

## Memorandum 98-37

**Environment Code: Division 4 — Air Resources: Part 4**

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**Note:** The proposed Environment Code is intended to reorganize and continue existing environmental statutory law without substantive change.

Attached to this memorandum is a staff draft of Part 4 of Division 4 of the proposed Environment Code, relating to air resources. A staff draft of conforming revisions and a disposition table showing the relationship between existing code sections and their corresponding proposed Environment Code sections are also attached. Noteworthy aspects of the staff draft are discussed below.

## ORGANIZATIONAL IMPROVEMENTS

In drafting this part, the staff has made a number of nonsubstantive changes to improve the internal organization of the part. These improvements are generally of two types:

(1) *Structural division of undifferentiated material.* In many cases, the organization of material within this part would benefit from being broken up into smaller organizational divisions. This would make the material more comprehensible by aggregating related provisions under more specific descriptive headings. For example, this part contains 27 sections governing penalties. These sections are grouped in a single article, entitled "Penalties." In the attached draft this article has been promoted to a chapter and has been broken up into four subordinate articles, "General Provisions," "Criminal Penalties," "Civil Penalties," and "Procedure for Recovery of Civil Penalties." See proposed Sections 39500-39656.

(2) *Division of unnecessarily long sections.* Many sections are extremely long and contain a number of related, but distinct provisions. These sections can be difficult to understand, and their great length complicates any subsequent amendment. This latter problem is addressed in Senate and Assembly Joint Rule 8, which provides in relevant part:

Bills that are not amendatory of existing laws shall be divided into short sections, where this can be done without destroying the sense of any particular section, to the end that future

amendments may be made without the necessity of setting forth and repeating sections of unnecessary length.

In preparing the attached draft, unnecessarily long sections have been divided into a number of shorter sections. In many cases, the resulting sections have been organized into one or more articles. For example, Health and Safety Code Section 41865, the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, contains 21 subdivisions, with 32 subordinate paragraphs and subparagraphs. In the attached draft, this section has been divided into 20 separate sections organized as a separate article. See proposed Sections 38250-38269.

#### DRAFTING IMPROVEMENTS

The staff has identified a few sections that are very awkwardly drafted or contain ambiguities. Staff notes to these sections identify the problems and suggest alternative language to rectify them. See proposed Sections 38350 (unclear application of definitions), 38554 (ambiguous reference), 38856 (ambiguous reference), 39009 (meaning of section unclear), 39601 (awkward drafting).

#### SECTIONS BETTER LOCATED ELSEWHERE

##### **Health and Safety Code Section 41509**

Health and Safety Code Section 41509 governs the effect of the provisions of the Air Resources division and all orders, rules, and regulations of the state board and all district boards. Such a broad provision should be with the other provisions that apply to the division generally. **The staff recommends continuing this section in Part 1 of this division, as follows:**

##### **§ 30005. Effect on powers and rights relating to nuisance**

30005. No provision of this division, or of any order, rule, or regulation of the state board or of any district, is a limitation on:

(a) The power of any local or regional authority to declare, prohibit, or abate nuisances.

(b) The power of the Attorney General, at the request of a local or regional authority, the state board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) The power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(d) The right of any person to maintain at any time any appropriate action for relief against any private nuisance.

**Comment.** Section 30005 continues former Health and Safety Code Section 41509 without change.

#### ERRONEOUS REFERENCES

A number of sections contain erroneous references to other provisions. Staff Notes to these sections identify these errors and the staff's suggestions as to how to rectify them. See proposed Sections 37100, 37101, 39000, 39154, 39157, and 39654.

#### OBSOLETE PROVISIONS

The staff has identified a number of provisions that appear to be obsolete. In some cases, obsolescence is clear and the provision has not been continued. In these cases, the failure to continue the obsolete provision is noted in the Comment to the relevant section. In other cases, obsolescence is less clear. Staff Notes to these sections raise the issue of obsolescence and request public input on the continued usefulness of the apparently obsolete provision.

##### **Start Dates**

A number of sections impose duties on state agencies, or change their procedures, beginning on a specified date. These dates have historical relevance, but appear to have no continuing legal effect. These apparently obsolete dates are not continued in the attached draft, but are noted in the corresponding Comments. See proposed Sections 37004, 37452, 38008, 38105, 38458, and Comments.

##### **Deadlines**

A number of sections specify deadlines by which state agencies were to complete some task. These provisions appear to be obsolete, but may have some continuing relevance if an agency has not yet complied with the requirement. Staff Notes to these sections raise this issue and request input on the continued relevance of the deadline provisions. See proposed Sections 37006, 38001-38005, 38262, 38300, 38602, 38652, 39158, and 39801.

Health and Safety Code Sections 41518-41520 require the preparation of a report by 1980. These provisions appear to be obsolete and are not continued. See Staff Note following proposed Section 37402.

**Miscellaneous Obsolete Provisions**

A few sections appear to be obsolete for reasons other than those discussed above. Health and Safety Code Section 41507 governs the exercise of authority established in a section that has been repealed. Consequently, this section appears to be obsolete and has not been continued. See the Staff Note following proposed Section 37201. See also Staff Notes following proposed Sections 37450 (obsolete date reference), 38854 (transitional effect of prior amendment).

**MINOR ISSUES**

There are two sections raising minor issues. These issues and the staff's approach to addressing them are discussed in staff notes to Proposed Sections 38006 (applicable definition) and 39605 (minor substantive change consistent with similar provisions).

Respectfully submitted,

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## DIVISION 4. AIR RESOURCES

### PART 4. NONVEHICULAR AIR POLLUTION CONTROL

#### TITLE 1. GENERAL PROVISIONS

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##### **§ 37000. Assistance to small businesses**

37000. (a) The Legislature finds and declares that the California Pollution Control Financing Authority and the Department of Commerce, working with the south coast district, have established successful programs to assist small businesses in complying with district rules and financing the purchase of pollution control equipment.

(b) The Treasurer, the California Pollution Control Financing Authority, and the Department of Commerce shall work with, and provide all feasible assistance to, districts to increase opportunities for small businesses to comply with the rules and regulations of the district. That assistance may include loans, loan guarantees, and other forms of financial assistance.

**Comment.** Section 37000 continues former Health and Safety Code Section 41503.6 without change.

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##### **§ 37001. Stricter local standards**

37001. Except as otherwise specifically provided in this division, including, but not limited to, Sections 37902, 37959, and 38304, any local or regional authority may establish additional, stricter standards than those set forth by law or by the state board for nonvehicular sources.

**Comment.** Section 37001 continues former Health and Safety Code Section 41508 without substantive change.

---

##### **§ 37002. Action required to determine amount of emission**

37002. For the purpose of carrying out the duties imposed upon the state board or any district, the state board or the district, as the case may be, may adopt rules and regulations to require the owner or the operator of any air pollution emission source to take the action determined by the state board or the district to be reasonable for the determination of the amount of the emission from that source.

**Comment.** Section 37002 continues former Health and Safety Code Section 41511 without substantive change.

---

##### **§ 37003. Application of division, rules, and regulations to vehicles**

37003. Notwithstanding any other provision of law, no provision of this division, and no rule or regulation of the state board or of a district adopted pursuant to this division, imposing any requirement pertaining to the control of nonvehicular emissions shall apply to any equipment carried by, or affixed to, any motor vehicle described in Section 27156.3 of the Vehicle Code.

**Comment.** Section 37003 continues former Health and Safety Code Section 41514 without change.

#### **§ 37004. Findings required for regulation of powerplant emissions**

---

37004. (a) Prior to adopting rules or regulations which would affect the operation of existing powerplants, the state board or any district shall consider and adopt written findings that specify the supporting information relied upon with regard to all of the following:

(1) The need for the emission reductions expected to be achieved from the implementation of the proposed rule or regulation, and the extent to which the rule or regulation is necessary solely for the attainment of a state ambient air quality standard.

(2) The relative cost of achieving the emission reductions from the proposed rule or regulation compared to the cost of feasible reductions from sources other than powerplants.

(3) The availability and technological feasibility of control technologies required by the proposed rule or regulation.

(b) Rules and regulations affecting the operation of existing powerplants adopted by the state board or any district shall take into consideration the findings under subdivision (a).

**Comment.** Section 37004 continues former Health and Safety Code Section 41514.8 without substantive change. The reference in subdivision (b) to the date after which certain findings must be considered in adopting certain rules and regulations (January 1, 1982), is obsolete and has not been continued.

#### **§ 37005. Application of part to construction equipment used on temporary basis**

---

37005. Nothing contained in this part shall be construed to include or restrict the use of construction equipment such as portable sandblasting equipment or portable spraying or spray painting equipment, or any similar equipment, used on a temporary basis in connection with new construction, or on maintenance or repairs of existing structures, machinery, or equipment; provided, the equipment is operated in accordance with the requirements of this division and applicable district and state board rules and regulations.

**Comment.** Section 37005 continues former Health and Safety Code Section 41512(b) without substantive change.

#### **§ 37006. Independent testing**

---

37006. Where testing to demonstrate compliance with permit conditions or with any state or local law, order, rule, or regulation relating to air pollution is required by the state board, the state board, not later than April 1, 1981, shall establish procedures under which the operator may request that the testing be performed by an independent testing service. The state board may, for good cause, reject the request.

**Comment.** Section 37006 continues former Health and Safety Code Section 41512(c) without substantive change.

☞ **Staff Note.** This section specifies a deadline for the establishment of certain procedures. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Were the procedures established as required? (2) Does the deadline provision still serve a useful purpose?

## TITLE 2. STATE BOARD OVERSIGHT

### CHAPTER 1. GENERAL PROVISIONS

#### **§ 37100. Powers and responsibilities of state board**

---

37100. To coordinate air pollution control activities throughout the state, and to ensure that the entire state is, or will be, in compliance with the standards adopted pursuant to Section 31250, the state board shall do all of the following:

(a) Review the district attainment plans submitted pursuant to Section 33201, and the revised plans submitted pursuant to Section 33453, to determine whether the plans will achieve and maintain the state's ambient air quality standards by the earliest practicable date.

(b) Review the rules and regulations and programs submitted by the districts pursuant to Section 32302 to determine whether they are sufficiently effective to achieve and maintain the state ambient air quality standards.

(c) Review the enforcement practices of the districts and local agencies delegated authority by districts pursuant to Sections 32900 to 32907, inclusive to determine whether reasonable action is being taken to enforce their programs, rules, and regulations.

**Comment.** Section 37100 continues former Health and Safety Code Section 41500 without substantive change. The reference to Section 40717.2 in former subdivision (c) is erroneous and has not been continued.

☞ **Staff Note.** Subdivision (c) refers to Health and Safety Code Section 40717.2. That section does not appear to exist. The staff would like to receive information on the intended effect of this erroneous reference.

#### **§ 37101. Application of environmental management plan requirements**

---

37101. Notwithstanding any other provision of law, any plan required by the provisions of this division shall be subject to the provisions of Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

**Comment.** Section 37101 continues former Health and Safety Code Section 41500.5 without substantive change. The reference in former Section 41500.5 to "this title" was erroneous and has been replaced with a reference to "this division."

☞ **Staff Note.** This section refers to "the provisions of this title." The Health and Safety Code does not use titles, so it is not clear what this reference is intended to mean. This part does not appear to require the preparation of plans, but other parts in the division do. Probably, the reference to the title should be replaced with a reference to the division.

#### **§ 37102. Public hearing requirements**

---

37102. (a) Before taking any action pursuant to Section 37150, 37200, 37201, or 37503, the state board shall hold a public hearing within the air basin affected, upon a 45-day written notice given to the basinwide air pollution control council, if any, the affected districts, the affected air quality planning agencies, and the public. However, except with respect to action taken pursuant to Section 37503, upon receipt of evidence that a concentration of air contaminants in any place is presenting an imminent and substantial endangerment to the health of persons, and that the districts affected are not taking reasonable action to abate the concentration of air contaminants, the state board shall give, orally if necessary, as much notice as possible, but not less than 24 hours. The state board

shall, in the action taken, include a statement of the facts which prevented the state board from giving a 45-day written notice.

(b) In addition to any other statutory requirements, interested persons shall have the right, at the public hearing, to present oral and written evidence and to question and solicit testimony of qualified representatives of the state board on the matter being considered. The state board may, at the public hearing, place reasonable limits on the right to question and solicit testimony.

(c) If, after conducting the public hearing required by subdivision (a), the state board determines to take action pursuant to any section enumerated in subdivision (a), the state board shall, based on the record of the public hearing, adopt written findings which explain the action to be taken by the state board, why the state board decided to take the action, and why the action is authorized by, and meets the requirements of, the statutory provisions pursuant to which it was taken. In addition, the findings shall address the significant issues raised or written evidence presented by interested persons or the staff of the state board. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the state board.

(d) Subdivisions (a), (b), and (c) shall be applicable to the executive officer of the state board acting pursuant to Section 31107, or to his delegates acting pursuant to Section 31108, with respect to any action taken pursuant to any section enumerated in subdivision (a).

**Comment.** Section 37102 continues former Health and Safety Code Section 41502 without substantive change.

## CHAPTER 2. DISTRICT ATTAINMENT PLANS

### § 37150. Sufficiency of plan

---

37150. (a) Within 12 months of receiving each district's attainment plan developed pursuant to Section 33201, the state board shall determine whether the attainment date specified in the plan represents the earliest practicable date and whether the measures contained in the plan are sufficient to achieve and maintain state ambient air quality standards.

(b) The state board shall conduct its review to include the plans of every district in the air basin, and shall determine whether the combination of measures in all the plans is sufficient to achieve and maintain state ambient air quality standards throughout the air basin. The state board shall hold at least one public hearing in each affected air basin prior to reaching a final determination of the sufficiency of the plans. The state board shall require control measures for the same emission sources to be uniform throughout the air basin to the maximum extent feasible, unless a district demonstrates to the satisfaction of the state board that adoption of the measure within its jurisdiction is not necessary to achieve or maintain the state ambient air quality standard.

(c) Where air pollutant transport is a factor, the state board shall determine whether the attainment plan is sufficient to satisfy the requirements of Section 33300.

(d) If a district is unable to specify an attainment date and the state board concurs that projecting an attainment date is not feasible, the state board shall determine whether the plan contains every feasible control strategy or measure to ensure progress toward attainment is maintained.

(e) In making determinations under subdivisions (a), (b), (c), and (d), the state board shall consider any emission reductions occurring in, or expected to occur in, the district or air basin.



**Comment.** Section 37150 continues former Health and Safety Code Section 41503 without substantive change.

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**§ 37151. Approval of plan with lower emissions reductions**

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37151. The state board may approve an attainment plan which achieves less emission reductions than 5 percent per year, or less than 15 percent every three years, as specified in Section 33251, if the state board determines that the district is unable to meet these requirements, despite the expeditious adoption of all feasible controls, or if the state board determines that the equivalent air quality improvement will be achieved through an alternate level of emissions reduction.

**Comment.** Section 37151 continues former Health and Safety Code Section 41503.1 without substantive change.

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**§ 37152. Deficiencies in plan**

---

37152. (a) If the state board concludes that a district's plan does not meet the requirements of Section 37150, the state board shall notify the district of all deficiencies in writing. The district shall correct the deficiencies identified by the state board, and shall submit its revised plan to the state board for approval.

(b) If the district does not concur with the state board's findings and determinations of deficiency, or the state board determines that the district's plan revisions are inadequate to remedy identified deficiencies, the state board and the district shall attempt to resolve the differences within three months of the board's disapproval. The state board and the districts shall develop a uniform conflict resolution procedure, for purposes of this subdivision, prior to any district's submittal of its attainment plan to the state board.

(c) If a conflict between the state board and district cannot be resolved, the state board shall take all of the following actions:

(1) Conduct a public hearing in the air basin containing the affected district for purposes of hearing testimony on the plan and the deficiencies identified by the state board pursuant to subdivision (a).

(2) Prior to conducting the hearing, provide a 45-day written notice to the affected district and to the public of the date, time, location, and subject of the hearing.

(3) After conducting the public hearing on the plan and the deficiencies identified by the state board, revise the district's plan as it finds and determines necessary.

**Comment.** Section 37152 continues former Health and Safety Code Section 41503.2 without substantive change.

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**§ 37153. Triennial progress report and plan revisions**

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37153. Upon receipt of a district's triennial progress report and plan revisions prepared pursuant to subdivision (b) of Section 33452, the state board shall determine whether the district has achieved the minimum rate of progress under Section 33251 or as adjusted by the board pursuant to Section 37151. The state board shall require the adoption of one or more contingency measures when the minimum rate of progress has not been achieved, unless the district demonstrates to the satisfaction of the state board that the discrepancy will be corrected and the deficiency restored during the next reporting period.

**Comment.** Section 37153 continues former Health and Safety Code Section 41503.3 without substantive change.

**§ 37154. Public hearing requirement**

---

37154. All actions of the state board to approve, revise and approve, or disapprove a district's attainment plan or plan revision shall be taken at a noticed public hearing.

**Comment.** Section 37154 continues former Health and Safety Code Section 41503.4 without change.

**§ 37155. Satisfaction of applicable standards**

---

37155. The state board shall ensure that a district's attainment plan and plan revisions meet the requirements of this part and of Part 3 (commencing with Section 32000), and that every reasonable action is taken to achieve the state ambient air quality standards for ozone, carbon monoxide, nitrogen dioxide, and sulfur dioxide at the earliest practicable date.

**Comment.** Section 37155 continues former Health and Safety Code Section 41503.5 without substantive change.

CHAPTER 3. ACHIEVEMENT OF AMBIENT AIR QUALITY STANDARDS

**§ 37200. Failure to achieve ambient air quality standards**

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37200. (a) If, after a public hearing, the state board finds that the program or the rules and regulations of a district will not likely achieve and maintain the state's ambient air quality standards, the state board may establish a program, or portion thereof, or rules and regulations it deems necessary to enable the district to achieve and maintain the ambient air quality standards.

(b) Any program, or portion thereof, or rule or regulation established by the state board for the district shall have the same force and effect as a program, rule, or regulation adopted by the district and shall be enforced by the district.


**Comment.** Section 37200 continues former Health and Safety Code Section 41504 without substantive change.

**§ 37201. Exercise of district powers by board**

---

37201. If, after a public hearing, the state board finds that a district is not taking reasonable action to enforce the statutory provisions, rules, and regulations relating to air quality in a manner that will likely achieve and maintain the state's ambient air quality standards, the state board may exercise any of the powers of that district to achieve and maintain the ambient air quality standards.

**Comment.** Section 37201 continues former Health and Safety Code Section 41505 without substantive change.

 **Staff Note.** Section 41507 appears to be obsolete and is not continued in this draft. The section governs the state board's review of basinwide air pollution control plans pursuant to authority granted under Section 41602. Section 41602 was repealed in 1988. See 1999 Cal. St. ch. 1568, § 23.

TITLE 3. FEE SCHEDULES

**§ 37300. Fee schedule relating to sampling**

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37300. The state board or a district board may adopt, by regulation, after a public hearing, a schedule of fees not exceeding the estimated cost of planning, preliminary

evaluation, sampling, sample analysis, calculations, and report preparation with respect to samples of emissions secured from air pollution emission sources. However, the fees may be imposed or assessed only when the samples are required to determine compliance with permit conditions or with any state or local law, order, rule, or regulation relating to air pollution. The fees shall not include charges for the reasonable time exclusively spent by the owner or operator of the source constructing testing facilities or preparing for the testing. The failure to pay a fee in a timely manner shall constitute grounds for the revocation or suspension, and may be made a condition for the issuance, of any permit. The revocation or suspension shall be in accordance with the procedures set forth in Sections 38807 to 38812, inclusive.

**Comment.** Section 37300 continues former Health and Safety Code Section 41512(a) without substantive change.

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**§ 37301. Fee schedule relating to emission sources not included in permit system**

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37301. (a) A district board may adopt a schedule of fees applicable to emission sources not included within a permit system adopted pursuant to Section 38750 to cover the estimated reasonable costs of evaluating plans required by law or by district rule or regulation, including, but not limited to, review, inspection, and monitoring related thereto. The fees shall not exceed the estimated costs of reviewing, monitoring, and enforcing the plan for which the fees are charged.

(b) The district board shall hold a public hearing at least 30 days prior to the meeting of the district board at which the adoption or revision of the fee schedule is to be considered, and supporting data on the actual or estimated costs required to provide the service for which the fee is proposed to be charged shall be made available at that public hearing.

**Comment.** Section 37301 continues former Health and Safety Code Section 41512.5 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

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**§ 37302. Limitation on fee increases**

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37302. (a) No district with an annual budget of less than one million dollars (\$1,000,000) shall increase any existing fees for authority-to-construct permits or permits to operate by more than 30 percent in any calendar year, unless required to comply with the minimum fee requirements of Title V.

(b) No district with an annual budget of one million dollars (\$1,000,000) or more shall increase any existing fees for authority-to-construct permits or permits to operate by more than 15 percent in any calendar year.

(c) Notwithstanding subdivision (b), this section shall not apply to the south coast district.

**Comment.** Section 37302 continues former Health and Safety Code Section 41512.7(a)-(c) without substantive change.

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**§ 37303. Permit fees of San Diego County Air Pollution Control District**

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37303. (a) Notwithstanding Section 37302, effective January 1, 1998, any of the San Diego County Air Pollution Control District's individual fees for authority-to-construct permits and permits to operate may reflect the district's actual costs, as determined by the district's fee-for-service calculations.

(b) Notwithstanding subdivision (a) or Section 37302, on and after January 1, 1999, the San Diego County Air Pollution Control District may increase any individual fees for

authority-to-construct permits and permits to operate by more than 15 percent in any fiscal year only if the total, aggregate increase in existing fees for authority-to-construct permits and permits to operate does not exceed 15 percent in that fiscal year.

(c) This section shall remain operative so long as the San Diego County Air Pollution Control District continues to determine fees for authority-to-construct permits and permits to operate pursuant to a cost-based fee system in which all of the following requirements are met:

(1) Fees for authority-to-construct permits and permits to operate are specified for a minimum of 120 separate equipment and process categories.

(2) Labor expended to issue authority-to-construct permits and permits to operate is tracked in increments of 0.5 hours or less for each of those categories.

(3) The fees for authority-to-construct permits and permits to operate are determined from the costs of labor tracked in increments of 0.5 hours or less and other actual and projected costs related to permitted stationary sources.

(d) This section shall become inoperative if, and at the time that, the San Diego district ceases to determine fees for authority-to-construct permits and permits to operate as specified in subdivision (c).

**Comment.** Section 37303 continues former Health and Safety Code Section 41512.7(d) without substantive change.

## TITLE 4. COGENERATION TECHNOLOGY AND RESOURCE RECOVERY PROJECTS

### CHAPTER 1. LEGISLATIVE FINDINGS AND DECLARATIONS

#### **§ 37400. Legislative findings and declarations**

---

37400. The Legislature finds and declares the following:

(a) Present methods of generating and using energy in California result in substantial waste of energy through the loss of exhaust steam and heat which is not recovered or otherwise put to use, and that this waste of energy results in adverse environmental and economic impacts and accelerates the need for new powerplant construction, and increases dependence upon imported oil.

(b) The use of cogeneration technology can substantially increase the efficiency of energy use in California and can also result in environmental and economic benefits for the people of the state.

(c) The expanded use of cogeneration technology is specifically encouraged as a matter of national energy policy through the tax and regulatory incentives provided in the National Energy Act, and through state legislation which encourages the expeditious approval of cogeneration projects.

(d) The construction and operation of cogeneration facilities will result in an incremental air quality emissions benefit to the extent they reduce demand on existing utility combustion generation facilities in the same air basin and that this benefit should be recognized in determining requirements for new cogeneration projects.

**Comment.** Section 37400 continues former Health and Safety Code Section 41515 without substantive change.

#### **§ 37401. Further legislature findings and declarations**

---

37401. The Legislature further finds and declares the following:

(a) The disposal of liquid and solid waste poses serious environmental and economic problems for local governments in California.

(b) Resource recovery technology presently exists which can convert municipal waste to energy while also recovering substantial quantities of raw materials.

(c) The construction of resource recovery projects can help alleviate the environmental and economic problems associated with municipal waste disposal, while at the same time producing additional supplies of energy and raw materials.

(d) Resource recovery projects should therefore be encouraged as a matter of state policy.


**Comment.** Section 37401 continues former Health and Safety Code Section 41516 without substantive change.

---

#### **§ 37402. Further legislature findings and declarations**

37402. The Legislature further finds and declares that the 1977 amendments to the federal Clean Air Act specifically authorize local governments to provide for the mitigation of the air quality impact of projects with communitywide benefits, such as cogeneration technology and resource recovery projects, by providing regional growth increments in the state implementation plan.

**Comment.** Section 37402 continues former Health and Safety Code Section 41517 without change.

 **Staff Note.** Health and Safety Code Sections 41518-41520 require the state board to inventory potential cogeneration technology and resource recovery projects that could be constructed before 1987. These inventories were to be prepared by 1980. These sections appear to be obsolete and have not been continued.

## **CHAPTER 2. BASINWIDE MITIGATION FOR COGENERATION AND RESOURCE RECOVERY PROJECTS**

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#### **§ 37450. Growth allowances**

37450. (a) The districts shall provide for, and shall periodically revise as appropriate, the growth allowances necessary to accommodate the net air quality impact, if any, of cogeneration technology projects and resource recovery projects expected to be permitted by January 1, 1987, and subsequent periods thereafter, pursuant to Section 39154, so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment.

(b) If appropriate, the districts shall submit to the state board, for inclusion in the next state implementation plan revisions, the necessary control measures for the growth allowances for federally approved nonattainment pollutants and precursors required by subdivision (a).

(c) Any district which lacks a federally approved demonstration of attainment with the national ambient air quality standard for ozone or nitrogen dioxide is not required to provide a growth allowance for any pollutant under this section until two years after the district makes both demonstrations. Federal approval shall be determined, based on regulations adopted by the Environmental Protection Agency, after public notice and opportunity for comment. After a district demonstrates attainment, the district may establish a growth allowance by allocating an air quality increment within the ambient air quality standard or through adoption of further control measures.

**Comment.** Section 37450 continues former Health and Safety Code Section 41600 without substantive change.

☞ **Staff Note.** Subdivision (a) requires analysis of the air quality impact of “cogeneration technology projects and resource recovery projects expected to be permitted by January 1, 1987, and subsequent periods thereafter, pursuant to Section 42314....” The staff would like to receive input on whether the quoted language could be replaced with the following language: “permitted cogeneration technology projects and resource recovery projects....”

#### **§ 37451. Utility displacement credits**

---

37451. (a) The districts, in cooperation with the state board, shall develop, adopt, and update, as necessary, a procedure to determine the magnitude of the emissions from the existing electric generating system in the air basin which would be displaced if cogeneration technology projects and qualifying facilities were constructed. The procedure shall be used once each year to determine the utility displacement credits which shall be used in reviewing the permit applications for new cogeneration technology projects and qualifying facilities during the following year, and shall ensure that the credits are real, permanent, quantifiable, enforceable, and surplus.

(b) A district may reduce the emission offset requirement for a cogeneration technology project or qualifying facility by the utility displacement credits determined pursuant to subdivision (a). In all cases in which a cogeneration technology project or qualifying facility satisfies subdivision (c), a district shall reduce the offset requirement for the project or facility by the utility displacement credits determined pursuant to subdivision (a). A district shall allocate at least 90 percent of the pounds of emissions available in the form of utility displacement credits to projects and facilities which satisfy the requirements of subdivision (c).

(c) Utility displacement credits shall be granted to cogeneration technology projects and qualifying facilities for those pollutants for which net project or facility emissions, after offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 39154, are lower, on a pounds of pollutant per unit of energy produced basis, than the emissions which would be generated by the fossil-fuel fired existing electric generating system in the air basin in the absence of the project or facility.

(d) Utility displacement credits shall be credited to a project or facility only to the extent necessary to satisfy district offset requirements, and only after credit has been granted for offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 39154.

(e) The cogeneration technology project or qualifying facility proponent, and the owner or operator of the purchasing utility, shall provide to the state board or the district, as the case may be, the information not publicly available from state or local agencies which is necessary to make the determinations required by this section. The information shall include, but is not limited to, all of the following:

- (1) Emission source test data.
- (2) Chronological fuel use data.
- (3) Chronological electric load data.

(f) In providing the utility displacement credits required by this section, and for purposes of this section only, the utility, if not an applicant, shall not be required to furnish emission offsets on a case-by-case basis for the project. This section does not permit a district on a case-by-case basis to limit the ability of the utility to operate its existing hydrocarbon combustion facilities in accordance with the requirements of the Public Utilities Commission or the governing body of a public utility owned by a municipality or other political subdivision of the state.

**Comment.** Section 37451 continues former Health and Safety Code Section 41605 without substantive change.

**§ 37452. Offset requirement for organic waste facilities**

---

37452. (a) In considering the offset requirement for a project facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler), to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall include the incremental emissions benefit that occurs because those wastes are not disposed of by open field burning or by forest land burning if the biomass fuel would ordinarily or otherwise be burned in that manner in the same air basin. The emissions credit shall be offset at a ratio of 1.2 to 1 for nonattainment pollutants if within 15 miles, and at a ratio of 2 to 1 if further than 15 miles within the same air basin.

(b) At least once every two years, the districts and the state board shall, in cooperation, reevaluate a procedure to determine the availability and magnitude of the offsets resulting from the incremental emissions benefits, including an accounting of the quantity of biomass material credits calculated for purposes of Section 39157 as necessary to ensure that state and federal ambient air quality standards may be achieved and maintained, or that reasonable further progress be made toward attainment.

(c) The applicant shall provide the state board or a district, as the case may be, the information not publicly available from state or local agencies which is necessary to make the determinations required by this section. The information shall include, but is not limited to, the following:

- (1) The quality of fuel or waste to be burned or used in the facility.
- (2) The type of fuel or waste to be burned or used in the facility.
- (3) The source of the fuel or waste to be burned or used in the facility.

**Comment.** Section 37452 continues former Health and Safety Code Section 41605.5 without substantive change. The reference in subdivision (b) to the date on which the biennial reevaluation requirement began (July 1, 1998) is obsolete and has not been continued.

**TITLE 5. NONATTAINMENT AREA PLANS**

**§ 37500. Adoption by state board**

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37500. The state board shall adopt the nonattainment area plan approved by a designated air quality planning agency as part of the state implementation plan, unless the state board finds, after a public hearing, that the nonattainment area plan will not meet the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

**Comment.** Section 37500 continues former Health and Safety Code Section 41650(a) without substantive change.

**§ 37501. Determination of availability of control measure**

---

37501. The primary responsibility for determining whether a control measure is reasonably available shall be vested in the public agency which has the primary responsibility for implementation of that control measure. The determination of reasonably available control measure by the public agency responsible for implementation shall be conclusive, unless the state board finds after public hearing that the determination will not meet the requirements of the Clean Air Act.

**Comment.** Section 37501 continues former Health and Safety Code Section 41650(b) without substantive change.

**§ 37502. Evidence and testimony relating to nonattainment area plan**

---

37502. (a) In addition to any other statutory requirements, at the public hearing held pursuant to Section 37500, the districts included, in whole or in part, within the nonattainment area, the designated air quality planning agency, and members of the public shall have the opportunity to present oral and written evidence.

(b) In addition, the districts and the agency shall have the right to question and solicit testimony of qualified representatives of the state board staff on the matter being considered. The state board may, by an affirmative vote of four members, place reasonable limits on the right to question and solicit testimony of qualified representatives of the state board staff.

**Comment.** Section 37502 continues former Health and Safety Code Section 41651 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 37503. Revisions by state board**

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37503. If, after the public hearing, the state board finds that the nonattainment area plan approved by the designated air quality planning agencies does not comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the state board may adopt any revisions that are necessary to comply with the requirements, except as otherwise provided in Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

**Comment.** Section 37503 continues former Health and Safety Code Section 41652 without substantive change.

TITLE 6. EMISSION LIMITATIONS

CHAPTER 1. GENERAL PROVISIONS

**§ 37600. Prohibition of discharge causing injury, detriment, nuisance, or annoyance**

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37600. Except as otherwise provided in Section 37601, no person shall discharge from any source whatsoever sufficient quantities of air contaminants or other material to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or to endanger the comfort, repose, health, or safety of these persons or the public, or to cause, or have a natural tendency to cause, injury or damage to business or property.

**Comment.** Section 37600 continues former Health and Safety Code Section 41700 without substantive change.

**§ 37601. Exception to application of Section 37600**

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37601. (a) Section 37600 shall not apply to odors emanating from any of the following:

(1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, provided that the odors emanate directly from the compost facility or operations.

(3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased



by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 37600 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on the date that is four years from the effective date of Chapter 788 of the Statutes of 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it is inoperative and is repealed.

**Comment.** Section 37601 continues former Health and Safety Code Section 41705 without substantive change.

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#### **§ 37601. Exception to application of Section 37600**

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37601. (a) Section 37600 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(b) This section shall become operative on the date that is four years from the effective date of Chapter 788 of the Statutes of 1997.

