State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Supplement to Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response

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

Public Hearing Date: July 8, 1993
Agenda Item No.: 93-8-2

I. GENERAL

In response to comments by the Office of Administrative Law's Reviewing Attorney, Craig Tarpenning, the Air Resources Board (ARB) provides supplemental information to Comment #17 of the Final Statement of Reasons for Rulemaking, Table of Contents, item #4, Regulatory Action No. 94-0520-02S.

This supplemental information adds clarity to the issue that was raised regarding the operation of the definition of "small business." Specifically, the question was raised whether each facility lease would be subject to the $700 small business fee or whether multiple facility leases subject to single ownership could qualify. Our response to the comment has been clarified to show that multiple facility leases, under common ownership, can qualify as one small business, provided that they belong to the same industrial grouping and are contiguous or adjacent. Discussion supporting this clarifying statement was addressed in the transcript of the proceeding for this regulatory (Table of Contents, Item # 10).

17. Comment: Because the definition of a point source of pollution in the San Joaquin Valley Unified APCD is unique, small oil producers would not qualify as small businesses for the Fee Regulation. Their fees could increase by a factor of ten or more, going from $400 to over $4,000 or $800 to $8,288, which is completely out of line. (Clark, Caufield: 34, Written, Caufield: 34)

Response: The staff agrees with this comment and the small business definition was modified in response to these commenters. The amount of gross receipts for a facility to qualify was raised from $500,000 to $1,000,000 and an aggregate cap on gross receipts of $5,000,000 was added. The definition of a "point source" for the San Joaquin Valley Unified APCD was determined by the district. The ARB does not have the authority to alter this definition. However, the ARB staff has worked with the district staff and representatives of small oil producers in the district to arrive at an equitable solution. In following the ARB's directive, for purposes of assessing fees on oil producers in the San Joaquin Valley Unified APCD, each lease will be evaluated to determine if it qualifies as a small business. If all individual leases in the San Joaquin Valley Unified APCD are owned by the same person, qualify as small business, belong to the same industrial grouping, and are located in one or more contiguous or adjacent properties, he/she will pay one fee of $700 in accordance with the small business exemption.

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I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation, released May 21, 1993 is incorporated by reference herein. The Notice of "Public Availability of Modified Text" to the Staff Report which was available on January 14, 1994 is also incorporated by reference herein.

On July 8, 1993 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, Titles 17 and 26, California Code of Regulations (CCR). After considering the staff's recommendation, and the public's written comments and testimony, the ARB adopted Resolution 93-48, the amendments to the Fee Regulation, sections 90700-90705, Titles 17 and 26, CCR. As required by Health and Safety Code section 44380, the Fee Regulation requires air pollution control districts and air quality management districts (districts) to adopt rules that assess fees upon facilities subject to the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act). These fees are used to recover costs incurred by State agencies and the local districts in implementing the Air Toxics Hot Spots Program (Program). The Fee Regulation also establishes fees to be assessed upon facilities subject to the Act which are located in the twelve districts that requested the ARB to adopt fee schedules for them, and submitted their District Board approved Program costs to the ARB by April 1, 1993.

In accordance with Government Code section 11346.8(c), the ARB directed the Executive Officer to adopt the modified regulation after making it available for public comment, and also required the Executive Officer to consider written comments regarding the modifications and to present the regulation to the ARB for further consideration, if warranted, in light of the comments received. The ARB also directed the Executive Officer to revise the Fee Regulation to reflect an amended "small business" definition in section 90701(v), of the Fee Regulation.

Resolution 93-48 makes the significant changes to the Fee Regulation that are discussed below. These revisions and other

non-substantive revisions are discussed in greater detail in the Staff Report made available to the public on May 21, 1993 and, as noted, in the Notice of Public Availability of Modified Text published on January 14, 1994. In brief, these changes are:

(1) The basis for calculating distribution of the State's cost and facility fees was changed to a toxics risk priority based facility program category method. Each district's portion of the State's cost is calculated using the number of facilities a district has in the various Hot Spots Program categories. Resource indexes account for facility complexity and risk priority to arrive at a flat State cost for each category of facility. This same method is used to set facility fees for the twelve districts requesting the ARB's assessment of fees. Accordingly, descriptions of assessing fees based on criteria pollutants in section 90704, subsections b, c, and d are deleted. New language is added describing fee assessments based on facility program categories in section 90704(c).

(2) Definitions for the various facility program categories and a definition of small business were added to section 90701. The definitions in section 90701, relating to the criteria pollutants fee basis, were deleted.

(3) Section 90703 was amended to no longer require annual adoption of district fee rules provided the district rule or regulation contains a specific provision for automatic readoption of the rule or regulation annually by operation of law.

(4) A new subsection, 90704(d), adds language for assessing specified flat fees for Survey and Industrywide facilities. These changes are reflected in Table 4 (formerly Table 9) of the Fee Regulation as described below in item ten (10). An additional provision was added to allow a district to waive the fee for facilities in column B of Table 4, provided certain conditions have been met, and the district determines that there are insignificant costs with respect to said facility under the Act. The existing fee waiver for facilities in column A will continue, provided certain conditions have been met.

(5) A new subsection, 90704(e) was added which specifies certain flat fees. Subpart 1 specifies a fee amount of $2,000 which a district may charge for reviewing supplemental information provided pursuant to section 44380.5 of the Health and Safety Code. Subpart 2 specifies that the maximum fee to be assessed a small business, as defined in section 90701(v), in any program category, is $700. Subpart 3 specifies a maximum amount of no more than $1,000 to be assessed to facilities categorized as Plan and Report (Simple), if the district judges the action will not result in a revenue shortfall.

(6) Table 1 of the Fee Regulation, "Revenues to be Remitted to Cover State Costs by Air Pollution Control District", was changed to reflect revised State costs and to reflect an updated facility count as discussed in the January 14, 1994 Notice of Public Availability of Modified Text.

(7) Table 2 of the Fee Regulation, "District Costs to be Recovered Through the Fee Regulation", was revised to reflect updated costs of the districts for Program implementation for fiscal year 1993-94. Table 2 was also revised to reflect changes in the districts requesting the ARB's assessment of fees. District costs for the Calaveras, Placer, and Tuolumne County Air Pollution Control Districts (APCD) and the Sacramento Metropolitan Air Quality Management District (AQMD) were added to Table 2; Shasta and Tehama County APCDs were deleted from Table 2. Additional changes were made to Table 2 in the January 14, 1994 Notice of Public Availability of Modified Text. The South Coast AQMD and the Santa Barbara County APCD requested changes in their district costs which decrease the dollar amount to be recovered though the Fee Regulation. For the South Coast AQMD, this reduction was due to a change in the flat fee to be recovered from Industrywide facilities as discussed in item ten (10) below.

(8) Tables 3-8, relating to fee assessments based on criteria pollutant emissions, were deleted because of the change in method for distributing the State's cost and facility fees.

(9) A new Table 3 was added to the regulation, "Cost to Facility by District and Facility Program Category".

(10) Table 9 was changed to Table 4, and retitled "Fees for Survey and Industrywide Facilities". In the new Table 4 column A was deleted, column B was relabeled "A" Survey Facilities, and column C was relabeled "B" Industrywide Facilities. This new Table 4 was updated to reflect changes to district-specified fees as requested by the San Joaquin Valley Unified APCD, Santa Barbara County APCD, and the South Coast AQMD. Specified fees for Calaveras, Placer, and Tuolumne County APCDs and the Sacramento Metropolitan AQMD were added. Specified flat fees for the Shasta and Tehama County APCDs were deleted.

(11) Appendix A of the Fee Regulation, List of Substances, was deleted. Reference is made to the same list titled, Substances To Be Inventoried, contained in the Emission Inventory Criteria and Guidelines Regulation, Appendices A, A-1, and A-II, CCR, sections 93300-93355.

(12) Appendix B, "Air Pollution Control District Air Toxic Inventories, Reports or Surveys", was retitled "Appendix A". The San Joaquin Valley Unified APCD toxics inventory was renamed and updated to the "San Joaquin Valley Unified APCD Toxics List, March 3, 1993". The Sacramento Metropolitan AQMD toxic emission inventory was revised

and updated to the "Toxic Air Pollutant Emission Inventory for Sacramento County, June 1993". A toxics inventory for the Monterey Bay Unified APCD was added and is titled "Monterey Bay Unified Air Pollution Control District, AB 2588 Facilities Affected FY 92/93 and FY 93/94." April 8, 1993.

In response to comments received during the January 14, 1994 Notice of Public Availability of Modified Text, and administrative review, several non-substantive changes were made to the Fee Regulation. These changes do not alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the regulation. In brief, these changes are:

(1) Section 90701(v) was modified to update the reference to the San Joaquin Valley Unified APCD Rule 2201 and correct a misspelling. Because the San Joaquin Valley Unified APCD Board amended Rule 2201, the new subsections referenced in section 90701(v) of the Fee Regulation are 3.29.1 through 3.29.3.

(2) Corrections were made to several titles in Appendix A, Air Pollution Control District Air Toxic Inventories, Reports or Surveys (formerly Appendix B). These changes are:

(a) The "Kern County Air Pollution Control District, "District's Toxic Use List, Southeast Desert Portion of Kern County, February 14, 1992.", was corrected to read: Kern County Air Pollution Control District, "District's Toxic Use List, Southeast Desert Portion of Kern County. February 14, 1992."

(b) The Sacramento Metropolitan Air Quality Management District "Toxic Air Pollutant Emission Inventory For Sacramento County,. June 1993.", was corrected to read: "Sacramento Air Quality Management District Toxic Air Pollutant Emission Inventory For Sacramento County. June 1993."

(c) The San Bernardino County Air Pollution Control District "Toxics Inventory List. June 27, 1990.", was corrected to read: "San Bernardino County APCD Toxics Inventory List. June 27, 1990."

(d) The San Diego County Air Pollution Control District "List of Semiconductor Manufacturers Using Toxic Gases. May 1988.", was corrected to read: "List of Semiconductor Manufacturers Using Toxic Gases (Arsine or Phosphine). May 1988."

(e) The San Joaquin Valley Unified Air Pollution Control District "San Joaquin Valley Unified APCD Toxics List, March 3, 1993.", was corrected to read "San Joaquin Valley Unified APCD Toxics List. March 3, 1993."

(f) The Current San Luis Obispo County Air Pollution Control District "Air Toxics Inventory List for AB 2588, May 3, 1990.", was corrected to read: "San Luis Obispo County

Air Pollution Control District Air Toxics Inventory List for AB 2588. May 3, 1990."

(g) The Santa Barbara County Air Pollution Control District "Current Santa Barbara County Air Pollution Control District List of Air Toxic Sources. May 27, 1992"., was corrected to read: "Current Santa Barbara County Air Pollution Control District List of Air Toxic Sources. May 27, 1992."

(h) The South Coast Air Quality Management District "Current SCAQMD Air Toxics Inventory for AB 2588. May 11, 1990.", was corrected to read: "Current SCAQMD Air Toxics Inventory List For AB 2588. May 11, 1990."

(i) The Monterey Bay Unified Air Pollution Control District, "AB 2588 Facilities Affected FY 92/93 and FY 93/94," April 8, 1993., was corrected to read: Monterey Bay Unified Air Pollution Control District "AB 2588 - Facilities Affected FY 92/93 & FY 93/94. April 8, 1993."

The ARB has determined that this regulatory action will not have a significant adverse impact on the environment, and should benefit air quality by stimulating a reduction in toxic pollutant emissions. The Act, as amended by Senate Bill 1731, Chapter 1162, statutes of 1992, requires facilities, judged to pose a potential significant health risk, to lower their emissions below a significance level. This regulatory action will fund supervision of this risk reduction effort.

The ARB's Executive Officer has determined that the amended regulation will create costs to, and impose a mandate upon, the districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement pursuant to Government Code sections 17500 et seq. and section 6 of Article XIIIB of the California Constitution, because the districts have the authority to levy fees sufficient to pay for the mandated program (see Health and Safety Code section 44380 and Title 17, CCR, sections 90700-90705). These fees are expected to recover in full the costs of district implementation of the Program, including the administration of the amended regulation. The estimated cost to districts to implement the amended Fee Regulation for fiscal year 1993-94 is $475,824.

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 Appendices A, A-I, or A-II of the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355, and release the specified quantity of at least one of the four "criteria pollutants" (total organic gases, particulate matter, nitrogen oxides, or sulfur oxides); and/or 2) they are listed on any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.

The Executive Officer has determined that adoption of the amended regulation will create costs to, and impose a mandate upon certain publicly owned treatment works (POTWs), as well as water treatment and solid waste facilities. The costs of complying with the amended regulation are not reimbursable within the meaning of section 6, Article XIIIB, California Constitution, and Government Code section 17500 et seq., because these types of facilities are authorized to levy service charges to cover the costs associated with the mandated program. For fiscal year 1993-94, the estimated total costs to POTWs and water treatment and solid waste facilities are $79,103 and $213,293, respectively.

The Executive Officer has determined that adoption of the amended regulation will create costs to and impose a mandate upon local school districts which must pay fees pursuant to the amended Fee Regulation. However, elementary and secondary schools' costs of compliance with the regulation are not reimbursable by the State within the meaning of Article XIIIB, section 6 and Government Code sections 17500 et seq., because the school districts have the authority to levy assessments sufficient to pay for the program mandated by this Act. The estimated total cost to local school districts is $2,511 for fiscal year 1993-94.

The Executive Officer has determined that adoption of the amended regulation will create costs to and impose a mandate on other local government agencies and hospitals. However, local government agencies' and hospitals' costs of compliance with the regulation are not reimbursable by the State within the meaning of Article XIIIB, section 6 and Government Code sections 17500 et seq., because these agencies have the authority to levy assessments sufficient to pay for the program mandated by this Act. The estimated total cost to local government agencies and hospitals is $268,448 for fiscal year 1993-94.

The Executive Officer has determined that the amended regulation does not create costs or savings in federal funding to any State agency or program.

The Executive Officer has determined that the amended regulation will create costs to affected State agencies. The costs of the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) to implement and administer the Program, including the amended regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of Title 17, California Code of Regulations. The costs to the ARB and the OEHHA to develop and implement the amended Fee Regulation have been estimated to be $150,000 for fiscal year 1993-94.

Other affected State agencies (e.g. universities, hospitals, and correctional institutions) that must pay fees, pursuant to the amended regulation as emitters of specified pollutants, have been determined to be able to absorb their costs within existing budgets and resources. Total costs to these State agencies are estimated to be $93,028 for fiscal year 1993-94.

In developing the proposal, staff determined there is a potential cost impact on private persons or businesses directly affected by the regulation. The Executive Officer has determined that overall, California businesses seem to be able to absorb the costs of the fees without significant adverse impact on their profitability. Nevertheless, for businesses operating with little or no margin of profitability, imposing these fees may result in significant adverse impacts.

As discussed in the Summary of Public Comments and Agency Responses below, the ARB has determined that no alternative would be more effective in carrying out the purposes for which the regulation was proposed or would be as effective and less burdensome to affected private persons; the statute is clear regarding who must pay fees and what costs the fees are intended to recover. The Fee Regulation contains several fee options which districts may employ to lessen the economic burden on facilities. Each option will result in recovery of the costs of implementing and administering the Program as required by law. The regulation also allows local districts to adopt a fee rule developed by the district, provided that the district's rule will assess a fee against all facilities subject to the Program, and will result in the recovery of the district's and State's costs associated with the Hot Spots Program.

II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

A. Comments From Districts Regarding Updated Facility Numbers and Updated Anticipated District Costs

District Comments

For the purposes of calculating fees for presentation in the Staff Report, the facility count by program category was frozen on April 1, 1993. Some correspondence was received during the 45-day comment period which affects distribution of the State's cost and facility fees for the twelve districts requesting the ARB to adopt their fee schedules. All of this correspondence is summarized and responded to as Comments below. No changes were made to the facility count or district costs after the July 8, 1993 close of the 45-day comment period, however.

