

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD
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 1997-98

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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 1997-98. The staff proposes to continue to use the method to calculate fees adopted for last year. That method conforms to the provisions of Senate Bill 1378 (McCorquodale; Statutes of 1992; Chapter 375) which amended Health and Safety Code Section 44380(a), and Assembly Bill 564 (Cannella; Statutes of 1996; Chapter 602) which amended Health and Safety Code Section 44344.4 through 44344.7 and 44380(e).

The Fee Regulation requires the collection of fees to reimburse the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) for the resources they will expend in fiscal year 1997-98 to implement the Air Toxics Hot Spots Information and Assessment Act of 1987 (the Act)¹. The staff proposes an overall fiscal year 1997-98 State budget for the Air Toxics Hot Spots Program (Program) of \$1.49 million, a 23 percent reduction from the fiscal year 1996-97 State budget and 25 percent less than the legislative cap of \$2 million for fiscal year 1997-98. The proposed Fee Regulation also contains fee schedules to cover local costs for the seven air pollution control districts and air quality management districts (districts) that have requested to be included in the State's regulation.. The remaining 28 districts will adopt their own fee schedules, as required by the regulation. Overall, Program costs for most districts are going down, as are the State's implementation costs. Significantly fewer sources will pay fees this year than they did last year. However, many individual facilities may experience an increase in fees due to new information that indicates a higher risk value at that facility or because there are fewer facilities remaining in the Program as facilities are exempted under the new legislation.

The Program was enacted to inform the California public about releases of toxic air pollutants and, ultimately, to reduce risk. It sets forth requirements for facility operators, districts, and the State. It requires that emissions of toxic substances 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 according to methods developed by the OEHHA, the public be notified of significant risks posed by nearby facilities, and emissions that pose significant risk be reduced.

The enabling legislation for the Program requires that the State's and districts' costs of implementing the Act be recovered from fees paid by facilities subject to the Act. The first Fee Regulation was adopted in 1988, and it has been revised annually. Program costs peaked at \$5,226,000 in fiscal year 1993-94, and have since decreased by 63 percent to \$1,936,000 for fiscal year 1996-97.

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

Legislation passed in 1996 (Assembly Bill 564, Cannella) required extensive revision to last year's fee regulation in order to meet new provisions of the law governing Hot Spots Fees. No new legislative requirements were established in 1997, therefore, for fiscal year 1997-98, the staff proposes to make only minor amendments to the Fee Regulation, including reducing the State's cost to implement the Program and clarifying facility Program categories. Those proposed amendments are discussed in this report.

The proposed Fee Regulation focuses the fees on those facilities of greatest concern and exempts facilities of least concern. Facility fees are based primarily on a facility's health risk assessment results or prioritization scores with some adjustment to account for the workload related to facilities. Facilities for which low risks have been demonstrated would be exempt from paying fees. These changes were made to bring the Program into accordance with the provisions of Senate Bill 1378 (McCorquodale; Statutes of 1992; Chapter 375) which amended Health and Safety Code Section 44380(a). This section requires fees to be proportionate to toxics emissions and the health risk priority assigned to a facility by the districts to the maximum extent practicable. The method also brings the Program into accordance with the provisions of Assembly Bill 564 which amended sections 44344.4 through 44344.7 and 44380 (e). Those sections provide some facility fee exemption criteria and set a maximum State Program funding level.

The facility fee exemption criteria are consistent with the Program emission reporting requirements and exemptions found in the amended Emission Inventory Criteria and Guideline Report (Guidelines Report). The Guidelines Report, amended by the Board in July 1996, specifies which facilities are subject to reporting and sets the reporting requirements to be met by those facilities. The amended Guidelines Report was approved by the Office of Administrative Law and became effective July 1, 1997.

Approximately 20 percent of the facilities that were subject to the Fee Regulation for fiscal year 1996-97 would be exempted from fees for fiscal year 1997-98, with approximately 16,000 facilities still subject to the Fee Regulation. Of that number, approximately 800 facilities are core facilities. That number represents 56 percent fewer core facilities paying State fees than in fiscal year 1996-97. Core facilities are the larger, unique facilities that cannot be classified as industrywide facilities under Health and Safety Code section 44323. As fewer facilities remain subject to the Fee Regulation, the State must reduce its Program implementation costs.

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

- o The public health will continue to be protected as mandated by the Program. Program activities will be downsized and costs reduced, while the elements of the Program which focus on the higher risk facilities will be retained.**

- o Facilities will continue to be exempted from fees based on prioritization scores, risk assessment results, and *de minimis* levels for certain types of facilities consistent with those in the Guidelines Report adopted by the Board in July 1996.**

- o The ARB is proposing a State budget for this Program of \$1.49 million for fiscal year 1997-98.**
- o Each year since 1993, the Program's budget has declined faster than that projected by a Board approved, five year plan to reduce State costs by 40 percent by fiscal year 1997-98.**
- o For fiscal year 1997-98, the proposed budget for State costs will be 25 percent less than the \$2 million maximum level mandated by the Legislature in AB 564. The State's cost for fiscal year 1997-98 is \$446,000 less, or a 23 percent reduction, from the fiscal year 1996-97 cost. In addition, the State's cost for fiscal year 1997-98 will be a 71 percent reduction from the costs for fiscal year 1993-94.**
- o Staff proposed that the ARB adopt fee schedules for seven districts. The staff proposed that the method for establishing fees for districts that the Board adopts be similar to the methodology proposed for State fees.**
- o Approximately 4,000 core and industrywide facilities have been exempted from fees since the 1996-97 Fee Regulation.**
- o The fees for State costs will be based on prioritization scores and health risk assessment results. The fee rate for facilities will increase as the risk increases. All facilities not exempted from the Fee Regulation would pay a minimal maintenance cost.**

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 Committee met or held teleconferences in January, February, March, May, June, and July 1997 to discuss implementation of the streamlined Program and development of the 1997-98 Fee Regulation. In addition, the staff held several conference calls and meetings with representatives of affected industries, industry associations, and environmental organizations. The staff also held one set of public workshops in May 1997 and a second set is planned for mid-August 1997. Workshop notices were sent to over 7,500 facility operators and members of the public.

