

# CITY OF OAKLAND

## BILL ANALYSIS



**Date:** Thursday, February 16, 2006

**Bill Number:** AB 1101

**Bill Author:** Oropeza, Horton

### DEPARTMENT INFORMATION

**Contact:** Nancy Humphrey, Environmental Program Specialist

**Department:** PWA/Environmental Services Division

**Telephone:** 238-6259 **FAX #** 238-7286 **E-mail:** nhumphrey@oaklandnet.com

**RECOMMENDED POSITION:** Support if Amended

### Summary of the Bill

Under existing law, certain facilities are required to prepare inventories of their air emissions and submit the inventories to local air districts. The air districts prioritize these facilities based on the magnitude and toxicity of their emissions, and high priority facilities are required to perform health risk assessments to determine the maximum probable health risks to the public exposed to the facility's emissions. Each district board has established a risk threshold at which facilities must notify the public of potential health risks, and state law also requires that very high risk facilities reduce their risks to acceptable levels within five years or cease operation. Typically, the facilities that have done this are stationary sources. Stationary sources as large as petroleum refineries and as small as gas stations and dry cleaners have been required to comply with this law.

AB 1101 would subject "diesel magnet sources" (those facilities that attract large numbers of diesel-fueled vehicles) to these same requirements. The facilities affected by the bill are large ports, airports, and rail yards. The key difference is that these facilities would be responsible for diesel emissions from all vehicles related to their facility, including those not owned or operated by the facility itself.

The bill would give regional districts such as the Bay Area Air Quality Management District (BAAQMD) the authority to establish region-specific standards and guidelines. It would require affected facilities to submit emissions inventories to the regional districts, and the facilities with the highest emissions levels would also need to make their emissions inventories public, and would be required to reduce the risk to the public from these emissions over time, or cease operations.

The legislative analysis of this bill points out that existing regulations covering stationary sources could be used to regulate diesel magnet sources as well, although this is not the current practice of the Air Resources Board. The bill text and legislative analysis are attached.

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### **Suggested Amendments**

As currently written, AB 1101 provides little guidance on what methodology the required health risk assessments should apply. While allowing some local discretion in this matter seems reasonable, there ought to be state-wide consistency with respect to two basic modeling assumptions: (1) acceptable cancer risk (e.g., one in one hundred thousand or one in one million); and (2) the geographical extent to which off-site impacts must be considered (e.g., only at the diesel magnet facility itself, within one mile radius of the facility, within ten mile radius of the facility, etc.). Absent such agreement on basic modeling assumptions, this legislation may be enforced inequitably.

### **Positive Factors for Oakland**

Passage and enactment of AB 1101 would likely ensure that Oakland residents have access to more detailed information than is currently available regarding the potential health risks posed by nearby diesel magnet facilities, such as the Port of Oakland. Depending on the levels of emissions by Oakland's diesel magnet facilities and how BAAQMD interprets the risk from these emissions, diesel magnet facilities may be required to reduce air emissions in Oakland.

### **Negative Factors for Oakland**

AB 1101 sets very few parameters for the risk assessments that are to be performed. Additionally, the shift to local control of diesel emission limits may create a situation in which different areas of the state are subject to significantly different standards. Were BAAQMD to apply very broad parameters to the risk assessment process or enforce relatively much stricter standards, Oakland might experience job losses.

### **PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or**  **None** (do not review with City Council, position not required)

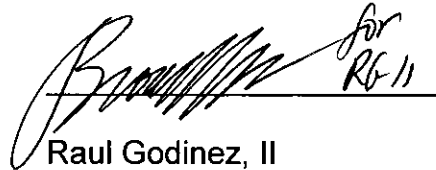
### **Known support:**

California Air Pollution Control Officers Association (sponsor)  
American Lung Association  
Bay Area Air Quality Management District  
Sacramento Air Quality Management District  
South Coast Air Quality Management District

**Known Opposition:**

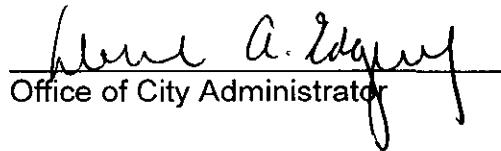
APM Terminals  
California Chamber of Commerce  
California Manufacturers & Technology Association  
California Railroad Association  
California Trade Coalition  
California Trucking Association

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Raul Godinez, II", written over a horizontal line. To the right of the signature, the words "for RB-11" are written in a smaller, cursive hand.

