

APPENDIX H. ASSEMBLY BILL 617

Assembly Bill No. 617

CHAPTER 136

An act to amend Sections 40920.6, 42400, and 42402 of, and to add Sections 39607.1, 40920.8, 42411, 42705.5, and 44391.2 to, the Health and Safety Code, relating to nonvehicular air pollution.

[Approved by Governor July 26, 2017. Filed with Secretary of State July 26, 2017.]

legislative counsel's digest

AB 617, Cristina Garcia. Nonvehicular air pollution: criteria air pollutants and toxic air contaminants.

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

SECTION 1. Section 39607.1 is added to the Health and Safety Code, to read:

39607.1. (a) For purposes of this section, the following definitions apply:

(1) "Nonattainment pollutant" means a criteria pollutant for which a district is classified as a nonattainment area pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(2) "Stationary source" means any of the following:

(A) A facility that is required to report to the state board the facility's greenhouse gas emissions pursuant to Section 38530.

(B) A facility that is authorized by a permit issued by a district to emit 250 or more tons per year of any nonattainment pollutant or its precursors.

(C) A facility that receives an elevated prioritization score based on cancer or noncancer health impacts pursuant to Section 44360.

(b) (1) The state board, in consultation with districts, shall establish a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source.

(2) The state board shall require a stationary source to report to the state board its annual emissions of criteria pollutants and toxic air contaminants using the uniform statewide system of annual reporting developed pursuant to paragraph (1).

(c) With the report required pursuant to paragraph (2) of subdivision (b), the state board may require, as appropriate, a stationary source to provide relevant facility-level emissions data.

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(d) *The state board may require, as appropriate, a stationary source to verify or certify the accuracy of its annual emissions reports by a third-party verifier or certifier that is accredited by the state board.*

SEC. 2. Section 40920.6 of the Health and Safety Code is amended to read:

40920.6. (a) Prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914, districts shall, in addition to other requirements of this division, do all of the following:

(1) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.

(2) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this paragraph, “cost-effectiveness” means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.

(3) Calculate the incremental cost-effectiveness for the potential control options identified in paragraph (1). To determine the incremental cost-effectiveness under this paragraph, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.

(4) Consider, and review in a public meeting, all of the following:

(A) The effectiveness of the proposed control option in meeting the requirements of this chapter and the requirements adopted by the state board pursuant to subdivision (b) of Section 39610.

(B) The cost-effectiveness of each potential control option as assessed pursuant to paragraph (2).

(C) The incremental cost-effectiveness between the potential control options as calculated pursuant to paragraph (3).

(5) Make findings at the public hearing at which the regulation is adopted stating the reasons for the district’s adoption of the proposed control option or options.

(b) A district may establish its own best available retrofit control technology requirement based upon consideration of the factors specified in subdivision (a) and Section 40406 if the requirement complies with subdivision (d) of Section 40001 and is consistent with this chapter, other state law, and federal law, including, but not limited to, the applicable state implementation plan.

(c) (1) On or before January 1, 2019, each district that is a nonattainment area for one or more air pollutants shall adopt an expedited schedule for the implementation of best available retrofit control technology (BARCT), by the earliest feasible date, but in any event not later than December 31, 2023.

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(2) *The schedule shall apply to each industrial source that, as of January 1, 2017, was subject to a market-based compliance mechanism adopted by the state board pursuant to subdivision (c) of Section 38562.*

(3) *The schedule shall give highest priority to those permitted units that have not modified emissions-related permit conditions for the greatest period of time. The schedule shall not apply to an emissions unit that has implemented BARCT due to a permit revision or a new permit issuance since 2007.*

(d) *Prior to adopting the schedule pursuant to paragraph (1) of subdivision (c), a district shall hold a public meeting and take into account:*

(1) *The local public health and clean air benefits to the surrounding community.*

(2) *The cost-effectiveness of each control option.*

(3) *The air quality and attainment benefits of each control option.*

(e) *A district shall allow the retirement of marketable emission reduction credits under a program which complies with all of the requirements of Section 39616, or emission reduction credits which meet all of the requirements of state and federal law, including, but not limited to, the requirements that those emission reduction credits be permanent, enforceable, quantifiable, and surplus, in lieu of any requirement for best available retrofit control technology, if the credit also complies with all district rules and regulations affecting those credits.*

(f) *After a district has established the cost-effectiveness, in a dollar amount, for any rule or regulation adopted pursuant to this section or Section 40406, 40703, 40914, 40918, 40919, 40920, 40920.6, or 40922, the district, consistent with subdivision (d) of Section 40001, shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced, including the use of emission reduction credits, for any stationary source that has a demonstrated compliance cost exceeding that established dollar amount.*

SEC. 3. Section 40920.8 is added to the Health and Safety Code, to read: 40920.8. (a)

The state board shall establish and maintain a statewide clearinghouse that identifies the best available control technology and best available retrofit control technology for criteria air pollutants, and related technologies for the control of toxic air contaminants.

(b) When updating best available control technology determinations, a district shall use the information in the statewide clearinghouse established and maintained by the state board.

SEC. 4. 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 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

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than five thousand dollars (\$5,000) 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. 5. 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, 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 five thousand dollars (\$5,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, 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 five thousand dollars (\$5,000) 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 conduct or 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.

