

## § 66.52

owner or operator of the right to petition for a hearing under § 66.52; or

(3) The source owner or operator has not submitted any calculation, or the information submitted is inadequate to enable EPA to verify the owner or operator's penalty calculation. The Administrator shall specify what deficiencies exist and request the source owner or operator to supplement his submission within thirty days of receipt of that request. If an inadequate supplemental submission is made within this time, EPA may calculate the penalty itself or as provided in § 66.22.

(b) Supplemental material provided pursuant to paragraph (a)(3) of this section shall be evaluated as provided in paragraph (a).

### § 66.52 Petitions for reconsideration of calculation.

Within forty-five days after receipt of notice under § 66.51(a)(2) that the penalty has been recalculated by EPA, a source owner or operator who wishes to challenge EPA's recalculation shall petition in writing for reconsideration. A statement of all arguments on which the owner or operator relies, including all necessary supporting data and a substitute penalty calculation and payment schedule shall be included in or accompany this petition. Issues not raised in the petition shall be deemed waived.

### § 66.53 Decisions on petitions.

Within thirty days after receiving a petition for reconsideration under § 66.52 the Administrator shall:

(a) Accept the penalty calculation of the owner or operator to the extent the Administrator concludes it is correct; or

(b) Grant a hearing to the extent he does not conclude that the petition is correct.

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

### § 66.54 Procedures for hearing.

(a) Hearings granted under § 66.53 shall be held as provided in subpart J.

(b) The Presiding Officer at a hearing granted under § 66.53 shall issue an initial decision within ninety days after the Administrator grants the hearing, unless the duration of the hearing or

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the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

## Subpart G—Payment

### § 66.61 Duty to pay.

(a) Except where the owner or operator has submitted a petition pursuant to § 66.13(a)(2), the first installment of the penalty shall be paid on the date six months after receipt of the notice of noncompliance.

(b) Where the source owner has filed a petition pursuant to § 66.13(a)(2), the first installment consisting of payment of penalties for all quarters "missed" as well as for the upcoming quarter shall be paid on the date six months after a final administrative decision affirming the source owner or operator's liability. Installments shall be paid quarterly thereafter until compliance is achieved. Quarters shall be measured in increments of three calendar months from the date the first payment is due.

(c) A source owner or operator who submits a petition pursuant to § 66.52 shall pay the penalty amount calculated by the owner or operator under § 66.13 or § 66.43 or any penalty calculated by EPA where the owner or operator has failed to calculate such penalty. Within 45 days after EPA has notified the owner or operator of a final administrative action after hearings on such petition, the owner or operator shall submit any necessary modification to the penalty. The revised penalty will be calculated in accordance with the Technical Support Document and the Manual, and a revised schedule, including appropriate adjustments for overpayments or underpayments made, will be established.

### § 66.62 Method of payment.

Payments in excess of \$10,000 under this part shall be made by wire transfer payable to the U.S. Treasury. Payments under this part which are less than \$10,000 shall be made by cashier's or certified check made payable to the United States Treasury, sent by registered mail, return receipt requested,

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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