

Assembly Bill 990 (Lieber)
Toxic substances: California Safer Chemical Substitutes Act of 2005

Summary: This bill would ensure the substitution of safer alternatives for priority toxic substances in their use, manufacture, emission, and distribution, including consumer products that contain these priority toxic substances, as specified in the bill.

Background: Existing law requires the California Environmental Protection Agency to initiate a scientific peer review of screening levels for certain contaminants. The agency is required to publish a list of screening numbers determined for specified contaminants, and to conduct public workshops in establishing and revising those levels.

Status: Amended and passed as amended on May 3, 2005, by the Committee on Environmental Safety and Toxic Materials (5-2 vote). Re-referred to the Committee on Appropriations. No hearing date set yet.

Specific Provisions: Among other things, the bill would prohibit the use or sale of methylene chloride, perchloroethylene, trichloroethylene, or 1-bromopropane, as those terms are defined in the bill, including their use in consumer products, on or after January 1, 2007, but would allow their use for specified purposes until designated later dates. The bill would require that a manufacturer or distributor has a duty to take back specified substances from retailers and consumers, and compensate them for the full price paid for the substance or for a consumer product containing those chemicals.

The bill would require the State Air Resources Board to promulgate regulations by August 1, 2006, to implement and enforce the act. The bill would authorize the state board to promulgate regulations that transfer enforcement authority to air pollution control districts and air quality management districts, thereby creating a state-mandated local program by authorizing the imposition of new duties on these districts.

The bill would require that, by July 1, 2008, and every 2 years thereafter, the Office of Environment Health Hazard Assessment, in consultation with the State Department of Health Services, the State Air Resources Board, the Department of Toxic Substances Control, and any other relevant public agency, to recommend to the Legislature whether other chemicals or hazardous substances in commerce in California are candidates for substitution.

Operational Impacts on AQMD:

AB 990 has a worthy goal of increasing the substitution of safer alternatives for priority toxic substances. However, the bill also conflicts with existing AQMD rules. The bill conflicts with AQMD rules by:

- Requiring the phase out of all chlorinated solvents in airless/airtight systems by 2010. AQMD Rule 1122 allows for limited use because there are no suitable alternatives available for some cleaning applications used in these systems, which are commonly used in the electronics manufacturing industry for products such as circuit boards.
- Continuing to allow for the use of chlorinated solvents including perchloroethylene in dry cleaning operations; which AQMD Rule 1421 will phase out the use of by December 31, 2020, since non-toxic alternatives to this toxic substance have already been identified.
- This bill will phase out other uses that do not have a known alternative at this time, including motion picture film printing and wood furniture stripping. It seems inconsistent to support those phase outs, but not support phasing out perchloroethylene use by dry cleaners when several different alternatives are widely used today.
- Overriding the AQMD's current Adhesive and Sealant Applications Rule 1168, which allows for the low volume uses of these substances since acceptable substitute formulations with lesser or no amounts of methylene chlorides do not yet exist for this application. Example: methylene chloride is used for the solvent welding of plastic products such as aquariums and display cases.

Recommended Position: Discussion Only

Support:

None on File.

Opposition:

None on File.

May 13, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Discussion only</i>

Senate Bill 757 (Keho) Petroleum Demand Reduction Act

Summary: SB 757 addresses the improvement of oil refinery safety and pollution prevention, alternatives to petroleum based transportation fuels, and monitoring global petroleum adequacy.

Background: Existing law contains various requirements for the California Energy Commission (CEC), California Air Resources Board (ARB), California Environmental Protection Agency (CalEPA), Department of Toxic Substances Control (DTSC), and the South Coast Air Quality Management District (South Coast AQMD).

This bill enacts the Petroleum Demand Reduction Act that sets a policy for state agencies to take every cost-effective and technologically feasible action to achieve a net-zero increase in on-road petroleum consumption by 2010, and a significant reduction by 2020, and provides that those state agencies should take the reduction goals into account in adopting rules and regulations.

Status: Amended on May 3, 2005, after being re-referred to Senate Committee on Appropriations. Read second time. Passed Committee on Environmental Quality (6-3 vote) on May 2, 2005.

Specific Provisions:

- This bill would specify that it is state policy to take cost effective and feasible measures to achieve a net zero increase in on-road petroleum consumption by 2010, and a significant reduction by 2020.
- The bill would authorize CARB, in cooperation with AQMD, to adopt regulations requiring fleet operators to use alternative fuel vehicles and advanced transportation technologies where technologically feasible and cost-effective.
- The bill would require Cal-EPA, in consultation with various agencies including air districts, to adopt model rules to ensure that all petroleum refining, storage, and waste treatment and disposal facilities, regardless of their date of original construction, install best available control technology and pollution prevention measures that reflect the best practices available.
- The bill would require Cal-EPA, in consultation with CARB, CEC, and SCAQMD, to adopt, by January 1, 2007, recommendations, policies, and programs, as appropriate, to increase the diversity of the state's transportation energy supplies consistent with the goal of increasing non-petroleum fuels to 20% of on-road fuel

consumption by 2020. These recommendations, policies, and programs shall integrate state ambient air quality standards, including those for particulates, criteria pollutants, toxic air contaminants and greenhouse gases, to assure that no petroleum reduction strategy or alternative fuel policy impedes the state's ability to comply with federal air quality standards.