The staff recommends that the Board adopt the proposed amendments to the Fee Regulation for fiscal year 1997-98. 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 amendments to the Air Toxics Hot Spots Fee Regulation (Fee Regulation) for fiscal year 1997-98. The Fee Regulation allocates 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) among the air pollution control and air quality management districts (districts) and requires each district to collect fees to cover the districts' Program costs and to provide to the ARB the districts' share of the State's costs.

With the Board's recent amendments to the Emission Inventory Criteria and Guidelines Report (the Guidelines Report), which further streamlined the reporting requirements and the applicability criteria of the Hot Spots Program (Program), and the Fee Regulation for fiscal year 1996-97 by the Office of Administrative Law (OAL), the ARB completed the two-phase streamlining effort begun at the time of the adoption of the Fee Regulation for fiscal year 1995-96. With the completion of the second phase, the Board also fulfilled the mandate in Health and Safety Code section 44380(a)(3) requiring that fees be based on toxic-weighted emissions and the level of priority assigned to a source by the district to the maximum extent practicable.

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 regulations are adopted by the Board.

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.

B. PUBLIC OUTREACH

The proposal to amend the Fee Regulation for fiscal year 1997-98 was developed in consultation with the Air Toxics Hot Spots Fee Regulation Committee (Committee), the affected industries, environmental groups, other government agency staffs, and the general public. The Committee, established in 1988 to develop the initial Fee Regulation, includes representatives

from the districts, the ARB, and the OEHHA. The Committee met or held teleconferences in January, February, March, May, June, and July 1997, to discuss proposed amendments to the Fee Regulation for fiscal year 1997-98. Representatives from all districts were invited to participate in the Committee meetings. The ARB staff also held many discussions with individual interested parties and facility representatives to provide assistance in understanding the Program and in working with their respective districts.

The ARB staff also held two public workshops. Workshops were held in Sacramento and El Monte in May 1997 and a second set of workshops are planned for mid-August 1997. The staff sent workshop notices to over 7,500 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 the public.

In addition to the public workshops, staff held numerous separate meetings and teleconferences with industry and environmental group representatives from our 2588 Hot Spots stakeholders group. This stakeholders group is made up of approximately 80 members representing affected industries, industry associations, and environmental organizations. Teleconferences were held in March and May, 1997. An additional stakeholders teleconference is scheduled for August 1997. At each of these meetings and workshops, we received valuable input, comments, and suggestions that were considered and incorporated in this proposal.

C. TOTAL PROGRAM 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 year for which the fees are to be collected. Seven districts requested that the ARB adopt fee regulations for them, and they are included in this proposal. The remaining 28 districts plan to adopt their own fee schedules, as required by the Fee Regulation. The seven districts whose fee regulations are included in this proposal are listed in Table 1.

Table 1

Adoption of District Fees for Fiscal Year 1997-98
Districts Included in the State Fee Regulation

1. Great Basin Unified APCD
2. Imperial County APCD
3. Lassen County APCD
4. Mojave Desert AQMD
5. Santa Barbara County APCD
6. South Coast AQMD
7. Tuolumne County APCD

The estimated total cost for the State and districts to implement the Program for fiscal year 1997-98 is approximately \$4,879,989. This represents a reduction of approximately 27% from fiscal year 1996-97. The distribution of total cost among agencies which implement the program is shown graphically in Figure 1. Of the total cost, 31 percent is State costs, of which 12 percent supports the ARB activities and 19 percent supports the OEHHA activities. Sixty-nine percent of the total costs support district activities.

The fees for fiscal year 1997-98 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.

D. TREND IN STATE PROGRAM COSTS

The staffs of the ARB and the OEHHA prepared a plan in 1993 that projected the State's resources needed for the Program for five fiscal years, starting with fiscal year 1993-94. The plan, which forecasted Program requirements, was designed to streamline the Program and significantly reduce State operating costs. The goal was to downsize the Program and maintain essential elements such as maintaining a credible air toxics emission inventory, assessing potential health risks, informing the public of potential health risks, and reducing risks.

The Board approved the five-year plan at a public hearing on July 8, 1993. According to that plan, by fiscal year 1997-98, the total State costs would be reduced from \$5,226,000 to no more than \$3,497,000, as shown by the upper line (the original plan) in Figure 2. The ARB would reduce its Program costs by approximately 38 percent, from \$2,396,000 in fiscal year 1993-94 to \$1,509,000 in fiscal year 1997-98. The OEHHA would reduce its costs by about 38 percent, also from \$3,231,000 in fiscal year 1993-94 to \$1,988,000 in fiscal year 1997-98.

In fiscal years 1994-95, 1995-96, and 1996-97, the Board adopted fee regulations that accelerated the State's cost reductions beyond the original plan. This reduction is shown by the lower line in Figure 2. For fiscal year 1997-98, the staff is proposing even greater reductions in State costs. The proposed amount to be collected to support State activities for fiscal year 1997-98 is \$1.49 million, a reduction of approximately 23 percent from fiscal year 1996-97 and a 57 percent reduction from the \$3.5 million proposed in the original plan. Overall,

this represents a 71 percent reduction in State costs to implement the Program since fiscal year 1993-94. This reduction in cost is commensurate with the reduction in workload that will result from the streamlining measures adopted in the Guidelines Report. The reduction also reflects the fact that many of the original tasks mandated by the Act are now completed or nearing completion. The State Program budget for fiscal year 1998-99, and each subsequent fiscal year thereafter, has been set by statute at \$1.35 million. The staff will continue to evaluate the Program needs in future years. It is possible that as more facilities reduce their risk and are exempted from reporting, State costs to implement the Program will decline somewhat. However, any future declines are expected to be a more modest than those over the last several years. This is because current costs mostly cover base program activities that are expected to continue so long as the basic program is in place.

E. PROPOSED CHANGES TO THE FEE REGULATION

For fiscal year 1997-98, the staff is proposing no major changes to the fee regulation. The same method will be used to calculate districts' share of State costs as in fiscal year 1996-97. Fee categories will continue to be based on prioritization scores and health risk assessment results. Fee rates will increase with increasing risks. The complexity of the facility will continue to be used as a secondary determinant of fees. That is, for a given level of risk, fees will vary approximately 5 percent based on whether the facility is considered simple, medium, or complex. The definitions of "simple," "medium," and "complex," are based on the number of Source Classification Codes (SCCs), as established by the U.S. Environmental Protection Agency, which are used to describe a facility's operation. The definition and the fee rate (\$15) for "state industrywide" facilities are proposed to remain the same as in the fiscal year 1996-97 regulation. The fee categories and their definitions are shown in Figure 3. A detailed discussion of the fee method is presented in Chapter V.

