

ATTACHMENT 2

Senate Bill 109 - (Ortiz)

Air Pollution: Minor Violations: Stationary Sources: Prosecution of Violations

Summary: SB 109 would (a) repeal the provision in existing state law pertaining to the emissions of air contaminants or toxic air contaminants that precludes criminal prosecution following the recovery of civil penalties, and that when a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds for the dismissal of any civil action brought for the same offense, and (b) extend the current authority of CARB and local air districts to adopt a regulation or rule that classifies certain violations as minor;

Background:

Existing Law:

- Designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources, subject to the powers and duties of the State Air Resources Board.
- Subjects any person that violates any rule, regulation, permit, or order of the state board or a district pertaining to emissions of air contaminants or toxic air contaminants to fines, imprisonment, and civil penalties.
- Requires until January 1, 2006 that the state board and each district to adopt a regulation or a rule that classifies certain violations as minor.
- Provides that when a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds for the dismissal of any civil action brought for the same offense.

This bill would extend that minor violation classification requirement until January 1, 2012.

The bill would also repeal the provision precluding criminal prosecution following the recovery of civil penalties for the same offense, and would repeal the requirement that a civil action be dismissed upon the filing of a criminal complaint for the same offense.

Status: SB 109 is currently in the Senate Committee on Environmental Quality. No hearing date has been scheduled.

Specific Provisions

- (1) This bill would extend the minor violation classification requirement until January 1, 2012.
- (2) The bill would also repeal the provision that when a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds for the dismissal of any civil action brought for the same offense.

Operational Impacts on AQMD: NONE

Support:
None on file

Opposition:
None on File

Recommended Position: SUPPORT WITH AMENDMENTS

Recommended Amendments by AQMD Staff:

- 1) Expansion of Reward Statute to Include Stationary Sources:

Health & Safety Code Section 42405.1 authorizes payments of monetary rewards to persons disclosing violations of district rules pertaining to mobile sources. Since air districts have little authority over mobile sources, it makes no sense to limit Health & Safety Code Section 42405.1 to mobile sources. To give this law effect, it must be expanded to include stationary sources and to provide a meaningful reward. Accordingly, the AQMD staff recommends the following revision:

Health & Safety Code Section 42405.1- Rewards

(a) Any person who provides information that materially contributes to the imposition of a civil penalty or criminal fine against any person for violating any provision of this part or any rule, regulation, or order of a district pertaining to ***stationary source or*** mobile source emission regulations or limitations shall be paid a reward pursuant to regulations adopted by the district under subdivision (f). The reward shall not exceed 10 percent of the amount of the civil penalty or criminal fine collected by the district, district attorney, or city attorney. The district shall pay the reward to the person who provides information that results in the imposition of a civil penalty, and the city or the county shall pay the reward to the person who provides information that results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed ~~five thousand dollars~~ ***fifty thousand dollars (\$50,000.00)***.

- 2) New Legislation Dealing with Tampering:

Due to the enormous number of contractors who conduct maintenance and repairs at regulated facilities, it would greatly enhance the enforcement program at local air districts to require these contractors to report tampered equipment to the air districts when this equipment is discovered during repair or maintenance operations. Accordingly, the AQMD staff recommends the following new statute:

No person shall repair, conduct maintenance or modify any source of emissions if such person knows that such source has been tampered with or modified by any person in a manner that will cause it to violate a rule, regulation, permit, or order of a district, including an order of a hearing board, unless such person has notified the district of such tampering or modification.

3) Expansion of Public Nuisance Statute to Authorize Recovery of Penalties Based on Both the Discharge and the Number of Individuals, Businesses, or Properties Affected.

Health and Safety Code Section 41700 authorizes the recovery of penalties for a discharge of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

The District interprets existing law to authorize recovery of penalties for each person or property affected by a discharge that results in a public nuisance. However, it is desirable to clarify this principle in order to assure that there is sufficient penalty for nuisances affecting the health of a large number of persons, and to assure that such penalty will have adequate deterrent effect on similar sources. Therefore, staff recommends the following revision:

Health and Safety Code Section 41700 (***with suggested amendment in bold***)

“Except as otherwise provided in Section 41705, no person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property. ***A separate violation of this section arises for each person whose comfort, repose, health or safety is endangered by a discharge; a separate violation of this section arises for each business or property that is injured or damaged by a discharge.***”

4) Also, staff proposes to author additional legislative concepts:

- Legislation that would provide for recovery of attorney fees by the prevailing party in civil penalty actions filed by an air district pursuant to Health and Safety Code Sections 42402 et seq. in which the penalty demand exceeds \$50 million.
- Legislation that would establish mandatory minimum penalties for chronic and serious violations of any rule, regulation, permit, or order of a state board or of a district, including a district hearing board, according to a prescribed criteria that also allows for the suspension of the mandatory minimum penalties if undue economic hardship would result.

