

Final Statement of Reasons

For Rulemaking

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS
"HOT SPOTS" FEE REGULATION**

Public Hearing Date: October 25, 2001
Agenda Item No.: 01-8-3

California Environmental Protection Agency



Air Resources Board

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses**

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I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking (Staff Report), entitled "Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 2001-2002," released September 7, 2001, is incorporated by reference herein.

On October 25, 2001, the Air Resources Board (ARB) conducted a public hearing to consider the adoption of amendments to the text in sections 90700-90705, and to Tables 1, 2, 3a, 3b, 3c and 4, in section 90705, as determined by sections 90700-90705, title 17, California Code of Regulations (CCR). After considering the staff's recommendation, the ARB approved Resolution 01-47, the amendments to the Fee Regulation, sections 90700-90705, title 17, CCR. As required by Health and Safety Code section 44380, the Fee Regulation is designed to recover the anticipated costs incurred by the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) to implement the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code sections 44300-44394) for the 2001-2002 fiscal year.

The Fee Regulation establishes the share of the State's cost for each of the 35 air pollution control districts, or air quality management districts (district). The current Fee Regulation also establishes fee schedules for five districts for fiscal year 2001-2002. Each of the remaining 30 districts must adopt a fee rule that provides for the recovery of its district costs for fiscal year 2001-2002.

At the hearing, the staff presented, and the Board approved modifications to the regulations originally proposed in the Staff Report. These modifications were made due to further clarification of data submitted by the districts.

Resolution 01-47 presents the findings of the Board and the Board's approval of the changes to the Fee Regulation. These changes are discussed in greater detail in the Staff Report and the 15-day changes made available to the public on

November 30, 2001. These changes are summarized as follows.

- 1) Table 1 of the Fee Regulation was amended to reflect recalculations based on updated facility program data.
- 2) Table 2 of the Fee Regulation was amended to reflect changes in the districts' Program costs for the five districts requesting ARB adoption of their fee schedule for fiscal year 2001-2002.
- 3) Facility fees in Tables 3a, 3b, and 3c of the Fee Regulation were amended to reflect changes in the districts' Program costs, updated facility counts in Program fee categories, and updated facility Program data for the districts requesting that the ARB adopt their fee schedule.
- 4) Table 4 was amended to reflect changes in flat fees for Industrywide facilities and District Update Facilities as specified by the districts requesting that the ARB adopt their fee schedule.
- 5) The Board has approved amendments to the Fee Regulation that will convert the annual update and collection of State fees to an administrative process. For future fiscal years, State Facility Fee Rates for each fee category will remain at current levels. If it becomes necessary to make substantive changes to the Fee Regulation, the staff will return to the Board to amend the Regulation. To help keep the Board, districts, and the public informed about the Program, the ARB staff will prepare an annual status report that will summarize how the State Program costs were assessed and how the funds are being used by the State.

In accordance with section 11346.8 of the Government Code, the Board approved the amendment of section 90705, title 17, CCR.

The ARB has determined that this regulatory action will not have a significant adverse impact on the environment and may 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. Health and Safety Code sections 44391 - 44394 require facilities, determined to pose a potential significant health risk, to lower their emissions below the significance level. This regulatory fee action will fund ARB implementation of this risk reduction effort.

The determinations of the ARB concerning the costs or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The ARB has determined that this regulatory action will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the Act. However, the Board

finds that that these costs are not reimbursable pursuant to Part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, and section 6 of Article XIII B of the California Constitution because the districts have the authority to levy fees sufficient to recover costs of the mandated Program (Health and Safety Code section 44380). These fees are intended to recover the full costs of district implementation of the Air Toxics "Hot Spots" Program, including compliance with the amended Fee Regulation. The estimated fiscal year 2001-2002 district costs to implement the amended Fee Regulation are approximately 10 percent of each district's total Program costs.

Pursuant to the amended regulation, some local and State government facilities must pay "Hot Spots" fees. In accordance with the Health and Safety Code section 44320, these facilities are subject to the Fee Regulation because: 1) they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report incorporated by reference in title 17, CCR, sections 93300.5, and release the specified quantity of at least one of the four "criteria pollutants" (total organic gases, particulate matter, nitrogen oxides, or sulfur oxides); or 2) they are listed on any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district; and 3) they are not exempted under any of the exemption criteria. The local and State government facilities that are affected by "Hot Spots" fees are some publicly owned treatment works (POTWs), universities, hospitals, and correctional institutions.

The ARB has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some local POTWs. POTWs are subject to the Fee Regulation if they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report, release the specified quantity of at least one of the four criteria pollutants, and are classified by the district in one of the prescribed Facility Program fee categories. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, Article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated Program. ARB staff estimates the total cost for POTWs to comply with the Fee Regulation to be \$26,481 for fiscal year 2001-2002. This amount was slightly different than the amount given in the public hearing notice published September 7, 2001, and was due to a clerical error by a district staff person.

The ARB has also determined that the amended Fee Regulation will impose costs on affected State agencies. The costs to the ARB to implement and administer the Air Toxics "Hot Spots" Program, including the amended Fee Regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of title 17, CCR.

Other affected State agencies (e.g., universities, hospitals, and correctional institutions) that must pay fees pursuant to the amended Fee Regulation as emitters of specified pollutants should be able to absorb their costs within existing budgets and resources. Costs to these

State agencies were estimated to total \$21,274 for fiscal year 2001-2002. This amount was slightly different than the amount given in the public hearing notice and was corrected shortly after the public hearing notice was published.

The ARB has determined that the amended Fee Regulation will not create costs or savings in federal funding to any State agency or program.

The ARB has determined, pursuant to Government Code 11346.5(a)(3)(B), that the regulation will affect small business. Based on an assessment made, the Executive Officer has determined there is a potential cost impact on private persons or businesses directly affected by the Regulation. The Executive Officer has also determined that adopting these amendments may have a significant, adverse economic impact on some businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the ARB has determined that, for businesses operating with little or no margin of profitability, the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board. The imposition of the fees and the requirement that the fees, in the aggregate, cover reasonable anticipated costs of implementing the Program, are mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses. Additionally, existing exemptions will continue to relieve lower risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

Furthermore, the ARB evaluated the alternatives to the proposed amendments submitted to the ARB pursuant to Government Code section 11346.5(a)(7). The ARB considered whether there is a less costly alternative, or combination of alternatives, which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments. The ARB determined that there is no such alternative or combination of alternatives.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received no written comments in connection with the 45-day comment period following the release of the Initial Statement of Reasons. There was no oral testimony presented at the October 25, 2001 hearing. The ARB received no written comments on the modifications during the 15-day comment period. Furthermore, no comments were

submitted by the Office of Small Business Advocate or the Trade and Commerce Agency.