State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

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

Public Hearing Date:	January 25, 1996
Public Availability Date:	March 6, 1996
Deadline for Public Comment:	March 21, 1996

At a public hearing held on January 25, 1996 the Air Resources Board ("ARB"/"Board") considered the adoption of amendments to the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), sections 90700 through 90705, Titles 17 and 26, California Code of Regulations (CCR). As required by Health and Safety Code section 44380, the Fee Regulation is designed to recover the anticipated costs of the ARB and the Office of Environmental Health Hazard Assessment to implement the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code section 44300 et seq.). The Fee Regulation also establishes fee schedules for some air pollution control and air quality management districts (air districts). A facility may be subject to the Act and the Fee Regulation if: 1) it manufactures, formulates, uses or releases a toxic substance listed in Appendix A of the Emission Inventory Criteria and Guidelines Regulation (CCR section 93300 et seq.); or 2) it is listed on an air district toxic inventory or survey. For fiscal year 1995-96 the Fee Regulation establishes each air district's portion of the State's cost and fee schedules for 12 air districts. The remaining 22 air districts are required to adopt fee rules that provide for the recovery of their portion of the State's cost as well as their air district's cost.

The proposed amendments to the Fee Regulation, presented to the ARB at the January 25, 1996 hearing, are described in detail in the Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation (Staff Report), released on December 8, 1995. Modifications to this original proposal were presented for consideration at the hearing and are described in this notice.

At the hearing, after considering the ARB staff's recommendation and the public testimony, the ARB approved the originally proposed amendments and the modifications suggested by the staff at the hearing. Appended to this notice as Attachment A is a copy of Board Resolution 96-2 which sets forth the Board's action. The Executive Officer was directed to adopt sections 90700 through 90705, Titles 17 and 26, CCR, in accordance with the procedures set forth in Government Code sections 11346.4-11346.8, after making the regulation available to the public for a written comment period of 15 days and making modifications, as appropriate, in light of the public comments received. The Executive Officer was directed to adopt the amendments with such additional modifications as may be appropriate in light of the comments received or to present the regulation to the Board for further consideration, if warranted, in light of the comments.

Modifications to the ARB staff's proposal to amend the Fee Regulation that were presented at the January 25, 1996 hearing are as follows:

Modification to proposed section 90701(ad): The proposed definition for "Standard Industrial Classification Code" was modified to incorporate by reference the Standard Industrial Classification Manual, 1987, published by the Executive Office of the President, Office of Management and Budget, 1987. This document is incorporated by reference due to its length. It is available for sale from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161. An abbreviated version of Standard Industrial Classification Codes is available by contacting the ARB.

Modification to proposed section 90702(b): Proposed section 90702(b)(1) was modified to incorporate by reference the California Air Pollution Control Officers Association (CAPCOA) "Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990." A nonsubstantive grammatical correction was made to section 90702(b)(1). Proposed section 90702(b)(2) was modified to incorporate by reference the CAPCOA "Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993." These documents are incorporated by reference because of their length. They are available by contacting the ARB.

Addition to proposed section 90702(b): Proposed section 90702(b) was modified to add subpart (7) which describes criteria for an additional exemption to the Fee Regulation. The additional proposed exemption is for a facility that is a hospital or veterinary clinic, that is in compliance with the control requirements specified in the Ethylene Oxide Control Measure for Sterilizers and Aerators, section 93108 of Title 17, CCR. The facility must also have an annual usage of ethylene oxide of less than 100 pounds per year if it is housed in a single story building, or an annual usage of ethylene oxide of less than 600 pounds per year if it is housed in a multi-story building.

Modification to Table 1, Table 2, and Table 3 of the Fee Regulation: Table 1, "Revenues to be Remitted to Cover State Costs by Air Pollution Control District," was revised to reflect updated facility counts received from the air districts. Table 2, "District Costs to be Recovered Through the Fee Regulation," was modified to reflect changes in air districts' costs to be recovered for the Mojave Desert Air Quality Management District (AQMD), the San Joaquin Valley Unified Air Pollution Control District (APCD), and the Santa Barbara County APCD due to updated facility counts. Tables 3 a, b, and c, "Cost per Facility by District and Facility Program Category," were modified to reflect updated costs and facility counts received from the Imperial, Placer, Santa Barbara, and Tuolumne County APCDs, the Mojave Desert AQMD, and the San Joaquin Valley Unified APCD.

