



Statutory Penalties for Violations

Introduction

This document summarizes the list of penalties for violations used by the Monterey Bay Air Resources District (Air District).

Violations of air pollution laws are subject to criminal or civil penalties. Such laws include state statutes, state regulations, federal statutes and federal regulations, and all Air District Rules and Regulations, permit conditions, and Air District Hearing Board orders. The California Health and Safety (H&S) Code specifies maximum penalties for violations of state and Air District laws, Rules and Regulations, and permits conditions. Generally, the penalties are specified in H&S Code § 42400 et seq. The Air District may decide not to seek penalties for certain minor violations as described in District Rule 107.

Statutory Penalties for Air Pollution Violations

Air pollution violations may result in either criminal or civil liability. The Air District does not criminally prosecute air pollution violations. Relevant criminal penalties are contained in California Health and Safety Code sections 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, and 42400.4. The Air District's enforcement authority for civil penalties, as required by the State Implementation Plan, can be found in the California Health and Safety Code Civil Penalties sections 42402, 42402.1, 42402.2, 42402.3, 42402.4, and 42402.5.

In some cases, criminal or civil penalties for violations may be sought by the District Attorney, the state Air Resources Board, the Attorney General, the U.S. Attorney, the U.S. Environmental Protection Agency, Circuit Court Prosecutors, in addition to the Air District. For more information, please contact the Air District Compliance Section at 831-647-9411.

Summary of Penalties

The following table summarizes criminal and civil penalties that may be assessed pursuant to the California H&S Code for violations of air quality laws and regulations.

Criminal Penalties

H&S Code § 42400	General Violations
H&S Code § 42400.1	Negligence
H&S Code § 42400.2	Failure to Take Corrective Action
H&S Code § 42400.3	Willful and Intentional Emittance
H&S Code § 42400.3.5	Knowing Emittance, False Material Statements
H&S Code § 42400.4	District Fines for Violation of Title V Source
H&S Code § 42400.5	Unauthorized Outdoor Fires
H&S Code § 42408	Tampering with Ambient Air Monitoring Equipment

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Civil Penalties

H&S Code § 42400.6	Collection of Fines or Monetary Penalties
H&S Code § 42401	Violating Order of Abatement
H&S Code § 42402	General Violations
H&S Code § 42402.1	Negligence or Great Bodily Injury
H&S Code § 42402.2	Knowing Emission or Failure to Take Corrective Action
H&S Code § 42402.3	Willful and Intentional Emission
H&S Code § 42402.4	Document Falsification
H&S Code § 42403.5	Bus Idling
H&S Code § 44381	Civil Penalties for False Statement
H&S Code § 44394	Failure to Submit/Implement Plan

Considerations in Determining Penalties

The circumstances used to determine the fine amount and recovery of civil penalties are defined in H&S Code § 42400.8 and § 42403. Maximum penalties are limited based on what is contained in the H&S Code. In determining the amount of a fine or civil penalty to be assessed, the court (or the Air District, in the case of a civil settlement) shall consider all relevant circumstances, including but not limited to:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) The frequency of past violations.
- (5) The record of maintenance.
- (6) The unproven or innovative nature of the control equipment.
- (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
- (8) The financial burden to the defendant.
- (9) Any other circumstances that the court (or the Air District, in the case of a civil settlement,) deems relevant.

The following sections summarize the monetary amounts for civil penalties codified in the California Health and Safety Code section 42402.

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\$5,000 per Day Strict Liability

Under Section 42402(a), a person is strictly liable for a civil penalty of \$5,000 per day for violating any provision of the Health and Safety Code section within Part 4 of Division 26 of the code or any order, permit, rule, or regulation of a district, including a district hearing board, or of the state Air Resources Board issued pursuant to Parts 1 through 4 of Division 26 of the code.

In plain language this means that a person who violates any provision of the Health and Safety Code or an Air District rule, regulation, order or permit is strictly liable for a civil penalty of \$5,000 per day.

