

PAB Resolution No. 04
Series of 2003

Guidelines on the Fine Rating System under the Implementing Rules and Regulations of the Philippine Clean Air Act of 1999 for Stationary Sources

Whereas, Republic Act (RA) 8749 provides that for actual exceedance of any pollution or air quality standards under this Act or its rules and regulations, the Department, through the Pollution Adjudication Board (PAB), shall impose a fine of not more than one-hundred thousand pesos (Php 100,000.00) for every day of violation against the owner or operator of a stationary source until such time that the standards have been complied with.

Whereas, RA 8749 also provides that for the purposes of the application of the fines, the PAB shall prepare a fine rating system to adjust the maximum fine based on the violator's ability to pay, degree of willfulness, degree of negligence, history of non-compliance and degree of recalcitrance. Provided, that in the absence of any extenuating or aggravating circumstances, the amount of fine for negligence shall be equivalent to one-half of the fine for willful violation.

RESOLVED, as it is hereby resolved, that the following are the guidelines for rating fines.

Guideline I
Title and Construction

Section 1. Title – These Guidelines shall be known as the Guidelines on the Fine Rating System under the Implementing Rules and Regulations (IRR) of the Philippine Clean Air Act (CAA) of 1999 for Stationary Sources.

Section 2. Applicability – These Guidelines shall apply to air pollution cases as defined by RA No. 8749 and its IRR, brought before the Board or through the Environmental Management Bureau Regional Office of the Department including applicable cases referred by the Laguna Lake Development Authority (LLDA) and the PENROs or CENROs through their respective offices, in the exercise of their delegated powers and functions under Executive Order (EO) No. 192.

Section 3. Construction of the Guidelines – These Guidelines shall be liberally construed in order to promote compliance and to assist the parties in obtaining just, speedy and inexpensive disposition of pollution cases.

Guideline II
Definition of Terms

“*Board/PAB*” shall mean the Pollution Adjudication Board

“*CENRO*” shall mean the Community Environment and Natural Resources Office

“*Department*” shall mean the Department of Environment and Natural Resources

“*Order*” shall mean any order issued by the Pollution Adjudication Board

“*PCO*” shall mean Pollution Control Officer duly accredited by the DENR pursuant to DENR Administrative Order No. 26 series of 1992

“*PENRO*” shall mean the Provincial Environment and Natural Resources Office



Guideline III Source of Emission/Air Pollutants

Section 1. For any trade, industry, process and fuel burning equipment or industrial plant emitting pollutants, the following practical/applicable parameters shall be the basis of emission standard violations and shall consequently be the basis of the imposition of fines for every exceedance thereof.

Sources of Emission	Practical/Applicable Parameters to be Analyzed
Fuel burning equipment a) coal-fired b) oil-fired c) bagasse d) other solid fuels such as wood, rice hulls, coconut husk etc. e) natural gas	PM, SO _x , NO _x , CO, trace elements*, VOC* and other relevant industrial emission parameters included in the National Emission Standards for Source Specific Air Pollutants (NESSAP)
Cement Plants	PM, SO _x , NO _x , CO, trace elements* and other relevant industrial emission parameters included in the NESSAP
Furnaces (for smelting, melting, remelting etc.)	PM, SO _x , NO _x , CO, heavy metals* and other relevant industrial emission parameters included in the NESSAP
Petrochemical plants	Acid mist/vapor*, VOC*, POP _s *(includes but not limited to PCB's, dioxins and furans) and other relevant industrial emission parameters included in the NESSAP
Chemical plants	Acid mist/vapor*, VOC*, POP _s * (includes but not limited to PCBs, dioxins and furans), NO _x , HF and other relevant industrial emission parameters included in the NESSAP
Milling process	PM and other relevant industrial emission parameters included in the NESSAP
Processes related to the Extractive industries (mining, quarrying, etc.) other than cement plant	PM, and other relevant industrial emission parameters included in the NESSAP
Geothermal power plant	H ₂ S*, heavy metals and other relevant industrial emission parameters included in the NESSAP
Incinerator/Non-burn Technologies	PM, heavy metals*, POP _s * (includes but not limited to PCBs, dioxins and furans) and other emission parameters cited in Rule XXVIII, Section 3 of the IRR of Clean Air Act of 1999
Asbestos-based industries	Asbestos*, PM and other relevant industrial emission parameters included in the NESSAP

