

Regulation I

Rule 105 – Enforcement & Penalty Actions

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TABLE OF CONTENTS

- A. ENFORCEMENT
- B. ORDERS OF ABATEMENT
- C. CIVIL PENALTIES
- D. EQUIPMENT BREAKDOWN

RULE 105

ENFORCEMENT & PENALTY ACTIONS

A. ENFORCEMENT: No person shall violate any condition of an Authority to Construct, any condition of a Permit to Operate, any provision of these Rules and Regulations; or any order, rule, or regulation of the H&SC. Any person violating any such Rule or statute is guilty of a misdemeanor and/or is liable for a civil penalty and shall be subject to a fine or imprisonment in the county jail, or both as allowed by the H&SC or other such criminal and civil penalties as may be lawful. Every day during any portion of which the violation occurs constitutes a separate offense.

B. ORDERS OF ABATEMENT:

1. The District Hearing Board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is in violation of Section 41700 or 41701 of the H&SC, or of any order, rule or regulation prohibiting or limiting the discharge of air contaminants into the air.
2. The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met. (H&SC 42452)

C. CIVIL PENALTIES:

1. Except as otherwise provided in Rule 105(C)(2) and (C)(3), any person who violates Section 41700 or 41701 of the H&SC, or any Rule or Regulation of the District, shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which such violation occurs. (H&SC 42402)
2. Any person who negligently emits an air contaminant in violation of any rule, regulation or order of CARB or of the District pertaining to emission regulations or limitations shall be liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each day in which such violation occurs. (H&SC 42402.1)
3. Any person who emits an air contaminant in violation of any order, rule, or regulation of CARB or of the District pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time, or which causes actual injury to the health or safety of a considerable number of persons or the public, shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs. (H&SC 42402.2)
4. Any person who intentionally or negligently violates any order for abatement issued by the District Hearing Board pursuant to Rule 105(B)(1) or (B)(2), shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs. (H&SC 42401)
5. The civil penalties prescribed in Rule 105(C)(1) through (4) shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any District

Attorney in whose jurisdiction the violation occurs, or by the attorney for the District in any court of competent jurisdiction. In determining such amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and corrective action, if any, taken by the defendant.

D. EQUIPMENT BREAKDOWN:

- 1. Breakdown Conditions:** For the purposes of this Rule, a breakdown condition means an unforeseeable failure or malfunction of any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these Rules and Regulations, by State law, or similar failure of any required in-stack continuous monitoring equipment where such failure or malfunction:
 - a. Is not the result of neglect or disregard of any air pollution control law or rule or regulation;
 - b. Is not intentional or the result of negligence;
 - c. Is not the result of improper maintenance;
 - d. Does not constitute a nuisance; or
 - e. Is not an abnormally recurrent breakdown of the same equipment.

- 2. Breakdown Procedures:**
 - a. Any breakdown condition meeting the qualifications of Rule 105(D)(1) shall constitute a violation of any applicable emission limitation or restriction prescribed by these Rules and Regulations; however, the APCO may elect to take no enforcement action if the owner or operator demonstrates to his satisfaction that a breakdown condition exists and the following requirements are met:
 - i. The breakdown is reported to the District as soon as reasonably possible, but no later than one (1) hour after its detection during normal office hours (9:00 a.m. to 4:00 p.m.), or one (1) hour after the start of the next regular business day, whichever is sooner.
 - ii. The owner or operator takes immediate steps to minimize the impact of the breakdown and come into compliance.
 - iii. The breakdown does not interfere with the attainment or maintenance of any National Ambient Air Quality Standard.
 - b. The breakdown shall be logged, investigated and handled to its final disposition in accordance with uniform District procedures.
 - c. Upon receipt of notification of a breakdown condition, the APCO shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If it is not a breakdown condition, the APCO may take appropriate enforcement action including, but not limited to, seeking fines, an abatement order, or an injunction against further operation.

- 3. Reporting Requirements:** Within ten (10) days after a breakdown occurrence has been corrected, the owner or operator shall submit a written report to the APCO including, but not limited to, the following details:
 - a. Duration of excessive emissions.
 - b. Estimate of quantity of emissions.
 - c. Statement of the cause of the occurrence.
 - d. Corrective measures to be taken to prevent recurrences.
 - e. Documentation of the breakdown condition may be required by the APCO.

4. **Burden of Proof:** The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the APCO shall take enforcement action.
5. **Failure to Comply with Reporting Requirements:** Any failure to comply, or comply in a timely manner, with the reporting requirements established in subparagraphs (D)(2)(a)(i) and (D)(3)(a) through (e) of this Rule shall constitute a separate violation of this Rule.
6. **False Claiming of Breakdown Occurrence:** It shall constitute a separate violation of this Rule for any person to file with the APCO a report which falsely, or without probable cause, claims that an occurrence is a breakdown occurrence.
7. **Extended Breakdown Provisions:** For any occurrence which causes a breakdown condition meeting the requirements of Rule 105(D)(1), the owner or operator may, in lieu of shutdown, petition the Hearing Board for an emergency variance, if the breakdown will persist longer than the following times:
 - a. For continuous emissions monitoring equipment (CEMs), if the breakdown will persist longer than ninety-six (96) hours.
 - b. For all other devices, if the breakdown will persist longer than twenty-four (24) hours.