

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 15

Enforcement Procedure and Civil Penalties

Section 15-001 Policy

1. The goals of enforcement are to:
 - A. Obtain and maintain compliance with the Agency's statutes, rules, permits and orders;
 - B. Protect the public health and the environment;
 - C. Deter future violators and violations; and
 - D. Ensure an appropriate and consistent enforcement program.
2. As required by this Title, the Agency will endeavor by conference, conciliation and persuasion to solicit compliance.
3. The Agency shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in Subsection 1 of this Section.
4. Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Section 15-003 Scope of Applicability

These amendments shall apply to violations occurring on or after the effective date of such amendments. They shall not apply to cases pending. For purposes of determining Class and Magnitude of violation, only, LRAPA rules and regulations in effect prior to these amendments shall apply to violations occurring before the effective date of these amendments. For purposes of determining number and gravity of prior violations, these amendments will apply.

Section 15-005 Definitions

Words and terms used in this title are defined as follows, unless the context requires otherwise:

- "Class I (one) Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class II (two) violations, one Class II and two Class III (three) violations, or three Class III violations.

- "Compliance" means meeting the requirements of the Agency's or Department's, Commission's or EPA's rules, permits or orders.
- "Documented Violation" means any violation which the Agency or other government agency records after observation, investigation or data collection.
- "Enforcement" means any documented action taken to address a violation.
- "Federal Operating Permit Program" means a program approved by the DEQ Administrator under 40 CFR Part 70 (last amended by 57 FR 32295, July 21, 1992).
- "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and consciously set out to commit the violation.
- "Formal Enforcement Action" means an administrative action signed by the Director or authorized representative which is issued to a Respondent for a documented violation. A formal enforcement action may require the Respondent to take specific action within a specified time frame and/or state the consequences for continued non-compliance.
- "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.
- "Magnitude of the Violation" means the extent of a violator's deviation from federal, state and the Agency's statutes, rules, standards, permits or orders. In determining magnitude, the Agency shall consider available information, including such factors as concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In any case, the Agency may consider any single factor to be conclusive. Deviations shall be categorized as major, moderate or minor.
- "Negligence" or "negligent" means failing to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.
- "Order" means:
 - A. Any action satisfying the definition given in ORS Chapter 183; or
 - B. Any other action so designated in ORS Chapter 468 or 468.A.
- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Prior Violation" means any violation established, with or without admission, by payment of a civil penalty, by an order of default, or by a stipulated or final order of the Agency.
- "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the

circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

- "Respondent" means the person to whom a formal enforcement action is issued.
- "Risk of Harm" means the level of risk to public health or the environment created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation.
- "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof, and includes both acts and omissions. Violations shall be classed according to risk of harm as follows:
 - A. "Class I (one)" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in an agency permit or board order;
 - B. "Class II (two)" means any violation which poses a moderate risk of harm to public health or the environment;
 - C. "Class III (three)" means any violation which poses a minor risk of harm to public health or the environment.

Section 15-010 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense and that, in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

Section 15-015 Notice of Violation

When the Director or the Board has cause to believe that a violation has occurred, the Director or authorized representative may document the violation and initiate any of the enforcement actions described in Subsections 15-018 and 15-020 by serving the appropriate notice to the responsible party or Respondent according to ORS 183 and these rules and regulations. Cause to believe a violation has occurred can be prima facie evidence based on first-hand observations, reports of observations by citizens or government officials, results of tests, instrument reading or any other evidence which the Director finds, in his discretion, to be sufficient to constitute cause to believe.

Section 15-018 Notice of Permit Violations and Exceptions

1. Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit, the Agency shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the Agency within five (5) working days of receipt of the Notice of Permit Violation:

- A. A written response from the permittee acceptable to the Agency certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable the Agency to determine that compliance has been achieved.
- B. A written proposal, acceptable to the Agency, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:
 - (1) Proposed compliance dates;
 - (2) Proposed date to submit a detailed compliance schedule;
 - (3) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;
 - (4) A statement that the permittee has reviewed all other conditions and limitations of the permit, and no other violations of the permit were discovered by the permittee.
- C. In the event that any compliance schedule to be approved by the Agency, pursuant to Subsection 1.B of this Section, provides for a compliance period of greater than six (6) months, the Agency shall incorporate the compliance schedule into an Order described in LRAPA subsection 15-020-4.A which provides for stipulated penalties in the event of any non-compliance therewith. Stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. Stipulated penalties may also be required for compliance periods of less than or equal to six (6) months. The stipulated penalties shall be set at amounts consistent with those established under LRAPA Section 15-045.
- D. The certification allowed in Subsection 1.A of this Section shall be signed by a Responsible Official, based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of the permitted facility means one of the following:
 - (1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
 - (3) For a municipality, state, federal, or other public agency, either a principal executive officer or appropriate elected official.

