AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 1231

Introduced by Assembly Member Jerome Horton

February 22, 2005

An act to amend ~~Section 40440 of~~ *Sections 40448, 40500, 40500.5, 40501, 40502, 40503, 40752, 40804, 41702, 42301.3, 42350, 42351, 42351.5, 42352, 42352.5, 42353, 42354, 42355, 42356, 42357, 42358, 42359, 42359.5, 42360, 42361, 42362, 42363, 42365, 42368, 42372, 42400, 42400.3.5, 42401, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42402.5, and 42451 of, to add Section 42407 to, to add Chapter 7.5 (commencing with Section 40770) to Part 3 of Division 26 of, and to repeal Section 40501.3 of,* the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1231, as amended, Jerome Horton. Air pollution*: Air Pollution Accountability Act of 2005*.

~~Existing~~

(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. ~~Existing law requires the South Coast Air Quality Management District board (south coast district board) to adopt rules and regulations relating to air pollution, not in conflict with state laws and federal laws and rules and regulations.~~

~~This bill would require the south coast district board to adopt rules and regulations, not in conflict with state and federal laws, rules, and regulations.~~

Existing law establishes one or more hearing boards in each district for the purposes of performing specified functions, including, but not limited to, issuing orders of abatement and issuing, extending, renewing, and reissuing variances from specified provisions of law relating to excess emissions by stationary sources and the products of stationary sources. Existing law provides that the terms of the members of a hearing board are three years, and sets forth the procedure a hearing board is required to take with respect to hearings conducted by the hearing board.

Existing law provides for variances from specified provisions of law relating to excess emissions by stationary sources and products of stationary sources, including interim and emergency variances in specified circumstances. Existing law requires written findings to be made by the hearing board before granting any variance, and sets forth procedures for the revocation or modification of any variance. Existing law specifies criminal and civil penalties for violations of laws relating to excess emissions from stationary sources of air pollution and products from stationary sources, and permits a hearing board to issue an order of abatement if it finds that any person is in violation of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

This bill would establish the Air Pollution Accountability Act of 2005 to establish one or more hearing officers, employed and appointed by the state board, to issue, modify, or revoke every order of abatement and every variance, extension, renewal, or reissuance of a variance relating to excess emissions by stationary sources or the products of stationary sources. This bill would specify that districts with hearing boards composed entirely of locally elected officials would not be required to replace the hearing board with a hearing officer for the performance of the above specified functions. This bill would establish procedures for hearings conducted by a hearing officer, and would require each district to provide notices of any request for a variance or issuance of an order of abatement to specified persons. This bill would prohibit a hearing officer from approving any variance authorizing noncompliance with federally approved state implementation plan rules, and would require a hearing officer to make additional written findings in issuing any

variance. This bill would provide that fees paid for excess emissions would increase by a factor of 3 for each 30 days the variance continues, and would make public the total fees paid for excess emissions by each business through monthly filings by hearing officers or hearing boards with the district board.

This bill would additionally require the districts to prepare and submit to the state board, on or before January 1, 2007, and annually thereafter, an annual report relating to variances and the total amount of excess emissions allowed by variances in the district, and would require the state board, on or before July 1, 2007, and annually thereafter, to compile the information and send a similar report to the Legislature.

This bill would make technical, conforming changes relating to the duties and functions of a hearing officer and hearing boards.

Because this bill would impose certain requirements on local districts, this 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 shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

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

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

1 ~~SECTION 1. Section 40440 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 *SECTION 1. This act shall be known, and may be cited, as*
4 *the Air Pollution Accountability Act of 2005.*
5 *SEC. 2. Section 40448 of the Health and Safety Code is*
6 *amended to read:*
7 40448. (a) The south coast district shall maintain an office of
8 public advisor and small business assistance to provide
9 administrative and technical services and information to small

businesses and the public. The executive officer shall appoint the public advisor.

(b) The office shall facilitate and encourage compliance by small businesses with the rules and regulations of the south coast district, assist small businesses in applying for permits and variances, and facilitate the participation of small businesses in the development of rules and regulations and in other proceedings of the south coast district. The office shall provide information on the economic impact of the rules and regulations of the south coast district on small businesses in the south coast district. The office shall make available to small businesses information regarding alternative processes, cleaner fuels and solvents, and low-cost financing for air pollution control equipment. Upon receiving findings and recommendations from the public advisor, the south coast district board shall endeavor to coordinate compliance schedules with the availability to small businesses of financing for pollution control equipment and other measures to reduce emissions.

(c) The office shall assure effective communication with interested groups and the public through means such as maintaining a staffing level adequate to respond to requests for its services and providing toll-free telephone lines. The office shall facilitate effective participation by all interested groups and the public in the development of rules and regulations and the plan and in the discharge of other responsibilities of the south coast district by assuring that, consistent with the express requirements of this chapter, Chapter 6.5 (commencing with Section 40725), Chapter 8 (commencing with Section 40800), and Chapter 10 (commencing with Section 40910), timely and complete notice of all proceedings of the south coast district board and the hearing board is disseminated to all interested groups and the public. Upon request, the office shall advise interested groups and the public as to effective ways of participating in these proceedings, provide more extensive information on any item on an agenda, and make referrals to sources of expert advice and assistance on the district staff and elsewhere. Upon request, the office shall obtain and make available the public record of any aspect of, or particular action taken at, these proceedings. The office shall recommend to the south coast district board and the hearing board additional

measures to assure open consideration and public participation in all proceedings.

