

Appendix B

Health and Safety Code Related to Air Toxics Hot Spots

Appendix B. Health and Safety Code Related to Hot Spots Program¹

PART 6. AIR TOXICS "HOT SPOTS" INFORMATION AND ASSESSMENT

(Part 6 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384. Note: Sections 44380 and 44384 became operative Jan. 1, 1988.)

CHAPTER 1. LEGISLATIVE FINDINGS AND DEFINITIONS

(Chapter 1 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44300. This part shall be known and may be cited as the Air Toxics "Hot Spots" Information and Assessment Act of 1987. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44301. The Legislature finds and declares all of the following:

- (a) In the wake of recent publicity surrounding planned and unplanned releases of toxic chemicals into the atmosphere, the public has become increasingly concerned about toxics in the air.
- (b) The Congressional Research Service of the Library of Congress has concluded that 75 percent of the United States population lives in proximity to at least one facility that manufactures chemicals. An incomplete 1985 survey of large chemical companies conducted by the Congressional Research Service documented that nearly every chemical plant studied routinely releases into the surrounding air significant levels of substances proven to be or potentially hazardous to public health.
- (c) Generalized emissions inventories compiled by air pollution control districts and air quality management districts in California confirm the findings of the Congressional Research Service survey as well as reveal that many other facilities and businesses which do not actually manufacture chemicals do use hazardous substances in sufficient quantities to expose, or in a manner that exposes, surrounding populations to toxic air releases.
- (d) These releases may create localized concentrations or air toxics "hot spots" where emissions from specific sources may expose individuals and population groups to elevated risks of adverse health effects, including, but not limited to, cancer and contribute to the cumulative health risks of emissions from other sources in the area. In some cases where large populations may not be significantly affected by adverse health risks, individuals may be exposed to significant risks.

¹ AB564 Passed in the 1996 legislative session. The text will be added when the code is revised.

- (e) Little data is currently available to accurately assess the amounts, types, and health impacts of routine toxic chemical releases into the air. As a result, there exists significant uncertainty about the amounts of potentially hazardous air pollutants which are released, the location of those releases, and the concentrations to which the public is exposed.
- (f) The State of California has begun to implement a long-term program to identify, assess, and control ambient levels of hazardous air pollutants, but additional legislation is needed to provide for the collection and evaluation of information concerning the amounts, exposures, and short- and long-term health effects of hazardous substances regularly released to the surrounding atmosphere from specific sources of hazardous releases.
- (g) In order to more effectively implement control strategies for those materials posing an unacceptable risk to the public health, additional information on the sources of potentially hazardous air pollutants is necessary.
- (h) It is in the public interest to ascertain and measure the amounts and types of hazardous releases and potentially hazardous releases from specific sources that may be exposing people to those releases, and to assess the health risks to those who are exposed. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44302. The definitions set forth in this chapter govern the construction of this part. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44303. "Air release" or "release" means any activity that may cause the issuance of air contaminants, including the actual or potential spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the ambient air and that results from the routine operation of a facility or that is predictable, including, but not limited to, continuous and intermittent releases and predictable process upsets or leaks. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44304. "Facility" means every structure, appurtenance, installation, and improvement on land which is associated with a source of air releases or potential air releases of a hazardous material. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44306. "Health risk assessment" means a detailed comprehensive analysis prepared pursuant to Section 44361 to evaluate and predict the dispersion of hazardous substances in the environment and the potential for exposure of human populations and to assess and quantify both the individual and population wide health risks associated with those levels of exposure. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44307. "Operator" means the person who owns or operates a facility or part of a facility. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44308. "Plan" means the emissions inventory plan which meets the conditions specified in Section

44342. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44309. "Report" means the emissions inventory report specified in Section 44341. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

CHAPTER 2. FACILITIES SUBJECT TO THIS PART

(Chapter 2 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44320. This part applies to the following:

- (a) Any facility which manufactures, formulates, uses, or releases any of the substances listed pursuant to Section 44321 or any other substance which reacts to form a substance listed in Section 44321 and which releases or has the potential to release total organic gases, particulates, or oxides of nitrogen or sulfur in the amounts specified in Section 44322.
- (b) Except as provided in Section 44323, any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district. A district may, with the concurrence of the state board, waive the application of this part pursuant to this subdivision for any facility which the district determines will not release any substance listed pursuant to Section 44321 due to a shutdown or a process change. (Amended by Stats. 1989, Ch. 1254, Sec. 7). References at the time of publication (see page iii): Regulations: 17, CCR, sections 90700-90703, 90704, 93303, 93306

