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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 AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.)*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 6. AIR TOXICS "HOT SPOTS" INFORMATION AND ASSESSMENT [44300 - 44394] (*Part 6 added by Stats. 1987, Ch. 1252, Sec. 1.)*

CHAPTER 6. Facility Toxic Air Contaminant Risk Reduction Audit and Plan [44390 - 44394] (*Chapter 6 added by Stats. 1992, Ch. 1162, Sec. 3.)*

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

(a) "Airborne toxic risk reduction measure" or "ATRRM" means those in-plant changes in production processes or feedstocks that reduce or eliminate toxic air emissions subject to this part. ATRRM's may include:

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

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

(c) "Airborne toxic risk reduction audit and plan" or "audit and plan" means the audit and plan specified in Section 44392.

(*Added by Stats. 1992, Ch. 1162, Sec. 3. Effective January 1, 1993.*)

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

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

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

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

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

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

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

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

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

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

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

(Amended by Stats. 1993, Ch. 1041, Sec. 2. Effective January 1, 1994.)

44391.2. (a) For purposes of this section, the following provisions shall apply:

(1) "Disadvantaged community" means a community identified as disadvantaged pursuant to Section 39711.

(2) "Sensitive receptors" includes the same locations as specified in paragraph (5) of subdivision (a) of Section 42705.5.

(b) On or before October 1, 2018, the state board shall prepare, in consultation with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Office of Environmental Health Hazard Assessment, environmental justice organizations, affected industry, and other interested stakeholders, a statewide strategy to reduce emissions of toxic air contaminants and criteria air pollutants in communities affected by a high cumulative exposure burden. The state board shall update the statewide strategy at least once every five years. In preparing the statewide strategy, the state board shall conduct at least one public workshop in each of the northern, central, and southern parts of the state. The statewide strategy shall include criteria for the development of community emissions reduction programs. The criteria presented in the statewide strategy shall include, but are not limited to, all of the following:

(1) An assessment and identification of communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants. The assessment shall prioritize disadvantaged communities and sensitive receptor locations based on one or more of the following: best available modeling information, existing air quality monitoring information, existing public health data based on consultation with the Office of Environmental Health Hazard Assessment, and the monitoring results obtained pursuant to Section 42705.5.

(2) A methodology for assessing and identifying the contributing sources or categories of sources, including, but not limited to, stationary and mobile sources, and an estimate of their relative contribution to elevated exposure to air pollution in impacted communities identified pursuant to paragraph (1).

(3) An assessment of whether a district should update and implement the risk reduction audit and emissions reduction plan developed pursuant to Section 44391 for any facility to achieve emissions reductions commensurate with its relative contribution, if the facility's emissions either cause or significantly contribute to a material impact on a sensitive receptor location or disadvantaged community, based on any data available for assessment pursuant to paragraph (1) or other relevant data.

(4) An assessment of the existing and available measures for reducing emissions from the contributing sources or categories of sources identified pursuant to paragraph (2), including, but not limited to, best available control technology, as defined in Section 40405, best available retrofit control technology, as defined in Section 40406, and best available control technology for toxic air contaminants, as defined in Section 39666.

(c) (1) Based on the assessment and identification pursuant to paragraph (1) of subdivision (b), the state board shall select, concurrent with the statewide strategy, locations around the state for preparation of community emissions reduction programs. The state board shall select additional locations annually thereafter, as appropriate.

(2) (A) Within one year of the state board's selection, the district encompassing any location selected pursuant to this subdivision shall adopt, in consultation with the state board, individuals, community-based organizations, affected sources, and local

governmental bodies in the affected community, a community emissions reduction program to achieve emissions reductions for the location selected using cost-effective measures identified pursuant to paragraph (4) of subdivision (b).

(B) A district, with the agreement of the state board and a majority of the persons who are designated by the district to participate in the development and adoption of the community emissions reduction program, may take up to one additional year to adopt a community emissions reduction program pursuant to subparagraph (A).

(3) The community emissions reduction programs shall be consistent with the statewide strategy and include emissions reduction targets, specific reduction measures, a schedule for the implementation of measures, and an enforcement plan.

(4) The community emissions reduction programs shall be submitted to the state board for review and approval within 60 days of the receipt of the program. Programs that are rejected shall be resubmitted within 30 days. To the extent that a program, in whole or in part, is not approvable, the state board shall initiate a public process to discuss options for achieving an approvable program. Concurrent with the public process to achieve an approvable program, the state board shall develop and implement the applicable mobile source elements in the draft program to commence achievement of emissions reductions.

(5) The community emissions reduction programs shall result in emissions reductions in the community, based on monitoring or other data.

(6) In implementing a community emissions reduction program, the district and the state board shall be responsible for measures consistent with their respective authorities.

(7) A district encompassing a location selected pursuant to this subdivision shall prepare an annual report summarizing both of the following:

(A) The results and actions taken to further reduce emissions pursuant to the community emissions reduction program.

(B) Updates to the community emissions reduction program made to ensure consistency with updates to the statewide strategy prepared pursuant to subdivision (b).

(8) Compliance with a community emissions reduction program prepared pursuant to this section, including its implementation, shall be enforceable by the district and state board, as applicable.

(d) The state board shall provide grants to community-based organizations for technical assistance and to support community participation in the implementation of this section and Section 42705.5.

(Amended by Stats. 2022, Ch. 340, Sec. 1. (AB 1749) Effective January 1, 2023.)