The Fee Regulation will continue to include exemptions for low risk facilities. The Program exemptions will continue to reduce the number of facilities subject to the Fee Regulation. Because of this, fewer facilities are covered by the fee proposal this year, and accordingly, the State costs are reduced to \$1,490,000, a reduction of approximately 23 percent from fiscal year 1996-97.

Figure 3

Facility Program Categories*

Unprioritized Facility

Simple, Medium, or Complex

District Update Facility (Priority Score greater than 1 and less than or equal to 10)

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 then or equal to 100

Simple, Medium, or Complex

Industrywide

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

Staff is proposing some minor changes to the Fee Regulation for fiscal year 1997-98. The following is a summary of the proposed changes:

- o The definitions of “Tracking Facility” and “Update Facility” will be revised to clarify them and provide greater differentiation between them.
- o 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 health risk assessment results and prioritization scores.
- o Revisions to the list of districts that have requested the ARB to establish fee schedules as part of the Fee Regulation.
- o Updated Fee schedules reflect reductions in State and district program costs for fiscal year 1997-98.
- o 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.
- o The deadline for districts to submit facility information needed for calculating facility fees is changed to July 1, 1997.

F. ENVIRONMENTAL AND ECONOMIC IMPACTS

We do not anticipate potential adverse impacts on the environment due to the implementation of these proposed amendments to the Fee Regulation. The Fee Regulation may 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.

G. RECOMMENDATION

The staff recommends that the Board adopt these proposed amendments to the Fee Regulation for fiscal year 1997-98. These amendments are described in more detail in Chapter V, and the regulation text is shown in its entirety in Appendix I.

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 which manufacture or use toxic substances may 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 which 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 27,000 facilities, or 4 percent of California's 700,000 businesses, were subject to the Program. Of those 27,000 facilities, approximately 5,100 are larger facilities which had been required to submit reports and to pay fees. Of those 5,100 larger facilities, more than **1,000** have been exempted from fees and reporting due to the streamlining amendments adopted by the Board in July 1996.

The remaining 21,000 smaller facilities are considered "Industrywide" facilities. The districts conduct generic inventories and risk assessments for these facilities. These facilities include gasoline stations, dry cleaners, printing shops, and autobody shops.

b. Exemptions from Requirements in the Act

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.

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.

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.

Health and Safety Code section 44344.4(a) exempts facilities from fees and reporting 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.

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. Reporting Requirements

Facilities subject to emissions reporting under the 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 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.

3. 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 incorporated a report containing the requirements by reference in the Code. The re-codification does 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.

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 possible further 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.

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

CAPCOA Air Toxics "Hot Spots" Program Facility Prioritization Guidelines (July 1990) and the CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines (October 1993).

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 are 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. Conservative assumptions for inputs to the risk assessment process are made where data are not available in order to ensure that the analysis is conservative.

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 California Air Pollution Control Officers Association (CAPCOA) has developed a document to help districts develop public notification procedures: the CAPCOA Air Toxics "Hot Spots" Program Public Notification Guidelines (October 1992).

The districts must publish annual reports which summarize the health risk assessment program, rank facilities according to the cancer risk posed, identify the facilities posing non-cancer health risks, and describe the status of the development of control measures.

5. 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 facilities for 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 A (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 which 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.

6. Benefits of the Program

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

- o The Program has resulted in the development of the nation's first and only 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.

- o The Hot Spots Program has been extremely effective in reducing air toxics emissions by providing ample incentives for facility operators to reduce emissions voluntarily and reduce requirements for significant risk public notification and risk reduction action.
- o The requirement for risk reduction audits and plans is viewed as better than “command and control” by many facility operators as it allows facility operators to choose the most cost-effective methods for reducing emissions from their facilities.
- o 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.
- o The risk assessment guidelines 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 Hot Spots 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 comprehensive attempt to provide the citizens of this State with healthy air.

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 directs the ARB to adopt a regulation that 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 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. This chapter also specifies which tasks will be performed in fiscal year 1997-98.

B. 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), proposes the method for distributing the State's cost among the districts and calculating facility fees, and develops the subsequent fee basis. The ARB staff consults with the districts to verify district Program costs and facilities subject to the Act, 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 emission 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 Guideline Report (the Guidelines Report). Section 93300.5, was adopted by the Air Resources Board on July 26, 1996, and was approved by the Office of Administrative Law on July 1, 1997.

Figure 4

State Hot Spots Program Implementation Activities

- o 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

- o 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

- o Air Toxics Emission Data System (ATEDS) (ARB)
 - provide toxics emission database information to other government departments and the public
 - perform computer programming tasks
 - develop and implement electronic data submittal
 - 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)
 - develop merged criteria and toxics pollutant inventory

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

Figure 4 (continued)

- o 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

- o 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

- o Health Risk Assessment Guidelines Development (OEHHA)
 - develop new facility risk assessment guidelines
 - develop risk expressions that describe the probability and uncertainty in the risk assessment
 - coordinate with CAPCOA and ARB
 - notify the public of guidelines development
 - hold public workshops to discuss guidelines
 - present guidelines to Scientific Review Panel for comment
 - provide guidance to districts
 - review supplemental health risk assessment information
 - revise and update guidelines 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
 - develop non-cancer health risk assessment methods
 - develop and operate a chemical database for substances having acute effects

Figure 4 (continued)

- o 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)

- o Develop Public Notification Procedures (OEHHA - health assessment, ARB - air dispersion modeling)
 - assist districts and facilities with public notification procedures and public meetings

- o Participate in Public Notification Workshops and Hearings (OEHHA - health assessment, ARB - air dispersion modeling)

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 staff recommendations to amend the Guidelines Report. In February of 1997, the ARB staff released the Guidelines Report for an additional 15-day public review and comment period. This additional public review and comment was necessitated by the changes to the Guidelines Report required by the enactment of AB 564.

