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AMENDED IN ASSEMBLY MAY 27, 2005
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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1101

Introduced by Assembly Members Oropeza and Jerome Horton

February 22, 2005

An act to amend Sections 44320, 44322, *44340*, 44342, 44360, 44390, and 44391 of, and to add Sections 44303.5, 44323.5, 44350, 44395, and 44396 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1101, as amended, Oropeza. Air pollution: diesel magnet sources.

(1) Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources, including stationary sources. The Air Toxics

“Hot Spots” Information and Assessment Act of 1987 requires the state board to compile a list of substances that present a chronic or acute threat to public health when present in the ambient air, subjects certain facilities to the act, according to a schedule, and requires the operator of a subject facility to prepare and submit to an air district a proposed comprehensive emissions inventory plan, for approval by the district. The act requires an air district to prepare an industrywide emissions inventory for certain facilities. The act, under certain circumstances, requires a facility operator to conduct a facility toxic air contaminant risk reduction audit and to develop an emissions reduction plan.

This bill would establish a compliance schedule for a facility that is a diesel magnet source, as defined, for specified purposes of the act. The bill would require the state board, on or before July 1, 2007, in consultation with the air districts, to prepare and make available to the public a list of diesel magnet sources, as prescribed. The bill would require any facility for which a district is preparing an industrywide emissions inventory or health risk assessment to provide to the district, within 60 days of the date of the request, all information as may be specified by the district as necessary for the preparation of the inventory or assessment.

The bill would require the districts, on or before July 1, 2009, in consultation with the state board, to prepare, and maintain in the form of a clearinghouse, a list of available strategies to reduce emissions that are associated with the diesel magnet sources. By establishing new duties on air districts, the bill would impose a state-mandated local program.

~~The bill would require the districts state board, on or before January 1, 2008, in cooperation with prescribed state agencies the districts and the Office of Environmental Health Hazard Assessment, to establish and implement a collaborative public process to review advances, benefits, and limitations in methods to estimate emissions, exposure, and risk to the public that results from the release of air contaminants. By establishing new duties on air districts, the bill would impose a state-mandated local program.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The people of California have a right to know when
4 industrial or commercial operations result in emission of toxic air
5 contaminants that may pose a significant health risk to the people
6 exposed to those emissions.

7 (2) Existing law requires facilities whose operations result in
8 emission of toxic air contaminants to prepare inventories of those
9 emissions and submit them to the local air districts for
10 prioritization.

11 (3) Existing law also requires facilities that are designated
12 high-priority to prepare health risk assessments, and if the
13 assessment shows the potential health risks to be significant, to
14 notify the public of those risks.

15 (4) Existing law further requires facilities that pose
16 unacceptably high risks to public health to prepare plans to
17 reduce those risks, and to implement the plans according to a
18 specified schedule.

19 (5) Traditional stationary sources, both large and small, have
20 already complied with these requirements by preparing
21 inventories of their emissions, and where applicable, preparing
22 health risk assessments, notifying the public, and implementing
23 risk reduction.

24 (6) Recent studies show that particulate emissions in diesel
25 exhaust are highly toxic, and account for upwards of 70 percent
26 of the statewide cancer risk due to toxic pollutants in ambient air.

27 (7) Industrial and commercial operations that involve or attract
28 high levels of diesel traffic or other diesel engine use can pose
29 substantially higher risks to the public near the facilities.

30 (8) Available data indicate that these operations may pose
31 risks to the surrounding communities that are far greater than
32 risks posed by most traditional stationary sources, and that far
33 greater numbers of people are affected by the emissions. These

1 operations meet the statutory definition of “facility” under
 2 existing law, but to date have not submitted inventories or taken
 3 other actions in compliance with existing statutes.

4 (9) These facilities should comply with requirements to
 5 prepare and submit inventories of their emissions, prepare health
 6 risks assessments, notify the public of significant risks, and
 7 reduce unacceptably high risks.

8 (10) Local air pollution control districts and air quality
 9 management districts should review policies and procedures that
 10 implement existing law and, if necessary, revise them to
 11 appropriately address these facilities. Review of existing policies
 12 and procedures, and the preparation of inventories, health risk
 13 assessments, public notification, and risk reduction should be
 14 carried out under a coordinated process and schedule.

