

Introduced by Senator Dutton
(Coauthors: Senators Calderon, Cogdill, Correa, Cox, Denham,
Hollingsworth, and Huff)
(Coauthor: Assembly Member Smyth)

February 19, 2010

An act to amend Sections 43008.6, 43016, 43020, 43023, 43154, and 43212 of, to amend and renumber Section 43031 of, to add Sections 39619.7, 42413, and 43024.5 to, and to repeal Section 43031.5 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as introduced, Dutton. State Air Resources Board: administrative and civil penalties.

Existing law subjects violators of air pollution laws to specified civil and administrative penalties. Existing law imposes various duties on the State Air Resources Board relative to the reduction of air pollution.

This bill would require a communication, whether written or oral, from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information. The bill would require this information and final mutual settlement agreements reached between the state board and a person alleged to have violated air pollution laws to be made available to the public.

The bill would require the state board to prepare and submit to the Legislature and the Governor a report summarizing the motor vehicle pollution administrative penalties imposed by the state board for calendar year 2011, and annually thereafter, and would require the state

board to adopt and submit to the Legislature a written penalty policy for motor vehicle pollution laws that is based on specified criteria.

This bill would entitle a person alleged to have violated motor vehicle pollution laws the right to an administrative hearing pursuant to existing provisions of law, at the person's request, in lieu of a civil action. It would increase the maximum amount of an administrative penalty imposed pursuant to specified provisions of law per penalty assessment proceeding for any violation arising from the same conduct from \$100,000 to \$300,000, and would require specified administrative and civil penalties, including proceeds of mutual settlement agreements, be deposited in the General Fund.

The bill would provide that a person would not be liable under more than one civil, administrative, or criminal penalty provision of motor vehicle pollution law for any violation arising from the same conduct, and would prohibit the state board from assessing penalties against multiple persons for the production or sale of the same vehicle or units under motor vehicle pollution law provisions.

This bill, in addition, would provide that any person who fails to obtain a new certification for an engine family certified in the previous model year and sold in the same configuration in the model year for which the failure to obtain new certification was made would be liable for a civil penalty not to exceed \$10,000 per engine family for which the person failed to obtain certification, rather than per vehicle.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 39619.7 is added to the Health and Safety
2 Code, to read:
3 39619.7. (a) A communication, whether written or oral, from
4 the state board alleging that an administrative or civil penalty will
5 be, or could be, imposed either by the state board or another party,
6 including the Attorney General, for a violation of air pollution law,
7 shall contain a clear explanation of both of the following:
8 (1) The manner in which the administrative or civil penalty
9 amount was determined, including the aggravating and mitigating
10 factors the state board considered in arriving at the amount, and,
11 where applicable, the per unit or per vehicle basis for the penalty.

1 (2) Whether there were direct pollution emissions in excess of
2 legal requirements resulting from the violation, and if there were,
3 a quantification of the specific amount of pollution emitted in
4 excess of the requirements.

5 (3) The provision of law or regulations under which the alleged
6 violator is being assessed the administrative or civil penalty,
7 including the reason that provision is most appropriate for that
8 violation.

9 (b) The information described in subdivision (a) and all final
10 mutual settlement agreements reached between the state board and
11 a person alleged to have violated air pollution laws shall be made
12 available to the public.

13 SEC. 2. Section 42413 is added to the Health and Safety Code,
14 to read:

15 42413. All penalties collected by the state board pursuant to
16 Part 1 (commencing with Section 39000) to Part 4 (commencing
17 with Section 41500), inclusive, including proceeds from mutual
18 settlement agreements, shall be deposited in the General Fund.

19 SEC. 3. Section 43008.6 of the Health and Safety Code is
20 amended to read:

21 43008.6. (a) Notwithstanding Section 43012, for the purpose
22 of enforcing or administering Section 27156 of the Vehicle Code,
23 the executive officer of the state board or an authorized
24 representative of the executive officer, upon presentation of
25 credentials or, if necessary under the circumstances, after obtaining
26 a warrant pursuant to Title 13 (commencing with Section 1822.50)
27 of Part 3 of the Code of Civil Procedure, has the right of entry to
28 any premises owned, operated, used, leased, or rented by an owner
29 or operator of any vehicle operated for commercial purposes in
30 order to inspect any such motor vehicle, secure emission samples
31 therefrom, or inspect and copy any maintenance, use, or other
32 records pertaining to that vehicle.

