

**AIR POLLUTION CONTROL DISTRICT  
COUNTY OF SAN DIEGO  
10124 Old Grove Road  
SAN DIEGO CA 92131-1649  
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**PENALTIES FOR AIR POLLUTION VIOLATIONS**

Violations of air pollution laws—including state statutes, state regulations, federal statutes and federal regulations, and all Air Pollution Control District (“District”) rules and permits and District Hearing Board orders—are subject to criminal or civil penalties. The California Health and Safety (H&S) Code specify maximum penalties (and in a few cases minimum penalties) for violations of state and District laws, and rules and permits. Generally, the penalties are specified in Health and Safety Code Section 42400 et seq. See also District Rule 6 for a list of minor violations for which the District may decide not to seek penalties. You should be aware, however, that criminal or civil penalties for violations may be sought by the District Attorney, the state Air Resources Board, the Attorney General, the U.S. Attorney, or the U.S. Environmental Protection Agency, in addition to the District. The District may only seek penalties in civil actions pursuant to the Health and Safety Code, but the non-District agencies can prosecute in either criminal or civil actions, and may be able to seek penalties other than those specified in the Health and Safety Code. (The District can also seek penalties for certain violations of the Vehicle Code, and for unlawful business practices, Business and Professions Code Section 17200, pursuant to delegation by the District Attorney.)

**The following summarizes criminal and civil penalties that may be assessed pursuant to the California Health and Safety Code for violations of air quality laws:**

**CRIMINAL PENALTIES**

**H&S Code Section 42400: General Violations**

- (a) Any person who violates air pollution laws (see above—this includes state statutes, state regulations, District rules and permits, District Hearing Board orders) is guilty of a misdemeanor and is subject to a fine up to \$1,000, or up to six months in the County jail, or both.
- (b) An employee or independent contractor who operates a vapor recovery system on a gasoline cargo tank in violation of air pollution laws is subject to the above penalties, but the employer or person who retains the independent contractor is not unless they violate separately.
- (c) An owner or operator of a source that causes public nuisance and actual injury is subject to increased penalties: up to \$15,000, and up to nine months in jail, or both.
- (d) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

**H&S Code Section 42400.1: Negligence**

- (a) Any person who negligently emits an air contaminant in violation of air pollution laws is guilty of a misdemeanor and is subject to a fine up to \$25,000, or nine months in the County jail, or both.
- (b) If the negligent emission causes public nuisance and great bodily injury, the maximum penalty rises to \$100,000, and up to one year in jail, or both.
- (c) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

**H&S Code Section 42400.2: Failure to Take Corrective Action**

- (a) Any person who knowingly emits an air contaminant in violation of air pollution laws and fails to take corrective action within a reasonable time is guilty of a misdemeanor and is subject to a fine up to \$40,000, or one year in the County jail, or both.
- (b) (Defines “corrective action.”)
- (c) If the knowing emission causes public nuisance and great bodily injury, and the person failed to take corrective action within a reasonable time, the maximum penalty rises to \$250,000, and up to one year in jail, or both.
- (d) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

**PENALTIES FOR AIR POLLUTION VIOLATIONS - continued**

**H&S Code Section 42400.3: Willful and Intentional Emission**

- (a) Any person who willfully and intentionally emits an air contaminant in violation of air pollution laws is guilty of a misdemeanor and is subject to a fine up to \$75,000, or one year in the County jail, or both.
- (b) If any person willfully and intentionally, or with reckless disregard for the risk of great bodily injury, emits an air contaminant causing public nuisance and unreasonable risk of great bodily injury or death, the maximum fine rises to \$125,000, or one year in the County jail, or both. If the violator is a corporation, the maximum fine is \$500,000.
- (c) If in addition great bodily injury or death is actually caused, the maximum penalty rises to \$250,000, and up to one year in jail, or both. The maximum fine for a corporation rises to \$1,000,000.
- (d) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

**H&S Code Section 42400.3.5: Knowing Emission, False Material Statements**

- (a) Knowing violation of any air pollution law adopted for control of federal hazardous air pollutants (including fee or filing requirements) is a misdemeanor subject to a fine up to \$10,000 and six months in jail, or both.
- (b) Knowingly making a false statement or certification in any form or notice or report required for federal hazardous air pollutants, or knowingly rendering inaccurate any monitoring device required for federal hazardous air pollutants, is subject to a fine up to \$35,000 or up to nine months in jail, or both.
- (c) Falsifying any document required by air pollution laws, and with intent to deceive, is subject to the penalties just above.

**H&S Code Section 42400.4: District Fines for Violation of Title V Source**

- (a) Knowing violation of federally enforceable conditions or requirements applicable to federal Title V (major source) facilities is subject to a fine up to \$10,000.
- (b) Knowingly making a false statement or certification in any form or notice or report required for federal Title V sources, or knowingly rendering inaccurate any monitoring device required for federal Title V sources, is a misdemeanor and is subject to a fine up to \$10,000.

**H&S Code Section 42400.5: Unauthorized Outdoor Fires**

The cost of putting out any unauthorized outdoor fire used for burning waste or for metal salvage, or for agricultural burning without a permit, may be imposed in addition to other penalties.

**H&S Code Section 42408: Tampering with Ambient Air Monitoring Equipment**

Tampering with any ambient air monitoring equipment operated by the state or the District is a misdemeanor.

**CIVIL PENALTIES**

**H&S Code 42400.6: Collection of Fines or Monetary Penalties**

Fines or penalties may be imposed under Section 17200 of the Business and Professions Code, which prohibits unfair competition.

