

**Appendix H to California's Proposed Compliance  
Plan for the Federal Clean Power Plan:  
Relevant Legal Authorities**

## **Legal Authorities for California Clean Power Plan Compliance Plan Development and Implementation**

The Proposed Plan describes California, and the Air Resources Board's, authorities to develop and implement a compliance plan for the Clean Power Plan. This appendix gathers many of the statutes that support this authority. They include AB 32, the California Global Warming Solutions Act, and several other sections of the California Health and Safety Code that provide the Board with broad organic authority to address air pollutants, and to comply with federal Clean Air Act mandates. The authorities cited here are not necessarily a complete list; instead, they reflect an effort to identify critical statutory provisions for the Proposed Plan. Readers may refer to the full California Health and Safety Code, and related regulations, for a complete accounting of relevant law.

### **AB 32**

38500. This division shall be known, and may be cited, as the California Global Warming Solutions Act of 2006.

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in

the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

38505. For the purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) "Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) "Direct emission reduction" means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) "Emissions reduction measure" means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources,

that are designed to reduce emissions of greenhouse gases.

(g) "Greenhouse gas" or "greenhouse gases" includes all of the following gases:

- (1) Carbon dioxide.
- (2) Methane.
- (3) Nitrous oxide.
- (4) Hydrofluorocarbons.
- (5) Perfluorocarbons.
- (6) Sulfur hexafluoride.
- (7) Nitrogen trifluoride.

(h) "Greenhouse gas emissions limit" means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) "Greenhouse gas emission source" or "source" means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) "Market-based compliance mechanism" means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(l) "State board" means the State Air Resources Board.

(m) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38550).

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.

38530. (a) On or before January 1, 2008, the state board shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.

(b) The regulations shall do all of the following:

(1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions.

(2) Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code.

(3) Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the California Climate Action Registry, established pursuant to Chapter 6 (commencing with Section 42800) of Part 4 of Division 26. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

(4) Ensure rigorous and consistent accounting of emissions, and provide reporting tools and formats to ensure collection of necessary data.

(5) Ensure that greenhouse gas emission sources maintain comprehensive records of all reported greenhouse gas emissions.

(c) The state board shall do both of the following:

(1) Periodically review and update its emission reporting requirements, as necessary.

(2) Review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs, and to streamline reporting requirements on greenhouse gas emission sources.

38550. By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions.

38551. (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.

(b) It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.

(c) The state board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

38560. The state board shall adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part.

38560.5. (a) On or before June 30, 2007, the state board shall publish and make available to the public a list of discrete early action greenhouse gas emission reduction measures that can be implemented prior to the measures and limits adopted pursuant to Section 38562.

(b) On or before January 1, 2010, the state board shall adopt regulations to implement the measures identified on the list published pursuant to subdivision (a).

(c) The regulations adopted by the state board pursuant to this section shall achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources or categories of sources, in furtherance of achieving the statewide greenhouse gas emissions limit.

(d) The regulations adopted pursuant to this section shall be enforceable no later than January 1, 2010.

38561. (a) On or before January 1, 2009, the state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division. The state board shall consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission, on all elements of its plan that pertain to energy related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner.

(b) The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

(c) In making the determinations required by subdivision (b), the

state board shall consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations, including the northeastern states of the United States, Canada, and the European Union.

(d) The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods.

(e) In developing its plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and shall recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

(f) In developing its plan, the state board shall identify opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.

(g) The state board shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The state board shall conduct a portion of these workshops in regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(h) The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years.

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in

other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) After January 1, 2011, the state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

38563. Nothing in this division restricts the state board from adopting greenhouse gas emission limits or emission reduction measures prior to January 1, 2011, imposing those limits or measures prior to January 1, 2012, or providing early reduction credit where appropriate.

38564. The state board shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

38565. The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

38570. (a) The state board may include in the regulations adopted pursuant to Section 38562 the use of market-based compliance mechanisms to comply with the regulations.

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

(2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.

(3) Maximize additional environmental and economic benefits for California, as appropriate.

(c) The state board shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.