15 (b) It is the intent of the Legislature to define diesel magnet
 16 sources to ~~include~~ *mean the largest* ports, airports, and railyards,
 17 and to establish the timeframe for districts and the state board to
 18 review and, if necessary, revise policies and procedures, and for
 19 ~~the largest~~ diesel magnet sources to comply with these
 20 requirements.

21 SEC. 2. Section 44303.5 is added to the Health and Safety
 22 Code, to read:

23 44303.5. “Diesel magnet source” means ~~a facility that, by the~~
 24 ~~nature of its operation, attracts diesel engines in large numbers,~~
 25 ~~and includes the following:~~

- 26 (a) ~~Ports.~~
- 27 (b) ~~Airports.~~
- 28 (c) ~~Railyards.~~ *only a port, airport, or railyard facility listed*
 29 *pursuant to subdivision (e) of Section 44322.*

30 SEC. 3. Section 44320 of the Health and Safety Code is
 31 amended to read:

32 44320. This part applies to ~~all~~ *both* of the following:

33 (a) Any facility that manufactures, formulates, uses, or
 34 releases any of the substances listed pursuant to Section 44321 or
 35 any other substance that reacts to form a substance listed in
 36 Section 44321 and that releases or has the potential to release
 37 total organic gases, particulates, or oxides of nitrogen or sulfur in
 38 the amounts specified in Section 44322.

39 (b) Except as provided in Section 44323, any facility that is
 40 listed in any current toxics use or toxics air emissions survey,

1 inventory, or report released or compiled by a district. A district
2 may, with the concurrence of the state board, waive the
3 application of this part pursuant to this subdivision for any
4 facility that the district determines will not release any substance
5 listed pursuant to Section 44321 due to a shutdown or a process
6 change.

7 ~~(e) Any facility that is a diesel magnet source, as defined in~~
8 ~~Section 44303.5, with the greatest potential impact on public~~
9 ~~health determined on a statewide basis, as listed by the state~~
10 ~~board under subdivision (e) of Section 44322.~~

11 SEC. 4. Section 44322 of the Health and Safety Code is
12 amended to read:

13 44322. This part applies to facilities specified in ~~subdivisions~~
14 ~~(a) and (e)~~ *subdivision (a)* of Section 44320 in accordance with
15 the following schedule:

16 (a) For those facilities that release, or have the potential to
17 release, 25 tons per year or greater of total organic gases,
18 particulates, or oxides of nitrogen or sulfur, this part becomes
19 effective on July 1, 1988.

20 (b) For those facilities that release, or have the potential to
21 release, more than 10 but less than 25 tons per year of total
22 organic gases, particulates, or oxides of nitrogen or sulfur, this
23 part becomes effective July 1, 1989.

24 (c) For those facilities that release, or have the potential to
25 release, less than 10 tons per year of total organic gases,
26 particulates, or oxides of nitrogen or sulfur, the state board shall,
27 on or before July 1, 1990, prepare and submit a report to the
28 Legislature identifying the classes of those facilities to be
29 included in this part and specifying a timetable for their
30 inclusion.

31 (d) On and after January 1, 2007, facilities that are subject to
32 this part but have not submitted inventories as required under
33 Chapter 3 (commencing with Section 44340) shall have one year
34 from the date of inclusion on a list of subject facilities,
35 established pursuant to this part, to prepare and submit to the
36 district an emissions inventory plan. Except for any calendar date
37 deadline before January 1, 2007, all schedules for action set forth
38 in Chapter 3 (commencing with Section 44340), Chapter 4
39 (commencing with Section 44360), or Chapter 6 (commencing
40 with Section 44390) shall apply.

1 (e) On or before July 1, 2007, the state board shall, in
 2 consultation with the districts, prepare and make available to the
 3 public a list of diesel magnet sources subject to this part, as
 4 follows:

5 (1) The list of subject facilities shall include *only* the
 6 following:

- 7 (A) Five ports.
- 8 (B) Ten airports.
- 9 (C) Twenty-five railyards.

10 (2) In listing these facilities, the state board shall use the
 11 following criteria, unless clear and compelling data is readily
 12 available and demonstrates that other criteria and ranking should
 13 be used, to include on the list the facilities likely to pose the
 14 greatest potential risk to public health:

15 (A) A port that moves at least 1,500,000 metric tons per year
 16 of dry cargo, inbound and outbound, combined.

