



UNIFORM PENALTY POLICY

Division of Environmental Quality

January 1, 2025

Preface

This Uniform Penalty Policy provides a rational, objective, and consistent method for determining the appropriate amount of administrative civil penalties the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ), will propose in formal enforcement actions or actions brought before the Arkansas Pollution Control and Ecology Commission (PC&EC). PC&EC's promulgated rule for Civil Penalties, found in Title 8 of the Code of Arkansas Rules (CAR), 8 CAR § 10-109, details ten (10) factors to be considered in determining assessed civil penalty amounts. In addition, 8 CAR § 10-109 allows DEQ to "develop and utilize formulas for the calculation of penalties for specific offenses in an effort to uniformly assign penalty amounts where practicable." This Uniform Penalty Policy is intended to comply with the requirements of 8 CAR Part 10 for calculating civil penalties proposed in Consent Administrative Orders (CAO) and assessed in Notices of Violation (NOV). DEQ may propose the statutory max penalty of up to \$10,000 or \$25,000 per day per violation for NOVs in lieu of calculating a penalty. These procedures will be periodically reviewed to determine their effectiveness and refined as necessary.

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1. Introduction

Formal administrative enforcement actions by DEQ generally result from an inspection performed at a facility or site; a permit file review or other knowledge gained by DEQ related to a violation of a permit, rule, or statute; or a combination thereof. Generally, DEQ will seek formal enforcement for serious or unresolved violations of permits, rules, and statutes. Each Office (Offices of Air, Land, and Water) within DEQ has individual inspection and enforcement procedures, and this document is not intended to address the timing or initiation of a formal enforcement action, but rather to document how violations are evaluated for the purpose of determining civil penalties to be proposed in CAOs or assessed in NOV's. Each Office reviews the calculated civil penalties to ensure the amounts conform to the applicable regulation, rule, or statute governing the alleged violation. DEQ may propose the statutory max penalty of up to \$10,000 or \$25,000 per day per violation for NOV's in lieu of calculating a penalty.

This Uniform Penalty Policy provides guidance for the assessment of civil penalties in a CAO or NOV. DEQ may vary from this Policy if circumstances warrant.

2. Penalty Calculations

A penalty amount should be calculated for each substantially distinguishable alleged violation. Each penalty calculation shall be determined by utilizing the penalty worksheet, an example is contained in Appendix A. The following procedures detail the process for determining penalty adjustments and final penalties proposed to be assessed in formal enforcement actions.

2.1 Base Penalty

The base penalty for each civil penalty calculation will be based on each Office's living penalty guidance document. This determination will be in the form of a Major, Moderate, or Minor rating.

A brief description of the violation and the documented or potential effects on the environment or public health utilized in selecting the base penalty rating should be entered in the box marked "Justification for Base Penalty" on the worksheet.

2.2 Adjustments to Base Penalty

After establishing a base penalty amount, the factors detailed in 8 CAR § 10-109(a) will be considered to make penalty adjustments, as necessary. Each potential adjustment corresponds to an adjustment rating that is multiplied against the base penalty amount and then added to or subtracted from the base penalty to get the total adjusted penalty. A brief description as to how the selected adjustment was determined must be entered in the box marked "Justification for Adjustment" on the worksheet for the factors identified in 8 CAR § 10-109(a).

2.2.1 Applicability and Scope of the term "violator"

For purposes of this policy, a "violator" includes any person as defined in 8 CAR § 10-102, who is subject to formal enforcement, and may include an "affiliated person" as defined in Ark. Code Ann. § 8-1-106.

If the director determines that an "affiliated person" such as an owner, officer, director, partner, or member or manager of a limited liability company, or a person with an interest exceeding 5% in

the entity subject to formal enforcement, or other affiliated person, has been the subject of formal enforcement by DEQ or has a documented history of violating a statute, rule, permit condition or order of the DEQ, the PC&EC, or any other state or federal environmental regulatory agency, including those of other states, the director may consider that affiliated person's history when evaluating the violator's history for purposes of penalty calculated.

