# **RULE 806 ADMINISTRATIVE CIVIL PENALTIES**

Adopted 04-13-00

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### **RULE 806 ADMINISTRATIVE CIVIL PENALTIES**

Adopted 04-13-00

#### 100 GENERAL

- **PURPOSE:** The purpose of this rule is to provide procedures for the imposition and amounts of administrative civil penalties that may be levied pursuant to Section 42402.5, Article 3, Chapter 4, Part 4, of Division 26 of the California Health and Safety Code. Administrative civil penalties provide an alternative means for the District to levy penalties appropriate to the violation without necessitating negotiated settlement or the filing of civil or criminal complaints.
- APPLICABILITY: This rule applies to the imposition of administrative civil penalties for a violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, adopted pursuant to Part 1, of Division 26 of the California Health and Safety Code (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive. Nothing in this rule restricts the authority of the District to negotiate mutual settlements under other penalty provisions of law which exceed five hundred dollars (\$500), or the authority of the District to seek the recovery of civil penalties or the prosecution of criminal violations, in lieu of administrative civil penalties.
- **MAXIMUM ADMINISTRATIVE CIVIL PENALTY:** No administrative civil penalty levied pursuant to this rule may exceed five hundred dollars (\$500) for each violation. Each day during any portion of which a violation occurs is a separate offense.
- **ENFORCEMENT AUTHORITY:** The imposition of administrative civil penalties pursuant to this rule, in lieu of other remedies, shall be at the discretion of the Air Pollution Control Officer under the authority of California Health and Safety Code Sections 40001, 40702, and 40752.
- PRECLUSION: The filing of a complaint for civil or criminal violations pursuant to California Health and Safety Code Section 42400 et seq. shall preclude the assessment of administrative civil penalties for the same violation. The payment in full of administrative civil penalties levied pursuant to this rule shall preclude any subsequent complaint for civil or criminal penalties, pursuant to California Health and Safety Code Sections 42400 et seq., for the same violation. These preclusions do not apply to any costs attributed to extinguishing a fire that the District may seek to recover pursuant to California Health and Safety Code Section 42400.5.
- **EXEMPTION, MINOR VIOLATIONS:** Violations that are classified as minor violations and for which the person or facility is in compliance with the Notice to Comply Standards, of Rule 805, NOTICE TO COMPLY, are exempt from the application of administrative civil penalties.

### 200 DEFINITIONS

For the purposes of this rule the following definitions apply.

- 201 AIR POLLUTION CONTROL OFFICER: The Air Pollution Control Officer of the Placer County Air Pollution Control District appointed by the Placer County Air Pollution Control District Board. Unless the Air Pollution Control Officer for good cause appoints another person to conduct an administrative hearing, the Air Pollution Control Officer is also the Hearing Officer for the purposes of this rule.
- **CHRONIC VIOLATION:** A violation that reflects a pattern of neglect or disregard that results in the same or similar violation at the same source, facility, or same piece of equipment.

- **MINOR VIOLATION**: The failure of any person to comply with administrative or procedural requirements of applicable state requirements, District rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District which meets the following criteria:
  - 203.1 Does not result in an increase of emissions of air contaminants;
  - 203.2 Does not endanger the health, safety, or welfare of any person or persons;
  - 203.3 Does not endanger the environment;
  - 203.4 Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;
  - 203.5 Does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirements, District rules and regulations, administrative or procedural plan or permit conditions, or requests for information or records.
  - 203.6 Notwithstanding the criteria above, no violation of an applicable state or federal requirement, District rule or regulation, administrative or procedural plan or permit condition, or request for information or records shall be considered a minor violation if:
    - 203.6.1 The violation involves failure to comply with the emission standards in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material limitations, and other rule provisions directly associated with emissions; or
    - 203.6.2 The violation is knowing, willful, or intentional; or
    - 203.6.3 The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
    - 203.6.4 The violation is chronic; or
    - 203.6.5 The violation is committed by a recalcitrant violator; or
    - 203.6.6 The violation results in a nuisance.
- **NOTICE OF VIOLATION:** A written method of alleging a violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, adopted pursuant to Part 1, of Division 26 of the California Health and Safety Code (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive.
- **NOTICE TO COMPLY:** A written method of alleging a minor violation that meets the requirements of Health and Safety Code Section 39151 and is issued pursuant to Rule 805, NOTICE TO COMPLY.
- **PROCEDURAL REQUIREMENT:** A provision of a rule or regulation that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.
- **207 RECALCITRANT VIOLATOR:** A person or facility where there is evidence indicating that the person or facility has engaged in a pattern of neglect or disregard with respect to the requirements of District rules and regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

