
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2910
Author: Santiago
Version: 4/20/2022
Urgency: No
Consultant: Eric Walters

Hearing Date: 6/22/2022
Fiscal: Yes

SUBJECT: Nonvehicular air pollution: civil penalties

DIGEST: This bill increases the maximum civil penalties for air pollution violations, including tripling the lowest penalty caps for strict liability.

ANALYSIS:

Existing law:

- 1) Requires air districts to adopt and enforce rules and regulations to achieve and maintain state and federal ambient air quality standards in all areas affected by non-vehicular emission sources under their jurisdiction. (Health and Safety Code (HSC) § 40000 et seq.)
- 2) Generally prohibits a person, except as specified, from discharging air contaminants or other material that cause injury, detriment, nuisance, or annoyance or endanger the comfort, repose, health or safety to any considerable number of persons, or to the public, or that cause, or have a tendency to cause, injury or damage to a business or property. (HSC § 41700)
- 3) Authorizes the governing board or the hearing board of an air district, after notice and a hearing, to issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a required permit, or is in violation of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air. (HSC § 42300 et seq.)
- 4) Deems any person who violates air pollution laws, rules, regulations, permits, or orders of the Air Resources Board (ARB) or of a district, including a district hearing board, as specified to be guilty of a misdemeanor and subject to specified fines, imprisonment in the county jail for not more than six months, or both. (HSC § 42400 et seq.)

- 5) Prescribes maximum civil penalty amounts for violations as follows (HSC § 42400 et seq.):
 - a) Strict liability: \$5,000, \$10,000 or \$15,000 per day, depending on specified circumstances. Penalties in excess of \$5,000 permit an affirmative defense that the violation was caused was not intentional or negligent. The \$15,000 level applies when a violation causes actual injury to a considerable numbers of persons or the public.
 - b) Negligent: \$25,000 per day, or \$100,000 if the violation causes great bodily injury or death.
 - c) Knowing: \$40,000 per day, or \$250,000 if the violation causes great bodily injury or death.
 - d) Willful and intentional: \$75,000 per day.
 - e) Willful, intentional, or reckless: \$125,000 per day for a person, or \$500,000 for a corporation, if the violation results in an unreasonable risk great bodily injury or death. \$250,000 for a person, or \$1,000,000 for a corporation, if the violation causes great bodily injury or death.
 - f) Intentional falsification of a required document: \$35,000.
- 6) Requires the maximum penalties in effect January 1, 2018 to increase annually based on the California Consumer Price Index. (HSC § 42411)
- 7) Specifies that the recovery of certain civil penalties precludes prosecution for the same offense. (HSC § 42400.7)
- 8) Requires that, in determining the amount of penalty assessed, that the extent of harm, nature and persistence of violation, length of time, frequency of past violations, the record of maintenance, the unproven nature of the control equipment, actions taken by the defendant to mitigate the violation and the financial burden to the defendant be taken into consideration. (HSC § 42400.8)
- 9) Establishes the Air Pollution Control Fund within the General Fund to act as a depository for penalties and fees collected on vehicular and nonvehicular air pollution control sources, and to be available ARB to carry out its duties and functions. (Chapter 1063, Statutes of 1976)

This bill:

- 1) Increases specified strict liability civil penalties for the violation of the state's air pollution laws or any rule, regulation, permit, or order of a local air district, including a district hearing board, or of the Air Resources Board (ARB) from

\$5,000 to \$15,000.

- 2) Increases specified strict liability civil penalties for the violation of the state's air pollution laws or any rule, regulation, permit, or order of a local air district, including a district hearing board, or of ARB from \$15,000 to \$45,000 if the unlawful emission causes actual injury to the health and safety of a considerable number of persons or the public.
- 3) Increases the civil penalties imposed on a person or entity that negligently emits an air contaminant in violation of the state's air pollution laws or a rule, regulation, permit, or order of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations from \$25,000 to \$35,000.
- 4) Provides that any moneys collected from a penalty assessed pursuant to this bill above the costs of prosecution are to be used to mitigate air pollution in the community or communities affected by the violation.
- 5) Provides that the penalties assessed pursuant to this bill are to be annually changed based on the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

Background

- 1) *Penalties for violating air pollution standards.* California's non-vehicular air pollution statutes provide for civil penalties for violations of air pollution standards. Penalties are assessed based on the number of days of violation and the intent of the violator. In the absence of evidence to indicate negligence or worse (i.e., knowledge and failure to correct or willful and intentional behavior), civil penalties are assessed at penalty ceilings for the strict liability classification, where the violation is found to occur but districts need not establish knowledge, negligence, intent or injury. No minimum penalty is required, leaving the amount prosecuted at the discretion of the air district. Offenses are most often prosecuted under the strict liability standard, which is generally capped at \$10,000 per day. However, when districts seek more than \$5,000 per day, an affirmative defense that the act was not intentional or negligent is allowed.

In 2017, AB 617 (C. Garcia), Chapter 136, Statutes of 2017, increased the basic strict liability penalty cap from \$1,000 per day to \$5,000 per day (accounting for 42 years of inflation since the limits were established in 1975).

AB 617 also added an inflation adjustment for all civil penalties, with the amounts in effect in 2018 as the baseline.

- 2) *Air Pollution Control Fund.* The Air Pollution Control Fund (APCF) fund was created to act as a depository for penalties and fees collected on vehicular and nonvehicular air pollution control sources. The money in the fund is intended to be available to ARB to carry out its duties and functions. According to the Manual of State Funds, the major revenues for the APCF are penalties paid by manufacturers or distributors of motor vehicles for violations of regulations, cargo tank certification and direct import vehicle certification fees, penalties for violation of abatement orders and regulations, and various fees imposed on non-vehicular sources of air emissions.

