

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

ADOPTION OF AMENDMENTS TO THE AIR TOXICS HOT SPOTS FEE REGULATION

UPDATED INFORMATIVE DIGEST OF ACTION

Actions and Sections Affected: Adopted amendments to sections 90700-90705, Title 17, California Code of Regulations (CCR) and Appendix A to sections 90700-90705 (The Air Toxics Hot Spots Fee Regulation).

The objective of the Air Toxics Hot Spots Fee Regulation (Fee Regulation) is to recover the costs of the State and the local air pollution control and air quality management districts (air districts) to implement and administer the Air Toxics Hot Spots Information and Assessment Act. The fees assessed through this regulation are used to inventory air toxics emissions, prioritize facilities for preparation of risk assessments, review risk assessments, notify the public of potential health risks from exposure to the emissions, and provide guidance to the facilities in reducing the potential risk from exposure to the emissions. The regulation specifically allocates the State's costs among the air districts, and establishes facility fees for the air districts that have requested ARB adoption of facility fee schedules.

Background: The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the Act) (Health and Safety Code section 44300 et seq.) established a program to inventory air toxics emissions from facilities in California and to assess the potential risk to public health from exposure to these emissions. The Act also requires that the public be notified of any potentially significant health risks associated with the emissions from high risk facilities. These high risk facilities must reduce their toxic emissions below the level of significance within five years. The Act specifies activities which must be carried out by the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and the air districts, to implement the Act. The Act requires the ARB to adopt a fee regulation to ensure that costs incurred by the State and air districts in implementing and administering the Air Toxics Hot Spots Program (Program) are recovered by assessing fees on facilities subject to the requirements of the Act (Health and Safety Code section 44380).

To implement the Act, the ARB first adopted the Fee Regulation in 1988. Each year, ARB staff, in consultation with the Fee Regulation Committee, which is comprised of the air districts and OEHHA, reviews the Fee Regulation and prepares adopted amendments for the ARB's consideration. Annual revisions have been needed to ensure that the State's and air districts' costs of implementing the Program are recovered.

Air districts may recover their Program costs and their portion of the State's cost by adopting their own fee rules or by requesting the ARB to adopt a fee schedule for them. If an air district requests the ARB to adopt its fee schedule, the district must submit its Program costs,

approved by its air district governing board, to the ARB by April 1, prior to the applicable Fiscal Year. Nine air districts submitted district board approved costs for Fiscal Year 1996-97 and are requesting ARB adoption of facility fee schedules.

In September 1996, AB564 was enacted and amended the Hot Spots provisions in the Health and Safety Code. ARB staff included modifications in the adopted amendments to the Fee Regulation for Fiscal Year 1996-97 to be consistent with the enacted bill.

Phase II of a Two-Phased Proposal for Further Streamlining the Program: After significantly reducing costs in Fiscal Year 1994-95, the staff of the ARB proposed a two-phased approach to further streamline the Program in January 1996. Under Phase I of the proposal, ARB staff recommended an interim step that would provide exemptions from the Fee Regulation for Fiscal Year 1995-96 for facilities that present a very low health risk to the surrounding public. Phase I proposals for amending the Fiscal Year 1995-96 Fee Regulation were approved by the Board in January 1996. These exemption proposals reduced the State's cost significantly because ARB staff decided not to redistribute the revenue lost as a result of the number of facilities exempted from the Fee Regulation but, rather, to adjust Program activities. In Phase II, ARB staff proposed adopted amendments to the Emission Inventory Criteria and Guidelines Report to further streamline the reporting requirements and the applicability criteria. These proposals were approved by the Board in July 1996. The adopted amendments to the Fee Regulation for Fiscal Year 1996-97 are the final stage of Phase II. The adopted amendments change the method for calculating fees to one based primarily on a facility's risk or prioritization score and provide more exemptions for low risk facilities. Finally, the adopted amendments reduce the State's Program costs by approximately 25 percent as compared to Fiscal Year 1995-96.

