

SACRAMENTO METROPOLITAN



AIR QUALITY
MANAGEMENT DISTRICT

Mutual Settlement Program

GUIDELINES

MAY 2019

I. Purpose

This document establishes guidelines for settlement of Notices of Violation and associated penalties under California Health and Safety Code (CHSC) sections 39674 and 42401- 42403. The guidelines support compliance with applicable laws and regulations, promote consistent treatment of all entities, and expedite resolution of disputed claims without the need for litigation.

II. Definitions

1. APCO: Air Pollution Control Officer of the Sacramento Metropolitan Air Quality Management District.
2. Board of Directors (Board): Board of Directors of the Sacramento Metropolitan Air Quality Management District.
3. Case: the facts involved and parties responsible for violation(s) charged in NOV(s).
4. Counsel: legal counsel of the Sacramento Metropolitan Air Quality Management District.
5. District Attorney (DA): Office of the Sacramento County District Attorney.
6. District: Sacramento Metropolitan Air Quality Management District.
7. EPA: United States Environmental Protection Agency.
8. Mutual Settlement Program (MSP): process by which the District offers to settle violation penalties with the violator.
9. Notice of Violation (NOV): violation notice issued by District staff.
10. Penalty: dollar value calculated for a violation under the MSP.
11. Residential violations: violations at residences when the violation does not concern the operation of a business.
12. Rules and Regulations: rules duly adopted by resolution of the Board of Directors and federal and state rules and regulations.
13. Settlement Agreement: written agreement between a violator and the District that establishes the penalties and other conditions associated with resolving a violation.
14. Settlement Discussion: a voluntary meeting or dialogue between District staff and the violator to settle a violation through the MSP process. Settlement Discussions may be a phone or office conference in an informal setting in which violators may present evidence in their defense, seek a penalty reduction or request that a violation be dismissed.
15. Violator: any recipient of an NOV issued by the District.
16. Violation: any breach of applicable air quality laws or regulations, permit conditions, or Board of Directors or Hearing Board order.

III. Authority

CHSC section 42403 authorizes the District to file civil actions to assess and recover penalties. This necessarily includes the authority to settle violations without resorting to litigation.

IV. Review of Violation

District staff will review all NOV's in a timely manner to assess the NOV's merits and determine if it should be resolved through the MSP or one of the options below:

1. NOV rescission: Rescind the NOV if the District determines the NOV was issued erroneously.
2. No Further Action (NFA): Issue an NFA determination if the District determines the NOV was properly issued, but additional District action is not merited (for example, when the matter qualifies for small claims court and the District is unlikely to prevail).
3. Counsel referral: Refer to Counsel, who will determine what further actions the District will pursue.

V. Mutual Settlement Program

The MSP allows a violator to settle violations by accepting the District's settlement offer or presenting evidence or argument in favor of a reduced penalty. District staff will refer unsettled cases to Counsel. District staff will document, review and process all MSP cases. Penalties that exceed certain thresholds, as described in District policies, may be subject to additional review and approval.

1. **Monetary Component Formula:** The penalty will be determined using the monetary component formula (MCF). The formula uses five main criteria: (1) the CHSC violation category, (2) aggravating and mitigating factors and the gravity of each factor, (3) the likelihood that pollutants were released, (4) whether the violation occurred at a residence or small business, and (5) the number of days in violation.
 - a. **Violation Category:** The District will determine the violation category based upon CHSC sections 39674 and 42401 to 42402.4.
 - b. **Factors:** CHSC 42403 requires consideration of all relevant factors.
 - i. **Aggravating Factors (AGG):** Factors that will increase the penalty. These factors include: (1) the extent of harm caused by the violation, (2) the nature and persistence of the violation, (3) the length of time in a day over which the violation occurred, (4) the number and type of past violations, and (5) the economic benefit of noncompliance.
 - ii. **Mitigating Factors (MIT):** Factors that lower the penalty. These factors include: (1) the record of maintenance, (2) the unproven or innovative nature of the control equipment, (3) the actions taken to mitigate the violation, (4) good faith effort to comply, and (5) the financial burden on the violator. Not all cases will include mitigating factors.
 - iii. **Total Factor (TF):** Sum of the aggravating factors (AGG) minus mitigating factors (MIT).
 - c. **Gravity Level of Factors:** Aggravating and mitigating factors will be weighted using a gravity level of "high", "medium", "low" and "not applicable". These levels have the following meaning:

- i. *High*: actions with negative, serious, or severe potential consequences on air quality or public health.
 - ii. *Medium*: actions with moderately negative potential consequences on air quality or public health.
 - iii. *Low*: actions with low negative potential consequences on air quality or public health.
 - iv. *Not Applicable*: no potential consequences on air quality or public health.
 - d. **Pollution Factor (PF)**: Each violation will be assessed to determine whether there was a potential emissions release.
 - e. **Classification (CF)**: The penalty amount for a resident and a small business will be weighted so that the penalty is reduced, unless District staff determines circumstances do not merit a reduction.
 - f. **Number of Days (ND)**: The number of days a violation occurred will be determined and be used as a multiplier in the MCF.
2. **Multiple Rule Violations**: If a single act or occurrence violates multiple rules or regulations, District staff will use the violation resulting in the most severe consequence to calculate the penalty. Violations arising from separate acts or occurrences will be analyzed separately, even if they are resolved as part of a single case. Notwithstanding the foregoing, aggravating and mitigating factors may include consideration that multiple rules were violated by the same act or occurrence.
 3. **Annual Increase of Maximum Penalties**: As required by CHSC section 42411, the District will increase the maximum daily penalty amount annually based on the California Consumer Price Index maintained by the Department of Industrial Relations. This update is automatic and will not require Board approval.
 4. **Supplemental Environmental Projects**: CHSC 42421(c) allows the violator to request to offset part of its penalty by agreeing to take actions to improve air quality in lieu of paying monetary penalties. These requests are known as Supplemental Environmental Projects (SEP) and are subject to approval by the District based upon criteria consistent with the District's Supplemental Environmental Project Policy.
 5. **Settlement Offer Letter**: The District will issue a settlement offer letter to the violator to inform them of the basic facts associated with the violation, specify the penalty amount, and propose the terms upon which the District is willing to settle the violation. The appropriate signing authority must approve the terms contained in the settlement offer letter. The settlement offer letter will specify options the violator has to: (1) reject the settlement offer, or (2) have a settlement discussion. If no response is received from the violator within the specified timeframe, the settlement offer will be deemed rejected, and the matter will be referred to legal counsel by the District's Division Manager and APCO. The settlement offer letter will inform the violator the case will be referred to legal counsel if they fail to respond to the offer.
 6. **Amended Settlement Offer**: If the violator establishes relevant facts that support a penalty reduction, the settlement offer may be amended. Relevant facts may include

facts establishing that the violation was not the result of intentional or negligent conduct, or did not result in an emission. Any amended settlement offer will be communicated to the violator in writing. The violator will be granted additional time to either accept or reject the amended settlement offer. If no response is received from the violator within the specified timeframe, the settlement offer will be deemed rejected, and the matter will be referred to legal counsel by the District's Division Manager and APCO.

7. **Resolution:** In the event a settlement is reached, the terms of the settlement will be deemed accepted when the District receives the penalty amount.
8. **Closure:** The Case will be considered closed when the civil penalty is paid.