

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD
Planning and Technical Support Division

Staff Report: Initial Statement of Reasons
For Proposed Rulemaking

Proposed Amendments to the
Air Toxics "Hot Spots" Fee Regulation
for Fiscal Year 2000-2001

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EXECUTIVE SUMMARY

In this report, the staff of the Air Resources Board (ARB or Board) presents proposed amendments to the Air Toxics Hot Spots Fee Regulation (Fee Regulation, Title 17, California Code of Regulations, sections 90700-90705) for fiscal year 2000-2001. The purpose of the Fee Regulation is to recover the State's Program costs to implement the Air Toxics Hot Spots Information and Assessment Act of 1987 (the Act)¹ by allocating portions of the State costs among the air pollution control and air quality management districts (districts). The Fee Regulation requires each district to collect and submit to ARB, fees to recover their district's portions of the State's Program costs. The proposed Fee Regulation also contains fee schedules to recover local district Program costs for the six districts that requested the ARB to include them in the Fee Regulation. The remaining 29 districts must adopt their own fee schedule. Overall, Program costs for most, but not all, districts are going down or remaining the same for fiscal year 2000-2001. The proposed Fee Regulation continues to focus the fees on those facilities of greatest public health concern and exempts facilities of least concern.

Proposed program costs for this year (2000-2001) are \$1,038,000 compared to fiscal year 1993-94 peak of \$5,226,000. Of the State's Program revenues, about 58 percent are passed through to support the Office of Environmental Health Hazard Assessment (OEHHA) and the remainder supports ARB activities. We expect Program costs to remain stable at about \$1,000,000, well under the statutory cap of \$1,350,000 that took effect in 1998-99. The Program was substantially streamlined in the late 1990's.

The staff proposes to continue to use the same calculation method to allocate fees among the districts that was adopted for the past four years. This method is based on the health risk of facilities in each district as determined by their prioritization scores or health risk assessment results. We are proposing to amend the Fee Regulation by updating the fee tables found in the Fee Regulation to use the most current facility Program data submitted by the districts to the ARB by July 1, 2000. Based on the staff proposals and current facility Program data, most districts will see small reductions or no change in their share of State costs.

The Air Toxics Hot Spots Program (Program) was enacted to inform the California public about releases of toxic air pollutants and the risks those pollutants pose to the public health. It sets forth requirements for facility operators, districts, and the State. It requires that emissions of air toxics from specified facilities be quantified and compiled into an inventory, facilities be prioritized to determine which must conduct health risk assessments, risk assessments be conducted, the

¹ Health and Safety Code sections 44300-44394, Stats. 1987, Ch. 1252; as amended by Stats. 1989, Ch. 1254; Stats. 1990, Ch. 1432; Stats. 1992, Ch. 375; Stats. 1992, Ch. 1162; Stats. 1993, Ch. 1037; Stats. 1993, Ch. 1041; and Stats. 1996, Ch. 602.

public be notified of significant health risks posed by nearby facilities, and emissions that pose significant risk be reduced.

As a result of the Program, the ARB has developed a comprehensive emission inventory of over 8,000 facilities that release toxic substances into the ambient air. Those facilities have been prioritized and health risk assessments have been performed for over 800 facilities. Significant sources of toxics emissions and toxic risk have been identified. Many facility operators voluntarily reduced large volumes of toxic emissions in an effort to eliminate their toxics risks.

In addition, many emission inventory and risk assessment tools continue to be developed through the Program. Emission inventory tools include the development of procedures for developing emission inventories, a database of air toxics emission factors, and software to enable the electronic submittal of emission inventory data. Risk assessment tools include procedures for prioritizing facilities' toxics emissions, health risk assessment guidelines, and risk assessment software. Other tools include source testing methods and pollutant health risk values. All of these tools are valuable assets that enable the State and local air districts to evaluate the near source potential health risks from exposure to toxic substances released into the ambient air. They also represent tools that help the State and districts to evaluate community health issues.

The Fee Regulation conforms to the provisions of Health and Safety Code Section 44380(a). This section requires a facility's district fees to be based on toxics emissions and the health risk priority assigned to the facility by the districts, to the maximum extent practicable. The Fee Regulation also conforms to sections 44344.4 through 44344.7 and 44380 (e) of the Health and Safety Code. Those sections establish facility fee exemption criteria and a cap on fees collected to support the Program.

Due to facility exemptions, fewer sources will pay State fees this year. Approximately one percent of core facilities that paid State fees in fiscal year 1999-2000 will be exempt from State fees this year because of lower prioritization scores and health risk assessment results. Overall, this represents an 89 percent reduction in the number of core facilities paying State fees since 1994. Core facilities are the larger, unique facilities that pay the larger fees to support the Program. Approximately 48 percent of industrywide facilities have been exempted from paying State fees since 1994. Industrywide facilities are smaller facilities; like gasoline service stations, dry cleaners, print shops, and autobody shops; that meet the definition under Health and Safety Code section 44323.

The major provisions of this year's Fee Regulation are as follows:

- o A proposed State budget for this Program of \$1,038,000 for fiscal year 2000-2001.**
- o The Fee Regulation tables will be updated based on current facility Program data submitted by the districts to the ARB by July 1, 2000.**

- o The Fee Regulation proposes to adopt fee schedules for six districts based on a method similar to the methodology proposed for State fees, which bases fees on facilities health risk assessment results and prioritization scores.**
- o Approximately 200 facilities that paid fees in fiscal year 1999-2000 are exempted from paying fees for fiscal year 2000-2001.**

The staff developed the proposed amendments to the Fee Regulation with the assistance of the Air Toxic Hot Spots Fee Regulation Committee (Committee) which was established in 1988 to develop the initial Fee Regulation. The Committee includes representatives from the districts, the ARB, and the OEHHA.

The staff recommends that the Board adopt the proposed amendments to the Fee Regulation for fiscal year 2000-2001. The proposed changes are described in detail in this staff report.

I.

INTRODUCTION AND OVERVIEW

A. INTRODUCTION

The staff of the Air Resources Board (ARB or Board) is proposing to continue to use the current method for calculating fees and make only minor amendments to the Air Toxics Hot Spots Fee Regulation (Fee Regulation) for fiscal year 2000-2001. The amendments proposed will update the fee tables found in the Fee Regulation based on the most current facility Program data submitted by the districts to the ARB by July 1, 2000. Staff is proposing a State budget for the Air Toxics "Hot Spots" Program for fiscal year 2000-2001 of \$1,038,000.

The Fee Regulation recovers the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) Program costs for implementing the Air Toxics Hot Spots Information and Assessment Act of 1987 (AB2588 or the Act) by allocating portions of the State costs to the air pollution control and air quality management districts (districts). It also requires each district to collect fees to recover the State's and districts' Program costs and to provide to the ARB the districts' share of the State's costs.

The Act requires that the State's and the districts' costs of implementing the Program be recovered from fees paid by facilities subject to the Act. The Act also allows a district to request that the ARB adopt its fee regulation if the district program costs are approved by the district board and transmitted to the ARB by April 1 before the fiscal year for which the fees are to be collected. Six districts requested that the ARB adopt fee regulations for them, and they are included in this proposal. The remaining 29 districts plan to adopt their own fee schedules, as required by the Fee Regulation. The six districts whose fee regulations are included in this proposal are listed in Table 1.

Table 1

Adoption of District Fees for Fiscal Year 2000-2001
Districts Included in the State Fee Regulation

1. Antelope Valley APCD
2. Great Basin Unified APCD
3. Imperial County APCD
4. Lassen County APCD
5. Mojave Desert AQMD
6. Santa Barbara County APCD

This Chapter gives an overview of the Fee Regulation, Program costs, and the proposed changes to the Fee Regulation. Chapter II describes the requirements of the Program including legislative amendments to the Act. Chapter III details the State's and local governments' activities required to implement and maintain the Program. Chapter IV presents the State's and districts' costs to implement the Program. Chapter IV also describes the fees that must be paid by facilities located in air districts whose fee schedules are adopted by the Board as part of this Fee Regulation.

Chapter V gives a detailed description of the current Fee Regulation and the proposed changes. The environmental and economic impacts of the regulation are described in Chapter VI. The economic analysis includes the impact on both government and non-government entities, and the possible effects on jobs and businesses. Chapter VII presents evaluations of methods suggested as alternatives to the current method of assessing Program fees.

B. PROGRAM ACHIEVEMENTS

Both the public and industry have benefited from the achievements accomplished through the Program. The Program has resulted in the development of the nation's first and most comprehensive statewide inventory of air toxics emissions. It allows California the ability to identify who the toxic emitters are in the State, the health risks posed by those emitters, and what is being done to reduce the risks.

The Hot Spots Program has been extremely effective in reducing air toxics emissions by providing ample incentives for facility operators to reduce emissions voluntarily or through the requirements for significant risk public notification and risk reduction action. The requirement for risk reduction audits and plans is viewed as being more effective than "command and control" regulations by many facility operators as it allows facility operators to choose the most cost-effective methods for reducing emissions and risks from their facilities.

Information collected under the Hot Spots Program ensures the ARB and the districts use their resources most efficiently by allowing them to focus on the air toxics emitting sources of greatest concern. Much of that information is available to the public through the ARB's internet Web site at: <http://www.arb.ca.gov/ab2588/ab2588.htm> .

The risk assessment guidelines, procedures, and substance health values being prepared by the OEHHA pursuant to the requirements of this Program will assure that the best risk assessment science and data will be available statewide.

The achievements and expertise developed through the Hot Spots Program serves as a foundation for future efforts to address cumulative health risks from multiple facilities and community health risk issues. The Program serves as an integral part of the State's effort to manage the public's exposure to toxic air pollutants, which in turn is critical to the efforts to provide the citizens of this State with healthy air.

C. DEVELOPMENT OF STAFF PROPOSAL

The proposal to amend the Fee Regulation for fiscal year 2000-2001 was developed in consultation with the Air Toxics Hot Spots Fee Regulation Committee (Committee). The Committee includes representatives from the districts, the ARB, and the OEHHA. The Committee discussed the development of the Fee Regulation for fiscal year 2000-2001 in March, April and July 2000.

The ARB staff will be holding a public workshop in September 2000 in Sacramento to take public comments. The staff will send workshop notices to over 7,000 facility operators and members of the public. In addition, the staff will send copies of the staff report to over 1,600 facility operators and members of the public.