44391.3. A school or school district located in a community with a high cumulative exposure burden, as identified pursuant to Section 44391.2, may do both of the following:

(a) Work with districts to identify school sites in need of air quality improvements.

(b) Be eligible for a grant as part of a community emissions reduction program, adopted pursuant to Section 44391.2, to implement air quality mitigation efforts, including, but not limited to, either of the following:

(1) Air filter upgrades or installations.

(2) Vegetation buffer planting.

(c) This section shall be implemented only if an appropriation for this purpose is made in the annual Budget Act or other statute.

(Added by Stats. 2018, Ch. 714, Sec. 2. (AB 2453) Effective January 1, 2019.)

44391.4. (a) (1) Funds made available pursuant to an appropriation from the Greenhouse Gas Reduction Fund to reduce mobile and stationary sources of criteria air pollutants or toxic air contaminants consistent with the community emissions reduction programs developed pursuant to Section 44391.2 shall be available to districts, as distributed by the state board, and shall be used for projects that complement and further the rules and regulatory requirements that the state board or districts have established or are in the process of developing to reduce or mitigate emissions from mobile or stationary sources in affected communities pursuant to Section 44391.2. The funds shall be allocated for projects that are intended to benefit communities that the state board has selected or is considering for selection in future years pursuant to Section 44391.2.

(2) Funds shall be allocated to projects consistent with priorities identified by the affected community in a transparent meaningful public process.

(3) Funds shall only be allocated to projects that will provide emission reductions that are in excess of those otherwise required by law or regulation.

(b) Projects eligible for funding include the following:

(1) Projects that provide financial assistance for the purchase of cleaner technologies with a priority on zero-emission equipment either through the Community Air Protection Funds Moyer Guidelines Supplement or in accordance with the state board's guidelines for the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code) relative to funding amount and truck evaluation.

(2) Zero-emission charging infrastructure projects with a priority toward infrastructure that supports medium- and heavy-duty vehicles.

(3) (A) Projects that provide financial assistance to owners of stationary sources that are not subject to the requirements adopted by the state board pursuant to subdivision (c) of Section 38562 for replacement of equipment with technologies that will result in direct emission reductions of toxic air contaminants and criteria air pollution, including zero-emission technologies.

(B) The state board may contract with the State Treasurer to expend funds for purposes of this paragraph through programs implemented by the State Treasurer or the California Pollution Control Financing Authority.

(c) In addition to subdivision (b), the state board may also fund a program developed by a district, with community input through a public process, that is consistent with actions identified in the applicable community emissions reduction program developed pursuant to Section 44391.2.

(d) (1) Notwithstanding Section 10231.5 of the Government Code, by March 1 of each year, the state board shall report to the Legislature on the use, in the prior fiscal year, of funds that are subject to this section. The report shall include all of the following:

(A) A list of projects funded.

(B) An identification of the communities designed to be benefited by the projects.

(C) The anticipated reduction in the emissions of criteria pollutants, toxic air contaminants, and greenhouse gases resulting from the projects.

(D) How the projects further the relevant community emissions reduction program.

(2) The report required by paragraph (1) may be submitted as a part of the annual report required pursuant to Section 39720.

(Added by Stats. 2019, Ch. 31, Sec. 18. (SB 85) Effective June 27, 2019.)

44391.5. (a) Each statewide strategy update developed by the state board pursuant to Section 44391.2, known as the "Community Air Protection Blueprint" or "Blueprint," shall additionally identify measures to reduce criteria air pollutants and toxic air contaminants.

(b) A district with a population of 1,000,000 persons or more that issues permits to stationary sources of criteria air pollutants or toxic air contaminants shall make available on an easily identifiable location on the district's internet website all permits issued by the district for those stationary sources.

(Added by Stats. 2022, Ch. 340, Sec. 2. (AB 1749) Effective January 1, 2023.)

44392. A facility operator subject to this chapter shall conduct an airborne toxic risk reduction audit and develop a plan which shall include at a minimum all of the following:

(a) The name and location of the facility.

(b) The SIC code for the facility.

(c) The chemical name and the generic classification of the chemical.

(d) An evaluation of the ATRRM's available to the operator.

(e) The specification of, and rationale for, the ATRRMs that will be implemented by the operator. The audit and plan shall document the rationale for rejecting ATRRMs that are identified as infeasible or too costly.

(f) A schedule for implementing the ATRRMs. The schedule shall meet the time requirements of subdivision (a) of Section 44391 or the time period for implementing the plan set by the district pursuant to subdivision (b) or (c) of Section 44391, whichever is applicable.

(g) The audit and plan shall be reviewed and certified as meeting this chapter by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor.

(Amended by Stats. 2012, Ch. 39, Sec. 83. (SB 1018) Effective June 27, 2012.)

44393. The plan prepared pursuant to Section 44391 shall not be considered to be the equivalent of a pollution prevention program or a source reduction program, except insofar as the audit and plan elements are consistent with source reduction, as defined in Section 25244.14, or subsequent statutory definitions of pollution prevention.

(Added by Stats. 1992, Ch. 1162, Sec. 3. Effective January 1, 1993.)

44394. Any facility operator who does not submit a complete airborne toxic risk reduction audit and plan or fails to implement the measures set forth in the plan as set forth in this chapter is subject to the civil penalty specified in subdivision (a) of Section 44381, and any facility operator who, in connection with the audit or plan, knowingly submits any false statement or representation is subject to the civil penalty specified in subdivision (b) of Section 44381.

(Added by Stats. 1992, Ch. 1162, Sec. 3. Effective January 1, 1993.)