Raul Godinez, II  
Director, Public Works Agency

Approved for Forwarding to the  
Rules & Legislation Committee:

A handwritten signature in black ink, appearing to read "Howard A. Edgerton", written over a horizontal line. Below the line, the text "Office of City Administrator" is printed.

Office of City Administrator

**6**  
**RULES & LEGISLATION**  
**CMTE**  
**MAR 09 2006**

AMENDED IN ASSEMBLY JANUARY 26, 2006

AMENDED IN ASSEMBLY JANUARY 9, 2006

AMENDED IN ASSEMBLY MAY 27, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1101**

Introduced by Assembly ~~Member Oropeza~~ *Members Oropeza and Jerome Horton*

February 22, 2005

An act to amend Sections 44320, 44322, 44342, 44360, 44390, and 44391 of, and to add Sections 44303.5, 44323.5, 44395, and 44396 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1101, as amended, Oropeza. Air pollution: diesel magnet sources.

(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, including stationary sources. The Air Toxics "Hot Spots" Information and Assessment Act of 1987 requires the state board to compile a list of substances that present a chronic or acute threat to public health when present in the ambient air, subjects

certain facilities to the act, according to a schedule, and requires the operator of a subject facility to prepare and submit to an air district a proposed comprehensive emissions inventory plan, for approval by the district. The act requires an air district to prepare an industrywide emissions inventory for certain facilities. The act, under certain circumstances, requires a facility operator to conduct a facility toxic air contaminant risk reduction audit and to develop an emissions reduction plan.

This bill would make a facility that is a diesel magnet source, as defined, subject to the act. The bill would require the state board, on or before July 1, 2007, in consultation with the air districts, to prepare and make available to the public a list of diesel magnet sources, as prescribed. The bill would require any facility for which a district is preparing an industrywide emissions inventory or health risk assessment to provide to the district, within 60 days of the date of the request, all information as may be specified by the district as necessary for the preparation of the inventory or assessment.

The bill would provide for an extended period for a diesel magnet source to comply with the risk reduction audit and plan requirements. By expanding the types of facilities subject to the act, the bill would impose new duties on air districts, thereby imposing 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 is required by this act for a specified reason.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The people of California have a right to know when
- 4 industrial or commercial operations result in emission of toxic air
- 5 contaminants that may pose a significant health risk to the people
- 6 exposed to those emissions.

1 (2) Existing law requires facilities whose operations result in  
2 emission of toxic air contaminants to prepare inventories of those  
3 emissions and submit them to the local air districts for  
4 prioritization.

5 (3) Existing law also requires facilities that are designated  
6 high-priority to prepare health risk assessments, and if the  
7 assessment shows the potential health risks to be significant, to  
8 notify the public of those risks.

9 (4) Existing law further requires facilities that pose  
10 unacceptably high risks to public health to prepare plans to  
11 reduce those risks, and to implement the plans according to a  
12 specified schedule.

13 (5) Traditional stationary sources, both large and small, have  
14 already complied with these requirements by preparing  
15 inventories of their emissions, and where applicable, preparing  
16 health risk assessments, notifying the public, and implementing  
17 risk reduction.

18 (6) Recent studies show that particulate emissions in diesel  
19 exhaust are highly toxic, and account for upwards of 70 percent  
20 of the statewide cancer risk due to toxic pollutants in ambient air.

21 (7) Industrial and commercial operations that involve or attract  
22 high levels of diesel traffic or other diesel engine use can pose  
23 substantially higher risks to the public near the facilities.

24 (8) Available data indicate that these diesel magnet sources  
25 may pose risks to the surrounding communities that are far  
26 greater than risks posed by most traditional stationary sources,  
27 and that far greater numbers of people are affected by the  
28 emissions. These diesel magnet sources meet the statutory  
29 definition of “facility” under existing law, but to date have not  
30 submitted inventories or taken other actions in compliance with  
31 existing statutes.

32 (9) Large diesel magnet sources should comply with  
33 requirements to prepare and submit inventories of their  
34 emissions, prepare health risks assessments, notify the public of  
35 significant risks, and reduce unacceptably high risks.

