

SOUTHWEST CLEAN AIR AGENCY

Board of Directors Meeting  
June 1<sup>st</sup>, 2023, at 3:00 PM  
Southwest Clean Air Agency  
11815 NE 99th St. Suite 1294  
Vancouver, Washington

This meeting will be held by video conference using Zoom:

<https://us02web.zoom.us/j/82154159897>

Meeting ID: 821 5415 9897

Or call in by phone (669) 900-9128

AGENDA

- I. Call to Order  
SWCAA Chair Alan Melnick
- II. Roll Call/Determination of Quorum  
SWCAA Chair Alan Melnick
- III. Board of Directors Minutes  
Board of Directors Minutes – May Meeting
- IV. Changes to the Agenda  
SWCAA Chair Alan Melnick
- V. Consent Agenda
  - A. Approval of Vouchers
  - B. Financial Report
  - C. Monthly Activity Report
- V. Info Items & Public Comment  
None
- VII. Public Hearing  
None

## VIII. Unfinished Business/New Business

### **A. Discussion about SWCAA's Schedule of Minimum Civil Penalty**

**Issue** - SWCAA's Schedule of Minimum Civil Penalty Assessment Levels has not been updated since 2012.

**Summary** - There have been no consumer price index increases in the SWCAA assessment levels since 2012 so the ability of the penalties to encourage compliance without needing to take enforcement action has diminished over the past decade. EPA updates its minimum enforcement levels by the consumer price index at regular intervals and encourages state and local clean air agencies to take similar updating actions. The Western States Consumer Price Index increased by 36% between 2011 and 2022. Attachment A includes the existing minimum penalty schedule and what a 36% adjustment would look like.

**Recommendation.** Request a proposal for revisions to the minimum penalty schedule be brought to the August Board meeting.

### **B. Discussion about SWCAA's Asbestos Penalty Worksheet**

**Issue** - SWCAA's asbestos penalties have not been updated in over a decade and are significantly lower than surrounding jurisdictions.

**Summary** - There have been no increases in SWCAA's asbestos penalty worksheet for over a decade and at current levels may not be effective at deterring non-compliance. SWCAA will present a fee comparison and case examples regarding civil penalty amounts. SWCAA is recommending revising the worksheet to add additional categories to the gravity criteria and increasing asbestos penalty amounts particularly for commercial operations as shown in Attachment B.

**Recommendation.** Request a proposal for revisions to SWCAA's asbestos penalty worksheet be brought to the August Board meeting.

### **C. Cancellation of July and December 2023 Board of Directors Meetings**

**Summary** - The Board is not required to meet every month. As a result, the July and December Board meetings have historically been canceled. The Washington Clean Air Act requires that the Board meet at least 10 times per year. Six meetings have been held through the June Board meeting. The remaining four meetings this year will be held in August, September, October, and November. Vouchers needing payment in July and December may be signed electronically.

**Recommendation** - Cancel the July and December Board of Directors meetings.

### **D. Board "Member at Large" Position**

Board members are appointed by their respective governing body at least every four

years as dictated by statute.

“RCW 70A.15.2000 (b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority. (4) The terms of office of board members shall be four years.”

Ryan Smith, the “Member at Large” (or private citizen) member was last appointed by the SWCAA Board of Directors in June of 2019 and is therefore up for consideration of renewal.

