

**Final Regulation Order
for the Air Toxics “Hot Spots” Fee Regulation
for Fiscal Year 2001-2002**

Note: Language to be added is underlined and Language to be removed is shown in strikeout. Asterisks (****) indicate that a portion of the regulation is not included here.

Amend Sections 90700 – 90704, and Tables 1, 2, 3a, 3b, 3c, and Table 4 and the text in Section 90705 of title 17, California Code of Regulations to read as follows:

Subchapter 3.6 Air Toxics “Hot Spots” Fee Regulation

Article 1. General

90700. Purpose and Mandate.

- (b) Each district with jurisdiction over facilities meeting the criteria set forth in Section 90702(a) shall annually collect from the operator of each such facility, and each operator shall pay, fees which shall provide for the following:
 - (1) Recovery of anticipated costs to be incurred by the State Board and the Office to implement and administer the Act, as set forth in Table 1 of this regulation for fiscal year 2001-2002, and as determined by the Executive Officer for subsequent fiscal years, and any costs incurred by the Office or its independent contractor for review of facility risk assessments submitted to the State after March 31, 1995 under Health and Safety Code Section 44361(c).

- (c) Beginning in fiscal year 2002-2003, the ARB staff will prepare an annual status report that will summarize the State program costs, the Board activities supported by the fees, and the district costs. This report will be sent to the members of the Air Resources Board and the air pollution control and air quality management districts and will be made available to the public 90 days after the Executive Officer has determined the fees for the applicable fiscal year.

NOTE: Authority cited: Sections 39600, 39601, and 44380, Health and Safety Code.

Reference: Sections 44320, 44361, and 44380, Health and Safety Code.

90701. Definitions.

- (e) "Facility Data List" means a list of facilities, including the information set forth in Section 90704(ef)(3).

- (v) "Risk of 50.0 to Less Than 100.0 Per Million Facility (Simple)" means a facility that meets the criteria set forth in Section 90701(s), and has one or two processes as determined by six-digit SCC.

- (aa) "Small Business" for the purposes of Section 90704(gh)(2) means a facility which is independently owned and operated and has met all of the following criteria in the preceding year: 1) the facility has 10 or fewer (annual full-time equivalence) 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 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.

- (ap) "Executive Officer" means the Executive Officer of the California Air Resources Board.

- (aq) "State Facility Fee Rate" means the dollar value of the State fee assessed for each facility in a particular Facility Program Category.

NOTE: Authority cited: Sections 39600, 39601, 44380, and 44380.5, Health and Safety Code. Reference: Sections 44320, 44344.4, 44380, and 44380.5, Health and Safety Code.

Article 2. Applicability

90702. Facilities Covered.

- (b) On or before July 1 for fiscal year 2001-2002, and September 1 for subsequent fiscal years of the applicable fiscal year, each district shall provide to the State Board a list

of facilities meeting any one or more of the criteria specified in subdivision (c) and (d) of this section. The list of facilities shall include the facility's name, identification number, and documentation of the exemption or exemptions any facility qualifies for under this section.

- (c) A facility shall be excluded from the calculation of the distribution of the State's cost specified in Section 90703(a) by July 1 for fiscal year 2001-2002, and September 1 for subsequent fiscal years ~~of the applicable fiscal year~~, if any one or more of the following criteria is met:

- (d) For fiscal year 2001-2002, Aa facility shall be excluded from the fee schedule calculated in accordance with Section 90704(~~de~~)-(gh) and from the fee schedule set forth in Table 3 ~~for the applicable fiscal year~~ if (1) it qualifies for exclusion pursuant to subdivision (c) of this section, (2) it is located in a district which has met the requirements of Section 90704(~~eb~~) and (3) the district has requested State Board adoption of a fee schedule. Exclusion from fee schedules under this subdivision does not exempt a facility from any other applicable requirement under this title.

- (e) Commencing July 1, 2002, a facility shall be excluded from the fee schedule calculated in accordance with Section 90704(e)-(h) if it qualifies for exclusion pursuant to subdivision (c) of this section as of September 1 of the applicable year, and is located in a district that is recovering district costs pursuant to Section 90704(e)(5).

NOTE: Authority cited: Sections 39600, 39601, 44321, 44344.4, 44344.7, and 44380, Health and Safety Code. Reference: Sections 44320, 44321, 44322, 44344.4, 44344.7, and 44380, Health and Safety Code.

Article 3. Fees

90703. District Board Adoption of Fees.

Except for the districts that have fulfilled all of the requirements specified in Section 90704(b) and (e)(5), every district shall annually adopt a rule or regulation which recovers the costs specified in 90700(b), unless the district rule or regulation contains a specific provision for automatic readoption of the rule or regulation annually by operation of law.

