

## REVISED MUNICIPAL CODE OF THE CITY AND COUNTY OF DENVER, COLORADO

### Chapter 4 - AIR POLLUTION CONTROL

#### Sec. 4-9. - Civil or administrative penalties.

(a) Any person who violates any provision of this chapter shall also be subject to a civil penalty of not more than two thousand dollars (\$2,000.00) per violation per day.

(b) Any person who violates any order issued by the manager shall also be subject to a civil penalty of not more than two thousand dollars (\$2,000.00) per violation per day.

(c) The manager shall determine the amount of penalties. In determining the propriety and amount of penalties, the following factors may be considered:

(1) The potential harm to public health, or welfare, safety or the environment; as a result of the violation;

(2) The history of previous violations;

(3) The number of continuing rule or code violations in the order;

(4) The person's current compliance with this chapter and rules and regulations adopted and promulgated pursuant thereto;

(5) Whether the violation occurred because of negligent or intentional conduct;

(6) Economic benefit of noncompliance to the violator;

(7) The effect of the penalty on the person or entity's ability to continue in business;

(8) The demonstrated good faith of the person or entity charged in attempting to achieve rapid compliance after notification of a violation and other facts and circumstances relevant to the violation.

(d) Any person who disputes a violation for which a civil penalty has been assessed by or on behalf of the city pursuant to the authority of the manager, may petition the board for a hearing in accordance with article I of [chapter 24](#), D.R.M.C. and the rules and regulations adopted pursuant thereto. Compliance with this subsection is a jurisdictional prerequisite to any action brought under this section and failure to comply forever bars any such action.

(e) In the event a person fails to pay a civil penalty, the manager may collect penalties by action initiated in the district court for collection of the penalty. A stay of any order of the manager pending judicial review does not relieve any person from liability under subsection (a) or (b).

(f) The city may also petition the district court to issue a preliminary or permanent injunction, or both, as may be appropriate, restraining any person from the continued violation of this chapter. (Ord. No. 683-08, § 4, 12-8-08)

## DENVER DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### CRITERIA FOR EVALUATING VIOLATIONS AND ASSESSING CIVIL PENALTIES

A. General Criterion II.A: Potential Harm to Public Health, Safety, Welfare, or the Environment Resulting from the Violation.

1. The actual or threatened harm to public health, welfare, safety, or the environment. Select ONE of the following:

- i. Low Impact (1 Point): Constituents of concern (i.e. pollutants, particulates, other contaminants) have been released into the environment but emissions are deemed to be low, negligible, or non-existent risk to the environment, health, or safety.
- ii. Medium Impact (10 Points): Constituents of concern (i.e. pollutants, particulates, other contaminants) have been released into the environment and the emissions are deemed to have interfered with reasonable and comfortable use and enjoyment of property or have caused substantial annoyance or inconvenience to persons exposed.
- iii. High Impact (up to 50 Points). Constituents of concern (i.e. pollutants, particulates, other contaminants) have been released into the environment and the emissions are deemed to be detrimental to health and have the potential to cause injury to persons exposed or to damage property.

2. Involvement of Criteria Pollutant or Hazardous Air Pollutant. Select if applicable:

In considering the actual or threatened harm in General Criterion II.A.1, a factor of two times (2X) the penalty points assessed in General Criterion II.A.1 shall be added if the constituents of concern involve a Criteria Pollutant or a Hazardous Air Pollutant.

3. Potential long-term effects of the violation. Select if applicable:

In considering the actual or threatened harm in General Criterion II.A.1, a factor of five times (5X) the penalty points assessed in General Criterion II.A.1 shall be added if it is deemed that the violation will result in long-term (longer than 90 days) environmental or public health effects.

B. General Criterion II.B: Current Compliance; History of Previous Violations; and Number of Continuing Rule or Code Violations in the Order

1. Current status of compliance with Chapter 4 and rules and regulations adopted and promulgated pursuant thereto. Select ONE of the following:

- i. In Compliance (0 Points). Alleged violator has no outstanding or continuing violations of documented and substantiated prior violations of air quality regulations, codes, rules, requirements, and guidance documents.

