage associated with the appropriate degree of willfulness to determine the "Willfulness" assessment.

Willfulness: Reckless Negligent 80.0% Unintent.

$$\text{Willfulness: } (0.125) \times \text{Maximum Penalty} \times (\%)$$

$$\underline{\quad\quad\quad \$750 \quad\quad\quad}$$

Guidance:

Willfulness -A range up to 12.5% of the established maximum penalty can be assessed by using the following criteria.

Recklessness -100% of the willfulness penalty will be assessed based on the operator's total disregard of the regulated activity or the obvious risk that a pipeline incident was likely to occur through his activities, i.e. could have been prevented. Also included in this category is blatant disregard of previous warnings or disapprovals issued by the Department.

Negligence -80% of the willfulness penalty will be assessed when the operator did not act in a responsible manner and should have been aware that his activities were regulated or carried a degree of risk. For example, an incident that could have been prevented with proper planning or operation and maintenance.

Unintentional -20% of the willfulness penalty will be assessed if it is determined that a violation occurred and could not have been reasonably prevented. For example, the operator showed diligent effort to prevent the incident.

Step 4 - Violation History: Using 5% of the maximum penalty from Step 1, apply the appropriate percentage associated with violation history to determine the "Violation History" assessment.

Violation History:

Number of NOV's: 1

Violation History: \$375

Guidance:

Management records which may provide documentation which relieve the entity of any responsibility for the violation.

Any **off-site mitigation projects** which are safety sound and have been agreed upon by the SDPUC and the violator.

Any other **pertinent and appropriate factors** as presented by the entity.

SECTION IV - ECONOMIC ADVANTAGE TO ENTITY FOR NOT COMPLYING

Step 8 - Economic Advantage: Consider any economic advantages.

Guidance:

A **reasonable methodology** shall be utilized to estimate any economic benefit or advantage the entity would have gained by not complying or alleviating the violation. The penalty should be set high enough to offset any benefit or advantage to the entity. The penalty shall also be set reasonably high enough to offset any potential burden to the State by the avoidance of responsibility by the entity.

Step 9 - Final Penalty: Add any economic advantages to Step 7.

STEP 8 Economic Advantage

Economic \$0

FINAL PENALTY= \$2,732