



California
Air Resources Board
Compliance Division

Advisory

(REGULATION CHANGES)

Hearing Boards

Number 31

December 7, 1988

1988 California Clean Air Act
Changes in Variance Regulations

Attached is a copy of specific sections of the 1988 California Clean Air Act (CCAA) which was signed into law on September 30, 1988. The CCAA amends and adds many sections to the Health and Safety Code. The specific sections that pertain to hearing board activities and requirements are Sections 42302.1, 42311, and 42352. The CCAA becomes effective January 1, 1989 and will apply to any variance order issued on or after that date. The following is a brief description of each section.

Section 42302.1 expressly allows an aggrieved person who has in any way participated in an action before a district board regarding issuance of a permit to request the hearing board to hold a public hearing to determine whether the district issued the permit properly. Within 30 days from the date of the request, the hearing board must hold a public hearing and render a decision on whether the permit was properly issued.

Section 42311 was amended to add a new subsection (h). Subsection (h) now allows the district board to adopt, by regulation, a fee schedule that would cover the costs the hearing board incurs as a result of appeals from district decisions on the issuance of permits. The hearing board may waive all or part of the fees if it determines that circumstances warrant the waiver.

Section 42352 was amended to add three additional findings that the hearing board must make before granting a variance. The three new findings are:

“(d) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance;

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

(f) 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.”

We recommend that you review these regulation changes carefully with your staff and the hearing board members.

If you have any questions about these changes or need additional information, please call the Air Resources Board Compliance Division at (800) 952-5588.

Attachment

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**CALIFORNIA
CLEAN AIR ACT
1988**

**AB 2595, SHER
(Chapter 1568, Statutes of 1988)**



SEC. 28.5. Section 42302.1 is added to the Health and Safety Code, to read:

42302.1. Within 10 days of any decision or action pertaining to the issuance of a permit by a district, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

SEC. 29. Section 42311 of the Health and Safety Code is amended to read:

42311. (a) A district board may adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs related to permitted stationary sources authorized or required under this division that are not otherwise funded. The fees assessed under this section shall not exceed, for any fiscal year, the actual costs for district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover. Every person applying for a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule. Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources.

(b) The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) prior to evaluating a permit application, if the district accounts for the costs of its services and refunds to the applicant any significant

portion of the deposit which exceeds the actual, reasonable cost of evaluating the application.

(c) Except as provided in Section 42313, all the fees shall be paid to the district treasurer to the credit of the district.

(d) This section does not apply to the south coast district board which is governed by Section 40510.

(e) In addition to providing notice as otherwise required, before adopting a regulation establishing fees pursuant to this section, the district board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the district board. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the district board shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service. Any costs incurred by the district board in conducting the required meeting may be recovered from fees charged for the programs which were the subject of the meeting.

(f) In addition to any other fees authorized by this section, a district board may adopt, by regulation, a schedule of annual fees to be assessed against permitted nonvehicular sources emitting toxic air contaminants identified pursuant to the procedure set forth in Sections 39660, 39661, and 39662. A district board shall demonstrate that the fees assessed under this subdivision do not exceed the reasonable, anticipated costs of funding

district activities mandated by Section 39666 related to nonvehicular source emissions. In making the demonstration, the district shall account for all direct and indirect costs of district activities related to each toxic air contaminant. If the district does not make this demonstration, it shall make reimbursement for that portion of the fee not determined to be reasonable.

(g) A district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources.

(h) A district board may adopt, by regulation, a schedule of fees to cover the reasonable costs of the hearing board incurred as a result of appeals from district decisions on the issuance of permits. However, the hearing board may waive all or part of these fees if it determines that circumstances warrant that waiver.

(i) Nothing in the amendments to this section enacted in 1988 limits or abridges any previously existing authority of a district to vary fees according to quantity of emissions, nor affects any pending litigation which might affect that previous authority.

SEC. 29.2. Section 42311.1 is added to the Health and Safety Code, to read:

42311.1. (a) On or before July 1, 1990, and at least once every two years thereafter, the state board shall prepare a report on the sources of funding for each district with an annual budget which exceeds one million dollars (\$1,000,000). The report shall include all of the following:

(1) The annual budget of each district, based upon the most recent fiscal year for which data are available.

(2) A description of each district's budgetary process, including, but not limited to, criteria for allocating costs.

(3) A description of current funding sources for district programs, including, but not limited to, fees, state subventions, federal grants, and local tax revenues, and the approximate amount each source contributes to the district's annual budget.

(4) A comparison of the fees paid by different

industries within each district, to the extent these data are available.

(5) A description of program needs, if any, which are not met by current funding levels.

(6) For a district which adopts a schedule of fees for issuance of permits for activities described under Section 42311.2, a comparison between the fees paid by persons or entities issued a permit and district administrative costs for issuing and enforcing those permits.

(b) Every district included within subdivision (a) shall provide data and analyses to the state board for inclusion in the report.

(c) The state board shall consult with districts and other interested parties prior to preparing the report required under subdivision (a).

(d) Upon adoption of the report described in subdivision (a), the state board shall transmit copies of the report to the Governor and the Legislature.

(e) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 29.4. Section 42311.2 is added to the Health and Safety Code, to read:

42311.2. (a) Notwithstanding Section 42311, a district shall not adopt or impose fees which exceed actual district administrative costs for processing or enforcing permits applicable to any of the following:

(1) Prescribed burning operations on state responsibility lands conducted under the terms of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code when the purpose of the operation is prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.

(2) Burning of vegetation or disposal of slash following timber operations required under regulations adopted by the State Board of Forestry pursuant to Section 4551.5 or

4562 of the Public Resources Code and for the purpose of reducing the incidence and spread of fires on timberlands.

(3) Wildland vegetation management burns. For purposes of this subdivision, "wildland vegetation management burn" means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency to burn land predominantly covered with chaparral, trees, grass, or standing brush. For purposes of this subdivision, "prescribed burning" is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may include natural or accidental ignition.

(b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or (3), a district shall hold a public hearing and shall consider the following:

(1) The costs of the fees on private landowners and other persons who engage in activities specified in paragraph (1), (2), or (3).

(2) Any revenues currently provided to the county for general government by public agencies which administer public lands.

SEC. 30. Section 42352 of the Health and Safety Code is amended to read:

42352. No variance shall be granted unless the hearing board makes all of the following findings:

(a) 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.

(b) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.

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

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

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

(f) 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.

SEC. 31. Section 42402.5 is added to the Health and Safety Code, 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 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. 32. Section 43000.5 is added to the Health and Safety Code, to read:

43000.5. The Legislature further finds and declares:

(a) That despite the significant reductions in vehicle emissions which have been achieved in recent years, continued growth in population and vehicle miles traveled throughout California have the potential not only to prevent attainment of the state standards, but in some cases, to result in worsening of air quality.

(b) That the attainment and maintenance of the state air quality standards will necessitate the achievement of substantial reductions in new vehicle emissions and substantial improvements in the durability of vehicle emissions systems.

(c) That the burden for achieving needed reductions