Bay Area Air District

New Legal Enforcement Policy

Public Workshop

Presented by:
Alexander "Sandy" Crockett, General Counsel
Marcia Raymond, Acting Deputy Executive Officer
Alexandra Kamel, Senior Assistant Counsel
Jacqueline Huyhn, Supervising Air Quality Specialist

November 16, 2026

Welcoming Remarks

Introductions

Alexander "Sandy" Crockett
General Counsel

Alexandra Kamel
Senior Assistant Counsel for Enforcement

Marcia Raymond
Acting Deputy Executive Officer of
Equity & Community Programs

Jacqueline Huyhn
Supervising Air Quality Specialist
Compliance & Enforcement Division

Participation Principles

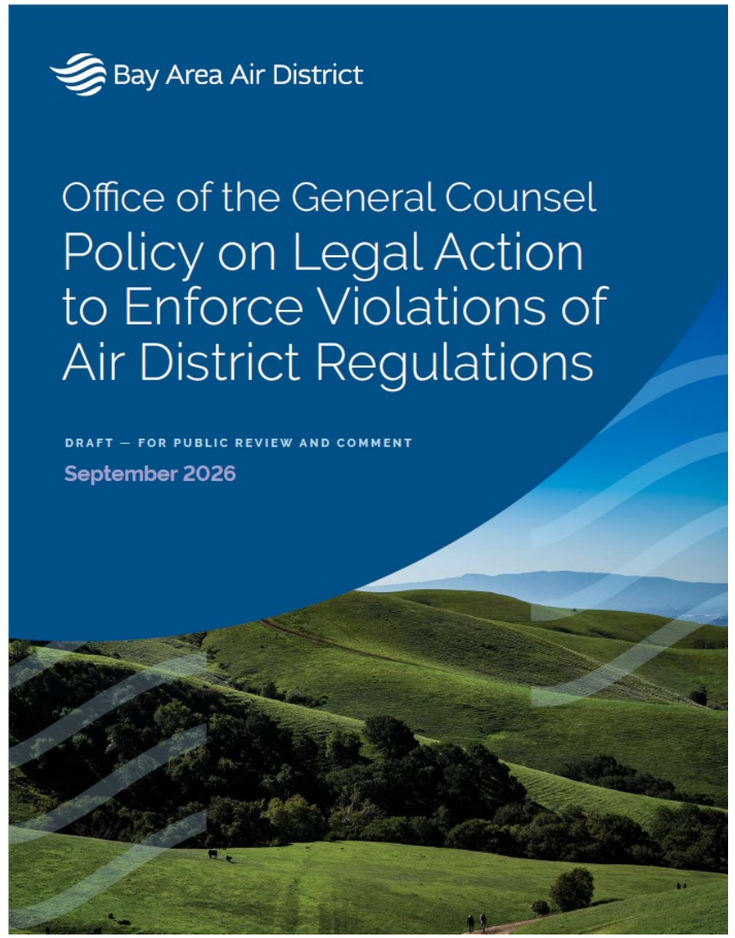
- All voices and opinions are important
- We are committed to remaining open to all perspectives
- Questions will be taken at appropriate break points and at the end of the presentation
- Speak one at a time and be mindful of time
- Respect presenters and other meeting participants – and everyone's viewpoints
- The meeting will end promptly at 7:30 pm

This meeting is being recorded. Technology happens, thank you for your patience.

Agenda

Agenda

- Background
- Policy Development Process
- Draft Policy Elements
  - Policy Principles
  - Penalties for Air Quality Violations
  - Addressing Ongoing Non-Compliance
  - Legal Enforcement Accountability
  - Other Policy Elements
- Public Comment Process & Next Steps
- Questions & Discussion



Background

About the Air District

- Formed in 1955
- Mission: Improve air quality to protect public health, reduce historical and current environmental inequities, and mitigate climate change and its impacts
- ~10,000 facilities with ~26,000 permitted devices and operations
- Office of General Counsel: Takes legal enforcement action for violations of regulations and permit conditions



Enforcement Resources

- Compliance & Enforcement Division:
  - 53 field inspectors
- Office of the General Counsel:
  - 13 attorneys handle larger cases
  - 3 non-attorney small claims case specialists handle smaller cases



