

**State of California
AIR RESOURCES BOARD**

**ENFORCEMENT PENALTIES:
BACKGROUND AND POLICY**

Pursuant to Senate Bill 1402 (Dutton, Chapter 413, Statutes of 2010)

September 30, 2011

PREFACE

This document has been prepared by the Air Resources Board (ARB) pursuant to Health and Safety Code Section 43024 which was adopted as part of Senate Bill 1402 (SB 1402, Dutton, Chapter 413, Stats. 2010). Section 43024 provides:

43024. (a) No later than March 1, 2011, the state board shall publish a penalty policy for civil or administrative penalties prescribed under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200).

(b) The policy shall take into consideration all relevant circumstances, including, but not limited to, all of the following:

- (1) The extent of harm to public health, safety and welfare caused by the violation.*
- (2) The nature and persistence of the violation, including the magnitude of the excess emissions.*
- (3) The compliance history of the defendant, including the frequency of past violations.*
- (4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.*
- (5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.*
- (6) The efforts of the defendant to attain, or provide for, compliance.*
- (7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.*
- (8) The financial burden to the defendant.*

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EXECUTIVE SUMMARY

Millions of Californians continue to breathe unhealthful air. Many areas in California exceed health-based air quality standards and cannot tolerate additional, illegal emissions of smog-forming compounds and diesel soot. For many toxic air contaminants, such as benzene and formaldehyde, there are no known safe levels of exposure. There is no practical way Californians can individually protect themselves from air pollution. Children, the elderly and people with heart and lung disease are particularly at risk.

The Air Resources Board (ARB) approaches this challenge with the conviction that betterment of public health goes hand-in-hand with economic health.

The bottom line of ARB's enforcement program is the same as its overall mission: "To promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the state." The ARB aims to reduce air emissions through fair, consistent and comprehensive enforcement of air pollution laws and by providing compliance assistance.

In 2009, the ARB began to explore ways to improve compliance and make its enforcement process more transparent. Staff solicited public comment in a widely announced Oct. 12, 2009 workshop in Sacramento, which drew a large audience and much participation. Many commenters encouraged ARB to increase the transparency of its enforcement process. The Enforcement Division reported the results of its outreach efforts at the Board's Jan. 28, 2010 meeting and committed to developing a written penalty policy that explains how it resolves violations and determines penalties.

The California Legislature underscored the importance of ARB's enforcement outreach in approving Senate Bill 1402, which became law on Sept. 28, 2010. Appendix A contains a copy of the bill. Among other requirements, SB 1402 directs the ARB to publish by March 1, 2011 a penalty policy that takes certain circumstances into account when assessing penalties. This document responds to that directive.

Part 1 provides context and background for the penalty policy. It outlines California's air pollution laws, regulations and corresponding penalties and details ARB's enforcement program, which includes public outreach and compliance assistance workshops. The handling of penalty revenue also is discussed.

Part 2 is the proposed penalty policy itself and related Cal/EPA guidance documents. The policy calls for consideration of "all relevant circumstances," in

determining the penalty amount. By law, penalty levels must be set at levels to ensure compliance and deter violations. They may be based on any relevant evidence, including a violator's financial condition. Such circumstances, along with the eight factors enumerated in SB 1402 (see Preface), must all be considered in determining penalties for violations of laws under the Board's jurisdiction.

For easy reference, Appendix B of this document presents a matrix of most of the laws and regulations ARB enforces, with the corresponding penalties.

The penalty policy explains how ARB works to consistently reach swift and fair resolution of violations.

Fairness is at the heart of an effective enforcement program—one that benefits those who invested in pollution controls and maintains consistency in the level of penalties issued for similar violations. To be fair, the Board also takes into account the specific circumstances, causes, results and actors—all of which vary from case to case.

As a result, comparisons between individual cases of similar violations may be invalid. Similarly, the policy does not have a mathematical formula for calculating penalties. Such a formulaic approach would not properly weigh individual circumstances and might result in an unjust or ineffective penalty.

Fairness also calls for proportionality, meaning monetary sanctions should be severe enough to deter future violations but proportionate to the financial wherewithal of the company or individuals involved.

ARB's penalty determinations are designed to prevent harm to the public and the environment, not to drive people out of business. Penalties may be reduced in cases of financial hardship. Also, for example, ARB's consumer product regulations commonly provide a "sell-through" period, allowing businesses to sell their remaining inventory of newly prohibited, higher-polluting products for a limited period before enforcement takes effect. The ARB's Enforcement Division generally launches an extensive public outreach campaign with the rollout of a new regulation so the regulated community isn't caught by surprise or misinformed.

The Enforcement Division takes great care to engage regulated industries and businesses in developing, understanding and complying with each regulation it adopts. Over the years, the enforcement staff has grown more specialized and involved in public outreach. The division's compliance assistance workshops annually draw thousands of from small business, industries, local air pollution control districts and other groups. Enrollment more than doubled in 2009 to 9,000.

The ARB resolves thousands of violations a year and annually deposits millions of dollars in penalties in an Air Pollution Control Fund controlled by the California Legislature.

Over the years, ARB regulations have evolved from focusing almost exclusively on large enterprises such as engine manufacturing and fuel production to medium and small operations. This is particularly the case with enforcement of the Board's diesel risk reduction regulations that affect owners of truck and bus fleets of any size. The Board's strategy for attaining cleaner diesel emission standards traditionally called for accelerated retirement of older, higher polluting diesel trucks and buses. Recent regulations, however, also require fleet operators to retrofit certain model years of higher-polluting diesel vehicles and equipment that are still years away from retirement. There are more than 500,000 heavy-duty diesel trucks on California's roads today.

ARB puts considerable efforts into drafting regulations that are enforceable, that phase in regulatory requirements in ways that foster compliance and backs them up with outreach and education for the regulated community. ARB has carefully organized its enforcement program and deploys its resources to address areas of most concern. The results can be reviewed in the annual enforcement reports ARB publishes and posts on its webpage at <http://www.arb.ca.gov/enf/reports/reports.htm>.

Enforcement also has grown more active. The number of cases or citations closed in 2009 totaled 4,054, compared with 1,535 in 2002. Penalties collected in 2009 totaled \$16.3 million, up from \$11.3 million collected in 2002. For more enforcement statistics, please visit the ARB Enforcement Division website at: <http://www.arb.ca.gov/enf/enf.htm>.

ARB's enforcement process can be summarized in five steps: (1) finding violations through inspections, investigations or complaints, (2) determining the penalty, (3) notifying the responsible party, (4) providing the responsible party an opportunity to explain and ask questions and (5) resolving the violation informally if possible. These steps may vary, depending on the type of violation.

When a settlement cannot be reached, ARB generally refers the matter to a prosecutor, usually the Attorney General, for civil litigation or criminal prosecution if warranted. Administrative hearings may be held for certain mobile source citations.

The proposed penalty policy fulfills the requirements of SB 1402. The policy extends ARB's practice of explaining the basis of its penalty determinations to include more details in its written demands for a penalty or settlement, as SB 1402 requires. Those details include the governing law and a quantification of excess emissions where practicable.

The policy also formalizes the Board’s longtime penalty-setting practice of taking into consideration “all relevant circumstances,” including the eight SB 1402 factors. Those factors include the extent of public harm caused by the violation and the defendant’s compliance history and level of cooperation in the investigation.

ARB’s efforts to improve the transparency of its enforcement process go beyond the fulfillment of SB 1402’s requirements. For example, ARB now posts online all settlement agreements, complete with explanations of penalty determinations.

The Board staff worked with the interested public and regulated community on refining the penalty policy in public workshops and in response to public comments. When this policy was published, efforts were still underway to implement and interpret The Global Warming Solutions Act of 2006 (AB 32). Although this policy reflects some principles that are common to all enforcement efforts, this policy is not intended to determine how regulations issued under AB 32 will be written or implemented.

PART 1: BACKGROUND ON ARB ENFORCEMENT

I. INTRODUCTION

To fully understand ARB’s penalty policy, it is important to understand the Board’s overall mission, goals, environmental justice policies and enforcement program.

A. Mission

- To promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the state.

B. Major Goals

- Provide healthful air to all Californians
- Protect public from exposure to Toxic Air Contaminants
- Reduce California's emission of greenhouse gases
- Provide leadership in implementing and enforcing air pollution control regulations

- Provide innovative approaches for complying with air pollution regulations
- Base decisions on best possible scientific and economic information
- Provide quality service to the public

C. Environmental Justice Policies

ARB is committed to making the achievement of environmental justice an integral part of its activities. State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations, and policies.

The Board approved its Environmental Justice Policies and Actions on Dec. 13, 2001, consistent with the directives of state law. They are available at <http://www.arb.ca.gov/ch/programs/ej/ej.htm>

D. ARB's Enforcement Program

The ARB designed its enforcement program to achieve immediate compliance, deter future violations and to make sure that people who follow the rules are not disadvantaged by those who don't.

ARB resolves several thousand violations a year through a swift and informal settlement process and annually deposits several million dollars in penalties in an Air Pollution Control Fund that is controlled by the California Legislature.

When a settlement cannot be reached, ARB generally refers the matter to a prosecutor, usually the Attorney General, for civil litigation or to a District Attorney if criminal prosecution is warranted. Administrative hearings are available for some of ARB's cases.

ARB's regulations have become increasingly complex and have reached larger and more diverse industrial and business sectors. Consequently, the need to provide compliance assistance and a clear enforcement policy has become more critical.

II. LEGAL FRAMEWORK

A. Laws and Regulations

The Air Resources Board enforces a variety of laws and regulations to stop illegal air pollution. The statutes are found in the **California Health and**

Safety Code (HSC), which recognizes air pollution sources as either “vehicular” or “non-vehicular.”

- **Vehicular:** cars, trucks and other motorized mobile sources.
- **Non-vehicular:** stationary sources such as oil refineries, factories, dry cleaners and auto body shops. Such sources include “consumer products,” meaning chemically formulated products for household or institutional use. Regulated products include cleaning compounds, aerosol paints, perfumes and other personal care products.

Most of the air quality statutes the ARB enforces are in HSC’s **Division 26**, which is divided into five **Parts**. Division 26 gives the ARB responsibility for control of vehicular sources. It allocates primary control of the non-vehicular sources to the **local air pollution control districts**, which are subject to ARB oversight. ARB regulations are in **Titles 13 and 17** of the **California Code of Regulations (CCR)**.

For easy reference, Appendix B of this document presents a matrix of most of the laws and regulations ARB enforces, with the corresponding penalties.

B. Regulations

In proposing an air pollution regulation, ARB staff documents why it is needed, inventories the sources of emissions and their contribution to the problem and surveys existing control options. ARB then publicly issues a draft regulatory proposal, solicits comments from various stakeholders and refines the proposal based on those comments. The staff contacts stakeholder groups – typically representatives from industry, the environmental community and public health professionals – and holds public workshops. The goal of this iterative process is to resolve as many stakeholder issues as possible before staff presents the proposed regulation to the Board for adoption. ARB follows the same steps when a regulation requires re-evaluation and amendment. After regulations are adopted, ARB expends considerable efforts to help the affected industry comply with it.

C. Penalties

California’s air quality laws and regulations apply the legal doctrine of “**strict liability**,” meaning a prohibited act constitutes a violation no matter one’s intent or the amount of care taken to avoid violations. Under strict liability, the circumstances of a violation are taken into account to determine the appropriate penalty, not to excuse the violation. The doctrine is common to environmental laws nationwide (including the federal Clean Air Act), because pollution violations occur in the course of ongoing business activity and usually are not committed intentionally or even negligently. In some cases, higher maximum penalties are

available for intentional or negligent violations. But without strict liability, air pollution laws would have little deterrent effect.

Maximum penalties are specified for each type violation:

□ **Stationary Sources and Consumer Products (Part 4 of Division 26, HSC)**

There are civil penalties (sections 42401 through 42403) and criminal penalties (sections 42400 through 42400.8). Violators may be punished using either, but not both (section 42400.7). Most violations are punished civilly.

Maximum penalty amounts are based on the degree of a violator's intent. The range begins at \$1,000 per violation per day, which can be imposed with no finding of intent (strict liability). Penalties top at \$1 million per violation per day for corporate violators and \$250,000 per violation per day for individuals, in cases of willful and intentional emissions of air contaminants that result in great bodily harm or death. ARB also can obtain a court order or "injunction" to stop violations from taking place (section 41513). In criminal cases, violators also face possible jail sentences of 30 days to 1 year per violation per day.

Part 4 penalty provisions also apply to violations of ARB's consumer products regulations (Title 17, California Code of Regulations, sections 94500-94575), and indoor air cleaner regulations (sections 94800-94810).

The list of factors that must be considered in determining a penalty under Part 4 (section 42403) is similar to those required under SB 1402 (section 43024).

□ **Air Toxics Penalties (Part 2 of Division 26, HSC)**

ARB enforces state and some federal Air Toxic Control Measures (ATCMs) under section 39674 of Part 2. That section provides for penalties of up to \$10,000 per violation, per day. Higher penalties may also apply because certain ATCMs may also be enforced under section 39675 provisions of Part 4, stationary sources, described above. Because the regulations ARB adopts to control diesel particulate matter are in part adopted pursuant to ARB's authority to control air toxics, violations of the ARB's diesel retrofit regulations, for example, may also carry penalties under Health and Safety Code sections 39674 and 39675.

□ **Mobile Sources and Fuels Penalties (Part 5 of Division 26, HSC)**

Unlike Part 4, Part 5 relies almost exclusively on civil penalties. Transactions involving new motor vehicles that are not certified to ARB's emission standards are subject to civil penalties of up to \$5,000 per vehicle per violation (section 43154). These are the hallmark penalties that safeguard ARB's stringent motor vehicle emission standards. They were upheld in *People ex rel.*

State Air Resources Board v. Wilmshurst (1999) 68 Cal.App.4th 1332, which rejected many of the legal challenges to ARB's ability to enforce its vehicle certification programs.

Other requirements carrying specific penalties for violations selling vehicles that violate ARB's emission standards [\$5,000 per vehicle (section 43211)], violating ARB test procedures [\$50 per vehicle (section 43212)] and tampering with pollution control devices (\$1,000 per violation for car dealers (section 43012)).

There is a "catchall" provision (section 43016) for violations of requirements that do not carry a specific penalty. It provides for penalties of up to \$500 per violation and is commonly applied to violations of the Small Off-Road Engine regulations (Title 13 CCR sections 2400-2409).

The SB 1402 penalty factors now formally apply to mobile source violations. Section 43031 applies a similar list of factors to violations of ARB's fuels regulations.

As for ARB's fuel regulations, willful violations are subject to civil penalties of up to \$250,000 per day, plus removing any economic benefit. Negligent violations are subject to penalties of up to \$50,000 per day, while strict liability violations are subject to penalties of up to \$35,000 per day (sections 43027 and 43030.)

It is a criminal offense to knowingly violate an ARB fuels regulation (section 43020). The misdemeanor is punishable by up to \$1,000 per day of violation and a maximum six months jail time.

ARB can obtain a court order to stop any violation of a Part 5 requirement from occurring (section 43017).

III. ARB's ENFORCEMENT PROCESS

A. Finding the violation

ARB learns about violations through inspections, tips from the public, referrals from other agencies, mandatory emissions reporting and voluntary disclosure. How ARB learns about a violation may make a difference in how it calculates the penalty. Concealing violations, for example, may result in a maximum penalty.

B. Determining the penalty

When it finds a violation, ARB determines a proposed penalty amount based on applicable laws and court decisions. The penalty amount may be adjusted based on other relevant circumstances, such as the violator's financial

position and history of violations. In some cases, each item (say a vehicle or piece of equipment that is not certified to ARB emission standards) triggers a penalty. In other situations, each day a violation continues is a separate violation.

C. Notifying the responsible party

Every person ARB believes has violated a law is notified. The notice may be a citation issued (say on a roadside inspection of big rig truck with smoking exhaust), in a letter informing the person of an apparent violation or in a more formal "Notice of Violation." In rare cases, the first notice will be a legal pleading requiring a response and appearance in court to face charges. No matter the form, all notifications contain the information required by SB 1402. ARB explains the basis for any penalty it demands, and violators may request a reduced penalty based on mitigating circumstances ARB had previously not known about. Likewise, written demands explain:

- Laws or regulations on which the penalty is based.
- How the penalty amount was determined, including mitigating or aggravating factors.
- The penalty's per unit basis, if any.
- Whether the law violated specifies emission limits, and if so, a quantification of excess emissions where practicable (Health and Safety Code section 39619.7).

D. Opportunity to discuss

Everyone ARB notifies of violating any law or regulation is given one or more opportunities to explain the circumstances and to ask about the basis of the accusation. Depending on the seriousness and scope of the violations, the discussion may be a phone call, meetings with ARB staff or an exchange of correspondence. These discussions are a two-way street. The ARB seeks to confirm and learn more about the violations, while the violator may want to explain that no violation occurred or outline points that could lower the penalty.

E. Resolution

Most violations are quickly resolved when the violator mails in a fine or negotiates a settlement by phone or in person. Violations that are disputed sometimes require more information gathering and discussion before an agreement is reached.

When a settlement cannot be reached, ARB generally refers the matter to a prosecutor, usually the Attorney General, for civil litigation or criminal prosecution if warranted. In most cases, ARB has discretion whether to initiate an administrative hearing prior to litigation. Given its success in obtaining mutually agreeable settlements, ARB has had little need for these administrative hearings.

IV. PUBLIC COMMUNICATIONS AND OUTREACH

ARB issues press releases announcing its settlements in cases involving large penalties. All settlement agreements complete with explanations of penalty determinations are posted online at: <http://www.arb.ca.gov/enf/casesett/casesett.htm>. In addition, ARB publishes a detailed report of its enforcement activities each year at: <http://www.arb.ca.gov/enf/reports/reports.htm>. A copy of ARB's 2010 enforcement report is attached as Appendix E.

Much effort goes to engage regulated industries and small businesses in developing, understanding and complying with each regulation it adopts. Staff widely broadcasts enforcement advisories, maintains web pages and list-serves on regulatory developments, distributes brochures and fact sheets, publishes articles in trade journals and regularly responds to public inquiries.

ARB's Office of the Ombudsman specializes in helping owners of small businesses and start-ups navigate permitting, resolve compliance issues and find financial assistance and incentive programs.

Over the years, ARB's enforcement staff has offered compliance assistance workshops for thousands of people from industry, small business, academia, local air districts and other groups. Enrollment more than doubled in 2009 to 9,000.

V. PENALTY REVENUE

ARB staff records penalty checks then deposits them into the Air Pollution Control Fund, which is administered by the California Legislature. Money in the fund must be appropriated by the Legislature before it can be spent.

Some cases are resolved by paying part of the penalty (not to exceed 25 percent) to a Supplemental Environmental Project as described in Appendix D.

VI. DEVELOPING AN ARB PENALTY POLICY

In 2009, the Enforcement Division began to explore ways to improve compliance and better assist a growing regulated community that faces increasing complex air pollution laws and regulations.

In the largest listserve broadcast in ARB history, staff announced an Oct. 12, 2009 public workshop to discuss enforcement policy. See: <http://www.arb.ca.gov/enf/meetings/meetings.htm>. Staff followed up with hundreds of phone calls to a wide spectrum of people interested in ARB enforcement. The workshop drew a large attendance and wide participation. Many commenters expressed support for ongoing enforcement outreach and encouraged ARB to increase the transparency of its enforcement process.

The Enforcement Division reported the results of its outreach efforts at the Board's Jan. 28, 2010 meeting and committed to developing a penalty policy in consultation with stakeholders.

As ARB conducted its enforcement policy discussions, the Legislature considered SB 1402. The version of SB 1402 enacted and signed into law (see Appendix A) requires ARB to publish a penalty policy by March 1, 2011 that is applicable to specified vehicular air pollution violations. (See Health and Safety Code section 43024.)

This document responds to that directive. Because the principles governing ARB's penalty calculations are common across ARB's programs (see Health and Safety Code sections 42403, 43024 and 43031), the policy is designed to apply to all the programs the ARB has historically enforced.

PART 2: ENFORCEMENT PENALTY POLICY

VIII. ARB CONSIDERS ALL RELEVANT CIRCUMSTANCES IN ASSESSING PENALTIES INCLUDING EIGHT STATUTORY FACTORS

A. Introduction

Health and Safety Code sections 42403, 43024 and 43031 require that penalties "shall take into consideration all relevant circumstances, including, but not limited to," eight specified factors. This analysis must account for legal authorities that provide that penalty levels must be set at levels to ensure compliance and deter violations, that penalties may be based on any relevant evidence, and must relate to the violators' financial condition. It also requires recognition that, as the Legislature has declared, air quality laws protect the public health and welfare. These circumstances, along with the eight factors enumerated in Health and Safety Code sections 42403, 43024 and 43031 must all be considered in calculating penalties. Cal/EPA has published guidance documents on penalty-related topics, one on self-disclosure of violations (attached as Appendix C) and the other on supplemental environmental projects (attached as Appendix D). These guidance documents and ARB mission statements are also relevant circumstances that ARB considers in calculating penalties. They are discussed at the end of this section.

B. General Penalty Principles

A penalty's ultimate purpose is to promote compliance with the law. The Legislature determines the appropriate penalty in the first instance by establishing an amount in statute, based on the environmental and health values that the Legislature sought to protect against a particular violation. Many statutes provide for penalties "not more than" the maximum, giving courts and ARB some discretion to reduce the maximum amount. The circumstances of individual cases may or may not provide reasons to reduce penalties below the maximum.

Three key principles guide penalty determinations: the need for deterrence, fairness, and swift correction of environmental problems. ARB typically exercises its discretion by considering the circumstances of the particular violation, past penalties in similar cases, and the potential costs and risk associated with litigating particular violations.

Deterrence. To achieve the goal of deterrence, every penalty must impose a consequence that will deter both the violator and others from future violations. In keeping with that goal, an adequate penalty must deprive a violator of any economic benefit resulting from the violation and include an additional amount reflecting the seriousness of the violation. In many cases, the amount of any economic benefit may be smaller than the proposed penalty, difficult to calculate, or both. Accordingly, ARB does not routinely calculate a precise economic benefit amount unless the facts suggest that such benefit is significant or easily determined.

Fairness. To treat the regulated community fairly requires both consistency and flexibility. Treating similar situations similarly is key to fairness. The consideration of each case must be flexible enough to reflect legitimate differences between violations.

Swift Resolution. The third key goal is swift resolution of both environmental problems and pending cases. Prompt resolution of disputes limits environmental harm, promotes good environmental practices and enhances a penalty's deterrent effect.

C. General Legal Considerations in Calculating Penalties

The determination of an appropriate penalty depends on the purpose and meaning of the particular statute, and is informed by the larger statutory scheme and case law.

The statutes establishing penalties for violations of ARB program requirements are discussed above and listed in the matrix in Appendix B. In some statutes the Legislature carefully distinguished between intentional

conduct, knowing failure to correct a violation, negligence, and strict liability, setting forth different maximum penalties for each.¹ Accordingly, when determining a penalty for an intentional violation subject to the penalty set forth in section 42402.3, for example, it may be inappropriate to automatically consider intent as an aggravating factor. Conversely, the absence of intent may not be a significant mitigating factor for strict liability violations. Many of the penalty statutes the Air Resources Board applies were adopted decades ago. To maintain the deterrent effect the Legislature intended at the time these statutes were adopted, current penalties are appropriately set toward the maximum ranges the statutes provide.

Case law interpreting penalty statutes also informs the meaning and operation of penalty provisions. Those cases uniformly note that the purpose of penalties is to punish and deter violations. California courts, like federal courts interpreting the federal Clean Air Act, have stated that the statutory maximum is the presumptive starting point, subject to reductions based on mitigating factors a violator can establish. These cases are discussed in more detail below, but it is important to note the reason for air quality laws in the first place—to protect public health and safety—and acknowledge that this also weights the calculation toward substantial penalties.

D. Air Quality Laws Protect Public Health and Safety

Calculating penalties for violations of California air quality laws must account for the fact that these laws protect the public health, safety and welfare of all Californians. The Legislature declared this in Health and Safety Code section 39000, which provides:

“The Legislature finds and declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California.”

The important public policy interests involved in air quality cases justify substantial penalties for violations. Many areas in California fail to attain ambient air quality standards and cannot tolerate additional, illegal emissions. In the case of toxic air contaminants, there are no known safe exposure thresholds. There is no practical way for people to protect themselves from air pollution, so air quality violations must be prevented wherever possible.

¹ Compare Health and Safety Code sections 42402 [\$10,000 strict liability], 42402.1 [\$25,000 negligence], 42402.2 [\$40,000 knowing], 42402.3 [\$75,000 intentional]. See also Health and Safety Code section 43027, subd. (a) [\$250,000 intentional], (b) [\$50,000 negligent], and (c) [\$35,000 strict liability].

E. All Relevant Evidence is Considered in Calculating Penalties

As provided in SB 1402 and elsewhere, the proper penalty amount is an issue that can be proven by any relevant evidence. (See: Health and Safety Code sections 42403, 43031 and 43024; Evidence Code section 350.) “Relevant evidence” is a very wide term and means any evidence that would be admissible in court and has a tendency to prove what the proper penalty should be. (See: Evidence Code sections 210 and 350.)

F. General Case Law on Civil Penalties

Courts have not interpreted most of the air quality penalty provisions in the Health and Safety Code, but they have considered other civil penalty statutes. These courts have recognized that civil penalties have several purposes: punishment, deterring future violations, motivating compliance, and preventing unjust enrichment and unfair business advantage.

For example courts have said a civil penalty is “unquestionably intended as a deterrent against future misconduct and does constitute a severe punitive exaction by the state....” (*People v. Superior Court (Kaufman)* (1974) 12 Cal.3d 421, 431.) Civil penalties “do partake of the nature of punishments for wrongdoing [,] accomplish a chastisement of the wrongdoer and act as a deterrent against similar misconduct” by the violator and others. (*People v. Superior Court (Kardon)* (1973) 35 Cal.App.3d 710, 713.) “[C]ivil penalties may have a punitive or deterrent aspect, [but] their primary purpose is to secure obedience to statutes and regulations imposed to assure important public policy objectives.” (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 147-148 [279 Cal.Rptr. 318] cited in *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1315 [92 Cal.Rptr. 418].

G. Case Law on Air Quality Penalties

The concepts developed in civil penalty cases in other contexts have been applied to California air quality law. Discussing the civil penalties provided in Health and Safety Code section 43154 for violations of California’s vehicular air quality certification requirements, the court in *People ex rel. State Air Resources Board v. Wilmshurst* (1999) 68 Cal.App.4th 1332, explained at page 1351 that when air quality violations occur, maximum penalties are presumed and the violator has the obligation to demonstrate that a lesser penalty amount is appropriate:

“In addition to disgorging illicit gains and obtaining recompense, a civil penalty also has the purpose of deterring future misconduct. (*State of California v. City & County of San Francisco* (1979) 94 Cal.App. 3d 522, 531 [156 Cal.Rptr. 542]; *People v. Bestline*

Products, Inc. (1976) 61 Cal.App.3d 879, 924 [132 Cal.Rptr. 767].) Regulatory statutes would have little deterrent effect if violators could be penalized only where a plaintiff demonstrated quantifiable damages. (*State of California v. City & County of San Francisco*, *supra*, 94 Cal.App.3d at p. 531.) Further, “A penalty statute presupposes that its violation produces damages *beyond that which is compensable.*” (*Ibid.*, italics added.) The burden of proving that actual damages are less than the liquidated maximum provided in a penalty statute lies with the defendant, and in the absence of evidence in mitigation a court is free to assess the full amount. (*Id.* at pp. 531-532.)”²

In settling cases, ARB computes the maximum penalty as a reference point, but proposes a penalty based on the facts, law and circumstances of the particular case.