\$10,000 per Day

Under Section 42402(b), a person may be liable for a civil penalty of up to \$10,000 per day if that person has violated any Health and Safety Code section in Part 4 of Division 26 of the code, or any order, permit, rule, or regulation of a district, including a district hearing board, or of the state Air Resources Board issued pursuant to Parts 1 through 4 of Division 26 of the code.

In plain language this means that a person who violates an Air District rule, regulation, order, permit condition or applicable state law, will be subject to a civil penalty of up to \$10,000 per day unless the violator can establish that the violation was not the result of intentional or negligent conduct. If the violation involves the emission of air contaminants, the penalty could be higher than \$10,000 per day.

\$15,000 per Day

Under Section 42402(c), a person may be liable for a civil penalty of up to \$15,000 per day if that person who owns or operates any source of air contaminants in violation of Section 41700 causes actual injury, as defined in subdivision (d) of Section 42400, to the health and safety of a considerable number of persons or the public.

In plain language this means that a source of air pollution which causes actual injury to many people or the public (meaning any physical injury that in the opinion of a licensed physician or surgeon requires medication treatment involving more than a physical examination) is subject to a civil penalty of up to \$15,000 per day.

\$25,000 per Day

Under Section 42402.1, a person may be liable for a civil penalty of up to \$25,000 per day if that person has negligently emitted an air contaminant in violation of Part 4 of Division 26 of the code, or any rule, regulation, permit or order of the state Air Resources Board or district board pertaining to emission regulations or limitations.

In plain language this means a person who carelessly, inattentively, or inadvertently violates air pollution rules, causing the emission of air contaminants, will be subject to a civil penalty of up to \$25,000 per day. Moreover, if the negligent emission of air contaminants causes actual harm to an individual, a civil penalty of up to \$100,000 per day may be imposed.

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An example of such a violation would be the use of coatings containing higher levels of VOC than allowed by Air District Rule 426 by a person who did not make sure that the coatings complied with Air District requirements.

In addition, if the violation results in a situation of public nuisance under Health and Safety Code Section 41700 which causes injury to the public, the potential penalty increases to \$15,000 per day. See Section 42402(c).

\$40,000 per Day

Under Section 42402.2, a person may be liable for a civil penalty of up to \$40,000 per day if that person has emitted an air contaminant in violation of Part 4 of Division 26 of the code, or any order, rule, regulation, or permit of the state Air Resources Board or district board pertaining to emission regulations or limitations, provided the person knew of the emission and failed to take corrective action within a reasonable time under the circumstances. Moreover, if the knowing emission of air contaminants causes actual harm to an individual, a civil penalty of up to \$250,000 per day may be imposed.

In plain language this means that a person who violates air pollution rules will be subject to a civil penalty of up to \$40,000 per day if the violation causes the emission of an air contaminant and the person knows of the emission but fails to act promptly to halt the emission.

What matters is that there was a violation that caused an emission and the person knew of the emission without acting as quickly as possible to stop it. The person's knowledge of the emission and the failure to act promptly are the key elements in making this a serious type of violation.

\$75,000 per Day

Under Section 42402.3, a person may be liable for a civil penalty of up to \$75,000 per day if that person willfully and intentionally emits an air contaminant in violation of any Health and Safety Code section in Part 4 of Division 26 of the code or any order, rule or regulation of the state Air Resources Board or district pertaining to emission regulations or limitations.

If the willful and intentional emission of air contaminants causes injury to any person or results in a violation of Health and Safety Code Section 41700 which poses a risk of injury to any person, one may be liable for a civil penalty of up to \$125,000 per day and a corporation may be liable for an amount up to \$500,000 per day. If the willful and intentional emission of air contaminants causes great bodily injury or death, a person may be liable for a civil penalty of up to \$250,000 per day and a corporation may be liable for an amount up to \$1,000,000 per day.

Mutual Settlement Program

The Air District has also implemented a Mutual Settlement Program. The Mutual Settlement Program provides a forum to resolve significant violations of air quality regulations without formal legal proceedings. The operation of a local mutual settlement program provides an opportunity for direct Air District and respondent interaction to settle violations and achieve compliance.