

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1465 (Wicks)  
Version: June 21, 2023  
Hearing Date: July 11, 2023  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Nonvehicular air pollution: civil penalties

**DIGEST**

This bill trebles certain penalties related to nonvehicular air pollution if a Title V source discharges specified air contaminants, and requires health impacts, community disruptions, and other circumstances related to the violation to be considered in assessing penalties.

**EXECUTIVE SUMMARY**

In an effort to increase compliance with air quality requirements and decrease flaring events that release toxic air contaminants into local neighborhoods. The bill also provides for the trebling of existing civil penalties, and requires health impacts, community disruptions, and other circumstances related to the violation to be considered in assessing penalties. Since 2018, the Bay Area Air Quality Management District (AQMD) has issued an increasing number of NOVs to Bay Area refineries. Additionally, the Bay Area AQMD recently discovered long-term underreporting of criteria pollutant and toxic air contaminant emissions from one Bay Area refinery dating back at least fifteen years.

The bill is sponsored by the Bay Area AQMD and supported by various organizations, local entities, and air quality districts. It is opposed by the California Association of Sanitation Agencies and the Western States Petroleum Association. The bill passed the Senate Environmental Quality Committee on a vote of 5 to 2.

**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 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 \$5,000, as specified. (Health and Saf. Code § 42402(a).)
- 5) Provides that the penalties in 6) may increase to not more than \$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).)
- 6) 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 \$25,000. (Health and Saf. Code § 42402.1(a).)
- 7) 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 \$100,000. (Health and Saf. Code § 42402.1(b).)
- 8) 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 \$40,000. (Health and Saf. Code § 42402.2(a).)
- 9) 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 \$250,000. (Health and Saf. Code § 42402.2(b).)

- 10) 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 \$75,000. (Health and Saf. Code § 42402.3(a).)
- 11) 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 \$125,000, and that if the violator is a corporation, the maximum penalty may be up to \$500,000. (Health and Saf. Code § 42402.3(b).)
- 12) 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 \$250,000, and if the violator is a corporation, the maximum penalty may be up to \$1,000,000. (Health and Saf. Code § 42402.3(c).)
- 13) Provides that the civil penalties prescribed in specified Health and Safety Code sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 are to 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).)
- 14) Provides that any person who knowingly and with intent to deceive, falsifies any document required to be kept, or any rule, regulation, permit, or order of the state board or of a district is liable for a civil penalty of not more \$35,000. (Health & Saf. Code § 42402.4.)
- 15) Requires the court, or the district in reaching any settlement, when determining the penalty amount to be assessed to take into consideration all relevant circumstances, including, but not limited to, the following:
  - a) the extent of harm caused by the violation; the nature and persistence of the violation; the length of time over which the violation occurs;
  - b) the frequency of past violations; the record of maintenance; the unproven or innovative nature of the control equipment; and

- c) 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).)
- 16) Defines “Title V source” to mean only a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act (42 U.S.C. Secs. 7661 to 7661f, incl.) and the federal regulations adopted pursuant to Title V. (Health and Saf. Code § 39053.5.)
- 17) Defines a toxic air contaminant (TAC) as an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health, including a substance that is listed as a hazardous air pollutant pursuant to the federal Clean Air Act. (Health and Saf. Code § 39655)
- 18) Specifies certain air contaminants, including:
- a) TACs, including those incorporated in the Federal Clean Air Act (FCAA) (Health and Saf. Code §39657);
  - b) “Air contaminant” or “air pollutant” means any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof (Health and Saf. Code §39013); and
  - c) Establishes pursuant to regulations ambient air quality standards for the following pollutants: Particulate Matter (PM10 and PM2.5), Ozone (O3), Nitrogen Dioxide (NO2), Sulfate, Carbon Monoxide (CO), Sulfur Dioxide (SO2), Visibility Reducing Particles, Lead, Hydrogen Sulfide (H2S), and Vinyl Chloride. (17 C.C.R. § 70200.)