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: *Neutral-unless amended*

Assembly Joint Resolution 8 – (Canciamilla) Marine pollution

Summary: This measure would urge the Congress of the United States to ratify treaty provisions known as Annex VI of MARPOL 73/78, and the United States Environmental Protection Agency to pursue the creation of a North America Sulfur Emission Control Area.

Background: An international treaty, known as Marpol 73/78 defines and sets standards for the prevention of exhaust emissions from ships and will go into effect in March 2005. Annex VI will acquire the force of law in the United States only after the Senate concurs in the treaty. The United States Senate Foreign Relations Committee has delayed for several years the ratification of Annex VI. Included within Annex VI is a provision for signatory states to petition the International Maritime Organization to designate areas within their jurisdiction as a Sulphur Emission Control Area or SECA. Once an area is designated as a SECA, a specified cap on sulphur levels in marine fuels for sale or combustion can be stipulated.

The United States Environmental Protection Agency has stated its intent to pursue, in cooperation with Canada and Mexico, a North America SECA and is already in the process of collecting the requisite data necessary to support a petition to the International Maritime Organization. The California Air Resources Board estimates that sulphur reduction in marine fuels will reduce particulate matter by approximately 20 percent and additionally provide a benefit in mitigation of NOx. The reduction of sulfur content in fuel also provides for corresponding reductions in emissions of oxides of sulphur (SOx) and diesel particulate matter (PM); and reductions in NOx, SOx, and PM. The creation of a North America Sulfur Emission Control Area will lead to the expanded availability of low sulfur fuel for the international maritime trade, and maintain the competitive standing of California's ports.

Status: Hearing date set for March 29, 2005.

Specific Provisions: On passage of this measure, the Legislature will respectfully memorialize the Congress of the United States to ratify Annex VI of MARPOL 73/78, and the Environmental Protection Agency to pursue the creation of a North America Sulfur Emission Control Area.

Operational Impacts on AQMD: AQMD is already working with ARB, U.S. EPA, ports, marine terminals and other local stakeholders on the creation of a North America Sulfur Emission Control Area (SECA). Ratification of MARPOL Annex VI would facilitate creation of a North American SECA, which would provide significant air quality benefit by reducing SOx, NOx, and PM emissions from ships, particularly for the impacted port areas.

Recommended Position: Support -- Although just advisory, this AJR targets attention at a critical element toward reducing air pollution from marine vessels on a west coast basis.

Support:
None on File

Opposition:
None on File

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Support</i>
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Assembly Bill 1229 (Nation)
Air Pollution: New Motor Vehicles: Air Pollution Label

Summary: Existing law requires that a smog index decal is placed on new motor vehicles for sale. This bill expands the public information requirements to include emission and global warming index information.

Background: Existing law permits the State Air Resources Board to adopt a regulation to prohibit the sale and registration of any new motor vehicle certified by the state board to which there has not been affixed on a side window to the rear of the driver or, if it cannot be so placed, to the windshield, a decal disclosing specified emissions information, including, for 1976 and subsequent model year motor vehicles, the exhaust emissions, as provided.

Existing law requires the state board to develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles. Existing law also prohibits the sale and registration of a new motor vehicle unless a decal that discloses a smog index for the vehicle is affixed, as specified.

Status: Referred to Committee on Transportation. May be heard in committee on or after March 26.

Specific Provisions: This bill would:

1. Expand the requirement to place the exhaust emissions information for 1976 and subsequent model year motor vehicles on the emissions index decal to affix to the emissions as provided, of any new motor vehicle.
2. Require the decal to be affixed to the driver's side window or, if it cannot be so placed, to the windshield.
3. Require a specified, emissions index and a global warming index to be included on the emissions information decal that the state board is authorized, by regulation to require.
4. Require state decal to be renamed the air pollution label, and would subject to those provisions, at a minimum, all passenger cars and light-duty trucks with a gross vehicle weight of 8,500 pounds or less, and all vehicles that are subject to those regulations adopted by the state board pertaining to greenhouse gases.

Operational Impacts on AQMD: None.

Recommended Position: Support -- This bill proposes to require air pollution labeling for the sales of passenger cars and light duty trucks, informing the prospective purchaser of the vehicles pollution index and global warming index. As such, the bill provides more air pollution information to the consumer to make his or her choice.

