

# SCHEDULE OF MINIMUM CIVIL PENALTY ASSESSMENT LEVELS-ANNOTATED

Southwest Clean Air Agency

Effective: ~~Sept. 13, 2018~~

<u>TYPE OF VIOLATION</u>	<u>FIRST CONTACT*</u>	<u>SECOND CONTACT OR REPEAT VIOLATION**</u>	
	Clark, Cowlitz, Lewis, Skamania, Wahkiakum	Clark	Cowlitz, Lewis Skamania, Wahkiakum
1. WAC 173-425, RCW 70.94.743 THRU 780, SWCAA 425 AND/OR Ag Burning	Treat as a Notice of Correction	See Outdoor Burning Worksheet	
2. WAC 173-433 (opacity from wood heating) Residential/Commercial	Treat as a Notice of Correction	<del>\$170</del> <sup>25</sup>	<del>\$90</del> <sup>65</sup>
3. WAC 173-433-120 (burning prohibited materials in a wood heating or other space heating device)	Treat as a Notice of Correction	<del>\$170</del> <sup>25</sup>	<del>\$90</del> <sup>65</sup>
4. WAC 173-433 (use of wood heating device during an air pollution episode)	Treat as a Notice of Correction	<del>\$170</del> <sup>25</sup>	<del>\$90</del> <sup>65</sup>
5. WAC 173-433 (use of wood heating device during an air quality burn ban)	Treat as a Notice of Correction	<del>\$170</del> <sup>25</sup>	<del>\$90</del> <sup>65</sup>
6. RCW 70.94.460/463/467 (sale of unapproved woodstove)	Treat as a Notice of Correction	<del>\$1,700</del> <sup>1,250</sup>	<del>\$1,700</del> <sup>1,250</sup>
7. SWCAA 400-040-2&3 (fallout of particulate matter and/or fugitive emissions) Commercial/Municipal/Industrial	Treat as a Notice of Correction	<del>\$850</del> <sup>625</sup> Major source double	<del>\$410</del> <sup>300</sup> Major source double
8. SWCAA 400-040-4 (excessive odors) Commercial/Municipal/Industrial	Treat as a Notice of Correction	<del>\$410</del> <sup>300</sup> Major source double	<del>\$410</del> <sup>300</sup> Major source double
9. SWCAA 476 (asbestos violations) Residential/Commercial/Municipal/Industrial	See Asbestos Worksheet		
10. SWCAA 400-100 (failure to register) Commercial/Municipal/Industrial	Treat as a Notice of Correction	<del>\$1,700</del> <sup>1,250</sup> Major source double	<del>\$1,700</del> <sup>1,250</sup> Major source double
11. SWCAA 400-100 (failure to pay registration fees) Commercial/Municipal/Industrial	Treat as a Notice of Correction	Three times the original fee owed	Three times the original fee owed
12. SWCAA 400-105 (failure to submit annual emissions) Commercial/Municipal/Industrial	Treat as a Notice of Correction	<del>\$410</del> <sup>300</sup> Major source double	<del>\$410</del> <sup>300</sup> Major source double
13. SWCAA 400-072 (installation without SUN Application/Approval) Commercial/Municipal/Industrial	Treat as a Notice of Correction	Benefit value received from non-compliance plus <del>\$410</del> <sup>300</sup> per small unit. Normal SUN fees are still payable upon submittal. Major source double	

