

Final Statement of Reasons

for Rulemaking

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

Public Hearing Date: November 13, 1997
Agenda Item No.: 97-9-1

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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FEE REGULATION, FISCAL YEAR 1997-98

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I. GENERAL

On November 13, 1997 the Air Resources Board (ARB) conducted a public hearing to consider the adoption of amendments to the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), sections 90700-90705, Title 17, California Code of Regulations (CCR). After considering the staff's recommendation, and the public's written comments and testimony, the ARB approved Resolution 97-41, 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 1997-98 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 Fee Regulation establishes fee schedules for seven districts. Each of the remaining twenty eight districts must adopt a fee rule that provides for the recovery of its share of the State's costs as well as the district's costs.

At the hearing, the Board considered the staff's recommendation and the public testimony. The Board then approved the proposed amendments with modifications presented by the staff at the hearing.

The following documents, which provide additional information about this rulemaking, are incorporated by reference herein:

- (1) Staff Report: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1997-1998, released August 8, 1997.
- (2) Notice of Public Availability of Modified Text, available on December 16, 1997.

- (3) California Air Pollution Control Officers Association (CAPCOA) "Air Toxics 'Hot Spots' Program Facility Prioritization Guidelines, July 1990."

Resolution 97-41 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 (Initial Statement of Reasons, ISOR) made available to the public on August 8, 1997, and in the Notice of Public Availability of Modified Text made available to the public on December 16, 1997. These changes are summarized below with the changes proposed in the Initial Statement of Reasons followed by "ISOR" and the changes made available for a 15-day comment period in the Notice of Availability of Modified Text are followed by "15-day".

- 1) The following amendments were made to section 90701 of the Fee Regulation (Definitions):
 - a) The definition of "Update Facility" in section 90701 (ao) was revised such that it is now known as "District Update Facility" to clarify that these facilities are subject to district Air Toxics "Hot Spots" Program (Program) fees only. They are not subject to a State portion of Program fees. (ISOR)
 - b) The definition of "Facility Program Category List" in section (e) was revised such that it is now known as "Facility Data List" to clarify the exact nature of the Facility related Program information districts are required to forward to the ARB. (ISOR)
 - c) The definition for "Facility Program Category" in sections 90701 (d) was revised to reflect the new order of the Fee Regulation definitions. (ISOR)
 - d) The definitions of a number of facility program categories, sections 90701 (k) - (m), (o) - (q), (t) - (u), (w) - (y), (ah) - (aj), and (am) - (ao) were revised to reflect the new order of the Fee Regulation definitions. (ISOR)
 - e) Sections 90701 (n)(2), and (ag)(1) and (2) were revised to include the phrases "acute" and "chronic" to make the definitions more specific and accurate. (ISOR)
 - f) The definition of "small business" in section 90701 (z) was revised to include, "(full-time equivalence)", regarding the numbers of employees, to make the definition more inclusive. (ISOR)
 - g) Section 90701 (z) was further revised to include the word "annual" as part of definition to make it more accurate. (15-day)
 - h) Section 90701 (ak) was revised to include the phrase, "...and that are consistent with the procedures presented in the California Air Pollution Control Officers Association (CAPCOA) "Air Toxics 'Hot Spots' Program Facility Prioritization Guidelines, July 1990", which has been approved by the State Board and is

incorporated by reference herein....” for consistency with other Fee Regulation definitions. (ISOR)

- 2) The following amendments were made to section 90702 of the Fee Regulation (Facilities Covered):
 - a) Section 90702 (a) was revised to include section 44380.1 of the California Health and Safety Code to clarify which facilities are exempt from the Fee Program. (ISOR)
 - b) Section 90702 (d) was moved such that it became Section 90702 (b). This move clarified the information that must be forwarded to the ARB by the districts. Sections 90702 (b)(3) - (8) were revised to reflect that change. (15-day)
 - c) Section 90702 (c) was generalized to mean July 1 of the applicable fiscal year. (ISOR)
 - d) Section 90702 (c)(2) was revised to be more specific by adding the phrases “acute” and “chronic”. (ISOR)
 - e) Section 90702 (d) generalized the applicable fiscal year. (ISOR)
- 3) Several amendments were made to section 90703 of the Fee Regulation to reflect the change to the date at which facility fee categories are set (District Board Adoption of Fees). (ISOR)
- 4) The following amendments were made to section 90704 of the Fee Regulation (State Board Adoption of Fees):
 - a) The intent of section 90704 (b)(2) was clarified to make the section more accurate. (ISOR)
 - b) Section 90704 (d)(1) generalized the date by which the ARB must notify the districts’ individual facilities’ fees. (ISOR)
 - c) Section 90704 (d)(2) was clarified by revising the description of the information to be sent by the districts to the ARB such that it conforms to the definitions found in section 90701 and revising the date that information is due. (ISOR)
 - d) Section 90704 (d)(3) was clarified by revising the description of the information to be sent by the districts to the ARB such that it conforms to the definitions found in section 90701 and revising the date that information is due. (ISOR)