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 are also providing written guidance on the streamlining measures.

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 or to delete compounds that are not needed. 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 approves their Health Risk Assessment Guidelines, anticipated in 1998, the Guidelines Report will be amended again to incorporate the Health Risk Assessment Guidelines as the basis for reporting requirements. The Office of Administrative Law approved the Guidelines Report on July 1, 1997.

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. This activity includes the development of emission test methods, the review of pooled source test proposals, the review of source test reports, and the approval of 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 .

The ARB staff has recently published the California Air Toxics Emission Factor (CATEF) database to streamline future emission inventory reporting and to ensure consistency and accuracy in the reported data. CATEF will also reduce reporting costs substantially 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 is currently developing a follow-up contract to develop additional emission factors and make the CATEF computer software easier to use.

c. Air Toxics Emission Database

The ARB staff developed and maintains the statewide Air Toxics Emission Data System (ATEDS). The ARB staff developed a software package (Facility Air Toxics Electronic Submittal (FATES)) that allows facilities to submit emission data intended for ATEDS electronically. The FATES software reduces paperwork, speeds data entry, and reduces costs to the ARB, districts and facility operators. The ARB will soon complete development of a second generation electronic submittal software. California Emission Inventory Development and Reporting System (CEIDARS)-Lite will contain improvements of FATES and allow for integration of criteria and toxics emissions reporting.

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.

d. Emission Data Collection and Validation

The ARB staff is responsible for entering emission data received from the districts into ATEDS. 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 ATEDS. The staff performs numerous quality control checks to ensure data accuracy.

e. 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. Options for risk reduction may include modifying feedstocks, evaluating system enclosures, installing emission control equipment, and modifying operational standards and practices. 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 owners 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 is developing risk reduction guidelines which include a self-conducted audit and checklist. 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 staff continues to work 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 is also under development to assist those facilities not covered by the source-specific guidelines. The guideline for autobody refinishing was completed in May, 1997. By December, 1997, we anticipate releasing all of these risk reduction guidelines and self-conducted audit and plan checklists to industry.

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 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.

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 also identifies newly available cancer potencies 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.

3. Joint ARB/OEHHA Activities

a. 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 health reference exposure levels and chemical potencies involved in quantifying potential health risks. The ARB reviews changes to emission inventory procedures to ensure that the data are usable 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.

b. Public Notification

When a district determines that a risk assessment indicates that a facility's emissions pose a potential significant health risk, the operator of the facility 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.

4. Activities for Fiscal Year 1997-98

With the Air Toxics Hot Spots Program focused on those facilities posing the highest potential risk, many of the tasks performed by the ARB, OEHHA, and local districts have been completed. For fiscal year 1997-98, the ARB and OEHHA staff will be working on the following tasks: emission inventory data collection and database management; development, completion, and implementation of the fiscal year 1997-98 Fee Regulations; implementation of the Inventory Guidelines Report and fiscal year 1996-97 Fee Regulation; health effects evaluation and database development; completion and implementation of risk assessment guidelines; including uncertainty and exposure assessment; public notification assistance; assistance for computer software development; OEHHA regulatory and district assistance; and risk reduction guidance to small businesses.

C. DISTRICT ACTIVITIES

The districts review 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 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 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, the district must review the emission 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, request corrections from the facility, or determine that the facility's potential health risk is significant enough to warrant public notification. The districts are required to establish public notification procedures.

A district may determine that a facility's emissions may cause potentially significant health effects. These high risk facilities are required 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.

IV.

PROGRAM COSTS AND FACILITY FEES

A. INTRODUCTION

Chapter IV contains a description of the costs of the Program and proposed method for allocating those fees among facilities and districts. As noted before, the costs for the Air Resources Board (ARB or Board), the Office of Environmental Health Hazard Assessment (OEHHA), and the districts are all decreasing for fiscal year 1997-98. Although Program costs are decreasing, some individual facilities may experience an increase in fees. Such increases are due to a change in a facility's risk status (newer information indicates a higher risk), or because as more facilities are exempted from fees, there are fewer facilities responsible for the Program costs.

In the fee regulations adopted prior to 1993, the emissions of criteria pollutants served as the basis for distributing the State's costs among the districts and for calculating most individual facilities' fees. In 1993, the ARB staff revised the method for determining the allocation of the State's costs and facility fees to a method based on workload and Program activity. In the Fee Regulation for fiscal year 1993-94, the distribution of the State's costs among districts and facilities was determined by the numbers of facilities in the various Program categories, determined by the activity facilities were involved in (i.e. Plan and Report, Risk Assessment, Notification, or Risk Reduction Audit and Plan), and the complexity of the facilities as determined by source classification codes. For fiscal years 1994-95 and 1995-96, minor modifications were made to this method, however, the basic concept remained the same.

For fiscal year 1996-97, the staff proposed a new method for determining facility fees in order to meet the goal of Senate Bill 1378 (Health and Safety Code Section 44380(a)(3)) and to conform to Assembly Bill 564. The new method based fees on the public health risk presented by a facility's air toxics emissions and on the workload required by the State and district to process the facility through the program. Facilities were divided into several risk categories based on the facilities' air toxics emissions and the potencies/toxicities of the emitted substances.

Staff is also proposing to use the same method for calculating fees as in fiscal year 1996-97. The staff still believes this is an equitable method to calculate facility fees, one which puts higher fees on the higher risk facilities.

B. PROPOSED COSTS FOR FISCAL YEAR 1997-98

Although Health and Safety Code section 44380(e) caps State costs for implementing the Program in fiscal year 1997-98 at \$2,000,000, both the ARB and the OEHHA propose to make reductions for fiscal year 1997-98 beyond that level. Staff is proposing a total State cost to be recovered through fees in fiscal year 1997-98 of \$1,490,000. This represents a reduction of

23 percent, or \$446,000, from the fiscal year 1996-97 costs. The \$1,490,000 budget represents a reduction of 71 percent since fiscal year 1993-94 and a 57 percent reduction from the State's original 5-year budget reduction plan.