Description of the Regulatory Action: At a public hearing held on September 26, 1996, ARB staff proposed adopted amendments to the Air Toxics Hot Spots Fee Regulation for Fiscal Year 1996-97 for the ARB's consideration. After considering the staff's recommendation, public comments, and testimony, the ARB approved the adopted amendments contained in Resolution 96-45 at the September 26, 1996 hearing. A Notice of Public Availability of Modified Text, Supporting Documents and Information was made available on December 30, 1996 to describe the additional adopted amendments that were proposed and approved at the September 26, 1996 hearing. The deadline for public comment was January 14, 1997. Some of the additional adopted amendments were made to make the proposal conform to statutory changes resulting from the enactment of Assembly Bill 564 just prior to the hearing. The adopted amendments to the Fee Regulation for Fiscal Year 1996-97 approved by the ARB are described below. The Notice of Public Availability of Modified Text was made available to the public on March 14, 1997, with a deadline for public comment of March 31, 1997. In this document three Facility Program Category definitions were modified for clarity. There were no comments received as a result of these modifications.

Modification to the Method to Distribute the State's Cost: For Fiscal Year 1996-97, the staff proposed a new method for distributing the State's cost among districts and for calculating fees. This change was proposed to conform with Senate Bill 1378 (McCorquodale; Statutes of 1992; Chapter 375) (amending Health and Safety Code section 44380).

Senate Bill 1378 requires fees to be based on toxic emissions and the health risk priority assigned to a facility by the district to the maximum extent practicable. This is the first time the staff has proposed a method that bases fees primarily on risks or priority.

In the staff's proposal, fee categories are based on prioritization scores and health risk assessment results. Generally, fee rates increase with increasing risks. This represents a major change from the previous method used in Fiscal Year 1995-96 Fee Regulation. The Fiscal Year 1995-96 Fee Regulation method is based primarily on the status of the facility in the program, e.g., reporting phase, status of risk assessment development, notification activity. The complexity of the facility is used as a second determinate for fees in the staff's proposal and is consistent with the Fiscal Year 1995-96 Fee Regulation except the term "intermediate" has been changed to "medium" to avoid any inconsistency in terms with the Emission Inventory Criteria and Guidelines Report.

The same fee categories and exemptions included in the State's Fee Regulation are applied to district facility fees for districts requesting the ARB to adopt their fee schedule.

Exemptions from the Fee Regulation: The adopted amendments exempt facilities from the Fee Regulation in three ways which are listed below. The exemptions are listed in section 90702 (b) of the Fee Regulation. A facility is exempt from State fees if:

- a) its prioritization score is less than or equal to 10.0 for cancer and non-cancer risk; or
- b) its approved risk assessment shows a potential cancer risk of less than one case per one million persons, and the total hazard index is less than 0.1; or
- c) it is a printing shop, wastewater treatment plant, crematorium, boat or ship building and repair facility, or hospital or veterinary clinic using ethylene oxide and meets established *de minimis* throughput criteria.

The prioritization score of less than or equal to 10.0 for exemption of facilities represents a change from the Fee Regulation for Fiscal Year 1995-96 which exempted facilities with scores of less than 0.1. The prioritization score was modified to be consistent with AB564 as enacted. Items b and c, above, are the same as in the Fiscal Year 1995-96 regulation with the exception of a minor clarification to the printing *de minimis* exemption.

For facilities located in air districts which have asked that the Board adopt their fee regulations, these same exemptions would be applied to district fees, and facilities that meet at least one of the criteria would not be assessed district fees in Fiscal Year 1996-97.

Reduction in the State's Cost: The adopted amendments included a reduction in State costs to implement the Air Toxics Hot Spots Program by approximately \$600,000 for Fiscal Year 1996-97. This represents a reduction of approximately 25 percent compared to Fiscal Year 1995-96; this reduced State revenues to approximately \$1,936,000. This represents a greater than 63 percent reduction from Fiscal Year 1993-94 in State revenues to implement and administer the Program. With an adjustment factor of five percent added to this amount, the State's estimated revenue to be recovered through the Fee Regulation is approximately \$2,032,000 (this amount may differ slightly from the amount shown in Table 1 of the Fee Regulation due to rounding). The five percent adjustment factor is necessary to account for non-payment and for uncertainty in the facility information.

