

Office of the General Counsel Policy on Legal Action to Enforce Violations of Air District Regulations

DRAFT — FOR PUBLIC REVIEW AND COMMENT

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Contents

I.	Introduction	01
II.	Enforcement Tools and Processes to Address Violation of Air Quality Laws and Regulations	03
a.	Developing Enforcement Cases for Prosecution	04
b.	Legal Actions to Address Air Quality Violations	06
c.	Resolving Cases through Litigation vs. Settlement	08
d.	Expeditious Resolution of Enforcement Cases	10
III.	Penalties for Air Quality Violations	12
a.	Legal Authority to Impose Penalties for Air Quality Violations	12
b.	"Top-Down" Approach to Penalty Assessment	13
IV.	Legal Action to Address Ongoing Non-Compliance	22
V.	Using Penalty Funds to Redress Harm to Communities Caused by Air Quality Violations	25
VI.	Enhanced Compliance Measures in Settlements	26
VII.	Mutual Settlement Program for Minor Violations	28
VIII.	Partnering with Other Enforcement Agencies	30
IX.	Accountability to Affected Communities for the Air District's Legal Enforcement Program	31
a.	Public Reporting of Air District Legal Enforcement Actions	31
b.	Engaging Community in Legal Enforcement Processes and Outcomes	34
	APPENDIX – List of Potential Violations and Penalty Ranges	A-1

I. Introduction

The Office of the General Counsel is adopting this **Policy on Legal Action to Enforce Violations of Air District Regulations** (“Enforcement Policy”) to document publicly 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 burdens of air pollution in the Bay Area are not borne equally, and the public health harms arising from poor air quality fall disproportionately on communities of color and low-income communities. When polluters violate Air District regulations, the harm is greater in such areas because it exacerbates the elevated cumulative pollution burden these communities already suffer.

At the same time, the Air District has not always taken effective legal action to hold violators accountable in such areas to the full extent available under the law. Failing to provide consequences for air quality violations allows illegal operations to flourish, normalizes non-compliance, and creates a perception that it is acceptable to operate illegal, polluting businesses in already overburdened communities.

Given this reality, the Air District must use the full array of enforcement authorities provided to it by law to hold polluters accountable when they violate air quality regulations – and must focus its legal resources and efforts in particular on violations in overburdened communities, where the pollution levels are the highest, and where violators have not historically been held accountable.

In addition to effective legal enforcement of existing laws and regulations, the laws and regulations themselves must also be strengthened to reorient the system that over decades has concentrated air pollution sources in low-income communities and communities of color. Enforcement alone cannot achieve equity if the rules permit inequitable outcomes. But without effective enforcement, even the most stringent rules are meaningless – and if the Air District fails to enforce its current rules, pollution in overburdened communities will increase, worsening existing environmental injustices.



The Office of the General Counsel is therefore committed 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. With this Enforcement Policy, the Office of the General Counsel will develop and implement legal strategies in its enforcement cases to further these goals, guided by the following principles:

- ▶ Provide **transparency** into the legal enforcement process (without undermining the confidentiality of ongoing cases and the enforcement process) so the public can understand the legal tools available to pursue enforcement action and the principles the Office of the General Counsel follows in using those tools;
- ▶ Use available legal authorities effectively to **hold violators accountable** and **protect public health**, especially in the most vulnerable communities suffering the heaviest cumulative burdens of air pollution and other types of environmental degradation;
- ▶ Pursue effective and tailored enforcement outcomes to **deter future violations** and to **reduce and reverse the harms** that have resulted from decades of public and private decisions that, by design, have unfairly afflicted some communities with a disproportionate share of the region's pollution burdens;
- ▶ Use litigation tools and resources strategically where they can have the greatest **impact on changing behavior** in overburdened communities saddled with widespread non-compliance – through deterrence, incentivizing compliance, and getting regulated entities to recognize the need to prevent violations if they want to do business in the Bay Area.

The Office of the General Counsel is further committed to holding itself accountable to the communities where the violations occur. The Office of the General Counsel will publish annual reports of the legal actions it has taken, and the results obtained, to demonstrate how



it is following through on the commitments made in this Policy. 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. In addition to publishing this report annually, the Air District will also undertake regular outreach to overburdened communities to discuss enforcement in those communities through its Facilities, Oversight, Community Updates, and Shared Dialogue (FOCUS) Community Meetings Policy being adopted concurrently with this document – along with other avenues to engage with the public on enforcement outcomes and the legal enforcement process.

Effective implementation of this Policy is intended to ensure that the Office of the General Counsel faithfully applies the Air District's legal authorities to enforce against air quality violations, with a focus on communities where the harm is most severe and effective enforcement is most needed to address historical and current injustices. This goal will be achieved when these efforts produce 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 the 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.

II. Enforcement Tools and Processes to Address Violations of Air Quality Laws and Regulations

The Office of the General Counsel will implement this Enforcement Policy using the tools provided to it by state law. The law empowers the Air District to prosecute civil enforcement cases on behalf of the People of the State of California, meaning it can go to court to seek monetary penalties and court orders forcing a violator to comply.¹ The Office of the General Counsel has a team of attorneys and non-attorney staff who use this legal authority to prosecute enforcement cases. As of 2026, there are 11 attorneys and 3 non-attorney case resolution specialists assigned to these cases, handling a caseload that generally runs in the range of several hundred to over a thousand violations each year. This legal enforcement team exercises the Air District's legal enforcement authority through the following process.

¹ The Air District is not empowered to prosecute cases criminally (i.e., to seek jail time or other criminal sanctions for violations), although it does refer cases to criminal prosecutors for especially egregious violations.

a. Developing Enforcement Cases for Prosecution

Enforcement cases are initially developed by Air District inspectors. The Air District may discover violations through routine inspections or other site visits, through air quality complaints received from the public, or via mandatory reporting by regulated facilities, among other means. When an inspector identifies a potential violation, they investigate the situation, interview facility staff and other witnesses as appropriate, examine relevant data, test results and other documentation, and determine whether or not a violation has occurred. If so, they issue a Notice of Violation and document their findings and supporting evidence in a detailed investigation report.²

When the investigation is completed and fully documented, the case is referred to the Office of the General Counsel and assigned to an attorney or (for smaller cases) a non-attorney staff specialist for legal enforcement action. The Air District's attorneys may also be involved at the investigation stage to address any legal issues that come up and to help develop a robust enforcement case. After referral for legal enforcement action, the inspector also continues to be closely involved in order to provide factual support regarding the substance of the investigation, and to testify in any ensuing legal case if needed. In addition, the enforcement team often involves the facility's permit engineer, source testing staff, and staff from other Air District divisions, depending on whether their expertise is needed.



Facility inspections are informed by the Air District's Inspection Prioritization Policy, which prioritizes inspection resources towards achieving the greatest emissions reductions and meaningful air quality improvements, particularly in overburdened and disproportionately impacted communities. The Inspection Prioritization Policy is driven by two core objectives:

² In certain cases involving minor violations with no more than a *de minimis* level of emissions, the inspector may issue a Notice to Comply in accordance with Air District Regulation 1, Rule 2. The Notice to Comply requires the violator to fix the problem within a specified time period; if it does not, the Air District will issue a Notice of Violation pursuant to Regulation 1-2-304. In addition, in cases where the Air District's Hearing Board has issued a variance for a particular violation under Div. 26, Pt. 4, Ch. 4, Arts. 2-2.5 of the Health & Safety Code (§§ 42350-42372), the Air District is legally prohibited from issuing a Notice of Violation or taking other enforcement action.

- **Advancing Health Equity:** The Inspection Prioritization Policy focuses on prioritizing overburdened communities by leveraging their lived experiences and knowledge, which can provide insights into identifying local air quality concerns. Prioritizing inspections and aligning enforcement in these communities reduces harm and focuses on improving air quality and health outcomes where the need is greatest.
- **Information-Driven Approach to Prioritization:** The Inspection Prioritization Policy establishes a data-driven framework for prioritizing facility inspections. Inspection prioritization decisions are informed by a comprehensive analysis of enforcement records (including violation and prior inspection history), air quality complaint trends, and data about facility emissions and associated health risks. The Policy also integrates inter- and intra-agency referrals that help pinpoint areas and facilities that require inspections and additional resources to investigate, and it incorporates local community knowledge and input about air quality concerns and potential violations that community members observe in their neighborhoods.