(d) As used in this section:

(1) "Public" has the same meaning as "person," as defined in Section 39047.

(2) "Proceedings" means any hearing, workshop, conference, or meeting which is held or conducted by the south coast district board, the hearing board, any committee of either board, *a hearing officer,* or district staff, at which attendance by the public is allowed or required.

SEC. 3. Section 40500 of the Health and Safety Code is amended to read:

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~~ *a hearing officer* 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~~ *officer* 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~~ *a* hearing ~~board~~ *officer* after a public hearing and upon filing, with appropriate fees, of a variance petition with the hearing ~~board~~ *officer*.

SEC. 4. Section 40500.5 of the Health and Safety Code is amended to read:

40500.5. (a) Notwithstanding Section 40500, the south coast district board may prohibit the granting of variances by ~~the~~ *a* hearing ~~board~~ *officer* 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~~ *a* hearing ~~board~~ *officer* 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.

SEC. 5. Section 40501 of the Health and Safety Code is amended to read:

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~~ *a hearing officer* in the county in which the variance is applicable unless the applicant and the hearing ~~board~~ *officer* 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.

SEC. 6. Section 40501.3 of the Health and Safety Code is repealed.

~~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.~~

SEC. 7. Section 40502 of the Health and Safety Code is amended to read:

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~~ *a* hearing ~~board~~ *officer* at the time that the application is filed. Each ~~county~~ hearing ~~board appointed pursuant to subdivision (a) of Section 40501~~ *officer* 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~~ *officer* to the south coast district board at such time as the south coast district board may prescribe.

SEC. 8. Section 40503 of the Health and Safety Code is amended to read:

40503. (a) ~~The~~ *Any hearing officer in 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~~ *officer* 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~~ *officer* 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~~ *officer* 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~~ *officer* 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~~ *officer* 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~~ *officer* 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~~ *officer* 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~~ *officer* shall consider any effects of requiring immediate compliance on the availability of essential public services.

SEC. 9. Section 40752 of the Health and Safety Code is amended to read:

40752. The air pollution control officer shall observe and enforce all of the following:

(a) This part and Part 4 (commencing with Section 41500).

(b) All orders, regulations, and rules prescribed by the district board.

(c) All variances and standards ~~which the~~ *that any* district hearing board *or hearing officer* has prescribed.

(d) All permit conditions imposed pursuant to Sections 42301 and 42301.10.

SEC. 10. Chapter 7.5 (commencing with Section 40770) is added to Part 3 of Division 26 of the Health and Safety Code, to read:

CHAPTER 7.5. HEARING OFFICERS

40770. (a) Except as provided in subdivision (b), the state board shall employ and appoint one or more hearing officers to each district to issue, modify, or revoke every order of abatement pursuant to Section 42451, and every variance, extension, renewal, or reissuance of a variance pursuant to Article 2 (commencing with Section 42350) and Article 2.5 (commencing with Section 42365).

(b) The state board shall not employ or appoint one or more hearing officers to any district whose hearing board or hearing

boards, whichever is applicable, consist entirely of locally elected officials.

(c) For the purposes of this part, a hearing board that consists entirely of locally elected officials shall undertake the functions and duties of a hearing officer set forth in this part.

40771. In the performance of his or her duties, a hearing officer shall use the existing resources, staff, and facilities of any district hearing boards, established pursuant to Chapter 8 (commencing with Section 40800), within a district to which the hearing officer has been appointed.

40772. (a) The hearing officer shall not issue any variance, or any extension, renewal, or reissuance of any variance that authorizes noncompliance with federally approved state implementation plan rules or regulations, or that authorizes emissions of any toxic air contaminant.

(b) In issuing and modifying any variance, or any extension, renewal, or reissuance of any variance, the hearing officer shall make written findings as to the type and amount of excess emissions allowed by the approval of the variance, renewal, or reissuance. For every specific discharge or type of discharge, the hearing officer shall make additional written findings that the variance is consistent with the applicable state implementation plan, the regional air quality management plan, and that the variance is in the public interest. In districts without a state implementation plan or regional air quality management plan, the hearing officer shall only be required, with respect to a specific discharge or type of discharge, to make written findings that the discharge is in the public interest.

(c) Any variance, or any extension, renewal, or reissuance of any variance issued by the hearing officer shall be valid for no more than six months.

40773. No order of abatement or variance may be issued, modified, or revoked by the hearing officer unless a public hearing thereon has been held by the hearing officer pursuant to this chapter.

40774. Any hearing conducted by the hearing officer shall be held in a location readily accessible to the public.

40774.5. The district shall provide notice of any request for a variance or any issuance of an order of abatement to all residents and businesses within one mile of the requesting

facility, to anyone who has requested notice, and to all similar businesses within the district.

