



Legislation Text

File #: 2023-0330, Version: 1

Report to Mayor and City Council

Tuesday, May 02, 2023

Consent

SUBJECT:

CONSIDER TAKING A POSITION OF SUPPORT AND SENDING A CORRESPONDING LETTER REGARDING ASSEMBLY BILL 1465 TO INCREASE CIVIC PENALTIES ASSOCIATED WITH TOXIC DISCHARGES FROM REFINERIES AS IDENTIFIED BY THE STATE AIR RESOURCES BOARD (CITY COUNCIL)

I. SUMMARY

This item is on the agenda at the request of Mayor Davis-Holmes for City Council to consider taking a position of support and sending a corresponding letter regarding Assembly Bill 1465. The proposed letter is included as Exhibit 1 and the Policy Analysis is included as Exhibit 2.

According to the synopsis provided to the State Assembly Judiciary Committee, California has some of the most stringent air pollution laws in the nation. Nonetheless, unhealthy air quality continues to plague the state, especially in majority minority neighborhoods located near heavily industrialized areas. In recent years, it has become abundantly clear that the existing civil penalty structure designed to deter unlawful emissions of hazardous pollutants is not serving as a sufficient deterrent to unlawful releases of hazardous pollutants into the environment. This problem appears to be particularly acute as it pertains to California's oil and gas refining industry.

If adopted, AB 1465 would triple the level of potential civil penalties imposed on refineries for violating six provisions of existing law related to air quality, which would help ensure that the penalties associated with unlawful emissions of air contaminants are no longer treated as the cost of doing business.

Nothing in the Bill would otherwise alter the existing procedural rules for seeking these civil penalties or alter the existing law related to the distribution of penalty proceeds. This Bill is sponsored by the Bay Area Air Quality Management District who note that refineries are frequent violators of existing air quality laws, and that refinery violations are often some of the most disruptive to the adjacent communities. This Bill is opposed by the Western States Petroleum Association who object to singling out refineries for the enhanced penalties and not applying the Bill to all potential polluters. This measure was previously

heard and approved by the Committee on Natural Resources by a vote of 8-3.

II. RECOMMENDATION

TAKE a position of SUPPORT for Assembly Bill 1465 and DIRECT staff to transmit a corresponding letter (Exhibit 1).

III. ALTERNATIVES

TAKE another action the City Council deems appropriate and that is consistent with applicable laws.

IV. BACKGROUND

As detailed in the Policy Analysis included as Exhibit 2, AB 1465 defines a “refinery” to mean an establishment that is located on one or more contiguous or adjacent properties that produces gasoline, diesel fuel, aviation fuel, lubricating oil, asphalt, petrochemical feedstock, or other similar product through the processing of crude oil or alternative feedstock, redistillation of unfinished petroleum derivatives, cracking, or other processes.

AB 1465 would permit the civil or administrative penalties provided for in Health and Safety Code Section 42402 through 42402.5, related to unlawful discharges or air contaminants, to be tripled if both of the following occur:

- The discharge is from a refinery that is also deemed a Title V pollution source under federal law; and
- The discharge contains or includes one or more toxic air contaminants, as identified by the California Air Resources Control Board as a toxic air contaminant.

California law provides several tiers of penalties for entities found to have unlawfully emitted pollutants into the air. Despite the diversity of penalties provided by law, regulators frequently opt to utilize strict liability penalties for unlawful emissions of hazardous pollutants, which are capped at \$10,000 per violation. The author and proponents of this measure note that for many large-scale industrial operations, these penalties are so low that they are now viewed as little more than the cost of doing business. The author contends that this is especially true for large hydrocarbon refineries.

Accordingly, this Bill seeks to adopt a refinery-specific penalty regime for unlawful emissions of toxic air contaminants. In support of the Bill, the author states:

AB 1465 triples civil penalties for refineries who violate air quality standards. At oil refineries in recent years, there has been a precipitous decline in compliance with air

quality requirements, coupled with increases in flaring events that release toxic air contaminants into neighboring communities. Refinery flaring can result in shelter-in-place notifications, school closures, and a surge of visits to health care facilities for medical care. In the Bay Area, refineries are some of the largest sources of air pollutants. Specifically in my district, increased flaring events have led to incidents that have negatively impacted health of the community, including schools in the surrounding areas. Serious disruptions caused by flaring or similar pollution discharges at a refinery are occurring far too often. Refineries must be held more accountable when they pollute the air. The consequences for air quality violations must be severe enough to deter a discharge before it occurs, so refineries don't simply treat fines for causing community disruption as an acceptable cost of doing business.

Further information on the penalties is included in Exhibit 2.

V. FISCAL IMPACT

There will be no fiscal impact. This item seeks approval of the letter only.

VI. EXHIBITS

1. Proposed Letter of Support for Assembly Bill 1465 (pgs. 4 - 5)
2. Policy Analysis (pg. 6 - 13)

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