2.2.2 Seriousness and Potential for Harm

8 CAR § 10-109(a)(1) requires DEQ to consider the seriousness of the violation when calculating a civil penalty: "The seriousness of the noncompliance and its effect upon the environment, including the degree of potential or actual risk or harm to the public health caused by the violation." In considering this factor, DEQ will review available information to determine the violation's effect on the environment and/or potential to cause harm to public health, including but not limited to, the pollutant, toxicity of pollutant, or sensitivity of the environment. If DEQ determines that the violation would not have a direct effect on the environment or potential for harm, then there will be no adjustment to the penalty based on this factor. If DEQ determines there could have been a direct effect on the environment or potential for harm, then an amount equal to 20% of the base penalty will be added to the overall penalty.

2.2.3 Avoidability

8 CAR § 10-109(a)(2) requires that in calculating a civil penalty, DEQ must consider: "Whether the cause of the noncompliance was an unavoidable accident." In considering this factor, DEQ will review available information to determine if the violation was an unavoidable accident. In determining that the violation was an unavoidable accident, DEQ will consider if a conscientious effort was made by the violator and all reasonable and prudent measures were taken to prevent the

violation. This demonstration will generally include documentation of the efforts taken to prevent the violation. If DEQ determines that the violation was a result of an unavoidable accident after instituting reasonable and prudent measures or if it is unknown, or if there is not enough information available to determine if the violation resulted from an unavoidable accident, then there will be no adjustment to the penalty based on this factor.

Should DEQ determine that the violation could have been avoided if the violator had instituted reasonable and prudent measures, then an amount equal to 20% of the base penalty will be added to the overall penalty. The actions that should have been taken to avoid the violation should be indicated on the penalty calculation worksheet.

2.2.4 Cooperation and Delayed Corrective Action

8 CAR § 10-109(a)(3) requires that in calculating a civil penalty, DEQ must consider: “The violator’s cooperativeness and expeditious efforts to correct the violation.” 8 CAR § 10-109(a)(10) also requires that in calculating a civil penalty, DEQ must consider: “Whether the violator has delayed corrective action.” Violators who cooperate with DEQ to complete all actions to correct violations expeditiously will be given consideration for a reduction in the overall civil penalty. It is understood that in some cases significant work to remediate the effects of a violation fully may still be required. If DEQ determines that the violator corrected the violation in an expeditious manner, then an amount equal to 20% of the base penalty will be deducted from the overall penalty. The penalty calculation worksheet should indicate the actions taken to correct the violation in an expeditious manner. If it is unknown by DEQ at the time the civil penalty is calculated whether the violator has delayed implementing corrective action related to a violation, there will be no adjustment to the penalty based on this factor. If the violator has failed to provide evidence of

corrective action or has delayed implementing a significant amount of the needed corrective actions related to the violation or has not proceeded with corrective action in an expeditious manner, then an amount equal to 20% of the base penalty will be added to the overall penalty.

2.2.5 Corrective Action History

8 CAR § 10-109(a)(4) requires that in calculating a civil penalty, DEQ must consider: “The history of a violator in taking all reasonable steps or procedures necessary or appropriate to correct any noncompliance.” Should DEQ determine that despite the violation the violator expended all reasonable efforts to comply with the requirement in question, an amount equal to 20% of the base penalty will be subtracted from the overall penalty. If DEQ determines there is not enough information available to determine if the violator expended all reasonable efforts to comply with the requirement in question, then there will be no adjustment to the penalty based on this factor. If DEQ determines that the violator failed to respond to outreach pertaining to the requirement, an amount equal to 20% of the base penalty will be added to the overall penalty. The penalty calculation worksheet should include a brief description as to how the selected adjustment was determined.

2.2.6 Violator’s History

8 CAR § 10-109(a)(5) requires that in calculating a civil penalty, DEQ must consider: “The violator’s history of previous documented violations regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore.” If the violator has been inspected by DEQ during the three (3) years prior to the date that DEQ notified the violator of the violation subject to this penalty assessment, and none of the violations during that same time period resulted in CAOs entered, final orders issued, or other formal enforcement actions with DEQ that

confirm or allege a violation, then an amount equal to 20% of the base penalty will be subtracted from the overall penalty.

If no inspections of the facility by DEQ have been performed and no formal enforcement actions completed documenting or alleging a violation within three (3) years prior to the date DEQ identified and notified the violator of the violation subject to this penalty assessment, then no penalty adjustment will be made based on this factor.