40775. (a) In case of a hearing to consider an application for an interim variance, as authorized under Section 42351, the hearing officer shall serve reasonable notice of the time and place of the hearing upon the district air pollution control officer and upon the applicant, not less than 10 days prior to the hearing.

(b) In case of a hearing to consider an application for a variance, or a series of variances, to be in effect for a period of not more than 90 days, or an application for modification of a schedule of increments of progress, the hearing officer shall serve a notice of the time and place of a hearing to grant that variance or modification upon the air pollution control officer, all other districts within the air basin, the state board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 10 days prior to the hearing.

(c) In case of a hearing to consider an application for a variance, other than an interim variance or a 90-day variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements for the hearing shall be as follows:

(1) The hearing officer shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer, all other districts within the air basin, the state board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 30 days prior to the hearing, except as provided in paragraph (4).

(2) The hearing officer shall also publish a notice of the hearing in at least one daily newspaper of general circulation in the district, and shall send the notice to every person who requests the notice, not less than 30 days prior to the hearing, except as provided in paragraph (4).

(3) The notice shall state the time and place of the hearing; the time when, commencing not less than 30 days, or, under paragraph (4), not less than 15 days, prior to the hearing, and place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection; and any other information that may be necessary to

reasonably apprise the people within the district of the nature and purpose of the meeting.

(4) In districts with a population of 750,000 or less, the hearing officer shall serve, publish, and send the notice pursuant to subdivisions (a) and (b) not less than 15 days prior to the hearing.

(d) The hearing officer shall serve a notice of the time and place of a hearing either by personal service or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the hearing board shall serve that person by publication of notice in the district pursuant to Section 6061 of the Government Code.

40776. A hearing officer may administer oaths in any hearing.

40776.1. At any hearing, a hearing officer shall require any witness to be sworn before testifying.

40776.2. (a) There shall be a right of intervention for any interested party in any case heard before the hearing officer.

(b) A hearing officer shall allow interested members of the public a reasonable opportunity to testify with regards to the matter under consideration, and shall consider that testimony in making his or her decision.

(c) The hearing officer shall prepare a record of the witnesses and the testimony of each witness at the hearing. This record may be a tape recording. The record shall be retained by the hearing officer while the variance is in effect, or for a period of one year, whichever is longer.

40776.3. Whenever a hearing officer conducting any hearing deems it necessary to examine any person as a witness at the hearing, the hearing officer shall issue a subpoena, in proper form, commanding that person to appear before the hearing officer at a time and place specified to be examined as a witness. The subpoena may require the person to produce all books, papers, and documents in his or her possession, or under his or her control, material to the hearing.

40776.5. A subpoena to appear before a hearing officer shall be served in the same manner as a subpoena in a civil action.

40776.7. (a) Whenever any person duly subpoenaed to appear and give evidence, or to produce any books and papers, before a hearing officer neglects or refuses to appear, or to

produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question that the hearing officer decides is proper and pertinent, he or she shall be deemed in contempt, and the hearing officer shall report the fact to the superior court of the county in which the hearing is held.

(b) Upon receipt of a report submitted pursuant to subdivision (a), the superior court shall proceed as specified in Section 11455.20 of the Government Code.

(c) On the return of the attachment and the production of the body of the defendant, the superior court has jurisdiction of the matter. The person charged may purge himself or herself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

40776.9. All pleadings to be discussed before the hearing officer shall be filed with the clerk of the district board and be available to the public at least 48 hours prior to the date of the hearing.

40777. (a) A hearing officer shall announce his or her decision in writing. Copies of the hearing officer's decision and of any decision of the district governing board in an appeal of a hearing officer's decision shall immediately be filed with the clerk of the district board and mailed to all of the parties or their attorneys.

(b) The decision of a hearing officer shall include the reasons for the decision and any findings pursuant to Section 40772.

(c) The decision of a hearing officer shall become effective upon filing, unless the hearing officer orders otherwise.

40778. Any interested party may appeal any decision of a hearing officer to the district's governing board, and may appeal any decision of the district governing board to the state board. Except as otherwise provided in this section, a petition of appeal shall be filed within 30 days after the decision of the officer or the district governing board has been mailed pursuant to Section 40777.

40779. (a) Each district shall, on or before January 1, 2007, and annually thereafter, prepare and deliver a report to the state board that sets forth all of the following:

(1) The number of variances requested and granted by each district's hearing officers or hearing boards, whichever is applicable.

(2) The number of orders of abatement requested and granted by each district's hearing officers or hearing boards, whichever is applicable.

(3) The shortest, longest, and average length of the variances issued for the year.

(4) The shortest, longest, and average length of orders of abatement issued for the year.

(5) The total amount of excess emissions allowed by the granting of variances or orders of abatement.

(6) Certification under penalty of perjury that excess emissions allowed by the hearing officers or hearing board, whichever is applicable, are addressed in the state implementation plan and did not include variances for emissions of toxic air contaminants.

(b) The state board shall publish each district report submitted pursuant to subdivision (a) on the state board's Internet Web site.

