

Updated Informative Digest

Sections Affected: Amendment of sections 90700-90705, Titles 17 and 26, California Code of Regulations (CCR) and Appendix A to sections 90700-90705 (The Air Toxics "Hot Spots" Fee Regulation).

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code section 44300 et seq.) established a program to inventory air toxic emissions from stationary sources, and to assess the potential risk to public health they may cause. Facilities with toxic emissions that pose potentially significant health risks, must inform residents living nearby of the potential risk. Some of these facilities may also be required to lower their toxic emissions. The Act specifies activities which must be carried out by the Air Resources Board (ARB), the Office of Environmental Health Hazard Assessment (OEHHA), and local air pollution control districts and air quality management districts (districts), to implement the Act.

In accordance with Health and Safety Code section 44380, all of the State's and districts' Hot Spots Program (Program) costs must be recovered by assessing fees on facilities subject to the requirements of the Act. To do this, the ARB annually adopts a fee regulation. Districts may request to have the ARB adopt fee schedules for them, provided they submit District Board approved Program costs to the ARB by April 1, prior to the applicable fiscal year. Other districts must adopt district fee rules to recover their portion of the State's cost and their district's cost of implementing the Program.

The Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), including the List of Substances, was first adopted in 1988. The List of Substances is used to determine whether a facility is subject to the emission reporting and fee requirements of the Act. This list is contained in the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355.

At a public hearing held on July 28, 1994 the ARB staff proposed amendments to the Fee Regulation for fiscal year 1994-95 for the ARB's consideration. Titles 17 and 26, CCR, sections 90700-90705, the Fee Regulation, and Appendix A to it, are affected by adoption of these amendments.

Background: At a public hearing on July 8, 1993 the ARB adopted Resolution 93-48, the amendments to the Fee Regulation for fiscal year 1993-94. These amendments established facility fees for twelve districts that met the criteria for ARB adoption of district Hot Spots fee schedules. The major amendments to the fiscal year 1993-94 Fee Regulation included changes in the State's and districts' costs to be recovered, and a new method to distribute the State's cost and calculate facility fees.

The Act was amended in 1992 by Senate Bill 1378 (McCorquodale; Statutes of 1992, Chapter 375). Senate Bill 1378 (now Health and Safety Code section 44380(a)(3)) requires that Hot Spots fees be based on toxic emissions and health risk priority to the extent practicable. Because a statewide, approved toxics emission inventory was not yet complete, we could not consider the option of basing fees solely on air toxic emissions for fiscal year 1993-94. To comply with Health and Safety Code section 44380(a)(3), the ARB staff developed a new method for calculating the distribution of the State's cost based on facility risk priority. This same basis was used to calculate facility fees for the twelve districts which requested the ARB to adopt their fee schedules. The facility program category method bases assessments to the districts to recover the State's cost and calculate facility fees on the number of facilities each district has in specific Program categories. In general, facilities, whose toxic emissions potentially pose the greatest risk, are assessed the highest costs.

Senate Bill 1731 (Calderon; Statutes of 1992, Chapter 1162) also amended the Act in 1992. Senate Bill 1731 (now Health and Safety Code sections 44360 (2-3) and sections 44390-44394) requires facilities, determined by the district to pose a potentially significant health risk, to audit their emissions and develop a plan to reduce their toxic emissions. Within five years, these facilities must reduce their toxic emissions below a district established significance level. This legislation also requires the OEHHA to develop new risk assessment guidelines and requires the ARB to provide guidance to smaller businesses that are required to reduce their toxic emissions below the level of significance. The State's Program budget for fiscal year 1993-94 of \$5,170,000, included an increase of \$1,463,000 for this work.

In fiscal year 1993-94, the ARB and OEHHA staffs evaluated the status of the Program and predicted future resource needs. In light of this evaluation, and because the Program is maturing, a five-year plan was prepared that, absent new legislation, will result in a Program cost reduction of about 40 percent. The plan is now being implemented and costs for fiscal year 1994-95 reflect this.

The amendments to the Fee Regulation for fiscal year 1994-95, contained in Resolution 94-51, were approved by the ARB at the July 28, 1994 hearing. These amendments are summarized below.

Recovery of the State's Cost: The amendments to the Fee Regulation updated the amount that each of the State's 34 districts must remit to the State to recover the costs of the ARB and the OEHHA to implement the Program for fiscal year 1994-95.

The State's budget for fiscal year 1994-95 is \$4,987,000. This includes a five-year plan permanent cost reduction of \$183,000. However, Program savings from prior fiscal years allowed the ARB to carry-over \$150,000 and the OEHHA to carry-over \$600,000. With these carry-overs, the State's cost is reduced to \$4,237,000. This is an overall cost reduction of \$933,000, or 18 percent, compared to fiscal year 1993-94 cost.

Amendments to the Methodology for Distribution of the State's Cost: The same facility program category method that was adopted for fiscal year 1993-94, with minor modifications, was used to distribute the State's cost. The State's cost for Notification and Audit and Plan facilities was increased because these facilities pose the greatest potential health risk. These same two categories were subdivided to account for complexity. In the distribution of the State's cost, each district was assessed \$15 for each industrywide facility. For calculating fees, the district indexes for Risk Assessment-State facilities were modified, and an index for Risk Assessment (Simple) was added to better reflect workload.

Modifications to Facility Program Category Definitions: The definition of an Industrywide Facility was expanded to include any facility that qualifies to be included in an industrywide emission inventory prepared by the district.