If within the three (3) years prior to the date DEQ identified and notified the violator of the violation subject to this penalty assessment, the violator has agreed to a CAO documenting a violation or DEQ has obtained a final order against the violator for a violation of any environmental law, rule, or permit, then an amount equal to 20% of the base penalty will be added to the overall penalty.

2.2.7 Intent

8 CAR § 10-109(a)(6) requires that in calculating a civil penalty, DEQ must consider: “Whether the cause of the violation was an intentional act or omission on the part of the violator.” If DEQ determines that the violation was the result of an intentional act or intentional omission of the violator, then an amount equal to 20% of the base penalty will be added to the overall penalty. DEQ will consider an act intentional when DEQ has knowledge that the violator was aware of the requirements and purposely ignored those requirements or took deliberate steps that resulted in the violation. If DEQ determines that the violation was not an intentional act or intentional omission of the violator, then there will be no adjustment to the penalty based on this factor. The penalty calculation worksheet should include a brief description as to how the selected adjustment was determined.

2.2.8 Economic Benefit/Pecuniary Gain

8 CAR § 10-109(a)(7) requires that in calculating a civil penalty, DEQ must consider: “Whether the noncompliance has resulted in economic benefit or pecuniary gain to the violator, including but not limited to, cost avoidance.” If DEQ determines that the violator received an economic benefit or pecuniary gain, including potential cost avoidance due to the violation, then an amount equal to 20% of the base penalty will be added to the overall penalty. If DEQ determines that the violator did not receive an economic benefit or pecuniary gain from the violation, then no penalty adjustment will be made based on this factor. The penalty calculation worksheet should include a brief description as to how the selected adjustment was determined.

Ark. Code Ann. § 8-4-103(e) and other applicable statutes establish the authority of DEQ to seek any pecuniary gain resulting from violations as an alternative to the limits on civil penalties. Procedures for calculating economic benefit/pecuniary gain as an alternative to the limits on civil penalties are included in Section 5.0 of this document.

2.2.9 Unusual or Extraordinary Enforcement Costs

8 CAR § 10-109(a)(8) requires that in calculating a civil penalty, DEQ must consider: “Whether the pursuit and the execution of the enforcement action has resulted in unusual or extraordinary costs to DEQ or the public.” If DEQ determines that the pursuit and execution of the enforcement action has resulted in unusual or extraordinary costs to DEQ or the public, then an amount equal to 20% of the base penalty will be added to the overall penalty. Details of the unusual/extraordinary costs should be documented and included with the penalty calculation worksheet. If DEQ determines that the pursuit and execution of the enforcement action has not resulted in unusual or extraordinary costs to DEQ or the public, then no adjustment to the penalty will be made based on

this factor. The penalty calculation worksheet should include a brief description as to how the selected adjustment was determined.

2.2.10 Government Contribution

8 CAR § 10-109(a)(9) requires that in calculating a civil penalty, DEQ must consider: “Whether any part of the noncompliance is attributable to the action or inaction of the state government.” If it is determined that the state government has had a non-substantial or moderate impact on the duration or degree of the violation, but no impact on the occurrence of the violation, then an amount equal to 20% of the base penalty will be subtracted from the overall penalty. If state government action or inaction had no adverse impact on the duration, degree, or occurrence of the violation or if the violator is the state government entity that had an impact on the duration, degree, or occurrence of the violation, then no adjustment to the penalty will be made based on this factor. The Penalty calculation worksheet should include a brief description as to how the selected adjustment was determined.

3. Continuing and Multi-Occurrence Violations

Ark. Code Ann. § 8-4-103(b) and other applicable statutes establish that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. Completed penalty calculations after adjustments may be multiplied by the number of days the violation occurred. However, DEQ may elect to not seek a per day penalty or may seek a continuing penalty based on a time period greater than per day (i.e. per month, per quarter, per year).

4. Violations of the Hazardous Waste Management Act

Ark. Code Ann. § 8-7-204(b)(4) and 8 CAR § 10-106 establish the maximum civil penalties that may be assessed for a violation of the Arkansas Hazardous Waste Management Act. This amount is not to exceed twenty-five thousand dollars (\$25,000) per violation. This amount is 2.5 times higher than the statutory maximum penalty amounts set forth in other environmental statutes and programs. The final civil penalty assessment for each violation of the Hazardous Waste Management Act, the permits issued thereunder, or rules adopted pursuant to the Hazardous Waste Management Act will be multiplied by 2.5 in accordance with the higher statutory maximum.

