



Cal/EPA

California
Environmental
Protection
Agency



Air Resources Board

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Pete Wilson
Governor

Secretary for
Environmental
Protection

August 18, 1997

Ed Romano
Glenn County Air Pollution
Control District
720 North Colusa Street
Willows, California 95988-0351

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Dear Mr. Romano:

This letter is to inform you of our response to a formal comment made by your staff concerning recent amendments to the Air Toxics "Hot Spots" Criteria and Guidelines Report. Staff asked what the implications would be of the Statewide Portable Equipment Registration Program on the air districts regarding "Hot Spots" reporting, recordkeeping, fees, and implementation for registered portable equipment. Our response to the comment is included in the enclosed excerpts from the Final Statement of Reasons.

If you have any questions regarding our response, please contact Richard Bode, Manager of the Emission Inventory Methods Section, at (916) 322-3807.

Sincerely,

Linda C. Murchison, Chief
Emission Inventory Branch
Technical Support Division

Enclosure

cc: Richard Bode

Mr. Romano

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August 18, 1997

bcc: ~~Mike~~ Tollstrup, ARB
Rick Steward, Glenn County APCD
Kevin Tokunaga, Glen County APCD

GLENN COUNTY AIR POLLUTION CONTROL DISTRICT

26. Comment: What are the implications of the Statewide Portable Equipment Registration Program (Health and Safety Code sections 41750-41755) on the air districts regarding AB 2588 "Hot Spots" reporting, recordkeeping, fees, and implementation for registered portable equipment, and in particular will the State assess, evaluate, and collect the fees or are the districts responsible for fee recovery under AB 2588? (Glenn County APCD)

Agency Response to Comment #26: While staff believes the issue of fees raised in the comment is outside the scope of the 15-day comment period on the Guidelines Report, the fees aspect will be included for completeness in the agency's response to the comment regarding the overall impacts of these two programs relative to each other. (Note that in a separate rulemaking, the Board has approved changes to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1996-1997. This comment was not submitted during the public comment periods for the Fee Regulation rulemaking.) As discussed in more detail in the following paragraphs, both the Statewide Portable Equipment Registration Program and the Air Toxics "Hot Spots" Program are state-mandated programs, which also require the local air pollution control and air quality management districts (districts) to implement or enforce a number of provisions. The Board believes that, because the two programs are separate state-mandated programs distinct in scope and intent, it is the duty of the Board to attempt to harmonize the programs to the fullest extent possible. Accordingly, the Board does not believe that, with regard to the districts' duty to recover fees, the registration of portable equipment substantively changes the Air Toxics "Hot Spots" program applicability or requirements for facilities that include such registered portable equipment. As discussed below, "Hot Spots" provisions apply if the facility at which the equipment operates is subject to the "Hot Spots" program and if the use of the equipment is a routine and predictable operation of the facility. Facilities subject to the Air Toxics "Hot Spots" Fee Regulation are subject to "Hot Spots" fees, and districts are responsible for recovery of those fees. Likewise, facilities subject to the Guidelines Report are subject to its reporting requirements, and districts are responsible for implementing those requirements.

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 established a public right-to-know program, which requires specified facility operators to quantify and report the air emissions from all routine and predictable operations at their facility of specifically listed toxic substances; to assess the public health impacts and risks of those emissions; to notify those exposed to any potentially significant risks; to conduct audits and implement risk reduction plans to reduce any significant risks to below the significance levels within specified timeframes; and to pay fees to recover the state and district costs of implementing the state-mandated program. Under the "Hot Spots" statute, the State Board and the Office of Environmental Health Hazard Assessment must prepare various guidelines to implement the program, such as criteria and guidelines for preparing emission inventories, guidelines for assessing health risk, and a regulation for collecting state and certain district fees. Under the statute, the local air districts must review and approve the facilities' emission inventory plans and reports; prioritize the facilities for purposes of preparing health risk assessments; review and approve risk assessments; specify notification procedures and significant risk levels; adopt a fee schedule to recover district costs; and review facilities' risk reductions audits and plans. Under the "Hot Spots" emission inventory regulations, as interpreted by the State Board, the "Hot Spots" program addresses all sources within a subject facility that emit listed toxics during routine and predictable operations at the facility. Both permitted and unpermitted

sources located within the facility property are included. In addition, some types of mobile sources are also included, as discussed in more detail below.