(c) The state board shall, on or before July 1, 2007, and annually thereafter, compile the district reports required by subdivision (a) and submit a report to the legislature that details all of the following:

(1) The number of variances requested and granted by each district.

(2) The number of orders of abatement requested and granted by each district.

(3) The shortest, longest, and average length of the variances issued for the year.

(4) The shortest, longest, and average length of orders of abatement issued for the year.

(5) The total amount of excess emissions allowed by the granting of variances or orders of abatement.

(6) Certification that excess emissions allowed by the hearing officers are addressed in the state implementation plan.

SEC. 11. Section 40804 of the Health and Safety Code is amended to read:

40804. The terms of the members of a hearing board shall be three years. *A member shall serve no more than two terms.*

In the case of the initial members of a hearing board appointed subsequent to January 1, 1974, two shall serve for a term of one year, two for a term of two years, and one for a term of three years.

SEC. 12. Section 40826 is added to the Health and Safety Code, to read:

40826. The district shall provide notice of any request for a variance or any issuance of any orders of abatement to all residents and businesses within one mile of the requesting facility, to anyone who has requested notice, and to all similar businesses within the district.

SEC. 13. Section 40862 of the Health and Safety Code is amended to read:

40862. *(a)* The decision of a hearing board shall include the reasons for the decision.

(b) With respect to decisions relating to a variance pursuant to Article 2 (commencing with Section 42350) and Article 2.5 (commencing with Section 42365) or order of abatement pursuant to Section 42451, the decision of a hearing board shall include the reasons for the decision and any findings in accordance with that required of hearing officers in Section 40772.

SEC. 14. Section 40863.5 is added to the Health and Safety Code, to read:

40863.5. Any interested party may appeal any decision of a hearing board relating to a variance pursuant to Article 2 (commencing with Section 42350) or Article 2.5 (commencing with Section 42365), or order of abatement pursuant to Section 42451, to the district governing board, and may appeal any decision of the district governing board to the state board. Except as otherwise provided in this section, a petition of appeal shall be filed within 30 days after the decision of the hearing board or the decision of the district governing board has been mailed pursuant to Section 40960.

SEC. 15. Section 41702 of the Health and Safety Code is amended to read:

41702. No person shall operate any article, machine, equipment, or other contrivance which is the subject of a variance if that article, machine, equipment, or other contrivance, as may be the case, is not in compliance with a required schedule

of increments of progress, unless ~~such~~ *that* operation is authorized by a hearing ~~board~~ *officer or hearing board, whichever is applicable*.

SEC. 16. Section 42301.3 of the Health and Safety Code is amended to read:

42301.3. (a) It is the intent of the Legislature that districts expedite permits for the installation of air pollution control equipment.

(b) (1) This section applies only to air pollution control projects at existing sources, where the project is necessary to comply with emission standards or limitations imposed by law, including, but not limited to, district regulations.

(2) This section does not apply to air pollution control requirements applicable to new or modified sources that are not air pollution control projects necessary to comply with emission standards or limitations imposed by law. However, this section applies to the permitting of air pollution control projects necessary to comply with emission standards or limitations imposed by law that are intended to reduce emissions of one or more pollutants that may or may not result in an increase in emissions of a different pollutant or pollutants.

(c) Each district shall prepare, with input from the regulated community, a list of permitting criteria that identifies streamlined permit application requirements for each type of mandated air pollution control project. The list shall be consistent with the requirements of this section but may also include general facility information, a general description of the equipment affected by the air pollution control project, and specific information regarding the pollution control equipment or operational changes that will reduce emissions.

(d) (1) Within 30 days of the date that the applicant submits the information specified in paragraph (2), the district shall commence evaluation and deem the application complete, subject to the final as-built design submittal being consistent with the preliminary engineering and design information specified in subparagraph (B) of paragraph (2), for the purpose of issuing a permit to construct. Notwithstanding the limitations of Sections 65944, 65950, and 65952 of the Government Code, if final design information results in a material change in the permit evaluation that was based on the preliminary submittal, the

application shall undergo a new evaluation based on the final design and the district shall promptly notify the applicant of any further information that is necessary to complete the evaluation.

(2) Prior to the district deeming the application complete pursuant to paragraph (1), the applicant shall provide the following information:

(A) The information specified in the list prepared pursuant to subdivision (c).

(B) Either of the following:

(i) Preliminary engineering and design information or other technical equipment specification data reasonably available during the initial design phase.

(ii) The manufacturer's performance warranty and the associated preliminary engineering data on which the bidding documents for the contract with the manufacturer were based.

(C) Any reasonably required information regarding an air contaminant for which emissions will increase as a result of installation of the air pollution control project.

(D) Any information necessary to make the application complete with respect to any federal requirement adopted or promulgated pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) that applies to the air pollution control project.