17 (B) An airport through which at least 2,000,000 passengers
 18 travel per year.

19 (C) Any railyard site where locomotive engines operate at
 20 least 10,000 hours per year, including movement and idling.

21 *(f) The establishment of the list pursuant to amendments to this*
 22 *section enacted by Assembly Bill 1101 of the 2005–06 Regular*
 23 *Session of the Legislature does not limit the preexisting authority*
 24 *of the state board or the districts under this section.*

25 SEC. 5. Section 44323.5 is added to the Health and Safety
 26 Code, to read:

27 44323.5. Any facility for which a district is preparing an
 28 industrywide emissions inventory or health risk assessment shall
 29 provide to the district, within 60 days of the date of the request,
 30 all information as may be specified by the district as necessary
 31 for the preparation of the inventory or assessment.

32 *SEC. 6. Section 44340 of the Health and Safety Code is*
 33 *amended to read:*

34 44340. (a) The operator of each facility subject to this part
 35 shall prepare and submit to the district a proposed comprehensive
 36 emissions inventory plan in accordance with the criteria and
 37 guidelines adopted by the state board pursuant to Section 44342.

38 (b) The proposed plan shall be submitted to the district on or
 39 before August 1, 1989, except that, for any facility to which
 40 subdivision (b) of Section 44322 applies, the proposed plan shall

1 ~~be submitted~~ *submitted* to the district on or before August 1, 1990.
2 The district shall approve, modify, and approve as modified, or
3 return for revision and resubmission, the plan within 120 days of
4 receipt.

5 (c) The district shall not approve a plan unless all of the
6 following conditions are met:

7 (1) The plan meets the requirements established by the state
8 board pursuant to Section 44342.

9 (2) The plan is designed to produce, from the list compiled and
10 maintained pursuant to Section 44321, a comprehensive
11 characterization of the full range of hazardous materials that are
12 released, or that may be released, to the surrounding air from the
13 facility. Air release data shall be collected at, or calculated for,
14 the primary locations of actual and potential release for each
15 hazardous material. Data shall be collected or calculated for all
16 continuous, intermittent, and predictable air releases.

17 (3) The measurement technologies and estimation methods
18 proposed provide state-of-the-art effectiveness and are sufficient
19 to produce a true representation of the types and quantities of air
20 releases from the facility.

21 (4) Source testing or other measurement techniques are
22 employed wherever necessary to verify emission estimates, as
23 determined by the state board and to the extent technologically
24 feasible. All testing devices shall be appropriately located, as
25 determined by the state board.

26 (5) Data are collected or calculated for the relevant exposure
27 rate or rates of each hazardous material according to its
28 characteristic toxicity and for the emission rate necessary to
29 ensure a characterization of risk associated with exposure to
30 releases of the hazardous material that meets the requirements of
31 Section 44361. The source of all emissions shall be displayed or
32 described.

33 (d) *An emissions inventory prepared for any other purpose*
34 *may be submitted to comply with this section, if it meets the*
35 *conditions described in subdivision (c), and the criteria and*
36 *guidelines established pursuant to Section 44342.*

37 ~~SEC. 6.~~

38 *SEC. 7.* Section 44342 of the Health and Safety Code is
39 amended to read:

1 44342. (a) The state board shall, on or before May 1, 1989,
2 in consultation with the districts, develop criteria and guidelines
3 for site-specific air toxics emissions inventory plans which shall
4 be designed to comply with the conditions specified in Section
5 44340 and which shall include at least all of the following:

6 (1) For each class of facility, a designation of the hazardous
7 materials for which emissions are to be quantified and an
8 identification of the likely source types within that class of
9 facility. The hazardous materials for quantification shall be
10 chosen from among, and may include all or part of, the list
11 specified in Section 44321.

12 (2) Requirements for a facility diagram identifying each actual
13 or potential discrete emissions point and the general locations
14 where fugitive emissions may occur. The facility diagram shall
15 include any nonpermitted and nonprocess sources of emissions,
16 and shall provide the necessary data, including a comprehensive
17 list of all equipment that emits an air contaminant, to identify
18 emissions characteristics. An existing facility diagram that meets
19 the requirements of this section may be submitted.

