

State of California  
AIR RESOURCES BOARD

Resolution 98-50

October 22, 1998

Agenda Item No.: 98-11-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature found in the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act), Health and Safety Code section 44300 et seq., that facilities manufacturing or using hazardous substances may be exposing nearby populations to toxic air releases on a routine basis and that it is in the public interest to ascertain the nature and quantity of hazardous releases from specific sources that may create air toxics "hot spots";

WHEREAS, the Act sets forth an Air Toxics Hot Spots Program (Program) to develop air toxics emission inventories and to assess the risk to public health from exposure to these emissions, and air toxics Emission Inventory Criteria and Guidelines are incorporated by reference in section 93300.5 of title 17 of the California Code of Regulations (CCR) in accordance with the Act;

WHEREAS, on November 14, 1988, effective December 15, 1988, the Board adopted the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation) set forth in title 17, CCR, sections 90700 et seq., in accordance with Health and Safety Code section 44380(a), which assessed a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts (districts), and the Department of Health Services (hereinafter the Office of Environmental Health Hazard Assessment, or OEHHA) to implement and administer the Act;

WHEREAS, the Board has amended the Fee Regulation each year since 1988 to reflect changes in the emission inventory, the sources subject to the Act's requirements, the status of facilities in the Program, and the State and district costs of implementing the Act;

WHEREAS, Health and Safety Code section 44380(a) was amended in 1990 to require that the Board adopt a regulation that requires all districts, except for districts that have submitted specified information to the Board by April 1 of each year, to adopt rules that assess a fee upon the operator of every facility subject to the Act in order to recover the costs to the districts, the Board, and OEHHA to implement and administer the Act, and this Fee Regulation was amended accordingly each year since 1990;

WHEREAS, Health and Safety Code section 44380(e) caps the State portion of Program fees at \$1.35 million for fiscal year 1998-99 and the budget currently proposed for the State portion of fees for fiscal year 1998-99 is \$1.27 million;

WHEREAS, the amendments to the 1997-98 Fee Regulation approved by the Board on November 13, 1997, and effective in April, 1998, set forth in title 17, CCR, sections 90700 et seq., in accordance with Health and Safety Code section 44380(a), provided for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, districts, and OEHHA to implement and administer the Act in fiscal year 1997-98;

WHEREAS, Board staff, in consultation with the districts and the Fee Regulation Committee originally convened pursuant to the 1987 Act, has developed amendments to the Fee Regulation for fiscal year 1998-99 which were discussed with the public at four public consultation meetings;

WHEREAS, Health and Safety Code section 44344.4(b) excludes certain facilities from the State portion of Program fees;

WHEREAS, the process of developing amendments to the Air Toxics "Hot Spots" Fee Regulation for fiscal year 1998-99 highlighted several issues regarding the fairness of the current State law, which will continue to require facilities remaining in the Program to pay annually increasing costs per facility if the pool of facilities subject to fees continues to decrease;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, on November 13, 1997, the Board directed the Executive Officer to contact the districts and encourage them to assess, and improve where necessary, their communications with facilities subject to the Fee Regulation;

WHEREAS, on November 13, 1997, the Board also directed the Executive Officer to contact the California Air Pollution Control Officers Association (CAPCOA) and request that CAPCOA review its 1990 Prioritization Guidelines with the objective of updating them to ensure consistent statewide implementation;

WHEREAS, on November 13, 1997, the Board directed the staff to provide districts with technical assistance to help reduce Program fees;

WHEREAS, based upon the information presented by the staff and the written and oral comments received before and at the hearing, the Board finds that:

