(Adopted October 15, 1993)(Amended May 11, 2001)(Amended January 7, 2005)
PAR 2004c
March 2, 2007

RULE 2010. ADMINISTRATIVE REMEDIES AND SANCTIONS

(a) Purpose

This rule specifies provisions to ensure that RECLAIM facilities which exceed their Allocation provide compensating emission reductions. This rule also provides for administrative penalties for RECLAIM rule violations.

(b) Emissions in Excess of Allocation

(1) Upon determining that a Facility Permit holder has violated Rule 2004 (d), the Executive Officer will:

(A) reduce the facility's annual emissions Allocation for the compliance year following the determination by the total amount the Allocation was exceeded. The total amount exceeded is calculated as the sum of the individual quarterly exceedances~~;~~. If the original facility has undergone a complete or partial change of operator during or subsequent to the compliance year in which the violation occurred, any later Facility Permit holder who has a valid Facility Permit resulting from that or any subsequent change of operator shall be held both individually and jointly liable with the original Facility Permit holder that violated Rule 2004 (d) for the total Allocation exceedances. The Executive Officer will reduce the original facility's Allocation to cover the amount of exceedances to the maximum extent possible. The Executive Officer will proportion any remaining required reductions among any later facilities holding valid Facility Permits based on each facility's potential to emit the pollutant of the exceedance. Additionally, the Executive Officer may revise the Facility Permits of the original and subsequent Facility Permit holders in accordance with subparagraph (b)(1)(B)

(B) revise the Facility Permit to impose any conditions the Executive Officer determines to be appropriate to prevent future violations of Rule 2004 (d).

(2) If the Executive Officer petitions for a permit revocation pursuant to Health and Safety Code Section 42307 due to a violation of Rule 2004 (d), and the Hearing Board finds that Rule 2004 (d) was violated, it may revoke the Facility Permit pursuant to Health and Safety Code Section 42309 and invalidate all RTCs held for the facility's use. Any subsequent application for a Facility Permit filed for that facility shall be subject to all requirements of Rule 2005 - New Source Review for RECLAIM.

(3) Upon approval of a request for emission reductions from the Mitigation Fee Program, the Executive Officer will deduct RTCs equal to the amount of emissions in the approved request from the facility's RTC holding in the second compliance year or earlier following the compliance year in which emissions are requested. Deductions for compliance years 2001, 2002, and 2003 can be extended by no more than one additional year provided the Mitigation Fee Program achieves at least 75 percent reductions, in aggregate, by the second compliance year. However, emissions requested from the Mitigation Fee Program for compliance year 2004 shall be deducted no later than the 2005 compliance year.

(4) Upon Executive Officer approval of a request from a Facility Permit holder subject to the deductions under paragraph (b)(3) of this rule, a facility may set aside from such deductions the amount no greater than the amount of RTCs necessary to meet the requirements of Rule 2005 (c) to operate new electric generating equipment permitted and constructed after May 11, 2001. If actual NOx emissions from such new equipment is less than the amount of RTCs set aside, the remaining balance of the set aside RTCs shall be subject to the requirements of paragraph (b)(3). Such set aside shall not exempt a Facility Permit holder from accounting for all RECLAIM NOx emissions at its facility.

(c) Administrative Penalties

(1) For any violation of RECLAIM, the Executive Officer may seek an administrative penalty up to $500 per violation, per day, pursuant to Health and Safety Code Section 42402.5. If administrative penalties are sought, the Executive Officer will:

(A) provide written notice of the administrative penalty to the Facility Permit holder, including a written explanation of the basis for the penalty;

(B) provide an opportunity for a hearing by the Executive Officer or designee(s) within thirty (30) days of the date of the notice. The hearing shall include the right to call and examine witnesses under oath, the right to introduce exhibits, and the right to a record of the hearing.

(C) The hearing shall not be conducted according to technical rules of evidence. The rules of privilege shall be effective to the same extent that they are recognized in civil actions, and irrelevant evidence shall be excluded.

(D) Within thirty (30) days after the hearing, the Executive Officer or designee(s) will mail to the Facility Permit holder a notice of final decision including a statement of reasons therefore.

(E) In determining the amount of administrative penalty to be assessed, the Executive Officer or designee(s) will take into account all relevant circumstances, including but not limited to, the factors specified in Health and Safety Code Section 42403.

(2) The Facility Permit holder shall pay any administrative penalty within thirty (30) days after receipt of notice pursuant to subparagraph (c)(1)(A), or if a hearing has been held, within thirty (30) days of the date of receipt of notice pursuant to subparagraph (c)(1)(D). If the penalty is not paid when due, the Executive Officer may petition the Hearing Board to revoke the Facility Permit. If the Hearing Board finds that the penalties have not been paid, it shall revoke the Facility Permit.

(d) Other Remedies and Sanctions

The remedies and sanctions provided in this rule are in addition to any sanctions, penalties, actions or other remedies available under law.