

*California Air Resources Board  
Enforcement Division*

**Update on ARB's  
Enforcement Program**

*Presented to the Air Resources Board during the  
January 28, 2010  
Public Meeting*

Thank you and good afternoon Chairman Nichols and Board members. I'm Jim Ryden, Chief of ARB's Enforcement Division.

## **Response to Comments from the New Industry Coalition**

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We have worked closely with the Attorney General's Office to review the way we conduct enforcement at ARB to ensure that it complies with all legal requirements. With that input, as well as suggestions from the regulated community and the public, we are implementing some changes and continuing to look at issues.

### **Response to Comments from the New Industry Coalition**

First, I would like to address the main comments you heard from the new industry coalition by summarizing them and providing our current thinking on them. We are implementing several of the suggestions we heard from this group, including providing a model penalty guidance, looking at our administrative hearing process and augmenting our ability to take enforcement action against illegal uncertified products imported into the United States.

*Coalition Comment #1*  
**ARB should loosen existing laws  
for strict liability for violations of  
air quality requirements.**

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**The first comment you heard from this coalition was that ARB should loosen existing laws for strict liability for violations of air quality requirements.**

Strict liability for violations is established in the statutes and regulations we enforce. It is the typical standard in environmental laws across the country because environmental violations involve ongoing business activity and are not usually committed intentionally or even negligently. Under strict liability, a violator's intent helps determine the amount of the penalty. The coalition commenters urged ARB to adopt a system in which violators could avoid strict liability. This would put ARB out of step with most environmental laws and leave many violations unpunished.

*Coalition Comment #2*  
**ARB should require mandatory  
administrative hearings.**

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**The next comment you heard from the new coalition urged ARB to require mandatory administrative hearings, instead of following the current ARB practice of working with violators to reach mutually agreeable settlements based on the facts and law of each case.**

Allowing violators to invoke mandatory administrative hearings instead of working with us to settle cases would increase both settlement costs and the time it takes to reach settlements. Both would result in fewer violations being addressed. In addition to being long and costly, after an administrative hearing, both ARB and the violator have the option to challenge it all over again in court, adding to the expense and burden of the process. Instead, ARB handles case settlements the way most other agencies do. Our settlements are the product of mutual agreement between ARB and the violators and neither side is able to dictate terms to the other. In fact, we settle 99 percent of our cases, so we do not see much need for holding administrative hearings.

If we cannot settle a case, ARB shoulders the burden and expense of proving the violations in court. Litigation is seldom a winning proposition for us even if we technically “win” the lawsuit because litigation puts a huge strain on our staff and resources. Penalties must be deposited in the Air Pollution Control Fund for appropriation by the Legislature, not in our operating budget to compensate us for our litigation expenses. These are the realities of the situation.

This being said, we are looking at the administrative hearing regulations currently on the books.

*Coalition Comment #3*  
**ARB should adopt the  
U.S. EPA policy for  
determining mobile source  
penalties.**

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**The next comment that you heard from the new coalition is that ARB should adopt a complicated U.S. EPA policy for determining penalties in mobile source cases that is based on federal law and is barely a year old.**

The U.S. EPA mobile source penalty policy is not a good fit for ARB's enforcement program, mainly because California and federal mobile source penalty statutes are quite different. Moreover, when implementing the U.S. EPA mobile source penalty policy, the federal staff also uses its discretion in applying certain factors such as evaluating the violator's intent. Bottom line is, instead of adopting U.S. EPA's penalty policy as suggested, ARB will continue to evaluate the facts of individual cases and apply the California statutory factors. The 99% settlement rate reflects how well ARB's existing process works.

However, we believe that there is merit to adopting a penalty guidance that is consistent with California law and increases the transparency of our enforcement program. Later in my presentation, I will discuss the action we are taking in more detail.