## IX. Executive Director’s Report

- A. EPA Proposes Rules Addressing GHG Emissions from Fossil Fueled Power Plants (May 11, 2023)** EPA announced proposed new rules addressing greenhouse gas (GHG) emissions from fossil-fueled power plants. The proposal (EPA Docket EPA-HQ-OAR-2023-0072) would set emission limits for new gas-fired combustion turbines, existing coal, oil and gas-fired steam generating units, as well as certain existing gas-fired combustion turbines. The proposal includes four major rulemaking components. The first applies to coal-fired units. It sets the Best System of Emission Reductions (BSER) for coal-fired units, requiring 90% carbon capture and storage (CCS) for units expected to operate in 2040 and beyond, an 88.4 percent reduction. For units committing to retire before 2040, the proposal would require 40% co-firing with gas, a 16% emission reduction. Units retiring by 2035 can accept a utilization limit of 20 percent, and units that commit to cease operations by 2032 can continue business as usual, providing they commit to no emissions backsliding. In the second component of the proposal, existing gas turbines over 300 megawatts (MW) in size are offered two pathways: capturing 90 percent of their emissions by 2035 using CCS, or phasing in 30% low-GHG hydrogen co-combustion by 2032 and 96% co-combustion 2038. The third component of the rule applies to new gas turbines in three operational categories. For units operating less than 20 percent of the time, BSER is to use clean fuels with emissions varying from 120lb CO<sub>2</sub>/MMBtu to 160lb CO<sub>2</sub>/MMBtu, depending on fuel type. For power plants with capacity factors between 20% and 50%, before 2032, BSER will be 1150 lb CO<sub>2</sub>/megawatt hour (MWh), achievable with existing best-in-class turbine technology. Thereafter, BSER for new gas units will include the two pathways described for existing units: hydrogen co-combustion at 30 percent in 2032 (680 lb CO<sub>2</sub>/MWh) and 96 percent in 2038 (90 lb CO<sub>2</sub>/MWh); or 90 percent CCS in 2035 (90 lb CO<sub>2</sub>/MWh). EPA’s definition of “low GHG hydrogen” is fuel produced with less than 0.45 kg CO<sub>2</sub> emitted per kg hydrogen from well-to-gate, consistent with definitions included in tax credit language in the 2022 Inflation Reduction Act (IRA). The fourth component of the proposal repeals the Affordable Clean Energy Rule, finalized on June 19, 2019, but never implemented. EPA will be conducting virtual public hearings for its proposal on June 6 and June 7, 2023, and will accept comments from the public for 60 days from the date of publication in the Federal Register. For further information: <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power> and <https://www.federalregister.gov/documents/2022/12/23/2022-27557/adoption-and-submittal-of-state-plans-for-designated-facilities-implementing-regulations-under-clean>

**B. The ICCT Assesses Charging Infrastructure Needs Through 2030 To Support Transition to Zero-Emission Trucks and Buses (May 11, 2023)** - The International Council on Clean Transportation (ICCT) released, “Near-Term Infrastructure Deployment to Support Zero-Emission Medium- and Heavy-Duty Vehicles in the United States,” in which the group captures when, where and how much infrastructure the U.S. must deploy to meet the energy needs of zero-emission trucks and buses through 2030. In the 40-page “white paper,” ICCT reports its projection of 1.1 million zero-emission trucks and buses on U.S. roads by 2030, of which the vast majority will be battery electric vehicles (not hydrogen) whose energy needs will be met with both slow- and fast-chargers of 50 kilowatts to over 1 MW. ICCT projects that by 2030 electrification of medium- and heavy-duty vehicles will “increase U.S. daily electric energy consumption by 140,000 MWh per day. This equates to around 1% of the total national electricity retail sales in 2021, representing a marginal increase in required electric power generation.” However, “high-energy demand” counties are expected to experience high charging loads of up to 132 MW, concentrated in freight zones (e.g., freight corridors, ports and industrial zones). Based on its modeling results and discussions with stakeholders, ICCT concludes that 1) U.S. heavy-duty charging infrastructure need not be built all at once; 2) medium- and heavy-duty energy needs are likely to materialize in states that have adopted the Advanced Clean Trucks program, but likely constitute upper bounds for other states; 3) setting targets for charging station deployment along key National Highway Freight Network corridors can accommodate up to 85 percent of long-haul charging needs by 2030; 4) electric utilities should plan for the significant loads that will come from electric medium- and heavy-duty vehicles and provide timely interconnections; and 5) there are many options for meeting both near- and long-term charging needs. Among the tables in the appendix to the paper are Tables A6 and A7, on the last three pages, which provide state-level energy needs and county-level energy needs, respectively, for medium- and heavy-duty vehicle charging.

For further information:

<https://theicct.org/publication/infrastructure-deployment-mhdv-may23/>

**C. Study Finds Exposure to Hazardous Air Pollution from Consumer Products - (May 3, 2023)** - A study published in the journal Environmental Science & Technology found that consumer products are important sources of toxic air pollution through emissions of volatile organic compounds (VOCs). The study examined data from the California Air Resources Board to quantify emissions of VOCs that people would likely be exposed to as individual consumers, in workplaces and at the population level. They found that out of 172 consumer product categories, 105 contained chemicals listed in the California Safe Drinking Water and Toxic Enforcement Act (“Prop 65”). These are in widespread use, even though they include known carcinogens and reproductive/developmental toxicants. Among the chemicals that were most prevalent were methanol, diethanolamine, ethylbenzene, ethylene glycol, toluene, diethanolamine, N-methyl-2-pyrrolidone and formaldehyde. A wide variety of products were included on the list, ranging from shampoos and lotions to household products and cleaners. The researchers recommend that “manufacturers and regulators should prioritize product categories containing Prop 65-listed chemicals for reformulation or redesign to reduce human exposures and associated health risks.”