- (a) Except as specified in subdivision (b) of this section, or in Section 90702(c) and (d), the State Board shall calculate each district's share of state costs on the basis of the

number of facilities in Facility Program Categories as defined in Sections 90701 (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (ae), (ah), (ai), (aj), (ak), (al), (am), (an), and (ao).

- (1) For the purposes of subdivision (a) of this section, the district shall set forth the facilities that are in the described program categories on or before July 1 for fiscal year 2001-2002, and September 1 for subsequent fiscal years ~~of the applicable fiscal year.~~

NOTE: Authority cited: Sections 39600, 39601, 44321, and 44380, Health and Safety Code. Reference: Sections 44320, 44321, 44322, 44361, and 44380, Health and Safety Code.

90704. State Board Adoption of Fees.

- (a) The State Board shall ~~annually~~ adopt a regulation for fiscal year 2001-2002 which meets the requirements of Health and Safety Code Section 44380(a). Districts whose fee schedules are included in this regulation under Section 90704(b) are subject to the provisions of subdivisions (d)-(ij) of this section.
- (b) The State Board may annually adopt a fee schedule which assesses a fee upon the operators of facilities subject to this regulation, and which identifies and provides for the recovery of ~~both state costs~~ for the applicable fiscal year and district costs for fiscal year 2001-2002 to administer and implement the Act pursuant to Section 90700(b), for facilities located in districts that have completed all of the following requirements:
 - (1) The district board has approved, and adopted by resolution, the cost of implementing and administering the Act for ~~the applicable~~ fiscal year 2001-2002 as specified in Section 90700(b)(2);
 - (2) The district has submitted a written request specifying the amount to be collected for ~~the applicable~~ fiscal year 2001-2002, through fees established by the State Board regulation, as calculated pursuant to Section 90704(d),(e),(f),(g), ~~and (h), and (i)~~ and including documentation of the costs;

- (3) The district has submitted the resolution, request and documentation specified in subsections (1) and (2) to the State Board by April 1, 2001 preceding the applicable fiscal year.
- (c) Any district whose fee schedule is included in this regulation pursuant to Section 90704(b)(1) - (3) may, as a substitute for this regulation, adopt a district fee rule for fiscal year 2001-2002 that meets the requirements of Section 90700(b), provided that the district informs the Executive Officer of the State Board in writing.
- (d) Beginning in fiscal year 2002-2003, the Executive Officer will annually develop a fee schedule by applying the applicable State Facility Fee Rate contained in Table 3, or the \$35 flat fee for Industrywide facilities, to each facility subject to the Fee Regulation in the Facility Data List provided by the districts pursuant to Section 90702. Districts whose fee schedules are included in this regulation under Section 90704(e)(5) are subject to the provisions (d)-(i) of this section.
- ~~(d)~~ Calculation of Fees.
- (1) The State Board shall establish the fee applicable to each facility for the recovery of state and district costs and shall notify each district in writing ~~each year~~ of the amount to be collected from each facility and of the amount of revenue which the district must remit to the State Board for reimbursement of state costs, as set forth in Table 1. When calculating the fees, the State Board shall use the State costs in Table 1 and the district costs in Table 2 for fiscal year 2001-2002, and shall take into account and allow for the unanticipated closing of businesses, nonpayment of fees, and other circumstances which would result in a shortfall in anticipated revenue.
- (2) Beginning in fiscal year 2002-2003, the Executive Officer will annually develop a fee schedule by applying the applicable State Facility Fee Rate contained in Table 3, or the \$35 flat fee for Industrywide facilities, to each facility subject to the Fee Regulation in the Facility Data List provided by the districts pursuant to Section 90702, and shall notify each district in writing of the amount to be collected from each facility and the amount of revenue

which the district must remit to the State Board for reimbursement of the State costs.

