

TITLES 17 AND 26. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS HOT SPOTS FEE REGULATION.

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider amendments to the Air Toxics Hot Spots Fee Regulation.

DATE: July 8, 1993

TIME: 9:30 A.M.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the Board, which will commence at 9:30 a.m., July 8, 1993, and may continue at 8:30 a.m., July 9, 1993. This item may not be considered until July 9, 1993. Please consult the agenda for the meeting, which will be available at least ten days before July 8, 1993, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Sections 90700-90705, Titles 17 and 26, California Code of Regulations (CCR), and Appendix A and Appendix B to sections 90700-90705 (The Air Toxics Hot Spots Fee Regulation).

Background: The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the Act) (Health and Safety Code section 44300 et seq.) established a program to inventory air toxics emissions from stationary sources in California, to assess the risk to public health from exposure to these emissions, and to notify the public of any significant health risks associated with the emissions from any facility. The Act specifies activities which must be carried out by the ARB, the Office of Environmental Health Hazard Assessment (the Office or OEHH), and local air pollution control and air quality management districts (districts), to implement the Act. The Act requires the ARB to adopt a Fee Regulation to insure that all costs incurred by the state in implementing and administering the Hot Spots Program be defrayed by assessing fees on those facilities subject to the requirements of the Act (Health and Safety Code section 44380).

To implement the Act, the ARB first adopted the Air Toxics Hot Spots Fee Regulation (Fee Regulation) in 1988. Each year, the ARB staff, in consultation with the districts and the Fee Regulation Committee, prepares amendments to the Fee Regulation for the Board's consideration. Annual

revisions have been needed to ensure that the state's and districts' costs of implementing the Air Toxics Hot Spots Program will be recovered.

An amendment to the Act, which took effect January 1, 1991, allows districts to adopt district Hot Spots fee rules. Alternatively, districts may request the ARB to adopt fee rules for their district, but must submit district governing board approved Hot Spots Program costs to the ARB by April 1 for inclusion in the Fee Regulation.

Two separate pieces of legislation amended the Act in 1992, Senate Bill 1378 (McCorquodale; Statutes of 1992, Chapter 375) and Senate Bill 1731 (Calderon; Statutes of 1992, Chapter 1162). Senate Bill 1378 requires that Hot Spots fees be assessed based on toxic emissions to the extent practicable, a goal expressed by the Board in 1988 when it adopted the first Fee Regulation. Senate Bill 1731 requires facilities determined by the district to pose a significant health risk to develop a plan to audit and reduce their emissions; requires the OEHHA to develop new risk assessment guidelines; and requires the ARB to provide guidance to help smaller businesses reduce their toxic emissions below significant levels.

Accordingly, for fiscal year 1993-94, the staff of the ARB is proposing a new basis for calculating the distribution of state costs and facility fees for the twelve districts which have requested the ARB to adopt their fee schedules. Instead of basing these calculations on the criteria pollutant emission inventory, as was done in past years, the staff proposes the following. Assessments to the districts to recover state costs and the calculation of facility fees would be based on resource indexes and the number of facilities each district has in specific Hot Spots Program categories. ~~These factors relate costs to toxic emissions and were developed to account for workload, facility complexity, priority, and potential economic impact.~~

Staff proposes to add several new definitions to the Fee Regulation to reflect the change in the fee basis. A new Table 3 is added to the Fee Regulation which contains proposed fees for each program category.

Other significant proposed amendments to the Fee Regulation for fiscal year 1993-94 include:

- 1) changes to the amounts that each of the 34 districts would remit to recover the reasonably anticipated state costs;
- 2) a provision that would waive fees for facilities included in industrywide emission inventories prepared by the district pursuant to Health and Safety Code section 44323, provided certain criteria have been met, and continuation of the fee waiver for survey facilities;
- 3) a \$700 cap on fees for small businesses;

- 4) a provision for a fee of \$2,000 to be charged, at the district's discretion, to recover district costs for reviewing supplemental risk assessment information;
- 5) changing the language requiring annual adoption of fee rules--approved fee rules would not need to be amended annually, provided that the state's and districts' costs would be recovered;
- 6) updates to the list of districts which are requesting the ARB to adopt fee schedules for them and removal of the districts that are adopting district fee rules;
- 7) updating Table 2 which lists the districts' costs to be recovered by the Fee Regulation;
- 8) deleting the appended List of Substances (Appendix A) and incorporating by reference instead the List in the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, Sections 93300-93354; and
- 9) deleting definitions no longer needed because of the change in fee basis.

These proposed changes to the Fee Regulation for fiscal year 1993-94 are discussed in more detail below.

Recovery of State Costs: The amendments to the Fee Regulation would change the amount that each of the state's 34 districts must remit to the state to recover the reasonably anticipated state costs of implementing the Air Toxics Hot Spots Program for fiscal year 1993-94. Each district's share of the state's cost is calculated as described below, and includes a five percent adjustment factor.

