

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Air Resource Technical Revisions

June 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 15, 1999.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The California Law Revision Commission has identified a number of technical defects in Parts 1 to 4 of Division 26 of the Health and Safety Code (Health & Safety Code §§ 39000-42708), relating to air resources. The proposed law would correct those defects.

This recommendation was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998.

1 AIR RESOURCES TECHNICAL REVISIONS

2 In the course of studying the organization of California’s environmental and
3 natural resource statutes, the Commission identified a number of technical defects
4 in Parts 1 to 4 of Division 26 of the Health and Safety Code, relating to air
5 resources.¹ The Commission recommends a number of technical revisions to
6 correct those defects.

7 **Erroneous Cross-References**

8 A number of sections contain cross-references to sections that do not exist or
9 have been repealed. The proposed law would delete these cross-references.² Other
10 sections contain erroneous cross-references, but the intended meaning of the cross-
11 reference is clear. The proposed law would correct these cross-references.³

12 **Obsolete Provisions**

13 A number of provisions govern requirements that have already been satisfied or
14 events that have already occurred. The proposed law would delete these obsolete
15 provisions.⁴

16 **Minor Substantive Changes**

17 In two cases, the proposed law would make minor substantive changes:

18 (1) *Definition of “bureau.”* A 1994 statute added a number of sections relating
19 to air quality. The operation of those sections was contingent on events that have
20 not occurred and are unlikely to occur.⁵ Consequently, those sections have never
21 become operative. One of those sections defines the term “bureau” for the purpose
22 of the Air Resources division.⁶ Other sections of the division, including sections
23 that were not subject to the operation contingency, use the defined term.⁷ This
24 problem is addressed in the proposed law by repealing the definition section and
25 reenacting it without any restriction on its operation.

26 (2) *Administrative civil penalties.* There are a number of sections establishing
27 criminal or civil penalties for violation of requirements of the Air Resources

1. Health & Safety Code §§ 39000-42708.

2. See proposed amendments to Health & Safety Code §§ 39513, 39515, 39604, 39807, 40452, 40454, 40500.1, 40717.5, 41500, 42301.9.

3. See proposed amendments to Health & Safety Code §§ 39510, 39512.5, 40162, 40503, 41500.5, 42314, 42314.5, 42405.1.

4. See proposed revisions to Health & Safety Code §§ 39671, 40416, 40450, 40452, 40484, 40515, 40521, 40524, 40709.7, 40962, 41212, 41242, 41261, 41263, 41507, 41518, 41519, 41520, 41600, 41704.5, 41900, 41981.

5. See 1994 Cal. Stat. ch. 1192, § 32.

6. Health & Safety Code § 39016.5.

7. See, e.g., Health & Safety Code § 44017.5.

1 division.⁸ All of these sections provide that each day in which a violation occurs is
2 a separate offense for the purpose of determining the penalty. However, the section
3 authorizing a district to impose administrative civil penalties does not contain such
4 a provision.⁹ If the omission of such language were interpreted to limit an air
5 district to imposing a single administrative civil penalty for each violation,
6 regardless of the violation's duration, the utility of administrative civil penalties as
7 an alternative to civil or criminal penalties would be significantly reduced.¹⁰ The
8 proposed law adds language clarifying that each day in which a violation occurs is
9 a separate offense for the purpose of determining an administrative civil penalty.

8. See Health & Safety Code §§ 42400-42400.4, 42400.6-42402.3.

9. See Health and Safety Code Section 42402.5.

10. See letter from Leslie Krinsk, Senior Staff Counsel, Air Resources Board 11 (Nov. 18, 1998) (attached to Memorandum 98-76, on file with California Law Revision Commission).

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1 PROPOSED LEGISLATION

2 **Health & Safety Code § 39016.5 (repealed). Bureau**

3 SECTION 1. Section 39016.5 of the Health and Safety Code, as added by
4 Section 3 of Chapter 1192 of the Statutes of 1994, is repealed.

5 ~~39016.5. “Bureau” means the Bureau of Automotive Repair in the Department
6 of Consumer Affairs.~~

7 **Comment.** Section 39016.5 is repealed. The section was subject to an uncodified operation
8 contingency that was not satisfied as of January 1, 1998. See 1994 Cal. Stat. ch. 1192, § 32; Air
9 Resources Board, California Environmental Protection Agency, California Air Pollution Control
10 Laws 4 (1998). However, the definition of “bureau” provided by the former section is useful —
11 the term is used repeatedly throughout this division. In order to clarify the meaning of “bureau,”
12 as used in this division, the substance of former Health and Safety Code Section 39016.5 is
13 continued in the new Section 39106.5.

14 **Health & Safety Code § 39016.5 (added). Bureau**

15 SEC. 2. Section 39016.5 is added to the Health and Safety Code, to read:

16 39016.5. “Bureau” means the Bureau of Automotive Repair in the Department
17 of Consumer Affairs.

18 **Comment.** Section 39016.5 replaces former Section 39016.5 (added by 1994 Cal. Stat. ch.
19 1192, § 3) which never became operative and was repealed by the act that enacted this section. It
20 continues the substance of former Section 39016.5 without change.

21 **Health & Safety Code § 39510 (amended). Composition of board**

22 SEC. 3. Section 39510 of the Health and Safety Code is amended to read:

23 39510. (a) The State Air Resources Board is continued in existence in the
24 California Environmental Protection Agency. The state board shall consist of 11
25 members.

26 (b) The members shall be appointed by the Governor, with the consent of the
27 Senate, on the basis of their demonstrated interest and proven ability in the field of
28 air pollution control and their understanding of the needs of the general public in
29 connection with air pollution problems. Six members shall have the following
30 qualifications:

31 (1) One member shall have training and experience in automotive engineering or
32 closely related fields.

33 (2) One member shall have training and experience in chemistry, meteorology,
34 or related scientific fields, including agriculture or law.

35 (3) One member shall be a physician and surgeon or an authority on health
36 effects of air pollution.

37 (4) Two members shall be public members.

38 (5) One member shall have the qualifications specified in paragraph (1), (2), or
39 (3) or shall have experience in the field of air pollution control.

1 (c) Five members shall be board members from districts who shall reflect the
2 qualitative requirements of subdivision (b) to the extent practicable. Of these five
3 members, one shall be a board member from the south coast district, one shall be a
4 board member from the bay district, one shall be a board member from the San
5 Joaquin Valley Unified Air Pollution Control District or, if the unified district is
6 abolished, from the San Joaquin Valley Air Quality Management District if
7 created pursuant to Section 41101 5 of Chapter 915 of the Statutes of 1994, one
8 shall be a board member from the San Diego County Air Pollution Control
9 District, and one shall be a board member of any other district.

10 (d) Any vacancy shall be filled by the Governor within 30 days of the date on
11 which it occurs. If the Governor fails to make an appointment for any vacancy
12 within the 30-day period, the Senate Committee on Rules may make the
13 appointment to fill the vacancy in accordance with this section.