H. Penalties Must Also Relate to the Violator’s Financial Condition

To accomplish their intended goals, civil penalties must bear some relationship to the violator’s financial condition. The relevance of a violator’s financial information was established in *People v. Toomey* (1985) 157 Cal.App.3d 1, 24-25. In *Toomey* the court reiterated the holding in *People v. Superior Court (Kardon)* (1973) Cal.App.3d 710, 713, that civil penalty provisions are sufficiently similar to exemplary damages as to permit discovery of a violator’s financial condition. The *Kardon* court explained the necessity of financial information: “a relatively small penalty might suffice for the small operator, while the same penalty would be paid with little hurt by the wealthy one” (*Kardon*, at p. 713.) More recently, the court observed in *City and County of San Francisco v. Sainez*, *supra*, at p. 1319:

“Accordingly, we hold that, as in the case of substantive due process protection against excessive punitive damages awards, substantive due process protection against civil penalties under the

² Similarly, courts calculating Clean Air Act (CAA) and Clean Water Act (CWA) fines often start with the maximum penalty. (*United States v. Dell’Aquila* (3d Cir. 1998) 150 F.3d 329, 338 [CAA]; *United States v. B & W Inv. Properties* (7th Cir. 1994) 38 F.3d 362, 368 [CAA]; *Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc.* (11th Cir. 1990) 897 F.2d 1128, 1137 [under CWA “the point of departure for the district court should be the maximum fines for such violations”]; *United States v. Midwest Suspension & Brake* (E.D. Mich. 1993) 824 F. Supp. 713, 735 [CAA]; *United States v. Hoge Lumber Co.* (N.D. Ohio 1997) Case No. 3:95CV7044, 1997 U.S. Dist. LEXIS 22353 [CAA]; *U.S. v. Vista Paint Corp.* (C.D.Cal.1996) 1996 WL 477053, 1996 U.S. Dist. LEXIS 22129, *27 [CAA calls for top-down approach starting with the maximum].)

rationale of *Hale* and *Kinney* allows inquiry into a defendant's full net worth, not just the value of the particular property at issue in the case."

Applying this holding, the *Sainez* court upheld a civil penalty that totaled 28.4 percent of the violators' net worth and 120 percent of the illegal rents they charged. The court took note of *U.S. v. Lippert* (8th Cir. 1998) 148 F.3d 974, 976, 978 where "[a] net worth of about \$500,000 has been held enough ability to pay to uphold a penalty of \$353,000...."

Accordingly, a violator's financial condition always is relevant to determining an appropriate penalty and ARB takes it into account. Health and Safety Code section 42403 mentions it in relation to determining civil penalties for violations of ARB requirements adopted pursuant Part 4 of Division 26 of the Health and Safety Code. SB 1402 made it expressly applicable to Part 5 or mobile source violations via the new Health and Safety Code section 43024.

I. SB 1402's Statutory Factors

Several enforcement provisions in statutes implemented by ARB set forth considerations pertinent to determining the penalty amount to be assessed or recovered in settlement. Health and Safety Code sections 42403, 43024, and 43031 require consideration of "all relevant circumstances, including but not limited to" eight separate, but somewhat interrelated, factors. Because the eight factors are nearly identical in those three statutes, this Policy focuses on the wording found in SB 1402's section 43024. However, as provided in SB 1402 and ARB's other penalty assessment statutes, penalty calculations must be made in consideration of the totality of the circumstances, both factual and legal, not just be based on the non-exclusive list of factors the penalty assessment statutes enumerate.

In Health and Safety Code section 43024, SB 1402 provides that penalties "shall take into consideration all relevant circumstances, including, but not limited to, all of the following:

- (1) The extent of harm to public health, safety, and welfare caused by the violation.
- (2) The nature and persistence of the violation, including the magnitude of the excess emissions.
- (3) The compliance history of the defendant, including the frequency of past violations.
- (4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.
- (5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.

- (6) The efforts of the defendant to attain, or provide for, compliance.
- (7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.
- (8) The financial burden to the defendant.”³

J. The Penalty Factors Explained

The factors in SB 1402 and ARB’s other penalty assessment statutes can affect a penalty determination in either direction. Applying the factors in any particular case involves a weighing process because the factors are somewhat vague and seldom command a particular penalty in any case. Although no circumstance allows a penalty to exceed the statutory maximum, a violation that involves public harm, illegal emissions, repeat violations, intent, impact on a particular regulatory program, unfair business advantage or similar factors, may justify a penalty at or near the maximum penalty, despite the presence of other mitigating factors. As case law provides, penalty calculations must start at the maximum but can be mitigated, if possible, down from there. The burden is on the violator to make the case for mitigation.

Each of Health and Safety Code section 43024’s eight factors are discussed below. Based on experience, some of the most common considerations in penalty calculations are whether the penalty is set at a level sufficient to discourage violations, illegal emissions, the violator’s financial condition and his or her compliance history and cooperation with the investigation.

- (1) “The extent of harm to public health, safety, and welfare caused by the violation” refers to injury to air quality, property, persons, or the implementation of an air quality regulation. In cases involving vehicles, engines, pieces of equipment, fuels or products not certified to ARB’s air quality standards, the emissions from these illegal units are illegal and excess as well. These types of violations undermine ARB’s emission standards, the lynchpin of the emission reductions achieved under ARB’s regulations. Since acquiring the data necessary to quantify these illegal emissions (when it exists at all) can be time consuming and expensive, ARB makes these calculations where practicable in accordance with SB 1402 (see: Health and Safety Code section 39619.7). Whether quantifiable or not, wherever there is a violation of a requirement ARB is charged with enforcing and there are emissions to the air, the violation

³ Health and Safety Code section 42403 is very similar, as is section 43031, pertaining to fuels violations. Instead of “financial burden to the defendant,” section 43031 subd. (b)(8) sets forth the eighth factor as follows: “For a person who owns a single retail service station, the size of the business.” Because the “financial burden” of paying a penalty will depend in large part on the “size of the business,” the two formulations are conceptually very similar. To the extent there is any difference, we note that the financial burden on a defendant or the size of any enterprise may constitute a “relevant circumstance” under any of the statutes.

involves illegal, excess emissions. Removing illegal units from the state is very difficult.

Recordkeeping, reporting and certification obligations are important. Air quality programs cannot function properly without them and violations of these types of obligations warrant substantial penalties. Depending on the circumstances, violations involving things like proven clerical errors and typographical mistakes may warrant nominal penalties.

- (2) "The nature and persistence of the violation, including the magnitude of the excess emissions" refers to the type of illegal conduct, quantity and type of pollutant, length of time the violation extended over, as well as the considerations discussed under factor (1).
- (3) "The compliance history of the defendant, including the frequency of past violations" refers to whether defendant has had environmental violations within the past several years. Because penalties are imposed to deter violations and motivate compliance, a repeat violation indicates that the prior penalty was inadequate and should be augmented. If the prior violations are closer factually or temporally to the present one, this argues for a higher penalty augmentation. The absence of prior violations may argue for mitigating the penalty.
- (4) "The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance" refers to acts, including installation, operation or maintenance of equipment, to comply, and systematic attempts to prevent or promptly identify and correct violations. It does not refer to actions required by a permit, the rules, or the normal standard of care.
- (5) "The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods" refers to creative methods or unusual efforts to comply that should be encouraged, even if not entirely successful as well as the accuracy of test methods used to determine violations. This factor does not refer to efforts that are common in an industry.
- (6) "The efforts of the defendant to attain, or provide for, compliance" is related to factor (4) and refers to actions taken *prior to* the violation to ensure compliance.
- (7) "The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation" refers to actions taken *after* a violation is detected. Cooperation with the

investigation includes providing information on the violation in a complete and timely manner. Mitigation includes improvements to prevent future violations. A mere return to compliance is not mitigation. A special policy applies to self-disclosed violations discovered through a systematic audit process: Cal/EPA's October 2003 "Recommended Guidance on Incentives for Voluntary Disclosure." That Guidance is designed to encourage "regulated entities to prevent or to discover voluntarily, disclose, and correct violations of federal, state and local environmental requirements through the use of routine, systematic application of an environmental compliance auditing program." It defines the terms "environmental audit" and "gravity based penalties," provides incentives to conduct environmental audits and self-disclose violations, and lists conditions that must be met for the Guidance to apply. For more information, the Cal/EPA Guidance is discussed in greater detail below and is attached as Appendix C. The criteria that Guidance contains can be difficult to meet in certain cases. The ARB considers reducing penalties for self-disclosures that do not meet all of the Guidance criteria.

- (8) "The financial burden to the defendant" refers to the burden of the penalty to the violator in terms of continued viability of business, fraction of assets, revenues, gross income, or income represented by the portion of the penalty in excess of any economic benefit. Proposed penalties may be adjusted for financial burden only after a defendant adequately reveals its finances for recent years. Special case law has been developed to deal with financial issues and is discussed above.

K. Penalty Reductions under the California Environmental Protection Agency Voluntary Disclosure Guidance

Penalties may be reduced under the Cal/EPA Voluntary Disclosure guidance. The criteria the Guidance contains can be difficult to meet in certain cases. The ARB considers reducing penalties for self-disclosures that do not meet all of the Guidance criteria.

i. Introduction

The California Environmental Protection Agency (Cal/EPA) issued its "Recommended Guidance on Incentives for Voluntary Disclosure" in October of 2003. It is attached as Appendix C. This Guidance is designed to encourage "regulated entities to prevent or to discover voluntarily, disclose, and correct violations of federal, state and local environmental requirements through the use of routine, systematic application of an environmental compliance auditing program." The Guidance **defines** the terms "environmental audit" and "gravity based penalties", provides **incentives** to conduct environmental audits and self-disclose violations and lists **conditions** that must be met for the Guidance to apply.

ii. Voluntary Disclosure Guidance-Definitions

"Environmental Audit" is a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

"Gravity based penalties" are that portion of a penalty over and above the economic benefit gained by noncompliance, whether or not they are labeled that way. In other words, the punitive portion of the penalty is the gravity based part.

iii. Incentives-Why a Company Would Do Environmental Audits

The major incentives to encourage self-audits, prompt disclosure, and correction may include: significantly reducing or not seeking gravity based civil penalties, declining to refer for criminal prosecution companies that self-report, and refraining from routine requests for audits.

iv. Conditions FOR A Voluntary Self-Disclosure to Reduce Penalties

1. The violation was discovered through an environmental audit or other objective, documented, **systematic** procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations.
2. The violation was discovered **voluntarily** and not due to a legal mandate.
3. The disclosure must be **prompt** and in writing, no more than 21 days after the violation is discovered.
4. The disclosure must be **independent**, meaning it is not made in reaction to a pending government enforcement action or third party complaint.

5. The violation was **corrected immediately**.
6. The violator agrees to **prevent recurrences**.
7. The violation (or similar violation) must not have occurred at the same facility within the past three years.
8. The violation is **not serious**, meaning it did not cause actual harm, present an imminent or substantial endangerment to, human health or the environment, or violate the specific terms of any judicial or administrative order, or consent agreement.
9. The violator **fully cooperated** with the regulatory agency.

Note: Nothing in this modifies the Cal/EPA “Recommended Guidance on Incentives for Voluntary Disclosure,” dated October of 2003.

L. Penalty Allocations under the California Environmental Protection Agency Supplemental Environmental Projects Guidance

Some cases may be resolved by paying part of the penalty (not to exceed 25 percent) to a supplemental environmental project, provided that the criteria of the Cal/EPA Supplemental Environmental Projects Guidance are met.

i. Introduction

The California Environmental Protection Agency (Cal/EPA) issued its “Recommended Guidance on Supplemental Environmental Projects (SEP)” in October of 2003. It is attached as Appendix D. This Guidance notes that, “Although SEPs may not be appropriate in all instances, they can play an important [role in] . . . an effective enforcement program.”

The Guidance:

- **defines** the term “SEP”;
- lists **legal guidelines** for and **categories** of SEPs;
- discusses the **proper ratio** between **SEP funds** and penalty funds in settlements; and,
- counsels that all SEPs should be **well-defined** and **implementable**.

SEPs are “environmentally beneficial projects that [an alleged violator] agrees to undertake in settlement of an enforcement action, but which the [alleged violator] is not otherwise legally required to perform.” For example, the funds an alleged violator expends to come into compliance are not properly

considered part of a SEP, but funds the same entity might expend to reduce emissions below regulatory requirements could be considered a SEP.

ii. Guidelines for SEPs

ARB has broad discretion in settling cases, including the discretion to include SEPs as part of its settlements. Nevertheless, SEPs must further the statutory goals of ARB and cannot violate public policy. The Cal/EPA SEP Guidance contains the following elements to ensure that these requirements are met.

- SEPs must be **consistent** with ARB's underlying statutes and **advance** at least one of the objectives of the statutes involved in the enforcement action.
- SEPs must have an adequate **nexus** with ARB's enforcement responsibilities, i.e., reduce the environmental or health impact of the violation or the likelihood that such a violation will reoccur.
- SEPs must be **clearly defined**.
- SEPs should **not directly benefit the alleged violator**. For example, a SEP that funds the purchase of products manufactured by the alleged violator would be inappropriate.

Categories of SEPs include: environmental compliance promotion, enforcement projects, emergency planning, pollution prevention/reduction, environmental restoration/protection, public health or any other projects that are consistent with the Guidance. Two types are not allowed: general educational or public environmental awareness projects and projects unrelated to environmental protection. Such projects lack a nexus with the laws involved in ARB enforcement actions, would not advance the goals of ARB's programs and may directly benefit the alleged violator.

iii. Proper Ratio of SEP Funds to Penalty Funds

In general, a SEP should constitute no more than 25 percent of the total settlement. For example, if a settlement is reached for a total of \$1,000,000, it should include a payment of at least \$750,000 in penalty funds and any SEP should not exceed \$250,000.

Note: This summary is only informational and does not modify the Cal/EPA "Recommended Guidance on Supplemental Environmental Projects" dated October 2003.

Appendix A

Senate Bill 1402
(Stats. 2010 Chap. 413)

Senate Bill No. 1402

CHAPTER 413

An act to amend Section 43023 of, and to add Sections 39619.7 and 43024 to, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2010. Filed with
Secretary of State September 28, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, Dutton. State Air Resources Board: administrative and civil penalties.

(1) Existing law subjects violators of air pollution laws to specified civil and administrative penalties. Existing law imposes various duties on the State Air Resources Board relative to the reduction of air pollution.

This bill would require a written communication from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information. The bill would require this information and final mutual settlement agreements reached between the state board and a person alleged to have violated air pollution laws to be made available to the public.

The bill would require the state board to prepare and submit to the Legislature and the Governor a report summarizing the motor vehicle pollution administrative penalties imposed by the state board for calendar year 2011, and annually thereafter, and would require the state board to publish a penalty policy for motor vehicle pollution laws that is based on specified criteria.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 39619.7 is added to the Health and Safety Code, to read:

39619.7. (a) A written communication from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, shall contain a clear explanation of all of the following:

(1) The manner in which the administrative or civil penalty amount was determined, including the aggravating and mitigating factors the state board

considered in arriving at the amount, and, where applicable, the per unit or per vehicle basis for the penalty.

(2) The provision of law or regulations under which the alleged violator is being assessed the administrative or civil penalty, including the reason that provision is most appropriate for that violation.

(3) Whether the administrative or civil penalty is being assessed under a provision of law that prohibits the emission of pollution at a specified level, and if so, a quantification of the specific amount of pollution emitted in excess of that level, where practicable. This quantification may be based on estimates or emission factors.

(b) The information described in subdivision (a) and all final mutual settlement agreements reached between the state board and a person alleged to have violated air pollution laws shall be made available to the public.

SEC. 2. Section 43023 of the Health and Safety Code is amended to read:

43023. (a) As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board may impose an administrative penalty, as specified in this section, for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. An administrative penalty imposed pursuant to this section shall not exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and an administrative penalty imposed pursuant to this section shall not exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one-hundred-thousand-dollars (\$100,000) per penalty assessment proceeding for any violation arising from the same conduct. This one hundred thousand dollar (\$100,000) maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board shall not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 43031.

(g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(h) This section does not apply to any violation for which a penalty may be assessed pursuant to Chapter 1.5 (commencing with Section 43025).

(i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

(j) Any administrative penalty assessed pursuant to this section shall be paid to the Treasurer for deposit in the General Fund.

(k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

(l) This section applies only to violations that occur on or after January 1, 2002.

(m) The state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar year 2011, and annually thereafter.

SEC. 3. Section 43024 is added to the Health and Safety Code, to read: 43024. (a) No later than March 1, 2011, the state board shall publish a penalty policy for civil or administrative penalties prescribed under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200).

(b) The policy shall take into consideration all relevant circumstances, including, but not limited to, all of the following:

(1) The extent of harm to public health, safety, and welfare caused by the violation.

(2) The nature and persistence of the violation, including the magnitude of the excess emissions.

(3) The compliance history of the defendant, including the frequency of past violations.

(4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.

(5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.

(6) The efforts of the defendant to attain, or provide for, compliance.

(7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.

(8) The financial burden to the defendant.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that air pollution penalties are imposed in furtherance of state goals as quickly as possible, it is necessary that this act take effect immediately.

Appendix B

Matrix of ARB Regulations and Corresponding Penalties

Matrix of Regulations and Corresponding Penalties

Item #	Regulation or Program CA Regulatory or Statutory Code Program Internet Site	Enforceable Requirements	Enforcement Processes	Criteria	Applicable Max. Penalties
1	Aerosol Coating Products Title 17, CCR, Sections 94700-94701 http://www.arb.ca.gov/consprod/reqs/2008/aptmirtab.pdf	Administrative Requirements (Labeling, Dating, Reporting), Maximum Incremental Reactivity (MIR) Limits	Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code §42403	Health and Safety Code §§42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
2	Aftermarket Parts Title 13 CCR 1900+, 2030-31, 2047-48, 220-2207, 2220-2225 California Vehicle Code (CVC), Section 27156 http://www.arb.ca.gov/msprog/aftermkt/aftermkt.htm	Valid CA Executive Order Advertising E.O. Number Label Requirements Legal Application Warranty New Engine Compliance	Field Inspections Emission Testing Audit Testing Self Disclosure Certification/Exemptions, Field Inspections, Manufacturer and Dealer Audits, Informants	Health and Safety Code §43024	Health and Safety Code §43154 maximum \$5000 if the vehicle is eligible for CA DMV registration Health and Safety Code §43016 \$500 if not eligible for CA DMV registration 43212 \$50 label violation
3	Agricultural Equipment, In-Use http://www.arb.ca.gov/ag/agtractor/agtractor.htm	Regulation under development	PROPOSED REGULATION	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
4	Antiperspirants and Deodorants Title 17, CCR, Sections 94500-94506.5 http://www.arb.ca.gov/consprod/reqs/2008/apdo.pdf	Administrative Requirements (Labeling, Dating, Reporting), Medium and High Volatility Organic Compound Limits	Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code §42403	Health and Safety Code §§42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
5	Asbestos NESHAP 40 CFR, Part 61, Subpart M http://www.arb.ca.gov/enf/asbestos/asbestos.htm	Notification Requirements Sampling/Analysis Requirements Certification/Training Requirements	Field Inspections Record and Certification Verification		Section 113(b) of the Clean Air Act , 42 US Code §7413(b) Up to \$25,000 per day per violation
6	Automotive Refrigerant, Small Containers Title 17, CCR, 95362-95368 http://www.arb.ca.gov/regact/2009/hfc09/resubfro.pdf	Regulation adopted. Awaiting OAL approval.	PROPOSED REGULATION	Health and Safety Code §42403	Health and Safety Code §§42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
7	Cargo Tank Vapor Recovery Title 17, CCR, Section 94014 http://www.arb.ca.gov/enf/cargotanks/cargotanks.htm	Annual Leak Decay Testing Recordkeeping Test Company Audits	Field Testing Inspections and Audits Complaints	Health and Safety Code §42403	Health and Safety Code §§42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
8	Composite Wood ATCM Title 17, CCR, Section 93120-93120.12 http://www.arb.ca.gov/toxics/compwood/compwood.htm	Third Party Certification Requirements Recordkeeping Requirements Labeling Requirements	Field Inspections Record Audits Label Verification Emissions Testing	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
9	Construction Equipment, In-Use Title 13, CCR, Section 2449 http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm	Reporting Requirements Identification Number Engine Retrofit/Repower/Replacement	Field Inspections, Reporting and Fleets/Facility Audits, Informants	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected

Matrix of Regulations and Corresponding Penalties

Item #	Regulation or Program CA Regulatory or Statutory Code Program Internet Site	Enforceable Requirements	Enforcement Processes	Criteria	Applicable Max. Penalties
10	Consumer Products Title 17, CCR, Sections 94507-94517 http://www.arb.ca.gov/consprod/regs/gencregs.htm	Administrative Requirements (Labeling, Dating, Reporting), Volatile Organic Compound (VOC) Limits, Toxic Prohibitions, Global Warming Potential Limits	Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code 42403	Health and Safety Code §§39674, 42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
11	Consumer Products, Alternative Control Plan http://www.arb.ca.gov/consprod/regs/2008/acp.pdf	Enforceable Sales Records, Recordkeeping	Recordkeeping audits	Health and Safety Code §42403	Health and Safety Code §§42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
12	Diesel Emission Control System, Verified Title 13, CCR, Sections 2706(g), 2707(c), and 2709 http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm	Vehicle and Engine Label Requirements Certification/Verification Standards	Field Inspections, Facility and Manufacturer Audits Self Reporting	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
13	Dry Cleaner Verification http://www.arb.ca.gov/toxics/dryclean/dryclean.htm	Notification, Recordkeeping and Reporting Requirements Equipment Replacement Operator Certification	Field Inspections Equipment Verification Record Audits	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
14	Fuel Containers and Spouts, Portable Title 13, CCR, Sections 2467-2467.9 http://www.arb.ca.gov/consprod/fuel-containers/pfc/pfcereg2005.pdf	Administrative Requirements (Labeling, Dating, Reporting), Certification Requirements, Performance Standards	Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code §43024	Health and Safety Code §43016 \$500 per portable fuel container or spout
15	Fuel Distributor (Motor Vehicle Fuel) Health and Safety Code, Section 43026 http://www.arb.ca.gov/enf/fuels/distcert.htm	Registration Recordkeeping	Review Registration Review Documents	Health and Safety Code §43031	Health and Safety Code, Section 43026
16	Fuels Title 13, CCR, Sections 2250 to 2259; 2260 to 2276; 2280 to 2285; 2290 to 2293.5; and 2299 to 2299.5 http://www.arb.ca.gov/fuels/fuels.htm	Fuel Standards Reporting Requirements Recordkeeping Fuel Testing	Field Inspections Record Audits Review Submitted Reports	Health and Safety Code §43031	Health and Safety Code §43027 - §43030, \$25,000 (false or missing records), \$35,000 per violation per day (fuel standards), higher if negligence or intent
17	Heavy-Duty Vehicle Inspection Program Title 13, CCR, Sections 2180-2189 http://www.arb.ca.gov/enf/hdvp/hdvp.htm	Smoke Opacity Standards Tampering	Field Inspections, Informants	13 CCR 2180 et seq. Harris et. al case law	Health and Safety Code §44011.6; \$300 First Citation; \$800 After 45 Days; \$1800 2nd Citation in 12 Months
18	Idling, Commercial Vehicle/Sleeper Berth Title 13, CCR, Section 1956.8 and 2485 http://www.arb.ca.gov/msprog/truck-idling/truck-idling.htm	Idling Time Restriction	Field Inspections, Public Complaints	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day; \$300 minimum per §43704
19	Indoor Air Cleaning Devices Title 17, CCR, 94800-94810 http://www.arb.ca.gov/regact/2007/iacd07/finalreg07.pdf	Administrative Requirements (Labeling, Dating, Reporting), Certification Requirements, Ozone Emission Limits	Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code §42403	Health and Safety Code §§42400 - 42402.3, \$1,000 or \$10,000 per violation per day, higher if negligence, knowledge or intent
20	Marine/Watercraft Title 13 CCR 2440-2448 http://www.arb.ca.gov/msprog/offroad/recmarine/recmarine.htm	Valid CA Executive Order Test Procedures/Emissions Labels Warranty	Field Inspections Emission Testing Audit Testing	Health and Safety Code § 43016	HSC §43016 Max. \$500/eng. \$50 for test procedure violations under HSC §43212

Matrix of Regulations and Corresponding Penalties

Item #	Regulation or Program CA Regulatory or Statutory Code Program Internet Site	Enforceable Requirements	Enforcement Processes	Criteria	Applicable Max. Penalties
21	Motor Vehicles/Engines, New HSC 43150-43154 http://www.arb.ca.gov/msprog/onroad/onroad.htm	Valid CA Executive Order Test Procedures/Emissions Labels Warranty	Field Inspections Emission Testing Audit Testing Self Disclosure	Wilmshurst Case law	Health and Safety Code §43154 maximum \$5000 if the vehicle is eligible for CA DMV registration Health and Safety Code §43016 \$500 if not eligible for CA DMV registration §43212 \$50 label violation
22	Off-Highway Recreational Vehicles Title 13 CCR 2410-2415 http://www.arb.ca.gov/msprog/offroad/orrec/orrec.htm	Valid CA Executive Order Test Procedures/Emissions Labels Warranty	Field Inspections Emission Testing Audit Testing Self Disclosure	Health and Safety Code §43150 Health and Safety Code §43016	Health and Safety Code 43154 maximum \$5000 if the vehicle is eligible for CA DMV registration Health and Safety Code §43016 \$500 if not eligible for CA DMV registration §43212 \$50 label violation
23	Off-Road Engine Certification, Compression Ignition Title 13 CCR 2420-2427 http://www.arb.ca.gov/msprog/offroad/orcomp/orcomp.htm	Valid CA Executive Order Test Procedures/Emissions Labels Warranty	Field Inspections Emission Testing Audit Testing Self Disclosure	Health and Safety Code §43024	Health and Safety Code §43154 maximum \$5000 if the vehicle is eligible for CA DMV registration Health and Safety Code §43016 \$500 if not eligible for CA DMV registration §43212 \$50 label violation
24	Off Road Engine Certification, Small Title 13 CCR 2400-2409 http://www.arb.ca.gov/msprog/oofroad/sore/sore.htm	Valid CA Executive Order Test Procedures/Emissions Labels Warranty	Field Inspections Emission Testing Audit Testing Self Disclosure	Health and Safety Code §43024	HSC 43016 Max. \$500/eng. \$50 for test procedure violations under HSC 43212
25	Off-Road New Diesel Engine Standards Certification Title 13, CCR, Sections 2420-2427 www.arb.ca.gov/msprog/offroad/ofcie/ofciecpt/ofciecpt.htm	New Engine Compliance	Certification, In-Use Compliance Testing, Selective Enforcement Audits, Field Inspections,	Health and Safety Code §43024	Health and Safety Code §43154 maximum \$5000 if the vehicle is eligible for CA DMV registration Health and Safety Code §43016 \$500 if not eligible
26	On-Road Heavy-Duty Vehicle Engine Certification Label Program Title 13, CCR, Sections 2180-2189 http://www.arb.ca.gov/enf/hdvp/bip/bip.htm	Manufacturer-installed emissions label must be in place to show that engine met U.S. EPA standards at time of manufacture.	Field Inspections, Informants	13 CCR 2180 et seq.	Health and Safety Code §44011.6; \$300 First Citation; \$800 After 45 Days; \$1800 2nd Citation in 12 Months
27	On-Road Heavy-Duty Vehicle On-Board Diagnostics Title 13, CCR, Sections 1968.2, 1968.5, 2035, 2037, and 2038 www.arb.ca.gov/msprog/obdprog/obdprog.htm	New Engine Compliance	Certification, Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code §43024	Health and Safety Code §43154 maximum \$5000 per vehicle
28	On-Road New Diesel Engine Emission Standards Certification Title 13, California Code of Regulations (CCR), Sections 1956.8, 1971, and 1971.1 http://www.arb.ca.gov/msprog/onroad/cert/cert.php	New Engine Compliance	Certification, In-Use Compliance Testing/Selective Enforcement Audits, Field Inspections, Manufacturer and Dealer Audits	Health and Safety Code §43024	Health and Safety Code §43154 maximum \$5000 per vehicle
29	Outboard Marine Tanks and Components, Portable Title 13, CCR, 2468-2468.10 http://www.arb.ca.gov/regact/2008/omt2008/oalfro.pdf	Administrative Requirements (Labeling, Dating, Reporting), Certification Requirements, Performance Standards	Field Inspections, Laboratory Confirmatory Testing	Health and Safety Code §43024	Health and Safety Code §43016 \$500 per Marine Tank or Component
30	Periodic Smoke Inspection Program Title 13, CCR, Sections 2190-2194 http://www.arb.ca.gov/enf/hdvp/hdvp.htm	Smoke Opacity Standards Recordkeeping Requirements	Reporting and Audits, Fleets/Facility Audits, Informants	Health and Safety Code §43024	Health and Safety Code §43016