36 (10) Local air pollution control districts and air quality  
37 management districts should review policies and procedures that  
38 implement existing law and, if necessary, revise them to  
39 appropriately address large diesel magnet sources. Review of  
40 existing policies and procedures, and the preparation of

1 inventories, health risk assessments, public notification, and risk  
2 reduction should be carried out under a coordinated process and  
3 schedule.

4 (b) It is the intent of the Legislature to define diesel magnet  
5 sources to include ports, airports, ~~railyards, and intermodal sites~~  
6 *and railyards*, and to establish the timeframe for districts to  
7 review and, if necessary, revise policies and procedures, and for  
8 the largest diesel magnet sources to comply with these  
9 requirements.

10 SEC. 2. Section 44303.5 is added to the Health and Safety  
11 Code, to read:

12 44303.5. "Diesel magnet source" means a facility that, by the  
13 nature of its operation, attracts diesel engines in large numbers,  
14 and includes ~~all of~~ *only* the following:

15 (a) Ports.

16 (b) Airports.

17 (c) Railyards.

18 SEC. 3. Section 44320 of the Health and Safety Code is  
19 amended to read:

20 44320. This part applies to all of the following:

21 (a) Any facility that manufactures, formulates, uses, or  
22 releases any of the substances listed pursuant to Section 44321 or  
23 any other substance that reacts to form a substance listed in  
24 Section 44321 and that releases or has the potential to release  
25 total organic gases, particulates, or oxides of nitrogen or sulfur in  
26 the amounts specified in Section 44322.

27 (b) Except as provided in Section 44323, any facility that is  
28 listed in any current toxics use or toxics air emissions survey,  
29 inventory, or report released or compiled by a district. A district  
30 may, with the concurrence of the state board, waive the  
31 application of this part pursuant to this subdivision for any  
32 facility that the district determines will not release any substance  
33 listed pursuant to Section 44321 due to a shutdown or a process  
34 change.

35 (c) Any facility that is a diesel magnet source, as defined in  
36 Section 44303.5, with the greatest potential impact on public  
37 health determined on a statewide basis, as listed by the state  
38 board under subdivision (e) of Section 44322.

39 SEC. 4. Section 44322 of the Health and Safety Code is  
40 amended to read:

1 44322. This part applies to facilities specified in subdivision  
2 (a) of Section 44320 in accordance with the following schedule:

3 (a) For those facilities that release, or have the potential to  
4 release, 25 tons per year or greater of total organic gases,  
5 particulates, or oxides of nitrogen or sulfur, this part becomes  
6 effective on July 1, 1988.

7 (b) For those facilities that release, or have the potential to  
8 release, more than 10 but less than 25 tons per year of total  
9 organic gases, particulates, or oxides of nitrogen or sulfur, this  
10 part becomes effective July 1, 1989.

11 (c) For those facilities that release, or have the potential to  
12 release, less than 10 tons per year of total organic gases,  
13 particulates, or oxides of nitrogen or sulfur, the state board shall,  
14 on or before July 1, 1990, prepare and submit a report to the  
15 Legislature identifying the classes of those facilities to be  
16 included in this part and specifying a timetable for their  
17 inclusion.

18 (d) On and after January 1, 2006, facilities that are subject to  
19 this part but have not submitted inventories as required under  
20 Chapter 3 (commencing with Section 44340) shall have one year  
21 from the date of inclusion on a list of subject facilities,  
22 established pursuant to this part, to prepare and submit to the  
23 district an emissions inventory plan. Except for any calendar date  
24 deadline before January 1, 2006, all schedules for action set forth  
25 in Chapter 3 (commencing with Section 44340), Chapter 4  
26 (commencing with Section 44360), or Chapter 6 (commencing  
27 with Section 44390) shall apply.

28 (e) On or before July 1, 2007, the state board shall, in  
29 consultation with the districts, prepare and make available to the  
30 public a list of diesel magnet sources subject to this part, as  
31 follows:

32 (1) The list of subject facilities shall include ~~all of~~ *only* the  
33 following:

34 (A) Five ports.

35 (B) Ten airports.

36 (C) Twenty-five railyards.

37 (2) In listing these facilities, the state board shall use the  
38 following criteria, unless clear and compelling data ~~are readily~~  
39 ~~available and demonstrate~~ *is readily available and demonstrates*  
40 that other criteria and ranking should be used, to include on the



1 list the facilities likely to pose the greatest potential risk to public  
2 health:

3 (A) A port that moves at least 1,500,000; metric tons per year  
4 of *dry* cargo, inbound and outbound, combined.

