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The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
One Winter Street, Boston 02108
Office of General Counsel, Tel. 292-5568

DANIEL S. GREENBAUM
Commissioner

WILLARD R. POPE
General Counsel

March 16, 1990

Frank Anthony, Vice President and General Counsel
Bird, Incorporated
One Dedham Place
PO BOX 1035
Westwood, Ma 02090-0008

Re: Bird, Incorporated
Docket No. 87-09/ File AP-NE-87-704
Docket No. 87-33/ File AP-NE-87-714
Docket No. 87-16/ File AP-NE-87-705
Penalty worksheets

Dear Mr. Anthony:

Please find enclosed the three penalty worksheets which are background to the Department's assessment of the above referenced penalties. It is my understanding that you did not receive copies of these at or after the informal pre-hearing conference held June 15, 1987.

Yours truly,

A handwritten signature in cursive script, appearing to read "Lin Cheney Sasman".

Lin Cheney Sasman
Deputy General Counsel

cc: J. Belsky, T. Natario, B. Lampkin, J. MacAuley

004311

PAN # AP-NE-87-705

ADMINISTRATIVE PENALTY WORKSHEET
AIR QUALITY 7.00

VIOLATOR Bird Incorporated DATE 13 Mar
LOCATION Norwood PREPARED BY Ed Kince
DATE OF NON, IF APPLICABLE _____
VIOLATION CITED NSPS Violations 310 CMR 7.02(2)

GRAVITY COMPONENT

1. Base Number (range 100-25,000) 1,000
2. Actual Impact (+ or -) 2,000
3. Potential Impact (+ or -) 1,000
4. No. and Extent of Violations (+ or -) 3,000
5. Total gravity base number (add #'s 1-4) 7,000
6. Number of days in Violation ① 1
7. Total (multiply 5 by 6) \$ 7,000

ADJUSTMENTS TO GRAVITY COMPONENT

8. Good Faith Effort (+ or -) 0-50% 50 %
9. History of Compliance (+) 0-50% 25 %
10. Financial Condition (+ or -) 0-50% - %
11. Public Interest (+ or -) 0-50% - %
12. Special Circumstances (+ or -) 0-50% 25 %
13. Total Percentage Adjustments (add #'s 8-12) 100 %
14. Multiply Line 7 by Line 13 \$ 7,000 %

ECONOMIC BENEFIT

15. Delayed Costs \$ 1,500 004312

① Violation for entire week - sampled 22 & 23 Jan but did not issue NON
so can only use one day

16. Avoided Costs

N/A

17. Profits

15,000

18. Total Economic Benefit (add #'s 15-17)

16,500

19. TOTAL DOLLAR ADJUSTMENTS (add # 14 and 18)

23,500

20. TOTAL PENALTY (add lines 7 and 19)

30,500

25,000

REASON FOR PENALTY ASSESSMENT:

1. Pattern of Noncompliance

2. Continued or repeated Violation After NON

3. Willful Violation

4. Significant Impact

5. Failure to report H.W. Release

X

REASONS FOR ADJUSTMENTS:

see attached notes

Penalty \$25,000 (can't go higher for single major violation)

004313

To: File

From: Ed Kuncie

Subject: Penalty Basis for Bird Inc, Unapproved Equip Oper.
17 Mar 87

① Base violation is \$1,000

Violation 7.02 (2) (B) 2 - High bucket

② Gravity component

Actual Impact: emissions were not in conformance with
NSPS, impact actual but not major \$2,000

Potential Impact: NSPS are designed to protect public health
and environment exceeding NSPS creates "potential" \$1,000

Extent of Violation: deliberate violation, considered major
violation, total disregard of requirements \$3,000

③ Adjustments to Gravity Component

Good Faith Effort: Bird Inc had total control over action,
non-compliance was a deliberate action +50%

History of Compliance: Currently processing another PPA
for asbestos violations +75%

Special Circumstances: Bird Inc was aware of regulatory
requirements, but not been able to demonstrate
NSPS capability, made a business decision to
operate out of compliance +25%

004314

④ Economic Benefit

Delay Costs $0.5 \text{ year} \times 0.12 \times \text{Capital Cost} =$

Have no estimate on capital cost to get unit up to NSPS standards assume \$25,000

$$0.5 \times 0.12 \times \$25,000 = \$1,500 \text{ (with not much value unless business were during leaving)}$$