20 (3) Requirements for source testing and measurement. The
21 guidelines may specify appropriate uses of estimation techniques,
22 including, but not limited to, emissions factors, modeling, mass
23 balance analysis, and projections, except that source testing shall
24 be required wherever necessary to verify emissions estimates to
25 the extent technologically feasible. The guidelines shall specify
26 conditions and locations where source testing, fenceline
27 monitoring, or other measurement techniques are to be required
28 and the frequency of that testing and measurement.

29 (4) Appropriate testing methods, equipment, and procedures,
30 including quality assurance criteria.

31 (5) Specifications for acceptable emissions factors, including,
32 but not limited to, those which are acceptable for substantially
33 similar facilities or equipment, and specification of procedures
34 for other estimation techniques and for the appropriate use of
35 available data.

36 (6) Specification of the reporting period required for each
37 hazardous material for which emissions will be inventoried.

38 (7) Specifications for the collection of useful data to identify
39 toxic air contaminants pursuant to Article 2 (commencing with
40 Section 39660) of Chapter 3.5 of Part 2.

1 (8) Standardized format for preparation of reports and
2 presentation of data.

3 (9) A program to coordinate and eliminate any possible
4 overlap between the requirements of this chapter and the
5 requirements of Section 313 of the Superfund Amendment and
6 Reauthorization Act of 1986 (Public Law 99-499).

7 (b) On and after January 1, 2008, the state board shall ensure
8 that the guidelines include any specific criteria for the
9 preparation of emissions inventory plans by diesel magnet
10 sources, including, but not limited to, methods for quantifying air
11 releases of diesel particulate exhaust that occur within the
12 boundaries of the facility, and for characterizing for the public
13 potential impacts of releases that occur outside of the boundaries
14 of the facility but in the same general location and associated
15 with mobile source trips to and from the facility. Air releases of
16 diesel particulate exhaust from diesel magnet sources shall
17 include emissions from motor vehicles, and may address
18 mechanisms to integrate data prepared by the state board
19 pursuant to subdivision (b) of Section 44345.

20 (c) The state board shall design the guidelines and criteria to
21 ensure that, in collecting data to be used for emissions
22 inventories, actual measurement is utilized whenever necessary
23 to verify the accuracy of emission estimates, to the extent
24 technologically feasible.

25 (d) On or before January 1, 2008, the state board shall review
26 the guidelines prepared pursuant to this part to identify *any* gaps
27 and determine if any changes or additions are necessary to ~~meet~~
28 ~~the state's environmental justice goals~~ *enhance the input of*
29 *impacted communities*. In conducting this review, the state board
30 shall consult with the districts and other interested stakeholders,
31 including representatives of low-income communities and
32 communities of color, and shall make a report of its findings at a
33 duly noticed public hearing. If the review shows that changes or
34 additions are necessary, the state board shall complete those
35 changes or additions on or before July 1, 2009.

36 ~~SEC. 7.~~

37 *SEC. 8.* Section 44350 is added to the Health and Safety
38 Code, to read:

1 44350. (a) The state board shall, in consultation with the
2 state board's environmental justice stakeholders group, do all of
3 the following:

4 (1) Identify all sources *listed pursuant to subdivision (e) of*
5 *Section 44322* that should, pursuant to this part, be considered
6 diesel magnet sources.

7 (2) For these sources, identify all available air pollution
8 control measures, including pollution prevention measures, and
9 their costs of implementation.

10 (3) Create a report on the sources, the available control
11 measures, and the costs of implementation. The state board shall
12 hold at least three public workshops in communities impacted by
13 diesel magnet sources to receive input and comments on the
14 report, and shall submit the report to the Legislature by March
15 2008.

16 (b) (1) On or before July 1, 2009, the districts shall, in
17 consultation with the state board, prepare a list of available
18 strategies to reduce emissions that are associated with ~~the diesel~~
19 ~~magnet sources listed pursuant to subdivision (e) of Section~~
20 ~~44322: diesel magnet sources.~~

21 (2) The list of strategies shall identify, by type or category, the
22 emissions sources associated with these diesel magnet sources.

