



ADVISORY

(State Law Changes)

Number 92

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AB 1572 - Increasing Maximum Penalties

Attached is a copy of Assembly Bill (AB) 1572 which was signed into law on September 29, 1992. AB 1572 amends Sections 39674, 42400, 42400.1, 42400.2, 42402, 42402.1, 42402.2 and 42403, and adds Sections 42400.3 and 42402.3 to the Health and Safety Code, relating to air pollution.

These additions and amendments in some cases substantially increase the penalties for violations of nonvehicular air pollution laws, regulations, and orders. AB 1572 became effective January 1, 1993 and will apply to any violations which occur on or after that date.

Under the new law, Section 39674 is amended to add a provision for strict liability of \$1,000 for each day in which the violation occurs and adds the phrase: "or which is implemented and enforced as authorized by subdivision (b) of Section 39658". The term "strictly liable" is only applied to the \$1,000 penalty and not the \$10,000 penalty. The subdivision that refers to: "There is no liability under [this subdivision] if the person accused...", has been modified to apply only to the seeking of a civil penalty in excess of \$1,000 for each day.

Section 42400 is amended to add a reference to Section 42402.3 to subdivision (c). This is the only change to this Section.

Section 42400.1 is amended to add the word "permit" to the phrase: "...any rule, regulation, [permit], or order...". The penalty amount in this Section is changed from \$10,000 to \$15,000 and adds the reference to Section 42402.3 into subdivision (d).

Section 42400.2 is amended to add the word "permit" to the phrase: "...any rule, regulation, [permit], or order..." into subdivisions (a), (b), and (c). The phrase "...and failed to take corrective action within..." in subdivision (d) now reads: "...and failed to take corrective action [as defined in subdivision (a)] within...". The reference to Section 42402.3 has been added to subdivision (f).

Section 42400.3 has been added to the Health and Safety Code and is a provision to "fine" a "person" not more than \$50,000 for "willfully and intentionally" emitting an air contaminant.

Section 42402 is amended to add the reference to Section 42402.3 into subdivision (a). A provision for liability of \$10,000 has been added and becomes subdivision (b). The term "strictly liable" rather than "liable" is now used in subdivision (a) for the \$1,000 civil penalty. The word "strictly" is not applied to the \$10,000 civil penalty.

Section 42402.1 has been amended changing the civil penalty amount from \$10,000 to \$15,000 for each day as a separate offense. The word "permit" has been added to subdivision (a) written as: "...any rule, regulation, [permit], or order..."

Section 42402.2 is amended to add the word "permit" to subdivision (a) written as: "...any order, rule, regulation, [or permit] of the state board...". The definition of "corrective action" has been deleted from subdivision (a). The word "permit" has been added to subdivision (b) written as "...any rule, regulation, [permit], or order...". The definition of "actual injury" has been deleted from subdivision (c) and is instead defined by referencing paragraph 2 of subdivision (d) of section 42400.2. "Corrective action" is now defined by referencing subdivision (b) of Section 42400.2.

Section 42402.3 is added to the Health and Safety Code and is a provision to make a "person" "willfully and intentionally" emitting an air contaminant, "liable for a civil penalty of not more than [\$50,000]". This differs from Section 42400.3 in that the term "fine" is used in Section 42400.3 and the term "civil penalty" is used in 42402.3.

Section 42403 has been amended to add the references to Sections 39674 and 42402.3 to subdivision (a). The reference to Sections 42401, 42402, 42402.1, and 42402.2 has been deleted from what is now subdivision (b). The criterion to be considered in determining the amount assessed has changed from lettered subsections (a) through (h) to a numbered list of (1) through (8). Number (7) on this list now reads: "Any action taken by the defendant [including the nature, extent, and time of response of the cleanup and construction undertaken,] to mitigate the violation."

AB 1572 also stipulates that: "If a violation is punishable under Division 26 (commencing with Section 39000) of the Health and Safety Code as a violation of either (1) a permit condition or (2) an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the violation may be punished as a violation of either (1) or (2), but not both.

If you have any questions regarding this legislation, please call the Air Resources Board, Compliance Division at (800) 952-5588.

Attachment

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Assembly Bill No. 1572

CHAPTER 1252

An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42402, 42402.1, 42402.2, and 42403 of, and to add Sections 42400.3 and 42402.3 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 29, 1992. Filed with Secretary of State September 30, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1572, Campbell. Air pollution: penalties.

