

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

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 28, 1994
Agenda Item No.: 94-7-2

I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation, released June 10, 1994 is incorporated by reference herein. The Notice of "Public Availability of Modified Text" to the Staff Report which was available on October 20, 1994 is also incorporated by reference herein.

On July 28, 1994 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 approved Resolution 94-51, the amendments to the Fee Regulation, sections 90700-90705, Titles 17 and 26, CCR. In accordance with 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 the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), 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 12 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, 1994.

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.

Resolution 94-51 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 June 10, 1994 and, as noted, in the October 20, 1994 Notice of Public Availability of Modified Text. In brief, these changes are:

- (1) Several modifications were made to the facility program category method for calculating distribution of the State's cost and facility fees. The State's cost for Notification and Audit and Plan facilities was increased because these facilities pose the greatest potential health risk. These same two categories were subdivided to account for complexity. The number of industrywide facilities in each district was included in the distribution of the State's cost. Each district is assessed \$15 for each industrywide facility. In the October 20, 1994 Notice of Public Availability of Modified Text, the indexes to keep the cost for industrywide facilities at \$15 were modified. To better reflect workload, an index for Risk Assessment (Simple) was applied to the facility fee calculation to distribute districts' costs. For calculating fees, the district indexes for Risk Assessment-State facilities were modified to better reflect workload.
- (2) Definitions for Notification (Simple), Notification (Intermediate), Notification (Complex), Audit and Plan (Simple), Audit and Plan (Intermediate), and Audit and Plan (Complex) facilities were added to section 90701. These same categories of facilities were added to section 90703(a) for calculation of each district's share of the State's cost and to section 90704(e)(1) for setting facility fees.
- (3) The definition for an Industrywide Facility in section 90701(i) was modified to clarify applicability. The definition was expanded to include any facility that qualifies to be included in an industrywide emission inventory. Industrywide facilities were also added to section 90703(a) for calculating each district's share of the State's cost.
- (4) The definition of a Plan and Report Facility in section 90701(p) was modified to include facilities submitting an update summary form. This modification was necessary to conform with the Emission Inventory Criteria and Guidelines Regulation, CCR, sections 93300-93355.
- (5) The definition for a Risk Assessment-State Facility, contained in section 90701(x) was updated to specify the new one-year time period of applicability, from April 1, 1993 through March 31, 1994.
- (6) Revisions were made and new subsections and subparts were added to section 90704 of the Fee Regulation. These changes and additions are as follows:
 - a) A new subsection (a) clarifies that the State shall annually adopt a fee regulation that meets the requirements of Health and Safety Code section 44380.

- b) A new subsection (b), formerly subsection (a), was modified to read that the State may annually adopt a fee schedule for a district which requests it to do so.
 - c) A new subsection (c) was added that allows a district included in the State's Fee Regulation the option of adopting its own fee rule as a substitute for the State's Fee Regulation, provided certain criteria are met.
 - d) A new subpart (3) to subsection (d) establishes a reduced State cost for the OEHHA's review of health risk assessments. A facility that had its risk assessment prepared for it by its district, using an automated program approved by the ARB, would be assessed a reduced State's cost. A Risk Assessment-State (Intermediate) facility would be assessed \$1,632. A Risk Assessment-State (Complex) facility would be assessed \$1,909.
 - e) A new subpart (2) to subsection (e) was added which specifies a fee for a facility that becomes subject to the Act after State Board adoption of the Fee Regulation. If a facility is required to prepare an Inventory Plan and Report during the applicable fiscal year, it shall pay the Plan and Report (Simple) fee for that fiscal year.
 - f) Subsection (g) subpart (2) was modified. The fee to be assessed facilities meeting the definition of "small business", as defined in section 90701(ab), was reduced from \$700 to \$300.
 - g) Subsection (g) subpart (3) was modified to reduce the fee cap for the Plan and Report (Simple) category from \$1,000 to \$800. This is an optional fee cap for districts.
 - h) A new subpart (4) was added to subsection (g) which sets a fee cap for the Risk Assessment-District (Simple) category at no more than \$2,000. This is an optional fee cap for districts.
 - i) Language was added to subsection (h) which clarifies that the State shall do the required calculations to determine the amount of revenue that must be collected from facilities other than the industrywide and survey facilities that pay the district-specified flat fees in Table 4.
 - j) A new subsection (i) was added which will require the OEHHA to initiate a program of labor tracking of risk assessment review for purposes of management review and accountability.
- (7) A new subpart (1) to section 90705(a) specifies information that must be included on invoices sent by districts to facilities to recover State and district costs. The invoices must include: 1)

facility name and address; 2) name, address, and phone number contact of the district sending the bill; 3) billing date, invoice number, and applicable fiscal year; 4) small business applicability criteria; and 5) a statement saying the bill is required by Health and Safety Code section 44380.

- (8) The alphabetic and numeric notations in the Fee Regulation, sections 90700-90705, were revised to reflect new definitions, subsections, and subparts.
- (9) 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 updated facility counts as discussed in the October 20, 1994 Notice of Public Availability of Modified Text.
- (10) 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 1994-95. Table 2 was also revised to reflect changes in the districts requesting the ARB's assessment of fees. District costs for the Imperial and Mariposa County Air Pollution Control Districts (APCD) and the Yolo-Solano Air Quality Management District (AQMD) were added to Table 2; costs for the Calaveras and Placer County APCDs and the Sacramento Metropolitan AQMD were deleted from Table 2. Additional changes were made to Table 2 in the October 20, 1994 Notice of Public Availability of Modified Text. The cost to be recovered through the Fee Regulation was changed for the San Joaquin Valley Unified APCD, the Mojave Desert AQMD, and the Yolo-Solano AQMD because of updated industrywide facility counts.
- (11) Table 3, "Cost per Facility by District and Facility Program Category", was revised to reflect updated facility fees for the Kern, Lassen, Mendocino, Santa Barbara, and Tuolumne County APCDs; the Great Basin and San Joaquin Valley Unified APCDs; and the Mojave Desert and South Coast AQMDs. Fee schedules for the Calaveras, and Placer County APCDs and the Sacramento Metropolitan AQMD were deleted. Fee schedules for the Imperial and Mariposa County APCDs and the Yolo-Solano AQMD were added to Table 3.
- (12) Table 4, "Fees for Survey and Industrywide Facilities", was updated to reflect revised district-specified flat fees. Specified flat fees for the Sacramento Metropolitan AQMD and the Placer and Calaveras County APCDs were deleted from Table 4. Flat fees for the Mariposa and Imperial County APCDs and the Yolo-Solano AQMD were added to Table 4.
- (13) Appendix A, "Air Pollution Control District Air Toxic Inventories, Reports or Surveys", was revised to include an updated San Joaquin Valley Unified APCD toxic inventory entitled "San Joaquin Valley Unified APCD Toxics List, February 25, 1994". The San Luis Obispo

County APCD made an addition to its toxic emission inventory entitled "Additions to List of District's Toxics Inventory, January 6, 1994".

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. Health and Safety Code section 44390 et seq., requires facilities, judged to pose a potential significant health risk, to lower their emissions below a significance level. This regulatory action will fund implementation 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 XIII B 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 1994-95 is \$840,000. This amount is revised from the estimate made in the fiscal impact statement due to revisions in the Program costs that must be recovered by the districts. The districts notified the ARB of the need for these revisions during the applicable comment periods.

