



Covered Electronic Waste Recycling Program

ADMINISTRATIVE CIVIL LIABILITIES

PROPOSED REGULATORY LANGUAGE

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PROPOSED REGULATIONS

Article 6. Administrative Civil Penalties

- § 18660.44. Procedure for Imposing Civil Liabilities for False Statements or Representations
- § 18660.45. Procedure for Imposing Civil Liabilities for Failure to Pay a Covered Electronic Waste Recycling Fee
- § 18660.46. Procedure for Imposing Civil Liabilities for Failure to Comply with Requirements for Manufacturers

Article 2.0. Electronic Waste Payment System – Applicability and Limitations, Document Submittals, Records, Audits and Net Cost Reports

- § 18660.7. Document Submittals

CIVIL LIABILITIES FOR FALSE STATEMENTS

- a) Administrative civil penalties authorized by Public Resources Code Section 42474(d) shall be assessed in accordance with the procedures set forth in this Section.

CIVIL LIABILITIES FOR FALSE STATEMENTS

b) The penalties shall be assessed as follows:

1. A **“Minor” violation** includes **first-time or multiple unintentional violations**. The penalties for this type of violation would be no less than **five hundred dollars (\$500)** and no more than **four thousand dollars (\$4,000)**.
2. A **“Moderate” violation** includes **subsequent or multiple violations after notice**. The penalties for this type of violation would be no less than **four thousand dollars (\$4,000)** and no more than **fifteen thousand dollars (\$15,000)**.
3. A **“Major” violation** includes violations that indicate a **pattern and practice of noncompliance, or first-time intentional violations**. The penalties for this type of violation would be no less than **fifteen thousand dollars (\$15,000)** and no more than **twenty-five thousand dollars (\$25,000)**.

CIVIL LIABILITIES FOR FALSE STATEMENTS

- c) CalRecycle may consider any or all of the following when imposing an administrative civil penalty:
1. The nature, circumstances, extent, and/or gravity of the violation;
 2. The value of the actual or potential economic benefit to the violator associated with the violation;
 3. The amount of actual or potential harm to CalRecycle, financial or otherwise;
 4. Any prior history of noncompliance with this chapter, including but not limited to any prior violations of a similar nature;
 5. Truthful and forthright cooperation during any relevant investigation, including but not limited to any measures taken by the violator to remedy the current violation or prevent future violations;
 6. The violator's ability to pay the proposed penalty;
 7. The deterrent effect that the imposition of the proposed penalty would have on the community as a whole and the violator; and
 8. Any other matters that justice may require.

CIVIL LIABILITIES FOR FALSE STATEMENTS

- d) In any case in which it is determined that more than one person or entity is responsible and liable for a violation, **each such person may be held jointly and severally liable for an administrative civil penalty.**
- e) Prior to the imposition of penalties, CalRecycle may issue a prior written **notice of violation** alleging with specificity:
 1. A description of the violation or violations;
 2. The proposed penalty amount, if any;
 3. The facts considered in determining the violation and penalty amount;
 4. A list of corrective actions to be taken by the violator; and
 5. An acknowledgement of receipt to be executed by the violator.

CIVIL LIABILITIES FOR FALSE STATEMENTS

- f) CalRecycle may issue an **accusation**, as defined in Government Code Section 11503, **seeking an administrative penalty or penalties pursuant to this Section in lieu of issuing a prior written notice of violation**. The accusation and all accompanying documents may be served by personal service or registered mail.
- g) Within **fifteen (15) days after service** upon the respondent of the accusation seeking any administrative civil penalty, **respondent may request a hearing by filing a Notice of Defense** pursuant to Government Code Sections 11505 and 11506. The request for hearing may be made by delivering or mailing the Notice of Defense to CalRecycle. **Failure to file a Notice of Defense within fifteen (15) days of service of the accusation shall constitute a waiver of the respondent's right to a hearing and CalRecycle may proceed upon the accusation without a hearing.**

CIVIL LIABILITIES FOR FALSE STATEMENTS

- h) CalRecycle shall provide a **hearing before the director or his or her designee**, who shall act as hearing officer. At any time during the proceeding, before a decision is issued, CalRecycle and the respondent(s) may engage in settlement of the matter.
- i) The hearing officer shall consider the notice of violation, the accusation, the Notice of Defense, and all other relevant evidence presented by CalRecycle and the respondent. The hearing officer shall specify relevant procedures to be conducted during the proceeding, which include but are not limited to, informing the parties as to whether the hearing officer will consider witness testimony, and whether there shall be written and/or oral arguments. The hearing officer shall issue a written decision stating the factual and legal basis for the decision within thirty (30) days of the hearing. If the hearing officer determines that any penalties are owed, the hearing officer shall include in the written decision the date payment of the assessed penalties shall be due and paid.

CIVIL LIABILITIES FOR FALSE STATEMENTS

- j) The respondent's failure to comply with the hearing officer's written decision may be grounds for suspension or revocation of their status as an approved collector and/or approved recycler.
- k) Except as otherwise specified herein, the hearing shall be governed by the informal administrative hearing procedures in Government Code Section 11400 et seq.
- l) Penalties assessed in a hearing officer's decision **may be in addition to any adjustments** made pursuant to Section 18660.30 and **may be offset by CalRecycle** against any other amounts that are otherwise be due to the respondent(s) for payment claims. In the event of settlement, the Parties may agree to offset provisions in the settlement agreement.

CIVIL LIABILITIES FOR FAILURE TO PAY A COVERED E-WASTE RECYCLING FEE

- a) The administrative procedure set forth in Section 18660.44(b)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(c).
- b) The hearing shall be governed by the informal administrative hearing procedures in Government Code Section 11400 et seq.

CIVIL LIABILITIES FOR FAILURE TO COMPLY WITH REQUIREMENTS FOR MANUFACTURERS

- a) The administrative procedure set forth in Section 18660.44(b)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(c).
- b) The hearing shall be governed by the informal administrative hearing procedures in Government Code Section 11400 et seq.

DOCUMENT SUBMITTALS

Article 2.0. Electronic Waste Payment System – Applicability and Limitations, Document Submittals, Records, Audits and Net Cost Reports

§ 18660.7. Document Submittals *shall be amended to include the following subsection:*

- f) Any person, including but not limited to a handler, who provides documentation or information to an approved collector or an approved recycler that may be used by the approved collector or approved recycler pursuant to this Chapter shall not make a false statement or representation in the information or documentation provided.

NEXT STEPS

- Stakeholders to submit comments by July 31, 2015
- Review and incorporate comments
- Prepare “request for approval” and post notice
- Summarize proposal at August CalRecycle monthly
- Seek approval to submit emergency regulation package to OAL