Community members can also identify violations proactively by submitting an air quality complaint. The [Air District's complaint webpage](#) provides information on how to submit complaints electronically or by calling the Air District's 24-hour toll-free hotline. The Air District also publishes a summary of all air quality complaints received through its [Air Quality Complaint Search Tool](#). This service provides increased accessibility and transparency by allowing members of the public to search complaint records by complaint type, alleged source, date range, city, county, and ZIP code.

The Air District aims to respond to all complaints within 30 minutes during working hours. To enhance responsiveness, the Air District has also established new protocols for weekend enforcement. The Air District will launch quarterly weekend enforcement in select communities in 2026 and work closely with regulatory partners to target compliance concerns. The agency has committed in its [2024-2029 Strategic Plan](#) to improve the complaint process to ensure that it is effective and transparent (see Strategy 2.5).

An “**Overburdened Community**” is one that experiences disproportionate environmental harms and risks due to the cumulative effects of environmental pollution and/or greater vulnerability to environmental hazards. This increased vulnerability can result from an accumulation of negative – and lack of positive – environmental, health, economic, or social conditions. Air District regulations specifically define Overburdened Community as any area in, or within 1,000 feet of, a census tract having an overall [CalEnviroScreen 4.0](#) score at or above the 70th percentile. This Policy uses the term Overburdened Community generally to refer to any community that suffers disproportionate environmental harm, including but not limited to those falling within that definition.

The Air District is updating complaint reporting formats and evaluating additional platforms to streamline how community members track and view complaint outcomes as part of its implementation of this Strategic Plan strategy.

b. Legal Actions to Address Air Quality Violations

Once a violation is discovered, the first priority is stopping the violation and getting the facility back into compliance. The violator must be held accountable and pay a penalty, but first it must be brought into compliance as quickly as possible. The Air District has an array of enforcement responses at its disposal to achieve compliance in such situations:

- **Notice of Violation:** As noted above, the first step when a violation is discovered is to issue a Notice of Violation (or in some cases a Notice to Comply). The Notice of Violation clearly identifies the violation and informs the facility operator³ that it is liable for penalties and other legal action. In most cases, this is sufficient to compel the facility operator to take the necessary steps to stop the violation (to the extent the violation is not already back in compliance).⁴
- **Cease-and-Desist Letter:** If the Notice of Violation is not sufficient to compel the facility to get back into compliance, the assigned Air District attorney may issue a Cease-and-Desist Letter demanding that the facility operator address the violation and informing the operator that the Air District will pursue legal action if it does not do so. This is a common initial step the Office of the General Counsel often uses for ongoing violations referred to it by the Air District's inspectors.



³ In general, both the owner and the operator of a regulated facility are liable for air quality violations at the facility. This document uses the term "facility operator" to encompass both the owner and the operator.

⁴ A Notice of Violation is not a legal pre-requisite for taking legal action for a violation. The Air District's normal administrative practice is to issue a Notice of Violation, however, because it clearly identifies the fact of the violation to the facility operator (to the extent it was not aware of the violation already) and allows the Air District to track the violation and subsequent enforcement efforts administratively.

- **Hearing Board**

Abatement Order: If the facility operator does not heed the Cease-and-Desist Letter, the attorney may file a Petition with the Air District's [Hearing Board](#) seeking an abatement order. This is a legally binding order directing the facility operator to take specific

The **Hearing Board** is an independent body of five members who are not Air District employees. It is a quasi-judicial tribunal created by California law to adjudicate disputes between the Air District and regulated facilities. In addition to having the power to issue mandatory orders to comply with Air District regulations, it can also grant variances allowing facilities to operate out of compliance for a limited period of time under certain circumstances. It also hears permit appeals. Hearing Board hearings are formal, trial-like proceedings and are open to the public. Further information is available on the Hearing Board's [web page](#).

actions to come into compliance. Upon receiving a Petition, the Hearing Board will hold a public hearing and review evidence and testimony regarding the alleged violation – including comments from affected members of the public. If the Hearing Board concludes that action is required to stop the violation, it will issue an abatement order requiring the facility operator to take such action. Compliance is mandatory. If the facility operator does not comply, it will be subject to monetary penalties and can be ordered to comply by the Superior Court.

- **Superior Court Injunction (Court Order):** The Air District may also file a lawsuit in Superior Court seeking a court order (called an injunction) requiring the violator to come into compliance. Filing a lawsuit to obtain an injunction may be necessary if the facility operator refuses to comply with a Hearing Board abatement order, as noted above. Alternatively, there may be situations that call for filing a lawsuit in Superior Court immediately, without seeking an abatement order first.
- **Permit Revocation or Denial:** Finally, the Air District may petition the Hearing Board to revoke a facility's permit if the facility is violating air quality requirements and/or has failed to correct any conditions necessary to achieve compliance.⁵ If a facility has had emissions or permitting violations in the previous three years that demonstrate a recurring pattern of noncompliance or pose a significant risk to public health or safety or to the environment, the Air District also has the authority to refuse to renew a permit or specify additional permit conditions to ensure compliance.⁶ In extreme cases where the permit-holder has demonstrated that it cannot or will not operate in compliance, the Air District will use these tools to revoke the facility's permit and force it to shut down. Where the facility can take steps to come into compliance, the most appropriate action

⁵ The Air District's authority to seek permit revocation comes from Health & Safety Code section 42307. Section 42304 also provides for permits to be suspended if the permitholder refuses to provide certain required information, but the Air District must reinstate the suspended permit once the information is provided.

⁶ This authority comes from Health & Safety Code section 42333. There are multiple prerequisites for refusing to grant or renew a permit or imposing additional permit conditions, as set forth in sections 42331 through 42333.

may be to compel the violator to implement those measures and operate legally – for example by seeking a court order requiring it to comply.

The Office of the General Counsel uses these escalating legal actions to address air quality violations, with a priority on stopping ongoing emissions that harm public health and exacerbate existing disparities in exposure to air pollution. Depending on the case, the Air District may use some or all of these legal actions, and may use them in a different order than presented here. For example, in a case with significant ongoing harm to public health requiring immediate action, the circumstances may call for immediately filing for an abatement order or a court injunction. The Office of the General Counsel evaluates each case individually to determine the most appropriate course of action to bring the facility back into compliance and protect public health.

In addition to ensuring the facility addresses the violation and returns to compliance, the Air District also seeks to assess a monetary penalty for each Notice of Violation in accordance with the penalty provisions of the Health & Safety Code. These statutory penalty provisions are discussed in detail [below in Section III](#). In order to send a clear signal that air quality violations are unacceptable, and to incentivize regulated entities to be proactive in ensuring compliance, the Air District is committed to assessing materially impactful penalties when it issues a Notice of Violation. The Air District also takes cumulative impacts into account to seek heightened penalties where violations contribute to existing environmental injustices under Health & Safety Code section 42403(b), as the harm from illegal air pollution is increased where it contributes to existing pollution from other sources in overburdened communities.

c. Resolving Cases through Litigation vs. Settlement

In addition to litigating enforcement cases, the Office of the General Counsel uses settlements as a tool to achieve effective enforcement results. Settlement is when the violator agrees to take the necessary steps to come into compliance and pay the fine without the need for litigation. The violator's commitment to do so is made legally enforceable through a binding settlement agreement; through a stipulated Hearing Board abatement order; or through a judicial "consent judgment," in which a lawsuit is filed but the violator agrees to have a judgment entered against it without a trial.

Resolving violations through settlement has several advantages over litigation. Settlements allow the Air District to obtain results more quickly and efficiently than taking each case to court, and they avoid the risk that litigating a case will not be fully successful in achieving the desired enforcement outcome. If the violator agrees to come into compliance and pay its penalty, a settlement allows the Air District to achieve an appropriate enforcement resolution without having to devote the resources to litigating the case – resources that could be better spent addressing other important enforcement work. A settlement can



also be a vehicle to get the violator to commit to go beyond simply coming into compliance, and to implement proactive measures to prevent violations or improve processes going forward, which would not be available in a lawsuit. [\(See also Section VI. below.\)](#)

Settlement is only possible where the violator agrees, however. The Office of the

General Counsel is prepared to litigate when necessary, and it has resources available to call on to ensure that it can do, so regardless of the size of the case. If the violator resists the Air District's enforcement efforts and will not agree to appropriate terms to get back into compliance and pay the penalty, the Air District will not hesitate to take the case to court.