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- (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. 6. Section 42411 is added to the Health and Safety Code, to read: 42411. Notwithstanding any other law, maximum penalties assessed by the state board or a district pursuant to this chapter as of January 1, 2018, shall be increased annually based on the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

- SEC. 7. Section 42705.5 is added to the Health and Safety Code, to read: 42705.5. (a) For purposes of this section, the following definitions and related provisions shall apply:*
- (1) *“Community air monitoring system” means advanced sensing monitoring equipment that measures and records air pollutant concentrations in the ambient air at or near sensitive receptor locations and in disadvantaged communities and that may be useful for estimating associated pollutant exposures and health risks, determining trends in air pollutant levels over time, and in supporting enforcement efforts.*
- (2) *“Disadvantaged community” means a community identified as disadvantaged pursuant to Section 39711.*
- (3) *“Fence-line monitoring system” means monitoring equipment that measures and records air pollutant concentrations at or adjacent to a stationary source that may be useful for detecting or estimating emissions of pollutants from the source, including the quantity of fugitive emissions, and in supporting enforcement efforts.*
- (4) *“Nonattainment pollutant” has the same meaning as in Section 39607.1.*
- (5) *“Sensitive receptors” includes hospitals, schools and day care centers, and such other locations as the district or state board may determine.*
- (6) *“Stationary source” has the same meaning as in Section 39607.1.*
- (b) *On or before October 1, 2018, the state board shall prepare, in consultation with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Office of Environmental Health Hazard Assessment, environmental justice organizations, affected industries, and other interested stakeholders, a monitoring plan regarding the availability and effectiveness of toxic air contaminant and criteria air pollutant advanced sensing monitoring technologies and existing community air monitoring systems, as well as the need for and benefits of establishing additional community air monitoring*

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systems. In preparing the monitoring plan, the state board shall conduct at least one public workshop in each of the northern, central, and southern parts of the state.

(c) Based on findings and recommendations in the monitoring plan prepared pursuant to subdivision (b), the state board shall select, concurrent with the monitoring plan, in consultation with the districts and based on an assessment of the locations of sensitive receptors and disadvantaged communities, the highest priority locations around the state to deploy community air monitoring systems, which shall be communities with high exposure burdens for toxic air contaminants and criteria air pollutants. By July 1, 2019, any district containing a location selected pursuant to this subdivision shall deploy a community air monitoring system in the selected location or locations. In implementing this subdivision, the district may require any stationary source that emits pollutants in, or that materially affect, the highest priority locations identified pursuant to this subdivision to deploy a fence-line monitoring system or other appropriate real-time, on-site monitoring, taking into account technical capabilities, cost, and the degree to which additional data would materially contribute to an understanding of community risk.

(d) By January 1, 2020, and January 1 of every year thereafter, the state board shall select additional locations pursuant to subdivision (c), as the state board deems appropriate based on the monitoring plan described in subdivision (b). Any district containing a location selected pursuant to this subdivision shall deploy a community air monitoring system in the selected location within one year of the state board selecting the location. The state board shall hold an annual public hearing on the status of implementing the network of community air monitoring systems and make recommendations for improvements.

(e) The districts shall provide to the state board the air quality data produced by the community air monitoring systems deployed pursuant to this section. The state board shall publish the air quality data on its Internet Web site.

SEC. 8. Section 44391.2 is added to the Health and Safety Code, to read: 44391.2. (a) For purposes of this section, the following provisions shall apply:

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

(2) “Sensitive receptors” includes the same locations as specified in subdivision (a) of Section 42705.5.

(b) On or before October 1, 2018, the state board shall prepare, in consultation with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Office of Environmental Health Hazard Assessment, environmental justice organizations, affected industry, and other interested stakeholders, a statewide strategy to reduce emissions of toxic air contaminants and criteria air pollutants in communities affected by a high cumulative exposure burden. The state board shall update the strategy at least once every five years. In preparing the strategy, the state board shall conduct at least one public workshop in each of the northern, central, and southern parts of the state.

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The strategy shall include criteria for the development of community emission reduction programs. The criteria presented in the state strategy shall include, but are not limited to, all of the following:

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

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

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

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

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

(2) Within one year of the state board's selection, the district encompassing any location selected pursuant to this subdivision shall adopt, in consultation with the state board, individuals, community-based organizations, affected sources, and local governmental bodies in the affected community, a community emissions reduction program to achieve emissions reductions for the location selected using cost-effective measures identified pursuant to paragraph (4) of subdivision (b).

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

(4) The community emissions reduction programs shall be submitted to the state board for review and approval within 60 days of the receipt of the program. Programs that are rejected shall be resubmitted within 30 days. To the extent that a program, in

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whole or in part, is not approvable, the state board shall initiate a public process to discuss options for achievement of an approvable program. Concurrent with the public process to achieve an approvable program, the state board shall develop and implement the applicable mobile source elements in the draft program to commence achievement of emission reductions.

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

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

(7) A district encompassing a location selected pursuant to this subdivision shall prepare an annual report summarizing the results and actions taken to further reduce emissions pursuant to the community emissions reduction program.

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

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

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.