Matrix of Regulations and Corresponding Penalties

Item #	Regulation or Program CA Regulatory or Statutory Code Program Internet Site	Enforceable Requirements	Enforcement Processes	Criteria	Applicable Max. Penalties
31	Portable Equipment Title 13, CCR, Section 2450 and Title 17, CCR, Section 93116 http://www.arb.ca.gov/portable/portable.htm	Engine Certification Standards Registration and Labeling Requirements	Field Inspections by Air Districts, Program Oversight by ARB, Informants	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or corrected
32	Public Agencies and Utilities Fleets Title 13, CCR, Sections 2022 and 2022.1 http://www.arb.ca.gov/msprog/publicfleets/publicfleets.htm	Fleet Recordkeeping Requirements Vehicle Labeling Requirements	Field Inspections, Reporting and Fleets/Facility Audits	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
33	Public Transit Bus Fleets Title 13, CCR, Sections 1956.1 and 1956.4 www.arb.ca.gov/regact/bus02/bus02.htm	Fleet Recordkeeping Reporting Requirements	Reporting, Fleets/Facility Audits	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
34	Railroad Strategies (N/A) http://www.arb.ca.gov/msprog/offroad/loco/loco.htm	Idling Time Restrictions Fuel Specifications	Reporting and Audits, Fleets/Facility Inspections, Field Inspections, Public Tips, Informants	Railroad MOU	ARB/Railroad Statewide Agreement \$400 first violation \$800 second violation - same year \$1200 third violation - same year
35	School Bus Idling and Idling at Schools Title 13, CCR, Section 2480 http://www.arb.ca.gov/msprog/schoolbus/schoolbus.htm	Idling Standards Fleet Recordkeeping Requirements	Field Inspections, Public Complaints	Health and Safety Code §42403	Health and Safety Code §§39674 (\$1,000 or \$10,000 per violation) and 39642 (\$300 Minimum)
36	Solid Waste Collection Vehicles Title 13, CCR, Sections 2020, 2021, 2021.1, and 2021.2 www.arb.ca.gov/regact/scswcv05/scswcv05.htm	Fleet Recordkeeping Requirements Vehicle Labeling Requirements	Field Inspections, Reporting and Fleets/Facility Audits	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
37	Spark Ignited Engine Title 13 CCR 2430-2439 http://www.arb.ca.gov/msprog/offroad/orspark/orspark.htm	Valid CA Executive Order Test Procedures/Emissions Labels Warranty	Field Inspections Emission Testing Audit Testing Self Disclosure	Health and Safety Code §43024	HSC §43016 Max. \$500/eng. \$50 for test procedure violations under HSC 43212
38	Stationary Diesel Engines Title 17, CCR, Section 93115 http://www.arb.ca.gov/diesel/statport.htm	Engine Certification Standards Registration and Labeling Requirements	Field Inspections by Air Districts, Program Oversight by ARB	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
39	Transport Refrigeration Units Title 13, CCR, Section 2477, Article 8 http://www.arb.ca.gov/diesel/tru.htm	Facility Reporting Equipment Registration and Labeling Engine Retrofit/Repower/Replacement	Field Inspections Reporting and Audits, Informants	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
40	Trucks and Buses, In-Use Diesel Title 13, CCR, Section 2025 (PROPOSED) http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm	Reporting Requirements Identification Number Engine Retrofit/Repower/Replacement	Field Inspections, Reporting and Fleets/Facility Audits, Informants	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
41	Truck and Trailer Efficiency (Greenhouse Gas Meas.) Title 17, CCR, Section 95300 (PROPOSED) http://www.arb.ca.gov/cc/hdghg/hdghg.htm	Fleet Recordkeeping Requirements Reporting Requirements	Field Inspections, Fleets/Facility Audits	Health and Safety Code §42403	Health & Safety Code §38580

Matrix of Regulations and Corresponding Penalties

Item #	Regulation or Program CA Regulatory or Statutory Code Program Internet Site	Enforceable Requirements	Enforcement Processes	Criteria	Applicable Max. Penalties
42	Trucks, Heavy-Duty Drayage Title 13, CCR, Section 2027 http://www.arb.ca.gov/msprog/onroad/porttruck/porttruck.htm	Recordkeeping and Reporting Requirements Engine Retrofit/Repower/Replacement	Reporting and Audits, Field Inspections, Public Tips	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
43	Vapor Recovery Title 17, CCR, Sections 94000 to 94015 http://www.arb.ca.gov/vapor/vapor.htm	Certified Vapor Recovery Systems	Field Inspections, Complaints, District Referrals	Health and Safety Code §42403	HSC §42400 Criminal Penalty for Violations HSC §42402 Violation of emission limitations; Civil Penalty
44	Vessel (Ocean-Going) Incineration ATCM Title 17, CCR, Section 93119 http://www.arb.ca.gov/regact/cs0106/cs0106.htm	Recordkeeping Requirements	Field Inspections, Record Audits	Health and Safety Code §42403	Health and Safety Code §§39674, 39675, \$1,000 or \$10,000 per violation per day, higher if not corrected
45	Vessels, Fuel Sulfur and Other Operational Requirements for Ocean-Going Title 13, CCR, Sections 2299.2 and Title 17, CCR, Section 93118.2 http://www.arb.ca.gov/ports/marinevess/marinevess.htm	Recordkeeping Requirements Fuel Specifications	Field Inspections, Informants	Health and Safety Code §42403	Health and Safety Code §39674, §39675 (\$1000 or \$10,000), Penalty determined by above sections, per violation per hour

Appendix C

Cal/EPA's October 2003 "Recommended Guidance on Incentives
for Voluntary Disclosure"

CAL/EPA RECOMMENDED GUIDANCE ON INCENTIVES FOR VOLUNTARY DISCLOSURE

October 2003

Purpose

This Guidance is designed to enhance the protection of human health and the environment by encouraging regulated entities to prevent or to discover voluntarily, disclose, and correct violations of federal, state and local environmental requirements through the use of routine, systematic application of an environmental compliance auditing program.

Definitions

For purposes of this Guidance, the following definitions apply:

"Environmental Audit" is a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

"Due Diligence" encompasses the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect, disclose, and correct violations through all of the following:

1. Compliance policies, standards, and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, and other sources of authority for environmental requirements;
2. Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;
3. Mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out. These include monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;

4. Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents whose duties involve environmental compliance;
5. Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and
6. Procedures for the prompt and appropriate disclosure and correction of any violations, and for any necessary modifications to the regulated entity's program to prevent future violations.

"Environmental audit report" means the analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

"Gravity based penalties" are that portion of a penalty over and above the economic benefit of noncompliance, whether or not they are labeled as such, i.e., the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from non-compliance. (For further discussion of this concept, see "A Framework for Statute-Specific Approaches to Penalty Assessments," #GM-22, 1980, U.S. EPA General Enforcement Policy Compendium. See also the particular penalty statutes and regulations for the individual enforcing agency bringing the action).

"Regulated entity," means any person, facility, or entity, including a federal, state, or municipal agency, regulated under federal, state, or local environmental laws.

C. Incentives

This section identifies the major incentives provided to encourage self-audits, prompt disclosure and correction. These may include significantly reducing or not seeking gravity based civil penalties, declining to refer for criminal prosecution companies that self-report, and refraining from routine requests for audits.

1. Waiving Gravity Based Penalties

Where the regulated entity establishes that it satisfies all of the conditions of Section D, gravity based penalties for violations of environmental requirements may be waived if allowed by applicable statute. Gravity based penalties (defined in Section B) generally reflect the seriousness of the violator's behavior. It would be appropriate to waive a portion of such penalties for violations discovered through due diligence or environmental audits, recognizing that these voluntary efforts play a critical role in protecting human health and the environment by identifying, correcting, and ultimately preventing violations. The conditions set forth in Section D, which include prompt

disclosure and expeditious correction must be satisfied for any portion of gravity based penalties to be waived.

Any economic benefit obtained as a result of noncompliance should be recovered, even when all other conditions of the Guidance are met. Economic benefit could be waived, however, if the enforcing agency determines that it is insignificant. The recovery of economic benefit is important for two reasons. First, it provides an incentive to comply in a timely manner. Taxpayers expect to pay interest or a penalty fee if their payments are late; the same principle should apply to corporations that have delayed their investment in compliance. Second, it is fair because it protects responsible companies from being undercut by their noncomplying competitors, thereby preserving a level playing field.

2. Reduction of Gravity Based Penalties

Gravity based penalties for violations of environmental requirements can be reduced to the extent the regulated entity satisfies the conditions of Section D below. The enforcing agency, may, at its sole discretion, reduce the gravity based penalties further as a credit for investment in Supplemental Environmental Projects (See Cal/EPA guidance on Supplemental Environmental Projects.).

The complete waiver of gravity based civil penalties should be available only to companies that meet the higher standard of reporting as a result of conducting an environmental auditing or systematic compliance management. However, to provide encouragement for the kind of self-policing that benefits the public, gravity based penalties can be significantly reduced for a violation that is voluntarily discovered, promptly disclosed, and expeditiously corrected, even if it was not found through an environmental audit particularly where the company agrees to implement an environmental compliance management procedure. Cal/EPA expects that this will encourage companies to come forward and work with regulatory agencies to resolve environmental problems and begin to develop an effective compliance management program.

3. No Criminal Recommendations

The enforcing agency may decline to recommend to a prosecuting authority that criminal charges be brought against a regulated entity where they determine that all of the conditions in Section D are satisfied, so long as the violation does not demonstrate or involve:

- a. A management practice that concealed or condoned environmental violations; or
- b. Knowing or negligent involvement in or deliberate ignorance of the violations by corporate officials or managers.

Whether or not an enforcing agency refers the regulated entity for criminal prosecution under this section, they may reserve the right to recommend prosecution of the criminal acts of individual managers or employees.

This Guidance has important limitations. It will not apply, for example, where corporate officials are consciously and knowingly involved in, or willfully blind to, violations, or conceal or condone noncompliance. Since the regulated entity must satisfy all of the conditions of Section D, violations that caused serious harm or that may pose imminent or substantial endangerment to human health or the environment are not covered by this Guidance.

Nothing in this guidance should be construed to restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring any criminal proceeding otherwise authorized by law or to prevent an enforcing agency from cooperating with, or participating in, such a proceeding.

4. No Routine Request for Audits

It is not recommended that an enforcing agency routinely request environmental audit reports to initiate an investigation of the entity. If the enforcing agency has independent reason to believe that a violation has occurred however, it is reasonable to expect that they seek any information relevant to identifying violations or determining liability or extent of harm, including any audits that the facility may have conducted.

D. Conditions

This section describes the nine conditions that a regulated entity must meet in order for an enforcing agency not to seek (or to reduce) gravity-based penalties for violations of environmental laws. As explained in the Summary above, regulated entities that meet all nine conditions may avoid gravity-based civil penalties unless otherwise mandated by statute.

1. Systematic Discovery

The violation was discovered through:

- a. an environmental audit; or
- b. an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the enforcing agency as to how it exercises due diligence to prevent, detect, and correct violations according to the criteria for due diligence outlined in Section B. The enforcing agency may require as a condition of penalty mitigation that

a description of the regulated entity's due diligence efforts be made publicly available.

2. Voluntary Discovery

The violation was identified voluntarily, and not through a legally mandated auditing, monitoring, or sampling requirement prescribed by statute, regulation, permit, variance, judicial or administrative order, or consent agreement.

3. Prompt Disclosure

The regulated entity must have fully disclosed in writing to the appropriate federal, state or local agency, a specific violation promptly after the violation is discovered. Promptly is nominally defined as 21 working days or such shorter period as provided by law.

The 21 day period begins when the regulated entity discovers that a violation has, or may have, occurred. The trigger for discovery is when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred. Where an entity has some doubt about the existence of a violation, the recommended course is for it to disclose and allow the regulatory authorities to make a definitive determination.

The 21 working day period may not always be appropriate. Many laws and permits require immediate notification. In other instances where circumstances are complex, do not present a serious threat, and take longer to evaluate, disclosures within 21 days may not be practical. The enforcing agency may accept later disclosures as "prompt" where the regulated entity meets its burden of showing that the additional time was needed to determine compliance status and did not expose the public to unreasonable risk. Conversely, if the violation objectively represented an imminent threat to human health or the environment, reporting within 21 working days will not be deemed reasonable. Satisfaction of the prompt disclosure condition is solely within the discretion of the enforcing agency.

This condition recognizes that it is critical for enforcing agencies to receive timely and accurate reports of violations, in order to have clear notice of the violations and the opportunity to respond if necessary. Prompt disclosure is also evidence of a facility's good faith attempt to achieve or return to compliance as soon as possible.

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff

Regulated entities must have taken the initiative to find violations and promptly report them, rather than reacting to knowledge of a pending enforcement action or third party complaint. Thus this condition specifies that the violation has to have been identified and disclosed by the regulated entity prior to:

- a. The commencement of a federal, state, or local agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity or related industries;
- b. Notice or commencement of a citizen suit;
- c. The filing of a complaint by a third party;
- d. The reporting of the violation to a government agency by a "whistle blower" employee, rather than by one authorized to speak on behalf of the regulated entity; or
- e. The imminent discovery of the violation by a regulatory agency.

5. Correction and Remediation

The regulated entity corrected the violations immediately, certified in writing that the violations have been corrected, and took appropriate measures as determined by the appropriate agency to remedy any environmental or human harm resulting from the violation. Where appropriate, the enforcing agency will require that to satisfy conditions 5, 6, and 8, a regulated entity enter into a publicly available written agreement, administrative consent order, variance, or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.

This Guidance requires the violation to be corrected immediately reflecting the expectation that regulated entities will move quickly to meet their obligations under the law. While it is expected that violations must be corrected immediately, there will be those violations that require longer-term remedies, such as where significant capital expenditures are involved, or where regulatory oversight is required. The regulated entity will be expected to do its utmost to achieve compliance under the law, and the appropriate enforcing agency will retain sole discretion to determine whether the regulated entity timely corrected and remediated the violations.

6. Prevent Recurrences

The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental auditing or due diligence efforts.

7. No Repeat Violations

The violation (or similar violation) shall not have occurred at the same facility within the past three years. This three year time period begins to run when the government has given the violator notice of the violation, without regard to when the violation cited in the notice actually occurred. For purposes of this determination, a violation includes:

- a. Any noncompliance with a federal, state, or local environmental law or regulation identified in a conviction, plea agreement, judicial order, final administrative order, consent agreement, variance, or in a notice of violation or inspection report.
- b. Any act or omission for which the regulated entity has previously received penalty mitigation from a federal, state or local agency.

This condition bars repeat or chronic offenders from receiving penalty reduction and benefits both the public and law-abiding entities by ensuring that penalties are not waived for those entities that have previously been notified of violations and have failed to prevent repeat violations. The enforcing agency should consider all the facts and circumstances relating to any prior violation in determining whether it is a repeat violation.

This condition applies if the entity was operating under the same ownership and/or management when both violations occurred. When the facility is part of a multi-facility organization, relief under this guidance is unavailable if the same or a closely related violation occurred as part of a pattern of similar violations at one or more of these facilities within the past five years.

8. Serious Violations Excluded

The violation is not one which (1) resulted in actual harm, or which may present an imminent or substantial endangerment to, human health or the environment, or (2) violates the specific terms of any judicial or administrative order, or consent agreement.

This condition makes clear that violations that result in actual harm or which may present an imminent or substantial endangerment to public health or environment are excluded from consideration under this guidance.

The Guidance also excludes penalty reductions for violating the specific terms of any judgment, order, consent agreement, or plea agreement. Once an order or agreement is in effect, there is little incentive to comply if there are no sanctions for violating its specific requirements. The exclusion in this section also applies to any failure to implement any response, removal, or remedial action covered by a written judgment, order or agreement.

9. Cooperation

The regulated entity timely and fully cooperated as requested by any regulatory agency and provided the agency with the information it needs to determine applicability of this Guidance. Cooperation includes, at a minimum; timely providing all requested documents, and access to employees and the facility; and providing assistance in

investigating the violation, other related compliance problems, and any environmental consequences related to the violations. The regulated entity must not hide, tamper with, or destroy possible evidence following discovery of potential environmental violations.

This section makes clear that recalcitrant violators are excluded from consideration under this guidance. To be considered under the guidance, all entities that have been ordered or requested to come into compliance shall have done so pursuant to any time frame described by the enforcing agency. Entities that are determined to have refused lawful orders shall not benefit from their recalcitrance.

E. Economic Benefit

The enforcing agency should retain full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that do comply. The enforcing agency may forgive all or any portion of the penalty for violations which meet Conditions 1 through 9 in Section D, and which in its opinion do not merit the full penalty due to the insignificant amount of any economic benefit.

In determining economic benefit, the enforcing agency should also take into consideration any documented expenditures the regulated entity has made to create and implement an environmental audit or due diligence program, which can be significant. Such expenditures may counterbalance the economic benefit of the violations.

F. Applicability

At the discretion of the enforcing agency, this Guidance may be applied to settlement of claims for administrative or civil penalties for violations under statutes and regulations within the jurisdiction of enforcing agencies.

It is within the discretion of the enforcing agency to determine whether it is appropriate that a regulated entity that has received penalty mitigation for satisfying specific conditions under this Guidance receive additional penalty mitigation for satisfying the same or similar conditions under other policies for the same violation(s).

This Guidance sets forth factors for consideration that will guide the enforcing agencies in the exercise of their enforcement discretion, and is intended as guidance only. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. This guidance is not promulgated in regulation or statute and as such is not binding on any Board, Department or local agency.

This Guidance can be used in settlement negotiations for both administrative and civil judicial enforcement actions. It is not intended for use in pleading, at hearing, or at trial. The Guidance may be applied at the enforcing agency's discretion to the settlement of

administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this Guidance.

G. Scope Of Guidance

Cal/EPA has developed this document as a guide for settlement actions involving a broad range of environmental violations. All enforcing agencies are encouraged to adopt similar policies in order to assure statewide consistency in application.

H. Making Disclosures

Disclosures should be made to state and local agencies that have jurisdiction over their reported violations, i.e. to the local air district for air violations, to the local CUPA and/or the Department of Toxic Substance Control for hazardous waste violations. A copy may also be sent to Cal/EPA, attention legal unit. Reports to the US EPA should follow the guidelines set forth in their guidance.

Appendix D

Cal/EPA's October 2003 "Recommended Guidance on Supplemental Environmental Projects"

CAL/EPA RECOMMENDED GUIDANCE ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS

October 2003

A. Introduction

In settlement of environmental enforcement cases, Cal/EPA's Boards, Departments and Offices (BDOs) and local counterparts must insist upon terms that require defendants/respondents achieve and maintain compliance with environmental laws and regulations and where appropriate, pay a penalty for violations. The recovery of economic benefit and the imposition of additional gravity based penalties should be considered in every case. Additional relief remediating the adverse public health or environmental consequences of the violations at issue should be included in the settlement to offset the effects of the particular violation. As part of the settlement, the agreement may require the defendant/respondent to undertake supplemental environmentally beneficial expenditures that exceed regulatory requirements. These additional projects are known as supplemental environmental projects, or SEPs.

Evidence of a violator's commitment and ability to perform a SEP is factor in determining whether a SEP is appropriate. Although SEPs may not be appropriate in all instances, they can play an important part of an effective enforcement program. SEPs can play a role in securing additional significant environmental or public health protection. SEPs may be particularly appropriate to further the objectives in the statutes administered by the BDOs and local agencies, and to achieve policy goals such as pollution prevention and environmental restoration.

B. SEP Procedure

In evaluating a proposed project to determine if it qualifies as a SEP, the following five-step procedure may be used:

1. Ensure that the project meets the basic definition of SEP (See Section B).
2. Ensure that all legal guidelines, including nexus, are satisfied (See Section C).
3. Ensure that the project fits within one (or more) categories of SEPs (See Section D).
4. Ensure that the cost of the project is appropriate in relationship to the fines paid (See Section E).
5. Ensure that the project satisfies all of the implementation and other criteria. (See Section F, G, and H).

This guidance is intended to apply to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations administered by the Cal/EPA BDOs. It may also be used by local authorities enforcing related environmental ordinances and codes. Claims for stipulated penalties for violations of orders or settlement agreements should not be mitigated by the use of a SEP. This guidance is intended to assist in the settlement of an enforcement action, and thus is not intended for use by any party at a hearing or trial. In addition, the amount of any penalty mitigation that may be given for a SEP is strictly within the discretion of the administering agency, as is the determination of whether the use of a SEP is appropriate in any particular case.

C. Definition and Key Characteristics of a SEP

Supplemental environmental projects are defined as environmentally beneficial projects that a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform. The three key parts of this definition are elaborated as follows:

1. "Environmentally beneficial" means a SEP must improve, protect, or reduce risks to public health or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.
2. "In settlement of an enforcement action" means (1) The enforcing agency has the opportunity to help shape the scope of the project before it is implemented; and (2) the project is not commenced until after the enforcing agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).
3. "Not otherwise legally required to perform" means the SEP is not required by a federal, state, or local law or regulation. Further, SEPs cannot include actions that the defendant/respondent may be legally required to perform, such as:
 - a. Injunctive relief in the instant case, or in another legal action that an enforcement agency could bring;
 - b. part of an existing settlement or order in another legal action; or
 - c. federal, state or local requirements.

SEPs may include activities that the defendant/respondent will become legally obligated to undertake two or more years in the future. Such "accelerated compliance" projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the defendant/respondent for early compliance.

Performance of a SEP reduces neither the stringency nor timeliness requirements of applicable environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

For many of these projects, the defendant/respondent may lack the experience, knowledge or ability to conduct and /or implement the project. In these instances the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project

D. Legal Guidelines

Environmental regulatory agencies have broad discretion to settle cases, including the discretion to include a SEP as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within the regulatory agencies' authority and consistent with all statutory and constitutional requirements may be a complex task and should be thoroughly evaluated by the individual agency.

As noted by the Attorney General, statutes and case law allow administrative agencies to settle cases prior to trial or hearing containing sanctions that an agency would not otherwise have the authority to impose (Attorney General Opinion No. 00-510, July 25, 2000). The Attorney General also notes the ability to enter into creative settlements is limited by the caveat that no such settlement shall violate public policy and must further the goals and purposes of the agency. The Opinion concluded that an agency may not enter into a settlement that requires payment of funds that support activities unrelated to the regulatory enforcement responsibilities of the agency.

With this in mind, the following are required when a SEP is considered:

1. A project cannot be inconsistent with any provision of the underlying statutes. In addition a project shall advance at least one of the declared objectives of the environmental statutes that are the basis of the enforcement action.
2. All projects should have adequate "nexus" to the regulatory enforcement responsibilities of the agency. Nexus is the relationship between the violation and the proposed project. This relationship exists if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
3. The type and scope of each SEP should be clearly defined in the signed settlement document. Thus a SEP that has terms that are intended to be defined after the settlement document is entered into should be avoided.

E. Categories of Supplemental Environmental Projects

There are several types of projects that may be appropriate as SEPs:

1. Environmental Compliance Promotion

An environmental compliance promotion project provides training, technical support, or publication media to other members of the regulated community to: (1) identify, achieve and maintain compliance with applicable statutory and regulatory requirements; (2) avoid committing a violation with respect to such statutory and regulatory requirements; or (3) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. Acceptable projects may include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent violations within the defendant/respondent's economic sector.

Environmental compliance promotion SEPs are acceptable where the primary impact of the project is focused on the same regulatory program requirements that were violated, and where the administering agency has reason to believe that compliance in the sector would be significantly advanced by the proposed project. The defendant/respondent should be required to note in any promotional material or credits that the production of the promotion is in response to an enforcement action against the respondent/defendant.

2. Enforcement Projects

Such projects may include contributions to environmental enforcement, investigation and training programs as provided in Penal Code section 14300 and/or contributions to nonprofit organizations such as the California District Attorneys Association, the Californian Hazardous Materials Investigators Association and the Western States Project. These supplemental projects should be consistent with the settlement contribution guidelines for these respective organizations.

3. Emergency Planning and Preparedness

An emergency planning and preparedness project provides assistance, such as computers and software, equipment, or training, to an emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the federal Emergency Right to Know Act and state statutes to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the same emergency planning district affected by the violations.

4. Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through "source reduction," i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible, and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modification, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project that protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

5. Pollution Reduction

If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment or disposal techniques, may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream, or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology. This also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site, reducing the need for treatment, disposal, or consumption of energy or natural resources.

6. Environmental Restoration and Protection

An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected. These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments such as facilities and buildings. Also included, is any project that protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem. Examples of such projects include: restoration of a wetland in the same ecosystem in which the

facility is located; projects which provide for the protection of threatened or endangered species by improving critical habitat impacted by facility operations; or purchase and management of a watershed area by the defendant/respondent to protect a drinking water supply where the violation, e.g., a reporting violation, did not directly damage the watershed, but potentially could lead to damage due to unreported discharges.

With regards to man-made environments, such projects may involve the remediation of facilities and buildings provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as soils, asbestos and leaded paint, which are a continuing source of releases and/or threat to individuals.

7. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care that is related to the actual or potential damage to human health caused by the violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment and rehabilitation therapy. Public health SEPs are acceptable only where the primary benefit of the project is to the population that was harmed or put at risk by the violations.

8. Other Types of Projects

Other types of projects may be determined to have environmental merit that do not fit within the above categories but are otherwise fully consistent with all other provisions of this guidance.

