

State of California  
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER THE ADOPTION OF AMENDMENTS TO THE EMISSION  
INVENTORY CRITERIA AND GUIDELINES DEVELOPED PURSUANT TO  
REQUIREMENTS OF THE AIR TOXICS "HOT SPOTS" INFORMATION AND ASSESSMENT  
ACT OF 1987

Public Hearing Date: June 10, 1993  
Agenda Item No.: 93-7-3

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report"), entitled Proposed Amendments to the Emission Inventory Criteria and Guidelines Regulation for the Administration of the Air Toxics "Hot Spots" Information and Assessment Act of 1987 released April 23, 1993, is incorporated by reference herein.

A. Board Action

On June 10, 1993, the Air Resources Board (ARB or Board) conducted a public hearing to consider the adoption of amendments to the Emission Inventory Criteria and Guidelines Regulations, Sections 93300 through 93355, Titles 17 and 26, California Code of Regulations (CCR). At the hearing on June 10, 1993, the Board approved the amendments without change by adopting Resolution 93-45. These amendments streamline the reporting requirements applicable to facilities required to report toxic emissions pursuant to the Air Toxics "Hot Spots" Information and Assessment Act of 1987 ("the Act"; Stats. 1987, ch. 1252; Health and Safety Code Sections 44300 et seq.). A few editorial changes were made by the ARB staff to the adopted amendments. These changes have no regulatory effect as defined in Title 1 CCR Section 100 (b).

B. Incorporation by Reference

Published source test methods, ASTM Methods D2361-85, D3177-89, E776-87, and E775-87, have been incorporated by reference in Section 93336(b) of the amended regulations. These test methods pertain to tests used to determine quantities of trace elements that are listed substances in fuel and material samples and are required to be performed by only a limited number of the facilities which are subject to the regulations. Nearly all of this testing will not be conducted by the affected facility operators themselves, but by a limited number of analytical laboratories. Therefore,

it would be cumbersome, unduly expensive, or otherwise impractical to publish in the CCR such lengthy, technically complex procedures which are of interest or concern to this limited audience. Furthermore, printing portions of the procedures in the CCR would be unnecessarily confusing to the affected public.

Also, the San Joaquin Valley Unified Air Pollution Control District's New Source Review rule which defines "stationary source" for Kern and Fresno counties continue to be incorporated by reference in Section 93301(g) of the regulations. The entire text of these regulations is voluminous and technically complex. The definition of stationary source in the cited rules includes subsidiary definitions which are also lengthy. The cited rules pertain to a limited number of the facilities. Therefore, it would be equally impractical to publish in the CCR.

The agency has made the documents which are incorporated by reference available to the public and to the local and state agencies at all times applicable to this rulemaking and will continue to supply copies upon request.

#### C. Costs to Public Agencies and to Affected Businesses

The Board has determined that this regulatory action does not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies, except as noted below:

Adoption of the proposed regulation should result in substantial cost savings to those state and local agencies which are subject to the Air Toxics Hot Spots Act due to substantial reductions in reporting requirements for those affected agencies.

The Executive Officer has also determined that the amendments will not have a significant adverse economic impact on affected business, including small business. The amendments streamline the reporting process and will result in savings to affected businesses.

Finally, the Executive Officer has determined that there will be no additional cost impact, as defined in Government Code section 11346.53(e), but rather a cost savings on private persons or businesses directly affected resulting from the adopted action. The regulatory action results in substantial cost savings to those private persons and business which are subject to the Air Toxics "Hot Spots" Act due to substantial reductions in reporting requirements for those affected facility operators.

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board. The proposed amendments streamline the reporting obligations to the maximum extent possible and comply with the terms of the Act.

The Executive Officer has determined that this regulatory action will not have a significant adverse impact on the environment and should benefit air quality by generating the data needed to make informed decisions for the control of toxic air contaminants in a cost effective manner.

## II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Comment letters were received from the following districts, industries, and interested groups during the 45-day comment period that ran from April 23, 1993, to June 10, 1993.