*Coalition Comment #4*

**ARB should concentrate on “emissions” violations and ignore other violations or impose nominal penalties.**

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**You also heard comments from the new coalition that ARB should concentrate on prosecuting “emissions” violations and either ignore other violations or impose nominal penalties.**

We do concentrate on emissions violations, but we prosecute other violations as well. Some coalition commenters argue that violations of ARB’s engine emission certification requirements are simply paperwork violations. We disagree. ARB considers selling vehicles that are not certified to ARB emission standards to be emissions violations—the emissions that come out of uncertified vehicles are illegal; they should not occur at all. The only way to protect our certification programs, the emission standards they implement and the many law-abiding companies that spend their time and resources to comply with ARB’s certification requirements is to impose substantial penalties for certification violations. Since the Health and Safety Code provides substantial penalties for these violations, ARB is reflecting the Legislature’s decision.

These commenters also urged us to augment enforcement against illegal uncertified products being imported into the United States. We agree and have been seeking to do this for several years, but have made less progress than we would like in discussions with federal customs officials and others. We are working with the coalition commenters to help obtain the necessary authority to inspect products at the ports.

*Coalition Comment #5*  
**ARB should stop enforcing allegedly  
underground regulations.**

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**You were also told that ARB should stop enforcing allegedly underground regulations—ones the coalition commenters claimed had not been adopted through the Administrative Procedures Act.**

ARB does not enforce underground regulations. We have our hands full enforcing the regulations this Board adopts. The Office of Administrative Law recently declined to rule on the underground regulation petitions that these commenters, the California Motorcycle Dealers Association and the Sand Car Association, brought to your attention at the open sessions of recent board meetings.

*Coalition Comment #6*  
**Compliance assistance and  
training activities should be  
transferred away from the  
Enforcement Division.**

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**Finally, you were told that compliance assistance and training activities should be transferred away from the Enforcement Division because people are allegedly reluctant to interact with ARB enforcement staff.**

Over the years, we have trained thousands of people from industry, academia, government agencies, other organizations and members of the public and have never heard this concern expressed. In fact, our training is a model for other states, the nation and other countries. Enrollment is growing, from 4,000 people in 2008 to 9,000 in 2009. Also, clients appreciate getting information from the enforcement perspective. Other compliance assistance is conducted by the Ombudsman and other ARB staff through toll-free hotlines, websites, problem resolution, program implementation and financial incentives.

## **The Sand Car Investigation**

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### **The Sand Car Investigation**

ARB brought an action against individuals selling sand cars (off-road dune buggy style vehicles) that were not certified to ARB emission standards. After the sand car settlement was entered, an individual complained to the Board. In response, we opened an investigation into the allegations you heard. This investigation is ongoing but, to date, the allegations are not substantiated.

Contrary to what you heard, we do give people detailed explanations of how their penalties are calculated. We issue citations, notices of violation and penalty evaluations based on the penalty amounts and factors established in law, such as the harm the violation caused, how long it lasted, what the violator did to correct it and the financial burden the penalty would place on the violator.

## **Summary of additional comments and outreach efforts**

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### **Summarize Main Comments and ARB Outreach Efforts**

Now, I would like to summarize the other comments we received and ways we are addressing them. We always seek to improve the enforcement program, and these proposals came out of outreach efforts recently taken at your direction. These outreach efforts have been quite productive, thanks to the high level of public participation. We'd like to think that the public's outstanding response was due to ARB's outreach abilities, but there is something bigger in play here. ARB's enforcement program is receiving a great deal of interest lately because of the ambitious regulations this Board has adopted. These regulations will impact industries and individuals who have never before been subject to ARB compliance obligations. Based on the comments we received, now is an excellent time to increase the transparency of what we do, provide additional compliance assistance, especially to these newly regulated companies and individuals, and to augment our efforts in environmental justice communities. We look forward to continuing this dialogue.

Before I present the specific actions we are taking, I would like to briefly summarize our outreach activities.

## **October 12, 2009 Workshop**

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### **The October 12 Workshop**

We reached out to all parties interested in ARB's enforcement program in various ways. Toward that end, staff held a public workshop on October 12, 2009.