Attachment B to this notice is the Air Toxics Hot Spots Fee Regulation, containing the approved regulatory language. In the Fee Regulation, the proposed modifications described above are indicated with a double underline to indicate a proposed addition to the proposal originally contained in the Staff Report; shading indicates a proposed deletion to the original proposal.

The draft Fee Regulation in the Staff Report, made available with the Notice of Public Hearing, indicated proposed additions with a single underline and deletions ~~lined through~~.

The material described above and all other documentation relied upon in this regulatory action are available for public inspection at the ARB's Public Information Office, 2020 L Street, Sacramento, California, 95814, (916) 322-2990. For further information concerning the proposed revisions, please contact Ms. Genevieve A. Shiroma, Chief, Air Quality Measures Branch, at (916) 322-7072.

Written comments on the proposed modifications shown in Attachment B must be submitted to the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, California, 95812, no later than March 21, 1996, for consideration by the Executive Officer prior to final action. Only comments relating to the modifications or supporting documents and information described in this notice will be considered by the Executive Officer.

Attachments

Attachment A

State of California
AIR RESOURCES BOARD

Resolution 96-2

January 25, 1996

Agenda Item No.: 96-1-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board ("ARB" or the "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 ("the 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 set forth in sections 93300 et seq. 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 April 7, 1995, effective June 6, 1995;

WHEREAS, the amendments to the 1994-95 Fee Regulation approved by the Board on July 27, 1994 and adopted by the Board on April 7, 1995, 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 1994-95;

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 1995-96 which were discussed with the public at six public consultation meetings;

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, changes have been proposed to the originally-noticed text of the regulation based on information presented by the districts regarding costs of implementing the Act and facility Program categories, among other things;

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 two-phased approach is appropriate as it rapidly streamlines the Program while maintaining sufficient resources to accomplish the most important Program elements. Phase I amends the Fee Regulation for fiscal year 1995-96 to exclude certain low priority facilities from fee schedules while lowering fees for all other facilities in the Program, thus reducing State costs. Phase II, planned for Board consideration in mid-1996, is intended to substantially further streamline the Fee Regulation for fiscal year 1996-97 and to streamline the Emission Inventory Criteria and Guidelines Regulation;

2. The ARB and OEHHA are proposing to downsize their Programs to reflect lower revenues that would result from excluding certain facilities in calculating the distribution of the State's cost;

3. Although the proposed approach will 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;

4. The proposed amendments would continue to allocate State costs among the districts based on facility Program categories that reflect potential health risk priority;

5. The Calaveras, Imperial, Lassen, Mariposa, Placer, Santa Barbara, and Tuolumne County Air Pollution Control Districts (APCDs), the Great Basin and San Joaquin Valley Unified APCDs, and the Mendocino County, Mojave Desert, and Yolo-Solano 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;

6. The Amador, Butte, Colusa, El Dorado, Glenn, Kern, Modoc, Northern Sonoma, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama and Ventura County APCDs, the Feather River and Monterey Bay Unified APCDs, and the Bay Area, Lake, North Coast Unified, Northern Sierra, Sacramento Metropolitan, and South Coast AQMDs will be adopting district Program fee rules for fiscal year 1995-96;

7. The revenues to be assessed pursuant to the proposed Fee Regulation are reasonably necessary to recover the anticipated Program costs which will be incurred by the Board, the districts, and OEHHA to implement and administer the Act's provisions in fiscal year 1995-96;

8. 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 50 percent compared to the fiscal year 1993-94 baseline for the five year plan;

9. 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 staff has determined that 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; and

10. 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.

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 them available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulation 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 revise the facility Program categories as necessary to reflect needed revisions brought to the Board's attention through January 25, 1996 only, and to accept no further revisions after that date.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to continue to implement the two-phased approach to further streamline the Program and reduce costs.

I hereby certify that the above is a true and correct copy of Resolution 96-2, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Board Secretary

Attachment B

Proposed Amendments to
the Air Toxics Hot Spots Fee Regulation
For Fiscal Year 1995-96

Note: The text of the proposed amendments as appended to the Staff Report released on December 8, 1995 is shown in underline to indicate additions and ~~strikeout~~ to show deletions. The modifications proposed at the public hearing on January 25, 1996 are shown in double underline to show additions and shading to show deletions.