- e) Section 90704 (g)(4) was clarified by deleting information that was no longer applicable since it was specific to the fiscal year 1996-97 Fee Regulation. (ISOR)
- 5) The following amendments were made to section 90705 of the Fee Regulation (Fee Payment and Collection):
 - a) Section 90705 (b) clarified the time frame districts must transmit the State costs recovered to the ARB. (ISOR)
- 6) Table 1 of the Fee Regulation was amended to reflect recalculations based on final facility data. (15-day)
- 7) Table 2 of the Fee Regulation was amended to reflect changes in the districts' Program costs for the seven districts requesting ARB adoption of their fee schedule. District costs for the Kern County APCD and the Yolo-Solano AQMD were deleted from Table 2 since they did not request the ARB to adopt their fee schedule. (ISOR)
- 8) Facility fees in Table 3 of the Fee Regulation were amended to reflect the final State fee for each Facility Program Category, changes in the districts' Program costs, updated facility counts, and facility data corrections for the Imperial, Lassen, Santa Barbara and Tuolumne County APCDs, the Great Basin Unified APCD and the Mojave Desert and South Coast AQMDs. Facility fees for the Kern County APCD and Yolo-Solano AQMD were deleted since they did not request the ARB to adopt their fee schedule. (15-day)
- 9) Table 4 was amended to reflect changes in flat fees for Industrywide facilities as specified by the districts. Flat fees for Industrywide facilities for the Kern County APCD and Yolo-Solano AQMD were deleted from Table 4. In addition, flat fees for "District Update Facilities" were added to Table 4 for the Imperial, Santa Barbara and Tuolumne County APCDs, and the Mojave Desert and South Coast AQMDs. (ISOR)
- 10) Table 4 was further amended to revise the State Industrywide facility fee from \$15 to \$25. Flat fees for industrywide facilities were amended to reflect changes in State's costs to be recovered by the Imperial and Santa Barbara County APCDs and the South Coast AQMD in Table 4. (15-day)
- 11) Appendix A of the Fee Regulation was amended to reflect a change in the date of the Santa Barbara County APCD's list of air toxic sources from "September 18, 1996" to "July 14, 1997," and the Air Toxics inventories, reports, or surveys for the Kern and San Luis Obispo County APCDs and the Bay Area and Sacramento Metropolitan AQMDs were deleted from Appendix A. (ISOR)

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 90700 through 90705, Title 17, CCR, as approved, after making the modified regulatory language available for public comment for a period of at least 15

days. The Board further provided that the Executive Officer shall consider written comments as may be submitted during this period, make such modifications as may be appropriate, and present the Fee Regulation to the Board for further consideration if he determines that this is warranted.

The ARB has determined that 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. Health and Safety Code sections 44391 - 44394 require facilities, judged to pose a potential significant health risk, to lower their emissions below a significance level. This regulatory fee action will also fund district and 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 the amended Fee Regulation will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement to the districts pursuant to Government Code sections 17500 et seq. 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 1997-98 district costs to implement the amended Fee Regulation are approximately \$332,000.

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, correctional institutions and laboratories.

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 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 \$34,500 for fiscal year 1997-98.

The ARB has determined that adoption of the amended regulation will not create a significant cost to, or impose a mandate upon, local school districts. Currently, there is only one facility in a local school district subject to a "Hot Spots" Program fee.

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. The costs for the ARB to develop and implement the amended Fee Regulation are estimated to be \$114,000. The Office of Environmental Health Hazard Assessment (OEHHA) incurs no cost to implement the Fee Regulation.

Other affected State agencies (e.g., universities, hospitals, correctional institutions, laboratories) 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 \$51,900 for fiscal year 1997-98.

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.

In considering the proposed amendments, the ARB has determined that no alternative considered by the agency would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action. 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 in those districts for which ARB is adopting a fee schedule. Additionally, exemptions will relieve lower risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

Furthermore, in accordance with Health and Safety Code section 57005(a), the ARB, after evaluating the alternatives, if any, to the proposed amendments submitted to the ARB pursuant to Government Code section 11346.5(a)(7), and considering 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, has determined that there is no such alternative or combination of alternatives.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received written and oral comments in connection with the 45-day comment period following the release of the Initial Statement of Reasons and a written comment during the 15-day comment period for the December 16, 1997 Notice of Public Availability of Modified Text. The comments received in connection with the 45-day comment period are divided into technical data adjustments and general comments. The technical adjustments include districts providing corrected facility data, providing documentation, and reducing anticipated district Program costs. Under General Comments a list of commenters is set forth below, identifying the date and form of all comments that were timely filed. Following the list is a summary of each objection or recommendation made regarding the proposal, followed by the agency response with an explanation of what action has been taken to accommodate the objection or recommendation, or the reasons for making no change.

