

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2910 (Santiago)  
Version: June 23, 2022  
Hearing Date: June 28, 2022  
Fiscal: Yes  
Urgency: No  
ME

**SUBJECT**

Nonvehicular air pollution: civil penalties

**DIGEST**

This bill increases already existing civil penalties imposed on non-vehicular, stationary source air polluters, and provides that more of the penalty funds be used to mitigate air pollution in the communities that are actually affected by the violations.

**EXECUTIVE SUMMARY**

This bill increases the civil penalties imposed on those who violate specified non-vehicular air pollution laws in an effort to deter facilities from continuing to violate the law despite being fined for daily violations. The idea behind the bill is that a facility will choose to comply with the law if the penalty is high enough.

The bill is sponsored by the South Coast Air Quality Management District and Bay Area Air Quality Management District who assert that raising civil penalty ceilings will help reduce air pollution, especially in disadvantaged communities, by deterring facilities and operators from committing repeated air quality violations. It is opposed by the California Council for Environmental and Economic Balance, who asserts that it is unsubstantiated that increased penalties will improve compliance and reduce accidental releases. Moreover, opponents assert that the new penalty ceiling amounts will “strongly encourage districts to disregard cooperative, incentive-based compliance programs in favor of more dollar-based and revenue-generating penalties.”

The bill passed out of the Senate Environmental Quality Committee with a 5-2 vote. Should this bill pass out of this Committee, it will next be heard in the Senate Appropriations Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that in order to coordinate air pollution control activities throughout the state, and to ensure that the entire state is, or will be, in compliance with air quality standards, the Air Resources Control Board must do all of the following:
  - a) review regional air quality management attainment plans to determine whether the plans will achieve and maintain the state's ambient air quality standards by the earliest practicable date;
  - b) review the rules and regulations and programs submitted by the regional air quality management districts to determine whether they are sufficiently effective to achieve and maintain the state ambient air quality standards; and
  - c) review the enforcement practices of the regional air quality management districts and other local agencies delegated authority by regional air quality districts to determine whether reasonable action is being taken to enforce their programs, rules, and regulations. (Health and Saf. Code § 41500.)
- 2) Provides that a regional air quality management district board may establish, by regulation, a permit system that requires, except as otherwise provided, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to do so from the air pollution control officer of the district. (Health and Saf. Code § 42300.)
- 3) Requires a permit system established pursuant to 2) to do all of the following:
  - a) ensure that the article, machine, equipment, or contrivance for which the permit was issued does not prevent or interfere with the attainment or maintenance of any applicable air quality standard;
  - b) prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all applicable orders, rules, and regulations of the district and of the state board in accordance with state law;
  - c) prohibit the issuance of a permit to a Title V source if the Administrator of the Environmental Protection Agency objects to its issuance in a timely manner as provided in Title V;
  - d) provide that the air pollution control officer may issue to a Title V source a permit to operate or use if the owner or operator of the Title V source presents a variance exempting the owner or operator from any rule or regulation of the district, or any permit condition imposed, or presents an abatement order that has the effect

of a variance and that meets all of the requirements of this part pertaining to variances, and the requirements for the issuance of permits to operate are otherwise satisfied;

- e) require, upon annual renewal, that each permit be reviewed to determine that the permit conditions are adequate to ensure compliance with, and the enforceability of, district rules and regulations applicable to the article, machine, equipment, or contrivance for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing article, machine, equipment, or contrivance, by the district board and, if the permit conditions are not consistent, require that the permit be revised to specify the permit conditions in accordance with all applicable rules and regulations; and
  - f) provide for the reissuance or transfer of a permit to a new owner or operator of an article, machine, equipment, or contrivance, as specified. (Health and Saf. Code § 42301.)
- 4) Provides that any person who violates the law regarding non-vehicular air pollutants or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, inclusive, is guilty of a misdemeanor and is subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or both. (Health and Saf. Code § 42400.)
  - 5) Provides that notwithstanding 4) recovery of civil penalties pursuant to specified non-vehicular air pollution statutes precludes prosecution and that when a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought for the same offense. (Health and Saf. Code § 42400.7.)
  - 6) Provides that a person who violates the law regarding non-vehicular air pollution, or a rule, regulation, permit, or order of a district, including a district hearing board, or of the state board is strictly liable for a civil penalty of not more than five thousand dollars (\$5,000), as specified. (Health and Saf. Code § 42402 (a).)
  - 7) Provides that the penalties in 6) may increase to not more than fifteen thousand dollars (\$15,000) if the health and safety of a considerable number of persons or the public is at risk. (Health and Saf. Code § 42402 (c).)
  - 8) Provides that a person who negligently emits an air contaminant in violation of the law regarding non-vehicular air pollution statutes 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 is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000). (Health and Saf. Code § 42402.1 (a).)

