

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS
HOT SPOTS FEE REGULATION FOR FISCAL YEAR 1997-98.

The Air Resources Board (ARB) will conduct a public hearing at the time and place noted below to consider amendments to the Air Toxics Hot Spots Fee Regulation for Fiscal Year 1997-98.

DATE : September 25, 1997

TIME : 9:30 A.M.

PLACE : Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the ARB commencing at 9:30 a.m., September 25, 1997, and continuing at 8:30 a.m., September 26, 1997, if necessary. This item may not be considered until September 26, 1997. Please consult the agenda for this meeting, which will be available at least ten days before September 25, 1997, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY
STATEMENT OVERVIEW

Proposed Actions and Sections Affected: Proposed amendments to sections 90701, 90702, 90703, 90704 and 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 State's and the local air pollution control and air quality management districts' (districts) costs of implementing and administering the Air Toxics Hot Spots Information and Assessment Act. The fees assessed through this regulation will be used to inventory air toxics emissions, prioritize facilities, prepare risk assessments, review risk assessments, notify the public of potential health risks from exposure to the emissions, and provide guidance to the facilities for reducing the potential risk from exposure to the emissions. The regulation specifically allocates the State's costs among the air districts, and it establishes facility fees for the seven districts that have requested the ARB to adopt their 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 compile an inventory of air toxics emissions from facilities in California and to assess the potential risks to public health as a result of exposure to these emissions. The Act also requires that the public be notified of facilities whose emissions pose potentially significant health risks. The high risk facilities must reduce their toxic emissions below the level of significance within five years pursuant to Health and Safety Code section 44391(a). The Act specifies activities that the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and the districts must carry out 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 to implement and administer 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).

The ARB adopted the first Fee Regulation in 1988. Each year thereafter, the ARB staff in consultation with the Fee Regulation Committee (which is comprised of representatives of the ARB, the districts, and OEHHA) reviewed the Fee Regulation and proposed amendments for the ARB's consideration. Annual revisions have been needed to ensure that the State's and districts' costs of implementing the Program are fully recovered.

Districts may recover their Program costs and their portions of the State's cost by adopting their own fee rules or by requesting the ARB to adopt fee regulations for them. If a district requests the ARB to adopt its fee regulation, it must submit its Program costs, approved by its district governing board, to the ARB by April 1 prior to the beginning of the Fiscal Year for which the fees are to apply. Seven districts submitted district board approved costs for Fiscal Year 1997-98, and those districts have requested that the ARB adopt their facility fee regulations.

The Act established an air quality program unique to the State of California. No equivalent federal requirement at this time targets toxics Hot Spots facilities. Accordingly, there is no conflict or duplication between this Fee Regulation and current federal regulations.

Reduction in the State's Cost: The staff proposes that the Board reduce State costs to implement the Air Toxics Hot Spots Program by \$446,000 for Fiscal Year 1997-98. This represents a reduction of approximately 23 percent compared to Fiscal Year 1996-97; this would reduce State revenues to approximately \$1,490,000. This represents an approximate 71 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 the budget amount, the State's estimated revenue to be recovered through the Fee Regulation is approximately \$1,564,500 (this amount may differ slightly from the amount shown in Table 1 of the Fee Regulation due to rounding).

Other Proposed Amendments to the Fee Regulation for Fiscal Year 1997-98 include:

- 1) Revisions to the list of districts that have requested the ARB to establish fee schedules as part of the Fee Regulation.
- 2) The definitions of “Tracking Facility” and “Update Facility” will be revised to clarify them and provide greater differentiation between them.
- 3) The definition of “Small Business” will be revised to clarify it.
- 4) Districts' shares of the State's cost are changed to reflect the changes in the number of facilities per Facility Program Category based on the current status of facility risk, due to changes in health risk assessment results and prioritization scores.
- 5) Updated Fee Schedules reflect reductions in State and district program costs for Fiscal Year 1997-98.
- 6) Sacramento Metropolitan Air Quality Management District’s (AQMD) and San Luis Obispo County Air Pollution Control District’s (APCD) toxics lists will be removed from Appendix A, and Mojave Desert Air Quality Management District’s and Santa Barbara County Air Pollution Control District’s toxics lists will be revised to reflect the most recent version.
- 7) The deadline for districts to submit facility information needed for calculating facility fees is changed to July 1 of the applicable fiscal year.

