



PENALTY COMPUTATION SUMMARY

Facility's Name: Advanced Chemical Treatment, Inc.

EPA ID #: NMD002208627

Facility Address: 6137 Edith Blvd. NE
Albuquerque, NM 87113

Date: 11/5/2018

Regulatory Citation 40 CFR	Potential for Harm	Extent of Deviation	Counts	Multi-Day Adjustment	Economic Benefit Adjustment	History of non- compliance Adjustment	Total
1. <u>279.45(a)</u>	Moderate	Major	32	N/A	N/A	10%	\$105,600
2. <u>279.45(g)</u>	Minor	Major	1	N/A	N/A	5%	\$525
3. <u>279.45(h)</u>	Moderate	Major	2	N/A	N/A	10%	\$6,600
4. <u>262.11</u>	Minor	Minor	6	N/A	N/A	20%	\$4,320
5. <u>PC III.J.1 and 264.176</u>	Moderate	Moderate	3	12 days	N/A	0%	\$37,000
6. <u>PC I.B.6</u>	Major	Major	3	12 days	N/A	0%	\$60,000
7. <u>PC III.A.1.d</u>	Major	Major	2	15 days	N/A	0%	\$65,000
8. <u>Permit Att. D, Pg.7 and 264.73(b)(2)</u>	Moderate	Moderate	18	N/A	N/A	0%	\$90,000
9. <u>PC III.E and 264.173(b)</u>	Moderate	Major	2	N/A	N/A	20%	\$14,400
10. <u>PC III.B.2</u>	Major	Major	1	16 days	N/A	0%	\$58,000
11. <u>PC II.D.2 and 264.14(c)</u>	Moderate	Moderate	1	N/A	N/A	10%	\$5,500
12. <u>PC III.2 and 264.15(c)</u>	Minor	Moderate	1	N/A	N/A	0%	\$1,300
13. <u>PC II.C.1 and 264.13(a)</u>	Moderate	Major	16	N/A	N/A	0%	\$96,000
14. <u>PC III.L.1 and 264.73</u>	Moderate	Moderate	4	N/A	N/A	20%	\$24,000
15. <u>273.14(a) and 20.4.1.1001.B</u>	Minor	Minor	2	N/A	N/A	0%	\$600

TOTAL PENALTY AMOUNT FOR ALL VIOLATIONS: **\$568,845.00**

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PENALTY COMPUTATION WORKSHEET

Company Name: Advanced Chemical Treatment, Inc.

EPA ID # NMD002208627

PENALTY JUSTIFICATION:

Potential for Harm and Extent of Deviation were determined using guidance documents produced by NMED, including the NMED's "RCRA Penalty Guidance Spreadsheet", dated October 2018, "Used Oil Penalty Guidance Spreadsheet", dated January 2018, "Universal Waste Penalty Guidance Spreadsheet", dated October 2018, and NMED's "Hazardous Waste Civil Penalty Policy", dated March 2017.

Regulations Cited:

1. 40 CFR § 279.45(a): Failure to store used oil for a period of less than 35 days for a Transfer Facility. The 35-day exceedances were identified in the current operating log, printed on 11/5/18. Used Oil stored at the facility dates back to January 2018. There were 32 containers identified in the operating record as being stored greater than 35 days.

Potential for Harm: Moderate

Refer to line 4 in the Used Oil Penalty Guidance Spreadsheet and potential for harm calculation table at the end of the document.

Extent of Deviation from the regulation: Major

Refer to line 4 in the Used Oil Penalty Guidance Spreadsheet.

Counts: 32 counts; one for each used oil container

Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Because ACT, Inc. has a minor history of noncompliance with this same requirement (ACT, Inc. has been cited for this violation in other inspections), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 10%.

2. 40 CFR § 279.45(g): Failure to label containers, storing used oil, with the words "Used Oil". Two black 55-gallon metal drums were located in the back dock and identified as storing used oil. NMED determined that one of the drums had the words "Waste Oil" on the California hazardous waste label. The other drum did not contain any labels.

Potential for Harm: Minor

Refer to line 39 in the Used Oil Penalty Guidance Spreadsheet and the Potential for Harm calculation table at the end of the document.

Extent of Deviation from the regulation: Major

Refer to line 39 in the Used Oil Penalty Guidance Spreadsheet.