14 (e) While serving on the state board, all members shall exercise their
15 independent judgment as officers of the state on behalf of the interests of the entire
16 state in furthering the purposes of this division. No member of the state board shall
17 be precluded from voting or otherwise acting upon any matter solely because that
18 member has voted or acted upon the matter in his or her capacity as a member of a
19 district board, except that no member of the state board who is also a member of a
20 district board shall participate in any action regarding his or her district taken by
21 the state board pursuant to Sections 41503 to 41505, inclusive.

22 (f) Notwithstanding subdivision (e) of Section 1 of Chapter 1201 of the Statutes
23 of 1991, this section shall become operative on January 1, 1994.

24 **Comment.** Section 39510 is amended to replace an obsolete reference to Section 41101, which
25 was repealed, with a reference to an equivalent provision in the act that repealed it. See 1994 Cal.
26 Stat. ch. 915, §§ 4 (Section 41101 repealed), 5 (San Joaquin Valley Air Quality Management
27 District created if San Joaquin Valley Unified Air Pollution Control District ceases to exist).

28 **Health & Safety Code § 39512.5 (amended). Reimbursement for expenses**

29 SEC. 4. Section 39512.5 of the Health and Safety Code is amended to read:

30 39512.5. (a) With respect to the members appointed pursuant to subdivision (c)
31 of Section 39510, those members shall serve without compensation but shall be
32 reimbursed for actual and necessary expenses incurred in the performance of their
33 duties to the extent that reimbursement for expenses is not otherwise provided or
34 payable by another public agency or agencies. Each elected public official member
35 of the state board shall receive one hundred dollars (\$100) for each day, or portion
36 thereof, but not to exceed one thousand dollars (\$1,000) in any month, attending
37 meetings of the state board or committees thereof, or upon authorization of the
38 state board while on official business of the state board.

39 (b) Reimbursements made pursuant to subdivision (a) shall be made ~~by the~~
40 ~~district from which the person qualified for membership, except that the board~~
41 ~~member appointed pursuant to paragraph (2) of subdivision (c) of Section 39510~~
42 ~~shall be reimbursed by the state board.~~ as follows:

1 (1) A member appointed from a district that is specifically named in subdivision
2 (c) of Section 39510 shall be reimbursed by the district from which the person
3 qualified for membership.

4 (2) The member appointed as a board member of a district that is not specifically
5 named in subdivision (c) of Section 39510 shall be reimbursed by the state board.

6 **Comment.** Section 39512.5 is amended to correct an obsolete reference to former Section
7 39510(c)(2). In 1993, Section 39510 was amended so as to eliminate the enumeration of separate
8 paragraphs within subdivision (c). See 1993 Cal. Stat. ch. 1062, § 1. Before that change Section
9 39510(c)(2) provided for the appointment of a State Air Resources Board member from a district
10 other than the districts named in Section 39510(c)(1). Pursuant to Section 39512.5(b), the board
11 member representing the district that was not specifically named was to be reimbursed by the
12 state board. That general policy is continued in the amendment to Section 39510(b).

13 **Health & Safety Code § 39513 (amended). Meetings**

14 SEC. 5. Section 39513 of the Health and Safety Code is amended to read:

15 39513. The state board shall hold regular meetings at least twice a month.
16 Special meetings may be called by the ~~chairman~~ chair or upon the request of a
17 majority of the members. Each member of the state board shall receive ~~his~~ that
18 member's actual necessary traveling expenses incurred in the performance of ~~his~~
19 official duties. ~~Time spent in such meetings shall count towards the 60 hours~~
20 ~~specified in Section 39512.~~

21 **Comment.** Section 39513 is amended for gender neutrality and to eliminate an obsolete
22 reference to former Section 39512, that conditioned board member salaries on hours worked.
23 Section 39512 is repealed. See 1975 Cal. Stat. ch. 957, § 12.

24 **Health & Safety Code § 39515 (amended). Executive officer**

25 SEC. 6. Section 39515 of the Health and Safety Code is amended to read:

26 39515. (a) The state board shall appoint an executive officer who shall serve at
27 the pleasure of the state board and, except as provided in subdivision (d), may
28 delegate any duty to the executive officer which the state board deems appropriate.

29 (b) The intention of the Legislature is hereby declared to be that the executive
30 officer shall perform and discharge, under the direction and control of the state
31 board, the powers, duties, purposes, functions, and jurisdiction vested in the state
32 board and delegated to the executive officer by the state board.

33 (c) The state board shall, upon the receipt of a petition from any affected
34 member of the public, affected district, or designated air quality planning agency,
35 hold a public hearing to review any action taken by the executive officer relating
36 to any of the following:

37 (1) Making any order pursuant to Section 41507, ~~41602,~~ or 41603.

38 (2) Taking action pursuant to Section 41650, 41651, or 41652.

39 (d) Any action taken by the executive officer pursuant to Section 40469 or
40 Sections 41503 to 41505, inclusive, shall be subject to the provisions of Chapter
41 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
42 Government Code.

1 **Comment.** Section 39515 is amended to eliminate obsolete references to former Health and
2 Safety Code Section 41602 and 41603. Those sections are repealed. See 1988 Cal. Stat. ch. 1568,
3 §§ 23 & 24.

4 **Health & Safety Code § 39604 (amended). Report**

5 SEC. 7. Section 39604 of the Health and Safety Code is amended to read:

6 39604. (a) The state board shall submit to the Governor and the Legislature, not
7 later than January 1, 1985, and every two years thereafter, a biennial report on air
8 quality conditions and trends statewide and on the status and effectiveness of state
9 and local air quality programs.

10 (b) The report shall include, but not be limited to, all of the following:

11 (1) A review of air quality trends in each air basin over the most recent five-
12 calendar-year period for which a complete data record is available.

13 (2) A statement of the number of violations of air quality standards which
14 occurred in each air basin over the most recent two calendar years for which a
15 complete data record is available, and a comparison of the number of violations to
16 those in prior years.

17 (3) A listing of any changes in state ambient air quality standards adopted by the
18 board over the previous two calendar years.

19 (4) A summary of the results of research projects concluded during the previous
20 two years, the status of current research projects, and the conduct of the research
21 program pursuant to Section 39703.

22 (5) A summary of any actions taken by the state board to assume the powers of
23 districts under Section 39808.

24 (6) A summary of the effects of any significant federal actions over the previous
25 two years which have affected state air quality or air quality programs.

26 (7) A summary of the status of the state implementation plan for achieving and
27 maintaining ambient air quality standards.

28 (8) A summary of the state board's actions in the previous two calendar years to
29 control toxic air pollutants pursuant to Chapter 3.5 (commencing with Section
30 39650).

31 ~~(9) A report on acid deposition prepared pursuant to Section 39909.~~

32 ~~(10) A summary of actions of the state board in controlling emissions from~~
33 ~~motor vehicles during the previous two-year period.~~

34 ~~(11) (10)~~ A summary of significant actions taken by districts to control
35 emissions from nonvehicular sources during the previous two-year period. This
36 summary shall not include a district by district analysis for each district in the
37 state, but shall include an overall analysis.

