

GEORGIA HEAVY-DUTY DIESEL ENGINE REQUIREMENTS  
PENALTY POLICY  
AIR PROTECTION BRANCH  
ENVIRONMENTAL PROTECTION DIVISION  
January 15, 2004

I. INTRODUCTION

This document is intended to provide guidance for any Environmental Protection Division (EPD) associate involved in calculating the initial proposed monetary settlement for violation(s) of the Heavy-Duty Diesel Engine Requirements Rule, 391-3-1-.02(000). The policy is designed to provide an effective means of deterrence while ensuring fair and equitable treatment of violators. The "initial penalty target figure" calculations noted in any Consent Order will be based on a number of factors which include: procedural violations, severity of the violation, economic benefit to the violator, degree of cooperation or willfulness, history of compliance or noncompliance, ability to pay and other factors unique to the case. Each of these factors may be considered during case negotiations prior to arriving at the "adjusted penalty target figure" or "settlement amount". This policy will discuss each of these factors as they relate to the base penalties and the gravity of the violation.

II. BASE PENALTIES

A. PROCEDURAL

The penalty for failure to submit required reports, submission of late reports, failure to provide mandatory records upon request, failure to provide vehicles for inspection of emission label and vehicle identification number, or other shall range from not less than \$1000 to no more than \$5000.

The penalty for selling, leasing, renting, importing, delivering, purchasing, leasing, acquiring, receiving, offering for sale, offering for lease, or offering to rent a heavy-duty diesel vehicle or engine without a California Air Resources Board Executive Order shall range from not less than \$1000 to no more than \$5000 per vehicle or engine per day.

B. EXCESS MASS EMISSIONS VIOLATIONS

The penalty for violation of the applicable air quality control standard(s) shall range up to \$25,000 per violation per day.

EXCESS EMISSIONS CALCULATIONS

The penalty for excess mass emissions violations for all air pollutants, including VOC, particulate matter, NO<sub>x</sub>, SO<sub>2</sub>, CO, TRS, and hazardous or toxic air pollutants, shall be based upon the amount of excess emissions

multiplied by a dollar per ton of excess emissions taking into account the time over which the vehicle or engine will emit the excess emissions, with an additional multiplier used to factor in the sensitivity of the environment and the toxicity of the pollutant. The penalty per ton shall be \$100 for the amount of excess emissions occurring during the first 120 days of noncompliance; \$200 for the amount of excess emissions occurring during the next 90 days (210 total days) of noncompliance; \$300 for the amount of excess emissions occurring during the next 90 days (300 total days) of noncompliance; \$400 for the amount of excess emissions occurring during the next 65 days (365 total days) of noncompliance; and \$500 for the amount of excess emissions occurring after 365 total days of noncompliance.

### III. ECONOMIC BENEFIT

The economic benefit that the violator has received from noncompliance will be calculated based on the estimated differential cost between the noncomplying heavy-duty vehicle or engine and the same make, model, and horse power rating with a CARB Executive Order. EPD will utilize current available market research data and/or published studies to estimate the cost differential to be used.

### IV. COOPERATION FACTOR

The degree of cooperation of a violator in remedying the violation is an appropriate element to consider in adjusting a penalty. A greater degree of cooperation and expeditious action would decrease the penalty. For very low cooperation EPD will add 30 percent, for reasonable cooperation, no adjustment, and for very good cooperation subtract 30 percent.

### V. HISTORY OF NONCOMPLIANCE

Sources that have had a history of Heavy-Duty Diesel Engine Requirements Rule violations may not be providing the necessary resources to assure compliance. A history of noncompliance would normally result in a greater increase of the penalty. For no history of noncompliance no adjustment, for one past violation add 10 percent, for two past violations add 20 percent, and for three or more past violations, add 30 percent.

### VI. ABILITY TO PAY

It is not the intent of this penalty guidance to seek penalties that are clearly beyond the means of the violator to pay. At the same time, it is important that the regulated community not view noncompliance as a way of abetting a financially troubled business. The burden to demonstrate its ability to pay rests strictly with the violator. Absent information to the contrary, the penalty should not be adjusted for this factor.

This ability to pay factor requires a significant amount of financial information specific to each violator.

## VII. SENSITIVITY

### 1. Sensitivity of the Environment

Excess emissions in a nonattainment area are usually more serious than excess emissions in an attainment area.

For VOC, NO<sub>x</sub>, or PM emitted in excess due to violation of the Heavy-Duty Diesel Engine Requirements Rule whereby the heavy-duty diesel vehicle is operated in any ozone or PM designated nonattainment area, multiply the penalty amount by 2.

### 2. Toxicity of the Pollutant

Violations involving air pollutants identified as hazardous air pollutants or toxic air pollutants are more serious and should result in larger penalties. For hazardous air pollutants emitted in excess of a NESHAP standard under 40 CFR Part 61 or 40 CFR Part 63, multiply the penalty amount by 4.

## VIII. VIOLATION OF CONSENT ORDERS

For violation of prior Consent Orders to which both parties have agreed, a penalty of up to 10 times the original penalty may be imposed.

## IX. SPECIAL BASIS

In unusual cases, the Division may elect to use a special basis for penalties. That is not expected to occur often. When done, the reasons and basis of the penalty will be documented. The occurrence of such cases may be used to make appropriate changes to these procedures in the future.

## X. EXPEDITED AGREEMENT AND ACTION

If a violator promptly enters into a negotiated final Consent Order and agrees to expeditiously correct the violation(s), the proposed penalty may be negotiated downward - normally no more than 30 percent if a first-time violation or 15 percent if not the first time in violation. If the violator is difficult to negotiate with, no reduction should be considered.

## XI. ADMINISTRATIVE ORDERS

If negotiation does not result in a Consent Order in a reasonable time period, EPD may elect to issue an Administrative Order. The violator who receives an Administrative Order may appeal that action before an Administrative Law Judge. The Judge will determine the final amount of penalty in such a case. The Office of the Attorney General will provide all legal representation for EPD.