These proposed changes to the Fee Regulation for Fiscal Year 1997-98 are discussed in more detail below.

1. 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. Seven 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 Great Basin, Lassen County, Imperial, Santa Barbara, and Tuolumne County APCDs; and the Mojave Desert, and South Coast AQMDs. 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.

The following 28 districts have chosen to adopt their own rules to recover their Program costs in Fiscal Year 1997-98: Amador, Antelope Valley, Butte, Calaveras, Colusa, El Dorado, Glenn, Kern, 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, Sacramento Metropolitan, and Yolo-Solano AQMDs. These 28 districts are required to adopt district fee rules that recover costs for Fiscal Year 1997-98 (see Health and Safety Code section 44380(a)(2)).

2. Definitions of “Tracking” and “Update” Facilities - Section 90701 of the Fee Regulation defines the terms used in the regulation. The ARB staff proposes to clarify several of the program categories to which districts assign facilities. These Facility Program Categories, defined in the proposed regulation, are summarized as follows:

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 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 of greater than or equal to 0.1, but less than or equal to 1.0.

Staff is proposing to revise the definition so that the hazard index for subcategory (1) states it includes **both** acute and chronic toxicity and hazard index for subcategory (2) states it includes **either** acute or chronic toxicity. This change will clarify the interpretation of the definition.

Update Facility - a facility:

(1) that has been prioritized by its district in accordance with Health and Safety Code section 44360(a) using procedures that have undergone public review and that are consistent with the procedures presented in the California Air Pollution Control Officers Association (CAPCOA) “Air Toxics ‘Hot Spots’ Program Facility Prioritization Guidelines, July 1990,” which has been approved by the State Board and which is incorporated by reference in the Fee Regulation, (2) that is required by the district to submit a quadrennial emissions inventory update pursuant to Health and Safety Code section 44344 during the applicable fiscal year, and (3) whose prioritization scores for cancer and non-cancer health effects are greater than 1.0 and less than or equal to 10.0.

In an effort to show that facilities in the Update Facility Program Category pay no State fees, staff is proposing to rename the definition to “District Update Facility.”

3. Definition of “Small Business” - The definition of a “Small Business” currently in the Fee Regulation is as follows:

a facility which is independently owned and operated and has met the following criteria in the preceding year:

1) the facility has 10 or fewer employees, 2) the facility's total annual gross receipts are less than \$1,000,000, and 3) the total annual gross receipts of the California operations of the business the facility is part of are less than \$5,000,000. All oil producers in the San Joaquin Valley Unified Air Pollution Control District will be judged by the criteria of San Joaquin Valley Unified Air Pollution Control District Rule 2201, subsections 3.29.1 - 3.29.3 (Operative June 15, 1995) to determine overall facility size and boundaries for purposes of qualifying as a small business."

During the development of amendments to the Fee Regulation for fiscal year 1996-97, there was a comment concerning the number of employees a business can have to qualify as a "small business" for the Air Toxics Hot Spots Fee Regulation. At the time the comment was made, there was not sufficient time prior to the Board hearing to address that issue, so ARB staff made the commitment to address that issue during the course of developing amendments to the Fee Regulation for fiscal year 1997-98. The ARB staff plans on adding the term, "annual full-time employee equivalent," to the first element of the definition to resolve the number of employees issue.

