

The Air Resources Board's Enforcement Penalty Policy

Presented at the
November 17, 2011
Board Hearing

ARB's Enforcement Penalty Policy

- Increases transparency of ARB's enforcement program and will elevate overall compliance
- ARB's enforcement program is designed to obtain immediate compliance, ensure a level playing field and stop future violations
- ARB's enforcement program is effective, fair and well-regarded
- SB 1402 memorialized ARB practices and added some other requirements

General Penalty Principles

3 general principles guide ARB penalty determinations

- Deterrence
 - Deter both the violator and potential violators
 - Deprive the violator of any economic benefit
- Fairness
 - Requires consistency and flexibility
- Swift resolution of both environmental problems and pending cases
 - Limits environmental harm
 - Promotes good environmental practice
 - Enhances deterrent effects

ARB's Enforcement Penalty Policy Development

2009

- Public process initiated to strengthen and add transparency to ARB's enforcement program, includes October 2009 public workshop

2010

- January 2010 report to the Board committing to preparation of a penalty policy
- SB 1402 memorialized this commitment

2011

- Policy released for public comment in February and July 2011
- Public workshops and face-to-face meetings with stakeholders held
- Policy released as final in September 2011

Enforcement Penalty Policy Overview

- ARB's enforcement program is designed to obtain immediate compliance, ensure a level playing field, and stop future violations
- Penalties are based on an evaluation of: the facts of the case, applicable statutes (which establish the maximum penalties), court decisions, other case settlements, enforcement goals and relevant policies
- In addition to publishing the Penalty Policy, SB 1402 requires ARB to provide penalty information in NOVs and settlement agreements and publish the settlement agreements on ARB's webpage

Enforcement Program Review

Comprehensive Program Review conducted in 2011

Recommendations

- 1. Reorganize by function versus programs**
- 2. Move to a four branch structure (3 current)**
- 3. Other improvements including field and laboratory processes, databases and reporting**
- 4. Implement recommendations as soon as practicable to maximize use of scarce enforcement resources**

ARB and Air District Partnership

- **Quarterly CAPCOA enforcement manager meetings**
- **Training**
- **Joint field inspections and investigations**
- **MOUs with select districts to assist with diesel enforcement (BAAQMD and SJVUAPCD)**
- **Vapor Recovery enforcement activities**
- **Developing Refrigerant Management enforcement program**

Conclusion

- ARB regulates activities that impact air quality to ensure the health and safety of all Californians
- Penalties are a tool to achieve this and must take into consideration all relevant circumstances, including the eight factors specified in the Health and Safety Code
- The Penalty Policy will inform the public how ARB penalties are determined
- The Policy was developed in an open public process and is available on ARB's website at: <http://www.arb.ca.gov/enf/sb1402/policy.pdf>
- ARB's enforcement program review will maximize use of ARB's scarce enforcement resources
- ARB is partnering with air districts to leverage enforcement assets statewide (MOUs, refrigerant management, vapor recovery, training, etc.)