1. The proposed amendments will continue to reduce the State portion of the Program's budget. The ARB and OEHHA are proposing to further downsize their programs to reflect lower revenues that would result from excluding additional facilities in calculating the distribution of the State's cost;
2. Although the proposed amendments will further downsize the Program, the ARB and OEHHA staffs, working with the districts, can continue to collect and evaluate necessary information as mandated in order to protect public health, which should reduce toxic air emissions;
3. The proposed amendments will continue to allocate State costs among the districts based on Facility Program Categories that reflect potential health risk priority;
4. The Antelope Valley, Imperial, Lassen, and Santa Barbara County Air Pollution Control Districts (APCDs), the Great Basin Unified APCD, and the Mojave Desert Air Quality Management District (AQMD) have requested that the Board adopt their fee schedule, and have submitted the required information to the ARB on time;
5. The Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Kern, Mariposa, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, Tuolumne, and Ventura County APCDs, the Feather River, Monterey Bay, and San Joaquin Valley Unified APCDs, and the Bay Area, Lake, Mendocino, North Coast Unified, Northern Sierra, Sacramento Metropolitan, South Coast, and Yolo-Solano AQMDs must adopt district Program fee rules for fiscal year 1998-99 in accordance with Health and Safety Code section 44380(a);
6. The revenues to be assessed under the proposed Fee Regulation are necessary to recover the anticipated Program costs that will be incurred by the Board, the districts, and OEHHA to implement and administer the Act's provisions in fiscal year 1998-99;
7. The proposed Program costs of \$1.27 million for fiscal year 1998-99 reduce the State's cost by 6 percent from the fiscal year 1997-98 and by over 76 percent compared to the fiscal year 1993-94 peak Program costs;
8. The proposed Program costs meet the requirement of Health and Safety Code section 44380(e) to cap State Program costs at \$1.35 million;

9. The proposed Fee Regulation provides for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, districts, and OEHHA to implement and administer the Act in fiscal year 1998-99;
10. The proposed Fee Regulation excludes certain facilities from the State portion of Program fees, as required by Health and Safety Code section 44344.4(b);
11. On the basis of a financial analysis conducted to indicate the economic impacts on affected facilities resulting from the fees proposed in this regulation, the proposed amendments impose no noticeable impact on the profitability of California businesses and will not cause a significant change in employment, business creation, elimination, expansion, or business competitiveness. However, for some businesses operating with little or no margin of profitability, the proposed amendments may have a significant adverse economic impact on the business, or on private persons directly affected by the regulation, including their ability to compete with similar businesses in other states, and the creation, elimination, or expansion of jobs and businesses within the State;
12. This regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants;
13. The Executive Officer addressed a Board directive by forwarding a letter dated January 28, 1998, to all district air pollution control officers encouraging them to "...examine its rapport with facilities subject to this Program to ensure they understand how what they do affects the fees they pay.";
14. The Executive Officer addressed a second Board directive by forwarding a letter dated January 28, 1998, to the President of CAPCOA requesting that their 1990 Prioritization Guidelines be reviewed and updated such that the Guidelines would, "...create a method applied consistently statewide and that results in a more equitable allocation of the State's program costs to the districts.";
15. The staff addressed a third Board directive by holding a two-day workshop, in conjuncture with the staff of OEHHA, in February 1998, to review the Air Toxics "Hot Spots" Program with district staff and provide district staff with technical tools to implement the Program. The staff also held a number of meetings with individual districts and provided technical guidance intended to reduce the fiscal burden on facilities subject to the Program;

WHEREAS, based upon the information presented by the staff and the written and oral comments received at the hearing, the Board further finds that the public and private sectors both encourage the ARB to assist with the development of legislative changes to appropriate monies from the State of California's General Fund to support the State portion of the Air Toxics "Hot Spots" Program costs.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves title 17, CCR, sections 90700-90705 including the appendix referenced therein, as set forth in Attachments A.

BE IT FURTHER RESOLVED that the Board directs the staff to create a working group and meet to consider legislative changes to the currently mandated method of recovering the State's Air Toxics "Hot Spots" Program costs for proposal by the ARB or affected parties.

I hereby certify that the above is a true and correct copy of Resolution 98-50, as adopted by the Air Resources Board.

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Pat Hutchens, Clerk of the Board

Resolution 98-50

October 22, 1998

**Identification of Attachments to the Resolution**

**Attachment A:** Amendments to title 17, CCR, sections 90700-90705 including the Appendix referenced therein, as appended to the Staff Report released September 4, 1998.

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