The ARB provided interpretation and guidance regarding mobile sources which are subject to the "Hot Spots" program in a September 12, 1989 interpretation letter from Gary Agid, Chief, Emission Inventory Branch, ARB, to all districts. A copy of the letter is included as a document relied upon for this rulemaking package. The following cases are addressed in Attachment I, item #1 of the letter:

- (1) Tailpipe emissions from sources that meet the Vehicle Code definition of "motor vehicle" (such as automobiles, trucks, buses, motorcycles, tractors, and forklifts) are not included in the facility's Hot Spots reporting requirements; however, dust emissions from motor vehicle activities at a facility must be reported, and the districts may require activity data regarding the usage of such vehicles at the facility.
- (2) Emissions from mobile sources not meeting the "motor vehicle" definition that operate and stay within the facility property (such as cranes and generators) must be reported.
- (3) For other non-motor vehicle mobile sources that are periodically located within the facility property (such as aircraft and trains), the districts may require the reporting of site-specific activity data regarding the usage of these sources in order to support area and mobile source estimates required by the statute to be developed by the ARB.

In item #7 of the same September 12, 1989 letter, the ARB provided interpretation and guidance regarding equipment that is temporarily located at a facility site. The letter stated that "If the facility is subject to the [Hot Spots] Act, the emissions from such temporary equipment must be reported if the operations are routine and predictable. The facility operator should estimate the amount of time the equipment is used at the site during the reporting year."

These provisions regarding moveable sources are consistent with the intent of the "Hot Spots" Act to ensure public right-to-know regarding emissions of air toxics from all routine and predictable operations from an entire facility, if that facility is subject to the "Hot Spots" applicability criteria. These provisions would not be substantively changed by the registration of portable equipment under the Statewide Portable Equipment Registration Program and its implementing regulations.

The Statewide Portable Equipment Registration Program was established pursuant to the directions of AB 531. The ARB staff has proposed adoption of the Portable Equipment Registration Program to implement AB 531. The program would allow for the statewide registration of specified types and sizes of portable equipment. The registration would be voluntary in most cases; however, once the equipment is so registered, districts would be prohibited from permitting, registering, or otherwise regulating the equipment. However, districts would be responsible for fully enforcing the statewide registration program as adopted by the Air Resources Board.

The Air Toxics "Hot Spots" and Portable Equipment Registration programs address two distinct legislative concerns. The "Hot Spots" program addresses the assessment of air toxic substances. In contrast, the Portable Equipment Registration Program is intended to develop

uniform and consistent statewide regulation for portable equipment, while achieving necessary and feasible emission reductions that protect the public health and welfare. The Legislature expressly enacted the registration statute to address the burdens that owners and operators were experiencing because of different emission standards, limitations, and other permit conditions that different districts have imposed on such equipment which moves throughout the state. It was the intent of the Legislature to preempt the districts from the further regulation of this equipment to the extent that such regulations imposed, among other things, inconsistent emission standards, limitations, and operational controls that directly affect the operation and performance of such equipment.

It was not the Legislature's intent to relieve the facilities at which such portable equipment is operated from the duties and obligations of the Air Toxics "Hot Spots" Act. The Portable Equipment Program and the Air Toxics "Hot Spots" Program represent separate and distinct state-mandated programs. The "Hot Spots" statute requires the district to implement the statute's provisions regarding review and approval of facilities emission inventory plans and reports and risk assessments, and other implementation provisions regarding public notification and assessing fees, as discussed in the preceding paragraphs. The Board believes that implementing these "Hot Spots" provisions by the districts does not constitute "otherwise regulating" the portable equipment within the meaning of the Portable Equipment Program, and would therefore not be prohibited under the Portable Equipment Program. The Board believes that these "Hot Spots" provisions are not an area of regulation intended to be captured under AB 531. First of all, legislative history does not indicate an intent to preempt "Hot Spots" program requirements. Furthermore, it would be incongruous to assess "Hot Spots" fees for some portable equipment and not to assess fees for similar or identical equipment, based on the registration status of such equipment. In addition, the effectiveness of the Air Toxics "Hot Spots" Program in protecting public health and fulfilling its public right-to-know provisions could be compromised if assessment and reporting of the contribution of portable equipment to the toxic emissions impacts of a facility within which the portable equipment operated on a routine and predictable basis, and which would otherwise be subject to "Hot Spots" applicability provisions, were not addressed.

The determination of whether particular portable equipment would be subject to "Hot Spots" reporting depends on the following:

- (1) whether the facility at which the equipment operates is a "facility", as defined under Health and Safety Code section 44304, and meets applicability criteria to be subject to the "Hot Spots" program. (For example, if a portable drilling rig drills a water well at a farm that does not meet the definition of a facility under the "Hot Spots" program, the emissions of the portable drilling rig are not subject to "Hot Spots" reporting requirements); and
- (2) whether the use of the portable equipment at a subject facility constitutes a routine and predictable operation at the facility. It is clear that the intent of the "Hot Spots" statute was to address routine and predictable operations and emission releases, not emergency releases. Health and Safety Code (H&SC) sections 44301(b) and 44301(e) refer to "routinely releases" and "routine toxic chemical releases", respectively. H&SC section 44340(c)(2) requires that the inventory plan must produce "a comprehensive characterization of the full range of hazardous materials that are

released, or that may be released, to the surrounding air from the facility. Data shall be collected or calculated for all continuous, intermittent, and predictable air releases." Consistent with these provisions, the Guidelines Report exempts certain uses that are not routine and predictable. For example, section VIII.D.(6) exempts use of products for minor maintenance and repair of process and industrial equipment, but clearly states that "Minor maintenance and repair shall not include maintenance and repair which is routinely scheduled or which is due to predictable process upsets." Conversely, if the use of registered portable equipment occurs at a facility subject to the "Hot Spots" program and its operation is routine or predictable for that reporting year, then the emissions from the portable equipment usage must be included in the facility's "Hot Spots" emission inventory report.

The Guidelines Report sets forth an option which allows an alternative process to evaluate facilities and changes in their emissions through the permit review process, if the facility is subject to a district permit program. Sections II.C.(1)(c) and II.C.(2) for new and modified facilities, section II.E.(2)(d) for less than 10 ton per year facilities, and sections II.J.(3)(c) and IV.A.(4) for reinstated facilities, all contain provisions related to alternatives for facilities subject to district permit programs. Several of these follow directly from the amended "Hot Spots" statute under AB 564, which added provisions to the statute for alternative evaluations for facilities subject to district permit programs. Portable equipment that has opted into the Statewide Portable Equipment Registration Program would not itself be subject to district permit programs, so changes in these specific pieces of equipment within a facility would not meet the criteria for the alternative evaluation under the permit process. However, the provisions of these sections of the Guidelines Report could nonetheless be applied to the evaluation of changes in other sources within a facility that are subject to a district permit program, and the assessment must still meet all the stated criteria, including evaluation of the aggregate effect of all sources within the entire facility (see, for example, the criteria in section IV.A.(4)(c)(iii) of the Report), including registered and unregistered portable equipment. The potential toxic emissions and associated health impacts from any portable equipment within the facility would therefore still be required to be included in the overall evaluation, when using the alternative option for facilities subject to district permit program.

Fees under the Air Toxics "Hot Spots" program for fiscal year 1996-1997 are set forth in the Air Toxics "Hot Spots" Fee Regulation and apply to facilities subject to the "Hot Spots" Program fee provisions. State fees are determined using the methodology in the State's Fee Regulation, based on categories defined by prioritization scores and risk assessment results for the facility, which include any contributions from portable equipment that meets the "Hot Spots" applicability provisions. Similarly, the districts' fees, which are required by the "Hot Spots" statute to be recovered by either the State's Fee Regulation or district-adopted fee regulations, are determined using the methodologies in the applicable State or district fee regulation. Fees assessed to a facility would include any contributions to emissions, prioritization scores, or risk results from registered and unregistered portable equipment that meets the "Hot Spots" applicability provisions. For the reasons set forth above, the Portable Equipment Registration Program provisions do not alter the "Hot Spots" fee provisions.