23 (3) The list of strategies shall identify, for each type or
24 category of equipment, available strategies to reduce emissions,
25 including, but not limited to, replacement or repowering of
26 engines, use of alternative fuels or energy sources, application of
27 emissions reduction technologies, and operational changes that
28 would reduce emissions.

29 (4) The list of strategies shall indicate, for each strategy
30 identified in paragraph (2) for each type or category of
31 equipment, whether the strategy would constitute the lowest
32 achievable emission rate (LAER), the best available control
33 technology (BACT), the best available retrofit control technology
34 (BARCT), and whether the strategy has been demonstrated in
35 practice on this or any similar type or category of equipment.

36 (5) In preparing the list of strategies, the districts, in
37 consultation with the state board, shall consider existing
38 regulations or requirements of the districts and the state board,
39 and current operations at these diesel magnet sources. The
40 districts, in consultation with the state board, shall also consider,

1 to the extent data is reasonably available, regulations,
2 requirements, and operational practices in other jurisdictions
3 within and outside of the state.

4 (6) The districts shall maintain the list of strategies in the form
5 of a clearinghouse, that shall be made available to the public and
6 to the operators of these diesel magnet sources, and shall update
7 the list every five years. After January 1, 2020, the districts may
8 discontinue the clearinghouse if the districts find that it is no
9 longer necessary.

10 (7) The districts may, at their discretion, include in the
11 clearinghouse the information described in paragraphs (3) and (4)
12 for other types of facilities or sources of emissions, but shall do
13 so in a manner that clearly indicates that these emissions are not
14 associated with diesel magnet sources.

15 ~~SEC. 8.~~

16 *SEC. 9.* Section 44360 of the Health and Safety Code is
17 amended to read:

18 44360. (a) (1) Within 90 days of completion of the review of
19 all emissions inventory data for facilities specified in subdivision
20 (a) of Section 44322, but not later than December 1, 1990, the
21 district shall, based on examination of the emissions inventory
22 data and in consultation with the state board and the State
23 Department of Health Services, prioritize and then categorize
24 those facilities for the purposes of health risk assessment. The
25 district shall designate high, intermediate, and low priority
26 categories, and shall include each facility within the appropriate
27 category based on its individual priority. In establishing priorities
28 pursuant to this section, the district shall consider the potency,
29 toxicity, quantity, and volume of hazardous materials released
30 from the facility, the proximity of the facility to potential
31 receptors, including, but not limited to, hospitals, schools, day
32 care centers, worksites, and residences, and any other factors that
33 the district finds and determines may indicate that the facility
34 may pose a significant risk to receptors. The district shall hold a
35 public hearing prior to the final establishment of priorities and
36 categories pursuant to this section.

37 (2) Any diesel magnet source ~~listed pursuant to subdivision (e)~~
38 ~~of Section 44322~~ shall be designated as a high-priority facility
39 for the purposes of this part, except that in establishing priority
40 for diesel magnet sources subject to the memorandum of

1 understanding between the Class 1 Railroads (“Participating
2 Railroads”) and the state board dated June 2005, the districts
3 shall use the most expeditious schedule under the memorandum
4 of understanding or applicable regulations.

5 (3) For any facility that submits inventory data pursuant to
6 Section 44341 on or after January 1, 2007, the district shall,
7 within 90 days of the receipt of approved inventory data,
8 prioritize the facility using established prioritization guidelines,
9 except that any diesel magnet source ~~listed pursuant to~~
10 ~~subdivision (e) of Section 44322~~ shall be designated a
11 high-priority facility as specified in ~~subparagraph~~ *paragraph* (2).
12 The district shall notify the facility in writing of the facility’s
13 prioritization category, and this notification shall be considered a
14 formal designation pursuant to this section.

15 (b) (1) Within 150 days of the designation of priorities and
16 categories pursuant to subdivision (a), the operator of every
17 facility that has been included within the highest priority
18 category shall prepare and submit to the district a health risk
19 assessment pursuant to Section 44361. The district may, at its
20 discretion, grant a 30-day extension for submittal of the health
21 risk assessment.