According to the latest fund condition statement from the 2022-23 budget, the APCF currently has a balance of roughly \$228 million. It has brought in roughly \$175 million in revenue each of the last two years, primarily from regulatory fees and penalty assessments. It is largely used for “state operations” and “local assistance”, which account for 41% and 53% of APCF expenditures, respectively.

Comments

- 1) *Purpose of Bill.* According to the author, “While some Californians wake up to the smell of fresh air or the ocean breeze, my constituents wake up to the harsh odors of flesh and carcass. For decades, many of my constituents and Southeast Los Angeles communities have had to deal with smells from rendering plants that are strong, rancid, and nauseating. These communities have voiced concerns of these harmful and bothersome odors from local rendering facilities and the SCAQMD has increased their efforts to address these issues from noncompliant rendering plants. Unfortunately, the current maximum civil penalties against facilities that violate air quality standards is only \$10,000 per day per violation, which is an inadequate deterrent. While significant to a small, family-run company, that sum has very little deterrent value to the prototypical large, well-funded corporate violator. Large facilities simply chalk it up as the cost of doing business and do not make meaningful changes. To ensure we do not further harm environmental justice communities and that improve enforcement of air pollution and air quality laws, AB 2910 will increase the maximum penalty amount for all facilities under SCAQMD’s jurisdiction who violate air pollution rules.”
- 2) *Where does the money go?* As introduced, AB 2910 required any moneys collected pursuant to the increased penalty to be expended in support of air

quality programs. Amendments taken in the Assembly further focused that provision to require civil penalties collected (above the costs of prosecution) to be expended to mitigate the effects of air pollution in the communities affected by the violation.

Regarding penalty funds more generally, HSC § 42405 prescribes where penalty funds are deposited:

- a) When the Attorney General brings an action on behalf of a district, the penalty collected is split 50/50 between the district and the General Fund.
- b) When the Attorney General brings an action on behalf of ARB, the entire penalty collected goes to the General Fund.
- c) When the action is brought by the district itself, or by a district attorney, the entire penalty collected goes to the district.

For AB 2910, it should be noted that the violations for which penalties are collected need not necessarily be from a single point source. For example, if a specific product were found to be noncompliant with an air district rule, the manufacturer could be assessed a penalty. However, the question of which specific communities were affected by that violation (and thus required to have mitigation actions taken on their behalf) could be much more difficult than if the violator were, say, a single refinery.

- 3) *Consequences for ARB.* As described in the background, the APCF collects and expends hundreds of millions of dollars annually, much of it from the collection of penalties. Previous amendments to this bill were made to address concerns about “lawful air district expenditure” encompassing uses of the penalty funds that would not redress harms suffered by communities. However, it does not seem to be the intent of those amendments to also limit the discretion of ARB in its use of APCF moneys.

The committee may wish to consider amending the measure to ensure the provision directing use of penalty funds applies only to the applicable air district.

- 4) *Redressing harms.* The victims of air pollution, and particularly of the kinds of release events that evoke civil penalties, suffer tremendous harms. The human toll of breathing criteria air pollutants and toxic air contaminants alike are well documented and sobering. It is appropriate and aligned with air districts’ mandate to serve and protect these populations. However, it is staff’s understanding that the specific language currently in the bill regarding the use of penalty funds in the communities affected by the pollution does not comport with air districts’ current practices.

The author and sponsor of this measure have expressed interest in devising an alternative strategy to ensure that moneys collected benefit affected communities, but with greater discretion and flexibility than currently provided in the bill.

It is the understanding of committee staff that future amendments to AB 2910 may instead make use of supplemental environmental projects (SEPs) to direct moneys to affected communities. While details regarding the affected penalties, potential projects, and other stipulations still remain uncertain, it is the opinion of staff that this approach could achieve the goal of redressing harms for those affected by pollution. This could also help avoid situations where de minimis penalties must be returned to specific communities in a way that may not in fact maximize benefits to those communities.

Going forward, the author and sponsor of this measure should continue to engage with staff of this and prior committees to ensure any proposed solution still aligns those committees' expectations.

- 5) *Chaptering issue.* Both this bill and AB 1897 (Wicks) increase maximum civil penalties for air pollution violations, and both amend HSC § 42402, as well as subsequent penalty sections.
- 6) *Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comment 3 above.*

Related/Prior Legislation

AB 1897 (Wicks, 2022) increases the maximum civil penalty applicable to a refinery, as defined, for the initial date of an air pollution violation to \$30,000, or \$100,000 for a second violation within 12 months. It also requires civil penalties above the cost of prosecution to be expended to mitigate the effect of air pollution in communities affected by the violation. AB 1897 is currently before this committee.

AB 617 (C. Garcia, Chapter 136, Statutes of 2017), among other things, increased air district criminal and civil strict liability penalty limits from \$1,000 to \$5,000 per day, adjusting for inflation since the limits were enacted in 1975, and required both ARB and air district maximum penalties to be inflation-adjusted annually going forward.

SB 691 (Hancock, 2013) would have authorized a civil penalty of up to \$100,000 against a person who emits a discharge from a Title V source if the discharge results in a severe disruption to the community, the discharge contains one or more toxic air contaminants, and 100 or more people are exposed. SB 691 was held on the Assembly Floor without a vote.

SOURCE: South Coast Air Quality Management District

SUPPORT:

Bay Area Air Quality Management District

OPPOSITION:

California Council for Environmental & Economic Balance (CCEEB)

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