(1) Existing law prescribes civil and misdemeanor criminal penalties for violations of specified air pollution control laws, rules, regulations, permits, and orders.

This bill would impose increased maximum fines or civil penalties for certain offenses, as specified. The bill would impose a state-mandated local program by creating new crimes.

The bill would state that if an offense is punishable under the air pollution control laws either as (a) a violation of a permit condition, or (b) a violation of an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the offense may be punished as a violation of either (a) or (b), but not both.

(2) Existing law specifies factors to be considered by the court in assessing those civil penalties.

This bill would specify that the same factors are to be considered by air pollution control districts and air quality management districts in reaching any settlement, and would include the nature, extent, and time of response of the cleanup and construction undertaken by the defendant as a factor to be considered.

(3) This bill also makes additional changes in Section 39674 of the Health and Safety Code proposed by AB 2728, to be operative only if AB 2728 and this bill are both chaptered and become effective on or before January 1, 1993, and this bill is chaptered last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 39674 of the Health and Safety Code is amended to read:

39674. (a) Any person who violates any rule () regulation,

emission limitation, or permit condition adopted pursuant to Article 4 (commencing with Section 39665) is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b) (1) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Article 4 (commencing with Section 39665) is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day in which the 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 is caused by an act which was not the result of intentional or negligent conduct.

SEC. 1.5. Section 39674 of the Health and Safety Code is amended to read:

39674. (a) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b) (1) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation 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 is caused by an act which was not the result of intentional or negligent conduct.

SEC. 2. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1 or 42400.2, any person who violates any provision 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, 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 install 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 any action violating any provision of this part.

(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) occurs is a separate offense.

SEC. 3. Section 42400.1 of the Health and Safety Code is amended to read:

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 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.

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is punishable as provided in subdivision (a).

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

(d) 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.

SEC. 4. Section 42400.2 of the Health and Safety Code is amended to read:

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 subject to a fine of not more than twenty-five thousand dollars (\$25,000) or imprisonment in the county jail for not more than one year, or both.

(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, 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, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(d) (1) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury to the health or safety of a considerable number of persons or the public, 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 as provided in subdivision (a).

(2) As used in this subdivision, "actual injury" means any physical injury which, 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 occurs constitutes a separate offense.

(f) 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.

SEC. 5. Section 42400.3 is added to the Health and Safety Code, to read:

42400.3. (a) Any person who willfully and intentionally 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 is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the county jail for not more than one year, or both.

(b) 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.

SEC. 6. Section 42402 of the Health and Safety Code is amended

to read:

42402. (a) Except as otherwise provided in subdivision (b) or in Section 42402.1, 42402.2, or 42402.3, any person who violates any provision of this part, any order issued pursuant to Section 42316, or any order, permit, rule, or regulation 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 order, permit, rule, or regulation 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 liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day in which the 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 which was not the result of intentional or negligent conduct.

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

SEC. 7. Section 42402.1 of the Health and Safety Code is amended to read:

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 pertaining to emission regulations or limitations is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public is liable for a civil penalty as provided in subdivision (a).

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

SEC. 8. Section 42402.2 of the Health and Safety Code is amended to read:

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 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 twenty-five thousand dollars (\$25,000).

(b) 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, is subject to the same civil penalty as provided in subdivision (a).

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public, 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 subject to a civil penalty as provided in subdivision (a).

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

SEC. 9. Section 42402.3 is added to the Health and Safety Code, to read:

42402.3. Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any order, permit, rule, or regulation of the state board, or of a district, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

SEC. 10. Section 42403 of the Health and Safety Code is amended to read:

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.

SEC. 11. (a) If a violation is punishable under Division 26 (commencing with Section 39000) of the Health and Safety Code as a violation of either (1) a permit condition or (2) an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the violation may be punished as a violation of either (1) or (2), but not both.

(b) This language is modeled on Penal Code Section 654, for purposes of civil and criminal air pollution violations.

SEC. 12. Section 1.5 of this bill incorporates amendments to Section 39674 of the Health and Safety Code proposed by both this bill and AB 2728. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1993, (2) each bill amends Section 39674 of the Health and Safety Code, and (3) this bill is enacted after AB 2728, in which case Section 1 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.