



**Maricopa County Air Quality Department**  
**Substantive Policy Statement: SPS-2018-012**  
**Penalty Assessment Policy**  
**Issue Date: August 26, 2019**

Approved by:

A handwritten signature in blue ink that reads "Philip A. McNeely".

**Philip A. McNeely, Director**

A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the county and does not impose additional requirements or penalties on regulated parties or include confidential information or rules or ordinances adopted pursuant to Arizona Revised Statutes (A.R.S.) Title 49 (The Environment), Chapter 3 (Air Quality). [A.R.S. §§ 11-1601(8), 49-471(17)]

If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement. [A.R.S. § 41-1033]

An applicant for a license subject to A.R.S. Title 11 (Counties), Chapter 11 (County Regulations), Article 1 (General Provisions) may request a county to clarify its interpretation or application of a statute, ordinance, regulation, delegation agreement or authorized substantive policy statement affecting the procurement of that license by providing the county with a written request that satisfies the requirements of A.R.S. § 11-1609(A). [A.R.S. § 11-1609]

**I. Purpose**

This substantive policy statement (SPS) describes the factors that the Maricopa County Air Quality Department (MCAQD) will consider when assessing penalties, when warranted, for violations of air quality requirements.

This SPS complements the compliance assurance program being implemented by the MCAQD. The MCAQD pursues a comprehensive, multi-faceted program to protect air quality in Maricopa County, which includes clearly written and enforceable rules and permits together with community outreach and education. However, where these efforts alone do not result in compliance, the MCAQD addresses instances of non-compliance in a manner that is consistent with state statutes and policies established in the U.S. Environmental Protection Agency's (EPA's) "Policy on Civil Penalties".

**II. Applicability**

This SPS applies to violations of air quality requirements.

### III. Definitions

- A. **Business Day/Working Day** – For the purposes of this SPS, any day during which the MCAQD is open for business, which is typically Monday through Friday but not on Maricopa County-recognized holidays that fall on any of the days Monday through Friday.
- B. **Day** – A 24-hour period beginning at midnight.
- C. **Economic Benefit** – An economic gain from non-compliance, which may occur in one of three ways: (1) Delay necessary pollution control expenditures, (2) Avoid necessary pollution control expenditures or (3) Gain an illegal competitive advantage during the period of non-compliance.
- D. **Enforcement Action** – Order of abatement by consent, order of abatement, injunctive relief, civil or criminal complaint.
- E. **Enforcement Case** – The inspection report and other documentation used by the MCAQD that supports a decision to issue an inspection report.
- F. **Inspection Report** – Documentation of the compliance status of the facility at the time of the inspection.
- G. **Order of Abatement** – A legal order issued pursuant to A.R.S. § 49-511 to any person who is violating applicable air quality control statutes, rules and/or permit conditions. The order will notify the person of the act constituting the violation, the provision or rule being violated, the duration of the order, the alleged violator's rights to a hearing, and any conditional orders requiring the person to refrain from any activities.
- H. **Order of Abatement by Consent (OAC)** – A legal agreement between the responsible party and the MCAQD, which includes negotiated terms which may include monetary payments. The OAC may also include possible actions the responsible party must take to achieve compliance and supplemental environmental project (SEP) requirements.
- I. **Person** – Any individual, public or private corporation, company, partnership, firm, association or society of persons, the Federal Government and any of its departments or agencies, or the State and any of its agencies, departments or political subdivisions, as well as a natural person.
- J. **Responsible Party** – The individual or entity identified by air quality control statutes, rules and/or permits (i.e., the permit holder), who is legally responsible to bind the facility and liable for ensuring compliance.
- K. **Supplemental Environmental Project (SEP)** – An environmentally beneficial project a responsible party agrees to undertake as part of a settlement of an enforcement action that the responsible party is not otherwise legally required to perform.

### IV. Discussion

Not applicable

## V. Statutory Authority

- A. A.R.S. § 49-513 [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 513-Violations; Civil Penalties]

## VI. Procedures

- A. In compliance with A.R.S. § 49-513(C), the MCAQD shall consider all of the following when determining the amount of a penalty:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other factors as the MCAQD deems relevant.