A. Technical Data Adjustments

1. For the purposes of calculating distribution of the State's costs, and facility fees where applicable, the following districts supplied facility data corrections during the 45-day comment period: the Santa Barbara and Ventura County APCDs; and the Mojave Desert and South Coast AQMDs.

Agency Response: The ARB staff made corrections to the facility data as requested by these districts when justification for the changes and appropriate supporting documentation were provided and confirmed by ARB staff. These data were used to calculate the distribution of the State's cost and facility fees for fiscal year 1997-98.

B. General Comments Regarding the Proposed Amendments to the Fee Regulation for Fiscal Year 1997-98

Received During the 45-Day Comment Period and at the November 13, 1997 Hearing

The ARB received the written and oral comments listed below during the Notice of Public Hearing 45-day comment period. In the discussion of comments and responses following this list, the commenter is identified by his or her last name.

- (1) August 18, 1997 letter from Timothy W. Chandler, S & ES Coordinator, Praxair Surface Technologies, to the Clerk of the Board, ARB. (Chandler)
- (2) August 19, 1997 letter from Daniel A. Cunningham, Executive Director, Metal Finishing Association of Southern California, Inc., to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (Cunningham I)
- (3) September 17, 1997 letter from W. J. McConachie, Private Citizen, to the Clerk of the Board, ARB. (McConachie, written)
- (4) November 3, 1997 letter from Hal Stocker, Chairman, Feather River Air Quality Management District, to John Dunlap, Chairman, California Air Resources Board, ARB. (Stocker)
- (5) November 7, 1997 letter from Richard J. Smith, Deputy Director, San Diego County Air Pollution Control District, to Terry McGuire, Chief, Technical Support Division, ARB. (Smith)
- (6) November 11, 1997 letter from Daniel A. Cunningham, Executive Director, Metal Finishing Association of Southern California, Inc., to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (Cunningham II)
- (7) November 12, 1997 letter from Craig D. Anderson, Chairman of the Air and Air Toxics Committee of the San Diego Industrial Environmental Association, to the Clerk of the Board, ARB. (Anderson)

Oral Testimony Presented at the November 13, 1997 Hearing of the Air Resources Board

- (8) W. J. McConachie, Private Citizen, oral testimony. (McConachie, oral)
- (9) Randy Solganik, Metal Finishing Association of Southern California, Inc., oral testimony. (Solganik)

Comments Concerning the Proposed Amendments in General

1. Comment: Commends the Air Resources Board (ARB) for reducing the State

portion of Program costs by 23 percent. (Stocker)

Agency Response: The ARB appreciates this comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1997-98 at the November 13, 1997 hearing. The amendments included provisions to reduce the State portion of Program fees by \$586,000 or 30 percent from fiscal year 1996-97.

2. Comment: The staff of the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) are to be applauded for their efforts to control and reduce their costs under the “Hot Spots” Program. At the same time, we want to make sure the program is sufficiently funded to provide needed support to the districts and their customers. (Anderson)

Agency Response: The ARB approved the amendments to the Fee Regulation for fiscal year 1997-98 at the November 13, 1997 hearing. These amendments included significant reductions in State costs to administer the Air Toxic “Hot Spots” Program. The State has been able to reduce costs because many Program tasks have been completed or are nearing completion. Although there will be a reduction in support to the districts and the general public, we believe the ARB and the OEHHA staff resources are adequate to satisfactorily serve our clients.

3. Comment: The districts administering the Air Toxics “Hot Spots” Program should be required to inform facilities in the Program of their most current status, especially prioritization scores and its effect on fees. The ARB should send districts a letter reminding them of the importance of timely communications concerning the “Hot Spots” Fee Program status of facilities in their jurisdiction. (McConachie, written; McConachie, oral, Chandler)

Agency Response: Most districts do maintain good communications with facilities in their district subject to the “Hot Spots” Program. However, at the November 13, 1997 hearing, the ARB directed staff to prepare a letter to the districts reminding them that timely communication with facilities in their jurisdiction in the “Hot Spots” Program is a concern of the regulated community and that they are responsible for communicating with their facilities about Program requirements, status, and fees. The ARB staff is in the process of preparing that letter. The type of information in that communication should include current prioritization scores and health risk assessment results and the effect of those scores and results on the facility’s fees and Program requirements. When the ARB developed the amendments for the fiscal year 1997-98 Fee Regulation, staff held four public workshops and mailed notices to over 7,500 individuals in order to notify interested parties and provide them an opportunity to comment on plans early in the process.