38571. The state board shall adopt methodologies for the quantification of voluntary greenhouse gas emission reductions. The state board shall adopt regulations to verify and enforce any voluntary greenhouse gas emission reductions that are authorized by the state board for use to comply with greenhouse gas emission limits established by the state board. The adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

38574. Nothing in this part or Part 4 (commencing with Section 38560) confers any authority on the state board to alter any programs administered by other state agencies for the reduction of greenhouse gas emissions.

38580. (a) The state board shall monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board pursuant to this division.

(b) (1) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(2) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division shall be deemed to result in an emission of an air contaminant for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(3) The state board may develop a method to convert a violation of any rule, regulation, order, emission limitation, or other emissions reduction measure adopted by the state board pursuant to this division into the number of days in violation, where appropriate, for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(c) Section 42407 and subdivision (i) of Section 42410 shall not apply to this part.

38590. If the regulations adopted pursuant to Section 43018.5 do not remain in effect, the state board shall implement alternative regulations to control mobile sources of greenhouse gas emissions to achieve equivalent or greater reductions.

38591. (a) The state board, by July 1, 2007, shall convene an environmental justice advisory committee, of at least three members, to advise it in developing the scoping plan pursuant to Section 38561 and any other pertinent matter in implementing this division. The advisory committee shall be comprised of representatives from communities in the state with the most significant exposure to air pollution, including, but not limited to, communities with minority populations or low-income populations, or both.

(b) The state board shall appoint the advisory committee members from nominations received from environmental justice organizations and community groups.

(c) The state board shall provide reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

(d) The state board shall appoint an Economic and Technology Advancement Advisory Committee to advise the state board on activities that will facilitate investment in and implementation of technological research and development opportunities, including, but not limited to, identifying new technologies, research, demonstration projects, funding opportunities, developing state, national, and international partnerships and technology transfer opportunities, and identifying and assessing research and advanced technology investment and incentive opportunities that will assist in the reduction of greenhouse gas emissions. The committee may also advise the state board on state, regional, national, and international economic and technological developments related to greenhouse gas emission reductions.

38592. (a) All state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.

(b) Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

38593. (a) Nothing in this division affects the authority of the Public Utilities Commission.

(b) Nothing in this division affects the obligation of an electrical corporation to provide customers with safe and reliable electric service.

38594. Nothing in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

38595. Nothing in this division shall preclude, prohibit, or restrict the construction of any new facility or the expansion of an existing facility subject to regulation under this division, if all applicable requirements are met and the facility is in compliance with regulations adopted pursuant to this division.

38596. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

38597. The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse

gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division.

38598. (a) Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

38599. (a) In the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm, the Governor may adjust the applicable deadlines for individual regulations, or for the state in the aggregate, to the earliest feasible date after that deadline.

(b) The adjustment period may not exceed one year unless the Governor makes an additional adjustment pursuant to subdivision (a).

(c) Nothing in this section affects the powers and duties established in the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(d) The Governor shall, within 10 days of invoking subdivision (a), provide written notification to the Legislature of the action undertaken.

### **Organic Authorities for the Air Resources Board**

39500. It is the intent of the Legislature that the State Air Resources Board shall have the responsibility, except as otherwise provided in this division, for control of emissions from motor vehicles and shall coordinate, encourage, and review the efforts of all levels of government as they affect air quality.

39510. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 14 members.

(b) Twelve members shall be appointed by the Governor, with the consent of the Senate, on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems.

(c) Of the members appointed pursuant to subdivision (b), six members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry,

meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) Two members shall be public members.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.

(d) Of the members appointed pursuant to subdivision (b), six members shall be board members from districts who shall reflect the qualitative requirements of subdivision (c) to the extent practicable. Of these members:

(1) One shall be a board member from the south coast district.

(2) One shall be a board member from the bay district.

(3) One shall be a board member from the San Joaquin Valley Unified Air Pollution Control District.

(4) One shall be a board member from the San Diego County Air Pollution Control District.

(5) One shall be a board member from the Sacramento district, the Placer County Air Pollution Control District, the Yolo-Solano Air Quality Management District, the Feather River Air Quality Management District, or the El Dorado County Air Pollution Control District.

(6) One shall be a board member of any other district.

(e) The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one member to the state board who shall be a person who works directly with communities in the state that are most significantly burdened by, and vulnerable to, high levels of pollution, including, but not limited to, communities with diverse racial and ethnic populations and communities with low-income populations.

