

## **ATTACHMENT 1**

**RELEVANT CALIFORNIA HEALTH AND SAFETY CODE SECTIONS  
INCLUDED FOR INFORMATION ONLY  
AND NOT TO BE INCLUDED IN CALIFORNIA'S  
STATE IMPLEMENTATION PLAN**

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**ATTACHMENT 1**  
**Relevant California Health and Safety Code Sections Included for**  
**Information Only and not to be Included in California's**  
**State Implementation Plan**

**Section 39002. Agencies responsible for pollution control**

Local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources. The control of vehicular sources, except as otherwise provided in this division, shall be the responsibility of the State Air Resources Board. Except as otherwise provided in this division, including, but not limited to, Sections 41809, 41810, and 41904, local and regional authorities may establish stricter standards than those set by law or by the state board for nonvehicular sources. However, the state board shall, after holding public hearings as required in this division, undertake control activities in any area wherein it determines that the local or regional authority has failed to meet the responsibilities given to it by this division or by any other provision of law.

**Section 39602. Designated air pollution control agency; Compliance with federal law**

The state board is designated the air pollution control agency for all purposes set forth in federal law.

The state board is designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act (42 U.S.C., Sec. 7401, et seq.) and, to this end, shall coordinate the activities of all districts necessary to comply with that act.

Notwithstanding any other provision of this division, the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act.

**Section 39602.5. Adoption of rules and regulations**

- (a) The state board shall adopt rules and regulations pursuant to Section 43013 that, in conjunction with other measures adopted by the state board, the districts, and the United States Environmental Protection Agency, will achieve ambient air quality standards required by the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) in all areas of the state by the applicable attainment date, and to maintain these standards thereafter. The state board shall adopt these measures if they are necessary, technologically feasible, and cost effective, consistent with Section 43013.
- (b) If necessary to carry out its duties under this section, the state board shall adopt and enforce rules and regulations that anticipate the development of new technologies or the improvement of existing

technologies. The rules and regulations shall require standards that the state board finds and determines can likely be achieved by the compliance date set forth in the rule.

**Section 39607(a). Gathering air pollution information**

The state board shall:

- (a) Establish a program to secure data on air quality in each air basin established by the state board.

**Section 39607(c). Gathering air pollution information**

The state board shall:

- (c) Monitor air pollutants in cooperation with districts and with other agencies to fulfill the purpose of this division.

**Section 40000. Legislative finding and declaration**

The Legislature finds and declares that local and regional authorities have the primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles. The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board.

**Section 40001(a). Rules and regulations**

- (a) Subject to the powers and duties of the state board, the districts shall adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and shall enforce all applicable provisions of state and federal law.

**Section 40718. Pollutant maps**

- (a) Not later than January 1, 1990, the state board shall publish maps identifying those cities, counties, or portions thereof which have measured one or more violations of any state or federal ambient air quality standard. The state board shall produce at least one separate map for each pollutant.

**Section 40725. Notice of public hearing**

- (a) A district board shall not adopt, amend, or repeal any rule or regulation without first holding a public hearing thereon.
- (b) Notice of the time and place of a public hearing to adopt, amend, or repeal any rule or regulation shall be given not less than 30 days prior thereto to the state board, which notice shall include a copy of the rule or

regulation proposed to be adopted, amended, or repealed, as the case may be, and a summary description of the effect of the proposal, and by publication in the district pursuant to Section 6061 of the Government Code. In addition, in the case of a district which includes portions of more than one county, the notice shall be published in each county not less than 30 days prior to the date of the hearings.

- (c) Notice published pursuant to subdivision (b) shall invite written public comment and indicate the name, address, and telephone number of the district officer to whom these comments are to be addressed, and the date by which comments are to be received.

#### **Section 41509. Scope of division**

No provision of this division, or of any order, rule, or regulation of the state board or of any district, is a limitation on:

- (a) The power of any local or regional authority to declare, prohibit, or abate nuisances.
- (b) The power of the Attorney General, at the request of a local or regional authority, the state board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.
- (c) The power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.
- (d) The right of any person to maintain at any time any appropriate action for relief against any private nuisance.

