

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

ADOPTION OF AMENDMENTS TO THE AIR TOXICS “HOT SPOTS” FEE REGULATION

UPDATED INFORMATIVE DIGEST OF ACTION

Actions and Sections Affected: Adopted amendments to sections 90700-90705, title 17, California Code of Regulations (CCR) and Appendix A to sections 90700-90705 (The Air Toxics “Hot Spots” Fee Regulation).

The objective of the Air Toxics “Hot Spots” Fee Regulation (Fee Regulation) is to recover the costs of the State and the local air pollution control and air quality management districts (air districts) to implement and administer the Air Toxics “Hot Spots” Information and Assessment Act. The fees assessed through this regulation are used to inventory air toxics emissions, prioritize facilities for preparation of risk assessments, review risk assessments (districts only), notify the public of potential health risks from exposure to the emissions, and provide guidance to the facilities in reducing the potential risk from exposure to the emissions. The regulation specifically allocates the State’s costs among air districts, and establishes facility fees for the air districts that have requested the Air Resources Board (ARB) to adopt their fee schedules.

Background: The Air Toxics “Hot Spots” Information and Assessment Act of 1987 (the Act) (Health and Safety Code section 44300 et seq.) established a program to inventory air toxics emissions from facilities in California and to assess the potential risk to public health from exposure to these emissions. The Act also requires that the public be notified of any significant health risks associated with the emissions from high risk facilities. These high risk facilities must reduce their air toxics emissions below the level of significance within five years. The Act specifies activities that must be carried out by the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and the air districts, to implement the Act. The Act requires the ARB to adopt a fee regulation to ensure that costs incurred by the State and air districts in implementing and administering the Air Toxics “Hot Spots” Program (Program) are recovered through fees on facilities subject to the requirements of the Act (Health and Safety Code section 44380).

To implement the Act, the ARB first adopted the Fee Regulation in 1988. Each year, ARB staff, in consultation with the Fee Regulation Committee, which is comprised of the air districts and OEHHA, reviews the Fee Regulation and prepares amendments for the ARB’s consideration. Annual revisions have been needed to ensure that the State’s and air districts’ costs of implementing the Program are recovered.

Air districts recover their Program costs and their portion of the State’s cost by adopting their own fee rules or by requesting the ARB to adopt a fee schedule for them. If an air district requests the ARB to adopt its fee schedule, the district must submit its Program costs, approved by its air district governing board, to the ARB by April 1, prior to the applicable fiscal year.

Seven air districts submitted district board approved costs for fiscal year 1997-98 and requested ARB adoption of facility fee schedules.

Description of the Regulatory Action: At a public hearing held on November 13, 1997, ARB staff proposed amendments to the Air Toxics “Hot Spots” Fee Regulation for fiscal year 1997-98 for the ARB’s consideration. After considering the staff’s recommendation, public comments, and testimony, the ARB passed resolution 97-41, which adopted amendments contained in the August 9, 1997 staff report and modifications presented by the staff at the hearing. A Notice of Public Availability of Modified Text, supporting documents and information was made available on December 16, 1997 to describe the additional modifications that were proposed and approved at the November 13, 1997 hearing. The deadline for public comment on the modified regulatory text was December 31, 1997. There was one comment received as a result of these modifications. The Fee Regulation for fiscal year 1997-98 adopted by the ARB is described below.

Reduction in the State’s Cost: The original proposed amendments found in the August 9, 1997 staff report, included a reduction in the State costs to implement the Air Toxics “Hot Spots” Program of approximately \$446,000 for fiscal year 1997-98. This represents a reduction of 23 percent compared to fiscal year 1996-97. Modifications approved at the November 13, 1997 hearing and included in the Notice of Public Availability of Modified Text, reduced the State costs an additional \$140,000. State costs for fiscal year 1997-98 were reduced \$586,000 an approximately 30 percent reduction from fiscal year 1996-97; State costs for fiscal year 1997-98 will be \$1,350,000. This represents a greater than 74 percent reduction from fiscal year 1993-94 in State revenues to implement and administer the Program. With an adjustment factor of five percent added to this amount, the State’s estimated revenue to be recovered through the Fee Regulation is approximately \$1,417,515 (this amount may differ slightly from the amount shown in Table 1 of the Fee Regulation due to rounding). The five percent adjustment factor is necessary to account for non-payment and for uncertainty in the facility information.

Definition Modifications: Section 90701 (e), “Facility Program Category List,” has been revised to clarify the information districts must forward to the ARB pertaining to a facility’s status in the Program. This list was renamed, “Facility Data List,” and the specific information required is set forth in section 90704 (e)(3). Section 90701 (d) was revised to reflect the changes in the order the definitions are found. Sections 90701 (k) - (m), (o) - (q), (t) - (u), (w) - (z), (ah) - (ak), and (al) - (an) were also revised to reflect the changes in the order of the definitions. Sections 90701 (n), “Risk of 10.0 to Less Than 50.0 Per Million Facility,” and 90701 (ag), “Tracking Facility,” were revised to make the definitions more specific by making them apply to both acute and chronic hazard indexes. Section 90701 (ak), “Unprioritized Facility,” was revised to incorporate the California Air Pollution Control Officers Association’s Prioritization Guidelines, Section 90701 (ao), “Update Facility,” was renamed “District Update Facility” to clarify that facilities in this facility program category are not subject to State Program fees. These facilities are subject to district Program fees only. Section 90701 (z), “Small Business,” has been revised by adding the phrase “(annual full-time equivalence)” to the number of employees section of the definition.