38 ~~(12) (11)~~ A list of recommendations for legislation or administrative actions to
39 resolve specific air quality problems in the state.

40 **Comment.** Section 39604 is amended to eliminate an obsolete reference to a report required by
41 Section 39909. That section was repealed by operation of former Section 39911 on January 1,
42 1994. See 1988 Cal. Stat. ch. 1518, § 2.

1 **Health & Safety Code § 39671 (amended). Staggered terms**

2 SEC. 8. Section 39671 of the Health and Safety Code is amended to read:

3 39671. (a) The terms of the members of the Scientific Review Panel on Toxic
4 Air Contaminants appointed pursuant to subdivision (b) of Section 39670 shall be
5 staggered so that the terms of three members expire each year. ~~To accomplish this,~~
6 ~~the terms of six members are extended in the following manner:~~

7 ~~(1) The term of one member appointed pursuant to paragraph (1) of subdivision~~
8 ~~(b) of Section 39670 is extended until January 1, 1988, and the terms of three~~
9 ~~members appointed pursuant to that paragraph are extended until January 1, 1989,~~
10 ~~as designated by the Secretary of Environmental Affairs.~~

11 ~~(2) The term of one member appointed pursuant to paragraph (2) of subdivision~~
12 ~~(b) of Section 39670 is extended until January 1, 1988, as designated by the Senate~~
13 ~~Committee on Rules.~~

14 ~~(3) The term of one member appointed pursuant to paragraph (3) of subdivision~~
15 ~~(b) of Section 39670 is extended until January 1, 1988, as designated by the~~
16 ~~Speaker of the Assembly.~~

17 ~~(4) The terms of the three remaining members shall expire January 1, 1987.~~
18 ~~Thereafter, each appointment shall be for a term of three years, as provided in~~
19 ~~subdivision (b) of Section 39670.~~

20 **Comment.** Section 39671 is amended to eliminate obsolete provisions regarding the staggering
21 of the terms of the panel members.

22 **Health & Safety Code § 39807 (amended). Reduction of subventions equal to federal aid**

23 SEC. 9. Section 39807 of the Health and Safety Code is amended to read:

24 39807. The subvention otherwise due a district may be reduced by the state
25 board up to an amount equal to the funds which are granted to the district by the
26 federal government. In so reducing a subvention, the state board shall take into
27 account all the following factors:

28 (a) The purpose for which the federal funds were granted.

29 (b) The needs of the district in relationship to the needs of other districts.

30 (c) Any special and worthy programs conducted by the district not required by
31 the plan or program approved by the state board pursuant to ~~Sections~~ Section
32 41500 and 41603.

33 (d) The severity of air pollution within the district.

34 (e) Any other factors which the state board reasonably determines should be
35 considered.

36 **Comment.** Section 39807 is amended to eliminate an obsolete reference to Section 41603. That
37 section is repealed. See 1988 Cal. Stat. ch. 1568, § 24.

38 **Health & Safety Code § 40162 (amended). San Joaquin Valley district**

39 SEC. 10. Section 40162 of the Health and Safety Code is amended to read:

40 40162. Funding of the San Joaquin Valley Unified Air Pollution Control
41 District, or, if the unified district ceases to exist, of the valley district if created
42 pursuant to Section 41101 5 of Chapter 915 of the Statutes of 1994, may be

1 provided by, but is not limited to, grants, subventions, permit fees, penalties, and
2 vehicle license fees. Notwithstanding any other provision of law, no funding
3 contribution shall be required from the counties or cities included in the unified
4 district or valley district.

5 **Comment.** Section 40162 is amended to replace an obsolete reference to Section 41101, which
6 was repealed, with a reference to an equivalent provision in the act that repealed it. See 1994 Cal.
7 Stat. ch. 915, §§ 4 (Section 41101 repealed), 5 (San Joaquin Valley Air Quality Management
8 District created if San Joaquin Valley Unified Air Pollution Control District ceases to exist).

9 **Health & Safety Code § 40416 (repealed). Commencement of district operation**

10 SEC. 11. Section 40416 of the Health and Safety Code is repealed.

11 ~~40416. The south coast district shall commence operation on February 1, 1977,~~
12 ~~and on that date shall assume the authority, functions, and responsibilities of the~~
13 ~~Southern California Air Pollution Control District.~~

14 **Comment.** Section 40416 is repealed as obsolete.

15 **Health & Safety Code § 40450 (amended). Restrictions on county orders, rules or**
16 **regulations**

17 SEC. 12. Section 40450 of the Health and Safety Code is amended to read:

18 40450. Except as provided in Section 40449 regarding the adoption of stricter
19 orders, rules, and regulations than those of the south coast district board, the board
20 of supervisors of any county included, in whole or in part, within the south coast
21 district shall have no authority after February 1, 1977, with respect to the control
22 of air pollution in that part of the county included within the south coast district.

23 **Comment.** Section 40450 is amended to eliminate an obsolete reference to the date after which
24 the authority of a county board of supervisors is limited by the section (February 1, 1977).

25 **Health & Safety Code § 40452 (amended). Report on regulatory activities**

26 SEC. 13. Section 40452 of the Health and Safety Code is amended to read:

27 40452. ~~On or before April 1, 1991, and annually thereafter, the~~ The south coast
28 district shall submit a an annual report to the state board and the Legislature
29 summarizing its regulatory activities for the preceding calendar year. The report
30 shall include:

31 (a) A summary of each major rule and rule amendment adopted by the south
32 coast district board. The summary shall include emission reductions to be
33 accomplished by each rule or regulation; the cost per ton of emission reduction to
34 be achieved from each rule or regulation; other alternatives that were considered
35 through the environmental assessment process; the cost per ton of comparable
36 emission reductions that could have been achieved from each alternative; a
37 statement of the reason why a given alternative was chosen; the conclusions and
38 recommendations of the district's socioeconomic analysis, including any
39 evaluations of employment impacts; and the source of funding for the rule or
40 regulation. For the purposes of this subdivision, a major rule or rule amendment is

1 one that is intended to significantly affect air quality or which imposes emission
2 limitations.

3 (b) The number of permits to operate or to construct, by type of industry, that are
4 issued and denied, and the number of permits to operate that are not renewed.

5 (c) Data on emission offset transactions and applications, by pollutant, during
6 the previous fiscal year, including an accounting of the number of applications for
7 permits for new or modified sources that were denied because of the unavailability
8 of emission offsets.

9 (d) The district's forecast of budget and staff increases proposed for the
10 following fiscal year, and projected for the next two fiscal years. Budget and staff
11 increases shall be related to existing programs and rules, and to new programs or
12 rules to be adopted during the following years. The budget forecast shall provide a
13 workload justification for proposed budget and staff changes and shall identify any
14 cost savings to be achieved by program or staff changes. The budget forecast shall
15 include increases in permit fees and other fees proposed for the following fiscal
16 year and projected for the next two fiscal years. ~~Budget information developed by
17 the district pursuant to Section 42311.1 may be used to comply with the
18 requirements established under this section.~~

19 (e) An identification of the source of all revenues collected that are used, or
20 proposed to be used, to finance activities related to either stationary or
21 nonstationary sources.