4. Comment: A “corrections” period should be established to allow facilities to resolve discrepancies before fees are calculated. (Chandler)

Agency Response: We believe the Program allows for a corrections period. Facility operators have the majority of the fiscal year to update their emissions inventories, submit them to

the district for reprioritization, and discuss the impacts of that reprioritization. Program fees are based on facility Program data submitted to the ARB by the districts by July 1, the beginning of a new fiscal year. The ARB must establish a deadline for the submittal of “final” data for a particular fiscal year in order to have the time needed to verify the Program data submitted by the districts, incorporate that data into the fee methodology, and review the impacts of the resulting facility fees. Also, the fee methodology calculates a facility’s fee based on the numbers of facilities in each of the facility program categories. Changes in the numbers of facilities in a particular facility program category would change the fees for all facilities in that category. If we allow late changes, many facilities would be unaware that their fee had been adjusted in the late stages of amending the Fee Regulation. Therefore, in an effort to be fair to all the facilities subject to the Program, the ARB must establish a deadline for changes.

5. Comment: The San Diego County Air Pollution Control District believes the ARB staff’s suggestion to use available procedures and methodologies (consistent with Program Guidance) to exempt facilities from the Program will significantly weaken the District’s successful Air Toxics “Hot Spots” Program. The implementation and success of the Program should not be driven by the State fee methodology. (Smith)

Agency Response: Section 44344.4(c) of the Health and Safety Code mandates that the California Air Pollution Control Officers Association (CAPCOA) Facility Prioritization Guidelines be used by districts to calculate facility prioritization scores. Those guidelines have some flexibility on the method districts can use to calculate a facility’s prioritization score built into them. The ARB staff has worked with districts and facility operators to be sure they understand the options available to them when calculating prioritization scores. The San Diego County Air Pollution Control District does not use receptor proximity factors to adjust facility scores based on the distance to the nearest receptor. All other districts incorporate the proximity adjustment factors when calculating prioritization scores for facilities in their jurisdiction. Both approaches are allowed within the regulatory framework of the Program. It is a District’s choice as to the method used to calculate prioritization scores for facilities in their jurisdiction.

In discussions with District staff before the November 13, 1997 Board hearing, District staff stated that since they are an urban district, with air toxics sources and receptors closely situated, the factors would not have a significant effect on facility scores. In addition, the ARB staff did identify that the District had a large number of facilities with prioritization scores greater than 10 that had not conducted risk assessments. The District could require health risk assessments for facilities in their jurisdiction with prioritization scores greater than 10, but has chosen not to do that. The District requires facilities with a prioritization score greater than 100 complete a health risk assessment. Once again, both approaches are allowed within the regulatory framework of the Program. It is possible that those facilities with prioritization scores greater than 10 would see lower fees if they were to complete health risk assessments.

During those discussions with staff of the San Diego County Air Pollution Control District, ARB staff informed them of available procedures and methodologies, consistent with the CAPCOA

Facility Prioritization Guidelines that could potentially impact the amount of State Program costs allocated to the District. We do not believe those procedures and methodologies will weaken the District's implementation of the Air Toxics "Hot Spots" Program. We do not believe facilities should pay fees if they can demonstrate, with the concurrence of the District and the ARB, that they present an air toxics health risk below the thresholds triggering fees.

The current fee methodology is based on statutory language and intent. The current fee methodology is designed such that those facilities with low, or no, risk are exempted from the assessment of Program fees. Those facilities with the highest risk are assessed the highest fees. Program fees are essential in providing the revenues necessary to support implementation of the Program. However, the success of the Program is a result of the Program's ability to identify facilities whose emissions present a significant health risk and California's regulated community recognizing and responding to the health risks that they might pose to the communities in which they conduct business.

6. Comment: The ARB staff should completely reevaluate the methodology used to allocate State Program fees to the districts prior to the Fee Regulation for fiscal year 1998-99. (Anderson)

Agency Response: The statute requires the "Hot Spots" fees be proportionate to the quantities of the releases identified in the toxics emission inventory and the level of priority assigned to a source by the district. The current fee methodology fulfills that requirement. The statute also requires the ARB to annually review, and if necessary, amend, the Fee Regulation. Each year, the ARB staff reviews the fee regulation in consultation with districts and the regulated community before proposing any amendments to the Fee Regulation. During the development of the amendments to the Fee Regulation for fiscal year 1997-98, the ARB held thirteen conference calls with the Fee Regulation Committee comprised of district and OEHHA staff. After the distribution of the Initial Statement of Reasons, the Committee evaluated other methods, including basing fees on population in counties and a flat fee, as a method of allocating State Program costs to the districts. The Committee concluded that the current method the ARB has used is the most appropriate at this time.