33 (b) The state board may collect a civil penalty not to exceed
34 one thousand five hundred dollars (\$1,500) for each violation of
35 Section 27156 of the Vehicle Code. Any penalties shall be paid to
36 the Treasurer for deposit in the ~~Air Pollution Control~~ *General*
37 Fund.

38 (c) The civil penalty specified in subdivision (b) may be
39 collected for one or more violations involving the tampering with
40 or disabling of a gasoline-powered vehicle's air injection, exhaust

1 gas recirculation, crankcase ventilation, fuel injection, carburetion,
2 ignition timing, or evaporative control system, fuel filler neck
3 restrictor, oxygen sensor or related electronic controls, or catalytic
4 converter, or for the use of leaded fuel in a vehicle certified for
5 the use of unleaded fuel only.

6 (d) The civil penalty specified in subdivision (b) may not be
7 collected for a violation that is related to any tampering or disabling
8 of a gasoline-powered vehicle specified in subdivision (c) by a
9 rental customer of that vehicle, including, but not limited to, a
10 missing gasoline filler cap and a disconnected or missing heated
11 air intake tube or vacuum hose. However, if more than 20 percent
12 of an owner's or operator's gasoline-powered vehicles are found
13 to be nonconforming during each of three consecutive inspections
14 conducted 30 or more days apart during any one-year period, the
15 civil penalty specified in subdivision (b) applies and shall be
16 collected for each time a vehicle is found in a nonconforming
17 condition.

18 SEC. 4. Section 43016 of the Health and Safety Code is
19 amended to read:

20 43016. Any person who violates any provision of this part, or
21 any order, rule, or regulation of the state board adopted pursuant
22 to this part, and for which violation there is not provided in this
23 part any other specific civil penalty or fine, shall be subject to a
24 civil penalty not to exceed five hundred dollars (\$500) per vehicle,
25 portable fuel container, spout, engine, or other unit subject to
26 regulation under this part, as these terms are defined in this division
27 or state board regulations. ~~Any penalty collected pursuant to this~~
28 ~~section shall be payable to the State Treasurer for deposit in the~~
29 ~~Air Pollution Control Fund.~~

30 SEC. 5. Section 43020 of the Health and Safety Code is
31 amended to read:

32 43020. (a) Any person who knowingly violates any regulation
33 adopted pursuant to this part by the state board pertaining to motor
34 vehicle fuels is guilty of a misdemeanor and is subject to a fine of
35 not more than one thousand dollars (\$1,000) or imprisonment in
36 the county jail for not more than six months, or both, for each
37 violation.

38 (b) The recovery of civil penalties pursuant to ~~Section 43016~~
39 *this part* precludes prosecution pursuant to this section for the
40 same offense. When the executive officer refers a violation to a

1 prosecuting attorney, the filing of a criminal complaint is grounds
2 requiring the dismissal of any civil action brought pursuant to
3 ~~Section 43016~~ *this part* for the same offense.

4 SEC. 6. Section 43023 of the Health and Safety Code is
5 amended to read:

6 43023. (a) (1) As an alternative to seeking civil penalties
7 under Chapter 1 (commencing with Section 43000) to Chapter 4
8 (commencing with Section 43800), inclusive, and Chapter 6
9 (commencing with Section 44200), for violation of state board
10 regulations, the state board may impose an administrative penalty,
11 as specified in this section, for a violation of this part, or any rule,
12 regulation, permit, variance, or order of the state board pertaining
13 to vehicular air pollution control except as otherwise provided in
14 this division. No administrative penalty imposed pursuant to this
15 section shall exceed the amount that the state board is authorized
16 to seek as a civil penalty for the applicable violation, and no
17 administrative penalty imposed pursuant to this section shall exceed
18 ten thousand dollars (\$10,000) for each day in which there is a
19 violation up to a maximum of ~~one~~ *three* hundred thousand dollars
20 ~~(\$100,000)~~ *(\$300,000)* per penalty assessment proceeding for any
21 violation arising from the same conduct. This ~~one~~ *three* hundred
22 thousand dollar ~~(\$100,000)~~ *(\$300,000)* maximum penalty limitation
23 does not apply in any judicial proceeding involving violations
24 committed under this part.