Increase In the Fee Assessed Industrywide Facilities: A modification approved at the November 13, 1997 hearing, and included in the Notice of Public Availability of Modified Text, increase the annual fee assessed Industrywide Facilities from \$15 to \$25. The Industrywide facilities (facilities that qualify to have their emission inventories completed by the air district as part of an industrywide emission inventory) are generally small businesses. The ARB staff anticipates an increase in the resources needed to evaluate these types of facilities. Several industrywide risk assessment guidelines are being finalized and will be distributed to districts in order to evaluate air toxics emissions and risk from industrywide sources, such as gas stations, autobody shops, and dry cleaners some time during the course of fiscal year 1997-98. With the distribution of these industrywide risk assessment guidelines, we are anticipating a need for additional public outreach.

Air District Shares of State Cost: The amendments to the Fee Regulation change the amount that each of the State's 35 air districts must remit to the State (Table 1 of the Fee Regulation) to recover the reasonably anticipated State costs to administer the Program for fiscal year 1997-98. These changes result from changes in facility risk and complexity information, numbers of facilities qualifying for exemptions, and required State revenues. As discussed earlier, the State's estimated cost for fiscal year 1997-98 has been reduced to \$1,350,000 plus a five percent adjustment factor to allow for nonpayment and uncertainty in the facility category information.

Air Districts Requesting State Adoption of Fee Schedules: The adopted amendments establish fee schedules for the following seven air districts: Imperial, Lassen, Santa Barbara, and Tuolumne County APCDs, the Great Basin APCD; and the Mojave Desert and South Coast AQMDs. The adopted amendments delete fee schedules for the Kern County APCD and the Yolo-Solano AQMD.

The method used to calculate facility fees for the above seven air districts is similar to the method used for calculating the State's fees. For these air districts, an adjustment factor of five percent is added to the air districts' costs to be recovered to allow for nonpayment, uncertainty in the facility category information, and uncertainty in the number of businesses that meet the small business cap provision. The same Facility Program Categories are used for air district fees as for State fees, but different category indexes (based on risk and complexity) are assigned for air district fees than for the State's fees.

The fee schedules in the Fee Regulation for the seven air districts that requested ARB to adopt their fee rule include cost-per-facility fees. The Industrywide facilities (facilities that qualify to have their emission inventories completed by the air district as part of an industrywide emission inventory) would pay facility fees between \$25 and \$121. If an Industrywide Facility has paid a fee once and the air district will not expend significant resources on the facility, subsequent fees may be waived by the district.

The following 28 air districts have chosen to adopt their own rules to recover the Program costs for fiscal year 1997-98: Amador, Butte Calaveras, Colusa, El Dorado, Glenn Kern, Lake, Mariposa, Modoc, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, and Ventura County APCDs; Feather River, Monterey Bay Unified, Northern Sonoma Unified, and San

Joaquin Valley Unified APCDs; and Bay Area, Mendocino, North Coast Unified, Northern Sierra, Sacramento Metropolitan, and Yolo-Solano AQMDs. These 28 air districts are required to adopt district fee rules that recover costs for fiscal year 1997-98 (Health and Safety Code section 44380 (a)(2)).

Air Districts' Costs to be Recovered: Table 2 of the Fee Regulation was modified to reflect changes in each air district's Program costs to be recovered for the seven air districts requesting ARB adoption of facility fees. The Kern County APCD and Yolo-Solano AQMD costs were deleted from Table 2.

Changes to Table 3 of the Fee Regulation: Facility fees in Table 3 of the Fee Regulation were changed to reflect the State's new cost for the Facility Program Categories; changes in the air districts' costs, updated facility counts, and facility data revisions as enacted for the Imperial, Lassen, Santa Barbara, and Tuolumne County APCDs, the Great Basin APCD, and the Mojave Desert and South Coast AQMDs. Facility fees for the Kern County APCD and Yolo-Solano AQMD were deleted.

Changes to Specified Fees: Flat fees for Industrywide facilities specified by the air districts in Table 4 of the Fee Regulation were revised. Flat fees for Industrywide facilities for Kern County APCD and Yolo-Solano AQMD were deleted. In addition, flat fees for Industrywide facilities were modified to reflect changes in districts' costs to be recovered by Lassen County APCD and South Coast AQMD.

Table 4 was also revised to include the District Update Facility fee the seven districts will assess facilities with prioritization scores between 1.0 and 10.0 for processing their quadrennial toxic emissions inventory updates. These flat fees range from \$0 - \$517.

Changes to Appendix A: Appendix A of the Fee Regulation, "Air Pollution Control District Air Toxic Inventories, Reports, and Surveys," was revised to reflect the updated Santa Barbara APCD's "List of Air Toxic Sources," July 14, 1997. The lists for the Kern and San Luis Obispo County APCDs and the Bay Area and Sacramento Metropolitan AQMDs were deleted from Appendix A.

Clarifying and Grammatical Changes: Section 90702 was modified to clarify the information districts must forward to the ARB concerning exempted facilities. The date that information is due to the ARB from the districts was also revised. Section 90704 (e)(3) was revised to rename the list of information to be forwarded to the ARB in order to match the new definition name in section 90701 (e). Several other clarifying and grammatical changes were made to sections 90702, 90703, and 90705.

Comparable Federal Regulations: The Act established an air quality program unique to the State of California. No parallel federal requirement exists at this time. There is no federal fee which specifically targets "Hot Spots" facilities. Accordingly, there is no conflict or duplication between this Fee Regulation and current federal regulations.