2. No advance notice prior to assessment of a civil penalty shall be required under Subsection 1 of this Section, and the Agency may issue a Notice of Civil Penalty Assessment, without any preconditions, if:
 - A. The violation is intentional;
 - B. The violation would not normally occur for five consecutive days;
 - C. The permittee has received a Notice of Permit Violation or other formal enforcement action with respect to any violation of the permit within 36 (thirty-six) months immediately preceding the documented violation;
 - D. The permittee is subject to the Federal Operating Permit Program under ORS 468.A-300 to 468.A-320, OAR 340 Divisions 28 and 32, and violates any rule or standard adopted or permit and/or order issued under ORS 468.A and applicable to the permittee;
 - E. If EPA notifies the Department that the advance notice provision of ORS 468.126 would disqualify a program from federal approval or delegation; or
 - F. The permittee has an Air Contaminant Discharge Permit and violates any State Implementation Plan requirement contained in the permit.

For purposes of this Section, "permit" includes permit renewals and modifications, and no such renewal or modification shall result in the requirement that the Agency provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation or other formal enforcement action with respect to the permit within 36 (thirty-six) months.

Section 15-020 Enforcement Actions

1. Notice of Non-compliance (NON):
 - A. Informs a person of a violation and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved. The notice may state that further enforcement action may, or will be taken.
 - B. Shall be issued under the direction of the Director or authorized representative.
 - C. Shall be issued for, but is not limited to, all classes of documented violations.
 - D. May be issued prior to issuance of a Notice of Civil Penalty or an Order.
2. Notice of Permit Violation (NPV):
 - A. Is issued pursuant to Section 15-018.
 - B. Shall be issued by the Director or authorized representative.

- C. Shall be issued for, but is not limited to, the first occurrence of a documented Class I permit violation which is not excepted under Subsection 15-018-2, or the repeated or continuing occurrence of documented Class II or III permit violations not excepted under subsection 15-018-2, or where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36 (thirty-six)-month period without being issued an NPV.
- 3. Notice of Civil Penalty Assessment (CPA):
 - A. Is issued pursuant to ORS 468.130, ORS 468.140, and LRAPA Sections 15-015, 15-025 and 15-030.
 - B. Shall be issued by the Director or authorized representative.
 - C. May be issued for, but is not limited to, the occurrence of any class of documented violation that is not limited by the NPV requirement of LRAPA Section 15-018.
 - 4. Order:
 - A. Is issued pursuant to ORS Chapters 183, 468, or 468A, and LRAPA Title 14;
 - B. May be in the form of a Board or Director Order or a Stipulation and Final Order (SFO):
 - (1) Board Orders shall be issued by the Board, or by the Director on behalf of the Board;
 - (2) Director Orders shall be issued by the Director or authorized representative;
 - (3) All Other Orders:
 - (a) May be negotiated;
 - (b) Shall be signed by the Director or authorized representative and the authorized representative of each other party.
 - C. May be issued for any class of violations.
 - 5. The enforcement actions described in Subsections 1 through 4 of this Section shall not limit the Director or Board from seeking legal or equitable remedies as provided by ORS Chapters 468 and 468A.

Section 15-025 Civil Penalty Schedule Matrices

- 1. In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Board's and Director's authorizing rules, regulations, permits or orders by service of a written Notice of Civil Penalty Assessment

upon the Respondent. Except for civil penalties assessed under LRAPA 15-045 and 15-050 (stipulated or intentional/reckless), or Title 16, the amount of any civil penalty shall be determined through the use of the following matrices, in conjunction with the formula contained in Section 15-030:

A. \$8000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$8,000	\$4,000	\$2,000
Class II	\$4,000	\$2,000	\$1,000
Class III	\$750	\$750	\$750

(1) The \$8000 penalty matrix applies to the following:

- (a) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.
- (b) Open burning violations as follows:
 - (i) Any violation of an open burning statute, rule permit or related order committed by a permitted industrial facility;
 - (ii) Any violation of LRAPA Title 47, Section 47-015-1E in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

B. \$6000 Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$6,000	\$3,000	\$1,500
Class II	\$3,000	\$1,500	\$750
Class III	\$500	\$500	\$500

(1) The \$6000 penalty matrix applies to the following:

- (a) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP, except for NSR, PSD, and Basic ACDP permits;
- (b) Any violation of an asbestos statute, rule, permit or related order except those violations listed in subsection D(1)b of this rule.