9. Projects that are Not Acceptable as SEPs

The following are examples of the types of projects that should not be allowable as SEPs:

- a. General education or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, or promoting recycling in a community.
- b. Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to charity, or donating playground equipment.

F. Penalties

Even when conditions exist which justify the approval of a SEP, the penalty policies of the BDOs should still require that an adequate monetary penalty be assessed. This penalty should be sufficient to provide a deterrent effect as well as to remove any unfair competitive advantage or economic benefit gained by the facility defendant/respondent's prior noncompliance. Penalties help create the level playing field that businesses require to adequately address their environmental compliance needs, by ensuring that violators do not obtain an unfair economic

advantage over their competitors. Allowing "one free bite of the apple" is a disincentive for voluntary compliance, hurts law abiding businesses and requires the regulator to become the compliance manager for business, a function that is neither appropriate or within our limited resources. Penalties also encourage regulated entities to adopt pollution prevention and recycling strategies in order to minimize their pollutant discharges and reduce their potential liabilities.

In general, supplemental projects should be no more than 25 percent of the total settlement, exclusive of projected administrative costs.

G. Oversight and Drafting Enforceable SEPs

The settlement agreement should accurately and completely describe the SEP. It should describe the specific actions to be performed by the defendant/respondent, and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to the appropriate government agency or court. If an outside auditor is necessary to conduct this oversight, the defendant/respondent should be made responsible for the cost of any such activities in the settlement document. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, and evidencing completion of the SEP, should be required.

The defendants/respondents should be required to quantify the benefits associated with the project and provide a report setting forth how the benefits were measured or estimated. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

Settlements should specify that enforcing agencies are entitled to oversee SEP implementation to ensure that a project is conducted pursuant to the provisions of the settlement. The settlement should specify the legal recourse if the SEP is not adequately performed to the agency's satisfaction whether the SEP is performed by the violator or a third party contractor. Government should not retain authority to manage or administer the SEP.

The type, scope, and timing of each project are determined in the signed settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be determined later are not recommended, however on a case by case basis where it is impractical to include the specifics of a project because it is not identified or fully developed at the time of the settlement, the violator should be required to open an escrow account and place funds in the account prior to finalizing settlement. This account would then be utilized to finance the projects as they are developed.

If necessary, there should also be a commitment in the SEP for long term monitoring and upkeep of the SEP. For example, if the SEP requires the construction of a wetland, then there should be a continuing input of water to the wetland so it retains its wetland character.

Pollution prevention, reduction, or environmental restoration projects should be defined narrowly for purposes of meeting supplemental environmental project policy guidelines. They should only be eligible as supplemental projects if they are designed to reduce, prevent, or ameliorate the effects of pollution at the defendant/respondent's facility or environ, as appropriate.

A defendant/respondent's offer to conduct a study regarding they own facility and/or operations, without an accompanying commitment to implement the results should not be eligible for penalty reduction.

The enforcing agency has sole discretion to decide whether it is technically and/or economically feasible to implement the results. There should be a clause in the agreement specifying that the penalty "offset" will be rescinded and the final assessed penalty reinstated in full should the agency decide that the results can be implemented but the defendant/respondent is unwilling to do so.

The form of SEPs easiest to oversee and implement are those that require a donation to a third party made at the time settlement is entered into. More difficult are those that require defendant/respondent to carry on activity over a period of time. These SEPs can require significant staff time to oversee and may be difficult to enforce if difficulties re encountered.

H. Failure of a SEP and Stipulated Penalties

If a SEP is not completed satisfactorily, the defendant/respondent should be required pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. The determination of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP is at the sole discretion of the enforcing agency.

I. Documentation and Confidentiality

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials must be included as part of the settlement agreement. The explanation of the SEP should demonstrate that the criteria set forth herein are met by the project and include a description of the expected benefits associated with the SEP. Settlement agreements should not allow that documentation and explanations of a SEP are confidential.

CALIFORNIA AIR RESOURCES BOARD'S 2010 ANNUAL ENFORCEMENT REPORT



THEN

California has come a long way in 44 years
and our future is bright



NOW

2010 ANNUAL ENFORCEMENT REPORT

ARB

ENFORCEMENT DIVISION

June 2011

To learn more about ARB Enforcement Programs or to file an air pollution complaint,
please visit

<http://www.arb.ca.gov>.

To file a complaint by phone, call the Statewide Hotline at (800) 952-5588

or

The Vehicle Complaint Hotline at (800) END-SMOG - (800) 363-7664.

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ACRONYM LIST

AB	Assembly Bill
AFS	Air Facility System
APCD	Air Pollution Control District
APCF	Air Pollution Control Fund
AQMD	Air Quality Management District
ARB	Air Resources Board
ATCM	Air Toxic Control Measure
AG	Attorney General
BAAQMD	Bay Area Air Quality Management District
BHP	Brake-horsepower
BOE	Board of Equalization
CAP	Compliance Assistance Program
CAPCOA	California Air Pollution Control Officers Association
CADMV	California Department of Motor Vehicles
CARBOB	California Reformulated Blendstocks for Oxygenate Blending
CaRFG3	California Reformulated Gasoline Phase III
CHE	Cargo Handling Equipment
CAS	Compliance Assistance Section
CCDET	California Council on Diesel Education and Technology
CCR	California Code of Regulations
CEM	Continuous Emission Monitoring
CHP	California Highway Patrol
CNC	Certificate of Noncompliance
CPES	Consumer Products Enforcement Section
CTS	Compliance Training Section
DRRP	Diesel Risk Reduction Plan
DA	District Attorney
ECLP	Emission Control Label Program
ED	Enforcement Division
EJ	Environmental Justice
EPA	Environmental Protection Agency
FOE	Fundamentals of Enforcement
GHG	Greenhouse Gas
GHGES	Greenhouse Gas Enforcement Section
GVWR	Gross Vehicle Weight Rating
HDD	Heavy-Duty Diesel
HDVIP	Heavy-Duty Diesel Vehicle Inspection Program
H&SC	Health and Safety Code
HC	Hydrocarbon
LBS	Pounds

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LSI	Large Spark-Ignition
MLD	Monitoring and Laboratory Division
MOU	Memorandum of Understanding
MSCD	Mobile Source Control Division
MSOD	Mobile Source Operations Division
MTBE	Methyl Tertiary-Butyl Ether
MY	Model Year
MSEB	Mobile Source Enforcement Branch
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NOV	Notice of Violation
NOx	Nitrogen Oxide
NSR	New Source Review
OGV	Ocean-Going Vessel
OHRV	Off-Highway Recreational Vehicle
OLA	Office of Legal Affairs
PAH	Polynuclear Aromatic Hydrocarbons
PAU	Public Agencies and Utilities
PERP	Portable Equipment Registration Program
PM	Particulate Matter
PPM	Parts per Million
PSI	Pounds per Square Inch
PSIP	Periodic Smoke Inspection Program
SAE	Society of Automotive Engineers
SB	Senate Bill
SEIES	Strategic Environmental Investigations and Enforcement Section
SEP	Supplemental Environmental Project
SORE	Small Off-Road Engine
SSD	Stationary Source Division
SSES	Stationary Source Enforcement Section
SWCV	Solid Waste Collection Vehicle
TAC	Toxic Air Contaminant
TFV	Transit Fleet Vehicle
TRU	Transport Refrigeration Unit
UB	Urban Bus
USEPA	United States Environmental Protection Agency
VDECS	Verified Diesel Emission Control Strategy
VC	Vehicle Code
VEE	Visible Emissions Evaluation
VOC	Volatile Organic Compound

EXECUTIVE SUMMARY

For all of its clean-air successes, California continues to suffer the most severe air pollution in the country. Millions of residents continue to breathe unhealthful air that taxes their lungs and heart. A key public health priority of the Board is protecting California communities from illegal emissions of smog-forming compounds and diesel soot. There is no practical way Californians can individually protect themselves from air pollution making the enforcement program essential to effectively carrying out ARB's mission. . Children, the elderly and people with impaired breathing and heart troubles are particularly at risk.

The Air Resources Board's mission is "to promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the state." The Board approaches this challenge with the recognition that improved public health goes hand-in-hand with economic health. It aims to reduce air pollution through fair, consistent and comprehensive enforcement of air pollution laws and by providing compliance assistance.

Addressing the Challenge of Diesel Pollution

Illegal diesel emissions remained the Board's top enforcement priority in 2010. Diesel pollution is a silent killer. The ultra-tiny, airborne particles in diesel exhaust can penetrate more deeply into lungs, and even enter the bloodstream, triggering death in people with pre-existing heart diseases. A comprehensive body of evidence links these particles to cardiovascular disease and premature deaths, and in 2010 the link between premature death and fine particle pollution (PM_{2.5}) was deemed by the U.S. EPA to be causal—the highest level of scientific certainty.

The Board identified the particles from diesel engines as a Toxic Air Contaminant in 1998, finding it responsible for 70 percent of the known cancer risk from air pollutants in California. This action was followed by the Board adopting a comprehensive plan to reduce at least 85 percent of the diesel soot and the associated health risk by 2020.

The Board began regulating emissions from both new and existing diesel-fueled equipment and vehicles. It started with public transit buses, followed by school buses and garbage trucks, public utility vehicles and transit buses, then heavy-duty trucks and off-road equipment such as bulldozers and irrigation pumps. The most recent additions include offshore ships, tugboats and the cargo trucks and handling equipment at ports and rail yards.

Ports, Rail Yards, Freeways: A New Focus

In 2010 the Enforcement Division focused particularly on neighborhoods near ports, rail yards and freeways – and, in some cases, all three. It overcame budget limitations by collaborating with local air districts and local police on ticketing truck drivers for excessive engine idling.

Staff worked with residents and local officials in identifying problem areas and coordinated with Cal Trans on posting “No Idling” signs at these hot spots.

Reductions in diesel risk are especially needed where port trucks are heavily concentrated, such as in West Oakland, Wilmington, Long Beach and the City of Commerce. The Enforcement Division made these ports high priority targets in 2010, the year the Board’s regulation of the drayage (port) trucks took effect. The rule puts ports and rail yards off limits to the dirtiest trucks – those with model-year 1993 or older engines – and limits entry of newer trucks that are past their prime to those with exhaust filters.

The 3,094 inspections in 2010 resulted in 356 violations – an 80 percent compliance rate. Staff soon discovered that trucks hauling goods transported by rail had a much higher non-compliance rate than those working the ports, so the enforcement focus shifted to the intermodal rail yards. Inspectors also focused on companies that defeated the intent of the regulation by staging their dirtier, non-compliant trucks just outside port and rail yard gates for transfer of loads. As with other heavy-duty diesel vehicles, port trucks are subject to Board limits on engine idling and exhaust smoke.

Transport Refrigeration Units

Enforcement staff also turned much of its attention to trucks equipped with diesel-powered refrigeration systems. Though their horsepower and related emissions are relatively small compared to the trucks themselves, significant numbers of these Transport Refrigeration Units congregate at truck stops and food distribution centers, posing an increased health risk for nearby workers and residents. The refrigeration engines are among the latest in a series of diesel-fueled equipment and vehicles to be regulated as part of the diesel reduction program.

Staff cited owners and operators of all 2002 model-year and older refrigeration units that had not been retrofitted or repowered to meet the diesel emission standard. The 6,119 field inspections in 2010 netted 2,318 violations. The 62 percent compliance rate is higher than expected for a first-time regulation of these units, which took effect just the previous year.

Overcoming Limitations

The State's ongoing hiring freeze kept the Board from adding inspectors to keep pace with the growing number and types of diesel emission sources coming under regulation. The Board nonetheless maximized its enforcement visibility and effectiveness through more strategic scheduling of inspections and by enlisting the help of local agencies with police authority.

In pursuing noncompliant refrigerated trucks, for example, enforcement staff concentrated inspections in agricultural areas at harvest when this truck traffic peaks. To keep better watch on the port traffic in Oakland and San Francisco, the Board arranged for the Bay Area Air Quality Management District to help conduct inspections of diesel cargo trucks.

Compliance Training

The Enforcement Division's compliance training section significantly expanded its outreach to businesses with diesel equipment and vehicles by introducing and expanding community college classes on several mobile source regulations and required retrofits, such as the Selective Catalytic Reduction system for certain heavy-duty diesel vehicles. The section held 253 classes, and directly reached 6831 participants at regulation-specific classes and workshops. Within the National Program (outside of CA) the section held 61 classes with 1436.

2010 Enforcement Highlights 2010

- A Board investigation led to the successful prosecution of the State's first criminal case on illegal sales of uncertified vehicles. The San Bernardino County District Attorney's Office won felony convictions against the owners of Goldenvale Inc. of Ontario for profiting from the sale of dirt bikes, ATVs and other vehicles from China that were falsely certified as meeting California's tough emissions standards. The defendants served jail time and were ordered to pay restitution to those who bought the illegal vehicles.
- Enforcement staff saw a marked increase in the illegal sale and installation of old, substandard catalytic converters. Staff attributed the escalation to the rise in prices of precious metals used in the devices.

2011 Action Items

- Pursuant to Senate Bill 1402, the Board published a draft penalty policy that takes certain circumstances into account when assessing penalties. The draft policy is being vetted in public workshops. Enforcement staff is continuing outreach and education on installation of exhaust filters, a retrofit for older heavy-duty trucks that will be required on a phased-in schedule, starting in 2012.
- Staff also is starting enforcement of the SmartWay truck greenhouse gas programs that require certain fuel-saving features such as aerodynamic skirts on the sides of trailers and low-rolling resistance tires.
- Staff continues working with other federal, state and local agencies and environmental justice community groups to improve air quality in heavily polluted areas.
- Staff aims to increase the compliance rate on the drayage truck rule by 10 percent at the rail yards, and increase pressure on the non-compliant motor carriers by developing cases against the major ones

INTRODUCTION

ARB coordinates California's efforts to reach and maintain the health-based federal and state air quality standards, and to protect the public from exposure to TACs. Since its inception, ARB has been charged with overseeing the efforts of the local air districts in controlling air pollution caused by stationary sources.

ARB is also mandated to address the serious problems caused by mobile sources – cars, motorcycles, trucks and buses, off-road vehicles and equipment, and the fuels that power them – major sources of air pollution in the most populous parts of the state.

ARB is also responsible for controlling emissions statewide from smaller but more numerous sources of air pollution. These include consumer products, other types of mobile sources like lawn and garden equipment and utility engines, and, especially, any sources of toxic air pollutants.

To carry out these responsibilities, ARB has undertaken a multifaceted program of planning, regulation development, implementation, compliance assistance and training, and enforcement. This is a complex process that weaves together air quality research, modeling and assessment and the development and adoption of regulations through a process that allows for public input and program implementation through active outreach to regulators and regulated industries through training and compliance assistance.

The final component, enforcement, ensures that these efforts do achieve the anticipated emissions reductions and guarantees a level playing field for all participants. This report focuses on ARB's enforcement efforts, both direct enforcement and oversight of

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air district enforcement programs, and voluntary compliance through education and compliance assistance materials.

Violations of California's air quality laws and regulations span a wide spectrum that extends from nominal breaches of the state's statutes or regulations to deliberate criminal actions. While varying degrees of pollution are created by way of these violations, what remains constant in each is the unfair economic disadvantage suffered by those members of the affected industries that do comply. To address these varying degrees of noncompliance and their effects on the state's public and environmental health and economic welfare, the ED has adopted as its mission statement:

"The Enforcement Division seeks to protect public health and provide safe, clean air to all Californians by reducing emissions of air contaminants through the fair, consistent and comprehensive enforcement of statutory and regulatory requirements, and by providing training and compliance assistance."

The report that follows includes a discussion of the enforcement programs currently administered by ARB, as well as some summary statistics relating to inspections, investigations, and activities in each of the programs. More detailed information relating to case status, local air district enforcement activities and other relevant information is included in the appendices. Please also note that it is ARB's practice to keep confidential the names of entities involved in pending enforcement actions, and that this convention will be observed in any pending case summary information. Specific case settlement summaries can be viewed at ARB's Enforcement Program web site located at: <http://www.arb.ca.gov/enf/casesett/casesett.htm>.

For more information on the ARB, ED or its programs, please contact James R. Ryden, Chief, at (916) 322-7061 or jryden@arb.ca.gov. For questions or comments relating to this report, please contact the Chief Editor, Michelle Shultz Wood, at (626) 459-4338, or email at mshultz@arb.ca.gov.

Questions relating to specific program areas may be directed to the appropriate section manager or branch chief listed on the Contacts List in Appendix G. Please refer to ED's web page as well, located at: <http://www.arb.ca.gov/enf/enf.htm>.

GENERAL ENFORCEMENT PROGRAMS

The ED, through its three branches and an unaligned section, is responsible for a variety of enforcement activities:

- The **Mobile Source Enforcement Branch** (MSEB) enforces programs to reduce gaseous (including GHGs), particulate, and visible exhaust emissions from HDD and gasoline-powered commercial trucks and buses, passenger vehicles and other light-duty on-road vehicles, off-highway vehicles, off-road engines like lawn and garden equipment, and aftermarket parts for on and off-road vehicles.

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- The **Stationary Source Enforcement Branch (SSEB)** investigates and develops cases related to motor vehicle fuels and consumer products, provides oversight and assistance to local air district enforcement programs, conducts a number of major inspection programs, and provides investigative and surveillance services to assist in the development of air quality, toxic exposure, and multi-media cases.
- The **Training and Compliance Assistance Branch** provides training and informative materials to ARB staff, air districts, and regulated industry personnel for improving enforcement and promoting compliance.
- The **Greenhouse Gas Enforcement Section (GHGES)** remains organizationally independent of a branch and provides an enforcement perspective and specific language to the ARB divisions involved in rule development in furtherance of the AB 32 climate change effort.

Integral to the success of the enforcement program is ED's close working relationship with ARB's Office of Legal Affairs (OLA). Division staff develops the cases, many of which are settled directly between the Division and the violators, who come into compliance and pay appropriate civil penalties. For cases that cannot be handled through this informal process, OLA attorneys are brought in to work with enforcement staff to negotiate settlements, or to prepare cases for referral for civil litigation or criminal prosecution to the California State Attorney General's Office (AG), local DA, or the United States Attorney's Office.

Regulation and Legislation Coordination

ED staff continues to be involved with rule development and proposed legislation. Coordination between the rule writers, the legislative staff, and the enforcement staff is critical in ensuring that new regulations and statutes are enforceable at both the state and local level.

Legislation

Senate Bill 1402, Dutton (Chapter 413), 2010, requires the ARB to provide air pollution violators with written information on how ARB determines their penalties, which may include an estimate of the excess air emissions their violations caused as practicable. The bill requires ARB to publish a written penalty policy and prepare an annual report to the Governor and Legislature summarizing the motor vehicle pollution administrative penalties imposed by ARB. Pursuant to SB 1402, starting in 2011 all Settlement Agreements will be made available to the public on the ARB's website <http://www.arb.ca.gov/enf/casesett/casesett.htm>. ED also incorporated SB 1402 compliance statements in all case settlement agreements as required by SB 1402.

Environmental Justice

The ARB is committed to making the achievement of EJ an integral part of its activities. State law defines EJ as the fair treatment of people of all races, cultures, and incomes

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with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

The Board's "Environmental Justice Policies and Actions" have established a framework for incorporating EJ into ARB's programs consistent with the directives of state law. These policies apply to all communities in California, but recognize that EJ issues have been raised more in the context of low-income and minority communities. These policies are intended to promote the fair treatment of all Californians and cover the full spectrum of ARB activities. Underlying these policies is a recognition that ARB needs to engage community members in a meaningful way as the Boards' activities are carried out. People should have the best information possible about the air they breathe and what is being done to reduce unhealthy air pollution in their communities. Finally, ARB recognizes the obligation the Board has to work closely with all stakeholders, communities, environmental and public health organizations, industry, business owners, other agencies, and all other interested parties to successfully implement these policies.

Over the last year, ED has increased its coordinated effort with federal, state and local enforcement agencies such as U.S. EPA, the Department of Toxic Substances Control, the California Water Resource Control Board, local air districts, local law enforcement, city leaders and local community groups throughout the state, especially in areas that have been identified as EJ areas. Staff has worked with environmental collaborative groups in the cities of Maywood, Oakland, Pacoima, Riverside, San Bernardino, and Wilmington. In 2010, in these communities and others, identified and reported environmental violations were resolved and ongoing projects continue to improve the quality of life for the people living in these communities. This very important effort will continue and expand to include other communities during the next year.

MOBILE SOURCE ENFORCEMENT PROGRAMS

Program Overview

California has long been the world leader in combating air pollution emitted from motor vehicles and other mobile sources. Because of the state's severe air quality problems, California is the only state authorized under the Federal Clean Air Act to set its own mobile source emissions and fuels standards. ARB has used this authority to establish an aggressive program to reduce emissions from many sources, ranging from on and off-road diesel engines, passenger cars, and on and off-road motorcycles to jet skis, lawn mowers, and chain saws.

The Board's Mobile Source Enforcement Program is structured to ensure that on and off-road vehicles and engines meet California's standards from the design phase through production, from the point of sale through the vehicle's or engine's useful life, and finally when they are retired from the fleet.

ARB has direct enforcement authority over all regulated mobile sources in California; including passenger vehicles and light duty pickups, on and off-road diesel powered

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vehicles and equipment, off-highway recreational vehicles (OHRVs), off-road diesel and gasoline powered equipment and small off-road engines (SOREs). It is illegal to sell or offer to sell into California new mobile sources unless they have been certified by ARB as meeting California emissions standards. Manufacturers are required to apply for ARB certification annually.

Highlights

Bay Area Air Quality Management District Inspection Memorandum of Understanding

In 2010, ARB entered into a MOU with the BAAQMD where under the MOU the BAAQMD conducts inspections of diesel engines and vehicles at the ports and other EJ areas in its' nine county jurisdiction. This program was implemented in 2010 and is working well to better protect these areas through increased enforcement resources.

Mobile Source Enforcement Branch Reaches out to Stakeholders

Over the past year, MSEB staff attended over 100 meetings and conferences hosted by governmental agencies such as the USEPA, Bureau of Automotive Repair, CHP, CADMV, and organizations such as the California Trucking Association and American Trucking Association where attendees were provided with enforcement program overviews and how to comply with ARB regulations. Outreach is so important to ARB's mission in coordination with enforcement. It allows the regulated community to better understand their responsibilities and requirements under ARB's laws and regulations and allows staff to work with stakeholders to prevent violations.

Mobile Source Enforcement Section

The Mobile Source Enforcement Section is responsible for ensuring all regulated mobile sources, on and off-road, comply with ARB certification requirements. ARB's enforcement program vigorously enforces these laws through inspections and investigations that can result in corrective actions and substantial civil and/or criminal penalties.

For on-road sources, the primary focus of enforcement is to ensure that all new vehicles sold, offered for sale, or used in the state are certified for sale in California. Under California's regulations, a new vehicle (defined as a vehicle that has fewer than 7,500 odometer miles) not certified to California's standards cannot be sold within or imported into the state by a California resident or business. If such a vehicle visits a Smog Check station, the owner is issued a Certificate of Noncompliance (CNC), a copy of the CNC is sent to ARB. When a violation has occurred, a Notice of Violation (NOV) is issued. The NOV requires that the vehicle(s) be removed from the state, and payment of a civil penalty of up to \$5,000 per vehicle, as authorized under H&SC §43151 et seq.

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Another area of focus for enforcement resources has been in the off-road categories. This includes off-road motorcycles and all-terrain vehicles commonly referred to as OHRVs; SOREs such as lawn and garden equipment, scooters; large spark ignited (LSI) engines which include fork lifts, sweepers, quads, and generators; and compression ignition diesel engines over 175 brake horsepower (bhp), which include generators and construction equipment.

Enforcement statistics for this program are found in Appendix C. Further details regarding the mobile source enforcement programs are discussed later in this report, or visit the ED's web page at <http://www.arb.ca.gov/enf/enf.htm>.

Highlights

Aftermarket Catalyst Cases

Based on regulations as of January 1, 2009 aftermarket catalysts sold in California required more stringent performance and durability standards and an ARB Executive Order. Older style catalysts are not legal for sale or installation in California. The cost of newer, more effective catalysts is higher; some shops sell the older illegal catalysts creating unfair business climates for shops installing legal parts. To help mitigate this situation, staff focused enforcement on catalyst manufacturers, distributors, and large retailers.

Illegal Import Market

Staff continues efforts to reduce incidences of illegally imported products (e.g. on and off-road motorcycles, ATVs, personal watercraft, lawn and garden equipment, etc.) coming into California through major shipping ports. Staff works with U.S. EPA, U.S. Immigration and Customs Enforcement, U.S. Coast Guard, and international governmental agencies especially China, to ensure imported products fully comply with California environmental regulations. Staff continues to pursue administrative, civil, and criminal action against violators.

In 2010, ARB successfully referred to the San Bernardino District Attorney's Office, the first criminal case based on illegally imported uncertified on and off-road vehicles. The defendants served jail time and were ordered to pay restitution to all victims.

Additionally, in 2010, the ARB continued to run confirmatory and in-use testing on selected import and domestic products using their own small engine test cell to ensure production vehicles and engines continue to meet certification and durability requirements.

Large Spark-Ignition Regulation

On January 1, 2010, emission standards and test procedures for off-road LSI engine powered equipment became more stringent. There are more than 90,000 off-road LSI

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engines in California. Many of these engines have no emission controls and some remain in operator fleets for decades. Just one uncontrolled engine can emit as much hydrocarbon (HC) and nitrogen oxide (NOx) in three eight-hour shifts as a new car certified to California's cleanest emission standard does over its entire lifetime.

The HC and NOx combine in the atmosphere to form ground level ozone, which can damage the respiratory tract and worsen asthma symptoms. The LSI regulation will reduce HC+NOx emissions by approximately six tons per day, helping California to meet federally imposed clean air standards. If these standards are not met, the federal government could impose economic sanctions on California; for example, federal highway funding could be withheld.

Manufacturers of 25 hp or greater (greater than 19 kilowatts) off-road LSI engines must comply with the new engine standards and test procedures and manufacturers of retrofit emission control systems intended for use on LSI engines must comply with the verification procedures. Individual persons, businesses, and government agencies that own or operate LSI engine powered fleets in California are subject to the fleet requirements. Out-of-state companies doing business in California are also subject to the fleet requirements.

The regulation establishes more stringent combined HC and NOx emission certification standards for engine manufacturers. The regulation also establishes verification procedures for manufacturers of retrofit emission control systems. Engine and retrofit emission control system manufacturers will likely employ advanced automotive-style emission control technologies including electronic fuel/air controllers, three-way catalysts, and oxygen sensors to meet the certification and verification standards, respectively.

Off-Highway Recreational Vehicles and Small Off-Road Engines

OHRVs (off-road motorcycles, ATVs) and SOREs (lawn mowers, trimmers, generators, and scooters) continue to receive enforcement attention. Staff worked cooperatively with industry to educate and assist industry's awareness and compliance with ARB laws and regulations.

Staff continues to work with CADMV and the California Department of Parks and Recreation to ensure registration and enforcement in riding areas throughout California and reduce smog-forming emissions by approximately 200 tons per day via aggressive enforcement of regulations. This cooperative effort ensures ARB will achieve the anticipated reductions.