Counts: 1

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Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Because ACT, Inc. has a minor history of noncompliance with another HWMR requirement in previous inspections, NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 5%.

3. 40 CFR 279.45(h): Failure to respond to a release of used oil to the environment. In the back-dock area, NMED noticed a large area of stained soil on the ground and a pool of used oil under the roll-off bin. There was no attempt to remediate the areas.

Potential for Harm: **Moderate**

Refer to line 36 in the Used Oil Penalty Guidance Spreadsheet and the Potential for Harm calculation table at the end of the document.

Extent of Deviation from the regulation: **Major**

Refer to line 36 in the Used Oil Penalty Guidance Spreadsheet.

Counts: 2 counts; one for each location of the release

Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Because ACT, Inc has a minor history of noncompliance with this same requirement (ACT, Inc. has been cited for this violation in the other inspections), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 10%.

4. 40 CFR § 262.11: Failure to make a hazardous waste determination. NMED inspectors observed containers or manifests with inaccurate information or no information:

- a) One 30-gallon white poly drum (bar code D206959-1) labeled Roundup Custom, with “Non-Regulated Waste and Empty Container” labels but was 1/3 full of liquid;
- b) Four containers on Manifest #011163986 FLE, dated 9/1/17, with waste profile number ACT68576. The waste profile describes the waste stream as waste flammable liquids (Ethanol); however, the manifest listed the waste with the EPA Hazardous Waste Code D010 (Selenium); and
- c) Five 50-mL vials on the Container Storage Facility (“CSF”) floor, which contained unknown contents.

Potential for Harm: **Minor**

Refer to line 6 in the RCRA Penalty Guidance Spreadsheet and the Potential for Harm calculation table at the end of the document.

Extent of Deviation from the regulation: **Minor**

Refer to line 6 in the RCRA Penalty Guidance Spreadsheet.

Counts: 6 counts; one for each container with the vials counted as one container

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Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Because ACT, Inc has a significant history of noncompliance with this same requirement (ACT, Inc. has been cited for this violation in the other inspections), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 20%.

5. 40 CFR 264.176; PC III.J.1 – Failure to manage and store hazardous wastes containers, holding ignitable or reactive hazardous waste, at least 15 meters (50 feet) away from the facility's property line. Trailer trucks, 1005, T-1138 and T-1096 were parked in the southeast corner of the facility property. These trucks were accepted into the facility the week prior to the inspection.

Potential for Harm: **Moderate**

Refer to line 32 in the RCRA Penalty Guidance Spreadsheet and the Potential for Harm calculation table at the end of the document.

Extent of Deviation from the regulation: **Moderate**

Refer to line 32 in the RCRA Penalty Guidance Spreadsheet.

Counts: 3 counts; one for each trailer

Multi-day Penalty Justification: Per the penalty policy, a multiple-day penalty is appropriate for a violation with a gravity-based classification of Moderate-Moderate; therefore, NMED chooses to assign a multiday penalty. 3 days were used for 1005; 4 days were used for T-1138 and 5 days were used for T-1096 as these were the time the trailers had been on site.

Economic Benefit: Not calculated.

History of Noncompliance: Not included.

6. PC I.B.6: Failure to manage and store hazardous waste only in seven rooms of the CSF. Trailer trucks, 1005, T-1138 and T-1096 were parked in the southeast corner of the facility property. These trucks were accepted into the facility the week prior to the inspection.

Potential for Harm: **Major**

Refer to line 3 in the RCRA Penalty Guidance Spreadsheet.

Extent of Deviation from the regulation: **Major**

Refer to line 3 in the RCRA Penalty Guidance Spreadsheet.

Counts: 3

Multi-day Penalty Justification: Per the penalty policy, a multiple-day penalty is mandatory for a violation with a gravity-based classification of Major-Major; therefore, NMED chooses to assign a multiday penalty. Three days were used for 1005; 4 days were used for T-1138 and 5 days were used for T-1096 as these were the time the trailers had been on site.

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Economic Benefit: Not calculated.

History of Noncompliance: Not included.