This bill:

- 1) Provides that penalties under Sections 42402, 42402.1, 42402.2, 42402.3, 42402.4, and 42402.5 of the Health and Safety Code are to be tripled if both of the following occur:
  - a) the discharge is from a Title V source; and
  - b) the discharge contains or includes one or more air contaminants, as identified in 17, above.
- 2) Defines “source” as an establishment that is located on one or more contiguous or adjacent properties.
- 3) Requires health impacts and community disruptions and other circumstances related to the violation to be considered in assessing penalties, pursuant to Section 42403 of the Health and Safety Code.

## COMMENTS

### 1. Stated need for the bill

The author writes:

AB 1465 triples civil penalties for Title V sources who violate air quality standards, including refineries. In the Bay Area, refineries are some of the largest sources of air pollutants, and in recent years there has been a serious decline in compliance with air quality requirements coupled with increases in flaring events that release toxic air contaminants into neighboring communities. Refinery flaring and other pollution events can result in shelter-in-place notifications, school closures, and a surge of visits to health care facilities for medical care. In my district, increased flaring events have led to incidents that have negatively impacted health of the community, including schools in the surrounding areas. Serious disruptions caused by flaring or similar pollution discharges at these sources are occurring far too often. These emitters must be held more accountable when they pollute the air. The consequences for air quality violations must be severe enough to deter a discharge before it occurs, so emitters don't simply treat fines for causing community disruption as an acceptable cost of doing business.

### 2. Air pollution and public health

#### *a. Refineries in California*

California is home to nineteen petroleum refineries, which separate crude oil into a numerous petroleum products through a series of physical and chemical separation techniques. The American Lung Association's *State of the Air 2022 Report Card*<sup>1</sup> found that all nineteen of the state's refineries are in counties with a failing grade for particulate matter pollution, and eighteen of those counties have failing grades for ozone pollution. The Senate Environmental Quality Committee states that according to the "US EPA's EJScreen tool, the communities within 5 miles of those refineries are on average over 70% people of color, with some being as high as 95% people of color. Taken together, these communities (according to the CalEnviroScreen 4.0 tool) are, on average, among the most pollution-burdened communities in the state."<sup>2</sup> The Senate Environmental Quality Committee analysis commented that "air pollution from refineries is predominantly harming people of color in communities that currently suffer the greatest air pollution harms in the state. The racial inequity of that pollution

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<sup>1</sup> American Lung Association, *State of the Air*, available at <https://www.lung.org/research/sota>.

<sup>2</sup> EPA, EJScreen Tool, available at <https://www.epa.gov/ejscreen>. Cal. Office of Environmental Health and Hazard Assessment, CalEnviroScreen 4.0, available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

burden deserves particular attention when evaluating changes to pertinent laws and regulations, such as this bill.”<sup>3</sup>

*b. Civil penalties for violation non-vehicular air pollution statutes*

California’s existing statutes governing non-vehicular air pollution provide for civil penalties for violations of air pollution standards. (*see* Health & Saf. Code § 42300 et. seq.). Assessment of the penalties are based on the number of days of violation and the intent of the violator, negligence, knowledge and failure to correct, or willful and intentional behavior. The penalties provide a maximum amount the penalty can be up to, but no specific minimums. Existing law requires the court, or the district in reaching a settlement agreement, take into consideration all relevant circumstances in determining the amount of the civil penalty assessed. These circumstances include, but are not limited to, the following: 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; action, if any, 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 to the defendant. (Health & Saf. Code § 42403.)

Penalties for violating air quality regulations and permits are supposed to act as a meaningful deterrent to encourage proper operation and reporting, which prevent unregulated releases of air pollutants. The Bay Area AQMD and author of the bill note that in the Bay Area refineries are some of the largest sources of criteria pollutants and toxic air contaminants in the region. According to the Bay Area AQMD, overall compliance with air quality permit requirements at the five Bay Area refineries has declined precipitously in recent years, with significant increases in flaring events, Title V permit condition deviations, and Notices of Violation (NOVs). Since 2018, the Bay Area AQMD has issued an increasing number of NOVs to Bay Area refineries. Additionally, the Bay Area AQMD recently discovered long-term underreporting of criteria pollutant and toxic air contaminant emissions from one Bay Area refinery dating back at least fifteen years.