D. TOTAL PROGRAM COSTS

The estimated total cost for the State and districts to implement the Program for fiscal year 2000-2001 is approximately \$3,848,000. The distribution of total costs among agencies that implement the program is shown graphically in Figure 1. Of the total cost, \$1,038,000, or 27 percent is the State's cost, of which \$440,000, or 11 percent supports the ARB activities and \$598,000, or 16 percent supports the OEHHA activities. Seventy-three percent, or \$2,811,000, of the total costs supports district activities. This represents a decrease in district costs of approximately 19 percent from fiscal year 1999-2000.

The State fees for fiscal year 2000-2001 will support a number of essential State activities. The ARB will maintain the Program by continuing to collect and provide air toxics emission data to the public, to inform the public of the potential health risks, and to work with facilities to reduce those risks. Specifically, the ARB staff will continue to collect emissions data for facilities of greatest concern; conduct quality control checks of those data; develop air toxics emission factors; implement electronic data submittal procedures; and provide emissions data to the public, government agencies, and the regulated community. The ARB staff will also continue to provide technical assistance to facilities for risk reduction audits and plans and other regulatory efforts needed to implement the Program. The OEHHA will complete the health risk assessment guidelines and develop health values for those substances currently on the list of substances to be reported. A more detailed description of the State's anticipated activities is presented in Chapter III.

E. TREND IN STATE PROGRAM COSTS

Figure 2 shows the trend in State Program costs since fiscal year 1992-93. Each year the Board has adopted fee regulations that consistently reduce the amount of fees collected to recover

placeholder for Figure 1, pie chart - "Estimated Total Program Costs Are Reduced for Fiscal Year 2000-2001"

placeholder for graph - "State's Proposed Accelerated Cost Reductions"

State Program costs. The proposed amount to be collected to support State activities for fiscal year 2000-2001 is \$1,038,000, an 80 percent since fiscal year 1993-94 and a 14 percent reduction from fiscal year 1999-2000. This total reduction in costs is commensurate with the reduction in workload resulting from the 1996 streamlining measures adopted in the Guidelines Report and also reflects the fact that many of the original tasks mandated by the Act are now completed or nearing completion.

F. PROPOSED CHANGES TO THE FEE REGULATION

For fiscal year 2000-2001, the staff is proposing only minor changes to the Fee Regulation. The same method will be used to calculate districts' share of State costs as in fiscal year 1999-2000. That method assigns facilities to Program fee categories based on their prioritization scores and health risk assessment results. Fee rates in those categories increase with increasing facility risks. Facility fee amounts for all seven categories, including industrywide, will remain the same as in fiscal year 1999-2000. The Fee Regulation will continue to include exemptions for low risk facilities. The fee categories and their definitions are shown in Figure 3. A detailed discussion of the fee method is presented in Chapter V.

Staff is proposing only minor changes to the Fee Regulation for fiscal year 2000-2001. The following is a summary of the major provisions of the proposed Fee Regulation:

- o A proposed State budget for this Program of \$1,038,000 for fiscal year 2000-2001.
- o The Program's proposed budget represents a 14 percent reduction from fiscal year 1999-2000.
- o The current method for allocating fees to the districts continues to be based on facilities' health risk assessment results and prioritization scores.
- o The Fee Regulation tables will be updated based on current facility Program data submitted by the districts to the ARB by July 1, 2000.
- o Fee amounts for the six main fee categories and industrywide facilities are proposed to remain unchanged from fiscal year 1999-2000.
- o Approximately 200 core and industrywide facilities are proposed for exemption from paying State fees since the 1999-2000 Fee Regulation due to reduction in facility risks or completion of facility evaluation requirements.
- o Fee schedules are proposed for six districts, based on a method similar to the methodology proposed for State fees. Individual facility fees in four districts increase due to either fewer facilities in the district subject to Program fees or due to an increase in district costs. The Fee Regulation requires the remaining 29 districts to adopt their own fee schedules.

Figure 3

Facility Program Categories*

Unprioritized Facility (the district has not assigned a priority score)
Simple, Medium, or Complex

Tracking Facility (Priority Score greater than 10, Health Risk Assessment greater than or equal to 1 and less than 10, or Hazard Index greater than or equal to 0.1 and less than or equal to 1.0.)
Simple, Medium, or Complex

Prioritization Score great than 10
Simple, Medium, or Complex

Health Risk Assessment greater than or equal to 10 and less than 50; or, Hazard Index greater than 1.0
Simple, Medium, or Complex

Health Risk Assessment greater than or equal to 50 and less than 100
Simple, Medium, or Complex

Health Risk Assessment greater than or equal to 100
Simple, Medium, or Complex

Industrywide

*Within each category, except industrywide, exist the three subcategories simple, medium or complex, based on the complexity of facility operation.

G. ENVIRONMENTAL AND ECONOMIC IMPACTS

We do not anticipate any potential adverse impacts on the environment due to the implementation of these proposed amendments to the Fee Regulation. The Fee Regulation may continue to provide indirect environmental benefits because the fees may be an incentive for businesses to reduce air toxics emissions and the health risks associated with those emissions.

Although some businesses could experience greater reduction in their profitability than others, overall, California businesses are able to absorb the costs of the fees without significant adverse impact on their profitability. However, the proposed changes to the Fee Regulation may adversely impact businesses operating with little or no margin of profitability. This could include impacts on the ability of the California businesses to compete with businesses in other states, an impact on the creation or elimination of jobs and businesses within California, and the expansion of businesses currently doing business within California. Economic and environmental impacts are described in more detail in Chapter VI.

H. RECOMMENDATION

The staff recommends that the Board adopt these proposed amendments to the Fee Regulation for fiscal year 2000-2001. These amendments are described in more detail in Chapter V, and the regulation text is shown in its entirety in Appendix I and II.

II.

PROGRAM ELEMENTS

A. INTRODUCTION

The legislation that established the Air Toxics Hot Spots Program, and subsequent amendments to that legislation, are discussed in this Chapter. Chapter II also explains how facilities subject to the Program are identified.

B. ASSEMBLY BILL 2588

In September 1987, Assembly Bill 2588 (Connelly; Statutes of 1987; Chapter 1252), the Air Toxics "Hot Spots" Information and Assessment Act (Act), was signed into law. The goals of the Act are to determine the extent of toxic air emissions in California, to assess their potential health implications, and to provide the public with information on releases of toxic substances into the environment (community right-to-know). In approving the Act, the Legislature found that facilities that manufacture or use toxic substances might routinely expose surrounding populations to emissions of toxic pollutants. The Legislature determined that the available emission information was not sufficient to allow an assessment of the potential health impacts of these emissions.

Under this Act (and subsequent amendments), operators of stationary sources are required to report the types and quantities of certain substances routinely emitted into the air. Air emissions that result from the routine operation of a facility or that are predictable must be reported. The Act requires that: 1) air toxics emissions from stationary sources be inventoried, 2) the potential health risks from the emissions be assessed, 3) the public be notified of potentially significant health risks, and 4) high risk facilities reduce their emissions below a specified level of significance.

1. Applicability

a. General

The Act applies to any facility which meets one of the following criteria:

- (1) The facility manufactures, formulates, uses, or releases one or more listed substances (or any substance which reacts to form a listed substance) and **emits ten tons per year (TPY) or more** of total organic gases, particulate matter, nitrogen oxides, or sulfur oxides.

- (2) The facility is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.
- (3) The facility manufactures, formulates, uses, or releases a listed substance (or any substance that reacts to form a listed substance) and **emits less than ten TPY** of each criteria pollutant and is subject to Appendix E of the Guidelines Report.

The Act provided for phasing of facilities into the Program. Beginning in 1989, Phase I facilities became subject to the Program. These facilities emitted over 25 TPY of criteria pollutants and manufactured, produced, used, or released a listed substance. Phase I facilities also included facilities on district toxics inventories, reports or surveys. Phase II facility requirements became subject to the Program in 1990. As defined, Phase II facilities emitted 10-25 TPY of criteria pollutants and manufactured, produced, used, or released a listed substance. In 1991, Phase III facilities became subject to the Program. Phase III applied to facilities that emitted less than ten TPY of criteria pollutants, fell within certain industrial classes, and produced, emitted or used a listed substance. Phase III requirements must be completed two years after the corresponding deadlines for Phase I facilities.

Approximately 31,000 facilities, or 4 percent of California's 700,000 businesses, were subject to the Program. Of those 31,000 facilities, approximately 5,800 are larger, or "core", facilities that had been required to submit individual emission inventory reports and to pay fees. Of those 5,800 larger facilities, approximately 5,100, or 88 percent, have been exempted from paying State fees due to demonstrated low risks. However, only 3,000 are exempt from emissions reporting requirements.

The remaining 25,000 smaller facilities are considered "Industrywide" facilities. The districts are required to develop an emission inventory and risk assessment for these facilities. These facilities include gasoline stations, dry cleaners, printing shops, and autobody shops. Approximately 12,000, or 48 percent, have been evaluated and have been exempted from paying State fees.

b. Exemptions from Requirements in the Act

The Act provides exemptions from certain Program requirements. These are:

- (1) Health and Safety Code section 44324 exempts certain uses of pesticides from the Act. A facility using pesticides is exempt unless it was subject to district permit requirements on or before August 1, 1987. These facilities are exempt from certain Program requirements and from the Fee Regulation.

- (2) Landfill facilities that are in compliance with Health and Safety Code section 41805.5 are exempt from only the emission inventory requirements, but they are still subject to other Program requirements including the Fee Regulation.
- (3) Health and Safety Code section 44380.1 exempts certain agricultural facilities from paying fees unless the fee schedule adopted by the district or the ARB is solely based on toxic emissions weighted for potency or toxicity.
- (4) Health and Safety Code section 44344.4(a) exempts facilities from fees and reporting requirements if their prioritization scores for cancer and non-cancer health effects are both equal to or less than one, based on the results of the most recent emissions inventory or emissions inventory update.
- (5) Health and Safety Code section 44344.4(b) exempts facilities from the State portion of Program fees if their prioritization scores for cancer and non-cancer health effects are both equal to or less than 10, based on the results of the most recent emissions inventory or emissions inventory update.

2. Emission Inventory Criteria and Guidelines Report

The ARB is required by the Act to adopt a criteria and guidelines regulation setting forth the requirements for the preparation of site-specific emission inventory plans and reports. The first Emission Inventory Criteria and Guidelines Regulation (Guidelines Regulation) was adopted in 1989, and it was subsequently amended in September 1990, June 1991, June 1993, May 1996, and July 1996. In May 1996, the Board adopted a proposal to re-codify the Guidelines Regulation as part of the California Environmental Protection Agency's Regulatory Improvement Initiative, undertaken in response to the Governor's Executive Order No. W-127-95 regarding "regulatory relief" efforts to reduce the regulatory burden on California business and the economy. The goal of the re-codification was to simplify the California Code of Regulations by removing the lengthy and technically detailed content of the Guidelines from the numbered sections of the Code, and instead incorporate by reference in the Code a report containing the requirements. The re-codification did not change the specific requirements of the Guidelines. The report entitled the "Emission Inventory Criteria and Guidelines Report, Published in Accordance with the Air Toxics 'Hot Spots' Information and Assessment Act of 1987" (the Guidelines Report) has the same enforceability as the Guidelines Regulation because it has been incorporated by reference into the California Code of Regulations.