(e) Prior to the final approval of the applicant's permit to operate, the applicant shall provide the district with final engineering and design information and other data reasonably necessary to ensure compliance with applicable emission limitations. The information may be based on source test results and other operating data available after startup and shakedown of the control equipment. Once the applicant has provided the information specified in this subdivision, and the final design is consistent with the preliminary design data specified in subparagraph (B) of paragraph (2) of subdivision (d) for purposes of permit evaluation, the district shall deem the application complete for the purpose of issuing a permit to operate.

(f) (1) For projects subject to this section for which the use of continuous emission monitoring systems is required, the air quality permit conditions that relate to emissions monitored by the continuous emission monitoring systems shall be sufficient for measurements and reporting as required to meet the specified emission limit as required by the rule or regulation.

(2) Nothing in this subdivision is intended to limit the applicability of standards or limitations or monitoring requirements set forth in any rule or regulation.

(g) (1) An applicant may petition *a district hearing board or* ~~the~~ *a hearing officer located in the* district ~~hearing board~~*, whichever is applicable,* for a variance from a requirement to install air pollution control equipment or to meet a more stringent emission standard or limitation if there is a delay in the approval of the permit to construct or permit to operate for projects under this section. The finding required by paragraph (2) of subdivision (a) of Section 42352 shall be met if the hearing ~~board~~ *officer or hearing board, whichever is applicable,* finds that the delay is not due to the lack of due diligence on the part of the applicant in the permit process, and the delay results in the inability of the applicant to legally comply with the requirement or schedule that requires the installation and operation of air pollution control equipment or achievement of a more stringent emission standard or limitation. The findings required by paragraphs (3), (4), and (5) of subdivision (a) of Section 42352 shall not apply to a variance granted pursuant to this paragraph. Paragraph (6) of subdivision (a) of Section 42352 shall apply to a variance granted pursuant to this paragraph. However, if the district requests that the applicant monitor or otherwise quantify emission levels from the source during the term of the variance pursuant to paragraph (6) of subdivision (a) of Section 42352, that monitoring or quantification required in connection with the variance shall be limited to any monitoring or quantification already being performed for the source for which the pollution control project is required. No variance shall be granted unless the hearing ~~board~~ *officer or hearing board, whichever is applicable,* makes the findings as specified in this subdivision. The hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall not impose any excess emission fees in connection with the grant of the variance. In determining the term of the variance, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall consider the period of time that the delay was not due to the lack of due diligence on the part of the applicant.

(2) For purposes of this subdivision, “due diligence” means that all of the following conditions exist:

(A) The air pollution control project proposed by the applicant was reasonably expected to achieve compliance with the pertinent emission standard or limitation.

(B) The applicant submitted the permit application in sufficient time for the district to act on the application and for the applicant to complete the project in accordance with the deadline.

(C) The applicant responded in a reasonable time to requests for additional information needed by the district to process the application or prepare any necessary environmental analyses.

(D) The district has not denied or proposed to deny the application on the basis of the project's inability to meet district permit requirements consistent with this section.

(E) During the term of the variance, the applicant will take practicable steps to ensure completion of the project as expeditiously as possible after issuance of the permit.

(3) Paragraph (1) shall not limit the authority of a district to require emissions monitoring or quantification under any other applicable provision of law.

(4) Nothing in this subdivision shall be interpreted as authorizing a hearing ~~board~~ *officer or hearing board, whichever is applicable,* to grant a variance from any requirement for a permit to build, alter, erect, or replace any air pollution control equipment included in a project subject to this section.

(h) If a supplemental or other environmental impact report or other environmental assessment is required for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the district is the lead agency, the district shall prepare and act upon the report or assessment and the permit to construct concurrently in order to streamline the approval process. However, the district shall be required to take that concurrent action only if the applicant has submitted the information required by this section to allow the district to streamline the approval process.

(i) For purposes of this section, "material change" means a change that would result in a material impact on the level of emission calculated.

SEC. 17. Section 42350 of the Health and Safety Code is amended to read:

42350. (a) Any person may apply to ~~the~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable,* for a variance from Section 41701 or from the rules and regulations of the district.

(b) (1) If the district board has established a permit system by regulation pursuant to Section 42300, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

(2) Title V sources shall not be granted a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use.

(3) In districts with emission-capped trading programs, no variance shall be granted from the emission cap requirement.

SEC. 18. Section 42351 of the Health and Safety Code is amended to read:

42351. (a) Any person who has submitted an application for a variance and who desires to commence or continue operation pending the decision of ~~the~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable,* on the application, may submit an application for an interim variance.

(b) An interim variance may be granted for good causes stated in the order granting such a variance. The interim variance shall not be valid beyond the date of decision of the hearing board on the application of the variance or for more than 90 days from date of issuance of the interim variance, whichever occurs first.

(c) The hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall not grant any interim variance (1) after it has held a hearing in compliance with the requirements of Section *40775 or* 40826*, whichever is applicable*, or (2) which is being sought to avoid the notice and hearing requirements of Section *40775 or* 40826*, whichever is applicable*.

(d) Every interim variance granted by a hearing officer or hearing board, whichever applicable, shall meet the written finding requirements set forth in Section 40772.