#### **Section 41510. Right of entry for inspection**

For the purpose of enforcing or administering any state or local law, order, regulation, or rule relating to air pollution, the executive officer of the state board or any air pollution control officer having jurisdiction, or an authorized representative of such officer, upon presentation of his credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50), Part 3 of the Code of Civil Procedure, shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, including securing samples of emissions therefrom, or any records required to be maintained in connection therewith by the state board or any district.

**Section 41511. Rules and regulations**

For the purpose of carrying out the duties imposed upon the state board or any district, the state board or the district, as the case may be, may adopt rules and regulations to require the owner or the operator of any air pollution emission source to take such action as the state board or the district may determine to be reasonable for the determination of the amount of such emission from such source.

**Section 41650. Adoption of nonattainment area plan**

- (a) The state board shall adopt the nonattainment area plan approved by a designated air quality planning agency as part of the state implementation plan, unless the state board finds, after a public hearing, that the nonattainment area plan will not meet the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).
- (b) The primary responsibility for determining whether a control measure is reasonably available shall be vested in the public agency which has the primary responsibility for implementation of that control measure. The determination of reasonably available control measure by the public agency responsible for implementation shall be conclusive, unless the state board finds after public hearing that such determination will not meet the requirements of the Clean Air Act.

**Section 41651. Hearing; Evidence**

In addition to any other statutory requirements, at the public hearing held pursuant to Section 41650, the districts included, in whole or in part, within the nonattainment area, the designated air quality planning agency, and members of the public shall have the opportunity to present oral and written evidence. In addition, the districts and the agency shall have the right to question and solicit testimony of qualified representatives of the state board staff on the matter being considered. The state board may, by an affirmative vote of four members, place reasonable limits on the right to question and solicit testimony of qualified representatives of the state board staff.

**Section 41652. Revision of plan**

If, after the public hearing, the state board finds that the nonattainment area plan approved by the designated air quality planning agencies does not comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the state board may adopt such revisions as necessary to comply with such requirements, except as otherwise provided in Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.



**Section 41700. Prohibited discharges**

- (a) Except as otherwise provided in Section 41705, a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property.
- (b) This section shall become operative on January 1, 2014.

**Section 41712(b). Regulations to control volatile organic compounds in consumer products**

- (b) The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:
  - (1) The regulations are necessary to attain state and federal ambient air quality standards.
  - (2) The regulations are commercially and technologically feasible and necessary.

**Section 42311. Fees**

- (a) A district board may adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs related to permitted stationary sources authorized or required under this division that are not otherwise funded. The fees assessed under this section shall not exceed, for any fiscal year, the actual costs for district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover. Every person applying for a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule. Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources.
- (b) The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) prior to evaluating a permit application, if the district accounts for the costs of its services

- and refunds to the applicant any significant portion of the deposit which exceeds the actual, reasonable cost of evaluating the application.
- (c) Except as provided in Section 42313, all the fees shall be paid to the district treasurer to the credit of the district.
  - (d) This section does not apply to the south coast district board which is governed by Section 40510.
  - (e) In addition to providing notice as otherwise required, before adopting a regulation establishing fees pursuant to this section, the district board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the district board. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the district board shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service. Any costs incurred by the district board in conducting the required meeting may be recovered from fees charged for the programs which were the subject of the meeting.
  - (f) In addition to any other fees authorized by this section, a district board may adopt, by regulation, a schedule of annual fees to be assessed against permitted nonvehicular sources emitting toxic air contaminants identified pursuant to the procedure set forth in Sections 39660, 39661, and 39662. A district board shall demonstrate that the fees assessed under this subdivision do not exceed the reasonable, anticipated costs of funding district activities mandated by Section 39666 related to nonvehicular source emissions. In making the demonstration, the district shall account for all direct and indirect costs of district activities related to each toxic air contaminant. If the district does not make this demonstration, it shall make reimbursement for that portion of the fee not determined to be reasonable.
  - (g) A district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources.
  - (h) A district board may adopt, by regulation, a schedule of fees to cover the reasonable costs of the hearing board incurred as a result of appeals from district decisions on the issuance of permits. However, the hearing

board may waive all or part of these fees if it determines that circumstances warrant that waiver.