22 (2) Health risk assessments required by this chapter shall be
23 prepared in accordance with guidelines established by the Office
24 of Environmental Health Hazard Assessment. The office shall
25 prepare draft guidelines, which shall be circulated to the public
26 and the regulated community, and shall adopt risk assessment
27 guidelines after consulting with the state board and the Risk
28 Assessment Committee of the California Air Pollution Control
29 Officers Association and after conducting at least two public
30 workshops, one in the northern and one in the southern part of
31 the state. The adoption of the guidelines is not subject to Chapter
32 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
33 Title 2 of the Government Code. The scientific review panel
34 established pursuant to Section 39670 shall evaluate the
35 guidelines adopted under this paragraph and shall recommend
36 changes and additional criteria to reflect new scientific data or
37 empirical studies.

38 (3) The guidelines established pursuant to paragraph (2) shall
39 impose only those requirements on facilities subject to this
40 subdivision that are necessary to ensure that a required health

1 risk assessment is accurate and complete, and shall specify the
2 type of site-specific factors that districts may take into account in
3 determining when a single health risk assessment may be allowed
4 under subdivision (d). The guidelines shall, in addition, allow the
5 operator of a facility, at the operator's option, and to the extent
6 that valid and reliable data is available, to include for
7 consideration by the district in the health risk assessment any or
8 all of the following supplemental information:

9 (A) Information concerning the scientific basis for selecting
10 risk parameter values that are different than those required by the
11 guidelines and the likelihood distributions that result when
12 alternative values are used.

13 (B) Data from dispersion models, microenvironment
14 characteristics, and population distributions that may be used to
15 estimate maximum actual exposure.

16 (C) Risk expressions that show the likelihood that any given
17 risk estimate is the correct risk value.

18 (D) A description of the incremental reductions in risk that
19 occur when exposure is reduced.

20 (4) To ensure consistency in the use of the supplemental
21 information authorized by subparagraphs (A), (B), (C), and (D)
22 of paragraph (3), the guidelines established pursuant to paragraph
23 (2) shall include guidance for use by the districts in considering
24 the supplemental information when it is included in the health
25 risk assessment.

26 (c) Upon submission of emissions inventory data for facilities
27 specified in subdivisions (b) and (c) of Section 44322, the district
28 shall designate facilities for inclusion within the highest priority
29 category, as appropriate, and any facility so designated shall be
30 subject to subdivision (b). In addition, the district may require the
31 operator of any facility to prepare and submit health risk
32 assessments, in accordance with the priorities developed pursuant
33 to subdivision (a).

34 (d) The district shall, except where site-specific factors may
35 affect the results, allow the use of a single health risk assessment
36 for two or more substantially identical facilities operated by the
37 same person.

38 (e) Nothing in this section, Section 44380.5, or Chapter 6
39 (commencing with Section 44390) shall be interpreted as
40 requiring a facility operator to prepare a new or revised health

1 risk assessment using the guidelines established pursuant to
 2 paragraph (2) of subdivision ~~(a) of this section~~ (b) if the facility
 3 operator is required by the district to begin the preparation of a
 4 health risk assessment before those guidelines are established. A
 5 *health risk assessment prepared for other purposes may be*
 6 *submitted for compliance with this part, if the assessment has*
 7 *been prepared in accordance with the guidelines established by*
 8 *the Office of Environmental Health Hazard Assessment pursuant*
 9 *to paragraph (2) of subdivision (b).*

10 (f) On or before January 1, 2008, the ~~districts state board~~, in
 11 cooperation with the ~~state board districts~~ and the Office of
 12 Environmental Health Hazard Assessment, shall establish and
 13 implement a collaborative public process to review advances,
 14 *benefits*, and limitations in methods to estimate emissions,
 15 exposure, and risk to the public that results from the release of air
 16 contaminants. The review shall address *the benefits and*
 17 *limitations of* risk assessment as currently practiced, cumulative
 18 risk assessment, and alternatives to risk assessment, and shall
 19 include participation by interested stakeholders, including
 20 representatives of low-income communities and communities of
 21 color.

22 ~~SEC. 9.~~

23 *SEC. 10.* Section 44390 of the Health and Safety Code is
 24 amended to read:

25 44390. For purposes of this chapter, the following definitions
 26 apply:

27 (a) “Airborne toxic risk reduction measure” or “ATRRM”
 28 means those in-plant changes in production processes or
 29 feedstocks that reduce or eliminate toxic air emissions subject to
 30 this part. ATRRM’s may include:

- 31 (1) Feedstock modification.
- 32 (2) Product reformulations.
- 33 (3) Production system modifications.
- 34 (4) System enclosure, emissions control, capture, or
- 35 conversion.
- 36 (5) Operational standards and practices modification.