- 9) Provides that if a negligent emission pursuant to 8) causes great bodily injury, as defined, to a person or that causes the death of a person, is liable for a civil penalty of not more than one hundred thousand dollars (\$100,000). (Health and Saf. Code § 42402.1 (b).)
- 10) Provides that a person who emits an air contaminant in violation of the law regarding non-vehicular air pollution, 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, and who knew of the emission and failed to take corrective action, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars (\$40,000). (Health and Saf. Code § 42402.2 (a).)
- 11) Provides that a person who emits an air contaminant in violation of the law regarding non-vehicular air pollution, 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 that results in great bodily injury, and who knew of the emission and failed to take corrective action, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000). (Health and Saf. Code § 4202.2 (b).)
- 12) Provides that a person who willfully and intentionally emits an air contaminant in violation of the law regarding non-vehicular air pollution 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, is liable for a civil penalty of not more than seventy-five thousand dollars (\$75,000). (Health and Saf. Code § 42402.3 (a).)
- 13) Provides that a person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined, or death of, a person, emits an air contaminant, as specified, that results in an unreasonable risk of great bodily injury to, or death of a person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars (\$125,000), and that if the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars (\$500,000). (Health and Saf. Code § 42402.3 (b).)
- 14) Provides that a person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined, or death of a person, emits an air contaminant, as specified, that actually results in great bodily injury to, or death of, a person, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000), and if the violator is a corporation, the maximum penalty may be up to one million dollars (\$1,000,000). (Health and Saf. Code § 42402.3 (c).)
- 15) Provides that the civil penalties prescribed in specified Health and Safety Code sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be assessed and recovered in a civil action brought in the name of the people of the State of

California by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction. (Health and Saf. Code § 42403 (a).)

- 16) Provides that in determining the amount assessed, the court, or in reaching any settlement, the district, shall take into consideration all relevant circumstances, including, but not limited to, the following: the extent of harm caused by the violation; the nature and persistence of the violation; the length of time over which the violation occurs; the frequency of past violations; the record of maintenance; the unproven or innovative nature of the control equipment; any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation, and the financial burden of the defendant. (Health and Saf. Code § 42403 (a).)
- 17) Federal law, pursuant to Section V of the Clean Air Act, defines a “major source” of pollution as an stationary source that is either:
  - a) located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants; or
  - b) any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant. (42 U.S Code Section 7661.)

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 California Air Resources Board (CARB) 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 the CARB 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 money collected from a penalty assessed by a district 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.

### COMMENTS

#### 1. Stated need for this 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 [we] 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. Increasing specified penalties in an attempt to stop facilities from harming community health

This bill 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 CARB from \$5,000 to \$15,000.

A person who violates 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 CARB is strictly liable for a maximum civil penalty of \$10,000. However, the penalty is no more than \$5,000 if the person establishes an affirmative defense that the act was not the result of intentional or negligent conduct. According to the sponsor of this bill, the South Coast Air Quality Management District, "[s]trict liability is the most frequently used level of civil penalties in enforcement efforts."

According to the author, fines on facilities are so low that facilities will choose to pay fines instead of choosing to be in compliance with the law. Community health suffers when facilities make this choice. The sponsor, South Coast Air Quality Management District explains how current civil penalties for air quality violations have very little deterrent for some corporate violators. The sponsor highlights the following:

For example, there are several rendering plants in Los Angeles County that have created terrible smells which impact surrounding communities. One such facility, Baker Commodities in the City of Vernon, has received numerous Notices of Violation. Despite being subject to repeated enforcement action, South Coast AQMD's investigation of a large odor event in January 2022 led to Baker Commodities again being found in violation of the agency's Rule 415 for failure to process or enclose raw material within four hours of receiving it. The current statutory penalty system must be strengthened to deter these kinds of repeated air quality violations.

Similar noncompliance has been found at other types of facilities, including oil and gas drilling operations; construction sites/stockpiles and transfer stations; landfills (active and closed); waste treatment plants; industrial operations (making solvents, distilling alcohol, etc.); natural gas storage facilities; and power plants. Many of these facilities are located in or near our most vulnerable communities.