The ARB's share of the proposed State cost is \$565,000 and the OEHHA's share is \$925,000. Further detail of these proposed costs is included in Appendix III. In addition to these costs, a five percent adjustment factor is included in the fees. This adjustment factor is necessary to account for nonpayment and for uncertainty in the facility information. With the adjustment factor, the total State fees proposed is approximately \$1,564,500.

C. DISTRIBUTION OF STATE COSTS

The fee method for fiscal year 1997-98 continues to distribute the total State Program Costs among all facilities. The State costs for risk assessment review are recovered on a fee-for-service basis, rather than distributing these costs to all facilities.

1. State Program Costs

The Fee Regulation distributes the State's program costs over all facilities for the following activities: emission inventory and regulatory development costs, health effects evaluation and database development costs, risk assessment guidelines development costs, uncertainty and exposure assessment method development costs, public notification assistance costs, district assistance costs, and risk reduction guidance to small businesses costs. All facilities that are subject to the Act are subject to the Fee Regulation unless expressly exempted under Health and Safety Code section 44380.1 or under section 90702(b) of the Fee Regulation.

The State will require approximately \$1,490,000 to implement this program. Of that, \$565,000 will support the ARB activities. This cost includes the computer contract at Teale Data Center for \$126,000 and the key data entry contract for \$59,000.

The ARB is mandated to assist small businesses in complying with the audit and plan provisions of Senate Bill 1731. The ARB staff is developing risk reduction guidelines and facility conducted checklists for the following facility categories: aerospace, autobody refinishing, degreasing, dry cleaning, chrome plating, and service stations. The staff is also developing a general guideline and checklist. The checklists will allow small businesses to avoid the cost of developing individual audits and plans. By definition, small businesses would be able to use these guidelines, but the facilities required to lower toxic emissions have yet to be identified. In light of this and to lessen the economic burden on these small businesses, the staff have distributed costs to develop these guidelines and checklists among all facilities as core program costs. The proposed cost to complete the risk reduction guidelines is \$38,000.

The ARB provides notification assistance to districts and facility operators. As in fiscal year 1996-97, the cost for this task is \$38,000.

The ARB staff also reviews and amends the Air Toxic Hot Spots Fee Regulation. The cost for this task 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.

Approximately, \$925,000 is required to support OEHHA's activities. The Fee Regulation distributes the development and documentation of the health effects evaluation and database costs among all facilities. This is because the OEHHA's efforts to develop a chemical database for substances having acute effects are ongoing, and are not directed at any specific facilities. The total cost for these tasks is \$125,000. As was the case in fiscal year 1996-97, no OEHHA contract costs have been included in the proposal for fiscal year 1997-98. For fiscal year 1997-98, our proposal includes a cost of \$125,000 for OEHHA to maintain, evaluate, and administer the new risk assessment guidelines.

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 guideline development is \$307,000.

To complete the implementation and tracking of the fee-for-service program for health risk assessment review, the OEHHA's costs are \$75,000. OEHHA also provides technical assistance to the ARB, districts, and facility operators implement the Program including development of regulatory requirements. The cost for this assistance is \$293,000.

2. Elimination of State Risk Assessment Review Costs

As was the case for fiscal year 1996-97, there are no costs included in the proposed fees for risk assessment review during the fiscal year 1997-98 because risk assessments submitted to the OEHHA after March 31, 1995, are paid for by the facilities on a fee-for-service basis. The districts will be billed for the actual costs incurred by OEHHA for the review and must reimburse OEHHA pursuant to Health and Safety Code Section 44361(c). The districts can then bill facilities for their facility-specific risk assessment review costs. At the time of the writing of this staff report, the average staff cost for OEHHA risk assessment review is approximately \$119 per hour and includes all levels of personnel involved in the risk assessment evaluation process. However, this does not include future adjustments to staff costs such as cost of living increases. For comparison purposes, private sector contractors doing similar technical work charge up to \$125 per hour. In an effort to reduce risk assessment evaluation costs even further, the ARB

staff, OEHHA staff, and district staff have worked together to develop a more streamlined risk assessment submittal and review process. That revised review process will be implemented for fiscal year 1997-98. Based on previous experience, the OEHHA has estimated the average time to review risk assessments ranges from one to more than 25 hours, depending on the complexity of the risk assessment. No costs have been included for fiscal year 1997-98 for risk assessment related tasks done by the ARB staff.

3. Total State Costs Distribution

The total State program costs proposed are \$1,490,000. With a five percent adjustment factor, this total is \$1,564,500. The adjustment factor is added to the State's cost to ensure full cost recovery in the event of unforeseen business closures, nonpayment of fees, or other circumstances which would result in a shortfall in anticipated revenue. The method for allocating the State's costs among the districts is described in Appendix IV.

4. Districts' Share of the State's Costs

State costs are allocated among the districts using the number of facilities in each of the program categories and resource indices based on facility data received from the districts by July 1, 1997. The indices are described in Appendix IV of this report.

Table 2 compares the allocation of the State's costs among districts between fiscal year 1996-97 and fiscal year 1997-98. The difference between the total of Table 2 and the total of the State's costs described in paragraph 3 above is due to rounding. In most cases, if a district's share of the State's cost has increased, it is due to an increase in the number of facilities in a district, or from the realigning of facilities into the revised, risk-based, Facility Program Categories.

D. DISTRICT COSTS FOR FISCAL YEAR 1997-98

In the State's 35 districts, the ARB staff estimates that the total of districts' costs to implement the Hot Spots Program for fiscal year 1997-98 will be \$3,389,989. This represents a decrease of approximately 29 percent from the fiscal year 1996-97 total of \$4,757,162. Table 3 shows that the anticipated districts' costs in 32 of the districts remain unchanged or are reduced from fiscal year 1996-97.

Seven districts received their Boards' approval of Program costs by April 1, 1997, and requested that the ARB adopt fee schedules for them. These districts are identified in Table 3 by a double asterisk. The Program costs for these seven districts are decreasing from \$2.3 million for fiscal year 1996-97 to \$1.7 million for fiscal year 1997-98, approximately a 26 percent decrease.

Of the seven districts requesting that the ARB adopt facility fees for them, all of the districts' costs declined from fiscal year 1996-97, for a total reduction of \$525,061. Some of the changes in projected expenditures by districts may reflect changes in the number of facilities in the Program and changes in facility fees due to the revised fee method.