- (i) Nothing in the amendments to this section enacted in 1988 limits or abridges any previously existing authority of a district to vary fees according to quantity of emissions, nor affects any pending litigation which might affect that previous authority.

#### **Section 42400. Criminal penalty for violations**

- (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or both.
- (b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.
- (c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d), to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the county jail for not more than nine months, or both.
- (d) As used in this section, "actual injury" means any physical injury that, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.
- (e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

#### **Section 42400.1. Negligent emission of air contaminants; Operation of source of contaminants which causes actual injury; Criminal sanctions**

- (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than twenty-five thousand dollars (\$25,000), or imprisonment in a county jail for not more than nine months, or by both that fine and imprisonment.

- (b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, is guilty of a misdemeanor and is punishable by a fine of not more than one hundred thousand dollars (\$100,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.
- (c) Each day during any portion of which a violation occurs is a separate offense.

**Section 42400.2. Failure to take corrective actions; Criminal sanctions**

- (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable by a fine of not more than forty thousand dollars (\$40,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.
- (b) For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.
- (c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable by a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.
- (d) Each day during any portion of which a violation occurs constitutes a separate offense.

**Section 42400.3. Willful and intentional emissions of air contaminant; Penalties**

- (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than seventy-five thousand dollars (\$75,000), or imprisonment

in a county jail for not more than one year, or by both that fine and imprisonment.

- (b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in any unreasonable risk of great bodily injury to, or death of, any person, is guilty of a public offense and is punishable by a fine of not more than one hundred twenty-five thousand dollars (\$125,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, if the defendant is a corporation, the maximum fine may be up to five hundred thousand dollars (\$500,000).
- (c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person emits an air contaminant in violation of Section 41700 that causes great bodily injury to, or death of, any person is guilty of a public offense, and is punishable by a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment, or is punishable by a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment. If the defendant is a corporation, the maximum fine may be up to one million dollars (\$1,000,000).
- (d) Each day during any portion of which a violation occurs constitutes a separate offense.
- (e) This section does not preclude punishment under Section 189 or 192 of the Penal Code or any other provision of law that provides a more severe punishment.
- (f) For the purposes of this section:
  - (1) "Great bodily injury" means great bodily injury as defined by Section 12022.7 of the Penal Code.
  - (2) "Unreasonable risk of great bodily injury or death" means substantial probability of great bodily injury or death.

#### **Section 42400.3.5. Knowing violations; Penalties**

- (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more

than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

- (b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars (\$35,000) or imprisonment in the county jail for not more than nine months, or both.
- (c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).
- (d) Subdivisions (a) and (b) shall apply only to those violations that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

**Section 42400.4. Knowing violation of federally enforceable permit condition, fee, or filing requirement**

- (a) In any district where a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).
- (b) In any district in which a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).
- (c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.
- (d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

- (e) This section shall not become operative in a district until the federal Environmental Protection Agency fully approves that district's Title V permit program.
- (f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

**Section 42400.5. Cost of putting out unauthorized fires**

In addition to the penalties, specified in Section 42400, the cost of putting out any unauthorized open outdoor fires may be imposed on any person violating Section 41800 or 41852.

**Section 42400.6. Imposition of fine**

A fine or monetary penalty specified in Section 39674; subdivision (a), (b), (d), or (e) of Section 42400; Section 42402; or subdivision (a) of Section 44381 of this code, that may be imposed as the result of conduct that is also subject to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, may be collected either under those provisions of this code, or under that chapter of the Business and Professions Code, but not under both.

**Section 42400.7. Effect of recovery of civil penalties; Injunction**

- (a) The recovery of civil penalties pursuant to Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or 42402.4 precludes prosecution under Section 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.
- (b) If the pending civil action described in subdivision (a) includes a request for injunctive relief, that portion of the civil action shall not be dismissed upon the filing of a criminal complaint for the same offense.