Recent Concerns About Legal Enforcement

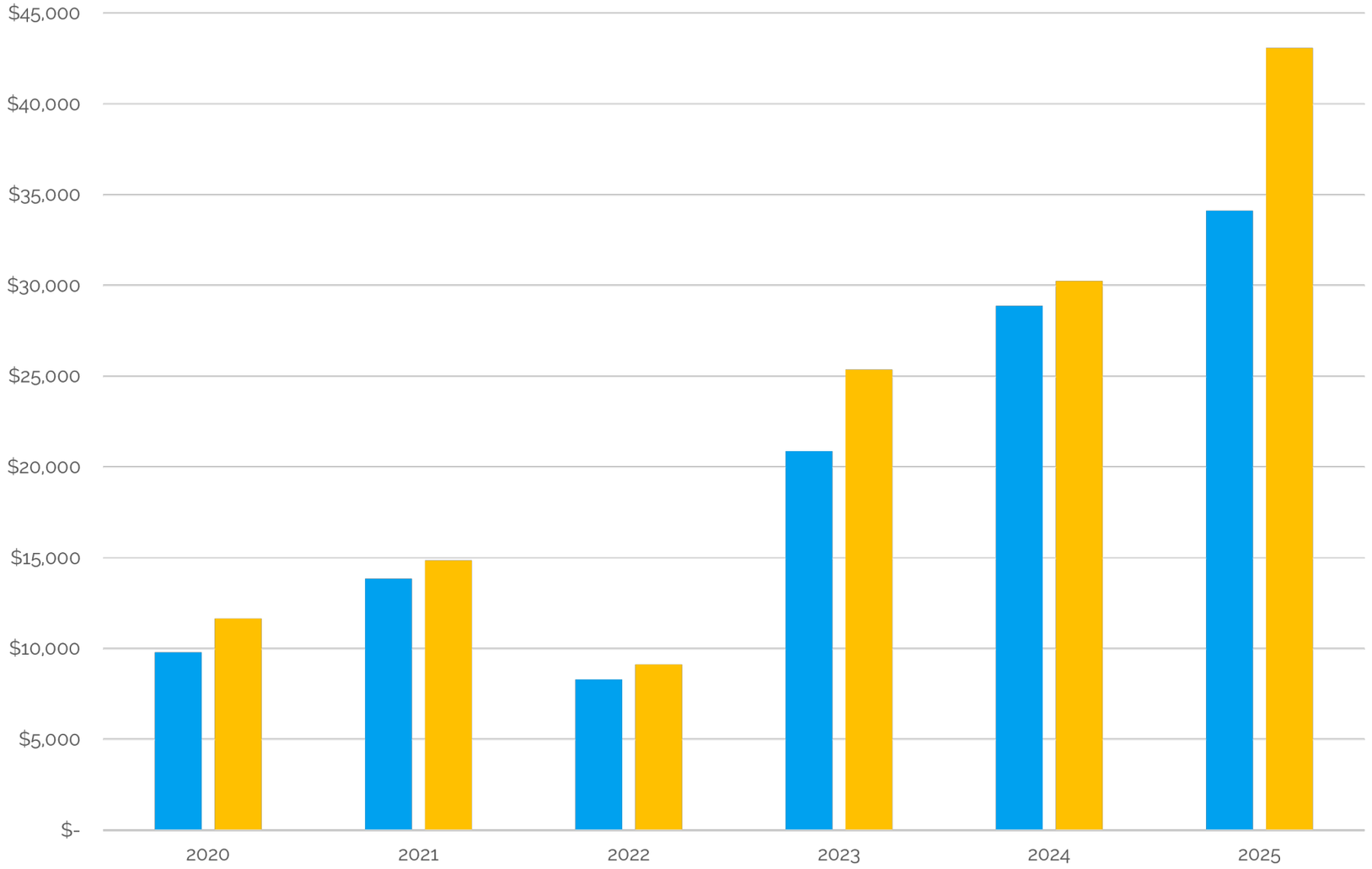
- Ineffective enforcement outcomes
- Low penalties
- Community criticism



Current Management Making Changes

- Increased penalties
- Partnering with other enforcement agencies
- Addressing backlog of older cases
- ***But more to be done!***

Average Penalties in Attorney Cases



All attorney cases

"Major" Facilities (~75 largest-emitting facilities)

