Maricopa County Air Quality Department	Number: PP-2012-002 Title: **Violation Self-Reporting Policy**
Author: Jo Crumbaker	Issue Date: October 1, 2012 Revision Date Review Date: October 1, 2014
Approved by: _____	**William D. Wiley, Director**

I. Purpose

The purpose of this policy is to encourage greater compliance with Maricopa County Air Pollution Control Rules and Regulations. It promotes a higher standard of self-policing by providing mitigation of all or a portion of the civil penalties for violations that are voluntarily discovered and promptly disclosed and corrected. Although a comprehensive environmental management system is not required to be in place to be eligible for this policy to apply, the policy provides an incentive for regulated entities to develop a comprehensive environmental management system which will promptly identify excursions from regulatory requirements so that violations may be quickly addressed and corrected.

II. Statement of Policy

In the event a Notice(s) of Violation has been issued by the department and such Notice of Violation was issued on the basis of information voluntarily reported to the department by the facility receiving the Notice of Violation, the department may reduce the proposed civil penalty in accordance with the provisions of this policy.

III. Incentives for Self-reporting a Violation

The department may provide the incentives listed below for violations discovered, reported and remedied that meet the conditions specified in Section IV of this policy.

A. Sources that meet all conditions may be eligible for 100% mitigation of the non-economic benefit portion of a settlement penalty. Any economic benefit gained from non-compliance may be collected.

B. Sources that meet conditions B-H may be eligible for 75% mitigation of the non-economic benefit portion of a settlement penalty. Any economic benefit gained from non-compliance may be collected.

IV. Penalty Mitigation Conditions

A. Systematic Discovery

The violation must have been discovered through either:

1. An environmental audit or a compliance management system exhibiting due diligence in preventing, detecting and correcting violations.

2. The source must provide documentation identifying the steps taken to achieve due diligence and describe how the source discovered the violation through an environmental audit or its compliance management system.

B. Voluntary Discovery

The violation must be identified voluntarily and not through a legally mandated monitoring, sampling, or auditing procedure required by statute, regulation, permit, consent agreement, judicial or administrative order. For example, the policy does not apply to violations discovered through due diligence done to prepare for Title V semi-annual compliance certifications or emissions violations detected through required continuous emissions monitoring.

C. Prompt Disclosure

1. The source must disclose the violation to the department within ten business days after discovery. If a statute, regulation or rule requires the source to report the violation in fewer than ten days, disclosure must be made within the time limit established by law. For example, the source must follow the provisions outlined in Maricopa County Air Pollution Control Rule 130 or 140 in the event of an excess emission. The ten-day disclosure period begins when the source discovers that a violation has or may have occurred or when the source reasonably should have known a violation took place. If the source has doubt as to whether or not a violation has occurred, the source should disclose the potential violation to the department and let the regulatory agency make the definitive determination.

2. Adequate notice disclosing a violation(s) must be sent to the department by e-mail to selfreport@mail.maricopa.gov within the appropriate time period and followed by a hard copy letter. The notice should include all of the following information:

   - The legal name of the source.
   - An affirmative assertion that a violation(s) or potential violation(s) has been discovered.
   - A description of each violation discovered, including references to relevant statutory, regulatory and permit provisions, where appropriate.
   - The date the violation(s) was discovered.

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- The duration of the violation(s) (start date of violation to completion date of corrective actions)
- The status, description and schedule of corrective actions to return to compliance.

3. The notice disclosing a violation is not considered to be part of a privileged audit report under ARS §49-1402. The department accepts notices disclosing violations and considers them to be nonprivileged; it does not accept audit reports submitted under claims of confidentiality.

D. Discovery and Disclosure Independent of Government or Third Party Plaintiff

The potential violation must be discovered and disclosed to the department before:

1. The department commences an inspection or investigation, or issues a request for information to the facility.

2. A citizen files a notice of intent to sue.

3. A third party files a complaint. Third party complaints cover formal judicial and administrative complaints as well as informal complaints such as a letter from a citizen alerting the department to a potential violation.

4. A whistleblower reports a violation to the department.

5. Discovery of the violation through any other means by the department.

E. Correction and Remediation

1. The source must take immediate corrective action and successfully correct and remediate the violation promptly. The source must certify in writing, with an accompanying truth and accuracy statement, that the violation has been corrected, that all practicable steps have been taken to remedy any harm caused by the violation, and identify what measures were taken to return to compliance.

