State of California
AIR RESOURCES BOARD

Resolution 89-78

September 15, 1989

Agenda Item No.: 89-17-3

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (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 set forth a program to develop air toxics emission inventories and to assess the risk to public health from exposure to these emissions;

WHEREAS, the Board adopted a fee schedule November 14, 1988 pursuant to 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 of the Board, local air pollution control districts ("Districts"), and the Department of Health Services to implement and administer the Act;

WHEREAS, Board staff, in consultation with representatives of the Districts and the fee regulation committee convened pursuant to Health and Safety Code 44380(b), has developed amendments to the fee regulation for fiscal year 1989-90 which have been discussed with the public at two consultation meetings;

WHEREAS, Health and Safety Code Section 44321 requires the Board to compile and maintain a list of specified toxic substances for use in determining which facilities are subject to the Act and the Board's implementing regulations;

WHEREAS, Health and Safety Code Section 44342 requires the Board to develop, in consultation with Districts, criteria and guidelines for site-specific air toxics emissions inventory plans and reports;

WHEREAS, the Board adopted a criteria and guidelines regulation which became effective June 1, 1989 which, among other things, divides the substances listed pursuant to Health and Safety Code Section 44321 into two categories:

substances which must be quantified and substances for which use must be reported but not quantified;

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 regulations on the basis of information presented by the Districts regarding costs of implementing the Act, 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 fees in the regulation are based on program costs approved by the District boards and on the most recently approved ARB statewide criteria pollutant emissions inventory for total organic gases, particulate matter, nitrogen oxides, and sulfur oxides, except for the Bay Area Air Quality Management District, where fees are based on that District's toxic emission inventory;

2. A statewide air toxics inventory has not yet been compiled, but after such an inventory is available the Board staff will propose changes to the regulation so that fees are assessed on the basis of emissions of toxic air releases;

3. The proposed addition of 59 substances to Appendix A of the fee regulation accurately reflects those required to be compiled and maintained by the ARB pursuant to Health and Safety Code Section 44321;

4. Because of the proposed additions to the list of substances appended to the fee regulation, it is also necessary to amend the "List of Substances for Which Emissions Must Be Quantified" and "List of Substances for Which Production, Use, or Other Presence Must Be Reported", contained in the Emissions Inventory Criteria and Guidelines Regulation (Appendix A, Sections 93300-93347, Title 17, California Code of Regulations);

5. In order to allow time for Districts to include the approval of their program costs in the county budget process, the proposed regulation delays the date for submission of final costs to the ARB from March 1 to September 1 of each year;

6. Due to revenue shortfalls experienced in fiscal year 1988-89, a provision is proposed to the regulation to allow Districts to carry over such shortfall to the fiscal year after which the shortfall was discovered and to add that amount to the subsequent year's program costs;

7. At the request of several Districts, changes are proposed to the regulation with regard to the flat fee charged those facilities listed on a district toxic inventory, survey, or report in such Districts;

8. The revenues to be assessed pursuant to the proposed fee regulation are reasonably necessary to recover the anticipated program costs for fiscal year 1989-90 which will be incurred by the Board, the Districts, and the Department of Health Services to implement and administer the Act's provisions;

9. Although preliminary cost estimates have been provided by District staff, several Districts have not yet submitted their District board-approved costs to the ARB for fiscal year 1989-90;

10. The substances proposed for addition to the list set forth in Appendix A of the fee regulation have been appropriately categorized for purposes of the Emission Inventory Criteria and Guidelines Regulation;

11. 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 economic impact on the affected facilities will not be significant; and

12. 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 90700-90704, Title 17, California Code of Regulations ncluding the appendices referenced therein, as set forth in Attachment A hereto, and Appendices A and B of Sections 93300-93347, Title 17, California Code of Regulations, as set forth in Attachment B hereto;

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to adopt Sections 90700-90704, Title 17, California Code of Regulations and Appendices A and B of Sections 93300-93347, Title 17, California Code of Regulations, after making them available to the public for a pericd 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 regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED, that because several District boards have not provided cost information to the ARB, the Board directs the Executive Officer to insert these District costs into the regulation upon receipt from the Districts and to make other conforming changes necessitated by the new data, and to delay commencement of the 15 day public review period until submittal of these cost data, but no later than October 31, 1989.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to present annually to the Board appropriate amendments to the fee schedule, taking into account the availability of toxic inventory information generated pursuant to the Act's requirements, and to report to the Board on the effectiveness of the fee regulation in recovering state and district costs.

I hereby certify that the above is a true and correct copy of Resolution 89-78, as adopted by the Air Resources Board.

Cary Allison

Cary Allison, Board Secretary