



April 7, 2010

Senator Joe Simitian, Chair
Senate Environmental Quality Committee
State Capitol
Sacramento, CA 95814, Room 2080

Senator George Runner, Vice Chair
Senate Environmental Quality Committee
State Capitol
Sacramento, CA 95814, Room 4090

Re: Senate Bill 1402

Dear Senator Simitian and Senator Runner:

Californians for Enforcement Reform and Transparency (“CERT”) writes to express its strong support for Senate Bill 1402 (“SB 1402”). CERT is a diverse group of sixteen industries and trade associations with thousands of affected members that have been working cooperatively with the California Air Resources Board (“CARB”) and other stakeholders for almost a year to improve CARB's compliance and enforcement programs. CERT members are committed to improving air quality through a transparent regulatory and enforcement environment that works for everyone.

SB 1402 strengthens CARB’s credibility, accountability and effectiveness through specific improvements to its enforcement programs. The measures in this bill are designed to enhance transparency and create regulatory certainty for the environmental community, the regulated community, and the broader public. Similar improvements at the federal level have dramatically enhanced the enforcement program and the settlement effectiveness of the United States Environmental Protection Agency’s (“EPA”) mobile source division.

(a) **Transparency**

SB 1402 requires CARB, in all mobile source enforcement actions, to explain and make publicly available the specific statutory authority for the claim, how it calculated the proposed penalty (*i.e.*, the number of units in violation of which statutory provision), the aggravating or mitigating factors considered, and the impact to air pollution (if any) of the alleged violation. These pieces of information represent the minimum prosecutorial due diligence that any regulatory body should provide to an alleged violator and the public to ensure adequate due process.

(b) **Enforcement Consistency**

SB 1402 requires CARB to adopt a formal enforcement penalty policy outlining objective criteria by which all mobile source violations will be assessed. Such a policy promotes good government by engendering consistency and aligns CARB's mobile source enforcement program with its other regulatory programs – all of which have similar or identical objective criteria. These criteria include, the nature and extent of harm to the environment from the violation (if any), the defendant's compliance history and mitigation efforts (if any), the effort required to comply, and the cooperation of the defendant during the investigation.

(c) **Administrative Hearings**

SB 1402 would broaden access to CARB's existing administrative penalty process, by, among other things, providing an administrative hearing as a matter of right for all proposed penalties under \$300,000. This provision is designed as a more efficient process to resolve disputes (rather than litigation) for both the State and many of California's small businesses.

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CERT strongly supports SB 1402. The bill is a win-win for CARB, the regulated community and the public and will result in a more legitimate and enhanced enforcement program that prioritizes the state's enforcement resources on violations that harm California's air quality.

Sincerely,

American Home Furnishing Alliance (AHFA)
California Chapter of the American Fence Contractors Association
California Dump Truck Owner Association (CDTOA)
California Motorcycle Dealers Association (CMDA)
California Moving and Storage Association (CMSA)
California Retailers Association (CRA)
Construction Industry Air Quality Association (CIAQC) – and several of
their affiliates
Engineering Contractors Association
Flasher/Barricade Association

Independent Waste Oil Collectors and Transporters
Marine Builders Association
Moving and Storage Association
National Marine Manufacturers Association (NMMA)
Outdoor Power Equipment Institute (OPEI)
Compliant Car Builders Association
Southern California Contractors Association

Cc: Senator Ellen Corbett (Room 5108)
Senator Loni Hancock (Room 3092)
Senator Alan Lowenthal (Room 2032)
Senator Fran Pavley (Room 4035)
Senator Tony Strickland (Room 4062)
Carroll Mortensen (Room 2205)
Senator Dutton