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); utilities; air and water treatment facilities; and solid waste facilities. The costs of complying with the amended regulation are not reimbursable within the meaning of section 6, Article XIII B, 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 1994-95, the estimated total costs to POTWs is \$91,737. The cost to utilities, air and water treatment facilities, and solid waste facilities is estimated to be \$156,466.

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 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 \$3,953 for fiscal year 1994-95.

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 XIII B, 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 \$155,376 for fiscal year 1994-95.

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 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 to develop and implement the amended Fee Regulation have been estimated to be \$158,000 for fiscal year 1994-95.

Other affected State agencies and facilities (e.g. universities, hospitals, and correctional institutions) that must pay fees, pursuant to the amended regulation as emitters of specified pollutants, are able to absorb their costs within existing budgets and resources. Total costs to these State agencies are estimated to be \$85,256 for fiscal year 1994-95.

In developing the proposal, staff determined there is a potential cost impact on private persons or businesses directly affected by the regulation. Based on the results of economic analyses, the Executive Officer has determined that overall, California businesses seem able to absorb the costs of the fees without a significant adverse impact on their profitability. Because the amended fees pose only a minor impact on the profitability of businesses, the Executive Officer has determined that there will be neither a noticeable change in employment nor an adverse impact on the ability of California businesses to compete with similar businesses in other states. Moreover, the Executive Officer has determined that the amended fees will not cause creation, expansion, or elimination of California businesses. Nevertheless, for businesses operating with little or no margin of profitability, imposing these fees may result in significant adverse impacts. The Executive Officer has also determined that because the

amended fees pose only a minor impact on the profitability of businesses, no change in consumer prices is expected.

As discussed in the summary of Public Comments and Agency Responses below, the ARB has further 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. Furthermore, in accordance with Health and Safety Code section 57005(a), the Executive Officer, after evaluating the alternatives, if any, to the proposed amendments submitted to the ARB pursuant to paragraph (2) of subdivision (a) of section 11346.53 of the Government Code (now Government Code section 11346.5(a)(7)), and considering whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments, has determined that there is no such alternative or combination of alternatives.

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, 1994. In response to district comments, some changes were made to facility counts and district costs during the 45-day comment period. These changes affect the distribution of the State's cost in all districts and facility fees for the 12 districts requesting the ARB to adopt their fee schedules. All of this correspondence is summarized and responded to as Comments below.

1. Comment: For the purposes of calculating distribution of the State's cost, and facility fees where applicable, the following districts supplied updates to their industrywide facility counts during the 45-day comment period: the Amador, Butte, Colusa, El Dorado, Glenn, Imperial, Kern, Lassen, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Santa Barbara, Tehama, Tuolumne, and Ventura County APCDs; the Bay Area, Feather River, Lake County, Mendocino County, Mojave Desert, Northern Sierra, Sacramento Metropolitan, Shasta County, South Coast, and the Yolo-Solano

AQMDs; and the Great Basin Unified, Monterey Bay Unified, and San Joaquin Valley Unified APCDs.

Response: The ARB staff updated all of the industrywide facility counts provided by these commenters, and used them to calculate the distribution of the State's cost and facility fees for fiscal year 1994-95.

2. Comment: For the purposes of calculating distribution of the State's cost and facility fees, where applicable, the following districts supplied information to the ARB regarding updated counts for facilities categorized other than Industrywide:

- a) Northern Sierra AQMD, letter dated June 21, 1994 to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.
- b) Shasta County AQMD, letter dated June 24, 1994 to Ms. Patricia Hutchens, ARB.
- c) Sacramento Metropolitan AQMD, letter dated July 11, 1994 to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.
- d) San Joaquin Valley Unified APCD, facsimile dated July 18, 1994 to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.
- e) Bay Area AQMD, facsimile dated July 20, 1994 to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.
- f) Mojave Desert AQMD, facsimile dated July 25, 1994 to Ms. Janette Brooks, Manager, Special Projects Section, ARB.
- g) Northern Sierra AQMD, facsimile dated July 28, 1994 to Ms. Carla Takemoto, ARB.

Response: The ARB staff updated all of the facility numbers, requested by these commenters, except those found to be in error. These updated counts were used to calculate the distribution of the State's cost and facility fees for fiscal year 1994-95.

3. Comment: For the purposes of calculating fees, the South Coast AQMD supplied an updated district Program cost.

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

4. Comment: The Santa Barbara County APCD supplied, via facsimile, an updated count of small businesses qualifying for a fee discount.

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

5. Comment: After the October 20, 1994 Notice of Public Availability of Modified Text was published, the following districts supplied updated facility counts:

- a) North Coast Unified APCD, letter dated October 24, 1994 to Ms. Janette Brooks, Manager, Special Projects Section, ARB.
- b) Modoc County APCD, facsimile dated October 25, 1994 to ARB.
- c) Northern Sierra AQMD, letter dated October 31, 1994 to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB.
- d) Siskiyou County APCD, facsimile dated November 3, 1994 to ARB.
- e) Mojave Desert AQMD, letter dated November 7, 1994 to Ms. Pat Hutchens, Board Secretary, ARB.

Response: These facility count updates are not responsive to the October 20, 1994 Notice of Public Availability of Modified Text. Facility counts were not open to comment pursuant to this notice; they were not part of the action the ARB proposed in the October 20, 1994 Notice. Accordingly, these comments were not directed at the ARB's proposed action or to the procedures the ARB followed in proposing or adopting the amendments as noticed. Hence, neither the distribution of the State's cost nor calculation of facility fees was changed in response to the comments.

B. General Comments Regarding The Proposed Amendments To The 1994-95 Fee Regulation

The ARB received the written and oral comments listed below during the Notice of Public Hearing 45-day comment period and the October 20, 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 October 20, 1994 Notice of Public Availability of Modified Text 15-Day Comment Period

- (1) June 15, 1994 letter from Fred Thoits, Engineering Division Manager, Monterey Bay Unified APCD, to Mr. Peter Venturini, Chief, Stationary Source Division, ARB. (Thoits)
- (2) June 23, 1994 letter from Roger Funston, Environmental Manager, McFarland Energy, Incorporated, to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB, with attachment. (Funston)

- (3) July 21, 1994 letter from Mark D. Jontz, Corporate Air Quality Project Manager, GM-Hughes Electronics, to ARB Secretary. (Jontz: 3)
- (4) July 21, 1994 facsimile from Christopher A. Collins, Supervising Air Quality Engineer, Mojave Desert AQMD, to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Identification Branch, ARB. (Collins)
- (5) July 25, 1994 facsimile from Milton Feldstein, Air Pollution Control Officer, Bay Area AQMD, to ARB Secretary. (Feldstein)
- (6) July 25, 1994 letter from Carol Foss, Air Quality Committee, Metal Finishing Association of Southern California, Incorporated, to Air Resources Board, with attachment. (Foss)
- (7) July 26, 1994 facsimile from Douglas W. Allard, Air Pollution Control Officer, Santa Barbara County APCD, to Ms. Genevieve A. Shiroma, Chief, Toxic Air Contaminant Branch, ARB. (Allard)
- (8) July 26, 1994 facsimile from Michael S. Sansing, Manager Regulatory Affairs, Independent Oil Producers' Agency, to Board Secretary and Members of the Air Resources Board. (Sansing)
- (9) July 27, 1994 facsimile from Blair Bradley, Chairman, San Joaquin Valley Unified APCD Governing Board, to Ms. Jacqueline E. Schafer, Chairwoman, ARB. (Bradley)
- (10) July 27, 1994 facsimile from Jack Caufield, REA, Environmental Consultant, Caufield Enterprises, to Board Secretary and Members of the Air Resources Board. (Caufield)
- (11) July 27, 1994 facsimile from Jeffrey Ho, Manager Regulatory Affairs, Lockheed Advanced Development Company, to Ms. Jacqueline E. Schafer, Chairwoman, ARB. (Ho)
- (12) July 27, 1994 facsimile from Patricia C. Hobson, Chair, California Aerospace Environmental Association, to Ms. Jacqueline E. Schafer, Chairwoman, ARB. (Hobson)
- (13) July 27, 1994 facsimile from Dan McCorquodale, Senator, 12th District, California Legislature, to Ms. Jacqueline E. Schafer, Chairwoman, ARB. (McCorquodale)
- (14) July 27, 1994 facsimile from Daniel V. Phelan, Executive Director, Bay Area League of Industrial Associations to Ms. Jacqueline E. Schafer, Chairwoman, ARB. (Phelan)
- (15) July 28, 1994 letter from Kraig Scheyer, TRW Manager of Safety, Health and Environmental Affairs, TRW Incorporated, to ARB Secretary. (Scheyer)