As noted above, Table 3 shows the anticipated district Program costs for all districts for fiscal year 1997-98. The Program costs shown in Table 3 may differ from the amounts shown in Table 2 of the Fee Regulation (Appendix I), "District Program Costs to be Recovered Through the Fee Regulation," which is the basis for the ARB fee calculations. This difference is due to adjustments for excess funds or deficits remaining from previous fiscal years and certain flat fees which are excluded from the fee calculations.

Table 2
Comparison of Distribution of State Costs Among Districts

District	A Cost Total <u>1996-97</u>	B Cost Total <u>1997-98</u>	C % Difference From <u>Column A</u>
Amador	6,328	7,771	+22.8
Antelope Valley	NA	14,168	NA
Bay Area	134,879	56,633	-58.0
Butte	17,240	19,611	+13.8
Calaveras	736	949	+28.9
Colusa	9,421	7,623	-19.1
El Dorado	6,624	9,927	+49.9
Feather River	9,664	15,574	+61.2
Glenn	4,278	4,529	+5.9
Great Basin	13,283	13,553	+2.0
Imperial	3,513	6,648	+89.2
Kern (Desert)	1,145	1,035	-9.6
Lake	0	0	0.0
Lassen	2,223	3,288	+47.9
Mariposa	676	889	+31.5
Mendocino	3,622	5,644	+55.8
Modoc	225	225	0.0
Mojave Desert	30,583	48,381	+58.2
Monterey	34,475	5,089	-85.2
North Coast	10,134	10,385	+2.5
Northern Sierra	7,451	11,949	+60.4
Northern Sonoma	30	30	0.0
Placer	13,937	18,028	+29.4
Sacramento	9,545	10,189	+6.3
San Diego	183,375	226,251	+22.4
San Joaquin Valley	145,819	153,508	+5.3
San Luis Obispo	321	317	-1.2
Santa Barbara	53,159	68,967	+29.7
Shasta	20,647	37,525	+81.7
Siskiyou	5,970	8,833	+48.0
South Coast	1,236,385	719,160	-41.8
Tehama	311	2,700	+768.2
Tuolumne	995	1,066	+7.1
Ventura	35,871	58,002	+61.7
<u>Yolo-Solano</u>	<u>23,397</u>	<u>16,181</u>	<u>-30.8</u>
TOTAL	2,026,282	1,564,628	-22.8

Note: Totals include 5 percent adjustment factor.

Table 3
District Cost Comparison Between Fiscal Years 1996-97 and 1997-98*

<u>District</u>	<u>Fiscal Year</u> <u>1996-97</u>	<u>Fiscal Year</u> <u>1997-98</u>
Amador	0	0
Antelope Valley	0***	?
Bay Area	375,000	365,900
Butte	19,715	19,715
Calaveras	0	0
Colusa	27,632	17,000
El Dorado	7,480	7,480
Feather River	16,000	75,000
Glenn	5,500	5,500
Great Basin	7,340**	6,790**
Imperial	12,127**	1,232**
Kern	4,832**	800
Lake	7,800	2,000
Lassen	2,669**	1,467**
Mariposa	0	0
Mendocino	22,330	22,330
Modoc	0	0
Monterey	175,000	119,385
Mojave Desert	25,000**	15,000**
North Coast	9,000	0
Northern Sierra	16,200	24,000
Northern Sonoma	5,000	2,000
Placer	9,421	9,421
Sacramento	122,000	61,787
San Diego	400,000	360,000
San Joaquin Valley	994,718	400,000
San Luis Obispo	18,150	18,150
Santa Barbara	173,402**	116,350**
Shasta	20,000	20,000
Siskiyou	5,700	5,700
South Coast	2,040,232**	1,599,702**
Tehama	7,950	1,200
Tuolumne	4,464**	4,410**
Ventura	227,500	75,000
<u>Yolo-Solano</u>	<u>35,000**</u>	<u>32,670</u>
TOTAL	4,757,162	3,389,989 -29%

district budget numbers for fiscal year 1997-98 in **bold** are those district's budget numbers for fiscal year 1996-97. Costs are estimates unless otherwise noted.

** District Board approved cost.

*** Antelope Valley did not exist prior to fy 1997-98

E. TOTAL PROGRAM COSTS

Total costs to the State and districts for fiscal year 1997-98 will be \$4,879,989. The State's costs are 31 percent and 69 percent is the districts' costs. Total costs decreased 27 percent from fiscal year 1996-97. The State's costs, decreased from \$1,936,000 for fiscal year 1996-97 to \$1,490,000 for fiscal year 1997-98, a decrease of 23 percent. The ARB's portion of the proposed State cost is \$565,000, and the OEHHA's portion is \$925,000. As discussed in section D of this Chapter, a five percent adjustment factor is added to the State's cost for fiscal year 1997-98. The estimated total Hot Spots Program costs for the State and districts for fiscal year 1997-98 are shown in Figure 5.

F. FACILITY FEES

For the seven districts requesting ARB adoption of fee schedules, the individual facility fees are calculated using the method described in Chapter V. The other 28 districts are required to 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 IV contains the equations that were used to calculate facility fees. Each facility 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 vary for each district since District Program costs varies. District Program costs in these seven districts were approved by their district boards at public hearings.

The range of fees shown in Table 5 is due to varying district fees. Many factors affect a district's costs of implementing the Program. These factors include but are not limited to the following:

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

Table 5 represents the total fees for facilities in districts for which the ARB is adopting a fee schedule. The total fee represents the State fee plus the district fee. This table was included at the request of facilities in these districts who wanted to know the State versus district portion of their fees.