Avoided Costs Not applicable since they did not operate here

Profits Bird Inc indicated that decision was made to operate out of compliance in order to avoid shut-down. Used the following assumptions to get "order of magnitude" of profit gained during week of illegal operation

Total annual revenues \$100 m

- per week $\$100/52 \approx \2 m

- 5% profit $\$2 \text{ m} \times 0.05 \approx \$100,000$

even if order of magnitude high assume minimum profit margin about \$10-20 K, say \$15,000

PAN # AP-NE-87-705

ADMINISTRATIVE PENALTY WORKSHEET
AIR QUALITY 7.00

VIOLATOR Burd Inc

DATE 18 March

LOCATION Norwood

PREPARED BY Ed Vance

DATE OF NON, IF APPLICABLE _____

VIOLATION CITED Exhaust Releases

310 CHR 7.01, 7.09(4)
7.15 7.09(4)+7.15

GRAVITY COMPONENT

1. Base Number (range 100-25,000)	<u>\$1,000</u>	<u>\$1,000</u>
2. Actual Impact (+ or -)	<u>5,000</u>	<u>—</u>
3. Potential Impact (+ or -)	<u>5,000</u>	<u>—</u>
4. No. and Extent of Violations (+ or -)	<u>5,000</u>	<u>—</u>
5. Total gravity base number (add #'s 1-4)	<u>16,000</u>	<u>—</u>
6. Number of days in Violation	<u>①</u>	<u>①</u>
7. Total (multiply 5 by 6)	<u>16,000</u>	<u>\$1,000</u>

ADJUSTMENTS TO GRAVITY COMPONENT

8. Good Faith Effort (+ or -) 0-50%	<u>50</u> %	<u>—</u> %
9. History of Compliance (+) 0-50%	<u>25</u> %	<u>—</u> %
10. Financial Condition (+ or -) 0-50%	<u>—</u> %	<u>—</u> %
11. Public Interest (+ or -) 0-50%	<u>50</u> %	<u>—</u> %
12. Special Circumstances (+ or -) 0-50%	<u>0</u> %	<u>—</u> %
13. Total Percentage Adjustments (add #'s 8-12)	<u>125</u> %	<u>—</u> %
14. Multiply Line 7 by Line 13	<u>20,000</u>	<u>—</u>

ECONOMIC BENEFIT

15. Delayed Costs

see attached sheet

004316

16. Avoided Costs

see attached sheet

17. Profits

see attached sheet

18. Total Economic Benefit (add #'s 15-17)

19. TOTAL DOLLAR ADJUSTMENTS (add # 14 and 18) 20,000

20. TOTAL PENALTY (add lines 7 and 19)

36,000

1,000

25,000

1,000

REASON FOR PENALTY ASSESSMENT:

26,000

1. Pattern of Noncompliance
2. Continued or repeated Violation After NON
3. Willful Violation
4. Significant Impact
5. Failure to report H.W. Release

REASONS FOR ADJUSTMENTS:

see attached sheet

004317

To: File

From: Ed Lance

Subj: Penalty Basis for Bird Inc, Asbestos release
18 Mar 87

1) Max for asbestos release violations \$25,000

Max for procedural violations \$1,000

Base amount for both is \$1,000, therefore only

asbestos release violation can be modified/adjusted

upward from base amount

2) Gravity Component

Actual Impact: Actual impact to public health and safety (probably worst type of air violation) \$5,000

Potential Impact: "Actual" aggravated by time period so that potential impact influence extended possibly over both time and impact area \$5,000

Extent of Violation: Extreme violation of regulatory requirements, worst type of violation \$5,000

3) Adjustments to Gravity Component

Good Faith Effort - None displayed, asbestos remained exposed for many months +50%

History of Compliance - Currently processing another PAN for NPS violation +25%

Public Interest - Direct public exposure, residential area nearby +50%

Special Circumstances : Initial problem caused by outside vendor would normally be a negative adjustment, however, neglect on Bird Inc's part to take action prior long negates mitigative value 0%

E) Economic Benefit

There would be increases for both delays and avoided costs. No increase for profit since operations would have occurred with or without compliance. Cravity component modifications and follow-up adjustments already exceed \$25,000, therefore no need to add in economic benefit.

004319