- (16) July 28, 1994 facsimile from California Independent Oil Marketers Association (CIOMA), to Board Secretary, ARB. (CIOMA)
- (17) October 28, 1994 letter from Mark Jontz, Manager, Corporate Air Quality Programs, Hughes Aircraft, to Board Secretary, ARB. (Jontz: 17)
- (18) November 1, 1994 letter from Richard H. Baldwin, Air Pollution Control Officer, Ventura County APCD, with attachment, to Board Secretary, ARB. (Baldwin)
- (19) November 7, 1994 facsimile from Ed Romano, Air Pollution Control Officer, Glenn County APCD, to Board Secretary, ARB. (Romano)

Oral and Written Testimony Presented at the July 28, 1994 Hearing of the Air Resources Board

- (20) Tim Sturdavant, Industrial Environmental Association, oral testimony. (Sturdavant)
- (21) Pat Leyden, South Coast AQMD, oral testimony. (Leyden)
- (22) Walt Murray, Manufacturers Council of the Central Valley, oral testimony. (Murray)
- (23) John Hunter, Northrup-Grumman, oral testimony. (Hunter)
- (24) M. Dean High, P. E., Metal Finishing Association of Southern California, oral and written testimony. (High)
- (25) Jeffrey Sickenger, Western States Petroleum Association, oral testimony. (Sickenger)
- (26) Cindy Tuck, P. E., California Council for Environmental and Economic Balance, oral testimony. (Tuck)
- (27) Matthew Dustin, Esq., Executive Director, California Paint Council, oral testimony. (Dustin)

General Comments Received During the 45-Day Comment Period and at the July 28, 1994 Hearing

1. Comment: Small businesses should pay a portion of Program costs. Larger and medium businesses should not have to subsidize all of the cost for work done on the smaller sources. (Sturdavant)

Response: The ARB staff agrees with this comment. Because a significant amount of the State's resources are being directed towards smaller sources, the ARB approved an amendment at the July 28, 1994 hearing which assesses all districts \$15 for each facility categorized as

Industrywide. Generally, industrywide facilities are small businesses such as gas stations and dry cleaners. Although the districts are assessed \$15 per industrywide facility, the Fee Regulation still allows a district to waive the fee for industrywide facilities. If a district elects this option, other larger facilities in the district will be assessed this cost.

2. Comment: We are concerned about the relationship of programmatic costs and how those efficiencies improve over time and what is the rain gauge for looking at how that improves over time. (Murray)

Response: This comment is not directed to the proposed amendments, but the ARB staff responds as follows. The ARB and OEHHA staffs endeavor to implement the Program as effectively as possible. As an example of improved efficiency, the ARB has developed user-friendly computer software that will allow facility operators to transmit their toxics emission data electronically. This will reduce the workload for both the ARB and facility operators. This reduction in resources is reflected in the ARB and OEHHA staffs' five-year plan that was endorsed by the ARB at the July 8, 1993 hearing. The five-year plan is an evaluation of Program requirements with projections as to how Program costs can be reduced over five years. Absent new legislation, the State plans to reduce Program costs by about 40 percent. Each year the plan is reevaluated to determine if further cost savings can be achieved through additional streamlining or efficiency.

3. Comment: Senate Bill 1731, Calderon, is a cost-reduction bill, not a cost-expansion bill. Businesses with significant emissions must shoulder the cost of reducing their toxic emissions. Districts may incur significant costs in reviewing plans, but only minor review should be necessary by the ARB and the OEHHA. (Murray)

Response: Although the commenter is correct in stating that businesses will pay the cost of reducing their toxic emissions in accordance with Senate Bill 1731, the ARB staff disagrees with the balance of this comment. None of the State's Program cost for fiscal year 1994-95 is allocated for review of facility audits and plans. In addition to requiring facilities to reduce significant emissions, Senate Bill 1731 (now sections 44360(2-3) and sections 44390-44394 of the Health and Safety Code) also placed significant new requirements on the ARB and the OEHHA. Development of new risk assessment guidelines and risk reduction guidelines are resource intensive tasks that could not be completed without additional funding. Because of these additional Program requirements, the ARB approved an increase in the State's Program cost of \$1,463,000 for fiscal year 1993-94.

4. Comment: We support the fee for service concept that is utilized in the San Diego County APCD. (Murray)

Response: This comment is not directed to the proposed amendments. Nevertheless, the ARB staff agrees with some aspects of this comment and disagrees with other aspects of this comment. Many tasks performed by the ARB and the OEHHA in implementing the Program are programmatic in nature,

affecting all facilities, and therefore, are not suitable for a fee-for-service structure. Moreover, a strict fee-for-service method may not comply with Health and Safety Code section 44380(a)(3) which requires that fees be based on toxic emissions to the extent practicable. The ARB believes that the current method utilizing Hot Spots Program categories ties fees more directly to toxic emissions and health risk priority than a strict fee-for-service approach would. It also reflects the workload associated with each facility, which does adhere to the fee-for-service concept.

However, in response to this comment, the ARB and the OEHHA have examined Program tasks that could be billed on a fee-for-service concept. As a result of this analysis, an amendment was proposed and approved by the ARB at the July 28, 1994 hearing which will require the OEHHA to initiate a program of labor tracking for risk assessment review. This labor tracking, in future fiscal years, may allow the OEHHA to utilize a fee-for-service concept for review of health risk assessments.

5. Comment: The ARB should look for ways to combine administrative tasks concerning stationary source review issues and toxics. This should lead to downsizing. (Murray)

Response: This comment is not directed at the proposed amendments. Nevertheless, the ARB staff agrees with this comment and responds as follows. All stationary source air quality issues, including toxics, are covered by the ARB's Stationary Source Division. Last year, recognizing that the Program is peaking, the ARB and the OEHHA evaluated Program requirements and responsibilities. The result of this evaluation was a five-year plan that outlines how the Program can be downsized. Absent new legislation, the ARB and the OEHHA plan to reduce Program costs by about 40 percent by fiscal year 1997-98.

6. Comment: The Fee Regulation should include an amendment that allows districts the option of adopting their own fee rules even after adoption of the State's Fee Regulation. (Leyden)

Response: The ARB staff agrees with this comment. At the July 28, 1994 hearing the ARB approved an amendment which would allow districts, included in the State's Fee Regulation, to adopt their own fee rules after the Fee Regulation has been adopted. A district must notify the Executive Officer of the ARB, in writing, of its intent to adopt its own fee rule.