SEC. 19. Section 42351.5 of the Health and Safety Code is amended to read:

42351.5. If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing ~~board~~ *officer or hearing board, whichever is applicable,* sufficiently in advance

to allow the hearing ~~board~~ *officer or hearing board, whichever is applicable,* to schedule a public hearing on the application, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application. ~~In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests such a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision.~~ The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

SEC. 20. Section 42352 of the Health and Safety Code is amended to read:

42352. (a) No variance shall be granted unless the hearing ~~board~~ *officer or hearing board, whichever is applicable,* makes all of the following findings*, in addition to the findings required by subdivision (b) of Section 40772*:

(1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

(2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

(b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

SEC. 21. Section 42352.5 of the Health and Safety Code is amended to read:

42352.5. (a) The hearing ~~board~~ *officer or hearing board, whichever is applicable*, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 42352 or paragraph (2) of subdivision (a) of Section 42368, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(2) In determining whether or not 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~~ *officer or hearing board, whichever is applicable,* shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as

defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(2) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining the extent to which the petitioner took reasonable actions to comply, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

SEC. 22. Section 42353 of the Health and Safety Code is amended to read:

42353. Upon making the specific findings set forth in Section 42352, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the district board, not more onerous, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of individual persons. However, no variance shall be granted if the operation, under the variance, will result in a violation of Section 41700.

SEC. 23. Section 42354 of the Health and Safety Code is amended to read:

42354. In prescribing other and different requirements, in accordance with Section 42353, the hearing ~~board~~ *officer or hearing board, whichever is applicable,* insofar as is consonant with the Legislature's declarations in Sections 39000 and 39001, shall exercise a wide discretion in weighing the equities involved

and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with ~~such~~ *those* requirements.

SEC. 24. Section 42355 of the Health and Safety Code is amended to read:

42355. (a) The hearing ~~board~~ *officer or hearing board, whichever is applicable,* may require, as a condition of granting a variance, that a bond be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. The bond may provide that, if the party granted the variance fails to perform the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or the sureties shall have the option of promptly remedying the variance default or paying to the district an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(b) The provisions of this section do not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

SEC. 25. Section 42356 of the Health and Safety Code is amended to read:

42356. The hearing ~~board~~ *officer or hearing board, whichever is applicable,* may modify or revoke, by written order, any order permitting a variance.

SEC. 26. Section 42357 of the Health and Safety Code is amended to read:

42357. The hearing ~~board~~ *officer or hearing board, whichever is applicable,* may review and for good cause, such as a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in such a schedule.

SEC. 27. Section 42358 of the Health and Safety Code is amended to read:

42358. ~~(a)~~ The hearing ~~board~~ *officer or hearing board,* whichever is applicable, in making any order permitting a variance, shall specify the time during which ~~such~~ *the* order shall

be effective, in no event~~, except as otherwise provided in subdivision (b),~~ to exceed ~~one year~~ *six months*, and shall set a final compliance date.

~~(b) A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.~~

SEC. 28. Section 42359 of the Health and Safety Code is amended to read:

42359. Except in the case of an emergency, as determined by the hearing ~~board~~ *officer or hearing board, whichever is applicable*, the hearing ~~board~~ *officer or hearing board,* shall hold a hearing pursuant to Chapter ~~8~~ *7.5* (commencing with Section ~~40800~~ *40770) or Chapter 8 (commencing with Section 40800),* of Part 3*, whichever is applicable,* to determine under what conditions, and to what extent, a variance shall be granted.

SEC. 29. Section 42359.5 of the Health and Safety Code is amended to read:

42359.5. (a) Notwithstanding any other provision of this article ~~or of Article 2 (commencing with Section 40820) of~~, Chapter ~~8~~ *7.5* (commencing with Section 40770)*, or Chapter 8 (commencing with Section 40820),* of Part 3, ~~the chairman of a district hearing board, or any other member of the hearing board designated thereby,~~ *a hearing officer or hearing board, whichever is applicable,* may issue, without notice and hearing, an emergency variance to an applicant.

(b) An emergency variance may be issued for good cause, including, but not limited to, a breakdown condition. The district board in consultation with its air pollution control officer and ~~the~~ hearing ~~board~~ *officers or district hearing boards, whichever is applicable,* may adopt rules and regulations, not inconsistent with this subdivision, to further specify the conditions, and to what extent, an emergency variance may be granted.

The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 40824 or 42351.

SEC. 30. Section 42360 of the Health and Safety Code is amended to read:

42360. Within 30 days of any order granting, modifying, or otherwise affecting a variance by ~~the~~ *a* hearing ~~board, or a member thereof pursuant to Section 42359.5~~ *officer or hearing board, whichever is applicable*, ~~either~~ the air pollution control officer*,* ~~or~~ the hearing ~~board~~ *officer or hearing board* shall submit a copy of the order to the state board.

SEC. 31. Section 42361 of the Health and Safety Code is amended to read:

42361. Any variance granted by ~~the~~ *a* hearing board ~~of a county district or a unified district, or any member of such a hearing board pursuant to Section 42359.5,~~ *or a hearing officer, whichever is* applicable*,* in an area ~~which~~ *that* subsequently becomes included within a regional district, including the bay district, shall remain valid for the time specified therein or for one year, whichever is shorter, or, unless prior to the expiration of ~~such~~ *that* time, the hearing board ~~of the regional district~~ *or the hearing officer, whichever is applicable* modifies or revokes the variance.