Tire Inflation Regulation

On September 1, 2010, the ARB's Tire Pressure Regulation took effect. The purpose of this regulation is to reduce GHG emissions from vehicles operating with under inflated tires by inflating them to the recommended tire pressure rating. The regulation applies

to vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds (lbs) or less. Automotive service providers must meet the regulation's following requirements of checking and inflating each vehicle's tires to the recommended tire pressure rating, with air or nitrogen, as appropriate, at the time of performing any automotive maintenance or repair service.

Heavy-Duty Diesel Enforcement

In 1998, ARB identified diesel exhaust as a TAC. As a result, ARB developed the ATCMs, a series of programs intended to reduce diesel emissions of particulates and NOx. These programs require commercial HDD fleets to replace or repower (i.e. install new engines) their vehicles and equipment or the exhaust systems with diesel particulate filters, and alter driver habits that create unnecessary diesel emissions from idling.

Certain segments of all diesel fleets are now required to be equipped with these retrofits, including transit buses, solid waste collection vehicles (SWCV), Public Agencies and Utilities (PAU) vehicles, CHE, drayage trucks, as well as TRU (trailers equipped with diesel-powered cooling systems). Starting in 2012, retrofits will be required on a phase-in schedule for on-road diesel-powered vehicles which are covered under the Truck and Bus Regulation (On Road HDD Vehicles greater than 14,000 GVWR). By January 1, 2023, all affected vehicles under this program must have a 2010 model year (MY) engine or equivalent installed.

Diesel powered off-road vehicles will be required to lower their particulate matter (PM) emissions once the U.S. EPA grants ARB the waiver to enforce the in-use emission standards set by ARB's regulation.

ARB, in cooperation with the CHP, inspects HDD trucks and buses for excessive smoke emissions and tampering of emission control systems. Every HDD vehicle traveling in California, including those registered in other states and foreign countries (i.e. Mexico or Canada), is subject to inspection and testing.

Although HDD vehicles comprise only two percent of California's on-road fleet, they produce about one-third of the NOx and approximately two-thirds of the PM emissions attributed to motor vehicles. The exhaust emissions from these vehicles are of special concern, particularly in populated areas, because of the toxic nature of the sooty particles found in diesel exhaust. ARB also inspects HDD gasoline-powered vehicles for emission control systems tampering. Tampered gasoline engines contribute an inordinate amount of HCs, NOx, and carbon monoxide to total vehicle emissions. Owners of tampered gasoline and diesel vehicles are cited. The citation must be cleared by repairing the engine, having the engine inspected by an authorized Smog Check Station or ARB inspector, submitting repair receipts, and paying an assessed penalty. Vehicles with citations that are not cleared in a timely manner may be subject to impound by CHP.

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In addition, California Vehicle Code (VC) Section 4755 authorizes CADMV to refuse the registration, renewal or transfer of registration, at ARB request, for vehicles with violations not cleared in a timely manner. The bill was signed by the Governor and became effective January 1, 2008.

Engine idling of school buses, commercial vehicles and off-road vehicles is now prohibited for longer than five minutes. This is intended to reduce public exposure, especially that of children, to harmful diesel particulates.

ARB has been authorized to adopt rules to address global warming by reducing the gaseous emissions (methane, carbon dioxide, etc.) that trap heat in the earth's atmosphere, as outlined in the Board's December 2008 Scoping Plan. Two initial efforts include designing new trucks and trailers, and retrofitting in-use trucks and trailers, with equipment that enhances aerodynamics to reduce air drag and increase fuel economy. These strategies are commonly referred to as "Smart Way Technologies". Other measures include controls on vehicle tire designs (to reduce rolling resistance) and air pressure, engine efficiency and economy, and the introduction of low-Carbon fuels. Some of these rules became effective January 1, 2010.

Highlights

California-Mexico Border Programs

Currently, there are designated commercial zones around the ports of entry at Otay Mesa, Calexico, and Tecate in which Mexican-domiciled trucks may transport and deliver freight to transfer stations in California. American carriers will load product at these stations and deliver it to final destinations. To mitigate excessive PM and NOx emissions from Mexican-domiciled vehicles, ARB maintains HDVIP inspection sites at the Otay Mesa, Calexico, and Tecate border crossings. ARB also conducts random roadside inspections near and around these border crossings to assure compliance from the trucking companies. Mexican commercial vehicles are inspected for engine certification, emissions and tampering when they travel through these inspection sites.

California Council on Diesel Education and Technology

Fleets, firms, and individuals that perform smoke opacity testing related to ARB's HDVIP (13 California Code of Regulations (CCR) 2180-2189) and Periodic Smoke Inspection Program (PSIP) (13 CCR 2190-2194) need a clear understanding of the programs' regulations and must be able to correctly administer the Society of Automotive Engineers (SAE) J1667 opacity test. To this end, in 1992 ARB created the CCDET. It is a partnership among ARB, the diesel trucking industry, and five California community colleges. The College of Alameda, San Joaquin Delta College, Santa Ana College, Los Angeles Trade Technology College, and Palomar College offer a low-cost, one-day class in the proper application of SAE J1667. The CCDET colleges held 141 of these classes in 2010.

ARB policy requires that certification through CCDET be renewed every four years (see

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ARB Advisory 340 at <http://www.arb.ca.gov/enf/advs/advs340.pdf>) The CCDET program is currently adding modules to cover other ARB diesel regulatory programs, such as retrofits to idling controls on diesel engine emission control systems.

CCDET's new class - Diesel Exhaust After-Treatment Maintenance training covers the following:

- Background on why diesel particulate filters are necessary;
- How the technology filters PM and how regeneration strategies such as passive and active systems operate;
- Explores how filters might fail as well as preventative maintenance practices to avoid break downs;
- An overview of selective catalytic reduction systems used on HDD engines.

The one day training also includes hands-on shop exercises designed to reinforce maintenance procedures employed to keep after-treatment technology and the engines they are installed on working at peak performance. Monies received by the CCDET colleges are used to purchase equipment for the hands-on testing portion of diesel after-treatment devices.

SEP	Number of Cases	Amount
CCDET/Peralta Community College District ¹	141	\$336,672

¹ CCDET was created to train diesel fleet mechanics on the proper conduct of ARB's HDVIP SAE J1667 test protocol, HDVIP/PSIP program record keeping requirements, and after-treatment and engine maintenance requirements. The Peralta Community College District administers the program and distributes the SEP monies in equal shares to participating CCDET community colleges. The cost for each CCDET class is \$175.

Carl Moyer Program and Proposition 1B Goods Movement Emission Reduction Program Compliance Checks

The Carl Moyer Program provides incentive grants to reduce emissions from HDD engines. The incentive grants offset the cost of replacing older, high-polluting engines with newer engines certified to more stringent emission standards.

Proposition 1B provides funding to cut air pollution and health risks by upgrading diesel equipment that is used to move freight in California.

Before these funds are released, ED staff performs compliance checks on the vehicle's registered owner and the vehicle's identification number to determine if there are any outstanding violations within the various enforcement programs. If an outstanding violation is found, the vehicle owner is required to provide proof of compliance and pay all civil penalties before the funds are released. This program ensures that the ARB

does not award money to violators.

Compliance Outreach and Education

The ARB's ED routinely issues citations for violations ranging from minor violations, such as smoking HDD vehicles to major violations, such as illegal engines. When a case against a violator is settled by the ARB, the terms of the settlement extend beyond simply punishing the violators by forcing them to pay fines. In all cases, ARB makes an effort to assist the violators in achieving compliance by educating them. Enforcement staff encourages the violators to work directly with ARB program staff in order to achieve a greater understanding of the regulatory programs.

Drayage Truck Regulation

The enforcement of the drayage truck rule was a high priority in 2010. Both the registration requirements and the first in-use compliance phase were enforced in the field through 3,094 inspections resulting in 356 violations with a compliance rate of 80 percent and through developing 16 new cases against motor carriers who dispatch non-compliant trucks to ports or rail yards in California. ARB enforcement quickly learned to focus efforts at the rail yards rather than the ports because it is there where a significantly higher rate of non-compliance was found.

Fleet Rule for Public Agencies and Utilities

The fleet rule for public agencies and utility fleets is ARB's effort to reduce both criteria pollutant emissions and exposure to toxic diesel exhaust from diesel powered vehicles. The regulation affects both municipalities and utilities.

PAU engines were required to meet a fleet average starting in January 2008 and the last date is December 31, 2018. This includes certification requirements for the fleets and includes meeting fleet fuel strategy requirements. Operators of all PAU vehicles are required to meet fleet-wide PM reductions and lower NOx fleet averages. This can be achieved through the use of verified diesel emission control strategies (VDECS), i.e. by installing certified particulate filters, by replacing older engines with ones that meet the 2008 engine exhaust emission standards, or by using alternative fuels. Annual reporting is also required from all PAUs by December 31st of each year.

Fleet Rules for Transit Agencies

In February 2000, the ARB adopted the Fleet Rule for Transit Agencies and more stringent exhaust emission standards for new UB engines and vehicles. The Fleet Rule for Transit Agencies is ARB's effort to reduce both criteria pollutant emissions and exposure to TAC from UBs and TFVs operated by and for public transit agencies. The regulation affects both public transit operators and HDD engine manufacturers.

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New UBs operated in California are required to have engines that meet the more stringent California UB engine exhaust emission standard through the 2006 MY. Starting with the 2007 MY, the standard aligned with the California HDD engine exhaust emission standard. A transit agency must report every January 31st, starting in 2003 through 2016, the UBs owned, operated, or under contract to the transit agency as of January 1 of that year.

Transit fleet operators that own TFVs are required to reduce public exposure to diesel PM and NOx emissions. TFVs are any on-road vehicles operated by a public transit agency, less than 35' in length and 33,000 GVWR, but greater than 8,500 GVWR, powered by HDD engines fueled by diesel or alternative fuel; including service vehicles, tow trucks, dial-a-ride buses, paratransit buses, charter buses, and "commuter service" buses operated only during peak commute hours with 10 or fewer stops per day. Gasoline-powered TFVs are exempt.

An UB is a passenger carrying vehicle owned or operated by a public transit agency, powered by a heavy HDD engine, or of a type normally powered by a heavy HDD engine, intended primarily for intra-city operation. A bus normally powered by a heavy HDD engine is usually 35 feet or longer, and/or greater than 33,000 lbs GVWR.

Transit operators are required to choose a fuel path: diesel or alternative fuel. The fuel path choice affects UB purchases and dictates emission reduction deadlines. During 2010, total penalties for the Transit Fleet Rule were divided between UBs and TFVs. There was \$1,875 in penalties collected to settle UB violations and \$1,250 in penalties collected from 2 TFV cases settled.

Idling Programs

California has two regulations aimed at curbing the length of time diesel vehicles are allowed to idle their engines. The Commercial Vehicle Idling regulation applies to HDD vehicles greater than 10,000 lbs. and prohibits these vehicles from idling for more than five minutes. The School Bus Idling regulation focuses on school buses and other vehicles that visit school zones, including HDD and alternatively fueled vehicles.

The school bus idling regulation requires that engines in these vehicles shut down immediately upon arriving at a school, and after starting up; the vehicle must leave the school within 30 seconds. Exceptions apply to both regulations, and each carries a \$300 penalty that is the responsibility of the driver of the vehicle in violation. There are numerous alternatives to idling a vehicle's main engine such as auxiliary power systems, battery systems and truck stop electrification. A list of alternatives and information about the regulation can be found at <http://www.arb.ca.gov/msprog/truck-idling/truck-idling.htm>. Complaints about idling vehicles from the general public may be submitted to <http://www.arb.ca.gov/enf/complaints/complaints.htm>.

AB 233 was enacted in 2007, requiring ARB to review existing enforcement needs, increase the penalty for commercial vehicle idling, enable registration holds to be placed

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on California vehicles with outstanding ARB citations, place “No Idling” signs throughout the State in places where trucks frequently idle, and train air pollution control districts and local law enforcement on the commercial vehicle idling regulation. In 2010, “No Idling” signs were approved by Cal Trans’ board and plans for placing them throughout the state are underway, the commercial vehicle idling penalty increased from \$100 to \$300, two air districts are actively enforcing commercial vehicle idling, and registration holds are routinely placed on vehicles with outstanding citations. These measures have achieved enhanced enforcement reducing toxic diesel emissions.

Periodic Smoke Inspection Program

The PSIP was authorized by SB 2330 of 1990 (HS&C section 43701). This program requires fleet operators with two or more heavy duty diesel powered vehicles over 6,000 pounds GVWR to conduct annual smoke emissions inspections using the SAE J1667 test procedure. This test is designed to be diagnostic of engine maintenance issues. It alerts fleet operators of vehicles that are emitting above normal levels so that they can be repaired to be brought back to manufacturer specifications.

When ARB performs fleet audits under the PSIP, fleet vehicle records are inspected to confirm that valid testing of the vehicles has been annually performed. As part of a PSIP audit, ARB conducts comprehensive multi-program audits (e.g. DTR, ECLs, PAU, TRU, SWCV, etc.) which include inspecting the compliance reports submitted to ARB regarding diesel exhaust retrofits, plus inspecting each vehicle for the proper installation of these exhaust retrofits, engine emissions certification labels, and other program labeling requirements.

When violations are found, a case is developed against the fleet. The developed case includes the violations, assessed penalties, and a list of additional requirements such as attending CCDET classes, re-flashing engine computers, and agreeing to comply to avert future violations. Over 99 percent of these cases are settled through mutual settlement and cases that remain unsettled are referred to the Office of the Attorney General or a local District Attorney’s Office for prosecution. In 2010, ARB closed 181 PSIP cases for a total of \$857,080 in penalties. See Appendix C, Table C-16.

Solid Waste Collection Vehicle Program

California’s SWCV regulation became effective in 2004. The SWCV regulation reduces cancer-causing PM and smog-forming NOx emissions from these trucks.

The rule applies to all SWCVs of 14,000 lbs or more that run on diesel fuel, have engines in MYs from 1960 through 2006, and collect solid waste for a fee. Each MY from 2004 through 2010, waste hauling and waste recycling companies are required to retrofit exhaust systems on more of their trucks by installing diesel particulate filters or diesel oxidation catalysts. The ARB must verify these devices for performance prior to installation.

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A phase-in was scheduled from 2004 through 2010 to retrofit entire fleets. By December 31, 2007, SWCV fleets were required to reduce particulate emissions from all of their trucks equipped with 1988-2002 MY engines. Fleets with 15 or more vehicles were required to bring into compliance all vehicles with 1960-1987 MY engines. Fleets with 14 or fewer vehicles had until December 31, 2010 to retrofit 100 percent of vehicles with 1960-1987 MY engines. Fifty percent of vehicles with 2003-2006 MY engines were required to be brought into compliance by December 31, 2009. The other half of these engines were brought into compliance by the end of 2010.

The objective was for fleets to have diesel emissions from all of their SWCVs at or below 0.01grams of PM per bhp hour level by 2010. Enforcement of this program is being conducted with HDVIP and PSIP. During 2010, 20 SWCV fleet cases were closed for \$52,720. See Appendix C, Tables C-13 and C-16 for other statistics regarding this program.

Tractor – Trailer Greenhouse Gas/SmartWay Regulation

The SmartWay regulation became effective in January of 2010 and is a phased-in GHG regulation. The SmartWay regulation was developed to reduce GHG emissions produced by HDD tractors by making them more fuel efficient. Fuel efficiency will be improved by requiring the use of aerodynamic tractors and trailers that are also equipped with low rolling resistance tires. This regulation, over time, will also save money and reduce the dependence on foreign oil.

The Tractor-Trailer GHG Regulation applies to 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and all HDD tractors that pull them on California highways. Any person residing in California that sells an affected vehicle or trailer must provide a disclosure notice to the buyer of such vehicle or trailer.

Tractors

Beginning January 1st, 2010 - MY 2011: Sleeper-cab tractors that pull affected trailers must be SmartWay certified; Day-Cabs that pull affected trailers must use SmartWay verified low rolling resistance tires; All 2010 and older MY tractors that pull affected trailers must use SmartWay verified low rolling resistance tires.

Trailers

Beginning January 1st, 2010 - 2011 and newer MY 53-foot or longer box-type trailers must, be either SmartWay certified or retrofitted with SmartWay verified technologies.

Beginning January 1, 2013 - 2010 and older MY 53-foot or longer box-type trailers (with the exception of certain refrigerated-van trailers) must meet the same aerodynamic device requirements as the 2011 and newer MY trailers.

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Fleet Options

July 1, 2011 – Fleets with 21 or more trailers can report to take advantage of a second phase-in timeline.

July 1, 2012 – Fleets with less than 21 trailers must report to take advantage of an optional phase-in timeline.

No enforcement action has been taken to date other than site visits to dealerships to ensure proper disclosure on tractors and trailers sold. This was done for outreach and education purposes.

Transport Refrigeration Units Regulation

Enforcement of the TRU rule was a main enforcement focus of the Off-Road Group - Heavy-Duty Diesel Enforcement Section in 2010. This was accomplished through 6,119 field inspections resulting in 2,318 violations with a compliance rate of 62 percent as well as through developing 102 new cases and settling 19 cases against non-complying companies. Specifically, field inspections were conducted in agricultural areas at the time when the local crops were being harvested and refrigerated truck traffic was at a peak to maximize enforcement visibility and effectiveness.

This regulation requires California based TRUs to be registered with the ARB and all TRUs operating in California to comply with applicable in-use particulate-matter, emission standards. In 2010, all 2002 MY and older TRU engines that were inspected were cited if they were not retrofitted or repowered.

Truck and Bus Regulation

The Truck and Bus regulation became effective in January of 2010 and is a phased-in regulation. The Truck and Bus regulation was developed to significantly reduce PM and NOx emissions from existing diesel vehicles operating in California. This regulation applies to nearly all diesel-fueled trucks and buses with a GVWR greater than 14,000 lbs that are privately or federally owned and for the privately and publicly owned school buses. This regulation basically affects the remaining HDD vehicles not covered under other regulations.

Enforcement will begin in 2012 for HDD powered vehicles with a GVWR greater than 26,000 lbs. Lighter trucks and buses with a GVWR of 14,001 to 26,000 GVWR do not have compliance requirements until 2015. Starting January 1st, 2015, these trucks with engines that are 20 years or older will need to be replaced with newer trucks. Starting January 1st, 2020, all remaining lighter trucks will need to be replaced so they all have 2010 MY engines or equivalent emissions by 2023. No reporting is required.

Heavier trucks and buses with a GVWR greater than 26,000 lbs have two primary ways to comply. Fleets can meet with the compliance schedule by engine MY or can use a

phase-in option that is more flexible.

The regulation has special provisions that delay some or all of the compliance requirements, but fleets must report to take advantage of them. By March 31st, 2011, fleets must report to qualify for lower use and specialty agricultural truck exemptions until 2017 or 2023 and must report hour meter reading for sweepers with auxiliary Tier 0 engines.

No enforcement action has been taken to date other than site visits to dealerships to ensure proper disclosure on tractors and trailers sold. This was done for outreach and education purposes.

STATIONARY SOURCE ENFORCEMENT PROGRAMS

The Board's Stationary Source Enforcement Programs conduct oversight and enforcement activities in conjunction with the 35 local air districts. Stationary sources include "point" or fixed sources such as petroleum refineries and factories, and "area" sources which individually emit small quantities of pollutants but collectively emit significant emissions, such as consumer products and residential chimneys.

ARB's stationary source enforcement initiatives include the following programs: fuels enforcement, consumer products enforcement, general stationary source enforcement, and strategic environmental investigations and enforcement. Further details regarding the stationary enforcement programs are discussed in this report, or may be found at <http://www.arb.ca.gov/enf/enf.htm>.

Fuels Enforcement Program

The fuels enforcement program regulates the composition of motor vehicle fuels and ensures compliance with motor vehicle fuels regulations, including California reformulated gasoline regulations, diesel fuel regulations, and cargo tank vapor recovery regulations.

The enforcement of the fuels program includes field investigations; inspection and certification of cargo tank vapor recovery on gasoline cargo tank trucks, evaluation of alternative compliance data, investigation into violations for the development of fuels cases, and other programs listed in the highlights below.

Fuels enforcement also provides outreach and support to clarify complex aspects of the regulations in the form of training seminars, individual company meetings, web pages, and ongoing telephone support to the regulated industry and the public.

Highlights

Field Investigations

Inspections of motor vehicle fuels are conducted year-round at refineries, import vessels, distribution and storage facilities, service stations, and bulk purchaser/consumer facilities. Fuels enforcement inspectors obtain samples of the gasoline and diesel fuel and transport them to ED's mobile fuels laboratory for analysis to determine whether they comply with the specifications of Phase 3 California Reformulated Gasoline (CaRFG3) regulations and California Diesel Fuel regulations.

In 2010, fuels enforcement staff collected 2,244 samples of gasoline and 435 samples of diesel fuel for a total of 2,679 samples. See Appendix D for data regarding fuels inspections. Further information is at the ARB fuels enforcement web page at <http://www.arb.ca.gov/enf/fuels/fuels.htm>

Mobile Fuels Laboratory

Use of the mobile fuels laboratory increases sampling capability and provides quicker turnaround time for sample analysis. The lab contains all the analysis instruments and support equipment necessary to test for the parameters of gasoline and diesel fuel regulated by ARB. After fuels samples are collected by inspectors and transferred to the lab, ARB chemists conduct the testing in accordance with approved American Society for Testing and Materials test methods. The results are evaluated and when a violation is discovered, an NOV is issued and a case is developed. In 2010, Fuels enforcement staff conducted 17,460 analyses on gasoline and diesel fuel. See Appendix D, Table D-4 for detailed fuels analysis data.

Phase 3 California Reformulated Gasoline

Changes to the CaRFG3 limits were implemented to give flexibility to producers who may use a Predictive Model for their final gasoline blend. A California model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB) allows producers to project the final parameters of the gasoline after all components are blended.

In 2010, ARB inspectors enforced the Phase 3 regulations by performing over 16,000 analyses on samples of California gasoline collected during fuels inspections. See Appendix D for detailed information.

Alternative Compliance Options and Self-Reporting

The Reformulated Gasoline and Diesel regulations offer alternative compliance options for refiners and importers of California fuel to meet the motor vehicle fuels standards. These alternative options include: when a company elects to use an alternative compliance option such as predictive model limits, designated alternative limits, or

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certified diesel fuel formulations, the company is required to notify ARB and provide data.

Fuels enforcement staff monitors and evaluates data submitted by companies to ensure accurate reporting and compliance with company protocols, as well as provide essential information. Staff randomly sample and test the fuel to confirm the accuracy of the reports. In 2010, staff received and evaluated 2670 predictive models from producers and 74 from importers of California gasoline.

Fuels Distributor Certification Program

The Fuels Distributor Certification Program provides a list of legally certified distributors to motor vehicle fuels retailers. It also provides the ARB with a means by which to check the records of companies who do not comply or cooperate with requests for data, and in some cases, companies which have been involved in criminal activity. To be placed on the list of certified distributors, a company must submit an application to ARB which includes its principal place of business and the location of its records.

In 2010, staff certified 270 distributors of motor vehicle fuel in the program. Fuels enforcement staff issued its annual list of certified distributors to gasoline and diesel fuel retailers and made it available to the public on the ARB website. This program is used in conjunction with special investigation and routine inspection activities. For more information, see <http://www.arb.ca.gov/enf/fuels/distcert.htm>.

Oxygenate Blender Certification Program

The Oxygenate Blender Certification Program was created to ensure that gasoline blend stock, known as CARBOB, complies with the standards for California gasoline. Any oxygenate blender must register with the ARB at least 20 days before blending oxygenates with CARBOB. To obtain certification, an oxygen blender is required to provide the facility name and the physical location of records, contact name and telephone number for each blending facility.

In 2010, staff certified 60 oxygenate blending facilities. Fuels enforcement staff posted its annual list of certified blenders at <http://www.arb.ca.gov/enf/fuels/oxyblend.htm>.

Red-Dyed Diesel Fuel Enforcement

The Board of Equalization (BOE) has contracted with ARB to conduct field inspections to prevent the use of illegal non-taxed diesel fuel. The exempt fuel is dyed red so that inspectors are able to distinguish it from the non-exempt fuel.

The ARB inspectors obtain samples of fuel that is suspected of being illegal, and ARB laboratory staff analyzes the samples for the presence of the red dye. ARB fuels enforcement inspectors also conduct special investigations of companies suspected of illegally using red-dyed diesel fuel.

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In 2010, staff conducted 11,855 red-dyed diesel fuel inspections and found ten violations. These inspections are conducted as part of the HDVIP program. For more detailed information, please see Appendix D, Table D-6.

Cargo Tank Vapor Recovery Program

The Cargo Tank Vapor Recovery Program (CTVRP) is responsible for the enforcement of California H&SC Section 41962(g), which requires that any tank vehicle transporting gasoline have a vapor recovery system certified by the ARB installed and maintained in compliance with the requirements for certification. Vapor recovery systems on cargo tanks capture the gasoline vapors produced during the transportation and delivery of gasoline.

Cargo tank program staff conducts statewide random inspections of cargo tanks at terminals and loading racks. When a leak is discovered, the cargo tank owner or operator is issued an NOV and must refrain from reloading gasoline until the cargo tank is brought back into compliance. If a cargo tank is found without a current decal or certification, or if the cargo tank is not maintained in accordance with ARB emission standards, it is in violation and the owner may be subject to penalties of \$500 or more, depending on the company's compliance history. Inspectors also conduct random inspections of ARB certified testers to ensure that leak tests are being conducted properly.

CTVRP certification staff also administers the annual certification compliance test program. An ARB certified copy of the application and an official decal which must be displayed by the cargo tank operator are issued after certification. The tanks are currently certified through a new web-based system: the system, which includes the thousands of cargo tanks that are ARB certified every year, is maintained in this program. In 2010, staff certified over 5,500 cargo tanks. Please see Appendices A and D, Table D-3 for further information regarding inspection and certification results from 2010. For more information about this program, please visit <http://www.arb.ca.gov/enf/cargotanks/cargotanks.htm>.

Case Development

Case development staff conducts investigations into violations of fuels regulations. Staff immediately notifies the violating entity to ensure that the non-compliant fuel is removed from distribution and then begins the investigation which includes obtaining and evaluating field data and other company records to determine the date of onset, cause, and extent of the violation(s). When a violation has occurred, staff will issue an NOV to the company and will initiate settlement negotiations. Most of the fuel specification cases are settled administratively through negotiation; cases that cannot be settled in this manner are referred for civil or criminal litigation with case development staff assisting the prosecution.

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In 2010, case development staff settled or closed 20 fuels cases and collected \$90,400 in penalties. See Appendices A, Table A-1, and B for an overview of case dispositions and summaries of the significant cases resolved in 2010.

Consumer Products Enforcement

Consumer products such as deodorants, hair sprays, cleaning solvents, spray paints and insecticides are examples of common everyday products that are made with ozone-forming volatile organic compounds (VOCs). Manufacturers self-designate the categories for their products. Although each consumer product contains only a small amount of VOCs, Californians use over half a billion of these products every year, which cumulatively contributes to the formation of ground level ozone, which is a major part of California's smog problem. ARB regulates the amount of VOCs permissible in approximately 129 categories of consumer products in order to reduce smog and public exposure to hazards associated with smog. In addition to their caseloads regarding VOCs and the chemical content of products, Consumer Product Enforcement Section (CPES) investigators are increasingly responsible for the enforcement of other product regulations adopted to reduce emissions into the air, including portable fuel containers, out-board marine tanks, and indoor air cleaners.