X. Board Policy Discussion Issues

As Necessary

XI. Issues for Upcoming Meetings

- SWCAA Civil Penalty Schedule
- Documentation of follow-up/implementation of previous Board actions/decisions
- SWCAA Performance Metrics, including summaries and reports of trends

XII. Adjourn

Notes:

- (1) Served by C-TRAN Routes: 7, 72 and 76.
- (2) Accommodation of the needs for disabled persons can be made upon request. For more information, please call (360) 574-3058 extension 110.

ATTACHMENT A

**SCHEDULE OF MINIMUM CIVIL PENALTY ASSESSMENT LEVELS-ANNOTATED**

**Southwest Clean Air Agency**

Effective:

<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	

**ATTACHMENT A**

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>\$1,7001,250</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>\$1,7001,250</del>	<del>\$1,7001,250</del>
23. Installation of equipment, source test	Treat as a Notice of Correction	<del>\$1,7001,250</del>	<del>\$1,7001,250</del>
24. failures and expansions			
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>\$17,00012,500</del> /day/violation	<del>\$17,00012,500</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.

## ATTACHMENT A

### 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 work-sheets 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.



Attachment B  
**Southwest Clean Air Agency**

**Asbestos Civil Penalty Worksheet and Recommendation**

NOV No.: \_\_\_\_\_ Date of Violation: \_\_\_\_\_

Facility/Name: \_\_\_\_\_ Prop. Owner? (Yes, No) \_\_\_\_\_

Property Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

The following procedure shall be employed in making a recommendation for assessment of civil penalties for violations of Agency asbestos regulations and/or breaches of a removal/encapsulation permit. Each violation shall include a gravity component to the civil penalty, as determined from the table below. Violations involving demonstrable economic benefit to the violator shall include a benefit component also. A component for records violations shall be determined from the table on the back of this form and added to the gravity and benefit components to determine the total civil penalty assessment.

**Gravity Criteria**

	No (0)	Possibly (1)	Probably (2)	Definitely (3)
1. Did the violation result in a public health risk or property damage?				
<u>2. Was the work performed at a public, commercial or institutional building?</u>				
<u>3. Was this a willful or knowing violation?</u>				
<u>4. Was the material known to contain asbestos or a common suspected asbestos containing material?</u>				
<u>5. Did the violator not unresponsive to correcting the violation or taking corrective actions?</u>				
<u>6. Were corrections not timely or effective?</u>				
<u>7. Did the violator have a history of similar violations? Was this a repeat violation?</u>				
<u>8. Was this a multiday violation?</u>				
<u>9. Did the violator benefit economically from non-compliance?</u>				

Total Gravity Criteria Rating: \_\_\_\_\_

**Gravity Component Penalty**

Rating:	1-3	4-6	7-8	9-10	11-12	13+
Penalty:	\$65	\$125	\$315	\$625	\$1,250	\$3,125

Homeowner/Commercial:

Rating:	1-3	4-6	7-9	10-13	13-16	17+
Penalty:	\$65/\$130	\$125/\$250	\$315/\$630	\$625/\$1,250	\$1,250/\$2,500	\$3,125/\$6,300

Attachment B

Gravity Component Penalty: \_\_\_\_\_

**Benefit Component Penalty**

If the answer to question #98 in the Table "Gravity Criteria" is "definitely", the dollar amount of economic benefit estimated from the current inspection/abatement/disposal charges is \$0.00. Were the necessary permit fees avoided? No If yes, how much? \$0.00

**Comments:**

**Records Violations Component Penalty**

Type	Residential by Owner	Commercial or Asbestos Contractor
1. No notification	<del>\$35</del> <u>50</u>	<del>\$315</del> <u>\$630</u>
2. Other recordkeeping violation	<del>\$35</del> <u>50</u>	<del>\$190</del> <u>\$380</u>

**Previous NOV's:**

NOV No.	NOV Date	Violation	Civil Penalty

**Penalty Components**

Gravity Penalty Component:	<u>\$0.00</u>
Benefit Penalty Component:	<u>\$0.00</u>
Records Violations Component:	<u>\$0.00</u>
Civil Penalty Recommendation:	<u>\$0.00</u>

Attachment B

Evaluator: \_\_\_\_\_  
Date: \_\_\_\_\_