The Guidelines Report as amended by the Board in July 1996 does the following:

- o defines which facilities must report;
- o defines a 3-tiered approach for update reporting requirements;

- o exempts low level facilities from emission inventory update reporting based on prioritization scores and health risk assessments;
- o sets reporting requirements for intermediate and high level facilities based on each facility's prioritization scores and health risk assessment results;
- o specifies the substances that must be quantified in an emission inventory report;
- o specifies the information a facility operator must include in an emission inventory update;
- o specifies the timetable facilities must follow for submitting initial inventories and updates; and
- o prescribes source testing requirements for emission estimation, other acceptable emission estimation methods, and the reporting forms to be used.

3. Reporting Requirements

Facilities subject to emissions reporting under the Criteria and Guidelines Report must prepare air toxics emission inventory plans. These plans describe how emissions must be measured or calculated. Upon district approval, a facility operator must implement the plan by submitting an inventory of emissions to the district within 180 days. Every four years, facilities are required to either update their emission information or report to their district that no changes have occurred. The Criteria and Guidelines Report contains detailed program emission reporting requirements.

For facilities defined as industrywide, facility operators are not required to prepare reports; the districts must prepare inventories for these facilities. The districts determine whether industrywide inventories are appropriate for facility classes by reviewing the criteria specified in Health and Safety Code 44323. These criteria include the following:

- (a) All facilities in the class fall within one four-digit Standard Industrial Classification Code.
- (b) Individual compliance with this part would impose severe economic hardships on the majority of the facilities within the class.
- (c) The majority of the class is composed of small businesses.
- (d) Releases from individual facilities in the class can easily and generically be characterized and calculated.

4. Prioritization, Risk Assessment, and Public Notification

After reviewing the emission inventory data, the district must assess a facility's potential health risk and categorize the facility as high, intermediate, or low priority for purposes of determining who must conduct a health risk assessment. In establishing priorities, a district is to consider the potency, toxicity, quantity, and volume of hazardous materials released from the facility. The district is also to consider the proximity of the facility to the surrounding population, and any other factors that the district determines may influence the risk posed by the facility. Prioritization scores are extremely conservative risk assessments using conservative default values to estimate the concentrations of a toxic substance in the air that a receptor would experience.

Districts currently calculate prioritization scores and health risk assessment results based on procedures found in the following documents:

the CAPCOA Air Toxics "Hot Spots" Program Facility Prioritization Guidelines (July 1990), the CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines (October 1993), and the CAPCOA Gasoline Service Station Industrywide Risk Assessment Guidelines (December 1997).

The California Air Pollution Control Officers Association (CAPCOA) has developed all three of the documents to help districts and facility operators meet these requirements.

A facility classified as high priority must prepare a risk assessment to evaluate the potential adverse health effects on the exposed population and submit it to the district. The district may also require a facility not designated as "high priority" to prepare and submit a risk assessment.

A risk assessment, as defined under the Act, includes a comprehensive analysis of the dispersion of hazardous substances into the environment, the potential for human exposure, and a quantitative assessment of both individual and population-wide health risks associated with those levels of exposure.

A risk assessment usually begins with the estimation of the atmospheric quantities of the hazardous substances emitted at a source. A dispersion model is used to estimate the downwind concentration of the hazardous substances emitted. Inputs to the dispersion model include the emission rate of the hazardous substances, source parameters (i.e., stack height, building height, etc.), distance to receptors, terrain characteristics, and meteorological conditions. The output from the air dispersion model is the estimated short-term and long-term concentrations at the maximum-impacted receptor as well as a distribution of receptors. The concentrations are then evaluated through a multipathway assessment to determine the acute, chronic, and carcinogenic risks attributed to those hazardous substances at all receptors. Where meteorological, receptor, or substance-specific data are not available, assumptions are used for inputs to the risk assessment process to bias the analysis toward a health-protective result.

Districts and the OEHHA review risk assessments. When requested, the districts must make the health risk assessments available to the public. The district is responsible for final approval of health risk assessments. If a district determines that there is a potentially significant health risk associated with emissions from a facility, the facility operator must notify all exposed persons of these findings. The CAPCOA has developed a document to help districts develop public notification procedures: the CAPCOA Air Toxics "Hot Spots" Program Public Notification Guidelines (October 1992).

5. Annual Reports

Commencing July 1, 1991, each district must prepare and publish an annual report which summarizes the health risk assessment program, ranks facilities according to the cancer risk posed, identifies the facilities posing non-cancer health risks, and describes the status of the development of control measures.

6. Fee Regulation

The Act requires the ARB to adopt a regulation that recovers the State's costs of operating the Program. The ARB may adopt a regulation that collects fees to support district's costs if requested by the district. State costs include those incurred by the OEHHA and the ARB. If a district does not request the ARB to adopt a fee regulation for it, it must adopt its own fee regulation.

a. State Adopted Fee Schedules

The ARB may adopt fee schedules for those districts that submit their Program costs to the ARB by April 1 preceding the fiscal year for which the fees are to be collected. Because these anticipated Program costs must be approved by formal action of the district's governing board, the public is given an opportunity to comment before the cost estimates are submitted to the ARB. The Fee Regulation requires the districts to specify how the collected fees will be used to administer the Program. This breakdown provides specific information on the local Program budget and becomes part of the regulatory file.

b. Collection Process

As required by Health and Safety Code section 44380(c), each district must invoice facility operators for the Air Toxics Hot Spots fees, whether the district adopts its own fee rule or it is included in the ARB's Fee Regulation.

The existing Fee Regulation requires each district to bill facilities for fees assessed, and it requires the district to remit its share of the State's costs to the ARB by April 1 of the applicable fiscal year. Table 1 of Appendix II (the Fee Regulation language) shows each district's share of the State's costs. The existing regulation also specifies that a fee will be considered past due if the

facility does not remit the fee to the district within 60 days after receiving the fee assessment notice. The districts shall assess a penalty of up to 100 percent of the assessed fee against any facility that fails to pay the Hot Spots fee. Districts may also initiate permit revocation proceedings to collect overdue fees.

The existing Fee Regulation requires that for districts having ARB adopt their fee schedules, any fees collected beyond district and State Program costs be retained by the districts for expenditure in the next two fiscal years. If program revenues are so carried over, program costs to be recovered each year must be adjusted. If a shortfall occurs, the Fee Regulation specifies that the districts for which the State has adopted Fee Regulations may increase their program costs in subsequent years to recover revenue shortfalls.

C. AMENDMENTS TO THE HOT SPOTS ACT

1. Assembly Bill 4070

The Act was amended in 1990 by Assembly Bill 4070 (Connelly; Statutes of 1990; Chapter 1432). Assembly Bill 4070 requires a district to adopt its own fee rule unless the district submits its Program costs to the ARB prior to April 1 immediately preceding the year for which fees are to be collected. If the district decides to adopt its own fee rule, it must assess fees sufficient to cover the local and State costs of the Program. The amendments also specify that the State board shall review and may amend the Fee Regulation annually.

If a district adopts a fee rule to recover Program costs, the district must follow the rule adoption procedures set forth in the Health and Safety Code sections 40725 through 40728. These procedures require no less than a 30-day public notice for hearings with the opportunity for the public to submit comments on the rule. The fee rule must also specify the record keeping requirements.

2. Senate Bill 1378

In 1992, the Act was amended by Senate Bill 1378 (McCorquodale; Statutes of 1992; Chapter 375). Senate Bill 1378 requires any district that has an approved toxics emission inventory, by August 1 of the preceding year, to adopt a fee schedule using toxics emissions as the basis of the fees. The fees are to be, to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emission inventory and the level of priority the district assigns to that source.

3. Senate Bill 1731

The Act was also amended in 1992 by Senate Bill 1731 (Calderon; Statutes of 1992; Chapter 1162). With respect to fees, Senate Bill 1731 provides that the district or the State may assess a supplemental fee upon the operator of a facility which submits supplemental health risk assessment

information. The supplemental information is optional. The maximum supplemental fee is set by the ARB in the Fee Regulation. Supplemental fees are those fees collected by districts to defray their costs if a facility operator requests that their Health Risk Assessment be updated.

Whenever a district determines that the emissions from a facility pose a potentially significant risk, Senate Bill 1731 requires the facility operator to conduct a risk reduction audit and develop a plan to implement airborne toxic risk reduction measures. These measures may include changes in production processes or materials, operation and maintenance, and emission controls. The plan must result in reduction of emissions to a level below the significant risk level within five years. Under certain circumstances, the district may either lengthen (up to five additional years) or shorten the time period to implement the plan. However, once a district determines that a facility presents a significant risk, the facility owner has six months to submit a risk reduction audit and plan to the district.

Senate Bill 1731 also requires the ARB to provide assistance to the districts and smaller businesses in obtaining information, assessing risk reduction methods, and applying risk reduction measures. For industries comprised mainly of small businesses, the ARB must develop a self-conducted audit and plan checklist to assist them in meeting the requirements of the Program. ARB staff are developing industry-specific audit and plan checklists for several industries which may save the affected industries the costs of individually evaluating risk reduction methods.

Senate Bill 1731 also requires OEHHA to establish guidelines for the preparation of health risk assessments. OEHHA is currently circulating elements of the risk assessment guidelines to the public for review and comment.

4. Assembly Bill 1060

The Act was amended in 1993 by Assembly Bill 1060 (Costa and Pringle; Statutes of 1993; Chapter 1041). The bill requires facility operators to update their air toxics emission inventory every four years instead of every two years.

5. Assembly Bill 956

Assembly Bill 956 (Cannella; Statutes of 1993; Chapter 1037) also amended the Act in 1993. This legislation provides for a fee exemption for certain facilities. The exemption applies to facilities which primarily handle bulk agricultural commodities and are subject to the Act only as a result of their particulate matter emissions. These facilities may be exempt from paying Hot Spots fees unless fee schedules are based solely on toxic emissions weighted for potency and toxicity.

