

**TO:** Board of Directors, Air Pollution Control District  
**FROM:** Larry R. Allen, Air Pollution Control Officer  
**DATE:** September 24, 2003  
**SUBJECT:** District Mutual Settlement Program

## **SUMMARY**

The District's Mutual Settlement Program is a voluntary procedure for settling both minor and major air pollution violations without the time and expense of litigation to either party. A mutual settlement process is used by most air districts in California. Settlements typically involve a financial penalty based on penalty schedules defined in State law, state and federal guidelines, and District policy; it may also include additional operational conditions to ensure future compliance. Through this process the violator is provided the opportunity to present mitigating evidence that can reduce the proposed penalty amount and/or modify any supplemental conditions required for resolution.

## **RECOMMENDATION**

That your Board receive and file the staff report provided.

## **DISCUSSION**

The rules and regulations adopted and implemented by the District are designed to protect public health and ensure that local businesses and individuals comply with state and federal air pollution laws. The California Health & Safety Code authorizes the District to enforce these regulations throughout San Luis Obispo County. A key aspect of our enforcement program is a significant focus on educating regulated sources. Through our Business and Compliance Assistance Program, staff helps businesses and individuals stay aware of important compliance parameters at their facility and encourage regular maintenance on all equipment in a manner consistent with permit conditions, rules and regulations.

When a District inspector finds someone out of compliance with a rule, permit condition, or law relating to air pollution, either a Notice to Comply (NTC) or Notice of Violation (NOV) is issued as the District's official record of the violation. An NTC is issued to document a minor violation of administrative or procedural requirements that does not result in an increase of emissions or

endanger public health or safety. It is analogous to a “fix-it” ticket and carries no financial penalties.

An NOV is issued for all other violations and has a similar look and feel to a traffic ticket issued by the California Highway Patrol. The primary purpose of the NOV is to initiate timely corrective action and help prevent future violations. To that end, NOVs typically result in monetary penalties. Serious or repeated violations that show blatant disregard for the law and for public health can lead to civil or criminal prosecution.

Once an NOV is issued a letter is sent to the affected business or individual describing the circumstances of the violation observed by our inspector and a request for response by a given date on actions taken to correct the violation. Once a response is received, the case is typically moved forward to our Mutual Settlement Program to reach final resolution of the violation with the business or individual.

### **The Mutual Settlement Program**

The District’s Mutual Settlement Program is a voluntary procedure for settling both minor and major air pollution violations without the time and expense of litigation to either party; a mutual settlement process is used by most air districts in California. Once the District moves a case forward to the Mutual Settlement Program, a settlement proposal letter is sent to the business or individual outlining the facts associated with the original NOV. The settlement letter specifies the maximum penalties authorized by state law for each violation and identifies the District’s proposed penalty, terms and conditions to resolve the violation(s). Key factors considered in developing the settlement proposal include:

- extent of harm caused by the violation;
- nature and persistence of the violation;
- length of time violation occurred and corrective action taken;
- past violations; and
- economic benefit, if any, of noncompliance.

The settlement letter invites the affected party to bring the air pollution matter to a close. The terms are set in writing for both parties to agree upon. Resolution of a Notice of Violation through a mutual settlement agreement is not considered an admission of liability.

### **“Let’s Conference”**

Businesses or individuals may request a discussion of the settlement offer through an office conference. This is an informal meeting with District enforcement staff and the APCO intended to provide an open forum to discuss the original NOV and mutually reach resolution on the incident. Businesses and individuals may present evidence in defense of their case. If they are able to show mitigating circumstances or otherwise convince staff that the nature of the violation was different than documented in the NOV and mutual settlement letter, then the District may agree to amend the proposed settlement.

After the conference meeting, District staff further evaluate the case and send a revised letter to the business or individual outlining the agreed upon modifications to the settlement penalties and conditions. When the affected party returns the signed settlement letter with the agreed penalty amount, the case is considered resolved.

### **Last Resort—Legal Action**

If the business or individual does not sign and return the revised letter with the agreed penalty amount, or if the matter cannot be resolved, the case is referred to the District's legal counsel for formal resolution. Some of these cases may be settled out of court. If civil prosecution appears necessary, it is then brought before the Board for approval to pursue that course of action.

Unusually serious violations which could have been prevented or which show willful disregard for public health and air pollution control laws may be referred for criminal prosecution. Criminal penalties for such violations can include a substantial fine and one year in jail for each day of violation.

### **Penalties**

To provide incentives for business and individuals to comply with air pollution regulations, the District levies penalties when issuing NOVs or when reaching settlement via the Mutual Settlement Program or litigation. Depending on the severity of air pollution violation, penalties can vary from a minimum of \$250 per day for minor cases to as much as \$1,000,000 per day plus imprisonment for an extreme case with willful intent by a corporation. The California Health & Safety Code, Sections 42400 and 42402 define the maximum allowable penalties for any person who negligently emits air contaminants in violation of air pollution standards.

The District maintains a general list of potential violations subject to penalties, which may be assessed by the District as required by Health and Safety Code Section 42409. Specific penalty lists, such as the one developed for backyard burning violations, are also used.

All air districts in California use a penalty schedule or penalty calculation system conforming to EPA, ARB and CAPCOA guidance. The District's penalty calculation procedure and penalty schedule reflects the factors in Health and Safety Code Section 42403 (b) and EPA's civil penalty policy by considering economic benefit, a gravity component and an adjustment that includes:

- If an emission violation, the percent above the limit or standard
- Pollutants involved in the violation
- The length of time over which the violation occurred
- Number of past violations in the last three years
- Economic benefit accrued, if any, as a result of the violation
- Record of maintenance
- Unproven or innovative nature of the control equipment

- Any action taken to mitigate the violation, including the nature, extent, and timeliness of response
- The financial burden to a business or individual

### **Supplemental Environmental Programs**

Some California air districts use penalties exclusively in negotiating settlements, while others also include environmental benefit programs called Supplemental Environmental Programs (SEP). We incorporate both strategies in our Mutual Settlement Program.

SEPs typically consist of an emission reduction, pollution prevention or community air quality benefit project that the violator agrees to implement to help mitigate the impacts of their violation. The SEP may replace or supplement the potential financial penalty; however, unlike a penalty, a SEP is a business expense that is tax deductible. SEPs with a non-monetary settlement can contribute to improved air quality or to overall community welfare; examples of these include establishment of a preventative maintenance program, sponsoring educational or training sessions to prevent violations by other operators in their industry, and public service programs such as community asthma screening. Settlement options under a SEP can also include “in kind” settlements, such as production of a professional educational video on air pollution, offering a site for placement of an air monitoring station, etc.

### **OTHER AGENCY INVOLVEMENT**

The District coordinates enforcement cases and meets regularly with other regulatory agencies such as code enforcement and fire agencies, County Environmental Health, County District Attorney’s Office, California Division of Forestry, State Fish and Game, Regional Water Quality Control Board, ARB and EPA. County Counsel serves as the District Counsel.

### **FINANCIAL CONSIDERATIONS**

None.