Definition Modifications: Sections 90701 (j) - (y) were revised to define six new risk categories, each with three facility complexity definitions (simple, medium, complex). These risk categories include "prioritization score greater than or equal to ten and no risk assessment facility," "risk of 10 to less than 50 per million facility," "risk of 50 to less than 100 per million facility," "risk of 100 per million or greater facility," "tracking facility," and "unprioritized facility." Sections 90701 (b) - (e), (j) - (m) and (p) - (aa) were revised to delete the four Facility Program Categories that existed under last year's fee method. Section 90701 (f) was added to define the Air Toxics Hot Spots Emission Inventory Criteria and Guidelines Report. Section 90701 (z), "Small Business" definition was revised to reflect a change to the district rule reference there. Section 90701 (ae), the definition of "Survey Facility," was removed to reflect the maturation of the Hot Spots Program. The purpose of defining Survey Facilities was to identify those facilities whose emissions could be of concern in the initial stages of the Hot Spots Program. In addition, section 90701 (ao), the definition of "Update Facility," was added to reflect language in AB564. In the Notice of Public Availability of Modified Text, the following Facility Program Category definitions were modified for clarity: "Risk of 10.0 to Less Than 50.0 Per Million Facility" in section 90701 (n), "Tracking Facility" in section 90701 (ag), and "Update Facility" in section 90701 (ao).

AB564 Modifications: To reflect the exemption of certain facilities from Hot Spots fees as enacted in AB564, the following sections were modified: sections 90701 (j) - (n), 90701 (ag), were added and sections 90702 (a), 90702 (b)(1), 90702 (b)(8), and 90704 (e)(1) were modified. To be consistent with AB564 as enacted, the following sections were modified or added: 90700 (b), 90704 (g)(4), 90705 (a), and the Authority and Reference citations were revised for sections 90701, 90702, and 90704.

Provisions for Facility Verification: Section 90704 (e)(3) was revised to identify the types of information that must be provided to the ARB to document facility risk and complexity. The

air districts are required to provide for each facility, the facility name, facility identification number, the Standard Industrial Classification Code (SIC) of the facility, the number of Source Classification Codes (SCC), the complexity (simple, medium, or complex), prioritization scores, health risk assessment results, whether health risk assessment was reviewed by OEHHA, whether a screening risk assessment was performed, whether the facility was exempted from the previous year's fee regulation and reason, whether the facility is classified as a State industrywide category facility, whether the facility is considered a small business, and the current facility status based on the facility program category as provided for the Fiscal Year 1995-96 fee regulation.

Air District Shares of State Cost: The adopted amendments to the Fee Regulation change the amount that each of the State's 34 air districts must remit (Table 1 of the Fee Regulation) to the State to recover the reasonably anticipated costs to the State to administer the Program for Fiscal Year 1996-97. This change accounts for changes in facility risk and complexity information, numbers of facilities qualifying for exemptions, required revenues, and provisions of AB564 as enacted. As discussed earlier, the State's estimated cost for Fiscal Year 1996-97 has been reduced to \$1,936,000 plus a five percent adjustment factor. Each air district's share of the State's costs includes that five percent adjustment factor to allow for nonpayment and uncertainty in the facility category information.

Air Districts Requesting State Adoption of Fee Schedules: The adopted amendments establish fee schedules for the following seven air districts: Imperial, Lassen, Santa Barbara, and Tuolumne County APCDs; the Great Basin APCD; and the Mojave Desert and Yolo-Solano AQMDs. The adopted amendments would add fee schedules for the South Coast Air Quality Management District and Kern County Air Pollution Control District. The adopted amendments delete fee schedules for Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCD, and Mendocino County AQMD.

The method used to calculate facility fees for the above nine air districts is the same basic method used for calculating the State's fees. For these air districts, an adjustment factor of five percent is added to the air districts' costs to be recovered to allow for nonpayment, uncertainty in the facility category information, and uncertainty in the number of businesses that meet the small business cap provision. The same Fee Program Categories are used for air district fees as for State fees, but different category indexes (based on risk and complexity) are assigned for air district fees than for the State's fees.

The fee schedules in the Fee Regulation for the nine air districts that requested ARB to adopt a fee regulation include cost-per-facility fees. The Industrywide facilities (facilities that qualify to have their emission inventories completed by the air district as part of an industrywide emission inventory) would pay facility fees between \$15 and \$125. If an Industrywide Facility has paid a fee once and the air district will not expend significant resources on the facility, subsequent fees may be waived by the air district.