SUBCHAPTER 3.6 AIR TOXICS "HOT SPOTS" FEE REGULATION

Article 1. General

90700. Purpose and Mandate.

(a) This regulation provides for the establishment of fees to pay for the cost of implementing and administering the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the "Act"; Stats 1987 ch 1252; Health and Safety Code Section 44300 et seq.).

(b) Each district with jurisdiction over facilities meeting the criteria set forth in Section 90702(a)(1), (a)(2), and (a)(3) 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, and <u>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).</u>

(2) Recovery of anticipated costs to be incurred by the district to implement and administer the Act, including but not limited to the cost incurred to: review emission inventory plans, review emission inventory data, review risk assessments, verify plans and data, and administer this regulation and the Air Toxics "Hot Spots" program.

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

90701. Definitions.

(a) "Air pollution control district" or "district" has the same meaning as defined in Section 39025 of the Health and Safety Code.

(b) "Audit and Plan Facility" means a facility that is required by the district, by April 1 of the calendar year prior to the fiscal year, to prepare a Risk Reduction Audit and Plan in accordance with Sections 44390 through 44394 of the Health and Safety Code.

(c) "Audit and Plan Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(b), and has more than five processes as determined by six-digit Source Classification Codes (SCC).

(d) "Audit and Plan Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(b), and has three to five processes as determined by six-digit SCC.

(e) "Audit and Plan Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(b), and has one or two processes as determined by six-digit SCC.

(f) "Criteria pollutant" means, for purposes of this regulation, total organic gases, particulate matter, nitrogen oxides or sulfur oxides.

(g) "Facility" has the same meaning as defined in Section 44304 of the Health and Safety Code.

(h) "Facility Program Category" means a list of facilities, including facility name and identification number, provided to the Air Resources Board by the districts by April 1 of the calendar year prior to the fiscal year, which lists the facilities which meet the definitions in Section 90701 (b), (c), (d), (e), ~~(i)~~, (j), (k), (l), (m), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), and (af).

(i) "Industrywide Facility" means a facility that qualifies to be included in an industrywide emission inventory prepared by an air pollution control district pursuant to Health and Safety Code Section 44323, or an individual facility which emits less than 10 tons per year of each criteria pollutant, falls within a class composed of primarily small businesses, ~~as defined by subsection (ab) below,~~ and whose emissions inventory report was prepared by the air pollution control district.

(j) "Notification Facility" means a facility that is required by the district by April 1 of the calendar year prior to the fiscal year, to notify the public of the potential health risk associated with the air toxics emissions from that facility pursuant to Health and Safety Code Section 44362(b).

(k) "Notification Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(j), and has more than five processes as determined by six-digit Source Classification Codes (SCC).

(l) "Notification Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(j), and has three to five processes as determined by six-digit SCC.

(m) "Notification Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(j), and has one or two processes as determined by six-digit SCC.

(n) "Office" means the Office of Environmental Health Hazard Assessment.

(o) "Operator" has the same meaning as defined in Section 44307 of the Health and Safety Code.

(p) "Plan and Report Facility" means a facility that by April 1 of the calendar year prior to the fiscal year, has been required by the district to prepare an individual plan and report in accordance with Sections 44340, 44341, and 44344 of the Health and Safety Code. This includes facilities completing an update plan, an update report, an update summary form, and facilities in the Santa Barbara County Air Pollution Control District that were categorized as intermediate priority for health risk assessment, and had a health risk assessment prepared for them by the district.

(q) "Plan and Report Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(p), and has more than five processes as determined by six-digit Source Classification Codes (SCC).

(r) "Plan and Report Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(p), and has three to five processes as determined by six-digit SCC.

(s) "Plan and Report Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(p), and has one or two processes as determined by six-digit SCC.

(t) "Risk Assessment-District Facility" means a facility that by April 1 of the calendar year prior to the fiscal year, has been required by the district to prepare a health risk assessment in accordance with Section 44360(b) of the Health and Safety Code, and whose risk assessment has not yet been approved by the district.

(u) "Risk Assessment-District Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(t), and has more than five different processes as determined by six-digit SCC.

(v) "Risk Assessment-District Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(t), and has three to five different processes as determined by six-digit SCC.

(w) "Risk Assessment-District Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(t), and has one or two different processes as determined by six-digit SCC.