7. Comment: The California Aerospace Environmental Association questions whether the current fee method follows the mandate of Senate Bill 1378, McCorquodale. (Hunter)

Response: The ARB staff disagrees with this comment. Health and Safety Code section 44380(a)(3) requires districts, with approved toxics emissions inventories, to assess fees proportionate to toxics emissions and health risk priority to the extent practicable. Because an approved, statewide toxic emission inventory is not complete, it was not possible to

base fees solely on toxics emissions. However, the facility program category method does comply with section 44380(a)(3) because fees are based on health risk priority and workload, both of which reflect toxic emissions to the extent practicable.

8. Comment: The metal finishing industries have been heavily regulated. Any further fee or regulation will cause additional attrition in our industry. (High: oral)

Response: This comment is not directed at the 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 staff responds as follows. The Fee Regulation was first adopted in 1988. These fees are not a new or further fee or regulation. Moreover, an economic impact analysis, conducted by the ARB staff, indicated that most businesses seem to be able to absorb the cost of the fees without a significant impact on their profitability. Because of the small reduction in profitability, this analysis also indicated that imposition of the fees will not contribute to a California business's ability to compete with similar businesses in other states or cause the elimination of businesses. The ARB does acknowledge, however, that some businesses, operating with little or no margin of profitability, may suffer an economic hardship by paying these fees. The commenter offers no alternative analysis to indicate that these fees are an economic burden on facilities or would cause attrition.

9. Comment: We support the proposed amendment to initiate a labor tacking program at OEHHA. (Sturdavant)

Response: The ARB staff agrees with this comment. An amendment to the Fee Regulation would require the OEHHA to initiate a program of labor tracking for health risk assessment review to be used for management review and accountability. This amendment was approved by the ARB at the July 28, 1994 hearing.

10. Comment: Small metal finishing companies in the South Coast AQMD did not all receive the same bill. Some were categorized as industrywide, some as small businesses, and some as Plan and Report (Simple). The fee categories should be simplified. The fee schedule is not providing equitable treatment to all sources based on annual toxic emissions. (High: written and oral)

Response: Although the commenter may be correct in stating that all metal finishing companies did not receive the same bill, the ARB staff disagrees with this comment. A district determines what categories of facilities (by Standard Industrial Classification (SIC) Codes) are to be included as industrywide sources. Because not all metal finishing companies fall in the same SIC code, it is possible that not all would be categorized as industrywide and pay the fee associated with that category. If it is not in the industrywide category, a low priority facility would pay the fee for the Plan and Report category. Last year, ARB staff anticipated that some

smaller businesses could be included in higher fee categories. To alleviate some of the economic burden on these smaller businesses, a small business fee cap was established. Therefore, it is possible that similar types of facilities could be included in different fee categories. Although the number of categories leads to a more complicated method, they were developed to make the fees more equitable and ease the potential economic burden on smaller facilities.

Until a statewide, approved toxics emission inventory is available, fees cannot be based on actual toxics emissions. The current fee structure is based on health risk priority and workload. Facilities are assessed fees in an equitable manner based on these criteria which reflect toxic emissions to the extent practicable.

11. Comment: There should be a mechanism to get out of the fee and out of the Program if a source can prove they are no longer emitting a specified amount of pollution. A facility should be exempt from fees if a facility's toxic emissions no longer create a health risk to the surrounding community. (High: written and oral)

Response: The ARB staff agrees with this comment. Title 17, CCR, sections 93305.5, 93306.5, 93308 and 93309, for example, of the Emission Inventory Criteria and Guidelines Regulation, specify the criteria a facility must meet to no longer be subject to the Act. If the district and ARB concur that a facility satisfies these criteria, the facility is no longer subject to the Act, and hence, the Fee Regulation.

12. Comment: Fees should be used to conduct ambient air monitoring to show that major sources have reduced toxic exposures to people living nearby. (High: oral)

Response: This comment is not directed at the proposed amendments. Nevertheless, the ARB staff disagrees with this comment, and responds as follows. By law, Hot Spots fees can only be used to defray the costs of activities necessary to support the Program. The Act, Health and Safety Code sections 44300 et seq., does not specify that ambient air toxics monitoring should occur. Therefore, fees cannot be used to fund ambient air monitoring.

13. Comment: We support the current fee method which incorporates a fee-for-service component and believe it is consistent with the statute and Senate Bill 1378. (Sickenger, Leyden, Feldstein)

Response: The ARB approved this method for distributing the State's cost and calculating facility fees at the July 8, 1993 hearing.

14. Comment: The Program should encourage reduction of air toxics emissions by assessing fees on sources of air toxics. (Sickenger)

Response: The ARB staff agrees with this comment and believes the Program has this effect. Facilities that are emitting air toxics are

subject to the Act and are assessed Hot Spots fees. Under the current fee structure, higher priority facilities pay the highest fees. Higher priority facilities that lower their toxic emissions, and therefore their health risk priority, will pay lower fees in future fiscal years. This should, and possibly has stimulated toxic emission reductions.

15. Comment: As the Program moves into a maintenance mode, we anticipate seeing continued reductions in the State's cost. (Sickenger, Tuck)

Response: The ARB staff agrees with this comment. Last year, recognizing that the Program was peaking, the ARB and OEHHA staffs analyzed Program requirements over the next five years. As a result of that analysis, staff prepared a five-year plan to reduce the Program's resources by about 40 percent by fiscal year 1997-98, provided there are no new legislative mandates.

16. Comment: Most paint manufacturers do not meet the small business definition and it is difficult to absorb an 800 percent fee increase. (Dustin)

Response: This comment is not directed at the proposed amendments to the Fee Regulation for fiscal year 1994-95 which deal only with assessing fees sufficient to defray State and district costs associated with the Hot Spots Program for fiscal year 1994-95. However, the ARB staff responds as follows. The commenter appears to be comparing fees from fiscal year 1992-93 with fees for fiscal year 1993-94. Without more information, it is not possible to determine if the commenter's analysis is correct. For fiscal year 1994-95, facility fees, on average, are increasing by about 22 percent compared to fiscal year 1993-94.

17. Comment: The fee should be reconsidered or increases phased in over a period of years. This could prevent more businesses leaving California. (Dustin)

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 for fiscal year 1994-95. Furthermore, the ARB staff disagrees with this comment and incorporates its Response to Comment 8 herein. The commenter is referring to fees assessed for fiscal year 1993-94. Those fees cannot be reconsidered because they have been adopted and are now State law. Moreover, Health and Safety Code section 44380 requires the ARB to adopt a Fee Regulation which recovers all of the State's reasonably anticipated Program costs. Phasing in or reconsidering fee increases would result in this provision not being met.

An economic impact analysis, conducted by the ARB staff, indicated that assessing these fees would result in only a small reduction in profitability. Based on this analysis the ARB staff concludes that imposition of the fees will not contribute to a business's ability to

compete with similar businesses in other states or cause the elimination of businesses. The ARB does acknowledge, however, that some businesses, operating with little or no margin of profitability, may suffer an economic hardship by paying these fees. The commenter offers no alternative analysis to indicate that these fees are an economic burden on facilities or would cause the attrition the commenter contends.

Thanks to the five-year cost reduction plan adopted by the ARB, fees should be declining during the time period the commenter mentions. The staff incorporates its Response to Comment 15 above.