**Section 42400.8. Determination of amount of fine**

- (a) In determining the amount of fine to impose pursuant to Sections 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, and 42400.4, the court shall consider all relevant circumstances, including, but not limited to, the following:
  - (b) The extent of harm caused by the violation.
  - (c) The nature and persistence of the violation.
  - (d) The length of time over which the violation occurs.
  - (e) The frequency of past violations.

- (f) The record of maintenance.
- (g) The unproven or innovative nature of the control equipment.
- (h) Any action taken by the person including the nature, extent, and time of response of any cleanup and construction undertaken, to mitigate the violation.
- (i) The financial burden on the defendant.
- (j) Any other circumstances the court deems relevant.

**Section 42401. Violation of abatement order; Civil penalty**

Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 42450, by a hearing board pursuant to Section 42451, or by the state board pursuant to Section 41505 is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

**Section 42402. Violation of emission limitations; Civil penalty**

- (a) Except as provided in Sections 42402.1, 42402.2, 42402.3, and 42402.4, any person who violates this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than five thousand dollars (\$5,000).
- (b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).
- (2) (A) If a civil penalty in excess of five thousand dollars (\$5,000) for each day in which a violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act that was not the result of intentional conduct or negligent conduct.
- (B) Subparagraph (A) shall not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.
- (C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.
- (c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d) of Section 42400, to the health and safety of a



considerable number of persons or the public, is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

- (d) Each day during any portion of which a violation occurs is a separate offense.

**Section 42402.1. Negligent emission of air contaminants; Operation of source of contaminants which cause actual injury; Civil penalties**

- (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000).
- (b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than one hundred thousand dollars (\$100,000).
- (c) Each day during any portion of which a violation occurs is a separate offense.

**Section 42402.2. Failure to take corrective actions; Civil penalties**

- (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars (\$40,000).
- (b) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000).
- (c) Each day during any portion of which a violation occurs is a separate offense.

**Section 42402.3. Willful and intentional emission of air contaminant; Penalty**

- (a) Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, including a district hearing board, pertaining to

emission regulations or limitations, is liable for a civil penalty of not more than seventy-five thousand dollars (\$75,000).

- (b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars (\$125,000). If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars (\$500,000).
- (c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars (\$1,000,000).
- (d) Each day during any portion of which a violation occurs is a separate offense.

#### **Section 42402.4. Penalty for knowing falsification of document**

Any person who knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, is liable for a civil penalty of not more than thirty-five thousand dollars (\$35,000).

#### **Section 42402.5. Administrative civil penalties**

In addition to any civil and criminal penalties prescribed under this article, a district may impose administrative civil penalties for a violation of this part, or any order, permit, rule, or regulation of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, if the district board has adopted rules and regulations specifying procedures for the imposition and amounts of these penalties. No administrative civil penalty levied pursuant to this section may exceed five hundred dollars (\$500) for each violation. However, nothing in this section is intended to restrict the authority of a district to negotiate mutual settlements under any other penalty provisions of law which exceed five hundred dollars (\$500).

**Section 42403. Civil actions; Determination of penalty**

- (a) The civil penalties prescribed in Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.
- (b) In determining the amount assessed, the court, or in reaching any settlement, the district, shall take into consideration all relevant circumstances, including, but not limited to, the following:
  - (1) The extent of harm caused by the violation.
  - (2) The nature and persistence of the violation.
  - (3) The length of time over which the violation occurs.
  - (4) The frequency of past violations.
  - (5) The record of maintenance.
  - (6) The unproven or innovative nature of the control equipment.
  - (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
  - (8) The financial burden to the defendant.

**Section 42403.5. Discharge from idling engine of diesel-powered bus**

- (a) Notwithstanding Section 42407, any violation of Section 41700 resulting from the engine of any diesel-powered bus while idling shall subject the owner to civil penalties assessed under this article, which may be recovered pursuant to Section 42403 by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.
- (b) There is no liability under subdivision (a) if the person accused of the violation establishes by affirmative defense that the extent of the harm caused does not exceed the benefit accrued to bus passengers as a result of idling the engine.