As a result of the issues identified by the Bay Area AQMD, this bill seeks to triple the maximum allowable penalties if a discharge is from a Title V source and the discharge contains one or more air contaminants as identified by the State Air Resources Board or listed under Section 70200 of Title 17 of the California Code of Regulations. This bill is substantially similar to AB 1897 (Wicks, 2022), which passed this Committee on a vote of 9 to 1 but was ultimately amended to address a completely different subject matter.

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<sup>3</sup> Sen. Environmental Quality Comm. analysis of AB 1465 (2023-24 Reg. Sess.) as amended June 21, 2023.

3. Proposed amendment

The Senate Environmental Quality Committee found an error in a cross-reference in the bill. Section 42402.6 of the Health and Safety Code cross references Section 39567 but it should be 39657. The author may wish to amend the bill to fix this issue.

4. Statements in support

The American Lung Association writes in support stating:

The American Lung Association's "State of the Air" 2023 report was issued on April 19, 2023 and illustrates that Californians face the most difficult air pollution burdens in the nation. Children, seniors, those with heart and lung disease and others are more vulnerable to these consequences. Further, lower-income people and people of color often bear an added, disproportionate burden due to nearby sources of harmful emissions. AB 1465 would impose higher penalties for facilities that release air contaminants that cause harm in communities affected by the release.

Specifically, AB 1465 seeks to increase the deterrent effect of fines for the release of excess air pollutants 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. By tripling the civil penalties imposed, AB 1465 would provide greater incentive to act appropriately and preventatively to avoid harmful releases of air contaminants into the communities nearest the pollution sources. AB 1465 would increase public health, air quality and environmental justice protections by strengthening the deterrent effect of civil penalties.

5. Statements in opposition

The Western States Petroleum Association writes in opposition unless amended stating:

AB 1465 unjustifiably triples civil penalties prescribed under Health and Safety Code Sections 42402 through 42402.5 that is also a violation of Section 41700 of the California Health and Safety Code if the discharge is from a Title V source that is a refinery and contains at least one toxic air contaminant. Existing law (H&SC Section 42402 through 42402.5) already escalates penalties based on degree of impact to persons. In 2017, AB 617 (C. Garcia) was passed, raising the maximum floor for civil penalties from \$1,000 to \$5,000 for all types of industry and facilities and mandated annual increases for all maximum penalties based on the California Consumer Price Index. Under that bill, the maximum floor for civil penalties has cumulatively increased by another 17.1% since 2018, and will continue to increase every year. Unfortunately, AB 1465 now triples the already

raised civil penalties for in-scope violations caused by refineries only without a rustication, rationale, or event that would support a need for increased penalties.

WSPA requests the bill be amended to ensure that all similar air quality violations referenced in AB 1465, regardless of facility type, are treated equally under the law and that the penalties would only be tripled if a discharge results in a significant increase in hospitalizations, residential displacement, shelter in place, evacuation, or destruction of property.

### **SUPPORT**

Bay Area Air Quality Management District (sponsor)  
American Lung Association in California  
California Air Pollution Control Officers Association  
Earthjustice  
South Coast Air Quality Management District

### **OPPOSITION**

California Association of Sanitation Agencies  
Western States Petroleum Association

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 1897 (Wicks, 2022) would have increased 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 required 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 was gut and amended to address a different subject matter.

AB 2910 (Santiago, 2022) would have increased maximum civil penalties for air pollution violations, including tripling the lowest penalty caps for strict liability. AB 2910 died on the Senate Floor.

AB 617 (Cristina Garcia, Ch. 136, Stats. 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 CARB and air

district maximum penalties to be inflation-adjusted annually going forward.

SB 691 (Hancock, 2013) 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.

**PRIOR VOTES:**

Senate Environmental Quality Committee (Ayes 5, Noes 2)

Assembly Floor (Ayes 51, Noes 15)

Assembly Appropriations Committee (Ayes 12, Noes 3)

Assembly Judiciary Committee (Ayes 8, Noes 2)

Assembly Natural Resources Committee (Ayes 8, Noes 3)

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