5. Seeking Economic Benefit/Pecuniary Gain Instead of Civil Penalty

It is the policy of DEQ to evaluate the economic benefit or pecuniary gain derived from noncompliance when penalties are calculated. Ark. Code Ann. § 8-4-103(e) and other applicable statutes establish the authority of DEQ to seek any pecuniary gain resulting from a violation as an alternative to the limits on civil penalties. Recovering the pecuniary gain is fundamental to the success of the compliance monitoring and enforcement program and ensures that economic incentives for noncompliance are eliminated. If after a civil penalty is paid violators still profit from the violation of the law, then the incentive to comply in the future is eliminated.

Any significant economic benefit component should be calculated for each violation and when the amount exceeds the adjusted civil penalty, the economic benefit should be collected in place of the civil penalty calculated under this policy. Economic benefit can result from a violator delaying or avoiding compliance costs, or when the violator achieves a competitive advantage through its noncompliance. For certain requirements of the rules and statutes, the economic benefit derived

from noncompliance may be de minimis (e.g., failure to submit a report on time). In the interest of simplifying and expediting an enforcement action, DEQ may forego the calculation of the economic benefit component for a violation where it appears that the economic benefit is likely to be significantly less than the amount of the adjusted final penalty for that violation. Any decision not to seek an economic benefit penalty and the rationale for such a decision should be documented on the penalty calculation worksheet.

6. Expedited Penalty Policy

6.1 Statement of Issue

DEQ is tasked with ensuring compliance with environmental law and regulation within the State of Arkansas. The goal of enforcement is to quickly address any impacts to the environment, to bring violators back into compliance as soon as possible, and to utilize penalties, when appropriate, as a deterrent to future noncompliance. In order to accomplish these goals, it is important to optimize the efficiency and effectiveness of DEQ's enforcement program through implementation of an expedited enforcement policy. The Expedited Enforcement Settlement Policy will allow concentration of resources on the serious issues which have the highest impact on human health and the environment while retaining the elements of an effective enforcement program.

6.2 Statement of Policy

To provide an incentive to expedite settlement of CAOs, the violator, in some cases as detailed below, will be given a fifty percent (50%) reduction of the proposed civil penalty if the CAO is signed and returned for execution within a designated period, usually within twenty (20) days of

receipt of the “expedited settlement” offer. Because the rationale for granting this extreme relief from a civil penalty is based on the benefits achieved by a rapid reduction of any possible risks to human health or the environment which might occur due to continuing violations, any extension of the specified time frame for expedited settlement is not appropriate. If the CAO is not signed and returned during the expedited enforcement settlement period (usually 20 days), the offer for 50% penalty reduction will expire and, upon concurrence with the director, negotiations on the penalty amount may commence or another form of enforcement may be pursued by DEQ. The following violators are not eligible, and will not be offered, an expedited settlement:

- Violators who within the last three (3) years have been subject to a DEQ enforcement action involving the violation of any environmental law, regulation, rule, or permit;
- Violators of 20 CAR pt 860, Asbestos Abatement Rule;
- Violators who exhibit criminal behavior, extreme negligence, patterns of habitual noncompliance, delayed corrective action, or recalcitrance; or
- Violator who has one of the following permits:
 - Hazardous Waste Treatment, Storage, or Disposal Permit
 - Major Title V Air permit
 - Major NPDES discharge permit
 - Class 1 Landfill Solid Waste Disposal Permit

The director shall have the sole discretion in making final eligibility determinations. DEQ will not offer a 50% reduction in penalty for violations for which DEQ seeks enforcement through issuance of a NOV or court action.