**Comment.** Section 37601 continues former Health and Safety Code Section 41705 without substantive change.

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#### **§ 37602. Prohibited discharge of air contaminants**

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37602. Except as otherwise provided in Section 37603, or Chapter 4 (commencing with Section 37900) of this title other than Section 37960, or Chapter 5 (commencing with Section 39300) of Title 7, no person shall discharge into the atmosphere from any source whatsoever any air contaminant, other than uncombined water vapor, for a period or periods aggregating more than three minutes in any one hour which is:

(a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (a).

**Comment.** Section 37602 continues former Health and Safety Code Section 41701 without substantive change.

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#### **§ 37603. Exceptions to application of Section 37602**

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37603. Section 37602 does not apply to any of the following:

(a) Fires set pursuant to Section 37950.

(b) Agricultural burning for which a permit has been granted pursuant to Chapter 5 (commencing with Section 38050) of Title 6.

(c) Fires set or permitted by any public officer in the performance of his or her official duty for the improvement of watershed, range, or pasture.

(d) Use of any aircraft to distribute seed, fertilizer, insecticides, or other agricultural aids over lands devoted to the growing of crops or raising of fowl or animals.

(e) Open outdoor fires used only for cooking of food for human beings or for recreational purposes.

(f) The use of orchard and citrus grove heaters which are in compliance with the requirements set forth in Section 38105.

(g) Agricultural operations necessary for the growing of crops or raising of fowl or animals.

(h) The use of other equipment in agricultural operations necessary for the growing of crops or raising of fowl or animals.

(i) Fugitive dust emissions from rock crushing facilities within the Southeast Desert Air Basin, where the facilities were in existence prior to January 1, 1970, at a location where the population density is less than 10 persons per square mile in each square mile within a seven-mile radius of the facilities; provided, however, that under no circumstances shall the emissions cause a measurable degradation of the ambient air quality or create a nuisance. This subdivision does not apply to any rock crushing facilities which (1) process in excess of 100 tons of rock in any 24-hour period, averaged over any period of 30 consecutive days, (2) have 25 or more employees, (3) fail to operate and maintain in good working order any emission control equipment installed prior to January 1, 1978, or (4) undergo a change of ownership after January 1, 1977.

(j) Emissions from vessels using steam boilers during emergency boiler shutdowns for safety reasons, safety and operational tests required by governmental agencies, and where maneuvering is required to avoid hazards.

(k) Emissions from vessels during a breakdown condition, as long as the discharge is reported in accordance with district requirements.

(l) The use of visible emission generating equipment in training sessions conducted by governmental agencies necessary for certifying persons to evaluate visible emissions for compliance with Section 37602 or applicable district rules and regulations. Any local or regional authority rule or regulation relating to visible emissions are not applicable to the equipment.

(m) Smoke emissions from teepee burners operating in compliance with Section 4438 of the Public Resources Code during the disposal of forestry and agricultural residues or forestry and agricultural residues with supplementary fossil fuels when the emissions result from the startup or shutdown of the combustion process or from the malfunction of emission control equipment. This subdivision does not apply to emissions which exceed a period or periods of time aggregating more than 30 minutes in any 24-hour period. This subdivision does not apply to emissions which result from the failure to operate and maintain in good working order any emission control equipment.

(n) Smoke emissions from burners used to produce energy and fired by forestry and agricultural residues with supplementary fossil fuels when the emissions result from startup or shutdown of the combustion process or from the malfunction of emission control equipment. This subdivision does not apply to emissions which exceed a period or periods of time aggregating more than 30 minutes in any 24-hour period, or which result from the failure to operate and maintain in good working order any emission control equipment.

(o) Emissions from methanol fuel manufacturing plants which manufacture not more than 2,000,000 gallons of methanol fuel per day from wood, agricultural waste, natural gas, or coke (exclusive of petroleum coke). As used in this subdivision, "manufacturing plant" includes all necessary support systems, including field operations equipment that provide feed stock. However, this subdivision shall apply to not more than one methanol fuel manufacturing plant in each air basin and each plant shall be located in an area designated as an "attainment area" pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and shall meet all applicable standards required by the district board. This subdivision shall remain in

effect with respect to a plant until five years after construction of the plant and shall have no force and effect with respect to the plant on and after that date.

(p) The use of an obscurant for the purpose of training military personnel and the testing of military equipment by the United States Department of Defense on any military reservation.

**Comment.** Section 37603 continues former Health and Safety Code Section 41704 without substantive change.

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#### **§ 37604. Experimental burning**

37604. Notwithstanding the provisions of this title restricting burning, the state board, after consultation with the district in which the burning is to take place, may issue permits for experimental burning designed to develop new or improved techniques of burning to reduce emissions, except that no experimental burning may create a nuisance.

**Comment.** Section 37604 continues former Health and Safety Code Section 41707 without substantive change.

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#### **§ 37605. Schedule of increments of progress**

37605. (a) If a district board adopts a rule or regulation of emission standards to take effect as of a future date, the rule or regulation shall also require any person who owns or operates a source of air contaminants whose emissions exceed the standards to submit to the hearing board, for a public hearing, after notice pursuant to Section 32556, a schedule of increments of progress by which the source emissions will be brought into compliance by the time the standards take effect.

(b) If the rule or regulation itself includes a schedule of increments of progress, the person shall apply for a modification in accordance with Section 39401 in the event the person cannot comply with the schedule in the rule or regulation, except that an application for a change in the final compliance date shall be subject to the requirements for a variance, as provided in Section 39351.

**Comment.** Section 37605 continues former Health and Safety Code Section 41703 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

## **CHAPTER 2. VOLATILE ORGANIC COMPOUNDS IN CONSUMER GOODS**

### **Article 1. Definitions**

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#### **§ 37650. Application of definitions**

37650. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 37650 generalizes the introductory clause of former Health and Safety Code Section 41712(a).

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#### **§ 37655. “Consumer product”**

37655. “Consumer product” means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden

products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

**Comment.** Section 37655 continues former Health and Safety Code Section 41712(a)(1) without substantive change.

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**§ 37660. “Health benefit product”**

37660. “Health benefit product” means an antimicrobial product registered with the Environmental Protection Agency.

**Comment.** Section 37660 continues former Health and Safety Code Section 41712(a)(2) without substantive change.

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**§ 37665. “Maximum feasible reduction in volatile organic compounds emitted”**

37665. “Maximum feasible reduction in volatile organic compounds emitted” means at least a 60-percent reduction in the emissions of volatile organic compounds resulting from the use of aerosol paints, calculated with respect to the 1989 baseline year, including acetone in that baseline year.

**Comment.** Section 37665 continues former Health and Safety Code Section 41712(a)(3) without substantive change.

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**§ 37670. “Medical expert”**

37670. “Medical expert” means a physician, including a pediatrician, a microbiologist, or a scientist involved in research related to infectious disease and infection control.

**Comment.** Section 37670 continues former Health and Safety Code Section 41712(a)(4) without substantive change.

## Article 2. State Board Regulations

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**§ 37700. Adoption of regulations**

37700. The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:

- (a) The regulations are necessary to attain state and federal ambient air quality standards.
- (b) The regulations are commercially and technologically feasible and necessary.

**Comment.** Section 37700 continues former Health and Safety Code Section 41712(b) without substantive change.

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**§ 37701. Limitations on adoption of regulations**

37701. (a) A regulation shall not be adopted which requires the elimination of a product form.

(b) The state board shall not adopt regulations pursuant to Section 37700 unless the regulations are technologically and commercially feasible, and necessary to carry out this division. The state board shall consider the effect that the regulations proposed for health benefit products will have on the efficacy of those products in killing or inactivating agents of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations will have on the availability of health benefit products to California consumers.

(c)(1) Prior to adopting regulations pursuant to this chapter governing health benefit products, the state board shall consider any recommendations received from federal, state, or local public health agencies and medical experts in the field of public health.

(2) Within 30 days from the date of the adoption of any regulation pursuant to this chapter governing health benefit products, the state board shall prepare and submit to the Legislature and the Governor a report that summarizes any recommendations received pursuant to paragraph (1) and any conclusions made by the state board concerning the recommendations.

(d) A district shall adopt no regulation pertaining to disinfectants, nor any regulation pertaining to a consumer product that is different than any regulation adopted by the state board for that purpose.

(e) The state board shall not adopt a regulation pertaining to disinfectants any sooner than December 1, 2003.

**Comment.** Section 37701(a)-(d) continues former Health and Safety Code Section 41712(c)-(f) without substantive change. Subdivision (e) continues former Health and Safety Code Section 41712(j) without change.

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#### **§ 37702. Aerosol adhesives**

37702. (a) It is the intent of the Legislature that, prior to January 1, 2000, air pollution control standards affecting the formulation of aerosol adhesives and limiting emissions of reactive organic compounds resulting from the use of aerosol adhesives be set solely by the state board to ensure uniform standards applicable on a statewide basis.

(b) The Legislature recognizes that the current state board volatile organic compound (VOC) limit for aerosol adhesives is 75 percent by weight. Effective January 1, 1997, the state board's 75-percent standard shall apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses, and any district regulations limiting the VOC content of, or emissions from, aerosol adhesives, are null and void. After that date, a district may adopt and enforce the state board's 75-percent standard for aerosol adhesives, or a subsequently adopted state board standard, in the same manner as a district regulation limiting the issuance of air contaminants.

(c) On or before July 1, 2000, the state board shall prepare a study and conduct a public hearing on the need for, and the feasibility of, establishing a more stringent standard or standards for aerosol adhesives. If the state board finds that more stringent limits for aerosol adhesives are expected to become feasible, the state board shall, at that time, adopt a standard or standards to implement more stringent VOC limits. At a minimum, the state board shall establish standards pursuant to this subdivision that constitute best available retrofit control technology, as defined in Section 35860, and implement all plans adopted pursuant to Chapter 3 (commencing with Section 33200) of Title 2 of Part 3 unless the state board determines that those measures are not achievable.

(d) Notwithstanding any other provision of this chapter, on and after January 1, 2000, a district may adopt and enforce a regulation setting an emission standard or standards for VOC emissions for the use of aerosol adhesives that is more stringent than the standards adopted by the state board.

**Comment.** Section 37702 continues former Health and Safety Code Section 41712(h) without substantive change.

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#### **§ 37703. Aerosol paints**

37703. (a) It is the intent of the Legislature that air pollution control standards affecting the formulation of aerosol paints and limiting the emissions of volatile organic compounds

resulting from the use of aerosol paints be set solely by the state board to ensure uniform standards applicable on a statewide basis. A district shall not adopt or enforce any regulation regarding the volatile organic compound content of, or emissions from, aerosol paints until the state board has adopted a regulation regarding those paints, and any district regulation shall not be different than the state board regulation. A district may observe and enforce a state board regulation regarding aerosol paints in the same manner as a district regulation limiting the issuance of air contaminants. This section shall not apply to any district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of a federal court, until the federal court has authorized the district to observe and enforce the state board regulation in lieu of the district regulation.

(b) On or before January 1, 1995, the state board shall adopt regulations requiring the maximum feasible reduction in volatile organic compounds emitted from the use of aerosol paints. The regulations shall establish final limits and require full compliance not later than December 31, 1999, and shall establish interim limits prior to that date resulting in reductions in reactive organic compounds.

(c) On or before December 31, 1998, the state board shall conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the final limits by December 31, 1999. If the state board determines that a 60-percent reduction in emissions of reactive organic compounds from the use of aerosol paints is not technologically or commercially feasible by December 31, 1999, the state board may grant an extension of time not to exceed five years. During the extension of time, the most stringent interim limits shall be applicable. Any regulation adopted by the state board shall include a provision authorizing the time extension and requiring a public hearing on technological or commercial feasibility consistent with this section. The state board shall seek to ensure that the final limits for aerosol paints established pursuant to this section do not become federally enforceable prior to the effective date established by the state board for these limits, including any extension granted under this section.

(d) Reductions required for aerosol paints under this section are not intended to apply to any other consumer product.

**Comment.** Section 37703 continues former Health and Safety Code Section 41712(i) without substantive change.

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#### **§ 37704. Products manufactured before applicable regulation effective**

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37704. A consumer product manufactured prior to each effective date specified in regulations adopted by the state board pursuant to this chapter that applies to that consumer product may be sold, supplied, or offered for sale for a period of three years from the specified effective date if the date of manufacture or a representative date code is clearly displayed on the product at the point of sale. An explanation of the date code shall be filed with the state board.

**Comment.** Section 37704 continues former Health and Safety Code Section 41712(g) without substantive change.

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#### **§ 37705. Requirements of 1994 State Implementation Plan**

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37705. The state board shall comply with its volatile organic compound emission reduction obligations under the 1994 State Implementation Plan, or any amendments thereto, and shall ensure that there is no loss of emission reductions as a result of its compliance with subdivision (e) of Section 37701.

**Comment.** Section 37705 continues former Health and Safety Code Section 41712(k) without substantive change.

## CHAPTER 3. PORTABLE EQUIPMENT

### Article 1. Legislative Findings and Declarations

#### § 37750. Legislative findings and declaration

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37750. The Legislature hereby finds and declares all of the following:

(a) Existing law authorizes each district to impose separate and sometimes inconsistent emission control requirements for, and to require separate permits to operate, portable equipment that are used at various sites throughout the state.

(b) That multiplicity of permits and regulatory requirements imposes a complex and costly burden on California businesses that use, hire, provide, and manufacture that equipment.

(c) A uniform, voluntary system of statewide registration and regulation of portable equipment, consistent with current state and federal air quality law, is necessary to ensure consistent and reasonable regulation of that equipment without undue burden on their owners, operators, and manufacturers.

(d) Portable equipment has attributes of both mobile sources and stationary sources of air pollution. A separate registration and emission control program is needed to reflect the unique operating characteristics of that equipment while providing authority for a statewide program of emission reduction measures to be applied to existing in-state, out-of-state, and newly manufactured portable equipment.

**Comment.** Section 37750 continues former Health and Safety Code Section 41750 without change.

### Article 2. Definitions

#### § 37800. Application of definitions

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37800. 1200. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 37800 generalizes the introductory clause of former Health and Safety Code Section 41751(a)(1) & (a)(2).

#### § 37805. “Portable equipment”

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37805. As used in this chapter, “portable equipment” includes any portable internal combustion engine and equipment that is associated with, and driven by, any portable internal combustion engine.

**Comment.** Section 37805 continues former Health and Safety Code Section 41751(a)(1) without substantive change.

#### § 37810. Examples of portable equipment

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37810. Portable equipment includes, but is not limited to, any of the following:

- (a) Confined and unconfined abrasive blasting equipment.
- (b) Portland concrete batch plants.

(c) Sand and gravel screening, rock crushing, unheated pavement crushing, and recycling operations equipment.

(d) Consistent with federal law, portable internal combustion engines used in conjunction with, but not limited to, the following types of operations or equipment:

- (1) Well drilling, including service equipment and work over rigs.
- (2) Power generation, excluding cogeneration.
- (3) Pumps.
- (4) Compressors.
- (5) Pile drivers.
- (6) Welding.
- (7) Cranes.
- (8) Wood chippers.

(e) Equipment necessary for the operation of portable equipment.

**Comment.** Section 37810 continues former Health and Safety Code Section 41751(c) without substantive change.

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#### **§ 37815. “Portable internal combustion engine”**

37815. (a)(1) As used in this chapter, and except as provided in subdivision (b), a “portable internal combustion engine” is any internal combustion engine that, by itself, or contained within or attached to a piece of equipment, is portable or transportable.

(2) As used in this subdivision, “portable or transportable” means designed to be, and capable of being, carried or moved from one location to another. Indicia of portability or transportability include, but are not limited to, wheels, skids, carrying handles, or a dolly, trailer, or platform.

(b) Any engine otherwise included in this article is not a portable internal combustion engine if either of the following applies:

(1) The engine remains, or will remain, at a fixed location for more than 12 consecutive months. For purposes of this paragraph, a “fixed location” is any single site at a building, structure, facility, or installation.

(2) The engine is used to propel nonroad equipment or a motor vehicle of any kind, including, but not limited to, a heavy-duty vehicle.

**Comment.** Section 37815 continues former Health and Safety Code Section 41751(a)(2) & (b) without substantive change.

### Article 3. Statewide Regulation

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#### **§ 37850. State board responsibilities**

37850. (a) At the earliest feasible date, but not later than July 1, 1997, the state board shall do all of the following:

(1) Evaluate the emissions from the operation of portable equipment and identify emission reduction technologies that may be applied to portable equipment.

(2) After holding at least one public hearing, establish, by regulation, emission limits and emission control requirements, consistent with Sections 37852 and 37853, and an optional registration program for portable equipment that is, or may be, used in more than a single district.

(b) The registration program shall take effect on the date specified by the state board in the regulation, but not later than 180 days from the date that the state board adopts the regulation.



(c) The program shall provide for the voluntary registration of portable equipment, and may provide for the renewal of a registration not more than once every three years.

(d)(1) The state board may establish a schedule of fees for purposes of this chapter to be assessed on persons seeking to register, or to renew the registration of, portable equipment. The state board may establish separate fees for the initial registration and for the renewal of a registration. The fees charged, in the aggregate, shall not exceed the reasonable cost to the state board of administering the registration program, and adopting the regulations specified in Sections 37852 and 37853.

(2) The state board shall, in adopting the regulations specified in Sections 37852 and 37853, include a uniform statewide district fee schedule for the recovery of the reasonable costs of enforcement pursuant to Section 37854.

(e) Notwithstanding Sections 37852 and 37853, the state board may periodically revise and update the regulations adopted pursuant to this section, including, but not limited to, revising and updating a determination of best available control technology (BACT) for portable internal combustion engines.

**Comment.** Section 37850 continues former Health and Safety Code Section 41752 without substantive change.

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#### **§ 37851. Statewide registration program**

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37851. (a)(1) It is the intent of the Legislature that the registration of, and the regulation of emissions from, portable equipment that is operated in more than one district and that is subject to the registration program be done on a uniform, statewide basis by the state board and that the permitting, registration, and regulation of portable equipment by the districts be preempted.

(2) Notwithstanding paragraph (1), if the owner or operator of portable equipment elects not to register under the statewide registration program, the unregistered portable equipment shall be subject to district permitting requirements pursuant to district regulations.

(b) On and after the effective date of the statewide registration program established by the state board pursuant to subdivision (a) of Section 37850 and upon the registration of portable equipment by the portable equipment owner or operator, a district shall not, with respect to the affected portable equipment, do any of the following:

(1) Require a permit for the construction or operation of the portable equipment.

(2) Assess any fee related to the construction or operation of the portable equipment, other than that specified in paragraph (2) of subdivision (d) of Section 37850.

(3) Adopt any emission limit or emission control requirement applicable to the portable equipment.

(4) Except as provided in Section 37854, enforce any emission limit or emission control requirement applicable to the portable equipment.

(c) The state board, in consultation with affected districts, shall amend the state implementation plan as necessary to include the statewide registration program and conform the state implementation plan to its requirements.

**Comment.** Section 37851 continues former Health and Safety Code Section 41753 without substantive change.

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#### **§ 37852. Regulatory provisions**

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37852. The regulations adopted by the state board, on or before July 1, 1997, shall include, but need not be limited to, provisions that ensure all of the following:

(a) That emissions from portable equipment subject to the statewide registration program will not, in the aggregate, interfere with the attainment or maintenance of state or federal ambient air quality standards and the emissions from any one portable equipment engine, exclusive of background concentration, shall not cause an exceedance of any ambient air quality standard. This subdivision shall not be construed as requiring portable equipment operators to provide emission offsets for portable equipment registered under the program.

(b)(1) That, to the extent not in conflict with federal law, the registration program preserves the most stringent requirements adopted by a district which require the use of best available control technology (BACT) for each class or category of portable equipment determined appropriate by the state board, and which requirements were in effect on January 1, 1995. In determining the appropriate emission limits or emission control technology requirements for classes and categories of portable equipment, the state board may set different requirements for portable equipment that is defined by the state board as California resident portable equipment.

(2) Notwithstanding paragraph (1) and, to the extent not in conflict with federal law, the state board may consider technical and economic feasibility in establishing emission limits or control equipment requirements for any category or class of existing California resident portable equipment, if all portable equipment in that category or class is required to be modified or replaced to meet BACT or the more stringent of a state or federal emission standard, at a date determined by the state board.

(c) That any registered portable equipment, including any turbine, used by the Department of Defense or the National Guard exclusively for military technical support or other federal emergency purposes, as specified in the regulations adopted by the state board, is not subject to any statewide or district emission control or emission limit.

**Comment.** Section 37852 continues former Health and Safety Code Section 41754(a) without substantive change.

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#### **§ 37853. Limitations on regulatory provisions**

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37853. (a) No emission limit or emission control requirement shall be established for any portable equipment defined by the state board as California resident portable equipment unless the state board determines that the emission limit or emission control requirement is technologically and economically feasible and is necessary to carry out the express terms of this division, including, but not limited to, Section 43013 of the Health and Safety Code, or to attain or maintain state or federal ambient air quality standards.

(b) Prior to adopting any emission limit or emission control requirement, the state board shall consider the magnitude of the resultant air quality benefits and the potential effects of the regulation on the costs to businesses that use the portable equipment.

(d) The emission limits established for any portable equipment or class of portable equipment shall reflect the effectiveness of all control equipment installed and operated on the portable equipment or particular class of portable equipment.

(d) No emission limits other than those established by the state board for any portable equipment or class of portable equipment shall be used by a district for purposes of calculating and reporting emissions from portable equipment subject to this chapter.

(e) Any recordkeeping and reporting requirements prescribed by the state board for the purpose of tracking portable equipment utilization and movement shall be the minimum that is necessary to provide sufficient emission inventory data and allow adequate enforcement of the registration program.

(f) Source testing of portable equipment emissions for registration purposes shall not be required if there is no emission standard applicable to portable equipment, or if acceptable

emissions data is available. For purposes of this subdivision, “acceptable emissions data” means emissions data representative of current portable equipment operations that is either reliable emissions data from the portable equipment manufacturer or a source test performed within three years prior to the date that the emissions data is requested.

**Comment.** Section 37853 continues former Health and Safety Code Section 41754(b)-(g) without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

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#### § 37854. Enforcement by districts

37854. (a) Districts shall enforce the statewide registration program, emission limitations, and emission control requirements established by the state board pursuant to this chapter in the same manner as a district rule or regulation.

(b)(1) Source testing of engines for compliance purposes shall not be required more frequently than once every three years, except where evidence of engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect emissions from the engine are identified.

(2) A district may conduct source testing to determine compliance with mass emission limits where there is an indication of noncompliance.

(3) Except as required for purposes of paragraph (2), source testing of engine emissions for compliance purposes shall not be required of engines for which there is no applicable emission limit.

**Comment.** Section 37854 continues former Health and Safety Code Section 41755 without substantive change.

### CHAPTER 4. NONAGRICULTURAL BURNING

#### Article 1. General Provisions

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#### § 37900. General prohibition

37900. Except as otherwise provided in this title, no person shall use open outdoor fires for the purpose of disposal or burning of petroleum wastes, demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste; or for metal salvage or burning of motor vehicle bodies.

**Comment.** Section 37900 continues former Health and Safety Code Section 41800 without substantive change.

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#### § 37901. Relation of chapter to district rules and regulations

37901. The provisions of this chapter shall not supersede any rule or regulation of any district, which rule or regulation was in effect for five or more years prior to September 19, 1970.

**Comment.** Section 37901 continues former Health and Safety Code Section 41811 without substantive change.

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#### § 37902. Off-shore islands

37902. For islands located 15 or more miles from the mainland coast:

- (a) The provisions of Section 37602 shall not apply to smoke from fires set thereon.
- (b) No district shall adopt any rule or regulation stricter than those provided by law with respect to open outdoor fires.

**Comment.** Section 37902 continues former Health and Safety Code Section 41810 without substantive change.

## Article 2. Exceptions to General Prohibition

### **§ 37950. Authority to set or permit fires**

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37950. Nothing in this chapter shall be construed as limiting the authority granted under other provisions of law to any public officer to set or permit a fire when the fire is, in his or her opinion, necessary for any of the following purposes:

- (a) The prevention of a fire hazard which cannot be abated by any other means.
- (b) The instruction of public employees in the methods of fighting fire.
- (c) The instruction of employees in methods of fighting fire, when the fire is set, pursuant to permit, on property used for industrial purposes.
- (d) The setting of backfires necessary to save life or valuable property pursuant to Section 4426 of the Public Resources Code.
- (e) The abatement of fire hazards pursuant to Section 13055 of the Health and Safety Cod.
- (f) Disease or pest prevention, where there is an immediate need for and no reasonable alternative to burning.
- (g) The remediation of an oil spill pursuant to Section 8670.7 of the Government Code.

**Comment.** Section 37950 continues former Health and Safety Code Section 41801 without substantive change.

### **§ 37951. Wood waste disposal**

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37951. Notwithstanding Section 37900, with respect to wood waste from trees, vines, or bushes on property being developed for commercial or residential purposes, or with respect to the disposal of brush cuttings on the property where the brush was grown when the cuttings resulted from brush clearance done in compliance with local ordinances to reduce fire hazard, a district board may, upon its own motion or the request of any person, authorize the disposal, by open outdoor fires, of the waste, on the property where it was grown, under the conditions specified in Section 37952.

**Comment.** Section 37951 continues former Health and Safety Code Section 41802 without substantive change.

### **§ 37952. Authorization for burning of wood waste**

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37952. (a) Burning may be authorized under Section 37951 only if:

- (1) The district board finds that it is more desirable to dispose of the waste by burning than to dispose of it by other available means, such as, but not limited to, by removing it to sanitary fills.
- (2) The district has developed criteria for the disposal, which shall include provisions to improve the combustibility of the waste to reduce its smoke level.
- (3) The state board has approved the criteria developed pursuant to subdivision (b).
- (b) The authorization, if granted, shall be in the form of a permit issued by the district air pollution control officer, and the permit shall allow burning only on days during which agricultural burning is not prohibited by the state board pursuant to Section 38151.

(c) The district board may adopt rules and regulations to authorize any burning authorized under Section 37951, to review each proposed burn prior to authorizing its air pollution control officer to issue a permit for the burn, or to delegate to its air pollution control officer the authority to approve or disapprove each proposed burn after consideration of the amount of waste to be burned, the season of the year, the ambient air quality, the proximity of the waste to developed areas, or other or additional criteria as the district board may establish.

**Comment.** Section 37952 continues former Health and Safety Code Section 41804 without substantive change. The introductory clause of former Health and Safety Code Section 41804 has been designated as a subdivision, and former subdivisions (a) and (b) have been renumbered as paragraphs.

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**§ 37953. Burning nonindustrial wood waste by city or county**

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37953. (a) Notwithstanding Section 37900, a district board may authorize, subject to the limitations in Section 37954 and this section, the use of open outdoor fires by a city or county to dispose of nonindustrial wood waste from trees, vines, and brush at disposal sites located above 1,500 feet elevation mean sea level anywhere in the state, or at any elevation in the area designated as the North Coast Air Basin by the state board pursuant to Section 31250.

(b) Authorization for the burning, if granted, shall be in the form of permits issued by the district and by the fire protection agency having jurisdiction over the area in which the disposal site is located. The permits shall allow burning only on days during which agricultural burning is not prohibited by the state board pursuant to Section 38151.

(c) No permit shall be issued until there is filed with the district a written statement by the owner of the land on which the disposal site is located, or his agent, or if some other person is lawfully in possession of the land, by that person, approving the burning on the land by the city or county.

(d) Prior to issuing a permit, the district may inspect the wood waste to be burned to verify that it is exclusively nonindustrial wood waste from trees, vines, and brush.

(e) The state board shall approve the use of open outdoor fires at a designated disposal site to dispose of the wood waste if the operation of the disposal site will not prevent the achievement and maintenance of ambient air quality standards. The approval shall be granted for a minimum of one year.

(f) In seeking approval from the state board to use open outdoor fires at disposal sites throughout the county to dispose of the wood waste, a county may submit its plan for the disposal of the wood waste in the county by the use of open outdoor fires at the disposal sites.

**Comment.** Section 37953 continues former Health and Safety Code Section 41804.5 without substantive change.

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**§ 37954. Alternatives to burning of wood waste**

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37954. No authorization, however, under Section 37951 or 37953 shall be granted after a date determined by state board, based upon a finding that an alternative method of disposal has been developed which is technologically and economically feasible.

**Comment.** Section 37954 continues former Health and Safety Code Section 41803 without substantive change.

**§ 37955. State board study of alternatives to burning of wood waste**

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37955. (a) The Legislature hereby finds and declares that, because sanitary landfill sites are very difficult to obtain, these valuable sites should be reserved for high-priority waste such as garbage and low-volume rubbish, and that the disposal, by open outdoor fires of high-volume wood waste will help prolong the life of landfill sites. However, it is the intent of the Legislature that the disposal, by open outdoor fires, of waste be reasonably regulated so as to not create a nuisance or significantly reduce the quality of the ambient air.

(b) Therefore, the state board shall conduct studies of alternative methods of disposing of wood waste from trees, vines, or bushes, other than by open outdoor fires.

**Comment.** Section 37955 continues former Health and Safety Code Section 41805 without substantive change.

**§ 37956. Combustible or flammable solid waste**

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37956. Nothing in this chapter shall be construed as prohibiting any of the following:

(a) Burning for the disposal of the combustible or flammable solid waste of a single-or two-family dwelling on its premises.

(b) Open outdoor fires used only for cooking food for human beings or for recreational purposes.

(c) The burning, in a respectful and dignified manner, of an unserviceable American flag that is no longer fit for display.

**Comment.** Section 37956 continues former Health and Safety Code Section 41806 without substantive change.

**§ 37957. Right of way clearance**

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37957. Nothing in this chapter shall be construed to prohibit burning for right-of-way clearing by a public entity or utility or for levee, reservoir, and ditch maintenance. No material may be burned pursuant to this section unless (a) agricultural burning is not prohibited on the day pursuant to Section 38151, and (b) the material has been prepared by stacking, drying, or other methods to promote combustion as specified by the air pollution control officer having jurisdiction.

**Comment.** Section 37957 continues former Health and Safety Code Section 41807 without substantive change.

**§ 37958. Solid waste dump operated by city or county**

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37958. The state board shall permit a city or county to use open outdoor fires, for a limited time only, in its operation of a solid waste dump, upon the finding that, because of sparse population in the geographical area and economic and technical difficulties, the solid waste dump should be so operated.

**Comment.** Section 37958 continues former Health and Safety Code Section 41808 without change.

**§ 37959. Russian thistle (*Salsola kali*)**

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37959. Notwithstanding Sections 37001 and 37900, open outdoor fires may be used to dispose of Russian thistle (*Salsola kali*) when authorized by a chief of a fire department or fire protection agency of a city, county, or fire protection district, the Director of Forestry and Fire Protection or his or her duly authorized representative, a county agricultural commissioner, or an air pollution control officer.

**Comment.** Section 37959 continues former Health and Safety Code Section 41809 without substantive change.

#### **§ 37960. Mechanized burners**

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37960. (a) The air pollution control officer of any district in a county with a population of 6,000,000 or less, upon authorization of the district board, may authorize, by permit, open outdoor fires for the purpose of disposing of agricultural wastes, or wood waste from trees, vines, bushes, or other wood debris free of nonwood materials, in a mechanized burner such that no air contaminant is discharged into the atmosphere for a period or periods aggregating more than 30 minutes in any eight-hour period which is:

(1) As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (a).

(b) In authorizing the operation of a mechanized burner, the air pollution control officer may make the permit subject to whatever conditions the air pollution control officer determines are reasonably necessary to assure conformance with the standards prescribed in this section.

**Comment.** Section 37960 continues former Health and Safety Code Section 41812 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions and the former subdivisions have been renumbered as paragraphs..

#### **§ 37961. Air curtain destructor**

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37961. (a) Notwithstanding any other provision of this division, in the San Bernardino County Air Pollution Control District, Group 2 solid waste, as defined in Section 2521 of Title 23 of the California Administrative Code, for a period not to exceed six months from the effective date of this section, may be disposed of by means of an air curtain destructor. The authority provided by this section applies only to an existing solid waste disposal site in the upper desert area which receives less than 50 tons of solid waste for disposal per day. The use of the air curtain destructor shall be monitored by the San Bernardino County Air Pollution Control District and the state board. Within nine months after the effective date of this section, the district shall file a report with the County of San Bernardino and the state board regarding the extent to which the air curtain destructor meets the emission rules, regulations, and orders of the district and the state board.

(b) At the end of the six-month experimental period, the air curtain destructor may continue to be used if the state board makes a finding that the public health and safety will not be adversely affected by continued use. The state board, in cooperation with San Bernardino County, shall establish a list of toxic materials that will be removed from the solid waste prior to use of the air curtain destructor.

(c) There shall be no liability on the part of the state board for any injury occurring as a result of the use of the air curtain destructor under the provisions of this section.