San Joaquin Valley Unified Air Pollution Control District (SJUAPCD)  
[Dated: May 24, 1993]

CALPINE [Dated: May 28, 1993]

Western States Petroleum Association (WSPA) [Dated: June 2, 1993]

Santa Barbara County Air Pollution Control District (SBAPCD1)  
[Dated: June 3, 1993]

Santa Barbara County Air Pollution Control District (SBAPCD2)  
[Dated: June 8, 1993]

Mitchell, Silberberg & Knupp (MSK) [Dated: June 8, 1993]

South Coast Air Quality Management District (SCAQMD)  
[Dated: June 9, 1993]

County Sanitation Districts of Los Angeles County (L.A. Sanitation)  
[Dated: June 9, 1993]

California Council for Environmental and Economic Balance (CCEEB)  
[Dated: June 9, 1993]

One comment was received after the close of the 45-day comment period.

Matheson Gas Products, Inc. [Dated: June 1, 1993]

In addition, oral testimony was received from WSPA, Radian Corporation (Radian), SCAQMD, and L.A. Sanitation during the Board hearing.

The comments received and the ARB staff's responses to them are provided below.

SJUAPCD, SCAQMD, CALPINE, CCEEB, and Radian

1. Comment: The proposed amendments should be adopted by the Board without change. (SJUAPDC, SCAQMD, CALPINE, CCEEB, and Radian)

Agency Response: The staff agreed with this comment and the Board followed it.

WSPA

2. Comment: The current instructions for reporting mixtures and trade name products, specifically for gasoline vapors and polycyclic aromatic hydrocarbons (PAHs), should be revised to require the reporting of individually listed constituents in the mixtures and any residual material in the mixtures in order to avoid double-counting (emphasis added). (WSPA)

Agency Response: The list of substances requires that mixtures be inventoried and reported as both individually listed constituent emissions and total mixture emissions (Health and Safety Code Sections 44321 and 44340 (c)(2)). The staff is aware of the potential for double reporting of these emissions and compensates by qualifying these types of emissions when releasing the inventory data.

3. Comment: Allow low and intermediate priority facilities that are required to update their inventories to only do so for their significant devices, similar to the option allowed for significant risk and other high priority facilities. (WSPA)

Agency Response: The staff disagrees with this comment. Significant devices are those that create at least 80 percent of total facility risk. This comment was not followed because most low and intermediate priority facilities were not required to submit risk assessments and would therefore not be able to identify and quantify which devices cause their risk. However, under the regulation the air pollution control districts (districts) have flexibility to cooperate with these facilities to identify which devices should be included in the inventory update, if one is required.

4. Comment: Revise the submittal date for the biennial summary form from February 1 to May 1 to allow facilities extra time to gather necessary information. (WSPA)

Agency Response: The staff disagrees with this comment. When the proposed update schedule was discussed at the public consultation meetings,

most facilities agreed that a submittal date of February 1 would furnish enough time to collect records from the previous calendar year upon which reports must be based. In addition, the proposed amendments allow districts to use alternative submittal schedules for biennial updates. Therefore, facility operators may arrange alternate submittal schedules with their local district, if needed.

5. Comment: Allow districts discretion to require new source testing for inventory updates only if retesting provides significant improvements in the assessment of the facility's risk rather than its emissions. (WSPA)

Agency Response: The staff believes that the language the commenter refers to is actually explanatory language in the Staff Report. There does not appear to be comparable language in the proposed amendments to change. The amended language in 'the regulation' regarding the use of previously submitted source test data (Section 93351(c)) is intended to allow the districts to exempt retesting requirements if they are determined to be unnecessary. This would appear to grant districts the discretion the commenter recommends.

6. Comment: Require that only significant risk and other high priority facilities be required to fill in the facility location (Universal Transverse Mercator, UTM) coordinates fields on the reporting forms. (WSPA)

Agency Response: The staff believes that this change is unwarranted. These fields have already been completed in each facility's initial report and only need to be copied to update reports if there have been no changes. Only new facilities would have to determine this information and the district staff are available to assist in determining coordinates.

#### SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT (SBAPCD)

7. Comment: The amendments allow greater district discretion and will create greater statewide inconsistency with implementing program requirements. (SBAPCD)

Agency Response: The staff agrees with this comment to the extent that the amendments raise the possibility of inconsistent program implementation. In practice, however, staff believes that inconsistency will be minimized. Accordingly, the staff plan to hold district workshops and to develop district guidance reports to explain the new biennial update procedures. Thanks to these efforts, district to district inconsistency in implementing these procedures will be minimized.

8. Comment: Require all low and intermediate priority facilities to complete Part C of the biennial summary form which includes an evaluation of device level activity. (SBAPCD)

Agency Response: The staff disagrees with this comment. The statute and regulation (Health and Safety Code Section 44365(b) and CCR Section 93348(d)) grant districts the flexibility to request this additional information from their low and intermediate facilities, if desired. After staff brought this to the commenter's attention the commenter withdrew the comment (SBAPCD2).

9. Comment: Require all districts to consider specific factors listed in the regulation when reviewing the biennial summary forms to determine when an inventory should be updated. (SBAPCD)

Agency Response: Districts may consider, but are not limited to considering the factors listed in the regulation when reviewing the biennial summary forms to determine when an inventory should be updated (CCR Section 93349(c)). In making the determination, districts need the flexibility to consider the facility specific information relevant to any particular facility. Requiring districts to consider each one of the listed factors in every case would pose an unnecessary burden on facilities and districts alike. The staff will hold workshops with districts to explain the new biennial update procedures including instructions on how to properly review the biennial summary forms.

10. Comment: The ARB should provide to all districts an annual summary of important changes such as changes to emission factors and potency values that would affect the evaluation of a facility's biennial summary form. (SBAPCD)

Agency Response: This comment is not directed at the proposed regulation, but the staff agrees with this comment and has committed to supply this annual summary of changes to the districts and the California Air Pollution Control Officers Association.

#### MITCHELL, SILBERBERG & KNUPP

11. Comment: The regulation establishes an irrebuttable presumption by requiring one-half of the limit of detection (LOD) to be averaged with detected values when reporting emissions from source test results in which some, but not all, runs are below the test method's limit of detection. The language completely bars the commenter from proving that any of it's detected test results were actually anomalies or invalid. (MSK)

Agency Response: The staff disagrees with this comment. If a test run for a substance results in a detected value, it is known that the substance is emitted from the tested source or process. If any other test runs for the same substance from the same process result in non-detected values, it is most likely that the concentration of the tested substance is between zero and the detection limit for those test runs. The averaging of one-half LOD values for non-detect runs that occur in concert with detected

values is a commonly accepted laboratory practice. It was discussed at public consultation meetings where it was supported by knowledgeable people in the field. The staff's guidance on reporting these types of source test results was originally provided to districts and industry in an April 1991 guidance letter. Staff is adding the reporting instructions' approach to reporting non-detect runs that occur in concert with detected values to the regulation to promote statewide reporting consistency. If a facility operator believes its detected test values were anomalous, the operator may demonstrate to the district that the test results were invalid and that the tested substance was not present.

12. Comment: The ARB did not comply with Government Code Sections 11342.2 and 11350(b)(1) because the instructions for averaging one-half LOD values with detected values is not reasonably necessary to effectuate the purpose of the Act, is not supported by substantial evidence, and is not consistent with and conflicts with the Act because it requires emissions to be reported at levels that can not be technologically shown. (MSK)

Agency Response: The staff disagrees with this comment and incorporates the response to comment number 11 herein. Health and Safety Code Section 44342 authorizes the Board to develop criteria and guidelines for emission inventory plans, including appropriate testing methodology, procedures and quality assurance criteria. Averaging one-half LOD values is consistent with and not in conflict with the statute, is reasonably necessary to effectuate the purpose of the statute, and is supported by substantial evidence--the requirements of Government Code Sections 11342.2 and 11350(b)(1). Consequently, the staff believes the agency has complied with the Government Codes noted above.