5 (B) An airport through which at least 2,000,000; passengers  
6 travel per year.

7 (C) Any railyard site that locomotive engines operate at least  
8 10,000 hours per year, including movement and idling.

9 SEC. 5. Section 44323.5 is added to the Health and Safety  
10 Code, to read:

11 44323.5. Any facility for which a district is preparing an  
12 industrywide emissions inventory or health risk assessment shall  
13 provide to the district, within 60 days of the date of the request,  
14 all information as may be specified by the district as necessary  
15 for the preparation of the inventory or assessment.

16 SEC. 6. Section 44342 of the Health and Safety Code is  
17 amended to read:

18 44342. (a) The state board shall, on or before May 1, 1989,  
19 in consultation with the districts, develop criteria and guidelines  
20 for site-specific air toxics emissions inventory plans which shall  
21 be designed to comply with the conditions specified in Section  
22 44340 and which shall include at least all of the following:

23 (1) For each class of facility, a designation of the hazardous  
24 materials for which emissions are to be quantified and an  
25 identification of the likely source types within that class of  
26 facility. The hazardous materials for quantification shall be  
27 chosen from among, and may include all or part of, the list  
28 specified in Section 44321.

29 (2) Requirements for a facility diagram identifying each actual  
30 or potential discrete emissions point and the general locations  
31 where fugitive emissions may occur. The facility diagram shall  
32 include any nonpermitted and nonprocess sources of emissions,  
33 and shall provide the necessary data to identify emissions  
34 characteristics. An existing facility diagram that meets the  
35 requirements of this section may be submitted.

36 (3) Requirements for source testing and measurement. The  
37 guidelines may specify appropriate uses of estimation techniques,  
38 including, but not limited to, emissions factors, modeling, mass  
39 balance analysis, and projections, except that source testing shall  
40 be required wherever necessary to verify emissions estimates to

1 the extent technologically feasible. The guidelines shall specify  
2 conditions and locations where source testing, fenceline  
3 monitoring, or other measurement techniques are to be required  
4 and the frequency of that testing and measurement.

5 (4) Appropriate testing methods, equipment, and procedures,  
6 including quality assurance criteria.

7 (5) Specifications for acceptable emissions factors, including,  
8 but not limited to, those which are acceptable for substantially  
9 similar facilities or equipment, and specification of procedures  
10 for other estimation techniques and for the appropriate use of  
11 available data.

12 (6) Specification of the reporting period required for each  
13 hazardous material for which emissions will be inventoried.

14 (7) Specifications for the collection of useful data to identify  
15 toxic air contaminants pursuant to Article 2 (commencing with  
16 Section 39660) of Chapter 3.5 of Part 2.

17 (8) Standardized format for preparation of reports and  
18 presentation of data.

19 (9) A program to coordinate and eliminate any possible  
20 overlap between the requirements of this chapter and the  
21 requirements of Section 313 of the Superfund Amendment and  
22 Reauthorization Act of 1986 (Public Law 99-499).

23 (10) On and after January 1, 2007, any specific criteria for the  
24 preparation of emissions inventory plans by diesel magnet  
25 sources, including, but not limited to, methods for quantifying air  
26 releases of diesel particulate exhaust that occur within the  
27 boundaries of the facility, and for characterizing for the public  
28 potential impacts of releases that occur outside of the boundaries  
29 of the facility but in the same general location and associated  
30 with mobile source trips to and from the facility. Air releases of  
31 diesel particulate exhaust from diesel magnet sources shall  
32 include emissions from motor vehicles, and may address  
33 mechanisms to integrate data prepared by the state board  
34 pursuant to subdivision (b) of Section 44345.

35 (b) The state board shall design the guidelines and criteria to  
36 ensure that, in collecting data to be used for emissions  
37 inventories, actual measurement is utilized whenever necessary  
38 to verify the accuracy of emission estimates, to the extent  
39 technologically feasible.