44321. For the purposes of Section 44320, the state board shall compile and maintain a list of substances that contains, but is not limited to, all of the following:

- (a) Substances identified by reference in paragraph (1) of subdivision (b) of Section 6382 of the Labor Code and substances placed on the list prepared by the National Toxicology Program issued by the United States Secretary of Health and Human Services pursuant to paragraph (4) of Section 262 of Public Law 95-622 of 1978. For the purposes of this subdivision, the state board may remove from the list any substance which meets both of the following criteria:
 - (1) No evidence exists that it has been detected in air.
 - (2) The substance is not manufactured or used in California, or, if manufactured or used in California, because of the physical or chemical characteristics of the substance or the manner in which it is manufactured or used, there is no possibility that it will become airborne.
- (b) Carcinogens and reproductive toxins referenced in or compiled pursuant to Section

25249.8, except those which meet both of the criteria identified in subdivision (a).

- (c) The candidate list of potential toxic air contaminants and the list of designated toxic air contaminants prepared by the state board pursuant to Article 2 (commencing with Section 39660) of Chapter 3.5 of Part 2, including, but not limited to, all substances currently under review and scheduled or nominated for review and substances identified and listed for which health effects information is limited.
- (d) Substances for which an information or hazard alert has been issued by the repository of current data established pursuant to Section 147.2 of the Labor Code.
- (e) Substances reviewed, under review, or scheduled for review as air toxics or potential air toxics by the Office of Air Quality Planning and Standards of the Environmental Protection Agency, including substances evaluated in all of the following categories or their equivalent: preliminary health and source screening, detailed assessment, intent to list, decision not to regulate, listed, standard proposed, and standard promulgated.
- (f) Any additional substances recognized by the state board as presenting a chronic or acute threat to public health when present in the ambient air, including, but not limited to, any neurotoxins or chronic respiratory toxins not included within subdivision (a), (b), (c), (d), or (e). (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44322. This part applies to facilities specified in subdivision (a) of Section 44320 in accordance with the following schedule:

- (a) For those facilities that release, or have the potential to release, 25 tons per year or greater of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective on July 1, 1988.
- (b) For those facilities that release, or have the potential to release, more than 10 but less than 25 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective July 1, 1989.
- (c) For those facilities that release, or have the potential to release, less than 10 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, the state board shall, on or before July 1, 1990, prepare and submit a report to the Legislature identifying the classes of those facilities to be included in this part and specifying a timetable for their inclusion. (Amended by Stats. 1989, Ch. 1254, Sec. 8.)

44323. A district may prepare an industrywide emissions inventory and health risk assessment for facilities specified in subdivision (b) of Section 44320 and subdivisions (a) and (b) of Section

44322, and shall prepare an industrywide emissions inventory for the facilities specified in subdivision (c) of Section 44322, in compliance with this part for any class of facilities that the district finds and determines meets all of the following conditions:

- (a) All facilities in the class fall within one four-digit Standard Industrial Classification Code.
- (b) Individual compliance with this part would impose severe economic hardships on the majority of the facilities within the class.
- (c) The majority of the class is composed of small businesses.

- (d) Releases from individual facilities in the class can easily and generically be characterized and calculated. (Amended by Stats. 1989, Ch. 1254, Sec. 9.)

44324. This part does not apply to any facility where economic poisons are employed in their pesticidal use, unless that facility was subject to district permit requirements on or before August 1, 1987. As used in this section, "pesticidal use" does not include the manufacture or formulation of pesticides. (Added by Stats. 1981, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44325. Any solid waste disposal facility in compliance with Section 41805.5 is in compliance with the emissions inventory requirements of this part. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