During the development of amendments to the Fee Regulation for fiscal year 1998-99, staff will again evaluate alternative methodologies for allocating State Program fees. The Committee and general public will be involved in evaluating the current and alternative methods within the framework of the statutory language and intent associated with the Program.

7. Comment: Some processes should be put in place to find autobody shops using cheap paint with hexavalent chromium and lead as components and to cut their emissions. (McConachie, oral)

Agency Response: Some districts have rules prohibiting the use of those substances as

pigments in paints and districts are responsible for enforcing those rules. The industrywide emission inventory and risk assessment portion of the “Hot Spots” Program is meant to identify facilities emitting these substances. Use of these substances would result in high risks. The “Hot Spots” Program requires high risk facilities to reduce risks, usually by reducing emissions, below the level of significance. The ARB is willing to assist districts in locating these facilities and including them in the “Hot Spots” Program.

8. Comment: The proposed Fee Regulation relies significantly on prioritization scores and health risk assessment results. The ARB has not critically reviewed how districts implement the Program. The ARB is aware of variations among districts in emission inventory methods, prioritization procedures, and health risk assessment procedures. The variations result in significant differences between districts in emissions, prioritization scores, and health risk assessment results. The outcome is an inequitable distribution of State Program costs among the districts. (Smith)

Agency Response: The Fee Regulation methodology is based on facility prioritization scores and health risk assessment results as reported to the ARB by individual districts. The procedures for calculating those scores and health risk assessment results were adopted by the California Air Pollution Control Officers Association (CAPCOA) early in the Program (1990 and 1993, respectively). The Facility Prioritization Guidelines and Health Risk Assessment Guidelines do allow districts some flexibility in their procedures. We disagree that this flexibility results in great variations in prioritization scores and health risk assessment results between districts that would result in an inequitable distribution of State Program costs.

In a review of the Districts’ share of State costs, the ARB staff determined the flexibility in the Prioritization Guidelines had little to do with the amounts eventually allocated to the District. It is a District’s choice as to the method used to calculate prioritization scores for facilities in their jurisdiction. In discussions with District staff before the November 13, 1997 Board hearing, District staff stated that since they are an urban district, with air toxics sources and receptors closely situated, they chose to not adjust prioritization scores downward in cases where receptors are located a far distance from the source as allowed by the Guidelines. In addition, the ARB staff did identify that the District had a large number of facilities with prioritization scores greater than 10 that had not conducted risk assessments. The District could require health risk assessments for facilities in their jurisdiction with prioritization scores greater than 10, but has chosen not to do that. It is possible that those facilities with prioritization scores greater than 10 would see lower fees if they were to complete health risk assessments.

Regarding emission inventory methodologies and differences between districts, the ARB staff conducted an extensive review and evaluation of air toxics emission inventories in the three months before the Board hearing. ARB staff compared substances reported and the quantity emitted between districts for the same source types. Staff was unable to find where significant differences exist between districts in how emissions are reported for the same source type. Therefore, the method used to report emissions data do not impact prioritization scores, or health

risk assessment results, between districts or create an inequitable allocation of State Program costs. ARB staff will continue to evaluate the Air Toxics Emission Data System for discrepancies as new data are received.

9. Comment: The San Diego County Air Pollution Control District has repeatedly tried to bring about an acceptable solution to issues facing the District through the Fee Regulation Committee, and separately with ARB staff, without success. (Smith)

Agency Response: The staff of the San Diego County Air Pollution Control District has worked with the Fee Regulation Committee in an effort to revise the fee calculation methodology. After the distribution of the Initial Statement of Reasons, the District's staff suggested using a methodology based on population, or a flat fee per facility, but these proposals were rejected by the Fee Regulation Committee.

In addition, those methodologies do not appear to meet the framework established in statute for the Fee Regulation. Districts can recover fees only from facilities in the Program. If a district's shares of State Program costs were determined by population, the effect would be a high risk facility in one district would pay a higher fee than a high risk facility in a district with a small population. If there was a flat fee for facilities in the Program, a high risk facility would pay the same Program fee as an intermediate risk facility. The ARB staff considers neither of those alternatives equitable to facilities statewide. The current method is the most equitable method in that facilities statewide are assessed the same fee if they are in the same Program fee category. Those categories are determined strictly on the basis of a facility's risk or prioritization score.

