

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT AND RECOMMENDATION

Environmental Law

Reorganization of Environmental and Natural Resource Statutes	401
Air Resources Technical Revisions	409

October 1999

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT

Reorganization of Environmental and Natural Resource Statutes

June 1999

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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STATE OF CALIFORNIA

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June 25, 1999

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

The California Law Revision Commission was directed by the Legislature to study whether the laws within various codes relating to environmental quality and natural resources should be reorganized. Significant opposition by those who would be most affected by such reorganization has convinced the Commission that the reorganization should not be undertaken.

This report is submitted pursuant to Resolution Chapter 91 of the Statutes of 1998.

Respectfully submitted,

Arthur K. Marshall
Chairperson

REORGANIZATION OF ENVIRONMENTAL AND NATURAL RESOURCE STATUTES

In 1996, the Legislature directed the California Law Revision Commission to study:

Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes.¹

It was hoped that reorganization would make these statutes more easily accessible to businesses and individuals that are subject to environmental regulation.

Proposed Outline

In 1997, the Commission developed a detailed outline of a proposed Environment Code with the advice of its consultants, Professors John P. Dwyer² and Brian E. Gray.³ The Commission circulated the outline and requested public comment on the advantages and disadvantages of reorganizing California's environmental statutes along the lines proposed.

Public reaction was mixed. Some commentators felt that the creation of a consolidated and well-organized body of environmental statutory law would be quite beneficial. Others felt that reorganization was unnecessary because electronic research tools and commercially available practice guides already made environmental and natural resource statutes suf-

1. See 1996 Cal. Stat. res. ch. 38.

2. Professor Dwyer, Boalt Hall School of Law, is editor of California Environmental Laws Annotated (Bancroft-Whitney *annual*).

3. Professor Gray, Hastings College of Law, is editor of California Environmental Laws (West *annual*).

ficiently accessible. Some were concerned that the disadvantages of reorganization would outweigh the benefits. The identified disadvantages include:

(1) *Transitional costs.* The proposed reorganization would require the renumbering of nearly all environmental and natural resource statutes. After renumbering, those who use the statutes would need to learn the new numbering scheme and replace obsolete reference materials, at a significant cost. Also, administrative agencies responsible for enforcing the statutes would need to amend their regulations to reflect the new numbering.

(2) *Ongoing costs.* Statutory renumbering would require the use of a cross-reference table relating old section numbers to new section numbers in order to understand material that cites the old section numbers (e.g., a previously published court opinion).

(3) *Risk of inadvertent policy change.* Despite the Commission's intention that the reorganization be nonsubstantive, drafting errors and changes in interpretive context could have a substantive effect on the meaning of reorganized provisions.

Trial Installment

In response to the public's mixed reaction to the concept of statutory reorganization, the Commission decided to prepare a trial installment of the proposed Environment Code. This would provide a more tangible basis for evaluating the merits of reorganization.

In July 1998, the Commission released a tentative recommendation setting out the first four divisions of the Environment Code and soliciting public comment. The response to the tentative recommendation was not favorable. Reactions ranged from doubt and concern to outright opposition. The same concerns were expressed that had been raised earlier —

reorganization is unnecessary, would impose transitional and ongoing costs, and would result in inadvertent substantive change.⁴ Significantly, critics of the tentative recommendation now included business groups (who, as a class, were intended to benefit from reorganization).⁵

Legislative Guidance

In light of the negative reaction to the tentative recommendation, the Commission decided to seek additional guidance from the Legislature. To that end, an informational hearing was held by the Assembly Natural Resources Committee on March 15, 1999. After considering testimony from Commission staff and from members of the public, the majority of the committee members strongly urged that the reorganization not go forward:

In short, while a noble idea, the practicality of developing a consolidated environmental code is diminished by the potential confusion, inconsistency and cost of the task. For these reasons, we strongly urge that the Commission end this project and focus its efforts on other, more productive projects.⁶

Conclusion

It is clear that many of those who would be affected by the reorganization of environmental and natural resource statutes believe that the reorganization would impose significant costs

4. The commentators did not identify any provision in the trial installment that would have caused a substantive change, but still believed the risk of inadvertent substantive change to be significant.

5. See, e.g., letter from Victor Weisser, California Council for Environmental and Economic Balance (Nov. 16, 1998) (attached to Memorandum 98-76, on file with California Law Revision Commission); letter from Brian E. White, California Chamber of Commerce (Nov. 16, 1998) (attached to Memorandum 98-76, on file with California Law Revision Commission).

6. Letter from Assembly Natural Resources Committee members (April 5, 1998) (on file with California Law Revision Commission).

and would not significantly improve the law. In light of this public response, the Commission has decided not to proceed with the reorganization.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Air Resources Technical Revisions

October 1999

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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STATE OF CALIFORNIA

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October 14, 1999

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

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 is submitted pursuant to Resolution Chapter 81 of the Statutes of 1999.

