

State of California
AIR RESOURCES BOARD

Resolution 01-47

October 25, 2001

Agenda Item No.: 01-8-3

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 of title 17, California Code of Regulations, 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 section 90700 et seq. of title 17, California Code of Regulations, 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 requiring the Board to 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;

WHEREAS, the Board amended the Fee Regulation for fiscal year 2000-2001 on October 26, 2000, and the Regulation was effective in May 2001;

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 2001-2002 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;

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 Fee Regulation are necessary to recover the anticipated Program costs that the Board, the districts, and OEHHA will incur to implement and administer the Act's provisions in fiscal year 2001-2002;

2. The proposed amendments would assess revenues of approximately \$945,802 for the State to implement the Air Toxics "Hot Spots" Program in fiscal year 2001-2002;
3. The proposed Program costs meet the requirement of Health and Safety Code section 44380(e) to cap State Program costs at \$1.35 million;
4. 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 costs. This downsizing is a direct result of reductions in emissions from facilities and the risks associated with those emissions;
5. 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;
6. The Antelope Valley, Lassen, 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;
7. The Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Imperial, 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 2001-2002 in accordance with Health and Safety Code section 44380(a);
8. 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 2001-2002;

9. The proposed amendments will further streamline the Program, while allowing the ARB and OEHHA staffs, working with the districts, to 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;
10. The proposed Fee Regulation delegates the authority to administer the fee program to the Executive Officer of the ARB beginning in fiscal year 2002-2003 and every fiscal year thereafter. In future fiscal years, these fees will continue to be based on Facility Program Fee Categories that reflect potential health risk priority;
11. Beginning in fiscal year 2002-2003, the proposed Fee Regulation provides for those districts that do not have a locally adopted fee regulation to recover their district costs up to, but not to exceed, their State costs on a per-facility basis by requesting this provision by September 1 of the applicable fiscal year;
12. 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);
13. On the basis of a financial analysis conducted to indicate the economic impacts on affected facilities resulting from the fees proposed in this regulation, the proposed amendments impose no noticeable impact on the profitability of California businesses and will not cause a significant change in employment, business creation, elimination, expansion, or business competitiveness. However, for some businesses operating with little or no margin of profitability, the proposed amendments may have a significant adverse economic impact on the business, or on private persons directly affected by the regulation, including their ability to compete with similar businesses in other states, and the creation, elimination, or expansion of jobs and businesses within the State; and
14. 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, California Code of Regulations, as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt sections 90700-90705, title 17, California Code of Regulations, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be 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.

I hereby certify that the above is a true and correct copy of Resolution 01-47, as adopted by the Air Resources Board.

Marie Kavan, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: Amendments to the text in sections 90700-90705, and to Tables 1, 2, 3a, 3b, 3c and 4 in section 90705, title 17, California Code of Regulations, as presented in Appendix II to the Staff Report released September 7, 2001.

Attachment B: Staff's suggested modifications.