

State of California
AIR RESOURCES BOARD

Resolution 02-36

December 12, 2002

Agenda Item No.: 02-9-7

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, in 1991, pursuant to section 44011.6 of the Health and Safety Code, the Board adopted administrative hearing procedures, title 17, California Code of Regulations, sections 60075.1 et seq., to review citations issued under the Heavy-Duty Diesel Roadside Smoke Emission Testing and Heavy-Duty Vehicle Emission Control System Inspections Program, title 13, California Code of Regulations, sections 2180 through 2188 (Roadside Inspection Program);

WHEREAS, in 1995, Senate Bill 163 (Stats. 1995, Ch. 966, Sec. 3), was enacted authorizing the Board with authority to assess administrative penalties for violations pertaining to the fuel requirements and standards adopted by the Board (Health and Safety Code section 43028) and to adopt administrative hearing procedures to review such assessments (Health and Safety Code section 43031(a));

WHEREAS, in 1998, the Board adopted amendments to the administrative hearing procedures for the Roadside Inspection Program which broadened application of the procedures to include the review of less complex and less serious fuel-related violations arising under section 43028 of the Health and Safety Code;

WHEREAS, in 1998, the Board adopted administrative hearing procedures for the review of the more serious and complex fuel-related violations arising under section 43028 of the Health and Safety Code and for the review of Executive Officer decisions, respectively codified in title 17, California Code of Regulations, sections 60065.1 through 60065.45 and sections 60055.1 through 60055.43;

WHEREAS, in 2001, the Legislature adopted SB 527 (Stats 2001, Ch. 769, sections 3 and 18) to enact Health and Safety Code sections 42410 and 43023;

WHEREAS, Health and Safety Code sections 42410 and 43023 broadly authorize ARB to impose administrative civil penalties as an alternative to judicial civil penalties for all

violations of ARB adopted rules and regulations arising under parts 1 through 4, division 26 of the Health and Safety Code and for violations arising under chapters 1 through 4 and 6, part 5, division 26 of the Health and Safety Code;

WHEREAS, Health and Safety Code sections 42410 and 43023 further provide that:

No administrative penalty imposed pursuant to the above sections shall exceed \$10,000 for each day in which there is a violation up to a maximum of \$100,000 per penalty assessment and that no penalty assessed shall exceed the amount that the Board is authorized to seek as a civil penalty for the same violation in judicial court;

Nothing in sections 42410 and 43023 prohibits the Board from negotiating mutual settlements under any penalty provision of law that exceeds the dollar limits set forth above;

Nothing in sections 42410 and 43023 authorizes the Board to impose penalties for categories of violations for which the State Board could not seek penalties in a civil action as of January 1, 2002, and the penalty assessment authority granted under these sections shall only apply to violations that occur on or after January 1, 2002;

If the ARB imposes an administrative penalty pursuant to SB 527, it may not bring any action pursuant to the Business and Professions Code, section 17000 et seq.;

In determining the amount of any administrative penalty imposed under the above sections, the Board shall take into consideration all relevant circumstances, including but not limited to, the factors set forth at section 42403(b) for penalties assessed pursuant to section 42410 and at section 43031(b) for penalties assessed under section 43023;

Administrative review of violations and penalty assessments authorized pursuant to SB 527 shall be conducted under the administrative hearing regulations located in title 17, California Code of Regulations sections 60065.1 et seq. (Administrative Hearing Procedures for the Review of Complaints) and 60075.1 et seq. (Administrative Hearings for the Review of Citations);

Administrative law judges appointed by the Office of Administrative Hearings shall conduct hearings under the above procedures;

A party adversely affected by a final administrative hearing may seek judicial review by filing a petition for a writ of mandate in accordance with Code of Civil Procedure section 1094.5;

Any administrative penalty assessed pursuant to the above shall be paid to the State Treasurer for deposit into the General Fund;

After an order imposing an administrative penalty becomes final and no petition for writ of mandate has been filed within the time allotted for seeking judicial review, the Board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty; and

The ARB shall prepare a report by January 1, 2005, to the Legislature and the Governor summarizing the administrative penalties imposed by the ARB.

WHEREAS, Health and Safety Code section 42410 further states that, if a violation is within the enforcement jurisdiction of both the ARB and a local air district, the ARB may not impose an administrative penalty if the air district has already commenced an enforcement action;

WHEREAS, Health and Safety Code section 43023(h) further provides that the provisions of section 43023 do not apply to the Board's authority to adopt administrative penalties for violations that arise under section 43025 et seq. pertaining to fuel requirements and standards;

WHEREAS, consistent with the above-described directives of the Legislature, staff has proposed amendments to California Code of Regulations sections 60065.1 et seq. (Administrative Hearings for the Review of Complaints) and CCR 60075.1 et seq. (Administrative Hearings for the Review of Citations) that, among other things, would:

Broaden the ARB's authority to assess administrative penalties as an alternative to seeking civil penalties in State court;

Continue to provide separate hearing procedures for those violations determined to be subject to a citation, which typically are those violations that are less complex and serious; administrative penalties for such violations could not exceed \$5,000 per day of violation for each violation, with total penalties not to exceed \$15,000;

Allow the ARB to issue complaints for those violations that are more serious and complex; administrative penalties for such violations could not exceed the lesser of \$10,000 per day of violation for each violation, with total penalties not to exceed \$100,000 or the penalty amount that could be sought in State court;

Continue the separate administrative penalty structure that applies to complaints issued for alleged violations of Health and Safety Code section 43025 et seq. pertaining to ARB fuel-related requirement and standards;

Require the ARB in assessing penalties to take into consideration all relevant circumstances surrounding the violation including, but not limited to, Health and Safety Code sections 42403 for violations covered under Health and Safety Code 42410, and Health and Safety Code 43031 for violations covered under Health and Safety Code section 43023; and

Prohibit the ARB from imposing administrative penalties for any category of violation that wasn't subject to enforcement as of January 1, 2002 or any violation that occurred prior to that date;

Prohibit the ARB from seeking an enforcement action for any violation for which the ARB shares concurrent enforcement authority with a district as defined in Health and Safety Code section 39025, if that district has commenced an enforcement action.

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code; and

WHEREAS, the Board finds that:

Administrative assessments and adjudication for less complex and serious violations afford a more efficient and expeditious process for all parties, and allows the ARB to better utilize its enforcement resources and that improved enforcement will result in greater compliance with air quality laws;

Principles of due process and other provisions of state law require that persons alleged to have violated rules and regulations of parts 1 through 4, division 26 and provisions of chapters 1 through 4 and 6 of part 5, division 26 of the Health and Safety Code or any rule, regulation, permit, variance, or order of the Board pertaining to air pollution adopted pursuant thereto, shall be afforded with notice and an opportunity to be heard in a full and fair administrative hearing;

The economic and cost impacts of the proposed regulations have been analyzed as required by California law, and that there will be no adverse impacts because of these regulations; and

Pursuant to the requirements of CEQA and title 17, CCR, section 60006, the proposed regulations will have no potential adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the amendments to sections 60065.1 et seq. and 60075.1, et seq., title 17, California Code of Regulations as set forth in Attachments A and B.

BE IT FURTHER RESOLVED that the Board hereby directs the staff to prepare a report by January 1, 2005, to the Legislature and the Governor summarizing the administrative penalties imposed by the ARB.

I hereby certify that the above is a true and correct copy of Resolution 02-28, as adopted by the Air Resources Board.

Stacey Dorais, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Proposed amendments to sections 60065.1 et seq.

Attachment B: Proposed amendments to sections 60075.1 et seq.