- B. Cost Recovery for Enforcement Efforts:** Pursuit of an enforcement action involves the expenditure of varying amounts of staff time and can require collection of special data or information. A penalty will be increased to include all special costs incurred that are unique to a particular enforcement action. These costs may include sampling and analysis costs, research time, costs for legal proceedings, and other costs associated with above average staff time for gathering evidence and pursuing settlement of the violation.

### C. Mitigating Factors

1. Ability to pay: This factor will be considered after commencement of settlement negotiations if, and only if, raised by a violator and if the violator provides all necessary financial information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the violator. A claim of inability to pay can be validated using the EPA's Ability-To-Pay (ABEL) model. The following options are available when it is determined that a violator cannot afford the penalty or that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which are more important than the deterrence effect of the penalty:
  - a. A delayed payment schedule
  - b. An installment payment plan with interest

c. Penalty reduction as a last recourse

2. Litigation risks: The penalty amount may also be mitigated in appropriate circumstances based on litigation risk. Cases raising legal issues of first impression must be carefully selected in order to present the issue fairly in a factual context. Adverse legal precedent and strength of the overall case, including evidence and the available witnesses, the strength of the violator's evidence, and any adverse indications from the court must be considered.

**D. Multiple Violations:** In general, each violation will be considered as a separate violation for the purposes of calculating a penalty if they result from independent acts, compliance problems, or if they are distinguishable from any other rule violation. There may be certain situations where violations may be grouped together and calculated as a single violation; this would occur if the multiple violations were a result of a single act and the regulations cited were similar in substance. The total penalty amount in an enforcement case may include penalties for several violations or groups of violations, each calculated to be consistent with this policy.

**E. Self-Reporting Violations:** Self-reporting provides an incentive for responsible parties to develop a comprehensive environmental management system which will promptly identify deviations from regulatory requirements so that violations may be quickly addressed and corrected.

1. Incentives for Self-Reporting a Violation:

- a. Sources that meet all of the conditions in Section VI(E)(2) of this policy may be eligible for 100% mitigation of the non-economic benefit portion of a settlement penalty. Any economic benefit gained from non-compliance may be collected.
- b. Sources that meet conditions in Sections VI(E)(2)(b)-(h) of this policy may be eligible for 75% mitigation of the non-economic benefit portion of a settlement penalty. Any economic benefit gained from non-compliance may be collected.

2. Penalty Mitigation Conditions:

- a. Systematic Discovery: The violation must have been discovered through either:
  - (1) An environmental audit or a compliance management system exhibiting due diligence in preventing, detecting and correcting violations; or
  - (2) Documentation provided by the source identifying the steps taken to achieve due diligence and describing how the source discovered the violation through an environmental audit or its compliance management system.
- b. Voluntary Discovery: The violation must be identified voluntarily and not through a legally mandated monitoring, sampling or auditing procedure required by statute, regulation, permit, consent agreement, judicial or administrative order. For example, voluntary discovery does not apply to violations discovered through due diligent done to prepare for Title V semi-annual compliance certifications or emissions violations detected through required continuous emissions monitoring.

c. Prompt Disclosure:

- (1) The source must disclose the violation to the MCAQD within ten business days/working day after discovery. If a statute, regulation or rule requires the source to report the violation in fewer than ten business days/working day, disclosure must be made within the time limit established by law. For example, the source must follow the provisions outlined in Maricopa County Air Pollution Control Regulations Rules 130 or 140 in the event of an excess emission. The ten business day/working day disclosure period begins when the source discovers that a violation has or may have occurred or when the source reasonably should have known a violation took place. If the source should disclose the potential violation to the MCAQD and let the regulatory agency make the definitive determination.
- (2) Adequate notice disclosing a violation(s) must be sent to the MCAQD by email to [AQCompliance@maricopa.gov](mailto:AQCompliance@maricopa.gov) within the appropriate time period. The notice should include all of the following information:
  - (a) The legal name of the source
  - (b) An affirmative assertion that a violation(s) or potential violation(s) has been discovered
  - (c) A description of each violation discovered, including references to relevant statutory, regulatory and permit provisions, where appropriate
  - (d) The date the violation(s) was discovered
  - (e) The duration of the violation(s) (start date of violation to completion date of corrective action)
  - (f) The status, description and schedule of corrective actions to return to compliance
- (3) The notice disclosing a violation is not considered to be part of a privileged audit report under A.R.S. § 49-1402. The MCAQD accepts notices disclosing violations and considers them to be non-privileged. The MCAQD does not accept audit reports submitted under claims of confidentiality.