1 SEC. 7. Section 44360 of the Health and Safety Code is  
2 amended to read:

3 44360. (a) (1) Within 90 days of completion of the review of  
4 all emissions inventory data for facilities specified in subdivision  
5 (a) of Section 44322, but not later than December 1, 1990, the  
6 district shall, based on examination of the emissions inventory  
7 data and in consultation with the state board and the State  
8 Department of Health Services, prioritize and then categorize  
9 those facilities for the purposes of health risk assessment. The  
10 district shall designate high, intermediate, and low priority  
11 categories, and shall include each facility within the appropriate  
12 category based on its individual priority. In establishing priorities  
13 pursuant to this section, the district shall consider the potency,  
14 toxicity, quantity, and volume of hazardous materials released  
15 from the facility, the proximity of the facility to potential  
16 receptors, including, but not limited to, hospitals, schools, day  
17 care centers, worksites, and residences, and any other factors that  
18 the district finds and determines may indicate that the facility  
19 may pose a significant risk to receptors. The district shall hold a  
20 public hearing prior to the final establishment of priorities and  
21 categories pursuant to this section.

22 (2) On or before January 1, 2007, the districts, collaboratively,  
23 and in consultation with the state board, shall review, and if  
24 appropriate, revise or augment guidelines and procedures for  
25 facility prioritization to address diesel magnet sources pursuant  
26 to this chapter.

27 (b) (1) Within 150 days of the designation of priorities and  
28 categories pursuant to subdivision (a), the operator of every  
29 facility that has been included within the highest priority  
30 category shall prepare and submit to the district a health risk  
31 assessment pursuant to Section 44361. The district may, at its  
32 discretion, grant a 30-day extension for submittal of the health  
33 risk assessment.

34 (2) Health risk assessments required by this chapter shall be  
35 prepared in accordance with guidelines established by the Office  
36 of Environmental Health Hazard Assessment. The office shall  
37 prepare draft guidelines, which shall be circulated to the public  
38 and the regulated community, and shall adopt risk assessment  
39 guidelines after consulting with the state board and the Risk  
40 Assessment Committee of the California Air Pollution Control

1 Officers Association and after conducting at least two public  
2 workshops, one in the northern and one in the southern part of  
3 the state. The adoption of the guidelines is not subject to Chapter  
4 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
5 Title 2 of the Government Code. The scientific review panel  
6 established pursuant to Section 39670 shall evaluate the  
7 guidelines adopted under this paragraph and shall recommend  
8 changes and additional criteria to reflect new scientific data or  
9 empirical studies.

10 (3) The guidelines established pursuant to paragraph (2) shall  
11 impose only those requirements on facilities subject to this  
12 subdivision that are necessary to ensure that a required health  
13 risk assessment is accurate and complete, and shall specify the  
14 type of site-specific factors that districts may take into account in  
15 determining when a single health risk assessment may be allowed  
16 under subdivision (d). The guidelines shall, in addition, allow the  
17 operator of a facility, at the operator's option, and to the extent  
18 that valid and reliable data ~~are~~ *is* available, to include for  
19 consideration by the district in the health risk assessment any or  
20 all of the following supplemental information:

21 (A) Information concerning the scientific basis for selecting  
22 risk parameter values that are different than those required by the  
23 guidelines and the likelihood distributions that result when  
24 alternative values are used.

25 (B) Data from dispersion models, microenvironment  
26 characteristics, and population distributions that may be used to  
27 estimate maximum actual exposure.

28 (C) Risk expressions that show the likelihood that any given  
29 risk estimate is the correct risk value.

30 (D) A description of the incremental reductions in risk that  
31 occur when exposure is reduced.

32 (4) To ensure consistency in the use of the supplemental  
33 information authorized by subparagraphs (A), (B), (C), and (D)  
34 of paragraph (3), the guidelines established pursuant to paragraph  
35 (2) shall include guidance for use by the districts in considering  
36 the supplemental information when it is included in the health  
37 risk assessment.

38 (c) Upon submission of emissions inventory data for facilities  
39 specified in subdivisions (b) and (c) of Section 44322, the district  
40 shall designate facilities for inclusion within the highest priority

1 category, as appropriate, and any facility so designated shall be  
2 subject to subdivision (b). In addition, the district may require the  
3 operator of any facility to prepare and submit health risk  
4 assessments, in accordance with the priorities developed pursuant  
5 to subdivision (a).

6 (d) The district shall, except where site-specific factors may  
7 affect the results, allow the use of a single health risk assessment  
8 for two or more substantially identical facilities operated by the  
9 same person.

10 (e) Nothing contained in this section, Section 44380.5, or  
11 Chapter 6 (commencing with Section 44390) shall be interpreted  
12 as requiring a facility operator to prepare a new or revised health  
13 risk assessment using the guidelines established pursuant to  
14 paragraph (2) of subdivision (a) of this section if the facility  
15 operator is required by the district to begin the preparation of a  
16 health risk assessment before those guidelines are established.

