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HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 5. VEHICULAR AIR POLLUTION CONTROL [43000 - 44299.91] (*Part 5 added by Stats. 1975, Ch. 957.*)

CHAPTER 1.5. Penalties for Violation of Fuel Regulations [43025 - 43031.5] (*Chapter 1.5 added by Stats. 1995, Ch. 966, Sec. 3.*)

43025. It is the intent of the Legislature in the enactment of this chapter to update the penalty provisions for violations of fuel regulations to ensure that the appropriate tools are available to effectively and fairly enforce state law. In enacting this chapter, it is not the intent of the Legislature to modify penalty settlements beyond historic levels. The civil and administrative penalty provisions in this chapter are designed to give the state board an effective, efficient, and flexible tool to fairly enforce all violations.

(*Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.*)

43026. (a) For purposes of this section, "motor vehicle fuel distributor" means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state shall, annually on January 1, inform the state board in writing of the distributor's principal place of business, which shall be a physical address and not a post office box, and any other place of business at which distributor records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. A complete record for each delivery shall consist of not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

(e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision (b) or (d) is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day of noncompliance.

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described in subdivision (c). Any person who transports, or provides vehicles to transport, motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per day. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of compliance shall not be liable for any penalties under this subdivision unless that person has specific knowledge of noncompliance.

(g) Any retailer who knowingly sells or supplies motor vehicle fuel which was delivered to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each transaction.

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease and desist have been delivered to the owner, manager, or attendant on duty at the retailer facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten thousand dollars (\$10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified motor vehicle fuel distributors, and shall mail a copy to every licensed transporter of petroleum products.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)

43027. The following civil penalties apply to the following acts not included within Section 43026:

(a) Any person who willfully and intentionally violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000), and the prosecuting agency shall include a claim for an additional penalty in the amount of any economic gain that otherwise would not have been realized from the sale of the fuel determined to be in noncompliance.

(b) Any person who negligently violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

(c) Any person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is strictly liable for a civil penalty of not more than thirty-five thousand dollars (\$35,000).

(d) Any person who enters false information in, or fails to keep, any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is strictly liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000). In determining the amount of the penalty to be assessed under this subdivision, the court, or in reaching any settlement, the Attorney General or the state board, shall take into consideration, in addition to subdivision (b) of Section 43031, the specific circumstances and intent of the defendant in making the false entry or in failing to keep the document.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)

43028. As an alternative to any civil penalties prescribed under this part, the state board may impose administrative civil penalties for a violation of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, if the state board has adopted rules and regulations specifying procedures for the imposition and amounts of those penalties. No administrative civil penalty levied pursuant to this section shall exceed twenty-five thousand dollars (\$25,000) for each day on which there is a violation or three hundred thousand dollars (\$300,000) in total. However, nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law which exceed twenty-five thousand dollars (\$25,000) for each day on which there is a violation or three hundred thousand dollars (\$300,000) in total, except that the state board shall not rely on any provision of the Business and Professions Code.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)

43029. In an action to recover civil penalties pursuant to subdivisions (b) and (c) of Section 43027, a proceeding to assess administrative civil penalties pursuant to Section 43028, or a criminal prosecution pursuant to Section 43020, the prosecuting agency shall include a claim for an additional penalty designed to eliminate the economic benefits from noncompliance against any person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to fuel requirements or standards as follows:

(a) For violations of gasoline requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and nine thousand one hundred dollars (\$9,100) per ton, which is the maximum calculated cost-effectiveness for California Phase 2 Reformulated Gasoline.

(b) For violations of diesel fuel requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and five thousand two hundred dollars (\$5,200) per ton, which is the maximum calculated cost-effectiveness for California low sulfur, low aromatics diesel fuel.

(c) To ensure that the penalties under subdivisions (a) and (b) continue to adequately reflect the goals of this section, the following shall occur annually:

(1) The cost-effectiveness values set forth in subdivisions (a) and (b) shall be adjusted to reflect the change in the annual average nationwide producers price index of industrial commodities, less fuels and related products and power, published by the United States Bureau of Labor Statistics, averaged over the previous 5 years.

(2) The methodologies used to calculate the excess emissions from noncompliant fuels shall be reviewed by the state board and updated as necessary.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)

43030. (a) For the penalties prescribed in Sections 43027 and 43028, each day during any portion of which a violation occurs is a separate offense.

(b) In applying penalties under Section 43027 or 43028 for violations based solely upon the state board's review of monthly production records, each day within a month for which a violation occurs is a separate violation.

(c) The recovery of civil or administrative civil penalties pursuant to this chapter precludes prosecution pursuant to Section 43020 for the same offense. When the executive officer refers a violation to a prosecuting attorney, the filing of a criminal complaint is grounds requiring the dismissal of any civil action or administrative proceedings brought pursuant to this chapter for the same offense.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)

43031. (a) The civil or administrative civil penalties prescribed in this chapter shall be assessed and recovered either in a civil action brought in the name of the people of the State of California by the Attorney General or by the state board, or in administrative hearings established pursuant to regulations adopted by the state board.

(b) In determining the amount assessed, the court, the Attorney General, or the state board, in reaching any settlement, 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 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) For a person who owns a single retail service station, the size of the business.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)

43031.5. The revenues from penalties recovered by the state board pursuant to this chapter shall be deposited in the Air Pollution Control Fund and shall only be expended by the state board for environmental cleanup, abatement, or pollution prevention technology.

(Added by Stats. 1995, Ch. 966, Sec. 3. Effective January 1, 1996.)