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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 AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)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 4. NONVEHICULAR AIR POLLUTION CONTROL [41500 - 42710] (*Part 4 added by Stats. 1975, Ch. 957.*)

CHAPTER 4. Enforcement [42300 - 42454] (*Chapter 4 added by Stats. 1975, Ch. 957.*)

ARTICLE 1.5. District Review of a Permit Applicant's Compliance History [42330 - 42339] (*Article 1.5 added by Stats. 1991, Ch. 1209, Sec. 3.*)

42330. The Legislature finds and declares that the effective regulation of air pollution emissions requires that permit applicants who have a demonstrated recurring pattern of air pollution control violations, and who have consistently refused to take the necessary steps to cooperate with a district to correct those violations, shall be subject to appropriate permit actions to bring them into compliance. The Legislature further finds that noncompliance may endanger the public health and safety and the environment and places permit applicants that are in compliance at a serious competitive disadvantage.

It is the intent of the Legislature in enacting this article to provide districts with an effective enforcement tool to bring noncompliant permit applicants into conformity with the applicable air pollution control laws and regulations. It is further the intent of the Legislature that any permit action authorized by this article shall be taken only after a district has attempted to bring the applicant into voluntary or required compliance, in accordance with the procedural and due process requirements prescribed by this article.

(*Added by Stats. 1991, Ch. 1209, Sec. 3.*)

42331. (a) Prior to issuing a permit pursuant to Article 1 (commencing with Section 42300), the air pollution control officer may review the compliance history of the applicant submitted to the district pursuant to Section 42336, under laws or regulations governing the control of air pollution, including the Clean Air Act (42 U.S.C. Sec. 7401 and following) and regulations adopted thereunder, and this division and regulations adopted pursuant to this division.

(b) In reviewing the applicant's compliance history, the officer shall take into account the size and complexity of the applicant's operations, the compliance history of all sources within the facility for which the permit is being sought, and the number of permits held by the applicant.

(c) For a permit for new or modified equipment at an existing facility, the officer's review of an applicant's compliance history shall be limited to the compliance history of the facility in question and the compliance history of other permitted sources at facilities owned, operated, or controlled by the applicant in the district. As used in this subdivision, "modified equipment" means any modification, including a change in the method of operation, that would require a permit modification under district rules.

(*Added by Stats. 1991, Ch. 1209, Sec. 3.*)

42332. (a) Prior to renewing a permit, an air pollution control officer may review the compliance history of the source in question at the facility, as shown in district records, under laws or regulations governing the control of air pollution, including the Clean Air Act (42 U.S.C. Sec. 7401 and following) and regulations adopted thereunder, and this division and regulations adopted pursuant to this division.

(b) In reviewing an applicant's compliance history, the officer shall take into account the size and complexity of the applicant's operations and the number of permits held by the applicant.

(*Added by Stats. 1991, Ch. 1209, Sec. 3.*)

42333. (a) An air pollution control officer may, pursuant to this article, deny a permit, refuse to renew a permit, or specify additional permit conditions to ensure compliance with applicable rules and regulations, if the officer determines that each of the following has occurred:

- (1) In the three-year period preceding the date of application, the applicant has violated laws or regulations identified in subdivision (a) of Section 42331 and subdivision (a) of Section 42332 resulting in either excessive emissions or violations at a

facility which is required to be permitted but is not permitted, owned or operated by the applicant.

(2) A notice of violation was issued for those violations.

(3) A variance was not in effect with respect to those violations.

(4) The violations demonstrate a recurring pattern of noncompliance or pose or have posed a significant risk to the public health or safety or to the environment.

(5) Notice and an opportunity for an office conference was provided pursuant to Section 42334.

(b) This section does not apply to a permit to operate, or the renewal of such a permit, issued by an air pollution control officer for a facility which is owned or operated by an applicant, unless the applicant has met the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) at the source in question at that facility.

(c) For the purposes of determining a permit action under this section, the air pollution control officer shall take into consideration the size and complexity of the applicant's operations and the number of permits held by the applicant.

(d) The air pollution control officer's determination of whether to deny a permit shall be based upon all of the following:

(1) Whether the emissions violations forming the basis for the denial were the result of circumstances beyond the reasonable control of the applicant and could not have been prevented by the exercise of reasonable care.

(2) Whether a permit denial is not an appropriate action given the severity of the violations, or that the denial is not supported by the applicant's overall compliance history.

(3) Whether a permit denial is not an appropriate action because the equipment type, operational character, or emissions capacity of the sources where the violations occurred are significantly different than that of the source for which the permit is being sought.

(4) Whether the violation has been corrected in a timely fashion or reasonable progress is being made.

(5) Whether a permit denial is not an appropriate action because a variance has been granted with respect to those violations.

(6) Whether the violations demonstrate a recurring pattern of noncompliance or pose or have posed a significant risk to the public health or safety or to the environment.

(7) Whether notice and an opportunity for an office conference was provided pursuant to Section 42334.

(e) A permit denial pursuant to subdivision (a) which is based solely upon violations which have not been admitted by the applicant or otherwise established by law shall be set aside by a hearing board if a hearing has been requested by the applicant pursuant to Section 42302, unless the air pollution control officer, following the presentation of substantial evidence and the applicant's opportunity to rebut the evidence, proves that the violation did occur, and that denial is supported by the applicant's overall compliance history.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42334. If, in the course of enforcing existing permits and conducting inspections relative thereto, an air pollution control officer makes a preliminary determination that the person has met the criteria prescribed in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 42333, the officer shall take all of the following actions:

(a) Notify the person, in writing, that the district has made a preliminary determination that the person has met those criteria and that the district may take action pursuant to subdivision (a) of Section 42333. The notice shall include all facts relating to the preliminary determination which are known to the officer.

(b) Request, as part of the notification required by subdivision (a), that the person confer with the officer in an office conference to discuss the pattern of noncompliance.

(c) Conduct the office conference.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42335. A permit denied pursuant to Section 42333 shall be set aside by the hearing board under either of the following conditions:

(a) The applicant proves that either:

(1) The emissions violations forming the basis for the denial were the result of circumstances beyond the reasonable control of the applicant and could not have been prevented by the exercise of reasonable care.

(2) The denial is not an appropriate action given the severity of the violations, or is not supported by the applicant's overall compliance history.

(b) The violation has been corrected in a timely fashion or reasonable progress is being made.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42336. In addition to any other information required to be submitted, an applicant for a permit to construct or a permit to operate which involves a change of operator who has owned or operated a facility pursuant to a permit issued by any district shall provide a description of all emissions violations satisfying the criteria specified in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 42333, under this division or any regulation adopted pursuant to this division, and the Clean Air Act (42 U.S.C. Sec. 7401 and following) or any regulations adopted thereunder, which occurred at any facility permitted by any district and owned or operated by the applicant in the state in the three years prior to the date of application.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42337. Any public notice provided by the district concerning the issuance of a permit to an applicant shall include, in addition to a description of the proposed project, a statement that information regarding the facility owner's compliance history submitted to the district pursuant to Section 42336, or otherwise known to the district, based on credible information, is available from the district for public review.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42338. Nothing in this article limits the existing authority of the district.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42339. This article does not apply to nuisance complaints based on odor emissions.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)