

State of California
AIR RESOURCES BOARD

Resolution 00-36

October 26, 2000

Agenda Item No.: 00-10-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature found in the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act), Health and Safety Code section 44300 et seq., that facilities manufacturing or using hazardous substances may be exposing nearby populations to toxic air releases on a routine basis and that it is in the public interest to ascertain the nature and quantity of hazardous releases from specific sources that may create air toxics "hot spots";

WHEREAS, the Act sets forth an Air Toxics Hot Spots Program (Program) to develop air toxics emission inventories and to assess the risk to public health from exposure to these emissions, and air toxics Emission Inventory Criteria and Guidelines are incorporated by reference in section 93300.5, title 17, California Code of Regulations (CCR) in accordance with the Act;

WHEREAS, on November 14, 1988, effective December 15, 1988, the Board adopted the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation) set forth in sections 90700 et seq., title 17, CCR, in accordance with Health and Safety Code section 44380(a), which assessed a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts (districts), and the Department of Health Services (hereinafter the Office of Environmental Health Hazard Assessment, or OEHHA) to implement and administer the Act;

WHEREAS, the Board has amended the Fee Regulation each year since 1988 to reflect changes in the emission inventory, the sources subject to the Act's requirements, the status of facilities in the Program, and the State and district costs of implementing the Act;

WHEREAS, Health and Safety Code section 44380(a) was amended in 1990 to require that the Board adopt a regulation that requires all districts, except for districts that have submitted specified information to the Board by April 1, of each year, to adopt rules that assess a fee upon the operator of every facility subject to the Act in order to recover the costs to the districts, the Board, and OEHHA to implement and administer the Act, and this Fee Regulation was amended accordingly each year since 1990;

WHEREAS, Health and Safety Code section 44380(e) caps the State portion of Program fees at \$1.35 million for fiscal year 1999-2000, and for each fiscal year thereafter, and the budget currently proposed for the State portion of fees for fiscal year 2000-2001 is \$1.08 million;

WHEREAS, the amendments to the 1999-2000 Fee Regulation approved by the Board on October 28, 1999, and effective on April 18, 2000, set forth in sections 90700 et seq. of title 17 of the California Code of Regulations in accordance with Health and Safety Code section 44380(a), provided for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, districts, and OEHHA to implement and administer the Act in fiscal year 1999-2000;

WHEREAS, Board staff, in consultation with the districts and the Fee Regulation Committee originally convened pursuant to the 1987 Act, has developed amendments to the Fee Regulation for fiscal year 2000-2001 which were discussed with the public at a public consultation meeting;

WHEREAS, Health and Safety Code section 44344.4(b) excludes certain facilities from the State portion of Program fees;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, based upon the information presented by the staff and the written and oral comments received before and at the hearing, the Board finds that:

1. The revenues to be assessed under the proposed amendments to the Fee Regulation are necessary to recover the anticipated Program costs that will be incurred by the Board, the districts, and OEHHA to implement and administer the Act's provisions in fiscal year 2000-2001.

2. The proposed amendments would assess revenues of \$1.08 million for the State to implement the Air Toxics Hot Spots Program in fiscal year 2000-2001.
3. The proposed amendments reflect a reduction in State cost of 10 percent from fiscal year 1999-2000 and by 80 percent compared to the fiscal year 1993-94 peak Program costs.
4. The proposed Program costs meet the requirement of Health and Safety Code section 44380(e) to cap State Program costs at \$1.35 million.
5. The proposed amendments will continue to reduce the State portion of the Program's budget. The ARB and OEHHA are proposing to further downsize their programs to reflect lower revenues that would result from excluding additional facilities in calculating the distribution of the State's cost.
6. Although the proposed amendments will further downsize the Program, the ARB and OEHHA staffs, working with the districts, would continue to maintain an effective Program that would collect and evaluate necessary information as mandated in order to reduce toxic air emissions and protect public health.
7. The proposed amendments will continue to allocate State costs among the districts based on Facility Program Fee Categories that reflect potential health risk priority based on toxic emissions weighted for potency or toxicity.
8. The Antelope Valley, Imperial County, Lassen County, and Santa Barbara County Air Pollution Control Districts (APCDs), the Great Basin Unified APCD, and the Mojave Desert Air Quality Management District (AQMD) have requested that the Board adopt their fee schedule, and have submitted the required information to the ARB on time.
9. The Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Kern, Mariposa, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, Tuolumne, and Ventura County APCDs, the Feather River, Monterey Bay, and San Joaquin Valley Unified APCDs, and the Bay Area, Lake, Mendocino, North Coast Unified, Northern Sierra, Sacramento Metropolitan, South Coast, and Yolo-Solano AQMDs must adopt district Program fee rules for fiscal year 2000-01 in accordance with Health and Safety Code section 44380(a).

10. The proposed Fee Regulation provides for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, districts, and OEHHA to implement and administer the Act in fiscal year 2000-2001.
11. The proposed Fee Regulation excludes certain facilities from the State portion of Program fees, as required by Health and Safety Code section 44344.4(b).
12. This regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 90700-90705, title 17, (CCR) including the appendix referenced therein, as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted after review of the comments.

I hereby certify that the above is a true and correct copy of Resolution 00-36, as adopted by the Air Resources Board.

Marie Kavan, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Amendments to sections 90700-90705, title 17, California Code of Regulations, including the Appendix referenced therein, as appended to the Staff Report released September 8, 2000.

Attachment B: Staff's Suggested Changes to the Original Proposal (distributed at the Board hearing on October 26, 2000).