CPES staff travels throughout California conducting inspections and collecting consumer product samples for laboratory analysis, as well as purchasing samples online and through mail order outlets. CPES staff logs all samples into a dedicated sample tracking database, then transfers the acquired products under legal chain-of-custody to ARB's Monitoring and Laboratory Division (MLD) for testing of VOC content or the presence of toxic compounds prohibited under California regulations. MLD has developed specific testing methods to determine product compliance with California regulations.

After receipt of laboratory analysis or performance testing, CPES staff determines if there have been violations of the Consumer Products Regulations. If a violation is determined, staff either works with the manufacturers or retailers to reach a mutual settlement agreement, or refers the case to the OLA. In 2010, CPES staff settled 72 consumer products cases and 2 portable fuel container cases. Penalties collected were \$2,948,005 for consumer products and \$93,000 for portable fuel container cases.

Highlights

Portable Outboard Marine Tanks Regulation

Starting in 2010, new regulations limiting the permeation and diurnal emissions from the tanks, caps, hoses, hose fittings, and primer bulb assemblies used to store and supply fuel to outboard marine engines became effective. Similar requirements for marine primer bulbs and fuel tanks, took effect on January 1, 2011. CPES staff work closely with the MLD to evaluate new products in order to implement the regulations, and maintains frequent contact with industry stakeholders in support of their efforts to

achieve compliance.

California Certified Air Cleaning Devices

New requirements adopted to limit the ozone emitted from indoor air cleaning devices became effective in 2010. All manufacturers who sell to California residents or businesses were required to notify their distributors, retailers, and sellers about this regulation, to provide a copy of the regulation to them and to provide documentation of the notification to ARB. Enforcement action will be taken initially against manufacturers that ARB has not received documentation or notification from, as well as, against ozone generator companies that are not complying with the regulation.

Hair Care Products

CPES staff observed many hair care products claiming to be both a styling product, as well as a finishing product. These products can only fall under the hairspray category (55 percent VOC limit) if they meet the criteria for finishing products otherwise they must comply with the hair styling product category (6 percent VOC limit). Staff will be looking closely at these two categories and have advised manufacturers to review the labels of their products.

Personal Fragrance

In 2010, CPES staff settled several cases involving body sprays subject to either the antiperspirant deodorants or personal fragrance products categories. Some deodorant body spray products were labeled an antiperspirant deodorant, thus making the products in violation with the VOC limits. Additional body spray manufacturers imitated these labels and also produced products that were out of compliance. In addition, personal fragrance body spray products were discovered that failed to meet the limits of the category. Often these products were manufactured overseas and the importers did not verify the VOC content of the products prior to selling them in California.

"Special Purpose" Products Making General Purpose Claims

2010 saw an increase in the number of products CPES encountered that were ostensibly labeled for an unregulated special purpose, but were labeled with additional claims that put the products into a regulated general purpose category. Several degreaser and lube-type products that were labeled for firearm or power tool lubrication and degreasing also included claims that made the products subject to general purpose cleaners, multipurpose lubricants, general purpose degreasers, and even carpet cleaners category limits. Enforcement actions were taken where warranted.

Multiple Air Freshener Cases

Air freshener cases are a significant amount of the CPES case load due to introductions of newer methods to deliver fragrances into the air. Reed diffusers, ceramic diffusers,

fragrance lamps, gel beads, and fragrance fans are just some of the creative methods that are being used. Air fresheners are imported as well as domestically manufactured and are sold everywhere; from low-end retail establishments to high-end boutiques.

Stationary Source Enforcement

The Stationary Source Enforcement Section (SSES) is responsible for overseeing several enforcement programs and activities established to ensure compliance with air pollution rules and regulations. The programs and activities that the section is responsible for are presented below. Please refer to Appendix E for additional statistics of these programs and activities.

Highlights

Complaint Hotline and the Online California EPA Environmental Complaint System

The Complaint Hotline - (800) 952-5588 – and the Online Cal/EPA Environmental Complaint system, provides a means for citizens to alert ARB of persistent odors, emissions from industry, vapor recovery equipment problems at gas stations, and smoking vehicles, as well as to get information regarding air pollution. Every call and online complaint received is recorded, assessed, and referred to the appropriate air district or agency, or is investigated by ARB. In 2010, staff responded to 933 complaints/questions from the Complaint Hotline, and 312 complaints were received and handled from the Online Cal/EPA Environmental Complaint System. – See Appendix E, Table E-1.

Variances

The SSES reviews all District Hearing Board variance orders for compliance with H&SC requirements and sends a letter requiring corrective action to the appropriate air district and District Hearing Board when the board variance order does not comply with the mandated requirements. SSES maintains a database to monitor all activity related to Board orders. In addition, ARB staff support district staff and Hearing Boards by providing training and workshops to educate in the hearing board process. In 2010, staff addressed 78 Hearing Board issues and reviewed 496 variances and abatement orders - See Appendix E, Table E-2.

Air Facility System

The Air Facility System (AFS) is the U.S. EPA's permit and compliance tracking database for Title V sources, and other significant stationary sources. SSES staff oversees the collection, input, and quality assurance of the compliance and permitting data entered into U.S. EPA's AFS database for 27 of the 35 air districts. In addition, staff assists the U.S. EPA in training district personnel to effectively use the AFS database. In 2010, staff entered 75 Full Compliance Evaluation reports and 60 High Priority Violation reports. See Appendix E, Tables E-3 and E-4.

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Continuous Emission Monitoring Program

Any stationary source that an air district requires to install and operate a continuous emission monitor (CEM) is also required by H&SC section 42706 to report the violations of emission limits recorded by the CEM to the air district, and the air district, in turn, must report them to ARB. SSES collects, stores, analyzes and reports this information. In 2010, staff received and processed 132 reports. See Appendix E, Table E-5.

Rule Review

ARB works cooperatively with local air districts to ensure that they adopt regulations that achieve the maximum air pollution reduction through the use of the most efficient and cost effective control technology. The Rule Review Program staff reviews the rules for clarity and enforceability, and ensures that the rule contains definitions of all key terms and phrases, the appropriate test methods, control efficiencies, recordkeeping, and averaging periods for verifying compliance of any limits and/or exemptions contained in the rule.

Thorough review of the rules from the draft to the adoption stages has proven vital in reducing the need for amending subsequent adopted rules, and nearly eliminated the need for ARB to identify rule deficiencies at public hearings. In 2010, ED staff reviewed 174 rules - See Appendix E, Table E-6.

Complaint Investigation

The SSES conducts special investigations of stationary source complaints referred to ARB by state citizens, air districts, ARB's OLA and Executive Office, and by other agencies. In addition, staff conducts compliance inspections to assist other ED sections with case development and special projects. In 2010, staff completed six special projects, received 132 CEM reports and sent 222 reports to U.S. EPA - See Appendix E, Table E-7.

Strategic Environmental Investigations and Enforcement

The Strategic Environmental Investigations and Enforcement Section (SEIES) conducts special and joint investigations of "cross media" environmental cases. Cross media cases involve multiple areas of environmental regulation governing air, water, soil, toxic waste, regular waste, or pesticides. SEIES investigations may also include coordination with enforcement jurisdictions that fall outside the environmental field. The Section works under a MOU with Cal/EPA to provide the investigative services necessary to fulfill Cal/EPA's statutory enforcement responsibilities.

SEIES is also tasked with providing enforcement assistance to local air districts and other environmental agencies. This assistance includes facility inspections, complex investigations, surveillance technology, and case preparation. SEIES staff also actively participates in a number of environmental task forces throughout the state.

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In 1998, the California Legislature identified diesel exhaust as a TAC. In October 2000, the ARB adopted a DRRP. Subsequently, a number of new regulations have been adopted. Starting in 2006, SEIES staff has shared responsibility with MSEB to implement certain new rules at rail yards, ports, and marinas. These new regulations are collectively known as the Goods Movement Regulations.

Another recently adopted rule is the ATCM to Reduce Formaldehyde Emissions from Composite Wood Products. SEIES staff has been actively implementing this regulation during 2010.

In 2010, SEIES successfully concluded cases valued at \$120,950 in penalties and mitigation costs. This does not include significant penalties collected by local air districts or US EPA. Many cases generated during 2010 remain in development. See Appendix E, Table E-8.

Highlights

Goods Movement Inspections

Enforcement of Goods Movement Regulations is a major, growing responsibility for SEIES. The purpose of these regulations is to reduce public exposure to health risks associated with diesel PM. Inspection efforts include CHE, commercial harbor craft, marina fuel docks, rail yards, OGV, and TRUs.

The purpose of the CHE regulation is to reduce pollutants from diesel powered mobile cargo handling equipment that operates at ports and intermodal rail yards. Examples of this type of equipment include yard trucks, rubber tire gantries, side picks, and forklifts.

The commercial harbor craft inspection program began in 2009. Harbor craft include tugboats, crew boats, and excursion (tour) vessels. These vessels are evaluated for compliance with emission and recordkeeping standards. The marina fuel dock inspection program began in 2007, after the regulations governing ARB on-road diesel fuel were expanded to cover harbor craft. SEIES staff collects samples of marine diesel fuel and review records at fueling docks located on both coastal and inland waterways.

Ocean-going vessels are inspected at the Ports of Los Angeles, Long Beach, San Pedro, Oakland, Richmond, Stockton, Sacramento, Port Hueneme, Benicia, and San Diego. Staff board vessels and obtain samples of low sulfur marine distillate fuels for laboratory analysis. Staff also reviews bunkering receipts and fuel switching logs to verify compliance with requirements that apply within 24 nautical miles of the California baseline. Compliance with certain incinerator requirements is also verified.

Rail yards are inspected twice each year. The first is in the spring and the second is in the fall. This involves 32 covered and designated rail yards identified in the ARB/Railroad Statewide Agreement. To better assure statewide compliance,

enforcement activity includes additional inspections outside the covered and designated rail yards. SEIES staff evaluates locomotives for compliance with idling and visible emission standards. Staff also sample locomotive fuel at some rail yards to enforce the sulfur fuel standard. The overall compliance rate exceeds 99 percent.

TRUs are refrigeration systems used for commercial transportation that are powered by a small integral diesel engine. Highway vehicles with TRUs are handled by MSEB personnel. SEIES is responsible for inspecting units at ports and rail yards.

Composite Wood Air Toxic Control Measure Inspections

The ATCM to reduce formaldehyde emissions from composite wood products was effective in 2009. The regulation targets composite wood panels that are typically manufactured using urea formaldehyde resins and glues, specifically hardwood plywood, medium density fiberboard, and particle board. Any finished goods produced with regulated composite wood panels also fall under the scope of the ATCM. SEIES staff performs facility inspections, prepare samples for laboratory testing, conduct presentations for industry groups, and respond to inquiries from the regulated community and the public. In 2011, as part of a reorganization of ED, this inspection program is moving to the Stationary Source Enforcement Program.

Notable Upcoming Strategic Environmental Investigations and Enforcement Section Activities in 2011

In 2011, SEIES will continue to ramp up new inspection and enforcement programs. This includes the OGV main and auxiliary engine, and auxiliary boiler low-sulfur fuel regulation, shore power requirements, CHE, harbor craft, TRU, drayage truck, and composite wood products programs.

GREENHOUSE GAS ENFORCEMENT SECTION

The GHGES was formed in December 2007, as a result of the California Global Warming Solutions Act of 2006 (AB 32), which mandates that ARB monitor compliance with and enforce all adopted regulations.

The primary mission of GHGES is to ensure maximum emission reductions through effective enforcement of AB 32 regulations utilizing a four-pronged approach: regulation development, implementation support, enforcement, and development of a case tracking database. These four core functions are summarized below.

1) Regulation Development

- Collaborate with regulation writers from other ARB Divisions to strengthen enforceability of new GHG-related regulations.

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- Conduct in-depth regulation analysis resulting in written input that improves and harmonizes regulatory language.
- Provide estimates on resources needed to enforce new regulations.

2) Regulation Implementation Support

- Ensure continuity between regulatory development, implementation and enforcement by participating in ARB workshops and training sessions.
- Advise on and produce documents related to enforcement and compliance processes. These processes include public advisories and workshops, guidance documents, compliance monitoring plans, inspections, audits, and complaint procedures.

3) Regulation Enforcement

- Develop enforcement strategies and options with ARB program and legal staff to shape effective enforcement plans, inspection protocols, and penalty assessment.

4) Case Tracking Database Development

- Develop a division-wide modular case tracking database that will interface with other ARB divisions and the public. This database will aid GHGES in measuring enforcement effectiveness.

Highlights

Regulatory Support

In 2010, GHGES collaborated on the following regulations by engaging in one or more of the four core functions:

- *Mandatory GHG Emissions Reporting*
- *Cap and Trade*
- *Renewable Electricity Standard*
- *Landfill Methane Control*
- *Low Carbon Fuel Standard*
- *Sulfur Hexafluoride Reduction in Non-Electricity Applications*

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- *Sulfur Hexafluoride in Semiconductor Applications*
- *Sulfur Hexafluoride in the Electricity Sector*
- *Reduction of HydrofluoroCarbon Emissions from Do-it-Yourself Motor Vehicle Air Conditioning Servicing*
- *Mandatory Commercial Recycling*
- *Energy Efficiency and Co-Benefits Audits*
- *High Global Warming Potential GHG Refrigerant Management*
- *Under-Inflated Tires*

Outreach, Training and Regulatory Support Activities

- *Training* – GHGES participated in various training programs including ARB's board administration and regulation coordination unit regulatory training and air district hearing board training. At the board administration training, attended by ARB regulation writers, GHGES presented language and other considerations necessary for development of enforceable regulations. At the air district hearing board training, GHGES provided instruction on the Health and Safety Code and administrative hearing requirements for granting variances, thus ensuring consistent statewide implementation.
- *Earthquake disaster outreach* - After a magnitude 7.2 earthquake in Imperial County, GHGES staff met with building owners and facility operators to explain how to perform asbestos cleanup procedures that comply with the National Emissions Standard for Hazardous Air Pollutants (NESHAP).
- *Western Climate Initiative* – Throughout 2010, GHGES staff continued to participate in Western Climate Initiative Committees pertaining to emissions reporting, market oversight and offsets. Western Climate Initiative is a collaboration of seven U.S. governors and four Canadian Premiers and was created to identify, evaluate, and implement collective and cooperative ways to reduce GHGs in the region, focusing on a market-based cap-and-trade system.
- *Inter-divisional staff exchange* – In support of the GHGES mission to support regulation development, a GHGES staff member, selected due to his extensive knowledge about the California Environmental Quality Act, worked for more than six months with the Office of Climate Change in development of the Functional Equivalent Document for California's cap-and-trade program. The document serves as the environmental document for the Initial Statement of Reasons for Proposed

Rulemaking required by the California Administrative Procedure Act and addresses the potential environmental impacts of California's cap-and-trade regulation and program implementation.

TRAINING AND COMPLIANCE ASSISTANCE PROGRAM

Traditionally, ARB has been charged with overseeing the efforts of local air pollution control and air quality management districts in controlling air pollution caused by stationary sources. The goals of ARB's outreach and compliance assistance efforts are to ensure that members of the public and the regulated industries are aware of regulations, understand how to comply, and have sufficient information to meet its requirements. The undertaking of the Compliance Training Section (CTS) has been to train local air pollution control district staff, state and federal personnel and the regulated industry. The assignment of the Compliance Assistance Section (CAS) has been to provide a variety of outreach publications as well as provide Visible Emissions Evaluation (VEE) certification and training services to these same clients.

Typical outreach activities include: maintaining web pages, outreach via list-serves on regulatory developments, publication and distribution of brochures and fact sheets that include overviews of regulatory requirements and compliance dates, articles published in industry journals, presentations to public groups and industry associations, and staff response to inquiries from the public and the regulated community.

CTS courses provide current, practical, and technologically up-to-date information for both new and experienced environmental professionals working throughout California. As ARB is on the leading edge of air quality controls, the rest of the world looks to ARB for leadership regarding environmental issues. To help fulfill this role, similar training is offered throughout the country via the EPA funded National Training Program. Entry-level courses cover history of air pollution, laws and regulations, and enforcement aspects of air pollution. The advanced level courses cover the analysis of industrial processes, theory and application of emission controls and emissions evaluation procedures pertaining to stationary, diesel and GHGs regulations.

The CAS develops publications to provide complementary resources for outreach and education of air compliance professionals. The section develops and distributes a variety of practical, rule-specific publications and web-based information geared to assist regulated businesses in complying with these regulations. This information is aimed at a diverse audience, from process operators to air quality specialists, from small businesses to the interested public. Publications include outreach flyers and pamphlets to increase awareness of new air quality regulations, handbooks that assist regulated businesses in complying with these regulations and reference manuals that provide the comprehensive technical, regulatory, and inspection information to government and industry environmental professionals. The CAS also provides VEE training and certification services throughout the state.

Compliance Assistance

In general, businesses and other regulated entities make an effort to comply with air quality regulations but sometimes need assistance in their efforts. Enforcement agencies also need general and in-depth information about a variety of sources, relevant regulations, and inspections. The CAS serves both the regulated community and air enforcement agencies by providing appropriate technical publications, online materials, and self-inspection guides, and by conducting VEE training and certification.

The publications arm of the section is called the Compliance Assistance Program (CAP). To create these publications, CAP staff works with ARB staff throughout the agency, government agencies, private industries, and the local air pollution control districts. CAP staff collaborates closely with CTS staff to develop these materials. Technical manuals are the primary references used in a number of training courses and provide in-depth, source-specific information for inspectors and facility environmental specialists. Handbooks and pamphlets explain source-specific regulatory and compliance programs in everyday terms. They are brief, colorful, and easy to read, with helpful inspection checklists, flowcharts, diagrams, and illustrations.

The two components of the VEE program are the Fundamentals of Enforcement (FOE) training course and the VEE Certification program. FOE is a basic overview of air pollution and enforcement of air pollution regulations emphasizing evaluation of visible emissions. The classroom portion of the FOE course is a prerequisite to becoming VEE-certified in accordance with U.S. EPA Reference Method 9.

VEE certification/recertification is conducted in the field for both new and returning students. Certification is valid for six months and is required for most district enforcement staff and many industry staff. VEE program staff schedule recertification sessions on a six-month rotation throughout the state during the year as either stand-alone sessions or in conjunction with FOE.

Highlights

CAP Publications

- The CAP library currently has 40 handbooks and pamphlets in print and/or on-line (including some in Spanish and Korean) and 22 technical manuals on CD or on-line.
- In 2010, the program distributed just over 4,990 copies of publications, an approximately 40 percent decrease from the previous year. This decrease has been a trend for several years as many more people view publications on-line. The distribution of publications was as follows: approximately 477 Technical Manuals (including interactive and archival CDs), 4,151 handbooks, and 363 pamphlets. Most of the older manuals are still used for the National Training Program courses on a case-by-case basis and were factored into the year-end statistics for the CAP. The top five CDs and handbooks distributed and the top five website inquiries are shown in Appendix F, Tables F-4 and F-5. Rankings for hard copy distribution are

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based on both California and national programs.

- Webpage views for CAP publications were up just slightly from 2009. The 217,204 views were distributed as follows: 59,978 on Technical Manuals, 148,585 on Handbooks, and 8,641 on Pamphlets. (The number of webpage views is not a precise number, because a certain percentage of web views are from “robot” search engines.) CAP publications can be found on the webpage: <http://www.arb.ca.gov/cap/cap.htm>.

New and Revised Publications Activities

In 2010, CAP staff:

- Published a new *Stationary Source Controls Devices* technical manual. The manual describes 13 categories of emission control technologies for stationary sources along with a description of emissions and their health effects. It combines and updates all or part of five older style hardcopy manuals. There is a discussion of federal, state, and local regulatory requirements and a detailed description of suggested inspection procedures applicable to stationary sources in California. The manual is available on CD or on the ARB website in an interactive web-page format. The manual includes a glossary of commonly used air pollution control device and control technology definitions, acronyms, and a gallery of movies and animations.
- Published and extensively updated the *Automotive Refinishing* handbook. This publication was updated to reflect changes in coating technology and ARB’s Automotive Refinishing Suggested Control Measure. The handbook describes how automotive refinishing shops contribute to air pollution; how to calculate VOCs generated from automotive refinishing; how to reduce VOCs and save money; inspection points for automotive refinishing shops; and informational resources available to shops.
- Updated the *In-Station Diagnostics* job aid booklet. This job aid was developed to aid gas station owners and operators on how to operate the in-station diagnostics equipment, understand the different in-station diagnostics equipment alarms, generate reports, and conduct self-inspection of in-station diagnostics equipment. The booklet is provided to attendees at Enhanced Vapor Recovery Classes and upon request from gas station owners and operators.
- Updated the *Enhanced Vapor Recovery Self-Inspection Calendar* (for 2011). This calendar was updated to reflect 2011 dates and to show new equipment certified by Executive Order. The calendar provides check-off lists so that owners and operators of gas stations can inspect their vapor recovery equipment daily. The calendar also contains an excellent vapor recovery glossary and air district contact information.
- Updated the *Wood Burning* handbook with new information about district rules. During 2010, staff received requests for over 2,000 handbooks. Since the handbook need to be reprinted to fill these orders, staff took the opportunity to update the handbook with some of the new wood burning air district rules and to update air

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district telephone numbers.

- Created a pamphlet for the composite wood enforcement program called *What Retailers Need to Know*. CAS staff has been working with Enforcement and Stationary Source Divisions to develop outreach publications for the Composite Wood ATCM. Staff completed a brochure to assist retailers of hardwood plywood, particleboard, medium density fiberboard, and finished goods with their compliance efforts.
- Developed several Flash animations to be used in online publications. These animations include: illustrations of health effects (respiration, the body's response to air pollution), principles of operation (vapor recovery, adsorber, venturi scrubber, RSCR), industrial processes (steam power plant operation), and formation of air pollutants (PM, ozone, and TOG).
- Developed an online friendly template for ARB interactive technical manuals that has navigation links for the learner to find information quickly. This template also includes much more interactivity with an interactive glossary, labeled graphics and improved flash animation.

On-Line Training

CAP staff began and will continue their role as contract manager for a multi-year contract with the Foundation for Community Colleges to develop an extensive introductory online "Air Quality Training Program". CAP staff worked with a contractor and CTS staff to begin converting a 4-day classroom course into an 11 module online course.

Fundamentals of Enforcement Program

CAS staff taught five FOE Courses (Course #100) to 135 government agency and private sector personnel.

VEE Certification Program

Thirty four VEE day and 5 night certification/recertification sessions (Courses #100.1 and #100.2) were completed in 2010. Out of 1,954 participants, 1,250 successfully certified or recertified in 2010, a pass rate of 64 percent. (Note: The 1,954 participant statistic is included in totals for the 100-Series in CTS)

Compliance Training

In 2010, CTS increased training offerings and took on additional duties within the ED. CTS increased the compliance training activities to a much higher level in order to meet increasing requests from the CAPCOA districts, state and federal agencies and the regulated communities. CTS also took on various enforcement outreach activities and expanded and revised the compliance training curriculum. CTS provide a valuable

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service to ED, other divisions within the ARB, Cal/EPA, and U.S. EPA. The continuous growth of the Compliance Training Program over the years reflects its value. ARB has received countless favorable comments for the excellent work performed by CTS staff and CTS's accomplishments continue to be utilized to meet Cal/EPA's program commitments.

CTS continues to emphasize program enhancement through the development of new courses and continual updating of existing courses. The expectation provides high quality training while responding to the changing needs of California agencies and industries by ensuring that its instructors are continuously updated on the emerging issues in the air quality field, and kept up to date by attending training themselves. Over the years, ARB has trained thousands of people from industry, academia, government agencies, other organizations, and members of the public on how to comply with ARB requirements. ARB training is, and continues to be, a model for other states, the nation and other countries.

The courses scheduled for the upcoming 2011 year reflect the specific needs of most local agencies in California. In addition, many special training programs are requested by other agencies and industries annually, and are provided by CTS as resources allow. In this manner, CTS has gained the support and respect of many California agencies as well as many leaders of the regulated community, by providing compliance training and regulatory support to their staff.

January 1, 2010 to December 31, 2010	Total Students Taught in CA	6,783
	Total Courses Taught in CA	250
	Total Students Taught in the National Program (outside CA)	1,435
	Total Courses Taught in the National Program (outside CA)	61
	Webcast Capable Courses	26
	Webcast Students	611
	Average Webcast Students per Course	22
	Total Courses Total Students	337 8829

Compliance Training Highlights

The Uniform Air Quality Training Program is a series of 14 courses providing an introduction to air pollution control and enforcement. The program is intended for new, entry-level stationary source inspectors, regulatory agency staff, and environmental specialists in business and government. Federal EPA staff, local air district staff, representatives from regulated industry, employees of municipalities and counties, navy, marine corps, air force, and other military personnel, L.A. County Dept. of Water

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and Power, and utility districts made up the bulk of the attendees of these trainings. CTS is currently developing an on-line module of this Uniform Air Quality Training Program.

A total of 5 sessions were offered to 95 students comprising of air district inspectors and permit writers, as well as industry participants, along with military personnel from the Air Force and Navy and U.S. EPA.

200 Series

The 200 series courses are designed for the semi-experienced air quality professional. They contain a higher level of technical information offering first-hand application of topics addressed in the classroom study portion of the class by including field visits to regulated commercial and industrial sites. These field trips afford the students the opportunity to interact with the regulated community and ask questions that are more detailed or extremely technical in nature. A representative sample of the 200 series courses is listed below.

Course 267: In-Station Diagnostics:

This course presented specific information regarding the use of in-station diagnostics as an enforcement tool at Gasoline Dispensing Facilities. These systems are required to be installed under the provisions of enhanced vapor recovery which was adopted by the Board in 2000. In-station diagnostics equipment is a continuous monitoring system for gasoline dispensing facilities which monitors the vapor collection system, vapor containment and itself. The in-station diagnostics system notifies the station of possible problems with a series of warning and failure alarms. If the problem is serious enough, the system has the ability to shut down the station, preventing the sale of gasoline. A total of 8 outreach sessions were offered to 109 station operators and district inspectors.

Course 297 – Permitting Under New Source Review and Course 298 – Overview of the Title V Permitting Program

These courses present and discuss New Source Review (NSR) and Title V Permitting Program. NSR was promulgated with the 1977, Clean Air Act Amendments, and addresses the air quality problems in attainment and non-attainment areas of the nation due to air pollution from industrial and commercial processes, while still allowing economic growth. NSR is the overriding consideration for almost any air quality permitting action for stationary sources in the state. The Title V Permitting Program course presents and discusses the applicability, requirements, and how implementation of the Title V program is carried out in California.

A total of 11 sessions were offered to 264 students comprising of air district inspectors and permit writers, as well as owner/operators from South Coast, San Diego, Bay Area, Santa Barbara, North Coast, Sacramento, Kern, Imperial, Antelope Valley, Mojave, L.A. County and City, Port of Oakland, L.A. Dept. of Water and Power, along with military

personnel from the Air Force and Navy and U.S. EPA.

300/400 Series

The 300 and 400 series courses are comprised of workshops, seminars, and symposiums that address current, and sometimes controversial, environmental issues such as cross media training, legal issues, case development and variance/hearing board requirements. This series of training was designed for experienced environmental professionals.

