



## PENALTIES FOR AIR POLLUTION VIOLATIONS

Violations of air pollution laws—including state statutes, state regulations, federal statutes and federal regulations, and all Air Pollution Control District (“District”) rules and permits and District Hearing Board orders—are subject to criminal or civil penalties. The California Health and Safety Code (“H&S”) specifies maximum penalties (and in a few cases minimum penalties) for violations of state and District laws, and rules and permits. Generally, the penalties are specified in H&S Section 42400 *et seq.* See also [District Rule 6](#) for a list of minor violations for which the District may decide not to seek penalties. You should be aware that criminal or civil penalties for violations may be sought by the District Attorney or a local City Attorney, the state Air Resources Board, the Attorney General, the U.S. Attorney, or the U.S. Environmental Protection Agency, in addition to the District. Each day in which a violation occurs is a separate violation subject to penalties.

**The following criminal and civil penalties for violations of air quality laws are provided for by state law.** (Section references in the following are to the H&S unless otherwise noted.)

### HEALTH AND SAFETY CODE

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this Part [H&S Sections 41500 – 42708], or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), 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.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part [H&S Sections 41500 – 42708], the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part [H&S Sections 41500 – 42708].

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d), to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the county jail for not more than nine months, or both.

(d) As used in this section, "actual injury" means any physical injury that, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision of this part [H&S Sections 41500 – 42708] or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than twenty-five thousand dollars (\$25,000), or imprisonment in a county jail for not more than nine months, or by both that fine and imprisonment.

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, is guilty of a misdemeanor and is punishable by a fine of not more than one hundred thousand dollars (\$100,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(c) Each day during any portion of which a violation occurs is a separate offense.

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part [H&S Sections 41500 – 42708], or any order, rule, regulation, or permit of the state board or of a district 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 guilty of a misdemeanor and is punishable by a fine of not more than forty thousand dollars (\$40,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action. (c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable by a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part [H&S Sections 41500 – 42708] or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than seventy-five thousand dollars (\$75,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in any unreasonable risk of great bodily injury to, or death of, any person, is guilty of a public offense and is punishable by a fine of not more than one hundred twenty-five thousand dollars (\$125,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, if the defendant is a corporation, the maximum fine may be up to five hundred thousand dollars (\$500,000). (c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person emits an air

contaminant in violation of Section 41700 that causes great bodily injury to, or death of, any person is guilty of a public offense, and is punishable by a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment, or is punishable by a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment. If the defendant is a corporation, the maximum fine may be up to one million dollars (\$1,000,000).

(d) Each day during any portion of which a violation occurs constitutes a separate offense. (e) This section does not preclude punishment under Section 189 or 192 of the Penal Code or any other provision of law that provides a more severe punishment.

(f) For the purposes of this section:

(1) "Great bodily injury" means great bodily injury as defined by Section 12022.7 of the Penal Code.

(2) "Unreasonable risk of great bodily injury or death" means substantial probability of great bodily injury or death.

42400.3.5. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (1) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(1)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (1) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(1)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars (\$35,000) or imprisonment in the county jail for not more than nine months, or both.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part [H&S Sections 41500 – 42708], or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).

(d) Subdivisions (a) and (b) shall apply only to those violations that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

42400.4. (a) In any district where a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000). (b) In any district in which a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or

method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. 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 pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the federal Environmental Protection Agency fully approves that district's Title V permit program.

(f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

42400.5. In addition to the penalties, specified in Section 42400, the cost of putting out any unauthorized open outdoor fires may be imposed on any person violating Section 41800 or 41852.

42400.6. A fine or monetary penalty specified in Section 39674; subdivision (a), (b), (d), or (e) of Section 42400; Section 42402; or subdivision (a) of Section 44381 of this code, that may be imposed as the result of conduct that is also subject to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, may be collected either under those provisions of this code, or under that chapter of the Business and Professions Code, but not under both.

42400.8. In determining the amount of fine to impose pursuant to Sections 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, and 42400.4, the court shall consider all relevant circumstances, including, but not limited to, the following:

(a) The extent of harm caused by the violation.

(b) The nature and persistence of the violation.

(c) The length of time over which the violation occurs.

(d) The frequency of past violations.

(e) The record of maintenance.

(f) The unproven or innovative nature of the control equipment.