**Comment.** Section 37961 continues former Health and Safety Code Section 41813 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 37962. Waste water treatment facilities**

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37962. Notwithstanding any local ordinance adopted pursuant to Section 37100 of the Government Code or by charter provision to prohibit the burning of waste materials, the

burning of the gaseous byproducts of the recycling of water by a waste water treatment facility as part of an energy conservation and cost reduction program to generate power to operate the facility shall be permitted if the burning operation complies with all regulations of the district having jurisdiction and any other applicable provisions of state law.

**Comment.** Section 37962 continues former Health and Safety Code Section 41815 without change.

### Article 3. Solid Waste Air Quality Assessment Test Report

#### § 38000. Definitions

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38000. For the purpose of Sections 38000 to 38008, inclusive, the following definitions apply:

(a) “Inactive solid waste disposal site” means a solid waste disposal site which has not received any solid waste for disposal after January 1, 1984.

(b) “Landfill gas” means any untreated, raw gas derived through a natural process from the decomposition of organic waste deposited in a solid waste disposal site or from the evolution of volatile species in the waste.

(c) “Operator” means the person who operates or manages, or who has operated or managed, the solid waste disposal site. If the operator of the solid waste disposal site no longer exists, or is unable, as determined by the district, to comply with the requirements of Sections 38000 to 38008, inclusive, “operator” means any person who owns or who has owned the solid waste disposal site.

(d) “Perimeter” means the outer boundary of the entire solid waste disposal site property.

(e) “Solid waste disposal site” means a place, location, tract of land, area, or premises in use, or which has been used, for the landfill disposal of solid waste, as defined in Section 66719 of the Government Code, or hazardous waste, as defined in Section 66714.8 of the Government Code, or both.

(f) “Specified air contaminants” means substances determined to be air contaminants by the state board in coordination with the districts. The state board and the districts shall consider determining the following compounds to be air contaminants for purposes of this subdivision: benzene, chloroethene, 1,2-dibromoethane, 1,2-dichloroethane benzyl chloride, chlorobenzene, dichlorobenzene, 1,1-dichloroethene, dichloromethane, formaldehyde, hydrogen sulfide, tetrachloroethylene, tetrachloromethane, toluene, 1,1,1-trichloroethane, trichloroethylene, trichloromethane, xylene, and any other substance deemed appropriate by the state board or a district.

**Comment.** Section 38000 continues former Health and Safety Code Section 41805.5(i) without substantive change.

#### § 38001. Solid waste air quality assessment test report

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38001. (a) Except as provided in Sections 38002 and 38003, the operator of a solid waste disposal site shall submit to the district on or before July 1, 1987, a solid waste air quality assessment test report that contains all of the following:

(1) Test results to determine if there is any underground landfill gas migration beyond the solid waste disposal site’s perimeter.

(2) Analyses for specified air contaminants in the ambient air adjacent to the solid waste disposal site to determine the effect of the site on air quality.

(3) Chemical characterization test results to determine the composition of gas streams immediately above the solid waste disposal site, or immediately above the solid waste



disposal site and within the solid waste disposal site, as appropriate, as determined by the district.

(4) Any other information which the district board may require, by emergency regulation.

(b) The solid waste air quality assessment test report shall be prepared in accordance with the guidelines developed by the state board pursuant to Section 38004.

**Comment.** Section 38001 continues former Health and Safety Code Section 41805.5(a) without substantive change. The last, unnumbered, paragraph of former Section 41805.5(a) has been numbered as a subdivision.

☞ **Staff Note.** This section requires the submission of a specified report on or before a date in 1987. This requirement appears to be obsolete. However, proposed Section 38008 would authorize a district to require new or revised reports of the type required in this section. In light of this, the staff would like to receive input on whether this section has continued relevance.

#### **§ 38002. Inactive solid waste disposal site**

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38002. The operator of an inactive solid waste disposal site shall complete and submit the screening questionnaire, developed pursuant to Section 38005, to the district on or before November 1, 1986, unless the operator is required to submit a report containing the same information specified in Section 38001 pursuant to a federal, state, or district order, or unless exempted pursuant to Section 38003. The district shall evaluate the submitted screening questionnaires in accordance with the guidelines developed pursuant to Section 38005 and shall determine whether the operator of the site be required to submit all, or a portion of, the information required to be reported in a solid waste air quality assessment test report. The district shall notify the operator in writing on or before January 1, 1987, of the information identified in Section 38001 to be submitted for the site. After receiving this notification, the operator of the inactive solid waste disposal site shall submit a solid waste air quality assessment test report containing the required information on or before January 1, 1988, to the district.

**Comment.** Section 38002 continues former Health and Safety Code Section 41805.5(b) without substantive change.

☞ **Staff Note.** This section requires the submission of a specified report on or before a date in 1986. This requirement appears to be obsolete. However, proposed Section 38008 would authorize a district to require new or revised reports of the type required in this section. In light of this, the staff would like to receive input on whether this section has continued relevance.

#### **§ 38003. Site containing only inert or nondecomposable solids**

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38003. A district may exempt from Sections 38001 and 38002 a solid waste disposal site or inactive solid waste disposal site which has accepted or now contains only inert and nondecomposable solids. To receive an exemption, the operator of the site shall submit, on or before November 1, 1986, a copy of all permits, all waste discharge requirements pertinent to the site, and any other data necessary for the district to determine whether an exemption should be granted to the site.

**Comment.** Section 38003 continues former Health and Safety Code Section 41805.5(c) without substantive change.

☞ **Staff Note.** This section requires the submission of a specified report on or before a date in 1986. This requirement appears to be obsolete. However, proposed Section 38008 would authorize a district to require new or revised reports of the type required in this section.

In light of this, the staff would like to receive input on whether this section has continued relevance.

#### **§ 38004. Test guidelines**

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38004. On or before February 1, 1987, the state board, in coordination with the districts, shall develop and publish test guidelines for the solid waste air quality assessment report specifying the air contaminants to be tested for and identifying acceptable testing, analytical, and reporting methods to be employed in completing the report.

**Comment.** Section 38004 continues former Health and Safety Code Section 41805.5(d) without substantive change.

☞ **Staff Note.** This section specifies a deadline for the development of guidelines. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of the section been satisfied? (2) Does the deadline provision still serve a useful purpose?

#### **§ 38005. Screening questionnaire**

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38005. On or before October 1, 1986, the state board, in coordination with the districts, shall develop and publish a screening questionnaire for inactive solid waste disposal sites and guidelines for evaluating the questionnaire by the districts pursuant to Section 38002. The screening questionnaire and guidelines shall require an inactive solid waste disposal site to be evaluated based on the nature and age of materials in the site, the quantity of materials in the site, the size of the site, and other appropriate factors. The guidelines for evaluating the screening questionnaire shall require a district to weigh heavily the proximity of the site to residences, schools, and other sensitive areas, and to pay particular attention to potential adverse impacts on facilities such as hospitals and schools, and on residential areas, within one mile of the site's perimeter.

**Comment.** Section 38005 continues former Health and Safety Code Section 41805.5(e) without substantive change.

☞ **Staff Note.** This section specifies a deadline for the development of a questionnaire. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of the section been satisfied? (2) Does the deadline provision still serve a useful purpose?

#### **§ 38006. District evaluation of report**

---

38006. A district shall evaluate any solid waste air quality assessment test reports submitted pursuant to Sections 38001, 38002, and 38008, and determine if the report's testing, analytical and reporting methods comply with the guidelines developed pursuant to Section 38004. If the district determines that the solid waste air quality assessment test report complies with the guidelines, it shall evaluate the data. If the district determines, after evaluation of the report and consultation with the State Department of Health Services and the California Waste Management Board, that levels of one or more specified air contaminants pose a health risk to human beings or a threat to the environment, the district shall take appropriate remedial action.

**Comment.** Section 38006 continues former Health and Safety Code Section 41805.5(g) without substantive change.

☞ **Staff Note.** Health and Safety Code Section 41805.5(g) uses the term "state department," which is defined in Health and Safety Code Section 20 to mean "State Department of Health Services." Section 20 will not apply to this section after it has been

moved to the Environment Code, so the term has been changed to “State Department of Health Services.” Note that use of the full term rather than the defined term is consistent with all other sections in Parts 1-3 & 5 of this division that use the term.

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**§ 38007. Solid waste air quality assessment test report**

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38007. If a district determines that a solid waste air quality assessment test report does not comply with the guidelines developed pursuant to Section 38004, the district shall provide the operator of the site with a written notice specifying the inadequacies of the report and shall require the operator to correct the deficiencies and resubmit the report by a date determined by the district.

**Comment.** Section 38007 continues former Health and Safety Code Section 41805.5(h) without substantive change.

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**§ 38008. Reevaluation by district**

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38008. A district may reevaluate the status of a solid waste disposal site, including sites exempted pursuant to 38003, and require the operator to submit or revise a solid waste air quality assessment test report. The district shall give written notification to the operator of the solid waste disposal site that a solid waste air quality assessment test report is to be submitted, or that the existing report is to be revised, and the date by which the report is to be submitted.

**Comment.** Section 38008 continues former Health and Safety Code Section 41805.5(f) without substantive change. The reference to the date after which a district may require additional or revised reports (January 1, 1987) is obsolete and has not been continued.

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**§ 38009. Exemption for small cities in Kings County**

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38009. (a) Notwithstanding Sections 38000 to 38008, inclusive, a small city which operates a Class III solid waste disposal site is not required to submit a screening questionnaire or a solid waste air quality assessment test report pursuant to Sections 38000 to 38008, inclusive, if the city has a population of less than 20,000 persons, the solid waste disposal site receives less than 20,000 tons of waste per year, the water table of the highest aquifer under the disposal site is 250 or more feet below the base of the disposal site and the water in the highest aquifer is not potable, and the site receives less than an average of 12 inches of rainfall per year.

(b) This section applies only if the disposal site is operational and has been granted all required permits as of January 1, 1991, and if the site is located in Kings County.

**Comment.** Section 38009 continues former Health and Safety Code Section 41805.6 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

## CHAPTER 5. AGRICULTURAL BURNING

### Article 1. General Provisions

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**§ 38050. Legislative intent**

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38050. It is the intent of the Legislature, by the enactment of this chapter, that agricultural burning be reasonably regulated and not be prohibited. The state board and the districts shall take into consideration, in adopting rules and regulations for purposes of this chapter,

various factors, including, but not limited to, the population in an area, the geographical characteristics, the meteorological conditions, the economic and technical impact of the rules and regulations, and the importance of a viable agricultural economy in the state.

**Comment.** Section 38050 continues former Health and Safety Code Section 41850 without substantive change.

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#### **§ 38051. Application of Section 37900**

38051. Section 37900 shall not apply to burning regulated pursuant to this chapter.

**Comment.** Section 38051 continues former Health and Safety Code Section 41851 without substantive change.

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#### **§ 38052. Relation of chapter to district rules and regulations**

38052. The provisions of this chapter shall not supersede any rule or regulation of any district, which rule or regulation was in effect for five or more years prior to September 19, 1970.

**Comment.** Section 38052 continues former Health and Safety Code Section 41864 without substantive change.

### **Article 2. Permits**

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#### **§ 38100. Necessity of permit**

38100. No person knowingly shall set or permit agricultural burning unless the person has a valid permit from the agency designated by the state board to issue such permits in the area where the agricultural burning is to take place.

**Comment.** Section 38100 continues former Health and Safety Code Section 41852 without substantive change.

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#### **§ 38101. Exemption from permit requirements**

38101. The state board may, after holding a public hearing, authorize an exemption from the permit requirement of Section 38100 for a district, or a portion of a district, where agricultural burning does not significantly affect air quality.

**Comment.** Section 38101 continues former Health and Safety Code Section 41852.5 without substantive change.

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#### **§ 38102. Designation of agencies for issuance of permits**

38102. The state board shall designate public fire protection agencies or other equivalent agencies to issue permits under subdivision (a) of Section 38100, and shall adopt rules and regulations to provide a procedure for the issuance of the permits. Each agency so designated by the state board shall issue permits subject to the rules and regulations of the state board.

**Comment.** Section 38102 continues former Health and Safety Code Section 41853 without change.

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#### **§ 38103. Cotton ginning**

38103. (a) No permit shall be issued pursuant to Section 38102 to a person for the burning of solid waste which is produced from the ginning of cotton, unless the person

pays to the issuing agency a fee of fifteen cents (\$0.15) for each bale of cotton ginned that will produce the solid waste that is to be burned.

(b) Except as provided in subdivision (c), the issuing agency shall deposit monthly the collected fees in the Air Pollution Control Fund.

(c) To pay for administrative costs of issuing the permits, the issuing agency may retain from the fees collected pursuant to this section an amount equal to either the estimated cost of issuing the permits, or 4 percent of the total fees collected, whichever is less. The state board may make an annual audit of the issuing agency to determine the amount of fees retained by an issuing agency.

**Comment.** Section 38103 continues former Health and Safety Code Section 41853.5 without substantive change.

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#### **§ 38104. Sacramento Valley Air Basin**

38104. The Sacramento Valley Basinwide Air Pollution Control Council may impose, and may require that districts within the Sacramento Valley Air Basin collect, a fee not to exceed five dollars (\$5) per permit, per year on each permit issued by a district within the Sacramento Valley Air Basin, for the purpose of administering all basinwide air pollution control efforts, and may adopt a budget to expend those funds at any noticed regularly scheduled meeting, allowing for public comment.

**Comment.** Section 38104 continues former Health and Safety Code Section 41866 without change.

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#### **§ 38105. Orchard and citrus grove heaters**

38105. (a) The state board shall adopt and publish a list of orchard and citrus grove heaters which it finds produce no more than one gram per minute of unconsumed solid carbonaceous material. No new orchard or citrus grove heater produced or manufactured shall be sold for use against frost damage unless it has been approved by the state board.

(b) No person shall use any orchard or citrus grove heater unless it has been approved by the state board or does not produce more than one gram per minute of unconsumed solid carbonaceous material.

(c) In addition to the penalties specified in Sections 39550 and 39551, the cost of putting out the fire caused by a violation of this section may be imposed on any person who violates this section.

**Comment.** Section 38105 continues former Health and Safety Code Section 41860 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions. The reference in subdivision (b) to the date on which the prohibition stated in that subdivision took effect (January 1, 1975) is obsolete and has not been continued.

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#### **§ 38106. Wildlife or game habitats**

38106. No burning shall be conducted for the improvement of land for wildlife or game habitat until the person desiring to conduct the burning obtains from the Department of Fish and Game a written statement certifying that the burning is desirable and proper for the improvement of land for wildlife or game habitat and the statement is filed with the air pollution control officer having jurisdiction in the area in which the burning is to take place. As to burning conducted by the Department of Fish and Game, the department shall, on its own behalf, issue and file these statements.

**Comment.** Section 38106 continues former Health and Safety Code Section 41861 without substantive change.

### Article 3. Days on Which Burning is Prohibited

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#### § 38150. Validity of permit on days burning prohibited

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38150. (a) No permit issued pursuant to Section 38102 shall be valid for any day during which agricultural burning is prohibited by the state board pursuant to Section 38151 or by a district board pursuant to Section 37001.

(b) Each permit shall bear a statement of warning containing the following words or words of like or similar import:

“This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board pursuant to Section 38151 of the Health and Safety Code.”

**Comment.** Section 38150 continues former Health and Safety Code Section 41854 without substantive change.

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#### § 38151. Days burning prohibited

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38151. The state board shall determine and designate from meteorological data the days when agricultural burning shall be prohibited within each air basin.

**Comment.** Section 38151 continues former Health and Safety Code Section 41855 without change.

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#### § 38152. Permits for nonburning days

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38152. (a) A district may issue a permit to authorize agricultural burning on days designated by the state board pursuant to Section 38151 as nonburning days when denial of a permit would threaten imminent and substantial economic loss.

(b) The state board shall require the districts to transmit regular reports of permits issued authorizing agricultural burning on nonburning days. The report shall include the number of permits issued, the date of issuance of each permit, the person to whom each permit was issued, and any other information requested by the state board.

**Comment.** Section 38152 continues former Health and Safety Code Section 41862 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

### Article 4. Regulation of Agricultural Burning

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#### § 38200. Guidelines for each basin

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38200. The state board shall promulgate guidelines for the regulation and control of agricultural burning for each of the air basins established by the state board.

**Comment.** Section 38200 continues former Health and Safety Code Section 41856 without change.

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#### § 38201. Basis for guidelines

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38201. The guidelines promulgated by the state board shall be based on meteorological data, the nature and volume of materials to be burned, and the probable effect of the burning on the ambient air quality within the air basins affected.

**Comment.** Section 38201 continues former Health and Safety Code Section 41857 without substantive change.

**§ 38202. Economic and technical feasibility**

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38202. In adopting guidelines, the state board shall consider their economic and technical feasibility, including their probable effect on agricultural production in the air basin affected.

**Comment.** Section 38202 continues former Health and Safety Code Section 41858 without substantive change.

**§ 38203. Review of guidelines**

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38203. The state board shall continuously review the guidelines promulgated under this chapter, and may modify, repeal, or alter the guidelines if scientific and technological data indicates that changes are warranted. Before adopting any changes, the state board shall hold a public hearing and shall consider the criteria set forth in Section 38201.

**Comment.** Section 38203 continues former Health and Safety Code Section 41859 without substantive change.

**§ 38204. Inclusion in council and district plans and programs**

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38204. Each basinwide coordinating council and district shall, as part of the implementation plans and programs prepared pursuant to Chapter 2 (commencing with Section 37450) of Title 4, include a component for the regulation and control of agricultural burning pursuant to guidelines adopted by the state board therefor.

**Comment.** Section 38204 continues former Health and Safety Code Section 41863 without substantive change.

Article 5. Rice Straw Burning Reduction Act

**§ 38250. Short title**

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38250. This article shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

**Comment.** Section 38250 continues former Health and Safety Code Section 41865(a) without substantive change.

**§ 38251. Legislative findings and declarations**

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38251. The Legislature hereby finds and declares as follows:

(a) Because of the requirements imposed by this article, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(b) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

**Comment.** Section 38251 continues former Health and Safety Code Section 41865(p) without substantive change.

**§ 38252. Legislative intent**

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38252. It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

**Comment.** Section 38252 continues former Health and Safety Code Section 41865(q) without substantive change.

### § 38253. Definitions

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38253. As used in this article, the following terms have the following meanings:

(a) “Administrative burning” means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 38100 is not subject to this article.

(b) “Air pollution control council” means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 34500.

(c) “Allowable acres to be burned” means the number of acres that may be burned pursuant to Section 38254.

(d) “Conditional rice straw burning permit” means a permit to burn granted pursuant to Sections 38256 and 38258.

(e) “Department” means the Department of Food and Agriculture.

(f) “Maximum fall burn acres” means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(g) “Maximum spring burn acres” means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(h) “Sacramento Valley Air Basin” means the area designated by the state board pursuant to Section 31250.

**Comment.** Section 38253 continues former Health and Safety Code Section 41865(b) & (k) without substantive change. The defined terms have been placed in alphabetical order.

### § 38254. Reduction in allowable burning

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38254. Notwithstanding Section 38050, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(a) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

	Maximum Fall Burn	Maximum Spring Burn
Year	Acres	Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(b) Notwithstanding subdivision (a), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(c) Notwithstanding subdivision (a), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(d) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in Section 28259, subject to Sections 38256 and 38258.

**Comment.** Section 38254 continues former Health and Safety Code Section 41865(c) without substantive change.



**§ 38255. Daily allowable acreage**

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38255. The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

**Comment.** Section 38255 continues former Health and Safety Code Section 41865(d) without substantive change.

**§ 38256. Conditional rice straw burning permit**

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38256. Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in Section 38258. The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

**Comment.** Section 38256 continues former Health and Safety Code Section 41865(f) without substantive change.

**§ 38257. Conditional rice straw burning permit fee**

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38257. The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in Section 38256. This section shall be operative only until January 1, 2009.

**Comment.** Section 38257 continues former Health and Safety Code Section 41865(g) without substantive change.

**§ 38258. Issuance of conditional rice straw burning permit**

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38258. If the terms and conditions for issuing conditional rice straw burning permits specified in subdivisions (a) to (d), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

- (a) The fields to be burned are specifically described.
- (b) The applicant has not violated any provision of this article within the previous three years.
- (c) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.
- (d) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in subdivision (c) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to Section 38261.

**Comment.** Section 38258 continues former Health and Safety Code Section 41865(h) without substantive change.

#### **§ 38259. Limitations on allowable burning**

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38259. (a) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to subdivision (c) of Section 38254 shall be the lesser of:

(1) The total of 25 percent of each individual applicant's planted acres that year.

(2) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(b) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in subdivision (a), if the grower has met the criteria for a conditional rice straw burning permit.

(c) The air pollution control council shall annually determine which is the lesser of paragraphs (1) and (2) of subdivision (a), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in Sections 38256 and 38258.

(d) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in subdivision (a) is not exceeded.

(e) Nothing in this section shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

**Comment.** Section 38259 continues former Health and Safety Code Section 41865(i) without substantive change.

#### **§ 38260. Extraordinary circumstances**

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38260. (j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in Sections 38254, 38256, and 38258, may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

**Comment.** Section 38260 continues former Health and Safety Code Section 41865(j) without substantive change.

#### **§ 38261. Regulations**

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38261. On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in Sections 38256 and 38258. On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

**Comment.** Section 38261 continues former Health and Safety Code Section 41865(e) without substantive change.


#### **§ 38262. Advisory committee**

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38262. (a) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(b) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

**Comment.** Section 38262 continues former Health and Safety Code Section 41865(l) without substantive change.

 **Staff Note.** Subdivision (a) specifies a deadline for the creation of an advisory committee. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the committee created as required? (2) Does the deadline provision still serve a useful purpose?

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#### **§ 38263. Diversion plan and schedule**

38263. On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Department of Commerce, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

**Comment.** Section 38263 continues former Health and Safety Code Section 41865(m) without substantive change.

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#### **§ 38264. Progress report to legislature**

38264. On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by Section 38263, progress toward achieving the 50 percent diversion goal, any recommended changes to this article, and other issues related to this article. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in Section 38267 to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars (\$50,000).

**Comment.** Section 38264 continues former Health and Safety Code Section 41865(n) without substantive change.

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#### **§ 38265. Study of effects of burning**

38265. The state board and the California Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in subdivision (a) of Section 38254. On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts

associated with the burning of rice straw pursuant to the schedule provided in subdivision (a) of Section 38254.

**Comment.** Section 38265 continues former Health and Safety Code Section 41865(o) without substantive change.

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**§ 38266. Emission reduction credits**

38266. This section confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with subdivisions (a) and (b).

(a) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 32700 to 32751, inclusive, and 32850 to 32856, inclusive. Districts are urged to establish banking systems in accordance with Sections 32700 to 32751, inclusive, and 32850 to 32856, inclusive. The state board may adopt regulations to implement this section, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in Section 38254.

(b) Reductions in emissions achieved in compliance with Section 38254 that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

**Comment.** Section 38266 continues former Health and Safety Code Section 41865(r) without substantive change.

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**§ 38267. Enforcement**

38267. (a) Any person who negligently or intentionally violates any provision of this chapter is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This section applies only to agricultural burning in the Sacramento Valley Air Basin.

(b) Any person who negligently or intentionally violates any provision in this chapter is liable for a civil penalty of not more than ten thousand dollars (\$10,000). This section applies only to agricultural burning in the Sacramento Valley Air Basin.

**Comment.** Section 38267 continues former Health and Safety Code Section 41865(s) without substantive change.

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**§ 38268. Fees to cover costs of program**

38268. Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this article pursuant to Sections 38850 to 38854, inclusive.

**Comment.** Section 38268 continues former Health and Safety Code Section 41865(t) without substantive change.

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**§ 38269. Further responsibilities**

38269. To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(a) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(b) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

**Comment.** Section 38269 continues former Health and Safety Code Section 41865(u) without change.

## CHAPTER 6. SANDBLASTING

### § 38300. Committee to recommend standards

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38300. The chairman of the state board shall convene a committee of 11 members to recommend to the state board for adoption, not later than January 1, 1975, air pollution standards for sandblasting operations.

**Comment.** Section 38300 continues former Health and Safety Code Section 41900 without change.

☞ **Staff Note.** This section specifies a deadline for the creation of an advisory committee. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the committee created as required? (2) Does the deadline provision still serve a useful purpose?

### § 38301. Composition of committee

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38301. (a) The committee shall include nine members appointed by the chairman of the state board as follows: three contractors licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code for sandblasting services, three members from public entities which contract for these services, and three members from district boards. The committee shall also include two public members, one of whom shall be appointed by the Senate Rules Committee and one by the Speaker of the Assembly.

(b) The committee shall select a chairman from its membership, and the chairman shall serve at the pleasure of the committee.

**Comment.** Section 38301 continues former Health and Safety Code Section 41901 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

### § 38302. Factors to be considered

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38302. In developing the standards, the committee shall take into consideration the need to reduce air pollution from all sources and the need to also continue sandblasting operations as a means of corrosion control. The committee shall examine present sandblasting procedures and equipment, and determine where improvements can be made so that the standards reflect the strictest standards that can be reasonably achieved.

**Comment.** Section 38302 continues former Health and Safety Code Section 41902 without change.

### **§ 38303. Adjournment**

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38303. Thirty days after the adoption of air pollution standards for sandblasting operations, the committee shall adjourn. Thereafter, it may meet at least once annually upon the call of the chairman of the committee to review the standards in light of changes in sandblasting technology.

**Comment.** Section 38303 continues former Health and Safety Code Section 41903 without change.

### **§ 38304. Statewide application of standards**

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38304. The standards shall be statewide, and no rule or regulation of any district that is applicable to sandblasting operations shall be stricter or less strict than the standards adopted by the state board pursuant to the recommendations of the committee.

**Comment.** Section 38304 continues former Health and Safety Code Section 41904 without change.

### **§ 38305. Relation of standards to other district rules and regulations**

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38305. (a) The standards, however, shall not supersede any rule or regulation of any district governing permanent sandblasting operations or equipment, which rule or regulation was in effect on January 1, 1974.

(b) For purposes of this section, “permanent sandblasting operations or equipment” means sandblasting operations conducted, or sandblasting equipment located, in a building which is used, in whole or in part, for sandblasting operations.

**Comment.** Section 38305 continues former Health and Safety Code Section 41905 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

## **CHAPTER 7. GASOLINE VAPOR CONTROL**

### **Article 1. Definitions**

#### **§ 38350. Application of definitions**

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38350. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 38350 is new.

☞ **Staff Note.** Health and Safety Code Sections 41951-41953 provide definitions but do not indicate their application. It appears that these definitions are intended to apply to the provisions of this chapter.

#### **§ 38355. “Floating roof”**

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38355. A “floating roof” consists of a pontoon-type or double-deck-type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank wall. The control equipment required by this section shall not be used if the gasoline or petroleum distillate has a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices shall be gastight except when gauging or sampling is taking place.

**Comment.** Section 38355 continues former Health and Safety Code Section 41953 without change.

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**§ 38360. “Pressure tank”**

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38360. A “pressure tank” is a tank which maintains working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere.

**Comment.** Section 38360 continues former Health and Safety Code Section 41951 without change.

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**§ 38365. “Vapor recovery system”**

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38365. A “vapor recovery system” consists of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing hydrocarbon vapors and gases so as to prevent their emission into the atmosphere, with all tank gauging and sampling devices gastight except when gauging or sampling is taking place.

**Comment.** Section 38365 continues former Health and Safety Code Section 41952 without substantive change.

## Article 2. Performance Standards and Certification

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**§ 38400. Authority and responsibilities of state board**

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38400. (a) The state board shall adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard.

(b) The state board shall, after a public hearing, adopt additional performance standards which are reasonable and necessary to ensure that systems for the control of gasoline vapors resulting from motor vehicle fueling operations do not cause excessive gasoline liquid spillage when used in a proper manner. To the maximum extent practicable, the additional performance standards shall allow flexibility in the design of gasoline vapor recovery systems and their components.

(c) The state board shall certify, in cooperation with the districts, any gasoline vapor control system, upon its determination that the system, if properly installed and maintained, will meet the requirements of subdivision (a). The state board shall enumerate the specifications used for issuing the certification. After a system has been certified, if circumstances beyond the control of the state board cause the system to no longer meet the required specifications or standards, the state board may revoke or modify the certification.

(d) The state board may test, or contract for testing, gasoline vapor control systems for the purpose of certifying them.

(e) The state board shall charge a reasonable fee for certification, not to exceed its estimated costs therefor. Payment of the fee shall be a condition of certification.

(f) No person shall offer for sale, sell, or install any new or rebuilt gasoline vapor control system, or any component of the system, unless the system or component has been certified by the state board and is clearly identified by a permanent identification of the certified manufacturer or rebuilder.

**Comment.** Section 38400 continues former Health and Safety Code Section 41954(a)-(f) without change. Statements of legislative intent applicable to former Health and Safety Code

Section 41954 now apply to this section. See, e.g., Assembly Daily Journal, 1995-96 reg. sess., at 8821.

#### **§ 38401. Limitation on authority of district**

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38401. (a)(1) Except as authorized by other provisions of law and except as provided in this subdivision, no district may adopt, after July 1, 1995, stricter procedures or performance standards than those adopted by the state board pursuant to subdivision (a) of Section 38400, and no district may enforce any stricter procedures or performance standards.

(2) Stricter procedures or performance standards shall not require the retrofitting, removal, or replacement of any existing system, which is installed and operating in compliance with applicable requirements, within four years from the effective date of those procedures or performance standards, except that existing requirements for retrofitting, removal, or replacement of nozzles with nozzles containing vapor-check valves may be enforced commencing July 1, 1998.

(3) Stricter procedures or performance standards shall not be implemented until at least two systems meeting the stricter performance standards have been certified by the state board.

(4) If the certification of a gasoline vapor control system, or a component thereof, is revoked or modified, no district shall require a currently installed system, or component thereof, to be removed for a period of four years from the date of revocation or modification.

(b) No district shall require the use of test procedures for testing the performance of a gasoline vapor control system unless those test procedures have been adopted by the state board or have been determined by the state board to be equivalent to those adopted by the state board, except that test procedures used by a district prior to January 1, 1996, may continue to be used until January 1, 1998, without state board approval.

**Comment.** Section 38401 continues former Health and Safety Code Section 41954(g)-(h) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 41954 now apply to this section. See, e.g., Assembly Daily Journal, 1995-96 reg. sess., at 8821.

#### **§ 38402. Limitation on enforcement**

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38402. With respect to those vapor control systems subject to certification by the state board, there shall be no criminal or civil proceedings commenced or maintained for failure to comply with any statute, rule, or regulation requiring a specified vapor recovery efficiency if the vapor control equipment which has been installed to comply with applicable vapor recovery requirements meets both of the following requirements:

(a) Has been certified by the state board at an efficiency equal to or greater than the efficiency required by applicable statutes, rules, or regulations.

(b) Is installed, operated, and maintained in accordance with the procedures set forth in the certification and the instructions of the equipment manufacturer.

**Comment.** Section 38402 continues former Health and Safety Code Section 41954(i) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 41954 now apply to this section. See, e.g., Assembly Daily Journal, 1995-96 reg. sess., at 8821.



**§ 38403. Certification by other agencies**

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38403. Prior to state board certification of a gasoline vapor control system pursuant to Sections 38400 to 38402, inclusive, the manufacturer of the system shall submit the system to, or, if appropriate, the components of the system as requested by, the Division of Measurement Standards of the Department of Food and Agriculture and the State Fire Marshal for their certification.

**Comment.** Section 38403 continues former Health and Safety Code Section 41955 without substantive change.

**§ 38404. Basis for certification by other agencies**

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38404. The State Fire Marshal, the Division of Occupational Safety and Health, and the Division of Measurement Standards shall certify any system or component which complies with their adopted rules and regulations. Any one of the state agencies may certify a system or component on the basis of results of tests performed by any entity retained by the manufacturer of the system or component or by the state agency. The requirements for the certification of a system or component shall not require that it be tested, approved, or listed by any private entity, except that certification testing regarding recirculation of gasoline shall include testing by an independent testing laboratory.

**Comment.** Section 38404 continues the second paragraph of former Health and Safety Code Section 41958 without change.

**§ 38405. Fee for certification by other agency**

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38405. The State Fire Marshal, the Division of Measurement Standards, and the Division of Occupational Safety and Health may charge a reasonable fee for certification of a gasoline vapor control system or a component thereof, not to exceed their respective estimated costs therefor. Payment of the fee may be made a condition of certification. All money collected by the State Fire Marshal pursuant to this section shall be deposited in the State Fire Marshal Licensing and Certification Fund established pursuant to Section 13137 of the Health and Safety Code, and shall be available to the State Fire Marshal upon appropriation by the Legislature to carry out the purposes of this chapter.

**Comment.** Section 38405 continues former Health and Safety Code Section 41961 without substantive change.

**§ 38406. Regulations of State Fire Marshal and Division of Measurement Standards**

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38406. (a) As soon as possible after the effective date of this section, the State Fire Marshal and the Division of Measurement Standards, after consulting with the state board, shall adopt rules and regulations for the certification of gasoline vapor control systems and components thereof.