6. Assembly Bill 564

Assembly Bill 564 (Cannella; Statutes of 1996; Chapter 602) amended the Act in 1996. This legislation provides Program exemptions for those facilities thought to have the lowest risk. The exemption applies to facilities whose prioritization scores for cancer and non-cancer health effects are both equal to or less than one, based on the results of the most recent emissions inventory or emissions inventory update. Assembly Bill 564 also exempts facilities from the State portion of Program fees if their prioritization scores for cancer and non-cancer health effects are both equal to or less than 10, based on the results of the most recent emissions inventory or emissions inventory update. These facilities must still submit quadrennial emission inventory updates, and there are provisions that allow districts to assess fees to recover the costs of processing those updates.

Assembly Bill 564 also set forth reinstatement criteria for facilities exempted from the Program. Finally, Assembly Bill 564 set caps on the State portion of Program costs for fiscal year 1997-98 of \$2 million dollars and \$1.35 million for fiscal year 1998-99 and each succeeding fiscal year.

III.

PROGRAM ACTIVITIES

A. INTRODUCTION

The ARB, OEHHA, and the 35 local air districts work together to implement the Air Toxics Hot Spots Program statewide. This chapter discusses the activities these governmental agencies perform or have performed to administer the Program. The Act specifies tasks that must be performed by each of these agencies. As the program comes to fruition many of the tasks have been completed or are nearing completion. The ARB has reached a maintenance level of Program activities. This chapter also specifies which tasks will be performed in fiscal year 2000-2001.

B. BENEFITS OF THE PROGRAM

Both the public and industry have benefited from the Program. Some of these benefits are presented below:

- The Program has resulted in the development of the nation's first and most comprehensive statewide inventory of air toxics emissions. It allows California the ability to identify who the toxic emitters are in the State, the health risks posed by those emitters, and what is being done to reduce the risks.
- The Hot Spots Program has been extremely effective in reducing air toxics emissions by providing ample incentives for facility operators to reduce emissions voluntarily or through requirements for significant risk public notification and risk reduction action.
- The requirement for risk reduction audits and plans is viewed as being more effective than "command and control" regulations by many facility operators as it allows facility operators to choose the most cost-effective methods for reducing emissions and risks from their facilities.
- Information collected under the Hot Spots Program ensures the ARB and the districts use their resources most efficiently by allowing them to focus on the air toxics emitting sources of greatest concern. Much of that information is available to the public through the ARB's internet Web site at: <http://www.arb.ca.gov/ab2588/ab2588.htm>.
- The risk assessment guidelines, procedures, and substance health values being prepared by the OEHHA pursuant to the requirements of this Program will assure that the best risk assessment science and data will be available statewide.

The achievements and expertise developed through the Hot Spots Program serves as a foundation for future efforts to address cumulative health risks from multiple facilities and community health risk issues. The Program serves as an integral part of the State's effort to manage the public's exposure to toxic air pollutants, which in turn is critical to the efforts to provide the citizens of this State with healthy air.

C. STATE ACTIVITIES

The ARB and OEHHA have been responsible for specific programmatic tasks specified in the Act. Figure 4 summarizes the State's activities. These activities are described in detail below.

1. Air Resources Board Activities

a. Regulation Development

Each year, as required by the Act, the ARB staff reviews the Fee Regulation and proposes amendments as appropriate. To ensure the State's and districts' costs are recovered, the ARB staff, with the Fee Regulation Committee (Committee), reviews the method for distributing the State's cost among the districts and calculating facility fees, and develops any subsequent proposals for amending the Fee Regulation. The ARB staff consults with the districts to verify district Program costs and facilities subject to the Act. Based on that information, ARB staff develop a database on the health risk status of subject facilities and makes that information available on the internet web site. ARB staff also conducts public workshops, holds meetings and conference calls with affected industries and environmental groups, and prepares the proposed amendments to the Fee Regulation.

To ensure that districts and facilities submit useful, accurate, and uniform emissions information, the ARB staff developed the Emission Inventory Criteria and Guidelines Regulation (the Guidelines Regulation). Section 93300.5 of Title 17 of the California Code of Regulations incorporates by reference the Air Toxics Hot Spots Emission Inventory Criteria and Guidelines Report (the Guidelines Report). The Guidelines Report implements the emission inventory reporting and updating provisions of the Air Toxics Hot Spots Program. It defines who is subject to the program, what they need to report and update, when they must report, which processes need source testing, and which chemical substances must be reported under the program.

The Guidelines Regulation was amended in 1993 to streamline the reporting requirements and, pursuant to Assembly Bill 1060, to change the emission inventory update schedule to a four-year period. In July of 1996, the Board approved additional streamlining amendments to the Guidelines Report based on staff recommendations and to conform with AB 564, which was approved by the Legislature in 1996. The Office of Administrative Law approved the Guidelines Report on July 1, 1997.

The ARB staff has held and will continue to hold meetings with affected industries, environmental groups, and districts to assist in implementing the Guidelines Report. The ARB staff has also provided written guidance on emission estimation methodologies to assist affected facilities and districts.

In consultation with OEHHA, the staff reviews the list of substances in the regulation to identify new compounds that should be added to the list. The ARB staff tracks the status of Program implementation within the districts, provides assistance, and works closely with the district staffs on a daily basis. When OEHHA completes their Health Risk Assessment Guidelines, anticipated by the end of 2000, the Guidelines Report will be amended again to incorporate the Health Risk Assessment Guidelines as the basis for reporting requirements.

b. Source Test Methods Development

Under the Guidelines Report, the ARB is responsible for specifying source test methods and defining when source testing is required to quantify emissions of toxic pollutants from specific sources. As a result of these requirements, the ARB has developed emission source test methods and reviews pooled source test proposals, source test reports, and requests to use alternative test methods. The ARB staff has reviewed over 484 pooled source test proposals to date. At the request of the districts, the staff also conducts periodic seminars on how to review air toxics source test plans and reports.

c. Toxics Emission Factor Database

The ARB staff has developed the California Air Toxics Emission Factor (CATEF) database to assist and improve emission inventory reporting and to ensure consistency and accuracy in the reported data. CATEF will also substantially reduce reporting costs for business by reducing the need for source testing. The emission factors, developed through a research contract, were calculated from source test data collected for the Air Toxics Hot Spots Program. The ARB staff has recently completed a follow-up contract to develop additional emission factors.

d. Air Toxics Emissions Database

The ARB staff developed and maintained the initial Air Toxics Emissions Database (ATEDS). The management of the air toxics emission inventory data was a specific requirement of the Hot Spots Act. Staff is now working on merging the toxics emissions data with the ARB's criteria pollutant emissions database. The merged system is known as the statewide California Emission Inventory Development and Reporting System (CEIDARS2).

The ARB staff developed a software package (Facility Air Toxics Electronic Submittal, or FATES) that allows facilities to submit air toxics emission data electronically. The FATES software reduces paperwork, speeds data entry, and reduces costs to the ARB, districts and

facility operators. The ARB has completed the development of a second generation electronic submittal software, CEIDARS-Lite, which contains improvements of FATES and allow for integration of criteria and toxics emissions reporting and submittal to the merged CEIDARS2 system.

The ARB is currently developing the Hot Spots Analysis and Reporting Program (HARP) which will integrate the emission inventory, prioritization, risk assessment and geographical mapping components into one software package. This should improve the efficiency of the Program by allowing districts to complete all program assessment requirements through this integrated software package.

The ARB staff analyzes the toxics emission data and uses this information to set priorities for identifying and controlling sources of toxic air contaminants. The staff also makes the emission data available to other government agencies and the public.

e. Emission Data Collection and Validation

The ARB staff is responsible for entering new or updated emissions data received from the districts into CEIDARS2. When toxics emission data are received from the districts, the staff reviews the data and makes appropriate corrections prior to inputting the data into the CEIDARS2. The staff performs numerous quality control checks to ensure data accuracy.

f. Risk Reduction

Under the requirements added by Senate Bill 1731, whenever a district finds that a facility's emissions pose a potential significant health risk, the operator of the facility must conduct a risk reduction audit and develop a plan to implement airborne toxic risk reduction measures. The plan must state how the facility will reduce emissions to below the district-specified significant risk level within five years. Under certain circumstances, the district may either lengthen (up to five years) or shorten the time period to implement the plan. Upon district determination that a facility presents a significant risk, the facility operators have six months to submit a risk reduction audit and plan to the district.

Senate Bill 1731 requires the ARB to assist small businesses who have inadequate technical and financial resources to obtain information, assess risk reduction methods, and develop and apply risk reduction techniques. For selected industries that are comprised of mainly small businesses with substantially similar technology, the ARB has developed risk reduction guidelines which include a self-conducted audit and checklist. The staff worked closely with affected industries and the districts to develop six source-specific risk reduction guidelines and self-conducted audit and plan checklists for the following industries: aerospace, autobody refinishing, degreasing, dry cleaning, chrome plating, and service stations. In addition, a general guidance document has also been developed to assist those facilities not covered by the source-specific guidelines. The ARB,

in cooperation with the districts, will forward the checklist to the businesses to assist them in meeting the audit and plan requirements. The checklists will allow a small business operator to avoid the expense of developing their own facility audit and plan checklist. The checklists will make it easier to determine measures needed to meet the requirements of the Act. The general guidance document; along with the aerospace, autobody shop, degreasing and chrome plating guidelines have been completed and distributed. Risk reduction guidelines for gas stations are anticipated to be published by the end of 2000. Risk reduction guidelines for drycleaners are currently under development.

2. Office of Environmental Health Hazard Assessment Activities

a. Health Risk Assessment Review

Operators of high priority facilities must submit risk assessments of the potential health effects that may be associated with emissions from their facilities. The OEHHA reviews health risk assessments prepared by facilities and reviewed and submitted by the districts, including the exposure assessments and risk characterizations, to verify that the risks have been accurately assessed. As part of the review, OEHHA corrects risk assessments that are inaccurate and identifies areas of inadequacy. As part of this review, OEHHA also reviews risk assessment results from the use of nonstandard methodologies. Following the review, the OEHHA staff provides comments to the districts and assists the districts' staffs in interpreting the results. District are responsible for approving the final risk assessments after incorporating the OEHHA comments.

b. Risk Assessment Guidelines

Senate Bill 1731, which amended the Act in 1992, requires OEHHA to adopt new facility risk assessment guidelines after: (1) consulting with CAPCOA's Toxics Committee and the ARB; (2) circulating the guidelines to the public and regulated community for comment; (3) submitting the guidelines to the Scientific Review Panel on Toxic Air Contaminants; and (4) holding public workshops. To the extent valid data are available, these risk assessment guidelines must allow facility operators to include alternative risk parameter values, likelihood distributions of risk estimates, microenvironmental characteristics, data from dispersion models, and population distributions. The OEHHA is also required to provide guidance to the districts in considering this supplemental information, when it is included in a risk assessment.