Respectfully submitted,

Howard Wayne
Chairperson

AIR RESOURCES TECHNICAL REVISIONS

In the course of studying the organization of California's environmental and natural resources statutes, the Law Revision Commission identified a number of technical defects in Parts 1 to 4 of Division 26 of the Health and Safety Code, relating to air resources.¹ The Commission recommends a number of technical revisions to correct these defects.

Erroneous Cross-References

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

Obsolete Provisions

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

Inoperative Definition

A 1994 statute added a number of sections relating to air quality whose operation was contingent on events that have

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, 41865, 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, 42301.5.

not occurred and are unlikely to occur.⁵ Consequently, these sections have never become operative. One inoperative section defines “bureau” for the purpose of the Air Resources division.⁶ Other sections in the division, including sections that were not subject to the operation contingency, use the defined term.⁷ This problem is addressed in the proposed law by repealing the definition section and reenacting it without any restriction on its operation.

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

6. Health & Safety Code § 39016.5.

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

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PROPOSED LEGISLATION

Health & Safety Code § 39016.5 (repealed). Bureau

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

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

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

Health & Safety Code § 39016.5 (added). Bureau

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

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

Comment. Section 39016.5 replaces former Section 39016.5 (added by 1994 Cal. Stat. ch. 1192, § 3), which never became operative and is repealed. It continues the substance of former Section 39016.5 without change.

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

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

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

(b) The members shall be appointed by the Governor, with the consent of the Senate, on the basis of their demonstrated

interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems. Six members shall have the following qualifications:

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

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

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

(4) Two members shall be public members.

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

(c) Five members shall be board members from districts who shall reflect the qualitative requirements of subdivision (b) to the extent practicable. Of these five members, one shall be a board member from the south coast district, one shall be a board member from the bay district, one shall be a board member from the San Joaquin Valley Unified Air Pollution Control District or, if the unified district is abolished, from the San Joaquin Valley Air Quality Management District if created pursuant to Section ~~41401~~ 5 of Chapter 915 of the Statutes of 1994, one shall be a board member from the San Diego County Air Pollution Control District, and one shall be a board member of any other district.

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

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

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

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

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

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

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

or committees thereof, or upon authorization of the state board while on official business of the state board.

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

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

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

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

Health & Safety Code § 39513 (amended). Meetings

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 39515 is amended to eliminate obsolete references to former Health and Safety Code Sections 41507, 41602, and 41603, which have been repealed. See 1988 Cal. Stat. ch. 1568, §§ 23 & 24, and the act that amended this section.

Health & Safety Code § 39604 (amended). Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) The term of one member appointed pursuant to paragraph (1) of subdivision (b) of Section 39670 is extended until January 1, 1988, and the terms of three members appointed pursuant to that paragraph are extended until~~

~~January 1, 1989, as designated by the Secretary of Environmental Affairs.~~

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

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 39807 is amended to eliminate an obsolete reference to Section 41603, which was repealed. See 1988 Cal. Stat. ch. 1568, § 24.

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

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

40162. Funding of the San Joaquin Valley Unified Air Pollution Control District, or, if the unified district ceases to exist, of the valley district if created pursuant to Section 41101 5 of Chapter 915 of the Statutes of 1994, may be provided by, but is not limited to, grants, subventions, permit fees, penalties, and vehicle license fees. Notwithstanding any other provision of law, no funding contribution shall be required from the counties or cities included in the unified district or valley district.

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

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

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

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

Comment. Section 40416 is repealed as obsolete.

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

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

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

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

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

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

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

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

regulation. For the purposes of this subdivision, a major rule or rule amendment is one that is intended to significantly affect air quality or which imposes emission limitations.

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 40454 is amended to eliminate an obsolete reference to former Section 40457, which was repealed. See 1996 Cal. Stat. ch. 777, § 1.

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

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

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

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

~~for the south coast district as for the Southern California Air Pollution Control District.~~

Comment. Section 40484 is repealed as obsolete.

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

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

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

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

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

Comment. Section 40500.1 is amended to eliminate an obsolete reference to former Section 42311.1, which was repealed by its own terms. See 1993 Cal. Stat. ch. 1028, § 8.

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

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

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

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider whether or not 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 from which the variance is sought.

(2) 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.

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

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

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

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

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

(A) In determining whether or not the petitioner took timely actions to comply or seek a variance, the hearing board shall

make specific inquiries into the reasons for any claimed ignorance of the requirement from which a variance is sought.

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

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

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

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

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

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

40515. (a) Any public utility owned by a municipal corporation within the south coast district shall provide public notice, pursuant to subdivision (b), before submitting to the board of the south coast district any application for a permit to construct or operate any facility, machine, or contrivance which would be used for water treatment and would emit toxic air contaminants.

(b) A public utility specified in subdivision (a) shall mail, post, deliver, or use any other practical method to notify all residents and persons who own property within 330 feet of

the property containing the proposed facility, machine, or contrivance. The notice shall include a description of the proposed facility, machine, or contrivance and an explanation of the right to petition the south coast district board to hold a hearing pursuant to Section 40509.

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 40524 is repealed as obsolete.

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

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

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

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

(c) An appropriate entity of the federal government may apply to the district for emission reduction credits that result from reduced emissions from a military base by June 1, 1995,

or within 180 days of the reduction in emissions, whichever occurs later, if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 40962 is repealed as obsolete.