(f) Any vacancy shall be filled by the appointing authority within 30 days of the date on which it occurs. If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.

(g) While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. A member of the state board shall not be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that a member of the state board who is also a member of a district board shall not participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive.

39511. (a) The Governor shall appoint the chairperson, who shall serve at the pleasure of the Governor, from among the members of the state board, and shall serve as the principal advisor to the Governor on, and shall assist the Governor in establishing, major policy and program matters on environmental protection. The chairperson shall also serve as the principal communications link for the effective transmission of policy problems and decisions to the Governor relating to the activities of the State Water Resources Control Board and the State Solid Waste Management Board, in addition to serving

as the Governor's chief air quality policy spokesperson.

(b) The chairperson shall serve full time.

39512. Each member of the state board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

39512.5. (a) With respect to the members appointed pursuant to subdivision (d) of Section 39510, those members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for expenses is not otherwise provided or payable by another public agency or agencies. Each elected public official member of the state board shall receive one hundred dollars (\$100) for each day, or portion thereof, but not to exceed one thousand dollars (\$1,000) in any month, attending meetings of the state board or committees thereof, or upon authorization of the state board while on official business of the state board.

(b) Reimbursements made pursuant to subdivision (a) shall be made as follows:

(1) A member appointed from a district that is specifically named in subdivision (d) of Section 39510 shall be reimbursed by the district from which the person qualified for membership.

(2) The member appointed as a board member of a district that is not specifically named in subdivision (d) of Section 39510 shall be reimbursed by the state board.

39513. The state board shall hold regular meetings at least twice a month. Special meetings may be called by the chair or upon the request of a majority of the members. Each member of the state board shall receive reimbursement for actual necessary traveling expenses incurred in the performance of official duties. Time spent in these board meetings shall count toward the sixty hours per month work requirement specified in Section 11564 of the Government Code.

39514. The provisions of Chapter 2 (commencing with Section 11150), Part 1, Division 3, Title 2 of the Government Code apply to the state board, and the state board is the head of a department within the meaning of the chapter.

39515. (a) The state board shall appoint an executive officer who shall serve at the pleasure of the state board and, except as provided in subdivision (d), may delegate any duty to the executive officer that the state board deems appropriate.

(b) The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge, under the direction and control of the state board, the powers, duties, purposes, functions, and jurisdiction vested in the state board and

delegated to the executive officer by the state board.

(c) The state board shall, upon the receipt of a petition from any affected member of the public, affected district, or designated air quality planning agency, hold a public hearing to review any action taken by the executive officer pursuant to Section 41650, 41651, or 41652.

(d) Any action taken by the executive officer pursuant to Section 40469 or Sections 41503 to 41505, inclusive, shall be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

39516. Any power, duty, purpose, function, or jurisdiction which the state board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the state board, by affirmative vote recorded in the minutes of the state board, specifically has reserved the same for the state board's own action.

The executive officer may redelegate to his subordinates unless, by state board rule or express provision of law, the executive officer is specifically required to act personally.

39517. The district shall be given notice and the opportunity to act before any rule or regulation is adopted by the state board for the district pursuant to Section 41502.

39600. The state board shall do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.

39601. (a) The state board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.

(b) The state board, by rules and regulations, may revise the definitions of terms set forth in Chapter 2 (commencing with Section 39010) of Part 1 in order to conform those definitions to federal laws and rules and regulations.

(c) The standards, rules, and regulations adopted pursuant to this section shall, to the extent consistent with the responsibilities imposed under this division, be consistent with the state goal of providing a decent home and suitable living environment for every Californian.

39601.5. (a) The state board shall make available to the public all information described in paragraph (2) of subdivision (b) of Section 11346.2 of the Government Code, related to, but not limited to, air emissions, public health impacts, and economic impacts, before the comment period for any regulation proposed for adoption by the state board.

(b) In meeting the requirement of subdivision (a), the state board shall not release proprietary, confidential, or otherwise legally protected business information. The state board shall release information in aggregated form, where necessary, to protect proprietary, confidential, or otherwise legally protected business information.

39602. 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.

39602.5. (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.

39603. (a) The state board may do both of the following:

(1) Contract for technical advisory services and other services as may be necessary for the performance of its powers and duties.