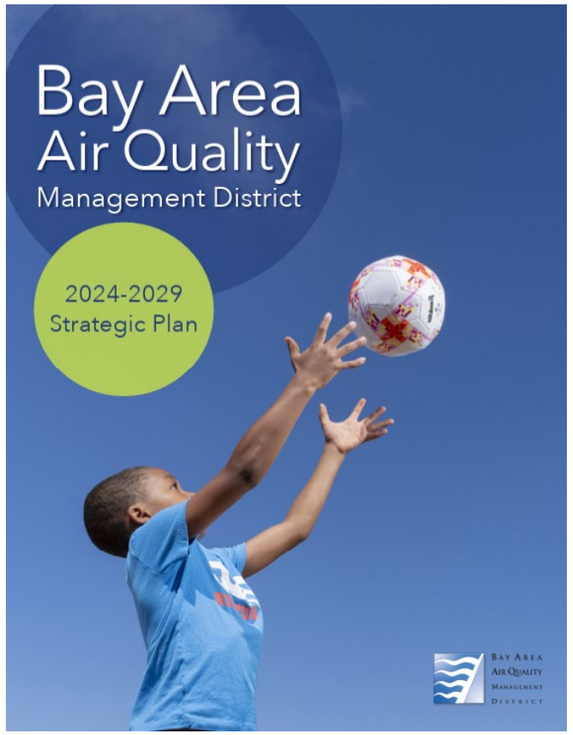
2024 average excludes $82 million Valero penalty

With Valero, 2024 average is $105,000 per violation

Commitments to Improved Approaches

- Air District Strategic Plan
  - Strategy 1.6 – Adopt a New Enforcement Policy

- *Path to Clean Air* Plan (Richmond / North Richmond / San Pablo Community Emission Reduction Plan)
  - Action FR 3.8 – Pilot New Legal Enforcement Approaches
  - Action FR 3.6 – Coordinate with Partner Agencies



Legal Enforcement Policy Development Process

Working Group Developed Initial Draft

- Air District Staff
  - General Counsel's Office
  - Compliance & Enforcement Division
- Community Advisory Council (CAC) Representative
  - CAC Co-Chair Patrick Messac
- AB 617 Community Steering Committee Representatives
  - Bayview Hunters Point / SE San Francisco: Uzuri Pease-Greene
  - East Oakland: Gabrielle Sloane law
  - Richmond / North Richmond / San Pablo: Shaun Cotten
  - West Oakland: Nicole Merino-Tsui

Public Comment on the Draft Policy

- Initial Draft Published October 13, 2026
- Public Comment Period Open Until November 30, 2026
- Finalize Policy in December Based on Comments Received

Date	Milestone	
October 13, 2026	Draft Legal Enforcement Policy published	
November 16, 2026	Public Workshop	Today
November 19, 2026	CAC Presentation & Discussion	
November 30, 2026	Public Comment Deadline	
December 3, 2026	Board of Directors Presentation	
December 2026	Finalize Policy based on comments received	

Draft Legal Enforcement Policy

Bay Area Air District

Table of Contents

Policy Contents

I. Introduction – Policy Principles
II. Enforcement Tools & Processes
III. Assessing Penalties for Air Quality Violations
IV. Addressing Ongoing Non-Compliance
V. Using Penalty Funds To Redress Community Harm
VI. Enhanced Compliance Measures in Settlements
VII. Small Claims Enforcement for Minor Violations
VIII. Partnering With Other Enforcement Agencies
IX. Accountability to Board of Directors & Affected Communities

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Policy Principles

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Policy Principles

- Provide **transparency** into the legal enforcement process, without undermining the confidentiality of ongoing cases;
- Use 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; and
- Use litigation tools and resources strategically where they can have the greatest **impact on changing behavior** in overburdened communities saddled with widespread non-compliance.

