**Section 1458.540 Standards for the Assessment of Civil Penalties**

a) In determining whether to assess civil penalties, the Commission shall consider the following factors:

1) the lack of mitigating circumstances, including:

A) whether the violation's occurrence was attributable to causes beyond the respondent's control rather than to respondent's fault or intent; and

B) whether the violation's occurrence was attributable to action by the Commission that precluded compliance;

2) the lack of good faith or intent, including:

A) the past compliance history of the respondent; and

B) whether a violation is the result of willful conduct or comes about through mistake, inadvertence, or negligence;

3) the financial ability of the respondent to pay the penalties assessed;

4) the degree to which the violative conduct was harmful to the public; and

5) the financial benefit accruing to the respondent as a result of its illegal activities.

b) The Commission's consideration shall be limited to only those violations for which evidence exists. It shall be the burden of the respondent to establish a compelling reason why the civil penalty should be mitigated.