The Office of the General Counsel has a staff of experienced attorneys who work on enforcement cases. In addition, it can partner with other enforcement agencies where appropriate. (Joint prosecutions with partner enforcement agencies is discussed [below in Section VIII.](#)) The Office of the General Counsel also has a pre-qualified a bench of outside law firms with extensive litigation experience and attorney resources to provide additional capacity for larger cases where the Air District's attorneys may require outside assistance.

Considerations regarding whether to litigate a case or resolve it through settlement involve multiple factors, including the strengths and weaknesses of the case; the time and resources necessary to take the case to court; the enforcement outcome that can be obtained immediately through settlement as compared to the potential that a judge would award a stronger outcome if we take the case to trial; and the risk that the case may not be fully successful and the court may side with the violator on some issues. The Office of the General Counsel considers all the facts and circumstances for each violation on a case-by-case basis to determine whether to settle the violation or initiate legal action.

The Office of the General Counsel will also consider the broader impact of litigating enforcement cases publicly. Taking violators to court or to the Hearing Board sends a powerful, visible signal to the violators – and to everyone else in the surrounding community, including similarly-situated facility operators and the public at large – that air quality violations will not be tolerated and that the Air District will take action to stop them. Litigating such cases can therefore have a broader deterrence effect that benefits overall compliance, especially

Commitment to Publicize Enforcement Actions: Informing the public of legal enforcement actions is essential to effective deterrence and a strong enforcement program. Publicizing enforcement actions shows other facility operators that there are consequences for failing to comply with air quality requirements, and it assures the community that the Air District is holding violators accountable for the harm they cause. The Office of the General Counsel is committed to publicizing its legal enforcement actions, both while they are occurring so the public can track the proceedings and observe and participate, and after they are resolved so the public can see the enforcement outcomes achieved. These outreach efforts are discussed in further detail in [Section IX](#).

in overburdened communities where enforcement has historically been lax. The Office of the General Counsel will take into account the potential for such additional beneficial impacts on reducing air quality violations and improving compliance rates when making strategic decisions about what cases to settle and what cases to litigate.

d. Expeditious Resolution of Enforcement Cases

The Air District strives to resolve all enforcement cases as expeditiously as possible. The process of developing a case and resolving it with an appropriate penalty takes time, however. Investigating a violation and working up the case for prosecution is highly time-intensive, and the inspectors, attorneys and others involved must juggle each case with the hundreds of others the Air District pursues each year. Penalty cases cannot realistically be resolved within a few weeks or a few months after the violation is discovered and a Notice of Violation is issued. Especially if litigation is involved, it is not uncommon for final resolution to take several years.

The Air District nevertheless recognizes that it can be frustrating for members of the community affected by the violation if the enforcement process remains unresolved for an inordinate amount of time. It undermines confidence in the Air District's enforcement function if there is no accountability for an extended period after the violation occurs.

The Office of the General Counsel is therefore committed to reducing the time to resolve Notices of Violation from the date it is referred for prosecution to final resolution and closure of the case as much as possible. The Office of the General Counsel will aim to meet the following goals for the time taken to resolve penalty enforcement cases:

- 50% of Notices of Violation resolved within one year of referral
- 75% of Notices of Violation resolved within two years of referral
- 90+% of Notices of Violation resolved within three years of referral⁷

⁷ The Office of the General Counsel generally expects to resolve all cases within three years. Some cases may take longer, however, especially if they are complex or involve a large number of violations. In addition, given the time involved in litigating enforcement cases, it is unlikely that the Office of the General Counsel will be able to resolve violations on this timeline where it has to litigate them through trial.

The Office of the General Counsel will work to achieve these targets, but will not treat them as mandatory requirements to the extent it would undermine the agency's enforcement program. The Office of the General will not cut corners and compromise its enforcement actions just to close cases quickly. It would be easy to resolve a large volume of cases quickly by offering a low penalty to induce the violator to agree to settle immediately. But doing so would dilute the deterrent effect of the penalty and would not make for effective enforcement. The Air District will take the time necessary to develop strong enforcement cases and recover appropriate penalties – either through settlement or litigation – even if it means that a case takes longer to resolve than the targets outlined above.

The Air District will of course always prioritize cases with ongoing violations. As noted [below in Section IV](#), where a violator is continuing to operate out of compliance, the Air District will take immediate action as necessary to stop the violation. It is never appropriate to wait years to address an ongoing violation, especially where it involves illegal emissions that may be impacting public health. The timelines outlined above are for violations where the violator has come back into compliance and the only outstanding issue is to assess a penalty.



III. Penalties for Air Quality Violations

The Air District seeks to assess a monetary penalty for every Notice of Violation it issues. Assessing penalties when regulated entities violate air quality regulations is fundamentally important to the entire system of air quality regulation. If violators do not feel a financial impact when they violate air quality regulations, they will have no incentive to take those regulations seriously and do what is necessary to ensure compliance. The Office of the General Counsel is committed to utilizing the deterrent effect of monetary penalties as a central element of its legal enforcement program. The Office of the General Counsel does so using the penalty assessment process set forth in the California Health & Safety Code, as outlined below.

a. Legal Authority to Impose Penalties for Air Quality Violations

The Air District does not have the power to unilaterally require violators to pay a penalty. By law, only a court can do that. The Air District has the power to take cases to court and present the evidence on which the court can order the violator to pay the penalty, however. By extension, the Air District also has the power to demand that the violator pay the penalty voluntarily and make clear that if the violator does not agree to do so, the Air District will take them to court to force them to pay. The Air District's authority to take polluters to court is a powerful tool, and in most cases it is sufficient to convince the violator to pay the penalty through a settlement agreement. As noted above, the Air District is prepared to litigate if the violator does not.

The Health & Safety Code specifies the rules that govern how a court must evaluate penalty cases and determine the amount of the penalty for a particular violation. The Air District is also required to follow these rules in considering settlement of air quality violations.

These rules provide a two-step process to evaluate the appropriate penalty for a given violation. The **first step** is to determine the maximum penalty listed in the statutes for that type of violation. Once that maximum value is determined, the **second step** is to apply a set of penalty adjustment factors to the specific facts of the case, which consider how much harm the violation caused, how egregious the misconduct was, and other relevant facts and circumstances such as ability to pay. These penalty adjustment factors determine where within the statutory range the penalty should fall for that violation – which could be the full statutory maximum for a serious violation, or could be smaller for a more minor violation.

The two-step statutory process does not provide any specific formula for calculating the penalty in a particular case, however. All the relevant facts and circumstances must be

weighed in each case, and a court has wide discretion to issue a higher or lower penalty depending on the judge's overall sense of the seriousness of the violation. The Air District's attorneys use their best judgment, based on experience, to assess each case through

this process. They are guided, ultimately, by what penalty a judge would likely award if they took the case to court. This is the process required by the Health & Safety Code; the statutes do not provide any more precise methodology for calculating the penalty value in a particular case.

How much do polluters pay for air quality violations in your community? Members of the public can look up the penalty assessed for an air quality violation using the Air District's [Notice of Violation web tool](#). The web tool provides a searchable database of all Notices of Violation issued in the past five years, along with the status of the enforcement case and the amount of the penalty once the case is resolved. Violation and penalty history can be searched based on ZIP code, facility name, or other relevant attributes.

b. “Top-Down” Approach to Penalty Assessment

In applying this two-step approach to evaluating penalties, the Air District starts from a presumption that the statutory maximum penalty is appropriate for the violation, and then puts the burden of proof on the violator to establish that the penalty should be anything less than the maximum, if the violator contends that it should be less. The burden is not on the Air District to prove that a large penalty is warranted for a given violation. The burden is on the violator to prove that a large penalty is *not* warranted, if the violator believes it has evidence to support that assertion. The Air District relies on the authority granted under the Health and Safety Code, as established in cases such as *People v. Wilmshurst* (1999) 68 Cal. App.4th 1332, to place the burden on the violator in this manner.

This does not mean that the Air District will necessarily collect the maximum penalty in all cases, because not every case will warrant the maximum penalty under the statutory penalty adjustment factors referred to [above \(Step 2\)](#). Nor does it necessarily mean that the Air District will demand the maximum penalty in all cases in its settlement demands. There may be cases where the Air District's investigation uncovers clear evidence that indicates the penalty should not be at the full statutory maximum level. By law, the Air District cannot ignore such evidence in evaluating penalty cases. In those situations, the Air District will account for that evidence in assessing the amount of the penalty it will seek in settlement, as it is required to do under Health & Safety Code section 42403(b).