C. \$2500 Penalty Matrix:

Magnitude	Major	Moderate	Minor
Class I	\$2,500	\$1,250	\$625
Class II	\$1,250	\$625	\$300
Class III	\$200	\$200	\$200

(1) The \$2500 penalty matrix applies to the following:

- (a) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix;
- (b) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix;
- (c) Any violation of LRAPA Title 47, Section 47-015-1E in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

D. \$1000 penalty matrix applies to the following:

Magnitude	Major	Moderate	Minor
Class I	\$1,000	\$500	\$250
Class II	\$500	\$250	\$125
Class III	\$100	\$100	\$100

(1) The \$1000 penalty matrix applies to the following:

- (a) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix;
- (b) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

Section 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)

1. When determining the amount of civil penalty to be assessed for any violation, other than violations of LRAPA Title 16 which are determined in Title 16, and of ORS 468.996 which are determined according to the procedure set forth below in Section 15-050, the Director or authorized representative shall apply the following procedures:

- A. Determine the class and the magnitude of each violation;
- B. Choose the appropriate base penalty (BP) established by the matrices of Section 15-025 after determining the class and magnitude of each violation;
- C. Starting with the base penalty (BP), determine the amount of penalty through application of the formula:

$BP + [(.1 \times BP)(P + H + O + M + C)] + EB$ where:

- (1) "P" is whether the Respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purpose of determining "P," Class I equivalent or equivalent means two Class II violations, one Class II and two Class III violations, or three Class III violations. The values for "P" and the finding which supports each are as follows:
 - (a) 0 if no prior violations or there is insufficient information on which to base a finding;
 - (b) 1 if the prior violation is one Class II or two Class III's;
 - (c) 2 if the prior violation(s) is one Class I or equivalent;
 - (d) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1;
 - (e) 10 if the prior violations are nine or more class I's or equivalents, or if any of the prior violations were issued for any violation of ORS 468.996 (Civil Penalty for Intentional or Reckless Violation);
 - (f) The value of "P" will not exceed 10.
 - (g) In determining the appropriate value for prior violations as listed above, the Agency shall reduce the appropriate factor by:
 - (i) 2 if all the prior violations were issued more than three years before the date the current violation occurred;
 - (ii) 4 if all the prior violations were issued more than five years before the date the current violation occurred.
 - (h) Include all prior violations at all facilities owned or operated by the same violator within the state of Oregon;
 - (i) The value of "P" may not be reduced below zero;
 - (j) Any prior violation which occurred more than ten (10) years prior to the time of the present violation shall not be included in the above determination.

- (2) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any prior violations. The sum of the values for "P" and "H" may not be less than one unless the Respondent took extraordinary efforts to correct or minimize the effects of all prior violations. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral, the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:
- (a) -2 if Respondent corrected each prior violation;
 - (b) -1 if violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior violations;
 - (c) 0 if there is no prior history or if there is insufficient information on which to base a finding;
 - (d) 2 if the Respondent took no feasible steps to correct each prior violation.
- (3) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:
- (a) 0 if the violation existed for one day or less and did not recur on the same day, or if there is insufficient information on which to base a finding;
 - (b) 2 if the violation recurred on the same day, or existed for or occurred on more than one day up to and including six days, which need not be consecutive days;
 - (c) 3 if the violation existed for or occurred from 7 to 28 days, which need not be consecutive days;
 - (d) 4 if the violation existed for or occurred on more than 28 days, which need not be consecutive days;
 - (e) The Agency may, at its discretion, assess separate penalties for each day that a violation occurs. If the Agency does so, the "O" factor for each affected violation will be set at 0.
- (4) "M" is the mental state of the Respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:
- (a) 0 if there is insufficient information on which to base a finding;
 - (b) 2 if the Respondent's conduct was negligent or the Respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation. Holding a permit that prohibits or requires conduct is

presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case;

