

Policy: Funding Community Benefits from Penalty Funds

Definitions:

Penalty Package: Civil penalties collected through an individual settlement agreement or court judgment that requires payment from a particular regulated entity. A package can address more than one violation but must be with an individual entity.

Fiscal Year Penalty Budget Assumption: The amount of assumed general fund revenue derived from penalties in a fiscal year's adopted budget.

Fiscal Year Penalty Budget Cap: The amount needed to meet the Fiscal Year Penalty Budget Assumption for the current fiscal year, plus any shortfalls from the previous two years. A shortfall occurs when actual penalties collected in a fiscal year are less than the Fiscal Year Budget Assumption for that fiscal year. Once the Fiscal Year Penalty Budget Cap has been met, any additional penalties collected will be designated for regional community benefits as described below. Since this policy is starting in FYE 2024, the Fiscal Year Penalty Budget Cap will be \$3,000,000 which is equal to the Fiscal Year Penalty Budget Assumption for FYE 2024. Also, since there is no shortfall in penalty collections in FYE 2024, the Fiscal Year Penalty Budget Cap for FYE 2025 will also be equal to the Fiscal Year Penalty Budget Assumption for FYE 2025.

Regional Community Benefits Fund: A fund that the Board of Directors has designated to reduce air pollution or mitigate the impacts of air pollution in overburdened communities or aimed at improving health outcomes in communities impacted by air pollution in the Bay Area. The program governing the disposition of these funds will be addressed in a separate document.

Local Community Benefits Fund: Funds that the Board of Directors has designated to reduce air pollution or mitigate the impacts of air pollution or aimed at improving health outcomes in the particular community that was affected by the air quality violations leading to the Penalty Package in which the funds were collected. The program governing the disposition of these funds will be addressed in a separate document.

Method of Allocating Funds:

Beginning in the fiscal year ending June 30, 2024, and retroactive to the beginning of that fiscal year, net penalty funds collected¹ shall be allocated according to the method below.

First \$100,000: Funds shall be placed in the general fund until the Fiscal Year Penalty Budget Cap for that year is met. Once the Fiscal Year Penalty Budget Cap for that year is met, the funds from these settlements shall be placed in the Regional Community Benefits fund.

Amounts greater than \$100,000 and less than or equal to \$1,000,000: Fifty percent (50%) of the funds shall be placed in a Local Community Benefits Fund associated with the community impacted by the violations leading to the Penalty Package. Fifty percent (50%) shall be placed in the

¹ Net penalty funds collected are all penalties obtained by the Air District through settlements or court judgments, net of any external costs associated with obtaining the penalty, such as litigation costs, costs of expert witnesses or consultant, or outside attorney fees, that are not otherwise recovered.

general fund or the Regional Community Benefits Fund depending on whether the Fiscal Year Penalty Budget Cap has been met.

Amounts exceeding \$1,000,000: Eighty percent (80%) of the funds shall be placed in a Local Community Benefits Fund associated with the community impacted by the violations leading to the Penalty Package. Twenty percent (20%) shall be placed in the general fund or the Regional Community Benefits Fund depending on whether the Fiscal Year Penalty Budget Cap has been met.

Annual Report:

In May of each year, staff will provide the Community Advisory Council and the Board of Directors a review of the results of this policy for the current fiscal year. The review will include the amount allocated and expended from each community benefit fund and an assessment of the effectiveness of the policy in advancing the environmental justice and equity goals of the Air District.

Attachment A: Example Calculations

Example Allocation Scenario assuming Fiscal Year Budget Target of \$3,000,000

Amount of Penalty Package	Location	Date
\$1,150,000	Richmond	7/27/2023
\$15,500	Napa	12/04/2023
\$20,000,000	Richmond	4/2/2024
\$130,000	Berkeley	5/10/2024

This example is taken from FYE24 penalty packages, but it does not include all penalties collected.