- ii. Not in Compliance (up to 10 Points). Alleged violator has one (1) or more open and ongoing violation(s) of documented and substantiated prior violations of air quality regulations, codes, rules, requirements, and guidance documents within the past three (3) years.
2. History of prior violations (not continuing) in the past three (3) years. Select ONE of the following:
    - i. First Offense (0 Points). No previous documented and substantiated violation of air quality regulations, codes, rules, or requirements.
    - ii. Second Offense (up to 10 Points). Documented and substantiated prior violation of air quality regulations, codes, or requirements.
    - iii. Third or Subsequent Offense (up to 50 Points). Documented and substantiated multiple prior violations of air quality regulations, codes, rules, or requirements and including substantiated prior violations involving hazardous conditions notifications, solid waste, hazardous waste, wastewater, stormwater, drinking water, or underground or above ground storage tanks.
  3. Breaches of compliance orders from any duly authorized regulatory agency or court in the past three (3) years. Select ONE of the following:
    - i. No Breaches (0 Points). No documented breaches of prior compliance orders.
    - ii. Prior Breach(es) (up to 50 Points). One or more documented prior breaches of compliance orders.
- C. General Criterion II.C: Whether the Violation Occurred Because of Negligent or Intentional Conduct
1. The degree of carelessness or negligence and whether the act or failure to act was willful and wonton or reckless. Select ONE of the following:
    - i. Low (up to 5 Points). Alleged violation occurred as a result of an accident or upset condition or otherwise deemed to be unintentional or inadvertent.
    - ii. Medium (up to 10 Points). Alleged violation occurred as a result of carelessness or incompetence.
    - iii. High (up to 50 Points). Alleged violation occurred as a result of willful, wanton, or reckless action(s) or failure to act.
  2. The degree to which the violator acted in good faith to voluntarily implement timely and effective remedial measures. Select ONE of the following:
    - i. Low (0 Points). Remedial measures not necessary or required; or where necessary or required appropriate measures undertaken timely, voluntarily, and in good faith by the alleged violator.
    - ii. Medium (up to 10 Points). Necessary or remedial measures taken by alleged violator under duress or threat of order.
    - iii. High (up to 50 Points). Necessary or required remedial measures not undertaken.
  3. Actions on the part of the violator indicating efforts to conceal or cover-up a violation or the evidence of a violation. Select ONE of the following:
    - i. No Actions (0 Points). No documented evidence that the alleged violator has concealed, withheld, deceived, or covered-up a violation or the evidence of a violation.
    - ii. Actions (up to 50 Points). Evidence is documented that the alleged violator has concealed, withheld, deceived, or covered-up a violation or the evidence of a violation; falsified records or reports; or tampered with pollution control devices or equipment.
- D. General Criterion II.D: Economic Benefit
1. Economic benefit of non-compliance by the violator. Select ONE of the following:
    - i. Low Benefit (No Adjustment). Proposed penalty is greater than the economic benefit to the alleged violator for non-compliance or failure to take timely corrective measures.
    - ii. Excess Benefit (Adjust Penalty to Offset Benefit to Maximum Extent). Proposed penalty is less than the economic benefit to the alleged violator for non-compliance or failure to take timely corrective measures.
  2. Effect of civil penalty on the person or entity's ability to continue in business. Select ONE of the following:
    - i. Able to Pay (No Adjustment). Alleged violator has sufficient economic resources to pay the proposed penalty.

- ii. Unable to Pay (Discretionary Reduction up to 75% of Calculated Penalty). Alleged violator does not have the ability to pay the proposed penalty as determined by the Department.
- 3. Demonstrated good faith. Select ONE of the following:
  - i. Good Faith (0 Points). Alleged violator has demonstrated efforts to work cooperatively with the Department and to make timely and productive efforts to correct the alleged violation, to mitigate the impacts of the violation, or both.
  - ii. No Good Faith (50 Points). Alleged violator has had the opportunity to work cooperatively with the Department but has been uncooperative and not made timely and productive efforts to correct the alleged violation, to mitigate the impacts of the alleged violation, or both.
- E. General Criterion II.E: Other Factors and Circumstances Relevant to Violation
  - 1. The Department may add up to fifty (50) points per factor for factors not listed above but deemed relevant to the violation. Each additional factor must be documented, substantiated, and assigned an appropriate discretionary point value.