37 (b) Airborne toxic risk reduction measures do not include
 38 measures that will increase risk from exposure to the chemical in
 39 another media or that increase the risk to workers or consumers.

1 (c) “Airborne toxic risk reduction audit and plan” or “audit
2 and plan” means the audit and plan specified in Section 44392.

3 (d) “Diesel magnet source risk reduction measure” or
4 “DMSRRM” means those changes to equipment or method of
5 operation that reduce or eliminate toxic air releases subject to this
6 part. DMSRRMs shall be considered a form of airborne toxic risk
7 reduction measure for the purposes of this chapter, and may
8 include, but are not limited to, all of the following:

9 (1) Modification of operational standards or practices.

10 (2) Application of emissions control technology.

11 (3) System enclosure and emissions control, capture, or
12 conversion.

13 (4) Use of alternative fuels or fuel additives.

14 (5) Engine replacement, retrofit, or repowering.

15 (6) Electrification of diesel-fueled internal combustion
16 engines.

17 (7) With the approval of the state board, any emission
18 reduction measure implemented by a participating railroad under
19 the memorandum of understanding dated June 2005 that was
20 entered into with the state board.

21 ~~SEC. 10.~~

22 *SEC. 11.* Section 44391 of the Health and Safety Code is
23 amended to read:

24 44391. (a) Whenever a health risk assessment approved
25 pursuant to Chapter 4 (commencing with Section 44360)
26 indicates, in the judgment of the district, that there is a significant
27 risk associated with the emissions from a facility, the facility
28 operator shall conduct an airborne toxic risk reduction audit and
29 develop a plan to implement airborne toxic risk reduction
30 measures that will result in the reduction of emissions from the
31 facility to a level below the significant risk level within five years
32 of the date the plan is submitted to the district. The facility
33 operator shall implement measures set forth in the plan in
34 accordance with this chapter.

35 (b) The period to implement the plan required by subdivision
36 (a) may be shortened by the district if it finds that it is technically
37 feasible and economically practicable to implement the plan to
38 reduce emissions below the significant risk level more quickly or
39 if it finds that the emissions from the facility pose an
40 unreasonable health risk.

1 (c) (1) A district may lengthen the period to implement the
2 plan required by subdivision (a) by up to an additional five years
3 if it finds that a period longer than five years will not result in an
4 unreasonable risk to public health and that requiring
5 implementation of the plan within five years places an
6 unreasonable economic burden on the facility operator or is not
7 technically feasible.

8 (2) A district may lengthen the period for a diesel magnet
9 source to implement the plan required by subdivision (a) in
10 increments of five years, if all of the following conditions are
11 met:

12 (A) The facility prepares and implements a plan, subject to
13 district approval in a public hearing, to make real and measurable
14 progress reducing risks using all technically and economically
15 feasible DMSRRMs, including those measures already
16 implemented by a similar diesel magnet source.

17 (B) The facility convenes an advisory group, subject to district
18 approval, that includes at least two members of the affected
19 residential community, two members of the affected business
20 community, and one representative each from the district, the
21 state board, and the city or county within which the facility is
22 located.

23 (C) The facility reviews its risk reduction implementation
24 progress with the advisory group, in a public meeting, at least
25 once each year until the risk has been reduced to below the
26 significance thresholds.

27 (D) The facility has updated its emissions inventory as
28 required under Section 44344.

29 (d) (1) The state board and districts shall provide assistance to
30 smaller businesses that have inadequate technical and financial
31 resources for obtaining information, assessing risk reduction
32 methods, and developing and applying risk reduction techniques.

33 (2) Risk reduction audits and plans for any industry subject to
34 this chapter which is comprised mainly of small businesses using
35 substantially similar technology may be completed by a
36 self-conducted audit and checklist developed by the state board.
37 The state board, in coordination with the districts, shall provide a
38 copy of the audit and checklist to small businesses within those
39 industries to assist them to meet the requirements of this chapter.

1 (e) The audit and plan shall contain all the information
2 required by Section 44392.