**H&S Code Section 42401: Violating Order of Abatement**

Any person who intentionally or negligently violates any order of abatement issued by the District Hearing Board or by the state Air Resources Board is subject to a penalty of up to \$25,000 per day of violation.

## **PENALTIES FOR AIR POLLUTION VIOLATIONS - continued**

### **H&S Code Section 42402: General Violations**

- (a) Any person who violates air pollution laws is strictly liable for a penalty up to \$1,000. But see (b).
- (b) Any person who violates air pollution laws is strictly liable for a penalty up to \$10,000, unless the person (except at a Title V source) establishes by affirmative defense that the violation was not the result of intentional or negligent conduct. (See also the similar penalties for violations concerning toxic air contaminants, in Health and Safety Code Section 39674. Violations there also involve fee requirements, filing requirements, duty to allow entry or to allow or carry out inspection or monitoring activities; District permits or rules may also contain such requirements, and penalties in Health and Safety Code Section 42400 et seq. apply to violations of District permits and rules.)
- (c) An owner or operator of a source that causes public nuisance and actual injury to the health and safety of a considerable number of persons is subject to increased penalties: up to \$15,000.
- (d) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

### **H&S Code Section 42402.1: Negligence or Great Bodily Injury**

- (a) Any person who negligently emits an air contaminant in violation of air pollution laws is subject to a penalty up to \$25,000.
- (b) If the negligent emission causes public nuisance and great bodily injury, the maximum penalty rises to \$100,000.
- (c) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

### **H&S Code Section 42402.2: Knowing Emittance or Failure to Take Corrective Action**

- (a) Any person who knowingly emits an air contaminant in violation of air pollution laws and fails to take corrective action within a reasonable time is subject to a penalty up to \$40,000.
- (b) If the knowing emission causes public nuisance and great bodily injury, and the person failed to take corrective action within a reasonable time, the maximum penalty rises to \$250,000.
- (c) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

### **H&S Code Section 42402.3: Willful and Intentional Emittance**

- (a) Any person who willfully and intentionally emits an air contaminant in violation of air pollution laws is subject to a penalty up to \$75,000.
- (b) If any person willfully and intentionally, or with reckless disregard for the risk of great bodily injury, emits an air contaminant causing public nuisance and unreasonable risk of great bodily injury or death, the maximum penalty rises to \$125,000. If the violator is a corporation, the maximum penalty is \$500,000.
- (c) If in addition great bodily injury or death is actually caused, the maximum penalty rises to \$250,000. The maximum penalty for a corporation rises to \$1,000,000.
- (d) Each day in which a violation occurs is a separate offense that is subject to the above penalties.

### **H&S Code Section 42402.4: Document Falsification**

Any person who knowingly and with intent to deceive, falsifies any document required by air pollution laws to be kept is subject to a penalty up to \$35,000.

### **H&S Code Section 42403.5: Bus Idling**

Public nuisance resulting from idling a diesel-powered bus engine is subject to the civil penalties above; however, no penalty applies if the violator establishes by affirmative defense that the extent of the harm caused does not exceed the benefit accrued to bus passengers as a result of idling the engine.

### **H&S Code Section 44381: Civil Penalties for False Statement**

Failure to submit any information, reports or statements required by the Air Toxics "Hot Spots" Information and Assessment Act, H&S Code Section 44300 et seq. (most of which requirements are stated in District [Rule 1210](#)) or failure to comply with requirements of that Act, is subject to a penalty of not less than \$500 or more than \$10,000 for each day the violation continues. Knowingly submitting any false statement

## **PENALTIES FOR AIR POLLUTION VIOLATIONS - continued**

or representation in any document filed or maintained for that Act is subject to a penalty of not less than \$1,000 or more than \$25,000 for each day the information remains uncorrected.

### **H&S Code Section 44394: Failure to Submit/Implement Plan**

Failure to submit or implement a risk reduction plan when required by the Air Toxics “Hot Spots” Information and Assessment Act, is subject to a penalty of not less than \$500 or more than \$10,000 for each day the violation continues.

## **CONSIDERATIONS IN DETERMINING PENALTIES**

### **H&S Code Sections 42400.8 and 42403: Determination of Fines and Recovery of Civil Penalties**

Maximum penalties are limited as described above. There are no minimum penalties for violations except violations of the Air Toxics “Hot Spots” Information and Assessment Act, as described just above. In determining the amount of a fine or civil penalty to be assessed, the court (or the District, in the case of a civil settlement) shall consider all relevant circumstances, including but not limited to:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) The frequency of past violations.
- (5) The record of maintenance.
- (6) The unproven or innovative nature of the control equipment.
- (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
- (8) The financial burden to the defendant.

## **REFERENCES**

The penalty descriptions above are summarized from the California Health and Safety Code. The Health and Safety Code Sections (and other state statutes) in their complete form may be found at <http://www.leginfo.ca.gov/calaw.html>.

Again, see also District [Rule 6](#) for a list of minor violations for which the District may decide not to seek penalties.

If you receive a Notice of Violation, you should take IMMEDIATE action to prevent the violation from recurring. You must also advise the District in writing of the action taken to correct the alleged violation or the reasons you think the violation did not occur. This response must be submitted within ten days of the date the Notice of Violation was issued.

For additional information on the web site, click on the following links:

[Current Rules and Regulations](#)

[Violation Settlement Program](#)

[Small Business Assistance Program](#)

[Hearing Board Variances](#)

For more information, contact the District's Compliance Division at (858) 586-2650.