Operational Impacts on AQMD: This bill would require staff resources in Planning and Rules to help CARB develop their fleet rules, and to help Cal-EPA develop the rules requiring BACT for refineries, and the recommendations, programs and policies to achieve the goal of 20% non-petroleum on-road fuel by 2020.

Recommended Position: Discussion Only

SUPPORT: American Lung Association of California, California Thoracic Society, Clean Power Campaign, Heal the Bay, Natural Resources Defense Council, Planning and Conservation League, Sierra Club, Union of Concerned Scientists

OPPOSITION: Alliance of Automobile Manufacturers, California Business Alliance, California Business Roundtable, California Chamber of Commerce, California Citrus Mutual, California Farm Bureau Federation, California Grocers Association, California Independent Oil Marketers Association, California Independent Petroleum Association, California League of Food Processors, California Manufacturers & Technology Association, California Mining Association, California Motor Car Dealers Association, California Retailers Association, California Taxpayers' Association, California Taxpayer Protection Committee, California Women in Agriculture, Howard Jarvis Taxpayers Association, Olive Growers Council of California, Western Growers Association, Western Plant Health Association, Western States Petroleum Association

May 13, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Discussion only</i>

Senate Bill 870 (Escutia)
Air Quality: Violations: Nonvehicular Sources: Business Penalties

Summary: This bill would establish minimum and maximum criminal penalties for specific violations of specified air pollution laws. It also authorizes imposition of fines or penalties for air quality violations. The recovery of these penalties would preclude criminal prosecution for the same offense.

Background: Existing law:

- Establishes air pollution control districts and air quality management districts; and, generally requires these districts to enforce standards for stationary sources of air pollution (e.g., factories, power plants, oil refineries) for achieving and maintaining state and federal ambient air standards.
- Authorizes air districts to seek civil or criminal penalties for violations of air quality statutes and regulations and subjects any person who 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 specified fines, civil penalties, or imprisonment.
- Establishes maximum criminal and civil penalties for any person for violations of air pollution laws from non-vehicular sources. Depending on the nature and severity of the alleged violation and the air district within which the alleged violation takes place, penalties may be sought by the air district, a city attorney, county attorney, or the state's Attorney General.

Status: Amended in Senate on May 4, 2005. Passed as amended by Senate Committee on Environmental Quality on April 25, 2005 (5-2 vote). Referred to the Senate Committee on Appropriations. No hearing date has been set.

Specific Provisions:

- The bill establishes minimum criminal penalties depending on the severity of the violation ranging from \$1,000 per day to \$250,000 per violation. The bill establishes new minimum civil penalties ranging from \$3,000 per day for businesses of less than one million dollars a year to \$20,000 per day for businesses earning \$50 million or more. The civil penalties are tripled if the violation occurs within 1500 feet of a school. The civil penalty minimums do not bear any relation to the severity of the violation. Thus, a small company that failed to properly record its coating usage that was located near a school could face minimum penalties of \$270,000 per month.

- The bill also redirects civil and criminal penalties into a state Air Pollution Business Penalty Fund, which would grant 50% of the money to CARB for enforcement activities, 40% to an unspecified agency for asthma services, leaving only 10% of the penalty revenue for the originating district. This division unfairly rewards CARB for AQMD enforcement efforts, and prevents AQMDs from recovering penalties which not only support enforcement activity but also have supported small business assistance and pollution reduction projects in the community.

Operational Impacts on AQMD:

AB 870 would deprive AQMD prosecutors of the ability to tailor civil penalties to the various factors required by the Health and Safety Code, Section 42403, including the nature of the violation, the extent of harm caused by the violation, the financial burden on the defendant, and the degree of culpability (e.g. negligence or willfulness). By setting certain fixed minimum penalties, which could be very large for a minor violation that continued for an extended period, SB 870 would potentially conflict with existing state law, Health & Safety Code Section 42403. This code requires courts and agencies making settlements to consider various factors in settling penalties, including the nature of the violation, the extent of harm caused by the violation, and the financial burden to the defendant.

The bill would also deprive AQMD of needed penalty revenues which are used for valuable enforcement efforts and other programs, and grant that money instead to CARB to support their enforcement activities, which are mobile source enforcement, and to an unspecified agency for asthma services. AQMD should retain the ability to use penalty revenues as deemed appropriate, including pollution production projects and small business assistance.

The bill also requires the AQMD to send a mailed notice to every address within a one-mile radius of every Notice of Violation (NOV) that we issue. This could be an extremely expensive mandate, for which the bill provides no funding.

Recommended Position: Discussion Only

Support: California Environmental Rights Alliance, California Safe Schools, Center for Environmental Health, Communities for a Better Environment, Community Asthma Education & Management, Community Coalition for Change, Del Amo Action Committee, Desert Citizens Against Pollution, Global Anti-Incineration Alliance, Latino Issues Forum, Literacy for Environmental Justice, Pacoima Beautiful, Physicians for Social Responsibility-LA, Planning and Conservation League, ProU

Opposition: American Chemistry Council, California Association of Sanitation Agencies, California Chamber of Commerce, California Council for Environmental and Economic Balance, California Manufacturers and Technology

Association, Sacramento Metropolitan Air Quality Management District, Western
Growers, Western States Petroleum Association

<p>May 13, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Discussion only</i></p>
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