

**SAN JOAQUIN VALLEY UNIFIED  
AIR POLLUTION CONTROL DISTRICT  
COMPLIANCE DEPARTMENT**

**COM 1165**

**APPROVED:**

  
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**Ryan Hayashi**  
**Director of Compliance**

**DATE:**

\_\_\_\_\_  
**February 6, 2018**

**TITLE:**

**MUTUAL SETTLEMENT POLICY**

**SUBJECT:**

**SETTLEMENT OF NOTICE OF VIOLATIONS AND MUTUAL  
SETTLEMENT CASES**

**OBJECTIVE:**

The San Joaquin Valley Unified Air Pollution Control District is a regional agency, which regulates stationary sources of air pollutants within the San Joaquin Valley of California. The District enforces state and federal air quality laws and the rules adopted by the District's Governing Board. The Mutual Settlement Program offers both the District and the source an opportunity to settle alleged violations without expensive and time-consuming litigation.

**PURPOSE:**

The purpose of the District's enforcement program is to assure ongoing compliance with applicable federal, state and local rules and regulations. The District's approach is fostered by a wide variety of compliance assistance programs, from education and training to mutual settlements and litigation. All are used to assure ongoing compliance.

**POLICY STATEMENT:**

**I. PROGRAM DESCRIPTION**

The purpose of the District's enforcement program is to assure ongoing compliance with applicable federal, state and local rules and regulations. This approach is fostered by a wide variety of compliance assistance programs. The emphasis is on assisting the District's stakeholders to maintain their operations in compliance with rules and regulations.

In those circumstances where a complaint or an inspection indicates a violation of District requirements, several legal remedies are available. (Per California Health and Safety Code Sections 42400 - 42403), the District and a county District Attorney may seek imprisonment and/or criminal fines of up to \$1,000,000 per day for each violation of an air quality rule.

In lieu of criminal prosecution, the District may seek civil penalties of up to \$1,000,000 per day per violation. Since most violations of District rules are not intentional or recurrent, such cases may be resolved out of court via the mutual settlement process.

The Mutual Settlement Program offers both the District and the violator (defendant) an opportunity to settle alleged violations without expensive and time-consuming litigation. After issuance of a Notice of Violation (NOV), the District sends the defendant a settlement letter offering to dispose of the alleged violation(s) based upon factors specified in state law. Sources may choose to pay the proposed settlement or request a reduction. Reductions may only be granted where the source demonstrates that factors specified in state law and District policy apply. In order to ease the burden of payment, installment payments are allowed in some cases.

Where the defendant fails to negotiate a settlement, the case will be referred to the District's counsel for appropriate legal action.

## II. PROGRAM POLICY

It is the policy of the District that all NOV's be handled in the following manner:

1. Retraction of the NOV if it is determined that it was issued in error.
2. Case resolved via the mutual settlement program.
3. Case transmitted to the District Counsel for prosecution.

## III. PENALTY ASSESSMENT CRITERIA

The District evaluates each violation individually and with reference to all known facts and circumstances when negotiating settlements. By evaluating each case individually the District attempts to balance economic and environmental concerns. This policy recognizes that what might be a fair penalty for a large company might not be for a small company, despite the fact that the same District rule was violated.

The District considers such factors as the financial burden to the violator or the action taken to correct the violation, thus allowing a "sliding scale" in negotiating the appropriate penalty. Without such a policy, all violators would have to be treated exactly alike without regard for the factors which can make one violation different from another.

The California Health and Safety Code requires that the following factors be considered in assessing penalties:

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 to mitigate the violation.
8. The financial burden to the defendant.

While it is clearly important for the District to enforce air pollution regulations to comply with federal and state law and to protect public health, it is also important to recognize that the regulated community is made up of all kinds and sizes of businesses. The policy of individualized attention to air pollution violations allows the District to carry forth with its legal obligations and mandates while carefully judging all of the circumstances of each air pollution violation.

The successful implementation of this policy has resulted in fair and reasonable penalty assessments that have balanced economic and environmental concerns in a fair and effective manner. Whether the penalty involves money or an alternative settlement of corresponding benefit to air quality, the underlying policy of the District is the same; that is, each case is carefully reviewed for the most appropriate penalty assessment.

