

**§ 41865. Citation of section; Definitions; Reduction of rice straw burning in Sacramento Valley Air Basin; Regulations and fees; Conditional permits; Identification of alternatives; Implementation of plan**

(a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 39606.

(2) "Air pollution control council" means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) "Conditional rice straw burning permit" means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) "Allowable acres to be burned" means the number of acres that may be burned pursuant to subdivision (c).

(5) "Department" means the Department of Food and Agriculture.

(6) "Maximum fall burn acres" means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) "Maximum spring burn acres" means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Maximum Fall Burn Maximum Spring Burn

Year Acres Acres

1998 90,000 110,000

1999 90,000 110,000

2000 90,000 110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

- (1) The fields to be burned are specifically described.
- (2) The applicant has not violated any provision of this section within the previous three years.
- (3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.
- (4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).
  - (i)(1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:
    - (A) The total of 25 percent of each individual applicant's planted acres that year.
    - (B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.
  - (2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.
  - (3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).
  - (4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.
  - (5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.
  - (j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.
  - (k) "Administrative burning" means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative

materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(l)(1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, and the advisory committee, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(o) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(p) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the

regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(q)(1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars (\$10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(r) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(s) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

Added Stats 1991 ch 787 § 1 (AB 1378). Amended Stats 1992 ch 1207 § 1 (AB 2661); Stats 1997 ch 745 § 2 (SB 318). Amended Stats 2000 ch 890 § 36 (AB 2939), ch 1055 § 46 (AB 2889), effective September 30, 2000, operative until January 1, 2001, ch 1055 § 46.5 (AB 2889), effective September 30, 2000, operative January 1, 2001; Stats 2004 ch 225 § 54 (SB 1097), effective August 16, 2004. Amended Stats 2004 ch 644 § 18 (AB 2701).

## ANNOTATIONS

### Amendments:

#### 1992 Amendment:

**(1)** Added the comma after "be known" in subd (a); **(2)** added subd (n); and **(3)** redesignated former subds (n)-(q) to be subds (o)-(r).

#### 1997 Amendment:

In addition to making technical changes, **(1)** deleted former subd (b)(5) which read: " 'Annual allocation' means the acres for which conditional rice straw burning permits may be issued each year pursuant to subdivisions (f) and (h)"; **(2)** redesignated former subd (b)(6) to be subd (b)(5); **(3)** added subds (b)(6) and (b)(7); **(4)** substituted subd (c) for former subd (c) which read: "(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down beginning September 1, 1992. After September 1, 1992, the number of acres that may be burned between September 1 of each year and August 31 of the following year, inclusive, shall be the following percentage of the total number of acres planted prior to September 1 of each year:

"(1) In 1992, 90 percent.

"(2) In 1993, 80 percent.

"(3) In 1994, 70 percent.

"(4) In 1995, 60 percent.

"(5) In 1996, 50 percent.

"(6) In 1997, 38 percent.

"(7) In 1998, 25 percent.

"(8) In 1999, 25 percent.

"(9) In 2000 and thereafter, the annual allocation prescribed in subdivision (i), subject to subdivisions (f) and (h)."; **(5)** substituted "September 1, 2000" for "September 1, 1999" in subd (e); **(6)** substituted "September 1, 2001" for "September 1, 2000" in subd (f); **(7)** substituted "be operative only until January 1, 2009" for "remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date." in subd (g); **(8)** deleted "in the field in" before "an amount" in subd (h)(3); **(9)** substituted subd (h)(4) for former subd (h)(4) which read: "(4) After the rice has been harvested, the county agricultural commissioner makes a finding that the existence of a pathogen during the growing season caused a significant, quantifiable reduction in yield."; **(10)** amended subd (i)(1) by **(a)** substituting "number of acres burned" for "allocation"; and **(b)** adding "pursuant to paragraph (3) of subdivision (c)"; **(11)** amended subd (i)(2) by substituting **(a)** "the grower's" for "his or her" before "planted"; and **(b)** "number of acres burned" for "allocation" after "annual"; **(12)** substituted "limit prescribed in paragraph (1)" for "maximum annual allocation in the Sacramento Valley" in subd (i)(4); **(13)** substituted "any permission to burn granted pursuant to this subdivision" for "his or her annual allocation" in subd (i)(5); **(14)** amended subd (k) by **(a)** substituting "means" for "is" near the beginning of the first sentence; and **(b)** adding "or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to