(x) "Risk Assessment-State Facility" means a facility whose risk assessment was received by the Office between April 1, ~~1993~~ 1994, and March 31, ~~1994~~ 1995.

(y) "Risk Assessment-State Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(x), and has more than five different processes as determined by six-digit SCC.

(z) "Risk Assessment-State Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(x), and has three to five different processes as determined by six-digit SCC.

(aa) "Risk Assessment-State Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(x), and has one or two different processes as determined by six-digit SCC.

(ab) "Small Business" for the purposes of Section 90704(g)(2) means a facility which is independently owned and operated and has met the following criteria in the preceding year: 1) the facility has 10 or fewer 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 October 21, 1993) to determine overall facility size and boundaries for purposes of qualifying as a small business.

(ac) "Source Classification Codes" means number codes created by the United States Environmental Protection Agency used to identify processes associated with point sources that contribute emissions to the atmosphere.

(ad) "Standard Industrial Classification (SIC) Code" means the Standard Industrial Classification Code which classifies establishments by the type of business activity in which they are engaged, as defined by the Standard Industrial Classification Manual, 1987, published by the Executive Office of the President, Office of Management and Budget, 1987, which is incorporated by reference herein.

(a~~d~~e) "State costs" means the reasonable anticipated cost which will be incurred by the State Board and the Office to implement and administer the Act, as shown in Table 1 of this part.

(af) "State Industrywide Facility " means a facility that (1) qualifies to be included in an industrywide emission inventory prepared by an air pollution control or air quality management district pursuant to Health and Safety Code Section 44323, (2) releases, or has the potential to release, less than ten tons per year of each criteria pollutant, and (3) is either of the following:

(A) a facility in one of the following four classes of facilities: autobody shops, as described by SIC Codes 5511-5521 or 7532; gasoline stations, as described by SIC Code 5541; dry cleaners, as described by SIC Code 7216; and printing and publishing, as described by SIC Codes 2711- 2771 or 2782; or

(B) a facility that has not prepared an Individual Plan and Report and for which the district submits documentation for approval by the Executive Officer of the State Board, verifying that the facility meets the requirements of Health and Safety Code Section 44323(a)-(d).

(a~~e~~g) "Supplemental Fee" means the fee charged to cover the costs of the district to review a health risk assessment containing supplemental information which was prepared in accordance with the provisions of Section 44360(b)(3) of the Health and Safety Code.

(a~~f~~h) "Survey Facility" means a facility which emits less than ten tons per year of criteria pollutants, and which falls in any class listed in Appendix E-II to Sections 93300 et seq. of Title 17 of the California Code of Regulations.

(a~~g~~i) "Total organic gases" or "TOG" means all gases containing carbon, except carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

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

Article 2. Applicability

90702. Facilities Covered.

(a) Except for facilities exempted by Health and Safety Code ~~s~~Section 44324, this regulation applies to any facility which:

(1) manufactures, formulates, uses, or releases any of the substances listed by the State Board pursuant to Health and Safety Code Section 44321 and contained in Appendix A to Sections 93300 et seq. of Title 17 of the California Code of Regulations, which is incorporated by reference, or any other substance which reacts to form a substance so listed, and releases 10 tons per year or greater of any criteria pollutant, or

(2) is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by an air pollution control district and referenced in Appendix A, or

(3) manufactures, formulates, uses or releases any listed substance or any other substance which reacts to form any listed substance, and which releases less than 10 tons per year of each criteria pollutant and falls in any class listed in Appendix E to Sections 93300 to 93355 of Title 17 of the California Code of Regulations.

(b) A facility shall be excluded from the calculation of the distribution of the State's cost specified in Section 90703(a) for fiscal year 1995-96 if by December 15, 1995, any one or more of the following criteria is met:

(1) the facility has been prioritized by its district in accordance with Health and Safety Code Section 44360(a) using procedures that have undergone public review, and the facility's prioritization score is less than 0.1 for cancer health effects and is less than 0.1 for non-cancer health effects. Some appropriate procedures for estimating priority facilities are presented in the California Air Pollution Control Officers' Association (CAPCOA) "Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990", which is incorporated by reference herein.

(2) the facility has had its health risk assessment approved by the district in accordance with Health and Safety Code Section 44362 and been notified in writing by the district that the risk assessment results show a total potential cancer risk at an actual receptor, summed across all pathways of exposure and all compounds, of less than one case per one million persons and a total hazard index for each toxicological endpoint of less than 0.1. Some appropriate procedures for determining potential cancer risk and total hazard index are presented in the CAPCOA "Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993", which is incorporated by reference herein.