CHAPTER 3. AIR TOXICS EMISSION INVENTORIES

(Chapter 3 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44340. (a) The operator of each facility subject to this part shall prepare and submit to the district a proposed comprehensive emissions inventory plan in accordance with the criteria and guidelines adopted by the state board pursuant to Section 44342.
- (b) The proposed plan shall be submitted to the district on or before August 1, 1989, except that, for any facility to which subdivision (b) of Section 44322 applies, the proposed plan shall be submitted to the district on or before August 1, 1990. The district shall approve, modify, and approve as modified, or return for revision and resubmission, the plan within 120 days of receipt.
- (c) The district shall not approve a plan unless all of the following conditions are met:
- (1) The plan meets the requirements established by the state board pursuant to Section 44342.
 - (2) The plan is designed to produce, from the list compiled and maintained pursuant to Section 44321, a comprehensive characterization of the full range of hazardous materials that are released, or that may be released, to the surrounding air from the facility. Air release data shall be collected at, or calculated for, the primary locations of actual and potential release for each hazardous material. Data shall be collected or calculated for all continuous, intermittent, and predictable air releases.
 - (3) The measurement technologies and estimation methods proposed provide state-of-the-art effectiveness and are sufficient to produce a true representation of the types and quantities of air releases from the facility.
 - (4) Source testing or other measurement techniques are employed wherever necessary to verify emission estimates, as determined by the state board and to the extent technologically feasible. All testing devices shall be appropriately located, as determined by the state board.
 - (5) Data are collected or calculated for the relevant exposure rate or rates of each hazardous material according to its characteristic toxicity and for the emission rate necessary to ensure a characterization of risk associated with exposure to releases of

the hazardous material that meets the requirements of Section 44361. The source of all emissions shall be displayed or described. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44341. Within 180 days after approval of a plan by the district, the operator shall implement the plan and prepare and submit a report to the district in accordance with the plan. The district shall transmit all monitoring data contained in the approved report to the state board. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44342. The state board shall, on or before May 1, 1989, in consultation with the districts, develop criteria and guidelines for site-specific air toxics emissions inventory plans which shall be designed to comply with the conditions specified in Section 44340 and which shall include at least all of the following:

- (a) For each class of facility, a designation of the hazardous materials for which emissions are to be quantified and an identification of the likely source types within that class of facility. The hazardous materials for quantification shall be chosen from among, and may include all or part of, the list specified in Section 44321.
- (b) Requirements for a facility diagram identifying each actual or potential discrete emission point and the general locations where fugitive emissions may occur. The facility diagram shall include any nonpermitted and nonprocess sources of emissions and shall provide the necessary data to identify emission characteristics. An existing facility diagram which meets the requirements of this section may be submitted.
- (c) Requirements for source testing and measurement. The guidelines may specify appropriate uses of estimation techniques including, but not limited to, emissions factors, modeling, mass balance analysis, and projections, except that source testing shall be required wherever necessary to verify emission estimates to the extent technologically feasible. The guidelines shall specify conditions and locations where source testing, fence-line monitoring, or other measurement techniques are to be required and the frequency of that testing and measurement.
- (d) Appropriate testing methods, equipment, and procedures, including quality assurance criteria.
- (e) Specifications for acceptable emissions factors, including, but not limited to, those which are acceptable for substantially similar facilities or equipment, and specification of procedures for other estimation techniques and for the appropriate use of available data.
- (f) Specification of the reporting period required for each hazardous material for which emissions will be inventoried.
- (g) Specifications for the collection of useful data to identify toxic air contaminants pursuant to Article 2 (commencing with Section 39660) of Chapter 3.5 of Part 2.
- (h) Standardized format for preparation of reports and presentation of data.
- (i) A program to coordinate and eliminate any possible overlap between the requirements of this chapter and the requirements of Section 313 of the Superfund Amendment and Reauthorization Act of 1986 (Public Law 99-499). The state board shall design the guidelines and criteria to ensure that, in collecting data to be used for

emissions inventories, actual measurement is utilized whenever necessary to verify the accuracy of emission estimates, to the extent technologically feasible. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44343. The district shall review the reports submitted pursuant to Section 44341 and shall, within 90 days, review each report, obtain corrections and clarifications of the data, and notify the Office of Environmental Health Hazard Assessment, the Department of Industrial Relations, and the city or county health department of its findings and determinations as a result of its review of the report. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384. Amended by Governor's Reorganization Plan No. 1 of 1991, §142.)

44344. Except as provided in Section 44391, emissions inventories developed pursuant to this chapter shall be updated every four years, in accordance with the procedures established by the state board. Those updates shall take into consideration improvements in measurement techniques and advancing knowledge concerning the types and toxicity of hazardous material released or potentially released. (Amended by Stats. 1993, Ch. 1041, Sec. 1. Effective January 1, 1994.)

44344.3.