4. District Shares of State Cost - The proposed amendments to the Fee Regulation would change the amount that each of the State's 35 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 1997-98. This change is proposed to account for changes in facility risk and complexity information, numbers of facilities qualifying for exemptions, and required revenues. As

discussed earlier, the State's estimated cost for Fiscal Year 1997-98 has been reduced to \$1,490,000 plus a five percent adjustment factor. Each district's share of the State's costs includes that five percent adjustment factor to allow for nonpayment and uncertainty

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5. 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 facility program categories and changes in the districts' costs. Facility fees for the Kern County APCD and Yolo-Solano AQMD were deleted. The ARB adopted a fee schedule for these districts for fiscal year 1996-97. For fiscal year 1997-98, neither of these districts requested that the ARB adopt a fee schedule for them
6. Changes to Appendix A - Sacramento Metropolitan Air Quality Management District's and San Luis Obispo County Air Pollution Control District's toxics lists will be removed from Appendix A and Mojave Desert Air Quality Management District's and Santa Barbara County Air Pollution Control District's toxics lists will be revised to reflect the most recent version.
7. Date Change for Updating Facility Counts: The deadline for districts to update their facility counts for the distribution of the State's cost and calculating facility fees for Fiscal Year 1997-98 is proposed to be changed to July 1 of the applicable Fiscal Year.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a noncontrolling plain English summary of the regulation is available from the agency contact person named in this notice. The plain English summary is also included in the Initial Statement of Reasons, Executive Summary.

The ARB staff has prepared a Staff Report entitled "Proposed Amendments to the Air Toxics 'Hot Spots' Fee Regulation for Fiscal Year 1997-98" (Staff Report), which includes the Initial Statement of Reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strike-out format, may be obtained from the California Air Resources Board, Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing. The ARB staff has compiled a record which includes all information upon which the proposal is based. Copies of the documents may be obtained through the Public Information Office, 2020 L Street, Sacramento, California 95814.

Further inquiries regarding this matter should be directed to Linda Murchison, Chief,

Emission Inventory Branch, Technical Support Division, P.O. Box 2815, Sacramento, California 95812, (916) 322-6021.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of ARB's Executive Officer concerning the cost or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The ARB's Executive Officer has determined that the amended Fee Regulation will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement to the districts pursuant to Government Code sections 17500 et seq. and section 6 of Article XIII B of the California Constitution because the districts have the authority to levy fees sufficient to pay for the mandated Program (Health and Safety Code section 44380). These fees are intended to recover the full costs of district implementation of the Air Toxics Hot Spots Program, including compliance with the amended Fee Regulation. The cost to the districts to implement the amended Fee Regulation is approximately 10 percent of the district's total Program costs. For Fiscal Year 1997-98, the total district Program costs are estimated to be \$3,389,989. Therefore, the costs to the districts to implement the amended Fee Regulation are approximately \$338,998.

The Executive Officer has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some publicly owned treatment works (POTWs). POTWs are subject to the Fee Regulation if they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report (title 17, CCR, section 93300.5), release the specified quantity of at least one of the four specified criteria pollutants, and are classified by the district in one of the prescribed Program categories. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated Program. The ARB staff estimates the total cost for POTWs to comply with the Fee Regulation to be \$34,447 for Fiscal Year 1997-98.

The Executive Officer has determined that the amended Fee Regulation does not create cost or savings in federal funding to any State agency or program.

The Executive Officer has also determined that the amended Fee Regulation will impose costs on affected State agencies. The costs to the ARB to implement and administer the Air Toxics Hot Spots Program, including the amended Fee Regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of title 17, CCR. The costs for the ARB to develop and implement the amended Fee Regulation are estimated to be \$114,000.

Other affected State agencies (e.g., universities, hospitals, correctional institutions, and laboratories) that must pay fees pursuant to the amended Fee Regulation as emitters of specified

pollutants should be able to absorb their costs within existing budgets and resources. Costs to these State agencies were estimated to total \$51,898 for Fiscal Year 1997-98.

The Board's Executive Officer has determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will affect small business. In an effort to reduce those potential impacts on small businesses, the ARB staff has placed a cap of \$300 for those facilities that fit the definition of small business in the Fee Regulation. Facilities that fit the definition of industrywide facilities found in Health and Safety Code section 44323 are currently assessed an annual State portion of fees of \$15.