22 (f) A response to audit recommendations pursuant to ~~Sections~~ Section 40453 and
23 42311.1. The response shall include proposed statutory changes needed to
24 implement the recommendations.

25 (g) The results of the clean fuels program as specified in Section 40448.5. This
26 element of the report shall be submitted biennially.

27 **Comment.** Section 40452 is amended to eliminate obsolete references. The introductory
28 paragraph is amended to eliminate the reference to the date on which the annual reporting
29 requirement began (April 1, 1991). Subdivisions (d) and (f) are amended to eliminate references
30 to Section 42311.1, which was repealed by its own terms. See 1993 Cal. Stat. ch. 1028, § 8.

31 **Health & Safety Code § 40454 (amended). Trip reduction plans**

32 SEC. 14. Section 40454 of the Health and Safety Code is amended to read:

33 40454. (a) Notwithstanding Section 40457, 40716, or 40717, or subdivision (c)
34 of Section 40717.5, the south coast district shall not adopt or enforce any rule or
35 regulation that would require any employer to submit a trip reduction plan.

36 (b) The south coast district may require employers with 100 or more employees
37 at a single worksite to provide ride-matching information and transit information
38 to employees at that worksite.

39 **Comment.** Section 40454 is amended to eliminate an obsolete reference to former Section
40 40457. That section is repealed. See 1996 Cal. Stat. ch. 777, § 1.

1 **Health & Safety Code § 40484 (repealed). District staff**

2 SEC. 15. Section 40484 of the Health and Safety Code is repealed.

3 ~~40484. In the appointment of persons to the south coast district staff, the south~~
4 ~~coast district board shall employ the personnel of the Southern California Air~~
5 ~~Pollution Control District.~~

6 ~~On February 1, 1977, all employees of the Southern California Air Pollution~~
7 ~~Control District shall be employed by the south coast district and shall be entitled~~
8 ~~to similar positions on the south coast district staff. Except as otherwise provided~~
9 ~~in this article, they shall have permanent merit system employee status and shall~~
10 ~~perform the similar duties for the south coast district as for the Southern California~~
11 ~~Air Pollution Control District.~~

12 **Comment.** Section 40484 is repealed as obsolete.

13 **Health & Safety Code § 40500.1 (amended). Stationary source fee limitation**

14 SEC. 16. Section 40500.1 of the Health and Safety Code is amended to read:

15 40500.1. (a) Except as required to comply with the Clean Air Act (42 U.S.C.
16 Sec. 7401 et seq.), fees assessed on stationary sources in the south coast district
17 pursuant to Sections 40500 and 40510 shall not exceed, for any fiscal year, the
18 actual costs of district programs pursuant to this article for the immediately
19 preceding fiscal year with an adjustment not greater than the change in the
20 California Consumer Price Index, for the preceding calendar year, from January 1
21 of the prior year to January 1 of the current year, as determined by the Department
22 of Industrial Relations.

23 (b) Unless specifically authorized by statute, the total amount of all of the fees
24 collected by the south coast district from stationary sources of emissions in the
25 1995-96 fiscal year, and in each subsequent fiscal year, shall not exceed the level
26 of expenditure in the 1993-94 fiscal year, except that the total fee amount may be
27 adjusted annually by not more than the percentage increase in the California
28 Consumer Price Index, as specified in subdivision (a).

29 (c) Any new state or federal mandate which is applicable to the south coast
30 district on and after January 1, 1994, shall not be subject to this section. However,
31 ~~each of those mandates shall be separately identified by the state board in its~~
32 ~~annual report prepared pursuant to Section 42311.1.~~

33 **Comment.** Section 40500.1 is amended to eliminate an obsolete reference to former Section
34 42311.1. That section was repealed by its own terms. See 1993 Cal. Stat. ch. 1028 § 8.

35 **Health & Safety Code § 40503 (amended). Grant of variance**

36 SEC. 17. Section 40503 of the Health and Safety Code is amended to read:

37 40503. (a) The south coast district hearing board, in determining whether or not
38 the petitioner has presented evidence sufficient to make the finding specified in
39 subdivision ~~(b)~~ (a) of Section 42352, shall consider, in addition to any other
40 relevant factors, both of the following:

1 (1) In determining whether or not conditions exist which are beyond the
2 reasonable control of the petitioner, the hearing board shall consider whether or
3 not the petitioner took actions to comply or seek a variance, which were timely
4 and reasonable under the circumstances. In so doing, the hearing board shall
5 consider actions taken by the petitioner since the adoption of the rule from which
6 the variance is sought.

7 (2) In determining whether or not requiring compliance would result in either an
8 arbitrary or unreasonable taking of property or the practical closing and
9 elimination of a lawful business, the hearing board shall consider whether or not
10 an unreasonable burden would be imposed upon the petitioner if immediate
11 compliance is required.

12 (b) (1) As used in this subdivision, “small business” means a business that is
13 independently owned and operated and meets all of the following criteria:

14 (A) The number of employees is 10 or less.

15 (B) The total gross annual receipts are five hundred thousand dollars (\$500,000)
16 or less.

17 (C) Emits not more than four tons per year of any nonattainment air contaminant
18 or its precursor.

19 (2) If the petitioner is a small business, the hearing board shall consider the
20 factors specified in subdivision (a) in the following manner:

21 (A) In determining whether or not the petitioner took timely actions to comply or
22 seek a variance, the hearing board shall make specific inquiries into the reasons for
23 any claimed ignorance of the requirement from which a variance is sought.

24 (B) In determining whether or not the petitioner took reasonable actions to
25 comply, the hearing board shall make specific inquiries into the petitioner’s
26 financial and other capabilities to comply.

27 (C) In determining whether or not the burden of requiring immediate compliance
28 would be unreasonable, the hearing board shall make specific inquiries into, and
29 shall balance, the impact to the petitioner’s business and the benefit to the
30 environment which would result if the petitioner is required to immediately
31 comply.

32 (c) Where the petitioner is a governmental agency, public district, or any other
33 governmental or public entity, in determining whether or not an unreasonable
34 burden would be imposed, the hearing board shall consider any effects of requiring
35 immediate compliance on the availability of essential public services.

36 **Comment.** Section 40503 is amended to correct an erroneous reference to subdivision (b) of
37 Section 42352.

38 **Health & Safety Code § 40515 (amended). Public utility owned by municipal corporation**

39 SEC. 18. Section 40515 of the Health and Safety Code is amended to read:

40 40515. (a) Any public utility owned by a municipal corporation within the south
41 coast district shall provide public notice, pursuant to subdivision (b), before
42 submitting to the board of the south coast district any application for a permit to

1 construct or operate any facility, machine, or contrivance which would be used for
2 water treatment and would emit toxic air contaminants.