1. Comment: For the purposes of calculating fees the following districts supplied information to the ARB regarding updated facility numbers.

a) Mendocino County AQMD, facsimile dated May 25, 1993 to Janette Brooks, ARB.

b) Mendocino County AQMD, facsimile dated May 27, 1993 to Roger Korenberg, ARB.

c) San Luis Obispo County APCD, letter dated June 2, 1993 to Roger Korenberg, ARB.

d) Santa Barbara County APCD, facsimile dated June 3, 1993 to Carla Takemoto, ARB.

e) Kern County APCD, facsimile dated June 14, 1993 to Carla Takemoto, ARB.

f) Lake County AQMD, facsimile dated June 14, 1993 to Roger Korenberg, ARB.

g) Yolo-Solano AQMD, telephone call on June 15, 1993 from Annette Carruthers to Roger Korenberg, ARB.

h) Sacramento Metropolitan AQMD, telephone call on June 16, 1993 from Karen Kelly to Carla Takemoto, ARB.

i) Imperial County APCD, letter dated June 16, 1993 to Roger Korenberg, ARB (facility count confirmed by teleconference with Bob Fisher, Imperial County APCD, on June 16, 1993).

j) Santa Barbara County APCD, facsimile dated June 17, 1993 to Roger Korenberg, ARB.

k) San Joaquin Valley Unified APCD, teleconference with Bill Weese, June 22, 1993 with Roger Korenberg, ARB.

Response: The ARB staff updated all of the facility numbers, requested by these commenters, and used them to calculate the distribution of the State's cost and facility fees for fiscal year 1993-94.

2. Comment: For the purposes of calculating fees, the Santa Barbara County APCD supplied updated district costs.

Response: The ARB staff updated the district cost as requested and used this amount to calculate facility fees for the district.

3. Comment: The South Coast AQMD requested a change in the flat fee to be charged Industrywide and Survey (E-II) facilities.

Response: The ARB staff made the change as requested and used this information to calculate facility fees for the district.

4. Comment: The Santa Barbara County APCD supplied, via facsimile, a copy of a letter from Bruce Falkenhagen to Richard Stedman of the Santa Barbara County APCD. This letter provided information on facilities that may qualify as small businesses and receive a fee discount.

Response: The ARB staff used this information to recalculate facility fees for the district.

5. Comment: The Sacramento Metropolitan AQMD supplied an updated Toxic Air Pollutant Emission Inventory for Sacramento County, dated June 1993.

Response: The ARB included this updated inventory in Appendix A of the Fee Regulation.

B. General Comments Regarding The Proposed Amendments To The 1993-94 Fee Regulation

The Air Resources Board received the written and oral comments listed below during the Notice of Public Hearing 45-day comment period and the January 14, 1994 Notice of Public Availability of Modified Text 15-day comment period. In the following discussion of comments and responses, the commenter is identified by his or her last name and with a numeral if multiple comments were received from the same commenter.

Written Comments Received During the 45-Day Comment Period and the January 14, 1994 Notice of Public Availability of Modified Text 15-Day Comment Period

(1) May 20, 1993 letter from James M. Ryerson, Air Pollution Control Officer, Santa Barbara County Air Pollution Control District, to James Boyd, ARB.

(2) May 28, 1993 letter from Bob Kober, Coast Rock Products, Inc., to Genevieve Shiroma, ARB.

(3) May 28, 1993 letter from Charlene L. Wardlow, Environmental Manager, Calpine, to Roger Korenberg, ARB.

(4) June 14, 1993 letter from Victor Magistrale, Ph.D., to Board Secretary, ARB.

(5) June 15, 1993 letter from Michael W. Tolmasoff, Air Pollution Control Officer, Northern Sonoma County Air Pollution Control District, to Board Secretary, ARB.

(6) June 21, 1993 letter from Paul Downey, Executive Director, Industrial Environmental Association, to Jananne Sharpless, Chairperson, ARB, and Members of the Air Resources Board, with attachment.

(7) June 21, 1993 letter from David L. Crow, Air Pollution Control Officer, San Joaquin Valley Unified Air Pollution Control District, to Jananne Sharpless, Chairperson, Air Resources Board, with attachment.

(8) June 24, 1993 letter from Robert R. Reynolds, Air Pollution Control Officer, Lake County Air Quality Management District, to Board Secretary, ARB.

(9) June 24, 1993 letter from Milton Feldstein, Air Pollution Control Officer, Bay Area Air Quality Management District, to Peter Venturini, Chief, Stationary Source Division, ARB.

(10) June 25, 1993 letter from James P. Jackson, Sr. Environmental Engineer, Homestake Mining Company, to Board Secretary, ARB.

(11) June 25, 1993 letter from Larry Bailey, Manager of Safety and Environment, Spreckels Sugar Company, Inc., to Genevieve Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.

(12) June 25, 1993 letter from E. Soeterik, Vice-President of Operations, Proline Paint Company, to James D. Boyd, Executive Officer, ARB.

(13) June 28, 1993 letter from Jim Jonas, Jim Jonas, Inc., Distributor, Union Oil Company of California, to Air Resources Board.

(14) June 30, 1993 letter from Richard Bailey, General Manager, Aggrelite Rock, to Board Secretary, ARB.

(15) July 2, 1993 letter from Mike Waugh, Deputy Air Pollution Control Officer, Tuolumne County Air Pollution Control District, to Jananne Sharpless, Chairwoman, ARB.

(16) July 6, 1993 letter from Ed Romano, Air Pollution Control Officer, Glenn County Air Pollution Control District, to Board Secretary, ARB.

(17) July 6, 1993 letter from R. J. Sommerville, Air Pollution Control Officer, San Diego Air Pollution Control District, to James Boyd, Executive Officer, ARB, with attachment.

(18) July 7, 1993 letter from Ron Greenberg, Manager, Plant Safety and Environment, Manville Building Insulation, to Pat Hutchens, Board Secretary, ARB.

(19) July 7, 1993 letter from Pat Leyden, Deputy Executive Officer, South Coast Air Quality Management District, to Jananne Sharpless, Chairwoman, ARB.

(20) July 7, 1993 letter from Roger A. Isom, California Cotton Ginners Association, to Peter Venturini, Chief, Stationary Source Division, ARB.

(21) July 7, 1993 letter from Victor Weisser, President, California Council for Environmental and Economic Balance, to Jananne Sharpless, Chairwoman, ARB.

(22) January 20, 1994 facsimile from Bill Weese, Director of Toxic Assessment, San Joaquin Valley Unified Air Pollution Control District, to Roger Korenberg, ARB.

(23) January 31, 1994 facsimile from Michael Sansing, Manager Regulation Affairs, Independent Oil Producers' Agency, to Genevieve Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.

(24) January 31, 1994 facsimile from John Donovan, Director of Environmental and Regulatory Affairs, California Independent Petroleum Association, to Jim Boyd, Executive Officer, ARB.

(25) January 31, 1994 facsimile from Jack Caufield, Caufield Enterprises, to Genevieve Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.

(26) January 31, 1994 facsimile from Kenneth Selover, Air Pollution Control Officer, Yolo-Solano Air Quality Management District, to Board Secretary and Jim Boyd, Executive Officer, ARB.

Oral and Written Testimony Presented at the July 8, 1993 Hearing of the Air Resources Board

(27) Doug Allard, Planning Division Manager, Santa Barbara County Air Pollution Control District, oral testimony.

(28) Tim Sturdavant, Industrial Environmental Association, oral testimony.

(29) William Sandman, Colusa County Air Pollution Control District, oral and written testimony.

(30) Annette Carruthers, Yolo-Solano Air Quality Management District, oral testimony.

(31) Les Clark, Independent Oil Producers Association, oral testimony.

(32) Bruce Falkenhagen, Energy Enterprises, oral testimony.

(33) Roger Isom, California Cotton Ginners Association, oral testimony.

(34) Jack Caufield, Caufield Enterprises, for small oil producers, oral and written testimony.

(35) Dan Phelan, Bay Area League of Industrial Associations, oral testimony.

(36) John Donovan, California Independent Petroleum Association, oral testimony.

(37) Mike Wang, Western States Petroleum Association, oral testimony.

(38) May 6, 1993 letter from Kenneth Selover, Air Pollution Control Officer, Yolo-Solano Air Quality Management District, to James Boyd, Executive Officer, ARB, with attachments. (Although dated prior to the 45-day comment period, Mr. Selover submitted this letter to the Board Secretary at the July 8, 1993 Public Hearing.)

(39) Mohsen Nazemi, South Coast Air Quality Management District, oral testimony. (Read into the record by Don Ames, ARB, at the request of Mr. Nazemi.)

General Comments Received During the 45-Day Comment Period

1. Comment: Fees for fiscal year 1993-94 should be based solely on air toxic emissions, in accordance with Senate Bill 1378. (Feldstein, Allard)

Response: The ARB disagrees with this comment. Senate Bill 1378 (McCorquodale, Statutes of 1992, Chapter 375) requires that Hot Spots fees be based on toxic emission and risk priority to the maximum extent practicable. In accordance with Senate Bill 1378, the ARB staff modified the fee basis for fiscal year 1993-94. Because a statewide toxics emission inventory is not yet complete, it was not possible to consider the option of basing fees for fiscal year 1993-94 solely on emissions of toxic pollutants. However, an interim method, basing fees upon facility Hot Spots Program categories, was developed for fiscal year 1993-94. This method is related to toxic emissions because it considers a facility's toxic risk priority. The method will be reevaluated for fiscal year 1994-95 to determine the extent to which fees can be further based on toxic emissions. Only when the statewide toxics emission inventory has been completed and approved can the option of basing fees on the quantity of toxic emissions a facility releases be considered.

2. Comment: The Industrial Environmental Association supports the implementation of Senate Bill 1731, but believes the proposed implementation costs are too high, even with the $457,000 reduction. (Sturdavant)

Response: The ARB appreciates the support of this commenter for implementing Senate Bill 1731 (Calderon, Statutes of 1992, Chapter 1162). Nevertheless, the ARB must disagree with this comment.

Senate Bill 1731, requires facilities judged to pose a potential significant health risk, to lower their toxic emissions below a significance level. The legislation also requires new risk assessment guidelines to be developed by the OEHHA and directs the ARB to assist smaller businesses with the risk reduction requirements. These are resource intensive tasks. The program mandated by Senate Bill 1731 is the first of its kind in the nation. It will involve complex scientific, industrial and legal determination of the measures required to reduce air toxics risk to acceptable levels. The fees proposed in the proposed amendments are necessary to implement Senate Bill 1731.

To implement this program, the Governor's Budget contained an allocation of $1,920,000. This amount reflects the best estimate of the resources required to fully implement Senate Bill 1731 in its first year. This budget was closely scrutinized by the California Environmental Protection Agency (Cal/EPA), the Department of Finance (DOF), both houses of the Legislature,

and the Governor's Office. All of these reviewers found the costs to be justified. However, in response to public comment and the current economic climate in California, the proposed budget was reduced by $457,000. This reduction will delay or eliminate some planned program activities in fiscal year 1993-94, but allows the ARB and the OEHHA to begin to comply with the legislative mandate.

3. Comment: The ARB and the OEHHA should look for ways to be more efficient and productive and absorb the cost increases internally. (Sturdavant)

Response: The response to Comment 2 is incorporated herein. Additionally, as the commenter suggests, on an ongoing basis, the ARB and the OEHHA evaluate ways to increase efficiency and reduce costs in the Hot Spots Program. For example, the emission reporting requirements of the Program were streamlined to save facilities, and eventually the ARB, some of the cost associated with these reports. Also, the ARB and the OEHHA have prepared a Five Year Plan to reduce resources by approximately 40 percent, absent new legislation. Nevertheless, Health and Safety Code section 44380 requires that Hot Spots fees, not other revenue sources, be used to support Hot Spot Program activities.

4. Comment: The Industrial Environmental Association strongly supports compliance assistance, however, after a certain amount of assistance has been provided to a facility, a fee-for-service concept should be applied. This approach ensures that facilities not requiring assistance do not subsidize those that do. (Sturdavant, Downey)

Response: The comment apparently is directed to the risk reduction assistance the ARB is to provide smaller businesses pursuant to Senate Bill 1731. This assistance is mandated by the Health and Safety Code section 44390(d). The Legislature found that many smaller businesses have inadequate technical and financial resources to assess and apply risk reduction techniques. To assist smaller businesses the ARB will develop a self-conducted audit and checklist. Further assistance may be in the form of risk reduction guidelines for small businesses using substantially similar technology. Although designed for smaller businesses, these guidelines would be made available to any business wishing to voluntarily reduce their toxic emissions. The ARB has budgeted $391,000 for these activities, and to lessen the potential economic burden to any one small business, this cost is allocated among all facilities.

A fee-for-service fee structure is not possible at this time because fee tracking systems are not in existence. Also, strict fee-for-service may not comply with Senate Bill 1378, and the ARB believes that the proposed amendments more closely base fees upon toxic emissions than a strict fee-for-service approach would. Nevertheless, the ARB will continue to evaluate the fee-for-service concept.

5. Comment: The Industrial Environmental Association supports permit streamlining. (Sturdavant)

Response: This comment is not directed to the proposed amendments to the Fee Regulation, which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program. However, the ARB acknowledges this commenter's support of permit streamlining.

6. Comment: The "comic book" approach used for other ARB compliance assistance programs may be a useful tool for the Hot Spots Program. Because small businesses will always be subject to Program requirements, a one-time publication that is easy to read and understand could lessen the amount of future assistance required and reduce costs. (Sturdavant)

Response: The Responses to Comments 5 and 6 are incorporated herein. The ARB will consider this approach in the development of the risk reduction guidelines for smaller businesses. A goal of the self-conducted audit and checklist and the risk reduction guidelines is to reduce the need for continued assistance for smaller businesses and ultimately reduce Program costs.

7. Comment: Fees for operating a maintenance program should go down. The ARB told us costs would go down, and we told our facilities this. When costs actually increase the ARB and the districts look bad. (Sandman)

Response: The ARB disagrees with this comment. The Response to Comment 2 is incorporated herein. Moreover, the Hot Spots Program is not in a maintenance mode. All facility phases have not completed initial reporting of emissions, and the Legislature imposed substantial new Program requirements via Senate Bill 1731.

Phase III facilities are only now submitting their initial report of toxic emissions. These facilities represent the largest portion of the Program with as many as 32,000 facilities reporting. Few districts have begun prioritizing these facilities and the number of risk assessments to be required of them has yet to be determined. Only after all three phases of facilities have been evaluated can the Program approach a maintenance mode.

Originally, the ARB staff did not expect that the State's cost for fiscal year 1993-94 would increase, and we informed the ARB of this. However, new legislation, Senate Bill 1731, effective on January 1, 1993 imposes significant new Program requirements on the ARB and the OEHHA. For example, the new risk reduction requirements and the development of new risk assessment guidelines require significant resources for both the ARB and the OEHHA. The increase in the State's cost is for implementation of these new Program requirements. Without the new legislatively mandated requirements, the State's cost could have remained stable for fiscal year 1993-94.

The ARB, however, does realize that some Program goals are being achieved and, together with the OEHHA, a Five Year Plan has been prepared to reduce resources by approximately 40 percent over the next five years.