But in cases where there is not any such mitigating evidence, the Air District will resolve any uncertainties in favor of assessing the full penalty. It will not give the violator the benefit of the doubt. For example, if a violator claims it has limited financial resources and lacks the ability to pay a major penalty – which would be relevant to the size of the penalty under the



“financial burden” adjustment factor in Health & Safety Code section 42403(b)(3) – the Air District will not credit such a claim unless the violator backs it up with verified tax returns and/or financial statements that would constitute legally admissible proof in court.

The Air District applies this top-down approach to the two-step statutory penalty analysis framework as follows:

► Step One: Determine Statutory Maximum Penalty

The maximum penalty a court can award for a given violation depends primarily on (i) the violator’s “state of mind”⁸ (i.e., the extent to which it acted intentionally or negligently); and (ii) whether the violation involved illegal air emissions (as opposed to a violation that did not directly cause illegal emissions, such as a recordkeeping violation). The statutory maximum penalties for each type of violation, which increase each year with inflation, are as follows:

- **No Emissions/No Evidence of Negligence or Intent:** The lowest penalties are reserved for violations (i) that do not involve emissions in violation of any rules or regulations, and/or (ii) that were not intentional or negligent – i.e., do not involve any culpability on the part of the violator. Even where there is no evidence that the violator acted intentionally or negligently, the Health & Safety Code still subjects the violation to a penalty. These violations are subject to penalties of up to **\$12,940** per violation per day, or up to **\$6,470** per violation per day if the violator can provide evidence to prove affirmatively that it did *not* act intentionally or negligently.⁹ These penalties are provided for in Health & Safety Code section 42402.
- **Negligent Emissions Violations:** For cases where the violator negligently emitted air pollution in violation of a rule or regulation, the violation is subject to penalties of up to **\$32,350** per violation per day. Negligence means that the violator did not intend to cause the illegal emissions, but it failed to act with reasonable care to prevent the emissions from occurring. Negligence may involve failing to properly maintain equipment to keep it from breaking down, failing to operate the equipment properly, or failure to train employees on how to operate the equipment, among other scenarios. These penalties are provided for in Health & Safety Code section 42402.1.

⁸ “State of mind” refers to the violator’s level of intent in committing the violation. The legal profession often refers to the violator’s state of mind using the Latin term *mens rea*, meaning “guilty mind.” The relevant levels of *mens rea* (guilty state of mind) are outlined in the bullets below.

⁹ The lower \$6,470 penalty maximum does not apply for violations of federally enforceable requirements at Title V “major” facilities. Violations of federally enforceable regulations at major facilities are subject to penalties up to \$12,940 per violation per day, even if the violator can prove that it did not act intentionally or negligently. (The lower maximum is similarly inapplicable for violations of an emissions cap established pursuant to a market-based incentive program, but the Air District does not have any such programs.) See generally Health & Safety Code § 42402(b)(2)(B)-(C).

- **Failure to Abate Known Emissions Within a Reasonable Time Period:** For violations where the violator knew it was emitting air pollution in violation of a rule or regulation and failed to take corrective action within a reasonable period of time under the circumstances, the violation is subject to penalties of up to **\$51,760** per violation per day. These penalties are provided for in Health & Safety Code section 42402.2.
- **Willful and Intentional Emissions Violations:** For violations where the violator willfully and intentionally emitted air pollution in violation of a rule or regulation, the violation is subject to penalties of up to **\$97,050** per violation per day. Ignorance of the law is not an excuse, and there is no requirement that the violator knew of the rule or regulation at issue and specifically intended to violate it. It is a willful and intentional violation if the violator willfully intended to cause the emissions – regardless of whether or not it was aware of the rule or regulation that was violated. These penalties are provided for in Health & Safety Code section 42402.3.

The maximum penalty amounts listed here are for 2026; they will be adjusted in future years based on the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations.

The Health & Safety Code also provides elevated penalties for public nuisance emissions violations that directly cause death or serious injury. These statutory maximum penalty levels are presented in [Table A-2](#) in Appendix A, and they range up to a maximum of \$1.3 million per violation per day for willful and intentional emissions by a corporation that cause death or great bodily injury.¹⁰

Finally, for emissions violations at “major facilities” occurring on or after January 1, 2025, the statutory maximum penalty levels outlined above are tripled. A “major facility” is defined in Air District regulations and includes the [approximately 75 largest-emitting facilities in the Bay Area](#), such as refineries, large power plants, major landfills, and other very large emitters.¹¹

¹⁰ Most air pollution violations cause harm by adding to the cumulative public health impacts caused by pollution from many sources. They do not directly cause the harm all by themselves. The cumulative impact of those combined emissions can cause additional deaths and serious bodily harm in exposed communities, but in such cases the individual violation by itself does not, so they do not implicate these heightened penalty provisions. The penalty statutes do not hold one individual contributor liable for the entirety of that harm where it is caused by the cumulative effect of multiple, separate sources.

Cases where an individual violation directly causes death or serious injury can arise, though, and when the Air District has evidence to tie a death or serious injury to an emissions violation, the Office of the General Counsel will assess the violation at those higher penalty levels. In appropriate cases, the Office of the General Counsel will also consider referring such cases for criminal prosecution.

Addressing the full scale of the harm arising from cumulative impacts requires regulatory action beyond the scope of enforcement of individual violations of existing regulations. Stronger regulations will require all sources that contribute to the cumulative harm to reduce their individual contributions. The Air District has committed to enhancing its regulations to address cumulative impacts in its 2024-2029 Strategic Plan. See Strategy 1.2 (Stronger Regulations) and Strategy 2.11 (Cumulative Health Impacts).

¹¹ Air District Regulation 2-6-212 defines a “major facility” as one that has the potential to emit 100 tons per year or more of any regulated air pollutant; or 10 tons per year or more of any single hazardous air pollutant or 25 tons per year or more of a combination of hazardous air pollutants.

These penalty levels are also summarized in [Tables A-1](#) and [A-2](#) in the Appendix the end of this document; please refer to that Appendix for more information.

► **Step Two: Apply Applicable Penalty Adjustment Factors**

Once the applicable penalty range is determined at step one, the second step is to determine where within that range the particular violation should fall. A serious violation may warrant a penalty at the top of the applicable range, whereas a very minor violation may warrant a smaller penalty towards the bottom of the range. The relevant **penalty adjustment factors** that determine how large or small a penalty should be within the given statutory range, which are set forth in Section 42403(b) of the Health & Safety Code, are outlined below.

A **Public Nuisance** is defined by statute as an emission that harms or otherwise impacts a "considerable" number of persons or the public, or damages business or property. A public nuisance may result when emissions cause health impacts like headaches or nausea, or when schools have to close or people to have to stay indoors.

These penalty adjustment factors are necessarily somewhat general in nature, as they need to be flexible enough to encompass the very wide range of types of violations that may arise. How they apply to a given violation will depend on all the facts and circumstances surrounding the violation, and the following descriptions are not intended to be prescriptive or to rule out additional considerations not expressly articulated here where they are relevant to the appropriate size of the penalty.

As noted above, the Office of the General Counsel applies a "top-down" approach that starts with a presumption that the maximum penalty should be applied and places the burden of proof on the violator to demonstrate that any lower penalty may be warranted, if it has evidence to that effect. As required by California law, however, the Office of the General Counsel takes into account the following factors when evaluating the penalty appropriate for a particular violation, to the extent supported by the evidence.

- **The extent of harm caused by the violation.** The extent of the harm caused by the violation is an important factor in determining the seriousness of the violation and how significant the penalty must be. Where a violation causes a large amount of illegal air pollution, for example, a higher penalty is warranted – and especially where the illegal air pollution exposes people to increased pollution levels in the air they breathe. Air pollutant emissions are only one type of harm that can result from violations of Air District regulations, however, and the agency takes all forms of harm to the public welfare into account under this adjustment factor.