**Section 42404. Civil actions; Precedence**

An action brought pursuant to Section 42403 to recover such civil penalties shall take special precedence over all other civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

**Section 42404.5. Commencement of limitation period**

Any limitation of time applicable to actions brought pursuant to Section 42403 shall not commence to run until the offense has been discovered, or could reasonably have been discovered.

### **Section 42405. Payment of penalty**

In an action brought pursuant to Section 42403 by the Attorney General on behalf of a district, one-half of the penalty collected shall be paid to the treasurer of the district on whose behalf judgment was entered, and one-half of the penalty collected shall be paid to the State Treasurer for deposit in the General Fund.

If the action is brought by the Attorney General on behalf of the state board, the entire penalty collected shall be paid to the State Treasurer for deposit in the General Fund.

If the action is brought by a district attorney or by an attorney for a district, the entire amount of the penalty collected shall be paid to the treasurer of the district on whose behalf judgment was entered.

### **Section 42405.1. Rewards for informants**

- (a) Any person who provides information that materially contributes to the imposition of a civil penalty or criminal fine against any person for violating any provision of this part or any rule, regulation, or order of a district pertaining to mobile source emission regulations or limitations shall be paid a reward pursuant to regulations adopted by the district under subdivision (f). The reward shall not exceed 10 percent of the amount of the civil penalty or criminal fine collected by the district, district attorney, or city attorney. The district shall pay the reward to the person who provides information that results in the imposition of a civil penalty, and the city or the county shall pay the reward to the person who provides information that results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed five thousand dollars (\$5,000).
- (b) No informant shall be eligible for a reward for a violation known to the district, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.
- (c) If there is more than one informant for a single violation, the first notification received by the district shall be eligible for the reward. If the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.
- (d) Public officers and employees of the United States, the State of California, or districts, counties, and cities in California are not eligible for the reward pursuant to subdivision (a), unless reporting of those violations does not relate in any manner to their responsibilities as public officers or employees.
- (e) An informant who is an employee of a business and who provides information that the business violated this part is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

- (f) The district shall adopt regulations that establish procedures for a determination of the accuracy and validity of information provided and for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for a reward and the materiality of the provided information shall be made pursuant to these regulations. In each case brought under subdivision (a), the district, the office of the city attorney, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violating any provision of this part or any rule, regulation, or order of a district pertaining to emission regulations or limitations.
- (g) The district shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.
- (h) Claims may be submitted only for those referrals made on or after January 1, 1989.

**Section 42405.5. Reimbursement of government agency for cost and expenses incurred in preparing and prosecuting case**

- (a) If any state or local government agency provides assistance in the investigation, data collection, or monitoring, preparation, or prosecution of an action to recover civil penalties pursuant to Section 42401, 42402, 42402.1, or 42402.2, and that assistance is provided in coordination with the state board or a district prosecuting the action, that agency shall be reimbursed out of the proceeds of the penalty collected for its costs and expenses incurred in providing the assistance.
- (b) If the penalty collected is insufficient to fully reimburse the state board or district for the costs and expenses incurred in preparing and prosecuting the case and another agency or agencies for the costs and expenses incurred in assisting in the case, the amount collected shall be prorated among the state board or district and the assisting agency or agencies, on the basis of costs and expenses incurred by each.
- (c) This section does not apply where there is an express agreement between the state board or district and another agency or agencies regarding reimbursement for assistance services and expenses.

**Section 42406. Lien on vessel**

To secure a civil penalty imposed pursuant to this article on the operation of a vessel, the district shall have a lien on the vessel which may be recovered in an action against the vessel in accordance with the provisions of Article 3 (commencing with Section 490), Chapter 2, Division 3 of the Harbors and Navigation Code, except that no undertaking shall be required to be filed by the district board as a condition to the issuance of a writ of attachment.