25 (2) *A person alleged to have violated this part is entitled to an*
26 *administrative hearing pursuant to this section, at the person's*
27 *request, in lieu of a civil action.*

28 (b) Nothing in this section restricts the authority of the state
29 board to negotiate mutual settlements under any other penalty
30 provision of law that exceeds ten thousand dollars (\$10,000) for
31 each day in which there is a violation up to a maximum of ~~one~~
32 *three* hundred thousand dollars ~~(\$100,000)~~ *(\$300,000)* per penalty
33 assessment proceeding.

34 (c) The administrative penalties authorized by this section shall
35 be imposed and recovered by the state board in administrative
36 hearings established pursuant to Article 3 (commencing with
37 Section 60065.1) and Article 4 (commencing with Section 60075.1)
38 of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the
39 California Code of Regulations, except that the hearings shall be

1 conducted by an administrative law judge appointed by the Office
2 of Administrative Hearings.

3 (d) Nothing in this section authorizes the state board to impose
4 penalties for categories of violations for which the state board may
5 not seek penalties in a civil action.

6 (e) If the state board imposes any administrative penalties
7 pursuant to this section, the state board may not bring any action
8 pursuant to, or rely upon, Chapter 4 (commencing with Section
9 17000) of Part 2 of Division 7 of the Business and Professions
10 Code.

11 ~~(f) In determining the amount of any administrative penalty~~
12 ~~imposed pursuant to this section, the state board shall take into~~
13 ~~consideration all relevant circumstances, including, but not limited~~
14 ~~to, those factors specified in subdivision (b) of Section 43031.~~

15 ~~(g)~~

16 (f) After an order imposing an administrative penalty becomes
17 final pursuant to the hearing procedures identified in subdivision
18 (c), and no petition for a writ of mandate has been filed within the
19 time allotted for seeking judicial review of the order, the state
20 board may apply to the Superior Court for the County of
21 Sacramento for a judgment in the amount of the administrative
22 penalty. The application, which shall include a certified copy of
23 the final order of the administrative hearing officer, shall constitute
24 a sufficient showing to warrant the issuance of the judgment.

25 ~~(h)~~

26 (g) This section does not apply to any violation for which a
27 penalty may be assessed pursuant to Chapter 1.5 (commencing
28 with Section 43025), *except that a person alleged to have violated*
29 *Chapter 1.5 (commencing with Section 43025) is entitled to an*
30 *administrative hearing, in lieu of a civil action.*

31 ~~(i)~~

32 (h) This section is not intended, and shall not be construed, to
33 grant the state board authority to assess an administrative penalty
34 for any category of violation that was not subject to enforcement
35 by the state board as of January 1, 2002.

36 ~~(j)~~

37 (i) Any administrative penalty assessed pursuant to this section
38 shall be paid to the State Treasurer for deposit in the General Fund.

39 ~~(k)~~

1 (j) A party adversely affected by the final decision in the
2 administrative hearing may seek independent judicial review by
3 filing a petition for a writ of mandate in accordance with Section
4 1094.5 of the Code of Civil Procedure.

5 ~~(t)~~

6 (k) This section applies only to violations that occur on or after
7 January 1, 2002.

8 ~~(m) On or before January 1, 2005, the The~~

9 (l) *The* state board shall prepare and submit to the Legislature
10 and the Governor a report summarizing the administrative penalties
11 imposed by the state board pursuant to this section for calendar
12 ~~years 2002, 2003, 2004, and 2005~~ *year 2011, and annually*
13 *thereafter.*

14 SEC. 7. Section 43024.5 is added to the Health and Safety
15 Code, to read:

16 43024.5. (a) A person shall not be liable under more than one
17 civil, administrative, or criminal penalty provision of Chapter 1
18 (commencing with Section 43000) to Chapter 4 (commencing with
19 Section 43800), inclusive, and Chapter 6 (commencing with
20 Section 44200) for any violation arising from the same conduct.

21 (b) The state board shall not assess penalties against multiple
22 persons for the production or sale of the same vehicle or units
23 under the provisions of law described in subdivision (a). The state
24 board shall impose penalties only on the person the state board
25 determines to be most responsible for the violation.

26 SEC. 8. Section 43031 of the Health and Safety Code is
27 amended and renumbered to read:

28 ~~43031.~~

29 43024. (a) The civil or administrative civil penalties prescribed
30 ~~in this chapter~~ *under Chapter 1 (commencing with Section 43000)*
31 *to Chapter 4 (commencing with Section 43800), inclusive, and*
32 *Chapter 6 (commencing with Section 44200)* shall be assessed and
33 recovered either in a civil action brought in the name of the people
34 of the State of California by the Attorney General or by the state
35 board, or in administrative hearings established pursuant to
36 regulations adopted by the state board.