CIVIL PENALTY MATRIX

<b>Points</b>	<b>\$ Penalty</b>	<b>Points</b>	<b>\$ Penalty</b>	<b>Points</b>	<b>\$ Penalty</b>	<b>Points</b>	<b>\$ Penalty</b>	<b>Points</b>	<b>\$ Penalty</b>
0 - 49 =	\$150							> 399 =	\$2,000
50 =	\$151	100 =	\$501	200 =	\$751	300 =	\$1,001		
51 =	\$158	101 =	\$504	201 =	\$754	301 =	\$1,006		
52 =	\$165	102 =	\$506	202 =	\$756	302 =	\$1,011		
53 =	\$172	103 =	\$509	203 =	\$759	303 =	\$1,016		
54 =	\$179	104 =	\$511	204 =	\$761	304 =	\$1,021		
55 =	\$187	105 =	\$514	205 =	\$764	305 =	\$1,026		
56 =	\$194	106 =	\$516	206 =	\$766	306 =	\$1,031		
57 =	\$201	107 =	\$519	207 =	\$769	307 =	\$1,036		
58 =	\$208	108 =	\$521	208 =	\$771	308 =	\$1,041		
59 =	\$215	109 =	\$524	209 =	\$774	309 =	\$1,046		
60 =	\$222	110 =	\$526	210 =	\$776	310 =	\$1,051		
61 =	\$229	111 =	\$529	211 =	\$779	311 =	\$1,056		
62 =	\$236	112 =	\$531	212 =	\$781	312 =	\$1,061		
63 =	\$244	113 =	\$534	213 =	\$784	313 =	\$1,067		
64 =	\$251	114 =	\$536	214 =	\$786	314 =	\$1,072		
65 =	\$258	115 =	\$539	215 =	\$789	315 =	\$1,077		
66 =	\$265	116 =	\$541	216 =	\$791	316 =	\$1,082		
67 =	\$272	117 =	\$544	217 =	\$794	317 =	\$1,087		
68 =	\$279	118 =	\$546	218 =	\$796	318 =	\$1,092		
69 =	\$286	119 =	\$549	219 =	\$799	319 =	\$1,097		
70 =	\$293	120 =	\$551	220 =	\$801	320 =	\$1,102		
71 =	\$301	121 =	\$554	221 =	\$804	321 =	\$1,107		
72 =	\$308	122 =	\$556	222 =	\$806	322 =	\$1,112		
73 =	\$315	123 =	\$559	223 =	\$809	323 =	\$1,117		
74 =	\$322	124 =	\$561	224 =	\$811	324 =	\$1,122		

75 =	\$329		125 =	\$564		225 =	\$814		325 =	\$1,127		
76 =	\$336		126 =	\$566		226 =	\$816		326 =	\$1,132		
77 =	\$343		127 =	\$569		227 =	\$819		327 =	\$1,137		
78 =	\$350		128 =	\$571		228 =	\$821		328 =	\$1,142		
79 =	\$357		129 =	\$574		229 =	\$824		329 =	\$1,147		
80 =	\$365		130 =	\$576		230 =	\$826		330 =	\$1,152		
81 =	\$372		131 =	\$579		231 =	\$829		331 =	\$1,157		
82 =	\$379		132 =	\$581		232 =	\$831		332 =	\$1,162		
83 =	\$386		133 =	\$584		233 =	\$834		333 =	\$1,167		
84 =	\$393		134 =	\$586		234 =	\$836		334 =	\$1,172		
85 =	\$400		135 =	\$589		235 =	\$839		335 =	\$1,177		
86 =	\$407		136 =	\$591		236 =	\$841		336 =	\$1,182		
87 =	\$414		137 =	\$594		237 =	\$844		337 =	\$1,187		
88 =	\$422		138 =	\$596		238 =	\$846		338 =	\$1,193		
89 =	\$429		139 =	\$599		239 =	\$849		339 =	\$1,198		
90 =	\$436		140 =	\$601		240 =	\$851		340 =	\$1,203		
91 =	\$443		141 =	\$604		241 =	\$854		341 =	\$1,208		
92 =	\$450		142 =	\$606		242 =	\$856		342 =	\$1,213		
93 =	\$457		143 =	\$609		243 =	\$859		343 =	\$1,218		
94 =	\$464		144 =	\$611		244 =	\$861		344 =	\$1,223		
95 =	\$471		145 =	\$614		245 =	\$864		345 =	\$1,228		
96 =	\$479		146 =	\$616		246 =	\$866		346 =	\$1,233		
97 =	\$486		147 =	\$619		247 =	\$869		347 =	\$1,238		
98 =	\$493		148 =	\$621		248 =	\$871		348 =	\$1,243		
99 =	\$500		149 =	\$624		249 =	\$874		349 =	\$1,248		
			150 =	\$627		250 =	\$876		350 =	\$1,253		
			151 =	\$629		251 =	\$879		351 =	\$1,258		
			152 =	\$632		252 =	\$881		352 =	\$1,263		
			153 =	\$634		253 =	\$884		353 =	\$1,268		