18. Comment: Independent crude oil producers in the San Joaquin Valley Unified APCD did not fully understand the impact that the new fee calculation method would have on the fee assessed our facilities. (Funston)

Response: This comment is not directed at the proposed amendments to the Fee Regulation which deal only with assessing fees sufficient to defray Program costs for fiscal year 1994-95. Furthermore, the ARB staff disagrees with this comment and responds as follows. In developing the fee basis for fiscal year 1993-94, the ARB staff worked extensively with small and independent oil producers' associations. Again for fiscal year 1994-95, ARB staff conducted numerous meetings with industry groups to inform them of the proposed changes to the Fee Regulation, and solicit their input. In both years, public workshops, explaining the proposed changes, were held at the San Joaquin Valley Unified APCD (SJVUAPCD) offices, as well. Over 6,000 notices were mailed announcing the workshops and the public hearing. All notices explained the proposed changes and included a draft copy of the Fee Regulation. This Commenter, as well as the industry associations which represent him, were mailed these notices. Furthermore, the industry association representing this Commenter supported the fee methodology developed for fiscal year 1993-94 and supported the proposed amendments to the Fee Regulation for fiscal year 1994-95.

19. Comment: It would be productive if representatives of San Joaquin Valley independent crude oil producers could meet with the appropriate ARB staff to discuss the fee method issue in more detail. (Funston)

Response: This comment is not directed to the proposed regulation. Nevertheless, the ARB staff agrees with this comment, and responds as follows. A teleconference was held among ARB staff, SJVUAPCD staff, and oil producing industry associations to discuss this commenter's concerns on July 8, 1994. ARB staff also discussed this commenter's concerns with him during a phone call in July 1994.

20. Comment: Using Source Classification Codes (SCCs) as the sole determinate for calculation of the Hot Spots fees for oilfields does not result in a fee based on the toxic emissions or risk priority as required by Senate Bill 1378, McCorquodale. (Funston)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 7, 10 and 19 herein. Source Classification Codes are not the sole determinate for calculating Hot Spots fees for oilfields or any other facility. Source Classification Codes are the workload component of the fee. The other component of the fee is related to a facility's health risk priority. The level of priority assigned to a facility is directly related to the facility's toxic emissions. Facilities with a higher health risk priority, in general, are assessed a higher fee than lower priority facilities. This method does comply with section 44380(a)(3) of the Health and Safety Code because these factors reflect toxic emissions and base the fees on toxic emissions to the extent practicable.

21. Comment: The definition of stationary source used in the SJVUAPCD for oilfields coupled with the current fee method, results in fee calculations which far exceed either the toxic emissions or risk priority for these types of facilities. Changing the stationary source definition in the SJVUAPCD rules could result in more equitable fees. (Funston)

Response: This comment is not directed at the proposed amendments. Nevertheless, the ARB staff responds as follows. The ARB staff disagrees with this comment, and incorporates its Responses to Comments 7, 19 and 20 herein. The current fee method incorporates a health risk priority component and a workload component. Lower priority facilities are, in general, assessed the lower fees of the Plan and Report category. Within this category, as the number of different SCCs increases, a higher fee is assessed. This is the workload component of the fee. It is true that oil production facilities have a number of different SCCs. This places them in the Intermediate or Complex categories, with a corresponding higher fee. However, these fees are less than are assessed to most higher priority facilities.

The definition of stationary source in the SJVUAPCD was determined by the district. The ARB does not have the authority to alter this definition.

In accordance with Health and Safety Code section 57005(a), the ARB staff evaluated, to the extent possible, the alternative method of distributing costs as suggested by this commenter. Because no information was supplied, a complete analysis was not possible. However, ARB staff did discuss the proposal with the staff of the SJVUAPCD. According to SJVUAPCD staff, changing the stationary source definition would result in increased fees for the majority of facilities in the District. After evaluating this alternative to the proposed amendments, submitted to the ARB pursuant to Government Code section 11346.5(a)(7), the ARB staff determined that this is not a less costly alternative or part of a combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments.

22. Comment: The number of SCCs is not a good predictor of an oil production facility's complexity or potential to emit toxic air

contaminants. Using SCCs results in oil production facilities being classified as Intermediate or Complex. Because of this, the SJVUAPCD has a higher percentage of complex facilities as compared to the statewide average. This approach results in fee calculations which exceed either the toxic emissions or risk priority for these types of facilities. Fees could be based on total equipment counts instead of SCCs. (Funston)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 7, 19, 20 and 21 herein. Source Classification Codes are not intended to correlate precisely with toxic emissions or health risk priority. They are the workload component of the fee and reflect toxic emissions to the extent practicable. The ARB staff did find a correlation between SCCs and the resources expended on evaluating a facility's Hot Spots Program data. Source Classification Codes define individual processes at a facility. In general, as the number of processes increases, more emission quantification methods must be applied, reviewed, and evaluated by both district and State staff. 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.

The SJVUAPCD does have a higher percentage of Intermediate and Complex facilities than the statewide average. Based on facility counts for the October 20, 1994 Notice of Public Availability of Modified text, the statewide percentage for Intermediate and Complex facilities is about 47 percent. Approximately 71 percent of the SJVUAPCD's facilities are categorized as Intermediate or Complex, and 18 percent of these are oil production facilities. Although the commenter implies that this means oil production facilities are paying higher fees, over 37 percent of these Intermediate and Complex oil production facilities in the SJVUAPCD qualify for the small business fee cap of \$300. Therefore, small, independent oil producers are not paying high fees as this commenter suggests.

In accordance with Health and Safety Code section 57005(a), the ARB staff evaluated, to the extent possible, the commenter's alternative method of distributing costs using total equipment counts. Because no supporting data were supplied by the commenter, a complete analysis was not possible. However, SJVUAPCD staff indicated that this proposal would result in higher fees for many facilities in the District because many facilities would be recategorized to the Intermediate and Complex categories. These categories are assessed higher fees. After evaluating this alternative to the proposed amendments, submitted to the ARB pursuant to Government Code section 11346.5(a)(7), the ARB staff determined that this is not a less costly alternative or part of a combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments.

23. Comment: Independent crude oil producers in the SJVUAPCD have had air toxic fees escalate over the past few years at a time when many are struggling to survive. (Funston)

Response: The Responses to Comments 8 and 17 are incorporated herein. Program costs have increased as more facilities have become subject to the requirements of the Act and new legislative mandates have placed additional responsibilities on the ARB and the OEHHA. These cost increases have meant fee increases for some facilities. The toxics-based method to distribute costs has also led to fee increases for some facilities, while other facilities' fees have decreased. The Hot Spots fees have been in existence since 1988 and are part of the cost of doing business in California. The ARB and the districts are required by law to recover the costs of funding the Program from facilities subject to the Act.

By law, ARB staff conducts economic impact analyses to determine the effects of assessing these fees on California businesses. In the analyses, we determine the impact on the businesses' profitability and their ability to compete with similar businesses in other states. We also estimate if the fee assessments could cause a business to relocate, cease or commence operation, or hire or layoff employees. The results of these analyses are included in the Staff Report.

To conduct the analyses, a random sample of businesses is selected from 400 different SIC codes. A Return on Equity is calculated for each business in the sample. If the change in the Return on Equity, due to imposition of the fee, is greater than ten percent, this is judged to be an adverse economic impact. Our analysis indicated an average reduction in the Return on Equity attributable to these fees of less than one percent. Because of this small change in businesses' profitability, it is not expected that imposition of the fees will hinder a business's ability to compete with similar businesses in other states. A change of less than one percent in profitability is not expected to cause a business to relocate or adversely affect employment.