The following 25 air districts have chosen to adopt their own rules to recover their Program costs in Fiscal Year 1996-97: Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lake, Mariposa, Modoc, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, and Ventura County APCDs; Feather River, Monterey Bay Unified, Northern Sonoma Unified, and San Joaquin Valley Unified APCDs; and Bay Area, Mendocino, North Coast Unified, Northern Sierra and Sacramento Metropolitan AQMDs. These 25 air districts are required to adopt district fee rules that recover costs for Fiscal Year 1996-97 (see Health and Safety Code section 44380 (a)(2)).

Air Districts' Costs to be Recovered: Table 2 of the Fee Regulation was modified to reflect changes in each air district's cost to be recovered for the seven air districts again requesting ARB adoption of facility fees. Air district costs to be recovered for the Kern County APCD and the South Coast AQMD were added to Table 2. The Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCD's, and Mendocino County AQMD costs were deleted from Table 2.

Criteria for Excluding Facilities from Calculation of State Fees: The adopted amendments revised the exemption using prioritization scores to be "less than or equal to 10.0" compared to "less than 0.1" in the Fiscal Year 1995-96 regulation. In addition, section 90702 (b)(8) was added which states that if a facility was not required to conduct a risk assessment under Health and Safety Code section 44360(b) and the facility's prioritization score is greater than or equal to 1.0, the district (or the facility with the concurrence of the district), can conduct a worst-case, health-conservative risk assessment using screening air dispersion modeling criteria set forth in the Guidelines Report. If the results of the conservative health risk assessment meet the criteria for exemptions, the facility can be exempt.

Changes to Table 3 of the Fee Regulation: Facility fees in Table 3 of the Fee Regulation were changed to reflect the State's new cost for the new facility program categories, changes in the air district's cost, updated facility counts, facility data corrections, and the provisions of AB564 as enacted for the Imperial, Kern, Lassen, Santa Barbara and Tuolumne County APCDs, the Great Basin Unified APCD and the Mojave Desert, South Coast and Yolo/Solano AQMDs. Facility fees were added for the Kern County APCD and South Coast AQMD. Facility fees for the Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCDs, and Mendocino County AQMD were deleted.

Changes to Specified Fees: Flat fees for Survey facilities for all districts in Table 4 were deleted. Flat fees for Industrywide facilities specified by the air districts in Table 4 were updated. Flat fees for Industrywide facilities for the Kern County APCD and South Coast AQMD were added to Table 4. Flat fees for Industrywide facilities for the Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCD, and Mendocino County AQMD were deleted. In addition, flat fees for industrywide facilities were modified to reflect changes in districts' costs to be recovered by Imperial County APCD and Mojave Desert AQMD.

Changes to Appendix A: Appendix A of the Fee Regulation, “Air Pollution Control District Air Toxic Inventories, Reports or Surveys,” was revised to reflect the updated Santa Barbara APCD’s “List of Air Toxics Sources,” September 18, 1996.

Date Change for Updating Facility Data: Sections 90702 (b), 90702 (d), and 90703 (a)(1) were modified to allow districts time to update facility data and to allow time for ARB staff to calculate fees and present them through the public process for the Fee Regulation for Fiscal Year 1996-97.

Consistency with other Documents: To specify that the prioritization procedures must be consistent with the CAPCOA “Air Toxics ‘Hot Spots’ Program Facility Prioritization Guidelines, July 1990,” the definitions for “Prioritization Score Greater Than Ten (10.0) Facility” in section 90701 (j), “Tracking Facility” in section 90701 (ag), and “Update Facility” in section 90701 (ao) were modified. In order to be consistent with the Emission Inventory and Criteria Guidelines Report, which specifies different procedures regarding choice of receptors between a screening risk assessment and a full refined risk assessment, the phrase “...at an actual receptor...” was removed from Section 90702 (b)(2).

Clarifying and Grammatical Changes: Section 90702 (b) (3) - (7) was modified to clarify that de minimis level exemptions are appropriate unless a health risk assessment required by the district is greater than exemption level specified. Several other clarifying and grammatical changes were made to sections 90701, 90702, 90703, 90704, and 90705.

Comparable Federal Regulations: The Act established an air quality program unique to the State of California. No parallel federal requirement exists at this time. There is no federal fee which specifically targets Hot Spots facilities. Accordingly, there is no conflict or duplication between this Fee Regulation and current federal regulations.