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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 AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)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 4.5. Protect California Air Act of 2003 [42500 - 42507] (*Chapter 4.5 added by Stats. 2003, Ch. 476, Sec. 1.*)

[42500.](#) This chapter shall be known, and may be cited, as the Protect California Air Act of 2003.

(*Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.*)

[42501.](#) The Legislature finds and declares all of the following:

- (a) For over 25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.) has required major new and modified sources of air pollution to be subject to a new source review program for nonattainment areas and for the prevention of significant deterioration, in order to ensure that those sources use the requisite level of emission control, offset any new emissions, and comply with other requirements, as a means of ensuring that those new and modified sources do not adversely affect air quality.
- (b) Requiring controls and emission offsets for new and modified sources ensures that industrial growth does not result in unacceptable levels of air pollution and that existing sources operate more cleanly over time by applying emission controls when those sources are overhauled or upgraded. Without these limits, air quality would degrade over time, and industrial growth, critical to the economic health of the state, would be foreclosed.
- (c) The new source review program has been a cornerstone of the state's efforts to reduce pollution from new and existing industrial sources by requiring those sources to use the requisite level of emission controls based on the attainment status of the area where the source is located.
- (d) The U.S. Environmental Protection Agency (U.S. E.P.A.) initially promulgated, and subsequently has revised, the new source review program to carry out the requirements of the federal Clean Air Act for preconstruction review of new and modified sources of air pollutants by the states.
- (e) On December 31, 2002, the U.S. E.P.A., under the direction of the President of the United States, promulgated regulations that substantially weaken the basic federal new source review program (67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the regulatory amendments, the U.S. E.P.A. claims that the new source review program has impeded or resulted in the cancellation of projects that would maintain or improve reliability, efficiency, and safety. This claim is contradicted by California's experience under the new source review programs of the air pollution control and air quality management districts.
- (f) The amendments promulgated December 31, 2002, will drastically reduce the circumstances under which modifications at an existing source would be subject to federal new source review. The U.S. E.P.A. has also proposed a rule that will change the definition of "routine maintenance, repair and replacement." If that rule is finalized, it will significantly worsen the situation.
- (g) The newly revised and proposed federal new source review reneges on the promise of clean air embodied in the federal Clean Air Act, and threatens to undermine the air quality of the State of California and thereby threaten the health and safety of the people of the State of California.
- (h) Section 107 of the federal Clean Air Act (42 U.S.C. Sec. 7407) provides that the state has primary responsibility for meeting ambient air quality standards in all areas of the state, and that the means to achieve the standards shall be set out in the state implementation plan, or SIP.
- (i) Section 116 of the federal Clean Air Act (42 U.S.C. Sec. 7416) preserves the right of states to adopt air pollution control requirements that are more stringent than comparable federal requirements. Moreover, the recent revisions to the federal new source review regulations provide that the states may adopt permitting programs that are "at least as stringent" as the new federal "revised base program," and that the federal regulations "certainly do not have the goal of 'preempting' State creativity or innovation." (67 Fed.Reg. 80241 (Dec. 31, 2002)).

(*Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.*)

42502. The Legislature further finds and declares all of the following:

- (a) The people of the State of California have a primary interest in safeguarding the air quality in the state from degradation and in ensuring the enhancement of the air quality of the state.
- (b) Emissions from nonvehicular sources are a significant contributing factor to unhealthful levels of air pollution in California. These emissions must be controlled to protect public health and the environment, and to allow the economic benefits of new and expanded business in this state without compromising those important goals.
- (c) Under state law, air quality management districts and air pollution control districts have primary responsibility for controlling air pollution caused by nonvehicular sources, including stationary sources. The primary mechanism for controlling pollution from new and modified stationary sources is the existing new source review program of the districts. The application of the new source review programs requires that all new and modified sources, unless specifically exempted, must apply control technology and offset emissions increases as a condition of receiving a permit.
- (d) The districts generally require the application of the lowest achievable emission rate, also known as California BACT, to achieve the necessary level of emission control from new or modified sources.
- (e) The requirement for California BACT, offsets, and other requirements are set out in the rules and regulations adopted by the districts to establish the new source review program. These rules and regulations, which typically are more stringent than the minimum requirements established by federal law, are reviewed and approved by the state board and transmitted to the U.S. E.P.A. for inclusion in the SIP.
- (f) The districts have one of the most effective new source review programs in the nation, with requirements for advanced emission control technology on new and expanding sources as its foundation. This technology-based program succeeds by requiring application of emission control technology at the time of construction or when a source undergoes a significant modification, which maximizes the emission reduction benefits and reduces costs.
- (g) With this and other programs, California has been able to improve air quality despite increases in population, industrial output, and motor vehicle use. However, significant areas of the state still do not meet the federal or state ambient air quality standards, which are set at levels necessary to protect public health and welfare. Any rollback of the new source review program, as a result of the federal "reforms," would exacerbate the continuing air pollution challenges faced by the state and delay attainment of the state and federal ambient air quality standards.

(Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.)