- (c) 6 if the Respondent's conduct was reckless, or the Respondent had actual knowledge that its conduct would be a violation and Respondent's conduct was intentional. A Respondent that previously received a Notice of Noncompliance, for the same violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case;
 - (d) 10 if the Respondent acted flagrantly.
- (5) "C" is the Respondent's efforts to correct the violation. The values for "C" and the finding which supports each are as follows:
- (a) -3 if the Respondent made extraordinary efforts to correct the violation, or took extraordinary efforts to minimize the effects of the violation;
 - (b) -2 if the Respondent made reasonable efforts to correct the violation or, reasonable affirmative efforts to minimize the effects of the violation, or extraordinary efforts to ensure the violation would not be repeated;
 - (c) -1 if the Respondent eventually made efforts to correct the violation, or took affirmative efforts to minimize the effects of the violation;
 - (d) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected or minimized;
 - (e) 2 if the Respondent did not address the violation as described in paragraphs (a) through (c) and the facts do not support a finding under paragraph (d).
- (6) "EB" is the approximated dollar value of the economic benefit gained and the costs avoided or delayed (without duplication) as a result the Respondent's noncompliance. The EB may be determined using the U. S. Environmental Protection Agency's BEN model. Upon request of the Respondent, the Agency will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and the discount rate are presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance. Upon request of the Respondent, the Agency will use the model in determining the economic benefit component of the civil penalty.
- (7) The Agency may make, for use in the applicable model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the Respondent. Economic benefit will be calculated without duplicating or double-counting the advantages realized by Respondent as a result of its noncompliance.

- (8) The Agency need not calculate EB if the Agency makes a reasonable determination that the EB is de minimis or if there is insufficient information available to the Agency on which to make an estimate under section (7) of this rule.
 - (9) The Agency may assess EB whether or not it assesses any other portion of the civil penalty using the formula in LRAPA Title 15, Section 15-030.
 - (10) The Agency's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, the Agency may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the Agency has the discretion not to impose the base penalty portion of the civil penalty. Nothing in this section precludes the Agency from assessing a penalty of up to the maximum allowed for the violation by statute.
2. In addition to the factors listed in Subsection 1 of this Section, the Director may consider any other relevant rule of the Agency and shall state the effect the consideration had on the penalty. On review, the Board or hearings officer shall consider the factors contained in Subsection 1 of this Section and any other relevant rule of the Agency.
 3. The Director or Board may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Director or Board documentary evidence concerning Respondent's inability to pay the full penalty amount.
 - A. When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Director or Board may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.
 - B. In determining the Respondent's ability to pay a civil penalty, the Agency may use the U. S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Agency shall use the version of the model that the Agency finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Agency will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.
 - C. In appropriate circumstances, the Director or Board may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance.

Section 15-035 Written Notice of Civil Penalty Assessment--When Penalty Payable

1. A civil penalty shall be due and payable ten (10) days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and LRAPA Section 14-170.
2. The written Notice of Civil Penalty Assessment shall comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.
3. The rules prescribing procedure in contested case proceedings contained in LRAPA Title 14 shall apply thereafter.

Section 15-040 Compromise or Settlement of Civil Penalty by Director

1. Any time after service of the written Notice of Civil Penalty Assessment, the Board or Director may, in their discretion, compromise or settle any unpaid civil penalty at any amount that the Board or Director deems appropriate. A refusal to compromise or settle shall not be subject to review. Any compromise or settlement executed by the Director shall be final, except for major Class I violations with penalties calculated under 15-025-1.A, which must be approved by the board.
2. In determining whether a penalty should be compromised or settled, the Board or Director may take into account the following:
 - A. New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in LRAPA Section 15-030;
 - B. The effect of compromise or settlement on deterrence;
 - C. Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
 - D. Whether Respondent has had any previous penalties which have been compromised or settled;
 - E. Whether the compromise or settlement would be consistent with the Agency's goal of protecting the public health and environment;
 - F. The relative strength or weakness of the Agency's case.

Section 15-045 Stipulated Penalties

Nothing in Title 15 shall affect the ability of the Board or Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued pursuant to ORS Chapter 468, 468.A or these rules and regulations.

Section 15-050 Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below.

Any person who intentionally or recklessly violates any provision of ORS 468, 468A, or any rule or standard or order of the Director or Board which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures.

1. The base penalties listed in 15-050-2 are to be used in lieu of the penalty method in 15-025-1.A and B.
2. Select one of the following base penalties after determining the cause of the violation:
 - A. \$50,000 if the violation was caused recklessly;
 - B. \$75,000 if the violation was caused intentionally;
 - C. \$100,000 if the violation was caused flagrantly.

3. Then determine the civil penalty through application of the formula:

$BP + (.1 \times BP)(P + H + O + C) + EB$, in accordance with the applicable subsections of Section 15-030.