(b) The State Fire Marshal shall be the only agency responsible for determining whether any component or system creates a fire hazard. The division shall be the only agency responsible for the measurement accuracy aspects, including gasoline recirculation of any component or system.

(c) Within 120 days after the effective date of this subdivision, the Division of Measurement Standards, shall, after public hearing, adopt rules and regulations containing additional performance standards and standardized certification and compliance test procedures which are reasonable and necessary to prevent gasoline recirculation in systems for the control of gasoline vapors resulting from motor vehicle fueling operations.

**Comment.** Section 38406 continues former Health and Safety Code Section 41956 without change.

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**§ 38407. Regulations of Division of Occupational Safety and Health**

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38407. (a) The Division of Occupational Safety and Health of the Department of Industrial Relations is the only agency responsible for determining whether any gasoline vapor control system, or component thereof, creates a safety hazard other than a fire hazard.

(b) If the division determines that a system, or component thereof, creates a safety hazard other than a fire hazard, that system or component may not be used until the division has certified that the system or component, as the case may be, does not create that hazard.

(c) The division, in consultation with the state board, shall adopt the necessary rules and regulations for the certification if the certification is required.

**Comment.** Section 38407 continues former Health and Safety Code Section 41957 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

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**§ 38408. Requirements for regulations adopted under Sections 38406 and 38407**

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38408. To the maximum extent practicable, the rules and regulations adopted pursuant to Sections 38406 and 38407 shall allow flexibility in the design of gasoline vapor control systems and their components. The rules and regulations shall set forth the performance standards as to safety and measurement accuracy and the minimum procedures to be followed in testing the system or component for compliance with the performance standards.

**Comment.** Section 38408 continues the first paragraph of former Health and Safety Code Section 41958 without change.

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**§ 38409. Revision of performance or certification standards**

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38409. (a) Whenever the state board, the Division of Measurement Standards of the Department of Food and Agriculture, or the State Fire Marshal revises performance or certification standards or revokes a certification, any systems or any system components certified under procedures in effect prior to the adoption of revised standards or the revocation of the certification and installed prior to the effective date of the revised standards or revocation may continue to be used in gasoline marketing operations for a period of four years after the effective date of the revised standards or the revocation of the certification. However, all necessary repair or replacement parts or components shall be certified.

(b) Notwithstanding subdivision (a), whenever the State Fire Marshal determines that a system or a system component creates a hazard to public health and welfare, the State Fire Marshal may prevent use of the particular system or component.

(c) Notwithstanding subdivision (a), the Division of Measurement Standards may prohibit the use of any system or any system component if it determines on the basis of test procedures adopted pursuant to subdivision (c) of Section 38406, that use of the system or component will result in gasoline recirculation.

**Comment.** Section 38409 continues former Health and Safety Code Section 41956.1 without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 41956.1 now apply to this section. See, e.g., Assembly Daily Journal, 1995-96 reg. sess., at 8821

**§ 38410. Simultaneous testing for certification**

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38410. Certification testing of gasoline vapor control systems and their components by the state board, the State Fire Marshal, the Division of Measurement Standards, and the Division of Occupational Safety and Health may be conducted simultaneously.

**Comment.** Section 38410 continues former Health and Safety Code Section 41959 without change.

**§ 38411. Effect of certification**

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38411. (a) Certification of a gasoline vapor recovery system for safety and measurement accuracy by the State Fire Marshal and the Division of Measurement Standards and, if necessary, by the Division of Occupational Safety and Health shall permit its installation wherever required in the state, if the system is also certified by the state board.

(b) Except as otherwise provided in subdivision (a) of Section 38401, no local or regional authority shall prohibit the installation of a certified system without obtaining concurrence from the state agency responsible for the aspects of the system which the local or regional authority disapproves.

**Comment.** Section 38411 continues former Health and Safety Code Section 41960 without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 41960 now apply to this section. See, e.g., Assembly Daily Journal, 1995-96 reg. sess., at 8821.

Article 3. Operating Requirements

**§ 38450. Loading gasoline through submerged fill pipe**

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38450. (a) Except as provided in subdivisions (b) and (e), no person shall install or maintain any stationary gasoline tank with a capacity of 250 gallons or more which is not equipped for loading through a permanent submerged fill pipe, unless the tank is a pressure tank as described in Section 38360, or is equipped with a vapor recovery system as described in Section 38365 or with a floating roof as described in Section 38355, or unless the tank is equipped with other apparatus of equal efficiency which has been approved by the air pollution control officer in whose district the tank is located.

(b) Subdivision (a) shall not apply to any stationary tanks installed prior to December 31, 1970.

(c) For the purpose of this section, "gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.

(d) For the purpose of this section, "submerged fill pipe" means any fill pipe which has its discharge opening entirely submerged when the liquid level is six inches above the bottom of the tank. "Submerged fill pipe," when applied to a tank which is loaded from the side, means any fill pipe which has its discharge opening entirely submerged when the liquid level is 18 inches above the bottom of the tank.

(e) Subdivision (a) shall not apply to any stationary tank which is used primarily for the fueling of implements of husbandry.

**Comment.** Section 38450 continues former Health and Safety Code Section 41950 without substantive change.

**§ 38451. Operation in accordance with applicable standards**

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38451. All vapor control systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall be operated in accordance with the applicable standards

established by the State Fire Marshal or the Division of Measurement Standards pursuant to Sections 38404, and 38406 to 38408, inclusive.

**Comment.** Section 38451 continues former Health and Safety Code Section 41960.1(a) without substantive change.

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**§ 38452. Failure to meet applicable standards**

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38452. (a) When a sealer or any authorized employee of the Division of Measurement Standards determines, on the basis of applicable test procedures of the division, adopted after public hearing, that an individual system or component for the control of gasoline vapors resulting from motor vehicle fueling operations does not meet the applicable standards established by the Division of Measurement Standards, he or she shall take the appropriate action specified in Section 12506 of the Business and Professions Code.

(b) When a deputy State Fire Marshal or any authorized employee of a fire district or local or regional firefighting agency determines that a component of a system for the control of gasoline vapors resulting from motor vehicle fueling operations does not meet the applicable standards established by the State Fire Marshal, he or she shall mark the component “out of order.” No person shall use or permit the use of the component until the component has been repaired, replaced, or adjusted, as necessary, and either the component has been inspected by a representative of the agency employing the person originally marking the component, or the person using or permitting use of the component has been expressly authorized by the agency to use the component pending reinspection.

**Comment.** Section 38452 continues former Health and Safety Code Section 41960.1(b)-(c) without change.

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**§ 38453. Maintenance of installed systems**

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38453. (a) All installed systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall be maintained in good working order in accordance with the manufacturer’s specifications of the system certified pursuant to Section 38400 to 38402, inclusive.

(b) Whenever a gasoline vapor recovery control system is repaired or rebuilt by someone other than the original manufacturer or its authorized representative, the person shall permanently affix a plate to the vapor recovery control system which identifies the repairer or rebuilder and specifies that only certified equipment was used. In addition, a rebuilder of a vapor control system shall remove any identification of the original manufacturer where the removal does not affect the continued safety or performance of the vapor control system.

**Comment.** Section 38453 continues former Health and Safety Code Section 41960.2(a)-(b) without substantive change.

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**§ 38454. Equipment defects**

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38454. (a) The state board shall identify equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations which substantially impair the effectiveness of the systems in reducing air contaminants.

(b) When a district determines that a component contains a defect specified pursuant to subdivision (a), the district shall mark the component “Out of Order” . No person shall use or permit the use of the component until the component has been repaired, replaced, or adjusted, as necessary, and the district has reinspected the component or has authorized use of the component pending reinspection.

(c) Where a district determines that a component is not in good working order but does not contain a defect specified pursuant to subdivision (a), the district shall provide the operator with a notice specifying the basis on which the component is not in good working order. If, within seven days, the operator provides the district with adequate evidence that the component is in good working order, the operator shall not be subject to liability under this division.

**Comment.** Section 38454 continues former Health and Safety Code Section 41960.2(c)-(e) without substantive change.

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#### **§ 38455. Complaints**

38455. (a) Each district which requires the installation of systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall establish a toll free telephone number for use by the public in reporting problems experienced with the systems. Districts within an air basin or adjacent air basin may enter into a cooperative program to implement this requirement. All complaints received by a district shall be recorded on a standardized form which shall be established by the state board, in consultation with districts, the State Fire Marshal, and the Division of Measurement Standards in the Department of Food and Agriculture.

(b) The operating instructions required by Section 38456 shall be posted at all service stations at which systems for the control of gasoline vapors resulting from motor vehicle fueling operations are installed and shall include a prominent display of the toll free telephone number for complaints in the district in which the station is located.

(c) Upon receipt of each complaint, the district shall diligently either investigate the complaint or refer the complaint for investigation by the state or local agency which properly has jurisdiction over the primary subject of the complaint. When the investigation has been completed, the investigating agency shall take appropriate remedial action and shall advise the complainant of the findings and disposition of the investigation. A copy of the complaint and response to the complaint shall be forwarded to the state board.

**Comment.** Section 38455 continues former Health and Safety Code Section 41960.3 without substantive change. The unnumbered second paragraph of former Health and Safety Code Section 41960.3(a) has been designated as subdivision (b), and former subdivision (b) redesignated as subdivision (c).

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#### **§ 38456. Operating instructions for service station pumps**

38456. The operator of each service station utilizing a system for the control of gasoline vapors resulting from motor vehicle fueling operations shall conspicuously post operating instructions for the system in the gasoline dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with vapor recovery nozzles utilized at the station and shall include a warning that repeated attempts to continue dispensing, after the system having indicated that the vehicle fuel tank is full, may result in spillage or recirculation of gasoline.

**Comment.** Section 38456 continues former Health and Safety Code Section 41960.4 without change.

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#### **§ 38457. Pump nozzle for leaded gasoline**

38457. (a) No retailer, as defined in Section 20999 of the Business and Professions Code, shall allow the operation of any gasoline pump from which leaded gasoline is dispensed, or which is labeled as providing leaded gasoline, unless the pump is equipped

with a nozzle spout meeting the required specifications for leaded gasoline nozzle spouts set forth in Title 40, Code of Federal Regulations, Section 80.22(f)(1).

(b) For the purpose of this section, “leaded gasoline” means gasoline which is produced with the use of any lead additive or which contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon.

**Comment.** Section 38457 continues former Health and Safety Code Section 41960.5 without change.

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#### **§ 38458. Pump nozzle hold open latch**

38458. (a) No retailer, as defined in subdivision (g) of Section 20999 of the Business and Professions Code, shall allow the operation of a pump, including any pump owned or operated by the state, or any county, city and county, or city, equipped with a nozzle from which gasoline or diesel fuel is dispensed, unless the nozzle is equipped with an operating hold open latch. Any hold open latch determined to be inoperative by the local fire marshal or district official shall be repaired or replaced by the retailer, within 48 hours after notification to the retailer of that determination, to avoid any applicable penalty or fine.

(b) For purposes of this section, a “hold open latch” means any device which is an integral part of the nozzle and is manufactured specifically for the purpose of dispensing fuel without requiring the consumer’s physical contact with the nozzle.

(c) Subdivision (a) does not apply to nozzles at facilities which are primarily in operation to refuel marine vessels or aircraft.

(d) Nothing in this section shall affect the current authority of any local fire marshal to establish and maintain fire safety provisions for his or her jurisdiction.

**Comment.** Section 38458 continues former Health and Safety Code Section 41960.6 without change. The reference in subdivision (a) to the date on which the prohibition stated in that subdivision took effect (July 1, 1992) is obsolete and has not been continued.

Uncodified statutory provisions applicable to former Health and Safety Code Section 41960.6 now apply to Section 38458 of the Environment Code. See 1991 Cal. Stat. ch. 468, § 1 (legislative findings and declarations).

### **Article 4. Cargo Tanks on Tank Vehicles**

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#### **§ 38500. Legislative intent**

38500. The Legislature hereby declares that the purposes of this article regarding cargo tank vapor recovery systems on tank vehicles are (1) to remove from the districts the authority to certify, except as specified in subdivision (a) of Section 38502, these systems and to charge fees therefor, and (2) to grant this authority to the state board, which shall have the primary responsibility to assure that these systems are operated in compliance with its standards and procedures adopted pursuant to Section 38501.

**Comment.** Section 38500 continues former Health and Safety Code Section 41962(i) without substantive change.

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#### **§ 38501. Performance standards and test procedures**

38501. Notwithstanding Section 34002 of the Vehicle Code, the state board shall adopt test procedures to determine the compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline with vapor emission standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard. The performance standards and test procedures adopted by the state board shall be

consistent with the regulations adopted by the Commissioner of the California Highway Patrol and the State Fire Marshal pursuant to Division 14.7 (commencing with Section 34001) of the Vehicle Code.

**Comment.** Section 38501 continues former Health and Safety Code Section 41962(a) without substantive change.

#### **§ 38502. State board testing and certification**

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38502. (a) The state board may test, or contract for testing, the vapor recovery system of any cargo tank of any tank vehicle used to transport gasoline. The state board shall certify the cargo tank vapor recovery system upon its determination that the system, if properly installed and maintained, will meet the requirements of Section 38501. The state board shall enumerate the specifications used for issuing the certification. After a cargo tank vapor recovery system has been certified, if circumstances beyond control of the state board cause the system to no longer meet the required specifications, the certification may be revoked or modified.

(b) Upon verification of certification pursuant to subdivision (a), which shall be done annually, the state board shall send a verified copy of the certification to the registered owner of the tank vehicle, which copy shall be retained in the tank vehicle as evidence of certification of its vapor recovery system. For each system certified, the state board shall issue a nontransferable and nonremovable decal to be placed on the cargo tank where the decal can be readily seen.

(c) With respect to any tank vehicle operated within a district, the state board, upon request of the district, shall send to the district, free of charge, a certified copy of the certification and test results of any cargo tank vapor recovery system on the tank vehicle.

(d) The state board may contract with the Department of the California Highway Patrol to carry out the responsibilities imposed by subdivisions (a), (b), and (c).

(e) The state board shall charge a reasonable fee for certification, not to exceed its estimated costs therefor. Payment of the fee shall be a condition of certification. The fees may be collected by the Department of the California Highway Patrol and deposited in the Motor Vehicle Account in the State Transportation Fund. The Department of the California Highway Patrol shall transfer to the Air Pollution Control Fund the amount of those fees necessary to reimburse the state board for the costs of administering the certification program.

**Comment.** Section 38502 continues former Health and Safety Code Section 41962(b)-(f) without substantive change.

#### **§ 38503. Certification required**

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38503. No person shall operate, or allow the operation of, a tank vehicle transporting gasoline and required to have a vapor recovery system, unless the system thereon has been certified by the state board and is installed and maintained in compliance with the state board's requirements for certification. Tank vehicles used exclusively to service gasoline storage tanks which are not required to have gasoline vapor controls are exempt from the certification requirement.

**Comment.** Section 38503 continues former Health and Safety Code Section 41962(g) without substantive change.

#### **§ 38504. Authority of district**

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38504. Performance standards of any district for cargo tank vapor recovery systems on tank vehicles used to transport gasoline shall be identical with those adopted by the state board therefor and no district shall adopt test procedures for, or require certification of, cargo tank vapor recovery systems. No district may impose any fees on, or require any permit of, tank vehicles with vapor recovery systems. However, nothing in this article shall be construed to prohibit a district from inspecting and testing cargo tank vapor recovery systems on tank vehicles for the purposes of enforcing this article or any rule and regulation adopted thereunder that are applicable to these systems and to the loading and unloading of cargo tanks on tank vehicles.

**Comment.** Section 38504 continues former Health and Safety Code Section 41962(h) without substantive change.

### **CHAPTER 8. ENFORCEMENT OF GASOLINE CARGO TANK REQUIREMENTS**

#### **§ 38550. Notice to appear**

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38550. (a) As an alternative to the criminal penalties provided in Article 2 (commencing with Section 39550) of Chapter 7 of Title 7 in any case involving a gasoline cargo tank subject to Chapter 7 (commencing with Section 38350), if it appears that any person has violated any provision of this part, or any order, rule, or regulation of the state board or of a district adopted pursuant to this part, and all of the conditions set forth in subdivision (b) are met and the investigating officer or official decides to initiate enforcement action, he or she may prepare, in triplicate, and the alleged violator shall sign, a written notice to appear containing the following statement: "Cited in accordance with Section 38550 of the Health and Safety Code." If the arrested person presents, by mail or in person, proof of correction as prescribed in Section 38551 on or before the date on which he or she promised to appear, the court shall dismiss the applicable charges.

(b) Use of the notice to appear pursuant to this chapter is authorized when both of the following conditions exist:

- (1) The violation does not evidence intentional avoidance or persistent neglect.
- (2) The violation has not presented and does not present an immediate safety hazard.

**Comment.** Section 38550 continues former Health and Safety Code Section 41970 without substantive change.

#### **§ 38551. Proof of correction**

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38551. Proof of correction shall consist either of a verification pursuant to Section 38552 or of a certification by an authorized representative of one of the following agencies that the alleged violation has been corrected:

- (a) The state board.
- (b) The State Fire Marshal.
- (c) The district board.
- (d) The Department of the California Highway Patrol.

**Comment.** Section 38551 continues former Health and Safety Code Section 41971 without substantive change.



#### **§ 38552. Proof of correction by verification**

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38552. (a) Proof of correction by verification shall consist of a verification by the owner or operator of the gasoline cargo tank that the alleged violation has been corrected. The owner or operator shall notify the agency which issued the notice to appear at least 24 hours in advance of the time when the correction may be inspected, specifying the location of the gasoline cargo tank.

(b) If a representative of the issuing agency fails to appear to make the inspection at the designated place and time, the owner or operator shall prepare and submit a verification under penalty of perjury that the alleged violation has been corrected.

(c) The state board shall adopt regulations for the making and submission of verifications pursuant to this section.

**Comment.** Section 38552 continues former Health and Safety Code Section 41972 without substantive change. The second and third paragraphs of former Health and Safety Code Section 41972(a) have been designated as subdivisions.

#### **§ 38553. Operation without correction of violations**

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38553. Each day that a gasoline cargo tank, which is the subject of a notice to appear issued pursuant to this chapter, is operated without correction of the violation subsequent to the date of the notice shall constitute a separate offense subject to the penalties provided in Chapter 7 (commencing with Section 39500) of Title 7.

**Comment.** Section 38553 continues former Health and Safety Code Section 41973 without substantive change.

#### **§ 38554. Application of article**

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38554. (a) Except as provided in subdivision (b), Chapter 7 (commencing with Section 39500) of Title 7 shall apply to any gasoline cargo tank subject to Chapter 7 (commencing with Section 38350).

(b) The other provisions of this chapter shall not apply to any gasoline cargo tank violation of Chapter 7 (commencing with Section 38350) occurring prior to January 1, 1981.

**Comment.** Section 38554 continues former Health and Safety Code Section 41974 without change.

☞ **Staff Note.** Section 41974(b) contains a reference to “that Article 5.” The staff believes this to be a reference to the article cited in full in subdivision (a) — “Article 5 (commencing with Section 41950).” In this draft, the reference has been replaced with a full citation. The staff would like to receive input on whether this changes the substance of the provision.

### **CHAPTER 9. INCINERATION OF TOXIC WASTE MATERIALS**

#### **§ 38600. Legislative findings and declarations**

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38600. The Legislature finds and declares that:

(a) Incineration has not been used extensively in California as a means of disposal of toxic waste materials, primarily because of the extensive area available for landfill, the low cost of landfill as a method of disposal, and problems with air pollution.

(b) Because problems may result from disposing of certain toxic waste materials in landfills, incineration should be investigated as a method of disposal.

(c) Incineration of certain toxic waste materials has the advantage, when compared to disposal by landfill, of breaking down toxic waste materials into harmless compounds or elements.

(d) The incineration of certain toxic waste materials can result in the net production of energy, which can help to displace the combustion of fossil fuels and reduce dependence on imported energy supplies.

(e) Improper or incomplete incineration of toxic waste materials can result in emissions of compounds in amounts or concentrations which may be hazardous to public health, and hazardous to economically or environmentally significant animal or plant life.

Therefore, it is the intent and purpose of the Legislature to investigate the methods of ensuring that emissions from incineration of toxic wastes do not endanger public health and welfare, while determining what appropriate role incineration could play in reducing the landfilling of toxic waste materials in California.

**Comment.** Section 38600 continues former Health and Safety Code Section 41980 without change.

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#### **§ 38601. “Toxic waste”**

38601. For purposes of this Chapter, “toxic waste” means hazardous waste, as defined in Section 25117 of the Health and Safety Code.

**Comment.** Section 38601 continues former Health and Safety Code Section 41980.5 without substantive change.

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#### **§ 38602. Study of emissions**

38602. (a) The state board shall, in consultation with the affected district and the Department of Health Services, complete a study, using all available data on the emissions from incineration of toxic waste materials.

(b) The state board shall report its findings to the Legislature on or before January 1, 1984.

**Comment.** Section 38602 continues former Health and Safety Code Section 41981 without change. The former unnumbered paragraphs have been numbered as subdivisions.

☞ **Staff Note.** This section may be obsolete. It specifies a 1984 deadline for submission of certain findings to the Legislature. The staff would like to receive input on two questions: (1) Was the requirement met? (2) Does the section still serve a useful purpose?

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#### **§ 38603. Guidelines for issuance of permits**

38603. The state board shall, after completing the study referred to in Section 38602, in consultation with the affected districts, the Department of Toxic Substances Control, and the Office of Environmental Health Hazard Assessment, and after public hearings, establish guidelines for the issuance of permits by the districts for the incineration of toxic waste materials. The guidelines shall take into consideration factors including, but not limited to, the following:

(a) The characteristics of the toxic waste materials to be incinerated.

(b) The methods or equipment available to minimize or eliminate the emission of air contaminants.

(c) The applicable federal standards, including, but not limited to, the regulations in Part 264 of Title 40 of the Code of Federal Regulations (40 CFR 264) concerning standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. Where

the guidelines deviate from the adopted federal standards, the reason for the difference shall be noted by the state board.

**Comment.** Section 38603 continues former Health and Safety Code Section 41982 without substantive change. Enactment of this section codifies part of the Governor's Reorganization Plan No. 1 of 1991, § 138, effective July 17, 1991.

#### **§ 38604. Construction of article**

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38604. (a) This chapter shall not be construed as preventing any district from establishing permit criteria more stringent than the guidelines specified in Section 38603.

(b) This chapter shall not be construed as limiting the authority of the Department of Toxic Substances Control concerning hazardous waste control (Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code), or any regulations promulgated under the authority of those provisions.

**Comment.** Section 38604 continues former Health and Safety Code Section 41983 without substantive change. Enactment of this section codifies part of the Governor's Reorganization Plan No. 1 of 1991, § 139, effective July 17, 1991.

### **CHAPTER 10. MISCELLANEOUS EMISSION SOURCES**

#### **§ 38650. Diesel pile-driving hammers**

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38650. (a) Neither the state board nor any district shall impose a discharge requirement on emissions of visible smoke from diesel pile-driving hammers which is more stringent than the requirements of this section, except as provided in subdivisions (b) and (c).

(b) A district shall issue a permit to the operator of a diesel pile-driving hammer if the operator submits a completed application for a permit to the district and the district determines, on the basis of information provided in the application, that the proposed use will comply with one of the following requirements:

(1) Meets the Ringelmann 1 limit, as published by the United States Bureau of Mines, and does not exceed that limit for more than four minutes during the driving of a single pile.

(2) Meets the Ringelmann 2 limit, as published by the United States Bureau of Mines, does not exceed that limit for more than four minutes during the driving of a single pile, and uses kerosene fuel, smoke suppressing fuel additives, and synthetic lubricating oil. A district may establish other requirements for compliance with this paragraph if the requirements are technologically and economically feasible. A district may consider the type of soil in which the pile driving is to occur and the number of blows required to drive a pile in determining the technological and economic feasibility of other conditions to be imposed by the district.

(c) A permit issued by a district shall be valid until the pile-driving work has been approved or accepted by the person or entity for which the work is being performed. Upon request of an operator or of a person or entity for which the pile-driving work is performed, a district may extend the time period for which the permit is valid if the operator continues to comply with this section.

**Comment.** Section 38650 continues former Health and Safety Code Section 41701.5 without change.

#### **§ 38651. Diesel auxiliary engines and generators**

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38651. Neither the state board nor any district shall impose a discharge requirement on emissions of visible smoke from any diesel auxiliary engine or generator used exclusively to operate a drinking water system which is more stringent than the Ringelmann 2 limit, as published by the United States Bureau of Mines on January 1, 1995, when operated under emergency circumstances, or operated not more than 30 minutes each week, or two hours each month, under nonemergency circumstances.

**Comment.** Section 38651 continues former Health and Safety Code Section 41701.6 without change.

#### **§ 38652. Vessels using steam boilers**

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38652. (a) The state board shall conduct a study in cooperation with the affected districts and representatives of the maritime industry to determine whether vessels using steam boilers can be brought into compliance with Section 37602 by January 1, 1984, or any earlier date, taking into account the age and physical condition of the affected vessels, vessel safety and operational requirements, and technological feasibility.

(b) Following completion of the study, the state board shall conduct a public hearing to consider and, if appropriate, adopt a compliance schedule by which various classes of vessels will be brought into compliance with the standards specified in Section 37602 on and after January 1, 1984. Prior to taking any action to adopt a compliance schedule, the state board shall report the results of its study to the Legislature, and in no event shall the study be filed with the Legislature later than January 1, 1983. The report shall also address emissions from diesel powered vessels.

**Comment.** Section 38652 continues former Health and Safety Code Section 41704.5 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

☞ **Staff Note.** This section may be obsolete. It specifies a 1983 deadline for submission of a certain study to the Legislature. The staff would like to receive input on two questions: (1) Was the requirement met? (2) Does the section still serve a useful purpose?

#### **§ 38653. Lead compounds**

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38653. (a) The Legislature hereby finds and declares that recent evidence indicates that lead compounds emitted into the air by nonvehicular sources accumulate in and upon vegetation in the vicinity of the sources, pose a grave threat to the health of animals which consume the vegetation, and constitute a potential human health hazard.

(b) Every district shall establish emission standards for lead compounds emitted into the air from nonvehicular sources. Where a district has failed to establish standards, the state board shall establish standards for that district.

**Comment.** Section 38653 continues former Health and Safety Code Section 41706 without substantive change.

#### **§ 38654. Cutback asphalt paving material**

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38654. (a) Any district may adopt a rule or regulation for the control of volatile organic compound emissions from cutback asphalt paving material based on local considerations, including, but not limited to, the degree of air pollution resulting from the paving material, the economic impact of the rule and regulation, and the feasibility of implementing the rule and regulation.

(b) The state board shall not override or otherwise amend any action taken by a district relating to the use of cutback asphalts.

**Comment.** Section 38654 continues former Health and Safety Code Section 41708 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

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**§ 38655. Equipment subject to variance**

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38655. No person shall operate any article, machine, equipment, or other contrivance which is the subject of a variance if that article, machine, equipment, or other contrivance, as may be the case, is not in compliance with a required schedule of increments of progress, unless operation is authorized by a hearing board.

**Comment.** Section 38655 continues former Health and Safety Code Section 41702 without substantive change.

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**§ 38656. Water projects undertaken by City of Los Angeles**

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38656. (a) The Great Basin Air Pollution Control District may require the City of Los Angeles to undertake reasonable measures, including studies, to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water and may require the city to pay, on an annual basis, reasonable fees, based on an estimate of the actual costs to the district of its activities associated with the development of the mitigation measures and related air quality analysis with respect to those activities of the city. The mitigation measures shall not affect the right of the city to produce, divert, store, or convey water and, except for studies and monitoring activities, the mitigation measures may only be required or amended on the basis of substantial evidence establishing that water production, diversion, storage, or conveyance by the city causes or contributes to violations of state or federal ambient air quality standards.

(b) The city may appeal any measures or fees imposed by the district to the state board within 30 days of the adoption of the measures or fees. The state board, on at least 30 days' notice, shall conduct an independent hearing on the validity of the measures or reasonableness of the fees which are the subject of the appeal. The decision of the state board shall be in writing and shall be served on both the district and the city. Pending a decision by the state board, the city shall not be required to comply with any measures which have been appealed. Either the district or the city may bring a judicial action to challenge a decision by the state board under this section. The action shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure and shall be filed within 30 days of service of the decision of the state board.

(c) A violation of any measure imposed by the district pursuant to this section is a violation of an order of the district within the meaning of Sections 38701, 39501 and 39601.

(d) The district shall have no authority with respect to the water production, diversion, storage, and conveyance activities of the city except as provided in this section. Nothing in this section exempts a geothermal electric generating plant from permit or other district requirements.

**Comment.** Section 38656 continues former Health and Safety Code Section 42316 without substantive change.

**§ 38657. Emission increase resulting from required device or technique**

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38657. A district shall not require emission offsets for any emission increase at a source that results from the installation, operation, or other implementation of any emission control device or technique used to comply with a district, state, or federal emission control requirement, including, but not limited to, requirements for the use of reasonably available control technology or best available retrofit control technology, unless there is a modification that results in an increase in capacity of the unit being controlled.

**Comment.** Section 38657 continues former Health and Safety Code Section 42301.2 without change.

**TITLE 7. ENFORCEMENT**

**CHAPTER 1. GENERAL PROVISIONS**

**§ 38700. Right of entry for purpose of inspection**

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38700. For the purpose of enforcing or administering any state or local law, order, regulation, or rule relating to air pollution, the executive officer of the state board or any air pollution control officer having jurisdiction, or an authorized representative of the officer, upon presentation of that person's credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50), Part 3 of the Code of Civil Procedure, shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting the source, including securing samples of emissions therefrom, or any records required to be maintained in connection therewith by the state board or any district.

**Comment.** Section 38700 continues former Health and Safety Code Section 41510 without substantive change.

**§ 38701. Injunctions**

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38701. Any violation of any provision of this part, or of any order, rule, or regulation of the state board or of any district, may be enjoined in a civil action brought in the name of the people of the State of California, except that the plaintiff shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss.

**Comment.** Section 38701 continues former Health and Safety Code Section 41513 without change.

**CHAPTER 2. PERMITS**

**Article 1. General Provisions**

**§ 38750. Establishment of permit system**

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38750. (a) Every district board may establish, by regulation, a permit system that requires, except as otherwise provided in Section 39152, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to do so from the air pollution control officer of the district.

(b) The regulations may provide that a permit shall be valid only for a specified period. However, the expiration date of any permit shall be eligible for extension upon completion of the annual review required pursuant to subdivision (e) of Section 38753 and payment of the fees required pursuant to Sections 38850 to 38854, inclusive, unless the air pollution control officer or the hearing board has initiated action to suspend or revoke the permit pursuant to Section 38807, 38810, or 38812, that action has resulted in a final determination by the officer or the board to suspend or revoke the permit, and all appeals have been exhausted or the time for appeals from that final determination has been exhausted.

(c) The annual extension of a permit's expiration date pursuant to subdivision (b) does not constitute permit issuance, renewal, reopening, amendment, or any other action subject to the requirements specified in Title V.

**Comment.** Section 38750 continues former Health and Safety Code Section 42300 without substantive change.

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#### **§ 38751. Consolidated permit**

38751. (a) A district board may issue a consolidated permit which serves as (1) authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) authority to operate or use that article, machine, equipment, or contrivance.

(b) If a district issues consolidated permits, the district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, and operated or used in the manner required by the consolidated permits.

**Comment.** Section 38751 continues former Health and Safety Code Section 42300.1 without change.

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#### **§ 38752. Certification of professional application preparers**

38752. A district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district or district-approved training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by the district, as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) An audit program, including periodic full district review of permit applications prepared by certified private environmental professionals, to determine whether or not district requirements for the preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

(1) Knowingly or negligently submitted false data as part of a permit application.

(2) Prepared any permit application in a manner contrary to district requirements.

(3) Prepared a permit application in connection with which the certified private environmental professional has a financial conflict of interest as defined in guidelines which shall be adopted by the district.

**Comment.** Section 38752 continues former Health and Safety Code Section 42300.2 without change.

### **§ 38753. Requirements of permit system**

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38753. A permit system established pursuant to Section 38750 shall do all of the following:

(a) Ensure that the article, machine, equipment, or contrivance for which the permit was issued does not prevent or interfere with the attainment or maintenance of any applicable air quality standard.

(b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all of the following:

(1) All applicable orders, rules, and regulations of the district and of the state board.

(2) All applicable provisions of this division.

(c) Prohibit the issuance of a permit to a Title V source if the Administrator of the Environmental Protection Agency objects to its issuance in a timely manner as provided in Title V. This subdivision is not intended to provide any authority to the Environmental Protection Agency to object to the issuance of a permit other than that authority expressly granted by Title V.