In developing the proposal, the staff has determined there is a potential cost impact on private persons or businesses directly affected by the regulation. The economic impact the Program fees have on individual facilities is related to the facility's prioritization score or the results of a health risk assessment. Program fees for those districts the State is adopting a fee schedule for range from \$156 to \$17,568. The fees for specific facility program categories for those districts the State is adopting fee schedules for can be found in Table 3 of Appendix I of the Initial Statement of Reasons for the proposed amendments to the Air Toxics Hot Spots Fee Regulation for fiscal year 1997-98.

The Executive Officer has also determined that adopting these amendments may have a significant, adverse economic impact on some businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states, based on an assessment of the evidence available in the record.

Accordingly, the following information is provided pursuant to Government Code section 11346.5(a)(7):

(A) Identification of the types of businesses that would be affected.

All businesses that emit a criteria pollutant and a listed substance (Health and Safety Code sections 44320-44322; title 17, CCR, section 90702) must pay a Hot Spots fee, (Health and Safety Code sections 44380-44382; title 17, CCR, sections 90703-90705) unless specified conditions have been met, and will be affected by these proposed amendments. Businesses that are operating with little or no margin of profitability may experience significant adverse impacts by paying these fees. Appendix VI of the Staff Report includes a list, which may be modified, of the categories of businesses that may be included in the scope of this regulation.

(B) Description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.

To comply with these proposed amendments, businesses will have to pay the fees assessed on them. These proposed amendments will not result in any additional reporting, record keeping, or other compliance requirements, beyond keeping records of payment.

- (C) The ARB staff finds that the amendment of this regulation may have a significant adverse economic impact on businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states. The ARB staff has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:
- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
 - (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
 - (iii) The use of performance standards rather than prescriptive standards.
 - (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Submissions may also include the following considerations which more closely apply to these amendments:

- (i) The establishment of differing payment requirements or timetables which take into account the resources available to businesses.
- (ii) Exemption or partial exemption from the fee requirements for businesses.
- (iii) Any other alternative that would lessen any adverse impact the fees may have on businesses.

In accordance with Government Code section 11346.3, the Executive Officer has determined that for businesses operating with little or no margin of profitability, the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

In considering the proposed amendments, the ARB must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The imposition of the fees and the requirement that the fees, in the aggregate, cover costs of implementing the Program, are mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses. Additionally, exemptions are proposed that will

relieve lower-risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than 12:00 noon, September 24, 1997, or received by the Clerk of the Board at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least ten days prior to the hearing. ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND HEARING PROCEDURES

Amendments to the Fee Regulation are proposed under the authority granted to ARB in sections 39600, 39601, 44321, 44380, and 44380.5 of the Health and Safety Code. The purpose of the Fee Regulation is to implement, interpret, and make specific sections 44320, 44321, 44322, 44361, 44380, and 44380.5 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed, or with nonsubstantive or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications, if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language, as modified, could result from the proposed regulatory action. Such modifications are expected to include but are not limited to the following:

- (1) Districts' share of the State's costs may be revised on the basis of it updating the number of facilities in the previously mentioned Program categories, changes to the State's budget, or adjustments to the category indices.
- (2) The specified amounts of fees may be adjusted on the basis of updates to numbers of facilities in the previously mentioned Program categories, changes to the State's budget, or adjustments to the category indices.

- (3) Fees specified by air districts may be changed on the basis of information being provided by each such district.
- (4) Changes may be made to Appendix A of the regulation in response to information provided between this date and the public hearing.
- (5) Changes may be made to definitions in response to information provided between this date and the public hearing.

In the event that such modifications are made, the full regulatory text with the modifications clearly indicated will be made available to the public for written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Air Resources Board Public Information Officer, 2020 L Street, 1st Floor, Sacramento, California 95814, (916) 322-2990.

This is a statewide regulation. Once adopted by the Board, and approved by the Office of Administrative Law, the fee schedule will be applicable to all subject facilities in the seven air districts for which the proposed amendments would provide fee schedules. The remaining 28 air districts will be required to adopt district rules to comply with the Fee Regulation.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: