

CHAPTER 8. ENFORCEMENT PROCEDURES

ARTICLE 1. VIOLATIONS

8-1-010. Classification and civil penalties

- A. A person who violates any provision of this Code, any permit or permit condition issued pursuant to this Code, any fee or filing requirement, an effective order of abatement issued pursuant to this Code or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than \$10,000 per day per violation. The County Attorney at the request of the Control Officer shall file an action in superior court to recover penalties provided for in this section.
- B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the Control Officer has notified the source of the violation and makes a *prima facie* showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violations shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in Subsection A. of this section.
- C. In determining the amount of a civil penalty under this section, the court, in accordance with A.R. S. §49-513 (1992), shall consider all of the following:
 - 1. The seriousness of the violation.
 - 2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
 - 3. Any history of that violation.
 - 4. Any good faith efforts to comply with the applicable requirements.
 - 5. The economic impact of the penalty on the violator.
 - 6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
 - 7. Payment by the violator of penalties previously assessed for the same violation.
 - 8. Other factors as the court deems relevant.
- D. All penalties collected pursuant to this section shall be deposited in the special public health fund authorized in A.R. S. §49-480 (1992).

[Adopted June 29, 1993 and effective September 1, 1993. Amended Subsections A. and C. effective November 3, 1993.]

8-1-020. Violation; classification; definition

From and after October 31, 1994:

- A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U . S.C. §11002(a)(2) (1990) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or

serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the Administrator, ADEQ Director or Control Officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.
 2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant. Notwithstanding Subdivisions 1. and 2. of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.
- B. A person who operates a source that is required to have a permit both under this Code and under Title V of the Clean Air Act (1990) and who knowingly operates such source without a permit issued by the Control Officer and without having filed a complete application for renewal of an existing permit in accordance with Title V of the Clean Air Act (1990) and this Code is guilty of a class 5 felony.
- C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this Code and under Title V of the Clean Air Act (1990), and who knowingly violates such emission standard is guilty of a class 5 felony.
- D. A person who is subject to an effective order of abatement issued pursuant to this Code and who knowingly violates such order is guilty of a class 5 felony.
- E. A person who is required by the Control Officer pursuant to this Code to conduct performance tests and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.
- F. A person who is required by the Control Officer to maintain any monitoring device pursuant to this Code, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.
- G. A person who operates a source that is required to have a permit issued pursuant to this Code and that is subject to a material permit condition other than an emission standard identified in Subsection C. of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition as defined in §3-1-109.
- H. A person who is required to obtain a permit before commencing construction of a source both under this Code and under Title V of the Clean Air Act (1990), and who knowingly commences construction of such source without a permit issued by the Control Officer is guilty of a class 6 felony.
- I. A person who operates a source that is not identified in Subsection B. of this section and that requires a permit under this Code, and who knowingly operates such source without a permit issued by the Control Officer and without having filed a complete application for renewal of an existing permit in accordance with this Code is guilty of a class 6 felony.
- J. A person who is required by the Control Officer pursuant to this Code to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.
- K. A person who is required to obtain a permit to commence construction of a source under this Code but not under Title V of the Clean Air Act (1990), and who acting with criminal negligence commences construction of such source without a permit issued by the Control Officer is guilty of a class 1 misdemeanor.

- L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:
1. Violates a permit condition not described in Subsections C. or G. of this section.
 2. Violates an opacity standard, unless the opacity standard is required by §111 or Title I, Part C or D, of the Clean Air Act (1990).
 3. Violates a fee or filing requirement established both under this Code and under Title V of the Clean Air Act (1990).
 4. Violates any other provision of this Code for which a penalty is not otherwise prescribed.
- M. Under this section, a knowing violation that continues for more than one day, that results from a single act or series of related acts, constitutes the commission of a single offense.
- N. In determining the amount of a fine under this section, the court, in accordance with A.R. S. §49-514 (1992), shall consider all of the following:
1. The seriousness of the violation.
 2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
 3. Any history of that violation.
 4. Any good faith efforts to comply with the applicable requirements.
 5. The economic impact of the penalty of the violator.
 6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
 7. Payment by the violator of penalties previously assessed for the same violation.
 8. Other aggravating and mitigating factors, as the court deems relevant.
- O. It shall be an affirmative defense to any prosecution under Subsection A. of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:
1. An occupation, business or profession.
 2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.
- P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under Subsections C. or G. or Subsection L. , Subdivisions 1. , 2. or 4. of this section that both of the following conditions were satisfied:
1. The violation was reported by verbal or facsimile notification to the Control Officer within twenty four hours after the source first learned of the violation.
 2. The owner or operator of the source provided written notification to the control officer containing all of the following information within seventy-two hours following the verbal or facsimile notification:
 - a. Confirmation of the violation for which verbal or facsimile notification was provided.
 - b. Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved. In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after

violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

- Q. It shall be an affirmative defense to any prosecution under Subsections B. , H . , I. or K. of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by the District, the defendant obtained and relied upon the written advice of the District that no permit was necessary. Failure of the District to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.
- R. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.
- S. Under this section, to prove a knowing violation the County must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.
- T. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the Administrator or the ADEQ Director or Control Officer.

[Adopted effective November 3, 1993 and effective October 31, 1994.]

8-1-030. Mitigating factors in the event of a violation

- A. Emissions in excess of an applicable emission limitation contained in this Code or in the terms of a permit shall constitute a violation of this Code. The Control Officer in pursuing a penalty, or a body having jurisdiction in assessing a penalty, may, but need not, consider a showing by the permittee of any of the following in mitigation of the penalty assessed:
 - 1. Compliance with the excess emissions reporting requirements in subsection C. of the section.
 - 2. The excess emissions resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during startup or shutdown, resulted from unavoidable conditions during upset of operations, or the greater or more extended excess emissions will result unless scheduled maintenance is performed.
 - 3. The air pollution control equipment, process equipment, or process were at all times maintained and operated in a manner consistent with good practice for minimizing emissions.
 - 4. Where repairs were required, such repairs were made in an expeditious fashion when the person knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime

were utilized where practical to insure that such repairs were made as expeditiously as possible. If offshift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that such measures were impractical.

5. During the period of excess emissions there were no measured violations of the ambient air quality standards established in Chapter 2 of this Code which could be attributed to the emitting facility.
 6. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
 7. All reasonable and practicable measures within were implemented to prevent the occurrence of excess emissions.
 8. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
 9. All feasible steps were taken to minimize the impact of the excess emissions on potential violations of ambient air quality standards.
- B. It shall be the burden of the owner or operator of the source to demonstrate, through submission of the data and information required by this section, that all reasonable and practicable measures within the owner of operator' s control were implemented to prevent the occurrence of excess emissions.
- C. Excess emissions shall be reported as follows:
1. The owner or operator of any source issued a permit shall report to the Control Officer any emissions in excess of the limits established by the chapter or the applicable permit. Such report shall be in two parts as specified below:
 - a. Notifications by telephone or facsimile within 24 hours or the next business day, whichever is later, of the time when the owner or operator first learned of the occurrence of excess emissions including all available information from Subdivision 2. of this subsection.
 - b. Detailed written notification within 3 working days of the initial occurrence containing the information listed in Subdivision 2. of this subsection.
 2. The excess emissions report shall contain the following information:
 - a. The identity of each stack or other emission point where the excess emissions occurred.
 - b. The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions.
 - c. The time and duration or expected duration of the excess emissions.
 - d. The identity of the equipment from which the excess emissions emanated.
 - e. The nature and cause of such emissions.
 - f. If the excess emissions were the result of a malfunction, steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunctions.
 - g. The steps that were or are being taken to limit the excess emissions. If the source's permit contains procedures governing source operation during periods of start-up or malfunction and the excess

emissions resulted from start-up or malfunction, the report shall contain a list of steps taken to comply with the permits procedures.

- D. In the case of continuous or recurring excess emissions, the notification requirements of this section shall be satisfied in the source provides the required notification after excess emissions are first detected and includes in such notification of an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to Paragraph C. 1. b. of this section.
- E. Information required to be submitted by this section shall be summarized and reported to the Control Officer in accordance with provisions contained in the applicable permit issued pursuant to the requirements of this chapter.
- F. No mitigating factor set forth in this section shall be considered when a violation unduly endangered human health or safety, either directly or indirectly.