(3) the facility primarily performs printing as described by SIC Codes 2711 through 2771 or 2782, and the facility uses an annualized average of two

gallons per day or less (or 17 pounds per day or less) of all graphic arts materials.

(4) the facility is a wastewater treatment plant as described by SIC Code 4952, the facility does not have a sludge incinerator and the maximum throughput at the facility does not exceed 10,000,000 gallons per day.

(5) the facility is a crematorium for humans, animals, or pets as described by SIC Code 7261 or any SIC Code that describes a facility using an incinerator to burn biomedical waste (animals), the facility uses propane or natural gas as fuel, and the facility annually cremates no more than 300 cases (human) or 43,200 pounds (human or animal). Facilities using incinerators that burn biomedical waste other than cremating animals do not qualify for this exemption.

(6) the facility is primarily a boat building and repair facility or primarily a ship building and repair facility as described by SIC Codes 3731 or 3732, and the facility uses 20 gallons per year or less of coatings or is a coating operation using hand held nonrefillable aerosol cans only.

(7) the facility is a hospital or veterinary clinic building that is in compliance with the control requirements specified in the Ethylene Oxide Control Measure for Sterilizers and Aerators, section 93108 of this title, and has an annual usage of ethylene oxide of less than 100 pounds per year if it is housed in a single story building, or has an annual usage of ethylene oxide of less than 600 pounds per year if it is housed in a multi-story building.

(c) A facility shall be excluded from the fee schedule calculated in accordance with Section 90704(d)-(g) and from the fee schedule set forth in Table 3 for fiscal year 1995-96 if (1) it qualifies for exclusion pursuant to subdivision (b) of this section, (2) it is located in a district which has met the requirements of section 90704(b) 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.

(d) Prior to December 15, 1995, each district shall provide to the State Board a list of facilities meeting any one or more of the criteria specified in subdivision (b) of this section. The list of facilities shall include the facility's name, identification number, and documentation of the exemption the facility qualifies for.

NOTE: Authority cited: Sections 39600, 39601, 44321, and 44380, Health and Safety Code. Reference: Sections 44320, 44321, 44322, 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), 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(b), the State Board shall calculate each district's share of state costs on the basis of the number of facilities in program categories as defined in Sections 90701(b), (c), (d), (e), ~~(i)~~, (j), (k), (l), (m), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), ~~and~~ (aa) and (af).

(1) For the purposes of subdivision (a) of this section, for fiscal year 1995-96, the district shall set forth the facilities that are in the described program categories as of December 15, 1995.

(b) For purposes of calculation of a district's share of State costs under subdivision (a) of this section, the number of facilities in the State Industrywide and Plan and Report program categories will be based on the provisions of Section 90704(d)(2).

(c) 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, 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 which meets the requirements of Health and Safety Code ~~s~~Section 44380(a). Districts whose fee schedules are included in this regulation under Section 90704(b) are subject to the provisions of subdivisions (d)-(i) 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 and district costs 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 as specified in 90700(b)(2);

(2) The district has submitted a written request specifying the amount to be collected for the applicable fiscal year, through fees established by the State Board regulation, as calculated pursuant to Section 90704(d)(3), (e), (f), (g), and (h) and including documentation of the calculations;

(3) The district has submitted the resolution, request and documentation specified in subsections (1) and (2) to the State Board by April 1 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 that meets the requirements of Section 90700(b), provided that the district informs the Executive Officer of the State Board in writing.

(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 by December 1 of 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, 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) The State Board shall calculate fees on the basis of the facility program category as set forth by the district by April 1 preceding the applicable fiscal year, except for facilities excluded under Section 90702(b) or ~~except for facilities~~ covered by Section 90704(f) and (g). 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.

(3) A Risk Assessment-State Facility (Intermediate or Complex) that is located in the Santa Barbara County Air Pollution Control District, and had its risk assessment prepared by the district using an automated risk assessment program approved by the Air Resources Board, will be assessed the following State costs for purposes of distribution of State Costs and facility fees: Risk Assessment-State (Intermediate) - ~~$1,632,~~ $1,476, Risk Assessment-State (Complex) - ~~$1,909~~ $1,702.