OEHHA has prepared four technical support documents. These are: 1) Air Toxics Hot Spots Risk Assessment Guidelines Part I: Technical Support Document for the Determination of Acute Reference Exposure Levels for Airborne Toxicants; 2) Part II: Technical Support Document Describing Available Cancer Potency Factors; 3) Part III: Technical Support Document for the Determination of Chronic Noncancer Reference Exposure Levels; and 4) Technical Support Document for Exposure Assessment and Stochastic Analysis. All four documents form the basis of the Air Toxics Hot Spots Risk Assessment Guidance. The four documents have undergone public comment, workshop, and peer review. Parts I through III have been finalized. Part IV is

being finalized incorporating comments from peer review. OEHHA is preparing a guidance manual for conducting risk assessments utilizing the information developed in the four technical support documents.

OEHHA also identifies newly available cancer potencies and non-cancer acute and chronic exposure levels used in assessing risks. In addition, OEHHA develops chemical potencies for cancer-causing agents and health reference exposure levels for substances causing acute and chronic health effects. OEHHA also develops non-cancer risk assessment methods and develops a chemical database for substances having acute effects. These activities serve to update the four-part Air Toxics Hot Spots Risk Assessment Guidelines.

D. JOINT ARB/OEHHA/DISTRICT ACTIVITIES

Many activities have been carried out through the cooperative efforts of the ARB, OEHHA, and the districts, using the expertise of staff from all three groups.

1. Risk Assessment Assistance

The staffs provide assistance to facilities, the public, and districts on appropriate exposure assessment procedures, including verifying computer modeling and meteorological data. The OEHHA provides information on health reference exposure levels and cancer potencies for substances involved in quantifying potential health risks. The ARB reviews changes to emission inventory procedures to ensure that the data are reliable for health risk assessment. The ARB also updates, and makes available to the public, the health risk assessment computer program that is available at low cost to help prepare risk assessments.

2. Public Notification

Facilities whose health risk assessment results show their emissions pose a potential significant health risk must notify the public exposed to those emissions about the results of the risk assessment. ARB and OEHHA staffs have worked in conjunction with CAPCOA to develop and publish public notification guidelines. The ARB and the OEHHA also assist the districts and facilities with developing specific procedures for public notification, and they participate, as requested, in public notification workshops and hearings. The OEHHA interprets non-cancer and potential cancer risk assessment results for the public.

3. Industrywide Risk Assessment Guidelines

The ARB, in conjunction with OEHHA and the districts (through CAPCOA), has also developed Industrywide Risk Assessment Guidelines for autobody shops and gasoline service stations. Guidelines for evaluating drycleaners are currently under development.

E. DISTRICT ACTIVITIES

The districts review and approve toxics emission inventory plans, reports and the quadrennial emission inventory updates before forwarding the information to the ARB. The districts are preparing industrywide emission inventory reports for some classes of facilities to minimize the economic impact on these facilities. The emission data findings are to be reported to the OEHHA, the Department of Industrial Relations, and the city and county health departments.

After reviewing emission inventory data, the districts prioritize facilities into low, intermediate, and high priority categories. Prioritization procedures are established by the districts based on the California Air Pollution Control Officers Association's (CAPCOA) Facility Prioritization Guidelines, July 1990 and the Gasoline Service Station Industrywide Risk Assessment Guidelines, December 1997. Based on a facility's priority, districts are required to exempt the facility entirely from the Program, to track it on a quadrennial basis, or to require it to prepare a health risk assessment. Once a facility's risk assessment is submitted to the district, the district must review the emissions data and air dispersion modeling before forwarding it to OEHHA for review of the health effects information. Based on OEHHA review and comments, the district may approve the risk assessment or request corrections from the facility. If the facility's emissions present a significant potential health risk, the district will require it to notify the public. The districts are required to establish public notification procedures.

Districts require these high-risk facilities to audit their operations and prepare a plan to reduce their emissions below the significance level within specified time frames. The plans are submitted to the district for review of completeness. The district's review of completeness includes a substantive analysis of the emission reduction measures and the ability of the measures to achieve reductions quickly.

Other district responsibilities include insuring that any permit issued to a new or modified source complies with the Act and publishing an annual report on the status of the district's Program. Districts are also required to notify facility operators of changes to the list of substances or if a substance's potency factor has increased and to track whether a new sensitive receptor is planned within 500 meters of a facility with potential high risk.

The districts are also required to collect Program fees and forward the district's portion of the State's cost to the State. Some districts, at their option, develop and implement their own fee rules. Finally, most districts participate in the ARB Fee Regulation Committee, which develops the Fee Regulation, and in the CAPCOA Toxics Committee meetings which discusses the implementation of the "Hot Spots" Program.

Figure 4

State Hot Spots Program Implementation Activities

- Regulatory Development and Implementation (ARB)
 - develop amendments to the Guidelines Report and Fee Regulation
 - prepare for and conduct public workshops
 - prepare for and hold meetings with interested groups
 - maintain the list of substances (identify new and/or delete compounds)
 - track status of implementation
 - provide assistance to districts, facility operators, and the general public

- Methods Development and Review (ARB)
 - review source tests
 - review and approve alternative source test methods in inventory plans and reports
 - review and comment on pooled source test proposals
 - conduct toxics source test seminars for district staff
 - conduct limited air toxics source testing
 - develop air toxics emission factors

- Air Toxics Emissions Database Maintenance (ARB)
 - provide toxics emission database information to other government departments and the public
 - perform computer programming tasks
 - develop merged criteria and toxics pollutant inventory -
California Emission Inventory Development and Reporting System (CEIDARS2)
 - develop and implement electronic data submittal (FATES and CEIDARS-Lite)
 - develop a personal computer version of ATEDS and operator's manual
 - analyze data for setting priorities for toxic air pollutant control
 - computer time contract (Teale Data Center)

- Emission Data Collection and Validation (ARB)
 - conduct initial emission data review
 - correct data (with district concurrence)
 - conduct quality control checks and correct data
 - follow-up with districts on data submittal and collection procedures

Figure 4 (continued)

- Risk Reduction Guidelines and Checklists Development (ARB)
 - hold public workshops on Senate Bill 1731 implementation including guidelines and checklists
 - assist smaller businesses in obtaining information, assessing risk reduction methods, and applying risk reduction techniques
 - locate possible emission sources
 - identify cost-effective control technologies
 - indicate possible pollution prevention measures
 - develop checklists for self-conducted audits and risk reduction options for industries comprised mainly of small businesses

- Health Risk Assessment Review (OEHHA)
 - review health risk assessments submitted by districts
 - correct health risk assessments that are inaccurate
 - identify areas of incompleteness in health risk assessments
 - supply comments to the district regarding health risk assessments
 - assist the district staff in interpreting the results of a health risk assessment

- Health Risk Assessment Guidelines Development (OEHHA)
 - develop new facility risk assessment guidance manual
 - coordinate with CAPCOA and ARB
 - notify the public of guidance manual development
 - hold public workshops to discuss guidance manual
 - present guidance manual to Scientific Review Panel for comment
 - provide guidance to districts
 - review supplemental health risk assessment information
 - revise and update technical support documents as appropriate
 - identify new cancer potencies
 - identify new chronic and acute health exposure levels
 - develop chemical potencies for cancer causing agents
 - develop health reference exposure levels for substances causing acute and chronic health effects
 - update non-cancer health risk assessment methods
 - develop and operate a chemical database for substances having acute effects

Figure 4 (continued)

- Risk Assessment Assistance (OEHHA or ARB as noted)
 - provide assistance to risk assessment preparers, the public and districts on appropriate procedures (OEHHA - health assessment, ARB - air dispersion modeling)
 - verify computer modeling and meteorological data (ARB)
 - provide assistance on health reference exposure levels and chemical potencies (OEHHA)
 - review changes to emission inventory procedures to ensure that data are usable for health risk assessment (OEHHA)
 - update of health risk assessment personal computer program (ARB)
- Develop Public Notification Procedures (OEHHA - health assessment, ARB - air dispersion modeling)
 - assist districts and facilities with public notification procedures and public meetings
- Participate in Public Notification Workshops and Hearings
 - OEHHA - health assessment; ARB - air dispersion modeling

IV.

PROGRAM COSTS AND FACILITY FEES

A. INTRODUCTION

Chapter IV contains a description of the State and districts costs of the Program and how the State costs are proposed to be allocated to the 35 districts for collection.

B. PROPOSED STATE COSTS FOR FISCAL YEAR 2000-2001

Staff is proposing a total State Program cost of \$1,038,000 in fiscal year 2000-2001 to be recovered through fees. The ARB's share of the proposed State cost is \$440,000, and the OEHHA's share is \$598,000. Specific activities related to these proposed costs are identified in this Chapter and Appendix IV. This budget represents a 14 percent or \$169,000 reduction from fiscal year 1999-2000. This reduction is a result of keeping the fees per Program fee category unchanged and the minor reduction in fee-paying facilities. Staff believes that this reduction will not interfere with the State's ability to implement the Program. The method for allocating fees to the districts is explained in Chapter V.

Beginning with fiscal year 1998-99, State statutes now limit the State's costs to implement the Hot Spots Program to \$1,350,000 (Health and Safety Code section 44380(e)). In addition, changes in legislation adopted in 1996 exempt facilities from paying State fees based on their health risks. This has dramatically reduced the number of facilities subject to Hot Spots Program fees. Greater than 80 percent of facilities paying fees in 1995 are currently exempt from fees even though only 60 percent of those facilities are exempt from emissions reporting requirements.

The Fee Regulation distributes the State's Program costs among all facilities subject to fees. All facilities that are subject to the Act are subject to the Fee Regulation unless expressly exempted under Health and Safety Code sections 44324, 44344.4, or 44380.1, or under section 90702(c) of the Fee Regulation.

1. Air Resources Board Costs

Of the \$1,038,000 State costs, \$440,000 will support the ARB activities. This cost includes the computer contract at Teale Data Center for \$60,000 to maintain the toxics emission inventory database and all historical data. The ARB is promoting electronic submittal of data since it is less costly and more accurate.

The ARB is mandated to assist small businesses in complying with the risk reduction audit and plan provisions of Senate Bill 1731. The proposed cost for this task is \$38,000.

The ARB provides risk assessment and public notification assistance to districts and facility operators. The cost for this task is \$38,000.