Figure 5

PIE CHART of
Total program costs

districts/arb/oeaha

Table 4

State and Air District Adoption of Fiscal Year 1997-98 Fees

Districts Included in the State Fee Regulation

Great Basin	Imperial	Lassen
Mojave Desert	Santa Barbara	South Coast
	Tuolumne	

Districts Adopting Local Fee Rules

Amador	Antelope Valley	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	Tehama	Ventura
	Yolo-Solano	

Table 5
Range of Proposed Facility Fees*

<u>Program Category</u>	<u>State Portion</u>	<u>District Portion</u>	<u>Total Fees</u>
Industrywide	15	0-125	15-125
Unprioritized			
Simple	544	256 - 355	800 - 899
Medium	815	533 - 3,123	1,348 - 4,041
Complex	1,087	711 - 4,551	1,798 - 5,638
Tracking (priority score $\geq 1 < 10$, HRA $\geq 1 < 10$ /million, Simple Hazard Index $\geq .1 < 1$)	91	65 - 379	156 - 470
Medium	136	177 - 569	313 - 705
Complex	181	236 - 5,516	417 - 5,696
Priority Score > 10			
Simple	2,265	829 - 5,018	3,094 - 7,283
Medium	2,718	1,540 - 5,377	4,258 - 7,922
Complex	3,171	947 - 5,735	4,118 - 8,722
Risk $\geq 10 < 50$ /million, Hazard Index > 1			
Simple	4,076	6,094	10,170
Medium	4,529	6,245 - 6,826	10,774 - 11,355
Complex	4,982	1,229 - 7,205	6,211 - 12,187
Risk $\geq 50 < 100$ /million			
Simple	5,888	7,169	13,057
Medium	6,341	7,286 - 7,964	13,627 - 14,305
Complex	6,794	2,600 - 7,886	9,394 - 14,680
Risk ≥ 100 /million			
Simple	7,700	7,980 - 8,722	15,680 - 16,422
Medium	8,153	2,836 - 9,102	10,989 - 17,255
Complex	8,606	2,954 - 8,969	11,560 - 17,568

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

V.

EXISTING REGULATION AND PROPOSED CHANGES

A. INTRODUCTION

The proposed amendments to the Fee Regulation for fiscal year 1997-98 are presented in this Chapter. The staff of the Air Resources Board (ARB or Board) proposes to continue to use the existing methodology to assess fees for State costs which bases fees on facilities' health impacts on the community. These health impacts are characterized by prioritization scores and health risk assessments results. The staff will continue to base district fees for those districts which have asked the Board to adopt their fee regulations on a similar methodology. In addition, the staff proposes to continue to exclude many facilities from the program based on prioritization scores, risk assessment results, and *de minimis* activity levels which are defined for certain types of facilities. The staff's proposed changes are minor and are found in section D. of this chapter.

B. PUBLIC OUTREACH

Staff developed the proposed changes to the Fee Regulation following extensive coordination with district representatives, the Fee Regulation Committee (Committee), our Industry/Environmental Stakeholders group, the regulated community, and the public. The Committee includes representatives from the districts, the ARB, and the OEHHA. We invited representatives from all districts to all meetings of the Committee. The Committee held nine conference calls and will hold two more, and at these calls the staff received helpful suggestions for amending the Fee Regulation.

The staff has held two public workshops to elicit comments and suggestions on the proposed changes to the Fee Regulation. Two more public workshops are planned for August, 1997, during the 45-day comment period. Notices of each workshop were sent to over 7,500 facility operators and members of the public. Copies of the workshop announcements are contained in Appendix V.

In addition to the public workshops held in May, and the public workshops planned for August, the staff held two meetings and conference calls with our Industry/Environmental Stakeholders group, which includes representatives from the affected industries and industry associations, and members of environmental organizations. A third teleconference call with our stakeholders group is planned during the 45-day public comment period prior to the Board hearing. At each of these meetings, conference calls, and workshops, the staff received valuable input, comments, and suggestions that were considered for incorporation into the proposed Fee Regulation.

C. CURRENT REGULATION

For fiscal year 1997-98, the staff proposes to use the same method used for fiscal year 1996-97 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 numbers of Source Classification Codes (SCCs) reported by facilities, which are used to divide facilities into 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)). Based on changes in facility operations (i.e. changes in scores and health risk assessment results), approximately 20 percent of the facilities included in the fiscal year 1996-97 Fee Regulation have been exempted from the fiscal year 1997-98 Fee Regulation. Approximately 16,000 facilities are still subject to the Fee Regulation. Of that number, approximately 800 facilities are core facilities. That number represents 56 percent fewer core facilities paying State fees than in fiscal year 1996-97. We will continue to exempt low risk facilities 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 risk categories (Facility Program Categories). This continues the ARB's commitment to fulfill the program mandate set forth in Health and Safety Code section 44380(a)(3) and section 44344.4(b). That mandate requires that fees be set, 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. Facilities with low prioritization scores or demonstrating low risk based on the results of a health risk assessment would be excluded from the Fee Regulation. Facilities with high prioritization scores or demonstrating high risk would then become the focus of 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 ARB staff plans to continue to exempt facilities demonstrating low potential risk to the communities they do business in. A facility will qualify for an exemption from being assessed fees in three ways:

- a) Prioritization Score: A facility that has a prioritization score (calculated by the district), of 10.0 or less for both cancer and non-cancer risk, and no risk assessment, shall be exempt. A prioritization score is determined, using health conservative assumptions for source parameters, distance to receptors, and meteorological conditions, through a calculation 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 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 undergone review by the OEHHA and must be approved by the district in writing to qualify for this exemption. This ensures that the results are valid. Also, written approval provides verification of the exempt facility.
- c) De Minimis Levels: Staff will continue to exempt printing shops, wastewater treatment plants, crematoria, boat and ship building and repair facilities, and hospitals or veterinary clinics using ethylene oxide from the Fee Regulation based on *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 on the basis of those results. For each facility type, the throughput or usage described below should result in a potential cancer risk of no more than one case per one million persons and a non-cancer risk of an order of magnitude below a level where any adverse health effects may occur. The intent of the exemptions is to provide an expedient way to exclude from fees all 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 the facilities' risk assessment results or prioritization scores. 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 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.

- o Prioritization score greater than 10.0, for facilities for which no risk assessments are available.
- o Risk of 10.0 to less than 50.0 per million, or a hazard index of greater than 1.0.
- o Risk of 50.0 to less than 100.0 per million
- o Risk of 100.0 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 the risk categories, other than Industrywide, into subcategories on the basis of their complexity. Facilities can be categorized by their 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. Any operation that causes air pollution can be classified by one or more of these SCCs. Based on the districts' experience and the staff's analysis of facilities, we found a correlation 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 by 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 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 seven districts whose fee schedules are included in the State Fee Regulation.