As for the staff of the San Diego County Air Pollution Control District working with ARB staff to bring about an acceptable solution, we agree that the District staff has participated in the process and we appreciate their contributions to the process. We have gone into detail with the District on the differences between the method used by their district to implement the Program and the way the rest of the districts in the State implement the Program. We have discussed our evaluation of the emission inventory in trying to address their concerns about the potential for significant differences between districts and how our evaluation indicates that significant differences do not exist in the data base. We have discussed with district staff the contradiction presented by their support for flexibility in the procedures used to calculate prioritization scores and health risk assessment results while simultaneously implying that that flexibility is the root cause of significant variations among districts. We have tried to work closely with District staff to resolve these issues and will continue to do so as we begin proposing amendments to the Air Toxics "Hot Spots" Fee Regulation for fiscal year 1998-99.

10. Comment: The fee calculation methodology should be based on "population weighted risk". (Solganik)

Agency Response: The current fee calculation method uses health risk information based on risk to an individual to determine a facility's annual fee. In discussions with the staff of OEHHA,

the staff of the ARB has found that there is some merit to the idea of basing the fee calculation methodology on a “population weighted risk”, but it would take a considerable investment of resources to develop a workable methodology. At this time, the issue that hinders the implementation of such a methodology the most is an overall lack of correlation between the risk isopleths generated by a health risk assessment and the actual populations impacted by the differing isopleths.

A second issue that would need to be addressed is how to assess fees of those facilities that have not had exposure isopleths developed for them. Facilities that have been prioritized, but have not done health risk assessments, do not have the same isopleth information available to them that a facility that has had a health risk assessment done for it. The ARB and the districts could not use a population weighted risk methodology to assess Program fees. In terms of the fairness of the implementation of any fee methodology, the ARB would be left with many of the same issues currently faced. During the development of amendments to the Fee Regulation for fiscal year 1998-99, staff will again evaluate alternative methodologies for allocating State Program fees for fiscal year 1998-99.

11. Comment: The contribution of toxic substances from mobile sources, including diesel exhaust, should be reviewed. Mobile sources should contribute a proportionate portion of “Hot Spots” Program fees. (Cunningham I)

Agency Response: The Air Toxics “Hot Spots” Program is focused, by statute, on stationary sources, the individual facilities emitting listed toxic substances. The legislation does not include mobile sources in the Program. Health and Safety Code section 44380 (a)(2) states that fees shall be assessed upon the operator of every facility subject to this Program. The ARB does not have the authority to assess fees upon those not in the Program. However, diesel exhaust is being addressed by the ARB under other regulatory programs.

12. Comment: The State maintenance budget of the “Hot Spots” Program should be funded using the State’s General Fund. (Cunningham I, Cunningham II)

Agency Response: The Health and Safety Code, section 44380 (a)(2), mandates that the “Hot Spots” Program be funded through an annual fee assessed from those facilities subject to the Program. Any change in the source of State funding for the Program would need to be mandated by the State Legislature through a change in the Air Toxics “Hot Spots” Act.

13. Comment: Other sources of funding available to the State should be used to supplement the Air Toxics “Hot Spots” Program. (Stocker)

Agency Response: Health and Safety Code, section 44380 (a)(2) mandates that the “Hot Spots” Program be funded through an annual fee assessed those facilities subject to the Program. Any change in the source of funding for the Program would need to be mandated by the State Legislature.

14. Comment: State costs should be distributed amongst the districts based on total number of permitted facilities or population. (Stocker)

Agency Response: The Health and Safety Code, section 44380 (a)(3) mandates that the “Hot Spots” Program be funded through an annual fee assessed based on the extent of the releases identified in the toxics emissions inventory and the level of priority assigned to a source by the district. After the distribution of the Initial Statement of Reasons, the Fee Regulation Committee, a working group composed of the staffs of OEHHA and districts, reviewed those alternatives and concluded that the current method the ARB has used is the most appropriate at this time.

Districts with large numbers of permitted facilities that had completed their “Hot Spots” requirements and demonstrated low risks, would receive a larger share of State costs than districts with a smaller number of permitted facilities but high risks. In addition, fees can only be assessed to facilities in the Program.

The current method is the most equitable method in that facilities statewide are assessed the same fee if they are in the same Program fee category. Those categories are determined strictly on the basis of a facility’s risk or prioritization score.

15. Comment: The San Diego County Air Pollution Control district strongly opposes the Fee Regulation because the ARB has inequitably distributed State Program cost to the District. (Smith)

Agency Response: We disagree and believe the Fee Regulation contains the most equitable and accurate method for allocating State costs to the districts. The ARB has worked closely with the districts through the Fee Regulation Committee to develop a methodology for distributing the State Program costs to districts that is fair, equitable, and accurate, and adheres to the requirements of the Health and Safety Code. The Fee Regulation Committee evaluated other methods for distributing State Program costs to districts, including basing fees on county population, number of permitted facilities, or a single flat fee for all facilities. After the distribution of the Initial Statement of Reasons, the Fee Committee concluded that the current method the ARB has used is the most appropriate at this time.