17 SEC. 8. Section 44390 of the Health and Safety Code is  
18 amended to read:

19 44390. For purposes of this chapter, the following definitions  
20 apply:

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

25 (1) Feedstock modification.

26 (2) Product reformulations.

27 (3) Production system modifications.

28 (4) System enclosure, emissions control, capture, or  
29 conversion.

30 (5) Operational standards and practices modification.

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

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

36 (d) "Diesel magnet source risk reduction measure" or  
37 "DMSRRM" means those changes to equipment or method of  
38 operation that reduce or eliminate toxic air releases subject to this  
39 part. DMSRRMs shall be considered a form of airborne toxic risk

1 reduction measure for the purposes of this chapter, and may  
2 include, but are not limited to, all of the following:

- 3 (1) Modification of operational standards or practices.
- 4 (2) Application of emissions control technology.
- 5 (3) System enclosure and emissions control, capture, or  
6 conversion.
- 7 (4) Use of alternative fuels or fuel additives.
- 8 (5) Engine replacement, retrofit, or repowering.
- 9 (6) Electrification of diesel-fueled internal combustion  
10 engines.

11 SEC. 9. Section 44391 of the Health and Safety Code is  
12 amended to read:

13 44391. (a) Whenever a health risk assessment approved  
14 pursuant to Chapter 4 (commencing with Section 44360)  
15 indicates, in the judgment of the district, that there is a significant  
16 risk associated with the emissions from a facility, the facility  
17 operator shall conduct an airborne toxic risk reduction audit and  
18 develop a plan to implement airborne toxic risk reduction  
19 measures that will result in the reduction of emissions from the  
20 facility to a level below the significant risk level within five years  
21 of the date the plan is submitted to the district. The facility  
22 operator shall implement measures set forth in the plan in  
23 accordance with this chapter.

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

30 (c) (1) A district may lengthen the period to implement the  
31 plan required by subdivision (a) by up to an additional five years  
32 if it finds that a period longer than five years will not result in an  
33 unreasonable risk to public health and that requiring  
34 implementation of the plan within five years places an  
35 unreasonable economic burden on the facility operator or is not  
36 technically feasible.

37 (2) A district may lengthen the period for a diesel magnet  
38 source to implement the plan required by subdivision (a) in  
39 increments of five years, consistent with the quadrennial review

1 pursuant to subdivision (h) of Section 44392, if all of the  
2 following conditions are met:

3 (A) The facility prepares and implements a plan, subject to  
4 district approval in a public hearing, to make real and measurable  
5 progress reducing risks using all technically and economically  
6 feasible DMSRRMs, including those measures already  
7 implemented by a similar diesel magnet source.

8 (B) The facility convenes an advisory group, subject to district  
9 approval, that includes at least two members of the affected  
10 residential community, two members of the affected business  
11 community, and one representative each from the district, the  
12 state board, and the city or county within which the facility is  
13 located.

14 (C) The facility reviews its risk reduction implementation  
15 progress with the advisory group, in a public meeting, at least  
16 once each year until the risk has been reduced to below the  
17 significance thresholds.

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

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

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

31 (f) The plan shall be submitted to the district, within six  
32 months of a district's determination of significant risk, for review  
33 of completeness. Operators of facilities that have been notified  
34 prior to January 1, 1993, that there is a significant risk associated  
35 with emissions from the facility shall submit the plan by July 1,  
36 1993. The district's review of completeness shall include a  
37 *substantive analysis of the emissions reduction measures*  
38 *included in the plan, and the ability of those measures to achieve*  
39 *emissions reduction goals as quickly as feasible as provided in*  
40 *subdivisions (a) and (b).*

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

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

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

21 (j) This section does not authorize the emission of a toxic air  
22 contaminant in violation of an airborne toxic control measure  
23 adopted pursuant to Chapter 3.5 (commencing with Section  
24 39650) or in violation of Section 41700.

25 SEC. 10. Section 44395 is added to the Health and Safety  
26 Code, to read:

27 44395. Nothing in this chapter requires the operator of a  
28 diesel magnet source to implement any DMSRRM that is  
29 preempted by federal law.