In applying this factor, the Air District will take into account available evidence of how the violation harmed the community where it occurred. For example, the violation may

have required neighboring residents to stay indoors or exposed them to noxious odors, or the emissions may have caused schools or businesses to have to close. The violation may have caused elevated readings on air pollution monitors downwind of the site. In extreme cases, there may even be evidence that emissions from a violation have required people to seek medical treatment. The Air District will collect such information where available and will use it to assert higher penalties.

In many cases, the emissions resulting from a violation may not, by themselves, have a direct, measurable impact on pollution levels detected at an official monitoring site. These violations still cause harm because they contribute to the ***cumulative impact*** resulting from the combination of the illegal emissions that are the subject of the violation and all the other sources of emissions that affect the affected community. Air pollution is largely a cumulative problem, so even individually minor amounts of illegal air pollution need to be prevented and deterred. Where those emissions violate applicable regulatory limits, they cause harm by exacerbating the overall cumulative problem.

“Cumulative impact” means the totality of exposures to combinations of chemical and nonchemical stressors and their effects on health, well-being, and quality of life outcomes. Cumulative impacts result from the combined effect of multiple emissions that may individually be relatively small, but taken together have a significant public health impact.

In evaluating the cumulative impacts from a violation, the Air District takes into account the extent to which the affected community already suffers from an elevated air pollution burden. Adding even more pollution on top of that existing burden makes the harm from the violation even worse, as compared to the same emissions in an area that does not suffer from such a high existing burden. Penalties should necessarily be higher for violations in such overburdened areas based on the increased harm that results from a given amount of additional pollution in those areas. The Air District will use tools such as [CalEnviroScreen](#) (among others) to assess the extent of the existing cumulative burden and how it informs the analysis of the harm from a violation under this penalty adjustment factor.

Finally, as noted above, there are other forms of harm beyond just illegal air emissions. Violations of air quality regulations impact the Bay Area's ability to achieve clean and healthy air even where they do not directly result in illegal emissions. Where a violator fails to properly monitor its emissions, for example, or to conduct periodic inspections to ensure equipment is not leaking, it exacerbates the risk that illegal emissions will go undetected and unaddressed. These types of violations harm the breathing public by increasing the risk that illegal emissions will occur and/or will continue for longer than necessary before being detected and remedied. The Air District includes all such harm to the integrity of its regulatory program in evaluating the extent of the harm under this penalty adjustment factor.

- The nature and persistence of the violation.** The Health & Safety Code requires consideration of this very general penalty adjustment factor, and the Air District looks to the facts and circumstances of each individual case to determine how to apply it. Where the nature of the violator's actions evidence a higher level of culpability for the violation that occurred, the Air District will seek a higher penalty. Similarly, where the violator's misconduct persisted for an extended period of time, the Air District will seek a higher penalty.
- The length of time over which the violation occurs.** The Air District will take into account how quickly the violation was remedied in evaluating the extent of the appropriate penalty. If the violation went on for a long time, that is more serious and warrants a higher penalty (all other things being equal), as compared to a violation that only lasted a short period of time.
- The frequency of past violations.** The Air District will seek higher penalties if the facility has had frequent violations in the past. If the facility operator is continuing to have additional violations, that is a signal that it is not taking effective steps to remedy a recurring problem, and a stronger deterrent is needed. This factor applies in cases where the same type of violation involving the same underlying problem frequently recurs. It also applies where a pattern of recurring violations of different types shows that the facility operator has been negligent or is not giving sufficient focus and resources to its environmental compliance responsibilities.
- The record of maintenance.** The Air District will take into account the violator's record of maintenance of any equipment involved in the violation. If the facility operator failed to maintain its equipment properly, the penalty must be higher to have an appropriate deterrent effect. A higher penalty will send a clear message to the facility operator and other similar entities that they must take their maintenance responsibilities seriously. Conversely, if the facility operator has properly maintained all equipment in good working order, the Health & Safety Code requires that fact to be taken into account in considering whether a less severe penalty is warranted.



- **The unproven or innovative nature of the control equipment.** The Air District supports innovation in finding more effective ways to control air pollution. If the cause of a violation is legitimately related to the unproven or innovative nature of a new technology with demonstrated potential for improved pollution control, the Air District is required to take that into account in considering whether a reduced penalty may be warranted. The extent of any such reduction will be evaluated in the context of the overall severity of the violation and the other adjustment factors.
- **Any action taken to mitigate the violation, including the nature, extent, and time of response of the cleanup and construction undertaken.** "Mitigate" means to make something (such as damage or loss) less severe, harmful, or extensive. This factor applies in situations where the violator has taken steps to make the harm from the violation less severe, harmful or extensive, for example by cleaning up the pollution that resulted from the violation. If a violation involved sooty particulate matter falling out onto neighboring properties, mitigating that harm might include paying to wash down vehicles or the exterior of houses, or even removing contaminated soil. Mitigating the harm from air pollution is often difficult, however, since the pollution usually mixes rapidly into the surrounding ambient air.

Efforts by the violator simply to stop the violation and come back into compliance are not encompassed within this penalty adjustment factor. A facility operator has a legal duty to comply with the law by stopping the violation immediately, and compliance with that duty does not warrant a reduced penalty under this factor. Certainly, if the facility operator fails to comply and the violation continues, it will be subject to a *higher* penalty under the "length of time" and "nature and persistence" factors discussed above, and also because the number of days of violation and the associated statutory maximum penalty may increase. But the facility operator cannot claim any additional *reduction* in penalty under this factor just because it took action to stop the violation after it was discovered.

Similarly, this factor does not encompass simply taking steps to avoid violations in the future. Regulated entities have a legal duty to prevent violations and comply with the law. Just doing





what they are required to do to stay in compliance does not mitigate the harm from their past violations. Again, if facility operator does *not* take those steps to stay in compliance, it will pay additional penalties when it has violations in the future (which may also be escalated under the “frequency of past violations” factor discussed above). But any such future-facing compliance measures – which the

facility operator should have been implementing all along – do not mitigate the harm from its past violations, which is what this adjustment factor addresses.

- **The financial burden to the defendant.** The Air District is required to take into account the financial resources of the violator in determining what penalty should apply for the violation. A penalty must be more substantial for a large company with extensive financial resources in order to have the necessary deterrent effect as compared to the penalty for a small “mom-and-pop”-type business. Not every violation is severe, of course, and a penalty at the very top of the scale may not be warranted even for the biggest company when all the relevant penalty adjustment factors are taken into account; and by the same token, a very serious violation may warrant a substantial penalty even for a small company. But generally, the Air District will aim to tailor the penalty in each case to the financial resources of the defendant (within the penalty range established by the Health & Safety code), as it is legally required to do.
- **Removing any economic benefit from the violation.** Penalties must also ensure that the violator does not reap any economic benefit from the violation. If the facility operator avoided certain costs of compliance, the penalty must be at least as much as those avoided costs to prevent the operator from gaining a competitive advantage by violating the law. If the penalty does not at least equal the amount the facility saved by not complying with the law, then it will create a perverse incentive for the facility operator to continue to violate and just pay the penalty, as opposed to spending the money to comply.

The penalty must also include an additional amount, on top of the economic benefit component. It is not sufficient just to put the violator back on an equal footing with those who incurred the costs to comply. To have the necessary deterrent effect, the penalty

must ensure that the facility operator ends up in a worse position financially than if it had spent the money to comply.

- **Any other relevant circumstances.** Finally, the Health & Safety Code also provides for the consideration of “all relevant circumstances,” in addition to the factors outlined above.¹² The Air District will use this catch-all provision to take into account any other facts or circumstances bearing on the severity of the violation and the magnitude of the associated penalty.

These penalty adjustment factors are set forth in Health & Safety Code section 42403(b). That provision requires the courts to use this process to determine the amount of the penalty for an air quality violation. It also directs the Air District to apply these factors when evaluating cases for settlement. Where warranted, the Air District will seek the maximum penalty provided for by statute. In cases where the violator can point to facts and circumstances that suggest a judge would impose a lower penalty under section 42403(b), the Air District will seek to resolve the case at a lower level, as required by the Health & Safety Code.

It is also important to note that not every adjustment factor will be relevant in every case. Moreover, not every factor will carry equal weight in each case. For example, if the evidence under one factor strongly supports the statutory maximum penalty for a violation, the maximum may still be appropriate even if there is countervailing evidence under another factor(s). The appropriate penalty for each case will always depend on the particular facts and circumstances of that case.