Support:
None on File

Opposition:
None on File

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Support</i>
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Liquefied Natural Gas Act of 2005

SUMMARY: This bill would require that companies, in order to site, construct, expand, or operate a liquefied natural gas import terminal, would have to obtain permission from the Federal Energy Regulatory Commission. The criterion that FERC would use in approving these terminals is that the siting, construction, expansion or operation of the facility would be in the public interest. Additionally, the bill would prohibit State or local governments from requiring permits, license, concurrence, approval, certificate, or other form of authorization for such terminals.

BACKGROUND: Last year, FERC issued an order challenging CPUC and CEC's authority for the permitting of LNG terminals in the Port of Long Beach. At that time, AQMD intervened by requesting clarification of that order, and FERC confirmed that its order did not specifically remove AQMD's authority, under Title V of the Clean Air Act, for requiring air quality permits. Also EPA Region IX stated that they have air permitting authority, which they have retained for permitting of an LNG offshore terminal in Ventura County under Deep Water Port Act. Other plaintiffs have filed suit against FERC, arguing it lacks the authority under the Natural Gas Act to preempt other forms of state and local review.

On Tuesday, February 15, 2005, the Long Beach City Council voted 9-0 to oppose this legislation on the grounds that it would extend the authority of the Federal Energy Regulatory Commission to exercise powers of eminent domain in the City of Long Beach.

BILL STATUS: Referred to the House Committee on Energy and Commerce's Subcommittee on Energy and Air Quality on February 25, 2005. No action taken by subcommittee yet.

SPECIFIC PROVISIONS OF BILL: The bill amends the Natural Gas Act to transfer from the Federal Energy Regulatory Commission (FERC) to the Secretary of Energy oversight functions regarding the exportation or importation of natural gas, including free trade agreements and liquefied natural gas. Liquefied natural gas import terminals are defined as all facilities located onshore or in State waters that are used to receive, unload, store, transport, gasify, or process liquefied natural gas imported to the United States from a foreign country, but does exclude the tankers used to deliver liquefied natural gas to such facilities.

The bill declares that:

- No person shall site, construct, expand, or operate a liquefied natural gas import terminal without first having secured a FERC authorization.
- Any State or local government is prohibited from requiring any form of authorization with respect to the siting, construction, expansion, or operation of a liquefied natural gas import terminal except as otherwise provided by Federal law.

The bill prescribes guidelines for FERC oversight authority pertaining to scheduling and administrative proceedings. Finally, the bill states that, “Any decision made or action taken by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to the siting, construction, expansion, or operation of a liquefied natural gas import terminal must be consistent with any authorization provided by the Federal Energy Regulatory Commission pursuant to this subsection with respect to the liquefied natural gas import terminal, and shall not prohibit or unreasonably delay the siting, construction, expansion, or operation.”

OPERATIONAL IMPACT ON AQMD: This bill would prohibit the AQMD from issuing air quality permits for LNG terminals. It also proposes to make the Clean Air Act subservient to the Natural Gas Act.

RECOMMENDED POSITION: Oppose -- Because the bill as currently written would impair the AQMD’s air permitting ability and because the criteria for how FERC will determine when a project is in the public interest is vague.

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Oppose</i>

Senate Bill 1 – (Murray)

Energy: renewable energy resources: Million Solar Roofs Initiative

Summary: Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to expand and accelerate development of alternative sources of energy, including solar resources. Existing law requires the Energy Commission, until January 1, 2006, and to the extent that funds are appropriated for that purpose in the annual Budget Act, to implement a grant program to accomplish specified goals, including making solar energy systems cost competitive with alternate forms of energy. This bill would establish the Million Solar Roofs Initiative, administered by the Energy Commission, with the goals of placing 1,000,000 solar energy systems, as defined, on new and existing residential and commercial customer sites, or its generation capacity equivalent of 3,000 megawatts, establishing a self-sufficient solar industry in 10 years, and placing solar energy systems on 50 % of new home developments in 13 years. The bill would establish the Million Solar Roofs Initiative Trust Fund and would continuously appropriate moneys deposited into the fund to the Energy Commission for purposes of carrying out the Million Solar Roofs Initiative. The program would require the Energy Commission to award incentives, pursuant to a declining schedule to be adopted by the Energy Commission, and would authorize certain other incentive programs, to support the installation of eligible solar energy systems. The bill would require the Energy Commission to establish eligibility criteria for solar energy systems and to establish conditions for incentives. The bill would require the Energy Commission to adopt guidelines governing the program at a publicly noticed meeting. This bill contains other related provisions and other existing laws.

Background: Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The existing Public Utilities Act requires the PUC to require Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources.