500 Series

The 500 Series courses are focused primarily on Mobile Source Emissions. Over the past couple of years, there have been numerous mobile source regulations introduced, therefore, demand for training and knowledge in this arena, specifically diesel regulation outreach, is at an all-time high. The demand for this training is apparent from the numerous classes required throughout 2010. Several new and revamped mobile source training and outreach courses are in development stages for 2011 to keep up with this growing demand. A representative sample of the 500 series courses is listed below.

Course 502: Portable Equipment Registration Program

This course discusses the Portable Equipment Registration Program (PERP) regulations in depth and is designed for both regulators and the public. Focus is on eligibility requirements, operating conditions, and record keeping for both engines and equipment units. The state ATCM for portable engines, along with enforcement for both PERP and the ATCM is also covered.

A total of 12 outreach sessions were offered to 412 participants that were affected by the aforementioned rule.

Course 511: Diesel Exhaust After-treatment Device Training

Course 511 provides students information on oxidation catalyst, flow-through filter, and wall-flow filter technology used to reduce engine-out PM emissions as well as lean NOx catalyst, NOx absorber and selective catalytic reduction systems to minimize NOx emissions from HDD engines. Training includes modules on the retrofitting process, engine and after-treatment device maintenance and compliance strategies.

A total of 23 outreach sessions were offered to 591 participants affected by the rules governing the Diesel Risk Reduction Plan. This course was delivered to, fleet operators, managers, dispatchers, service personnel, consultants and ARB/air district staff throughout California and serves to achieve compliance from fleets affected by regulations such as those applying to PAU fleets, UB and transit vehicles, SWCV fleets, off-road equipment, drayage trucks, and on-road truck and bus fleets.

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Course 512: Diesel Vehicle Regulation Overview Outreach

Outreach Course 512 consists of 8 modules covering HDD engine exhaust emissions health and environmental effects and ARB Enforcement programs such as HDVIP, PSIP, commercial vehicle and school bus idling, low NOx software re-flash, motor vehicle fuels enforcement; VDECS, the Statewide Truck and Bus rule, GHG Reduction, Drayage, TRU, and Off-road rules. Modules include who and what the rules apply to, compliance options, compliance dates, and contact information as well as question and answer periods.

A total of 21 outreach sessions were offered to fleet owners affected by these regulations. Participants totaled 514, and fleet owners/operators, managers, dispatchers, service personnel and consultants from up and down the state along with ARB staff attended.

National Program

The National Air Compliance Training Delivery Project, with the assistance of ARB, delivered 61 training classes nationwide (outside of California) to 1435 students during 2010. Principal funding support for the program comes from the U.S. EPA grants that are administered by the National Council on Aging and are coordinated, managed, and directed by the CTS.

The National Air Compliance Training Delivery Project consists of air pollution control training classes contained in three series. The 100 Series is a basic introductory group of 15 courses presented over a 4-day period. The 200 Series consists of 27 advanced classes. A set of three or four classes is given within a week and each class lasts for one day with the exception of "Petroleum Refining," which is a 2-day course. The 300 Series contains classes of special interest to many air pollution professionals. This series includes Permit Practices and Procedures I and II, Principles of Environmental Compliance and Enforcement, and Environmental Case Development and Resolution. Depending on the subject, these classes are two to three days in length and are presented in a lecture/workshop format.

Regional consortia sponsored most classes in ARB 17. These included the Northeast States for Coordinated Air Use Management NESCAUM, the Mid-Atlantic Regional Air Management Association, the Southeastern Local Air Pollution Control Agencies and the Southeastern States Air Resources Managers, the Central States Air Resource Agencies, and the Western States Air Resources Council. State agencies and/or local agencies also sponsored several classes.

ENFORCEMENT DIVISION ACTION ITEMS FOR 2011

General Enforcement:

- Continue working with other federal, state and local agencies and EJ community

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groups to improve air quality in the areas of California most affected by air pollution in support of ARB's Environmental Justice Action Plan.

- Ensure a vigorous response to complaints that allege a breach of environmental law and determine if a violation has occurred.
- Comply with SB 1402 reporting and transparency requirements. Develop and implement an ARB Enforcement Penalty Policy and continue working with stakeholders.
- Continue to ensure that all enforcement operations are conducted in a responsible manner, resulting in a level playing field for the regulated industries.
- Continue exchanging information with U.S. EPA regarding shared enforcement actions and violators. This helps both agencies use their resources to the fullest and achieve the best success in enforcement and compliance.

Mobile Source Enforcement:

- Work toward obtaining Clean Air Act 208 section authority through the USEPA to enhance enforcement authority and access to manufacturer data and records.
- Work with Mobile Source Operations Division (MSOD) and MLD to ensure new certified production products meet CA emissions requirements through confirmatory testing and initiating enforcement actions as needed.

Heavy-Duty Diesel Vehicle Enforcement:

- For 2011, drayage truck rule enforcement will be a top priority followed by TRU enforcement. Specifically, the compliance rate will be increased by 10 percent at the rail yards and increase the pressure on the non-compliant motor carriers by developing cases against major carriers.
- Maintain an enforcement presence for the off-road rule registration, idling and notification requirements
- Develop cases involving VDECS violations as they are referred to us.
- Implement enforcement of the statewide truck and bus and SmartWay truck and trailer greenhouse gas programs.
- Utilize the California Vehicle Code authority to reduce the incidence of delinquent violations by removing vehicles from service via the CHP and placing registration holds via CADMV and increasing the use of small claims court to assist in the collection process.

Fuels Enforcement:

- Increase the number of import inspections by 50 percent and increase the number of cargo tank test audits by 50 percent.

Consumer Products Enforcement:

- Focus on improving efficiency in selecting non-compliant consumer products, portable fuel containers, and indoor air cleaners for testing.

Stationary Source Enforcement:

- Increase investigations and enforcement of the Perchloroethylene ATCM.
- Step up the oversight of the air districts variance programs.

Strategic Environmental Investigation and Enforcement:

- Expand enforcement programs governing ocean-going vessels, harbor craft, cargo handling equipment, ship and railcar based TRUs, and railroads.

Greenhouse Gas Enforcement:

- Fine tune ARB's enforcement priorities for AB 32 GHG-related regulations so that enforcement activities achieve the greatest emission reductions possible. Work with local air districts on processes for shared responsibility of certain AB 32 regulations.
- Continue to expand staff expertise in new and changing aspects of enforcement (e.g., computer forensics and evidence gathering) in order to best respond to emerging enforcement challenges presented by AB 32 regulations.

Compliance Assistance:

- Complete a comprehensive update of the *Stationary Reciprocating Engines* technical manual to include new control technologies and ATCMs.
- Complete a comprehensive update of the *Automotive Refinishing* technical manual to include new NESHAP rules.
- Complete a comprehensive update of the *Industrial Boilers* technical manual with additional sections on biomass boilers.
- Conduct seven scheduled FOE courses and at least 30 day and 6 night VEE certification sessions.

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- Develop publications and resources for an on-road diesel communication and outreach campaign focusing on small business trucking operations. This initiative will take place as a strategic partnership with ED Training, Mobile Source Control Division (MSCD), MSOD, Stationary Source Division (SSD), the Ombudsman, and Public Information Office (PIO).

Compliance Training:

New Course Development:

- *How to Comply with New and Existing Diesel Regulations* for industry. Bridge the gap between implementation compliance and enforcement (maintenance) compliance. Goal: Compliance before enforcement for Industry.
- *Cal Trans Maintenance Vehicle and Employee Training* for Cal Tran's field personnel and vehicle and equipment maintenance staff. The course will include diesel and PERP/Fugitive Dust regulations.
- *Diesel Exhaust After-treatment (Diesel Particulate Filter) Maintenance* for CAPCOA and industry. This will be conducted in partnership with CCDET and lead to a higher compliance rate. Lack of diesel particulate filter maintenance is one of the biggest contributors to current ED enforcement cases.
- *GHG Refrigerant Management Program* for CAPCOA and Industry. Conducted in partnership with the Research Division.

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Appendix A

2010 Enforcement Program – Enforcement Action Summary

Table A-1 - Closed Enforcement Actions

Program¹	Cases/Citations Closed	Penalties²
Mobile Sources ³	3,517	\$9,517,967
Fuels	7	\$90,400
Consumer Products	72	\$2,948,005
Portable Fuel Containers	2	\$93,000
Cargo Tanks ⁴	32	\$16,000
Stationary Source/Other	19	\$112,750
Railroad MOU ⁴	52	\$9,200
TOTAL CASES	3,701	\$12,787,322

Many of these enforcement actions are joint ED/MSCD/MSOD/SSD/OLA investigations and settlements. Enforcement actions include citations and NOV's as well as investigative cases closed through mutual settlement or litigation.

¹ In negotiation settlements, the ED is often represented by ARB OLA.

² Includes supplemental environmental projects, early compliance costs, etc.

³ Includes cases, citations and NOV's - see table C-17.

⁴ Citation and NOV cases.

Table A-2 - 2010 Case Dispositions

Category	# Cases	Penalties
Civil Cases Pending ¹	16	N/A
Criminal Cases Pending	0	0
Civil Cases Closed ²	23	\$2,887,409
Criminal Cases Closed	1	\$1,200,000
Administrative Cases Closed	3,677	\$8,699,823
Total Cases Closed	3,701	\$12,787,232

¹ Civil cases pending: pending litigation or settlement with the attorney general or various district and city attorneys statewide.

² Civil cases closed: See Table A-3 on next page.

Key:

Civil or Criminal Cases are cases that are referred to the Attorney General's Office, local District Attorney or City Attorney's Office, or the U.S. Attorney's Office and are filed in Superior Court or U.S. District Court.

Administrative Cases are cases settled in-house via informal staff/violator settlements, the Mutual Settlement Program, or through an administrative hearing in front of an ARB Administrative Law Judge (this applies to HDD Vehicle Inspection Program cases only), or, through an administrative hearing in a State Office of Administrative Hearings Administrative Law Judge.

Investigative Costs are monies received for ARB investigative costs for cases that are referred to a DA/CA.

Supplemental Environmental Projects (SEPs) are programs under which case settlement monies are used for environmental research, education or technology projects (e.g. research on the effects of new gasoline additives, lawn mower exchange programs to promote the use of electric lawn mowers, etc.)

Settlement Agreements are formal signed agreements between the ARB and the violator for major cases settled under the Mutual Settlement Program.

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Table A-3 - 2010 Civil Cases Closed

Case Name	Prosecuting Agency	Date Closed	Settlement Amount
Pro's Choice ¹	California District Attorneys Association Circuit Prosecutor and Attorney General	March 2010	\$475,000
American Consumer Products ²	Attorney General	May 2010	\$75,000
Exotica Fresheners	ARB--Small Claims Court	Dec 2010	\$2,499
New Star Technology	District Attorney - San Bernardino	November 2010	\$235,000
Cummins Inc.	U.S. Department of Justice/USEPA/ARB	February 2010	\$2,100,000
TOTAL = 23 cases			\$2,887,499

¹Pro's Choice was a compilation of 15 individual cases.

²American Consumer Products was a compilation of 5 individual cases.

Table A-4 - 2010 Criminal Case Closed

Case Name	Prosecuting Agency	Date Closed	Settlement Amount
Goldenvale	San Bernardino District Attorney	April 2010	\$1,200,000 ¹

¹Paid in restitution to the victims and overseen by the San Bernardino District Attorney's office.

Table A-5 - 2009 Supplemental Environmental Projects

SEP	Number of Cases	Amount
CCDET/Peralta Community College District ¹	141	\$336,672

¹ CCDET was created to train diesel fleet mechanics on the proper conduct of ARB's HDVIP SAE J1667 test protocol and HDVIP/PSIP program record keeping requirements. The Peralta Community College District administers the program and distributes the SEP monies in equal shares to participating CCDET community colleges.

Appendix B
SIGNIFICANT CASE SETTLEMENTS

In most enforcement actions, ARB is able to reach mutual settlement agreements with air quality violators. These settlements generally include a monetary penalty, a corrective action, and in some cases, funds for an SEP that provides additional emission reduction incentive programs and public education projects.

Apart from funds earmarked for SEPs, all penalties submitted to ARB are deposited into the APCF, the Vehicle Inspection and Repair Fund, or the Diesel Emissions Reduction Fund, which serve as funding sources to mitigate air pollution throughout California.

The following is a summary of the significant cases settled for \$10,000 or more in 2010, including mobile sources, consumer products, fuels, and stationary sources cases. See the complete list of cases settled during 2010 at <http://www.arb.ca.gov/enf/casesett/casesett2009.htm> .

Mobile Source Cases

Adonis Transport - In February 2010, Adonis Transport paid \$10,500 in penalties for violating air quality regulations. An investigation by the ARB showed that Adonis Transport failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards, and to properly affix emission control labels the engines of their fleet vehicles. The case highlight can be found [here](#).

Agco Corporation – In June 2010, AGCO Corporation paid \$77,000 to the California Air Pollution Fund for violation of H&SC sections 43151, and 43152. AGCO Corporation introduced and sold into commerce uncertified engines without an ARB executive order. The case highlight can be found [here](#).

Aqua Pool and Spa - In December 2010, Aqua Pool and Spa agreed to pay \$24,000 in penalties for failing to self-inspect their diesel trucks to assure the trucks met state smoke emission standards, and to properly affix emission control labels the engines of their fleet vehicles as they related to the PSIP and Emission Control Label Program (ECLP). The case highlight can be found [here](#).

Baxman Gravel Company, Inc. - In August 2010, Baxman Gravel Company, Inc. paid \$17,500 in penalties for violating air quality regulations. An investigation by the ARB showed that Baxman Gravel Company, Inc. failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Biagi Bros Trucking – In February, 2010, Biagi Bros. Trucking paid ARB \$14,400 in penalties for emissions violations during 2008 and 2009. An investigation by ARB showed Biagi Bros., based in Napa, California, failed to properly inspect their diesel-powered vehicles for excess emissions. The case highlight can be found [here](#).

Bragg Investment Companies – In February 2010, Bragg Investment Companies paid \$31,500 in penalties for emissions violations during 2008. An ARB investigation showed Bragg Investment Companies, based in Long Beach, California, failed to properly inspect their diesel-powered vehicles for excess emissions. The case highlight can be found [here](#).

Carpentaria Motor Transport, Inc. - In April 2010, Carpentaria Motor Transport, Inc. paid \$11,500 in penalties. An investigation by the ARB showed that Carpentaria Motor Transport, Inc. failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Clean Harbors Environmental Services - In April 2010, Clean Harbors Environmental Services paid \$55,500 in penalties for violating air quality regulations. An investigation by the ARB showed that Clean Harbors Environmental Services failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Cummins Inc. - In March 2010, Cummins paid penalties in the amount of \$2.1 million in total to ARB, the USEPA, and the Department of Justice for violations of the Clean Air Act. An investigation by the agencies showed that Cummins Inc. had shipped diesel engines without exhaust after-treatment devices resulting in engines identified as having the incorrect after-treatment device installed. Cummins agreed to recall the non-conforming engines and install the correct after-treatment device. \$420,000 of the penalty amount went to the Air Pollution Control Fund. The case highlight can be found [here](#).

Cummins Emission Solutions and Johnson Matthey Inc. – In August 2010, Cummins Emission Solutions and Johnson Matthey Inc. paid \$110,000 in penalties for violating Title 13, CCR sections 2706 (j) and (q) of the Verification Procedure and VC section 27156 by installing incorrect labels on Johnson Matthey Inc. VDECS devices. Cummins Emission Solutions and Johnson Matthey Inc. also spent approximately \$132,000 in remediation by replacing all the incorrect labels with correct ones. The case highlight can be found [here](#).

Cummins West Inc. – In March 2010, Cummins West Inc. paid \$24,000 in penalties for violating California VC Section 27156 and Title 13 CCR sections 2706 (a) and (q) of the Verification Procedure by installing non-VDECS devices in California. Cummins West Inc. also agreed to corrective actions requiring replacement of non-VDECS with current VDECS. The case highlight can be found [here](#).

Diestel Turkey Ranch - In May 2010, Diestel Turkey Ranch, Sonora, CA paid \$10,500 in penalties for violating air quality regulations. An investigation by the ARB showed that Diestel Turkey Ranch failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Eastern Manufacturing, Inc. – In June 2010, ARB along with the OLA and the Office of

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the Attorney General for the State of California settled with Eastern Manufacturing, Inc. in the Los Angeles County Superior Court for \$2,000,000 for offering for sale and selling uncertified catalytic converters. The case highlight can be found [here](#).

Eaton Drilling Company, Inc. - In July, 2010, Eaton Drilling Company, Inc. paid \$20,000 in penalties for violating air quality regulations. An investigation by the ARB showed that Eaton Drilling Company, Inc., failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Fresh Express - In June 2010, Fresh Express paid \$37,425 in penalties for violating the TRU rule by failing to submit a report of the TRU activity at their facility by the required deadline. The case highlight can be found [here](#).

Fresh Link Logistics, Inc. - In July 2010, Fresh Link Logistics Inc. paid \$14,400 in penalties for violating the PSIP by not smoke testing their fleet of diesel vehicles. The case highlight can be found [here](#).

Gasparian, Inc. - In October 2010, Gasparian, Inc. paid \$10,000 in penalties for violating air quality regulations. An investigation by the ARB showed that Gasparian, Inc. failed to properly self-inspect their diesel trucks to insure the trucks met state smoke emission standards. Gasparian, Inc. also failed to comply with the SWCV rule by neglecting to install legally required emission-reduction devices by applicable compliance dates. The case highlight can be found [here](#).

Godoy Logistics LLC – In July 2010, Godoy Logistics LLC paid \$12,750 in penalties for violating the PSIP by not smoke testing diesel vehicles in its fleet and the TRU rule by not registering its TRUs with the ARB Equipment Registration (ARBER) system and not upgrading its TRU engines to meet the TRU in-use performance standards. The case highlight can be found [here](#).

Golden State Foods - In August 2010, Golden State Foods paid \$18,000 in penalties for violating the TRU rule by submitting incorrect data in the ARBER system. The case highlight can be found [here](#).

Golden State Lumber Inc. – In February 2010, Golden State Lumber, Inc. paid \$20,000 in penalties for violating air quality regulations by failing to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards, as they related to the PSIP. The case highlight can be found [here](#).

Goldenvale Inc. – In April 2010, ARB along with the San Bernardino County Office of the District Attorney settled with Goldenvale Inc. for \$1,200,000 in restitution for the sale of uncertified OHRVs and on-road vehicles in California. The president and vice president were charged criminally, served jail time, and ordered to pay restitution. The case highlight can be found [here](#).

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Green Valley Transportation Corporation - In July 2010, Green Valley Transportation Corporation paid \$10,125 in penalties for violating air quality regulations. An investigation by the ARB showed that Green Valley Transportation Corp. failed to properly self-inspect their diesel trucks to insure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Hendrick Automotive Group – In July 2010, Hendrick Automotive Group paid \$12,500 to the APCF for violation of H&SC sections 43151 through 43153. Hendrick Automotive Group marketed and assisted in the sale of modified engines without receiving an ARB Executive Order. The case highlight can be found [here](#).

International Surfacing Systems - In May 2010, International Surfacing Systems, Modesto, California paid \$16,875 in penalties for violating air quality regulations. An investigation by the ARB showed that International Surfacing System failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Ironman Parts and Service - In February 2010, Ironman Parts and Services paid \$15,000 in penalties for failing to comply with the VDECS regulation by installing non-verified VDECS devices on truck engines. The case highlight can be found [here](#).

ISE Corporation – In June 2010, ISE Corporation paid \$50,000 to the APCF for violation of H&SC sections 43154 and 43212. ISE Corporation introduced and sold into commerce uncertified engines without an ARB Executive Order. The case highlight can be found [here](#).

Napa County Transportation and Planning Agency - In June 2010, NCTPA paid \$12,000 in penalties for violating the PSIP by not smoke testing their diesel fleet and the Fleet Rule for Transit Agencies – TFV Requirements, Title 13 CCR section 2032.2 (b)(1) for PM reductions. The case highlight can be found [here](#).

Nor-Cal Produce Inc. - In February 2010, Nor-Cal Produce Inc. paid \$32,550 in penalties for violating the TRU rule by failing to submit a one-time report for their TRUs at their facility. The case highlight can be found [here](#).

NST, Inc. Yuan Cheng – In November 2010, NST, Inc. Yuan Cheng paid \$250,000 in penalties for violation of H&SC section 43151, VC section 4463 as well as Business and Professions Code section 17500. NST, Inc. Yuan Cheng imported and offered for sale non-certified new motor vehicles into commerce. The case highlight can be found [here](#).

Odwalla Inc. - In September 2010, Odwalla Inc. paid \$20,625 in penalties for violating the PSIP by not smoke testing their fleet of diesel vehicles. The case highlight can be found [here](#).

O'Reilly Auto Parts – In August 2010, O'Reilly Auto Parts paid \$125,000 to the California Air Pollution Fund. O'Reilly Auto Parts sold catalytic converters no longer

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legal for sale due to a regulation change in January 1, 2009. The case highlight can be found [here](#).

Paragon Industries - In December 2010, Paragon Industries paid \$22,125 in penalties for violating air quality regulations. An investigation by the ARB showed that Paragon Industries failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards, and to properly affix emission control labels on the engines of their fleet vehicles. The case highlight can be found [here](#).

Pep Boys, Inc. – In April 2010, Pep Boys, Inc. paid \$170,000 to the California Air Pollution Fund for violation of H&SC 43150 through 43156. Pep Boys, Inc. sold several small all-terrain vehicles and 49-state only generators before issuance of an ARB Executive Order. The case highlight can be found [here](#).

Petersen-Dean Inc. - In December 2010, Petersen-Dean Inc. paid \$11,250 in penalties for violating air quality regulations by failing to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards as they related to the PSIP. The case highlight can be found [here](#).

Producers Dairy Foods Inc. – In September 2010, Producers Dairy Foods Inc. paid \$87,600 in penalties for violating the PSIP by not smoke testing diesel vehicles in its fleet and the TRU rule by not registering its TRUs with the ARB ARBER system and not upgrading its TRU engines to meet the TRU in-use performance standards. The case highlight can be found [here](#).

Randy's Trucking, Inc - In June 2010, Randy's Trucking, Inc. paid \$28,000 in penalties for violating air quality regulations. An investigation by the ARB showed that Randy's Trucking, Inc. failed to properly self-inspect their diesel trucks to assure the vehicles met state smoke emission standards. The case highlight can be found [here](#).

Rapid Harvest Company – In February 2010, Rapid Harvest Company paid \$16,500 for diesel emissions violations. An ARB investigation showed Rapid Harvest, based in Salinas, California, failed to properly inspect their diesel vehicles in 2005. The case highlight can be found [here](#).

RDO Equipment Co. - In January 2010, RDO Equipment Co. (RDO) paid \$15,000 in penalties. An investigation by the ARB showed that RDO failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Renick Cadillac/Suburu – In September 2010, Renick Cadillac/Suburu paid \$15,000 to the California Air Pollution Fund for violation of H&SC section 43150 through 43153. Renick Cadillac/Subaru sold Tomcar utility vehicles and certified them for on-road use that violates the above H&SC sections. The case highlight can be found [here](#).

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Rim of the World Unified School District - In May 2010, Rim of the World Unified School District paid \$25,875 in penalties for violating air quality regulations. An investigation by the ARB showed that Rim of the World Unified School District failed to properly self-inspect their diesel buses to assure the vehicles met state smoke emission standards. The case highlight can be found [here](#).

Robin America, Inc. – In August 2010, Robin America, Inc. paid \$204,000 to the California Air Pollution Fund for violations of H&SC. Robin America, Inc. introduced into commerce and sold generators without the required exhaust catalysts system. The case highlight can be found [here](#).

Rosendin Electric, Inc. - In March 2010, Rosendin Electric, Inc. paid \$19,125 in penalties for violating air quality regulations. An investigation by the ARB showed that Rosendin Electric, Inc. failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards, and to properly affix emission control labels the engines of their fleet vehicles. The case highlight can be found [here](#).

San Jose Tallow Company - In June 2010, San Jose Tallow Company paid \$24,000 in penalties for violations as they related to the PSIP. The case highlight can be found [here](#).

SFO Shuttle Bus Company - In October 2010, SFO Shuttle Bus Company paid \$14,500 in penalties for violating air quality regulations. An investigation by the ARB showed that SFO Shuttle Bus Company failed to properly self-inspect their diesel vehicles to assure the vehicles met state smoke emission standards. The case highlight can be found [here](#).

Smart Refrigerated Transport, Inc. – In March 2010, SMART Refrigerated Transport, Inc. paid \$23,000 in penalties for violating air quality regulations. An investigation by the ARB showed that SMART Refrigerated Transport, Inc., failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Starving Students Inc. - In February 2010, Starving Students Inc. paid \$10,000 in penalties for violating the PSIP by failing to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Stidham Trucking, Inc. - In April 2010, Stidham Trucking, Inc. paid \$25,500 in penalties for violating air quality regulations. An investigation by the ARB showed that Stidham Trucking, Inc., failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Superior Grocers Inc. - In April 2010, Superior Grocers Inc. paid \$15,300 penalties for violating the TRU rule by failing to provide accurate registration information in ARBER system. The case highlight can be found [here](#).

Tiffany Coachworks – In April 2010, January 2007, Tiffany Coachworks paid a penalty of \$50,000 for failing to certify their modified limousines in violation of Health and Safety Code Sections 43150 through 43156, and Vehicle Code Section 27156. The case highlight can be found [here](#).

Tom Bengard Ranch - In August 2010, Tom Bengard Ranch, Salinas, CA paid \$16,800 in penalties for violating air quality regulations. An investigation by the ARB showed that Tom Bengard Ranch, failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

US Air Conditioning Distributors LLC - In January 2010, US Air Conditioning Distributors paid \$19,500 in penalties. An investigation by the ARB showed that US Air Conditioning Distributors failed to properly self-inspect some of their diesel trucks to assure the trucks met state smoke emission standards. The case highlight can be found [here](#).

Valley Fruit and Produce Co. - In November 2010, Valley Fruit and Produce Co. paid \$18,750 in penalties for violating the TRU rule by not upgrading its TRU engines to meet the TRU in-use performance standards. The case highlight can be found [here](#).

Walker Mowers – In August 2010, Walker Mowers paid \$14,500 to the California Air Pollution Fund under the penalty provision of H&SC 43016. Walker Mowers self reported that they had sold lawn mowers not legal for sale in California. The case highlight can be found [here](#).

Consumer Products Cases

American Consumer Products LLC – In May 2010, American Consumer Products LLC (ACP) paid \$275,000 in penalties for having sold toilet/urinal care product containing para-dichlorobenzene at a large discount retail chain without notifying the chain of the sell-through period and for continuing to sell the products after the ban on selling the products became effective. In addition, the ACP imported hairspray from China that greatly exceeded the VOC limit of 55 percent for hairspray and contained large quantities of methanol which is a poison and an inhalation hazard. The company also imported non-compliant toilet/urinal care products, hair gel, hair mousse, and reed diffuser type air fresheners. The case highlight can be found [here](#).

A.P. Deauville – In December 2010, A.P. Deauville paid \$50,000 in penalties for having supplied Power Stick Deodorant Body Spray product that contained VOCs in excess of the 75 percent limit for Personal Fragrance Products to California. The product was reformulated. The case highlight can be found [here](#).