**Section 42407. Scope of article**

Except as provided in Chapter 3.4 (commencing with Section 39640) of Part 2 and Sections 40720 and 42403.5, this article is not applicable to vehicular sources.

**Section 42408. Tampering with air pollution monitoring equipment**

- (a) Any person who tampers with any ambient air monitoring equipment, including related recording equipment, owned or operated by a county, unified or regional air pollution control district, air quality management district, or by the State of California, is guilty of a misdemeanor, and is liable in a civil action for damages caused by the tampering to the owner or operator of the equipment.
- (b) For purposes of this section, "tampering" means any unauthorized, intentional touching or other conduct affecting the operational status of monitoring equipment which has the potential to invalidate data collected from the monitoring activity.

**Section 42409. List of potential violations**

Every district shall publish in writing and make available to any interested party a list which describes potential violations subject to penalties under this article. The list shall also include the minimum and maximum penalties for each violation which may be assessed by a district pursuant to this article.

**Section 42410. Administrative penalty as alternative to civil penalty; Limitations; Construction of section; Report to Governor and Legislature**

- (a) As an alternative to seeking civil penalties under Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 for a violation of regulations of the state board, the state board may impose an administrative penalty, as specified in this section. Any administrative penalty imposed under this section shall be imposed as an alternative to, and not in addition to, a civil penalty imposed pursuant to this article. No administrative penalty imposed by the state board pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.
- (b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars (\$10,000) for each day in which there is a violation of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.

- (c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.
- (d) Nothing in this section authorizes the state board to seek penalties for categories of violations for which the state board may not recover penalties in a civil action.
- (e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.
- (f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 42403.
- (g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.
- (h) For any violation that is within the enforcement jurisdiction of both the state board and the districts, the state board may impose an administrative penalty pursuant to this section only if the district in which the violation has occurred has not commenced an enforcement action for that violation.
- (i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.
- (j) Any administrative penalty assessed pursuant to this section shall be paid to the State Treasurer for deposit in the General Fund.
- (k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.
- (l) This section shall only apply to violations that occur on or after January 1, 2002.
- (m) On or before January 30, 2005, the state board shall prepare and submit to the Legislature and the Governor a report summarizing the

administrative penalties imposed by the state board pursuant to this section for calendar years 2002, 2003, 2004, and 2005.

**Section 42450. Issuance by district board; Hearing**

The district board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 41700 or 41701 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air. In holding such a hearing, the district board shall be vested with all the powers and duties of the hearing board. Notice shall be given, and the hearing shall be held, pursuant to Chapter 8 (commencing with Section 40800) of Part 3.

**Section 42450.1. Application of article**

This article applies to any order for abatement issued pursuant to a determination made under Section 42301.7.

**Section 42451. Issuance by hearing board; Stipulated orders**

- (a) On its own motion, or upon the motion of the district board or the air pollution control officer, the hearing board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 41700 or 41701 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.
- (b) As an alternative to subdivision (a), the hearing board may issue an order for abatement pursuant to the stipulation of the air pollution control officer and the person or persons accused of constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or of violating Section 41700 or 41701, or any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air, upon the terms and conditions set forth in the stipulation, without making the finding required under subdivision (a). The hearing board shall, however, include a written explanation of its action in the order for abatement.

**Section 42452. Form of order**

The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a



variance unless all the conditions for a variance, including limitation of time, are met.

**Section 42453. Injunction against violations**

A proceeding for mandatory or prohibitory injunction shall be brought by the district in the name of the people of the State of California in the superior court of the county in which the violation occurs to enjoin any person to whom an order for abatement pursuant to Section 42452 has been directed and who violates such order.

**Section 42454. Injunction proceedings**

Proceedings under Section 42453 shall conform to the requirements of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure, except that it shall not be necessary to show lack of adequate remedy at law or to show irreparable damage or loss.

If, in any such proceeding, it shall be shown that an order for abatement has been made, that it has become final, and that its operation has not been stayed, it shall be sufficient proof to warrant the granting of a preliminary injunction.

If, in addition, it shall be shown that the respondent continues, or threatens to continue, to violate such order for abatement, it shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

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