7. PC III.A.1.d: Failure to store hazardous waste in the CSF for less than one year. One 5-gallon white poly container was observed with a received date of October 20, 2017. The container was storing Mercury compounds and had bar code IC5791-4 and was located in cell D6, in Room D. The other container was identified as IC6825-1 being received also in October 2017. Both containers were still being stored in the CSF during the inspection

Potential for Harm: **Major**

Refer to line 3 in the RCRA Penalty Guidance Spreadsheet

Extent of Deviation from the regulation: **Major**

Refer to line 3 in the RCRA Penalty Guidance Spreadsheet.

Counts: 2 counts; one for each container

Multi-day Penalty Justification: Per the penalty policy, a multiple-day penalty is mandatory for a violation with a gravity-based classification of Major-Major; therefore, NMED chooses to assign a multiday penalty. The number of days was determined by number of days over 1 year, 16-1=15

Economic Benefit: Not calculated.

History of Noncompliance: Not included.

8. 40 CFR 264.73(b)(2); Permit Attach. D, Page 7: Failure to label or mark hazardous waste containers for waste tracking. NMED inspectors observed the following containers to be unlabeled:

- a) Two black 55 -gallon metal drums were located on the third pallet from the front in cell F3B1 with no identifiable labels or markings; and
- b) sixteen cubic yard sacks in Room B, containing Bloom Energy waste, were all unlabeled.

Potential for Harm: **Moderate**

Refer to line 160 in the RCRA Penalty Guidance Spreadsheet

Extent of Deviation from the regulation: **Moderate**

Refer to line 160 in the RCRA Penalty Guidance Spreadsheet.

Counts: 18 counts; one for each container no labeled

Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Not included.

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9. 40 CFR 264.173(b); PC III.E: Failure to store containers in a manner that would prevent rupture or cause leaks. NMED inspectors observed areas where leakage from containers had occurred in the CSF. In Room D, next to containers D215824-16 and D215346-4, was evidence that leakage occurred onto drums stored below and onto the floor. Room E, E101, near container D215260-49, a liquid was observed pooling under the drum.

Potential for Harm: **Moderate**

Refer to line 23 in the RCRA Penalty Guidance Spreadsheet and the Potential for Harm calculation table at the end of the document.

Extent of Deviation from the regulation: **Major**

Refer to line 23 in the RCRA Penalty Guidance June 2014 spreadsheet.

Counts: 2 counts; one for each location

Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Because ACT, Inc. has a significant history of noncompliance with the same requirement (ACT, Inc. has received the same violation in the other inspections), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 20%.

10. PC III.B.2: Failure to store hazardous waste within the allowable maximum volume of 55,000 gallons. NMED inspectors reviewed the Operating Record and determined that a total of 85,050 gallons of hazardous waste being stored in the CSF, which did not include the three tractor trailers parked in the southeast corner of the property. Additionally, according to ACT's KPI report, the total volume stored in October 2018 was approximately 64,000 gallons of hazardous waste.

Potential for Harm: **Major**

Refer to line 3 in the RCRA Penalty Guidance Spreadsheet.

Extent of Deviation from the regulation: **Major**

Refer to line 3 in the RCRA Penalty Guidance Spreadsheet.

Counts: 1

Multi-day Penalty Justification: Per the penalty policy, a multiple-day penalty is mandatory for a violation with a gravity-based classification of Major-Major; therefore, NMED chooses to assign a multiday penalty. The number of days was determined by number of days over the permitted amount, 16 days

Economic Benefit: Not calculated.

History of Noncompliance: Not included.

11. 40 CFR 264.14(c); PC II.D.2: Failure to properly post legible warning signs on the property boundary fence. A physical walk around of the property identified signs that were illegible, spray painted, and faded. The signs must be legible from a distance of at least 25 feet from any approach.

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Potential for Harm: Moderate

Refer to line 165 in the RCRA Penalty Guidance Spreadsheet and the Potential for Harm calculation table at the end of the document.

Extent of Deviation from the regulation: Moderate

Refer to line 165 in the RCRA Penalty Guidance Spreadsheet.

Counts: 1

Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Because ACT, Inc. has a minor history of noncompliance with this same requirement (ACT, Inc. has received the same violation in other inspections), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 10%.

12. 40 CFR 264.15(c); PC II.I.2: Failure to remedy any deterioration or malfunction of equipment or structures which an inspection reveals. NMED observed a temporary eye-wash station near broken eye-wash station, which was never repaired.