- (23) The State Board shall calculate fees on the basis of the Facility Data List as set forth by the district by July 1 ~~of the applicable fiscal year~~ for fiscal year 2001-2002, except for facilities excluded under Section 90702(c) or covered by Section 90704(fg) and (gh). For purposes of calculation of a district's share of State costs under this subdivision and under Section 90703(a), the number of State Industrywide facilities shall be used instead of the number of Industrywide facilities. Facilities that meet the Industrywide Facility definition but do not meet the State Industrywide Facility definition shall be placed in the appropriate Facility Program Category for purposes of calculation of a district's share of the State's costs. Districts may still assess facilities that meet the Industrywide definition but not the State Industrywide definition the fees listed in Table 4 for fiscal year 2001-2002.
- ~~(4)~~ Beginning in fiscal year 2002-2003, the Executive Officer shall make an annual determination of the fees on the basis of the Facility Data List set forth by the district by September 1 of the applicable fiscal year, except for facilities excluded under Section 90702(c) or covered by Section 90704(g) and (h). For purposes of calculation of a district's share of State costs under this subdivision and under Section 90703(a), the number of State Industrywide facilities shall be used instead of the number of Industrywide facilities. Facilities that meet the Industrywide Facility definition but do not meet the State Industrywide Facility definition shall be placed in the appropriate Facility Program Category for purposes of calculation of a district's share of the State's costs.
- ~~(5)~~ Beginning in fiscal year 2002-2003 and for subsequent fiscal years, districts that do not have a locally adopted fee regulation are authorized to collect fees to recover local program costs up to, but not to exceed, the amount of the State Facility Fee Rate on a per-facility basis. Districts making use of this provision shall provide a summary of the district program costs to ARB by September 1 of the applicable fiscal year.

(6) No later than December 1 of the applicable fiscal year, beginning in December of fiscal year 2002-2003, the Executive Officer shall make a final determination of the State Program fee amounts and the apportionment of those amounts to the districts, as calculated based on the State Facility Fee Rate and Facility Data List.

(ef) Fees Based on Facility Program Category.

(1) The State Board shall provide a flat fee per facility based on the facility program category of the facility as set forth in the State Facility Fee Rate in Tables 3 for all applicable fiscal years, and Table 4 for fiscal year 2001-2002. For fiscal year 2002-2003 and beyond, the fee for the Industrywide category shall be \$35. The Facility Program Categories for Table 3 are Prioritization Score Greater Than Ten (10.0) (Complex); Prioritization Score Greater Ten (10.0) (Medium); Prioritization Score Greater Than Ten (10.0) (Simple); Risk of 10.0 to Less Than 50.0 Per Million (Complex); Risk of 10.0 to Less Than 50.0 Per Million (Medium); Risk of 10.0 to Less Than 50.0 Per Million (Simple); Risk of 50.0 to Less Than 100.0 Per Million (Complex); Risk of 50.0 to Less Than 100.0 Per Million (Medium); Risk of 50.0 to Less Than 100.0 Per Million (Simple); Risk of 100.0 Per Million, or Greater (Complex); Risk of 100.0 Per Million, or Greater (Medium); Risk of 100.0 Per Million, or Greater (Simple); Tracking (Complex); Tracking (Medium); Tracking (Simple); Unprioritized (Complex); Unprioritized (Medium); and Unprioritized (Simple). The Facility Program Category for Table 4 is State Industrywide.

(3) A district shall provide to the State Board, by July 1, 2001, and for subsequent fiscal years by September 1 of the applicable fiscal year, a Facility Data List. The Facility Data List shall contain the following information: (a) the district abbreviation, (b) the county ID, (c) the name and facility identification number, (d) the Standard Industrial Classification Code of the facility, (e) the number of Source Classification Codes, (f) complexity (Simple, Medium, Complex), (g) prioritization score, (h) health risk assessment results, (i) whether or not the health risk assessment has

been reviewed by OEHHA, (j) whether or not a screening risk assessment was performed, (k) reason excluded from calculation of the State's cost under the previously applicable fiscal year's Air Toxics "Hot Spots" Fee Regulation, (l) whether or not the facility is a state industrywide facility, (m) whether or not the facility is a small business as defined under Section 90701 (aa), (n) whether or not the facility is a District Update Facility as defined under Section 90701 (c), and (o) former Facility Program Category for the previously applicable fiscal year. The district shall provide the SIC Code for facilities being added to the State Industrywide Facility category.

(fg) Specified Flat Fees.

- (1) An Industrywide Facility shall be assessed the flat fee specified in Table 4 for fiscal year 2001-2002, and \$35 per Industrywide facility for subsequent fiscal years. If a facility was previously assessed, and has paid, a fee pursuant to the Facility Program Categories specified for Table 4, subsequent fees pursuant to Table 4 shall be waived by the district, if the district determines that there are insignificant costs with respect to said facility under the Act.
- (2) A facility in the State Industrywide Facility Program Category, as defined by Section 90701(ae), shall be assessed the flat fee specified in Table 4 for fiscal year 2001-2002, and \$35 per industrywide facility for subsequent fiscal years.

(gh) Other Flat Fees.