(d) Provide that the air pollution control officer may issue to a Title V source a permit to operate or use if the owner or operator of the Title V source presents a variance exempting the owner or operator from Section 37602, any rule or regulation of the district, or any permit condition imposed pursuant to this section, or presents an abatement order that has the effect of a variance and that meets all of the requirements of this part pertaining to variances, and the requirements for the issuance of permits to operate are otherwise satisfied. The issuance of any variance or abatement order is a matter of state law and procedure only and does not amend a Title V permit in any way. Those terms and conditions of any variance or abatement order that prescribe a compliance schedule may be incorporated into the permit consistent with Title V and this division.

(e) Require, upon annual renewal, that each permit be reviewed to determine that the permit conditions are adequate to ensure compliance with, and the enforceability of, district rules and regulations applicable to the article, machine, equipment, or contrivance for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing article, machine, equipment, or contrivance, by the district board and, if the permit conditions are not consistent, require that the permit be revised to specify the permit conditions in accordance with all applicable rules and regulations.

(f) Provide for the reissuance or transfer of a permit to a new owner or operator of an article, machine, equipment, or contrivance. An application for transfer of ownership only, or change in operator only, of any article, machine, equipment, or contrivance which had a valid permit to operate within the two-year period immediately preceding the application is a temporary permit to operate. Issuance of the final permit to operate shall be conditional upon a determination by the district that the criteria specified in subdivisions (b) and (e) are met, if the permit was not surrendered as a condition to receiving emission reduction credits pursuant to banking or permitting rules of the district. However, under no circumstances shall the criteria specify that a change of ownership or operator alone is a basis for requiring more stringent emission controls or operating conditions than would otherwise apply to the article, machine, equipment, or contrivance.



**Comment.** Section 38753 continues former Health and Safety Code Section 42301 without substantive change.

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**§ 38754. Temporary permit to operate**

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38754. Whenever necessary and appropriate to ensure compliance with all applicable conditions prior to issuance of a permit to operate an article, machine, equipment, or contrivance, a district may issue a temporary permit to operate. The temporary permit to operate shall specify a reasonable period of time during which the article, machine, equipment, or contrivance may be operated in order for the district to determine whether it will operate in accordance with the conditions specified in the authority to construct.

**Comment.** Section 38754 continues former Health and Safety Code Section 42301.1 without change.

Article 2. Procedures

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**§ 38800. Hearing on denial of permit**

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38800. An applicant for a permit which has been denied may request, within 10 days after receipt of the notice of the denial, the hearing board of the district to hold a hearing on whether or not the permit was properly denied.

**Comment.** Section 38800 continues former Health and Safety Code Section 42302 without change.

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**§ 38801. Public hearing to review issuance of permit**

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38801. Within 10 days of any decision or action pertaining to the issuance of a permit by a district, or within 10 days after mailing of the notice of issuance of the permit to any person who has requested notice or within 10 days of the publication and mailing of notice provided for in Section 39158, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Except as provided in Section 39158, within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

**Comment.** Section 38801 continues former Health and Safety Code Section 42302.1 without substantive change.

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**§ 38802. Information from applicant or permit holder**

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38802. An air pollution control officer, at any time, may require from an applicant for, or the holder of, any permit provided for by the regulations of the district board, information, analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which the permit was issued or applied.

**Comment.** Section 38802 continues former Health and Safety Code Section 42303 without substantive change.

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**§ 38803. Customer lists and records of orders**

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38803. (a)(1) An air pollution control officer, at any time, may, for the purpose of permitting or enforcement actions, require from the in-state or out-of-state supplier,

wholesaler, or distributor of volatile organic compounds or chemical substances the use of which results in air contaminants subject to regulation or enforcement by the district, customer lists and chemical types and quantities of those compounds and substances as specified by the district pursuant to subdivision (b) which are purchased by, or on order for, a specified source operator within the district.

(2) The supplier, wholesaler, or distributor shall disclose the information required pursuant to Sections 38803 to 38805, inclusive, to the district.

(b) Prior to implementing subdivision (a), an air pollution control officer shall prepare a comprehensive list of volatile organic compounds or chemical substances the use of which results in the emission of air contaminants which are subject to regulation or enforcement by the district.

**Comment.** Section 38803 continues former Health and Safety Code Section 42303.2(a)-(b) without substantive change. The unnumbered paragraphs of former subdivision (a) have been numbered as paragraphs. Statements of legislative intent applicable to former Health and Safety Code Section 42303.2 now apply to this section. See, e.g., letter of Assembly Member Roybal-Allard relating to A.B. 157, Assembly Journal, Sept. 13, 1991.

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#### **§ 38804. Penalties for breach of confidentiality**

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38804. (a)(1) Any officer or employee of the district or of a district contractor, or former officer or employee, who, by virtue of that employment or official position has possession of, or has access to, any confidential information that is a trade secret, customer list, or supplier name acquired pursuant to Sections 38803 to 38805, inclusive,, and who, knowing that the disclosure of the information to the general public is prohibited by Sections 38803 to 38805, inclusive,, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor punishable by a six month county jail term and a fine not to exceed one thousand dollars (\$1,000).

(2) Any officer or employee of the district or of a district contractor, or former officer or employee, who, by virtue of that employment or official position has possession of, or has access to, any other confidential information acquired pursuant to Sections 38803 to 38805, inclusive,, and who, knowing that the disclosure of the information to the general public is prohibited by Sections 38803 to 38805, inclusive, and who, knowing that the disclosure of the information to the general public is prohibited by Sections 38803 to 38805, inclusive, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor punishable by a 10-day county jail term or a fine not to exceed five hundred dollars (\$500).

(b) The penalties provided in subdivision (a) shall be in addition to any existing civil penalties and remedies available under the law.

**Comment.** Section 38804 continues former Health and Safety Code Section 42303.2(c)-(d) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42303.2 now apply to this section. See, e.g., letter of Assembly Member Roybal-Allard relating to A.B. 157, Assembly Journal, Sept. 13, 1991.

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#### **§ 38805. Relation of Section 38803 to Public Records Act**

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38805. Except for the purposes of any enforcement or permit action, and except for information obtained from an independent source, all information received or compiled by an air pollution control officer from a supplier, wholesaler, or distributor pursuant to subdivision (a) of Section 38803 is confidential for the purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and shall not be disclosed.

**Comment.** Section 38805 continues former Health and Safety Code Section 42303.2(e) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42303.2 now apply to this section. See, e.g., letter of Assembly Member Roybal-Allard relating to A.B. 157, Assembly Journal, Sept. 13, 1991.

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**§ 38806. False statements**

38806. No person shall knowingly make any false statement in any application for a permit, or in any information, analyses, plans, or specifications submitted in conjunction with the application or at the request of the air pollution control officer.

**Comment.** Section 38806 continues former Health and Safety Code Section 42303.5 without change.

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**§ 38807. Refusal of holder to furnish information**

38807. If, within a reasonable time, the holder of any permit issued by a district board willfully fails and refuses to furnish the information, analyses, plans, or specifications requested by the district air pollution control officer, the officer may suspend the permit. The officer shall serve notice in writing of the suspension and the reasons therefor on the permittee.

**Comment.** Section 38807 continues former Health and Safety Code Section 42304 without substantive change.

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**§ 38808. Reinstatement of suspended permit**

38808. The air pollution control officer shall reinstate a suspended permit when furnished with all the requested information, analyses, plans, and specifications.

**Comment.** Section 38808 continues former Health and Safety Code Section 42305 without change.

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**§ 38809. Request for hearing after suspension of permit**

38809. Within 10 days after receipt of the notice of suspension pursuant to Section 38807, the permittee may request the hearing board of the district to hold a hearing on whether or not the permit was properly suspended.

**Comment.** Section 38809 continues former Health and Safety Code Section 42306 without substantive change.

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**§ 38810. Revocation hearing**

38810. An air pollution control officer may request the hearing board of the district to hold a hearing to determine whether a permit should be revoked, if the air pollution control officer finds that the holder of the permit is violating any applicable order, rule, or regulation of the district or any applicable provision of this division.

**Comment.** Section 38810 continues former Health and Safety Code Section 42307 without substantive change.

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**§ 38811. Hearing by board**

38811. Within 30 days after a hearing has been requested pursuant to Section 38800, 38809, or 38810, the hearing board shall hold a hearing pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3.

**Comment.** Section 38811 continues former Health and Safety Code Section 42308 without substantive change.

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**§ 38812. Actions by board after hearing**

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38812. After a hearing, the hearing board may do any of the following:
- (a) Grant a permit denied by the air pollution control officer.
  - (b) Continue the suspension of a permit suspended by the air pollution control officer.
  - (c) Remove the suspension of an existing permit invoked by the air pollution control officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required.
  - (d) Find that no violation exists and reinstate an existing permit.
  - (e) Revoke an existing permit, if it finds any of the following:
    - (1) The permittee has failed to correct any conditions required by the air pollution control officer.
    - (2) A refusal of a permit would be justified.
    - (3) Fraud or deceit was employed in the obtaining of the permit.
    - (4) Any violation of this part, or of any order, rule, or regulation of the district.

**Comment.** Section 38812 continues former Health and Safety Code Section 42309 without change.

### Article 3. Fees

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**§ 38850. Authorized fees**

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38850. (a) A district board may adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs related to permitted stationary sources authorized or required under this division that are not otherwise funded. The fees assessed under Sections 38850 to 38854, inclusive shall not exceed, for any fiscal year, the actual costs for district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover. Every person applying for a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule. Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources.

(b) In addition to any other fees authorized by Sections 38850 to 38854, inclusive, a district board may adopt, by regulation, a schedule of annual fees to be assessed against permitted nonvehicular sources emitting toxic air contaminants identified pursuant to the procedure set forth in Sections 31750 to 31753, inclusive, 31755, and 31756. A district board shall demonstrate that the fees assessed under this subdivision do not exceed the reasonable, anticipated costs of funding district activities mandated by Section 31801 to 31805, inclusive related to nonvehicular source emissions. In making the demonstration, the district shall account for all direct and indirect costs of district activities related to each toxic air contaminant. If the district does not make this demonstration, it shall make reimbursement for that portion of the fee not determined to be reasonable.

(c) A district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources.

(d) A district board may adopt, by regulation, a schedule of fees to cover the reasonable costs of the hearing board incurred as a result of appeals from district decisions on the issuance of permits. However, the hearing board may waive all or part of these fees if it determines that circumstances warrant that waiver.

**Comment.** Section 38850 continues former Health and Safety Code Section 42311(a), (f)-(h) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to Section 38850 of the Environment Code. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

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#### **§ 38851. Permit application fee**

38851. The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) of Section 38850 prior to evaluating a permit application, if the district accounts for the costs of its services and refunds to the applicant any significant portion of the deposit which exceeds the actual, reasonable cost of evaluating the application.

**Comment.** Section 38851 continues former Health and Safety Code Section 42311(b) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to Section 38851 of the Environment Code. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

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#### **§ 38852. Disposition of fees**

38852. Except as provided in Section 38859, all the fees shall be paid to the district treasurer to the credit of the district.

**Comment.** Section 38852 continues former Health and Safety Code Section 42311(c) without change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to Section 38852 of the Environment Code. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

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#### **§ 38853. South coast district**

38853. Sections 38850 to 38854, inclusive, do not apply to the south coast district board which is governed by Section 36206.

**Comment.** Section 38853 continues former Health and Safety Code Section 42311(d) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to Section 38853 of the Environment Code. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

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#### **§ 38854. Public hearing regarding fee regulations**

38854. In addition to providing notice as otherwise required, before adopting a regulation establishing fees pursuant to Sections 38550 to 38554, inclusive the district board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the

information required by Sections 38550 to 38554, inclusive is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the district board. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the district board shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service. Any costs incurred by the district board in conducting the required meeting may be recovered from fees charged for the programs which were the subject of the meeting.

**Comment.** Section 38854 continues former Health and Safety Code Section 42311(e) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to Section 38854 of the Environment Code. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

Subdivision (i) of former Health and Safety Code Section 42311 provided that amendments made by Section 29 of Chapter 1568 of the Statutes of 1988 did not affect any previously existing authority of a district to vary fees according to quantity of emissions, and did not affect any then-pending litigation. This transitional provision is obsolete and has not been continued.

☞ **Staff Note.** It appears that subdivision (i) of Health and Safety Code Section 42311, governing the effect of amendments made to that section in 1988, is obsolete. The staff would like to receive input on whether the provision has any continued usefulness.

#### **§ 38856. Limitations on fees**

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38856. (a) Notwithstanding Sections 38850 to 38854, inclusive, a district shall not adopt or impose fees which exceed actual district administrative costs for processing or enforcing permits applicable to any of the following:

(1) Prescribed burning operations on state responsibility lands conducted under the terms of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code when the purpose of the operation is prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.

(2) Burning of vegetation or disposal of slash following timber operations required under regulations adopted by the State Board of Forestry pursuant to Section 4551.5 or 4562 of the Public Resources Code and for the purpose of reducing the incidence and spread of fires on timberlands.

(3) Wildland vegetation management burns. For purposes of this subdivision, “wildland vegetation management burn” means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency to burn land predominantly covered with chaparral, trees, grass, or standing brush. For purposes of this subdivision, “prescribed burning” is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may include natural or accidental ignition.

(b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or (3) of subdivision (a), a district shall hold a public hearing and shall consider the following:

(1) The costs of the fees on private landowners and other persons who engage in activities specified in paragraph (1), (2), or (3) of subdivision (a).

(2) Any revenues currently provided to the county for general government by public agencies which administer public lands.

**Comment.** Section 38856 continues former Health and Safety Code Section 42311.2 without substantive change.

☞ **Staff Note.** The introductory paragraph of subdivision (b) and paragraph (b)(1) refer to “paragraph (1), (2), or (3)” without indicating what subdivision these paragraphs fall within. From context it appears that the references are to paragraphs (1)-(3) of subdivision (a). The references have been changed to refer to subdivision (a).

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#### **§ 38857. Increased fees to finance implementation of certain provisions**

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38857. A district board may increase its fee schedule adopted under Sections 38850 to 38854, inclusive, to generate sufficient revenues to pay for any district costs associated with the implementation of Section 66796.53 of the Government Code or Sections 38000 to 38008, inclusive.

**Comment.** Section 38857 continues former Health and Safety Code Section 42311.5 without substantive change.

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#### **§ 38858. Permit service provided by county or city**

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38858. To aid in administering its permit system, a district board may contract with any county or city included, in whole or in part, within the district, and the county or city may contract with the district, for the performance of work in the name of, and subject to the approval of, the district air pollution control officer by the building department or other officer, department, or agency of the county or city charged with the enforcement of regulations pertaining to the erection, construction, reconstruction, movement, conversion, alteration, or enlargement of buildings or structures.

**Comment.** Section 38858 continues former Health and Safety Code Section 42312 without substantive change.

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#### **§ 38859. Fees paid to county or city**

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38859. Except in the case of a contract entered into between a county district and the county, a contract entered into pursuant to Section 38858 may provide that fees for permits shall be paid to the city or county which issues the permit and may be retained by that city or county, in whole or in part, as the consideration, or part thereof, for issuing the permits. Otherwise, all fees paid for the issuance of permits shall be paid into the district treasury.

**Comment.** Section 38859 continues former Health and Safety Code Section 42313 without substantive change.

### **Article 4. Air Pollution Control Equipment Permits**

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#### **§ 38900. Legislative intent**

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38900. It is the intent of the Legislature that districts expedite permits for the installation of air pollution control equipment.

**Comment.** Section 38900 continues former Health and Safety Code Section 42301.3(a) without substantive change.

#### **§ 38901. Application of article**

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38901. (a) This article applies only to air pollution control projects at existing sources, where the project is necessary to comply with emission standards or limitations imposed by law, including, but not limited to, district regulations.

(b) This article does not apply to air pollution control requirements applicable to new or modified sources that are not air pollution control projects necessary to comply with emission standards or limitations imposed by law. However, this article applies to the permitting of air pollution control projects necessary to comply with emission standards or limitations imposed by law that are intended to reduce emissions of one or more pollutants that may or may not result in an increase in emissions of a different pollutant or pollutants.

**Comment.** Section 38901 continues former Health and Safety Code Section 42301.3(b) without substantive change.

#### **§ 38902. Permitting criteria**

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38902. Each district shall prepare, with input from the regulated community, a list of permitting criteria that identifies streamlined permit application requirements for each type of mandated air pollution control project. The list shall be consistent with the requirements of this article but may also include general facility information, a general description of the equipment affected by the air pollution control project, and specific information regarding the pollution control equipment or operational changes that will reduce emissions.

**Comment.** Section 38902 continues former Health and Safety Code Section 42301.3(c) without substantive change.

#### **§ 38903. Evaluation of application**

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38903. Within 30 days of the date that the applicant submits the information specified in Section 38904, the district shall commence evaluation and deem the application complete, subject to the final as-built design submittal being consistent with the preliminary engineering and design information specified in subdivision (b) of Section 38904, for the purpose of issuing a permit to construct. Notwithstanding the limitations of Sections 65944, 65950, and 65952 of the Government Code, if final design information results in a material change in the permit evaluation that was based on the preliminary submittal, the application shall undergo a new evaluation based on the final design and the district shall promptly notify the applicant of any further information that is necessary to complete the evaluation.

**Comment.** Section 38903 continues former Health and Safety Code Section 42301.3(d)(1) without substantive change.

#### **§ 38904. Information required in complete application**

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38904. Prior to the district deeming the application complete pursuant to Section 38903, the applicant shall provide the following information:

- (a) The information specified in the list prepared pursuant to Section 38902.
- (b) Either of the following:
  - (1) Preliminary engineering and design information or other technical equipment specification data reasonably available during the initial design phase.
  - (2) The manufacturer's performance warranty and the associated preliminary engineering data on which the bidding documents for the contract with the manufacturer were based.
- (c) Any reasonably required information regarding an air contaminant for which emissions will increase as a result of installation of the air pollution control project.



(d) Any information necessary to make the application complete with respect to any federal requirement adopted or promulgated pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) that applies to the air pollution control project.

**Comment.** Section 38904 continues former Health and Safety Code Section 42301.3(d)(2) without substantive change.

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#### **§ 38905. Information required prior to final approval**

38905. Prior to the final approval of the applicant's permit to operate, the applicant shall provide the district with final engineering and design information and other data reasonably necessary to ensure compliance with applicable emission limitations. The information may be based on source test results and other operating data available after startup and shakedown of the control equipment. Once the applicant has provided the information specified in this section, and the final design is consistent with the preliminary design data specified in subdivision (b) of Section 38904 for purposes of permit evaluation, the district shall deem the application complete for the purpose of issuing a permit to operate.

**Comment.** Section 38905 continues former Health and Safety Code Section 42301.3(e) without substantive change.

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#### **§ 38906. Projects requiring continuous emission monitoring system**

38906. (a) For projects subject to this article for which the use of continuous emission monitoring systems is required, the air quality permit conditions that relate to emissions monitored by the continuous emission monitoring systems shall be sufficient for measurements and reporting as required to meet the specified emission limit as required by the rule or regulation.

(b) Nothing in this section is intended to limit the applicability of standards or limitations or monitoring requirements set forth in any rule or regulation.

**Comment.** Section 38906 continues former Health and Safety Code Section 42301.3(f) without substantive change.

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#### **§ 38907. Petition for variance due to delay in approval**

38907. (a) An applicant may petition the district hearing board for a variance from a requirement to install air pollution control equipment or to meet a more stringent emission standard or limitation if there is a delay in the approval of the permit to construct or permit to operate for projects under this article. The finding required by subdivision (b) of Section 39351 shall be met if the hearing board finds that the delay is not due to the lack of due diligence on the part of the applicant in the permit process, and the delay results in the inability of the applicant to legally comply with the requirement or schedule that requires the installation and operation of air pollution control equipment or achievement of a more stringent emission standard or limitation. The findings required by subdivisions (c), (d), and (e) of Section 39351 shall not apply to a variance granted pursuant to this subdivision. Subdivision (f) of Section 39351 shall apply to a variance granted pursuant to this subdivision. However, if the district requests that the applicant monitor or otherwise quantify emission levels from the source during the term of the variance pursuant to subdivision (f) of Section 39351, that monitoring or quantification required in connection with the variance shall be limited to any monitoring or quantification already being performed for the source for which the pollution control project is required. No variance shall be granted unless the hearing board makes the findings as specified in this section. The hearing board shall not impose any excess emission fees in connection with the grant

of the variance. In determining the term of the variance, the hearing board shall consider the period of time that the delay was not due to the lack of due diligence on the part of the applicant.

(b) For purposes of this section, “due diligence” means that all of the following conditions exist:

(1) The air pollution control project proposed by the applicant was reasonably expected to achieve compliance with the pertinent emission standard or limitation.

(2) The applicant submitted the permit application in sufficient time for the district to act on the application and for the applicant to complete the project in accordance with the deadline.

(3) The applicant responded in a reasonable time to requests for additional information needed by the district to process the application or prepare any necessary environmental analyses.

(4) The district has not denied or proposed to deny the application on the basis of the project’s inability to meet district permit requirements consistent with this article.

(5) During the term of the variance, the applicant will take practicable steps to ensure completion of the project as expeditiously as possible after issuance of the permit.

(c) Subdivision (a) shall not limit the authority of a district to require emissions monitoring or quantification under any other applicable provision of law.

(d) Nothing in this section shall be interpreted as authorizing a hearing board to grant a variance from any requirement for a permit to build, alter, erect, or replace any air pollution control equipment included in a project subject to this article.

**Comment.** Section 38907 continues former Health and Safety Code Section 42301.3(g) without substantive change.

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#### **§ 38908. Concurrent action on environmental impact report**

38908. If a supplemental or other environmental impact report or other environmental assessment is required for the project pursuant to the California Environmental Quality Act (Division 3 (commencing with Section 21000)) and the district is the lead agency, the district shall prepare and act upon the report or assessment and the permit to construct concurrently in order to streamline the approval process. However, the district shall be required to take that concurrent action only if the applicant has submitted the information required by this article to allow the district to streamline the approval process.

**Comment.** Section 38908 continues former Health and Safety Code Section 42301.3(h) without substantive change.

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#### **§ 38909. “Material change”**

38909. For purposes of this article, “material change” means a change that would result in a material impact on the level of emission calculated.

**Comment.** Section 38909 continues former Health and Safety Code Section 42301.3(i) without substantive change.

### **Article 5. Regulation Requiring Reduction in Emissions**

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#### **§ 38950. Effective date of regulation as applied to specified sources**

38950. Except as provided in Section 38951, any district regulation which requires a reduction in emissions from any article, machine, equipment, or contrivance for which an authority to construct was issued between January 1, 1981, and December 31, 1987,

inclusive, shall become effective for that article, machine, equipment, or contrivance five years after issuance of the permit to operate if the regulation was adopted after issuance of the authority to construct and construction has commenced within two years of the date of issuance of the authority to construct or the applicant has, in good faith reliance upon the permit issued, performed substantial work or incurred substantial liability.

**Comment.** Section 38950 continues former Health and Safety Code Section 42301.5(a) without substantive change.

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**§ 38951. Compliance required before effective date**

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38951. The district may require compliance with a regulation prior to completion of the five-year period specified in Section 38950 if the district or a portion of the district is designated by the state board as a nonattainment area for any national ambient air quality standard and the district determines that earlier compliance is necessary to demonstrate reasonable progress toward attainment and that, on a case-by-case basis, compliance with the regulation will not do any of the following:

(a) Require the abandonment or removal from service of any existing manufacturing or energy-producing equipment.

(b) Specify an emission level or operating standard which would cause a substantial increase in the rate of degradation of energy-producing equipment or would cause a violation or voiding of a manufacturer's warranty for that equipment.

(c) Result in an increase in operating costs in excess of 5 percent per year for the article, machine, equipment, or contrivance for which the authority to construct was originally issued.

(d) Require an increase in capital costs in excess of one hundred thousand dollars (\$100,000) or 3 percent of the original capital cost of the article, machine, equipment, or contrivance for which the authority to construct was originally issued, whichever is greater.

**Comment.** Section 38951 continues former Health and Safety Code Section 42301.5(b) without substantive change.

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**§ 38952. Reasonable schedule of compliance**

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38952. (a) Any article, machine, equipment, or contrivance which may emit into the ambient air any toxic air contaminant identified pursuant to Section 31756 shall comply with any regulation adopted by the state board or a district requiring a reduction in emissions of that contaminant or chemical from the article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the state board or the district.

(b)(1) Any article, machine, equipment, or contrivance which is located within a district which is designated by the state board as a nonattainment area for any national ambient air quality standard, and for which an authority to construct is issued on or after January 1, 1988, shall comply with any district regulation which is adopted after December 31, 1982, and which requires a reduction in emissions of any air pollutant, including any precursor of an air pollutant, which interferes with the attainment of the standard, from that article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the district.

(2) In determining a schedule of compliance under this subdivision, the district shall consider the extent to which the proposed schedule will adversely affect the ability of the facility owner or operator to amortize the capital costs of pollution control equipment purchased within the preceding five years.

**Comment.** Section 38952 continues former Health and Safety Code Section 42301.5(c)-(d) without substantive change.

## Article 6. Hazardous Air Emission Near School

### § 39000. Definitions

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39000. For the purposes of Sections 39001 to 39009, inclusive:

(a) “School” means any public or private school used for purposes of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(b) “Air contaminant” means any contaminant defined pursuant to Section 30125.

(c) “Administering agency” means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(d) “Handle” means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

**Comment.** Section 39000 continues former Health and Safety Code Section 42301.9 without substantive change, except that former subdivision (b) is redundant and has not been continued. See Section 30125 (“air contaminant” defined).

☞ **Staff Note.** By its terms, Health and Safety Code Section 42301.9 applies to Sections 42301.4-42301.8. This is overbroad. Section 42301.4 doesn’t seem to exist. Section 42301.5 does not use any of the defined terms except “air contaminant” which is already defined at the beginning of the division. In continuing this section its scope of application has been limited to relevant sections (Health and Safety Code Sections 42301.6-42301.8).

### § 39001. Public notice required

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39001. Prior to approving an application for a permit to construct or modify a source which emits hazardous air emissions, which source is located within 1,000 feet from the outer boundary of a schoolsite, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described. The notice may be prepared whether or not the material is or would be subject to subdivision (a) of Section 25536 of the Health and Safety Code, if the air pollution control officer determines and the administering agency concurs that hazardous air emissions of the material may result from an air release, as defined by Section 44303 of the Health and Safety Code. The notice may be combined with any other notice on the project or permit which is required by law.

**Comment.** Section 39001 continues former Health and Safety Code Section 42301.6(a) without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

### § 39002. Delivery of public notice

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39002. (a) The air pollution control officer shall, at the permit applicant’s expense, distribute or mail the public notice to the parents or guardians of children enrolled in any school that is located within one-quarter mile of the source and to each address within a radius of 1,000 feet of the proposed new or modified source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall

include written responses to the comments in the permit application file prior to taking final action on the application.

(1) Notwithstanding Section 49073 of the Education Code, or any other provision of law, the information necessary to mail notices required by Sections 39001 to 39007, inclusive, shall be made available by the school district to the air pollution control officer.

(2) Nothing in this subdivision precludes, at the discretion of the air pollution control officer and with permission of the school, the distribution of the notices to the children to be given to their parents or guardians.

(b) Notwithstanding subdivision (a), an air pollution control officer may require the applicant to distribute the notice if the district had that rule in effect prior to January 1, 1989.

**Comment.** Section 39002 continues former Health and Safety Code Section 42301.6(b)-(c) without substantive change.

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#### **§ 39003. Effect of delivery failure**

39003. The requirements for public notice pursuant to subdivision (a) of Section 39002 or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in these circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

**Comment.** Section 39003 continues former Health and Safety Code Section 42301.6(d) without substantive change.

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#### **§ 39004. Relation of article to authority of district**

39004. Nothing in Sections 39001 to 39007, inclusive, shall be deemed to limit any existing authority of any district.

**Comment.** Section 39004 continues former Health and Safety Code Section 42301.6(e) without substantive change.

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#### **§ 39005. Effect of delivery failure**

39005. An applicant for a permit shall certify whether the proposed source or modification is located within 1,000 feet of a schoolsite. Misrepresentation of this fact may result in the denial of a permit.

**Comment.** Section 39005 continues former Health and Safety Code Section 42301.6(f) without substantive change.

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#### **§ 39006. Exception to application of article**

39006. The notice requirements of Sections 39001 to 39007, inclusive, shall not apply if the air pollution control officer determines that the application to construct or modify a source will result in a reduction or equivalent amount of air contaminants, as defined in Section 30125, or which are hazardous air emissions.

**Comment.** Section 39006 continues former Health and Safety Code Section 42301.6(g) without substantive change.

#### **§ 39007. Definitions**

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39007. As used in Sections 39001 to 39007, inclusive, the following terms have the following meanings:

(a) “Acutely hazardous material” means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(b) “Hazardous air emissions” means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the state board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

**Comment.** Section 39007 continues former Health and Safety Code Section 42301.6(h) without substantive change. The defined terms have been placed in alphabetical order.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

#### **§ 39008. Threat of release near school**

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39008. (a) If the air pollution control officer determines there is a reasonably foreseeable threat of a release of an air contaminant from a source within 1,000 feet of the boundary of a school that would result in a violation of Section 37600 and impact persons at the school, the officer shall, within 24 hours, notify the administering agency and the fire department having jurisdiction over the school.

(b) The administering agency may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) Review the facility’s risk management and prevention plan prepared pursuant to Section 25534 of the Health and Safety Code to determine whether the program should be modified, and, if so, require submission of appropriate modifications. Notwithstanding any other provision of law, the administering agency may order modification and implementation of a revised risk management and prevention plan at the earliest feasible date.

(2) If the facility has not filed a risk management and prevention plan with the administering agency, require the preparation and submission of a plan to the administering agency pursuant to Section 25534 of the Health and Safety Code. Notwithstanding any other provision of law, the administering agency may require the filing of a risk management and prevention plan and its implementation at the earliest feasible date.

(c) The air pollution control officer may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) If necessary, issue an immediate order to prevent the release or mitigate the reasonably foreseeable threat of a release in violation of Section 37600 pending a hearing pursuant to Section 39751 when there is a substantial probability of an injury to persons at a school resulting from a release that makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate that injury. The officer may not issue the order unless there is written concurrence to issue the order by a representative of the administering agency.

(2) Apply to the district board for issuance of an order for abatement pursuant to Section 39751.

(d) Nothing in this section limits any existing authority of any district.

**Comment.** Section 39008 continues former Health and Safety Code Section 42301.7 without substantive change.

#### **§ 39009. Request from principal of a school**

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39009. Upon receiving a request, for good cause, from the principal or an authorized representative of the principal of a school, the district shall, within 24 hours, respond to the request and notify the administering agency and the fire department having jurisdiction over the school. The administering agency, upon receiving the request, shall notify the district within 24 hours.

**Comment.** Section 39009 continues former Health and Safety Code Section 42301.8 without substantive change.

☞ **Staff Note.** It isn't clear what this section does. If this section does serve some purpose it should probably be redrafted to make that purpose clear. The staff would welcome suggestions on this point.

### Article 7. Implementation of Title V of the Federal Clean Air Act

#### **§ 39050. Permit issued to Title V source**

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39050. In any district that has a permit system established pursuant to Section 38750, the air pollution control officer may include, in any permit issued to a Title V source, emission limits, standards, and other requirements that ensure compliance with all federal Clean Air Act "applicable requirements," as that term is defined in regulations adopted by the Environmental Protection Agency pursuant to Title V, including those requirements specified in an applicable implementation plan as defined by Section 7602(q) of Title 42 of the United States Code, and Parts C (42 U.S.C. Sec. 7470 et seq.) and D (42 U.S.C. Sec. 7501 et seq.) of Title 1 of the Clean Air Act.

**Comment.** Section 39050 continues former Health and Safety Code Section 42301.10 without substantive change.

#### **§ 39051. Implementation of Title V by districts**

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39051. It is the intent of the Legislature that, in addition to their responsibilities and obligations under state and federal law, in implementing Title V, districts do all of the following, to the extent feasible:

(a) Develop, in recognition that districts are obligated to issue one-third of the Title V permits within one year of the Title V program's approval by the Environmental Protection Agency, and in recognition that sources are allowed one year to submit a Title V permit application, an equitable program for ensuring that all sources receive as much time as feasible to develop and submit permit applications. In developing the program the districts shall recognize the complexity and size of the facilities, the number and similarity of facilities within each industry category, the level of effort required to develop the permit application, and the resources available to complete the application. The districts should also consider potential incentive programs to promote voluntary early permit application submissions.

(b) Consider the advantages and disadvantages of including the permit shield authorized by subsection (f) of Section 70.6 of Title 40 of the Code of Federal Regulations in all Title V permits to clarify the federal compliance responsibilities of Title V sources.

(c) Consistent with state and federal regulations, allow the use of emission monitoring alternatives, when available and having the accuracy required to ensure enforcement and compliance, in lieu of the use of continuous emission monitors.

(d) Encourage the issuance of Title V permits for five-year terms.

