



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY**

WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Clarification of the Size of Violator/Size of Business Civil Penalty Factor

FROM: Rosemarie Kelley, Director **ROSEMARIE**
Office of Civil Enforcement **KELLEY**

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Cynthia L. Mackey, Director
Office of Site Remediation Enforcement

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TO: Regional ECAD Directors and Deputies
Regional Counsels and Deputies

The purpose of this memorandum is to clarify that, when determining an appropriate civil penalty, case teams should calculate the size of business or size of violator component based on the violating entity and, in appropriate circumstances, related parties such as corporate affiliates. Certain environmental statutes require the U.S. Environmental Protection Agency to consider the “size of violator” or “size of business” as a factor when calculating civil penalties in enforcement cases. This clarification applies to all penalty policies (and appendices thereto) and enforcement response policies that implement these statutes.

Appropriate circumstances for considering related parties such as corporate affiliates include, but are not limited to, when:

- case teams are directed by the applicable penalty policy or enforcement response policy;
- a related party oversees or exercises control over the activities that gave rise to the violation;
- a related party controls the violating entity to the extent there is no meaningful separation between the violating entity and the related party;
- transactions between the violating entity and related party are less than arm’s length transactions;
- the violating entity is grossly undercapitalized, and the related party finances the violating entity’s operations; or
- monies are commingled to such a degree that it is not possible to determine what funds belong to which entity.

For any questions about this memorandum, please contact the Office of Civil Enforcement’s David Smith-Watts at smith-watts.david@epa.gov or 202-564-4083, or Ryan Didion at didion.ryan@epa.gov or 202-564-0332.