The proposed amendments reflect the total proposed state Hot Spots Program expenditures of \$5,627,000 contained in the Governor's budget for fiscal year 1993-94. This level of funding is proposed to enable the state to implement the program as the Act requires and to address the mandates of new legislation that amended the Act. The proposed state cost represents a 62 percent increase, or \$2,155,000, over fiscal year 1992-93 expenditures. Of this increase, \$1,920,000 is due to the workload increases imposed by Senate Bill 1731.

In light of comments received during public workshops conducted in April, and the state's current economic climate, the ARB staff proposes to reduce budgeted costs associated with Senate Bill 1731 implementation by \$457,000. This would reduce the total proposed state costs to \$5,170,000. The proposed reduction will affect planned program activities for implementing Senate Bill 1731 in fiscal year 1993-94.

Methodology for Distribution of State Costs: The facilities in the state were separated into Air Toxics Hot Spots Program categories based on

information received from the districts. These calculations are explained, with examples, in Appendix V of the Staff Report.

District Fee Schedules: The proposed amendments would add fee schedules for the Calaveras, Placer, and Tuolumne County Air Pollution Control Districts (APCDs), and the Sacramento Air Quality Management District (AQMD). The amendments would delete fee schedules for Tehama and Shasta County APCDs. Tehama and Shasta County APCDs, as well as 20 other districts, are required by law to adopt district fee rules for fiscal year 1993-94.

The proposed regulation would again establish fee schedules for the following eight districts: the Kern, Lassen, Mendocino, San Bernardino, and Santa Barbara County APCDs; the Great Basin and San Joaquin Valley Unified APCDs; and the South Coast AQMD.

The proposed methodology used to calculate facility fees for the above twelve districts employs the same methodology used for calculating the distribution of state costs. For the districts requesting ARB adoption of fee schedules, an adjustment factor of five percent is added to the districts' cost to be recovered. The same Program Categories are used but different resource indexes are employed. Each district's cost to be recovered is divided by the sum of the products to arrive at a unit cost for a Plan and Report (Simple) facility. This district unit cost is multiplied by the other program category indexes to arrive at a district cost per facility.

The fee schedules in the Fee Regulation include cost-per-facility fees, specified by each local district, for all facilities emitting less than ten tons per year of any criteria pollutant. ~~The Survey, (those facilities required to complete a one time survey of emissions), and the Industrywide facilities (those facilities whose emission inventory was completed by the district as part of an industrywide emission inventory) would pay a facility fee between \$20 and \$250, as specified by their district.~~

Fee Waiver for Industrywide Facilities: We propose to add a fee waiver provision for industrywide facilities for fiscal year 1993-94. An industrywide facility's fee shall be waived by the district provided the facility has already paid a Hot Spots fee once, and does not cause the district a significant workload.

District Fee Rule Adoption: Twenty-two districts have chosen to adopt district rules to recover the program costs in fiscal year 1993-94. Those districts are the following: the Amador, Butte, Colusa, El Dorado, Feather River, Glenn, Imperial, Lake, Mariposa, Modoc, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, Ventura, and Yolo-Solano APCDs, the Monterey Bay Unified and Northern Sonoma Unified APCDs, and the Bay Area, North Coast Unified and the Northern Sierra AQMDs.

Deletion of the List of Substances: We are proposing to delete the List of Substances (Appendix A) and, instead, incorporate by reference the same List

of Substances contained in the Emission Inventory Criteria and Guidelines Regulation (Title 17, CCR sections 93300-93354).

Small Business Facility Fee Cap: We are proposing an amendment that would place a \$700 cap on fees for facilities defined as "small business". Under this proposal, "Small Business" means a business which is independently owned and operated and meets the following criteria, or a business affiliated with another concern, if the combined activities of both concerns meet the following criteria: 1) the number of employees is ten or less; and 2) the total annual gross receipts are less than \$500,000.

Supplemental Risk Assessment Fee: Senate Bill 1731 requires the ARB to establish in the Fee Regulation a fee to recover costs of reviewing supplemental health risk assessment information. We are not proposing a fee for state review of this information this year, but a fee of \$2,000 is being proposed which the districts may assess to review this information.

Annual Fee Rule Adoption: Language in the Fee Regulation is being proposed which would delete the requirement for annual adoption of a district fee rule and the state's Fee Regulation; however, the rule shall be reviewed annually to insure that all state and district costs will be recovered.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strike-out format, may be obtained from the California Air Resources Board, Public Information Office, 2020 L Street, Sacramento, California 95814, at least 45 days prior to the scheduled hearing. The ARB staff has compiled a record which includes all information upon which the proposal is based. Copies of the documents may be obtained through the Public Information Office, 2020 L Street, Sacramento, CA 95814.

Further inquiries regarding this matter should be directed to Genevieve Shiroma, Chief, Toxic Air Contaminant Identification Branch, Stationary Source Division, P.O. Box 2815, Sacramento, CA 95812, (916) 322-7072.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The Board's Executive Officer has determined that the amended Fee Regulation will impose a mandate upon and create costs to the air pollution control districts and air quality management 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 XIII B of the California Constitution because the districts have the authority to levy fees sufficient to pay for the mandated program (Health and Safety Code section 44380). These fees are intended to recover the full costs of district implementation of the Air Toxics Hot Spots Program, including compliance with the amended Fee Regulation. The estimated fiscal year 1993-94 district costs to implement the amended Fee Regulation are approximately \$475,824.