**Comment.** Section 39051 continues former Health and Safety Code Section 42301.11 without change.

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**§ 39052. Permit systems or provisions to meet requirements of Title V**

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39052. Any district permit system or permit provision established by a district board to meet the requirements of Title V shall, consistent with federal law, minimize the regulatory burden on Title V sources and the district and shall meet all of the following criteria:

(1) Apply only to Title V sources.

(2) Issue permits pursuant to Title V only after the Environmental Protection Agency has approved the district's Title V permit program.

(3) Identify in the permit, to the greatest extent feasible, permit terms and conditions which are federally enforceable and those which are not federally enforceable. A district shall make that identification by either of the following means:

(A) Identifying in the permit the terms and conditions that are federally enforceable because they are imposed pursuant to a federal requirement or because the source has requested the terms and conditions and federal enforceability thereof and the permitting district has not determined that the request does not meet all applicable federal requirements and guidelines.

(B) Identifying in the permit the terms and conditions which are imposed pursuant to state law or district rules and are not federally enforceable. Districts may further identify those terms and conditions of the permit which are not federally enforceable, but which have been included in the permit to enforce district rules adopted by the district to meet federal requirements.

(4) Utilize, to the extent reasonably feasible, general permits and similar methods to reduce source and district permitting burdens for Title V sources.

(5) Establish clear and simple application completeness criteria.

(6) To the extent feasible, minimize the burden of federally mandated paperwork such as recordkeeping and reporting documents.

(7) Allow sources maximum flexibility in selecting cost-effective, reliable, and representative monitoring methods consistent with applicable state and federal requirements.

(8) If a permit is required to be reopened to comply with Title V requirements, base the reopening upon the federal criteria for reopening and limit the reopening to only the federal component of the Title V permit. This paragraph is not intended to limit in any way the authority under state law to reopen permits.

(9) Authorize administrative permit amendments and minor permit modifications as required by federal law.

(10) Provide that, unless the district determines that a Title V application is not complete within 60 days of receipt of the application, the application shall be deemed to be complete.

(11) Authorize, to the extent consistent with existing state law, mandatory operational flexibility provisions required pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations, and consider optional operational flexibility provisions established pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations. Nothing in this paragraph is intended to affect whatsoever any pending litigation.



(12) Make every reasonable effort, in partnership with Title V sources and the state board, to evaluate and respond to the substance of any objection to a proposed permit and to obtain expeditious approval of Title V permits submitted to the Environmental Protection Agency.

**Comment.** Section 39052 continues former Health and Safety Code Section 42301.12 without substantive change. The designation of the first paragraph as a subdivision has not been continued, and subordinate paragraphs and subparagraphs have been redesignated as subdivisions and paragraphs respectively.

Uncodified statutory provisions applicable to former Health and Safety Code Section 43012.12 now apply to this section. See 1996 Cal. Stat. ch. 984, § 1 (legislative intent).

## Article 8. Burning Municipal Waste or Refuse-Derived Fuel

### § 39100. Permit conditions

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39100. No district shall issue or renew a permit for the construction of, renew a permit for the operation of, or issue a determination of compliance for, any project which burns municipal waste or refuse-derived fuel unless all of the following conditions have been met:

(a) The project will not prevent or interfere with the attainment or maintenance of state and federal ambient air quality standards.

(b) The project will comply with all applicable emission limitations established prior to issuance of the permit or the determination of compliance.

(c) The project will, after issuance of the permit or determination of compliance, comply with toxic air contaminant control measures adopted by the district pursuant to Sections 31801 to 31805, inclusive, and regulations adopted by the district pursuant to Section 37600 for the protection of public health. Notwithstanding Sections 38950 and 38951, compliance with this subdivision shall be consistent with a reasonable schedule, as determined by the district.

(d)(1) A health risk assessment is performed and is submitted by the district to both the state board and the Office of Environmental Health Hazard Assessment for review. The state board shall review and, within 15 days, notify the district and the applicant as to whether the data pertaining to emissions and their impact on ambient air quality are adequate for completing its review pursuant to this subdivision, and what additional data, if any, are required to complete its review. Within 45 days of receiving the health risk assessment, the state board shall submit its comments in writing to the district, on the data pertaining to emissions and their impact on ambient air quality. The district shall forward a copy of the comments of the state board to the office. The office shall review and, within 90 days of receiving the health risk assessment, shall submit its comments to the district on the data and findings relating to health effects.

(2) This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(e) The district finds and determines, based upon the health risk assessment, comments from the state board and the Office of Environmental Health Hazard Assessment, and any other relevant information, that no significant increase in the risk of illness or mortality, including, but not limited to, increases in the risk of cancer and birth defects, is anticipated as a result of air pollution from the construction and operation of the project. This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(f) Prior to, and during, commercial operation of the project, periodic monitoring of emissions, including, but not limited to, toxic air contaminants, is performed pursuant to specifications established by the district.

**Comment.** Section 39100 continues former Health and Safety Code Section 42315(a)(1)-(3), (4)(A) & (E), (5)-(6) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

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#### **§ 39101. Preparation of health assessment**

39101. (a) For purposes of complying with the requirements of subdivision (d) of Section 39100, the Office of Environmental Health Hazard Assessment may select a qualified independent contractor to review the data and findings relating to health effects. In those cases, the review by the independent contractor shall comply with the following requirements:

- (1) Be performed in a manner consistent with guidelines provided by the office.
- (2) Be reviewed by the office for accuracy and completeness.
- (3) Be submitted by the office to the district in accordance with the schedules established by subdivision (d) of Section 39100.

(b) Notwithstanding Section 6103 of the Government Code, the district shall reimburse the Office of Environmental Health Hazard Assessment, or a qualified independent contractor designated by the office pursuant to subdivision (a), for its actual costs incurred in reviewing a health risk assessment for any project subject to this article.

**Comment.** Section 39101 continues former Health and Safety Code Section 42315(a)(4)(B)-(C) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

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#### **§ 39102. Completion of permit application**

39102. An application for any project which burns municipal waste or refuse-derived fuel is not complete until both of the following have been accomplished:

- (a) The health risk assessment has been performed and is submitted to the district.
- (b) The state board and the Office of Environmental Health Hazard Assessment, or a qualified independent contractor designated by the office pursuant to subdivision (a) of Section 39101 have completed their review pursuant to subdivision (d) of Section 39100, and have submitted their comments to the district, unless the state board and the office have failed to submit their comments to the district within 90 days and the district makes a finding that the application contains sufficient information for the district to begin its initial review.

**Comment.** Section 39102 continues former Health and Safety Code Section 42315(a)(4)(D) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

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#### **§ 39103. Effect of article**

39103. (a) This article does not prohibit a district from requiring ambient air monitoring under any other provision of law.

(b) Nothing in this article prohibits the permit applicant from entering into a contract with any person pursuant to which the person may enforce this article or any other provision of law.

**Comment.** Section 39103 continues former Health and Safety Code Section 42315(b) & (d) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

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**§ 39104. Application of article**

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39104. (a) This article does not apply to any project which does any of the following:

(1) Exclusively burns digester gas produced from manure or other animal solid or semisolid waste.

(2) Exclusively burns methane gas produced from a disposal site as defined in Section 66714.1 of the Government Code, which is used only for the disposal of solid waste as defined in Section 66719 of the Government Code.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(b) Nothing in this section is intended to prohibit a district from requiring those projects to meet one or more of the conditions of this article.

**Comment.** Section 39104 continues former Health and Safety Code Section 42315(c) without substantive change. The last paragraph of former Health and Safety Code Section 42315(c) has been designated as a subdivision. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

Article 9. Miscellaneous Permit Provisions

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**§ 39150. Demolition or removal of stationary source**

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39150. Notwithstanding any other provision of law, a district shall not require, as part of its permit system or otherwise, that any form of emission offset or emission credit be provided to offset emissions resulting from any activity related to, or involved in, the demolition or removal of a stationary source.

**Comment.** Section 39150 continues former Health and Safety Code Section 42301.13(a) without substantive change.

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**§ 39151. Relocation of portable emissions unit**

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39151. (a) Notwithstanding any other provision of law regulating a district permit system, an owner or operator of an existing portable emissions unit may relocate that equipment within the same air basin if both of the following requirements are met:

(1) The owner or operator provides, not less than 30 days prior to the date that the equipment is relocated, written notice to the district with jurisdiction over the location to which the equipment is relocated, and any additional notice required by federal law.

(2) The existing permit conditions are at least as stringent as the permit requirements in the district with jurisdiction over the location to which the equipment is relocated.

(b) For purposes of this section, "portable emissions unit" means any article, machine, or other contrivance, including an internal combustion engine, that meets all of the following criteria:

(1) Emits or may emit, or results in the emission of, any air contaminant.

(2) Either by itself, or as part of another piece of equipment, is designed to be, and is capable of, being moved from one location to another.

(3) Must be periodically moved from one location to another because of the nature of the operation in which it is used.

(c) Any equipment that is relocated pursuant to subdivision (a) remains subject to all previously imposed permit terms and conditions. If the permitted equipment that is

relocated is placed into substantially the same service that it was placed into at its previous location, a district shall not impose any new permit terms or conditions on that equipment, except site-specific terms and conditions or public notice requirements.

**Comment.** Section 39151 continues former Health and Safety Code Section 42301.13(b)-(c) without substantive change.

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#### **§ 39152. Equipment exempt from permit requirements**

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39152. (a) A permit shall not be required for:

- (1) Any vehicle.
- (2) Any structure designed for and used exclusively as a dwelling for not more than four families.
- (3) An incinerator used exclusively in connection with such a structure.
- (4) Barbecue equipment which is not used for commercial purposes.
- (5) Any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals, except that the district board of any district which is, in whole or in part, south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian, may require permits for the operation of orchard and citrus grove heaters. In no event shall a permit be denied an operator of orchard or citrus grove heaters if the heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute or less.
- (6) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

(b) As used in this section, maintenance does not include operation.

**Comment.** Section 39152 continues former Health and Safety Code Section 42310 without substantive change. The subdivisions and paragraphs have been redesignated.

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#### **§ 39153. Asphalt plants**

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39153. (a) Notwithstanding any provision of any district permit system, including the south coast district permit system, any permit issued for the operation of equipment at an asphalt plant shall be valid for operation of the equipment by another operator if all of the following conditions are met:

- (1) The permitted operator has given the new operator a copy of the operating permit.
- (2) The permitted operator has filed, with the district, a copy of the operating permit attached to a signed statement from the new operator agreeing to comply with the terms of the permit.
- (3) The permitted operator has paid a reasonable administrative fee as determined by the district.

(b) If the operation of the equipment by the new operator results in a violation of any state law or rule or regulation of the state board or district adopted pursuant to this division, the liability for the violation shall be determined based upon whether the conduct of the permitted operator or the new operator, or both, caused the violation.

**Comment.** Section 39153 continues former Health and Safety Code Section 42310.5 without change.

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#### **§ 39154. Cogeneration technology and resource recovery projects**

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39154. (a) Notwithstanding any other provision of any district permit system, and except as provided in this section, no district shall require emissions offsets for any cogeneration technology project or resource recovery project which satisfies all of the following requirements:

(1) The project satisfies one of the following size criteria:

(A) The project produces 50 megawatts or less of electricity. In the case of a combined cycle project, the electrical capacity of the steam turbine may be excluded from the total electrical capacity of the project for purposes of this paragraph if no supplemental firing is used for the steam portion and the combustion turbine has a minimum efficiency of 25 percent.

(B) The project processes municipal wastes and produces more than 50 megawatts, but less than 80 megawatts, of electricity.

(2) The project will use the appropriate degree of pollution control technology (BACT or LAER) as defined and to the extent required by the district permit system.

(3) Existing permits for any item of equipment to be replaced by the project, whether the equipment is owned by the applicant or a thermal beneficiary of the project, are surrendered to the district or modified to prohibit operation simultaneously with the project to the extent necessary to satisfy district offset requirements. The emissions reductions associated with the shutdown of existing equipment shall be credited to the project as emissions offsets in accordance with district rules.

(4) The applicant has provided offsets to the extent they are reasonably available from facilities it owns or operates in the air basin and which mitigate the remaining impacts of the project.

(5) For new projects which burn municipal waste, landfill gas, or digester gas, the applicant has, in the judgment of the district, made a good faith effort to secure all reasonably available emissions offsets to mitigate the remaining impact of the project, and has secured all reasonably available offsets.

(b) This section applies to any project for which an application for an authority to construct is deemed complete by the district after January 1, 1986, only if the project's net emissions, combined with the net emissions from projects previously permitted under this section, are less than the amount provided for in the applicable growth allowance established by the district pursuant to Section 37450. If a district has not yet provided a growth allowance pursuant to Section 37450, the growth allowance is zero. For purposes of this subdivision, "net emissions" means the project's emissions, less any offsets provided by the applicant and less utility displacement credits granted pursuant to Section 37451.

(c) This section does not relieve a project from satisfying all applicable requirements of Part C (Prevention of Significant Deterioration) of the Clean Air Act, as amended in 1977 (42 U.S.C. Sec. 7401 et seq.), or any rules or regulations adopted pursuant to Part C.

**Comment.** Section 39154 continues former Health and Safety Code Section 42314 without substantive change.

☞ **Staff Note.** Note that former Health and Safety Code Section 41604 was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25. Consequently, this section's reference to Health and Safety Code Section 41604 is erroneous and has been replaced with a reference to proposed Section 37450, which continues Health and Safety Code Section 41600.

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### **§ 39155. Burning of municipal waste, landfill gas, or digester gas**

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39155. (a) Except as provided in subdivision (b), to the extent permissible under federal law, and notwithstanding any state or local new source review or prevention of significant deterioration rule or regulation, at the request of an applicant, a district shall issue permits for the construction of a project which burns municipal waste, landfill gas, or digester gas, if all of the following conditions are met:

(1) The project produces less than 50 megawatts of electricity, except as provided in paragraph (4).

(2) The project will utilize the appropriate degree of pollution control technology (BACT or LAER) required by the new source review rule of the district.

(3) The project applicant has, in the judgment of the district, made a good faith effort to secure all available emission offsets to mitigate the impact of the project, but sufficient offsets or other mitigation measures are not available. The applicant, however, is required to secure all the offsets which are available to mitigate the air quality impact of the project, except for projects which constitute a modification to an existing source under the district's new source review rule, in which case the applicant is only required to provide offsets from facilities which the applicant owns or operates within the air basin.

(4) The project produces 50 megawatts or more, but less than 80 megawatts, of electricity, meets the requirements of paragraphs (2) and (3), is located in a district whose state implementation plan revisions have been approved by the Environmental Protection Agency and that has attained, or is reasonably expected to attain, national air quality standards for any criteria pollutant for which sufficient growth allowances are available in the air quality maintenance plan or, in the event the project would cause any criteria pollutant to exceed the available or possible future growth allowance, the applicant secures offsets in an amount equal to the excess in the growth allowance, and processes municipal wastes from one or more municipalities. Any project under this paragraph shall comply with applicable prevention of significant deterioration rules and regulations.

(b) If a proposed project permitted under subdivision (a) has an electrical generating capacity of 50 megawatts or more, the district shall determine whether the project meets the requirements of this section and, in making its determination, shall consider the potential emission of noncriteria pollutants from project facilities and shall develop appropriate permit conditions. The district shall submit its determination and supporting analyses, including the analysis of noncriteria pollutants and appropriate permit conditions, to the State Energy Resources Conservation and Development Commission for use pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

(c) Any permit issued pursuant to subdivision (a), and any determination made by a district pursuant to subdivision (b), shall meet the additional requirements of Sections 39100 to 39104, inclusive.

**Comment.** Section 39155 continues former Health and Safety Code Section 42314.1 without substantive change.

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#### **§ 39156. Resource recovery projects**

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39156. (a) The time limits established under Sections 65950, 65950.1, and 65952 of the Government Code for approval or disapproval of development projects may be extended for district review of an application for a permit for a resource recovery project upon the mutual consent of the district and the permit applicant. Notwithstanding Section 65957 of the Government Code, an extension made pursuant to this section shall not exceed nine months beyond the time limits established under Sections 65950, 65950.1, and 65952 of the Government Code.

(b) The district shall provide public notification at least 30 days prior to the effective date of any extension consented to under subdivision (a), which shall specify the reasons for, and the duration of, the extension period. The district shall provide this public notification by publishing a notice once a week for two consecutive weeks in a newspaper of general circulation in the district.

**Comment.** Section 39156 continues former Health and Safety Code Section 42314.2 without change.

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**§ 39157. Organic waste utilization facility permits**

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39157. In considering a permit for a facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler) to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall allow offset credits as provided in Sections 37450 and 27452.

**Comment.** Section 39157 continues former Health and Safety Code Section 42314.5 without substantive change.

☞ **Staff Note.** Note that former Health and Safety Code Section 41604 was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25. Consequently, this section's reference to Health and Safety Code Section 41604 is erroneous and has been replaced with a reference to proposed Section 37450, which continues Health and Safety Code Section 41600.

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**§ 39158. Application of CEQA to certain discretionary decisions**

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39158. (a) The California Environmental Quality Act (Division 3 (commencing with Section 21000)) shall not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. For purposes of this section, the term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of a permit, of the exemption by mail to any person who requests such a notice in writing, and by publication in two newspapers of general circulation in the area of the project. The notice shall state that the complete file on the project and the basis for the district's findings is available for inspection and copying at the office of the air quality management district.

(c) Any person may appeal to the hearing board as provided in Section 38801 of the Health and Safety Code, from the issuance of a permit after a decision of any district that a project is exempt pursuant to this section. If there is substantial evidence in light of the whole record before the hearing board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a), the permit shall be revoked. If there is no substantial evidence, the exemption shall be upheld and there shall be no further compliance with the requirements of Division 3 (commencing with Section 21000). Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide an appeal to a subcommittee of the hearing board.

(d) On or before December 31, 1995, the Resources Agency shall prepare and submit to the Legislature and the Governor a study on the exemption established pursuant to this section in order to determine the advisability of expanding this exemption to include other

industrial facilities. The study shall identify the potential benefits and adverse impacts on the environment from an expansion of the exemption and shall determine the potential benefits and adverse impacts on public participation of the exemption process.

**Comment.** Section 39158 continues 1993 Cal. Stat. ch. 1131, § 1 without substantive change.

☞ **Staff Note.** Subdivision (d) specifies a deadline for submission of a certain report to the Legislature and Governor. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of that subdivision been satisfied? (2) Does the deadline stated in subdivision (d) still serve a useful purpose?

### CHAPTER 3. AIR POLLUTION PERMIT STREAMLINING ACT

#### § 39200. Title of article

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39200. This chapter shall be known, and may be cited, as the Air Pollution Permit Streamlining Act of 1992.

**Comment.** Section 39200 continues former Health and Safety Code Section 42320 without substantive change.

#### § 39201. Legislative findings and declarations

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39201. The Legislature finds and declares as follows:

(a) California's air pollution control programs have been among the most successful efforts in the country to reduce air pollution and to protect public health and the environment.

(b) It is in the interest of the people of the state, particularly during times of economic difficulty, to enact laws which improve the processes by which businesses comply with environmental and air quality laws, without sacrificing the protection of public health and the environment.

(c) The purpose of this chapter is to require districts to review their permit programs and to institute new, efficient procedures which will assist businesses in complying with regional, state, and federal air quality laws in an expedited fashion, without reducing protection of public health and the environment.

**Comment.** Section 39201 continues former Health and Safety Code Section 42321 without change.

#### § 39202. Review of permits

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39202. (a) Every district shall establish, by regulation, a program to provide for the expedited review of permits issued pursuant to Chapter 2 (commencing with Section 38750) in order to reduce unnecessary delay in the issuance of those permits and to protect the public health and the environment. The expedited permit system shall include all of the following:

(1) A precertification program for equipment which is mass-produced and operated by numerous sources under the same or similar conditions, in order to allow permit applicants who purchase that equipment to receive permits in an expedited fashion.

(2) A consolidated permitting process for any source that requires more than one permit, which provides that the source will be permitted on a facility or project basis, provides a single point of contact for the permit applicant, and allows a source to be reviewed and permitted on a single, consolidated schedule.



(3) An expedited permit review schedule, based upon the types and amount of pollution emitted from sources. In order to comply with this subdivision, a district shall classify sources within its jurisdiction as minor, moderate, and major sources of air pollution, and shall establish a permit action schedule that sets forth specific deadlines, based on each classification, for an air pollution control officer to notify a permit applicant in writing of the approval or disapproval of a permit application.

(4) A training and certification program for private sector personnel, in order to establish a pool of professionals who can certify businesses as being in compliance with district rules and regulations.

(5) The development of standardized permit application forms that are written in clear and understandable language and provide applicants with adequate information to complete and return the forms.

(6) To the extent that a district determines that it will not adversely affect the public health and safety or the environment, the consolidation of the authority to construct and permit to operate into a single permit process in order to reduce processing times and paperwork for stationary sources.

(7) An appeals process whereby, if the air pollution control officer fails to notify a permit applicant of the approval or disapproval of a permit application within the schedule established pursuant to paragraph (3), the permit applicant may, after notifying the district, request the district board, at its next regularly scheduled meeting, to set a date certain on which the permit will be acted upon. This paragraph does not prohibit a permit applicant from seeking relief under Section 38800.

(b) For those districts which have a population of less than 1,000,000 persons, the state board shall provide assistance in developing regulations implementing this section.

(c) This section does not apply to county air pollution control districts in counties that have a population of less than 250,000 persons.

**Comment.** Section 39202 continues former Health and Safety Code Section 42322 without substantive change.

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#### **§ 39203. Additional requirements for districts of more than 500,000 persons**

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39203. Districts with a population of more than 500,000 persons shall additionally implement the following permit streamlining measures:

(a) Upon a permit applicant's request, the district shall allow the permit applicant to meet with district staff prior to the submittal of a permit to construct in order to identify issues and ways to expedite the permitting process.

(b) The district shall allow the permit applicant to propose conditions that are consistent with the applicable rules or regulations for the district's consideration.

(c) Before a district implements a rule or regulation for categories of emission sources for which significant capital expenditures will be required, the district shall develop, with input from the regulated community, a permitting protocol for any permits that will be required for common types of operating equipment, processes, or related air pollution control equipment as a result of the rule or regulation. Each district shall compile those protocols and make them available to businesses that are regulated by the rule or regulation.

**Comment.** Section 39203 continues former Health and Safety Code Section 42322.5 without change.

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#### **§ 39204. Small business stationary sources**

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39204. (a) For purposes of subdivision (b), "small business stationary source" means a source which meets all of the following criteria:

- (1) The source is owned or operated by a person who employs 100 or fewer individuals.
- (2) The source is a small business as defined under the federal Small Business Act (15 U.S.C. Sec. 631, et seq.).

(3) The source emits less than 10 tons per year of any single pollutant and less than 20 tons per year of all pollutants.

(b) In addition to the requirements of Section 39202, every district shall establish a small business assistance program for small business stationary sources located within the district's jurisdiction. A small business assistance program adopted pursuant to this section shall consist of all of the following:

(1) The development of a standardized permit application form which is written in clear and understandable language and provides small business persons with adequate information to complete and return the form.

(2) To the extent that a district determines that it will not adversely affect public health or the environment, the consolidation of the authority to construct and permit to operate into a single permit process in order to reduce processing times and paperwork for small business stationary sources.

(3) The establishment of expedited variance procedures for small businesses and the provision of technical assistance for applicants on the processing of variances.

(4) The designation of a single person or office within the district which shall serve as a point of initial access and accessibility to the district for small business persons.

(5) Upon the approval of the district board at a duly noticed public hearing, the establishment of surcharges on permit fees levied on sources regulated by the district, to be used for the establishment of a small business economic assistance program.

(c) This section does not apply to county air pollution control districts in counties that have a population of less than 250,000 persons.

**Comment.** Section 39204 continues former Health and Safety Code Section 42323 without substantive change.

## CHAPTER 4. DISTRICT REVIEW OF A PERMIT APPLICANT'S COMPLIANCE HISTORY

### **§ 39250. Legislative findings, declarations and intent**

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39250. (a) The Legislature finds and declares that the effective regulation of air pollution emissions requires that permit applicants who have a demonstrated recurring pattern of air pollution control violations, and who have consistently refused to take the necessary steps to cooperate with a district to correct those violations, shall be subject to appropriate permit actions to bring them into compliance. The Legislature further finds that noncompliance may endanger the public health and safety and the environment and places permit applicants that are in compliance at a serious competitive disadvantage.

(b) It is the intent of the Legislature in enacting this chapter to provide districts with an effective enforcement tool to bring noncompliant permit applicants into conformity with the applicable air pollution control laws and regulations. It is further the intent of the Legislature that any permit action authorized by this chapter shall be taken only after a district has attempted to bring the applicant into voluntary or required compliance, in accordance with the procedural and due process requirements prescribed by this chapter.

**Comment.** Section 39250 continues former Health and Safety Code Section 42330 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

**§ 39251. Review of compliance history on issuance of permits**

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39251. (a) Prior to issuing a permit pursuant to Chapter 2 (commencing with Section 38750), the air pollution control officer may review the compliance history of the applicant submitted to the district pursuant to Section 39259, under laws or regulations governing the control of air pollution, including the Clean Air Act (42 U.S.C. Sec. 7401 and following) and regulations adopted thereunder, and this division and regulations adopted pursuant to this division.

(b) In reviewing the applicant's compliance history, the officer shall take into account the size and complexity of the applicant's operations, the compliance history of all sources within the facility for which the permit is being sought, and the number of permits held by the applicant.

(c) For a permit for new or modified equipment at an existing facility, the officer's review of an applicant's compliance history shall be limited to the compliance history of the facility in question and the compliance history of other permitted sources at facilities owned, operated, or controlled by the applicant in the district. As used in this subdivision, "modified equipment" means any modification, including a change in the method of operation, that would require a permit modification under district rules.

**Comment.** Section 39251 continues former Health and Safety Code Section 42331 without substantive change.

**§ 39252. Review of compliance history on renewal of permits**

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39252. (a) Prior to renewing a permit, an air pollution control officer may review the compliance history of the source in question at the facility, as shown in district records, under laws or regulations governing the control of air pollution, including the Clean Air Act (42 U.S.C. Sec. 7401 and following) and regulations adopted thereunder, and this division and regulations adopted pursuant to this division.

(b) In reviewing an applicant's compliance history, the officer shall take into account the size and complexity of the applicant's operations and the number of permits held by the applicant.

**Comment.** Section 39252 continues former Health and Safety Code Section 42332 without change.

**§ 39253. Permit denial, refusal to renew permit, and additional permit conditions**

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39253. An air pollution control officer may, pursuant to this chapter, deny a permit, refuse to renew a permit, or specify additional permit conditions to ensure compliance with applicable rules and regulations, if the officer determines that each of the following has occurred:

(a) In the three-year period preceding the date of application, the applicant has violated laws or regulations identified in subdivision (a) of Section 39251 and subdivision (a) of Section 39252 resulting in either excessive emissions or violations at a facility which is required to be permitted but is not permitted, owned or operated by the applicant.

(b) A notice of violation was issued for those violations.

(c) A variance was not in effect with respect to those violations.

(d) The violations demonstrate a recurring pattern of noncompliance or pose or have posed a significant risk to the public health or safety or to the environment.

(e) Notice and an opportunity for an office conference was provided pursuant to Section 39257.

**Comment.** Section 39253 continues former Health and Safety Code Section 42333(a) without substantive change.

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**§ 39254. Application of Sections 39253 to 39256**

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39254. (a) Sections 39253 to 39256, inclusive, do not apply to a permit to operate, or the renewal of a permit to operate, issued by an air pollution control officer for a facility which is owned or operated by an applicant, unless the applicant has met the criteria set forth in subdivisions (a) to (d), inclusive, of Section 39253 at the source in question at that facility.

(b) For the purposes of determining a permit action under Sections 39253 to 39256, inclusive, the air pollution control officer shall take into consideration the size and complexity of the applicant's operations and the number of permits held by the applicant.

**Comment.** Section 39254 continues former Health and Safety Code Section 42333(b)-(c) without substantive change.

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**§ 39255. Criteria for denial of permit**

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39255. The air pollution control officer's determination of whether to deny a permit shall be based upon all of the following:

(a) Whether the emissions violations forming the basis for the denial were the result of circumstances beyond the reasonable control of the applicant and could not have been prevented by the exercise of reasonable care.

(b) Whether a permit denial is not an appropriate action given the severity of the violations, or that the denial is not supported by the applicant's overall compliance history.

(c) Whether a permit denial is not an appropriate action because the equipment type, operational character, or emissions capacity of the sources where the violations occurred are significantly different than that of the source for which the permit is being sought.

(d) Whether the violation has been corrected in a timely fashion or reasonable progress is being made.

(e) Whether a permit denial is not an appropriate action because a variance has been granted with respect to those violations.

(f) Whether the violations demonstrate a recurring pattern of noncompliance or pose or have posed a significant risk to the public health or safety or to the environment.

(g) Whether notice and an opportunity for an office conference was provided pursuant to Section 39257.

**Comment.** Section 39255 continues former Health and Safety Code Section 42333(d) without substantive change.

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**§ 39256. Violations not admitted or established by law**

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39256. A permit denial pursuant to Section 39253 which is based solely upon violations which have not been admitted by the applicant or otherwise established by law shall be set aside by a hearing board if a hearing has been requested by the applicant pursuant to Section 38800, unless the air pollution control officer, following the presentation of substantial evidence and the applicant's opportunity to rebut the evidence, proves that the violation did occur, and that denial is supported by the applicant's overall compliance history.

**Comment.** Section 39256 continues former Health and Safety Code Section 42333(e) without change.

#### **§ 39257. Preliminary determinations**

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39257. If, in the course of enforcing existing permits and conducting inspections relative thereto, an air pollution control officer makes a preliminary determination that the person has met the criteria prescribed in subdivisions (a) to (d), inclusive, of Section 39253, the officer shall take all of the following actions:

(a) Notify the person, in writing, that the district has made a preliminary determination that the person has met those criteria and that the district may take action pursuant to Section 39253. The notice shall include all facts relating to the preliminary determination which are known to the officer.

(b) Request, as part of the notification required by subdivision (a), that the person confer with the officer in an office conference to discuss the pattern of noncompliance.

(c) Conduct the office conference.

**Comment.** Section 39257 continues former Health and Safety Code Section 42334 without substantive change.

#### **§ 39258. Setting aside permit denials**

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39258. A permit denied pursuant to Sections 39253 to 39256, inclusive, shall be set aside by the hearing board under either of the following conditions:

(a) The applicant proves that either:

(1) The emissions violations forming the basis for the denial were the result of circumstances beyond the reasonable control of the applicant and could not have been prevented by the exercise of reasonable care.

(2) The denial is not an appropriate action given the severity of the violations, or is not supported by the applicant's overall compliance history.

(b) The violation has been corrected in a timely fashion or reasonable progress is being made.

**Comment.** Section 39258 continues former Health and Safety Code Section 42335 without substantive change.

#### **§ 39259. Description of emissions violations**

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39259. In addition to any other information required to be submitted, an applicant for a permit to construct or a permit to operate which involves a change of operator who has owned or operated a facility pursuant to a permit issued by any district shall provide a description of all emissions violations satisfying the criteria specified in subdivisions (a) to (c), inclusive, of Section 39253, under this division or any regulation adopted pursuant to this division, and the Clean Air Act (42 U.S.C. Sec. 7401 and following) or any regulations adopted thereunder, which occurred at any facility permitted by any district and owned or operated by the applicant in the state in the three years prior to the date of application.

**Comment.** Section 39259 continues former Health and Safety Code Section 42336 without substantive change.

#### **§ 39260. Public review of facility owner's compliance history**

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39260. Any public notice provided by the district concerning the issuance of a permit to an applicant shall include, in addition to a description of the proposed project, a statement that information regarding the facility owner's compliance history submitted to the district pursuant to Section 39259, or otherwise known to the district, based on credible information, is available from the district for public review.

**Comment.** Section 39260 continues former Health and Safety Code Section 42337 without change.

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**§ 39261. Existing authority of district**

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39261. Nothing in this chapter limits the existing authority of the district.

**Comment.** Section 39261 continues former Health and Safety Code Section 42338 without change.

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**§ 39262. Application to nuisance complaints based on odor emissions**

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39262. This chapter does not apply to nuisance complaints based on odor emissions.

**Comment.** Section 39262 continues former Health and Safety Code Section 42339 without change.

## CHAPTER 5. VARIANCES

### Article 1. Procedure

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**§ 39300. Application**

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39300. (a) Any person may apply to the hearing board for a variance from Section 37602 or from the rules and regulations of the district.

**Comment.** Section 39300 continues former Health and Safety Code Section 42350(a) without substantive change.

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**§ 39301. Notice of assistance available to small business**

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39301. Any form developed by a district board for use in filing an application for a variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

**Comment.** Section 39301 continues former Health and Safety Code Section 42350.5 without change.

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**§ 39302. Hearing required before grant of variance**

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39302. Except in the case of an emergency, as determined by the hearing board, the hearing board shall hold a hearing pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3 to determine under what conditions, and to what extent, a variance shall be granted.

