

MINUTES – NEWMOA CONFERENCE CALL 9/18/07

“Establishing the Economic Benefit Derived from Non-Compliance”

States represented during this teleconference included Maine, Massachusetts, New Hampshire, New Jersey, New York and Vermont. The USEPA was also represented on this call. The following summarizes the comments made during this teleconference.

EPA:

- EPA was represented by Mary Maderios, who can be reached at (617) 918 1725
- Economic benefit related penalties should exceed most of the economic savings made by the regulatee
- Total penalties should be reasonable
- EPA uses the “BEN” model when determining economic benefit
- Questions regarding economic benefit can be answered by the organization known as “Industrial Economics”, which can be reached at (888) 326-6778 or on the web at <http://www.indecon.com>
- Industrial Economics is the “brains” behind the BEN model
- EPA has publications and documents concerned with economic benefit that are available on-line

Maine:

- Tries to use the BEN model whenever possible
- BEN model does not fit many cases, so Maine is “struggling” to determine what to do

Massachusetts:

- Does not have a state policy, but is drafting one
- Uses BEN model whenever possible
- Goes back 2 years (5 years if AG’s office involved in case)
- Trying to determine if process should be “transparent” (i.e. provide regulatee with calculations)
- Trying to determine a “reasonable” penalty is a struggle

New Hampshire:

- Submitted a “Guidance Assurance Response Policy” dealing with economic benefit
- Difficult to determine what is “significant” economic benefit
- State requests regulatee to submit their economic benefit information
- Go back as far as rule has been violated
- Have actually gone back 10 to 15 years

New Jersey:

- New Jersey regulations give Department ability to collect economic benefit penalties

- Violations are capped at \$50,000, but this is not often done
- Penalty system designed so penalties are high enough to cover economic benefit
- Penalties tend to be high, so adding economic benefit would be overkill
- If regulatee claims inability to pay, the Department has an individual that can perform an ability to pay investigation

New York:

- Uses the EPA Civil Penalty Policy, but also has a state policy
- State Civil Penalty Policy includes a section on economic benefit
- State is BEN trained
- Penalty cap is \$37,500

Vermont:

- Tries to include an economic benefit analysis in every case because they are enabled by law
- Ask regulatee to submit documentation
- Use an economic analyst when needed
- Refer to economic benefit as “illegal profits”
- BEN model does not work in many cases
- Would like EPA to come up with model that works in smaller cases
- Seeking legislation to remove penalty caps, and make economic benefit a separate issue