MPY

Others not included in the above enumerated industries like wood, rattan and metal furniture production, batching plant, etc.	PM, SO _x , NO _x , CO, VOC* and other relevant industrial emission parameters included in the NESSAP
---	---

* Sampling of the parameters is subject to availability of analyzers, technical capability, and other factors

Guideline IV Rating of Fines

Section 1. Bases for the Computation of Fines

The following factors shall be the basis for the computation of fines with the corresponding weight/point values:

- a. Degree of willfulness - 10
- b. Degree of negligence - 5
- c. History of non compliance - 10
- d. Degree of recalcitrance - 15
- e. Exceedance of standards - 60

Total 100 points

Section 2. Degree of Willfulness

Degree of willfulness is the refusal to comply with the requirements imposed by the Board or the EMB-Regional Office, such as but not limited to submission of compliance reports, PCO reports or any other conditions set in a PAB Order or compliance to the conditions/commitments made by respondent company during a PAB Hearing or a Technical Conference. This shall also include misrepresentation and misleading statements/data in any documents or verbal manifestation during hearings or Technical Conferences and submission of documents beyond the prescribed periods set forth under of the rules and regulations of the Board.

For respondents who provide misleading statements and misrepresentation of facts, the maximum of 10 points shall apply. For any of the other violations enumerated above, the following point system shall apply:

- First offense - 3
- Second offense - 5
- Third or more offense - 10

Section 3. Degree of Negligence

The points assigned for degree of negligence shall automatically be one half (1/2) of the points assigned in the preceding section, as provided for in Paragraph 2, Section 45 of the RA 8749.

However, in the presence of any of the following extenuating/aggravating factors, a maximum of 5 points shall apply:

- a. Non-maintenance of Air Pollution Control Facility (APCF);
- b. Non-completion/construction of APCF despite a valid Authority to Construct (A/C);

MM

- c. Failure to file an appropriate motion during the period provided for by the rules and regulation;
- d. Failure to notify in writing the PAB and the Regional Office within twenty-four (24) hours from the time of discovery any breakdown of APCF and the Continuous Emission Monitoring System (CEMS) for any cause; or
- e. Operating without an APCF.

The maximum points for degree of negligence shall only be 5 points regardless of the number of factors present.

Section 4. History of Non-compliance

History of non-compliance shall mean the frequency of air pollution cases elevated to or brought before the Board.

- a. First offense shall mean the first time that the case is elevated to PAB -- 3 points
- b. Second offense shall mean non compliance with the DENR standards after a Formal Lifting Order (FLO) has been issued -- 5 points
- c. Third offense or more shall mean non compliance with the DENR standards after the resolution of the 2nd offense -- 10 points

Section 5. Degree of Recalcitrance


The equivalent point for recalcitrance shall be 15 regardless of the number of offenses committed. Acts of recalcitrance shall include any of, but not be limited to, the following:

- a. Refusal of entry to PAB authorized representative to serve and execute a PAB Order without justifiable reason;
- b. Non-acceptance of a PAB Order or refusal to execute the Order; or
- c. Non-appearance during a Technical Conference/public hearing without justifiable reasons.

Section 6. Exceedance of Standards

Exceedance	Point Equivalent
Up to 30%	10
Greater than 30% up to 50%	20
Greater than 50% up to 70%	30
Greater than 70% up to 85%	40
Greater than 85% up to 90%	50
Greater than 90%	60

The results of laboratory analyses of samples collected during a company visit for inspection, investigation, monitoring, resampling etc. shall be the bases for the computation of the pollution load. The following data shall be contained in the report accompanying the results of laboratory analyses:

- a. Flue gas emission rate (cu. m./hr);
- b. Number of hours per day the air pollution sources are operating; 

- c. Number of hours per day the whole plant is operating; and
- d. Quantity, volume or weight and kind of products produced (in a month or year).