The analyses do indicate that most businesses seem to be able to absorb the cost of the fees without significant impacts on their profitability. However, the ARB acknowledged in the Staff Report that some businesses, operating with little or no margin of profitability, may suffer an adverse impact by being assessed these fees. This commenter offers no alternative analysis to substantiate his claim.

However, because the Program is peaking, a five-year plan was prepared by the ARB and OEHHA staffs that will reduce overall Program costs by about 40 percent by fiscal year 1997-98. This should lead to lower fees in future fiscal years for most facilities.

24. Comment: Many districts are not consistently implementing the Hot Spots Program, as evidenced by the variation among districts in the number of industrywide sources compared to population. Districts with accurate counts are being assessed a disproportionate share of the State's cost. A statewide audit of the Program should be initiated so that inequities can be eliminated. (Thoits)

Response: This comment is not directed at the proposed amendments. Nevertheless, the staff responds to this comment as follows. The ARB staff

disagrees with this comment. All districts have endeavored to provide the ARB accurate facility counts. The Act authorizes districts to select categories of businesses to include in industrywide surveys. To prepare an industrywide emission inventory, the district must determine that: 1) all facilities in the class fall within the same Standard Industrial Classification Code; 2) individual compliance would cause a financial hardship; 3) most of the facilities in the class are small businesses; and 4) emissions from the class of facilities are easily and generically characterized and calculated. Accordingly, the types of facilities included in the industrywide category may vary among districts due to such things as regional manufacturing and business differences. However, in response to this commenter, the ARB provided guidance to and resurveyed all districts for an update of their industrywide facilities. The districts responded to this survey and a minor change was incorporated into the calculation to distribute the State's cost after an internal review of the responses was conducted. The results of this survey indicate that a statewide audit is unnecessary. To conduct an audit of the Program in all districts would be an unnecessary expense that would lead to unsupportable Program cost increases.

25. Comment: Districts' efforts to implement the Program will limit the effectiveness of moving to an emissions/toxics based fee system as required by State law. (Thoits)

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 Program costs for fiscal year 1994-95. However, the ARB staff disagrees with this comment and responds as follows. Air districts are implementing the Program and supplying air toxics emission data to the ARB. The ARB staff has also developed computer software that is being made available to all districts at no charge to assist them in transmitting their data electronically. This will speed data entry into the database and speed the transition to basing fees on actual toxic emissions. The proposed amendments comply with State law because they base fees on toxic emissions to the extent practicable. The staff incorporates its Responses to Comments 7, 10, 20, 22 and 32 herein.

26. Comment: We support the proposed amendment to reduce the small business fee cap from \$700 to \$300. (Caufield, Sansing, CIOMA, Collins)

Response: The ARB approved this amendment to the Fee Regulation at the July 28, 1994 hearing.

27. Comment: Businesses in California are constantly being placed at a further competitive disadvantage by additional pollution control requirements. More businesses are going to leave California or shut down. (Caufield)

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 Program costs for fiscal year 1994-95.

Nevertheless, the ARB staff disagrees with this comment, incorporates its Responses to Comments 8, 17 and 23 herein, and responds as follows. The proposed amendments enact no additional pollution control requirements. Furthermore, because of the small reduction in profitability, an economic impact analysis indicated that imposition of the fees should not cause a facility's overall competitive status to change. This commenter offers no alternative analysis or data to substantiate his claim.

28. Comment: A task force of ARB staff, air district staff, and businesses should be set up to further reduce both State and district budgets for the Hot Spots Program. (Caufield)

Response: This comment is not directed to the proposed amendments. Nevertheless, the ARB staff responds as follows. The ARB staff disagrees with this comment. The State's Program budget is reviewed closely by ARB management, the California Environmental Protection Agency (Cal/EPA), the Department of Finance, the Legislature, and the Governor's Office. All resource requirements are closely scrutinized and must be approved through the annual State budget process and by the ARB. Additionally, numerous workshops and meetings with industry groups and districts are already held to explain the State's budget. It is not apparent how a duplicative resource-consuming task force would lessen Program costs.

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 by fiscal year 1997-98. This plan is evaluated every year to see if additional savings can be achieved. Health and Safety Code section 44380 requires the ARB to adopt a regulation that recovers all of the State's reasonably anticipated Program costs. Any further reductions in the State's budget could result in this provision not being met.

District budgets are approved at noticed public hearings. The ARB has no authority to determine a district's Program budget, provided the Program is being implemented as required.

29. Comment: We question the huge costs of the Program to businesses compared to any real benefits gained. (Caufield)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 8, 14, 15, 17, 23, 27 and 28 herein. The goals of the Hot Spots Program are to identify and quantify the toxics emissions from stationary sources in California and protect the public's health. Fees fund these efforts. Program goals are being accomplished through the toxic emission inventory and risk assessment processes.

Facilities whose emissions are shown to be a potential health risk to individuals living nearby must notify these people of the potential health risks. Facilities with significant emissions are required to lower their toxic emissions. Through this Program, facilities have been made aware of the potential harm of their toxics emissions. By understanding the extent

of their toxic emissions, facilities are voluntarily reducing them. This has resulted in considerable protection of public health and the environment. These are the Program's substantial benefits.

By law, all reasonable costs associated with the Program must be recovered through assessing fees to facilities that are subject to the Act. The State's costs are scrutinized by the ARB management, the Cal/EPA, the Department of Finance, both houses of the Legislature, and the Governor's Office before being approved. Costs must also be approved by the ARB at public hearings. All of these reviewers have found the State's cost to implement the Program to be reasonable.

30. Comment: We support the revisions which would shift administrative costs away from the State to the affected Hot Spots facilities. (Jontz: 3, Ho, Scheyer)

Response: The ARB staff disagrees with this comment. Health and Safety Code section 44380 requires the ARB to adopt a regulation that recovers all of the State's reasonably anticipated Program costs by assessing fees on facilities that are subject to the Act. This includes administrative costs. Administrative costs for the ARB and the OEHHA have always been recovered through fees since the first Fee Regulation was adopted in 1988. Pursuant to the Act, the State and districts, not facilities, administer the Program.

31. Comment: We support the proposal that facilities that are only required to submit plans and reports should have reduced fees. (Jontz: 3, Ho, Scheyer)

Response: The ARB staff agrees with this comment. In general, Plan and Report facilities do pay the lowest fees, because they are low priority facilities. The method to distribute the State's cost and calculate facility fees was approved by the ARB on July 8, 1993, and adopted on June 28, 1994.

32. Comment: We supported the State's policy of tying emissions fees and costs directly to emissions volume and toxicity. The current Hot Spots fees represent a departure from the parity of this approach. (Ho, Jontz: 3, Scheyer)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 7, 10, 20, 22 and 25 herein. Prior to fiscal year 1993-94, Hot Spots fees were based on the volume of criteria pollutants a facility emitted, and were not related to toxicity. This method was utilized because insufficient toxics emissions information was available to base fees on the volume of emitted toxics. By 1993, toxic data were available to relate fees to a facility's toxic emissions. Therefore the facility program category method was proposed, approved by the ARB, and adopted on June 28, 1994. This method is used to distribute the State's cost and calculate facility fees based on a facility's health risk priority and workload. Although the facility program category method is a departure

from the previous criteria pollutant emissions method, legislation and direction from the ARB requires fees to be related to toxic emissions which are reflected in this method.

