



VIOLATION PENALTY POLICY

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I. Introduction

The primary goal of this policy is to deter future violations of air quality requirements. Deterrence will be achieved by recovering the economic benefit of noncompliance plus an additional deterrence amount beyond the economic benefit to reflect the seriousness of the violation. This policy shall be used for settlement purposes only. In the event that settlement is not possible and litigation is necessary to bring an alleged violator into compliance and collect penalties, this policy may no longer be used. In the event of litigation, the Department may seek the statutory maximum for all alleged violations, mitigated only by the considerations set forth in Arizona Revised Statute § 49-513.

Arizona Revised Statute § 49-513 provides authority for the County Attorney to file an action in Superior Court to recover penalties of up to \$10,000.00 per day per violation of air quality requirements set forth in Title 49 of Arizona Revised Statutes and Maricopa County Air Pollution Control Regulations. This policy was established to assure that penalties are developed in a consistent manner utilizing factors listed in Arizona Revised Statute § 49-513. In addition, this policy is consistent, where possible, with the EPA Clean Air Act Civil Penalty Policy.

Penalties are extremely important to the success of the Department's air quality program. Environmental requirements in statutes, regulations, permits, and orders exist in order to prevent harm to the environment and public health. Department enforcement action is initiated to correct violations in a timely manner and to encourage continuous compliance in the future. Penalties are an essential component of the enforcement process. Penalties are imposed to take away the economic benefit and enticement to operate in violation of requirements by recouping any money a violator saved by operating out of compliance. Penalties also create an additional incentive to comply by adding a gravity-based penalty amount which makes noncompliance cost more than staying in compliance with requirements.

The penalty calculation system contained in this policy consists of the following elements: 1) determining a gravity component dependent on the severity of a violation which may be adjusted based on factors and circumstances unique to each particular case, 2) determining a violator's economic benefit of noncompliance, 3) determining the Department's enforcement action costs, and 4) consideration of mitigating factors.

Total = Gravity + Economic Benefit + Cost + Mitigating
Penalty = Component Component Recovery Factors

II. Gravity Component

The first step in calculating a penalty is to determine the gravity component. A gravity component is calculated by assessing both a potential for harm posed by the violation and a violator's extent of deviation from legal requirements. These two factors measure the seriousness of a violation, and are incorporated in the penalty matrix from which an amount of gravity component is selected. This amount may then be adjusted to account for multi-day violations and for unique factors of each case.

Gravity = Potential + Extent of + Multi-day + or - Adjustments
Component for Harm Deviation Component

A. Potential for Harm

Potential for harm relates to risk of human or environmental exposure to pollutants in the air, water, or soil that may be imposed by a violation; or the risk of harm to natural resources from