Section 7. Schedule of Fines

The sum of the points obtained from the above factors (i.e. degree of willfulness, degree of negligence, history of non-compliance, degree of recalcitrance, and exceedance of standards) will determine the penalty on a per day basis. The reference table for the equivalent amount of penalty is as follows:

Total Points	Fines per day (PhP)
Up to 30	10,000.00
31 - 40	20,000.00
41 - 50	30,000.00
51 - 60	40,000.00
61 - 70	55,000.00
71 - 80	70,000.00
81 - 90	85,000.00
91 - 100	100,000.00

Section 8. Violator's Ability to Pay

The computed fines based on the above enumerated factors may be recomputed according to the violator's ability to pay *Provided however*, that respondent belongs to any of the categories of Micro, Cottage and Small enterprises and shall make available to the Board documents such as but not limited to those specified in Section 2 of Guideline V herein.

Section 9. Micro, Cottage and Small Enterprises

Micro, Cottage and Small Enterprises as defined by SMED (Small and Medium Enterprise Development) Council Resolution No. 3, Series of 1995 (Redefinition of Micro, Cottage and Medium Scale Enterprises) are any business activities or enterprises engaged in industry, agribusiness and/or services whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entities' offices, plants and equipments are situated, amount to not more than Fifteen Million Pesos (PhP15,000,000.00).

For Micro, Cottage and Small Enterprises, the following maximum fines shall apply:

Total Assets (PhP)	Total Fines (PhP)
PhP150,000.00 and below	10,000.00
Above 150,000 to 1 M	40,000.00
Above 1M to 5 M	60,000.00
Above 5 M to 10 M	80,000.00
Above 10M to 15 M	100,000.00

However, this provision will not apply if the emissions generated by respondent micro, cottage or small enterprise are toxic and hazardous as provided for in the DENR Department Administrative Order (DAO) no. 29, Series of 1992 for the management of toxic chemical substances and hazardous and nuclear wastes or if the respondent had previously availed of this provision.

Guideline V General Provisions

Section 1. A firm found violating emission standards and or related acts of violations should be notified immediately through a "Notice of Non-compliance" (NON) signed by the Regional Director (RD). In terms of procedure in the imposition of fines, unless otherwise revised or amended, the existing rules of the PAB shall apply.

Section 2. In the resolution of computation of fines involving cases elevated to the Board, the Board may require the respondent to submit the following:

- a) Notarized Pollution Control Officer (PCO) Reports duly received by the Regional Office in the format provided in DAO 26 and shall contain among others the following information/data:
 - i) Days of operation, maintenance period, shutdowns, etc.;
 - ii) The volumetric flow rate; and
 - iii) State of operation, i.e., at half capacity, full capacity.
- b) Continuous Emission Monitoring System (CEMS) print-out when applicable duly signed by the Managing Head and the PCO;
- c) Income Tax Return (ITR), SEC/DTI registration papers and certificates reflecting the firm's present Total Assets as well as audited financial statements duly received by the SEC, covering the period and the year prior to such violation. In the case of sole proprietorship, submit financial statement duly received by the BIR covering the period of the violation. The total assets to be considered shall be the total assets during the period of violation; and
- d) Other documents as may be required by the Board.

Section 3. For micro, cottage and small enterprises, Sections 8 and 9 of Guideline IV herein shall apply. However, should there be a change of total assets such that the enterprise no longer falls under the category of micro, cottage and small enterprises within the period of violation arising from one single sampling, then the computation of the fines shall be split into two sub-periods. The computation of the first sub-period shall be based on Sections 8 and 9 of Guideline IV while the computation of the second sub-period shall then be based on the regular point system as provided herein.

Section 4. Pursuant to Part XIII, Rule LIV Section 1 of the IRR of the Clean Air Act, the fines to be imposed shall be computed for every day of violation against the owner or operator of a stationary source until such time that the standards are complied with.


The period to be covered shall commence from the date of inspection and sampling wherein the findings in the inspection report and the results of laboratory analyses indicate that the emission standard(s) has been violated up to the day prior to the execution of the Cease and Desist Order (CDO) or up to the day prior to compliance with the DENR Emission standards.

For example:

Date of sampling	Lab results	Standard	Remarks
January 22, 2001	PM = 380 mg/Ncm	300 mg/Ncm	Failed

Execution of CDO : 05 February 2001 (cut -off date)

Period covered for the computation.

