

California Municipal Utilities Association

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April 14, 2011

Mr. Paul Jacobs, Chief
Mobile Source Enforcement Division
California Resources Board
1001 I Street
Sacramento CA 95814

Re: **Comments on the Proposed Enforcement Penalty Policy**

Dear Mr. Jacobs:

Thank you for the opportunity to submit our comments on the Proposed Enforcement Penalty Policy (as required under Senate Bill 1402, Dutton, Chapter 413, Statutes of 2010). The California Municipal Utilities Association (CMUA) greatly appreciates the Air Resources Board's (ARB) efforts in holding two workshops in March on Enforcement Penalty Policies.

CMUA was formed in 1933 to protect the interests of California's consumer-owned utilities and represents its members' interests on energy and water issues before the California Legislature, the Governor's Office, and the many regulatory bodies.

The Publicly Owned Utilities (POUs) are committed to meeting the goals that were outlined by AB 32, while keeping costs contained as we transition to a low carbon economy. CMUA members have been engaged in many of the AB 32 regulatory measures approved by the Board over the last few years. Today, CMUA is providing comments related to the proposed enforcement policy that takes into consideration the eight factors prescribed in Health and Safety (H&S) Code section 43024.

Our primary concern with the proposed Enforcement Penalty Policy pertains to potential penalties for AB 32-related violations. Many of our concerns mentioned below were discussed briefly at the March workshops.

1. The process for developing any AB 32-related penalties should be open and transparent. Up to this point, ARB enforcement actions have dealt primarily with criteria and toxic air pollution rules, with no history of AB 32 rule enforcement. Some of the compliance obligations under AB 32 are procurement obligations that operate within newly formed markets and thus are significantly different from other emissions limits the ARB enforces. Therefore, the ARB should actively involve stakeholders in any development of AB 32-related procedures or penalties, allowing for a consistent statewide policy structure.

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2. Any penalties for violations of AB 32 rules should be tailored to more rationally work within the framework of the requirements of AB 32. One of our key concerns is the use of daily penalties. While daily penalties may be appropriate for actual emission violations from stationary or mobile sources within the control of the covered entity, they are inappropriate for compliance with the annual or multi-year requirements of AB 32 related rules. This is particularly true, given that the potential fines range from \$1,000 to \$1 million per day per violation.
3. CMUA believes that the ARB's Enforcement Penalty Policy should include a clear and predictable process for determining where in the spectrum of possible penalties a particular violation will fall. This is necessary to ensure that there is equitable treatment for comparable violations. The Enforcement Penalty Policy needs to distinguish and address emissions violations considerably different than administrative citations. For example, a daily penalty may be appropriate for missing a reporting deadline based on the number of days.
4. A formal dispute resolution process needs to be integrated into ARB's proposed Enforcement Penalty Policy to address cases where no settlement agreement is reachable with ARB staff. To ensure impartiality, this process should operate independent of the ARB.
5. On pages 23 & 24, the proposed policy provides a voluntary self-disclosure environmental audit to help facilities comply, and highlights Supplemental Environmental Projects (SEPs) as a means to reduce or not seek gravity based civil penalties. We encourage ARB to revisit the criteria for both of these policies to ensure that they are flexible and usable by the regulated community.

In summary, CMUA stresses that the enforcement path for multiple regulatory efforts under AB 32 must be transparent, commensurate with the nature of the violation, and fair for all stakeholders. Our members will continue to engage in dialogue with the ARB's Executive office, and with management from the Enforcement and the Stationary Source Divisions on resolving our concerns outlined in this letter.

Sincerely,



David L. Modisette, Executive Director
California Municipal Utilities Association

cc: Mary Nichols, ARB Chairman
Jim Ryden, Enforcement Division Chief
Ellen Peter, Chief Counsel
James Goldstene, Executive Officer
Robert Fletcher, Deputy Executive Officer
Mark Stover, Fuels & Consumer Product Enforcement Branch Chief