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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 26. AIR RESOURCES [39000 - 44475.3]** ( *Division 26 repealed and added by Stats. 1975, Ch. 957.*  )

**PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357]** ( *Part 3 added by Stats. 1975, Ch. 957.*  )

**CHAPTER 5.5. South Coast Air Quality Management District [40400 - 40540]** ( *Chapter 5.5 added by Stats. 1976, Ch. 324.*  )

**ARTICLE 7. Variances and Permits [40500 - 40516]** ( *Heading of Article 7 renumbered from Article 6 by Stats. 1980, Ch. 1085.*  )

**40500.** (a) In accordance with the purposes of this chapter as set forth in Section 40402, the south coast district board shall establish rules and regulations for the granting of variances by the hearing board from Section 41701 or from any standards for the discharge of air contaminants that the south coast district may adopt. The south coast district board shall not limit the opportunity for any person to petition for a variance or for the hearing board to hear and grant variances beyond the limitations expressly stated in Section 42350.

(b) The rules and regulations shall include a schedule of fees, which shall be based upon the number of sources to which the variances apply and the extent that the amount of emissions from the sources exceeds the required standards, for the filing of applications for variances. All applicants shall pay the fees required by the rules and regulations, including, notwithstanding Section 6103 of the Government Code, an applicant that is a publicly owned public utility. A variance may be granted by the hearing board after a public hearing and upon filing, with appropriate fees, of a variance petition with the hearing board.

(Amended by Stats. 1996, Ch. 618, Sec. 4. Effective January 1, 1997.)

**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 that is applicable to the south coast district on and after January 1, 1994, shall not be subject to this section.

(Amended by Stats. 2000, Ch. 890, Sec. 16. Effective January 1, 2001.)

**40500.5.** (a) Notwithstanding Section 40500, the south coast district board may prohibit the granting of variances by the hearing board from the provisions of a market-based incentive program adopted pursuant to Section 39616 that establish procedures for assessing emissions during periods when monitoring or reporting systems are not operating as required.

(b) The south coast district board may prohibit the granting of variances by the hearing board from the minimum federal requirements for new source performance standards, or for national emissions standards for hazardous air pollutants, under Sections 7411 and 7412 of Title 42 of the United States Code, unless the district rule at issue is more stringent than the federal requirement. The south coast district board shall not prohibit the granting of a variance if the petitioner for the variance has obtained a waiver from the Environmental Protection Agency of the federal requirement at issue and the variance would be consistent with the waiver.

(Amended by Stats. 2004, Ch. 183, Sec. 218. Effective January 1, 2005.)

**40501.** (a) The south coast district board shall appoint a hearing board, or may authorize the board of supervisors of each county included, in whole or in part, within the south coast district to appoint a hearing board in accordance with Article 1 (commencing with Section 40800) of Chapter 8. The hearing board shall have the powers and duties vested in the hearing board of a county district, except as modified in this article. In addition, the hearing board has the same powers and duties with respect to plans for the control of emissions of air contaminants required by a district rule or regulation as it has for permits for authority to construct or operate any article, machine, equipment, or other contrivance required by the south coast district board.

(b) The granting of variances shall be processed by the hearing board in the county in which the variance is applicable unless the applicant and the hearing board agree otherwise, and shall be granted in conformance with the rules and regulations of the south coast district, and, except as modified by this article, with Article 2 (commencing with Section 42350) of Chapter 4 of Part 4, with respect to the granting of variances or the appeal of decisions.

*(Amended by Stats. 1991, Ch. 822, Sec. 1. Effective October 14, 1991.)*

**40501.1.** (a) On or before July 1, 1992, the south coast district board shall retire the current hearing board and appoint in its place a new hearing board with the following membership and qualifications:

(1) One member admitted to the practice of law in this state, with two or more years of practice, preferably with litigation experience.

(2) One member who is an engineer with a bachelor's degree from an accredited college in chemical, mechanical, environmental, metallurgical, or petroleum engineering, with two or more years of practical experience, and preferably who is a professional engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(3) One member who is a licensed physician, with two or more years of practical experience, preferably in the fields of epidemiology, physiology, toxicology, or related fields.

(4) Two public members.