- (a) A facility shall be granted an exemption by a district from further compliance with this part after meeting all of the following criteria:
 - (1) The facility was required to comply with this part only as a result of its particulate matter emissions.
 - (2) The facility has participated in, utilized data derived from, or is eligible to utilize data derived from, approved pooled source testing.
 - (3) The facility has submitted an emissions inventory plan and report that was subsequently accepted and approved.
 - (4) The facility has been designated by the district as a low priority facility under the guidelines set forth pursuant to this part for facility prioritization, and facility emissions do not present a significant health risk as specified in subdivision (b) of Section 44362.
 - (5) The facility handles, processes, stores, or distributes bulk agricultural commodities or handles, feeds, or rears livestock. (b) Subdivision (a) does not apply to a facility that, because of information provided pursuant to Section 44344.7, is reclassified as an intermediate or high priority facility by the district.
- (c) The operator of a facility that has been granted an exemption pursuant to this section shall biennially submit a statement to the district for the district's review, with a copy of the most recent emissions inventory for the facility, indicating that, except as to matters for which an emissions inventory update has been or will be submitted pursuant to Section 44344.7, there has been no significant change in facility operations or activities. The district shall not impose any fee upon the operator with regard to the submission of the statement. (Added by Stats. 1993, Ch. 1037, Sec. 1. Effective January 1, 1994.)

44344.5. The operator of any new facility that previously has not been subject to this part shall prepare and submit an emissions inventory plan and report. (Added by Stats. 1993, Ch. 1037, Sec. 2. Effective January 1, 1994.)

44344.7. The operator of a facility exempted pursuant to subdivision (a) of Section 44344.3 shall submit an emissions inventory update for those sources and substances for which a change in activities or operations has occurred, as follows:

- (a) The facility emits a newly listed substance.
- (b) A sensitive receptor has been established or constructed on or after January 1, 1994, within 500 meters of the facility.
- (c) The facility emits a substance for which the potency factor has increased.
- (d) The facility has begun emission of a listed substance not included in the previous emissions inventory. (Added by Stats. 1993, Ch. 1037, Sec. 3. Effective January 1, 1994.)

44345. (a) On or before July 1, 1989, the state board shall develop a program to compile and make available to other state and local public agencies and the public all data collected pursuant to this chapter.

(b) In addition, the state board, on or before March 1, 1990, shall compile, by district, emissions inventory data for mobile sources and area sources not subject to district permit requirements, and data on natural source emissions, and shall incorporate these data into data compiled and released pursuant to this chapter. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44346. (a) If an operator believes that any information required in the facility diagram specified pursuant to subdivision (b) of Section 44342 involves the release of a trade secret, the operator shall nevertheless make the disclosure to the district, and shall notify the district in writing of that belief in the report.

(b) Subject to this section, the district shall protect from disclosure any trade secret designated as such by the operator, if that trade secret is not a public record.

(c) Upon receipt of a request for the release of information to the public which includes information which the operator has notified the district is a trade secret and which is not a public record, the following procedure applies:

- (1) The district shall notify the operator of the request in writing by certified mail, return receipt requested.
- (2) The district shall release the information to the public, but not earlier than 30 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 30-day period, the operator obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this section or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the district of that action.

(d) This section does not permit an operator to refuse to disclose the information required pursuant to this part to the district.

- (e) Any information determined by a court to be a trade secret, and not a public record pursuant to this section, shall not be disclosed to anyone except an officer or employee of the district, the state, or the United States, in connection with the official duties of that officer or employee under any law for the protection of health, or to contractors with the district or the state and its employees if, in the opinion of the district or the state, disclosure is necessary and required for the satisfactory performance of a contract, for performance of work, or to protect the health and safety of the employees of the contractor.
- (f) Any officer or employee of the district or former officer or employee who, by virtue of that employment or official position, has possession of, or has access to, any trade secret subject to this section, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it is guilty of a misdemeanor. Any contractor of the district and any employee of the contractor, who has been furnished information as authorized by this section, shall be considered an employee of the district for purposes of this section.
- (g) Information certified by appropriate officials of the United States as necessary to be kept secret for national defense purposes shall be accorded the full protections against disclosure as specified by those officials or in accordance with the laws of the United States
- (g) As used in this section, "trade secret" and "public record" have the meanings and protections given to them by Section 6254.7 of the Government Code and Section 1060 of the Evidence Code. All information collected pursuant to this chapter, except for data used to calculate emissions data required in the facility diagram, shall be considered "air pollution emission data," for the purposes of this section. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