14. SWCAA 400-109 /110 (installation without ADP Application/Approval) Commercial/Municipal/Industrial	Treat as a Notice of Correction	Benefit value received from non-compliance plus <del>\$1,700+250</del> or estimated NSR fee. Normal NSR fees are still payable upon submittal. Major source double	
15. SWCAA 400-230-6 (compliance or correction order violation) Commercial/Municipal/Industrial	\$300/day Major source double	<del>\$850625</del> /day Major source double	<del>\$850625</del> /day Major source double
16. SWCAA 400-230 (permit violation – missed test, emissions, control device) Commercial/Municipal/Industrial	Treat as a Notice of Correction	<del>\$850625</del> criteria <del>\$1,290950</del> TAP/HAP Major source double	<del>\$850625</del> criteria <del>\$1,290950</del> TAP/HAP Major source double
17. SWCAA 400-230 (permit violation – late test, parameter monitoring, work practice, recordkeeping, reporting) Commercial/Municipal/Industrial	Treat as a Notice of Correction	<del>\$410300</del> Major source double	<del>\$410300</del> Major source double
18. WAC 173-491 (failure to install Stage I/II)	Treat as a Notice of Correction	<del>\$850625</del>	<del>\$850625</del>
19. WAC 173-491-040 (improperly maintained Stage I/II equipment, testing, i.e. leaking hoses, etc.)	Treat as a Notice of Correction	<del>\$410300</del>	<del>\$410300</del>
20. WAC 173-491-040 (failure to conduct and/or report Stage I/II testing)	Treat as a Notice of Correction	<del>\$410300</del>	<del>\$410300</del>
21. SWCAA 400-040-1 (excessive visual emissions) Industrial  Commercial/Municipal	Treat as a Notice of Correction  Treat as a Notice of Correction	<del>\$850625</del> Major source double  <del>\$680500</del>	<del>\$850625</del> Major source double  <del>\$410300</del>
22. Federal Regulations 40 CFR 60 – 63 Notification/reporting requirements	Treat as a Notice of Correction	<del>\$1,700+250</del>	<del>\$1,700+250</del>
23. Installation of equipment, source test <del>24.</del> failures and expansions	Treat as a Notice of Correction	<del>\$1,700+250</del>	<del>\$1,700+250</del>
<u>24. Other violations not listed</u>	<u>Treat as a Notice of Correction</u>	<u>\$170</u>	<u>\$90</u>
25. RCW 70.94.431 (maximum civil penalty amount per day of violation for any Washington Clean Air Act violation)	\$12,500/day/violation	<del>\$17,000+2,500</del> /day/violation	<del>\$17,000+2,500</del> /day/violation

\* “First Contact” pertains to the source’s knowledge of the regulations. In most cases if no prior notices, warnings or contact has been made on the particular topic of the violation, then this portion of the civil penalty schedule should be used.

\*\* SWCAA’s Annual Compliance Assurance Agreement with EPA and WDOE for major sources includes the expectation that violations should incur penalty assessments of a magnitude that discourages reoccurring non-compliance. Therefore, repeat violations for the same offense should incur progressively higher penalty assessments. Consequently, after the second offense, the minimum penalty should be significantly increased and possibly doubled from the previous amount each time it reoccurs. The above table should be considered MINIMUM assessments. In some cases, the level of penalty may be greater when special circumstances warrant such action.

## SWCAA'S PENALTY ASSESSMENT POLICY STATEMENT

It is the recommendation of the U.S. Environmental Protection Agency and the Washington State Environmental Hearings Board that penalty levels should exceed the cost of alternate methods of disposal and prevent a violator from receiving economic benefit from violation of rules and regulations.

It is SWCAA's desire to use whatever enforcement tools are available in order to encourage compliance to the regulations. It is not the desire of SWCAA management or the Board of Directors to utilize the assessment of civil penalties as solely a means of providing revenue for the Agency. Any enforcement measures taken, including but not limited to, the assessment of civil penalties are intended to: 1) eliminate any derived economic benefit obtained by a violator from circumventing or violating any air quality rule or regulation; 2) discourage repeat or continuing violations; and 3) provide a uniform and fair method of assessing punitive actions.

In the case of outdoor burning violations and violations of the asbestos removal/encapsulation regulations, multi-tiered assessment worksheets are provided. This method of penalty level determination takes into account many facets of the violation to arrive at a uniform, fair and equal assessment amount.

For other types of violations, penalties are established by using the "Schedule of Minimum Civil Penalty Assessment Levels" table. Factors considered within the table are: 1) location of the violation, 2) type of violation and 3) whether it is a first relative contact or a repeat violation. The amounts in this table are considered "minimum amounts" and depending upon circumstances may be escalated as needed on a case by case basis.

In the event of multiple or repeat violations, it is the intent and desire of SWCAA to continue to escalate the punitive enforcement action in order to discourage recalcitrant or repeat violations. The schedule table includes first offense and "repeat violations" with no attempt made to escalate the assessment after the second offense. It is felt that upon the third similar offense that the punitive assessment should be handled on a case by case basis, utilizing the guidance previously established in this document. In most all cases this will involve escalation of the enforcement from the previous assessments. This could however take the form of a criminal penalty, administrative order, civil penalty assessment, or a combination of several of these actions. The factors to be considered in these situations, but not necessarily limited to, include: 1) degree or amount of knowledge of the regulations and requirements; 2) degree of emergency involvement and public expense; 3) magnitude of the violation; 4) cooperation of the violator; 5) degree of confidence that this will not reoccur; 6) potential public health effects associated with the violation; and 7) uniformity of assessment.