33. Comment: Using facility complexity to allocate cost fails to address emissions and toxicity. Fees should be tied to the volume and hazard of emitted toxics, not to the processes from which they are released. This is required by Health and Safety Code section 44380(a)(3). (Jontz: 3, Ho, Scheyer, Hobson)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 7, 10, 20, 21, 22, 25 and 32 herein. Facility complexity is not the sole determinant for allocating costs. It represents the workload element of the allocation method. Source Classification Codes are the basis for determining complexity and are not intended to correlate precisely with toxic emissions or health risk priority. However, the other component of the fee basis, facility Program status, relates to the volume and hazard of the toxics emitted from a facility. In general, following this allocation method, facilities posing a higher potential health risk are assessed higher fees.

In accordance with Health and Safety Code section 57005(a), the ARB staff evaluated, to the extent possible, the alternative method of distributing costs as suggested by this commenter. Because no supporting data were supplied, a complete analysis was not possible. However, in developing the proposed amendments to the Fee Regulation, the ARB staff analyzed the option of basing fees on weighted toxic emissions. The ARB staff found that some of the relevant data are incomplete, inconsistent, and are still being quality checked for accuracy. Additionally, ARB staff found that not all districts have submitted all of their toxic emission data. Until the database is complete and quality checked, it would not be equitable or practicable to base fees on toxic emissions. After evaluating this alternative to the proposed amendments, submitted to the ARB pursuant to Government Code section 11346.5(a)(7), the ARB staff determined that this is not a less costly alternative or part of a combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments.

34. Comment: Fees can be reduced without sacrificing public health and the ability to implement the mandates of State law. (Bradley)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 8, 14, 15, 17, 23, 27, 28 and 29 herein. In addition, the ARB staff responds as follows. In accordance with the five-year plan, the ARB did reduce its budget and carried forward Program savings from fiscal year 1993-94 totaling \$933,000. The law specifies tasks which are to be carried out by the ARB and the OEHHA. To carry out these tasks, the State must adopt a regulation that recovers all

costs associated with the Program. Further reductions in the State's cost at this time would seriously impair the State's ability to carry out ongoing Program tasks to evaluate potential risks to the public's health.

35. Comment: We are concerned with the burden the proposed fees impose on businesses in the SJVUAPCD and California. (Bradley, McCorquodale)

Response: The ARB staff agrees with this comment and incorporates the Responses to Comments 8, 10, 23 and 27 herein. In addition, the ARB staff responds as follows. Economic impact analyses, conducted by ARB staff, indicated that imposition of these fees does not cause an adverse impact on a businesses's profitability. However, because of the State's economic climate, and as a result of an analysis of the Program's status, last year the ARB and OEHHA staffs prepared a plan to reduce the State's cost by about 40 percent by fiscal year 1997-98. The plan has now been implemented, and, in conjunction with Program savings from previous fiscal years, Program costs were reduced by \$933,000.

Because the ARB staff was concerned that smaller businesses could be included in higher fee categories, we proposed to lower two fee caps and proposed an additional fee cap. These proposals were approved at the July 28, 1994 hearing. The small business fee cap was reduced from \$700 to \$300. The fee cap for Plan and Report (Simple) was lowered from \$1,000 to \$800. A new fee cap of \$2,000 was established for Risk Assessment-District (Simple) facilities. The latter two fee caps are optional for districts. Each of these fee caps was proposed to provide relief to smaller businesses in the State.

Additionally, we recognize that fees are only one of the Program costs for businesses. To ease the burden and costs of the emission reporting requirements for most facilities, emissions updates, using a simplified two page form, are now required only every four years, instead of every two years. Additionally, we have developed user-friendly computer software for transmitting emissions data electronically. These are additional steps that have been taken to reduce the costs and burdens to businesses.

36. Comment: The State should consider all measures that would result in cost cutting and a more efficient implementation of the Program. (Bradley)

Response: The ARB staff agrees with this comment and incorporates its Response to Comment 35 herein. Continued implementation of the five-year plan, along with development of emission reporting computer software, and streamlined emission reporting requirements are examples of measures the State has taken to cut costs and improve efficiency. The State's overall Program costs are expected to be reduced by about 40 percent by fiscal year 1997-98. A reevaluation of the plan in each subsequent fiscal year may lead to additional Program savings. Moreover, it is estimated that the streamlined emission reporting requirements will save California businesses several million dollars.

37. Comment: The State's cost has not been reduced proportionate to the changing scope of the Program. A larger reduction in the State's cost is warranted. (Bradley)

Response: The ARB staff disagrees with this comment, and incorporates its Responses to Comments 28 and 29 herein. The State's cost for fiscal year 1994-95 was reduced by \$933,000, or about 18 percent from the fiscal year 1993-94 budget.

The scope of the Program remains wide and was widened by the addition of Senate Bill 1731, Health and Safety Code sections 44390, et seq. Development of new facility risk assessment guidelines and risk reduction guidelines is ongoing. Data from Phase II facilities are being compiled into the Air Toxics Emission Data System and Phase III data are just beginning to be received. Once all the data are entered, a long-term data validation project will be undertaken to ensure data quality. Source test and pooled source test methods are still being reviewed and developed. Risk assessment review and public notifications are continuing. Amendments to the Fee Regulation are developed each year.

The ARB acknowledges that the Program is peaking, however, and anticipates that further cost reductions can be made in future fiscal years in accordance with the five-year plan.

38. Comment: The fee methodology poses a disproportionate burden on the medium-sized businesses. In the SJVUAPCD, 18 percent of the facilities will bear 88 percent of the total cost of this Program. (Bradley)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 8, 10, 17, 23, 27 and 35 herein. This fee method is based on risk priority and workload, rather than criteria pollutant emissions. The change in method did result in fee increases for some businesses and some decreases for others. The economic impact analysis found no category of business that would suffer an adverse economic impact by paying these fees. However, without further supporting data of what the commenter considers to be a medium-sized business, it is not possible to analyze this comment or respond further.

39. Comment: The SJVUAPCD suggests establishing a tiered fee schedule for small businesses based on their complexity using SCC counts. (Bradley)

Response: The ARB staff disagrees with this comment. The ARB considered this approach in developing the proposed amendments. However, it was determined that the complexity of this approach would cause confusion for businesses and would make the Fee Regulation unduly cumbersome. Instead, the ARB staff proposed reducing the fee cap for all small businesses from \$700 to \$300.

40. Comment: The SJVUAPCD suggests readjusting the fee for industrywide facilities to \$125. (Bradley)

Response: This comment is not directed to the proposed amendments. Nevertheless, the staff responds as follows. The cost to be assessed to industrywide facilities is established by each individual district based on the district's anticipated cost for work performed on behalf of these facilities. The ARB does not establish this fee. To change the fee amount from the \$100 shown in Table 4 of the Fee Regulation, the district must submit a written request and documentation of why the fee amount should be changed. The SJVUAPCD chose not to increase the industrywide fee.

41. Comment: Because of the reduction in the workload for the Program, the SJVUAPCD cut their Program cost 29 percent. The ARB cut their budget by 21 percent, but this figure reflects a \$150,000 carry-over. There are no corresponding cuts in the OEHHA budget. The State's cost can be reduced as much as the SJVUAPCD's. (McCorquodale)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 34 and 37 herein. A district's cost reduction does not necessarily result in corresponding cost cuts at the State. The State's workload was not changed by the district's action. Most of the State's tasks are programmatic in nature, and affect all facilities. As an example of this, the risk assessment guidelines are being developed to prioritize all facilities, and will be used by high priority facilities to perform risk assessments. The cost of developing the guidelines was not lessened by the fact that there may be a few less facilities that will ultimately use them.