d. Discovery and Disclosure Independent of Government or Third-Party Plaintiff:  
The potential violation must be discovered and disclosed to the MCAQD before:

- (1) The MCAQD commences an inspection or investigation or issues a request for information to the facility.
- (2) A citizen files a notice of intent to sue.
- (3) A third-party files a complaint. Third-party complaints include formal judicial and administrative complaints as well as informal complaints, such as a letter from a citizen alerting the MCAQD to a potential violation.

- (4) A whistleblower reports a violation to the MCAQD.
  - (5) Discovery of the violation through any other means by the MCAQD.
- e. Correction and Remediation:
- (1) The source must take immediate corrective action and successfully correct and remediate the violation promptly. The source must certify in writing, with an accompanying truth and accuracy statement, that the violation has been corrected, that all practicable steps have been taken to remedy any harm caused by the violation, and identify what measures were taken to return to compliance.
  - (2) In the event a violation cannot be corrected immediately, the source must notify the MCAQD in writing within two business days/working days after the date the source first knew or reasonably should have known that a delay in achieving compliance would occur. Once compliance has been achieved, the source must certify in writing with an accompanying truth and accuracy statement that the violation has been corrected, that all practicable steps have been taken to remedy any harm caused by the violation, and identify what measures were taken to return to compliance.
  - (3) In the event that a consent agreement, corrective action plan or compliance plan is in effect, specified timelines in these documents shall supersede the timeline mentioned above.
  - (4) The source must take steps to prevent recurrence of the violation. Preventative steps must be submitted in writing to the MCAQD.
- f. No Repeat Violations: Repeat violations are not eligible for the incentives for self-reporting a violation.
- g. Other Violations Excluded: The incentives in Section VI(E)(1) of this policy are not available for a violation which:
- (1) Resulted in actual harm to public health and/or the environment.
  - (2) Resulted in the emissions of any toxic air contaminant(s) that caused or contributed to an exceedance of the National Ambient Air Quality Standards, Arizona Ambient Air Quality Standards or in excess of the facility's emission limit(s).
  - (3) Created a public nuisance.
  - (4) Resulted from knowing, willful, grossly negligent or intentional conduct.
- h. Cooperation:
- (1) The source must provide the MCAQD with all information needed to determine policy applicability and must provide any records in a timely manner.
  - (2) The source must not hide, destroy or tamper with possible evidence following discovery.

3. Economic Benefit: The MCAQD retains full discretion to recover any economic benefit gained as a result of non-compliance to preserve a “level playing field” in which violators do not gain a competitive advantage over regulated entities that comply. The MCAQD may forgive the entire penalty for violations that meet conditions in Sections VI(E)(2)(a)-(h) of this policy and, in the MCAQD’s determination, do not merit any penalty due to insignificant economic benefit.

**VII. Divisions Affected**

- A. Compliance and Enforcement

**VIII. References**

- A. “Policy on Civil Penalties”, EPA General Enforcement Policy #GM-21, February 16, 1984
- B. “A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA’s Policy on Civil Penalties”, EPA General Enforcement Policy #GM-22, February 16, 1984
- C. “Calculation of the Economic Benefit of Noncompliance in EPA’s Civil Penalty Enforcement Cases”, 64 FR 32948, June 18, 1999
- D. EPA’s Audit Policy (Incentive for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice), 65 FR 19618, April 11, 2000
- E. EPA’s Ability-To-Pay (ABEL) model
- F. EPA’s Economic Benefit (BEN) model

**IX. Revision History**

Version	Date	Description
1.	08-26-2019	Initial version; combines and supersedes the following policies: PP-2008-001 (Violation Penalty Policy), PP-2012-001 (Asbestos Demolition and Renovation Penalty Guidelines) and PP-2012-002 (Violation Self-Reporting Policy)
2.		