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

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

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

Comment. Section 41212 is repealed as obsolete.

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

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

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

Comment. Section 41242 is repealed as obsolete.

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

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

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

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

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

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

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

Comment. Section 41263 is repealed as obsolete.

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

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

41500. 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 39606, the state board shall do all of the following:

(a) Review the district attainment plans submitted pursuant to Section 40911, and the revised plans submitted pursuant to Section 40925, 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 40704 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 Section 40717 or ~~40717.2~~ to determine whether reasonable action is being taken to enforce their programs, rules, and regulations.

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

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

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

41500.5. Notwithstanding any other provision of law, any plan required by the provisions of this title *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 41500.5 is amended to correct an erroneous reference to “this title.” The Health and Safety Code does not use titles as an organizational division. The reference has been replaced with a reference to “this division.”

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

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

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

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

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

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

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

Comment. Section 41518 is repealed as obsolete.

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

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

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

Comment. Section 41519 is repealed as obsolete.

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

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

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

Comment. Section 41520 is repealed as obsolete.

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

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

41600. (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,~~ *permitted* pursuant to Section 42314, 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 41600 is amended to eliminate an obsolete provision.

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

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

~~41704.5. 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 41701 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.~~

~~Following completion of such 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 41701 on and after January 1, 1984. Prior to taking any action to adopt any such compliance schedule, the state board shall report the results of its study to the Legislature, and in no event shall such study be filed with the Legislature later than January 1, 1983. The report shall also address emissions from diesel powered vessels.~~

Comment. Section 41704.5 is repealed as obsolete.

Health & Safety Code § 41865 (amended). Rice straw burning

SEC. 36. Section 41865 of the Health and Safety Code is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 39606.

(2) “Air pollution control council” means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) “Conditional rice straw burning permit” means a permit to burn granted pursuant to subdivisions (f) and (h).

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

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

(6) “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.

(7) “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.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) 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

(2) Notwithstanding paragraph (1), 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.

(3) Notwithstanding paragraph (1), 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.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) 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.

(e) 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 subdivisions (f) and (h). 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.

(f) 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 subdivision (h). 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.

(g) 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 subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), 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:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) 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.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) 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 subdivision (e).

(i)(1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (3) (4) of subdivision (c) shall be the lesser of:

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

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

(2) 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 paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) 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 paragraph (1) is not exceeded.

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

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), 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.

(k) "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 41852 is not subject to this section.

(l)(1) 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.

(2) 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.

(m) 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.

(n) 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 subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section.

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 subdivision (s) 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).

(o) 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 subparagraph (1) of subdivision (c). 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 paragraph (1) of subdivision (c).

(p) The Legislature hereby finds and declares as follows:

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

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

(q) 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.

(r) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) 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 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, 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 subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) 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.

(s)(1) Any person who negligently or intentionally violates any provision of this article 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 subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

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

(t) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(u) 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:

(1) 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.

(2) 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. Subdivision (i) of Section 41865 is amended to correct an erroneous cross-reference.

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

SEC. 37. Section 41900 of the Health and Safety Code is repealed.

~~41900. 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 41900 is repealed as obsolete.

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

SEC. 38. Section 41981 of the Health and Safety Code is repealed.

~~41981. 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.~~

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

Comment. Section 41981 is repealed as obsolete.

Health & Safety Code § 42301.5 (amended). Compliance schedules

SEC. 39. Section 42301.5 of the Health and Safety Code is amended to read:

42301.5. (a) ~~Except as provided in subdivision (b), 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.~~

(b) ~~The district may require compliance with a regulation prior to completion of the five-year period specified in subdivision (a) 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:~~

(1) ~~Require the abandonment or removal from service of any existing manufacturing or energy-producing equipment.~~

(2) ~~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.~~

~~(3) 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.~~

~~(4) 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.~~

(e) Any article, machine, equipment, or contrivance which may emit into the ambient air any toxic air contaminant identified pursuant to Section 39662 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.

~~(d)~~ (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 42301.5 is amended to eliminate obsolete provisions.

Health & Safety Code § 42301.9 (amended). Definitions

SEC. 40. Section 42301.9 of the Health and Safety Code is amended to read:

42301.9. For the purposes of Sections ~~42301.4~~ 42301.5 to 42301.8, 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 39013.

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

(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 42301.9 is amended to correct an erroneous reference to Section 42301.4, which does not exist.

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

SEC. 41. Section 42314 of the Health and Safety Code is amended to read:

42314. (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 41604 *41600*. If a district has not yet provided a growth allowance pursuant to Section 41604 *41600*, 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 41605.

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

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

SEC. 42. Section 42314.5 of the Health and Safety Code is amended to read:

42314.5. 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 41604 *41600* and 41605.5.

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

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

SEC. 43. Section 42405.1 of the Health and Safety Code is amended to read:

42405.1. (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 ~~chapter~~ *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. Subdivision (e) of Section 42405.1 is amended to correct an underinclusive reference.
