

Environmental Protection Agency

§ 66.71

and addressed to the Administrator, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Payment by check is made on the due date if it is postmarked on or before the due date. Payment by wire transfer is made on the due date if the Treasury's account is credited on or before the due date.

§ 66.63 Nonpayment penalty.

(a) Any source owner or operator who fails to make timely payment under § 66.61 shall pay in addition to the penalty owed a quarterly nonpayment penalty. The nonpayment penalty shall be calculated as of the due date of the noncompliance penalty payment and shall be equal to 20 percent of the aggregate amount of the noncompliance penalties and nonpayment penalties due and owing from the owner or operator on the due date. Partial payments shall be credited first against the nonpayment penalty, then against the noncompliance penalty.

(b) The Administrator shall notify the source owner or operator in writing of the amount of any nonpayment penalty for which the owner or operator is liable. Failure of the Administrator to provide such notice immediately shall not affect the legal obligation of the source owner or operator to pay such penalty. Such nonpayment penalty, as well as the past due noncompliance penalty, shall be payable immediately.

Subpart H—Compliance and Final Adjustment

§ 66.71 Determination of compliance.

(a) An owner or operator of a source who is paying a noncompliance penalty under this part shall notify the Administrator in writing when he believes that the source has come into and is maintaining compliance with all applicable legal requirements. The notice shall be accompanied by any factual data, analytical materials, and legal arguments which the source owner or operator believes support such claim.

(b) Within 30 days of receipt of a source owner's submittal, the Administrator shall determine whether the source has achieved and is maintaining compliance with applicable legal requirements, and shall notify the source

owner or operator of this determination in writing. If the Administrator is unable to conclude, on the basis of the information submitted, whether the source has achieved and is maintaining compliance with applicable legal requirements, he shall inform the owner or operator of any additional material that is needed. Within 30 days of receipt of such additional material, the Administrator shall determine whether the source has achieved and is maintaining compliance, and shall notify the source owner or operator of this determination in writing.

(c) If the Administrator determines that the source has not achieved or is not maintaining compliance with applicable legal requirements, the source owner or operator may petition for reconsideration within 30 days of receipt of the determination. The source owner or operator shall include in this petition any necessary supporting material. Issues not raised in the petition will be deemed waived. The procedures of § 66.41 shall be followed upon the receipt of such petition.

(d) In the event that the applicable legal requirement (as defined in § 66.3(c)) the violation of which forms the basis for the penalty is superseded by another applicable legal requirement (as defined in § 66.3(c)) the owner or operator of a source liable for a noncompliance penalty under this part shall notify the Administrator in writing that the owner or operator believes that the applicable legal requirement is superseded and that the period of noncompliance covered by the notice of noncompliance is ended. The notice shall be accompanied by the legal arguments which the source owner or operator believes support such a claim. Within 30 days of receipt of a source owner or operator's notice, the Administrator shall determine whether the period of covered noncompliance is ended and shall notify the source owner or operator of this determination in writing. In cases where the superseding EPA-approved requirement was not approved by EPA within the time period required by statute, the period of covered noncompliance shall be deemed to have ended on the date when

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EPA under the statute should have acted.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

§ 66.72 Additional payment or reimbursement.

(a) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(b) that it has achieved and is maintaining compliance with applicable legal requirements, or within 120 days after receipt of a decision to that effect upon petition and hearing, or within 120 days after receipt of a decision to that effect upon an appeal to the Environmental Appeals Board, the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and the Manual, together with data necessary for verification. The revised calculation shall include interest on any underpayment.

(b) Within thirty days after receiving a revised penalty calculation provided pursuant to paragraph (a) of this section, the Administrator shall inform the source owner or operator in writing that:

(1) The revised penalty is correct as calculated;

(2) The revised penalty is incorrect and has been recalculated based on the data provided by the source owner or operator or on other data. The Administrator shall provide to the source owner or operator a brief statement of the basis of the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source owner or operator of the right to petition for reconsideration under § 66.73; or

(3) The source owner or operator has not submitted any penalty calculation, or has not submitted enough material to enable EPA to verify the penalty calculation. The Administrator shall specify what deficiencies exist and shall require the source owner or operator to furnish the supplemental material within thirty days of receipt of the notice. The supplemental material submitted will be evaluated in the same manner as the original submittal.

(c) If a source owner or operator fails to submit or to complete a revised penalty calculation when due under this section or the calculation submitted is incorrect, the Administrator may recalculate the penalty or may enter into a contract for independent calculation of the penalty as provided in § 66.22.

(d) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(d) that the period of covered noncompliance ended on the date the applicable legal requirement was superseded (or, in event of EPA delay past an applicable statutory deadline, on the date the applicable legal requirement would have been superseded if there had been no delay past the statutory deadline), the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and Manual together with data necessary for verification. The revised calculation shall include interest on any underpayment. Paragraphs (b) and (c) shall apply to calculations submitted under this paragraph.

[45 FR 50110, July 20, 1980 as amended at 50 FR 36734, Sept. 9, 1985; 57 FR 5329, Feb. 13, 1992]

§ 66.73 Petition for reconsideration and procedure for hearing.

Within forty-five days of receipt of a notice under § 66.72(b) (2) a source owner or operator may petition for reconsideration in the form and manner provided in § 66.52. The petition shall be evaluated as provided in § 66.53 and any hearing shall be held in conformity with § 66.54.

§ 66.74 Payment or reimbursement.

(a) Within thirty days after any adjustment of a noncompliance penalty under this Subpart has become administratively final:

(1) Any deficiency owed by the source owner or operator shall be paid as provided in § 66.62.

(2) Any reimbursement shall be paid by check from the United States payable to the order of the source owner or operator, and sent by registered or certified mail, return receipt requested.

(b) Any payment under paragraph (a) of this section, shall include interest