

Sec. 4-4. Penalties for violation of chapter, permit or order.

(a) Any person who violates or fails to comply with any provision of this chapter, any order of the board or of the director; or who makes any false material statement, representation, or certification in, or omits material information from, any record, report, plan or other document required either to be filed or submitted or maintained pursuant to this chapter; or who falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter; or fails to install any monitoring device or method required to be maintained or followed under this chapter; or fails to pay a fee established under this chapter; commits a misdemeanor and, upon conviction, is punishable as provided in *Tennessee Code Annotated*. For the prosecution of criminal action, the Chattanooga-Hamilton County Air Pollution Control Board and the Director shall follow and comply with the provisions of T.C.A § 6-201-112 and shall notify the District Attorney General of the violation. Any person who violates or fails to comply with any provision of this chapter who is cited to city court by the board or director and the city judge has issued process on the complaint of the board or direct shall be subject to a fine of \$50.00 for each violation and any costs imposed by the court.

(b) Each separate violation shall constitute a separate offense and upon a continuing violation each calendar day or portion thereof of violation shall constitute a separate offense.

(c) In addition to the fines provided in paragraph (a) of this section, any person who violates or fails to comply with any provision of this chapter, including any fee or filing requirement; or any duty to allow or carry out inspection, entry, or monitoring activities; or who violates the terms and conditions of any permit or certificate of operation issued pursuant to the provisions of this chapter; or who violates any order of the board, or of the director, shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) per separate violation, as hereinafter provided, to be imposed by the board after hearing, or opportunity for hearing. Provided, however, that the board may, in its discretion and for good cause shown, reduce the amount of a civil penalty or suspend payment of all or part of the civil penalty imposed. Upon a civil penalty assessed by the board or other order of the board becoming final, the board may institute in the name of the board a civil action in either circuit or chancery court to enforce the order of the board and/or to recover the amount of the civil penalty, plus interest, from the date of the assessment of the penalty. In imposing such civil penalty, the board shall give due consideration to all pertinent factors as justice may require, including, but not necessarily limited to:

- (1) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of people;
- (2) The social and economic value of the air pollutant source;
- (3) The technical practicability and economic reasonableness of reducing or eliminating the emission of air pollutants;
- (4) The economic benefit gained by the air pollutant source through any failure to comply with the provisions of this chapter or any permit, certificate, or order issued pursuant to the provisions of this chapter;

- (5) The amount or degree of effort put forth by the air pollutant source to attain compliance;
- (6) Any prior violations of this chapter, violations of orders of the board or director, or violations of conditions imposed upon any permit, certificate, or variance and payment by the violator of penalties previously assessed for the same violation;
- (7) The type and character of a violation, including the duration of the violation as established by any credible evidence, and the extent to which the same is in excess of the permissible limits or permissible activity or action;
- (8) The past history of pollution control efforts in regard to the taking of appropriate action to control emissions or abate pollution on the part of the person found to be in violation or others subject to entry of any order of the board; and
- (9) The size of the business and the economic impact of the penalty on the business. The plea of financial inability to prevent, abate or control air pollution by any person shall not be a valid defense to liability for a violation of any provision of this chapter. *[T.C.A. 68-201-106 and 68-201-116(c); Clean Air Act§ 113(e)]*
- (d) In addition to the fines provided for in paragraph (a) of this section and the civil penalties provided for in paragraph (c) of this section,, any person who violates or fails to comply with any provisions of this chapter , who violates or fails to comply with the terms and conditions of any permit or certificate of operation issued pursuant to the provisions of this chapter, or who violates any order of the board, or of the director, shall be liable for any damages to the board, any unit of local government, or any fire department including the Tennessee Division of Forestry and volunteer fire departments resulting therefrom. Damages to the board, any unit of local government, or any fire department including the Tennessee Division of Forestry and volunteer fire departments, may include any expenses incurred in investigating or enforcing this chapter; in removing, correcting, or terminating the effects of air pollution as well as government-incurred damages or clean-up expenses caused by the pollution or by the violation. These damages shall be in addition to, not in lieu of, the civil penalty provided for above. [T.C.A. 68-201-116(c)]
- (e) The amount of civil penalty to be imposed by the board, pursuant to subsection (c) and subsection (d) of this section, shall in no event exceed the amount of twenty five thousand dollars (\$25,000.00) for each separate violations occurring. In determining the amount of a penalty to be imposed or the type and character of any other order to be entered by the board, the board may give due consideration to pertinent facts including, but not necessarily limited to, the factors listed in section 4-4(c).
- (f) In addition to the civil penalties provided in subsection (c) and (d) of this section, the board may order that any person who violates any provision of this chapter, who violates the terms and conditions of any permit or certificate of operation issued pursuant to the provisions of this chapter, or who violates any order of the board, shall cease and desist the operation, use or activity which resulted in such violation.
- (g) In addition to the civil penalties provided in subsection (c) and (d) of this section, the board

may order that such person cease and desist from the use of the equipment, activity or other source of air contaminant; or the board may enter a conditional cease and desist order; and such order may include a reasonable delay during which to correct the source of violation.

(h) The liabilities which shall be imposed upon violation of any provision of this chapter upon violation of the terms and conditions of any permit or certificate of operation issued pursuant to the provisions of this chapter, or upon violations of the provision of this chapter, or upon violations of any order of the board, may not be imposed on account of any violation caused by an act of God, war, strike, riot, or other *force majeure*.

(i) Action pursuant to this section shall not be a bar to enforcement of this chapter, or enforcement of orders made by the director or the board pursuant to this chapter, by injunction to enjoin any violation of any requirement of this chapter, including conditions of a permit or certificate of operation, without the necessity of a prior revocation of the permit or certificate of operation, or other appropriate remedy, and the board shall have power to institute and maintain in the name of the board any and all such enforcement proceedings. The engaging in any activity in violation of a permit or certificate of operation where that activity is presenting an imminent and substantial endangerment to the public health, welfare or environment may be restrained and enjoined by an action of the appropriate court of record.

(j) The burden of proof requirement on any enforcement hearing or action before the board shall be that which is applicable to civil, and not criminal, proceedings.

THIS IS THE FEDERALLY APPROVED REGULATION AS OF MAY 8, 1990

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