CHAPTER 4. RISK ASSESSMENT

(Chapter 4 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44360. (a) Within 90 days of completion of the review of all emissions inventory data for facilities specified in subdivision (a) of Section 44322, but not later than December 1, 1990, the district shall, based on examination of the emissions inventory data and in consultation with the state board and the State Department of Health Services, prioritize and then categorize those facilities for the purposes of health risk assessment. The district shall designate high, intermediate, and low priority categories and shall include each facility within the appropriate category based on its individual priority. In establishing priorities pursuant to this section, the district shall consider the potency, toxicity, quantity, and volume of hazardous materials released from the facility, the proximity of the facility to potential receptors, including, but not limited to, hospitals, schools, day care centers, worksites, and residences, and any other factors that the district finds and determines may indicate that the facility may

pose a significant risk to receptors. The district shall hold a public hearing prior to the final establishment of priorities and categories pursuant to this section.

- (b) (1) Within 150 days of the designation of priorities and categories pursuant to subdivision (a), the operator of every facility that has been included within the highest priority category shall prepare and submit to the district a health risk assessment pursuant to Section 44361. The district may, at its discretion, grant a 30-day extension for submittal of the health risk assessment.
- (2) Health risk assessments required by this chapter shall be prepared in accordance with guidelines established by the Office of Environmental Health Hazard Assessment. The office shall prepare draft guidelines which shall be circulated to the public and the regulated community and shall adopt risk assessment guidelines after consulting with the state board and the Risk Assessment Committee of the California Air Pollution Control Officers Association and after conducting at least two public workshops, one in the northern and one in the southern part of the state. The adoption of the guidelines is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The scientific review panel established pursuant to Section 39670 shall evaluate the guidelines adopted under this paragraph and shall recommend changes and additional criteria to reflect new scientific data or empirical studies.
- (3) The guidelines established pursuant to paragraph (2) shall impose only those requirements on facilities subject to this subdivision that are necessary to ensure that a required risk assessment is accurate and complete and shall specify the type of site-specific factors that districts may take into account in determining when a single health risk assessment may be allowed under subdivision (d). The guidelines shall, in addition, allow the operator of a facility, at the operator's option, and to the extent that valid and reliable data are available, to include for consideration by the district in the health risk assessment any or all of the following supplemental information:
 - (a) Information concerning the scientific basis for selecting risk parameter values that are different than those required by the guidelines and the likelihood distributions that result when alternative values are used.
 - (b) Data from dispersion models, microenvironment characteristics, and population distributions that may be used to estimate maximum actual exposure.
 - (c) Risk expressions that show the likelihood that any given risk estimate is the correct risk value.
 - (d) A description of the incremental reductions in risk that occur when exposure is reduced.
- (4) To ensure consistency in the use of the supplemental information authorized by subparagraphs (A), (B), (C), and (D) of paragraph (3), the guidelines established pursuant to paragraph (2) shall include guidance for use by the districts in considering the supplemental information when it is included in the health risk assessment. (c) Upon submission of emissions inventory data for facilities specified in subdivisions (b) and (c) of Section 44322, the district shall

