CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

ENFORCEMENT DIVISION

FINAL STATEMENT OF REASONS FOR RULEMAKING

PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS DEFINING PROCEDURES FOR ADMINISTRATIVE HEARINGS FOR CITATIONS AND COMPLAINTS

Public Hearing Date: December 12, 2002

Agenda item 02-9-7

Prepared By

Stationary Source Enforcement Branch

ACKNOWLEDGEMENTS

Author:

Judy Lewis, Air Pollution Specialist
Stationary Source Enforcement Section

Reviewed by:

Kathleen Walsh, General Counsel, ARB
James Ryden, Chief, Enforcement Division, Air Resources Board
Paul Jacobs, Chief, Mobile Source Enforcement Branch
Robert Leonard, Chief, Stationary Source Enforcement Branch
Carl Brown, Manager, Stationary Source Enforcement Section
Michael Terris, ARB Office of Legal Affairs

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. To obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator

at (916) 322-4505, TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area. This report is available for viewing or downloading from the Air Resources Board's Internet site; http://www.arb.ca.gov/enf/enf/htm.

TABLE OF CONTENTS

I. GENERAL

II. WORKSHOPS, AVAILABILITY OF TEXT AND PUBLIC COMMENT PERIODS

III. BACKGROUND

IV. IMPACT ON THE ECONOMY OF THE STATE

A. Impact on Business and Individuals
B Fiscal and Economic Impacts on State and Local Government

V. ALTERNATIVES CONSIDERED

VI. PUBLIC COMMENTS

Attachments

Attachment A
Amended California Code of Regulation §60065.1 et seq.

Attachment B
Amended California Code of Regulation §60075.1 et seq.

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking

ADMINISTRATIVE CIVIL PENALTY PROGRAM - PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE PROCEDURES FOR ADMINISTRATIVE HEARINGS FOR CITATIONS AND COMPLAINTS

Public Hearing Date: December 12, 2002
Agenda Item No.: 02-9-7

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking (ISOR or "staff report"), entitled "Public Hearing to Consider Amendments to Regulations Defining Procedures for Administrative Hearings for Citations and Complaints", released October 24, 2002, is incorporated by reference herein.

Following a Public Hearing on December 12, 2002, the Air Resources Board (the "Board" or "ARB") by Resolution 02-36 approved the amendments to ARB's Administrative Hearing Procedures found in title 17, California Code of Regulations sections 60065.1 et seq. and 60075.1 et seq. These amendments comply with the relevant provisions of Senate Bill 527 (SB 527) (Stats. 2001, c. 769 sections 3 and 8, codified at sections 42410 and 43023 of the Health and Safety Code (HSC)).

II. WORKSHOPS, AVAILABILITY OF TEXT AND PUBLIC COMMENT PERIODS

The changes to existing regulations were made available on ARB's website, where a list serve was established and the workshop notice, the amendments to the regulations, and a summary of the text of SB 527 were posted to that site. On May 10, 2002, 30 days prior to the public workshops held in June, a mailing was sent out notifying approximately 2,500 businesses, individuals and stakeholders (including trade organizations) of the upcoming workshops on this rulemaking item. The text of the changes to the regulations was also made available at the subsequent workshops, one of which was held on June 11, 2002 in Sacramento and on June 13, 2002 in El Monte. No formal public comments were received as a result of these workshops.

On October 25, 2002, the staff report and the notice of upcoming board meeting were posted to the Enforcement Division's Administrative Penalty Program website. Also at that time, a notification of the availability of the staff report and request for public comment was sent to those individuals who had requested notification by signing up on the list serve. This was in addition to the ARB's Board meeting website postings (two separate websites). In addition, another mailing to the 2,500 individuals and businesses previously notified of the workshops was sent. No comments were received during the 45-day public comment period prior to the December 2003 hearing.

At the December 12, 2002 meeting, no public testimony was received regarding this item.

III. BACKGROUND

In 2001, the Legislature adopted SB 527, which vested the ARB with additional authority to administratively assess civil penalties as an alternative to judicial penalties for lesser violations of all ARB adopted rules and regulations. SB 527 provides that, as an alternate to seeking judicial civil penalties, the ARB may impose administrative civil penalties for violations of all ARB adopted rules and regulations under parts 1 through 4, division 26 of the HSC and most air pollution violations under part 5, division 26 of the HSC. Among other things, SB 527 provides that the ARB may adopt regulations to assess administrative penalties up to $10,000 per day per violation, with a total penalty not to exceed $100,000. It further provides that in determining appropriate penalties for a violation, the ARB may not assess administrative penalties that exceed the penalties that could otherwise be obtained in judicial court under the HSC for the violation in question.

SB 527 specifically directs the ARB to continue to use its existing administrative hearing procedures as codified at title 17 CCR, section 60065.1 et. seq. and 60075.1 et seq. The amendments adopted by the Board bring the procedures into conformity with the directives of SB 527.

IV. IMPACT ON BUSINESSES AND ECONOMY OF THE STATE

A. Impact on Businesses and Individuals

It has been determined that this rulemaking will not cause any adverse economic impact on businesses or small businesses and would not affect the ability of California businesses to compete with businesses in other states. The amendments do not substantively change existing enforcement authority but rather provide an alternative process for enforcing air quality laws. The amendments do not increase existing penalty amounts for violations.

By providing a less formal, more expeditious process for resolving compliance disputes,

the procedures are expected to be of benefit to affected businesses and individuals as well as the ARB. More effective enforcement will benefit the great majority of businesses who comply with the law and who are adversely affected by those few businesses that attempt to gain an economic advantage through noncompliance.

B. Fiscal and Economic Impacts on State and Local Government

For reasons that are outlined in the ISOR, it is not anticipated that this rulemaking will have a significant effect on local agencies or local programs or funds.

The Board has determined that the amendments will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500) Division 4, title 2 of the Government Code, or other discretionary savings to local agencies.

V. Alternatives Considered

For reasons outlined in the ISOR, the Board has further determined that no alternative to this proposal would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to the affected persons than the action taken by the Board. Having determined that broader authority to assess administrative penalties is in the public interest, the adopted amendments specifically implement the directives of SB 527, within the context of the existing ARB administrative hearing procedures. As mentioned above, neither stakeholders nor the public in general suggested any alternatives to the adopted amendments during the course of the rulemaking.

V. Public Comments

The ARB received no public comments or testimony during the 45-day comment period that immediately followed the issuance of the Notice of Public Hearing on October 25, 2002 or during the public hearing on December 12, 2002