30 SEC. 11. Section 44396 is added to the Health and Safety  
31 Code, to read:

32 44396. Notwithstanding the amendments to this part enacted  
33 by Assembly Bill 1101 of the 2005–06 Regular Session of the  
34 Legislature, all provisions of this part remain in full force and  
35 effect, and nothing in this part limits the authority of a district  
36 under any other provision of this code.

37 SEC. 12. All costs incurred by the State Air Resources Board,  
38 the Office of Environmental Health Hazard Assessment, and air  
39 districts, in complying with this act shall be recovered through



1 fees collected pursuant to Section 44380 of the Health and Safety  
2 Code.

3 SEC. 13. No reimbursement is required by this act pursuant  
4 to Section 6 of Article XIII B of the California Constitution  
5 because a local agency or school district has the authority to levy  
6 service charges, fees, or assessments sufficient to pay for the  
7 program or level of service mandated by this act, within the  
8 meaning of Section 17556 of the Government Code.

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REPLACE - 01/26/2006

ASSEMBLY THIRD READING  
AB 1101 (Oropeza)  
As Amended January 9, 2006  
Majority vote

TRANSPORTATION            8-4                    APPROPRIATIONS            13-5

Ayes:	Oropeza, Chan, Karnette, Liu, Pavley, Ridley-Thomas, Salinas, Torrico	Ayes:	Chu, Bass, Berg, Calderon, Mullin, Karnette, Klehs, Leno, Nation, Oropeza, Ridley-Thomas, Saldana, Yee
Nays:	Huff, Bogh, Mountjoy, Niello	Nays:	Sharon Runner, Emmerson, Haynes, Nakanishi, Walters

SUMMARY : Requires facilities that attract large numbers of diesel engines to take steps to reduce the levels of exhaust emissions from those engines. Specifically, this bill :

- 1) Makes legislative findings and declarations regarding the emission of toxic air contaminants from industrial and commercial establishments and the need for local air districts to address the operations of facilities that attract large numbers of diesel-burning engines.
- 2) Defines "diesel magnet source" as a facility that, by nature of its operation, attracts diesel engines in large numbers, and is either a port, an airport, or a railyard.
- 3) Specifies that a center for distribution of products or materials may include a single distribution operation or an aggregation of such operations in the same general location, where there may be cumulative impacts of such aggregations.
- 4) Subjects the facilities in each of the four subcategories of diesel magnet source with the greatest potential impact on public health determined on a statewide basis, as listed by

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the Air Resources Board (ARB) to the requirements of toxic hot spots statutes.

- 5) Allows, on or after January 1, 2006, facilities that are subject to hot spot statutes but have not submitted required inventories one year from the date of inclusion on a list of subject facilities, to prepare and submit to the appropriate air district an emission inventory plan.
- 6) Provides that all schedules for action set forth in hot spot statutes shall apply except for any calendar date deadlines prior to January 1, 2006.
- 7) Requires ARB, in consultation with the districts, not later than July 1, 2007, to prepare and make available to the public a list of diesel magnet sources that includes five ports, 10 airports and 25 rail yards for the distribution of products or materials.
- 8) Requires ARB to include on the list ports that move at least 1.5 million metric tons of cargo, inbound and outbound combined; airports through which at least two million passengers travel per year; and railyard sites where locomotive engines operate, including moving and idling, at least 10,000 hours per year.
- 9) Requires any facility for which a district is preparing an industrywide emissions inventory or health risk assessment to provide to the district, within 60 days of the date of the request, all information as may be specified by the district as necessary for the preparation of the inventory or assessment.
- 10) Requires ARB's criteria and guidelines for site-specific air toxics emissions inventory plans to include, on and after January 1, 2006, any specific criteria for the preparation of inventory plans by diesel magnet sources, including, but not limited to, specified quantification methods. Air releases of diesel particulate exhaust from diesel magnet sources would be required to include emissions from motor vehicles, and would be allowed to address mechanisms to integrate data prepared by ARB.
- 11) Requires air districts, collaboratively and in consultation with ARB, on or before January 1, 2007, to

review, and if appropriate, revise or augment guidelines and

procedures for facility prioritization to address diesel magnet sources pursuant to this bill.

