

REGULATION I, RULE 530 – ADMINISTRATIVE CIVIL PENALTIES

100 GENERAL

101 PURPOSE:

The purpose of this rule is to provide procedures for the imposition and amounts of administrative civil penalties that may be levied pursuant to Section 42402.5, Article 3, Chapter 4, Part 4, of Division 26 of the California Health and Safety Code. Administrative civil penalties provide an alternative means for the District to levy penalties appropriate to the violation without necessitating negotiated settlement or the filing of civil or criminal complaints.

102 APPLICABILITY:

This rule applies to the imposition of administrative civil penalties for a violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, adopted pursuant to Part 1, of Division 26 of the California Health and Safety Code (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive. Nothing in this rule restricts the authority of the District to negotiate mutual settlements under other penalty provisions of law which exceed five hundred dollars (\$500), or the authority of the District to seek the recovery of civil penalties or the prosecution of criminal violations, in lieu of administrative civil penalties.

103 MAXIMUM ADMINISTRATIVE CIVIL PENALTY:

No administrative civil penalty levied pursuant to this rule may exceed five hundred dollars (\$500) for each violation. Each day during any portion of which a violation occurs is a separate offense.

104 ENFORCEMENT AUTHORITY:

The imposition of administrative civil penalties pursuant to this rule, in lieu of other remedies, shall be at the discretion of the Air Pollution Control Officer under the authority of California Health and Safety Code Sections 40001, 40702, and 40752.

200 DEFINITIONS

For the purposes of this rule the following definitions apply.

201 AIR POLLUTION CONTROL OFFICER:

The Air Pollution Control Officer of the Northern Sonoma County Air Pollution Control District appointed by the Northern Sonoma County Air Pollution Control District Board. Unless the Air Pollution Control Officer for good cause appoints another person to conduct an administrative hearing, the Air Pollution Control Officer is also the Hearing Officer for the purposes of this rule.

202 CHRONIC VIOLATION:

A violation that reflects a pattern of neglect or disregard that results in the same or similar violation at the same source, facility, or same piece of equipment.

203 NOTICE OF VIOLATION:

A written method of alleging a violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, adopted pursuant to Part 1, of Division 26 of the California Health and Safety Code (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive.

206 PROCEDURAL REQUIREMENT:

A provision of a rule or regulation that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.

207 RECALCITRANT VIOLATOR:

A person or facility where there is evidence indicating that the person or facility has engaged in a pattern of neglect or disregard with respect to the requirements of District rules and regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

300 STANDARDS

301 ADMINISTRATIVE CIVIL PENALTY GUIDELINES:

In lieu of any other civil or criminal penalties, including, but not limited to, any costs attributed to extinguishing a fire that the District may seek to recover pursuant to California Health and Safety Code Section 42400.5, the following shall provide guidelines for the setting of administrative civil penalties. The penalty levied may be varied in consideration of exacerbating or mitigating circumstances, which could include:

- Does not result in an increase of emissions of air contaminants;
- Does not endanger the health, safety, or welfare of any person or persons;
- Does not endanger the environment;
- Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;
- Does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirements, District rules and regulations, administrative or procedural plan or permit conditions, or requests for information or records.

- 301.1 *Standard Violations:* A violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, shall be no more than \$350 per violation.
- 301.2 *Chronic or Recalcitrant Violations:* A violation of Part 4, of Division 26 of the California Health and Safety Code, or any order, permit, rule, or regulation of the state board or of the District, including the District Hearing Board, that is considered chronic or recalcitrant shall be no more than \$500 per violation.

302 PENALTY SCHEDULES:

Schedules of violations and applicable penalty amounts may be established to provide for consistency in the levying of penalties for similar violations. The penalty levied in accordance with a penalty schedule may be adjusted in consideration of exacerbating or mitigating circumstances.

400 ADMINISTRATIVE REQUIREMENTS

401 CITING AN ADMINISTRATIVE CIVIL PENALTY:

Written notice shall be given to the person, or source against whom administrative civil penalties are levied.

- 401.1 The notice shall identify the nature of the violation(s), specify the date(s) of violation, include a description of the District's evidence of the violation, and the administrative civil penalty that is assessed for each violation. A Notice of Violation may be issued separately or in conjunction with the notice of administrative civil penalty assessment.
- 401.2 The notice shall advise that the administrative civil penalty is being assessed pursuant to Health and Safety Code Section 42302.5 and Northern Sonoma Air District rules.
- 401.3 The recipient of the notice may be requested to sign and return a copy of the notice for the sole purpose of acknowledging receipt of the notice. Mailed notices shall be sent by certified mail.
- 401.4 The notice shall also advise that the recipient may review any non-confidential evidence pertaining to the alleged violation, and may within ten (10) days of receipt of the notice make a written request for an administrative hearing. If a hearing is not requested within ten (10) days, the Air Pollution Control Officer may issue an order assessing the penalties specified in the notice. Where no hearing has been timely requested and an order of assessment of penalty is made by the Air Pollution Control Officer, the Air Pollution Control Officer's order is the final administrative action.
- 401.5 The notice shall advise the recipient that payment in full of the total monetary penalties specified in the notice, within ten (10) working days of receipt, shall result in the closure of the enforcement action with respect to the violations cited.

402 ADMINISTRATIVE APPEAL HEARING:

Any person who is issued a notice assessing an administrative civil penalty may request an administrative hearing. Upon a timely request, an administrative hearing shall be conducted pursuant to the following procedures:

- 402.1 The hearing shall be conducted by the Chair of the District Hearing Board, or his or her alternate.
- 402.2 The person who has requested the hearing shall be given reasonable notice of the time and place of the hearing.
- 402.3 The person shall have an opportunity to present oral or written evidence and argument. A tape recording or transcript shall be made of the hearing.
- 402.4 Following the hearing, the Hearing Officer shall render a written notice of decision. The notice of decision shall be delivered or sent by certified mail to the person who

requested the hearing. The decision shall state whether the Hearing Officer has determined the person has committed a violation as charged, and shall state the basis for that determination. If the Hearing Officer determines that the person has committed one or more violations, the notice of decision shall include an order assessing an administrative penalty in accordance with this rule for each violation, or include an offer for negotiated settlement. The Hearing Officer may rescind an administrative civil penalty, or reduce the amount of a penalty for good cause. The decision of the Hearing Officer is the final administrative action.

DRAFT