The ARB staff reviews, proposes amendments, and implements the Air Toxic Hot Spots Fee Regulation. The ARB staff also works with districts to implement the emission inventory Program requirements. The cost for these tasks is \$114,000.

The ARB will maintain the Program by continuing to collect and provide air toxics emission data to the public, to inform the public of the potential health risks, and to work with facilities to reduce those risks. Specifically, the ARB staff will continue to collect emissions data for facilities of greatest concern; conduct quality control checks of those data; develop air toxics emission factors; implement electronic data submittal procedures; and provide emissions data to the public, government agencies, and the regulated community. The ARB staff will also continue to provide technical assistance to facilities for risk reduction audits and plans and other regulatory efforts needed to implement the Program. The cost for these tasks is \$190,000.

2. OEHHA Costs

OEHHA requires \$598,000 to support its Program activities for fiscal year 2000-2001. This includes \$310,000 to update the risk assessment guidelines.

The risk assessment guidelines development also requires the OEHHA to develop and maintain exposure assessment and uncertainty analysis parameters and methods. The total cost for this area of guidelines development is \$46,000.

The OEHHA costs for health risk assessment tracking are \$75,000. OEHHA also provides technical assistance to the ARB, districts, and facility operators to implement the Program including development of regulatory requirements. The cost for this assistance is \$143,000.

C. DISTRIBUTION OF STATE COSTS AMONG DISTRICTS

State costs are allocated among the districts using the number of facilities in each of the program categories and resource indices and are based on facility data received from the districts by July 1, 2000. The method for distributing State costs among the districts and the indices are described in Chapter V and Appendix V of this report.

The distribution of State costs among the districts for fiscal year 2000-2001 are shown on Table 2 of the Staff Report and Table 1 of the Fee Regulation. Table 2 also compares the allocation of the State's costs among districts for fiscal year 1999-2000 and fiscal year 2000-2001. The difference between the total fees in Table 2 and the total of the State's costs \$1,038,000 is due to rounding. Where a district's share of the State's cost has increased, it is due to an increase in the number of facilities in that district, or from facilities moving into a higher risk, higher fee Facility Program Category.

D. DISTRICT COSTS FOR FISCAL YEAR 2000-2001

The ARB staff estimates that the total cost of the State's 35 districts to implement the Hot Spots Program for fiscal year 2000-2001 will be \$2,810,476. This represents a decrease of approximately 19 percent from the fiscal year 1999-2000 total of \$3,469,907. Table 3 shows that district costs are decreasing for the majority of districts. In some cases a district may have district costs listed in Table 3 and no State costs listed in Table 2. This may occur when a district has district tracking facilities that may be charged a district fee but are exempt from paying State fees.

E. TOTAL PROGRAM COSTS

Total costs to the State and districts for fiscal year 2000-2001 will be \$3,848,000. The State's costs are 27 percent of the total, and the districts' costs are 73 percent of the total. The estimated total Hot Spots Program costs for the State and districts for fiscal year 2000-2001 are shown in Figure 5.

F. DISTRICT FEE SCHEDULES

Six districts which requested that the ARB adopt district fee schedules for them submitted their Board-approved Program costs by April 1, 2000. These districts are identified in Table 4, and their Board-approved Program costs are identified in Table 3 by a double asterisk. The individual facility fees for the six districts are calculated using the method described in Chapter V. The other 29 districts must adopt their own fee rule to recover their costs and their portions of the State's cost. Table 4 lists the districts requesting ARB adoption of facility fees and the districts adopting their own fee rules.

Appendix V contains the equations that were used to calculate facility fees. Each facility's total fee is the sum of the district fee portion and the State fee portion for facilities in that category. The State fee portion per category is the same for each district; however, the district fee portion per category may vary from district to district since district program costs vary as do the number of fee-paying facilities. District program costs in those six districts were approved by their respective district boards at public hearings.

The ranges of facility fees per category shown in Table 5 are for those districts for which the ARB is adopting a fee schedule. The actual fees for each Program category for each district are provided in Table 3 of the Fee Regulation. The ranges of fees shown in Table 5 are due to variations in fees among districts. Many factors affect a district's costs of implementing the Program. These factors include but are not limited to the following:

- type and complexity of facilities located in each district,
- type and amount of listed toxic substances emitted,
- district overhead cost (regional variations in rent, salary base, etc.),
- amount of assistance the district provides to facilities in the Program.

The total fee is the sum of the fee for the State costs and the fee for the district costs. This table was included at the request of facilities in these districts that wanted to know the State versus district portion of their fees.

Table 2
Comparison of Distribution of State Costs Among Districts

<u>District</u>	A	B
	Cost Total <u>1999-2000</u>	Proposed Cost Total <u>2000-2001</u>
Amador	2,552	1,346
Antelope Valley	10,133	8,928
Bay Area	80,022	83,371
Butte	10,435	9,296
Calaveras	0	0
Colusa	0	0
El Dorado	7,488	3,738
Feather River	5,015	8,863
Glenn	455	455
Great Basin	10,488	5,109
Imperial	10,775	10,775
Kern (Desert)	729	589
Lake	0	0
Lassen	3,129	3,129
Mariposa	507	507
Mendocino	4,519	4,720
Modoc	70	70
Mojave Desert	27,053	22,697
Monterey	7,994	5,985
North Coast	7,207	1,502
Northern Sierra	7,185	7,215
Northern Sonoma	70	70
Placer	12,018	11,147
Sacramento	9,232	9,232
San Diego	114,896	138,231
San Joaquin Valley	81,347	53,023
San Luis Obispo	350	350
Santa Barbara	39,668	30,897
Shasta	12,757	13,093
Siskiyou	6,275	5,873
South Coast	684,077	545,513
Tehama	67	67
Tuolumne	834	700
Ventura	43,833	45,775
Yolo-Solano	5,698	5,698
TOTAL	1,206,878	1,037,964

Table 3

District Cost Comparison Between Fiscal Years 1999-2000 and Proposed 2000-2001*

	<u>Fiscal Year</u> <u>1999-2000</u>	<u>Fiscal Year</u> <u>2000-2001</u>
Districts Requesting ARB to Adopt their Fee Schedule		
Antelope Valley	9,000**	13,340**
Great Basin	7,500**	5,520**
Imperial	770**	770**
Lassen	1,988**	2,089**
Mojave Desert	25,000**	35,135**
Santa Barbara	102,500**	50,000**
Districts Adopting their own Fee Schedule		
Amador	3,454	3,152
Bay Area	445,000	445,000
Butte	30,400	15,200
Calaveras	0	0
Colusa	17,000	2,000
El Dorado	7,480	7,480
Feather River	35,000	35,000
Glenn	800	1,250
Kern	7,350	12,565
Lake	2,000	2,000
Mariposa	0	0
Mendocino	10,725	10,725
Modoc	0	0
Monterey	46,666	69,625
North Coast	2,500	2,000
Northern Sierra	27,500	27,500
Northern Sonoma	0	0
Placer	20,000	16,556
Sacramento	61,787	61,787
San Diego	520,000	251,000
San Joaquin Valley	400,000	232,757
San Luis Obispo	19,057	25,000
Shasta	16,000	12,000
Siskiyou	5,700	5,700
South Coast	1,560,000	1,400,000
Tehama	1,500	3,500
Tuolumne	4,644	4,450
Ventura	75,000	56,000
Yolo-Solano	3,586	1,375
TOTAL	3,469,907	2, 810,476

*District budget numbers in **bold** are those supplied to the ARB by local districts for fiscal year 2000-2001. Costs are estimates unless otherwise noted as district board approved costs
.** District Board approved costs.

Figure 5

PIE CHART of
Total program costs - "Expenditure of Total Fiscal Year 2000-2001 Program Costs
by Districts, the ARB, and OEHHA "

Table 4

State and Air District Adoption of Fiscal Year 2000-2001 Fees

Districts Included in the State Fee Regulation

Antelope Valley	Great Basin	Imperial
Lassen	Mojave Desert	Santa Barbara

Districts Adopting Local Fee Rules

Amador	Bay Area	Butte
Calaveras	Colusa	El Dorado
Feather River	Glenn	
Kern	Lake	Mariposa
Mendocino	Modoc	Monterey
North Coast	Northern Sierra	Northern Sonoma
Placer	Sacramento	San Diego
San Joaquin Valley	San Luis Obispo	Shasta
Siskiyou	South Coast	Tehama
Tuolumne	Ventura	Yolo-Solano

Table 5
Range of Proposed Facility Fees
For Those Districts Requesting the ARB Adopt a Fee Schedule*

<u>Program Category</u>	<u>State Portion</u>	<u>District Portion</u>	<u>Total Fees</u>
Industrywide	35	0 - 60	35 - 95
Unprioritized			
Simple	402	658	1,060
Medium	603	987 - 3,691	1,590 - 4,294
Complex	804	1,315	2,119
Tracking (priority score >10, HRA >=1<10/million, Simple Hazard Index >=.1<1)	67	21 - 410	88 - 477
Medium	100	397 - 615	497 - 715
Complex	134	529 - 820	663 - 954
Priority Score >10			
Simple	1,674	1,535	3,209
Medium	2,009	3,369 - 5,823	5,378 - 7,832
Complex	2,344		
Risk >=10<50/million, Hazard Index >1			
Simple	3,014	4,494	7,508
Medium	3,349	383 - 7,381	3,732 - 10,730
Complex	3,684	404 - 7,792	4,088 - 11,476
Risk >=50<100/million			
Simple	4,353		
Medium	4,688	5,552	10,240
Complex	5,023	9,022	14,045
Risk >=100/million			
Simple	5,693		
Medium	6,028		
Complex	6,363		

* Summary of proposed fees for the six districts whose fee schedules are included in the Fee Regulation.

V.

EXISTING REGULATION AND PROPOSED CHANGES

A. INTRODUCTION

Chapter V contains a description of the current and the proposed method for allocating Program costs among the districts for collection through facility fees.

The proposed amendments to the Fee Regulation for fiscal year 2000-2001 are presented in this Chapter. The staff of the Air Resources Board (ARB or Board) proposes to continue to use the methodology that was used for the previous four years to assess fees for State costs. This methodology bases fees on facilities' public health impacts. These health impacts are characterized by facility-specific prioritization scores and health risk assessment results. For those districts which have asked the Board to adopt their fee regulations, the staff proposes to again base district fees on a similar methodology. In addition, the staff proposes to continue to exclude facilities from the program fees based on prioritization scores, risk assessment results, and *the de minimis* activity levels defined for eight types of facilities. The staff's proposed changes are minor and are found in section D. of this chapter.