(2) Appoint advisory groups and committees as it requires. Members of committees or advisory groups shall receive one hundred dollars (\$100) per day for each day they attend a meeting of the state board or meet pursuant to a request of the state board, plus actual and necessary travel expenses incurred while performing their duties.

(b) In appointing advisory groups and committees, the state board may appoint a number of persons qualified in various fields and disciplines. Persons appointed shall be kept informed of the issues

before the state board and the work pending before the state board. When the state board desires the advice, in connection with a particular problem or problems, of any person so appointed, the chairperson of the state board may select that person to serve as a member of a working group or committee for the purpose of providing the advice. After the working group or committee has given its advice to the state board, it shall cease to function as a working group or committee. The financial remuneration specified in paragraph (2) of subdivision (a) shall be available to persons only during the time they are serving as members of a working group or committee at the request of the state board.

39607. The state board shall:

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

(b) Inventory sources of air pollution within the air basins of the state and determine the kinds and quantity of air pollutants, including, but not necessarily limited to, the contribution of natural sources, mobile sources, and area sources of emissions, including a separate identification of those sources not subject to district permit requirements, to the extent feasible and necessary to carry out the purposes of this chapter. The state board shall use, to the fullest extent, the data of local agencies and other state and federal agencies in fulfilling this purpose.

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

(d) Adopt test procedures to measure compliance with its nonvehicular emission standards and those of districts.

(e) Establish and periodically review criteria for designating an air basin attainment or nonattainment for any state ambient air quality standard set forth in Section 70200 of Title 17 of the California Code of Regulations. In developing and reviewing these criteria, the state board shall consider instances where there is poor or limited ambient air quality data, and shall consider highly irregular or infrequent violations. The state board shall provide an opportunity for public comment on the proposed criteria, and shall adopt the criteria after a public hearing.

(f) Evaluate, in consultation with the districts and other interested parties, air quality-related indicators which may be used to measure or estimate progress in the attainment of state standards and establish a list of approved indicators. On or before July 1, 1993, the state board shall identify one or more air quality indicators to be used by districts in assessing progress as required by subdivision (b) of Section 40924. The state board shall continue to evaluate the prospective application of air quality indicators and, upon a finding that adequate air quality modeling capability exists, shall identify one or more indicators which may be used by districts in lieu of the annual emission reductions mandated by subdivision (a) of Section 40914. In no case shall any indicator be less stringent or less protective, on the basis of overall health protection, than the annual emission reduction requirement in subdivision (a) of Section 40914.

(g) Establish, not later than July 1, 1996, a uniform methodology which may be used by districts in assessing population exposure,

including, but not limited to, reduction in exposure of districtwide subpopulations such as children, the elderly, and persons with respiratory disease, to ambient air pollutants at levels above the state ambient air quality standards, for estimating reductions in population exposure for the purposes of Sections 40913, 40924, and 41503, and for the establishment of the means by which reductions in population exposures may be achieved. The methodology adopted pursuant to this subdivision shall be consistent with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and with this division, including, but not limited to, Section 39610.

### **Enforcement Authorities for the Air Resources Board**

42400. (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 one thousand dollars (\$1,000) 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.

42400.1. (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.

42400.2. (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.

42400.3. (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.

42400.3.5. (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 ( 1) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412( 1)), 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 ( 1) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412( 1)), 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.

42400.4. (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.

42400.5. 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.

42400.6. 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.

42400.7. (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.

42400.8. 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:

- (a) The extent of harm caused by the violation.
- (b) The nature and persistence of the violation.
- (c) The length of time over which the violation occurs.
- (d) The frequency of past violations.
- (e) The record of maintenance.
- (f) The unproven or innovative nature of the control equipment.
- (g) Any action taken by the person including the nature, extent, and time of response of any cleanup and construction undertaken, to mitigate the violation.
- (h) The financial burden on the defendant.
- (i) Any other circumstances the court deems relevant.

42401. 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.

42402. (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 one thousand dollars (\$1,000).

(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 one thousand dollars (\$1,000) 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 nor 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.

42402.1. (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.

42402.2. (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.

42402.3. (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.

42402.4. 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).

42402.5. 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).

42403. (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.

42403.5. (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.

42404. 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.

42404.5. 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.

42405. 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.

42405.1. (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.

42405.5. (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.

42406. 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.

42407. 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.

42408. (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.

42409. 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.

42410. (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.