Potential for Harm: Minor

Refer to line 197 in the RCRA Penalty Guidance Spreadsheet and potential for harm calculation at end of document.

Extent of Deviation from the regulation: Moderate

Refer to line 197 in the RCRA Penalty Guidance Spreadsheet.

Counts: 1

Multi-day Penalty Justification: Not included.

Economic Benefit: Economic benefit was not calculated.

History of Noncompliance: Not included.

13. 40 CFR 264.13(a); PC II.C.1- Failure to submit for a detailed chemical analysis, from a qualified lab, when knowledge of process is inadequate for determination. NMED inspectors reviewed the Operating Record and identified the following containers as mischaracterized:

- a) D181288-1: should have been classified as a D003;
- b) D183818-20: should have included a D026 code;
- c) D183551-2: should have been classified as D002;
- d) D188793-1: should have been classified as a D001;
- e) D193191-1 and D193191-3: should have been classified as at least D018 possibly D001;
- f) D199208-1: should have been classified as D001;

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- g) D213621-4: should have been classified as D003,
- h) D211066-4: should have been classified as D003;
- i) D211066-7 and D211066-9: should have been classified as D009;
- j) D211744-54: should have been classified as P023;
- k) D211066-2: should have been classified as D001;
- l) D211066-3: should have been classified as D003;
- m) D2124849: waste profile indicates lead, but no analytical results; and
- n) IC6754-9: the operating record lists D001, D002, D003, D005, D007, D009, P030 and U151; however, the contents on the lab pack indicate U058 and U188.

Potential for Harm: Moderate

Refer to line 158 in the RCRA Penalty Guidance Spreadsheet and potential for harm calculation at end of document.

Extent of Deviation from the regulation: Major

Refer to line 158 in the RCRA Penalty Guidance Spreadsheet.

Counts: 16 counts; one for each container

Multi-day Penalty Justification: Not included.

Economic Benefit: Not calculated.

History of Noncompliance: Not included.

14. 40 CFR 264.73; PC II.L.1: Failure to maintain an accurate Operating Record. The following is a list of discrepancies concerning the Operating Record:

- a) Owners and operators of hazardous waste TSDFs must include the common name of the waste in the operating record. ACT failed to include the common name of the waste for the following containers: D210532-116; IC6848-28; IC6848-29; IC6848-30; IC6848-31; IC6848-33; IC6848-2; IC6848-4; IC6848-5; IC6848-6; IC6848-7; IC6848-8; IC6848-9; IC6848-10; IC6848-11; IC6848-12; IC6848-13; IC6848-14; IC6848-15; IC6848-16; IC6848-17; IC6848-18; IC6848-19; IC6848-21; IC6848-22; IC6848-23; IC6848-25; IC6848-27; IC6982-14; and IC6982-13;
- b) Owners and operators of hazardous waste TSDFs must properly record the location of each hazardous waste within the Facility in the operating record. The following hazardous waste containers were not located in the permitted area as indicated in the operating record: D197256-2 and D203327-7 were supposed to be located in D7Stage; D207414-1, D204419-33, D204419-32, D204289-16, D204289-28, D204289-26, D204289-22, D204289-25, D204289-24, D204289-23, D204289-21, D204289-20, D204289-19, D204289-18, D204-289-17 were all supposed to be located in E1Stage; and D210337-1, D210337-2, D213348-6 and D213387-1 were supposed to be located in F7Stage. The following containers were not in the correct location: 1) D208710-12 and D209751-12 were located in C1K2, operating record has them in C1I2; and 2) D214442-2 located in E2F1, operating record has it in F7E2. The following containers were not in the operating record, but were being stored on site: Sixteen cubic yard sacks of Bloom Energy waste in Room B; D168859-11 located in F2S2; 300-gallon tote located in cell D7G2; D212224-3 located near the back dock; and the three trailer trucks parked in the southeast corner of the property;

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c) Owners and operators of hazardous waste TSDFs must include the physical state of the waste in the operating record. ACT failed to include the physical state of the hazardous waste approximately 100 times; and

d) Owners and operators of hazardous waste TSDFs must include the RCRA waste codes of the waste in the operating record. ACT failed to include the waste codes of the hazardous waste on the following containers: D180875-1; IC6037-1; D182372-5; D183551-2; D184735-3; D188793-1; IC6530-1; D193191-3; D193191-1; **10**) D198005-1; D199208-1; D205172-1; D207891-6; D210635-1; D211066-4; D211066-7; D211066-9; D214119-4; D213621-4; D213621-4; IC6906-1; D216910-1; D216912-3; and D216912-4;

Potential for Harm: Moderate

Refer to line 160 in the RCRA Penalty Guidance Spreadsheet.