¹² For the triple penalties for emissions violations at Major Facilities under Health & Safety Code section 42402.6, the statute provides that the penalty level shall take into account “health impacts, the timeliness and accuracy of the notifications from the violator, and other circumstances related to the violation ... pursuant to Section 42403.” This clarification does not materially change the penalty adjustment analysis applicable for Major Facility emissions violations, as these enumerated factors are already encompassed under Section 42403, as the statutory language notes.

IV. Legal Action to Address Ongoing Non-Compliance

The Air District and the breathing public in the Bay Area cannot tolerate violations of air quality regulations. Where the Air District discovers a violation, the first priority is to ensure that the violator takes steps immediately to bring the violation back into compliance. This is especially important in overburdened communities that already suffer from an elevated cumulative pollution burden, as any ongoing violations will add to the existing risk of harm to public health from historical and current pollution sources.



The Air District will legal take action to address ongoing violations in these communities, and all communities within the Bay Area, to ensure that the violator comes back into compliance.

For most Notices of Violation the Air District issues, the violation is already back in compliance by the time the Notice is issued, or the violator addresses it shortly after receiving the Notice and promptly achieves compliance. In those cases, the only remaining legal action needed to resolve the violation is to assess a penalty for the violation.

In some cases, however, the violator does not promptly address the problem and the violation continues after the Notice of Violation is issued. Those cases require an escalated legal response, using the tools outlined in [Section II above](#). The Air District will take action to address all such cases, but it must necessarily prioritize cases based on available enforcement resources, focusing first on ongoing violations with the greatest impact – and especially those in overburdened communities, where ongoing violations may have a greater effect on public health because of existing cumulative pollution impacts. The Air District will prioritize cases for immediate legal action based on the following factors, as well as any other relevant facts and circumstances.

- **Extent of Harm to the Public**

The Air District will prioritize cases where there are ongoing air pollution emissions exceeding applicable regulatory limits that are exacerbating public health impacts. Cases will be prioritized by the extent of the harm resulting from the illegal emissions, with the



highest priority given to cases causing the greatest harm. The Air District will pursue all cases of ongoing non-compliance to ensure that compliance is achieved and the violation ceases, but its first priority will always focus on cases where excessive emissions exceeding regulatory standards are endangering public health.

- **Impacts in Overburdened Communities**

The Air District will similarly prioritize cases with ongoing violations that have impacts in overburdened communities. Overburdened communities suffer higher levels of air pollution and resulting harm to public health, so there is a heightened need to address ongoing violations in those areas. Moreover, overburdened communities have often lacked effective enforcement historically, which has contributed to higher cumulative public health impacts in those areas. The Air District will therefore prioritize cases in these areas to send a strong and visible deterrent message to the violator, to other similarly situated businesses, and to the community, that air quality violations will not be tolerated.

- **Violator's Willingness to Comply**

The Air District will also take into account whether the facility operator is willing make an enforceable commitment to come back into compliance (e.g., through a stipulated abatement order or similar mechanism). The Air District will prioritize cases where the facility operator continues to flout air quality requirements and operate in violation, as compared to cases where the operator agrees to fix the problem expeditiously, to implement measures to minimize the extent of the harm while doing so, and to pay their penalty for the violations that have occurred. Compliance is never voluntary, and the Air District will not accept promises to comply without an enforceable mechanism to hold the facility operator to its commitments. But cases where the facility operator agrees to enforceable commitments to come into compliance will be a lower priority for formal enforcement action, as compared to cases with recalcitrant violators who refuse to do so.

- **Ease or Difficulty of Achieving Immediate Compliance**

The Air District will give higher priority to ongoing violations where the violator can easily curtail its operations to stop or limit the violation. There is no excuse for failing to do so under such circumstances, and taking formal enforcement action can be useful to send a strong deterrent message.

- **Anticipated Length of Time Out of Compliance**

The Air District will prioritize cases where it appears that the violation could continue for a significant period of time, as compared with violations that may be remedied within a few days or a few weeks. More serious action is warranted in situations where the violation will extend for a longer period of time if it is not addressed through enforceable injunctive measures.

- **Likelihood of Success in Obtaining Injunctive Order**

The Air District's Hearing Board and the California courts are required to balance the equities of a given situation in considering whether and how to grant injunctive relief regarding an ongoing violation. The Air District will give priority to cases where the agency has a higher likelihood of obtaining effective injunctive relief based on all the facts and circumstances, as compared to cases where the Air District has a lower likelihood of obtaining a meaningful order.

The Air District is committed to keeping the affected community informed about and involved in such actions. As discussed further in [Section IX.b.](#) below, the Office of the General Counsel will conduct outreach to inform the public in the affected area when such cases are filed, including opportunities for public participation and public comment where applicable, and will follow up about case resolutions and enforcement outcomes.





V. Using Penalty Funds to Redress Harm to Communities Caused by Air Quality Violations

The Air District is committed to enforcement outcomes that will reduce and reverse the harm that air quality violations cause to the surrounding community. One element of that commitment involves reinvesting penalties from those violations back into the communities where the violations occurred to help redress the harm the violations caused. The Air District has adopted a [Community Benefits Penalty Funds Policy](#) that directs how these funds will be reinvested in those communities.

The Air District has created a [Community Investments Office](#) to oversee the process for distributing those funds for projects in eligible communities that will reduce air pollution, improve public health, and build community resilience. As of 2026, Air District enforcement actions have generated over \$125 million for such projects. The Community Investments Office administers these funds through the Bay REPAIR (Reinvesting Penalties for Air Improvement and Resilience) program.

VI. Enhanced Compliance Measures in Settlements

The ultimate goal of the Air District's enforcement program is to prevent violations from occurring, especially in overburdened communities – not just to assess penalties for past environmental harm. To further that goal, the Office of the General Counsel looks for opportunities to use settlement agreements to obtain commitments by violators to implement proactive measures to improve compliance in the future, above and beyond what is required by law.

The substance of such commitments will vary depending on the nature and circumstances of each particular case. But they could include (for example) third-party audits to identify potential compliance weak points, training programs to ensure facility staff are aware of environmental requirements and what they need to do to comply, enhanced monitoring or inspection frequency, increased public transparency regarding the facility's operations, or other appropriate measures.

Proactive commitments to improve compliance will provide the most value where they address potential violations of greatest community concern. Where feasible, the Air District seeks to identify community concerns and incorporate them into settlement approaches, consistent with the need to maintain confidentiality and evidentiary privileges. Community concerns may be identified (for example) by the Air District's AB 617 Community Steering Committees, through FOCUS community meetings, or through other community outreach efforts.

AB 617 is a state law that requires all major air districts in California to partner with communities to develop plans to reduce air pollution. Communities selected for the AB 617 program have relatively higher levels of air pollution than average, along with health vulnerabilities such as higher asthma rates, cardiovascular disease, and cancer risk. There are four AB 617 communities in the Bay Area: Richmond-North Richmond-San Pablo; West Oakland; East Oakland; and Bayview Hunters Point/Southeast San Francisco.

The Air District will consider such commitments only if they go over and above current regulatory requirements. Compliance with all laws and regulations is the basic minimum, and the Air District will not credit a facility operator simply for doing what is legally required. In addition, the Air District will consider including such commitments only where there will be a potential future benefit to public health or improved compliance that warrants the additional oversight required to ensure the facility operator actually implements the conditions as agreed to. The Air District will not include measures that are merely performative, are not worth the agency staff resources needed to oversee them, or are something the company

would likely do anyway for its own business purposes. But where measures will be effective to enhance compliance and provide real environmental benefits beyond what would otherwise occur, the Air District may explore ways to incorporate them into settlements.

The Air District will include such measures in settlements only where they are readily enforceable as a practical matter. Compliance measures can be made enforceable by including them in a formal court order signed by a judge (called a “consent judgment”), which makes the facility operator subject to contempt of court – including fines and potentially even jail time – if it does not comply. Alternatively, a settlement agreement can include additional penalties that automatically kick in if the facility operator does not comply. These measures provide clear consequences if the facility operator does not follow through on the commitments it made in the settlement, providing additional assurances that the operator will comply, and giving the Air District additional legal tools if it has to go to court to force the operator to do so.