SEC. 32. Section 42362 of the Health and Safety Code is amended to read:

42362. The state board may revoke or modify any variance granted by any ~~district~~ *hearing officer or hearing board, whichever is applicable,* if, in its judgment, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of this article.

SEC. 33. Section 42363 of the Health and Safety Code is amended to read:

42363. Prior to revoking or modifying a variance pursuant to Section 42362, the state board shall conduct a hearing pursuant to Chapter ~~8~~ *7.5* (commencing with Section ~~40800~~ *40770) or Chapter 8 (commencing with Section 40800),* of Part 3*, whichever is applicable,* on the matter. The person to whom the variance was granted shall be given immediate notice of any ~~such~~ hearing by ~~the~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable*, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise ~~partake~~ *participate* as if ~~he were~~ *the person was* a party to the hearing.

SEC. 34. Section 42365 of the Health and Safety Code is amended to read:

42365. Any person who manufactures a product may petition ~~the~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable,* for a product variance from a rule or regulation of the district pursuant to this article.

SEC. 35. Section 42368 of the Health and Safety Code is amended to read:

42368. (a) No product variance shall be granted unless the hearing ~~board~~ *officer or hearing board, whichever is applicable,* makes all of the following findings*, in addition to the findings required by subdivision (b) of Section 40772*:

(1) The manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a rule, regulation, or order of the district.

(2) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.

(3) The taking or closing would be without a corresponding benefit in reducing air contaminants.

(4) The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with district rules and regulations.

(5) During the period that the product variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission levels to the district, if requested by the district.

(b) If the product variance is granted subject to conditions on the use of the product, within 10 days from the effective date of the variance, and for the duration of the time period of the variance, the petitioner shall cause a written notice to be furnished to any retailer, distributor, and purchaser of the product who is located within the district. The written notice shall be, attached to, or otherwise accompany, the product, and shall include all of the following information:

(1) That the product is being sold pursuant to a product variance granted by ~~the district~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable*.

(2) The beginning and ending dates of the product variance.

(3) Any other conditions set forth in the product variance.

(c) Within 10 days from the effective date of the granting of the product variance, the district shall cause to be published pursuant to Section 6061 of the Government Code, the information specified in subdivision (b).

(d) The ~~district hearing board~~ *hearing officer or hearing board, whichever is applicable,* may prescribe requirements or conditions in the product variance that are applicable to the product, other than those imposed by statute or by any rule, regulation, or order of the district board, if those requirements or conditions are not more onerous.

SEC. 36. Section 42372 of the Health and Safety Code is amended to read:

42372. (a) ~~The~~ *A* hearing ~~board~~ *officer or hearing board, whichever is applicable*, in making any order permitting a product variance, shall specify the time during which the order shall be effective, ~~which, except as provided in subdivision (b), shall~~ not *to* exceed ~~one year~~ *six months*, and shall set a final compliance date.

(b) ~~A product variance may be issued for a period exceeding one year, but in no event to exceed two years from the date of the granting of the initial product variance, if the product variance includes a schedule of increments of progress specifying a final compliance date by which the emission of air contaminants from the product for which the product variance is granted will be brought into compliance with applicable emission standards and all district rules, regulations, and orders. No extension may be granted to a petitioner without a showing of good cause and proof of compliance with the findings required by Section 42368.~~

~~(c)~~ If the product variance is for a process or product that is equivalent to, or exceeds, the applicable standards required by the district's rules and regulations, and the hearing ~~board~~ *officer or hearing board, whichever is applicable,* granting the variance specifies that the only way to achieve compliance will be for the district to adopt or amend a rule or regulation, the air pollution control officer within 180 days from the effective date of the variance, shall set a public hearing before the district governing board and make a recommendation on whether or not the board should adopt or amend a rule or regulation to bring the product into compliance. The district governing board shall, within ~~one~~

~~year~~ *six months* of the effective date of the variance, take action to (1) adopt or amend a district rule or regulation to bring the product into compliance, or (2) determine that no amendment, rule, or regulation is warranted. If the district governing board fails to take either action, nothing in this subdivision shall limit the petitioner's rights and remedies under existing law.

SEC. 37. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board*, of a hearing officer,* or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d), to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars ($15,000) or imprisonment in the county jail for not more than nine months, or both.

(d) As used in this section, "actual injury" means any physical injury that, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

SEC. 38. Section 42400.3.5 of the Health and Safety Code is amended to read:

42400.3.5. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board*, of a hearing officer,* or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars ($35,000) or imprisonment in the county jail for not more than nine months, or both.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).