3 (f) The plan shall be submitted to the district, within six
4 months of a district's determination of significant risk, for review
5 of completeness. Operators of facilities that have been notified
6 prior to January 1, 1993, that there is a significant risk associated
7 with emissions from the facility shall submit the plan by July 1,
8 1993. The district's review of completeness shall include a
9 substantive analysis of the emissions reduction measures
10 included in the plan, and the ability of those measures to achieve
11 emissions reduction goals as quickly as feasible as provided in
12 subdivisions (a) and (b).

13 (g) The district shall find the audit and plan to be satisfactory
14 within three months if it meets the requirements of this chapter,
15 including, but not limited to, subdivision (f). If the district
16 determines that the audit and plan does not meet those
17 requirements, the district shall remand the audit and plan to the
18 facility specifying the deficiencies identified by the district. A
19 facility operator shall submit a revised audit and plan addressing
20 the deficiencies identified by the district within 90 days of receipt
21 of a deficiency notice.

22 (h) Progress on the emissions reductions achieved by the plan
23 shall be reported to the district in emissions inventory updates.
24 Emissions inventory updates shall be prepared as required by the
25 audit and plan found to be satisfactory by the district pursuant to
26 subdivision (g).

27 (i) If new information becomes available after the initial risk
28 reduction audit and plan, on air toxics risks posed by a facility, or
29 emissions reduction technologies that may be used by a facility
30 that would significantly impact risks to exposed persons, the
31 district may require the plan to be updated and resubmitted to the
32 district.

33 (j) This section does not authorize the emission of a toxic air
34 contaminant in violation of an airborne toxic control measure
35 adopted pursuant to Chapter 3.5 (commencing with Section
36 39650) or in violation of Section 41700.

37 (k) ~~Once the district approves a risk reduction plan for a diesel~~
38 ~~magnet source listed pursuant to subdivision (e) of Section~~
39 ~~44322, the district shall submit the plan to the state board for~~
40 ~~review and comment. The state board shall provide its comments~~

1 within 90 days of receipt. The district shall, within 90 days of
 2 receipt, incorporate the state board's comments into the risk
 3 reduction plan unless the district determines that to do so will not
 4 result in the maximum feasible risk reductions on the most
 5 expeditious schedule practicable. *diesel magnet source, the*
 6 *district shall submit the plan to the state board for review and*
 7 *comment. The state board shall provide its comments within 90*
 8 *days of the date of receipt. The district, within 90 days of the date*
 9 *of receipt of the state board's comments, shall incorporate the*
 10 *board's comments related to motor vehicles into the risk*
 11 *reduction plan.*

12 ~~SEC. 11.~~

13 *SEC. 12.* Section 44395 is added to the Health and Safety
 14 Code, to read:

15 44395. Nothing in this chapter requires the operator of a
 16 diesel magnet source to implement any DMSRRM that is
 17 preempted by federal law.

18 ~~SEC. 12.~~

19 *SEC. 13.* Section 44396 is added to the Health and Safety
 20 Code, to read:

21 44396. Notwithstanding the amendments to this part enacted
 22 by Assembly Bill 1101 of the 2005–06 Regular Session of the
 23 Legislature, all provisions of this part remain in full force and
 24 effect, and nothing in this part limits the authority of a district or
 25 the state board under any other provision of this code. Nothing in
 26 those amendments limits the preexisting authority of the state
 27 board or the districts under this part, nor confers any new
 28 authority on the districts to establish emission standards for
 29 motor vehicles.

30 ~~SEC. 13.~~

31 *SEC. 14.* All costs incurred by the State Air Resources Board,
 32 the Office of Environmental Health Hazard Assessment, and air
 33 districts, in complying with the amendments to Part 6
 34 (commencing with Section 44300) of Division 26 of the Health
 35 and Safety Code enacted by Assembly Bill 1101 of the 2005–06
 36 Regular Session of the Legislature shall be recovered through
 37 fees collected pursuant to Section 44380 of the Health and Safety
 38 Code.

1 ~~SEC. 14.~~

2 *SEC. 15.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 a local agency or school district has the authority to levy service
5 charges, fees, or assessments sufficient to pay for the program or
6 level of service mandated by this act, within the meaning of
7 Section 17556 of the Government Code.

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