The facility health risk data, used to determine the facility program category and fee for each facility, is obtained directly from the district. The Fee Regulation treats all facilities in the same risk-based facility program category equally. A facility in the San Diego County Air Pollution Control District whose emissions present a 10 in a million cancer risk is assessed the same State

fee as all other facilities statewide with a 10 in a million cancer risk. Therefore, the risk-based allocation method is the most equitable of all the methods evaluated by the Committee.

Comments Concerning Fees:

16. Comment: The State Program fee assessed Industrywide facilities should be increased because many of the facilities have health risks similar to the risks posed by industries currently in the higher risk facility program categories. (Cunningham I)

Agency Response: Industrywide facilities are generally small businesses. Examples include gas stations and dry cleaners. The Health and Safety Code requires the districts to prepare the emission inventories and may prepare the risk assessments for these facilities. Because the vast majority of the districts have not completed the inventories and risk assessments for this group, and facilities cannot be placed in a facility program category, industrywide facilities have been placed in a single category and charged a single small fee. We have not placed them in the "Unprioritized" category since the completion of the emission inventory is dependent on the districts preparing the inventory. ARB staff proposed that the State fee for industrywide facilities be increased from \$15 to \$25 this year because of the increased resources needed to support the emission inventory and risk assessment activities we expect to occur this year for these types of facilities. The ARB staff has finalized several industrywide risk assessment guidelines that have been distributed to districts and industrywide sources in order to prepare emission inventories and health risk assessments during fiscal year 1997-98. With the distribution of these industrywide risk assessment guidelines, we are anticipating a greater need for additional public assistance and outreach. As emission inventories and health risk assessments are completed for Industrywide facilities, ARB staff will evaluate the appropriate fee as amendments to the fiscal year 1998-99 Fee Regulation are developed.

17. Comment: State Program fees assessed Industrywide facilities should be increased from the \$15 annually to \$75 to \$100 annually. (Cunningham II, Solganik)

Agency Response: We disagree. ARB staff proposed raising the industrywide facility fee from \$15 to \$25 to support the expected increase in resources needed to evaluate these types of facilities. However, staff believes an increase in fees from \$75 or to \$100 is unwarranted, particularly since the risks posed by most of these facilities is unknown at this time. We expect a lot of activity will occur this year evaluating industrywide facilities. After we have a better understanding of the risks these types of facilities present, we will re-evaluate the appropriate State Program fee.

Comments Concerning District Costs and Implementation:

18. Comment: The Feather River Air Pollution Control District has a problem with the increase in their portion of State Program costs. (Stocker)

Agency Response: The District's portion of State fees was reduced in the final proposed amendments presented at the November 13, 1997 Board hearing. However, the District's share of State costs did not go back to the level allocated in fiscal year 1996-97. In follow-up conversations with Mr. Stocker, ARB staff informed him that the district was adding facilities to the Program and that those additions result in the increase his district's share of State costs.

19. Comment: Although the San Diego Air Pollution Control District has not received ARB's final proposed Fee Regulation, the District believes it will result in substantial State fee increases for small and medium-sized San Diego County businesses. (Smith)

Agency Response: The final amendments to the Fee Regulation, proposed by the ARB staff at the Board hearing, allocated State Program costs to the San Diego County Air Pollution Control District that were approximately 3 percent higher than fiscal year 1996-97. So, there should not be a substantial increase in fees for small and medium-sized businesses in San Diego County. Since the District did not request the ARB to adopt a district fee schedule for them, the District is responsible for adopting its own Air Toxics "Hot Spots" Fee Rule. So, the District is responsible for the actual fee charged to facilities in its jurisdiction.

20. Comment: The San Diego County Air Pollution Control District should receive a reduction in State fees at least comparable to the reduction in State Program costs for this year. (Smith, Anderson)

Agency Response: A district's share of State Program costs cannot be derived solely from the State Program budget. The current methodology for determining State costs to the districts is based the numbers of facilities in the district and the Facility Program Category, as determined by the facilities' prioritization scores calculated by the district or the results of a health risk assessment, to which those facilities are assigned by the district. All the districts, through the Fee Regulation Committee, participated in the development of this methodology. Districts inform the ARB of the current prioritization scores and health risk assessment results for their facilities. Although State costs decreased by 30 percent from fiscal year 1996-97, districts would not automatically see a comparable 30 percent reduction in State costs allocated to their districts. For fiscal year 1997-98, if a facility did not change its Facility Program Category, it's State Program fee would have increased because the numbers of facilities with low, or no, risk that have been exempted from the assessment of Program fees has outstripped the reductions in State Program costs. Thus, there is a much smaller facility base from whom the districts can assess fees. Many districts saw a reduction in their allocation of State Program costs due to their facilities completing Program requirements and reducing risks, resulting in these facilities being placed in Facility Program Categories assessed a smaller fee. However, if most facilities stayed in the same Facility Program Categories they occupied in fiscal year 1996-97, as occurred in the San Diego County Air Pollution Control District, the districts would be allocated the same, or an increased, share of State costs to recover..