5. Provisions for Facility Count Verification

The staff is proposing to continue the requirement that districts provide documentation substantiating facility count changes. 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. Without this information, the staff could not sufficiently validate facility counts provided by the districts.

D. PROPOSED CHANGES TO THE REGULATION

1. Fee Schedules

Tables 2 and 3 of the Fee Regulation have been revised to reflect the district Program costs and facility fees in the seven 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.

2. 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.

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 among facilities in other Facility Program Categories.

Table 6 lists the districts included in the State's Fee Regulation and the districts adopting local fee rules.

3. Definitions

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:

- 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 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.

- o 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 both greater than 1.0 and less than or equal to 10.0.

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

- o Small Business - the Fee Regulation currently uses the following definition for small business:

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 the Fee Regulation for fiscal year 1996-97, we received a comment requesting the origin of the small business definition (particularly the number of employees) and asking whether we had considered other definitions. Our response was that we would review the definition during the development of the Fee Regulation for fiscal year 1997-98. Towards that end, ARB staff reviewed current statutes and regulations for precedence and brought the issue before the working groups and the public.

During the staff's review, we found numerous definitions of "small business" in statute and in the California Code of Regulations. Several existing definitions contain elements similar to those in the definition of "small business" currently in the Fee Regulation. We specifically looked at programs associated with toxic substances or small businesses. California Health and Safety Code section 25249.11(b), the statute associated with Proposition 65, excludes businesses with less than 10 employees from the Proposition 65 requirements. Also, Section 3403.2 of the United States Code of Regulations, which deals with small business research grants, contains a clause defining the type of employees covered by the definition.

The consensus was that adding the term, "annual full-time employee equivalent", to the first element of the definition would resolve the number of employees issue.

4. Change in Date for Updating Facility Counts

In the current Fee Regulation, districts are required to provide a list of facilities by Program category based on a facility's status as of April 1 prior to the start of the fiscal year. For this fiscal year, we are proposing to change that deadline to July 1, of the applicable fiscal year to allow districts time to update their facility counts based on the current exemptions.

In cases where a district does not provide the Board a list of facilities by Program category as of July 1, of the applicable fiscal year, the Board will use the best available facility list for that

district and, if necessary, assign facilities to the appropriate Facility Program Categories for the purpose of assessing fees.

5. District Program Costs

The seven districts that requested that the ARB adopt district fee regulations for them have provided us with district costs for the fiscal year 1997-98. The method used to calculate the district portion of the fees for the seven districts is identical to that used for the State portion of the fees except based on different resource indices as requested by the seven 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 IV.

VI.

ENVIRONMENTAL AND ECONOMIC IMPACTS

A. INTRODUCTION

This chapter discusses the environmental and economic impacts from the fees assessed through this Fee Regulation. The Air Resources Board (ARB) staff is not aware of any adverse environmental impacts resulting from implementing the Fee Regulation. The economic impacts were determined using draft fees calculated based on preliminary facility counts provided by the districts. Although State and district program costs continue to be reduced, we are beginning to see the impact the success of the Program is having on fees. Over the course of the Program, and in the last several years in particular, Program fees have served as an incentive to facility operators to reduce emissions and in the process, reduce their potential risk. As this happens, there are fewer and fewer facilities subject to the Fee Regulation. Thus, even with the 23 percent reduction in the State program costs, staff was unable to avoid an increase in fees for facility program categories. However, even with the increases, the staff estimates the proposed amendments to the Fee Regulation will have little, or no, significant adverse impacts on the economic status of businesses in the State.

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 changes to the Fee Regulation, ARB staff must estimate the potential economic impacts of the fees. The staff does an analysis to determine if paying Hot Spots fees will have an adverse economic 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 1997-98 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. Impact on Government Agencies

The ARB staff conducted a fiscal impact analysis for government agencies in June, 1997. The fiscal impacts at that time were based on a preliminary State budget that was higher than the current budget on which the State portion of fees are being based. These estimates likely overestimate the economic impacts.

a. State Government Agencies' Costs

The Fee Regulation will 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 \$125 to \$5,523. The total cost estimate for State-owned facilities was \$51,898.

By law, the Fee Regulation must recover all of the ARB's and OEHHA's costs for the Program. Implementing the Fee Regulation is part of the ARB's cost. The staff estimates that the ARB's cost to develop and implement the Fee Regulation for fiscal year 1997-98 is \$114,000. This is about 8 percent of the total State portion of Program costs, \$1,490,000, for the ARB and the OEHHA.

b. Local Government Agencies' Costs

The adoption of the proposed regulation will 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 \$25 to \$8,315. The total costs assessed to local governmental agencies, other than the districts, were estimated to be \$184,551.

Implementing the amended Fee Regulation will create costs and impose a State-mandated local program upon the 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 \$338,998.

The costs of seven 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 \$3.4 million.

2. Impact on Non-Government Facilities

The amended regulation will 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.

The ARB staff conducted an economic impact analysis to determine the potential economic impacts to businesses 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 VI 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) The staff developed a list of SIC Codes that represent industries with businesses that would be required to pay fees. Using the ARB's inventory of toxic emissions, a random sample of one to three businesses, from different areas of the State, was selected from each of the applicable SIC categories.
- (2) Fees were estimated for each of these approximately 800 businesses. Table 3 of Appendix I lists fee amounts by facility program category for each district having the ARB adopt fee schedules for them. Facility fees will vary by district because of differences in the anticipated district program costs. The highest fee in each SIC was then used in the analysis.
- (3) The fees required by this regulation are a business expense. Approximately 40 percent of the fee is deductible on State and federal tax returns as a business expense. This deduction is accounted for in determining potential economic impact.
- (4) 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 580 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. These reasons are described in the detailed analysis contained in Appendix VI of this report. The proposed fees are low enough and will be applied in such a manner that it is unlikely that they will result in a significant adverse economic impact on businesses. 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.

Continued exclusion of low risk-facilities from calculation of distribution of the State's costs and from the fee schedule adopted for certain districts under the Fee Regulation should not have any adverse impacts on the environment because facilities so excluded have been determined to be low-risk facilities and information about their emissions is already available.

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.