B. CURRENT REGULATION

For fiscal year 2000-2001, the staff proposes to continue to use the same method used for fiscal year 1999-2000 for distributing the State's cost among districts and for calculating facilities' fees. This methodology bases fees on facility-specific prioritization scores and health risk assessment results and the complexity of the facility, which is based on the number of Source Classification Codes (SCCs) reported by facilities. This information is used to assign facilities to one of six risk categories plus an industrywide category. The method meets the goals of Senate Bill 1378 (McCorquodale; Statutes of 1992; Chapter 375) which amended Health and Safety Code section 44380(a)(3)). This method also meets the requirements of Health and Safety Code sections 44344.4 through 44344.7 and 44380 (e) which provides Program exemptions for those facilities thought to have the lowest risk. The exemption applies to facilities whose prioritization scores for cancer and non-cancer health effects are both equal to or less than one, based on the results of the most recent emissions inventory or emissions inventory update. Those sections of the Health and Safety Code also exempt facilities from the State portion of Program fees if their prioritization scores for cancer and non-cancer health effects are both equal to or less than 10, based on the results of the most recent emissions inventory or emissions inventory update. These facilities must still submit quadrennial (every four years) emission inventory updates, and there are provisions that allow districts to assess fees to recover the costs of processing those updates. Those sections of the Health and Safety Code also set forth reinstatement criteria for facilities exempted from the Program. Low risk facilities will continue to be exempted on the basis of prioritization scores and health risk assessments from the Program as facilities change their operations and districts provide updated facility information.

1. Fee Calculation Method

The fee calculation method is based on the number of facilities in seven Program categories (Facility Program Categories). This continues the ARB's commitment to meet the program goals set forth in Health and Safety Code section 44380(a)(3). That mandate requires that fees be set, to the maximum extent practicable, commiserate with the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that source by the district. The method also fulfills the requirements of sections 44344.4(a) and (b) that facilities with low prioritization scores be excluded from the Fee Regulation. Facilities demonstrating low risk based on the results of health risk assessments also be excluded from the Fee Regulation. Facilities with high prioritization scores or demonstrating high risk are targeted by the Fee Regulation. Risk assessment results are used when available; prioritization scores are used when risk assessment results are not available.

2. Exemption from the Fee Regulation

The proposed regulation would continue to exempt facilities demonstrating low potential risks to the communities in which they do business. A facility will qualify for an exemption from fees in three ways:

- a) Prioritization Score: A facility that has a prioritization scores (calculated by the district) of 10.0 or less for both cancer and non-cancer risk, and no risk assessment, shall be exempt from the State fee. A prioritization score is determined using health conservative assumptions for source parameters, distance to receptors, and meteorological conditions, to calculate a value that allows a district to categorize facilities for the purpose of performing a health risk assessment by examining the factors included under Health and Safety Code section 44360(a), including a facility's emissions and the potency of those emissions.
- b) Risk Assessment Results: A facility that prepared a health risk assessment or screening risk assessment, as required by its district, which shows a potential cancer risk, summed across all pathways of exposure and all compounds, of less than one case per one million persons, and a total hazard index, both acute and chronic, for each toxicological endpoint of less than 0.1 shall be exempt from the Fee Regulation. The risk assessment must also have been reviewed by the OEHHA and must be approved by the district in writing to qualify for this exemption.
- c) De Minimis Levels: Printing shops, wastewater treatment plants, crematoria, boat and ship building and repair facilities, and hospitals or veterinary clinics using ethylene oxide are exempt from State fees if they operate at or below specified *de minimis* throughputs or usage, unless the facility was required to conduct a risk assessment by its district, and the results indicate the facility would not be exempt from fees. The intent of the exemptions is to provide an expedient way to exclude from fees, those facilities that clearly do not constitute or contribute to an air toxics hot spot. *De minimis* activity levels can also be used to preclude new facilities from being brought in.

3. Designation of Facility Program Categories

Facilities are assigned to seven Facility Program Categories based upon each facility's risk assessment results or prioritization score. The Facility Program Categories, defined in the Fee Regulation, are summarized as follows:

- o Unprioritized facility - a facility that has not been prioritized by its district.
- o Tracking Facility - Composed of two subcategories: Both include facilities with Prioritization Scores 10.0 or greater, but
 - (1) facilities whose health risk assessment results indicate a risk of 1.0 to less than 10.0 cases per million and a total hazard index for each toxicological endpoint, both acute and chronic, of less than or equal to 1.0, or
 - (2) facilities whose health risk assessment results indicate a risk of less than 10.0 cases per million, and a total hazard index for each toxicological endpoint, either acute or chronic, of greater than or equal to 0.1, but less than or equal to 1.0.
- o Prioritization score greater than 10.0 - for facilities whose prioritization score is greater than 10, but for which no risk assessment results are available.
- o Risk of 10.0 to less than 50.0 cases per million, or a hazard index of greater than 1.0.
- o Risk of 50.0 to less than 100.0 cases per million
- o Risk of 100.0 cases per million or Greater
- o Industrywide facility - a facility which emits less than ten tons per year of criteria pollutants that is or will be in an industrywide inventory prepared by the district.
 - a) Complexity - Source Classification Codes

Recognizing the range of complexity in facilities, we further divided each of the facility risk categories into subcategories on the basis of facility complexity. Facilities can be categorized by Source Classification Codes (SCC), which are number codes created by the United States Environmental Protection Agency to identify processes associated with point sources that contribute emissions. One or more SCCs can classify any operation that causes air pollution. Based on the districts' experience and the staff 's analysis of facilities, a correlation has been established between the number of SCCs at a facility and the complexity of that facility. Each SCC represents a specific process or function that is logically associated with a point source of air pollution within a given source category.

For subdividing the fee categories according to complexity, the Fee Regulation defines a facility with one or two processes or district SCCs as "Simple;" a facility with three, four, or five processes (SCCs) as "Medium;" and a facility with more than five processes (SCCs) as "Complex."

4. Special Features of Current Regulation

a. Cap on Fee For Small Businesses

Many of the facilities subject to the Act are small businesses. Because many small businesses may operate with limited cash reserves and low net incomes, they may not be able to absorb an increase in the cost of doing business. Therefore, the fee regulation contains a fee cap for small businesses.

Prior to fiscal year 1993-94, most small businesses paid low fees because they typically emitted less than 25 tons per year of criteria pollutants. Small businesses that are included in the Industrywide category still pay the lowest fees or may even qualify for fee waivers from the districts. However, under the fee structure of the current regulation, some small businesses could be subject to fees that would be detrimental to their profitability. To prevent undue hardship for these businesses, the Fee Regulation contains an upper fee limit of \$300 for any facility operating as a small business in the districts whose fee schedules are included in this Fee Regulation.

The cap for small businesses would apply to the facility fees for the five districts whose fee schedules are included in the State Fee Regulation.

5. Provisions for Facility Count Verification

The staff is proposing to continue requiring that districts provide documentation substantiating changes in facility Program data, including emission inventory updates. The information required continues to assist the staff in assigning facilities to the proper Facility Program Category for purposes of calculating the allocation of the State's costs. It also meets the requirements of Health and Safety Code section 44344.4(a) that prioritization scores be based on the most recent emissions inventory or emissions inventory update. Without this information, the staff could not sufficiently validate facility counts provided by the districts.

C. PROPOSED CHANGES TO THE REGULATION

The only changes proposed by staff are to update the tables in the Fee Regulation based on the most current facility Program data submitted by the districts to the ARB by July 1, 2000.

1. Update Table 1

Table 1 of the Fee Regulation has been revised to reflect the most current facility Program data submitted by the districts to the ARB.

2. District Fee Schedules

Tables 2 and 3 of the Fee Regulation have been revised to reflect the district Program costs and facility fees in the five districts which have requested that the ARB adopt fee schedules for them. The State portion of facility fees in Table 3 reflect facility counts from all districts. Table 4 of the proposed amended regulation has been revised to update district-specified flat fees. The districts specify and justify the fee for facilities in the Industrywide category.

3. Districts Requesting State Adoption of Fee Schedules

Health and Safety Code section 44380 allows the ARB to adopt fee schedules for only those districts that submit district program costs to the ARB by April 1 of the fiscal year preceding the year to which Fee Regulation applies. Six districts have requested that the Board adopt fees for them and have fulfilled the requirements of Health and Safety Code section 44380. Those districts are the Antelope Valley, Great Basin, Imperial County, Lassen County, and Santa Barbara County APCDs; and the Mojave Desert AQMD. The proposed fee schedules (Table 3 of the Fee Regulation) reflect each district's share of the State's costs, as calculated by the ARB, and district Program costs that have been approved by the governing board of the district.

For these districts, the ARB will deduct the amount of a district's cost to be recovered from Industrywide facilities prior to distributing each district's allocation of State fees. If the district chooses to waive fees for Industrywide facilities, the State's allocation of fees that might have been recovered from these facilities will be distributed by the districts among facilities in other Facility Program Categories.

Table 4 of the Staff Report lists the districts included in the State's Fee Regulation and the districts adopting local fee rules.

The six districts that requested that the ARB adopt district fee regulations for them have provided us with district costs for the fiscal year 2000-2001. The method used to calculate the district portion of the fees for the six districts is identical to that used for the State portion of the fees except based on different resource indices as requested by the six districts. The individual facility fee is the sum of the appropriate district cost and the State Program cost. A detailed explanation of the fee calculation method is included in Appendix V.

VI.

ECONOMIC AND ENVIRONMENTAL IMPACTS

A. INTRODUCTION

This chapter discusses the economic and environmental impacts from the fees assessed through this Fee Regulation. The Air Resources Board (ARB) evaluated the economic impacts from the fees assessed through the Air Toxics "Hot Spots" Fee Regulation for fiscal year 2000-2001 (Fee Regulation). The ARB staff is not aware of any adverse economic impacts resulting from implementing the Fee Regulation. The economic impacts were determined using draft fees calculated based on facility Program data provided by local air districts. In several previous fiscal years, fees for facility program categories increased due to the large decreases in facilities subject to the Fee Regulation. However, for fiscal year 2000-2001, the staff is proposing that the fee levels for each of the facility program categories remain at fiscal year 1999-2000 levels. In other words, no fee increases for the core facilities. The ARB staff is also not aware of any adverse environmental impacts resulting from implementing the Fee Regulation. Program fees may have an indirect environmental benefit since they serve as an incentive to facility operators to reduce emissions and in the process, reduce their potential risk.

