

State of California
AIR RESOURCES BOARD

Resolution 97-41

November 13, 1997

Agenda Item No.: 97-9-1

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 which 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 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 sections 90700 et seq. of Title 17 of the California Code of Regulations 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, 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 which requires all districts, except for districts that have submitted specified information to the Board by April 1 of each year, to adopt rules which 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 on September 26, 1996, effective April 22, 1997;

WHEREAS, Health and Safety Code section 44380(e) caps the State portion of Program fees at \$2 million for fiscal year 1997-98 and the budget currently proposed for the State portion of fees for fiscal year 1997-98 is \$1.35 million;

WHEREAS, the amendments to the 1996-97 Fee Regulation approved by the Board on September 26, 1996, and adopted by the Board on April 7, 1997, set forth in sections 90700 et seq. of Title 17 of the California Code of Regulations 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 1996-97;

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 1997-98 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 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, based upon the information presented by the staff and the written and oral comments received prior to and at the hearing, the Board finds that:

1. The proposed amendments will continue to reduce the State portion of the Program's budget while maintaining sufficient resources to accomplish important Program elements. 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 in order to protect public health as mandated by reducing 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 Imperial, Lassen, Santa Barbara, and Tuolumne County Air Pollution Control Districts (APCDs), the Great Basin Unified APCD, and the Mojave Desert and the South Coast Air Quality Management Districts (AQMDs) have requested that the Board adopt their fee schedule, and have submitted the required information to the ARB on time;
5. The Amador, Antelope Valley, Butte, Calaveras, Colusa, El Dorado, Glenn, Kern, Mariposa, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama 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, and Yolo-Solano AQMDs must adopt district Program fee rules for fiscal year 1997-98 in accordance with Health and Safety Code section 44380(a);
6. The revenues to be assessed under the proposed Fee Regulation are reasonably 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 1997-98;
7. The proposed Program costs include a permanent reduction in accordance with the five-year plan presented to, and endorsed by, the Board in 1993, and additional Program reductions which reduce the State's cost by over 71 percent compared to the fiscal year 1993-94 baseline for the five-year plan;
8. The proposed Program costs of \$1.35 million for fiscal year 1997-98 meets the requirement of Health and Safety Code section 44380(e) to cap State Program costs at \$2 million for fiscal year 1997-98;
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 1997-98;
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, 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 California Air Pollution Control Officers Association (CAPCOA) Prioritization Guidelines that districts use to prioritize their facilities, which can be the basis for a facility's Hot Spots fees, have not been revised since 1990;
14. The CAPCOA Prioritization Guidelines allow districts flexibility in the methods used to prioritize their facilities; and
15. Concerns have been raised about the timeliness of Program related communications between the districts and their facilities.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 90700-90705 of Title 17 of the California Code of Regulations including the appendix referenced therein, as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt sections 90700-90705 of Title 17 of the California Code of Regulations, after making the modified regulatory language, and additional supporting documents and information, available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification, and additional supporting documents and information, as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to write the California Air Pollution Control Officers Association (CAPCOA), urging CAPCOA to review and consider updating the CAPCOA Prioritization Guidelines, and to offer the assistance of ARB staff in this effort.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the districts to improve and streamline the Hot Spots Program. These efforts are to include: providing technical assistance to the districts in improving Program efficiency and reducing Program fees; informing districts if their prioritization methods will yield a fee structure significantly different from other districts; urging districts generally to keep their facilities better

informed of their status in the Hot Spots Program and the fees potentially resulting from that status; and urging districts specifically to notify facilities of their prioritization scores in time to allow corrections before final categorization of the facility.

I hereby certify that the above is a true and correct copy of Resolution 97-41, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

Identification of Attachments to the Resolution

Attachment A: Amendments to Title 17, California Code of Regulations, sections 90700-90705 including the Appendix referenced therein, as appended to the Staff Report released August 8, 1997.

Attachment B: Staff's Suggested Changes to the proposed amendments referenced in Attachment A, distributed at the November 13, 1997, hearing.