37 (b) In determining the amount assessed, the court, the Attorney
38 General, or the state board, in reaching any settlement, shall ~~take~~
39 *act pursuant to the official written policy described in subdivision*

1 (c) that takes into consideration all relevant circumstances,
2 including, but not limited to, all of the following:

3 (1) The extent of harm to public health, safety, and welfare
4 caused by the violation.

5 (2) The nature and persistence of the violation, including the
6 magnitude of the excess emissions.

7 (3) The compliance history of the defendant, including the
8 frequency of past violations.

9 (4) The preventive efforts taken by the defendant, including the
10 record of maintenance and any program to ensure compliance.

11 (5) The innovative nature and the magnitude of the effort
12 required to comply, and the accuracy, reproducibility, and
13 repeatability of the available test methods.

14 (6) The efforts to attain, or provide for, compliance.

15 (7) The cooperation of the defendant during the course of the
16 investigation and any action taken by the defendant, including the
17 nature, extent, and time of response of any action taken to mitigate
18 the violation.

19 (8) For a person who owns a single retail service station, the
20 size of the business, *for violations under Chapter 1.5 (commencing*
21 *with Section 43025).*

22 (c) *No later than March 1, 2011, the state board shall adopt*
23 *and submit to the Legislature a written penalty policy that is based*
24 *on the criteria in subdivision (b) and that is modeled on the United*
25 *States Environmental Protection Agency's 2009 Clean Air Act*
26 *Mobile Source Civil Penalty Policy for Vehicle and Engine*
27 *Certification Requirements.*

28 (d) *All administrative and civil penalties collected under Chapter*
29 *1 (commencing with Section 43000) to Chapter 4 (commencing*
30 *with Section 43800), inclusive, and Chapter 6 (commencing with*
31 *Section 44200), including proceeds from mutual settlement*
32 *agreements, shall be deposited in the General Fund.*

33 SEC. 9. Section 43031.5 of the Health and Safety Code is
34 repealed.

35 ~~43031.5. The revenues from penalties recovered by the state~~
36 ~~board pursuant to this chapter shall be deposited in the Air~~
37 ~~Pollution Control Fund and shall only be expended by the state~~
38 ~~board for environmental cleanup, abatement, or pollution~~
39 ~~prevention technology.~~

1 SEC. 10. Section 43154 of the Health and Safety Code is
2 amended to read:

3 43154. (a) Any person who violates any provision of this
4 article shall be liable for a civil penalty not to exceed five thousand
5 dollars (\$5,000) per vehicle, *except that any person who fails to*
6 *obtain a new certification for an engine family certified in the*
7 *previous model year and sold in the same configuration in the*
8 *model year for which the failure to obtain new certification was*
9 *made shall be liable for a civil penalty not to exceed ten thousand*
10 *dollars (\$10,000) per engine family for which the person failed to*
11 *obtain certification, rather than per vehicle.*

12 (b) Any action to recover a penalty under this section shall be
13 brought in the name of the people of the State of California in the
14 superior court of the county where the violation occurred, or in
15 the county where the defendant's residence or principal place of
16 business is located, by the Attorney General on behalf of the state
17 board, in which event all penalties adjudged by the court shall be
18 deposited in the ~~Air Pollution Control~~ General Fund, or by the
19 district attorney or county attorney of such county, or by the city
20 attorney of a city in that county, in which event all penalties
21 adjudged by the court shall be deposited with the treasurer of the
22 county or city, as the case may be.

23 SEC. 11. Section 43212 of the Health and Safety Code is
24 amended to read:

25 43212. Any manufacturer or distributor who does not comply
26 with the emission standards or the test procedures adopted by the
27 state board shall be subject to a civil penalty of fifty dollars (\$50)
28 for each vehicle which does not comply with the standards or
29 procedures and which is first sold in this state. The payment of
30 ~~such~~ *those* penalties to the state board shall be a condition to the
31 further sale by ~~such~~ *that* manufacturer or distributor of motor
32 vehicles in this state.

33 ~~Any penalty recovered pursuant to this section shall be deposited~~
34 ~~into the Air Pollution Control Fund.~~