7. Cost Recovery

7.1 Authority to Seek Cost Recovery

- a. Ark. Code Ann. § 8-4-103 authorizes DEQ to assess administrative civil penalties for violations of the Arkansas Water and Air Pollution Control Act and recover costs associated with the enforcement of the Act.
- b. Ark. Code Ann. § 8-6-204 authorizes DEQ to assess administrative civil penalties for violations of the Arkansas Solid Waste Management Act and recover costs associated with the enforcement of the Act.
- c. Ark. Code Ann. § 8-7-204 authorizes DEQ to assess administrative civil penalties for violations of the Arkansas Hazardous Waste Management Act of 1979 and recover costs associated with the enforcement of the Act.
- d. Ark. Code Ann. § 8-7-804 authorizes DEQ to assess administrative civil penalties for violations of the Regulated Substance Storage Tanks Subchapter and recover costs associated with the enforcement of the subchapter.
- e. Ark. Code Ann. § 8-9-415 authorizes DEQ to assess administrative civil penalties for violations of the Used Tire Recycling and Accountability Act and recover costs associated with the enforcement of the Act.

DEQ assesses these administrative civil penalties through CAOs. For those violations and other enforcement matters that are capable of resolution through a CAO, as listed above, Arkansas Code providing authority for DEQ to seek reimbursement for the expenses incurred in enforcing the Arkansas Water and Air Pollution Control Act, Arkansas Solid Waste Management Act, Arkansas Hazardous Waste Management Act, Regulated Substance Storage Tanks Subchapter, Used Tire Recycling and Accountability Act, and rules, permits, or plans issued pursuant to those statutes.

The purpose of recovering costs, expenses, and damages includes the cost of investigation, inspection, or survey establishing the violation or unlawful act, indicating that the legislature intended the language as it is written and for the purpose of recovering expenses incurred by the DEQ when establishing violations or unlawful acts and subsequent enforcement related to those violations or unlawful acts. DEQ has the authority to recover the costs and expenses that it has incurred as a result of having to develop enforcement orders for those persons who violate the

Arkansas Water and Air Pollution Control Act, Arkansas Solid Waste Management Act, Arkansas Hazardous Waste Management Act, Regulated Substance Storage Tanks Subchapter, Used Tire Recycling and Accountability Act, and rules, permits, or plans issued pursuant to those statutes.

7.2 Implementation of Cost Recovery

Penalties shall not be increased in pursuit of reimbursement for expenses incurred by DEQ. Reimbursement expenses shall be calculated as ten percent (10%) of the total collected penalty, not to exceed twenty-five thousand dollars (\$25,000.00). Upon DEQ's receipt of civil penalty payment pursuant to an enforcement order, the calculated reimbursement of ten percent (10%), not to exceed twenty-five thousand dollars (\$25,000.00), shall be deposited into the corresponding DEQ operating fund in accordance with the provisions of Arkansas Code Annotated Title 8.

APPENDIX A

PENALTY CALCULATION WORKSHEET

DEQ Civil Penalty Calculation Worksheet (January 2025)

Assessed Penalty
\$750.00

Facility Name:

AFIN:

Inspection Date:

Violation No:

Violation Description:

Compliance Action #:

Permit No:

BASE PENALTY

Justification for Base Penalty

Major \$4,000	Base Penalty	
Moderate \$1,000	Minor \$750.00	
Minor \$750		

PENALTY ADJUSTMENTS

Seriousness of Noncompliance and its effect on the Environment including Potential for Harm 8 CAR § 10-109(a)(1)	0.00	The violation has an indirect effect on the environment and has a minimal potential to cause harm to public health. The pollutant, toxicity of pollutant, or sensitivity of the environment pose a minimal risk for harm, or the effect on the environment could not be determined.
	0.20	The violation has resulted or could result in an effect on the environment or has the potential to result in harm to public health. The pollutant, toxicity of pollutant, or sensitivity of the environment pose an immediate or significant risk for harm.
	Justification for Adjustment	
Adjustment Selected 0.00		
Value of Adjustment \$0.00		

Avoidability 8 CAR § 10-109(a)(2)	0.00	The violation was the result of an unavoidable accident. All reasonable and prudent measures had been taken in the operation of the facility to prevent it from occurring. Documentation of efforts to prevent must be demonstrated.
	0.20	The violation could have been avoided if the violator had instituted reasonable and prudent measures.
	Justification for Adjustment	
Adjustment Selected <input type="text" value="0.00"/> Value of Adjustment <input type="text" value="\$0.00"/>		