13. Comment: The ARB has not complied with the provisions of Government Code 11346.7(a) because the commenter contends that it was not personally delivered a timely notice of this rulemaking. (MSK)

Agency Response: The staff disagrees with this comment. Government Code Section 11346.7(a) does not require that regulatory notices be personally delivered to every member of the affected public. Nevertheless the staff believes that the commenter was mailed a timely notice. For the Emission Inventory Regulation the ARB maintains a mailing list with approximately 5500 entries. The mailing list was created four years ago and is continually updated. It lists affected businesses, including small businesses, environmental groups, trade associations, law firms, consultants, state and local agencies, and private persons who have expressed interest in changes to the regulation. Every entity on the mailing list was sent a public hearing notice as certified, under penalty of perjury, on the certification of mailing, which is attached to the 45-day notice at Tab 6 of this rulemaking record. This clearly complies with Section 11346.7(a). Moreover, it appears that the commenter was mailed a timely notice on April 23, 1993. The commenter's address is on the mailing list and has been there since the list's creation. In addition, the

commenter was notified of the six public consultation meetings held between November, 1992 and February, 1993 to discuss changes to the Emission Inventory Regulation. Consequently, the staff believes the agency has complied with the Government Code section cited.

14. Comment: The ARB may not have complied with Government Code 11346.7(b), 11346.7(c) and 11346.7(d). (MSK)

Agency Response: The staff disagrees with this comment. Sections 11346.7(b) and 11346(c) of the Government Code concern information and materials that must be included in this Final Statement of Reasons and Updated Informative Digest which were not required to be completed at the time this comment was submitted. This Final Statement of Reasons and the Updated Informative Digest submitted with it contain the required information. Section 11346.7(d) does not apply to this rulemaking, because this rulemaking is not mandated by federal law.

15. Comment: The ARB staff did not comply with Government Code Section 11346.14 because it did not provide a description of alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. The agency did not provide a statement that no alternatives considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the amended regulation. (MSK)

Agency Response: The staff disagrees with this comment. Government Code Section 11346.14 requires that this information be included in the Initial Statement of Reasons. This information was included on page four in the Initial Statement of Reasons for this rulemaking.

#### COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY (L.A. Sanitation)

16. Comment: In addition to strongly supporting ARB's streamlining efforts, the commenter proposed that high priority, non-significant risk facilities be given the option to update their health risk assessments and only be required to submit an updated inventory if their updated risk is 90 percent of the district's notification level. (L.A. Sanitation)

Agency Response: The staff disagrees with the amendment the commenter proposed. Adopting the commenter's amendment would be expensive and, in addition, would not have the effect the commenter desires. To conduct a health risk assessment update would require that a facility first engage in the activities necessary to update its emissions inventory, e.g. determine whether there has been a change in emissions. Because a facility would first have to determine whether there was a change in emissions, the staff did not believe this option would be cost effective. However, the regulation allows individual facilities to work with their local districts

to use more stringent criteria (CCR 93348(c)(3)) if doing so would simplify the particular facility's update requirements, as it might for the commenter.

MATHESON

17. Comment: Provide a mechanism to exempt from reporting facilities which emit less than ten tons-per-year (TPY) of criteria pollutants and are included in Appendix E-I. This comment letter was received after the close of the 45-day comment period.

Agency Response: The amendments to the regulation provide three new mechanisms for removing facilities from the program which emit less than ten TPY. These include facilities that meet specified criteria and whose emissions decrease below 10 tons per year (CCR 93305.5), facilities removed from district surveys (CCR 93306.5), and facilities no longer falling within an "Any SIC" class description in Appendix E-I (CCR 93309). An additional removal method was not added as the commenter requested because there is insufficient data available to globally exempt classes of facilities included in Appendix E-I. However, when additional data are available, it is the intent of the staff to delete SIC codes for facilities listed in Appendix A-I which have been determined to be insignificant.