Definitions for Notification (Simple), Notification (Intermediate), Notification (Complex), Audit and Plan (Simple), Audit and Plan (Intermediate), and Audit and Plan (Complex) facilities were added.

The definition of a Risk Assessment-State Facility was updated to specify the new one-year time period of applicability from April 1, 1993 through March 31, 1994.

The definition of a Plan and Report Facility was modified to include facilities submitting an update summary form. This modification was necessary to conform with the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355.

Modifications to Fee Caps: The proposed amendments reduce two fee caps, and establish two additional ones. The fee to be assessed facilities meeting the definition of "small business" was reduced from \$700 to \$300.

The fee cap for the Plan and Report (Simple) category was reduced from \$1,000 to \$800. This is an optional fee cap for districts.

A new provision establishes a reduced State cost for the OEHHA's review of health risk assessments if the facility had its risk assessment prepared for it by its district, using an automated program approved by the ARB. A Risk Assessment-State (Intermediate) facility would be assessed \$1,632. A Risk Assessment-State (Complex) facility would be assessed \$1,909.

A new fee cap is established for the Risk Assessment-District (Simple) category at no more than \$2,000. This is an optional fee cap for districts.

Modification to State Adoption of the Fee Regulation and Facility Fees: A new provision clarifies that the State shall annually adopt a fee regulation that meets the requirements of Health and Safety Code section 44380.

An amendment is proposed that specifies that the State may, rather than shall, annually adopt a fee schedule for a district which requests it to do so.

A new provision allows a district, included in the State's Fee Regulation, the option of adopting its own fee rule as a substitute for the State's Fee Regulation, provided certain criteria are met.

Labor Tracking for Review of Health Risk Assessments: A new provision requires the OEHHA to initiate a program of labor tracking of risk assessment review for purposes of management review and accountability.

Amendment specifying the Minimum Information Included on Billing Invoices: A new provision specifies information that must be included on invoices sent by districts to facilities to recover State and district costs. The invoices must include: 1) facility name and address; 2) name, address, and phone number contact of the district sending the bill; 3) billing date, invoice number, and applicable fiscal year; 4) small business applicability criteria; and 5) a statement saying the bill is required by Health and Safety Code section 44380.

Provision for Billing New Facilities in the Program After Adoption of the Fee Regulation: A new provision specifies a fee for a facility that becomes subject to the Act after State Board adoption of the Fee Regulation. If a facility is required to prepare an Inventory Plan and Report during the applicable fiscal year, it shall pay the Plan and Report (Simple) fee for that fiscal year.

Modifications to Table 1 of the Fee Regulation: Table 1, "Revenues to be Remitted to Cover State Costs by Air Pollution Control District", was changed to reflect revised State costs and to reflect updated facility counts provided by the districts.

Modifications to Table 2 of the Fee Regulation: Table 2, "District Costs to be Recovered Through the Fee Regulation", was revised to reflect updated costs of the districts for Program implementation for fiscal year 1994-95. Table 2 was also revised to reflect changes in the districts requesting the ARB's assessment of fees. District costs for the Imperial and Mariposa County Air Pollution Control Districts (APCD) and the Yolo-Solano Air Quality Management District (AQMD) were added to Table 2; costs for the Calaveras and Placer County APCDs and the Sacramento Metropolitan AQMD were deleted from Table 2.

Modifications to Table 3 of the Fee Regulation: Table 3, "Cost per Facility by District and Facility Program Category", was revised to reflect updated facility fees for the Kern, Lassen, Mendocino, Santa Barbara, and Tuolumne County APCDs; the Great Basin and San Joaquin Valley Unified APCDs; and the Mojave Desert and South Coast AQMDs. Fee schedules for the Imperial and Mariposa County APCDs and the Yolo-Solano AQMD were added to Table 3. Fee schedules for the Calaveras, and Placer County APCDs and the Sacramento Metropolitan AQMD were deleted. These three districts, as well as 19 other

districts, are required by law to adopt district fee rules for fiscal year 1994-95.

The methodology used to calculate facility fees, for the above twelve districts, was the same that was used to calculate the distribution of the State's cost. As in past years, an adjustment factor of five percent was added to each district's cost to be recovered before calculating facility fees. Facility fees in Table 3 of the Fee Regulation are the sum of the district cost and State cost for each program category.

Modifications to Table 4 of the Fee Regulation: Table 4, "Fees for Survey and Industrywide Facilities", was updated to reflect revised district-specified flat fees. Fees for Survey and Industrywide facilities range from \$15 to \$250.

District Fee Rule Adoption: Twenty-two districts chose to adopt district rules to recover their State and district Program costs in fiscal year 1994-95. These districts are the following: the Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Siskiyou, Tehama, and Ventura County APCDs; the Monterey Bay Unified APCD; the Bay Area, Feather River, Lake County, North Coast Unified, Northern Sierra, Shasta County, and the Sacramento Metropolitan AQMDs.

Toxic Inventory Updates: Appendix A, "Air Pollution Control District Air Toxic Inventories, Reports or Surveys", was revised to include an updated San Joaquin Valley Unified APCD toxic inventory entitled "San Joaquin Valley Unified APCD Toxics List, February 25, 1994". The San Luis Obispo County APCD made an addition to its toxic emission inventory entitled "Additions to List of District's Toxics Inventory, January 6, 1994".