- designate facilities for inclusion within the highest priority category, as appropriate, and any facility so designated shall be subject to subdivision (b). In addition, the district may require the operator of any facility to prepare and submit health risk assessments, in accordance with the priorities developed pursuant to subdivision (a).
- (e) The district shall, except where site specific factors may affect the results, allow the use of a single health risk assessment for two or more substantially identical facilities operated by the same person.
 - (f) Nothing contained in this section, Section 44380.5, or Chapter 6 (commencing with Section 44390) shall be interpreted as requiring a facility operator to prepare a new or revised health risk assessment using the guidelines established pursuant to paragraph (2) of subdivision (a) of this section if the facility operator is required by the district to begin the preparation of a health risk assessment before those guidelines are established. (Amended by Stats. 1992, Ch. 1162, Sec. 1. Effective January 1, 1993.)
44361. (a) Each health risk assessment shall be submitted to the district. The district shall make the health risk assessment available for public review, upon request. After preliminary review of the emissions impact and modeling data, the district shall submit the health risk assessment to the Office of Environmental Health Hazard Assessment for review and, within 180 days of receiving the health risk assessment, the office shall submit to the district its comments on the data and findings relating to health effects. The district shall consult with the state board as necessary to adequately evaluate the emissions impact and modeling data contained within the risk assessment.
- (b) For the purposes of complying with this section, the Office of Environmental Health Hazard Assessment may select a qualified independent contractor to review the data and findings relating to health effects. The office shall not select an independent contractor to review a specific health risk assessment who may have a conflict of interest with regard to the review of that health risk assessment. Any review by an independent contractor shall comply with the following requirements:
 - (1) Be performed in a manner consistent with guidelines provided by the office.
 - (2) Be reviewed by the office for accuracy and completeness.
 - (3) Be submitted by the office to the district in accordance with this section.
 - (c) The district shall reimburse the Office of Environmental Health Hazard Assessment or the qualified independent contractor designated by the office pursuant to subdivision (b), within 45 days of its request, for its actual costs incurred in reviewing a health risk assessment pursuant to this section.
 - (d) If a district requests the Office of Environmental Health Hazard Assessment to consult with the district concerning any requirement of this part, the district shall reimburse the office, within 45 days of its request, for the costs incurred in the consultation.
 - (e) Upon designation of the high priority facilities, as specified in subdivision (a) of Section 44360, the Office of Environmental Health Hazard Assessment shall evaluate the staffing requirements of this section and may submit recommendations to the

Legislature, as appropriate, concerning the maximum number of health risk assessments to be reviewed each year pursuant to this section. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section

44384. Amended by Governor's Reorganization Plan No. 1 of 1991, §144.)

44362. (a) Taking the comments of the Office of Environmental Health Hazard Assessment into account, the district shall approve or return for revision and resubmission and then approve, the health risk assessment within 180 days of receipt. If the health risk assessment has not been revised and resubmitted within 60 days of the district's request of the operator to do so, the district may modify the health risk assessment and approve it as modified.

(b) Upon approval of the health risk assessment, the operator of the facility shall provide notice to all exposed persons regarding the results of the health risk assessment prepared pursuant to Section 44361 if, in the judgment of the district, the health risk assessment indicates there is a significant health risk associated with emissions from the facility. If notice is required under this subdivision, the notice shall include only information concerning significant health risks attributable to the specific facility for which the notice is required. Any notice shall be made in accordance with procedures specified by the district. (Added by Stats. 1981, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384. Amended by Governor's Reorganization Plan No. 1 of 1991, 145.)

44363. (a) Commencing July 1, 1991, each district shall prepare and publish an annual report which does all of the following:

- (1) Describes the priorities and categories designated pursuant to Section 44360 and summarizes the results and progress of the health risk assessment program undertaken pursuant to this part.
- (2) Ranks and identifies facilities according to the degree of cancer risk posed both to individuals and to the exposed population.
- (3) Identifies facilities which expose individuals or populations to any noncancer health risks.
- (4) Describes the status of the development of control measures to reduce emissions of toxic air contaminants, if any.

(b) The district shall disseminate the annual report to county boards of supervisors, city councils, and local health officers and the district board shall hold one or more public hearings to present the report and discuss its content and significance. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44364. The state board shall utilize the reports and assessments developed pursuant to this part for the purposes of identifying, establishing priorities for, and controlling toxic air contaminants pursuant to Chapter 3.5 (commencing with Section 39650) of Part 2. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44365. (a) If the state board finds and determines that a district's actions pursuant to this part do not meet the requirements of this part, the state board may exercise the authority of the district pursuant to this part to approve emissions inventory plans and require the preparation of health risk assessments.
- (b) This part does not prevent any district from establishing more stringent criteria and requirements than are specified in this part for approval of emissions inventories and requiring the preparation and submission of health risk assessments. Nothing in this part limits the authority of a district under any other provision of law to assess and regulate releases of hazardous substances. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)
44366. (a) In order to verify the accuracy of any information submitted by facilities pursuant to this part, a district or the state board may proceed in accordance with Section 41510. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