The Executive Officer has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some publicly-owned treatment works (POTWs). POTWs that emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Regulation, release the specified quantity of at least one of the four criteria pollutants, and are classified by the district in one of the prescribed program categories, must pay fees pursuant to the Fee Regulation. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, Article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated program. The average fee to POTWs is estimated to be \$1,236 for fiscal year 1993-94.

The Executive Officer has also determined that the amended Fee Regulation does impose a mandate on 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 XIII B, 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 the amended Fee Regulation does not create costs or savings in federal funding to any state agency or program.

The Executive Officer has also determined that the amended Fee Regulation will impose costs on affected state agencies. The costs to the ARB and the OEHHA to implement and administer the Air Toxics Hot Spots Program, including the amended Fee Regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of Title 17, 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.

Other affected state agencies (e.g., universities, hospitals, correctional institutions, laboratories) that must pay fees pursuant to the amended Fee Regulation as emitters of specified pollutants should be able to absorb their costs within existing budgets and resources. Costs to these state agencies are estimated to range from \$100 to \$4,875 for fiscal year 1993-94.

In developing the proposal, the staff has determined there is a potential cost impact on private persons or businesses directly affected by the regulations. The Executive Officer has also determined that adopting these amendments may have a significant adverse economic impact on businesses, based on an assessment of the evidence available in the record.

Accordingly, the following information is provided pursuant to Government Code section 11346.53:

(A) Identification of the types of businesses that would be affected

All businesses that emit a criteria pollutant and a listed substance (Health and Safety Code sections 44320-44322; Title 17, California Code of Regulations, section 90702) must pay a Hot Spots fee, (Health and Safety Code sections 44380-44382; Title 17, California Code of Regulations, sections 90703-90705) unless specified conditions have been met, and will be affected by these proposed amendments. Businesses that are operating with little or no margin of profitability may experience significant adverse impacts by paying these fees. Appendix VII of the Staff Report includes a list, which may be modified, of the categories of businesses that may be included in the scope of this regulation.

(B) Description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

To comply with these proposed amendments, businesses will have to pay the fees assessed on them. These proposed amendments will not result in any additional reporting, recordkeeping, or other compliance requirements, beyond keeping records of payment.

(c) The ARB staff finds that the amendment of this regulation may have a significant adverse economic impact on businesses. The ARB staff has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Submissions may also include the following considerations which more closely apply to these amendments:

- (i) The establishment of differing payment requirements or timetables which take into account the resources available to businesses.
- (ii) Exemption or partial exemption from the fee requirements for businesses.
- (iii) Any other alternative that would lessen any adverse impact the fees may have on businesses.

In considering the proposed amendments, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The imposition of the fees and the requirement that the fees, in the aggregate, cover costs of implementing the program, are mandated by statute. However, the staff is proposing a cap on fees for small businesses and is proposing to require the waiver of fees for facilities in two program categories if certain criteria are met. These provisions are meant to minimize the burden of the regulation.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, or 2020 L Street, 5th floor, Sacramento, CA 95814, no later than 12:00 noon, July 7, 1993, or received by the Board Secretary at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least ten days prior to the hearing. The Board encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND HEARING PROCEDURES

Amendments to the Fee Regulation are proposed pursuant to the authority granted to the Board in sections 39600, 39601, 44321, 44380, and 44380.5 of the Health and Safety Code. The purpose of the Fee Regulation is to implement, interpret, and make specific sections 44320, 44321, 44322, 44380, and 44380.5 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications, if the modifications are sufficiently related to the originally proposed text such that the public was adequately placed on notice that the regulatory language, as modified, could result from the proposed regulatory action. Such modifications are expected to include but are not limited to the following:

- (1) Each district's share of the state's costs may be revised on the basis of districts updating the number of facilities in the previously mentioned program categories, changes to the state's budget, or adjustments to the resource indexes.
- (2) The specified amounts of fees may be adjusted, on the basis of updates to numbers of facilities in the previously mentioned program categories, changes to the state's budget, or adjustments to the resource indexes.
- (3) Fees specified by districts may be changed on the basis of information being provided by each such district.
- (4) Changes to Appendix B (proposed Appendix A) of the regulation in response to information provided between this date and the public hearing.

In the event that such modifications are made, the full regulatory text with the modifications clearly indicated will be made available to the public for written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Air Resources Board Public Information Officer, 2020 L Street, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

This is a statewide regulation. Once adopted by the Board, the fee schedule will be applicable to all covered facilities in the twelve districts for which the proposed amendments would provide fee schedules. The remaining 22 districts will be required to adopt district rules to comply with the Fee Regulation.

CALIFORNIA AIR RESOURCES BOARD

Michael H. Scheuble
for James D. Boyd
Executive Officer

Date: May 11, 1993