(e) 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 Table 3. The program categories are Plan and Report (Simple), Plan and Report (Intermediate), Plan and Report (Complex), Risk Assessment-District (Simple), Risk Assessment-District (Intermediate), Risk Assessment-District (Complex), Risk Assessment-State (Simple), Risk Assessment-State (Intermediate), Risk Assessment-State (Complex), Notification (Simple), Notification (Intermediate), Notification (Complex), Audit and Plan (Simple), Audit and Plan (Intermediate), and Audit and Plan (Complex).

(2) A facility that becomes subject to the Act after State Board adoption of the Fee Regulation, and is required to prepare an Inventory Plan and Report during the applicable fiscal year, shall pay the Plan and Report (Simple) fee for that fiscal year.

(3) No changes to a facility's prior-year Facility Program Category shall be made by a district unless the district provides the State Board the following information: (a) the name and facility identification number, (b) the previous category of the facility, (c) the current category of the facility, (d) the previous Source Classification Codes of the facility, and (e) the current Source Classification Codes of the facility. The district shall provide the SIC Code for facilities being added to the State Industrywide Facility category.

(f) Specified Flat Fees

(1) A Survey Facility shall be assessed the flat fee specified in Table 4, Column A. An Industrywide Facility shall be assessed the flat fee specified in Table 4, Column B. If a facility was previously assessed, and

has paid, a fee pursuant to the program categories specified for Column A or B of Table 4, subsequent fees pursuant to Column A or B of 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.

(g) 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 $2,000.

(2) The maximum fee which a small business, as defined in Section 90701(ab), shall pay will be $300. The districts shall provide to the Air Resources Board by April 1 of the calendar year prior to the fiscal year, the number of facilities in each facility program category meeting the small business definition.

(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 Plan and Report (Simple) category be set at no more than $800.

(4) 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 Risk Assessment-District (Simple) category be set at no more than $2,000.

(h) Costs to be recovered by the regulation adopted by the State Board pursuant to ~~Section 90704~~ 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(f)(1); 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.

~~(i) In fiscal year 1994-95, the Office shall initiate a program of labor tracking of risk assessment review for purposes of management review and accountability.~~

(i) 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, and 44380, Health and Safety Code. Reference: Sections 44320, 44322, 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(b), 90703, 90704(f), and 90704(g)(1)-(2), 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.

(1) The invoices sent by the districts to the facilities shall contain, but not be limited to, the following information: name and address of the facility; name, address, and phone number contact of the district sending the bill, date of bill, invoice number, fiscal year for which the bill is being sent, where to send the remittance, an indication of whether or not a small business cap is applicable, and the following statement: "The California Health and Safety Code Section 44380 requires the collection of fees from facilities subject to the requirements of the Air Toxics Hot Spots Information and Assessment Act of 1987."

(b) Each district shall collect the fees assessed by or required to be assessed by this regulation. After deducting the costs to the district to implement and administer the program, each district shall transmit to the State Board the amount the district is required to collect for recovery of state costs pursuant to Section 90700(b)(1), as set forth in Table 1, on or before April 1 of each year. Checks shall be made payable to the State Air Resources Board. The State Board shall forward the revenues to the State Controller for deposit in the Air Toxics Inventory and Assessment Account.

(c) Any fee revenues received by a district for which fees have been adopted pursuant to Section 90704(b) which exceed district and state costs shall be reported to the State Board and shall be retained by the district for expenditure in the next two fiscal years.

(d) In the event a district does not collect sufficient revenues to cover both the district program costs and the portion of the state costs which the district is required to remit to the State Board due to circumstances beyond the control of the district,

including but not limited to plant closure or refusal of the source operator to pay despite permit revocation and/or other enforcement action, such district shall notify the Executive Officer of the State Board 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.