3 (b) A public utility specified in subdivision (a) shall mail, post, deliver, or use
4 any other practical method to notify all residents and persons who own property
5 within 330 feet of the property containing the proposed facility, machine, or
6 contrivance. The notice shall include a description of the proposed facility,
7 machine, or contrivance and an explanation of the right to petition the south coast
8 district board to hold a hearing pursuant to Section 40509.

9 ~~(c) This section only applies to any facility, machine, or contrivance on which~~
10 ~~construction began subsequent to May 24, 1985.~~

11 **Comment.** Section 40515 is amended to eliminate an obsolete provision.

12 **Health & Safety Code § 40521 (amended). Limitations on increases**

13 SEC. 19. Section 40521 of the Health and Safety Code is amended to read:

14 40521. (a) ~~Excluding any increase in apportionments due to increases in the~~
15 ~~salaries or wages and fringe benefits to the south coast district employees pursuant~~
16 ~~to subdivision (a) of Section 40488, the apportionment levied on a county, for the~~
17 ~~1977-78 fiscal year, by the south coast district board shall not exceed by more than~~
18 ~~15 percent the apportionment levied on that county by the Southern California Air~~
19 ~~Pollution Control District for the 1976-77 fiscal year.~~

20 (b) ~~For the 1978-79 fiscal year, and~~ For each fiscal year thereafter, the
21 percentage increase in the county apportionments by the south coast district board
22 may not exceed the percentage increase in the California Consumer Price Index as
23 specified in Section 2212 of the Revenue and Taxation Code, or the percentage
24 increase in the total county property tax revenues for the counties included, in
25 whole or in part, within the south coast district, whichever is greater.

26 (c) ~~(b)~~ The limitations specified in ~~subdivisions (a) and (b)~~ subdivision (a) shall
27 not apply to increases in apportionments resulting from the termination of federal
28 or state allocations to the south coast district, if the south coast district board votes
29 to continue the programs financed with those funds.

30 **Comment.** Section 40521 is amended to eliminate an obsolete limitation applicable to the
31 1977-78 fiscal year.

32 **Health & Safety Code § 40524 (repealed). Interests in real property**

33 SEC. 20. Section 40524 of the Health and Safety Code is repealed.

34 40524. All interests in real property held in the name of the Southern California
35 Air Pollution Control District shall become the property of the south coast district
36 on February 1, 1977, and the south coast district shall succeed as of that date to the
37 interest and liability of that district in any leases.

38 **Comment.** Section 40524 is repealed as obsolete.

1 **Health & Safety Code § 40709.7 (amended). Military base closure or realignment**

2 SEC. 21. Section 40709.7 of the Health and Safety Code is amended to read:

3 40709.7. (a) For the purposes of this section, “military base” means a military
4 base that is designated for closure or downward realignment pursuant to the
5 Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense
6 Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

7 (b) For the purposes of this section, “base reuse authority” means the authority
8 recognized pursuant to Section 65050 of the Government Code, ~~as added by~~
9 ~~Assembly Bill 3755 of the 1993-94 Regular Session. If Assembly Bill 3755 is not~~
10 ~~enacted or does not recognize the authority, “base reuse authority” means the~~
11 ~~entity which shall be designated for purposes of this section by the California~~
12 ~~Defense Conversion Council established pursuant to Section 15346.3 of the~~
13 ~~Government Code.~~

14 (c) An appropriate entity of the federal government may apply to the district for
15 emission reduction credits that result from reduced emissions from a military base
16 by June 1, 1995, or within 180 days of the reduction in emissions, whichever
17 occurs later, if the federal government is eligible under district regulations to file
18 and receive emission reduction credits on December 31, 1994.

19 (d) Not later than July 1, 1995, or six months from the date that the base closure
20 or realignment decision becomes final, whichever occurs last, the district shall
21 request and attempt to obtain all records maintained by a military base that are
22 necessary to quantify emission reductions, including, but not limited to, records on
23 the operation of any equipment which emits air contaminants, provided that the
24 district either waives the payment of direct costs to obtain the records or enters
25 into an agreement with the appropriate entity of the federal government or the base
26 reuse authority for the payment of the direct costs to obtain the records. The
27 district shall maintain these records.

28 (e)(1) A base reuse authority may apply to a district, under the emission
29 reductions banking system established pursuant to Section 40709, for any
30 reductions in emissions related to the termination or reduction of operations at the
31 military base under its jurisdiction.

32 (2) The district shall quantify and bank the emission reductions for a closing or
33 realigning military base within 180 days of a request by a base reuse authority and
34 payment of any applicable fees, if one of the following events has occurred:

35 (A) The federal government agrees in writing to allow the base reuse authority to
36 apply for and receive the emission reduction credits.

37 (B) The time period for the federal government to apply for emission reduction
38 credits pursuant to subdivision (c) has expired and the federal government has not
39 applied for the credits.

40 (C) The base reuse authority has, pursuant to other legal means, obtained the
41 authority to acquire the emission reduction credits.

42 (f) The district shall permanently retire the emission reduction credits obtained
43 pursuant to this section by 5 percent to improve air quality.

1 (g) The baseline for quantifying emission reductions shall be the date that the
2 base closure or realignment decision becomes final. The two-year period ending
3 on the date that the base closure or realignment decision was made shall be used to
4 determine average emissions from the military base unless this two- year period is
5 not representative of normal operations, in which case an alternative, consecutive,
6 two-year period which is within the five years prior to the baseline date may be
7 used, as determined by the district.

8 (h) After registration, certification, or other approval of the emission reductions
9 by a district air pollution control officer pursuant to subdivision (a) of Section
10 40709 and this section, the base reuse authority shall be deemed the owner of the
11 emissions source for purposes of the issuance of a certificate pursuant to Section
12 40710. Upon receipt of the certificate, or other approval, the base reuse authority
13 may use, sell, or otherwise dispose of the emission reduction credits as determined
14 by the base reuse authority, provided that the credits may only be used for base
15 reuse within the jurisdiction of the district.

16 **Comment.** Section 40709.7 is amended to eliminate an obsolete provision. The definition of
17 “base reuse authority” was contingent on whether Government Code Section 65050, listing base
18 reuse entities, was enacted. That section was enacted as specified in the contingency. See, 1994
19 Cal. Stat. ch. 1261, § 6. Consequently, the alternative definition, that would have applied if the
20 contingency had failed, is obsolete.

21 **Health & Safety Code § 40717.5 (amended). Indirect sources**

22 SEC. 22. Section 40717.5 of the Health and Safety Code is amended to read:

23 40717.5. (a) Any district which proposes to adopt or amend a rule or regulation
24 pursuant to Section 40716 or 40717, which imposes any requirement on an
25 indirect source to reduce vehicle trips or vehicle miles traveled, including, but not
26 limited to, any rule or regulation affecting ridesharing or alternative transportation
27 mode strategies, shall, prior to the adoption or amendment of the rule or
28 regulation, do all of the following:

29 (1) Ensure, to the extent feasible, and based upon the best available information,
30 assumptions, and methodologies which are reviewed and adopted at a public
31 hearing, that the proposed rule or regulation would require an indirect source to
32 reduce vehicular emissions only to the extent that the district determines that the
33 source contributes to air pollution by generating vehicle trips that would not
34 otherwise occur. In complying with this paragraph, a district shall make reasonable
35 and feasible efforts to assign responsibility for existing and new vehicle trips in a
36 manner which equitably distributes responsibility among indirect sources.

