

## CHAPTER 15 PENALTIES

### Rule 15.101 - General Provisions

- (1) Action under this Chapter is not a bar to enforcement of this Program, or regulations or orders made pursuant thereto, by injunction or other appropriate remedy. The Control Board or the department may institute and maintain in the name of the county or the state any and all enforcement proceedings.
- (2) All fines collected under this chapter are deposited in the County General Fund.
- (3) It is the intention of the Control Board to impose absolute liability upon persons for conduct that violates any part, provision or order issued pursuant to these regulations. Unless otherwise specifically provided, a person may be guilty of an offense without having, with respect to each element of the offense, either knowledge, negligence, or specific intent.
- (4) It is the specific intention of the Control Board that these regulations impose liability upon corporations for violations of a part, provision or order issued pursuant to these regulations.
- (5) A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable.
- (6) A person is legally accountable for the conduct of another under these regulations when he:
  - (a) causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or
  - (b) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

### Rule 15.102 - Criminal Penalties

- (1) Except as provided for in Rule 15.104, a person who violates a provision, regulation, or rule enforced under this Program, or an order made pursuant to this Program, is guilty of an offense and upon conviction subject to a fine not to exceed ten thousand dollars (\$10,000.00). Each day of the violation constitutes a separate offense.

### Rule 15.103 - Civil Penalties

- (1) Except as provided in Rule 15.104, a person who violates a provision, rule or order under this Program, after notice thereof has been given by the department is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) per violation. Each day a violation continues constitutes a separate violation. Upon request of the department the county attorney may petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided in Rule 15.102.

### Rule 15.104 - Solid Fuel Burning Device Penalties

- (1) Notwithstanding the provisions of Rule 15.102, a person who violates a provision of Chapter 9 (Solid Fuel Burning Devices) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars (\$500.00). Each day a violation continues constitutes a separate offense.
- (2) Notwithstanding the provisions of Rule 15.103, any person who violates any of the provisions of Chapter 9 is subject to a civil penalty not to exceed five hundred dollars (\$500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 15.102, and may be pursued in any court of competent jurisdiction.
- (3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules 9.104, 9.105

and 9.106 during any burning season as defined in Chapter 9 is:

- First Violation - Fifty Dollars (\$50)
- Second Violation - Two Hundred Fifty Dollars (\$250)
- Third or Subsequent Violation - Five Hundred (\$500)

(b) Penalties for violations of Rule 9.108 must not be less than five hundred dollars (\$500.00) per offense.

**Rule 15.105 - Non-Compliance Penalties**

- (1) Except as provided in Section (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:
  - (a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419), that is not in compliance with any emission limitation specified in an order of the department, emission standard, or compliance schedule under the state implementation plan approved by the EPA;
  - (b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411, 7412, 7477, or 7603;
  - (c) a stationary source that is not in compliance with any other requirement under this Program or any requirement of subchapter V of the FCAA, 42, U.S.C. 7661, et seq.; or
  - (d) any source referred to in Sections (1)(a) – (c) that has been granted an exemption, extension, or suspension under Subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance under such extension, order or suspension.
- (2) Notwithstanding the requirements of Section (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of Section (1) through Section (14) with respect to a particular instance of noncompliance that:
  - (a) the department finds is de minimis in nature and in duration;
  - (b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or
  - (c) is exempt under 42 USC 7420(a)(2)(B) of the Federal Clean Air Act.
- (3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, an administrative review as provided for in Chapter 14.
- (4) The amount of the penalty that shall be assessed and collected with respect to any source under Section (1) through Section (14) shall be equal to:
  - (a) the amount determined in accordance with the rules adopted by the Control Board, which shall be no less than the economic value which a delay in compliance after July 1, 1987, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus
  - (b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under Section (4)(a).

- (5) To the extent that any expenditure under Section (4)(b) made during any quarter is not subtracted for such quarter from the costs under Section (4)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.
- (6) If the owner or operator of any stationary source to whom notice is issued under Section (10) does not submit a timely petition under Section (10)(a)(ii) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.
- (7) Any person who fails to pay the amount of any penalty assessed under this rule on a timely basis shall be required to pay an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.
- (8) Any non-compliance penalty required under this rule shall be paid in quarterly installments for the period of covered noncompliance. After the first payment, all quarterly payments shall be equal and determined without regard to any adjustment or any subtraction under Section (4)(b).
  - (a) The first payment shall be due 6 months after the date of issuance of the notice of noncompliance under Section (10) with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for the preceding period within the period of covered noncompliance for such source.
  - (b) For the purpose of this rule, "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under Section (10) and ends on the date on which such source comes into, or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.
- (9) The department shall adjust the amount of the penalty or the payment schedule proposed by such owner or operator under Section (10)(a)(i) if the department finds after notice and opportunity for a hearing that the penalty or schedule does not meet the requirements of this rule.
  - (a) Upon determination that a source is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment of the penalty within 180 days after such source comes into compliance and:
    - (i) provide reimbursement with interest to be paid by the county at appropriate prevailing rates for overpayment by such person; or
    - (ii) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.
- (10) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to Section (1) which is not in compliance as provided in that section, within thirty (30) days after the department has discovered the noncompliance.
  - (a) Each person to whom notice has been given pursuant to Section (10) shall:
    - (i) calculate the amount of penalty owed (determined in accordance with Section (4)(a) and (b) and the schedule of payments (determined in accordance with Section (8) for each source), and within forty-five (45) days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or
    - (ii) submit to the Control Board a petition within forty-five (45) days after the issuance of

such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under Section (2) with respect to a particular source.

- (b) Each person to whom notice of noncompliance is given shall pay the department the amount determined under Section (4) as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to Section (10)(a)(ii).
- (11) The Control Board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than ninety (90) days after the receipt of any petition under Section (10)(a)(ii) with respect to such source. If the petition is denied, the petitioner shall submit the material required by Section (10)(a)(i) to the department within forty-five (45) days of the date of the decision.
- (12) All noncompliance penalties collected by the department pursuant to this rule shall be deposited in a county special revenue fund until a final determination and adjustment have been made as provided in Section (10) and amounts have been deducted by the department for costs attributable to implementation of this rule and for contract costs incurred pursuant to Section (6), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the County General Fund.
- (13) In the case of any emission limitation, emission standard, or other requirement approved or adopted by the Control Board under this Program after July 1, 1979, and approved by the EPA as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under Rule 15.102 (Criminal Penalties) and Rule 15.103 (Civil Penalties) shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.
- (14) Any orders, payments, sanctions, or other requirements under this rule shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Program and shall in no way affect any civil or criminal enforcement proceedings brought under Rule 15.102 (Criminal penalties) or Rule 15.103 (Civil penalties). The noncompliance penalties collected pursuant to this rule are intended to be cumulative and in addition to other remedies, procedures and requirements authorized by this Program.