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) 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 ~~to the~~ fiscal years after ~~which~~ the shortfall was discovered and add the shortfall amount to ~~the~~ 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 Air Pollution Control District

Air Pollution Control District		Revenues to be Remitted	
Amador	~~10,916~~	9,496	
Bay Area	~~377,205~~	397,833	300,731
Butte	~~33,500~~	36,543	34,651
Calaveras	~~795~~	3,170	856
Colusa	~~24,648~~	19,069	20,632
El Dorado	~~8,453~~	7,705	6,803
Feather River	~~17,615~~	11,718	
Glenn	~~17,141~~	15,898	14,350
Great Basin	~~14,820~~	11,915	
Imperial	~~26,620~~	24,175	23,499
Kern	~~18,917~~	9,977	
Lake	~~4,841~~	15,115	4,672
Lassen	~~4,541~~	4,642	
Mariposa	~~884~~	796	
Mendocino	~~19,470~~	9,946	
Modoc	~~0~~	225	
Mojave Desert	~~84,750~~	56,016	56,451
Monterey	~~61,971~~	37,015	36,068
North Coast	~~13,163~~	14,678	14,451
Northern Sierra	~~12,520~~	10,863	10,412
Northern Sonoma	~~6,317~~	4,988	
Placer	~~39,815~~	26,443	18,582
Sacramento	~~51,612~~	35,842	37,420
San Diego	~~247,524~~	189,968	182,890
San Joaquin Valley	~~631,510~~	373,291	359,089
San Luis Obispo	~~39,652~~	19,305	18,450
Santa Barbara	~~86,172~~	57,277	57,232
Shasta	~~26,159~~	20,927	20,026
Siskiyou	~~2,203~~	7,888	
South Coast	~~2,321,802~~	1,353,930	1,351,546
Tehama	~~7,598~~	8,775	7,903
Tuolumne	~~17,642~~	7,707	7,196
Ventura	~~168,135~~	98,794	89,101
Yolo-Solano	~~49,934~~	42,255	
TOTAL	~~4,448,845~~	2,944,185	2,786,857

Table 2

District Costs to be Recovered Through the Fee Regulation

Air Pollution Control District	Anticipated Districts Costs*		
Calaveras		0	
Great Basin	~~2,375~~	6,040	
Imperial	~~10,582~~	4,805	
~~Kern~~	~~34,112~~		
Lassen	~~2,161~~	1,496	
Mariposa	0		
Mendocino	~~23,565~~	22,330	
Mojave Desert	~~302,476~~	120,400	120,500
Placer		9,421	
San Joaquin Valley	~~1,115,815~~	568,855	543,855
Santa Barbara	~~203,625~~	197,895	198,075
~~South Coast~~	~~3,076,734~~		
Tuolumne	~~9,000~~	9,150	
Yolo-Solano	~~20,635~~	19,930	

* These amounts do not include program costs which will be recovered by the flat fees described in Section 90704(~~d~~ f), or may reflect adjustments for excess or insufficient revenues pursuant to Secction 90705(c) and (d)(1).

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

AIR POLLUTION CONTROL DISTRICT	Plan and Report (Simple)			Plan and Report (Intermediate)			Plan and Report (Complex)			Risk[1] Assessment (Simple)			Risk[2] District (Simple)
Calaveras		451											
Great Basin	~~638~~	555		~~1082~~	988		~~1945~~	1939					
Imperial	~~629~~	~~491~~	492	~~1057~~	~~792~~	800	1860	~~1305~~	1314				
~~Kern~~	~~794~~			~~1552~~			~~3509~~						
Lassen	~~973~~	570						2090					
Mariposa	~~554~~	796											
Mendocino	800			~~3497~~	3280								
Mojave Desert	800			~~4956~~	~~2404~~	2400	~~14857~~	~~6660~~	6649	2000	~~1603~~	1600	
Placer		620			~~1183~~	1184		~~2590~~	2594				
San Joaquin Valley	~~800~~	~~740~~	742	~~2179~~	~~1544~~	1548	~~5599~~	~~3796~~	3808	~~1452~~	~~1030~~	1032	~~1763~~
Santa Barbara	~~1249~~	~~860~~	861	~~2916~~	~~1905~~	1906	~~8058~~	~~4996~~	5000	~~1944~~	1270		~~2255~~
~~South Coast~~	~~976~~			~~2097~~			~~5326~~			~~1398~~			~~1708~~
Tuolumne				~~1527~~	~~2204~~	2143	~~3425~~	~~5995~~	5790				
Yolo-Solano	~~621~~	572		~~1033~~	1041		~~1780~~	2118		~~689~~	694		

[1]Risk assessment under review by the District.
[2]Risk assessment submitted to OEHHA from April 1, ~~1993~~ 1994 through March 31, ~~1994~~ 1995.