37 (2) Ensure that, to the extent feasible, the proposed rule or regulation does not
38 require an indirect source to reduce vehicular trips which are required to be
39 reduced by other rules or regulations adopted for the same purpose.

40 (3) Take into account the feasibility of implementing the proposed rule or
41 regulation.

42 (4) Pursuant to Section 40922, consider the cost effectiveness of the proposed
43 rule or regulation.

1 (5) Determine that the proposed rule or regulation would not place any
2 requirement on public agencies or on indirect sources which would duplicate any
3 requirement placed upon those public agencies or indirect sources as a result of
4 another rule or regulation adopted pursuant to Section 40716 or 40717.

5 (b) A district may delegate to any city or county the responsibility to implement
6 a rule or regulation that is subject to subdivision (a). However, if an indirect source
7 subject to the rule or regulation has sites located both within and outside of the
8 jurisdiction of a city or county to which that responsibility has been delegated, the
9 indirect source may elect to be subject to the implementation of that rule or
10 regulation only by the district. Notwithstanding Section 40454 or subdivision (b)
11 of Section 40927, an indirect source which elects to be regulated only by a district
12 pursuant to this subdivision may also elect to include sites under district regulation
13 that would not otherwise be subject to district regulation, and, in that event, shall
14 not be subject to the implementation by a city or county of any requirement
15 contained in that rule or regulation.

16 (c)(1) Nothing in this section constitutes an infringement on the existing
17 authority of counties and cities to plan, control, or condition land use, or on the
18 ability of a city, county, or other public agency to impose trip reduction measures
19 pursuant to a voter-mandated growth management program.

20 (2) Nothing in this section provides or transfers new authority over land use to a
21 district.

22 **Comment.** Section 40717.5 is amended to eliminate an obsolete reference to former section
23 40927. That section was repealed by its own terms. See 1993 Cal. Stat. ch. 563, § 2.

24 **Health & Safety Code § 40962 (repealed). Commencement of operation**

25 SEC. 23. Section 40962 of the Health and Safety Code is repealed.

26 ~~40962. The Sacramento district shall commence operation on July 1, 1989, and~~
27 ~~on that date shall assume the authority, functions, employees, and responsibilities~~
28 ~~of the Sacramento County Air Pollution Control District.~~

29 **Comment.** Section 40962 is repealed as obsolete.

30 **Health & Safety Code § 41212 (repealed). Commencement of operation**

31 SEC. 24. Section 41212 of the Health and Safety Code is repealed.

32 ~~41212. The Mojave Desert district shall commence operations on July 1, 1993,~~
33 ~~and on that date shall assume the authority, duties, and employees of the San~~
34 ~~Bernardino County Air Pollution Control District which shall cease to exist as of~~
35 ~~that date.~~

36 **Comment.** Section 41212 is repealed as obsolete.

1 **Health & Safety Code § 41242 (repealed). Transfer of funds, property, and obligations of**
2 **former district**

3 SEC. 25. Section 41242 of the Health and Safety Code is repealed.

4 ~~41242. On July 1, 1993, the Mojave Desert district shall succeed to all funds,~~
5 ~~property, and obligations of the San Bernardino County Air Pollution Control~~
6 ~~District.~~

7 **Comment.** Section 41242 is repealed as obsolete.

8 **Health & Safety Code § 41261 (amended). Transfer of officers and employees from former**
9 **district**

10 SEC. 26. Section 41261 of the Health and Safety Code is amended to read:

11 ~~41261. On July 1, 1993, the APCO, designated deputies, and other exempt~~
12 ~~employees of the San Bernardino County Air Pollution Control District shall be~~
13 ~~employed by the Mojave Desert district and shall serve in the same capacity for~~
14 ~~the Mojave Desert district. The APCO and designated deputies of the Mojave~~
15 ~~Desert District shall serve at the pleasure of the Mojave Desert district board, and~~
16 ~~shall receive the compensation that is determined by the Mojave Desert district~~
17 ~~board.~~

18 **Comment.** Section 41261 is amended to eliminate obsolete provisions relating to the
19 succession of the Mojave Desert District to the personnel of the former San Bernadino County
20 Air Pollution Control District.

21 **Health & Safety Code § 41263 (repealed). Employment of personnel of former district**

22 SEC. 27. Section 41263 of the Health and Safety Code is repealed.

23 ~~41263. In the appointment of persons to the Mojave Desert district staff, the~~
24 ~~Mojave Desert district board shall employ the personnel of the San Bernardino~~
25 ~~County Air Pollution Control District. On July 1, 1993, all employees of the San~~
26 ~~Bernardino County Air Pollution District shall be employed by the Mojave Desert~~
27 ~~district and shall be entitled to similar positions and duties on the Mojave Desert~~
28 ~~district staff. Except as otherwise provided in this article, they shall have~~
29 ~~permanent merit system employee status. A period of time as specified by the San~~
30 ~~Bernardino County Board of Supervisors shall be allowed to employees of the San~~
31 ~~Bernardino County Air Pollution Control District to transfer to other appropriate~~
32 ~~county employment before July 1, 1993.~~

33 **Comment.** Section 41263 is repealed as obsolete.

34 **Health & Safety Code § 41500 (amended). Powers and duties**

35 SEC. 28. Section 41500 of the Health and Safety Code is amended to read:

36 41500. To coordinate air pollution control activities throughout the state, and to
37 ensure that the entire state is, or will be, in compliance with the standards adopted
38 pursuant to Section 39606, the state board shall do all of the following:

39 (a) Review the district attainment plans submitted pursuant to Section 40911,
40 and the revised plans submitted pursuant to Section 40925, to determine whether

1 the plans will achieve and maintain the state’s ambient air quality standards by the
2 earliest practicable date.

3 (b) Review the rules and regulations and programs submitted by the districts
4 pursuant to Section 40704 to determine whether they are sufficiently effective to
5 achieve and maintain the state ambient air quality standards.

6 (c) Review the enforcement practices of the districts and local agencies
7 delegated authority by districts pursuant to Section 40717 ~~or 40717.2~~ to determine
8 whether reasonable action is being taken to enforce their programs, rules, and
9 regulations.

10 **Comment.** Section 41500 is amended to an erroneous reference to Section 40717.2, which
11 does not exist.

12 **Health & Safety Code § 41500.5 (amended). Environmental management**

13 SEC. 29. Section 41500.5 of the Health and Safety Code is amended to read:

14 41500.5. Notwithstanding any other provision of law, any plan required by the
15 provisions of this ~~title~~ division shall be subject to the provisions of Article 5.5
16 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5
17 of the Government Code.