The Air District generally disfavors Supplemental Environmental Projects, or “SEPs,” in settlements agreements.¹³ Some agencies use SEPs as a way to divert penalty funds to projects that will benefit the communities in which the violations occurred. The Air District does not need to use SEPs for that purpose, however, as it already has a policy in place to reinvest penalty funds back into the affected communities. [\(See discussion of the Community Benefits Penalty Funds Policy in Section V. above.\)](#) In most cases, allocating funds to affected communities under that approach is preferable to including a SEP in a settlement agreement. The Air District will use SEPs only in exceptional cases where the particular facts and circumstances of the case warrant it.



¹³ A SEP is when the violator agrees to undertake or fund a project to provide tangible environmental or public health benefits to the affected community or the environment as a means to mitigate the harm from the violation.

VII. Mutual Settlement Program for Minor Violations

The Air District is mindful that some violations may involve smaller businesses or individuals with limited financial resources. Where such entities have relatively minor violations that do not cause extensive emissions or public health impacts, and they respond proactively to achieve compliance and take steps to ensure such violations do not recur, the Air District will appropriately consider a smaller penalty.



The Air District is legally required to consider reduced penalties in such cases under the penalty adjustment factors in Health & Safety Code section 42403(b), including the “nature and persistence” factor and the “financial burden” factor.

The Air District will ensure that violators pay appropriate penalties in all such cases, however. Although the penalty may be relatively smaller for such violations, the Air District must still incentivize proactive environmental compliance and make it clear that businesses that ignore their responsibility to protect air quality will be worse off financially than those who take the necessary actions to comply. The same principles of deterrence apply for smaller businesses as they do for large companies, just on a smaller scale.

The Air District has created a Mutual Settlement Program to handle such situations. The Mutual Settlement Program consists of experienced non-attorney enforcement case specialists who resolve smaller cases that do not require direct attorney involvement. These case specialists handle penalty cases referred to them in the same way as the attorneys do, except that their legal enforcement mechanism when the violator refuses to pay their penalty is through small claims court. The small claims courts in the nine Bay Area counties provide a faster and more efficient process to assess penalties up to \$6,250 for air quality violations, and they do not require an attorney to file or prosecute them.

The Mutual Settlement Program resolves hundreds of violations every year and is an essential element of the Air District's overall enforcement function. Although the types of businesses the Mutual Settlement Program deals with are individually small, there are

a large number of them throughout the Bay Area. Without a high compliance rate and an effective deterrent to violations, the collective emissions from violations by such businesses could be very significant. The Mutual Settlement Program provides the enforcement mechanism to incentivize compliance for these entities.

Small Claims Court is a division of the Superior Court where limited disputes can be resolved quickly and inexpensively, with simpler rules and a less formal process. The defendant may not be represented by an attorney, and the Air District can usually obtain a judgment within a matter of months.

Violations are not assigned to the Mutual Settlement Program where there is ongoing non-compliance that the violator refuses to address; where the violation caused significant emissions or harm to public health; where the violator's misconduct was intentional or egregious; where there is a history or pattern of non-compliance demonstrating that the violator is not taking its compliance responsibilities seriously enough; or where other circumstances suggest that a minor penalty will not achieve the necessary deterrent effect. Such cases warrant a more significant penalty, even if the violator is a small business. The Air District assigns attorneys to handle such cases to ensure that the enforcement response is adequately tailored to the seriousness of the violation.



VIII. Partnering with Other Enforcement Agencies

The Air District will partner with other enforcement agencies where appropriate to ensure that the right enforcement resources are brought to bear on environmental violations. Partner agencies can include 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. Enforcement partners may also include other agencies in cases involving violations of other environmental laws, as well as private enforcers who may have claims under so-called "citizen suit" provisions.

There are pros and cons to joining with other enforcement partners with respect to violations of Air District regulations. The Air District will evaluate the benefits of doing so on a case-by-case basis.

Joint enforcement can be beneficial for very large cases that call for a significant investment of investigatory and legal resources. In those cases, it can be helpful to have multiple agencies involved to share the workload. Joint prosecution may also be warranted where a single incident causes environmental harm in other areas in addition to air quality violations, such as water pollution, hazardous waste releases, or worker safety violations. Consolidating all those violations in a single multi-agency prosecution may be the best way to achieve the most powerful enforcement response to the totality of the environmental harm.

Partner Enforcement Agencies that can enforce air pollution laws include:

- California Air Resources Board (CARB)
- California Attorney General
- U.S. Environmental Protection Agency
- County District Attorneys

Joint enforcement requires coordination among multiple different agencies, however, which can complicate the process and slow down the ultimate resolution. For cases that involve only air quality violations and where the Air District has adequate resources to prosecute the case itself (with its own attorneys and/or with assistance from an outside law firm), partnering with another agency may not provide a significant benefit in terms of the overall enforcement outcome. Moreover, partnering with other agencies may mean sharing the penalties collected as a result of the enforcement action. This may reduce the amount of penalty funds that get directed back to communities impacted by the violations under the Air District's [Community Benefits Penalty Funds Policy](#). The Office of the General Counsel will therefore evaluate each case carefully to ensure that there will be an overall benefit from joint prosecution.

IX. Accountability to Affected Communities for the Air District's Legal Enforcement Program

The Air District has been entrusted with the authority and responsibility to hold regulated entities accountable when they violate air quality regulations. To faithfully fulfill this mandate, the Air District must also hold itself and its enforcement program accountable to the public and to the communities affected by those violations. The Office of the General Counsel is committed to doing so by transparently and publicly reporting on the legal actions it takes to address air quality violations – and how it is implementing the principles outlined in this Policy.

a. Public Reporting of Legal Enforcement Actions

The Air District publicly reports on its website all [Notices of Violation](#) (NOVs) it has issued in the past five years, including the name and address of the violator, the regulation violated, and the date the Notice of Violation was issued. The website database also indicates whether the Air District has resolved the enforcement case with a penalty or whether the case is still ongoing (indicated by a "pending" status). Where the enforcement case has been resolved, the database also indicates the date it was resolved and the amount of the penalty.

The Air District also publishes a list of all Notices of Violations issued each month, and all penalty settlements for \$10,000 or more reached each month, in its monthly Board of Directors [meeting materials](#). It also publishes press releases to publicize major cases and provides the case resolution documents on its [penalties and settlements](#) webpage, and members of



the public can [sign up](#) to receive email notifications of all penalty resolutions of \$100,000 or more.

To provide further transparency, the Office of the General Counsel will publish an annual enforcement report each year documenting its enforcement cases for the previous year. The report will provide information on all the cases resolved during the year, along with information for previous years to identify trends and track progress. The report will provide information on the Office's staffing levels and caseload, and will include (at a minimum) data on each of the metrics listed in the table below.

In addition to average and median penalties per violation, the report will also document the distribution of penalty sizes to show the proportion of violations that are resolved at various penalty levels, from small to large. The report will also include sub-metrics for ZIP codes in AB 617 communities to evaluate how penalties are being assessed in those overburdened communities. The report will also identify the regulations that are most often violated, which may be useful to inform future rulemaking and enforcement prioritization. Finally, the report will summarize the penalties collected and allocated under the Air District's Community Benefit Penalty Funds Policy through the Bay REPAIR Program ([see Section V above](#)).

ANNUAL REPORTING METRICS

- | | |
|---|---|
| • # of NOVs Issued | • Average Penalty per Violation Resolved |
| • # of NOVs Resolved with Penalty | • Median Penalty per Violation Resolved |
| • # of NOVs Resolved by Attorneys | • Average Penalty per Violation Resolved by Attorneys |
| • # of NOVs Resolved by Mutual Settlement Program | • Average Penalty per Violation Resolved by Attorneys at Major Facilities |
| • # of NOVs Resolved as "No Further Action" | • Average Penalty per Violation Resolved by Mutual Settlement Program |
| • # of NOVs Canceled | • Median Penalty per Violation Resolved by Attorneys |
| | • Median Penalty per Violation Resolved by Attorneys at Major Facilities |
| | • Median Penalty per Violation Resolved by Mutual Settlement Program |
-

The Office of the General Counsel will evaluate these metrics and will adjust or add new metrics based on experience in implementing this Policy and feedback it receives on the annual report each year.

To track the time it takes from issuance of a Notice of Violation to final resolution, the report will also list how many of the Notices of Violation issued in each of the previous five years have

been resolved and how many are still unresolved. The report will also provide information on how long cases took to resolve from initial referral to the Office of the General Counsel through to final resolution by settlement or litigation. This metric will provide data to assess progress towards the Air District's goals for expeditious resolution of enforcement cases as outlined in [Section II.d. above](#).



