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Title 22@ Social Security

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Division 4.5@ Environmental Health Standards for the Management of Hazardous Waste

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Chapter 22@ Enforcement, Inspections, and Informant Rewards

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Article 3@ Assessment of Administrative Penalties

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Section 66272.68@ Adjustments to the Total Base Penalty

## **66272.68 Adjustments to the Total Base Penalty**

The Enforcement Agency shall adjust the total base penalty considering each of the following adjustment factors:

### **(a)**

Cooperation: The Enforcement Agency shall consider the violator's cooperation and efforts to return to compliance. Cooperation in achieving compliance is the standard and all necessary good faith efforts to comply with requirements must be made. Adjustments shall be based on the violator's efforts to return to compliance after being notified of the violations by the Enforcement Agency. The adjustment shall be made using the following guidelines:

Adjustment Factors for Cooperation	Degree of Cooperation / Effort	Circumstance
Extraordinary Downward adjustment of up to 25 percent	Violator exceeded the minimum requirements in returning to compliance or returned to compliance faster than requested.	Good Faith
No adjustment	Violator demonstrated a cooperative effort.	Recalcitrance
Upward up to 25 percent	Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.	Refusal
Upward adjustment of 50 to 100 percent	Violator intentionally failed to return to compliance or to allow clean-up operations to take place. This does not include refusal to allow inspections.	

### **(b)**

Prophylactic Effect: The total base penalty may be adjusted upward or downward to ensure that the penalty is sufficient to provide a prophylactic effect on both the violator and the regulated community as a whole.

**(c)**

Compliance History: The total base penalty may be decreased by five percent for each previous consecutive Enforcement Agency inspection report that has had no violations noted, up to a total reduction of ten percent. A separate, additional downward adjustment of 15 percent may be granted if the violator has a current International Organization for Standardization (ISO) 14001 Certificate. The total base penalty may be increased if the violator has demonstrated a history of noncompliance over the past five (5) years. The maximum adjustment factor for compliance history is an upward adjustment of 100 percent. When adjusting the penalty for compliance history, the Enforcement Agency shall consider the following criteria: (1) Previous violations at the site in question receive more weight than previous violations at another site owned or operated by the same person; (2) Recent violations receive more weight than older violations; (3) The same or substantially similar previous violations receive more weight than previous unrelated violations.

**(1)**

Previous violations at the site in question receive more weight than previous violations at another site owned or operated by the same person;

**(2)**

Recent violations receive more weight than older violations;

**(3)**

The same or substantially similar previous violations receive more weight than previous unrelated violations.

**(d)**

Ability to Pay: If the violator has provided the Enforcement Agency with the financial information necessary to assess the violator's ability to pay, the payment of the final penalty may be extended over a period of time if immediate, full payment would cause, in the judgment of the Enforcement Agency, extreme financial hardship. If extending the penalty payment over a period of time would cause, in the judgment of the Enforcement Agency, extreme financial hardship, the penalty may be reduced. No adjustment for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate, pursuant to subsection (a), or because of compliance history, pursuant to subsection (c).