18 **Comment.** Section 41500.5 is amended to correct an erroneous reference to “this title.” The
19 Health and Safety Code does not use titles as an organizational division. The reference has been
20 replaced with a reference to “this division.”

21 **Health & Safety Code § 41507 (repealed). Review of basinwide plan**

22 SEC. 30. Section 41507 of the Health and Safety Code is repealed.

23 ~~41507. The state board may order, pursuant to Section 41602, review of a~~
24 ~~basinwide air pollution control plan for revision to achieve and maintain federal~~
25 ~~ambient air quality standards in the air basin, as part of the state implementation~~
26 ~~plan required under Section 1857c-5 of Title 42 of the United States Code. Such~~
27 ~~revision shall be filed with the state board within 60 days of the request of the state~~
28 ~~board, and the districts shall adopt rules and regulations implementing such plans~~
29 ~~within 60 days after final review pursuant to Section 41500, or final adoption~~
30 ~~pursuant to Section 41503, by the state board.~~

31 **Comment.** Section 41507 is repealed as obsolete. The authority to conduct a review of the type
32 that is the subject of this section was provided in Section 41602, which is repealed. See 1988 Cal.
33 St. ch. 1568, § 23.

34 **Health & Safety Code § 41518 (repealed). Cogeneration technology projects capable of**
35 **construction before 1987**

36 SEC. 31. Section 41518 of the Health and Safety Code is repealed.

37 ~~41518. The state board shall develop, in cooperation with the districts and the~~
38 ~~Public Utilities Commission, an inventory of potential cogeneration technology~~
39 ~~projects in each air basin in the state which could be constructed before 1987.~~

40 **Comment.** Section 41518 is repealed as obsolete.

1 **Health & Safety Code § 41519 (repealed). Resource recovery projects planned or proposed**
2 **to be constructed before 1987**

3 SEC. 32. Section 41519 of the Health and Safety Code is repealed.

4 ~~41519. The state board, in cooperation with the State Solid Waste Management~~
5 ~~Board, the districts and the regional planning agencies, shall develop an inventory~~
6 ~~of potential resource recovery projects which are planned or proposed to be~~
7 ~~constructed before 1987.~~

8 **Comment.** Section 41519 is repealed as obsolete.

9 **Health & Safety Code § 41520 (repealed). Preparation of inventories**

10 SEC. 33. Section 41520 of the Health and Safety Code is repealed.

11 ~~41520. In preparing the inventories required pursuant to Sections 41518 and~~
12 ~~41519, the state board shall contract with private firms or utilize existing board~~
13 ~~staff, whichever costs less. Both inventories shall be completed not later than July~~
14 ~~1, 1980.~~

15 **Comment.** Section 41520 is repealed as obsolete.

16 **Health & Safety Code § 41600 (amended). Air quality impact of specified projects**

17 SEC. 34. Section 41600 of the Health and Safety Code is amended to read:

18 41600. (a) The districts shall provide for, and shall periodically revise as
19 appropriate, the growth allowances necessary to accommodate the net air quality
20 impact, if any, of cogeneration technology projects and resource recovery projects
21 ~~expected to be permitted by January 1, 1987, and subsequent periods thereafter,~~
22 ~~pursuant to Section 42314,~~ so that state and federal ambient air quality standards
23 may be achieved and maintained or that reasonable further progress be made
24 toward attainment.

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

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

38 **Comment.** Section 41600 is amended to eliminate an obsolete provision.

1 **Health & Safety Code § 41704.5 (repealed). Vessels using steam boilers**

2 SEC. 35. Section 41704.5 of the Health and Safety Code is repealed.

3 ~~41704.5. The state board shall conduct a study in cooperation with the affected~~
4 ~~districts and representatives of the maritime industry to determine whether vessels~~
5 ~~using steam boilers can be brought into compliance with Section 41701 by January~~
6 ~~1, 1984, or any earlier date, taking into account the age and physical condition of~~
7 ~~the affected vessels, vessel safety and operational requirements, and technological~~
8 ~~feasibility.~~

9 ~~Following completion of such study, the state board shall conduct a public~~
10 ~~hearing to consider and, if appropriate, adopt a compliance schedule by which~~
11 ~~various classes of vessels will be brought into compliance with the standards~~
12 ~~specified in Section 41701 on and after January 1, 1984. Prior to taking any action~~
13 ~~to adopt any such compliance schedule, the state board shall report the results of~~
14 ~~its study to the Legislature, and in no event shall such study be filed with the~~
15 ~~Legislature later than January 1, 1983. The report shall also address emissions~~
16 ~~from diesel powered vessels.~~

17 **Comment.** Section 41704.5 is repealed as obsolete.

18 **Health & Safety Code § 41900 (repealed). Sandblasting standards**

19 SEC. 36. Section 41900 of the Health and Safety Code is repealed.

20 ~~41900. The chairman of the state board shall convene a committee of 11~~
21 ~~members to recommend to the state board for adoption, not later than January 1,~~
22 ~~1975, air pollution standards for sandblasting operations.~~

23 **Comment.** Section 41900 is repealed as obsolete.

24 **Health & Safety Code § 41981 (repealed). Study of emissions**

25 SEC. 37. Section 41981 of the Health and Safety Code is repealed.

26 ~~41981. The state board shall, in consultation with the affected district and the~~
27 ~~Department of Health Services, complete a study, using all available data on the~~
28 ~~emissions from incineration of toxic waste materials.~~

29 ~~The state board shall report its findings to the Legislature on or before January 1,~~
30 ~~1984.~~

31 **Comment.** Section 41981 is repealed as obsolete.

32 **Health & Safety Code § 42301.9 (amended). Definitions**

33 SEC. 38. Section 42301.9 of the Health and Safety Code is amended to read:

34 42301.9. For the purposes of Sections ~~42301.4~~ 42301.5 to 42301.8, inclusive:

35 (a) "School" means any public or private school used for purposes of the
36 education of more than 12 children in kindergarten or any of grades 1 to 12,
37 inclusive, but does not include any private school in which education is primarily
38 conducted in private homes.

39 (b) "Air contaminant" means any contaminant defined pursuant to Section
40 39013.

1 (c) “Administering agency” means an agency designated pursuant to Section
2 25502.

3 (d) “Handle” means handle as defined in Article 1 (commencing with Section
4 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

5 **Comment.** Section 42301.9 is amended to eliminate an erroneous reference to Section 42301.4,
6 which does not exist.

7 **Health & Safety Code § 42314 (amended). Prohibition of emissions offsets requirement for**
8 **cogeneration technology projects**

9 SEC. 39. Section 42314 of the Health and Safety Code is amended to read:

10 42314. (a) Notwithstanding any other provision of any district permit system,
11 and except as provided in this section, no district shall require emissions offsets
12 for any cogeneration technology project or resource recovery project which
13 satisfies all of the following requirements:

14 (1) The project satisfies one of the following size criteria:

15 (A) The project produces 50 megawatts or less of electricity. In the case of a
16 combined cycle project, the electrical capacity of the steam turbine may be
17 excluded from the total electrical capacity of the project for purposes of this
18 paragraph if no supplemental firing is used for the steam portion and the
19 combustion turbine has a minimum efficiency of 25 percent.