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

AIR POLLUTION CONTROL DISTRICT	Risk[1] Assessment (Intermediate)			Risk[2] Assessment (Intermediate)			Risk[1] Assessment (Complex)			Risk[2] Assessment (Complex)	
Calaveras											
Great Basin								2458			
Imperial	~~1207~~										
~~Kern~~							~~4709~~				
Lassen											
Mariposa											
Mendocino	~~5274~~				6435			13918			
Mojave Desert							~~21732~~	~~9540~~	9522		
Placer											10481
San Joaquin Valley	~~3077~~	2123	2130	~~5282~~	4700	4704	~~7844~~	5243	5262	~~13357~~	
Santa Barbara	~~4306~~	2724	2725	~~3716~~				7044	7049	~~8858~~	
~~South Coast~~	~~2940~~			~~5200~~			~~7435~~			~~13085~~	
Tuolumne											
Yolo-Solano	~~1167~~	1285					~~2115~~	2727			10009

[1]Risk assessment under review by the District.
[2]Risk assessment submitted to OEHHA from April 1, ~~1993~~ 1994 through March 31, ~~1994~~ 1995.

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

AIR POLLUTION CONTROL DISTRICT	Notification (Simple)	Notification (Intermediate)	Notification (Complex)	Audit and Plan (Simple)	Audit and Plan (Intermediate)	Audit and Plan (Complex)
Calaveras						
Great Basin						
Imperial						
~~Kern~~						
Lassen						
Mariposa						
Mendocino						
Mojave Desert		~~35433~~ ~~19363~~ 19339	~~36364~~ ~~20310~~ 20286			
Placer						
San Joaquin Valley		~~16916~~ ~~13633~~ 13659	~~17847~~ ~~14580~~ 14606			
Santa Barbara						
~~South Coast~~						
Tuolumne						~~16210~~
Yolo-Solano			11225			

~~*Risk assessment under review by the District~~
~~*Risk assessment submitted to OEHHA from April 1, 1993 through March 31, 1994~~

Table 4*

Fees for Survey and Industrywide Facilities

District	A Survey Facilities		B Industrywide Facilities	
Calaveras	15		15	
Great Basin	25		25	
Imperial	~~60~~	75	75	
~~Kern~~	~~100~~		~~250~~	
Lassen	100		100	
Mariposa	15		15	
Mendocino	100		100	
Mojave Desert	100		115	
Placer	50		50	
San Joaquin Valley	100		100	
Santa Barbara	75		75	
~~South Coast~~	~~25~~		~~25~~	
Tuolumne	15		15	
Yolo-Solano	100		~~100~~	125

* State cost per facility is consistent statewide as follows:
Survey facilities: $0
Industrywide facilities: $15

Appendix A

District Air Toxic Inventories, Reports, and Surveys

Appendix A

Air Pollution Control District
Air Toxic Inventories, Reports or Surveys

1. Bay Area Air Quality Management District "Current BAAQMD Air Toxics Inventory. October 27, 1990."

2. Kern County Air Pollution Control District "District's Toxic Use List, Southeast Desert Portion of Kern County. February 14, 1992."

3. Sacramento Metropolitan Air Quality Management District "Sacramento Air Quality Management District Toxic Air Pollutant Emission Inventory For Sacramento County. June 1993."

4. ~~San Bernardino County Air Pollution Control District "San Bernardino County APCD~~ Mojave Desert Air Quality Management District "San Bernadino County Area Toxics Inventory List. June 27, 1990."

5. San Diego County Air Pollution Control District "List of Semiconductor Manufacturers Using Toxic Gases (Arsine or Phosphine). May 1988."

6. San Joaquin Valley Unified Air Pollution Control District "San Joaquin Valley Unified APCD Toxics List. February 25, 1994."

7. San Luis Obispo County Air Pollution Control District "San Luis Obispo County Air Pollution Control District Air Toxics Inventory List for AB 2588. May 3, 1990." "Additions to List of District's Toxics Inventory. January 6, 1994."

8. Santa Barbara County Air Pollution Control District "Current Santa Barbara County Air Pollution Control District List of Air Toxic Sources. May 27, 1992."

~~9. South Coast Air Quality Management District "Current SCAQMD Air Toxics Inventory List for AB 2588. May 11, 1990."~~

~~10. Monterey Bay Unified Air Pollution Control District "AB 2588 - Facilities Affected FY 92/93 & FY 93/94. April 8, 1993."~~