- (1) Pursuant to the provisions of Section 44380.5 of the Health and Safety Code, the supplemental fee which may be assessed upon the operator of a facility, to cover the direct costs to the district to review the information supplied, shall be no higher than \$2,000.
- (2) The maximum fee that a small business, as defined in Section 90701(aa), shall pay will be \$300.
- (3) If in the judgment of a district the action will not result in a shortfall in revenue, a district may request the fee for the Unprioritized (Simple) category be set at no more than \$800.

(4) Pursuant to the provisions of Section 44344.4(b) of the Health and Safety Code, the operator of an Update Facility may be assessed a fee of no higher than \$125 to cover the direct cost to the district to review the facility's quadrennial emission inventory update submitted under Health and Safety Code Section 44344. Beginning with Fiscal Year 1997-98, a district may assess a higher fee to review quadrennial emission inventory updates if it adopts written findings that the costs of processing the emission inventory update exceed \$125 and submits those findings to the State Board by ~~April 4~~ June 30 preceding the applicable fiscal year. The fee adopted shall be no higher than that supported by the written findings.

(hi) ~~For fiscal year 2001-2002, C~~costs to be recovered by the regulation adopted by the State Board pursuant to subdivision (b) of this section shall be calculated as follows: Each district board shall approve its anticipated costs to implement and administer the Act. The Air Resources Board will subtract from this amount anticipated revenues from collection of the flat fee specified in Section 90704(fg); and any excess revenues obtained by the district pursuant to Section 90705(c). When submitting board-approved program costs to the State Board, the district shall include a breakdown of how the collected fees will be used.

(ij) Districts shall reimburse the State in accordance with Health and Safety Code Section 44361(c) for review of facility risk assessments submitted to the State after March 31, 1995.

NOTE: Authority cited: Sections 39600, 39601, 44344.4, and 44380, Health and Safety Code. Reference: Sections 44320, 44322, 44344.4, 44361, 44380, and 44380.5, Health and Safety Code.

90705. Fee Payment and Collection.

(a) Each district shall notify and assess the operator of each facility subject to this regulation in writing of the fee due. Except as provided in Sections 90702(c) and (d), 90703, 90704(fg), and 90704(gh), each district shall use the facility program category as the basis for billing. The operator shall remit the fee to the district within 60 days after the receipt of the fee assessment notice or the fee will be considered past due. If an operator fails to pay the fee within 60 days of this notice, the district shall assess a penalty of not more than 100 percent of the assessed fee, but in an amount sufficient,

in the district's determination, to pay the district's additional expenses incurred by the operator's non-compliance. If an operator fails to pay the fee within 120 days after receipt of this notice, the district may initiate permit revocation proceedings. If any permit is revoked it shall be reinstated only upon full payment of the overdue fee plus any late penalty, and a reinstatement fee to cover administrative costs of reinstating the permit.

- (d) If a district does not collect sufficient revenues to cover ~~both the district program costs and~~ the portion of the state costs that the district is required to remit to the State Board for a particular fiscal year due to circumstances beyond the control of the district, the district shall notify the Executive Officer of the State Board prior to ~~April 1~~ June 30 of the year following the applicable fiscal year and may for demonstrated good cause be relieved by the Executive Officer from an appropriate portion of the fees the district is required to collect and remit to the state.

Circumstances beyond the control of the district may include but are not limited to plant closure or refusal of the facility operator to pay despite permit revocation or other enforcement action. Documentation of the circumstances resulting in the shortfall shall be submitted to the ARB upon request. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to this regulation.

- (1) A district for which the State Board has adopted a fee schedule pursuant to Section 90704(b) in fiscal year 2001-2002, or Section 90704(d) in subsequent years, may, upon notifying the Executive Officer of the State Board, carry over all or a portion of such shortfall in revenue from one to four fiscal years after the shortfall was discovered and add the shortfall amount to its program costs for each such subsequent fiscal year.

Notes: Authority cited: Sections 39600, 39601, and 44380, Health and Safety Code. Reference: Section 44380, Health and Safety Code.