(d) Subdivisions (a) and (b) shall apply only to those violations that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 39. Section 42401 of the Health and Safety Code is amended to read:

42401. Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 42450, by a hearing ~~board~~ *officer or hearing board* pursuant to Section 42451, or by the state board pursuant to Section 41505 is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

SEC. 40. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as provided in Sections 42402.1, 42402.2, 42402.3, and 42402.4, any person who violates this part, any order issued pursuant to Section 42316, *any rule, permit, or order of a hearing officer,* or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars ($1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, *any rule, permit, or order of a hearing officer,* or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars ($10,000).

(2) (A) If a civil penalty in excess of one thousand dollars ($1,000) for each day in which a violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act that was not the result of intentional nor negligent conduct.

(B) Subparagraph (A) shall not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d) of Section 42400, to the health and safety of a considerable number of persons or the public, is liable for a civil penalty of not more than fifteen thousand dollars ($15,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 41. Section 42402.1 of the Health and Safety Code is amended to read:

42402.1. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board*, of a hearing officer,* or of a district, including a district hearing board, pertaining to emission regulations or limitations is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000).

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than one hundred thousand dollars ($100,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 42. Section 42402.2 of the Health and Safety Code is amended to read:

42402.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board*, of a hearing officer,* or of a district, including a district hearing board, pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars ($40,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a

reasonable period of time under the circumstances, is liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 43. Section 42402.3 of the Health and Safety Code is amended to read:

42402.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, *of a hearing officer,* or of a district, including a district hearing board, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than seventy-five thousand dollars ($75,000).

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars ($125,000). If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars ($500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars ($250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars ($1,000,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 44. Section 42402.4 of the Health and Safety Code is amended to read:

42402.4. Any person who knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order

of the state board*, of a hearing officer,* or of a district, including a district hearing board, is liable for a civil penalty of not more than thirty-five thousand dollars ($35,000).

SEC. 45. Section 42402.5 of the Health and Safety Code is amended to read:

42402.5. In addition to any civil and criminal penalties prescribed under this article, a district may impose administrative civil penalties for a violation of this part, or any order, permit, rule, or regulation of the state board*, of a hearing officer,* or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, if the district board has adopted rules and regulations specifying procedures for the imposition and amounts of these penalties. No administrative civil penalty levied pursuant to this section may exceed five hundred dollars ($500) for each violation. However, nothing in this section is intended to restrict the authority of a district to negotiate mutual settlements under any other penalty provisions of law which exceed five hundred dollars ($500).

SEC. 46. Section 42407 is added to the Health and Safety Code, to read:

42407. (a) Notwithstanding any other provision of law, fees for excess emissions paid by a person granted a variance under Article 2 (commencing with Section 42350) or Article 2.5 (commencing with Section 42365) shall increase by a factor of three for each 30 days the variance continues. The base fee for excess emissions further allowed by any extensions, renewals, or reissuances of the variance shall continue at the highest fee assessed for the last variance, extension, renewal, or reissuance, and shall increase by a factor of three for each 30 days the variance, extension, renewal, or reissuance continues.

(b) The total fees for excess emissions paid by each person in the district shall be made public through monthly filings by the hearing officers within the district, or by district hearing boards, whichever is applicable, to the district board.

SEC. 47. Section 42451 of the Health and Safety Code is amended to read:

42451. (a) On its own motion, or upon the motion of the district board or the air pollution control officer, ~~the~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable,* may,

after notice and a hearing, issue an order ~~for~~ *of* abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 41700 or 41701 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

(b) As an alternative to subdivision (a), ~~the~~ *a* hearing ~~board~~ *officer or hearing board, whichever is applicable,* may issue an order ~~for~~ *of* abatement pursuant to the stipulation of the air pollution control officer and the person or persons accused of constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or of violating Section 41700 or 41701, or any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air, upon the terms and conditions set forth in the stipulation, without making the finding required under subdivision (a). The hearing ~~board~~ *officer or hearing board, whichever is applicable,* shall, however, include a written explanation of its action in the order ~~for~~ *of* abatement.

SEC. 48. No reimbursement shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

~~40440. (a) The south coast district board shall adopt rules and regulations that carry out the plan and are not in conflict with state and federal laws, rules, and regulations. Upon adoption and approval of subsequent revisions of the plan, these rules and regulations shall be amended, if necessary, to conform to the plan.~~

~~(b) The rules and regulations adopted pursuant to subdivision (a) shall do all of the following:~~

~~(1) Require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.~~

~~(2) Promote cleaner burning alternative fuels.~~

~~(3) Consistent with Section 40414, provide for indirect source controls in those areas of the south coast district in which there~~

~~are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.~~

~~(4) Provide for transportation control measures, as listed in the plan.~~

~~(c) The south coast district board shall adopt rules and regulations that will assure that all its administrative practices and the carrying out of its programs are efficient and cost-effective, consistent with the goals of achieving and maintaining federal and state ambient air quality standards and achieving the purposes of this chapter.~~

~~(d) The south coast district board shall determine what is the best available retrofit control technology for existing electric plants, and shall adopt rules and regulations requiring the use of the best available retrofit control technology in existing electric plants, if the board finds and determines that to do so is necessary to carry out the plan.~~

~~(e) In adopting any regulation, the south coast district board shall comply with Section 40703.~~

O