CHAPTER 5. FEES AND REGULATIONS

(Chapter 5 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44380. (a) The state board shall adopt a regulation which does all of the following:
- (1) Sets forth the amount of revenue which the district must collect to recover the reasonable anticipated cost which will be incurred by the state board and the Office of Environmental Health Hazard Assessment to implement and administer this part.
 - (2) Requires each district to adopt a fee schedule which recovers the costs of the district and which assesses a fee upon the operator of every facility subject to this part. A district may request the state board to adopt a fee schedule for the district if the district's program costs are approved by the district board and transmitted to the state board by April 1 of the year in which the request is made.
 - (3) Requires any district that has an approved toxics emissions inventory compiled pursuant to this part by August 1 of the preceding year to adopt a fee schedule, as described in paragraph (2), which imposes on facility operators fees which are, to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emissions inventory and the level of priority assigned to that source by the district pursuant to Section 44360.
- (b) Commencing August 1, 1992, and annually thereafter, the state board shall review and may amend the fee regulation.
- (c) The district shall notify each person who is subject to the fee of the obligation to pay the fee. If a person fails to pay the fee within 60 days after receipt of this notice, the district, unless otherwise provided by district rules, shall require the person to pay an additional administrative civil penalty. The district shall fix the penalty at not more than 100 percent of the assessed fee, but in an amount sufficient in its determination, to pay the district's additional expenses incurred by the person's noncompliance. If a

person fails to pay the fee within 120 days after receipt of this notice, the district may initiate permit revocation proceedings. If any permit is revoked, it shall be reinstated only upon full payment of the overdue fee plus any late penalty, and a reinstatement fee to cover administrative costs of reinstating the permit.

- (d) Each district shall collect the fees assessed pursuant to subdivision (a). After deducting the costs to the district to implement and administer this part, the district shall transmit the remainder to the Controller for deposit in the Air Toxics Inventory and Assessment Account, which is hereby created in the General Fund. The money in the account is available, upon appropriation by the Legislature, to the state board and the Office of Environmental Health Hazard Assessment for the purposes of administering this part. (Amended by Stats. 1992, Ch. 375, Sec. 1. Effective January 1, 1993.)

44380.1. A facility shall be granted an exemption by a district from paying a fee in accordance with Section 44380 if all of the following criteria are met:

- (a) The facility primarily handles, processes, stores, or distributes bulk agricultural commodities or handles, feeds, or rears livestock.
- (b) The facility was required to comply with this part only as a result of its particulate matter emissions.
- (c) The fee schedule adopted by the district or the state board for these types of facilities is not solely based on toxic emissions weighted for potency or toxicity. (Added by Stats. 1993, Ch. 1037, Sec. 4. Effective January 1, 1994.)

44380.5. In addition to the fee assessed pursuant to Section 44380, a supplemental fee may be assessed by the district, the state board, or the Office of Environmental Health Hazard Assessment upon the operator of a facility that, at the operator's option, includes supplemental information authorized by paragraph (3) of subdivision (b) of Section 44360 in a health risk assessment, if the review of that supplemental information substantially increases the costs of reviewing the health risk assessment by the district, the state board, or the office. The supplemental fee shall be set by the state board in the regulation required by subdivision (a) of Section 44380 and shall be set in an amount sufficient to cover the direct costs to review the information supplied by an operator pursuant to paragraph (3) of subdivision (b) of Section 44360. (Added by Stats. 1992, Ch. 1162, Sec. 2. Effective January 1, 1993.)

44381. (a) Any person who fails to submit any information, reports, or statements required by this part, or who fails to comply with this part or with any permit, rule, regulation, or requirement issued or adopted pursuant to this part, is subject to a civil penalty of not less than five hundred dollars (\$500) or more than ten thousand dollars (\$10,000) for each day that the information, report, or statement is not submitted, or that the violation continues.
- (b) Any person who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this part is subject to a civil penalty of not less than one thousand dollars (\$1,000) or more than twenty-five thousand dollars (\$25,000) per

day for each day that the information remains uncorrected. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1988, pursuant to Section 44384.)

44382. Every district shall, by regulation, adopt the requirements of this part as a condition of every permit issued pursuant to Chapter 4 (commencing with Section 42300) of Part 4 for all new and modified facilities. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, pursuant to Section 44384.)

44384. Except for Section 44380 and this section, all provisions of this part shall become operative on July 1, 1988. (Added by Stats. 1987, Ch. 1252, Sec. 1. Operative January 1, 1988, by its own provisions.)

CHAPTER 6. FACILITY TOXIC AIR CONTAMINANT RISK REDUCTION AUDIT AND PLAN

(Chapter 6 added by Stats. 1992, Ch. 1162, Sec. 3. Effective January 1, 1993.)

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.)

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 registered pursuant to Section 25570.3. (Added by Stats. 1992, Ch. 1162, Sec. 3. Effective January 1, 1993.)

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.)