

Office of General Counsel

Draft Enforcement Policy

The Office of the General Counsel is adopting a new **Policy on Legal Action to Enforce Violations of Air District Regulations** (“Legal Enforcement Policy”). The Legal Enforcement Policy publicly documents how the Air District takes legal action to enforce its regulations to further [the agency's mission](#) of protecting public health and reducing historical and current environmental inequities.

The goal of the Legal Enforcement Policy is to achieve enforcement outcomes that hold violators accountable and make clear that air quality violations will not be tolerated in any community in the Bay Area. Success will be measured through an annual reporting mechanism, which will provide a feedback loop to track progress and improvements over time, with accountability to the Board of Directors and to the communities in which air quality violations occur.

Guiding Principles for Air District Legal Enforcement

The Legal Enforcement Policy sets forth the Office of the General Counsel's commitment to taking robust legal action when the Air District's regulations are violated, with a priority on violations in overburdened communities to further equity and environmental justice throughout the Air District's jurisdiction. The Office of the General Counsel will develop and implement legal strategies in enforcement cases guided by the following principles:

- ▶ Provide **transparency** into the legal enforcement process, without undermining the confidentiality of ongoing cases;
- ▶ Use available legal authorities effectively to **hold violators accountable** and **protect public health**, especially in the most vulnerable communities;
- ▶ Pursue effective and tailored enforcement outcomes to **deter future violations** and to **reduce and reverse the harms** resulting from a legacy of inequitable public and private development decisions;
- ▶ Use litigation tools and resources strategically where they can have the greatest **impact on changing behavior** in overburdened communities saddled with widespread non-compliance.

Legal Mechanisms to Hold Violators Accountable

The Air District uses the following legal tools to address air quality violations:

- **Notice of Violation:** Issued when an inspector finds a violation; identifies the violation and informs the facility operator that it is liable for penalties and other legal action.
- **Cease-and-Desist Letter:** Sent by an attorney if the facility does not come back into compliance after receiving a Notice of Violation.
- **Hearing Board Abatement Order:** An enforceable order issued by the Air District's independent Hearing Board requiring a violator to take the necessary steps to abate a continuing violation.
- **Court Order (Injunction):** An enforceable order issued in a lawsuit filed in Superior Court requiring compliance.
- **Permit Revocation or Denial:** Used when the violator demonstrates that it cannot or will not comply with the law.

Assessing Penalties for Air Quality Violations

The Air District seeks to assess a monetary penalty for every Notice of Violation. The Air District normally gives the facility operator the opportunity to pay its penalty voluntarily through a settlement agreement. If the operator does not agree, the Air District will file a lawsuit seeking a court-ordered penalty. Only a court can formally impose a penalty if the violator does not agree.

The amount of the penalty depends on the facts and circumstances of each case. The penalty in a given case is established through a two-step process set forth in California law. The **first step** is to determine the maximum penalty listed in the statutes for the type of violation involved. The **second step** is to apply a set of penalty adjustment factors to the specific facts of the case to determine where within the statutory range the penalty should fall.

The Air District applies a "top-down" that presumes the statutory maximum penalty is appropriate. If the violator contends that it should be less, they have the burden to provide evidence to support that contention.

► Step One: Determine Statutory Maximum Penalty

California law establishes the following maximum penalties for air quality violations (per violation, per day):

Type of Violation	Maximum Penalty
Administrative (no emissions)	\$12,940*
Emissions – No evidence of negligent or intentional misconduct	\$12,940*
Emissions – Negligent (i.e., operator did not take reasonable care to prevent the illegal emissions)	\$32,350
Emissions – Failure to respond promptly to known emissions	\$51,760
Emissions – Willful & intentional	\$97,050

* Except for violations at "major" facilities, the maximum penalty for these violations is limited to \$6,470 if the violator can affirmatively prove that the violation was **not** negligent or intentional.

These maximum penalty values increase every year with inflation. Additionally, the maximum penalties for emissions violations at "major" facilities (the approximately 75 largest-emitting facilities in the Bay Area) are tripled for violations on or after Jan. 1, 2025. There are also heightened penalty maximums for public nuisance violations that directly cause death or serious bodily injury.

► Step Two: Apply Penalty Adjustment Factors

Once the maximum penalty is established, the following factors determine whether the penalty should be at the top of the statutory range or somewhere lower:

- **The extent of harm caused by the violation**, including cumulative impacts in overburdened communities;
- **The seriousness, persistence, and duration of the violation;**
- **The violator's compliance and maintenance history;**
- **Whether the violation legitimately involved unproven or innovative pollution-control technology;**
- **Any action taken to mitigate the violation**, for example by cleaning up the pollution that resulted;
- **The violator's financial resources;**
- **Any economic benefit gained from failing to comply;**
- **Any other relevant circumstances.**

Not every factor applies or carries equal weight in every case. A single factor may strongly support the statutory maximum even when other factors favor a reduction.

Addressing Ongoing Non-Compliance

If a facility operator does not promptly return to compliance, the Air District may seek an order from its Hearing Board or a court requiring corrective action. Priority is based on:

- **The extent of the harm to the public**, including disproportionate cumulative impacts in overburdened communities;
- **The violator's willingness to comply** through a legally binding commitment to correct the violation;
- **Whether the violation can be readily stopped or reduced**;
- **How long the violation is expected to continue**;
- **The likelihood that the Hearing Board or court will grant the requested relief.**

Ongoing violations posing the greatest harm receive the highest priority.

Partnering with Other Enforcement Agencies

To ensure appropriate resources are brought to bear for significant cases, the Air District may partner with other enforcement agencies such as the California Air Resources Board, the California Attorney General, and the local District Attorneys in the nine Bay Area counties, all of whom have enforcement authority for air quality violations.

Using Penalty Funds to Redress Harm to Communities

The Air District reinvests penalties collected from violators back into the communities where the violations occurred under the agency's [Community Benefits Penalty Funds Policy](#). As of 2026, Air District enforcement actions have generated over \$125 million for projects in eligible communities to reduce air pollution, improve public health, and build community resilience.

Accountability of the Office of General Counsel's Legal Enforcement Program

The Air District is committed to holding itself accountable to the communities where violations occur for its legal actions to address those violations. The Office of the General Counsel will publish annual reports of its legal enforcement activities and the results obtained. These annual reports will include measurable indicators of success such as case resolution rates, penalties assessed per violation, and notable actions taken for major violations, along with geographical information about enforcement outcomes to document where the Air District is investing enforcement resources.

For more information visit baaqmd.gov