

## Senate Bill No. 1402

### CHAPTER 413

An act to amend Section 43023 of, and to add Sections 39619.7 and 43024 to, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2010. Filed with  
Secretary of State September 28, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

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

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

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

The bill would require the state board to prepare and submit to the Legislature and the Governor a report summarizing the motor vehicle pollution administrative penalties imposed by the state board for calendar year 2011, and annually thereafter, and would require the state board to publish a penalty policy for motor vehicle pollution laws that is based on specified criteria.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 39619.7 is added to the Health and Safety Code, to read:

39619.7. (a) A written communication from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, shall contain a clear explanation of all of the following:

(1) The manner in which the administrative or civil penalty amount was determined, including the aggravating and mitigating factors the state board

considered in arriving at the amount, and, where applicable, the per unit or per vehicle basis for the penalty.

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

(3) Whether the administrative or civil penalty is being assessed under a provision of law that prohibits the emission of pollution at a specified level, and if so, a quantification of the specific amount of pollution emitted in excess of that level, where practicable. This quantification may be based on estimates or emission factors.

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

SEC. 2. Section 43023 of the Health and Safety Code is amended to read:

43023. (a) As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board may impose an administrative penalty, as specified in this section, for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. An administrative penalty imposed pursuant to this section shall not exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and an administrative penalty imposed pursuant to this section shall not 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 for any violation arising from the same conduct. This one hundred thousand dollar (\$100,000) maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.

(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 up to a maximum 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 impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board shall 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 43031.

(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) This section does not apply to any violation for which a penalty may be assessed pursuant to Chapter 1.5 (commencing with Section 43025).

(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 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 applies only to violations that occur on or after January 1, 2002.

(m) 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 year 2011, and annually thereafter.

SEC. 3. Section 43024 is added to the Health and Safety Code, to read: 43024. (a) No later than March 1, 2011, the state board shall publish a penalty policy for civil or administrative penalties prescribed under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200).

(b) The policy shall take into consideration all relevant circumstances, including, but not limited to, all of the following:

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

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

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

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

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

(6) The efforts of the defendant to attain, or provide for, compliance.

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

(8) The financial burden to the defendant.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that air pollution penalties are imposed in furtherance of state goals as quickly as possible, it is necessary that this act take effect immediately.