#### IV. VIOLATION CATEGORIES

##### A. Procedural violations (Administrative)

Section 42402(a) of the CH&SC establishes a strict liability for a violation of any rule, regulation, permit or order of the district, for a civil penalty of not more than \$5,000 per day. However, liability is restricted to \$5,000 per violation per day if the person accused of the violation demonstrates and establishes that the said violation was not caused by an act that was the result of intentional or negligent conduct. This section does not apply to a violation of any federally enforceable requirement that occurs at a Title V source. Title V sources are subject to CH&SC section 42400.4 (a), (b), (c), (d), (e) & (f)

Section 42402(b) of the CH&SC established a strict liability for a violation of any rule, regulation, permit or order of the district, for a civil penalty of not more than \$10,000 per day.

B. Emissions violations (Negligent)

Section 42402.1 of the CH&SC allows a maximum penalty of \$25,000 per day for negligent emissions violations. Recurring violations are subject to increasing penalties.

C. Emissions violations (failure to take corrective action of known violation)

Section 42402.2 of the CH&SC provides for a maximum penalty of \$40,000 per day. The Director of Compliance and District Counsel will review these cases prior to determining a penalty.

D. Emissions violations (willful and intentional)

Section 42402.3 of the CH&SC allows a maximum penalty of \$75,000 per day or imprisonment in the county jail for not more than one year, or both. The Director of Compliance and District Counsel will review these emission violations prior to determining a penalty.

V. PREPARATION OF SETTLEMENT LETTERS

In order to maintain consistency in the handling of mutual settlement cases, the following shall be observed:

1. A report and accompanying evidence is prepared by the issuing inspector, reviewed by the inspector's supervisor, and presented to the Mutual Settlements Section in the form of a packet. The supervisor's signature on the report indicates that the supervisor has reviewed the packet and recommends further enforcement action.
2. Mutual settlement staff will review the packet, prepare a case file, and assess any penalties in accordance with the provisions of the CH&SC.
3. Mutual settlements staff recommending a settlement offer exceeding \$5,000 must consult with the Director of Compliance for final approval.
4. Once the settlement offer has been finalized, a settlement letter is prepared in a form approved by the Director of Compliance.
5. The Central Regional Compliance Manager or designee will review all proposed mutual settlement case letters prior to formal presentation to the defendant.
6. All formal settlement letters will be mailed via US Mail.

## VI. NEGOTIATED REDUCTIONS

The coordinator assigned to the case will determine the amount of the reduction based upon the severity of the violation and the mitigation provided by the violator. A mitigation letter is required for a penalty reduction if the violation was for excess emissions in excess of one-ton. All other penalty reductions need to be documented in the NOV/NTC program and a letter is not required.

## VII. ALTERNATIVE SETTLEMENTS

Alternative settlements will be accepted with the director of compliance's approval. Monetary alternative settlements will be assessed at \$.25 on the dollar. A \$150.00 credit will be given to sources/violators who attend the District sponsored compliance school for vapor recovery and open burning violations. A \$50.00 credit will be given to sources/violators who attend the District sponsored compliance school for fireplace violations.

## VIII. FINAL LETTERS

Final letters will be sent out if the source/violator does not respond to the initial settlement letter within 14 days. Final letters will also be sent if the source/violator fails to stay in contact with the settlement department.

## IX. TRANSFER CASES TO THE LEGAL DEPARTMENT FOR RESOLUTION

Cases that cannot be settled by the mutual settlement process will be transferred to the District's legal department for resolution. Cases will be fast tracked to the legal department if the violator fails to respond to the initial settlement letter and the final letter.

## X. CLOSING CASES

When a penalty is paid the case will be closed. If No Further Action (NFA) is taken a case will be closed. If multiple cases are linked together (Multiple parties were issued an NOV for the same violation) and one of the parties pays in full or the parties split the penalty then the case will be closed.

## XI. MUTUAL SETTLEMENT DOCUMENTS

Mutual settlement documents and related records will be kept in a separate file from the main file system in the District office and in the District approved off-site storage facility. These records can be made available to the public upon request, once the settlement case is complete.