[Adopted effective June 29, 1993. Former Section 8-1-050 renumbered as Section 8-1-030 and amended effective November 3, 1993. Amended February 22, 1995.]

8-1-040. Production of records

When the Control Officer has reasonable cause to believe that any person has violated or is in violation of any provision of this Code, any rule adopted pursuant to this Code, or any requirement of a permit issued pursuant to this Code, he may request, in writing, that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this Code.

[Adopted June 29, 1993 and effective September 1, 1993. Former Section 8-1-020 renumbered without change as Section 8-1-040 effective November 3, 1993.]

8-1-050. Right of entry and inspection

The Control Officer, during reasonable hours, and for the purpose of enforcing and administering this Code, or any permit issued under this Code, may, with the consent of the owner, enter every building, premises, or other place, except the interior of structures used as private residences. Upon entering any building, premises or other place, the Control Officer shall observe reasonable standard safety requirements, as set forth by the owner or operator of such source, such as donning a hard hat, safety glasses and safety shoes. In the event that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate. Any person who in any way denies, obstructs, or hampers such entrance or inspection that is lawfully authorized by warrant shall be prosecuted pursuant to A.R. S. §49-488 (1992).

[Adopted effective June 29, 1993. Former Section 3-1-130 renumbered without change as Section 8-1-050 effective November 3, 1993.]

8-1-060. Special inspection warrant

- A. The Control Officer and his deputies charged under this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior of structures used as private residences.

- B. Upon showing by the affidavit of the Control Officer or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.
- C. The warrant shall be in substantially the following form:

"County of Pinal, state of Arizona to any Control Officer or Deputy Control Officer in the county of proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of _____ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if said premises comply with (section _____ of the Arizona Revised Statutes) or (section _____ of the PCAQCD Regulations), you are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable.

Date, signature and title of office. "

The endorsement on the warrant shall be in substantially the following form:

"Received by me _____, 20__ , at ___o' clock _____(name of Control Officer or Deputy Control Officer)."

The return of officer shall be in substantially the following form:

" I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).

Dated this ___day of _____, 20_____.

(name of Control Officer or Deputy Control Officer). "

- D. The warrant may be served by the Control Officer or his deputies mentioned in its directions, but by no other person except in aid of the Control Officer or his deputies, on his requiring it, the Control Officer or his deputies being present and acting in its execution.
- E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.
- F. Any person who knowingly refuses to permit an inspection lawfully authorized by warrant issued pursuant to this Code is guilty of a petty offense.

[Adopted effective November 3, 1993. Amended October 27, 2004.]

8-1-070. Order of abatement

- A. When the Control Officer has reasonable cause to believe that any person has violated or is in violation of any provision of this Code, or any requirement of a permit issued pursuant to this Code, the Control Officer may serve upon such person by certified mail, or in person,

an order of abatement or file a complaint in superior court alleging a violation pursuant to § 8-1-010.

- B. The order shall state with particularity the act constituting the violation, shall state in its entirety the certain requirement, provision or rule violated, shall state the duration of the order and that the alleged violator is entitled to a hearing if such hearing is requested in writing within 30 days after the date of issuance of the order. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met.
- C. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this Code and Title V of the Clean Air Act (1990), the order shall require compliance no later than one year after the date the order was issued, and shall be nonrenewable.

[Adopted June 29, 1993 and effective September 1, 1993. Former Section 8-1-030 renumbered without change as Section 8-1-070 effective November 3, 1993.]

8-1-080. Injunctive relief

The County Attorney, at the request of the Control Officer, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the Control Officer has reasonable cause to believe that any of the following is occurring:

- 1. A person has violated or is in violation of any provision of this Code, a rule adopted pursuant to this Code or a permit issued pursuant to this code.
- 2. A person has violated or is in violation of an effective order of abatement.
- 3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under A.R. S. Title 3, Chapter 2, Article 6 (1992).

[Adopted June 29, 1993 and effective September 3, 1993. Former Section 8-1-040 renumbered without change as Section 8-1-080 effective November 3, 1993.]