42503. The purposes of this chapter are all of the following:

- (a) To attain and maintain state and federal ambient air quality standards by the earliest practicable date.
- (b) To protect public health and welfare from any actual or potential adverse effect which reasonably may be anticipated to occur from air pollution.
- (c) To preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value.
- (d) To ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.
- (e) To ensure that emissions from any source in the state will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for this or any other state.
- (f) To ensure that any decision to permit increased air pollution in any area to which this chapter applies is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

(Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.)

42504. (a) No air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002. If the state board finds, after a public hearing, that a district's rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency, consistent with subdivision (b).

(b) (1) In amending or revising its new source review rules or regulations, a district may not change any of the following that existed on December 30, 2002, if the amendments or revisions would exempt, relax or reduce the obligations of a stationary source for any of the requirements listed in paragraph (2):

- (A) The applicability determination for new source review.

(B) The definition of modification, major modification, routine maintenance, or repair or replacement.

(C) The calculation methodology, thresholds or other procedures of new source review.

(D) Any definitions or requirements of the new source review regulations.

(2) (A) Any requirements to obtain new source review or other permits to construct, prior to commencement of construction.

(B) Any requirements for best available control technology (BACT).

(C) Any requirements for air quality impact analysis.

(D) Any requirements for recordkeeping, monitoring and reporting in a manner that would make recordkeeping, monitoring, or reporting less representative, enforceable, or publicly accessible.

(E) Any requirements for regulating any air pollutant covered by the new source review rules and regulations.

(F) Any requirements for public participation, including a public comment period, public notification, public hearing, or other opportunities or forms of public participation, prior to issuance of permits to construct.

(c) In amending or revising its new source review rules or regulations, a district may change any of the items in paragraph (1) of subdivision (b) only if the change is more stringent than the new source review rules or regulations that existed on December 30, 2002.

(d) Notwithstanding subdivisions (a), (b), and (c), a district may amend or revise a rule or regulation if a district board, at the time the amendments or revisions are adopted, makes its decision based upon substantial evidence in the record, the amendments or revisions are submitted to and approved by the state board after a public hearing, and each of the following conditions is met:

(1) The amended or revised rule or regulation will do one of the following:

(A) Will replace an existing rule or regulation that caused a risk to public health or safety from exposure to a toxic material, a dangerous condition, or an infectious disease with a rule or regulation that provides greater protection to public health or safety.

(B) Will replace an existing rule or regulation that has been found to be unworkable due to engineering or other technical problems with a rule or regulation that is effective.

(C) Will allow an amendment to an existing rule or regulation that otherwise will cause substantial hardship to a business, industry, or category of sources, if all of the following criteria are met:

(i) The amendment is narrowly tailored to relieve the identified hardship.

(ii) The district provides equivalent reductions in emissions of air contaminants to offset any increase in emissions of air contaminants.

(iii) All reductions in emissions of air contaminants are real, surplus, quantifiable, verifiable, enforceable, and timely. For the purposes of this clause, reductions are timely if they occur no more than three years prior to, and no more than three years following, the occurrence of the increase in emissions of air contaminants.

(iv) Information regarding the reductions in emissions of air contaminants is available to the public.

(D) Is a temporary rule or regulation necessary to respond to an emergency consisting of a sudden, unexpected occurrence and demanding prompt action to prevent or mitigate loss of or damage to life, health, property, or essential services and the temporary rule or regulation does not extend beyond the reasonably anticipated duration of the emergency.

(E) Will not, if the district is in attainment with all national ambient air quality standards, impair or impede continued maintenance of those standards or progress toward achieving attainment of state ambient air quality standards.

(2) The amended or revised rule or regulation will not exempt, relax, or reduce the obligation of any stationary source under the rules or regulations of the district, as those rules or regulations existed on December 30, 2002, to obtain a permit or to meet best available control technology requirements. This paragraph only applies to a source that constituted a major source under the rules or regulations of a district that existed on December 30, 2002, and does not apply to any individual best available control technology determination.

(3) The amended or revised rule or regulation is otherwise consistent with this division.

(4) The amended or revised rule or regulation is consistent with any guidance approved by the state board regarding environmental justice.

(Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.)

42505. For purposes of this chapter, each district's "existing new source review program" is comprised of those new source review rules and regulations for both nonattainment and prevention of significant deterioration for new, modified, repaired, or replaced sources that have been adopted by the district governing board on or prior to December 30, 2002, that have been submitted to the U.S. Environmental Protection Agency by the state board for inclusion in the state implementation plan and are pending approval or have been approved by the U.S. Environmental Protection Agency.

(Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.)

42506. In order to assist in interpreting district rules and regulations governing new source review for nonattainment areas and for prevention of significant deterioration, the state board shall provide on its Web site and in writing for purchase by the public, a copy of the federal new source review regulations as they existed on December 30, 2002, and the United States Environmental Protection Agency's guidance document entitled, "New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting," (October 1990 Draft).

(Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.)

42507. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Added by Stats. 2003, Ch. 476, Sec. 1. Effective January 1, 2004.)