**Comment.** Section 39302 continues former Health and Safety Code Section 42359 without substantive change.

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**§ 39303. Copy of order affecting variance to state board**

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39303. Within 30 days of any order granting, modifying, or otherwise affecting a variance by the hearing board, or a member thereof pursuant to Section 39306, either the air pollution control officer or the hearing board shall submit a copy of the order to the state board.

**Comment.** Section 39303 continues former Health and Safety Code Section 42360 without substantive change.

#### **§ 39304. Application for interim variance**

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39304. (a) Any person who has submitted an application for a variance and who desires to commence or continue operation pending the decision of the hearing board on the application, may submit an application for an interim variance.

(b) An interim variance may be granted for good causes stated in the order granting the variance. The interim variance shall not be valid beyond the date of decision of the hearing board on the application of the variance or for more than 90 days from date of issuance of the interim variance, whichever occurs first.

(c) The hearing board shall not grant any interim variance (1) after it has held a hearing in compliance with the requirements of Section 32556, or (2) which is being sought to avoid the notice and hearing requirements of Section 32556.

**Comment.** Section 39304 continues former Health and Safety Code Section 42351 without substantive change.

#### **§ 39305. Interim authorization of schedule modification**

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39305. If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing board sufficiently in advance to allow the hearing board to schedule a public hearing on the application, the hearing board may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application. In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision. The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

**Comment.** Section 39305 continues former Health and Safety Code Section 42351.5 without substantive change.

#### **§ 39306. Emergency variance**

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39306. (a) Notwithstanding any other provision of this chapter or of Article 2 (commencing with Section 32550) of Chapter 3 of Title 1 of Part 3, the chairman of a district hearing board, or any other member of the hearing board designated thereby, may issue, without notice and hearing, an emergency variance to an applicant.

(b) An emergency variance may be issued for good cause, including, but not limited to, a breakdown condition. The district board in consultation with its air pollution control officer and the hearing board may adopt rules and regulations, not inconsistent with this subdivision, to further specify the conditions, and to what extent, an emergency variance may be granted.

(c) An emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 32554 or 39304.

**Comment.** Section 39306 continues former Health and Safety Code Section 42359.5 without substantive change. The former unnumbered paragraph has been designated as subdivision (c).

#### **§ 39307. Fee schedule**

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39307. (a) The district board may adopt, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this chapter and for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by the schedule, including, notwithstanding the provisions of Section 6103 of the Government Code, an applicant that is a publicly owned public utility.

(b) All of these fees shall be paid to the district treasurer to the credit of the district.

**Comment.** Section 39307 continues former Health and Safety Code Section 42364 without substantive change.

### Article 2. Nature of Variance

#### **§ 39350. Prohibited variances**

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39350. (a) If the district board has established a permit system by regulation pursuant to Section 38750, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

(b) Title V sources shall not be granted a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use.

(c) In districts with emission-capped trading programs, no variance shall be granted from the emission cap requirement.

**Comment.** Section 39350 continues former Health and Safety Code Section 42350(b) without change. Statements of legislative intent applicable to former Health and Safety Code Section 42350(b) now apply to this section. See, e.g., Senate Daily Journal, 1997-98 reg. sess., at 12.

#### **§ 39351. Findings required for grant of variance**

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39351. No variance shall be granted unless the hearing board makes all of the following findings:

(a) That the petitioner for a variance is, or will be, in violation of Section 37602 or of any rule, regulation, or order of the district.

(b) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this subdivision, “essential public service” means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(c) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(d) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(e) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(f) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.



**Comment.** Section 39351 continues former Health and Safety Code Section 42352(a) without substantive change. Former Health and Safety Code Section 42352(b) is continued in substance in Section 75 (“public agency” defined).

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**§ 39352. Sufficiency of evidence supporting findings**

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39352. The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in subdivision (b) of Section 39351 or subdivision (b) of Section 39452, shall consider, in addition to any other relevant factors, both of the following:

(a) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(b) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

**Comment.** Section 39352 continues former Health and Safety Code Section 42352.5(a) without substantive change.

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**§ 39353. Sufficiency of evidence in relation to petition of small business**

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39353. (a) As used in this section, “small business” has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(b) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider the factors specified in Section 39352 in the following manner:

(1) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.

(2) In determining the extent to which the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into, and shall take into account, the petitioner’s financial and other capabilities to comply.

(3) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall consider, the impact on the petitioner’s business and the benefit to the environment which would result if the petitioner is required to immediately comply.

**Comment.** Section 39353 continues former Health and Safety Code Section 42352.5(b) without substantive change.

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**§ 39354. Additional requirements for variance**

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39354. Upon making the specific findings set forth in Section 39351, the hearing board shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the district board, not more onerous, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of

individual persons. However, no variance shall be granted if the operation, under the variance, will result in a violation of Section 37600.

**Comment.** Section 39354 continues former Health and Safety Code Section 42353 without substantive change.

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**§ 39355. Basis for additional requirements**

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39355. In prescribing other and different requirements, in accordance with Section 39354, the hearing board, insofar as is consonant with the Legislature's declarations in Sections 30000 and 30001, shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with the requirements.

**Comment.** Section 39355 continues former Health and Safety Code Section 42354 without substantive change.

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**§ 39356. Bond requirement**

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39356. (a) The hearing board may require, as a condition of granting a variance, that a bond be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. The bond may provide that, if the party granted the variance fails to perform the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or the sureties shall have the option of promptly remedying the variance default or paying to the district an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(b) The provisions of this section do not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

**Comment.** Section 39356 continues former Health and Safety Code Section 42355 without change. See the Bond and Undertaking Law. Code Civ. Proc. §§ 995.010-996.510.

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**§ 39357. Effective period of order**

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39357. (a) The hearing board, in making any order permitting a variance, shall specify the time during which the order shall be effective, in no event, except as otherwise provided in subdivision (b), to exceed one year, and shall set a final compliance date.

(b) A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.

**Comment.** Section 39357 continues former Health and Safety Code Section 42358 without substantive change.

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**§ 39358. Effect of inclusion of issuing district in regional district**

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39358. Any variance granted by the hearing board of a county district or a unified district, or any member of a hearing board pursuant to Section 39306, applicable in an area which subsequently becomes included within a regional district, including the bay district, shall remain valid for the time specified therein or for one year, whichever is shorter, or, unless prior to the expiration of that time, the hearing board of the regional district modifies or revokes the variance.

**Comment.** Section 39358 continues former Health and Safety Code Section 42361 without substantive change.

### Article 3. Modification or Revocation

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#### § 39400. Modification or revocation of variance

39400. The hearing board may modify or revoke, by written order, any order permitting a variance.

**Comment.** Section 39400 continues former Health and Safety Code Section 42356 without change.

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#### § 39401. Modification of schedule of increments of progress

39401. The hearing board may review and for good cause, such as a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in the schedule.

**Comment.** Section 39401 continues former Health and Safety Code Section 42357 without change.

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#### § 39402. Modification or revocation by state board

39402. The state board may revoke or modify any variance granted by any district if, in its judgment, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of this chapter.

**Comment.** Section 39402 continues former Health and Safety Code Section 42362 without substantive change.

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#### § 39403. Hearing required for modification or revocation by state board

39403. Prior to revoking or modifying a variance pursuant to Section 39402, the state board shall conduct a hearing pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3 on the matter. The person to whom the variance was granted shall be given immediate notice of the hearing by the hearing board, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if the person were a party to the hearing.

**Comment.** Section 39403 continues former Health and Safety Code Section 42363 without substantive change.

### CHAPTER 6. PRODUCT VARIANCES

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#### § 39450. Petition by product manufacturer

39450. Any person who manufactures a product may petition the hearing board for a product variance from a rule or regulation of the district pursuant to this chapter.

**Comment.** Section 39450 continues former Health and Safety Code Section 42365 without substantive change.

#### **§ 39451. Availability of product variance**

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39451. A product variance is only available if, to provide effective relief, the variance is required to be granted for, and attached to, a particular product, as distinguished from the variance that may be granted to an individual petitioner pursuant to Section 39351. A product variance shall be granted only when a product does not comply with district rules or regulations and the variance is necessary for the sale, supply, distribution, or use of the product.

**Comment.** Section 39451 continues former Health and Safety Code Section 42366 without substantive change.

#### **§ 39452. Findings required for grant of product variance**

---

39452. No product variance shall be granted unless the hearing board makes all of the following findings:

(a) The manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a rule, regulation, or order of the district.

(b) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.

(c) The taking or closing would be without a corresponding benefit in reducing air contaminants.

(d) The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with district rules and regulations.

(e) During the period that the product variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission levels to the district, if requested by the district.

**Comment.** Section 39452 continues former Health and Safety Code Section 42368(a) without substantive change.

#### **§ 39453. Notice of conditions on grant of product variance**

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39453. (a) If the product variance is granted subject to conditions on the use of the product, within 10 days from the effective date of the variance, and for the duration of the time period of the variance, the petitioner shall cause a written notice to be furnished to any retailer, distributor, and purchaser of the product who is located within the district. The written notice shall be, attached to, or otherwise accompany, the product, and shall include all of the following information:

(1) That the product is being sold pursuant to a product variance granted by the district hearing board.

(2) The beginning and ending dates of the product variance.

(3) Any other conditions set forth in the product variance.

(b) Within 10 days from the effective date of the granting of the product variance, the district shall cause to be published pursuant to Section 6061 of the Government Code, the information specified in subdivision (a).

**Comment.** Section 39453 continues former Health and Safety Code Section 42368(b)-(c) without substantive change.

#### **§ 39454. Additional requirements for product variance**

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39454. The district hearing board may prescribe requirements or conditions in the product variance that are applicable to the product, other than those imposed by statute or by any rule, regulation, or order of the district board, if those requirements or conditions are not more onerous.

**Comment.** Section 39454 continues former Health and Safety Code Section 42368(d) without substantive change.

#### **§ 39455. Prohibited variances**

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39455. (a) No product variance shall be granted if the use of the product under the variance will result in a violation of Section 37600.

(b) No emergency product variance shall be granted pursuant to this chapter.

(c) No product variance shall be granted pursuant to this chapter from a requirement for a permit to build, erect, alter, or replace any article, machine, equipment, or other contrivance pursuant to Section 38750.

**Comment.** Section 39455 (a)-(b) continues former Health and Safety Code Section 42369 without substantive change. Section 39455 (c) continues former Health and Safety Code Section 42367 without substantive change

#### **§ 39456. Effect of variance**

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39456. If the product variance is granted and the product is in compliance with subdivisions (a) of Section 39453 and Section 39454, the petitioner may manufacture, and any person may distribute, offer for sale, sell, apply, solicit the application of, or use the product under the conditions set forth in the product variance.

**Comment.** Section 39456 continues former Health and Safety Code Section 42370 without substantive change.

#### **§ 39457. Sections applicable to granting of variances**

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39457. Sections 39301, 39302, 39304, 39305, 39307, 39352, 39353, 39355, 39356, and 39400 to 39403, inclusive, shall apply to the granting of product variances pursuant to this chapter.

**Comment.** Section 39457 continues former Health and Safety Code Section 42371 without substantive change.

#### **§ 39458. Effective period of variance**

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39458. (a) The hearing board, in making any order permitting a product variance, shall specify the time during which the order shall be effective, which, except as provided in subdivision (b), shall not exceed one year, and shall set a final compliance date.

(b) A product variance may be issued for a period exceeding one year, but in no event to exceed two years from the date of the granting of the initial product variance, if the product variance includes a schedule of increments of progress specifying a final compliance date by which the emission of air contaminants from the product for which the product variance is granted will be brought into compliance with applicable emission standards and all district rules, regulations, and orders. No extension may be granted to a petitioner without a showing of good cause and proof of compliance with the findings required by Sections 39452 to 39454, inclusive.

(c) If the product variance is for a process or product that is equivalent to, or exceeds, the applicable standards required by the district's rules and regulations, and the hearing board granting the variance specifies that the only way to achieve compliance will be for the district to adopt or amend a rule or regulation, the air pollution control officer within 180 days from the effective date of the variance, shall set a public hearing before the district governing board and make a recommendation on whether or not the board should adopt or amend a rule or regulation to bring the product into compliance. The district governing board shall, within one year of the effective date of the variance, take action to (1) adopt or amend a district rule or regulation to bring the product into compliance, or (2) determine that no amendment, rule, or regulation is warranted. If the district governing board fails to take either action, nothing in this subdivision shall limit the petitioner's rights and remedies under existing law.

**Comment.** Section 39458 continues former Health and Safety Code Section 42372 without substantive change.

## CHAPTER 7. PENALTIES

### Article 1. General Provisions

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#### § 39500. Application of article

39500. Except as provided in Section 38806, this chapter is not applicable to vehicular sources.

**Comment.** Section 39500 continues former Health and Safety Code Section 42407 without substantive change.

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#### § 39501. Determining separate offenses

39501. Each day during any portion of which a violation occurs constitutes a separate offense.

**Comment.** Section 39501 continues former Health and Safety Code Sections 42400(e), 42400.1(c), 42400.2(e), 42400.3(c), 42400.4(d), 42402(c), 42402.1(c), 42402.2(d), and 42402.3(b) without substantive change.

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#### § 39502. Limitation on enforcement for single offense

39502. The recovery of civil penalties pursuant to Section 39601, 39602, 39603, or 39604 precludes prosecution pursuant to Article 2 (commencing with Section 39550) for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this chapter for the same offense.

**Comment.** Section 39502 continues former Health and Safety Code Sections 42400(d), 42400.1(d), 42400.2(f), 42400.3(b), and 42400.4(c) without substantive change.

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#### § 39503. Costs of putting out unauthorized open outdoor fires

39503. In addition to the penalties specified in Sections 38000 to 38008, inclusive, the cost of putting out any unauthorized open outdoor fires may be imposed on any person violating Section 37900 or 38100.

**Comment.** Section 39503 continues former Health and Safety Code Section 42400.5 without substantive change.

**§ 39504. List of potential violations**

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39504. Every district shall publish in writing and make available to any interested party a list which describes potential violations subject to penalties under this chapter. The list shall also include the minimum and maximum penalties for each violation which may be assessed by a district pursuant to this chapter.

**Comment.** Section 39504 continues former Health and Safety Code Section 42409 without substantive change.

**§ 39505. Collection of fines and penalties also applicable under Business and Professions Code**

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39505. A fine or monetary penalty specified in Section 31900; 39550 to 39552, inclusive, or 39601; or subdivision (a) of Section 44381 of the Health and Safety Code, that may be imposed as the result of conduct that is also subject to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, may be collected either under those provisions of this code, or under that chapter of the Business and Professions Code, but not under both.

**Comment.** Section 39505 continues former Health and Safety Code Section 42400.6 without substantive change.

Article 2. Criminal Penalties

**§ 39550. Violation of requirement of this part**

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39550. (a) Except as otherwise provided in Section 39552, 39553, 39554, or 39555, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

**Comment.** Section 39550 continues former Health and Safety Code Section 42400(a)-(b) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42400 now apply to this section. See, e.g., Assembly Daily Journal, 1993-94 reg. sess., at 4620.

**§ 39551. Knowing violation and knowing misrepresentations**

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39551. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is

subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(c) Subdivisions (a) and (b) apply only to violations that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 39552, 39553, or 39554.

**Comment.** Section 39551 continues former Health and Safety Code Section 42400(c) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42400 now apply to this section. See, e.g., Assembly Daily Journal, 1993-94 reg. sess., at 4620.

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#### **§ 39552. Negligent emission of air contaminant**

39552. (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the county jail for not more than nine months, or both.

(b) Any person who owns or operates any source of air contaminants in violation of Section 37600 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 39553, to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is punishable as provided in subdivision (a).

**Comment.** Section 39552 continues former Health and Safety Code Section 42400.1(a)-(b) without substantive change.

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#### **§ 39553. Knowing emission of air contaminant and knowing misrepresentation**

39553. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars (\$25,000) or imprisonment in the county jail for not more than one year, or both.

(b) For purposes of this section, “corrective action” means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Chapter 5 (commencing with Section 39300). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit,



notice to comply, or order of the state board or of a district, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(d)(1) Any person who owns or operates any source of air contaminants in violation of Section 37600 which causes actual injury to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(2) As used in this subdivision, “actual injury” means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

**Comment.** Section 39553 continues former Health and Safety Code Section 42400.2(a)-(d) without substantive change.

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#### **§ 39554. Willful and intentional emission of air contaminant**

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39554. Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the county jail for not more than one year, or both.

**Comment.** Section 39554 continues former Health and Safety Code Section 42400.3(a) without change.

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#### **§ 39555. Violation of Title V permit requirement**

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39555. (a) In any district where a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(b) In any district in which a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(c) This section shall not become operative in a district until the Environmental Protection Agency fully approves that district’s Title V permit program.

(d) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 39552, 39553, or 39554.

**Comment.** Section 39555(a)-(b) continues former Health and Safety Code Section 42400.4(a)-(b) without substantive change. Section 39555(c)-(d) continues former Health and Safety Code Section 42400.4(e)-(f) without change. Statements of legislative intent applicable to former Health and Safety Code Section 42400.4 now apply to this section. See, e.g., Assembly Daily Journal, 1993-94 reg. sess., at 4620.

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#### **§ 39556. Tampering with monitoring equipment**

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39556. (a) Any person who tampers with any ambient air monitoring equipment, including related recording equipment, owned or operated by a county, unified or regional

air pollution control district, air quality management district, or by the State of California, is guilty of a misdemeanor, and is liable in a civil action for damages caused by the tampering to the owner or operator of the equipment.

(b) For purposes of this section, “tampering” means any unauthorized, intentional touching or other conduct affecting the operational status of monitoring equipment which has the potential to invalidate data collected from the monitoring activity.

**Comment.** Section 39556 continues former Health and Safety Code Section 42408 without change.

### Article 3. Civil Penalties

#### **§ 39600. Violation of order of abatement**

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39600. Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 39751, by a hearing board pursuant to Section 39752, or by the state board pursuant to Section 37201 is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

**Comment.** Section 39600 continues former Health and Safety Code Section 42401 without substantive change.

#### **§ 39601. Violation of requirement of this part**

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39601. (a) Except as otherwise provided in subdivision (b) or in Section 39602, 39603, or 39604, any person who violates this part, any order issued pursuant to Section 38656, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars (\$1,000).

(b)(1) Any person who violates any provision of this part, any order issued pursuant to Section 38656, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(2)(A) If a civil penalty in excess of one thousand dollars (\$1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct.

(B) Subparagraph (A) does not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market-based incentive program adopted by a district pursuant to Section 31451.

**Comment.** Section 39601 continues former Health and Safety Code Section 42402(a)-(b) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42402 now apply to this section. See, e.g., 1981 Cal. Stat. ch. 1127, § 1 (legislative findings and intent).

☞ **Staff Note.** As currently drafted, this section is difficult to understand. Nor is there any published case law or state agency regulations to shed light on the section’s meaning. The

staff proposes redrafting the section to make it clearer without changing its substance, and would like to receive input on whether the language set out below accomplishes that goal:

39601. (a) Except as otherwise provided in subdivision (b) or in Section 39602, 39603, or 39604, any person who violates this part, any order issued pursuant to Section 38656, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(b) The civil penalty for a violation subject to subdivision (a) shall not be more than one thousand dollars (\$1,000) if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct.

(c) Subdivision (b) does not apply to either of the following:

(1) A violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(2) A person who is determined to have violated an annual facility emissions cap established pursuant to a market-based incentive program adopted by a district pursuant to Section 31451.

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**§ 39602. Negligent emission of air contaminant**

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39602. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 37600 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 39553, to the health or safety of a considerable number of persons or the public is liable for a civil penalty as provided in subdivision (a).

**Comment.** Section 39602 continues former Health and Safety Code Section 42402.1(a)-(b) without substantive change.

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**§ 39603. Knowing emission of air contaminant**

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39603. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 39553, within a reasonable period of time under the circumstances, is liable for a civil penalty, of not more than twenty-five thousand dollars (\$25,000).

(b) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, is subject to the same civil penalty as provided in subdivision (a).

(c) Any person who owns or operates any source of air contaminants in violation of Section 37600 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 39553, to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 39553, within a reasonable period of time under the circumstances, is subject to a civil penalty as provided in subdivision (a).

**Comment.** Section 39603 continues former Health and Safety Code Section 42402.2(a)-(c) without substantive change.

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**§ 39604. Willful and intentional emission of air contaminant**

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39604. Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

**Comment.** Section 39604 continues former Health and Safety Code Section 42402.3(a) without change. Statements of legislative intent applicable to former Health and Safety Code Section 42402.3 now apply to this section. See, e.g., Assembly Daily Journal, 1993-94 reg. sess., at 4620.

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**§ 39605. Administrative civil penalties**

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39605. In addition to any civil and criminal penalties prescribed under this chapter, a district may impose administrative civil penalties for a violation of this part, or any order, permit, rule, or regulation of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, if the district board has adopted rules and regulations specifying procedures for the imposition and amounts of these penalties. No administrative civil penalty levied pursuant to this section may exceed five hundred dollars (\$500) for each violation. However, nothing in this section is intended to restrict the authority of a district to negotiate mutual settlements under any other penalty provisions of law which exceed five hundred dollars (\$500).

**Comment.** Section 39605 continues former Health and Safety Code Section 42402.5 without substantive change.

☞ **Staff Note.** Unlike other sections in this Chapter establishing penalties, Health and Safety Code Section 42402.5 does not contain a provision providing that each day in which a violation occurs constitutes a separate offense. The staff has added a generally-applicable provision to that effect. See proposed Section 39501. It appears that application of Section 39501 to this section would change this section slightly. The staff would like to receive input on whether such a change would be beneficial or harmful. If it is harmful, this section can be exempted from the application of Section 39501.

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**§ 39606. Diesel-powered bus idling**

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39606. (a) Notwithstanding Section 39500, any violation of Section 37600 resulting from the engine of any diesel-powered bus while idling shall subject the owner to civil penalties assessed under this chapter, which may be recovered pursuant to Section 39650 by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.

(b) There is no liability under subdivision (a) if the person accused of the violation establishes by affirmative defense that the extent of the harm caused does not exceed the benefit accrued to bus passengers as a result of idling the engine.

**Comment.** Section 39606 continues former Health and Safety Code Section 42403.5 without substantive change.

## Article 4. Procedure for Recovery of Civil Penalties

### **§ 39650. Action for civil penalties**

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39650. (a) The civil penalties prescribed in Sections 31900, 39600, 39601, 39602, 39603, and 39604 shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.

(b) In determining the amount assessed, the court, or in reaching any settlement, the district, shall take into consideration all relevant circumstances, including, but not limited to, the following:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) The frequency of past violations.
- (5) The record of maintenance.
- (6) The unproven or innovative nature of the control equipment.
- (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
- (8) The financial burden to the defendant.

**Comment.** Section 39650 continues former Health and Safety Code Section 42403 without substantive change.

### **§ 39651. Precedence of action on court calendar**

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39651. An action brought pursuant to Section 39650 to recover civil penalties shall take special precedence over all other civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

**Comment.** Section 39651 continues former Health and Safety Code Section 42404 without substantive change.

### **§ 39652. Time limitation**

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39652. Any limitation of time applicable to actions brought pursuant to Section 39650 shall not commence to run until the offense has been discovered, or could reasonably have been discovered.

**Comment.** Section 39652 continues former Health and Safety Code Section 42404.5 without substantive change.

### **§ 39653. Disposition of penalty**

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39653. (a) In an action brought pursuant to Section 39650 by the Attorney General on behalf of a district, one-half of the penalty collected shall be paid to the treasurer of the district on whose behalf judgment was entered, and one-half of the penalty collected shall be paid to the State Treasurer for deposit in the General Fund.

(b) If the action is brought by the Attorney General on behalf of the state board, the entire penalty collected shall be paid to the State Treasurer for deposit in the General Fund.

(c) If the action is brought by a district attorney or by an attorney for a district, the entire amount of the penalty collected shall be paid to the treasurer of the district on whose behalf judgment was entered.

**Comment.** Section 39653 continues former Health and Safety Code Section 42405 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

**§ 39654. Reward for information resulting in penalty**

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39654. (a) Any person who provides information which materially contributes to the imposition of a civil penalty or criminal fine against any person for violating any provision of this part or any rule, regulation, or order of a district pertaining to mobile source emission regulations or limitations shall be paid a reward pursuant to regulations adopted by the district under subdivision (f). The reward shall not exceed 10 percent of the amount of the civil penalty or criminal fine collected by the district, district attorney, or city attorney. The district shall pay the reward to the person who provides information which results in the imposition of a civil penalty, and the city or the county shall pay the reward to the person who provides information which results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed five thousand dollars (\$5,000).

(b) No informant shall be eligible for a reward for a violation known to the district, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

(c) If there is more than one informant for a single violation, the first notification received by the district shall be eligible for the reward. If the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

(d) Public officers and employees of the United States, the State of California, or districts, counties, and cities in California are not eligible for the reward pursuant to subdivision (a), unless reporting of those violations does not relate in any manner to their responsibilities as public officers or employees.

(e) An informant who is an employee of a business and who provides information that the business violated this part is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(f) The district shall adopt regulations which establish procedures for a determination of the accuracy and validity of information provided and for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for a reward and the materiality of the provided information shall be made pursuant to these regulations. In each case brought under subdivision (a), the district, the office of the city attorney, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violating any provision of this part or any rule, regulation, or order of a district pertaining to emission regulations or limitations.

(g) The district shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.

(h) Claims may be submitted only for those referrals made on or after January 1, 1989.

**Comment.** Section 39654 continues former Health and Safety Code Section 42405.1 without change.

☞ **Staff Note.** Subdivision (e) of Health and Safety Code Section 42405.1 refers to violation of the "chapter." This seems erroneous. Section 42405 is contained in the enforcement chapter. It seems more appropriate to refer to violation of the part, given that other chapters of this part contain substantive provisions that can be violated.

**§ 39655. Reimbursement of agencies assisting in actions to recover civil penalties**

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39655. (a) If any state or local government agency provides assistance in the investigation, data collection, or monitoring, preparation, or prosecution of an action to recover civil penalties pursuant to Section 39600, 39601, 39602, or 39603, and that assistance is provided in coordination with the state board or a district prosecuting the action, that agency shall be reimbursed out of the proceeds of the penalty collected for its costs and expenses incurred in providing the assistance.

(b) If the penalty collected is insufficient to fully reimburse the state board or district for the costs and expenses incurred in preparing and prosecuting the case and another agency or agencies for the costs and expenses incurred in assisting in the case, the amount collected shall be prorated among the state board or district and the assisting agency or agencies, on the basis of costs and expenses incurred by each.

(c) This section does not apply where there is an express agreement between the state board or district and another agency or agencies regarding reimbursement for assistance services and expenses.

**Comment.** Section 39655 continues former Health and Safety Code Section 42405.5 without substantive change.

**§ 39656. Lien on vessel**

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39656. To secure a civil penalty imposed pursuant to this chapter on the operation of a vessel, the district shall have a lien on the vessel which may be recovered in an action against the vessel in accordance with the provisions of Article 3 (commencing with Section 490), Chapter 2, Division 3 of the Harbors and Navigation Code, except that no undertaking shall be required to be filed by the district board as a condition to the issuance of a writ of attachment.

**Comment.** Section 39656 continues former Health and Safety Code Section 42406 without substantive change.

CHAPTER 8. COMPLIANCE PROGRAMS

**§ 39700. Legislative findings and declarations**

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39700. The Legislature hereby finds and declares as follows:

(a) District enforcement programs should be prioritized to ensure that the imposition of civil and criminal penalties is commensurate with the severity of the violation.

(b) Districts shall endeavor to establish, where appropriate, alternatives to civil or criminal penalties for those circumstances in which the violation neither contributes to, nor potentially conceals, an emission that significantly contributes to unhealthful air quality.

**Comment.** Section 39700 continues former Health and Safety Code Section 42420 without change.

**§ 39701. Elements of compliance program**

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39701. Each district which has a population of one million or more shall establish a compliance program that shall consist of all of the following elements:

(a) Procedures to ensure the consistent issuance of notices of compliance and notices of violations.

(b) A compliance assistance program to provide information to small businesses with regard to statutes and district rules and regulations to which they are subject and to assist

them in identifying the most efficient and least costly means of complying with those statutes and rules and regulations.

(c) Settlement agreement procedures whereby persons who are in violation of those statutes or district rules or regulations may agree to take actions to improve air quality in lieu of paying monetary fines or penalties.

**Comment.** Section 39701 continues former Health and Safety Code Section 42421 without change.

## CHAPTER 9. ORDERS FOR ABATEMENTS

### **§ 39750. Application of article**

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39750. This chapter applies to any order for abatement issued pursuant to a determination made under Section 39008.

**Comment.** Section 39750 continues former Health and Safety Code Section 42450.1 without substantive change.

### **§ 39751. Issuance by district board**

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39751. (a) The district board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 37600 or 37602 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

(b) In holding the hearing, the district board shall be vested with all the powers and duties of the hearing board. Notice shall be given, and the hearing shall be held, pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3.

**Comment.** Section 39751 continues former Health and Safety Code Section 42450 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

### **§ 39752. Issuance by hearing board**

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39752. (a) On its own motion, or upon the motion of the district board or the air pollution control officer, the hearing board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 37600 or 37602 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

(b) As an alternative to subdivision (a), the hearing board may issue an order for abatement pursuant to the stipulation of the air pollution control officer and the person or persons accused of constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or of violating Section 37600 or 37602, or any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air, upon the terms and conditions set forth in the stipulation, without making the finding required under subdivision (a). The hearing board shall, however, include a written explanation of its action in the order for abatement.

**Comment.** Section 39752 continues former Health and Safety Code Section 42451 without substantive change.



#### **§ 39753. Nature of order**

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39753. The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met.

**Comment.** Section 39753 continues former Health and Safety Code Section 42452 without change.

#### **§ 39754. Injunction on violation of order**

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39754. A proceeding for mandatory or prohibitory injunction shall be brought by the district in the name of the people of the State of California in the superior court of the county in which the violation occurs to enjoin any person to whom an order for abatement pursuant to Section 39753 has been directed and who violates that order.

**Comment.** Section 39754 continues former Health and Safety Code Section 42453 without substantive change.

#### **§ 39755. Injunction proceedings**

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39755. (a) Proceedings under Section 39754 shall conform to the requirements of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure, except that it shall not be necessary to show lack of adequate remedy at law or to show irreparable damage or loss.

(b) If, in any such proceeding, it shall be shown that an order for abatement has been made, that it has become final, and that its operation has not been stayed, it shall be sufficient proof to warrant the granting of a preliminary injunction.

(c) If, in addition, it shall be shown that the respondent continues, or threatens to continue, to violate the order for abatement, it shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

**Comment.** Section 39755 continues former Health and Safety Code Section 42454 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

### **TITLE 8. MONITORING DEVICES**

#### **§ 39800. Legislative findings and declaration**

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39800. (a) The Legislature hereby finds and declares that stationary sources of air pollution are known to emit significant amounts of pollutants into the air, but that existing sampling techniques are not sufficiently precise to permit accurate measurement. The Legislature further finds and declares that more accurate data will improve the design of strategies for the control of pollutants in the most cost-effective manner.

(b) The Legislature further finds and declares that public complaints about excessive emissions from stationary sources are difficult or impossible to evaluate in the absence of adequate means of monitoring emissions on a continuing basis. The Legislature further finds and declares that, although the state board and the districts are authorized under Sections 37002 and 38802 to require stationary sources of air contaminants to install and operate monitoring devices to measure and record continuously the emissions concentration and amount of any specified pollutant, many districts have failed to exercise that authority.

(c) The Legislature further finds and declares that all districts, especially the bay district, the districts located, in whole or part, within the South Coast Air Basin, and the San Diego County Air Pollution Control District, should be encouraged to require that monitoring devices be installed in each stationary source of air contaminants that emits into the atmosphere 100 tons or more each year of nonmethane hydrocarbons, oxides of nitrogen, oxides of sulfur, reduced sulfur compounds, or particulate matter or 1,000 tons or more each year of carbon monoxide.

(d) The Legislature further finds and declares that, pursuant to Sections 31450 to 31456, inclusive, the south coast district has required the installation of a substantial number of monitoring devices and the installation and use of strip chart recorders for compliance purposes. However, electronic or computer data capture and storage is generally less costly and may have the capability to provide greater data availability with the same degree of security.

(e) To encourage the districts to take actions to monitor emissions of stationary sources as described in this section, the state board shall determine the availability, technological feasibility, and economic reasonableness of monitoring devices for those stationary sources as provided by Section 39801.

(f) To make emissions data available to the public and to minimize burdens on the private sector, the districts shall allow stationary sources the option of using electronic or computer data storage for purposes of compliance with Sections 31450 to 31456, inclusive.

**Comment.** Section 39800 continues former Health and Safety Code Section 42700 without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42700 now apply to this section. See, e.g., Senate Daily Journal, 1997-98 reg. sess., at 12.