Allocation of 7/27/2023 Package

	General Fund	Regional Benefits Fund	Richmond Fund
First \$100,000	\$100,000	\$0	\$0
\$100,000 to \$1,000,000	\$450,000	\$0	\$450,000
\$1,000,000 to \$1,150,000	\$30,000	\$0	\$120,000
Totals	\$580,000	\$0	\$570,000

Allocation of 12/04/2023 Package

	General Fund	Regional Benefits Fund	Richmond Fund
First \$100,000	\$15,500	\$0	\$0

Note that the General Fund now has \$595,500. So, an additional \$2,404,500 is required to meet the Fiscal Year Penalty Budget Cap.

Allocation of the 4/2/2024 package

	General Fund	Regional Benefits Fund	Richmond Fund
First \$100,000	\$100,000	\$0	\$0
\$100,000 to \$1,000,000	\$450,000	\$0	\$450,000
\$1,000,000 to \$20,000,000	\$1,854,500	\$1,945,500	\$15,200,000
Totals	\$2,404,500	\$1,945,500	\$15,650,000

After the 4/2/2024 package, the Fiscal Year Penalty Budget Cap has been met and the funds begin to flow into the Regional Community Benefits Fund. The Richmond Community Benefits Fund now has a total of \$16,220,000 with the contribution from the 7/27/2023 and the 4/2/2024 packages.

Allocation of the 5/10/2024 package

	General Fund	Regional Benefits Fund	Berkeley Fund
First \$100,000	\$0	\$100,000	\$0
\$100,000 to \$130,000	\$0	\$15,000	\$15,000
Totals	\$0	\$115,000	\$15,000

Since the Fiscal Year Penalty Budget Cap was met with the 4/2/2024 package, all penalty funds collected the rest of the fiscal year that do not accrue to Local Community Benefit Funds will accrue to the Regional Community Benefit Fund rather than the general fund.

The application of this policy to this example set of penalty packages had the following results:

General Fund: \$3,000,000 (Fiscal Year Penalty Budget Cap met)

Regional Benefits Fund: \$2,060,500

Richmond Community Benefits Fund: \$16,220,000

Berkeley Community Benefits Fund: \$15,000

Calculation of the Fiscal Year Penalty Budget Cap

This policy is being put in place in FYE 2024 and the Fiscal Year Penalty Budget Assumption has been met for FYE 2024. Therefore, the Fiscal Year Penalty Budget Cap for FYE 2024 will be \$3,000,000, which is equal to the Fiscal Year Penalty Budget Assumption. The Fiscal Year Penalty Budget Cap for FYE 2025 will also be equal to the FYE 2025 Fiscal Year Penalty Budget Assumption (currently proposed as \$4,000,000).

The Fiscal Year Penalty Budget Cap for FYE 2026 will be equal to the Fiscal Year Penalty Budget Cap for 2026 plus any shortfall in penalty collections in FYE 2025. The Fiscal Year Penalty Budget Cap for FYE 2027 will be equal to the Fiscal Year Penalty Budget Assumption for FYE 2027 plus any shortfall in penalty collections in FYE 2026 or FYE 2025. This two-year-lookback method will apply to future Fiscal Year Penalty Budget Caps while this policy remains in place.

Example 1 (actual Budget assumptions will be set by the Board of Directors):

Fiscal Year	2025	2026	2027
Penalty Budget Assumption	\$4,000,000	\$4,000,000	\$4,000,0000
Penalty Budget Cap	\$4,000,000	\$4,500,000	\$4,500,0000
Actual Penalties Collected	\$3,500,000	\$4,000,000	\$5,000,0000
Shortfall	\$500,000	\$0	\$0

Example 2 (actual Budget assumptions will be set by the Board of Directors):

Fiscal Year	2025	2026	2027
Penalty Budget Assumption	\$4,000,000	\$4,000,000	\$4,000,0000
Penalty Budget Cap	\$4,000,000	\$4,500,000	\$4,700,0000
Actual Penalties Collected	\$3,500,000	\$3,800,000	\$5,000,0000
Shortfall	\$500,000	\$200,000	\$0