Section 15-055 Air Quality Classification of Violation

Violations pertaining to air quality shall be classified as follows:

1. Class I (One)
 - A. Violating a requirement or conditions of a commission, department or Agency, consent order, agreement, consent judgment (formerly called judicial consent decree) or variance;
 - B. Violating a compliance schedule or condition in a permit;
 - C. Submitting false, inaccurate or incomplete information to the Agency where the submittal masked a violation, caused environmental harm, or caused the Agency to misinterpret any substantive fact;
 - D. Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree);
 - E. Using fraud or deceit to obtain Agency approval, permit or license;

- F. Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
- G. Operating a major source, as defined in LRAPA Title 12, without first obtaining the required permit;
- H. Exceeding a Plant Site Emission Limit (PSEL);
- I. Failing to install control equipment or meet performance standards as require by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
- J. Exceeding a hazardous air pollutant emission limit;
- K. Failing to comply with an Emergency Action Plan;
- L. Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard that was established pursuant to NSR/PSD, or the Western Backstop SO2 Trading Program;
- M. Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in LRAPA Title 12;
- N. Exceeding an emission limit, including a grain loading standard, by a major source, as defined in LRAPA Title 12, when the violation was detected during a reference method stack test;
- O. Failing to perform testing or monitoring required by a permit, rule or order, that results in failure to show compliance with a (PSEL), or with an emission limitation or performance standard set pursuant to (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rate (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;
- P. Causing emissions that are a hazard to public safety;
- Q. Violating a work practice requirement for asbestos abatement projects;
- R. Storing or accumulating friable asbestos material or asbestos-containing waste material;
- S. Conducting an asbestos abatement project by a person not licensed as an asbestos abatement contractor;

- T. Violating an LRAPA Title 43 disposal requirement for asbestos-containing waste material;
 - U. Failing to hire a licensed contractor to conduct an asbestos abatement project;
 - V. Openly burning materials which are prohibited from being open burned anywhere in Lane County, Oregon by LRAPA Title 47, Section 47-015-1E;
 - W. Failing to install or use certified vapor recovery equipment;
 - X. Failing to conduct weekly perchloroethylene leak inspection, and to measure the perchloroethylene refrigerated condenser outlet temperature and log the results, by a dry cleaning owner or operator.
2. Class II (Two)
- A. Violating any otherwise unclassified requirement;
 - B. Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) without first obtaining such permit, unless otherwise classified;
 - C. Violating the terms or conditions of a permit or license, unless otherwise classified;
 - D. Modifying a source in such a way as to require a permit modification from the Agency without first obtaining such approval from the Agency, unless otherwise classified;
 - E. Exceeding an opacity limit, unless otherwise classified;
 - F. Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;
 - G. Failing to timely submit an ACDP annual report;
 - H. Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;
 - I. Failing to timely submit a permit application or permit renewal application;
 - J. Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of LRAPA Title 47;
 - K. Failing to comply with open burning requirements in violation of any provision of LRAPA Title 47, unless otherwise classified;
 - L. Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of Stage I or Stage II vapor collection system;

- M. Failing to provide notification of an asbestos abatement project;
 - N. Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;
 - O. Violating on-road motor vehicle refinishing rules contained in OAR 340-242-0620;
 - P. Failing to immediately clean up a release within a containment system of dry cleaning solvent;
 - Q. Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility;
 - R. Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator;
 - S. Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations;
 - T. Failing to timely submit an annual report to the Agency, by a dry cleaning owner or operator.
3. Class III (Three)
- A. Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emissions limitations or underlying requirements;
 - B. Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
 - C. Modifying a source in such a way as to require construction approval from the Agency without first obtaining such approval from the Agency, unless otherwise classified;
 - D. Failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary, unless otherwise classified;
 - E. Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project;
 - F. Failing to notify the Agency of change of ownership or operator or closure at a dry business or dry cleaning store.

Section 15-057 Determination of Violation Magnitude

- 1. For each civil penalty assessed, the magnitude is moderate unless:

- A. A selected magnitude is specified in LRAPA 15-060 and information is reasonably available to the Agency to determine the application of that selected magnitude; or
 - B. The Agency determines using information reasonably available to it, that the magnitude should be major under section 3 or minor under section 4.
2. If the Agency determines, using information reasonably available to the Agency, that the general or selected magnitude applies, the Agency's determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that another magnitude applies and is more probable than the presumed magnitude.
 3. The magnitude of the violation is major if the Agency finds that the violation had a significant adverse impact on human health or the environment. In making this finding, the Agency will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission or department and LRAPA rules standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the Agency may consider any single factor to be conclusive.
 4. The magnitude of the violation is minor if the Agency finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or other environmental receptors. In making this finding, the Agency will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission or department of LRAPA rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the Agency may consider any single factor to be conclusive.