exceed 2,000 acres"; **(15)** added subd (m); **(16)** designated former subd (m) to be subd (n); **(17)** amended subd (n) by **(a)** substituting "September 1, 1999" for "September 1, 1995" at the beginning and **(b)** adding "and the identification and implementation of alternatives to," near the end of the first sentence; **(c)** adding "the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal," in the second sentence; **(d)** substituting "of each odd-numbered year" for ",1997, 1999, and 2001, respectively" at the end of the third sentence; **(e)** substituted "may" for "shall have the authority to" after "board"; **(f)** deleting "air pollution control" before "district" and **(g)** substituting "(s)" for "(q)" after "subdivision"

2000 Amendment:

**(1)** Substituted "paragraph (4)" for "paragraph (3)" in subd (i)(1); **(2)** substituted "Trade and Commerce Agency" for "Department of Commerce" in subd (b); **(3)** amended the first sentence of subd (o) by **(a)** deleting "California" after "board and the"; and **(b)** substituting "paragraph" for "subparagraph". (As amended Stats 2000 ch 1055, compared to the section as it read prior to 2000. This section was also amended by an earlier chapter, ch 890. See Gov C § 9605.)

2004 Amendment (ch 225):

Substituted "and the advisory committee" for "the advisory committee, and the Trade and Commerce Agency" in subd (m).

2004 Amendment (ch 644):

**(1)** Deleted former subds (n) and (o), which read: "(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars (\$50,000).

"(o) The state board and the Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c). On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts associated with

the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c)."; and (2) redesignated former subds (p)-(u) to be subds (n)-(s).

Law Revision Commission Comments:

**2000**-Subdivision (i) of Section 41865 is amended to correct an erroneous cross-reference.

#### NOTES OF DECISIONS

Air quality management district was entitled to sovereign immunity from a negligence suit filed by a ranch that suffered losses based on the government's erroneous calculation of the ranch's emission reduction credits. Cal. Gov't Code § 818.8 granted the district immunity for an injury caused by misrepresentation by an employee of the public entity. *Jopson v Feather River Air Quality Management Dist.* (2003, 3rd Dist) 108 Cal App 4th 492, 133 Cal Rptr 2d 506

Provisions in Cal. Health & Safety Code § 41865(m), (n), under the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, Cal. Health & Safety Code § 41865 et seq., directing state agencies to develop and prepare a diversion plan and progress report are within the category of quasi-legislative acts, and the subsections do not eliminate agency discretion but require it; since the manner of preparation and their contents were left to the discretion of the agencies involved, review was limited to the determination of whether the findings, conclusions, and recommendations were arbitrary, capricious, or unsupported by substantial evidence, and the court noted that traditional mandamus under Cal. Code Civ. Proc. § [1085](#) could not be used to force the exercise of discretion in a particular manner or to reach a particular result as contended by rice growers who sought such a writ against the agencies. *Carrancho v California Air Resources Bd.* (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 1405

Because state agencies' actions under Cal. Health & Safety Code § 41865(m), (n) of the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, Cal. Health & Safety Code § 41865 et seq., were neither informal nor ministerial, the rule applied that extra-record evidence was inadmissible in a traditional mandamus proceeding under Cal. Code Civ. Proc. § [1085](#) that challenged the quasi-legislative acts of the agencies, and thus the court's review was properly confined to the administrative record. *Carrancho v California Air Resources Bd.* (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 1405

Court affirmed the denial of rice growers' petition for a writ of mandate pursuant to Cal. Code Civ. Proc. § [1085](#) against state agencies in connection with their preparation of a diversion plan and progress report under Cal. Health & Safety Code § 41865(m), (n) of the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, Cal. Health & Safety Code § 41865 et seq.; the court found that the plan and report passed muster under the court's deferential standard of review, the documents properly reflected consideration by the agencies of the relevant factors affecting the development of off-field uses for rice straw and a rational connection between those factors and purpose of the statute to divert 50 percent of the straw, and the documents were not arbitrary, capricious, or without evidentiary support. *Carrancho v California Air Resources Bd.* (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 1405