(g) Any action taken by the person including the nature, extent, and time of response of any cleanup and construction undertaken, to mitigate the violation.

(h) The financial burden on the defendant.

(i) Any other circumstances the court deems relevant.

42401. Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 42450, by a hearing board pursuant to Section 42451, or by the state board pursuant to Section 41505 is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

42402. (a) Except as provided in Sections 42402.1, 42402.2, 42402.3, and 42402.4, any person who violates this part [H&S Sections 41500 – 42708], any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board

issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than five thousand dollars (\$5,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(2) (A) If a civil penalty in excess of five thousand dollars (\$5,000) for each day in which a violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act that was not the result of intentional nor negligent conduct.

(B) Subparagraph (A) shall not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d) of Section 42400, to the health and safety of a

considerable number of persons or the public, is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

42402.1. (a) Any person who negligently emits an air contaminant in violation of this part [H&S Sections 41500 – 42708] or any 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).

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than one hundred thousand dollars (\$100,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

42402.2. (a) Any person who emits an air contaminant in violation of any provision of this part [H&S Sections 41500 – 42708], or any order, rule, regulation, or permit 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, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars (\$40,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

42402.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of this part [H&S Sections 41500 – 42708] or any 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).

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars (\$125,000). If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars (\$500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars (\$1,000,000). (d) Each day during any portion of which a violation occurs is a separate offense.

42402.4. Any person who knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part [H&S Sections 41500 – 42708], or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, is liable for a civil penalty of not more than thirty-five thousand dollars (\$35,000).

42403. (a) The civil penalties prescribed in 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.

(b) 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:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) The frequency of past violations.
- (5) The record of maintenance.
- (6) The unproven or innovative nature of the control equipment.
- (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
- (8) The financial burden to the defendant.

42403.5. (a) Notwithstanding Section 42407, any violation of Section 41700 resulting from the engine of any diesel-powered bus while idling shall subject the owner to civil penalties assessed under this article, which may be recovered pursuant to Section 42403 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.

(b) There is no liability under subdivision (a) if the person accused of the violation establishes by affirmative defense that the extent of the harm caused does not exceed the benefit accrued to bus passengers as a result of idling the engine.

42408. (a) Any person who tampers with any ambient air monitoring equipment, including related recording equipment, owned or operated by a county, unified or regional air pollution control district, air quality management district, or by the State of California, is guilty of a misdemeanor, and is liable in a civil action for damages caused by the tampering to the owner or operator of the equipment. (b) For purposes of this section, "tampering" means any unauthorized, intentional touching or other conduct affecting the operational status of monitoring equipment which has the potential to invalidate data collected from the monitoring activity.

44381. (a) Any person who fails to submit any information, reports, or statements required by this part [H&S 44300 - 44394], or who fails to comply with this part or with any permit, rule, regulation, or requirement issued or adopted pursuant to this part, is subject to a civil penalty of not less than five hundred dollars (\$500) or more than ten thousand dollars (\$10,000) for each day that the information, report, or statement is not submitted, or that the violation continues.

(b) Any person who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this part [H&S 44300 - 44394] is subject to a civil penalty of not less than five thousand dollars (\$5,000) or more than twenty-five thousand dollars (\$25,000) per day for each day that the information remains uncorrected.

44394. Any facility operator who does not submit a complete airborne toxic risk reduction audit and plan or fails to implement the measures set forth in the plan as set forth in this chapter [H&S 44390 – 44394] is subject to the civil penalty specified in subdivision (a) of Section 44381, and any facility operator who, in connection with the audit or plan, knowingly submits any false statement or representation is subject to the civil penalty specified in subdivision (b) of Section 44381.

## RESPONDING TO VIOLATIONS

If you receive a Notice of Violation, you should take IMMEDIATE action to prevent the violation from recurring. Within ten days of the date the Notice of Violation was issued you should advise the District in writing of the action taken to correct the alleged violation or the reasons you think the violation did not occur. You should also provide documentation of any circumstances you wish to be considered in the determination of fines and penalties including any of the eight factors listed above. For additional information on the web site, click on the following links:

[Current Rules and Regulations](#)

[Small Business Assistance Program](#)

[Violation Settlement Program](#)

[Hearing Board Variances](#)

For more information, contact the District's Compliance Division at (858) 586-2650.