The workshop notice was distributed widely via the largest email broadcast in ARB's history and reached approximately 350,000 people, businesses and other organizations. Enforcement Division staff followed up with hundreds of direct phone calls to parties across the wide spectrum of people interested in the ARB's enforcement program. Our efforts paid off. The workshop attracted over 200 attendees in person and 150 more people on-line. 30 parties testified in person and many more submitted written comments. Since then, staff has held follow-up meetings with stakeholders.

Now, I would like to summarize the comments we received and the actions we are taking to address them.

## **Summary of comments received**

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### **Summary of Comments Received**

Many comments suggested ways to increase the transparency of what we do, requested that we provide additional compliance assistance activities and sought our increased presence in environmental justice communities. A number of comments requested that we stay the course and, if anything, seek to strengthen our program and the laws we enforce. Some comments, including many of the comments you have heard at the open comment periods at recent board hearings, sought changes that we believe would have the effect of weakening both our program and these laws. These comments were not widely supported, however, and they relate to issues some of the speakers have raised in on-going enforcement litigation with us. I have already summarized these comments for you and our thoughts on them. I will not repeat them here.

## **Response to comments**

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### **Response to Comments**

The main area of consensus among commenters is to increase the transparency of ARB's enforcement program. Again, these concerns are understandable because new ARB regulations will affect people who previously were not subject to regulation by ARB and are unfamiliar with the way we do business. We think many of these comments have merit and we are implementing them in several ways. Increased transparency should speed the resolution of our cases and provide savings to us and the regulated community.

Now I would like to discuss our specific actions.

**ARB will prepare an enforcement penalty guidance and will place it on the Enforcement Division web page.**

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**We will prepare an Enforcement Penalty Guidance and Will place it on the Enforcement Division Web Page.**

This guidance document will list the ARB's regulatory programs, the penalties available for violating their requirements and the factors we take into account in determining proper penalties. The document will clarify that we emphasize emissions violations, but that we seek appropriate penalties for all violations of ARB requirements. Once it is complete, the guidance document will be available on the Enforcement Division web page.

People want to know more about ARB's statutory penalty authority, how ARB penalty checks are processed, where the penalty funds the ARB collects are deposited, and how Supplemental Environmental Projects are identified and funded.

## **Public Information to Ensure Transparency**

- 1. A plain language explanation of ARB penalty statutes**
- 2. Cal/EPA guidances on Supplemental Environmental Projects and Self-Disclosure Policies**
- 3. A plain language explanation of these Cal/EPA guidances**
- 4. An explanation of where ARB penalty monies are deposited and how they are processed**
- 5. A list of potential Supplemental Environmental Projects including instructions for requesting that a project be added to the list**

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To address these comments, we are placing the following five things on the Enforcement Division Web Page:

- 1. A Plain Language Explanation of ARB Penalty Statutes**
- 2. Cal/EPA Guidances on Supplemental Environmental Projects and Self-Disclosure Policies**
- 3. A Plain Language Explanation of these Cal/EPA Guidances**
- 4. An Explanation of Where ARB Penalty Monies are Deposited and How They are Processed**

We think it is important to emphasize to the public that penalties paid in ARB enforcement cases are deposited into the Air Pollution Control Fund, and are spent only after appropriation by the Legislature.

- 5. A List of Potential Supplemental Environmental Projects Including Instructions for Requesting that a Project be added to the List.**

## Summary

- **Continue dialogue to improve enforcement**
- **Goals: foster compliance, deter violations and ensure level playing field for all**

Visit the Enforcement Division on line at: <http://www.arb.ca.gov/enf/enf.htm>

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In conclusion, we believe that there is much value in this dialogue and we plan to continue it into the future. We would like to afford people the opportunity to provide written comments on what they heard today. After we have reviewed these comments we plan to report back to you and will hold an additional workshop.

I would like to emphasize that ARB's enforcement program has three main goals: to foster compliance, deter violations and create a level playing field for people who have to comply with our regulations. We do our job well, but believe there is always room for improvement. The actions we are taking will promote all of these goals.

I would like to thank the Board for the opportunity to provide an update on ARB's efforts in this area. I am available to answer any questions you may have.