Period I: 22 January 2001 to 04 February 2001 

The fine shall not be applied to the periods enumerated below:

1. Days not operating and days-of-breakdown of the pollution source and other source related equipment or maintenance shutdowns. In the case of breakdowns the respondent should promptly (within 24 hours) inform the Regional Office (copy furnished the PAB) in writing about the matter. If however the twenty-four hour period falls within a holiday or a weekend then Respondent shall submit the report on the next working day;
2. Duration of force majeure, provided respondent has given notice in writing to the Regional Office (copy furnished the PAB) within a justifiable and reasonable period of time after the occurrence of the event and that respondent has not contributed to the happening of the event and/or has exercised due diligence to forestall or lessen the effect of the event;
3. Effectivity of the implementation CDO i.e. stoppage of operations in full compliance with a duly executed CDO issued by the PAB); or
4. Such other circumstances the Board may warrant provided that there is substantial evidence to support the reduction of the fines.

Section 5. Pollution exceedance on a daily basis shall be defined as non-compliance with emission standards per day regardless of the number of hours the firm is in operation. A fraction of a day of plant operation shall be considered one (1) whole day of operation. For firms with more than one emission source, the average of the pollution exceedance shall be computed upon recommendation of the EMB and approval of the Board and if there is non-compliance with the DENR Standards set forth in Part VII, Rule XXV, Section 1 Table 2 IRR of the Clean Air Act of 1999, the said exceedance shall now be the pollution exceedance which shall be applied to Section 6 of Guideline III. The formula for the computation is hereby attached as Annex "A".

Section 6. For sources located in non-attainment areas, Section 6 of Rule XII Part IV of the IRR of RA 8749 which states "*Sources subject to the non-attainment provisions will be subject to a 100% surcharge (i.e. 200% of base) for any penalties or fines relating to a violation of the non-attainment provisions.*" shall apply. In the same manner, Section 6 of Rule XIII, Part IV of the IRR of the Clean Air Act of 1999 which states "*Sections 5 and 6 of Rule XII above shall apply to new and modified sources in non-attainment areas.*" shall also apply.

Section 7. Should there be a definite finding that respondent's emissions have passed the allowable DENR Emission Standards, the Board may *motu proprio* or upon proper motion, issue a resolution formally lifting the CDO and terminating the case provided that the respondent has fully paid the fines imposed upon it.

Guideline VI Miscellaneous Provisions

Section 1. **Transitory Provision** – All air pollution cases currently pending with the Board shall, within thirty (30) days from the effectivity of these rules, be subject to the provisions hereof.

Section 2. **Separability Clause** – If any section or provision of these guidelines or part thereof is declared unconstitutional or invalid, the other sections or provisions thereof which are not affected thereby shall continue in full force and effect.

Section 3. **Repealing Clause** – All other policies, issuances, rules and regulations of the Board which are inconsistent with these rules are hereby repealed or modified accordingly.

Section 4. *Effectivity Clause* – These guidelines shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done in Quezon City this 23rd day of December in the year of the Lord, two thousand three.



ELISEA G. GOZUN
Chairman


DEMETRIO L. IGNACIO, JR.
Member

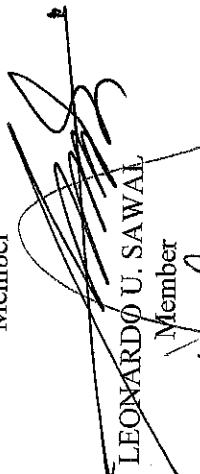

JULIAN D. AMADOR
Member

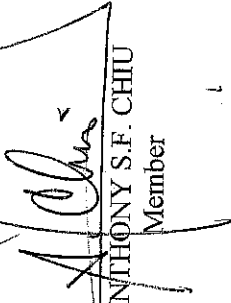

JEFFREY G. MIJARES
Member

Attested by:


ANGELITA T. BRABANTE
Board Secretary


RENATO A. DE RUEDA
Member


LEONARDO U. SAWAL
Member


ANTHONY S.F. CHIU
Member

ANNEX "A"

Let	n	-	Number of Source
	C_n	-	Concentration of emission from one Source (mg/Ncm)
	C_i	-	Concentration of emission from ith source (mg/Ncm)
	P_n	-	Pollution Exceedance, in percent
	S	-	DENR Emission Standard

Formula for Pollution Exceedance (for only one source):

$$P_n = \frac{(C_n - S)}{S} \times 100$$

Formula for Emission Averaging (for one facility with two or more sources):

$$C_{ave} = \frac{\sum_{i=1}^n C_i}{n}$$

$$P_n = \frac{(C_{ave} - S)}{S} \times 100$$