Armstrong World Industries – In October 2010, Armstrong World Industries, Inc. paid \$228,000 in penalties for selling non-compliant Bruce Hardwood and Laminate Floor Cleaner into California that exceeded the 4 percent by weight VOC limit for non-aerosol

wood cleaner. The case highlight can be found [here](#).

Avon Products – In September 2010, AVON Products, Inc. paid \$12,300 in penalties for selling non-compliant Snowman Reed Diffusers which were subject to the 18 percent VOC limit and for failing to display a date code on these products. The case highlight can be found [here](#).

Blitz USA - In May 2010, Blitz USA paid \$90,000 in penalties for the sale of non-compliant portable fuel containers. The new owners of Blitz USA self-reported that they had manufactured non-compliant Blitz USA *Pull-N-Pour* portable fuel containers that displayed a date of manufacture that had been altered by employees back in 2001. The case highlight can be found [here](#).

BP Lubricants – In August 2010, BP Lubricants, USA Company paid \$40,000 in penalties for sales of its Castrol Metal Parts Cleaner aerosol product as an “engine degreaser” that did not meet the 35 percent VOC limit. The product had already been discontinued from production for other reasons. The case highlight can be found [here](#).

Carroll Company – In February 2010, Carroll Company paid \$11,000 in penalties for selling non-compliant Pro Pride Green Cleaner subject to the 4 percent by weight VOC limit for non-aerosol general purpose cleaners. The case highlight can be found [here](#).

Home Depot – In July 2010, Home Depot paid \$27,000 in penalties for having sold or supplied windshield washer fluid products that exceeded the one percent VOC limit set under Consumer Products Regulation for their product category. The case highlight can be found [here](#).

Lowe’s HIW, INC – In May 2010, Lowe’s HIW Inc. paid \$20,000 in penalties for having sold or supplied 1050 containers of windshield washer fluids that exceeded the one percent VOC limit set under Consumer Products Regulation for automotive windshield washer fluids sold in non-type A areas of California. The case highlight can be found [here](#).

Olympic Mountain – In September 2010, Olympic Mountain Products paid \$15,000 in penalties for selling fragrance diffusers into California that contained concentrations of VOCs exceeding the 18 percent limit set under Consumer Products Regulations for their product category. The case highlight can be found [here](#).

Packaging Service Company – In August 2010, Packaging Service Company, Inc. paid \$13,000 for failing to certify four brands of “charcoal lighter materials”. The company had been previously cited for not including other brands on their certifications. The case highlight can be found [here](#).

Parfums de Coeur – In April 2010, Parfums de Coeur paid \$36,500 in penalties for supplying into California 98,644 four ounce units and 36,786 one ounce units of non-compliant Bod Man Deodorant Body Spray that exceeded the zero percent by weight

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VOC limits in the Antiperspirants and Deodorants regulation. The case highlight can be found [here](#).

Paslode – In September 2010, Paslode Construction Service and Parts Division, a subsidiary of Illinois Tool Works, Inc., paid \$70,000 in penalties for having supplied Paslode Degreaser Cleaner product that contained VOCs in excess of the 50 percent limit for General Purpose Degreasers to California. The product was reformulated and relabeled. The case highlight can be found [here](#).

Premier Brands – In December 2010, Premier Brands paid \$55,000 in penalties for selling non-compliant Blade Deodorant Body Spray in various fragrances into California that exceeded the zero percent by weight VOC limits in the Antiperspirants and Deodorants regulation. The case highlight can be found [here](#).

Pro's Choice – In March 2010, a Final Judgment and Permanent Injunction was issued by the Stanislaus County Superior Court in *People of the State of California v. Pro's Choice Beauty Care*. The litigation involved violations of the California Consumer Products regulations with 15 separate NOV issued to seven defendants involving diverted non-compliant hair care products. Pro's Choice obtained hair care products that were manufactured for sale in hair salons and resold the products to “mass market” retailers including Rite Aid, Ralphs, Long's, Walgreens, K-Mart, and Target, all of whom were defendants in this action. The defendants paid a total of \$1,250,000 in penalties, attorney's fees and costs to resolve this case. ARB received \$475,000 as part of the civil penalties and will be monitoring sales of hair care products by the defendants to ensure compliance with the terms of the Permanent Injunction. The case highlight can be found [here](#).

Remington Arms Company – In May 2010, Remington Arms Company paid \$40,000 in penalties for selling mislabeled Rem Oil gun lubricant product as a “multi-purpose lubricant” which did not meet the 50 percent by weight VOC limit. Remington Arms Company re-labeled their Rem Oil gun lubricant product to reflect its restricted use for firearms. The case highlight can be found [here](#).

Royal Oak – In October 2010, Royal Oak Enterprises, LLC paid \$12,000 in penalties for selling several uncertified “Charcoal Lighter Material” products. These products were manufactured by Royal Oak Enterprises, LLC, which failed to obtain an Executive Order from ARB prior to the products being offered for sale into California. The case highlight can be found [here](#).

Sears Holdings – In August 2010, Sears Holdings Management Corporation paid \$28,000 in penalties for violations of the charcoal lighter material requirements in the Consumer Products Regulations. Sears Holdings Management Corporation imported approximately 12,568 bags of the BBQ Pro Instant Light Charcoal (8-lb. bag) product from China that were not certified. The case highlight can be found [here](#).

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Seymour Manufacturing – In September 2010, Seymour Manufacturing Company paid \$16,000 in penalties for “Charcoal Lighter Material” violations in four Notices of Violation. Seymour failed to update the Executive Order to include brands it manufactured prior to the products being offered for sale into California. The case highlight can be found [here](#).

Ultrasol Industries Limited – In April 2010, Ultrasol Industries Limited paid \$20,000 in penalties for selling Doktor Doom Total Release Fogger insecticide foggers that did not comply with the 45 percent by weight VOC limit for insecticide foggers. The case highlight can be found [here](#).

Unilever/Conopco – In January 2010, Unilever/Conopco paid \$1.3 million in penalties for selling non-compliant Axe Deodorant Body Spray that exceeded the zero percent by weight VOC limits in the Antiperspirants and Deodorants regulation. After Unilever/Conopco was made aware of the violation, it took steps to correct the violation, mitigate the impacts, and ultimately reduce the emissions from this product. The case highlight can be found [here](#).

Vectra Enterprises, Inc. – In June 2010, Vectra Enterprises, Inc. paid a penalty of \$11,250 for selling non-compliant Vectra Spray in California that exceeded the VOC limit for footwear or leather care products (all other forms) and did not display the date of manufacture. The case highlight can be found [here](#).

Wurth USA – In October 2010, Wurth USA paid \$232,256 in penalties for having supplied Wurth saBesto HHS 2000 lubricant product that exceeded the 50 percent VOC limit for general purpose lubricants to California. During the course of the investigation Wurth disclosed an additional 42 consumer products that did not meet ARB’s VOC limits and prohibitions on the use of chlorinated TAC. The case highlight can be found [here](#).

Yankee Candle Company – In September 2010, Yankee Candle Company, Inc paid \$16,400 in penalties for selling and/or supplying non-compliant air fresheners. At least one production batch of Yankee Candle® Fragrance Room Sprays exceeded the 25 percent by weight VOC limit and Yankee Candle® Fragrance Fan Refills exceeded the 3 percent by weight VOC limit for Solid/Semisolid air freshener products. The case highlight can be found [here](#).

Fuels Cases

BP/Carson – In September 2010, BP/Carson paid \$19,000 in penalties for having shipped gasoline in violation of California reformulated gasoline regulations. On September 9, 2007, while shipping premium grade CARBOB from the refinery, BP added approximately 2,400 barrels of alkylate to the tender. BP shipped approximately 12 loads of uncertified fuel to 12 California service stations. The case highlight can be found [here](#).

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BP/Thrifty Service Station – In September 2010, BP/Thrifty paid \$32,000 in penalties for having sold/supplied gasoline in violation of California reformulated gasoline regulations. On June 14, 2007, an analysis of the premium grade gasoline revealed a Reid vapor pressure of 7.60 pounds per square inch (psi) and 7.57 psi both of which exceeded the State standard. The case highlight can be found [here](#).

Paramount – In September 2010, Paramount Refinery paid \$25,000 in penalties for having produced gasoline in violation of California reformulated gasoline regulations. In August 2008, Paramount refinery produced gasoline with 5.80 psi which exceeded the limit specified in its Predictive Model. In September 2008, Paramount produced gasoline with a Reid vapor pressure result of 5.77 psi which again exceeded the PM limit specified. The case highlight can be found [here](#).

Strategic Environmental Investigations Cases

Jumbo Shipping, Kahn Scheepvaart B.V. – In October 2010, Jumbo Shipping, Kahn Scheepvaart B.V. paid \$55,500 in penalties to the California Air Pollution Control Fund for violating air quality regulations. The Jumbo Shipping, Kahn Scheepvaart B.V. vessel, *Daniella*, failed to properly switchover its main engines from Heavy Fuel Oil over to Low-Sulfur Distillate Fuel before entering into regulated California waters. The case highlight can be found [here](#).

Parsec Inc. – In May 2010, Parsec Incorporated paid \$21,750 in penalties for violating regulations governing cargo handling equipment by importing vehicles that did not meet emission standards. The settlement included \$16,312.50 paid to the California Air Pollution Control Fund and \$5,437.50 paid to the Peralta Community College District for distribution to participating CCDET colleges. The case highlight can be found [here](#).

Appendix C
Mobile Source Enforcement
Program and Inspection Activities – 2010

Table C-1 - Administrative Hearings¹

Cases	6
Pending	3
Closed²	5
Settled	3

¹HDVIP/ECLP Program

²Includes cases from previous year

Table C-2 - Carl Moyer Program and Proposition 1B Goods Movement Emission Reduction Program - Compliance Checks

Carl Moyer Compliance Checks¹	2010
<u>Registered Owners/VINs Processed</u>	638
<u>Outstanding Violations</u>	9

<u>Proposition 1B Compliance Checks*</u>	2010
<u>Registered Owners/VINs Processed</u>	3,792
<u>Outstanding Violations</u>	247

¹Checks include querying numerous databases: HEVI, SWCV, ECLP, CVI, and SBI.

Table C-3 - Certificate of Non-Compliance (49-State Vehicle) Program

Certificates Received	699
Certificates Reviewed	110
Cases Opened	12
Cases Closed¹	48
Penalties Collected	\$54,450

¹Includes cases from previous year.

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Table C-4 - Commercial Idling Enforcement and Complaint Program

Inspections	6,456
Violations	887
Non-Compliance Rate	14%
Violations Closed	763
Penalties Collected	\$196,237
Complaints Received	50
Advisory Letters Sent	50
Responses Received	17
Response Rate	34%

Table C-5 - Emission Control Label Enforcement¹

Inspections	13,274
Violations	825
Non-Compliance Rate	6%
Violations Closed	739
Penalties Collected	\$190,399

¹Includes citations from previous years.

Table C-6 - Environmental Justice Inspections¹

Inspection days	335
Inspections	10,012
Violations	2,171
Non-Compliance Rate	22%

¹The data reflects multiple programs. Inspections are conducted major supply ports in Los Angeles, Oakland, San Bernardino and other EJ Areas within California.

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Table C-7 - Heavy-Duty Diesel Vehicle Inspection Program

Inspections	14,784
Violations	111
Non Compliance Rate	1%
Appeals Received/Closed ¹	6/6
Violations Closed¹	152
Penalties Collected	\$28,700

¹Includes violations pending from previous years.

Table C-8 - Heavy-Duty Diesel Delinquent Violations/Collections

Trucks Held under VC 27159 by CHP ¹	41
Judgments Obtained under H&SC 44011.6	134
CADMV VC 4755 Registration Holds ²	646
Delinquent Violations Closed	573
Delinquent Penalties Collected	\$231,895

¹ If an HDVIP citation is in delinquent status and the vehicle is encountered during a roadside inspection, under VC 27159, CHP can hold the truck until payment is received.

² For all programs.

Table C-9 - Drayage Truck Program: Inspections and Notices of Violation

Inspections	3,094
Violations	356
Non-Compliance Rate	12%
Violations Closed	90
Penalties Collected	\$66,150

Table C-10 - In-Use Off-Road Diesel Vehicle Program: Inspections and Notices of Violation

Inspections	76
Violations	17
Non-Compliance Rate ¹	22%
Violations Closed	10
Penalties Collected	\$4,800

¹ Limited sample size – not statistically representative of fleet's overall compliance rate.

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Table C-11 - Public Agency Utility Enforcement

Inspections	7
Violations	2
Non-Compliance Rate	29%
Violations Closed	2
Penalties Collected	\$900

¹ Limited sample size – not statistically representative of fleet’s overall compliance rate.

Table C-12 - Smoking Vehicle Complaint Program

Notices Sent	674
Responses Received	171
Response Rate¹	25%

¹ Responses are considered any repair receipts, smog checks, phone calls and written follow-ups, as well as junked or unidentified vehicle notices received by ARB staff.

Table C-13 - Solid Waste Collection Vehicle Program

Inspections	91
Violations	9
Non-Compliance Rate ¹	10%
Violations Closed	24
Penalties Collected	\$1,200

¹ Limited sample size – not statistically representative of fleet’s overall compliance rate.

Table C-14 - TRU Program – Truck/Trailers: Inspections and Notices of Violation

Inspections	6,119
Violations	2,318
Non-Compliance Rate	38%
Violations Closed	789
Penalties Collected	\$733,993

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Table C-15 - TRU Program – TRU Gensets: Inspections and Notices of Violation

Inspections	2,105
Violations	5
Non-Compliance Rate	0.24%
Violations Closed	3
Penalties Collected	\$3,000

Table C-16 - Diesel Fleet Closed Cases Summary: Combined HDDDES On-Road, Off-Road and Goods Movement Programs

Type of Case	Total Cases SETTLED	Total Cases CLOSED (NFA, Compliant, Settled)	Total Penalties Collected ¹
Drayage Truck	0	2	\$0
Emission Control Label ²	0	0	\$1,250
Off-Road Diesel Vehicle	1	7	\$5,850
Periodic Smoke Inspection Program	89	181	\$857,080
Public Agency/Utility ³	0	0	\$0
Solid Waste Collection Vehicle	10	20	\$52,720
Transit Fleet Vehicle	2	3	\$1,250
Transport Refrigeration Unit	19	26	\$228,275
Urban Bus	1	1	\$1,875
Verified Diesel Emission Control System	3	8	\$152,000
TOTAL	125	248	\$1,300,300

¹The amounts shown in “Total Penalties Collected” are calculated according to the penalties collected per Enforcement Program (“Type of Case”) and do not correlate directly with the number of cases settled (“Total Cases Settled”). Some cases are combined with others, but counted as only 1 case with penalty amounts applied to several different Enforcement Programs.

Example: An enforcement case is pursued and settled primarily as SWCV; therefore, it is counted as 1 ‘SWCV’ case in the “Total Cases Settled”, yet it has penalties that are applied to several different enforcement programs (SWCV, PSIP, ECLP, and VDECS). In this example you would see one settled case (SWCV) and Penalties collected under four different “Types of Case” (SWCV, PSIP, ECLP and VDECS). This is the reason why you may see penalty amounts listed for a “Type of Case” but show no ‘Closed’ cases for that venue.

²These penalties reflect ECLP violations found in other cases like PSIP, SWCV, etc.

³No cases closed in 2010 but numerous cases are under development.

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Table C-17 - 2010 Mobile Source Enforcement Actions*

I. 2010 Mobile Source Enforcement Totals: Compilation of II & III

Enforcement Actions Closed	Penalties
3,517	\$9,517,967

II. General Mobile Source Programs

Mobile Source Programs	Cases Closed	Penalties
Aftermarket Parts	6	\$2,134,500
Cars and Motorcycles ¹	19	\$526,327
Certificates of Non-Compliance	48	\$54,450
Compression Ignition (diesel)	2	\$2,177,000
Large Spark Ignited	3	\$15,000
Off-highway Recreational Vehicle	24	\$1,451,268
Small Off-Road Engine	16	\$398,348
Tampering (Used Cars)	6	\$3,500
Total	124	\$6,760,393

¹ Motorcycles account for 2 of these 19 cases and \$7,777 of the \$526,327.

III. In-Use Diesel Programs

A. Diesel Fleet Programs (see Table C-16)	Cases Closed	Penalties
	248	\$1,300,300
B. Diesel Field Inspections	Citations and Violations Closed	Penalties
Commercial Vehicle Idling	763	\$196,237
Drayage	90	\$66,150
Emission Control Label	739	\$190,399
Heavy-Duty Vehicle Inspection Program	152	\$28,700
Delinquent Citation Collections	573	\$231,895
In-Use Off-Road	10	\$4,800
Public Agency/Utility	2	\$900
Solid Waste Collection Vehicle	24	\$1,200
Transport Refrigeration Unit	792	\$736,993
Total	3,145	\$1,457,274
TOTAL A & B above	3,393	\$2,757,574

Many of these enforcement actions are joint ED/MSCD/MSOD/SSD/OLA enforcement actions.

Appendix D
Fuels and Consumer Products Enforcement
Inspection Activities – 2010

Table D-1 - Consumer Products Inspections and Samples

Samples Obtained	2,256
Lab Results Received	2,297
Alleged Violations	778
Violations	45

Table D-2 - Portable Fuel Containers and Spouts

Samples Obtained	51
Alleged Violations	21
Violations	4

Table D-3 - Cargo Tank Vapor Recovery Certification

Cargo Tanks Inspected	1,141
Cargo Tanks Tested	540
Cargo Tanks Certified	5,519
Pressure Violations (nitrogen test)	96
Uncertified Equipment Violations	4
Liquid Leak Violations	2
Annual Tests Observed	67

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Table D-4 - Motor Fuel Inspection Summary

Samples	2,679
Analyses	17,460
Reid vapor pressure	1,895
Lead	7
Sulfur (gasoline and diesel fuel)	2,065
Oxygen	1,704
MTBE, Ethanol	1,710
Benzene	1,835
Total aromatics	1,835
Olefin	1,848
Distillation, T50	1,754
Distillation, T90	1,754
Aromatic HC (diesel fuel)	479
PAH (diesel fuel)	479
Nitrogen (diesel fuel)	123

Table D-5 - Gallons Represented in Sampling

Gasoline	1,629,806,875
Diesel	379,404,311

Table D-6 - BOE Dyed Diesel Program¹

Inspections	11,855
Violations	10

¹ARB works under a reimbursable services contract for the Board of Equalization for this program and conducts these inspections concurrent with HDVIP roadside inspections.

Appendix E
Stationary Source Enforcement and
Air District Oversight Activity – 2010

Table E-1 - Hotline Complaint Activities

Total Complaints and Inquiries Received	933
- Stationary Source Complaints to Districts	148
- Vapor Recovery Complaints to Districts	77
- Questions Answered by Enforcement	28
- Referred to Other ARB Divisions	63
- Referred to Other Agencies	613
Air District Investigation Reports Reviewed	152
Online Cal EPA Online Complaints	312

Table E-2 - Variance Activity

Variances Reviewed	496
Notices Reviewed	370
Variances Questioned	67
Variances Returned	0
Issues Addressed	78
Workshops Conducted	1

Table E-3 - Air Facility System Compliance Data

Reports Received and Reviewed	75
Reports Entered	54
Issues Addressed	224
Reports Sent to Air Districts	170

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Table E-4 - Air Facility System High Priority Violators

Reports Received	60
Reports Entered	36
Issues Addressed	331
Reports Sent to Districts	233

Table E-5 - Continuous Emissions Monitoring Program Activity

Reports Received and Entered	547
NOx	173
SO ₂	18
H ₂ S	33
CO	159
Opacity	100
CO ₂	3
NH ₃	7
PM	3

Table E-6 - Air District Rule Review

Rules Received	182
Rules Reviewed	174
Rules with Formal Comments	2

Table E-7 – Complaint Investigations and U.S. EPA CEM Reporting

Investigations/Inspections	0
Requests for Assistance	3
Special Projects completed	6
Hotline Complaint Follow-up Investigations	4
CEM 105 Grant Reports Received from Sources	140
CEM 105 Reports sent to U. S. EPA	222

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Table E-8a: SEIES 2010 Cases and Investigations

TYPE OF ACTIVITY	TOTAL
Total SEIES Settlement Amounts¹	\$120,950
Continuing Investigations	6
New Investigations	15
SEIES Cases Closed	17
Cases Referred for Investigation	18
Cases Referred for Prosecution	13
Continuing Prosecution	16
Case Settlement/Prosecution	8
Investigative Assistance to Local Air District	1
Continuing Surveillance	6
New Surveillance	13
Surveillance Closed	10
Task Force Meetings Attended	47
Special Projects	4

Table E-8b: SEIES 2010 Inspection Summary

INSPECTION PROGRAM ¹	TOTAL
Stationary Source Inspections (non-PERP)	5
Portable Equipment Inspections	66
Railroad Locomotive Inspections	2,694
Rail Facilities Inspected (twice yearly)	32
Other Railroad Inspections	13
Railroad Violations	24
Railroad Notice to Complies Issued	28
Ocean-going Vessel Fuel Inspections	313
Ocean-going Vessel Violations	18
Harbor Craft Inspections	210
Fuel Dock/Marina Fuel Inspections	29
Cargo Handling Equipment Inspections	328
Cargo Handling Equipment Violations	2
Asbestos Inspections	84
Asbestos Complaint Investigations	5
Asbestos Violations	8
Composite Wood Inspections	218

¹ Information about Drayage Truck and TRU inspections conducted by SEIES are included with those reported by the Mobile Source Program

Appendix F
Compliance Training and Assistance Programs - 2010

Table F-1 - All Programs and Attendance

Classes and Programs	Number of Courses	Total Students
Uniform Air Quality Training Program 100 Series (California) (4 days)	5	95
Air Academy (Online)	---	156
100 Series Courses	45	2,308
200 Series (California)	84	1,242
300/400 Series (California)	23	963
400 Series (Staff Development Training)	6	228
500 Series (California)	87	1,791
California Totals	250	6,783
National Program	61	1,435
Webcast	26	611
Overall Totals	337	8,829

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Table F-2 - 500 Series Courses

<u>Course #</u>	<u>Title</u>	<u>Participants</u>
501	Stationary Diesel ATCM	68
502	Portable Equipment ATCM	412
504	In-Use Off-Road	27
507	Transport Refrigeration Units	5
511	Diesel Exhaust After-treatment Devices	598
512	Diesel Vehicle Regulation Overview	570
513	Drayage Truck ATCM	36
515	Maintenance Worker Reg. Overview	26
516	Diesel Exhaust After-treat. Maintenance	49
	Total	1,791

Table F-3 - California Attendance Totals (In-State Training)

January 1, 2010 to December 31, 2010	Students Taught in CA	6,783
	Courses	250
	Webcast Capable Courses	26
	Webcast Students	611
	Average Webcast Students per Course	22

Table F-4 - Top Five Hardcopy Materials Distributed 2010

Rank	Technical Manual CDs	Handbooks	Pamphlets
1	Fugitive Dust Control	Wood Burning	Asbestos-Containing Rock and Soil: Homeowner Enhanced Vapor Recovery Program HDD Vehicle Inspection Program Training and Compliance Assistance Program
2	Chrome Plating and Anodizing Operations	Vapor Recovery Calendars	California Council on Diesel Education and Technology TRUs ATCM #2
3	Asbestos Demolition and Renovation	In-Station Diagnostics Booklet	Cleaners and Degreasers Used in Automotive Repair
4	Vapor Recovery	Agricultural Burning (English)	Composite Wood Products ATCM Periodic Self Inspection Program
5	Compilation CD- Technical Manuals (pdf) California version	Forest Management Burning	Stationary Internal Combustion Engines

Table F-5 - Top Five Webpage Views Total 2010

Rank	Technical Manuals (pdf or interactive)	Handbooks	Pamphlets
1	Continuous Emission Monitors	Wood Burning	Enhanced Vapor Recovery Program
2	Stationary Source Control Devices	Automotive Refinishing (English)	Asbestos-Containing Rock and Soil: Homeowner
3	Ambient Air Monitoring	Fugitive Dust Control	Training and Compliance Assistance Program
4	Gas Turbines	Visible Emissions Evaluation	Stationary Internal Combustion Engines
5	Boilers	Chrome Plating and Anodizing Operations	Commercial HDD Vehicle Idling Emission Reduction Program

Appendix G
Enforcement Division Contacts and Other Information

<http://www.arb.ca.gov/enf/enf.htm>

Division Contacts:		
Chief , Enforcement Division	James R. Ryden	(916) 324-7346
Division Secretary	Barbara Gregson	(916) 322-6033
Enforcement Database Coordinator	Reggie Guanlao	(916) 445-2815
	Cindy Stover	(916) 322-0988
	Richelle Bishop	(916) 323-1696
Division Administrative Coordinator	Elizabeth Walker	(916) 322-2659
Division FAX (Sacramento - HD Diesel Program)	-	(916) 322-8274
Division FAX (Sacramento - General Enforcement)	-	(916) 445-5745
Division FAX (El Monte - HD Diesel Program)	-	(626) 450-6170
Division FAX (El Monte - MS Enforcement Program)	-	(626) 350-6431
Mobile Source Enforcement Contacts:		
Chief , Mobile Source Enforcement Branch	Paul E. Jacobs	(916) 322-7061
Environmental Justice and Enforcement Division Special Projects	Michelle Shultz Wood	(626) 459-4338
Manager , Mobile Source Enforcement Section	Gregory Binder	(626) 575-6843
Motorcycle Enforcement	Kerry Albert	(916) 323-2946
Marine and Personal Watercraft Enforcement	Erin Blanton	(916) 323-8420
OHRV, SORE, Aftermarket Parts Enforcement	Lisa Zarubick	(626) 350-6403
Hybrid, Diesel, Aftermarket Parts Enforcement	Martina Diaz	(626) 350-6576
Catalytic Converters, Aftermarket Parts Enforcement	Tony Zeng	(626) 350-6505
Manager , HDD Enforcement Section – Off-Road Programs	Manfred Ochsner	(626) 350-6532
Drayage Truck Enforcement North	Eric Bissinger	(916) 445-7602
Drayage Truck Enforcement South	Xiangyi Li	(626) 350-6506
TRU Enforcement South	Aldo Chaney	(626) 350-6577
TRU Enforcement North	Brad Penick	(916) 445-0799
VDECS Enforcement	Chris Patno	(626) 450-6173
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Transit Fleets/Urban Bus Fleets	Ann Stacy	(916) 324-7658
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Smart Way Technologies	Cathi Slaminski	(916) 323-1513
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Truck and Bus Rule and CCDET Liaison	Wendy Maienknecht	(916) 445-0235
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Citation Administration	Amy Ng	(916)322-8275
Citation Administration	Hortencia Mora	(626) 350-6950
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Manager , Consumer Products Enforcement Section	Steve Giorgi	(916) 322-6965
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Cargo Tank Certification Program	Juli Sawaya	(916) 322-3034
Enforcement Program Web Pages	Mary Rose Sullivan	(916) 327-1523
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Manager, Stationary Source Enforcement Section	Warren Hawkins	(916) 323-8417
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Complaint Hotline Program	Verna Ruiz	(800) 952-5588
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Manager , Compliance Assistance Section	Mark Tavianini	(916) 327-0632
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ARB Statewide Vehicle Complaint Hotline	(800)END-SMOG	(800) 363-7664
ARB ED Spanish Speaking Assistance	Hector Pelayo	(626) 575-6779
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Special Investigations/Collections	Jay Zincke	(916) 323-1608
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