			154 =	\$637		254 =	\$886		354 =	\$1,273		
			155 =	\$639		255 =	\$889		355 =	\$1,278		
			156 =	\$642		256 =	\$891		356 =	\$1,283		
			157 =	\$644		257 =	\$894		357 =	\$1,288		
			158 =	\$647		258 =	\$896		358 =	\$1,293		
			159 =	\$649		259 =	\$899		359 =	\$1,298		
			160 =	\$652		260 =	\$901		360 =	\$1,303		
			161 =	\$654		261 =	\$904		361 =	\$1,308		
			162 =	\$657		262 =	\$906		362 =	\$1,313		
			163 =	\$659		263 =	\$909		363 =	\$1,319		
			164 =	\$662		264 =	\$911		364 =	\$1,324		
			165 =	\$664		265 =	\$914		365 =	\$1,329		
			166 =	\$667		266 =	\$916		366 =	\$1,334		
			167 =	\$669		267 =	\$919		367 =	\$1,339		
			168 =	\$672		268 =	\$921		368 =	\$1,344		
			169 =	\$674		269 =	\$924		369 =	\$1,349		
			170 =	\$677		270 =	\$926		370 =	\$1,354		
			171 =	\$679		271 =	\$929		371 =	\$1,359		
			172 =	\$682		272 =	\$931		372 =	\$1,364		
			173 =	\$684		273 =	\$934		373 =	\$1,369		
			174 =	\$687		274 =	\$936		374 =	\$1,374		
			175 =	\$689		275 =	\$939		375 =	\$1,379		
			176 =	\$692		276 =	\$941		376 =	\$1,384		
			177 =	\$694		277 =	\$944		377 =	\$1,389		
			178 =	\$697		278 =	\$946		378 =	\$1,394		
			179 =	\$699		279 =	\$949		379 =	\$1,399		
			180 =	\$702		280 =	\$951		380 =	\$1,404		
			181 =	\$704		281 =	\$954		381 =	\$1,409		
			182 =	\$707		282 =	\$956		382 =	\$1,414		

			183 =	\$709		283 =	\$959		383 =	\$1,419		
			184 =	\$712		284 =	\$961		384 =	\$1,424		
			185 =	\$714		285 =	\$964		385 =	\$1,429		
			186 =	\$717		286 =	\$966		386 =	\$1,434		
			187 =	\$719		287 =	\$969		387 =	\$1,439		
			188 =	\$722		288 =	\$971		388 =	\$1,445		
			189 =	\$724		289 =	\$974		389 =	\$1,450		
			190 =	\$727		290 =	\$976		390 =	\$1,455		
			191 =	\$729		291 =	\$979		391 =	\$1,460		
			192 =	\$732		292 =	\$981		392 =	\$1,465		
			193 =	\$734		293 =	\$984		393 =	\$1,470		
			194 =	\$737		294 =	\$986		394 =	\$1,475		
			195 =	\$739		295 =	\$989		395 =	\$1,480		
			196 =	\$742		296 =	\$991		396 =	\$1,485		
			197 =	\$744		297 =	\$994		397 =	\$1,490		
			198 =	\$747		298 =	\$996		398 =	\$1,495		
			199 =	\$750		299 =	\$1,000		399 =	\$1,500		