- 12) Defines "diesel magnet source risk reduction measure" (DMSRRM) as those changes to equipment or method of operation that reduce or eliminate toxic air releases subject to this statute.
- 13) Requires DMSRRMs to be considered a form of airborne toxic risk reduction measure for the purposes of this bill, and specifies that they may include, but are not limited to, all of the following:
  - a) Modification of operational standards or practices;
  - b) Application of emissions control technology;
  - c) System enclosure and emissions control, capture, or conversion;
  - d) Use of alternative fuels or fuel additives;
  - e) Engine replacement, retrofit, or repowering; and,
  - f) Electrification of diesel fueled internal combustion engines.
- 14) Allows an air district to lengthen the period for a diesel magnet source to implement its plan for reducing toxic air emissions in increments of five years, if all of the following conditions are met:
  - a) The facility prepares and implements a plan, subject to district approval in a public hearing, to make real and measurable progress reducing risks using all technically and economically feasible DMSRRMs, including those measures already implemented by a similar diesel magnet source;
  - b) The facility convenes an advisory group, subject to district approval, that includes at least two members of the affected residential community, two members of the affected business community, and one representative each from the district, ARB, and the city or county within which the facility is located; and,
  - c) The facility reviews its risk reduction implementation progress with the advisory group, in a public meeting, at least once each year until the risk has been reduced to below the significance thresholds.

- 15) Specifies that nothing in this bill requires the operator of a diesel magnet source to implement any DMSRRM that is preempted by federal law.
- 16) Requires all costs incurred by ARB, the Office of Environmental Health Hazard Assessment, and the air districts resulting from the bill to be recovered through fees imposed on the regulated entities.

EXISTING LAW makes ARB responsible for the control of emissions from motor vehicles and the coordination, management, and review of the efforts of all level of government as they affect air quality.

FISCAL EFFECT : According to Assembly Appropriations staff, there will be nominal implementation costs for ARB. All other costs will be reimbursed through fees.

COMMENTS : Under existing law, "facilities" are required to prepare inventories of their air emissions and submit the inventories to local air districts. The air districts prioritize the facilities based on the magnitude and toxicity of their emissions, and high priority facilities are required to perform health risk assessments to determine the maximum probable health risks to the public exposed the facility's emissions. Each district board has established a risk threshold at which facilities must notify the public of potential health risks, and state law also requires that very high risk facilities reduce their risks to acceptable levels within five years or cease operation. Typically, the facilities that have done this are stationary sources. Stationary sources as large as petroleum refineries and as small as gas stations and dry cleaners have been required to comply with this law. Risk analysis results are reported to the state air board and are available graphically on ARB's Web site.

Air monitors throughout the state indicate that stationary sources account for only a small percentage of the cancer risk from air pollution, however. Over 90% of the cancer risk is

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caused by pollutants emitted from mobile sources, and, on average, diesel particulate emissions are responsible for about 75% of the statewide cancer risk from air pollution. Standards for new engines, reformulated diesel fuel, and efforts to replace or retrofit existing engines will slowly reduce the diesel particulate emissions from mobile sources, but the process is slow.

Certain activities attract very large numbers of diesel engines

in trucks, rail engines, ships, and other types of diesel equipment. These "magnet sources" include large ports, airports, rail yards, and intermodal sites. Although the emissions come from the activity of mobile sources at the site, the site itself behaves as a stationary source in so far as its operations cause emissions to occur that impact the surrounding public in a predictable and long-term way. Because of the very large numbers of diesel engines operating at the site, the risks to the surrounding public are expected to be very, very high. Preliminary studies have borne this out.

The author argues that the public has a basic right to know about the potential health risks posed by these magnet sources. Existing magnet sources should be required to minimize risks in the same fashion that other stationary sources have done, and new sources or expansions, should be constructed with the minimum possible risk to the public. In fact, these magnet sources meet the definition of "facility" under current law and could be required to comply with existing law as written.

Supporters of this bill within the environmental community point to the toxicity of diesel exhaust and believe air districts should be given the tools to disclose and mitigate diesel emissions that are currently unregulated. Some environmental organizations, however, feel this bill does not go far enough and, instead of relying on risk assessments, should simply mandate the use of best available control technologies at the facilities in question.

Opponents argue that the state should continue to be the regulatory authority over ports and rail yards, rather than shifting this jurisdiction to local air districts. Otherwise, businesses that operate in many parts of the state will be subject to inconsistent regulations. They also complain that this bill "requires the magnet sources to mitigate emissions from other sources over which it does not have control, such as

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ships, trains, and trucks."

Analysis Prepared by : Howard Posner / TRANS. / (916) 319-2093

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