8. Comment: None of the facilities in Colusa County APCD will fall under the additional health risk assessment requirements. The added costs associated with the health risk assessments should be borne by only affected industry. The cost should not be spread among all facilities. (Sandman)

Response: The ARB disagrees with this comment. There are no additional health risk assessment requirements imposed by statute or proposed in this rulemaking. The commenter may be referring to the development of new risk assessment guidelines. These new risk assessment guidelines will be used by all districts to prioritize all facilities subject to the requirements of the Act and are properly assessable to all facilities. Moreover, facilities not required to perform a health risk assessment initially, may later be required to perform a health risk assessment as new toxic compounds are identified or the potencies of currently identified toxic compounds change. Furthermore, the facilities that will directly use the new risk assessment guidelines have not been identified. Therefore, it is not possible to assess the cost of developing these guidelines on the facilities that will actually use them. For all of these reasons the cost of the risk assessment guidelines development is allocated among all facilities.

9. Comment: If the Program costs are too burdensome on affected industries, then a legislative change is needed. (Sandman)

Response: The comment is not directed at the proposed amendments. Also, the ARB disagrees with this comment. The commenter offers no analysis to indicate that these fees are an economic burden on facilities. An economic impact analysis, conducted by the ARB staff, indicates that most businesses seem to be able to absorb the cost of these fees without a significant impact on their profitability.

10. Comment: The proposed amendments to the Fee Regulation are clearly a case of trying to spread a noncost-effective program over a larger base of nonparticipatory businesses to make the Program cost more bearable. This is unfair to facilities that have limited toxic emissions. (Sandman)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 1, 2 and 9 herein. The proposed amendments base fees upon toxic emissions to the maximum extent practicable, pursuant to Senate Bill 1378. Also, since its inception, the cost of the Program has increased as more facilities have become subject to the requirements of the Act. Other cost increases have been necessary to implement new Program requirements. State costs and facility fees for fiscal year 1993-94 are based on a facility's priority and complexity. Consideration is also given to possible economic burden. In general, fee assessments are the lowest for smaller facilities with limited toxic emissions. This method, which was developed to comply with Senate Bill 1378, mandates that fees be assessed

based on a facility's risk priority and toxic emissions to the extent possible. Furthermore, a facility with limited toxic emissions could be a high priority facility because of the potency of their emissions. All facilities subject to the Act are subject to the Fee Regulation.

However, the State's costs of implementing the Program should decline in future fiscal years. In recognition of this, the ARB and the OEHHA staffs prepared a Five Year Plan which was endorsed by the ARB at the July 8, 1993 hearing. Absent new legislation, the State will reduce its overall program cost by approximately forty percent.

11. Comment: Low risk facilities should not pay extra Hot Spots fees to implement Senate Bill 1731. It is not good policy to have all facilities pay for additional outside consultants and new risk assessment guidelines that will mainly benefit 500 higher risk facilities statewide. (Bailey)

Response: The Response to Comment 10 is incorporated herein. Also, it is appropriate that all facilities will be assessed a State cost for implementing Senate Bill 1731. However, the proposed amendments, in general, do impose the lowest fees on the lowest risk facilities. The new risk assessment guidelines will not only be used by 500 higher risk facilities as this commenter suggests. All facilities, including low risk facilities, will be prioritized using the new risk assessment guidelines. Also, facilities currently rated low risk may lose that status due to such factors as emissions increases or changes in potency numbers, for example. Outside contractors may be utilized to research microenvironmental characteristics and to conduct literature searches to determine appropriate health values for listed substances, but these costs are already included in the guidelines development cost. To lessen the economic burden on smaller facilities, the costs of the risk reduction guidelines and checklists are allocated among all facilities, as well.

12. Comment: Because the Yolo-Solano APCD, within the last year, increased facility permit fees to the 80 percent cost recovery level, it will be difficult to pass along a 400 percent increase in Hot Spots costs to those facilities. (Carruthers)

Response: This comment is not directed at the proposed rulemaking. Also, the ARB disagrees with this comment and believes the method developed to allocate the State's cost is equitable and addresses the mandate of Senate Bill 1378. An analysis by the staff has determined that this district has approximately one percent of the facilities statewide and the district will be assessed less than one percent of the State's cost. Furthermore, this district did not request the ARB to adopt a fee schedule for it. It will be required to adopt its own fee rule and can distribute its portion of the State's cost among its facilities in a way it deems appropriate.

Permit fees are separate from the Hot Spots Program fees. Permit fees do not generate revenue for the Hot Spots Program. The district's portion of the State's cost shown in the Staff Report does increase as the commenter

suggests. This increase is due to the change in fee basis and the increase in the State's cost. However, because of updates to district facility counts submitted during the 45-day comment period, the Yolo-Solano APCD's portion of the State's cost was lowered by approximately $7,000. This lowers the percent increase to approximately 325 percent. The staff is sensitive to the commenter's concern, but Health and Safety Code section 44380 requires the ARB to adopt a Fee Regulation that recovers all of the State's reasonably anticipated Hot Spots Program costs.

13. Comment: The State has not done everything they can to cut their budget and operate within the constraints that can be tolerated by businesses during this financial crisis. The budget should be reduced further, the Program streamlined, and the Five Year Plan should be implemented this year. (Carruthers)

Response: The ARB disagrees with this comment. The Responses to Comments 2, 3, 7, 9 and 12 are incorporated herein. The State is sensitive to the current economic climate and expected the State's cost to remain stable for fiscal year 1993-94. Only because of new legislative mandates are costs increasing. Senate Bill 1731 imposes significant new resource intensive tasks on the ARB and the OEHHA. These new tasks can not be accomplished without an increase in resources. In light of the continuing economic recession, the State did reduce the resources to implement Senate Bill 1731. This reduction has led to elimination of positions and contract funds that will slow Program activities. Further reductions would severely limit the State's capacity to implement the Program. The emission reporting requirements were streamlined and should result in immediate cost savings to industry. The Five Year Plan will be implemented in fiscal year 1994-95. Absent new legislation, at the end of five years, the State's resources should be reduced by approximately 40 percent.

14. Comment: Because only two facilities [in the Yolo-Solano APCD] are currently performing risk assessments, it is difficult to comprehend a need for a fee increase when the amount of work is actually decreasing. (Carruthers)

Response: The Responses to Comments 2 and 7 are incorporated herein. The staff disagrees with this comment. The amount of work at the State is not decreasing as the commenter suggests. Because of new legislative mandates, the work is actually increasing. This district's share of the State's cost is increasing because of the change in method and the increase in the State's cost.

Also, according to information supplied by the commenter, it has a number of "complex" facilities. The fee basis using facility program categories is further subdivided to account for complexity within the Plan and Report and Risk Assessment categories. "Complex" facilities are assessed a higher cost because more work is involved in reviewing their data.

15. Comment: We support the methodology for distributing the State's costs, however, the budget is too big to divide the costs fairly. (Carruthers)

Response: The ARB appreciates the commenter's support of the methodology for distributing the State's cost. The staff disagrees with the remainder of this comment, however, and incorporates the Responses to Comments 2, 3, and 7 herein. The method is equitable, because the State's cost is distributed based on the number of facilities each district has in the various program categories. These categories consider facility priority, potential health risks, and complexity (workload).

16. Comment: Because two facilities in the Yolo-Solano district are performing health risk assessments, the district costs will remain high for at least two years, or maybe three years if the facilities are required to notify. (Carruthers)

Response: The staff incorporates the Responses to Comments 1, 2, 12, and 15. The method for distributing the State's cost was developed to address the mandates of Senate Bill 1378, which requires fees to be based on toxic emissions and risk priority to the maximum extent practicable. An approved toxics emission inventory does not yet exist to allow the option to have fees be based on the volume of toxics emitted. Calculating fees based on facility program categories takes toxic emissions and risk priority into account. Facility program factors correspond to toxic emissions and resultant risk.

The high priority facilities the commenter refers to will be assessed higher fees to recover the cost of reviewing their risk assessments. If the risk assessment result indicates a potential significant health threat from these facilities' emissions, they would be required to notify the public of these risks. In following the Senate Bill 1378 mandate, such high risk facilities are charged higher fees.

Nevertheless, this district chose to adopt its own fee rule to recover Hot Spots Program costs, they can distribute their portion of the State's cost in a manner they determine is appropriate.

17. Comment: Because the definition of a point source of pollution in the San Joaquin Valley Unified APCD is unique, small oil producers would not qualify as small businesses for the Fee Regulation. Their fees could increase by a factor of ten or more, going from $400 to over $4,000 or $800 to $8,288, which is completely out of line. (Clark, Caufield: 34, Written, Caufield: 34)

Response: The staff agrees with this comment and the small business definition was modified in response to these commenters. The amount of gross receipts for a facility to qualify was raised from $500,000 to $1,000,000 and an aggregate cap on gross receipts of $5,000,000 was added. The definition of a "point source" for the San Joaquin Valley Unified APCD was determined by the district. The ARB does not have the

in the SJVAPCD

authority to alter this definition. However, the ARB staff has worked with the district staff and representatives of small oil producers in the district to arrive at an equitable solution. In following the ARB's directive, for purposes of assessing fees on oil producers in the San Joaquin Valley Unified APCD, each lease will be evaluated to determine if it qualifies as a small business. If all individual leases, owned by the same person, qualify as small businesses, he/she will pay one fee of $700 in accordance with the small business exemption.

are

belongs to the same industrial grouping and are located in one or more contiguous or adjacent properties,

18. Comment: The Program was enacted to identify toxic hot spots. Two small noncontiguous oil properties, treated as one facility, is not a toxic hot spot. To treat them as such is not with the spirit of the rule as originally adopted. (Clark)

Response: The Response to Comment 17 is incorporated herein. In addition to identifying toxic hot spots however, the legislation was enacted to determine the amounts and types of toxics emitted from stationary sources. This information is being compiled into a statewide inventory, as required by the Act, and will be used to identify and control toxic air contaminants. As emitters of toxic pollutants, these facilities must pay fees to defray Program costs as specified by the Act.

19. Comment: The State should take away the inequities that cause an uneven playing field across the State. (Falkenhagen)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program.

Health and Safety Code section 44300 et seq. specifies the minimum requirements districts must follow to implement the Hot Spots Program. The Act allows the districts to establish more stringent requirements in a number of areas (Health and Safety Code section 44365), a fact which gives rise to differences in district Program costs. This can only be altered by legislative action.

20. Comment: The small business definition should be modified. Each facility owned by the same company should be treated separately. The gross receipts of each facility should be used to determine small business applicability. (Falkenhagen)

Response: The staff agrees with this comment. In response to this comment, other representatives of small oil producers, and the ARB's directive, the small business definition was modified and circulated for 15-day comments pursuant to Government Code section 11346.8. The new definition raised the amount of annual gross receipts a facility may have and still qualify as a small business, from $500,000 to $1,000,000. Each facility owned by the same company will be treated individually until the aggregate gross receipts of the company exceeds $5,000,000. If the aggregate gross receipts are over $5,000,000, the facility will not qualify as a small business for purposes of calculating Hot Spots fees.

21. Comment: All facilities should pay a portion of the State's cost. None of the fees collected from Survey and Industrywide facilities goes to the State, but much of the State's efforts in the next year are for these facilities. These facilities can pass the cost of the fee on to the consumer. Larger businesses cannot afford to continue to subsidize smaller businesses. (Falkenhagen)

Response: The staff disagrees with this comment. While it is true that the fees collected from Survey and Industrywide facilities are not used to defray the State's cost, the ARB believes that this is appropriately protective of small businesses and eases the economic burden these fees may cause on their profitability. The Fee Regulation includes a further provision to waive fees for these facilities if specified conditions are met and the district determines they will not encumber a significant amount of work for these facilities. Small businesses, especially those operating with little or no margin of profitability, may have significant adverse impacts from paying even reduced fees.

It is also true that the risk reduction guidelines and the self-conducted audit and checklists will be developed for small businesses and that many of these facilities are Survey and Industrywide facilities. However, the guidelines will be made available to other larger businesses who wish to voluntarily reduce their toxic emissions. Moreover, the bulk of the ARB's efforts, such as review of emissions data and development of risk assessment guidelines, will be properly apportionable to larger businesses.

To provide assistance to smaller businesses the ARB must assess some costs to larger businesses. The staff's economic impact analysis found no category of business that would suffer a disproportionate economic burden by paying these fees. The commenter offers no alternative analysis to substantiate his comment regarding affordability.

22. Comment: The way the small business definition is written now, you're not limiting this [definition] to even the State of California. (Falkenhagen)

Response: The staff disagrees with this comment. The Hot Spots Act is a State law. Both the originally proposed small business definition and the small business definition that was subject of the January 14, 1994 Notice of Public Availability of Modified Text were limited to facilities in the State of California.

23. Comment: Why should a major company not get the benefit of a small business? (Falkenhagen)

Response: The commenter does not define what a "major company" is. Clearly, larger businesses have more assets and are less in need of protection than are small businesses. However, the ARB staff's economic impact analysis did not identify any category of business, including larger businesses, that would suffer an economic burden from paying these fees. However, to increase the number of businesses that would qualify as small

businesses, the small business definition was modified to include a provision that if a company's aggregate gross receipts, for California operations, is less than $5,000,000, the facilities would qualify as small businesses.

24. Comment: In the Santa Barbara County APCD 79 percent of facilities had to perform risk assessments as compared to the statewide average of 22.2 percent. In other districts some of these facilities would be classified as Survey or Industrywide. The Santa Barbara County APCD has required more work than should really have been submitted to the ARB. Facilities in the Santa Barbara County APCD are not being subsidized; these facilities are subsidizing others. (Falkenhagen)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program. The staff disagrees with this comment and incorporates the Response to Comment 19 herein.

The Santa Barbara County APCD has the authority to implement the Program in a manner that is more stringent in accordance with section 44365 of the Health and Safety Code. It is true that this district required health risk assessments to be prepared by a higher percentage of facilities than other districts did, but the district itself performed these risk assessments for a nominal fee. These facilities incurred little cost to have their risk assessment prepared, and would have paid more if they would have been required to prepare risk assessments in other districts.

Under the new fee basis, lower priority facilities in the Santa Barbara County APCD that had risk assessments prepared, would be unfairly placed in higher fee categories. The district felt, and the ARB agreed that this would not be equitable and requested that low and intermediate facilities, that had a risk assessment prepared by the district, would pay the appropriate Plan and Report fee. The ARB made this change as requested by the district. By recategorizing these facilities, they are not subsidizing facilities in other districts that prepared risk assessments.

25. Comment: Two small business definitions could be developed; one for the San Joaquin Valley Unified APCD and one for the Santa Barbara County APCD. (Falkenhagen)

Response: The staff disagrees with this comment. The ARB staff believes that two different small business definitions would cause confusion. The ARB also endeavors to develop a Fee Regulation that can be implemented uniformly across all districts requesting the ARB to adopt their fee schedules. In modifying the small business definition for the 15-day comment period, the ARB staff worked closely with this commenter and other representatives of small oil producers to achieve consensus on the definition. The resulting modifications make the small business definition workable and equitable in all districts the ARB is adopting fee schedules for.

26. Comment: The small business definition needs to be modified. The $500,000 annual gross receipts amount is too low. The amount of gross receipts should be raised to $1,000,000. You should direct staff to report back to you on the impact of raising the level from $500,000 to $1,000,000 in gross receipts. (Caufield: 34, Falkenhagen, Donovan: 36)

Response: The staff agrees with this comment and incorporates its Responses to Comments 17 and 20 herein. In response to this comment and the ARB's directive, the staff did modify the small business definition. The level of annual gross receipts was raised to $1,000,000 as these commenters suggested. The Executive Officer, as authorized by the ARB's Resolution 93-48, determined that the staff need not report back to the ARB once the small business definition had been modified.

27. Comment: The commenter supplied information on the Bay Area AQMD's small business definition, it's fee cap, and implementation. (Phelan)

Response: The ARB examined the Bay Area AQMD's small business definition and modified the small business definition for the Fee Regulation in consideration thereof and other comments received. The Bay Area AQMD's small business definition has different employee and gross receipt amounts for manufacturers and nonmanufacturers. The limits for nonmanufacturers are 25 employees and $1,000,000 in gross receipts. For manufacturers the employee limit is 50 and the gross receipts are $5,000,000. If a facility meets these criteria, the fee cap is $5,000.