#### **300 STANDARDS**

- **ADMINISTRATIVE CIVIL PENALTY GUIDELINES:** In lieu of any other civil or criminal penalties, and in addition to any costs attributed to extinguishing the fire that the District may seek to recover pursuant to California Health and Safety Code Section 42400.5, the following shall provide guidelines for the setting of administrative civil penalties. The penalty levied may be varied in consideration of exacerbating or mitigating circumstances.
  - 301.1 Emissions Violations: A violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, relating to emissions shall be no more than \$500 per violation.
  - 301.2 Non-Emission Violations: A violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, that is not related to emissions shall be no more than \$250 per violation.
  - 301.3 Maximum Penalty: Administrative civil penalties levied pursuant to this rule to one person or source, shall not exceed two thousand dollars (\$2,000.00) for each day during which a violation occurs.
- **PENALTY SCHEDULES:** Schedules of violations and applicable penalty amounts may be established to provide for consistency in the levying of penalties for similar violations. The penalty levied in accordance with a penalty schedule may be adjusted in consideration of exacerbating or mitigating circumstances, but shall conform to the guidelines of Section 301.

## **400 ADMINISTRATIVE REQUIREMENTS**

- **401 CITING AN ADMINISTRATIVE CIVIL PENALTY:** Written notice shall be given to the person, or source against whom administrative civil penalties are levied.
  - 401.1 The notice shall identify the nature of the violation(s), specify the date(s) of violation, and the administrative civil penalty that is assessed for each violation. A Notice of Violation may be issued separately or in conjunction with the notice of administrative civil penalty assessment.
  - 401.2 The notice shall advise that the administrative civil penalty is being assessed pursuant to Health and Safety Code Section 42302.5 and Placer County Air Pollution Control District Rule 806.
  - 401.3 The recipient of the notice may be requested to sign and return a copy of the notice for the sole purpose of acknowledging receipt of the notice. Mailed notices shall be sent by certified mail.
  - 401.4 The notice shall also advise that the recipient may review any non-confidential evidence pertaining to the alleged violation, and may within ten (10) days of receipt of the notice make a written request for an administrative hearing. If a hearing is not requested within ten (10) days, the Air Pollution Control Officer may issue an order assessing the penalties specified in the notice. Where no hearing has been timely requested and an order of assessment of penalty is made by the Air Pollution Control Officer, the Air Pollution Control Officer's order is the final administrative action.
  - 401.5 The notice shall advise the recipient that payment in full of the total monetary penalties specified in the notice, within ten (10) working days of receipt, shall result in the closure of the enforcement action with respect to the violations cited.

- **402 ADMINISTRATIVE HEARING:** Any person who is issued a notice assessing an administrative civil penalty may request an administrative hearing. Upon a timely request, an administrative hearing shall be conducted pursuant to the following procedures:
  - 402.1 The hearing shall be conducted by the Air Pollution Control Officer, provided that an alternative Hearing Officer shall be appointed by the Air Pollution Control Officer for good cause.
  - 402.2 The person who has requested the hearing shall be given reasonable notice of the time and place of the hearing.
  - 402.3 The person shall have an opportunity to present oral or written evidence and argument. A tape recording or transcript shall be made of the hearing.
  - 402.4 Following the hearing, the Hearing Officer shall render a written notice of decision. The notice of decision shall be delivered or sent by certified mail to the person who requested the hearing. The decision shall state whether the Hearing Officer has determined the person has committed a violation as charged, and shall state the basis for that determination. If the Hearing Officer determines that the person has committed one or more violations, the notice of decision shall include an order assessing an administrative penalty in accordance with this rule for each violation, or include an offer for negotiated settlement. The Hearing Officer may rescind an administrative civil penalty, or reduce the amount of a penalty for good cause. The decision of the Hearing Officer is the final administrative action.
    - 402.4.1 Any administrative penalty assessed for a violation of an ordinance may be further subject to the provisions of California Government Code 53069.4.

### 403 RESOLUTION OF ENFORCEMENT ACTION:

- 403.1 If the total of monetary penalties specified in an administrative civil penalty notice is paid in full within ten (10) working days of the receipt of the notice, the enforcement action related to the violations cited in the notice shall be deemed closed.
- 403.2 If the total of monetary penalties specified in an administrative civil penalty order is not paid in full within ten (10) working days of receipt of the notice, and the Air Pollution Control Officer has issued an order assessing the administrative civil penalties specified in the notice, or the Hearing Officer has issued an administrative hearing decision assessing an administrative civil penalty, the District may seek to collect payment through any legal means, including public or private collections service, or take one or more of the following actions:
  - 403.2.1 The enforcement action may be closed.
  - 403.2.2 A judgement may be sought in a court of competent jurisdiction for the payment of the monetary penalties specified in the administrative civil penalty notice, including an administrative hearing decision, and the recovery of additional expenses incurred due to the failure to pay the penalties by the date required.
  - 403.2.3 The administrative civil penalty notice may be rescinded, and mutual settlement negotiations or the filing of complaints for civil or criminal violations may be sought pursuant to California Health and Safety Code Section 42400 et seq. Notice that the administrative civil penalty is rescinded shall be given by certified mail and shall be effective on the date mailed.

500 MONITORING AND RECORDS: (Not Included)