(b) In recruiting the hearing board members, the district board shall engage in positive outreach throughout the south coast district. In making these appointments, the district board shall receive recommendations of an advisory committee whose responsibility shall be to review and make recommendations to the appropriate district board committee, which in turn shall finalize recommendations on which the district board shall act in making appointments to the hearing board. The advisory committee shall be composed of one representative appointed by each of the Counties of Los Angeles, Orange, Riverside, and San Bernardino, and the City of Los Angeles. Members of the advisory committee shall be appointed for one-year terms. Recommendations of the advisory committee shall not be binding on the district board.

(c) When the south coast district board first appoints the new hearing board, the attorney and engineer members shall serve terms of two years each and the medical and public members shall serve terms of three years each. Thereafter, each member's term shall be three years.

(d) In the temporary absence of a member and that person's alternate, the hearing board chair, or the chair's designee, may appoint a qualified alternate or any former hearing board member to serve for a period of up to three months plus that period of additional time required to conclude proceedings on which the temporary member deliberated.

(e) The district budget shall have a line item to provide necessary staff and other support dedicated to the hearing board. The services provided by that staff shall include assistance to the public and small business as set forth in subdivision (b) of Section 40448.

*(Added by Stats. 1991, Ch. 822, Sec. 3. Effective October 14, 1991.)*

**40501.3.** (a) Notwithstanding any other provision of this division, the south coast district board may authorize, by resolution, the holding of single-member hearings by the chairman of the hearing board and any other member or alternate designated by the hearing board, under the conditions specified in this section.

(b) Single-member hearings shall be authorized, when stipulated to by the executive officer and the petitioner, only for the purpose of hearing petitions for emergency variances pursuant to Section 42359.5, interim variances pursuant to Section 42351, short variances and modifications of a schedule of increments of progress of a duration not to exceed 60 days pursuant to Section 40825, interim authorizations pursuant to Section 42351.5, and modifications of variances pursuant to Section 42356 which do not modify the final compliance date.

(c) The procedure for conducting single-member hearings shall be the same as for hearings before the full board and all legal requirements, including notice requirements, findings, and conditions, shall apply, except that the single member may take action on any matter properly before the member.

(d) A single-member hearing decision may be contested by (1) any person who, in person or through a representative, appeared at the single-member hearing, or (2) any person who informed the air pollution control officer of the nature of his concern prior to the hearing, or (3) any person who for good cause was unable to do either (1) or (2). If a decision is contested under this subdivision, the matter shall be reheard by the full board within 10 days of the decision. The clerk of the hearing board shall notify the petitioner, the executive officer, and all members of the public who appeared at the hearing of any contest of a decision. The notice shall be in writing and sent by first-class mail, postage prepaid, to the address supplied by the person who appeared, unless the right to the notice is affirmatively waived on the record.

*(Added by renumbering Section 40501.1 by Stats. 1991, Ch. 822, Sec. 2. Effective October 14, 1991.)*

**40502.** The revenues from the schedule of fees adopted by the south coast district board for the filing of applications for variances shall be collected by the hearing board at the time that the application is filed. Each county hearing board appointed pursuant to subdivision (a) of Section 40501 shall be reimbursed from these fees for its cost in administering the rules and regulations for the issuance of variances established by the south coast district board. The revenues from these fees shall be transmitted by the hearing board to the south coast district board at such time as the south coast district board may prescribe.

*(Added by Stats. 1976, Ch. 324.)*

**40503.** (a) The south coast district hearing board, in determining whether the petitioner has presented evidence sufficient to make the findings specified in subdivision (a) of Section 42352, shall consider, in addition to any other relevant factors, both of the following:

- (1) In determining whether conditions exist that are beyond the reasonable control of the petitioner, the hearing board shall consider whether the petitioner took actions to comply or seek a variance, that 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 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 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 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 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 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 that 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 an unreasonable burden would be imposed, the hearing board shall consider any effects of requiring immediate compliance on the availability of essential public services.

*(Amended by Stats. 2000, Ch. 890, Sec. 17. Effective January 1, 2001.)*

**40504.** The south coast district shall work with those persons granted variances to reduce emissions of air contaminants from their operations.