By increasing the maximum amounts of civil penalties for air quality violations, this bill would create better deterrents to stop regulated facilities and operators from committing repeated air quality violations. This will help reduce air pollution and better protect public health, especially in disadvantaged communities.

The author believes that a tripling of the maximum fines will make it so that more facilities will choose to be in compliance instead of choosing to pay fines and stay out of compliance. The sole opponent of this bill, the California Council for Environmental and Economic Balance does not agree that increased penalties will improve compliance. In fact, they write:

CCEEB members recognize the valuable role that incentive-based compliance programs play in meeting air quality objectives and protecting public health. However, CCEEB does not support the unsubstantiated assertion that increased penalties will improve compliance and reduce accidental releases. We are concerned that increasing penalties could unduly punish facilities for implementing critical process safety measures. We are also concerned that the new penalty ceiling amounts strongly encourage districts to disregard cooperative, incentive-based compliance programs in favor of more dollar-based and revenue-generating penalties.

Staff notes that the strict liability penalties are maximum penalties and Health and Safety Code Section 42403 provides factors that the court or district *shall* take into consideration in determining the civil penalty amount to ensure that penalties are tailored to be higher for repetitive violators and financially resourced violators and lower for infrequent violators and under resourced violators. The factors that must be considered in assessing penalties include, among other factors, the financial burden to the defendant, the frequency of past violations, and the length of time over which the violation occurs.

3. The bill aims to send penalties to the communities most impacted by the polluters

The bill provides that any money collected from a penalty assessed by a district 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. The goal is to ensure that penalties are used to mitigate the impacts of the pollution on the communities that are actually effected. A coalition of environmental organizations suggests amendments to the bill to ensure that the effected communities actually benefit. The author has agreed to continue working with these organizations and the policy committees of the Assembly and Senate with jurisdiction over this bill to further refine this provision to ensure the goal of directing funds to impacted communities is met. However, these specific amendments have not been agreed to at the time of the publishing of this analysis. The amendments suggested by Earthjustice, East Yard Communities for Environmental Justice, Del Amo Action Committee, the People's Collective for Environmental Justice, and California Communities Against Toxics are as follows:

- Include a provision allowing air districts to recover the costs of investigation, expert witness fees, and reasonable attorney's fees, *separately* from the penalty assessment.
- Specify that the penalty funds must be used to mitigate air pollution in the communities affected by the violation through *rulemaking* or *emission reduction projects*.

4. AB 1897 (Wicks) is also before this Committee and legislates in the same space

AB 1897 (Wicks, 2022) is also before this Committee and provides for increased civil penalties on specified refineries. The civil penalties are a maximum of \$30,000 for an initial air pollution violation if the discharge meets other criteria such as the discharge results in a disruption to the community, including residential displacement, evacuation, or destruction of property. AB 1897 provides for a civil penalty of up to \$100,000 for a second violation within a year. Like AB 2910, the bill provides that civil penalties assessed by a district above the costs of prosecution shall be used to mitigate air pollution in in the community or communities affected by the violation.



If AB 1897 (Wicks) and AB 2910 (Santiago) move to the Senate Appropriations Committee and the Senate Floor, the authors will need to amend their bills to harmonize the provisions and avoid chaptering out issues.

**SUPPORT**

South Coast Air Quality Management District (sponsor)  
Bay Area Air Quality Management District

**OPPOSITION**

California Council for Environmental and Economic Balance

**RELATED LEGISLATION**

Pending Legislation: AB 1897 (Wicks, 2022) Increases the civil penalty for refineries that discharge air pollutants in violation of existing air pollution control standards. (*See* Comment 4.)

Prior Legislation: AB 617 (Garcia, Ch. 136, Stats. 2017) Required the CARB to improve air pollution data collection and reporting; required expedited pollution control retrofit of large stationary sources; increased penalties for air pollution violations; required enhanced air pollution monitoring; required CARB to adopt a statewide emissions reduction strategy targeting pollution-burdened communities; and required CARB and air districts to implement community emissions reduction programs.

**PRIOR VOTES:**

Senate Environmental Quality Committee (Ayes 5, Noes 2)  
Assembly Floor (Ayes 52, Noes 17)  
Assembly Appropriations Committee (Ayes 13, Noes 3)  
Assembly Judiciary Committee (Ayes 8, Noes 1)  
Assembly Natural Resources Committee (Ayes 8, Noes 2)

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