The Responses to Comments 96 and 98 are incorporated herein. The small business definition was modified to address concerns of oil producers. The staff conducted an analysis that showed that as many as 65 percent of businesses could have ten or fewer employees. Another analysis showed that 80 percent of oil producers have annual gross receipts of less than $5,000,000, and another report showed that 82 percent have gross receipts of less than $1,000,000. Together, these analyses indicated that limits of ten or fewer employees with an individual receipt cap of $1,000,000 and an aggregate receipt cap of $5,000,000 would provide relief for most oil producers.

The Bay Area AQMD's cap of $5,000 would be too great of an economic burden for small businesses statewide. The ARB's definition would place the small business fee cap at $700.

28. Comment: Please explain how the economic impact analysis was done. Were small, medium, and large [oil] producers used in the sample? (Donovan: 36)

Response: This is not an objection or recommendation directed at the proposed amendments. Also, the economic impact analysis is explained in the Staff Report in Chapter V and Appendix VII, beginning on pages 69 and VII-1, respectively. Nevertheless, the economic impact analysis can be summarized as follows. A list of facilities by Standard Industrial Classification Codes (SIC) is generated from the emission inventory. A

random sample of three businesses are picked from 400 different SIC codes, to yield a sample of 1,200 businesses. Three oil producers were included in this sample. For each of these businesses a Return on Equity is calculated. If the change in the Return on Equity, due to the imposition of the fee, is greater than ten percent, this is judged to be an adverse economic impact. The result of the economic impact analysis indicated no category of business based on SIC Codes that would suffer an economic hardship by paying these fees.

29. Comment: The ARB staff should continue to look for areas within the Program where costs can be reduced. (Donovan: 36)

Response: The staff incorporates its Response to Comment 13 herein. Recognizing that the Program is peaking, the ARB and the OEHHA staffs prepared a Five Year Plan which, absent new legislation, will reduce the State's overall Program cost approximately 40 percent within the next five fiscal years. The ARB will continue to look for additional cost reductions.

30. Comment: The Western States Petroleum Association (WSPA) supports the proposed 40 percent reduction in Senate Bill 1731 implementation costs. (Wang)

Response: The staff disagrees with this comment. The staff proposed and the ARB approved an approximate 25 percent reduction in Senate Bill 1731 implementation costs, which, in the judgement of the staff and the ARB was the maximum reduction allowable that would permit the implementation of Senate Bill 1731 to proceed.

31. Comment: WSPA supports the small business fee cap and supports modifying the proposed definition. (Wang, Reynolds)

Response: The ARB appreciates the commenters's support of this amendment, agrees with this comment, and incorporates its Responses to Comments 17, 20, and 26 herein. The ARB approved the Fee Regulation containing the small business fee cap, because it believed this relief was necessary in these economic times. However, the ARB directed the staff to modify the small business definition. The staff did modify the small business definition and solicited public comment on the modified definition via a Notice of Public Availability of Modified Text.

32. Comment: Streamlining and elimination of duplication between agencies over the next five years should reduce costs even further. (Wang)

Response: The staff incorporates its Response to Comment 13 herein. The ARB and the OEHHA staffs have prepared a Five Year Plan which will reduce the State's resources, absent new legislation, by approximately 40 percent. Additional savings will be realized by industry through the streamlined reporting requirements in the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355.

The ARB is not aware of duplication of effort occurring among agencies implementing the Hot Spots Program. The statute outlines specific tasks to be completed by the districts, the ARB, and the OEHHA.

33. Comment: The San Joaquin Valley Unified APCD recommends an additional reduction in the State budget of $413,350. This can be achieved by removing duplicative or unnecessary processes in the various Hot Spots Program tasks. (Crow)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2 and 7 herein. The Health and Safety Code section 44300 et seq. outlines specific tasks to be carried out by the ARB, the OEHHA, and the Districts in implementing the Hot Spots Program. These tasks are neither duplicative nor unnecessary functions. To reduce the State budget by an additional $413,350 would impair the State's ability to implement the Program as required by the Act. However, in recognition that the Program is peaking, the ARB and the OEHHA staffs have prepared a Five Year Plan. Absent new legislation, the ARB and the OEHHA anticipate reducing the State's Hot Spots budget by about 40 percent within five years. This reduction will exceed the $413,350 decrease suggested by this commenter.

34. Comment: The Health Risk Assessment portion of the budget could be further reduced because most risk assessments have already been submitted. The OEHHA could spend some fee revenue training district staff to conduct risk assessment reviews. Only complex risk assessments would be sent to the OEHHA for review. This would lead to significant savings and would eliminate duplication of effort. The budget for this item should be reduced substantially for both the ARB and the OEHHA. (Crow)

Response: The staff disagrees with this comment and incorporates the Responses to Comments 2 and 7 herein. The review of health risk assessments is only one of the tasks associated with the State's health risk assessment costs. The ARB staff reviews modeling data contained in health risk assessments at the district's request. The ARB staff also tracks progress on multipathway exposure research contracts which will yield information to be used in preparing risk assessments. The ARB is responsible for updating health risk assessment computer software which is used to prepare low cost risk assessments. The ARB staff receives and responds to numerous requests from the public and districts regarding health risk assessment preparation and tracks Program compliance in all 34 districts. We believe current ARB staffing levels are appropriate as approved through the State budget process.

From a survey of the districts conducted in January 1993, to date, 800 risk assessments have been required of Phase I facilities. Of this number, 671 have been received by the districts, 646 have been submitted to the OEHHA, and 152 have been approved by the districts. Risk assessments have been required from 102 Phase II facilities to date. Thirty of these have been received by the districts, 11 have been submitted to the OEHHA, and none have been approved by the districts. The scope of risk assessments from

Phase III facilities has not been fully determined, as most districts have yet to prioritize them. However, there are as many as 32,000 facilities in Phase III of the Program and a significant percentage may be required to prepare health risk assessments. Procedures for industrywide risk assessment preparation are being developed, and the risk assessments resulting will require significant review time. Clearly, the OEHHA's risk assessment review workload will not decrease for several years.

The Health and Safety Code section 44360 et seq. requires a district to conduct a preliminary review of the emissions impact and modeling data and then to submit the risk assessment to the OEHHA for review of the health effects. Districts are required to submit risk assessments to the OEHHA for review. The district may also request the ARB to evaluate the emissions impact and modeling data. These are not duplicative functions and are statutory requirements which can only be amended through legislative action. Furthermore, additional district resources would be required for districts to review the health effects information in the risk assessment which would lead to higher district costs.

The ARB and the OEHHA staffs have prepared a Five Year Plan for the Hot Spots Program which was presented to the ARB at the July 8, 1993 hearing for the Fee Regulation. The plan recommends resource reductions in the area of health risk assessment, as the workload decreases over the next five years. Overall, absent new legislation, the State's resources should be reduced by approximately 40 percent.

35. Comment: The ARB should be able to reduce their risk reduction expenses because the guidelines required to be developed by the ARB may not be needed until fiscal year 1994-95. (Crow)

Response: The staff disagrees with this comment and incorporates the Response to Comment 2 herein. The risk reduction requirements were created by new legislation, Senate Bill 1731, Calderon. Health and Safety Code section 44391 now requires the ARB to provide assistance to the districts and smaller businesses in obtaining information, assessing risk reduction methods, and applying risk reduction techniques. For industries comprised of mainly smaller businesses, the ARB is required to develop a self-conducted audit and checklist to assist them in meeting the requirements of the Program. The ARB staff's experience in developing airborne toxic control measures has shown this to be a resource intensive task. High risk facilities may not be required to prepare risk reduction plans until 1994. However, the ARB staff believes that development of these guidance documents must be initiated early to ensure their availability when facilities are required to begin preparing risk reduction plans.

36. Comment: A change in the fee structure was necessary due to the requirements of Senate Bill 1378, but the complexity of the regulation and the proposed increase in State costs results in a Fee Regulation that will be difficult to implement if adopted by your board. (Ryerson)

Response: The staff disagrees with this comment and incorporates the Responses to Comments 2 and 12 herein. Senate Bill 1378 requires that Hot Spots fees be based on toxic emissions and priority to the extent possible. Over the past year, the ARB staff worked with affected industry and the districts to develop a method which would be equitable and comply with the Senate Bill 1378 mandate. Through seven public workshops, meetings with industry representatives, and meetings with the Fee Regulation Committee and the districts, the staff has coordinated many suggestions and ideas. A simple facility program category method (Plan and Report, Risk Assessment, Notification, and Audit and Plan) was approved by the Fee Regulation Committee and presented at public workshops in December 1992. In response to comments from these workshops, the Plan and Report and Risk Assessment categories were subdivided to account for varying degrees of facility complexity within the categories. This proposed method for distributing the State's cost and establishing facility fees allows the Senate Bill 1378 mandate to be met, and is equitable and workable across many diverse districts. Each district has the option to adopt its own fee rule, as provided in the statute, and can develop a method that best suits its needs. The method proposed reflects a consensus of all comments received.

37. Comment: The business community will be concerned with the increase in fees and redistribution of fees from large to small facilities. (Ryerson)

Response: The staff agrees with this comment and has developed the Fee Regulation in response to these concerns and according to legislative mandates.

The increase in fees is due to new legislation, Senate Bill 1731. This legislation creates significant new requirements for the ARB and the OEHHA which cannot be completed without an increase in resources. The fee basis was also changed in response to new legislation, Senate Bill 1378, and the ARB's directive to base fees on toxic emissions to the extent possible. As a result, some smaller businesses will pay higher fees. However, the ARB staff worked with affected industry and the districts in developing the fee basis. The ARB conducted seven public workshops, two meetings with industry representatives, and several meetings with the Fee Regulation Committee and the districts, to solicit suggestions and ideas for developing an equitable fee basis.

The ARB is sensitive to the resource limitation of small businesses and the economic burden paying fees may cause. The Fee Regulation contains several provisions to keep fees for small businesses as low as possible. Most small businesses will pay an average fee of $85, or may have their fee waived by the district. For smaller businesses that may be included in higher fee categories, a fee cap of $700 was established for businesses meeting the small business definition.

38. Comment: Some districts have low Program costs or have been able to reduce their Hot Spots Program Budgets, however the districts' portion of the State's cost will increase substantially. (Ryerson, Sandman, Carruthers)

Response: A district's Hot Spots budget depends on many factors including the number of facilities, the stringency of the district's Program requirements, variances in the cost of living, and the services provided by a district to facilities. While it is true that some districts' portion of the State's cost has increased, an approximately equal number of districts' portion of the State's cost decreased for fiscal year 1993-94. This is due to the new fee basis and the priority and complexity of facilities in a particular district. Districts have also been able to reduce costs because of the ARB's efforts to assist them with Program implementation.

39. Comment: Implementation of Senate Bill 1731 and the new method for allocating costs does not explain the increase in the State's overall projected budget. (Ryerson)

Response: The staff disagrees with this comment and incorporates the Responses to Comments 35 and 37 herein. The State's budget is increasing due to implementation of Senate Bill 1731. The new fee basis distributes the State's cost based on the number, complexity, and priority of facilities in a particular district. This results in some districts' portions of the State's cost increasing and some districts' portions decreasing.

40. Comment: State costs should be lower for districts that provide consistent and complete documents to the State for review. (Ryerson)

Response: This may be desirable, but the staff believes that it would be unworkable in practice. Defining and measuring what constitutes consistent and complete documents would be unfeasible to do within a fee regulation. The ARB believes all districts endeavor to submit accurate and complete documents for review.

41. Comment: The ARB should consider changes in the Fee Regulation that preclude controversial increases in the State Hot Spots budget. (Ryerson)

Response: The staff disagrees with this comment. Health and Safety Code section 44380, requires the ARB to adopt a Fee Regulation that recovers all of the State's reasonably anticipated Hot Spots Program costs controversial or not. The increase in the State's cost for fiscal year 1993-94 is due to implementation of Senate Bill 1731. This legislation places significant new responsibilities on the ARB and the OEHHA which cannot be met without an increase in funding. Adopting a provision in the Fee Regulation that prevented increases in the State's Hot Spots budget would be superseded by any legislative action that increased the State's workload. If cost increases were limited, the State would not be able to recover the costs of implementing new legislation. As a result, the State

would not be able to comply with the Health and Safety Code section 44380 requirement to recover the State's costs.

42. Comment: The Fee Regulation should distribute Program costs among local businesses consistent with the requirements of Senate Bill 1378. (Ryerson)

Response: The staff agrees with this comment and believes that the proposed amendments do this. Senate Bill 1378 requires fees to be based on toxic emissions and priority to the extent possible. Because the statewide toxics inventory is not yet complete to evaluate the option of using it as a fee basis, the ARB staff developed an interim method for distributing the State's cost that utilizes facility program categories. The method considers toxic emissions, workload, and facility health risk priority, and does distribute Program costs consistent with the Senate Bill 1378 mandate.

43. Comment: The new risk assessment guidelines should be "user friendly", incorporate the work already accomplished in the Program, and result in a tool to reduce Program costs. Districts and affected sources should be involved in the development process. (Downey, Sturdavant)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program. However, the OEHHA will consider this comment in development of the risk assessment guidelines. One goal of the new guidelines is to make them understandable and easy to follow. This will lead to consistent assessments of potential health risks statewide, and should reduce review costs. The development of the risk assessment guidelines will be a public process. The Health and Safety Code, section 44360, requires the draft guidelines to be circulated to the public and the regulated community. The ARB, the California Air Pollution Control Officers' Association (CAPCOA), and the risk assessment committee must also be consulted. Public workshops, in the northern and southern portions of the State, are to be conducted, and the guidelines are to be evaluated by a scientific review panel.

44. Comment: The fee increase proposed on March 29, 1993 is astounding. The fee schedule should be more reasonable in light of the economic situation in California. (Kober)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 3, 7, 9, 12, 13, 33, 34, 35, and 37 herein. Briefly, the ARB's proposed budget for the Hot Spots Program, for fiscal year 1993-94, was $5,627,000. Of this amount, $1,920,000 was for implementation of Senate Bill 1731. This amount was presented at public workshops in March 1993, and was included in the Governor's Budget. In response to comments and the economic climate in California, the ARB and the OEHHA staffs reduced the budget for Senate Bill 1731 implementation by $457,000. The Board approved this reduction and an overall budget of $5,170,000 at the July 8, 1993 hearing.

45. Comment: Spreckels Sugar is expected to pay an extra $947 for the State portion of Hot Spots fees. The 500 higher risk facilities should bear the brunt of the proposed $457,000 funding increase to implement Senate Bill 1731. (Bailey)

Response: The staff disagrees with this comment. The $947 this commenter is referring to is the total amount assessed to the district for this facility. It is not an extra amount. Because this facility is located in a district which adopts its own fee rule, the district may allocate its portion of the State's cost in a manner it determines is appropriate.

The increase for Senate Bill 1731 implementation is $1,463,000. The $457,000 the commenter refers to is the amount Senate Bill 1731 implementation cost was reduced from the originally proposed $1,920,000. One new requirement of Senate Bill 1731 is for development of new risk assessment guidelines. These guidelines will be used by the districts to prioritize all facilities in the Program. Another component of Senate Bill 1731 is to assist smaller businesses with the risk reduction requirements. Many of these facilities, although they may be higher risk, lack the resources to independently audit their emissions and evaluate control options. For these reasons the cost of implementing Senate Bill 1731 is allocated among all facilities.

46. Comment: The 73 percent increase in Glenn County APCD's portion of the State's cost is unreasonable. We cannot support this. The ARB should consider a smaller increase in light of the present economic situation. (Romano, Greenberg)

Response: Glenn County APCD's portion of the State's cost did increase from $12,429 in fiscal year 1992-93 to $21,840 for fiscal year 1993-94. This increase is due to the change in fee basis and the overall increase in the State's cost. Of the $9,411 increase in Glenn County APCD's portion of the State's cost, $7,206 is for review of a complex risk assessment by the OEHHA. A district only incurs a State cost once for review of a facility's risk assessment.

Because of comments received and the State's continuing poor economic situation, the ARB and OEHHA did reduce the proposed budget by $457,000. In approving the Fee Regulation for fiscal year 1993-94, the ARB acknowledged that an increase in resources was necessary to implement new Program requirements.

47. Comment: A yearly Emission Inventory Report is required. (Soeterik)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program.

48. Comment: In the San Diego APCD the cost of handling the emission inventory plan and report has increased 588 percent. (Soeterik)

Response: This comment is not directed at the proposed amendments, which do not include the San Diego County APCD fees. Also, the staff disagrees with this comment. The cost to review an emission inventory plan and report is only a part of the Hot Spots Program's cost. As more facilities have become subject to the requirements of the Act, State and district costs have necessarily increased to implement the Hot Spots Program. All tasks, required by the Act, are funded by assessing Hot Spots fees in accordance with section 44380 of the Health and Safety Code. These tasks include regulatory and guideline development, risk assessment review, public notification proceedings, and risk reduction assistance. However, recognizing that the Program is peaking, the State has prepared a resource plan which reduces the State's cost by approximately 40 percent over five years.

49. Comment: Businesses should be given the opportunity to voluntarily decrease the use of chemicals on the List of Substances. This should lead to eliminating the need to prepare health risk assessments, and lower regulatory fees. (Soeterik)

Response: This comment is not directed at the proposed amendments. However, the staff agrees with this comment and believes that avenues for this relief exist. With approval from the local APCD, facilities can reduce their use of chemicals on the List of Substances to lower their toxic emissions. The district determines if the lower emissions can be used to prioritize the facility and determines if the reduced emissions can be used in preparation of a risk assessment. If a risk assessment is not required, the facility's cost to comply with the Act should be reduced. Facilities that experience changes such that they no longer meet the applicability criteria of the Hot Spots Act (Health and Safety Code section 44320) may also be removed from the Program (see Title 17, CCR section 93305.5, 93306.5, and 93309).

50. Comment: The ARB should monitor the Emission Inventory Reports for five to seven years without a fee increase. Thereafter a scientific determination should be made if it is necessary to continue implementation of Assembly Bill 2588. (Soeterik)

Response: The staff disagrees with this comment. In accordance with the Health and Safety Code section 44380, Hot Spots fees are required to recover all of the State's and a district's costs to implement the Program. Fees are assessed to recover the costs associated with review of emission inventory reports, as well as the other tasks required by the Act. To freeze fees for five to seven years could result in a budget deficit if new program requirements are enacted. However, in the absence of new legislation and new Program requirements, the State is proposing to reduce the resources required to implement the Act by about 40 percent over five years.

In a separate regulatory action, the ARB amended the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR sections 93300-93355,

which will streamline emission reporting for lower risk facilities. This streamlining will result in direct cost savings to industry.

The Hot Spots Program was created by legislation (Assembly Bill 2588, Connelly; Statutes of 1987, Chapter 1252) and can only be changed through the legislative process. The ARB does not have the authority to discontinue the Program.

51. Comment: Permit fees in the San Diego APCD have increased 2,700 percent in the last six years. This same pattern of increases should not happen with Hot Spots fees. (Soeterik)

Response: The staff agrees with this comment. The ARB does not determine the cost of permit fees in the San Diego APCD. Furthermore, the San Diego APCD adopts its own fee rule to distribute their portion of the State's cost and the district's cost in a manner that is appropriate. Although Hot Spots Program costs have increased for fiscal year 1993-94, the ARB and the OEHHA staffs have prepared a plan to reduce resources by approximately 40 percent over the next five years, provided there are no new legislative mandates.

52. Comment: Small businesses cannot survive with these high regulatory fees and be competitive with other companies in the United States and abroad. Fees cannot continue to be absorbed. (Soeterik, Kober, Donovan: 36, Greenberg)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 3, 7, 9, 12, 13, 33, 34, 35, and 37 herein. Briefly, the ARB is sensitive to the resource limitations of small businesses and the economic burden paying fees may cause. An economic impact analysis, conducted by the ARB staff, found no category of business that would be adversely burdened by paying these fees. These commenters offer no alternative analyses to substantiate their comments.

The Fee Regulation contains several provisions to keep fees for small businesses as low as possible. Most small businesses in the State are categorized as Survey or Industrywide facilities. Survey facilities need only report the use of listed substances. Industrywide facilities are those facilities with similar processes that had emission reports prepared by the district. The average fee assessed to these facilities is $85. The Fee Regulation also contains a provision to waive the fee for these facilities if certain conditions have been met and the district does not incur a significant workload due to these facilities.

The Fee Regulation also provides a cap on fees of $700 for small businesses that are not categorized as Survey or Industrywide. An additional provision provides for a cap of $1,000 for the Plan and Report (Simple) category.

53. Comment: The ARB budget should be frozen at 1992-93 levels and new requirements should be funded through emission reporting streamlining savings. (Downey, Soeterik)

Response: The staff disagrees with this comment and incorporates its Response to Comment 37 herein. Also, although the emission reporting requirements have been streamlined as this commenter states, significant work still remains to compile the statewide toxics emission inventory as required by the Health and Safety Code section 44345. Phase II facility data, as well as Phase I facility emission updates, are being entered into the database. Phase III data are only now being submitted. Phase III facilities are the largest segment of the Program. Once all data have been entered into the Air Toxics Emission Data System (ATEDS) and quality checked, the ARB will reduce the resources in this area. Because of the large volume of emission inventory work yet to be completed, it is not possible to redirect resources from this area to fund new Program requirements. Therefore, an increase in funding is necessary to implement new Program requirements.

54. Comment: We do not support the State Hot Spots proposed budget. (Soeterik, Sommerville, Downey)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 3, 7, 10, 13, 37, 41, and 44 herein. Also, the ARB acknowledges that some districts and facility owners do not support the Hot Spots budget. However, the ARB staff worked diligently with the districts and affected industry to develop a new fee basis and to explain the reasons for increasing the State's cost. The increase in the State's cost, due to new legislative mandates, as well as the legislatively mandated change in fee basis, redistributed the State's cost among the districts. Compared to fiscal year 1992-93, the new fee basis increased costs for some districts, but decreased costs for an approximately equal number of districts. The Health and Safety Code section 44380 requires the ARB to adopt a fee regulation that recovers all of the State's reasonably anticipated Hot Spots Program costs.

55. Comment: The San Diego APCD Board has placed a moratorium on additional regulatory fees. The district cannot absorb the proposed increase of $164,607 for their portion of the State's cost. (Sommerville)

Response: The staff disagrees with this comment. Section 44380 of the Health and Safety Code requires the State to adopt a fee regulation which recovers all of the State's reasonably anticipated Hot Spots Program costs. This section also requires the districts to adopt a fee schedule to recover the costs of the district. The districts are required to collect the fees, and after deducting the district's cost, the remainder is to be submitted to the State.

Section 90705(d) of the Fee Regulation contains a provision to provide relief to districts for fees that are not collectable due to circumstances beyond the control of the district including, but not limited to, unanticipated closures of businesses or shutdowns. The staff's economic analysis indicates that the Fee Regulation should not cause these economic impacts, however.

56. Comment: Labor tracking procedures should be implemented at the ARB and the OEHHA that could provide an accurate accounting of past and future State expenditures of Assembly Bill 2588 funds. (Sommerville, Sturdavant)

Response: This comment is not directed at the proposed amendments. The staff disagrees with this comment. Proposed expenditures for the Hot Spots Program undergo review by the ARB's management, the Cal/EPA, the DOF, both houses of the Legislature, and the Governor's Office. All of these agencies must approve and ascertain that the proposed expenditures are justified. The ARB must also approve Program funding.

In meetings with the Hot Spots Fee Regulation Committee, labor tracking, or a fee-for-service approach, was evaluated as a possible method for distributing costs for fiscal year 1993-94. It was determined that it was not feasible to apply a strict fee-for-service approach because most of the OEHHA's and the ARB's responsibilities are not facility specific, but are programmatic in nature, with statewide implications. While the proposed amendments do not assess individual facilities for time spent, we have incorporated the concept by using different program categories, and subdividing categories for complexity. In general, facilities in program categories which require more resource effort from the State and their district pay higher fees. At the ARB's request, however, the staff will reevaluate this approach for fiscal year 1994-95.

57. Comment: The method developed to distribute the State's costs is only acceptable for administrative and Program development tasks common to all districts and facilities. (Sommerville)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 1, 15, 36, 37, and 42 herein. Also, the method for distributing the State's cost was developed to address the mandate of Senate Bill 1378, McCorquodale, and the ARB's directive to base fees on toxic emissions. Senate Bill 1378 requires all fees to be based on toxic emissions and facility priority to the extent possible. The proposed facility program category method does this and also addresses the concerns of this commenter. Costs for administrative and Program development tasks are allocated among all facilities according to workload requirements. Risk assessment related costs are only allocated among those facilities whose risk assessment was submitted for review to the OEHHA within a specified time frame.

58. Comment: Significant State costs associated with specific facilities and air districts should be recovered from those facilities or districts. Facilities in one district should not pay for inordinate ARB or OEHHA activities in other districts. (Sommerville, Sandman)

Response: The staff disagrees with this comment and incorporates its Response to Comment 56 herein. The ARB and the OEHHA cannot predict the level of assistance a particular district or facility may require in a given fiscal year. Such an approach would require billing in arrears, contrary to

Health and Safety Code section 44380. The State's cost for review of a health risk assessment is facility specific and is recovered from the district the facility is located in, however.

Because much of the ARB's and the OEHHA's Hot Spots Program responsibilities are programmatic in nature, with statewide implications, a strict fee-for-service approach was not feasible. At the ARB's directive, and in response to comments received, the staff will reevaluate this option for fiscal year 1994-95.

59. Comment: The method to recover the OEHHA's health risk assessment costs conflicts with Health and Safety Code section 44361(c), which requires the OEHHA to bill separately for each risk assessment review. Facilities performing a comprehensive risk assessment will pay the same fee as a similar facility performing a minimal and inadequate study. A fee-for-service concept should be applied. (Sommerville, Sturdavant, Downey, Falkenhagen, Selover: 38)

Response: The staff disagrees with this comment. Health and Safety Code section 44361 does authorize, but does not require the OEHHA to seek reimbursement from districts for its costs in reviewing individual risk assessments. The OEHHA has considered this fee-for-service approach and found it unfeasible because of difficulties in projecting staffing needs and costs from year to year. Health and Safety Code section 44380 requires the ARB to develop a Fee Regulation that will recover all of the State's reasonably anticipated costs to implement and administer the Program, including the costs of the OEHHA. This approach helps ensure that a budget deficit is not created. However, in response to comments and the ARB's directive, the ARB and the OEHHA staffs will review the fee-for-service concept again for fiscal year 1994-95, to determine if this type of program could be implemented.

60. Comment: The proposed increase in the State's budget for fiscal year 1993-94 is dramatic and does not appear to reflect changes in Program priorities. (Sommerville)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 3, 7, 13, 39, 41, and 44 herein. Briefly, the State budget is increasing by 49 percent. Most of this increase, $1,463,000, is for implementation of Senate Bill 1731. Senate Bill 1731 requires the OEHHA to develop new risk assessment guidelines and creates a new programmatic component, risk reduction. High risk facilities are now required to reduce their emissions below a significance level. The ARB is to provide guidance and assistance to smaller businesses in complying with risk reduction requirements. The risk reduction requirements and risk assessment guidelines are new program priorities, and the budget reflects this.

Additionally, the ARB and OEHHA staffs evaluated Program requirements for the next five fiscal years and the anticipated resources to complete them. Recognizing that the Program is peaking, a Five Year Plan was developed

which should achieve Program reductions of approximately 40 percent over the next five fiscal years, absent new legislation. This Five Year Plan was endorsed by the ARB at the July 8, 1993 hearing, and does reflect Program progress and priorities.

61. Comment: State Program costs continue to escalate even though most of the Program development is completed. Nearly all tasks associated with actual Program implementation are performed by local facilities and districts. Hot Spots Program streamlining should reduce State costs further. (Sommerville)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 3, 7, 13, 34, 35, 44, 48, 50, 53, and 60 herein. Briefly, the ARB did not anticipate increasing Program costs for fiscal year 1993-94. State Program costs are increasing now due to new legislative mandates. Senate Bill 1731 requires the OEHHA to develop new risk assessment guidelines and creates a new programmatic component, risk reduction. High risk facilities are now required to reduce their emissions below a level of significance. The ARB is to provide guidance and assistance to smaller businesses in complying with risk reduction requirements. These are resource intensive tasks which can only be accomplished with an increase in resources. Clearly, Program development is ongoing.

As outlined in the statute, the districts, the ARB, and the OEHHA all have specific tasks to perform for Program implementation. Compilation of all toxic emission data into a statewide inventory, review of risk assessments, development of new risk assessment guidelines, and development of risk reduction guidance are examples of implementation tasks to be performed by the State and not by the districts or facilities.

The State does anticipate that the emission reporting streamlining should lead to resource reductions in future fiscal years after the statewide toxic emission inventory has been validated. In recognition that the Program is peaking, the State has prepared a Five Year Plan that will reduce resources by 40 percent, absent new legislation.

62. Comment: The State Hot Spots budget lacks detail to identify specific objectives. Air districts and industry cannot verify that resources budgeted by the State are actually effective at the local level. (Sommerville)

Response: The staff disagrees with this comment. Specific objectives of the Hot Spots Program are outlined in the statute (Health and Safety Code section 44300 et seq.) and are described further in the Staff Report, May 1993. The State budget contains information on the component parts to meet these objectives. Also, tasks performed at the State level do and will continue to have an effect at the local level. The statewide toxics emissions inventory is important information about the quantities and types of toxic emissions. It will serve as a guide for toxic air contaminant control decisions and will be a benchmark to document

emission reductions. The review of health risk assessments is an essential component in protecting the public's health. Based on the risk assessment result a determination is made if the public's health is at risk from a facility's emissions. The integrity of the risk assessment is crucial because if a district judges that the potential health risk is significant, then the exposed public must be notified. Guidelines prepared by the CAPCOA, in consultation with the ARB, provide procedures for informing the public of a potential health risk. The goal of the guidance is to explain health risk to the public without causing alarm. Development of risk reduction guidelines will lower toxic emissions statewide. These are examples of tasks performed by the ARB and the OEHHA staffs which have a direct impact at the local level.

63. Comment: The proposed State budget is not sufficiently responsive to current local needs or economic realities. The budget includes continued substantial funding for data acquisition, data management and regulation development tasks, all of which have little local value. The ARB and OEHHA must redirect to provide districts and facilities with the tools necessary to streamline implementation procedures and minimize overall Program costs. (Sommerville)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 3, 7, 13, 44, 60, 61, and 62 herein. Also, the commenter does not offer suggestions as to local needs that the State could address. However, the tasks performed by the State, and cited by the commenter, do have an impact at the local level. Data acquisition and management are essential components of developing a statewide toxics emission inventory as the Act requires. Resources for regulatory development are for developing amendments to the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355, and for development of the Fee Regulation. These are also important at the local level as these guidelines provide facilities with the instructions for reporting their emissions and provides a way to fund the Program.

The commenter offers no recommendations on areas to streamline. However, the ARB has undertaken a major streamlining effort in the emission reporting requirements. These changes are expected to save industry millions of dollars. The streamlined emission reporting will also enable the State to reduce the resources in this area in future fiscal years. Additionally, the State has prepared a plan to reduce resources by approximately 40 percent over five years.

64. Comment: Proposed funding for implementation of Senate Bill 1731 is excessive given the small number of facilities immediately subject to the requirements and the substantial responsibilities of the districts. (Sommerville)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 7, 8, 11, 13, 35, 37, 44, 60, and 61 herein. Also, the districts will have significant responsibilities for implementing Senate Bill 1731 risk reduction requirements. However, Senate Bill 1731

also requires the development of new risk assessment guidelines. Two-thirds of the State's budget for Senate Bill 1731 implementation is for development of these risk assessment guidelines. The districts will be asked to comment on and review these guidelines, but the OEHHA will have primary responsibility for their development. The other third of the Senate Bill 1731 implementation budget is for providing assistance to smaller facilities in complying with the risk reduction requirements. As the commenter suggests, few facilities will be subject to the risk reduction requirements in fiscal year 1993-94. However, the ARB believes the development of both the risk reduction guidance documents and the self-conducted checklists for auditing emissions must be initiated now if facilities are to meet the deadlines in the Act.

65. Comment: The ARB is penalizing businesses that make a sizeable contribution to the California economy. (Greenberg)

Response: The ARB disagrees with this comment and incorporates its Responses to Comments 1, 9, 13, 21, 23, 36, 37, and 42 herein. Also, new legislation, Senate Bill 1378, McCorquodale, requires Hot Spots fees to be based on toxic emissions and facility priority to the extent possible. In following the mandate of this legislation, larger, more complex facilities that emit toxic pollutants are assessed higher fees. High priority facilities, those that are required to prepare health risk assessments, are assessed higher fees as well. By assessing higher fees to high priority facilities the legislative mandate of Senate Bill 1378 is met. The ARB staff recognizes the contribution businesses make to the State's economy, and has tried to minimize the economic burden paying these fees might cause. For districts that have requested the ARB to adopt their fee schedule, the Fee Regulation contains a fee cap of $700 for small businesses and a provision to cap the Plan and Report (Simple) category fee at $1,000, at a district's request.

66. Comment: Toxic Hot Spots requirements have turned into an administrative disaster with little benefit to the environment. (Greenberg)

Response: This comment is not directed at the proposed amendments to the Fee Regulation. Also, the staff disagrees with the comment. The commenter offers no specific examples of administrative deficiencies, therefore it is difficult to respond to his comment. However, to streamline the Program, on June 10, 1993 the ARB adopted amendments to simplify the toxic emission reporting requirements, contained in the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355. This streamlining effort will simplify administrative procedures for the ARB and will reduce the cost to industry to comply with the Act. Savings will be realized by lower risk facilities who will have minimal costs associated with updating their toxic emission reports. Only high risk facilities will be required to prepare complete toxic emission inventory updates.

The major goal of the Program is to protect the public's health. This is being accomplished through the risk assessment process, public notification, and risk reduction. High risk facilities are required to lower their

emissions below significance levels. The ARB has also documented voluntary toxic emission reductions from facilities. In addition, the data from the Program will be used by the State to decide which source categories warrant development of airborne toxic control measures that have statewide applicability. These emission reductions will not only protect the public's health, but should benefit the environment as well.

67. Comment: When a business is forced to pay $30,000 for a risk assessment and another $10,000 in fees it's time to think about laying off employees to compensate for the new costs. (Greenberg)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 7, 9, 13, 16, 23, 34, 37, 46, 52, 54, 58, and 59 herein. Also, the Hot Spots Program was created through legislation (Assembly Bill 2588, Connelly; Statutes of 1987, Chapter 1252). The ARB is required to implement and administer the Program as the Act requires. One requirement is that high priority facilities prepare risk assessments to determine if the facility's toxic emissions pose a potential health threat. The ARB acknowledges that consulting fees to have risk assessments prepared can be significant. However, the law requires them. If the risk assessment result is below the level of significance, the facility may not have to prepare another risk assessment if the emissions and processes remain unchanged.

The ARB cannot comment on the fee this commenter may be assessed because the facility is located in a district that adopts its own fee rule. However, this is a high priority facility which was required to prepare a risk assessment. In following the Senate Bill 1378 mandate, which requires fees to be based on toxic emissions and facility priority, the State's cost assessed to the district would reflect this.

The staff's economic impact analysis determined that most California businesses seem to be able to pay these fees without an adverse impact on their profitability. This analysis also indicated that some facilities operating with little or no margin of profitability could experience significant adverse impacts by being assessed these fees.

68. Comment: The ARB should reconsider fee increases, especially for smaller districts with only a few sources. (Greenberg)

Response: The staff agrees with this comment and did reconsider the fee increases. In response, the ARB and OEHHA staffs reduced the State's budget by $457,000. This reduction will affect some planned Program activities. In approving the State's Hot Spots budget for fiscal year 1993-94, the ARB acknowledged that the new legislative mandates made increasing costs unavoidable. However, in recognition of the Program peaking, the ARB and the OEHHA staffs prepared a plan to reduce resources by approximately 40 percent over five years.

In general, districts with fewer facilities are assessed a lower State cost. An analysis conducted by the ARB staff determined that the district referred to was not paying a disproportionate share of the State's cost.

69. Comment: The South Coast AQMD will bear a disproportionate share of the State's cost with the combination of the method change and the increased State budget. The district must collect an additional $1.9 million, increasing fees by 60 percent over last year's fees. Sources in the South Coast AQMD will be severely impacted. (Leyden, Nazemi)

Response: The staff disagrees with this comment. The ARB staff's analysis indicates that the South Coast AQMD contains 49 percent of the Hot Spots facilities in the State and is responsible for 64 percent of the Hot Spots risk assessments being reviewed by the OEHHA. The South Coast AQMD's portion of the State's cost is 55 percent of the budget. This is not a disproportionate share of the State's cost as these commenters suggest. The commenters are correct in the amount of additional State costs the district must collect.

70. Comment: We support the overall approach to distributing the State's cost, using facility program categories, to make fees more equitable and meet the requirements of Senate Bill 1378. (Leyden, Nazemi, Jonas, Bailey [14], Falkenhagen, Jackson, Weisser, Tolmasoff, Waugh, Sturdavant, Phelan, Crow, Wang, Wardlow, Feldstein)

Response: The ARB acknowledges and appreciates the support of these commenters. The ARB approved this amendment to the Fee Regulation, which will base fees on Facility Program Category, at the July 8, 1993 hearing.

71. Comment: If ARB and OEHHA were able to function with a ten percent reduction in their budgets last year and no real lack of service was noticed, why do they have to recover the ten percent this year to perform less work than last year? (Selover: 38)

Response: The staff disagrees with this comment and incorporates its Responses to Comments 2, 7, 10, 13, 14, 35, 37, 41, 48, 53, 60, 61, and 64 herein. Also, the ten percent budget reduction was required by the final approved State budget for fiscal year 1992-93. This was a one-time reduction and was not related to the State's workload. The ARB achieved the ten percent budget reduction by reducing computer data analyses costs at the State's Teale data center. This reduction slowed the compilation of emission data into the ATEDS, and did prevent staff from responding to requests for assistance from districts and the public in a timely manner.

The ARB is not proposing to restore the full ten percent reduction of $395,000, for fiscal year 1993-94, but only about five percent, or $174,000. This was made possible because of cost savings for computer time contracts with the State's Teale Data Center.

The commenter does not identify the areas that the State will perform "less work than last year". However, for fiscal year 1993-94, the ARB does not anticipate any decrease in the tasks it is required by statute to perform. The ARB does acknowledge, however, that some of the goals of the Program are being realized. In light of this, the ARB and OEHHA staffs prepared a Five Year Plan that identifies Program areas where staff reductions can be achieved as the workload decreases.

72. Comment: The streamlined biennial up-date will reduce ARB's workload tremendously. This should be taken into consideration in developing the budget. (Selover: 38, Ryerson)

Response: The Response to Comment 53 is incorporated herein. The staff agrees that streamlining biennial update requirements will reduce the ARB's workload. The ARB has taken the streamlined biennial emission updates into consideration and expects resource reductions to occur, as a result of these amendments, beginning in fiscal year 1995-96. Until that time, initial emission data from Phase II and Phase III facilities will not be compiled into the ATEDS. Before any resource reductions can be achieved, all three phases of facilities must have emission data entered and validated.

73. Comment: The District would like to see a written legal interpretation of the applicable section in the Health and Safety Code that allows the ARB and OEHHA to collect $1,900,000 for implementation of Senate Bill 1731. (Selover: 38)

Response: This comment is not directed at the proposed amendments, but the ARB staff responds as follows. Health and Safety Code section 44380 requires the ARB to adopt a Fee Regulation that will recover the reasonable, anticipated costs of the ARB and the OEHHA to implement and administer the Hot Spots Act and Senate Bill 1731.

74. Comment: The ARB has allocated three person years for regulatory development and implementation of Assembly Bill 2588. Since the Program has been in place for several years now, and new guidelines have already been drafted, it is not clear what these three person years will be doing. There may be a duplication of effort.

Please explain the different tasks that these three person years will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38, Crow)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. The three person years the commenter appears to be referring to are those required to develop and amend the Emission Inventory Criteria and Guidelines Regulation Title 17, CCR, sections 93300-93355 and the Fee Regulation, Title 17, CCR, sections 90700-90705. Development and implementation of these regulations is required by statute. The Emission

Inventory Criteria and Guidelines Regulation was amended in June of 1993, to streamline the emission reporting requirements for facilities. To implement the new reporting requirements and provide guidance to the districts will require continuing resources. This regulation may need to be amended in 1994 due to a change in the law effective January 1, 1994 and will continue to need review and amending as the staff gains experience from its implementation. One person year is necessary for these tasks in fiscal year 1993-94.

Two person years are currently required for developing the annual Fee Regulation. For fiscal year 1993-94 the ARB staff developed a new methodology, based on toxics, to distribute the State's costs among the districts and assign facility fees for twelve districts. Because this is a new method, and an interim step towards a toxics emission fee basis, we anticipate review and amending of this Fee Regulation to continue in future fiscal years. The two person years assigned to Fee Regulation development also coordinate with the districts to receive facility information for distribution of the State's costs and facility fees.

The ARB and the OEHHA do acknowledge, however, that the Program is peaking and believes that these two regulations will not be as resource intensive in future fiscal years. In light of this, the staffs of the ARB and the OEHHA prepared a Five Year Plan that identifies Program areas where staff reductions can be achieved. Overall, the State's resources will be reduced approximately 40 percent within five years.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a Budget Change Proposal (BCP) submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

75. Comment: The ARB has allocated five person years for methods development and review. The Assembly Bill 2588 Program has been in place for some time now and methods needed to implement the Program have already been developed. The ARB is proposing to create emission factors to be used instead of source testing. Most facilities required to perform source tests have already done so and have developed emission factors. The Hot Spots Act does not require emission factors to be developed.

Please explain the different tasks that these five person years will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38, Crow)

Response: This comment is not directed to the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9,

11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. Pursuant to the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355, the ARB is responsible for specifying test methods when source testing is required to quantify emissions of toxic pollutants from specific sources. Currently emissions of over 540 substances must be quantified. Test methods exist for only 15 percent of these substances. The ARB staff develops emission test methods and reviews pooled source test proposals, alternative test method requests, and source test reports. The five person years allocated for these tasks are working on test method development and modifications to existing methods. The staff believes that the five person years required to carry out these tasks are justified.

The ARB and the OEHHA do acknowledge, however, that the Program is peaking and believes that these tasks will not be as resource intensive in future fiscal years. In light of this, the ARB and the OEHHA staffs have prepared a Five Year Plan that identifies Program areas where staff reductions can be achieved. The development of emission factors and the streamlined reporting requirements will allow the ARB to significantly reduce the resources for test method development within five years.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

76. Comment: The ARB has allocated four person years and $175,000 in contracts for the ATEDS. Because there are 7,381 facilities in the State submitting Assembly Bill 2588 emission reports and the emission reporting requirements have been streamlined, the data entry work load should be dramatically reduced. Other tasks associated with the database should be minimal.

Please explain the different tasks that these four person years will be doing and what the contract is for, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. The ARB estimates that as many as 37,600 facilities are subject to the requirements of the Act and must document their emissions in one way or another for the purposes of compiling the ATEDS. These person years are necessary for the ATEDS development, database administration, maintenance, and support. Other tasks assigned are

developing report programs to support quality assurance and audits, developing ATEDS subsystems to incorporate mobile, area, and natural source inventories, and developing capability to provide districts with electronic access to the ATEDS. Additionally, staff has been developing software for a personal computer version of the ATEDS. Pilot projects are underway to check the software before making it available to districts requesting it. This software should speed data compilation at both the district and the ARB.

The contract for $175,000 is with the State's Teale Data Center. This contract is for use of the State's main-frame computer center to run various programming tasks. This amount of funding is anticipated to be ongoing.

The ARB believes current staffing levels are justified, but recognizing that the Program is peaking, and that the database will enter a maintenance mode, we are proposing to reduce the resources in this area within five years.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

77. Comment: The ARB has allocated five person years and a $164,000 contract for emission data collection and data validation. The districts do all the data collection. It is not clear what ARB's role is in the data collection process. The need to validate the data on a continuous basis seems unnecessary since most facilities have insignificant changes from year to year. Data validation on updates should be limited to reports showing significant changes in emissions from the previous report.

Please explain the different tasks that these five person years will be doing and what the contract is for, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. The Health and Safety Code section 44340 requires the ARB to compile a statewide toxics emission inventory. To fulfill this requirement, the ARB staff receives emission data from the districts and performs routine calculation checks before entering the data into the ATEDS. Data from Phase I facilities' initial reporting have been entered into the database and we are working on Phase II data, as well as Phase I emission updates. Phase III data are now beginning to be submitted. Once all data have been entered, a long-term data quality assurance effort will begin to

verify inter-facility and inter-district consistency and accuracy. This database will serve as a basis for air toxics control measures and health risk assessments, and may be used for facility fees in future fiscal years. This database will also serve as a benchmark to document emission reductions and effectiveness of control measures.

As the commenter suggests, the emission inventory reporting requirements, contained in the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355, will focus on high risk facilities and significant emission changes occurring at a facility. Data validation and quality assurance efforts will be directed at emission information from these facilities once the entire database has undergone rigorous quality assurance checks.

Once the data are entered and quality checked, the ARB intends to reduce resources in this area over the next five years as workload decreases.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

78. Comment: The districts may request the ARB to evaluate and review the air dispersion modeling data contained in a facility's health risk assessment. The ARB's role is expected to be insignificant in fiscal year 1993-94 because only a small number of risk assessments will be reviewed by the ARB and most facilities have already prepared their health risk assessments. The ARB has allocated three person years for health risk assessment assistance.

Please explain the different tasks that these three person years will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. In addition to assisting districts with review of exposure assessments in health risk assessments, the ARB performs many other tasks. The ARB staff coordinates with the OEHHA on health reference exposure levels and chemical potencies, monitors a contract for multipathway exposures, updates the personal computer program that is used to prepare low cost risk assessments. The ARB staff, upon request, assists APCDs and facilities with health risk assessment preparation. Assistance is also being given to districts involved in preparing industrywide risk assessments.

During fiscal year 1993-94 the ARB will be initiating procurement of an integrated computer software package to be used by the districts for multiple phases of the Hot Spots Program. Major efforts will focus on establishing specifications for the software and securing a contract.

Contrary to this commenter's statement, many risk assessments have yet to be prepared and many more are still in the review process. Eight hundred risk assessments have been required from Phase I facilities and 102 have been required from Phase II facilities. Of the risk assessments required, 646 have been submitted to the OEHHA for review. The number of risk assessments from Phase III facilities has yet to be determined, but as many as 32,000 facilities are included in Phase III of the Program. Therefore, the number of risk assessments from this phase could be quite large. Clearly many risk assessments have yet to be prepared and reviewed.

The ARB believes current staffing levels are justified for fiscal year 1993-94, but in recognition of the Program peaking, the ARB and the OEHHA staffs have prepared a Five Year Plan which will reduce resources in this area as workload decreases.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

79. Comment: The ARB has allocated three person years to assist districts and facilities with the public notification procedures and public meetings. The public notification procedures have already been prepared by the CAPCOA Risk Assessment Committee in consultation with the OEHHA and the ARB. The commenter states that 26 facilities in the State will be required to notify the public in fiscal year 1993-94. Based on this estimate, the commenter suggests that it will cost $8,000 for the ARB to participate in each of these hearings.

Please explain the different tasks that these three person years will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38, Crow)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. The CAPCOA Notification Guidelines were completed as this commenter suggests. However, the ARB has other public notification related tasks in addition to participating in public hearings. As requested, the ARB staff assists districts with developing specific notification procedures, and reviews notification procedures developed by

the districts. The 26 facilities the commenter mentions are facilities the districts estimated would be required to notify the public by April 1, 1993. From a survey of districts, estimates from two of the State's largest districts indicate as many as 85-90 facilities, in addition to the previously mentioned 26 facilities, will notify the public in this fiscal year. The ARB may be asked to participate in each of these hearings. The ARB staff anticipates more districts will be requesting assistance in developing their notification procedures since only seven out of the 34 districts have procedures in place. Additionally, because the notification procedure is relatively new, the ARB staff receives many more telephone inquiries from districts, facilities, and the public at large for further information on the guidelines, and status of public notifications in the State.

The ARB believes that the present staffing levels are justified for fiscal year 1993-94, but in recognition of the Program peaking, the ARB and the OEHHA staffs have prepared a Five Year Plan which will reduce resources in this area as workload decreases.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

80. Comment: The ARB has allocated five person years to develop risk reduction guidelines and checklists. Because only seven facilities are subject to Senate Bill 1731 requirements in fiscal year 1993-94, these guidelines will cost $55,857 per facility. The ARB states that 500 facilities could be determined by the districts to pose a significant health risk, but the majority of these facilities will fall under a common source category such as gas stations or dry cleaners. The ARB estimates that five person years will be needed to produce two risk reduction guidelines per year. This amount is equivalent to almost $200,000 per risk reduction guideline. How is this going to benefit small facilities?

Please explain the different tasks that these five person years will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. The five person years the commenter refers to are new positions to implement the risk reduction portion of the Hot Spots Program, mandated by Senate Bill 1731. This legislation requires the ARB to assist smaller businesses, determined to be significant risk facilities,

meet the risk reduction requirements without causing them a significant economic burden. To do this, the ARB plans to provide a technical evaluation of the possible risk reduction methods, as well as a self-conducted audit and checklist for any industry comprised of mainly smaller businesses as identified by the districts. The self-conducted audit and checklist will allow a small business operator, in selected industries, to avoid the expense of developing an individual facility audit and plan and provide ease in determining applicable measures to meet the requirements of the legislation. In support of the guidelines, the ARB will provide technical assistance to facility operators in applying the identified risk reduction methods.

The commenter refers to a chart supplied by the ARB dated January 28, 1993. This chart, the commenter suggests, indicates that only seven facilities will be subject to Senate Bill 1731 requirements in fiscal year 1993-94. These guidelines and the checklist are not directed specifically to these seven facilities, and they are not assessed the cost this commenter suggests. To lessen the burden to smaller facilities, the cost for developing these guidelines is distributed among all facilities.

During fiscal year 1993-94 the ARB staff will work with CAPCOA to develop guidelines to assist districts in implementing the risk reduction requirements of the Program. These guidelines will provide a framework for evaluating risk reduction audits and plans and provide guidance on possible significant risk levels.

The ARB believes these guidelines are an important step towards controlling toxic air contaminants in California at low cost to facilities. Furthermore, they are mandated by statute. The ARB's resources dedicated to develop these guidelines are justified. Staffing levels are anticipated to increase to six person years within the next five years by redirecting staff internally.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in BCPs submitted to the DOF for fiscal year 1993-94. The SB 1731 BCPs underwent review by the ARB's and OEHHA's management, the Cal/EPA, the DOF, the Governor's Office, and both houses of the Legislature. Copies of these BCPs were previously given to industry, the air districts and these commenters. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

81. <u>Comment</u>: The OEHHA has allocated five person years and $500,000 in contract dollars for the review of health risk assessments. Why does the OEHHA need $879,000 to review 330 risk assessments, over $2,600 per risk assessment? The districts review the air dispersion modeling data and many risk assessments were done using computer programs. The OEHHA's role in risk assessment review should be minimal.

Please explain the different tasks that these five person years will be doing and what the contract dollars are used for, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. How long does it take the OEHHA to review a risk assessment and what do they look for? (Selover: 38)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. The review of a health risk assessment involves the following steps:

1) The risk assessment is read to check that all information in the summary tables accurately reflects information contained in the air dispersion and exposure modeling output.

2) Staff verifies that all appropriate exposure pathways were evaluated for each emission.

3) Staff checks to see that correct cancer potency factors, unit risk factors, and reference exposure levels were used for all chemicals evaluated.

4) Information contained in the exposure model is processed using the Health Risk Assessment program, developed by the ARB and the OEHHA, to validate predictions of cancer risk for multipathway exposure pollutants.

5) When discrepancies arise between the OEHHA staff calculations of risk and risk reported in the assessment, staff evaluate the basis of the discrepancies.

6) Staff comments on any incorrect statements made in the text of the risk assessment regarding any aspect of risk assessment, including the toxicology of chemicals emitted from the facility.

7) Inaccurate risk assessments are corrected and areas of incompleteness are identified.

8) Written comments on the risk assessment are provided to the district and assistance is provided in interpreting the results of the health risk assessment.

Risk assessments derived from the use of nonstandard methodologies are also reviewed. Decisions regarding which facilities must notify the exposed public of their emissions and which facilities must lower their emissions depend on the risk assessment result. Because of this, it is imperative that the risk assessment is carefully reviewed for accuracy and correctness.

The OEHHA anticipated receiving only 60-75 risk assessments from Phase I facilities when the Program was first enacted, and requested staffing levels

accordingly. However, up to 800 risk assessments have now been required of Phase I facilities. To deal with this large volume, the OEHHA requested an additional $500,000 in contract dollars to hire independent contractors to help with the review process. These additional funds have allowed the OEHHA to complete review of over 280 risk assessments in 2.5 years.

Staff estimates that review of a simple, straight-forward risk assessment may take as little as eight hours of staff time. However, review of a complex risk assessment, from a facility with numerous emission points and diverse emissions, may take 180 or more staff hours for review. The OEHHA staff estimates that an average time for a risk assessment review is 34 staff hours.

The ARB and the OEHHA believe that the current staffing level and contract dollars for risk assessment review are justified. However, in recognition that the Program is peaking, the ARB and the OEHHA staffs have prepared a Five Year Plan which will reduce resources in this area as workload decreases.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

82. Comment: The OEHHA has allocated six person years and $370,000 in contracts for developing health guidance values, noncancer risk assessment methods, and an acute effects database.

Please explain the different tasks that these six person years will be doing and what the contract dollars are used for, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. For the 728 chemical substances that facilities must report information on, the OEHHA develops and/or identifies cancer potencies and acute and chronic reference exposure levels. Appropriate data are evaluated as the basis for derivation of cancer potency factors and reference exposure levels for noncancer health endpoints. Statistical methods and computer models are used to arrive at the health values. In the 1992 CAPCOA guidelines, the OEHHA has identified over 280 health levels for about 100 compounds, but an additional 600 chemicals need to be evaluated.

The OEHHA's contract funding is used to evaluate the toxicological literature for a particular chemical. This process can take from one month to two years depending on the data available.

For each of the 728 compounds, the OEHHA identifies acute, chronic, and carcinogenic endpoints (system or organ affected). Over 2,000 endpoints need to be considered.

The OEHHA is currently examining the use of "benchmark dose" methodology and epidemiologically-based approaches for noncancer risk assessments. The development of these non-cancer methods is ongoing. The OEHHA is also developing a readily accessible chemical database for substances having acute toxicological effects.

The ARB and the OEHHA believe that the current staffing level and contract dollars to perform these tasks are justified. However, in recognition that the Program is peaking, the ARB and the OEHHA staffs have prepared a Five Year Plan which will reduce resources in this area as workload decreases.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

83. Comment: The OEHHA may be requested to be at all 26 notification hearings to offer their expertise in toxicology. It is hard to believe that a full-time position is required to have someone represent the OEHHA in a maximum of 26, 2-hour public workshops.

Please explain the different tasks that this person year will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38, Crow)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. In addition to attending public notification hearings, the OEHHA assists districts in interpreting the results of the risk assessments and uncertainties involved. The OEHHA provides information on the health effects that may result from exposure to facility emissions and consults with districts, other local government representatives, and the public regarding specific judgements and notices that are based on risk assessment results. Although the commenter states only 26 facilities may notify, from a recent survey, the districts are indicating that an

additional 85-90 hearings may occur. The current staffing of one person year is justified, especially if time to prepare for and travel to and from these hearings is considered.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in a BCP submitted previously to the DOF. This BCP underwent review by the ARB staff's management, the Cal/EPA or the Environmental Affairs Agency (predecessor to the Cal/EPA), the DOF, the Governor's Office, and both houses of the Legislature. All resource requirements are closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

84. Comment: The Health and Safety Code, section 44390, requires the districts to review the audit and plan prepared by a facility. It is not clear why the OEHHA is proposing to allocate three person years for something that will be handled at the district level.

Please explain the different tasks that these three person years will be doing, the estimated volume of work associated with each task, time required to do each task, and the amount of expertise needed. (Selover: 38, Crow)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff incorporates its Responses to Comments 2, 3, 7, 9, 11, 13, 29, 32, 33, 35, 37, 41, 44, 53, 54, 60, 61, 68, 71, and 72 herein, and responds as follows. Because risk reduction is a new requirement, the OEHHA anticipates many requests from the districts to review the facility's emission audit and evaluate the plan to lower emissions. The evaluation would attempt to verify that emissions would actually be reduced below a significance level. Additionally, the OEHHA would provide assurances (where possible) that planned reductions in air emissions would not actually increase health risks due to product reformulations, process changes, or increased waste disposal.

However, in response to public comments and the State's current economic climate, the OEHHA reduced the requested resources to two person years. Because of other resource reductions the OEHHA is redirecting these two person years to work on development of the new risk assessment guidelines until fiscal year 1997-98. One-half person year will be available to assist districts with audit and plan review in fiscal years 1995-97.

Detailed budget information is contained in Appendix VI of the Staff Report dated May 1993. The tasks, work volume, time required, and level of expertise were described in detail in BCPs submitted to the DOF for fiscal year 1993-94. The SB 1731 BCPs underwent review by the ARB's and OEHHA's management, the Cal/EPA, the DOF, the Governor's Office, and both houses of the Legislature. Copies of these BCPs were previously given to industry, the air districts and these commenters. All resource requirements are

closely scrutinized and must be approved through the annual State budget process. The ARB also approves all funding for the Hot Spots Program each year when the Fee Regulation is amended.

85. Comment: We support the streamlining of the reporting procedures in the Emission Inventory Criteria and Guidelines Regulation for low risk facilities. (Wardlow)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program. However, the ARB approved amendments to the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355, at the June 10, 1993 hearing.

86. Comment: We support the fee waiver for Industrywide facilities that had surveys performed by the district. (Reynolds)

Response: The staff agrees with this comment and, the ARB approved this amendment to the Fee Regulation at the July 8, 1993 hearing.

87. Comment: We support the development of risk reduction guidelines and checklists for small businesses for implementation of Senate Bill 1731. (Feldstein, Donovan: 36)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program. However, the staff responds as follows. The statute requires the ARB to assist smaller businesses with meeting the risk reduction requirements. Development of the self-conducted checklists, to allow facilities to audit their emissions, and risk reduction guidelines, allows the ARB to meet this requirement. The ARB approved funding for development of the checklists and guidelines at the July 8, 1993 hearing.

88. Comment: We do not support the proposed amending of section 90704(a). The proposed amendment would no longer require the State to annually adopt a Fee Regulation. The State should continue to be required to annually adopt a Fee Regulation. (Isom 20, 33)

Response: The staff agrees with this comment and, in response, the ARB rescinded this proposed amendment to the Fee Regulation. The ARB will continue to annually adopt a Fee Regulation. The ARB approved the amendments to the Fee Regulation at the July 8, 1993 hearing.

89. Comment: We support the proposed Fee Regulation if the requirement for the annual adoption of a State Fee Regulation remains. (Isom 20)

Response: The staff agrees with this comment and, the ARB, as this commenter requested, will continue to adopt an annual Fee Regulation. The

ARB approved the amendments to the Fee Regulation at the July 8, 1993 hearing.

90. Comment: We support the proposed amendments to the Air Toxics "Hot Spots" Fee Regulation. (Weisser, Magistrale, Tolmasoff, Reynolds)

Response: The staff agrees with this comment and, the ARB approved these amendments to the Fee Regulation at the July 8, 1993 hearing.

91. Comment: We support the development of a Five Year Plan which will accomplish a 40 percent reduction in the State's cost. (Sandman, Weisser, Wang)

Response: This comment is not directed at the proposed amendments, but the ARB endorsed this plan at the July 8, 1993 hearing.

92. Comment: The State's cost increase of $1.7 million is lower than the $1.9 million increase in the portion of the State's cost to be assessed the South Coast AQMD. (Nazemi)

Response: The Commenter is correct. The ARB staff incorporates its Response to Comment 69 herein. The South Coast AQMD's portion of the State's cost is increasing by $1.9 million to $2,967,806, or 55 percent of the total State budget. As stated in the Response to Comment 69, this is not a disproportionate share of the State's cost because 49 percent of Hot Spots facilities are located in the South Coast AQMD, and the district is responsible for 64 percent of the Hot Spots risk assessments being reviewed by the State.

93. Comment: There is no justification in the Staff Report for these huge increases on these small businesses. (Caufield: 34, Written)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 7, 17, 20, 36 and 37 herein. The ARB staff estimates that over 90 percent of facilities subject to the Fee Regulation are categorized as Survey or Industrywide and will pay an average fee of $85. These facilities are typically small businesses. Most fees for these facilities are unchanged or reduced from the fiscal year 1992-93 fees. Additionally, these facilities may have their fee waived by its district provided certain criteria have been met.

The ARB staff did justify the need for increasing the overall State's cost for the Program. Significant new responsibilities were imposed on the ARB and the OEHHA via passage of Senate Bill 1731.

In developing the methodology to distribute the State's cost and calculate facility fees, the ARB staff anticipated that some smaller businesses may be included in higher fee categories. Therefore, a cap of $700 for facilities qualifying as small businesses was included. An additional provision caps the Plan and Report (Simple) fee at $1,000.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

94. Comment: It is not clear when fees are applied to small businesses. Are they applied per stationary source? Per business? Per location? (Caufield: 34, Written)

Response: Health and Safety Code section 44320 contains the applicability requirements that determine which facilities are subject to the Act, and therefore, the Fee Regulation. For the small business definition contained in the Fee Regulation, a stationary source would pay the small business fee of $700 if it meets the criteria specified in section 90701(v) of the Fee Regulation.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition. The modified definition clarifies the definition of stationary source such that the small business definition can be applied uniformly across all districts in the State's Fee Regulation.

95. Comment: The use of Source Classification Codes does not meet the legislative intent to base fees on toxic emissions. Source Classification Codes do not represent toxic emissions or workload. (Caufield: 34, Written)

Response: The ARB staff disagrees with this comment and incorporates its Response to Comment 1 herein. Source Classification Codes (SCCs) are not intended to relate fees to toxic emissions. Assigning a facility to a certain Hot Spots Program category is based on its health risk priority and is related to its toxic emissions. This allows the Senate Bill 1378 mandate to be met. Subdividing the Hot Spots Program categories based on SCCs is related to the toxic workload and complexity of various types of facilities. Based on districts' experience and the staff's analysis of facilities, a correlation was found between the number of different SCCs at a facility and the complexity of that facility. In general, the more unique SCCs that describe a facility's processes the greater the workload to review that facility's data. The SCCs are also used to alleviate possible economic burdens on smaller businesses that may be categorized in higher priority categories.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small

business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

96. Comment: The small [oil] producers I represent did not do a risk assessment and have low emissions of air toxics. They are simple sources by a normal definition as shown in Attachment A. Because they did a better job of reporting their emissions (sic) they will have higher fees than their neighbors. (Caufield: 34, Written)

Response: This comment is not directed at the proposed amendments which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program. The ARB staff disagrees with this comment, incorporates its Responses to Comments 10 and 11 herein, and responds as follows. Facilities with limited toxic emissions that were not required to prepare risk assessments are lower priority facilities. These facilities are in the Plan and Report Program category. In general, these facilities pay the lowest fees in the Program. Attachment A that the commenter refers to did not supply a "normal" definition of a simple source.

There is a specific workload associated with each facility subject to the requirements of the Act. Examples of facility specific tasks are review of emissions data and review of health risk assessments. Additionally, there are many programmatic functions which are ongoing and affect all facilities. Examples of this type of work are emission inventory quality assurance, development of the Fee Regulation, development of health guidance values, and risk assessment guidelines development.

It is a district's responsibility to ensure that all similar sources within the district are reporting their emissions data accurately. The ARB staff relies on all 34 districts to provide accurate and consistent information for the Fee Regulation.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

97. Comment: The ARB staff has not done an adequate socioeconomic impact analysis as required by State law. (Caufield: 34, Written)

Response: The ARB staff disagrees with this comment and incorporates its Response to Comment 28 herein. State law requires an economic impact analysis to be conducted prior to adopting or amending a regulation. The ARB staff's economic impact analysis satisfies this requirement.

The analysis is based on a comparison of the return on owners' equity for affected businesses before and after the inclusion of the amended fees. The

results of the analysis are intended to provide an indication of the potential economic impact of the amended fees on businesses in California. This analysis indicated that overall California businesses are able to absorb the cost of these fees without significant adverse impacts on their profitability. However, the ARB acknowledged in the Staff Report that for some businesses, operating with little or no margin of profitability, assessing these fees may have a significant adverse impact. The commenter offers no alternative analysis to substantiate this claim.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

98. Comment: Businesses in California carry a much higher cost burden than comparable businesses in other states. (Caufield: 34, Written)

Response: This comment is not directed at the proposed rulemaking. However, the ARB staff incorporates its Response to Comment 97 herein, and responds as follows. Overall, California businesses seem to be able to absorb the costs of the fees without significant adverse impacts on their profitability. However, the ARB acknowledged in the Staff Report that for some businesses, operating with little or no margin of profitability, assessing these fees may have a significant adverse impact. The commenter offers no alternative analysis to substantiate his claim.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

99. Comment: Many small [oil] producers and other small businesses are not taxed at the corporate rate, so the tax comparison used by staff [in the economic impact analysis] is not correct. (Caufield: 34, Written)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 28 and 97 herein. The economic impact analysis conducted by the ARB staff is a multi-industry general analysis. However, oil producers were included in the analysis sample. Additionally, most businesses are subject to the corporate tax rates used in this analysis. The results of the analysis are intended to provide an indication of the potential economic impact of the amended fees on businesses in California.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small

business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

100. Comment: The staff did not consider in the [economic impact] analysis that much of the crude oil produced in California is the lower priced heavy crude oil. Its price is also artificially low due to oil imported from Alaska into California depressing market prices. (Caufield: 34, Written)

Response: To determine the potential economic impact of assessing these fees, adjusted fees are subtracted from net profit data. Fees are adjusted prior to the analysis because they are a business expense. As such they are deductible on federal and state tax returns. Because net profit data are utilized in the analysis, it is not necessary to distinguish the type of product that is produced. The commenter offers no data to substantiate his claim.

In response to this commenter, other representatives of small oil producers, and the ARB's directive, the small business definition was modified, as shown in Comment 17, to allow more oil producers to qualify for the small business fee of $700. The ARB staff worked closely with this commenter and other representatives of oil producers to arrive at an equitable small business definition.

General Comments Received After the Publication of the January 14, 1994 Notice of Public Availability of Modified Text

101. Comment: The small business definition contained in section 90701(v) of the Fee Regulation should include the San Joaquin Valley Unified APCD Rule 2201, subsection 3.31.4, in addition to subsection 3.31.1-3.31.3, to determine if a facility meets the the criteria to qualify as a small business. (Weese)

Response: The staff disagrees with this comment and incorporates the Responses to Comments 17, 20, and 25 herein. Moreover, the ARB staff worked closely with this commenter and representatives of small oil producers to arrive at an equitable small business definition that could be uniformly applied in all districts the ARB was adopting fee schedules for. Subsection 3.31.4 (now subsection 3.29.4) of the San Joaquin Valley Unified APCD Rule 2201 is the criterion for defining oil leases as stationary sources specifically in this district. Because this definition is unique among the districts in the State, to ensure uniform criteria for applying the small business definition, this subsection was not included in the proposed amendments.

102. Comment: The modified small business definition, contained in the January 14, 1994 Notice of Public Availability of Modified Text, includes a reference to the San Joaquin Valley Unified APCD Rule 2201. The subsections

referenced are 3.31.1-3.31.3. On October 12, 1993 Rule 2201 was amended by the District Board. The subsections referenced in the modified small business definition of the State's Fee Regulation should now be Rule 2201, subsections 3.29.1-3.29.3. (Caufield: 25, Donovan: 24, Sansing)

Response: The staff agrees with this comment and the ARB made this nonsubstantial change to the small business definition contained in section 90701(v) of the Fee Regulation.

103. Comment: We appreciate the consideration and assistance given to the independent oil producers in modifying the small business definition. (Caufield: 25, Donovan: 24, Sansing)

Response: The staff acknowledges this comment and incorporates the Responses to Comments 17 and 20 herein. Also, in response to these commenters and the ARB's directive, the small business definition was modified. In modifying the small business definition, the ARB staff worked with these commenters to achieve consensus on an equitable small business definition. The result of these efforts is a small business definition that is equitable and workable in all of the districts the ARB is adopting fee schedules for.

104. Comment: The ARB staff should conduct a follow-up study to determine if the small business criteria could be modified to include any business with ten or fewer employees, regardless of their gross receipts. (Donovan: 24, Caufield: 25)

Response: This comment is not directed to the proposed amendments contained in the Notice of Public Availability of Modified Text. Nevertheless, the staff responds as follows. The ARB staff worked closely with these commenters in developing a modified small business definition for use in the Fee Regulation. The modified definition maintained a ten employee limit, but increased the annual gross receipts amount from $500,000 to $1,000,000 for an individual facility and included an aggregate cap on gross receipts of $5,000,000. These commenters indicated that this was an equitable definition. With this modification more oil producers were able to meet the small business criteria and will qualify for the small business fee cap of $700.

Additionally, the ARB staff conducted an analysis to determine the number of facilities that could have ten employees or less. If a facility needed to meet the employee criterion only, this analysis indicated that as many as 65 percent of facilities could qualify as small businesses. Because of this potentially large percentage, the ARB staff determined that facilities must meet both criteria to qualify as a small business. While providing relief to small businesses, the modified small business definition helps ensure that other businesses will not suffer an economic burden by paying substantially higher fees.

105. Comment: It is not fair to overcharge any business due to "quirks" in the regulation. (Caufield: 25)

Response: This comment is not directed to the proposed amendments contained in the Notice of Public Availability of Modified Text. Moreover, the commenter does not indicate what the supposed "quirks" or "overcharges" in the regulation are, so it is not possible to respond to this comment. However, the proposed amendments to the Fee Regulation were developed through a public process. The ARB conducted seven public workshops and held numerous meetings with industry and the districts to develop an equitable method to distribute the State's cost and calculate facility fees. The staff does not believe any facility is overcharged.

106. Comment: San Joaquin Facilities Management, Inc., a small producer as defined in the San Joaquin Valley Unified APCD regulations, is not included as a small business in [the State's] proposal. (Caufield: 25)

Response: The San Joaquin Valley Unified APCD may have a small producer definition, but this definition is not applicable for Hot Spots fees. The small business definition, contained in section 90701(v) of the State's Fee Regulation, is for Hot Spots fee assessments only. As noted above in Comments 17, 20, 95, and 96, the ARB modified the small business definition in response to this commenter, other representatives of independent oil producers, and the ARB's directive.

In developing the modified small business definition, the ARB staff analyzed annual gross receipts data supplied by representatives of small oil producers and the California Department of Commerce. Data from representatives of small oil producers indicated that 80 percent of facilities have annual gross receipts of less than $5,000,000. Data from the California Department of Commerce, for the 1992 calendar year, indicated that over 82 percent of oil producers have gross receipts of less than $1,000,000. The data further showed that less than seven percent of oil producing facilities have gross receipts in excess of $5,000,000. These data support the equity of the modified small business definition dollar limits of $1,000,000 for an individual facility, and the aggregate cap of $5,000,000 for all facilities owned by the same company.

The commenter was involved in the development of the modified definition. The facility in question may have less than ten employees, but the gross receipts are in excess of $5,000,000 annually. Therefore, this facility does not qualify as a small business. Based upon the foregoing, the staff does not believe that the proposed amendment should be modified.

107. Comment: San Joaquin Facilities Management, Inc. will have to pay $4,276 for the Central Source and $4,276 for the Western Source. If the Western Source is divided into wells producing light oil and wells producing heavy oil, the fee will be $8,552. This is a total of $12,828. This compares to $400 for the Central Source last year. The Western Source leases were obtained in 1993. (Caufield: 25)

Response: This comment is not directed at the Notice of Public Availability of Modified Text. However, the staff incorporates the Responses to Comments 2, 7, and 36 herein, and responds as follows. Staff

of the San Joaquin Valley Unified APCD indicates that this facility will be assessed a total fee of $4,276. Because the Western Source leases are recent purchases, they are not yet subject to the Fee Regulation. Additionally, for the Hot Spots Program, no fee is assessed based on whether a facility is producing light or heavy oil. The fee for the Central Source increased from $400 to $4,276 because of the change in fee basis and because of necessary State cost increases to implement the requirements of Senate Bill 1731.

108. Comment: Source Classification Codes do not represent toxic emissions or cost to the district. Other companies who have thousands of pages in their reports will be paying the same or less fees. (Caufield: 25)

Response: This comment is not directed at the Notice of Public Availability of Modified Text. However, the staff responds as follows. The staff did find a correlation between Source Classification Codes and the resources expended on processing a facility's Hot Spots Program data. Source Classification Codes define individual processes at a facility. In general, as the number of different processes at a facility increases, so does a facility's complexity. As the number of processes increases, more emission quantification methods must be applied, reviewed, and evaluated by both the district and the State. Many more resources are required to evaluate toxic emissions data from numerous processes, singly and in the aggregate, than are required to evaluate data from a simple facility with only one or two processes. San Joaquin Valley Unified APCD records indicate that this facility has more than five different processes or Source Classification Codes. As defined by the Fee Regulation, this is a complex facility. The method to distribute the State's cost and facility fees considers both a facility's risk priority and workload. Higher priority facilities, as determined by a district, pay higher fees.

109. Comment: Small [oil] producers can not stay in business without relief. (Caufield: 25)

Response: This comment is not directed at the amendments proposed in the Notice of Public Availability of Modified Text. Furthermore, this commenter provides no analysis to support this claim. However, to provide some relief to small oil producers, the modified small business definition increased the annual gross receipts a facility could have and still qualify as a small business from $500,000 to $1,000,000, with an aggregate cap of $5,000,000 for all facilities owned by the same company. With the modified definition, in the San Joaquin Valley Unified APCD, where facilities represented by this commenter are located, 59 businesses qualified as small businesses by increasing the gross receipts portion of the definition. Before modifying the definition, no facilities in this district qualified for the small business fee cap of $700.

It should also be noted that other representatives of independent oil producers commented that the modified small business definition was equitable, workable, and would provide relief to small oil producers.

110. Comment: The Yolo-Solano AQMD is satisfied with the methods used in distributing the State's cost and facility fees. (Selover: 26)

Response: Although this comment is not directed at the amendments proposed in the Notice of Public Availability of Modified Text, the ARB acknowledges this commenter's support of the methodology to distribute the State's cost and calculate facility fees.

111. Comment: The magnitude of the State's cost concerns me. Although the State has agreed to cut costs by five percent per year, a budget of $5,428,515 is still too imposing to pass on to sources, particularly in these tough economic times. (Selover: 26)

Response: This comment is not directed at the amendments proposed in the Notice of Public Availability of Modified text. However, the staff incorporates its Responses to Comments 2, 3, 7, 9, 13, 29, 37, 41, and 44, herein and responds as follows. To implement new Program requirements, the State's cost for fiscal year 1993-94 did increase. An increase of $1,920,000 was included in the Governor's Budget for implementation of Senate Bill 1731. In response to public comments and the State's current economic climate, Senate Bill 1731 expenditures were reduced by $457,000. Although this reduction is slowing planned Program activities, the State is able to begin implementing the requirements of Senate Bill 1731.

Additionally, recognizing that the Program is peaking, the State prepared a Five Year Plan that will reduce the overall State's cost by approximately 40 percent within five fiscal years, absent new legislation. The State did not agree to cut the budget five percent per year as this commenter states.

112. Comment: The State could cut their budget further and still carry out the intent of the regulation. (Selover: 26)

Response: This comment is not directed at the amendments proposed in the Notice of Public Availability of Modified Text. However, staff incorporates it Responses to Comments 2, 3, 7, 10, 13, 29, 33, 37, and 41, herein and also responds as follows. The Health and Safety Code, section 44380, requires the State to adopt a fee regulation which recovers all of the State's anticipated Hot Spots Program costs. Further budget reductions would not allow this provision to be met and would impair the State's ability to carry out the Program as mandated by statute.

113. Comment: The Yolo-Solano AQMD's share of the State's cost increased approximately 400 percent from $10,607 in fiscal year 1992-93 to $45,342 in fiscal year 1993-94. (Selover: 26)

Response: This comment is not directed at the amendments proposed in the Notice of Public Availability of Modified Text. However the staff incorporates its Responses to Comments 12, 13, 14, 15, and 16 herein and also responds as follows. The Yolo-Solano AQMD's portion of the State's cost did increase from $10,607 to $45,342, a 327 percent increase. This increase is due to the change in methodology to distribute the State's cost,

as required by law, the number of facilities this district has in the various Hot Spots Program categories, and the increase in the State's cost.

114. Comment: [In the Yolo-Solano AQMD], because sources will not tolerate an increase in fees and our Board will not adopt an increase, the excess cost will have to be absorbed by the district or the State, should we choose not to submit more than we can collect. (Selover: 26)

Response: This comment is not directed to the proposed amendments in the Notice of Public Availability of Modified text. However, the staff responds as follows. The Health and Safety Code, section 44380, requires the State to adopt a fee regulation to recover all of the State's reasonably anticipated Hot Spots Program costs. Because this district adopts its own Hot Spots fee rule, it can distribute their portion of the State's cost in a manner that they determine is appropriate. The Fee Regulation, in section 90705(d), does contain a provision to provide districts with relief from paying some portion of their State cost if the fees are not collectible due to circumstances beyond the control of the district. The district must document the circumstances which result in a shortfall. Only for the circumstances described in section 90705(d) of the Fee Regulation can a district be relieved from paying a portion of their share of the State's cost.