Table 1

Revenues to be Remitted to Cover State Costs By Districts

<i>District</i>	<i>Revenues to be Remitted</i>	
Amador	1,346	105
Antelope Valley	9,263	8,248
Bay Area	83,371	<u>121,307</u>
Butte	9,296	<u>4,433</u>
Calaveras	0	
Colusa	0	
El Dorado	3,738	<u>6,441</u>
Feather River	12,492	<u>535</u>
Glenn	455	<u>140</u>
Great Basin	5,109	<u>5,004</u>
Imperial	10,775	<u>9,620</u>
Kern	589	<u>694</u>
Lake	0	<u>70</u>
Lassen	3,129	<u>3,129</u>
Mariposa	507	
Mendocino	4,720	<u>7,555</u>
Modoc	70	<u>0</u>
Mojave Desert	22,295	<u>22,015</u>
Monterey	5,985	<u>4,109</u>
North Coast	1,502	<u>1,607</u>
Northern Sierra	7,215	<u>805</u>
Northern Sonoma	70	<u>70</u>
Placer	11,147	<u>10,945</u>
Sacramento	9,232	<u>19,647</u>
San Diego	138,231	<u>113,949</u>
San Joaquin Valley	53,023	<u>45,435</u>
San Luis Obispo	350	<u>560</u>
Santa Barbara	35,888	<u>28,688</u>
Shasta	-12,054	<u>9,088</u>
Siskiyou	5,873	<u>5,069</u>
South Coast	578,153	<u>478,158</u>
Tehama	67	<u>1,257</u>
Tuolumne	700	
Ventura	49,996	<u>29,934</u>
Yolo-Solano	5,698	<u>5,978</u>
TOTAL	1,082,339	<u>\$945,802</u>

Table 2

District Costs to be Recovered Through the Fee Regulation

<i>District</i>		<i>Anticipated District Costs*</i>
Antelope Valley	13,340	<u>12,570</u>
Great Basin	5,520	<u>3,570</u>
Imperial	770	
Lassen	2,089	<u>2,489</u>
Mojave Desert	35,135	<u>31,985</u>
Santa Barbara		50,000
TOTAL	106,854	<u>\$100,614</u>

* These amounts may reflect adjustments for excess or insufficient revenues under sections 90705 (c) and (d)(1).

Table 3a
 Cost per Facility by District and Facility Program Category

District	<i>Unprioritized (Simple)</i>	<i>Unprioritized (Medium)</i>	<i>Unprioritized (Complex)</i>	<i>Tracking (Simple)</i>	<i>Tracking (Medium)</i>	<i>Tracking (Complex)</i>
State Portion Of Facility Fee Rate	402	603	804	67	100	134
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Total Fee (State Portion + District Portion)						
Antelope Valley						
Great Basin	1,043 <u>780</u>	1,565 <u>1,170</u>	2,086 <u>1,560</u>			
Imperial				88		
Lassen						
Mojave Desert	800	4,294 <u>4,143</u>		477 <u>460</u>	715 <u>690</u>	954 <u>921</u>
Santa Barbara				396 <u>344</u>	594 <u>516</u>	792 <u>688</u>

Table 3b
 Cost per Facility by District and Facility Program Category

District	<i>Score >10 (Simple)</i>	<i>Score >10 (Medium)</i>	<i>Score >10 (Complex)</i>	<i>Risk >=10 < 50 (Simple)</i>	<i>Risk >=10 < 50 (Medium)</i>	<i>Risk >=10 < 50 (Complex)</i>
State Portion Of <u>Facility Fee Rate</u>	1,674	2,009	2,344	3,014	3,349	3,684
<hr/>						
Total Fee (State Portion + District Portion)						
Antelope Valley		7,832 <u>7,113</u>				11,060 <u>10,150</u>
Great Basin	3,170 <u>2,555</u>					
Imperial					3,732	4,088
Lassen		5,378 <u>4,498</u>				
Mojave Desert					10,730 <u>10,428</u>	11,476 <u>11,157</u>
Santa Barbara				8,607 <u>7,725</u>	9,274 <u>8,337</u>	9,935 <u>8,949</u>

Table 3c
 Cost per Facility by District and Facility Program Category

District	<i>Risk</i> ≥ 50 < 100 (Simple)	<i>Risk</i> ≥ 50 < 100 (Medium)	<i>Risk</i> ≥ 50 < 100 (Complex)	<i>Risk</i> ≥ 100 (Simple)	<i>Risk</i> ≥ 100 (Medium)	<i>Risk</i> ≥ 100 (Complex)
State Portion Of Facility Fee Rate	4,353	4,688	5,023	5,693	6,028	6,363
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Total Fee (State Portion + District Portion)						
Antelope Valley						
Great Basin						
Imperial						
Lassen						
Mojave Desert			14,045 <u>13,676</u>			
Santa Barbara		11,597 <u>10,507</u>				

Table 4*

District Fees for Industrywide and District Update Facilities

<i>District</i>	<i>Industrywide Facilities</i>	<i>District Update Facilities</i>
Antelope Valley	0	125
Great Basin	60 25	125 250
Imperial	35	38.50
Lassen	0	0
Mojave Desert	0	125
Santa Barbara	95 60	125

* State cost per facility is consistent statewide as follows:
 State Industrywide facilities: \$35