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Assessing Penalties for Air Quality Violations

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Two-Step Process for Determining Penalties

- Penalty Assessment Governed by Statute
  - Judges Required to Apply Statutory Process in Court
  - Air District Required to do so in Settlements
- **Two-Step Process** to Determine Penalty
  - Step 1: Determine **Maximum Penalty**
  - Step 2: Apply **Penalty Adjustment Factors**



Penalty Step 1: Determine Maximum

Statutes provide penalty maximum (per violation, per day) based on:

- Whether violation was administrative or involved emissions
- Whether violation was negligent/intentional

Maximum Penalty Levels Authorized by Statute (2026)

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

Penalty Step 2: Apply Adjustment Factors

Assess appropriate penalty within the statutory range based on:

- The **extent of harm** caused by the violation
- The **nature** and **persistence** of the problem
- The **length of time** over which the violation occurs
- The **frequency of past violations**
- The **record of maintenance**
- The **unproven** or **innovative** nature of the **control equipment**
- Any **action** taken **to mitigate** the violation
- The **financial burden** to the defendant
- Any other relevant circumstances

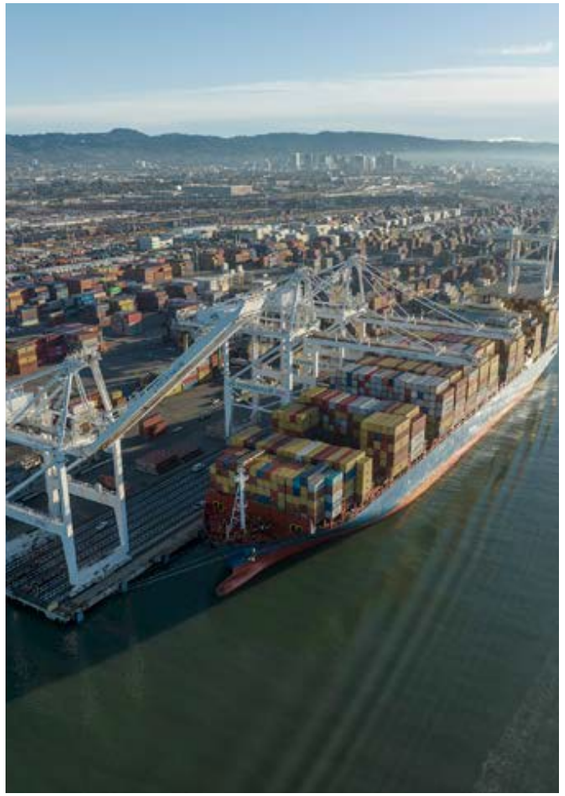
"Top-Down" Penalty Valuations

- Apply a ***Presumption*** that the ***Maximum Penalty is Appropriate***
- Put the ***Burden on the Violator*** to Present Evidence if it Seeks a Penalty Below the Maximum



Community Harm and Cumulative Impacts

- "***Extent of Harm***" is an Important Penalty Factor
- Consider ***Harm to the Affected Community***
- Consider ***Cumulative Impacts*** from Multiple Pollution Sources Concentrated in Overburdened Communities



Removing Economic Benefit

- If Violator Saved Money by Not Complying, Penalty Must Be ***At Least*** That Much
- ***Plus*** Additional Amount Reflecting the Severity of the Violation
- Levels the Playing Field – Ensures Competitors Who Do the Right Thing Are Not Disadvantaged
- Removes Economic Incentive to Violate and Just Pay the Penalty



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Addressing Ongoing Non-Compliance

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Tools Address Ongoing Violations

- **Notice of Violation**
- **Cease-and-Desist Letter** from Attorney
- **Abatement Order** from Air District's Independent Hearing Board
- **Court Order** (injunction)
- **Permit Revocation/Denial**



Governing Principles

- All Violations Must Be Brought Back Into Compliance
- Air District Will Take Legal Action If Violator Does Not Proactively Take Steps to Come Into Compliance
- Prioritize Cases Based On:
  - Extent of Harm to the Public
  - Impacts in Overburdened Communities
  - Violator's Willingness to Comply
  - Anticipated Length of Time Out of Compliance
  - Likelihood of Success in Obtaining Injunctive Order