The report will also list all of Hearing Board abatement order cases, Superior Court enforcement lawsuits (including both attorney cases and mutual settlement cases), and permit revocation cases. To track where the Air District is prioritizing enforcement resources for these cases, the list will also identify the location of the violations addressed in each case and whether they are in an AB 617 community or other overburdened community as defined in Air District Regulation 2, Rule 1.

Each annual report will summarize data from prior years to build an ongoing database of baseline conditions, trends, and progress in achieving the goals of this Policy. Tracking progress over time will provide visibility into the performance of the Office of the General Counsel in effective legal enforcement, and will help identify areas of success as well as opportunities for further improvement. Transparently reporting actions to implement this Policy will provide accountability to the public and to the Air District's Board of Directors that the Office of the General Counsel is following through on the commitments made herein.

The Office of the General Counsel will also continue to assess and consider adjustments to this Policy as it gains experience in implementing it. This Policy is intended to be an evergreen document that will be revised and improved upon over time. The Office of the General Counsel will document lessons learned through implementation of the Policy in its annual report, and will update the Policy as appropriate based on this experience and on feedback received through other channels (e.g., community feedback received in FOCUS community meetings, input from the Community Advisory Council, etc.).

b. Engaging Community in Legal Enforcement Processes and Outcomes

In addition to publishing its annual enforcement report, the Office of the General Counsel is also committed to proactively engaging affected communities to provide information on its legal enforcement activities.

The Air District will engage specific communities where there are notable legal developments related to enforcement cases in that community. For facilities or violations for which there is significant public interest, the Office of the General Counsel will engage with community partners regarding enforcement approaches, activities, and outcomes. Where feasible, the Air District seeks to identify community concerns and incorporate them into case resolution strategies, as noted in [Section VI](#) above. The Air District will also conduct outreach to inform the neighboring community when Hearing Board cases or lawsuits are filed, including opportunities for public participation and public comment. In cases where community members have information about a particular violation, the Air District's attorneys may call them as witnesses to support formal legal action. The Office of the General Counsel will also follow up with information about case resolutions and enforcement outcomes in significant cases, including the amount of the penalty assessed and how the facility has been brought back into compliance. The Air District will leverage its community connections through the Community Advisory Council, the Bay Area's four AB 617 Community Steering Committees, the Air District's "EJ Navigators" program, and related community partners to provide this information as widely as possible within the area affected by the violation.

The Air District will similarly engage the public with broad outreach on the Office of the General Counsel's annual enforcement report. In addition to making the information



and reporting generally available, the Office of the General Counsel will undertake targeted efforts to bring the information to those in communities most affected by air quality violations, including the Bay Area's AB 617 communities and other environmental justice communities throughout the region.

Reporting on legal enforcement activities and outcomes will be a central part of the town hall meetings the Air District will hold through the FOCUS Community Meetings Policy. The Office of the General Counsel will also provide briefings for the Community Advisory Council and the AB 617 Community Steering Committees, to the extent those bodies would like to consider this information at their meetings.

Through these initiatives, the Office of the General Counsel seeks to provide structured opportunities for community input on and evaluation of its legal enforcement program. Implementation of this Policy is envisioned as an iterative feedback loop, where the Office of the General Counsel informs and engages with the community on enforcement actions and outcomes, and the community provides input in assessing outcomes and identifying areas for further improvement. Success will be achieved through an open and transparent partnership where community voices are identified, informed, and engaged, and where community feedback ensures that the Air District's legal enforcement efforts are targeted to community priorities and accountable to community interests.



Appendix – List of Potential Violations and Penalty Ranges

The California Health & Safety Code requires the Air District to publish a list of violations subject to penalties. The list must also include the minimum and maximum penalties for each violation that may be assessed by the Air District.

The list of violations subject to penalties is defined by the regulatory requirements in the Air District's current rules and regulations, which are listed on the Air District's [Current Rules webpage](#) (containing all of the rules in the Air District's regulations, Regulation 1 through Regulation 14, inclusive); and by the requirements of the rules, regulations and orders of the California Air Resources Board (CARB), which are listed on the CARB [Laws and Regulations webpage](#). Violations of Air District permit conditions (including requirements in Title V permits) are subject to penalties pursuant to Air District Regulations 2-1-307 and 2-6-307. Violations of hearing board abatement orders are also subject to penalties; abatement orders of the Air District's Hearing Board are listed on the Hearing Board [Agendas, Reports and Orders webpage](#). Emissions that cause a public nuisance in violation of Health & Safety Code Section 41700 or that violate the opacity standards in Health & Safety Code Section 41701 are also subject to penalties, as are violations of all other requirements specified in Part 4 of Division 26 of the Health & Safety Code.

The penalties applicable for such violations range from a nominal penalty as the minimum (e.g., \$1) up to the statutory maximum penalties listed in Tables A-1 and A-2 below based on the type of violation. The statutory maximum penalties increase annually for inflation based on the California Consumer Price Index as reported by the California Department of Industrial Relations. The maximum penalty values provided in this document are for 2026, and they will increase with inflation in future years.

In addition, violations of the air toxics inventory reporting requirements in the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (a/k/a "AB 2588," Part 6 of Division 26 of the Health & Safety Code), and violations of any permit, rule, regulation or requirement adopted to implement that Act, are subject to penalties from a minimum of \$500 per violation per day up to a maximum of \$10,000 per violation per day. Any person who knowingly submits any false statement or representation filed, maintained or used for purposes of compliance with that Act is subject to penalties from a minimum of \$1,000 per violation per day up to a maximum of \$25,000 per violation per day. (See Health & Safety Code § 44381.)

Table A-1 below lists the basic statutory maximum penalties applicable for air quality violations under the Health & Safety Code sections 42402 through 42411. The maximum penalty values listed are for 2026 and will increase each year with inflation.

TABLE A-1 – Penalty Ranges for Air Quality Violations Under Health & Safety Code Sections 42402 through 42411

	Violator Proves No Intent/ Negligence	No Evidence of Negligence/ Intentional	Negligence	Known Emissions, Failed to Correct	Willful & Intentional
No Emissions	\$6,470 ^a	\$12,940	\$12,940	n/a	\$12,940
Emissions – Non-Major Facility	\$6,470 ^a	\$12,940	\$32,350	\$51,760	\$97,050
Emissions – Major Facility^b	\$38,820	\$38,820	\$97,050	\$155,280	\$291,150

NOTES:

^a The lower \$6,470 penalty maximum does not apply for violations of federally enforceable requirements at Title V "major" facilities. Violations of federally enforceable requirements at major facilities are subject to penalties up to \$12,940 per violation per day, even if the violator can prove that it did not act intentionally or negligently. (The lower maximum is similarly inapplicable for violations of an emissions cap established pursuant to a market-based incentive program, but the Air District does not have any such programs.) See generally Health & Safety Code § 42402(b)(2)(B)-(C).

^b The tripled penalty maximums applicable for emissions violations at Title V "major facilities" apply for violations on or after January 1, 2025.

In addition to the basic maximum penalty levels outlined in Table A-1, higher maximums apply for public nuisance violations that cause actual injury or death. These special, heightened maximum penalty levels depend on the violator's level of intent and the extent of the harm, as set forth in Table A-2 below. In addition, and as noted above, these maximum penalty levels are tripled for emissions violations at Title V "major facilities" that occur on or after January 1, 2025.

TABLE A-2 – Higher Penalty Ranges for Public Nuisance Violations that Cause Actual Injury or Death

Level of Intent	Resulting Harm	Maximum Penalty
Any	Actual injury to a considerable number of people requiring (in the opinion of a licensed physician and surgeon) medical treatment involving more than a physical examination	\$19,410
Negligence	Death or great bodily injury to any person	\$129,400
Knowing of the emission but failing to take corrective action w/ in a reasonable time	Death or great bodily injury to any person	\$323,500
Willful & intentional, or with reckless disregard of the risk	Unreasonable risk of death or great bodily injury to any person	\$161,750 (\$647,000 if the violator is a corporation)
Willful & intentional, or with reckless disregard of the risk	Death or great bodily injury to any person	\$323,500 (\$1,294,000 if the violator is a corporation)

NOTES:

"Great bodily injury" is defined as a significant or substantial physical injury.



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