This bill would require that the PUC, on or before February 1, 2006, and in consultation with the Energy Commission, issue an order opening a proceeding, or expanding the scope of an existing proceeding, to adopt, implement, and finance a comprehensive solar energy program to invest in and encourage the increased installation of residential and commercial solar energy systems, with the goal of placing solar energy systems on 1,000,000 residential and commercial customer sites or its equivalent of 3,000 megawatts of solar generating capacity, by December 31, 2018.

Status: From committee with author's amendments. Read second time. Amended.
Re-referred to committee. Last action: February 28, 2005.

Specific Provisions: The bill would require that:

- The program adopted by the PUC be a cost-effective investment by ratepayers in peak electricity generation capacity that enables ratepayers to recoup the cost of their investment through lower rates as a result of avoiding purchases of electricity at peak rates generated by traditional generation resources.
- Beginning January 1, 2010, a seller of production homes offer the option of a solar energy system to all customers negotiating to purchase a new production home constructed on land meeting certain criteria and to disclose certain information.

Operational Impacts on AQMD:

Recommended Position: Support.

Support:
None on File

Opposition:
None on File

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Support</i>
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Assembly Bill AB 1430 - (Goldberg) **Air Contaminants**

Summary: Existing law requires the State Air Resources Board to develop and adopt, at a public hearing, a methodology for use by air pollution control districts and air quality management districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably, with certain requirements. This bill would prohibit this methodology from permitting credits to be used to perpetuate human exposure to air contaminants in communities within a district, or elevated risks associated with air contaminants, including, but not limited to, airborne toxics and particulate matter in low-income communities and communities with a significant minority population.

Background:

Specific Provisions: On passage of this bill, Section 39607.5 of the Health and Safety Code will be amended to read:

39607.5. (a) The state board shall develop, and adopt in a public hearing, a methodology for use by districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

(b) In developing the methodology, the state board shall do all of the following:

(1) Ensure that the methodology results in the maintenance and improvement of air quality consistent with this division.

(2) Allow those credits to be used in a market-based incentive program adopted pursuant to Section 39616 that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

(3) Ensure that the methodology does not do any of the following:

(A) Result in the crediting of air emissions that already have been identified as emission reductions necessary to achieve state and federal ambient air quality standards.

(B) Provide for an additional discount of credits solely as a result of emission reduction credits trading if a district already has discounted the credit as part of its process of identifying and granting those credits to sources.

(C) Otherwise provide for double-counting emission reductions.

(D) Permit credits to be used to perpetuate human exposure to air contaminants in communities within a district, or elevated risks associated with air contaminants,

including, but not limited to, airborne toxics and particulate matter in low-income communities and communities with a significant minority population.

(4) Consult with, and consider the suggestions of, the public and all interested parties, including, but not limited to, the California Air Pollution Control Officers Association and all affected regulated entities.

(5) Ensure that any credits, whether they are derived from stationary, mobile, indirect, or areawide sources, shall be permanent, enforceable, quantifiable, and surplus.

(6) Ensure that any credits derived from a market-based incentive program adopted pursuant to Section 39616 are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with paragraph (2).

Status: May be heard in committee on or after March 27, 2005.

Operational Impacts on AQMD:

Recommended Position: Oppose -- Limits exposure to sensitive areas while at the same time promoting PM credit generation. Add language to allow credit use in areas of low income and significant minority populations as long as the requirements of the District's toxic risk rules are met (i.e., risk assessment, risk threshold, etc.).

Support:
None on File

Opposition:
None on File

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Oppose</i>

AB 343 (Huff)
Utility User Taxes: Exemption

Summary: This bill would exempt from any utility user tax imposed by any jurisdiction, as defined, the consumption of *compressed* [per 3/29/05 amendment] natural gas by a local agency or a school district for transportation purposes. This bill would make legislative findings and declarations regarding the statewide purposes of the bill.

Background: Existing law authorizes the board of supervisors of any county to levy a utility user tax on the consumption of electricity, gas, water, sewer, telephone, telegraph, and cable television services in the unincorporated area of the county.

AQMD's fleet rules require public agencies to replace fleet vehicles to alternative-energy vehicles. In addition through its Clean School Bus Program AQMD has provided millions of dollars to school districts to convert buses to CNG and other clean technologies. This bill will provide additional incentive for public agencies and school districts in unincorporated areas to convert fleet vehicles to natural gas.

Status: Referred to Committee on Revenue and Taxation. May be heard in committee on or after March 13.

Specific Provisions: None

Operational Impacts on AQMD: None

Recommended Position: Support -- Natural gas engines are cleaner than their diesel counterparts, and their use helps reduce emissions. This bill's intent is quite focused and reinforces other incentive programs aimed at fostering clean fuel vehicle use.

Support:
None on File

Opposition:
None on File

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Support</i>
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