*(Amended by Stats. 1987, Ch. 1301, Sec. 18.)*

**40505.** Any form developed by the south coast district for use in filing an application for variance shall contain a notice to small businesses of the availability of assistance in filling out the form, developing compliance schedules, and obtaining low-cost financing for air pollution control equipment to meet its regulations.

*(Added by Stats. 1976, Ch. 324.)*

**40506.** (a) In accordance with the purposes of this chapter as set forth in Section 40402, the south coast district board shall adopt rules and regulations for the issuance by the south coast district board of permits authorizing the construction, alteration, replacement, operation, or use of any article, machine, equipment, or other contrivance for which a permit may be required by the south coast district board.

(b) The rules and regulations shall include a schedule of fees for the filing of applications for permits and for the modification, revocation, extension, or annual renewal of permits. All applicants, including, notwithstanding Section 6103 of the Government Code, an applicant that is a publicly owned public utility, shall pay the fees required by the rules and regulations.

*(Amended by Stats. 1987, Ch. 1301, Sec. 19.)*

**40506.1.** (a) The south coast district shall establish a consolidated permit which serves as (1) an authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) an authority to operate or use that article, machine, equipment, or contrivance.

(b) The district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, operated, or used in the manner required by the consolidated permits.

*(Added by Stats. 1992, Ch. 371, Sec. 8. Effective January 1, 1993.)*

**40506.2.** The south coast district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by district rules as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) Full district review of a sample of permit applications prepared by certified private environmental professionals to determine whether or not district requirements for preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

(1) Knowingly or negligently submitted false data as part of a permit application.

(2) Prepared any permit application in a manner contrary to district requirements.

(3) Prepared a permit application where the person has a financial conflict of interest as defined in guidelines to be adopted by the district.

*(Added by Stats. 1992, Ch. 371, Sec. 9. Effective January 1, 1993.)*

**40507.** The south coast district board, in making any order granting a permit, may specify the time during which the order shall be effective and may require the payment of fees established by the south coast district board.

*(Amended by Stats. 1993, Ch. 1166, Sec. 4. Effective January 1, 1994.)*

**40508.** The revenues from the schedule of fees for the filing of applications for permits shall be collected by the south coast district board at the time that the application is filed.

*(Added by Stats. 1976, Ch. 324.)*

**40509.** Any person may petition the south coast district board to hold a public hearing on any application to issue or renew a permit.

*(Amended by Stats. 1987, Ch. 1301, Sec. 20.)*

**40510.** (a) The Legislature finds and declares as follows:

(1) Total fees collected by the south coast district must continue to be capped in order to prevent the imposition of undue financial burdens upon regulated sources.

(2) There is a need to provide for greater flexibility in establishing and amending fees within the total fee cap to ensure a fair apportionment of fee payment responsibilities.

(3) Fees based solely on the quantity of emissions created by a source should not be indexed to the emission potential, or to a percentage of emissions trading units, as that term is used in Sections 39616 and 40440.1, held by that source so as to prevent payments of those fees from decreasing if emissions decline.

(4) Before making any individual fee increase in excess of the percentage increase of the California Consumer Price Index for the preceding calendar year, findings of fact should be made, supported by relevant information in the public record, that the fee increase is necessary and will provide an equitable apportionment of fee payment responsibilities, and the increase should be phased in to avoid sudden adverse impacts on regulated sources.

(b) The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto. Every person applying for a variance or a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule.

(c) (1) The fees may be varied in accordance with the quantity of emissions and the effect of those emissions on the ambient air quality within the south coast district.

(2) The fees shall not be indexed to the potential emissions from, or to a percentage of the emissions trading units, as that term is used in Sections 39616 and 40440.1, held by, any source.

(d) Subject to the limits established by this section and Sections 40500.1 and 40523 and the requirements of Section 40510.5, this section shall not prevent the district from establishing or amending an individual permit renewal or operating permit fee applicable to a class of sources to recover the reasonable district costs of permitting, planning, enforcement, and monitoring which that class will cause to district programs. In establishing the fee applicable to a class of sources, the district may consider the impact on air quality of the emissions from that class.