Section 15-060 Selected Magnitude Categories

Magnitudes for selected violations will be determined as follows if sufficient information is reasonably available to the Agency to make a determination:

1. Opacity limitation violations:
 - A. Major— opacity measurements or readings of 20 percent opacity or more over the applicable limitation; or an opacity violation by a federal major source as defined in LRAPA Title 12;
 - B. Moderate— opacity measurements or readings of greater than 10 percent and less than 20 percent over the applicable limitation;
 - C. Minor— opacity measurements or readings of 10 percent or less opacity over the applicable limitation.

2. Operation of a major source, as defined in LRAPA title 12, without first obtaining the required permit: Major – The BACT analysis shows need for additional controls and/or if offsets are required.
3. Air contaminant emission limitation violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate amounts listed in the following table:

POLLUTANT	AMOUNT
Carbon Monoxide	100 tons/year
Nitrogen Oxides (NO _x)	40 tons/year
Particulate Matter A. TSP B. PM ₁₀	25 tons/year 15 tons/year
Sulfur Dioxide	40 tons/year
Volatile Organic Compounds (VOC)	40 tons/year
Lead	1200 lbs/year
Fluorides	3 tons/year
Sulfuric Acid Mist	7 tons/year
Hydrogen Sulfide	10 tons/year
Total Reduced Sulfur (including hydrogen sulfide)	10 tons/year
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons/year
Municipal waste combustor organics (measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 ton/year
Municipal waste combustor metals (measured as particulate matter)	15 tons/year
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tons/year
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tons/year

A. Major:

- (1) Exceeding the annual amount, as established by permit, rule or order, by more than the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by more than 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by more than 0.5 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by more than 0.1 percent of the above amount.

B. Moderate:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 50 up to and including 100 percent of the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 5 up to and including 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.25 up to and including 0.50 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.10 percent of the above amount.

C. Minor:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount less than 50 percent of the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount less than 5 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount less than 0.25 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount less than 0.05 percent of the above amount.

4. Violation of Emergency Action Plans: Major magnitude in all cases.

5. Violations of on-road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor – Refinishing 10 or fewer on-road motor vehicles per year.

6. Asbestos violations:

- A. Major— more than 260 lineal feet or more than 160 square feet asbestos-containing material;

- B. Moderate— from 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square asbestos-containing material;
 - C. Minor—less than 40 lineal feet or 80 square feet of asbestos-containing material;
 - D. The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5 percent asbestos.
7. Open burning violations:
- A. Major– Initiating or allowing the initiation of open burning of 20 or more cubic yard of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;
 - B. Moderate– Initiating or allowing the initiation of open burning of 5 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials(inclusive of tires); or 3 to 9 tires; or if the Agency lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned;
 - C. Minor– Initiating or allowing the initiation of open burning of less than 5 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires;
 - D. The selected magnitude may be increased one level if the Agency finds that one or more of the following are true or decreased one level if the Agency finds that none of the following are true:
 - (1) The burning took place in an open burning control area;
 - (2) The burning took place in an area where open burning is prohibited;
 - (3) The burning took place in a non-attainment or maintenance area for PM₁₀ or PM_{2.5};
 - (4) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

Section 15-065 Appeals

1. Any person who is issued a corrective action order or who is assessed with a civil penalty under Title 15 may appeal such order or penalty to the Agency within twenty-one (21) days of the date of mailing of the notice. The hearing and appeal shall be conducted according to Title 14 of these rules.
2. In reviewing the order or the penalty assessed by the Director, the Hearings Officer shall consider the factors set forth in Section 15-030, the findings of the Director and the

evidence and argument presented at the hearing. The Hearings Officer shall make findings as to those factors deemed to be significant.

3. Unless the issue is raised in Respondent's answer to the order or notice of assessment of civil penalty, the Hearings Officer may presume that the economic and financial conditions of Respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the Respondent's economic and financial condition shall be upon the Respondent.
4. If a timely request for a hearing is not received by the Agency, the Director may issue a final order upon default based upon a prima facie case as provided in Sections 14-175.4.C and 14-205.2. If the penalty is not paid within ten (10) days of issuance of the final order, the order shall constitute a judgment and may be filed as provided in ORS 468.135(4).