21. Comment: The ARB's Fee Regulation should ensure an equitable and accurate

distribution of State Program costs amongst the districts. (Smith)

Agency Response: The ARB believes the Fee Regulation allocates State Program costs to the districts in a fair, equitable and accurate manner. The ARB has worked closely with the districts, the regulated community, and the general public in developing a Fee Regulation that fulfills the statutory intent and requirements of the Air Toxics “Hot Spots” Information and Assessment Act. The Fee Regulation uses the most equitable and accurate method of assessing Program fees, by basing the fee on the most recent health risk assessment results and prioritization scores.

22. Comment: Does not support the proposed fee allocation to the districts, specifically the San Diego County Air Pollution Control District’s (APCD) share, which increases 20 percent while the State Program costs decrease by more than 20 percent. (Anderson)

Agency Response: The ARB has worked closely with the districts to insure that the State costs allocated to each district accurately reflect the health risk status of the facilities in each district. That effort includes the collection and verification of emissions inventory data for each facility for which the districts proposed a change in facility program category. The ARB staff believes that the districts’ proposed allocations in the Fee Regulation for fiscal year 1997-98 accurately reflect the status of the facilities in each district. The ARB receives the most current facility data from the districts. That data is used to place facilities into facility Program fee categories. Per-facility fees are based on a facility’s facility program category. That information has been verified using the most current emissions inventory data. The final amendments to the Fee Regulation resulted in only a 3 percent increase in the San Diego County Air Pollution Control District’s share of State Program costs.

Received During the Public comment Period for the December 16, 1997 Notice of Public Availability of Modified Text

- (1) December 22, 1997 letter from Patrick J. Griffin, Assistant Air Pollution Control Officer, Siskiyou County Air Pollution Control District, to Pat Hutchens the Clerk of the Air Resources Board.

Comments Concerning District Costs:

1. Comment: The Siskiyou County Air Pollution Control District objects to its increased share of State fees for fiscal year 1997-98. The State indicated it would reduce Air Toxic “Hot Spots” Program costs for fiscal year 1997-98 and appears to have deviated from its plan. The District Board has only appropriated from its general fund an amount equal to last year’s \$5,800 share. It is unlikely the District Board will approve additional funds to cover the difference. (Griffin)

Agency Response: The State has not deviated from its plan to reduce State costs and has

significantly reduced its “Hot Spots” Program budget for fiscal year 1997-98. The total reduction in State costs from fiscal year 1996-97 is \$586,000 which represents a 30 percent reduction in State Program costs. The final State budget is also 33 percent less than the \$2 million statutory cap on State fees for this fiscal year. The ARB has also streamlined the Program’s requirements to focus on the highest risk facilities. As the Program has matured, the ARB has attempted to balance the cost of the Program with the requirements of the Program. As a result, the State’s Program costs have been reduced 74% since the peak years of the Program.

Over the last year, many facilities have lowered their risks and therefore changed Program fee categories this year. As a result, many facilities will pay either reduced, or no, fees for State costs. For fiscal year 1997-98, approximately 1,000 facilities will pay no State fees. With so many facilities now exempt from a State fee, a smaller number of facilities are left to share the cost of the Program, and consequently, a higher fee per facility category, even though the State has reduced its portion of Program costs.

The district’s allocation of the State’s Program fees is based on the numbers of facilities in the District and the facility program categories to which those facilities are assigned. All facilities in the Siskiyou County Air Pollution Control district continue to be assigned to the “Unprioritized” facility program category. There has been no change in the status of those facilities from fiscal year 1996-97 to fiscal year 1997-98. Therefore, the District’s allocation of State fees would increase this year since fee amounts increased. Since none of the facilities changed fee categories, they would not gain the benefit of moving to lower fee categories.

Generally, facilities in the “Unprioritized” facility program category pay higher fees than those facilities that have completed the prioritization process and demonstrated low risks. It is the responsibility of the district staff to collect emissions inventory data from facilities in their jurisdiction and complete the prioritization process. ARB staff encourages districts to complete the collection air toxics emission inventory data from their facilities and complete the prioritization process.

Finally, the Air Toxics “Hot Spots” Program is a fee-supported Program supported by fees paid by facilities subject to the Program. Districts should not have to rely on general funds to support their district activities or pay the State fees. The districts should invoice facilities subject to the Program and facilities should be paying the appropriate fee. This is both a statutory and regulatory requirement.