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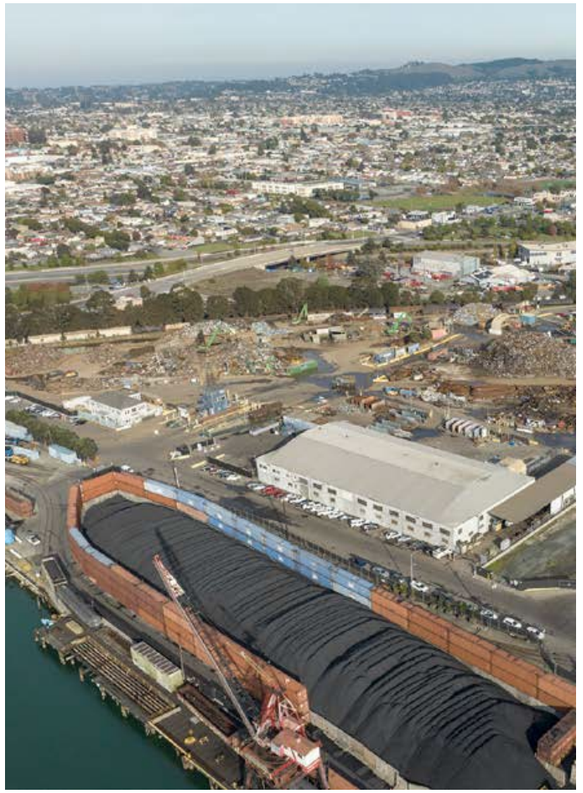
Accountability to the Board of Directors and Affected Communities

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Accountability Mechanisms

- Annual Legal Enforcement Report
  - Penalties Collected
  - Case Resolution Rates
  - Summaries of Significant Cases
  - Sub-Metrics for AB617/Overburdened Communities
- Outreach to Affected Communities



Annual Reporting Metrics

- # of NOVs Issued
- # of NOVs Resolved with Penalty
- # of NOVs Resolved by Attorneys
- # of NOVs Resolved by Mutual Settlement Program
- # of NOVs Resolved as "No Further Action"
- # of NOVs Canceled

- Average Penalty per Violation Resolved
- Median Penalty per Violation Resolved
- Average Penalty per Violation Resolved by Attorneys
- Average Penalty per Violation Resolved by Attorneys at Major Facilities
- Average Penalty per Violation Resolved by Mutual Settlement Program
- 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

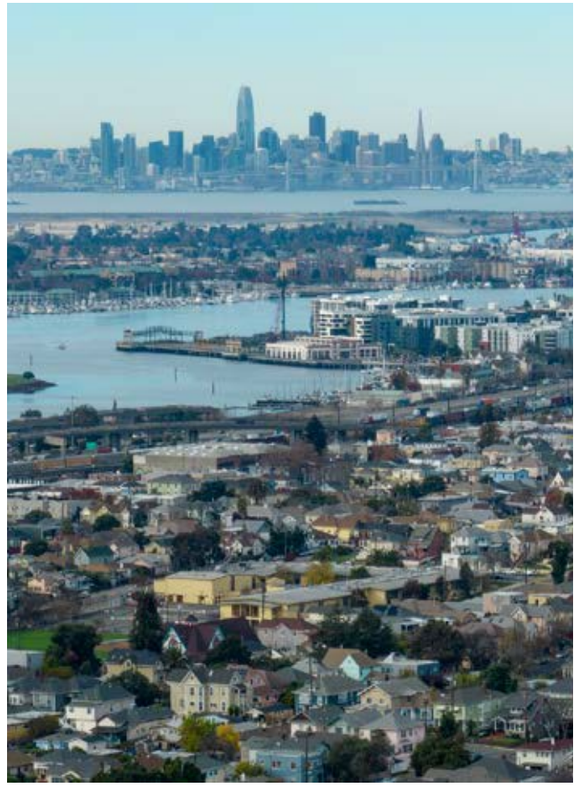
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Other Policy Topics

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Other Policy Topics

- Enforcement Tools & Processes
- Creative Use of Settlement Agreements as Alternative to Litigation
- Reinvesting Penalty Funds Back Into Affected Communities
- Small Claims Enforcement for More Minor Violations
- Partnering with Other Enforcement Agencies



Next Steps

Check Out Our Web Page!

Legal Enforcement Policy web page address:
www.baaqmd.gov/Rules-and-Compliance/Legal-Enforcement-Policy

Navigate from the Air District's main landing page:



Give Us Your Comments!

1. Provide comments this evening
2. Email comments to: Legal_St@baaqmd.gov
3. Mail or deliver comments to:

   Bay Area Air District
   Office of the General Counsel
   375 Beale Street, Suite 600
   San Francisco, CA 94105

Timeline for Finalizing Enforcement Policy

- Public Comment Period Open Until November 30
- Finalize Policy in December Based on Comments Received

Date	Milestone	
October 13, 2026	Draft Legal Enforcement Policy published	
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Questions, Comments & Discussion