*(Amended by Stats. 1995, Ch. 831, Sec. 1. Effective January 1, 1996.)*

**40510.5.** In addition to the limits on total fee collections established by Sections 40500.1 and 40523, the south coast district board shall not increase any existing permit fee by a percentage greater than any percentage increase in the California Consumer Price Index for the preceding calendar year, unless the board complies with both of the following requirements:

(a) The district board shall make a finding, based upon relevant information in a rulemaking record, that the fee increase is necessary and will result in an apportionment of fees that is equitable. This finding shall include an explanation of why the fee increase meets the requirements of this section and Section 40510.

(b) The fee increase shall be phased in over a period of at least two years.

*(Amended by Stats. 1995, Ch. 831, Sec. 2. Effective January 1, 1996.)*

**40510.7.** The south coast district board may establish an annual charge, in an amount not to exceed the annual estimated cost of sending notices required by this division, and individual charges, in amounts not to exceed the cost of sending notice on a one-time basis and the cost of duplicating and mailing any document furnished pursuant to this chapter.

*(Added by Stats. 1990, Ch. 1702, Sec. 8.)*

**40511.** The south coast district board may increase its fee schedule to generate sufficient revenues to pay for any district costs associated with the implementation of Section 66796.53 of the Government Code or Section 41805.5.

*(Added by Stats. 1984, Ch. 1532, Sec. 3.)*

**40512.** (a) The south coast district board may impose a fee surcharge based on a formula associated with quantity of emissions and the effect of these emissions on ambient air quality within the south coast district to generate sufficient revenues to pay for any of its costs associated with the development and implementation of Section 40448.5.

(b) The total amount of funds collected from these surcharge fees shall not exceed five hundred thousand dollars (\$500,000) in each of the first two fiscal years of the development or implementation of Section 40448.5. All surcharge fees received by the south coast district pursuant to this section shall be deposited in a clean fuels and transportation control measures account that shall be established and maintained by the south coast district.

(c) In subsequent fiscal years, the total amount of funds collected from these surcharge fees shall not exceed 25 percent of the amount of fees received the previous fiscal year from registered motor vehicle owners pursuant to Section 9250.11 of the Vehicle

Code. The surcharge fees received by the south coast district pursuant to this section shall be used to pay for the initial costs incurred by the Department of Motor Vehicles to implement the motor vehicle fee program established by Section 9250.11 of the Vehicle Code.

(d) All fees received by the south coast district pursuant to Section 9250.11 of the Vehicle Code shall be deposited in the clean fuels and transportation control measures account and shall be used solely for transportation and vehicular-related program activities within the program established by this section. Not more than 5 percent of the funds in the account shall be used for the south coast district's administrative costs.

*(Amended by Stats. 2008, Ch. 724, Sec. 1. Effective January 1, 2009.)*

**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 that 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.

*(Amended by Stats. 2000, Ch. 890, Sec. 18. Effective January 1, 2001.)*

**40516.** (a) The south coast district shall establish expedited permit review and project assistance mechanisms for facilities or projects which are directly related to research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies.

(b) The mechanisms shall include all of the following:

(1) The issuance of consolidated permits, serving the purpose of both the permit to construct and the permit to operate, to expedite the permitting process.

(2) The review and processing of permits on a facility or project basis rather than on an equipment basis to ensure a single point of contact for the applicant and to allow entire projects to be reviewed and evaluated on a single, consolidated schedule.

(3) The establishment of a "fast track" permitting procedure to approve permits in an average of 30 days from receipt of all information requested by the district, except for any of the following facilities:

(A) Facilities that may emit significant amounts of toxic air contaminants.

(B) Facilities that require public notice.

(C) Facilities that require additional review to meet the requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988).

(4) The development and implementation of postconstruction enforcement procedures to ensure that new and modified sources are constructed according to permit requirements.

(5) The establishment of a liaison program in the office of public adviser to assist facilities participating in research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies with preparing permit applications, complying with other district administrative procedures, and identifying and applying for state, federal, district, or other available funds set aside for electric and other clean fuel vehicle-related projects.

(c) For purposes of this section, clean fuels are fuels designated by the state board for use in low, ultralow, or zero emission vehicles and include, but are not limited to, electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, natural gas, and reformulated gasoline.

*(Added by Stats. 1992, Ch. 309, Sec. 1. Effective July 23, 1992.)*