Extent of Deviation from the regulation: Moderate

Refer to line 160 in the RCRA Penalty Guidance Spreadsheet.

Counts: 4 counts; one for each type of discrepancy

Multi-day Penalty Justification: Not included.

Economic Benefit: Economic benefit was not calculated.

History of Noncompliance: Because ACT, Inc. has a significant history of noncompliance with the same requirement (ACT, Inc. has received the same violation in the previous two inspections), NMED deems the appropriate adjustment to the penalty per the HWB Penalty Policy to be upward by 20%.

15. 40 CFR 273.14(a); 20.4.1.1001.B: Failure to label universal waste batteries with the words “Universal Waste-Batteries” or other wording to identify them as universal waste. NMED inspectors observed two pallets of spent batteries with only one battery labeled on each pallet, in cells E7Q1 and cell E3N1. The batteries were not shrink wrapped nor bound together.

Potential for Harm: Minor

Refer to line 9 in the Universal Waste Penalty Guidance Spreadsheet.

Extent of Deviation from the regulation: Minor

Refer to line 9 in the Universal Waste Penalty Guidance Spreadsheet.

Counts: 2

Multi-day Penalty Justification: Not included.

Economic Benefit: Economic benefit was not calculated.

History of Noncompliance: Not included.

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USED OIL POTENTIAL FOR HARM RANKING SYSTEM

ONLY APPLICABLE VIOLATIONS IN WHICH A “HARM” SCORE COULD BE CALCULATED IS LISTED.

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
1.	<u>279.45(a)</u>	Storage of UO >35 days	4	8	1	1	14
2.	<u>279.45(g)</u>	Failure to label UO drum	4	2	1	1	8
3.	<u>279.45(h)</u>	Failure to respond to release of UO	4	2	6	1	13

SCORING SYSTEM

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Discharge	Affected Population
4 = Used Oil	8 = more than 10 drums	6 = Actual Discharge	4 = > 1,000
	5 = 3-10 drums	4 = Potential for discharge	3 = 100 - 1,000
2 = Used Oil filters	2 = less than 3 drums		2 = 10 - 100
		1 = No discharge	1 = <10

MAJOR POTENTIAL FOR HARM: 19-24
 MODERATE POTENTIAL FOR HARM: 13-18
 MINOR POTENTIAL FOR HARM: 6-12

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HAZARDOUS WASTE POTENTIAL FOR HARM RANKING SYSTEM

ONLY APPLICABLE VIOLATIONS IN WHICH A "HARM" SCORE COULD BE CALCULATED IS LISTED.

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
4.	<u>262.11</u>	Failure to make HW determination	4	2	0	1	7
5.	<u>264.176;</u> <u>PC III.J.1</u>	Failure to store HW >50feet	8	8	0	1	17
9.	<u>264.173(b);</u> <u>PC III.3</u>	Failure to store containers to prevent leaks or rupture	4	2	6	1	13
11.	<u>264.14(c);</u> <u>PC II.D.2</u>	Failure to post legible warning signs	4	8	0	1	13
12.	<u>264.15(c);</u> <u>PC II.I.2</u>	Failure to repair inoperable eye-wash	4	2	0	1	7
13.	<u>264.13(a);</u> <u>PC II.C.1</u>	Failure to submit keep records of analysis	8	5	0	1	13

SCORING SYSTEM

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Discharge	Affected Population
8 = Highly hazard wastes	8 = more than 25 drums	6 = Actual Discharge	4 = > 1,000
	5 = 6-25 drums	4 = Potential for discharge	3 = 100 - 1,000
4 = typical hazardous waste	2 = less than 6 drums		2 = 10 - 100
		0 = No discharge	1 = <10

MAJOR POTENTIAL FOR HARM: 19-24
 MODERATE POTENTIAL FOR HARM: 13-18
 MINOR POTENTIAL FOR HARM: 7-12

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