B. ECONOMIC IMPACT ANALYSES

The Hot Spots Act requires facilities subject to the Act to pay fees in accordance with the Fee Regulation. To comply with State law, before adopting any amendments to the Fee Regulation, ARB staff must evaluate the potential economic impacts of the fees. The staff does an analysis to determine if paying Hot Spots fees will have a fiscal impact on any State or local government agency. The staff also conducts another analysis to determine the impact of the fees on California businesses. The economic impact analysis on businesses includes an evaluation of the ability of California businesses being assessed these fees to compete with similar businesses in other states. The staff also estimates if imposing these fees would cause a business to relocate, cease or commence operation, or hire or layoff employees, or any combination of these.

The staff performed the economic impact analyses using draft facility fees for fiscal year 2000-2001 for districts in the ARB Fee Regulation. Districts that are adopting their own fee rules provided us with estimates of fees for their facilities. For districts whose fee schedules are included in the Fee Regulation, draft fees were calculated based on the facility program category for facilities in those districts. For districts adopting their own fee rules, the staff used draft and adopted fee rules, as well as district personnel estimates of fees.

1. Fiscal Impact on Government Agencies

The ARB staff conducted a fiscal impact analysis for government agencies in July 2000. The analysis is included here as Appendix VIII. The Fee Regulation imposes two types of costs on State and local agencies. These are compliance costs to pay the fees and implementation costs to the State and local air districts to develop and implement the Fee Regulation. There will be an overall reduction in State and local Program costs from fiscal year 2000-2001.

a. State Government Agencies' Costs

The Fee Regulation will continue to impose costs on some State agencies that must comply with the requirements of the Act. An analysis by the staff indicates that State agencies will be able to absorb the fees assessed to them within existing budgets and resources. Hospitals, colleges and universities, and correctional facilities are examples of State-owned facilities that may have to pay Hot Spots fees. The fees for State agencies were estimated to range from \$50 to \$3,877. The total cost estimate for State-owned facilities was \$17,598.

By law, the Fee Regulation must recover all of the ARB's and OEHHA's costs for the Program. Developing and implementing the Fee Regulation is part of the ARB's implementation cost. The staff estimates that the ARB's cost to develop and implement the Fee Regulation for fiscal year 2000-2001 is \$114,000. This is approximately 10 percent of the total State portion of Program costs, \$1,193,000, for the ARB and the OEHHA.

b. Local Government Agencies' Costs

The adoption of the proposed regulation will continue to create costs and impose a State-mandated program upon local government agencies that will be required to pay the fees established. Potentially affected agencies include air districts; utilities, air, water, and solid waste facilities; school districts; hospitals; and publicly owned treatment works (POTWs). The staff estimated that fees assessed local governmental agencies would range from \$50 to \$12,201. The total costs assessed to local governmental agencies, other than the districts, were estimated to be \$96,010.

Implementing the amended Fee Regulation will create costs and impose a State-mandated local program upon the air pollution control districts. These costs are incurred because a district must set up a program to notify and collect fees from the operator of facilities subject to the Act. However, these district costs are not reimbursable by the State within the meaning of Section 6 of Article XIII B of the California Constitution and Government Code, section 17500 et seq., because the districts have the authority to levy fees sufficient to pay for the mandated program (Government Code section 17556(d)). The districts' costs to implement the amended regulation are estimated to be \$281,048.

The costs of six air pollution control districts will be recovered through the fee schedules in the proposed changes to the Fee Regulation. The Fee Regulation requires the remaining districts to adopt district rules to recover the district's costs and share of the State's costs. The total of districts' costs to be recovered is approximately \$2.8 million.

2. Impact on Non-Government Facilities

The amended regulation will continue to create costs and impose a State-mandated program on facilities that are subject to the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act). As described in Chapter II, each of these facilities may be required to pay a Hot Spots fee in accordance with the Fee Regulation. However, because net State revenues are proposed to decrease, the amendments to the current Fee Regulation will not alone create additional cost impacts on such facilities in the aggregate.

The ARB staff conducted an economic impact analysis to determine the potential economic impacts to different business sectors resulting from the fees proposed in this regulation. The staff is also required to estimate if imposing these fees would cause a business to relocate, cease or commence operation, or hire or layoff employees, or any combination of these. Appendix VII contains the detailed economic impact analysis. Included in this analysis is an evaluation of the ability of California businesses, subject to the Fee Regulation, to compete with similar businesses in other states.

The approach used in assessing the potential economic impact of the amended regulation on businesses is as follows:

- (1) A list of 242 types of industries currently subject to the Fee Regulation was created from the facility program category data submitted by the air districts.
- (2) A typical business from each affected industry was selected.
- (3) The highest fee (total of State and district fees), for districts for which the State is adopting a Fee Regulation, was estimated for each facility program category.
- (4) These fees were then applied to a typical business in the affected industries in each facility program category.
- (5) The estimated fees were adjusted for taxes because the profit data is reported on an after tax basis. Therefore, the costs (in this case the Program fee) must also be adjusted.
- (6) The Return on Equity (ROE) was calculated for each of the business categories by dividing the net profit by the net worth. The adjusted fees were then subtracted from net profit data. The results were used to calculate an adjusted ROE. The adjusted

ROE was then compared with the ROE before the subtraction of the adjusted fees, to determine the impact on the profitability of the businesses. A reduction in profitability of 10 percent indicates a potential for significant adverse economic impact.

This economic analysis includes 242 industries with a variety of products. For some additional industries with affected businesses, however, an analysis of the potential impact of the fees could not be performed because of the lack of financial data.

The staff concludes that, overall, California businesses seem to be able to absorb the costs of the fees without significant adverse economic impact on their profitability. Although some businesses would potentially experience a greater reduction in their profitability than others, most businesses appear to be able to absorb the fee. In addition, we expect that the actual cost impact of the fees on the profitability of California businesses is most likely to be less than what we have estimated in this analysis. However, the imposition of the amended fees may have a significant adverse impact on some businesses operating with little or no margin of profitability.

a. Ability to Compete with Other States

Analysis by the staff indicates that, in general, imposing these fees will not hinder a business' ability to compete with similar businesses in other states. However, for some businesses, operating with little or no margin of profitability, assessing these fees may have a significant adverse impact on their ability to compete with similar businesses in other states.

b. Effect on Jobs and Businesses

This proposed regulation is not expected to affect the creation or elimination of jobs or businesses within the State. The staff's analysis also indicates that imposing these fees should not cause a business to cease or commence operation or relocate, or any combination of these. However, for some businesses operating with little or no margin of profitability, assessing these fees may have a significant adverse impact on the creation, elimination, or expansion of jobs and businesses within the State.

C. ENVIRONMENTAL IMPACT

The staff does not anticipate any potential adverse impacts on the environment attributable to implementation of the amendments proposed to the regulation. The Fee Regulation may continue to provide indirect environmental benefits because the fees recover the State's cost for emission data collection and analysis, and businesses can use these data to voluntarily reduce emissions. Also, businesses have incentives to reduce their emissions so that they will pay lower fees because the fees are calculated based on the level of emissions and risks.

Neither the current Fee Regulation, nor any of the proposed amendments require the installation of pollution control equipment, or a performance standard, or a treatment requirement within the meaning of Public Resources Code section 21159.

VII.

EVALUATION OF ALTERNATIVES

A. INTRODUCTION

This chapter discusses the various alternatives that were considered by the ARB staff in determining how to distribute State costs to the districts for collection of fees. The ARB staff's recommendation on adoption of the proposed amendments is also included. During the development of the Fee Regulation for fiscal year 1998-99, ARB staff evaluated, in conjunction with district staff, the affected industries, environmental groups, other government agency staffs and the general public, two alternative methods to the current fee method. Those alternatives included basing a district's allocation of the State portion of Program costs on population and freezing the district's allocation for fiscal year 1998-99 at the same level as fiscal year 1997-98. Both of these alternatives have consequences requiring further discussion. The ARB staff concluded that all alternatives were inferior to keeping the current method and basing fees on the current facility Program data. This conclusion applies to fees for fiscal year 2000-2001 also.

B. EVALUATION OF ALTERNATIVES

Government Code section 11346.2(b)(4) requires us to describe the alternatives to the proposed regulation that were considered. We identified the following options:

Option 1: Distribute State costs to districts based on population.

ARB staff evaluated an alternative method of distributing State Program costs to the districts based on the percentage of State's population residing in its jurisdiction. This would appear to be a relatively straight forward and simple method, but there are issues that complicate this method. Fees can only be assessed from facilities subject to the Program and subject to paying the State portion of costs. After the district's portion is calculated based on population, it would be up to each district to determine the facility's fees. Districts with similar populations, but different numbers of facilities subject to fees, would see vast inequities in facility fees for like facilities in different districts. Because of the inequities this method could generate, the Fee Regulation Committee recommended that the ARB not use this method to calculate the districts' allocations for fiscal year 1998-99.

Option 2: Keep district's share of State costs the same level as fiscal year 1997-98.

The California Air Pollution Control Officers Association (CAPCOA) has recommended that the ARB freeze the districts' allocations of the State's portion of Program costs at the levels calculated for fiscal year 1997-98. Freezing the districts' allocations at fiscal year 1997-98 levels appears to be simple way to allocate the district portion of State program costs. However, it raises some unique issues. Last year, each district was allocated a share of the State's portion of

Program costs based on the number of facilities and their relative health risk. Since last year, each district has included, or exempted, different numbers of facilities than other districts based on new facility risk and score data. Staff evaluated the effect on each district and found vast inequities in fees could arise for like facilities in different districts. It also raises the issue of what the ARB would do in fiscal year 1999-2000; whether to freeze district allocations for another year, go to a new method, or go back to the current method. For these reasons, this method alternative was found to be inferior to the current method.

Option 3: Keep the current method for distributing State Program costs, based on current data.

The Fee Regulation fulfills a very specific legal requirement under Health and Safety Code section 44380. The proposed changes are made in accordance with those legislative mandates. The method currently used relates a facility's fees more directly with its toxics emissions. No alternative would be more effective in carrying out the legislative mandated purpose for which the regulation is proposed or would be as effective, equitable, and less burdensome to affected private persons.

C. RECOMMENDATION

Based on the results of our evaluation and our discussions with the Fee Regulation Committee, the ARB staff is currently inclined to stay with the current method. The ARB also needed to consider the Hot Spots statute that requires that fees be "to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that source by the district pursuant to Section 44360" into account when assessing alternatives. The staff believes that, from that mandate, it is clear that the authors intended that any fee method developed contain an emissions component, and a risk (priority) component if that is practicable. Neither of the alternatives fulfilled that requirement. We recommend that the ARB adopt the proposed amendments to the Fee Regulation for fiscal year 2000-2001. These changes are described in more detail in Chapter V, and are contained in Appendix II to this report.