2. In the event a violation cannot be corrected immediately, the source must notify the department in writing within two business days after the date the source first knew or reasonably should have known that a delay in achieving compliance would occur. Once compliance has been achieved, the source must certify in writing with an accompanying truth and accuracy statement that the violation has been corrected, that all practicable steps have been taken to remedy any harm caused by the violation, and identify what measures were taken to return to compliance.

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3. In the event that a consent agreement, corrective action plan or compliance plan is in effect, specified timelines in these documents shall supersede the timeline mentioned above.

4. The source must take steps to prevent recurrence of the violation. Preventative steps must be submitted in writing to the department.

F. No Repeat Violations

The violation is not considered to be a repeat violation if:

1. The same/similar violation has not occurred within the past five years at the same facility or as part of a pattern of violations at multiple facilities owned or operated by the same entity (a violation is a Notice to Comply, Opportunity to Correct, Notice of Violation, Order of Abatement by Consent or an Order of Abatement).

2. The facility is under new ownership and a previous same/similar violation occurred prior to the acquisition.

G. Other Violations Excluded

The incentives in Section III of this policy are not available for a violation which:

1. Resulted in actual harm to public health and/or the environment.

2. Resulted in the emissions of any toxic air contaminant(s) that caused or contributed to an exceedance of the National Ambient Air Quality Standards, the Arizona Air Quality Standards, or in excess of the facility's Air Quality Permit emission limit(s).

3. Created a public nuisance.

4. Resulted from knowing, willful, grossly negligent or intentional conduct.

H. Cooperation

1. The source must provide the department with all information needed to determine policy applicability and must provide any records in a timely manner.

2. The source must not hide, destroy or tamper with possible evidence following discovery.

V. Economic Benefit

The department retains full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that comply. The department may forgive the entire penalty for

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violations that meet conditions A-H in Section IV and, in the department's opinion, do not merit any penalty due to insignificant economic benefit.

VI. References

Compliance and Enforcement Handbook, Chapter 11, Special Penalty Considerations for Small Businesses, Arizona Department of Environmental Quality

Incentives for Self-Policing, Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy), Federal Register, Vol. 65, No. 70, Tuesday, April 11, 2000, United States Environmental Protection Agency

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SELF-REPORTING VIOLATION PENALTY CALCULATION WORKSHEET

Source Name / Permit # _____ NOV# Date _____ Description _____

II. GRAVITY COMPONENT

A. POTENTIAL FOR HARM

1. Level of Violation:

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

2. Toxicity of Pollutant:

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

3. Risk to Environment:

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

4. Risk to Population:

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

5. Size of the Violator:

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

Total Score _____

14-20	7-13	0-6
MAJOR	MODERATE	MINOR

B. EXTENT OF DEVIATION

MAJOR	MODERATE	MINOR
failure to comply	incomplete or incorrect compliance	late compliance

C. GRAVITY COMPONENT MATRIX

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM	MAJOR	$10,000-8,000	$8,000-6,000	$6,000-4,400
	MODERATE	$4,400-3,200	$3,200-2,000	$2,000-1,200
	MINOR	$1,200-600	$600-200	$200

Dollar Amount from within Range _____

_____ Enforcement Officer

_____ Date

D. MULTI-DAY VIOLATIONS

DAY	DISCOUNT	RATE	# of DAYS	SUBTOTAL
0-1	0%	1.00		
2-15	15%	0.85		
16-30	30%	0.70		
>30	50%	0.50		

Total Amount _____

E. SELF-REPORTING PENALTY MITIGATION

1. Meets all 8 conditions in Section IV of the Self-Reporting Policy: -100%

OR

2. Meets conditions B-H in Section IV of the Self-Reporting Policy: -75%

_____ (Total Amount) X (1+ _____) (Penalty Mitigation) = _____ (Mitigated Amount)

F. ADJUSTMENTS--HISTORY OF NONCOMPLIANCE

1. Most Recent Violation?

+10% Within 1 year +5% ≤ 5 years

2. Number of Prior Violations?

+5% X _____ = _____ %

Total Adjustments _____ %

_____ (Mitigated Amount) X (1+ _____) (Total Adjustments) = _____ (Gravity Component)

III. ECONOMIC BENEFIT COMPONENT

A. DELAYED COSTS:

_____ X _____ (# of years) X 0.05 = _____

B. AVOIDED COSTS: _____

C. ILLEGAL PROFITS: + _____

Total Economic Benefit _____

IV. MITIGATING FACTORS

A. ABILITY TO PAY: _____

B. LITIGATION RISKS: + _____

Total Mitigating Factors _____

V. TOTAL PENALTY

_____ (Gravity Component) + _____ (Economic Benefit) - _____ (Mitigating Factors) = _____ (Total)