20 (B) The project processes municipal wastes and produces more than 50
21 megawatts, but less than 80 megawatts, of electricity.

22 (2) The project will use the appropriate degree of pollution control technology
23 (BACT or LAER) as defined and to the extent required by the district permit
24 system.

25 (3) Existing permits for any item of equipment to be replaced by the project,
26 whether the equipment is owned by the applicant or a thermal beneficiary of the
27 project, are surrendered to the district or modified to prohibit operation
28 simultaneously with the project to the extent necessary to satisfy district offset
29 requirements. The emissions reductions associated with the shutdown of existing
30 equipment shall be credited to the project as emissions offsets in accordance with
31 district rules.

32 (4) The applicant has provided offsets to the extent they are reasonably available
33 from facilities it owns or operates in the air basin and which mitigate the
34 remaining impacts of the project.

35 (5) For new projects which burn municipal waste, landfill gas, or digester gas,
36 the applicant has, in the judgment of the district, made a good faith effort to secure
37 all reasonably available emissions offsets to mitigate the remaining impact of the
38 project, and has secured all reasonably available offsets.

39 (b) This section applies to any project for which an application for an authority
40 to construct is deemed complete by the district after January 1, 1986, only if the
41 project’s net emissions, combined with the net emissions from projects previously
42 permitted under this section, are less than the amount provided for in the

1 applicable growth allowance established by the district pursuant to Section 41604
2 41600. If a district has not yet provided a growth allowance pursuant to Section
3 41604 41600, the growth allowance is zero. For purposes of this subdivision, “net
4 emissions” means the project’s emissions, less any offsets provided by the
5 applicant and less utility displacement credits granted pursuant to Section 41605.

6 (c) This section does not relieve a project from satisfying all applicable
7 requirements of Part C (Prevention of Significant Deterioration) of the Clean Air
8 Act, as amended in 1977 (42 U.S.C. Sec. 7401 et seq.), or any rules or regulations
9 adopted pursuant to Part C.

10 **Comment.** Section 42314 is amended to correct erroneous references to former Section 41604,
11 which was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25.

12 **Health & Safety Code § 42314.5 (amended). Organic waste utilization facility permits**

13 SEC. 40. Section 42314.5 of the Health and Safety Code is amended to read:

14 42314.5. In considering a permit for a facility which utilizes agricultural waste
15 products, forest waste products, or similar organic wastes as biomass fuel in a
16 steam generator (boiler) to produce electrical energy, or to be used as a digester
17 feedstock in a cogeneration facility, the district shall allow offset credits as
18 provided in Sections 41604 41600 and 41605.5.

19 **Comment.** Section 42314.5 is amended to correct an erroneous reference to former Section
20 41604, which was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25.

21 **Health & Safety Code § 42402.5 (amended). Administrative civil penalties**

22 SEC. 41. Section 42402.5 of the Health and Safety Code is amended to read:

23 42402.5. (a) In addition to any civil and criminal penalties prescribed under this
24 article, a district may impose administrative civil penalties for a violation of this
25 part, or any order, permit, rule, or regulation of the state board or of a district,
26 including a district hearing board, adopted pursuant to Part 1 (commencing with
27 Section 39000) to Part 4 (commencing with Section 41500), inclusive, if the
28 district board has adopted rules and regulations specifying procedures for the
29 imposition and amounts of these penalties. No administrative civil penalty levied
30 pursuant to this section may exceed five hundred dollars (\$500) for each violation.
31 However, nothing in this section is intended to restrict the authority of a district to
32 negotiate mutual settlements under any other penalty provisions of law which
33 exceed five hundred dollars (\$500).

34 (b) Each day in which a violation occurs is a separate offense.

35 **Comment.** Section 42402.5 is amended to provide that each day in which a violation occurs
36 under this section is a separate offense. This is consistent with the provisions of this article
37 providing for civil and criminal penalties. See Sections 42400(e), 42400.1(c), 42400.2(e),
38 42400.3(c), 42400.4((d), 42401, 42402(c), 42402.1(c), 42402.2(d), 42402.3(b).

1 **Health & Safety Code § 42405.1 (amended). Reward for information resulting in penalty**

2 SEC. 42. Section 42405.1 of the Health and Safety Code is amended to read:

3 42405.1. (a) Any person who provides information which materially contributes
4 to the imposition of a civil penalty or criminal fine against any person for violating
5 any provision of this part or any rule, regulation, or order of a district pertaining to
6 mobile source emission regulations or limitations shall be paid a reward pursuant
7 to regulations adopted by the district under subdivision (f). The reward shall not
8 exceed 10 percent of the amount of the civil penalty or criminal fine collected by
9 the district, district attorney, or city attorney. The district shall pay the reward to
10 the person who provides information which results in the imposition of a civil
11 penalty, and the city or the county shall pay the reward to the person who provides
12 information which results in the imposition of a criminal fine. No reward paid
13 pursuant to this subdivision shall exceed five thousand dollars (\$5,000).

14 (b) No informant shall be eligible for a reward for a violation known to the
15 district, unless the information materially contributes to the imposition of criminal
16 or civil penalties for a violation specified in this section.

17 (c) If there is more than one informant for a single violation, the first notification
18 received by the district shall be eligible for the reward. If the notifications are
19 postmarked on the same day or telephoned notifications are received on the same
20 day, the reward shall be divided equally among those informants.

21 (d) Public officers and employees of the United States, the State of California, or
22 districts, counties, and cities in California are not eligible for the reward pursuant
23 to subdivision (a), unless reporting of those violations does not relate in any
24 manner to their responsibilities as public officers or employees.

25 (e) An informant who is an employee of a business and who provides
26 information that the business violated this ~~chapter~~ part is not eligible for a reward
27 if the employee intentionally or negligently caused the violation or if the
28 employee's primary and regular responsibilities included investigating the
29 violation, unless the business knowingly caused the violation.

30 (f) The district shall adopt regulations which establish procedures for a
31 determination of the accuracy and validity of information provided and for the
32 receipt and review of claims for payment of rewards. All decisions concerning the
33 eligibility for a reward and the materiality of the provided information shall be
34 made pursuant to these regulations. In each case brought under subdivision (a), the
35 district, the office of the city attorney, or the district attorney, whichever office
36 brings the action, shall determine whether the information materially contributed
37 to the imposition of civil or criminal penalties for violating any provision of this
38 part or any rule, regulation, or order of a district pertaining to emission regulations
39 or limitations.

40 (g) The district shall continuously publicize the availability of the rewards
41 pursuant to this section for persons who provide information pursuant to this
42 section.

- 1 (h) Claims may be submitted only for those referrals made on or after January 1,
2 1989.
- 3 **Comment.** Section 42405.1 is amended to correct an underinclusive reference in subdivision
4 (e).
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