Cooperation and Delayed Corrective Action 8 CAR § 10-109(a)(3) & (10)	-0.20	The violator has cooperated with DEQ and expeditiously completed all actions to correct the violation. Documentation of correction must be demonstrated.
	0.00	The violator has completed some of the actions to correct the violation.
	0.20	The violator has failed to provide evidence of corrective action. The violator has delayed implementing a significant amount of the needed corrective actions related to the violation or has not proceeded with corrective action in an expeditious manner.
Adjustment Selected <input type="text" value="0.00"/> Value of Adjustment <input type="text" value="\$0.00"/>	Justification for Adjustment	

Corrective Action History 8 CAR § 10-109(a)(4)	-0.20	The violator has expended all reasonable efforts to comply with the requirement in question and has been proactive in preventing environmental impacts.
	0.00	The violation is the result of an oversight by the violator.
	0.20	The violator failed to respond adequately to DEQ outreach pertaining to the requirement.
Justification for Adjustment		
Adjustment Selected <div>0.00</div>		
Value of the Adjustment <div>\$0.00</div>		

Violator's History 8 CAR § 10-109(a)(5)	-0.20	The violator has been inspected during the last three years by DEQ but has had no CAOs entered, final orders issued, or other formal enforcement actions with any DEQ Office during the last three years.
	0.00	There have been no inspections of this facility in the last three years or formal enforcement actions completed resulting in findings of violation, therefore the violator has an unknown violation
	0.20	Within the last three years, the violator has agreed to a CAO or DEQ has obtained a final order against the violator for the violation of any environmental laws, rules, or permits.
Justification for Adjustment		
Adjustment Selected <div>0.00</div>		
Value of Adjustment <div>\$0.00</div>		

Intent 8 CAR § 10-109(a)(6)	0.00	The violation was not the result of an intentional act or omission of the violator.
	0.20	The violation was the result of an intentional act or omission of the violator.
Adjustment Selected <div>0.00</div> Value of Adjustment <div>\$0.00</div>	Justification for Adjustment	

Economic Benefit/ Pecuniary Gain 8 CAR § 10-109(a)(7)	0.00	The violation did not result in a known economic benefit/pecuniary gain to the violator.
	0.20	The violation did result in an economic benefit/pecuniary gain to the violator regardless of the amount of benefit/gain received. The amount obtained should be determined and recorded or a determination reached that the gain was de minimis. In the event the economic benefit/pecuniary gain can be documented to be greater than the total penalty amount calculated for the violation and supported by sufficient evidence, the amount of economic gain will be assessed as an alternative per Ark. Code Ann. Section 8-4-103(e).
Adjustment Selected <div>0.00</div> Value of Adjustment <div>\$0.00</div> Amount of Benefit/Gain* <div>\$0.00</div> <small>* If no known Economic Benefit/Gain was obtained then enter \$0.00. If the amount is De minimis then leave blank.</small>	Justification for Adjustment	

Unusual/ Extraordinary Enforcement Cost 8 CAR § 10-109(a)(8)	0.00	The pursuit and execution of the enforcement action has not resulted in unusual or extraordinary costs to DEQ or the public.
	0.20	The pursuit and execution of the enforcement action has resulted in unusual or extraordinary costs to DEQ or the public. <i>Documentation of unusual/extraordinary costs must be demonstrated.</i>
Adjustment Selected <input type="text" value="0.00"/> Value of Adjustment <input type="text" value="\$0.00"/>	Justification for Adjustment	

Government Contribution 8 CAR § 10-109(a)(9)	0.00	Government action or inaction had no adverse impact on the duration, degree, or occurrence of the violation.
	-0.20	Government action or inaction had a non-substantial or moderate impact on the duration or degree of the violation but no impact on the occurrence of the violation.
Adjustment Selected <input type="text" value="0.00"/> Value of Adjustment <input type="text" value="\$0.00"/>	Justification for Adjustment	

Subtotal of Adjusted Penalty:	\$750.00
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Economic Benefit/Pecuniary Gain:	De Minimus
Total:	\$0.00

Multi-Day/Occurrence Calculation:	0	DAYS OR OCCURRENCES	=	\$0.00
Occurrence Basis:				
Is this a Violation of the Hazardous Waste Management Act? (x2.5)				No

Permit Type:	N/A
HPV?:	No
HPV Code:	N/A
HPV Justification: N/A	

Facility Name:

Inspection Date:

Violation #: 1