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#### **§ 39801. Determination of availability, technological feasibility and economic reasonableness**

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39801. For the purposes of Sections 37002 and 38802, the state board shall determine the availability, technological feasibility, and economic reasonableness of monitoring devices to measure and record continuously the emissions concentration and amount of nonmethane hydrocarbons, oxides of nitrogen, oxides of sulfur, reduced sulfur compounds, particulate matter, and carbon monoxide emitted by stationary sources. The determination shall be made for stationary sources which emit these contaminants in the quantities set forth in Section 39800, and may be made for stationary sources which emit lesser amounts. The state board shall complete an initial review of submitted devices by June 1, 1975.

**Comment.** Section 39801 continues former Health and Safety Code Section 42701 without substantive change.

☞ **Staff Note.** This section specifies a deadline for the completion of an initial review. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

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#### **§ 39802. Specification of types of stationary sources, processes and contaminants**

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39802. The state board shall specify the types of stationary sources, processes, and the contaminants, or combinations thereof, for which a monitoring device is available, technologically feasible, and economically reasonable. The specification may be by any technologically based classification, including on an industrywide basis or by individual stationary source, by air basin, by district, or any other reasonable classification.

**Comment.** Section 39802 continues former Health and Safety Code Section 42702 without substantive change.

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**§ 39803. Reimbursement of expenses of determination by manufacturer**

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39803. The state board shall require the manufacturer of any monitoring device submitted for a determination to reimburse the state board for its actual expenses incurred in making the determination, including, where applicable, its contract expenses for testing and review.

**Comment.** Section 39803 continues former Health and Safety Code Section 42703 without change.

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**§ 39804. Revocation or modification of determination of availability**

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39804. After the state board has made a determination of availability, the state board may, as appropriate, revoke or modify its prior determination of availability if circumstances beyond the control of the state board, or of a stationary source required to install a monitoring device, cause a substantial delay or impairment in the availability of the device or cause the device no longer to be available.

**Comment.** Section 39804 continues former Health and Safety Code Section 42704 without change.

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**§ 39805. Records**

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39805. Any stationary source required by the district in which the source is located to install and operate a monitoring device shall retain the records from the device for not less than two years and, upon request, shall make the records available to the state board and the district. The district shall allow the source the option of using electronic or computer data storage, as defined in Section 35870 and consistent with Section 36500, as a method of record retention. The source shall not be limited solely to the installation or maintenance of strip chart recorders.

**Comment.** Section 39805 continues former Health and Safety Code Section 42705 without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42700 now apply to this section. See, e.g., Senate Daily Journal, 1997-98 reg. sess., at 12.

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**§ 39806. Report of violation of emission standard**

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39806. Any violation of any emission standard to which the stationary source is required to conform, as indicated by the records of the monitoring device, shall be reported by the operator of the source to the district within 96 hours after the occurrence. The district shall, in turn, report the violation to the state board within five working days after receiving the report of the violation from the operator.

**Comment.** Section 39806 continues former Health and Safety Code Section 42706 without substantive change.

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**§ 39807. Inspection**

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39807. The air pollution control officer shall inspect, as the officer determines is necessary, the monitoring devices installed in every stationary source of air contaminants located within the officer's jurisdiction required to have monitoring devices to insure that the devices are functioning properly. The district may require reasonable fees to be paid by the operator of the source to cover the expense of the inspection and other related costs.

**Comment.** Section 39807 continues former Health and Safety Code Section 42707 without substantive change.

**§ 39808. Powers of local or regional authority**

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39808. This title shall not prevent any local or regional authority from adopting monitoring requirements more stringent than those set forth in this title or be construed as requiring the installation of monitoring devices on any stationary source or classes of stationary sources. This section shall not limit the authority of the state board to require the installation of monitoring devices pursuant to Title 1 (commencing with Section 37100).

**Comment.** Section 39808 continues former Health and Safety Code Section 42708 without substantive change.

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### **Civ. Code § 3482.6 (amended). Agricultural processing activity not a nuisance**

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SEC. \_\_\_\_\_. Section 3482.6 of the Civil Code is amended to read:

3482.6. (a) No agricultural processing activity, operation, facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after the same has been in continuous operation for more than three years if it was not a nuisance at the time it begins.

(b) If an agricultural processing activity, operation, facility, or appurtenances thereof substantially increases its activities or operations after January 1, 1993, then a public or private nuisance action may be brought with respect to those increases in activities or operations that have a significant effect on the environment. For increases in activities or operations that have been in effect more than three years, there shall be a rebuttable presumption affecting the burden of producing evidence that the increase was not substantial.

(c) This section shall not supersede any other provision of law, except other provisions of this part, if the agricultural processing activity, operation, facility, or appurtenances thereof, constitute a nuisance, public or private, as specifically defined or described in the provision.

(d) This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state, except regulations adopted pursuant to Section 41700 of the Health and Safety Code 37600 of the Environment Code as applied to agricultural processing activities, operations, facilities, or appurtenances thereof that are surrounded by housing or commercial development on the effective date of this section. However, nothing in this section shall preclude a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an

ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural processing activity, operation, facility, or appurtenances thereof and is subject to provisions of this section consistent with Section 1102.6a.

(e) For purposes of this section:

(1) "Agricultural processing activity, operation, facility, or appurtenances thereof" includes, but is not limited to, the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of beer and wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.

(2) "Continuous operation" means at least 30 days of agricultural processing operations per year.

(3) "Proper and accepted customs and standards" means the compliance with all applicable state and federal statutes and regulations governing the operation of the agricultural processing activity, operation, facility, or appurtenances thereof with respect to the condition or effect alleged to be a nuisance.

(f) This section shall not apply to any litigation pending or cause of action accruing prior to January 1, 1993.

**Comment.** Section 3482.6 is amended to substitute a reference to the Environment Code provision that replaced former Section 41700 of the Health and Safety Code.

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**Gov't Code § 6254.11 (amended). Volatile organic compounds or chemical substances information**

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SEC. \_\_\_\_\_. Section 6254.11 of the Government Code is amended to read:

6254.11. Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the ~~Health and Safety Code~~ 38800 of the Environment Code.

**Comment.** Section 6254.11 is amended to substitute a reference to the Environment Code provision that replaced former Section 42303.2 of the Health and Safety Code.

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**Gov't Code § 7550.5. Reports to Legislature or Governor**

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☞ **Staff Note.** Government Code Section 7550.5 contains a reference to Sections 41712, 41865, and 42311.1 of the Health and Safety Code. The references to Sections 41712 and 41865 must be replaced with references to Sections 37701 and 38264, respectively. The reference to Section 42311.1 is obsolete and should not be continued. That section has been repealed. See 1998 Cal. Stat. ch. 1568, § 29.2.

Conforming revisions to Section 7550.5 were set out in the staff draft of Division 2 of the Environment Code. See Memorandum 98-20. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

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**Gov't Code § 11017 (amended). Compliance with local air pollution control**

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SEC. \_\_\_\_\_. Section 11017 of the Government Code is amended to read:

11017. Notwithstanding any other provision of law, each state agency in performing its duties shall comply with all local air pollution control rules, regulations, and ordinances which are more stringent than any applicable state air pollution control statute, rule, or regulation.

In any area where neither any local air pollution control rules, regulations, or ordinances nor any state air pollution control statute, or rule or regulation adopted by the State Air Resources Board pursuant to Section 41503 or 41504 of the Health and Safety Code 37150 or 37200 of the Environment Code, applies, the State Air Resources Board may adopt, after a public hearing, air pollution control rules and regulations for state agencies performing their duties in such areas, and each state agency in performing its duties in such area shall comply with such air pollution control rules and regulations.

**Comment.** Section 11017 is amended to substitute a reference to the Environment Code provisions that replaced former Sections 41503 and 41504 of the Health and Safety Code.

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**Gov't Code § 65850.2 (amended). Local agency responsibilities**

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SEC. \_\_\_\_\_. Section 65850.2 of the Government Code is amended to read:

65850.2. (a) Each city and each county shall include, in its information list compiled pursuant to Section 65940 for development projects, or application form for projects that do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code or the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.

(2) The requirement that the owner or authorized agent certify whether or not the proposed project will have more than a threshold quantity of a regulated substance in a process or will contain a source or modified source of hazardous air emissions.

(b) A city or county shall not find the application complete pursuant to Section 65943 or approve a development project or a building permit for a project that does not require a development permit other than a building permit, in which a regulated substance will be present in a process in quantities greater than the applicable threshold quantity, unless the owner or authorized agent for the project first obtains, from the administering agency with jurisdiction over the facility, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit an RMP. Within five days of submitting the project application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMP. The requirement to submit an RMP to the administering agency shall be met prior to the issuance of a certificate of occupancy or its substantial equivalent. The owner or authorized agent shall submit, to the city or county, certification from the air pollution control officer that the owner or authorized agent has provided the disclosures required pursuant to Section ~~42303 of the Health and Safety Code~~ 38802 of the Environment Code.

(c) A city or county shall not issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district exercising

jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent.

(d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section. Those fees shall be used only for the implementation of this section.

(g) As used in this section, the following terms have the following meaning:

(1) "Administering agency," "process," "regulated substance," "RMP," and "threshold quantity" have the same meaning as set forth for those terms in Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, "hazardous air emissions" also means emissions into the ambient air of any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(i) This section does not apply to applications solely for residential construction.

**Comment.** Section 65850.2 is amended to substitute a reference to the Environment Code provision that replaced former Section 42303 of the Health and Safety Code.

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**Health & Safety Code § 13137 (amended). State fire marshal licensing and certification fund**

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SEC. \_\_\_\_\_. Section 13137 of the Health and Safety Code is amended to read:

13137. (a) The State Fire Marshal Licensing and Certification Fund is hereby created in the State Treasury. All money in the fund is available for the support of the State Fire Marshal upon appropriation by the Legislature. All moneys collected by the State Fire Marshal pursuant to this part, pursuant to Part 2 (commencing with Section 12500) of Division 11, and pursuant to Section 41961 38405 of the Environment Code, shall be deposited in the fund and shall be available to the State Fire Marshal for expenditure upon appropriation by the Legislature for the purposes of this part, Part 2 (commencing with Section 12500) of Division 11, or Section 38405 of the Environment Code, respectively.

(b) Neither this article nor any provision of this part or Part 2 (commencing with Section 12500) of Division 11 or Section 41961 38405 of the Environment Code authorize fees to exceed the actual cost of administration of the programs administered by the State Fire Marshal, nor authorize the charging of fees to a particular group being regulated under a program, for the costs of regulation under another program or for the costs of a different group under the same program.



**Comment.** Section 13137 is amended to substitute a reference to the Environment Code provision that replaced former Section 41961 of the Health and Safety Code.

**Health & Safety Code § 25198.3 (amended). Cooperative agreements**

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SEC. \_\_\_\_\_. Section 25198.3 of the Health and Safety Code is amended to read:

25198.3. (a) The secretary may enter into any cooperative agreement which meets the requirements of this article.

(b) Each cooperative agreement shall include, but shall not be limited to, all requirements determined to be necessary to meet the requirements of subdivision (e) to do all of the following:

(1) Protect water quality, as determined by the State Water Resources Control Board or the appropriate California regional water quality control board.

(2) Protect air quality, as determined by the State Air Resources Board or the appropriate air pollution control officer.

(3) Provide for proper management of hazardous materials and hazardous wastes, as determined necessary by the Department of Toxic Substances Control.

(4) In making these determinations, the state agencies shall consider any applicable federal environmental and public health and safety laws.

(c) A decision by the secretary whether to enter into a cooperative agreement shall be based on a good faith determination concerning whether a proposed cooperative agreement meets the requirements of this article. The secretary shall take this action within 130 days of a written request by the tribe that the secretary approve a draft cooperative agreement. At least 60 days prior to determining whether to enter into a cooperative agreement, the secretary shall provide notice, and make available for public review and comment, drafts of his or her proposed action and drafts of the findings and determinations that are required by this section. The secretary shall hold a public hearing in the affected area on the proposed action within the time period for taking that action, as specified in this section. Within 10 days after the close of the public review and comment period, the agencies shall complete the determinations required by this section and the secretary shall issue a final decision.

(d) The findings and determinations of the secretary and relevant agencies made pursuant to this section shall explain material differences between state laws and regulations and the proposed tribal or federal functionally equivalent provisions. The findings and determinations do not need to explain each difference between the state and tribal or federal requirements as long as they identify and evaluate whether the material differences meet the requirements of this article, including, but not limited to, providing at least as much protection for public health and safety and the environment as would the state requirements.

(e) Any cooperative agreement executed pursuant to this article shall provide for regulation of the hazardous waste facility through inclusion in the agreement of design, permitting, construction, siting, operation, monitoring, inspection, closure, postclosure, liability, enforcement, and other regulatory provisions applicable to a hazardous waste facility, or which relate to any environmental consequences that may be caused by facility construction or operation, that are functionally equivalent to all of the following:

(1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section 13370) of, Division 7 of the Water Code.

(2) ~~Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, Title 6 (commencing with Section 37600), Title 7 (commencing with Section 38700), and Title 8~~

(commencing with Section 42700) of Part 4 of Division 4 of the Environment Code, and Part 6 (commencing with Section 44300) of, Division 26.

(3) This chapter, Chapter 6.6 (commencing with Section 25249.5), Chapter 6.8 (commencing with Section 25300), and Chapter 6.95 (commencing with Section 25500).

(4) All regulations adopted pursuant to the statutes specified in this section.

(5) Any other provision of state environmental, public health, and safety laws and regulations germane to the hazardous waste facility proposed by the tribe.

(f) The tribal organizational structures or other means of implementing the requirements specified in subdivision (e) are not required to be the same as the state organizational structures or means of implementing its system of regulation.

(g) Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 25198.5, shall constitute a "project" as defined in Section 21065 of the Public Resources Code and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(h) Each cooperative agreement shall provide for the incorporation of the standards and requirements germane to the protection of the environment, public health, and safety listed in subdivision (e), as enacted, or as those provisions may be amended after January 1, 1992, or after the effective date of any cooperative agreement, if those standards and requirements meet both of the following requirements:

(1) The standards and requirements do not discriminate against a tribe which has executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or not more stringent than, other rules applicable to other similar or analogous facilities or operations outside Indian country.

(2) Adequate notice and opportunity for comment on the incorporation of new and amended standards or requirements are provided to the tribe, facility owner, and operator to facilitate any physical or operational changes in the facility in accordance with state law.

**Comment.** Section 25198.3 is amended to substitute a reference to the Environment Code provisions that replaced former Chapter 3 (commencing with Section 41700), Chapter 4 (commencing with Section 42300), and Chapter 5 (commencing with Section 42700) of Part 4 of Division 26 of the Health and Safety Code.

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#### **Health & Safety Code § 25421 (amended). Prohibited activities**

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SEC. \_\_\_\_\_. Section 25421 of the Health and Safety Code is amended to read:

25421. (a) Until the rule or order specified in subdivision (b) is adopted, no gas producer shall knowingly sell, supply, or transport landfill gas to a gas corporation, and no gas corporation shall knowingly purchase landfill gas, if that gas contains vinyl chloride in a concentration that exceeds the operative no significant risk level set forth in Article 7 (commencing with Section 12701) of Chapter 3 of Division 2 of Title 22 of the California Code of Regulations.

(b) On or before January 1, 1990, the Public Utilities Commission shall, by rule or order, specify the maximum amount of vinyl chloride that may be found in landfill gas pursuant to the requirements of subdivision (a).

(c) No gas corporation shall knowingly and intentionally expose any customer, employee, or other person to gas from a landfill if that gas contains any chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to that individual, except as provided by Section 25249.10.

(d) Every person who produces, sells, supplies, or releases landfill gas for sale offsite to a gas corporation shall, twice each month, sample and test the gas at the point of

distribution for the presence of chemicals known to the state to cause cancer or reproductive toxicity in accordance with the test guidelines prepared under ~~Section 41805.5~~ Sections 38000 to 38008, inclusive, of the Environment Code. The air pollution control district or air quality management district within which the landfill is situated shall review the testing procedures for compliance with the guidelines and require the correction of any deficiencies. The district shall require, among other things, that the gas be analyzed by a laboratory certified by the department and shall transmit the results of the analysis to the department for its determination of compliance or noncompliance with subdivisions (a) and (b). The department shall fix and impose upon the gas producer a fee to cover its costs under this subdivision. The results of each sample and test shall be reported promptly to the gas corporation to which the landfill gas is sold, and any person or public agency requesting a copy of the report.

(e) Nothing in this section prohibits the direct delivery of landfill gas for the generation of electricity, the production of steam, or other industrial application.

(f) The gas corporation shall obtain the results of the test conducted pursuant to subdivision (d) and shall purchase no gas which the test shows to contain vinyl chloride that exceeds the amount permitted in subdivision (a), or if the rule or order has been adopted, as specified in subdivision (b).

(g) This section applies only to landfill gas delivered to the pipeline of a gas corporation.

**Comment.** Section 25421 is amended to substitute a reference to the Environment Code provisions that replaced former Section 41805.5 of the Health and Safety Code.

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#### **Health & Safety Code § 25532 (amended). Definitions**

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SEC. \_\_\_\_\_. Section 25532 of the Health and Safety Code is amended to read:

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) "Accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) "Covered process" means a process that has a regulated substance present in more than a threshold quantity.

(d) "Modified stationary source" means an addition or change to a stationary source that qualifies as a "major change," as defined in Subpart A of Part 68 of Title 40 of the Code of Federal Regulations. "Modified stationary source" does not include an increase in production up to the source's existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300 38750 of the Environment Code.

(e) "Process" means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) "Qualified person" means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) "Regulated substance" means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2)(A) An extremely hazardous substance listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

- (i) A gas at standard temperature and pressure.
- (ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than ten millimeters mercury.
- (iii) A solid that is one of the following:
  - (I) In solution or in molten form.
  - (II) In powder form with a particle size less than 100 microns.
  - (III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.
- (iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B)(i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:

(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section 25543.1, and, therefore, should remain on the list of regulated substances until completion of the review conducted pursuant to subdivision (a) of Section 25543.3.

(ii) The office shall adopt, by regulation, a list of the extremely hazardous substances identified pursuant to clause (i). Extremely hazardous substances placed on the list are regulated substances for the purposes of this article. Until the list is adopted, the administering agency shall determine which extremely hazardous substances should remain on the list of regulated substances pursuant to the standards specified in clause (i).

(h) "Regulated substances accident risk" means a potential for the accidental release of a regulated substance into the environment that could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(i) "RMP" means the risk management plan required under Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations and by this article.

(j) "State threshold quantity" means the quantity of a regulated substance described in subparagraph (A) of paragraph (2) of subdivision (g), as adopted by the office pursuant to Section 25543.1 or 25543.3. Until the office adopts a state threshold quantity for a regulated substance, the state threshold quantity shall be the threshold planning quantity for the regulated substance specified in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(k) "Stationary source" means any stationary source, as defined in Section 68.3 of Title 40 of the Code of Federal Regulations.

(l) "Threshold quantity" means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

**Comment.** Section 25532 is amended to substitute a reference to the Environment Code provision that replaced former Section 42300 of the Health and Safety Code.

## Other provisions of the Environment Code

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☞ **Staff Note. (1)** There are several sections of earlier parts of Division 4 of the proposed Environment Code that refer to sections that have been included in Part 4. See proposed Environment Code §§ 30002, 30380, 30703, 31101, 31107, 31109, 31300, 31901, 32006, 32102, 32158, 32200, 32500, 32509, 32550, 32554, 32700, 32705, 33303, 33304, 33251, 33252, 33351, 33352, 33454, 35050, 35250, 36106, 36112, 36150, 36151, 36153, 36159, 36161, 36209, and 36502. Conforming changes to these sections will be made in the revised draft of this division.

(2) There are also sections of earlier divisions of the proposed Environment Code that refer to sections that have been included in Part 4 of this division. See proposed Environment Code §§ 4200, 21080.24. Conforming changes to these sections will be made in the revised draft of this division.

(3) There are several sections of later parts of Division 26 of the Health and Safety Code that refer to sections that have been included in Part 4 of Division 4 of the proposed Environment Code. See Health & Safety Code §§ 43021, 44325, 44344.5, 44344.7, 44366, 44382, 44391. Conforming changes to these sections will be made later, when a draft is prepared to incorporate them into the Environment Code.

## Penal Code § 803 (amended). Tolling or extension of time periods

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SEC. \_\_\_\_\_. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, ~~or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or Part 4 (commencing with Section 37100) of Division 4 of the Environment Code, or under~~ Section 386.

(f)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B)(i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published

opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B)(i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

**Comment.** Section 803 is amended to substitute a reference to the Environment Code provisions that replaced former Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code.

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**Pub. Res. Code § 25523. Written decision**

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☞ **Staff Note.** Public Resources Code Section 25523 contains a reference to Sections 41700 and 42315(a)(1)-(3) & (6) of the Health and Safety Code. These references must be replaced with references to Sections 37600 and 39100(a)-(c) & (f) of the Environment Code.

Conforming revisions to Section 25523 were set out in the staff draft of Parts 1 and 2 of Division 4 of the Environment Code. See Memorandum 98-22. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

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**Pub. Res. Code § 41783 (amended). Source reduction and recycling through transformation**

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SEC. \_\_\_\_\_. Section 41783 of the Public Resources Code is amended to read:

41783. For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(a) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and ~~Section 42315 of the Health and Safety Code~~ Sections 39100 to 39104, inclusive, of the Environment Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and safety or the environment.



- (e) The transformation facility is permitted and operational on or before January 1, 1995.
- (f) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

**Comment.** Section 41783 is amended to substitute a reference to the Environment Code provisions that replaced former Section 42315 of the Health and Safety Code.

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**Pub. Res. Code § 43209.1 (amended). Complaints pertaining to compost facility odors**

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SEC. \_\_\_\_\_. Section 43209.1 of the Public Resources Code is amended to read:

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code ~~37601 of the Environment Code~~, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code ~~37601 of the Environment Code~~. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) This section shall become inoperative on the date that is four years from the effective date of the amendments to this section enacted in 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it becomes inoperative and is repealed.

**Comment.** Section 43209.1 is amended to substitute a reference to the Environment Code provision that replaced former Section 41705 of the Health and Safety Code.

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**Pub. Res. Code § 71061 (amended). Exchange of electronic data**

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SEC. \_\_\_\_\_. Section 71061 of the Public Resources Code is amended to read:

71061. The secretary shall establish a standardized electronic format and protocol for the exchange of electronic data for the purpose of meeting environmental data reporting or other usage requirements that are imposed in the course of granting permits or other authorizations to operate pursuant to all of the following laws and regulations adopted pursuant to those laws:

(a) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), and Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(b) ~~Article 1 (commencing with Section 42300) of Chapter 4 of Part 4 of Division 26 of the Health and Safety Code. Chapter 2 (commencing with Section 38750) of Title 7 of Division 4 of the Environment Code.~~

(c) Division 7 (commencing with Section 13000) of the Water Code.

(d) The Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.).

(e) The Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.).

(f) Any other law relating to environmental protection, including, but not limited to, hazardous waste, substances, and materials, as determined by the secretary.

**Comment.** Section 71061 is amended to substitute a reference to the Environment Code provisions that replaced former Article 1 (commencing with Section 42300) of Chapter 4 of Part 4 of Division 26 of the Health and Safety Code.

## DISPOSITION OF EXISTING LAW

**Note.** This table shows the disposition of sections in the Health and Safety Code and in the Session Laws, in effect on January 27, 1998, that are to be repealed in connection with the Environment Code legislation. For further detail, see the Comment to the appropriate section in the attached staff draft.

### HEALTH AND SAFETY CODE

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
41500	37100	41703	37605
41500.5	37101	41704	37603
41502	31702	41704.5	38652
41503	37150	41705	37601
41503.1	37151	41706	38653
41503.2	37152	41707	37604
41503.3	37153	41708	38654
41503.4	37154	41712(a)(1)	37655
41503.5	37155	41712(a)(2)	37660
41503.6	37000	41712(a)(3)	37665
41504	37200	41712(a)(4)	37670
41505	37201	41712(a)(intro.)	37650
41507	Omitted	41712(b)	37700
41508	37001	41712(c)-(f)	37701(a)-(d)
41509	30005	41712(g)	37704
41510	38700	41712(h)	37702
41511	37002	41712(i)	37703
41512(a)	37300	41712(j)	37701(e)
41512(b)	37005	41712(k)	37705
41512(c)	37006	41750	37750
41512.5	37301	41751(a)(1)	37805
41512.7(a)-(c)	37302	41751(a)(1)-(2)(intro.)	37800
41512.7(d)	37303	41751(a)(2) & (b)	37815
41513	38701	41751(c)	37810
41514	37003	41752	37850
41514.8	37004	41753	37851
41515	37400	41754(a)	37852
41516	37401	41754(b)-(g)	37853
41517	37402	41755	37854
41518	Omitted	41800	37900
41519	Omitted	41801	37950
41520	Omitted	41802	37951
41600	37450	41803	37954
41605	37451	41804	37952
41605.5	37452	41804.5	37953
41650(a)	37500	41805	37955
41650(b)	37501	41805.5(a)	38001
41651	37502	41805.5(b)	38002
41652	37503	41805.5(c)	38003
41700	37600	41805.5(d)	38004
41701	37602	41805.5(e)	38005
41701.5	38650	41805.5(f)	38008
41701.6	38651	41805.5(g)	38006
41702	38655	41805.5(h)	38007

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
41805.5(i)	38000	41953	38355
41805.6	38009	41954(a)-(f)	38400
41806	37956	41954(g)-(h)	38401
41807	37957	41954(i)	38402
41808	37958	41955	38403
41809	37959	41956	38406
41810	37902	41956.1	38409
41811	37901	41957	38407
41812	37960	41958 (1st ¶)	38408
41813	37961	41958 (2d ¶)	38404
41815	37962	41959	38410
41850	38050	41960	38411
41851	38051	41960.1(a)	38451
41852	38100	41960.1(b)-(c)	38452
41852.5	38101	41960.2(a)-(b)	38453
41853	38102	41960.2(c)-(e)	38454
41853.5	38103	41960.3	38455
41854	38150	41960.4	38456
41855	38151	41960.5	38457
41856	38200	41960.6	38458
41857	38201	41961	38405
41858	38202	41962(a)	38501
41859	38203	41962(b)-(f)	38502
41860	38105	41962(g)	38503
41861	38106	41962(h)	38504
41862	38152	41962(i)	38500
41863	38204	41970	38550
41864	38052	41971	38551
41865(a)	38250	41972	38552
41865(b)&(k)	38253	41973	38553
41865(c)	38254	41974	38554
41865(d)	38255	41980	38600
41865(e)	38261	41980.5	38601
41865(f)	38256	41981	38602
41865(g)	38257	41982	38603
41865(h)	38258	41983	38604
41865(i)	38259	42300	38750
41865(j)	38260	42300.1	38751
41865(l)	38262	42300.2	38752
41865(m)	38263	42301	38753
41865(n)	38264	42301.1	38754
41865(o)	38265	42301.10	39050
41865(p)	38251	42301.11	39051
41865(q)	38252	42301.12	39052
41865(r)	38266	42301.13(a)	39150
41865(s)	38267	42301.13(b)-(c)	39151
41865(t)	38268	42301.2	38657
41865(u)	38269	42301.3(a)	38900
41866	38104	42301.3(b)	38901
41900	38300	42301.3(c)	38902
41901	38301	42301.3(d)(1)	38903
41902	38302	42301.3(d)(2)	38904
41903	38303	42301.3(e)	38905
41904	38304	42301.3(f)	38906
41905	38305	42301.3(g)	38907
41950	38450	42301.3(h)	38908
41951	38360	42301.3(i)	38909
41952	38365	42301.5(a)	38950

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
42301.5(b) . . . . .	38951	42333(e) . . . . .	39256
42301.5(c)-(d) . . . . .	38952	42334 . . . . .	39257
42301.6(a) . . . . .	39001	42335 . . . . .	39258
42301.6(b)-(c) . . . . .	39002	42336 . . . . .	39259
42301.6(d) . . . . .	39003	42337 . . . . .	39260
42301.6(e) . . . . .	39004	42338 . . . . .	39261
42301.6(f) . . . . .	39005	42339 . . . . .	39262
42301.6(g) . . . . .	39006	42350(a) . . . . .	39300
42301.6(h) . . . . .	39007	42350(b) . . . . .	39350
42301.7 . . . . .	39008	42350.5 . . . . .	39301
42301.8 . . . . .	39009	42351 . . . . .	39304
42301.9 . . . . .	39000	42351.5 . . . . .	39305
42302 . . . . .	38800	42352(a) . . . . .	39351
42302.1 . . . . .	38801	42352(b) . . . . .	75
42303 . . . . .	38802	42352.5(a) . . . . .	39352
42303.2(a)-(b) . . . . .	38803	42352.5(b) . . . . .	39353
42303.2(c)-(d) . . . . .	38804	42353 . . . . .	39354
42303.2(e) . . . . .	38805	42354 . . . . .	39355
42303.5 . . . . .	38806	42355 . . . . .	39356
42304 . . . . .	38807	42356 . . . . .	39400
42305 . . . . .	38808	42357 . . . . .	39401
42306 . . . . .	38809	42358 . . . . .	39357
42307 . . . . .	38810	42359 . . . . .	39302
42308 . . . . .	38811	42359.5 . . . . .	39306
42309 . . . . .	38812	42360 . . . . .	39303
42310 . . . . .	39152	42361 . . . . .	39358
42310.5 . . . . .	39153	42362 . . . . .	39402
42311(a), (f)-(h) . . . . .	38850	42363 . . . . .	39403
42311(b) . . . . .	38851	42364 . . . . .	39307
42311(c) . . . . .	38852	42365 . . . . .	39450
42311(d) . . . . .	38853	42366 . . . . .	39451
42311(e) . . . . .	38854	42367 . . . . .	39455(c)
42311(i) . . . . .	Omitted	42368(a) . . . . .	39452
42311.2 . . . . .	38856	42368(b)-(c) . . . . .	39453
42311.5 . . . . .	38857	42368(d) . . . . .	39454
42312 . . . . .	38858	42369 . . . . .	39455(a)-(b)
42313 . . . . .	38859	42370 . . . . .	39456
42314 . . . . .	39154	42371 . . . . .	39457
42314.1 . . . . .	39155	42372 . . . . .	39458
42314.2 . . . . .	39156	42400(a)-(b) . . . . .	39550
42314.5 . . . . .	39157	42400(c) . . . . .	39551
42315(a)(1)-(3), (4)(A) & (E), (5)-(6) . . . . .	39100	42400(d) . . . . .	39502
42315(a)(4)(B)-(C) . . . . .	39101	42400(e) . . . . .	39501
42315(a)(4)(D) . . . . .	39102	42400.1(a)-(b) . . . . .	39552
42315(b) & (c) . . . . .	39103	42400.1(c) . . . . .	39501
42315(c) . . . . .	39104	42400.1(d) . . . . .	39502
42316 . . . . .	38656	42400.2(a)-(d) . . . . .	39553
42320 . . . . .	39200	42400.2(e) . . . . .	39501
42321 . . . . .	39201	42400.2(f) . . . . .	39502
42322 . . . . .	39202	42400.3(a) . . . . .	39554
42322.5 . . . . .	39203	42400.3(b) . . . . .	39502
42323 . . . . .	39204	42400.3(c) . . . . .	39501
42330 . . . . .	39250	42400.4(a)-(b) . . . . .	39555(a)-(b)
42331 . . . . .	39251	42400.4(c) . . . . .	39502
42332 . . . . .	39252	42400.4(d) . . . . .	39501
42333(a) . . . . .	39253	42400.4(e)-(f) . . . . .	39555(c)-(d)
42333(b)-(c) . . . . .	39254	42400.5 . . . . .	39503
42333(d) . . . . .	39255	42400.6 . . . . .	39505

<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
42401 . . . . .	39600	42408 . . . . .	39556
42402(a)-(b) . . . . .	39601	42409 . . . . .	39504
42402(c) . . . . .	39501	42420 . . . . .	39700
42402.1(a)-(b) . . . . .	39602	42421 . . . . .	39701
42402.1(c) . . . . .	39501	42450 . . . . .	39751
42402.2(a)-(c) . . . . .	39603	42450.1 . . . . .	39750
42402.2(d) . . . . .	39501	42451 . . . . .	39752
42402.3(a) . . . . .	39604	42452 . . . . .	39753
42402.3(b) . . . . .	39501	42453 . . . . .	39754
42402.5 . . . . .	39605	42454 . . . . .	39755
42403 . . . . .	39650	42700 . . . . .	39800
42403.5 . . . . .	39606	42701 . . . . .	39801
42404 . . . . .	39651	42702 . . . . .	39802
42404.5 . . . . .	39652	42703 . . . . .	39803
42405 . . . . .	39653	42704 . . . . .	39804
42405.1 . . . . .	39654	42705 . . . . .	39805
42405.5 . . . . .	39655	42706 . . . . .	39806
42406 . . . . .	39656	42707 . . . . .	39807
42407 . . . . .	39500	42708 . . . . .	39808

## SESSION LAWS

<b>Session Laws</b>	<b>Env't Code</b>
1993 Cal. Stat. ch. 1131, § 1 . . . . .	39158