The State reduced its budget by \$183,000 in accordance with the five-year plan. Additional cost saving were achieved by carrying forward savings from previous fiscal years. The ARB carried over \$150,000 and the OEHHA carried over \$600,000. The total cost reduction for the ARB and the OEHHA is \$933,000, an 18 percent reduction from the fiscal year 1993-94 cost. We are committed to achieving a 40 percent permanent reduction by fiscal year 1997-98, absent new legislation.

42. Comment: The Fee Regulation states that "overall California businesses seem to be able to absorb the costs of the fees without a significant impact on their profitability". However when all fees are looked at cumulatively, businesses may suffer an adverse impact on their profitability. (McCorquodale)

Response: This comment is not directed at the proposed amendments which adopts fees for the Hot spots Program only. Nevertheless the ARB staff disagrees with this comment and incorporates its Responses to Comments 8, 17, 23, 27 and 35 herein. The ARB staff also responds as follows. The economic impact analysis the ARB staff conducted indicates that these fees will result in a reduction in Return on Equity of affected businesses of less than one percent. This small change in the Return on Equity is not expected to adversely affect a business's profitability. Because of this small reduction in profitability, the conclusion that California businesses are able to absorb the cost of the fees, without a significant impact on their profitability, is correct. However, the ARB acknowledged in the staff

report that some businesses operating with little or no margin of profitability may suffer an adverse impact by being assessed these fees. Also, the commenter offers no direct evidence or data on the cost of compliance with other programs. The ARB is required to analyze the impact of this regulation only. The ARB has no authority over the costs imposed by other regulatory agencies, environmental or otherwise.

43. Comment: We must ensure that the benefits of completing Phase III of the Program justify the costs. (McCorquodale)

Response: The ARB staff agrees with this comment and incorporates its Responses to Comments 3, 37 and 41 herein. The ARB staff observes, however, that the Program's cost and the fees proposed in the amendments are not designed only for completing Phase III of the Program. Phases I and II of the Program have yet to be completed. Although the emission inventory data for Phases I and II have been received and entered into the database, quality checks to ensure data validity need to be completed. Risk assessments from Phases I and II are still being completed and reviewed. Notifications for Phase I are just beginning and this will be followed by risk reduction. These steps must be accomplished for Phase II as well.

Phase III includes nearly 25,000 facilities. Data from these facilities are now being submitted for compilation into the statewide toxics database. Before risk assessment, notification and risk reduction can begin for Phase III, districts must prioritize these facilities. Clearly much work remains to be completed in all three facility phases.

Program costs also are used to fund on-going projects required by law. Specific examples include the risk assessment guidelines being developed by the OEHHA (Health and Safety Code 44360(2)), and the risk reduction assistance the ARB is developing for smaller businesses (Health and Safety Code section 44390(d)). These tasks affect facilities in all three phases of the Program.

44. Comment: We express our appreciation to the ARB staff for their efforts with the Fee Regulation. They have been helpful in trying to ease the burden of the Program on small businesses. (Sansing)

Response: The ARB staff appreciates this comment. The ARB approved an amendment at the July 28, 1994 hearing that will lower the fees assessed to small businesses from \$700 to \$300.

45. Comment: The Staff Report indicates that the Bay Area AQMD (BAAQMD) will have a 58 percent increase in its portion of the State's cost compared to fiscal year 1993-94. This concerns us. (Feldstein)

Response: In the draft Fee Regulation included in the Staff Report, the BAAQMD's portion did increase as this commenter suggests. However, the BAAQMD provided an updated facility count during the 45-day

comment period. The changes in its facility count reduced BAAQMD's portion of the State's cost below its portion of the State's cost for fiscal year 1993-94.

46. Comment: An increase in cost for the BAAQMD is not warranted because the district implemented the Program quickly and doesn't require risk assessment review or notification assistance. (Feldstein)

Response: The ARB staff agrees with this comment and incorporates its Response to Comment 45 herein. Because of a revised count provided by the BAAQMD, its Program costs are not increasing.

47. Comment: The BAAQMD realizes that the increase in cost was because of inconsistent interpretations among the districts regarding the facilities that should be included in the industrywide category. With guidance from the ARB we have revised our facility count and anticipate that now our costs will not increase over our 1993-94 cost. (Feldstein)

Response: The ARB staff agrees with this comment and incorporates its Responses to Comments 45 and 46 herein. Briefly, in response to a comment from the Monterey Bay Unified APCD, the ARB resurveyed all 34 districts regarding industrywide facility counts. In this survey the ARB provided guidance on possible types of facilities to include in the Industrywide category. Based on this guidance, the BAAQMD revised its industrywide facility count.

48. Comment: The Santa Barbara County APCD supports the proposed amendment to the Fee Regulation which reduces fees for facilities that have their risk assessment prepared for them by its district using an automated computer program approved by the ARB. (Allard)

Response: The ARB approved this amendment to the Fee Regulation at the July 28, 1994 hearing.

49. Comment: The \$15 State cost proposed to be assessed each district for each industrywide facility is fair. (CIOMA)

Response: The ARB approved this amendment to the Fee Regulation at the July 28, 1994 hearing.

50. Comment: We believe that the annual gross receipt limits for various industries should take into account the cost and pricing of products. Because of the price of petroleum, qualifying for the small business fee cap is difficult for even the smallest petroleum marketer. (CIOMA)

Response: The ARB staff disagrees with this comment. Last year we modified the small business definition in response to comments from small oil producers. The annual gross receipts limit used to qualify businesses as small businesses was increased from \$500,000 to \$1,000,000 because of the high price of petroleum products. Increasing the gross receipts limit

allowed a larger number of businesses to meet the small business criteria. To set variable limits on gross receipts for different industries would be unnecessarily burdensome, confusing and difficult to determine in the context of the Fee Regulation.

However, the ARB did agree to lower the fee for all small businesses from \$700 to \$300.

51. Comment: We support the proposed amendment to lower the cap for Plan and Report (Simple) facilities from \$1,000 to \$800. (Collins)

Response: The ARB approved this amendment to the Fee Regulation at the July 28, 1994 hearing.

52. Comment: We support the proposed amendment to cap the fee for Risk Assessment-District (Simple) at \$2,000. (Collins)

Response: The ARB approved this amendment to the Fee Regulation at the July 28, 1994 hearing.

53. Comment: The Staff Report states that the South Coast AQMD will not be charging its industrywide facilities. This statement is not correct. Many of our members are paying \$100. (High: written)

Response: The ARB staff disagrees with this comment. The South Coast AQMD (SCAQMD) did decide to not bill industrywide facilities for fiscal year 1994-95. The \$100 bill the Commenter refers to is the fee for industrywide facilities for fiscal year 1992-93.

54. Comment: We are not clear if the fees are annual or every four years. (High: written)

Response: The ARB staff disagrees with this comment. The fees are adopted for each fiscal year. In accordance with Health and Safety Code section 44380, facilities are billed annually to recover Program costs for both the districts and the State. However, section 90704(f)(1) of the Fee Regulation does allow districts to waive the fee for facilities categorized as Survey or Industrywide if certain criteria have been met.

55. Comment: Foss Plating Company was charged \$810 even though they changed to trivalent chromium. The facility uses one small hexavalent chrome rinse tank and some solvent. This does not justify Hot Spots fees. (High: written)

Response: This comment is not directed at the proposed amendments to the Fee Regulation. Nevertheless the ARB staff responds as follows. The ARB staff disagrees with this comment. All facilities that are subject to the Act are subject to the fees as well. We have discussed the fee assessed to the Foss Plating Company with SCAQMD staff. The facility in question was incorrectly categorized. The SCAQMD has corrected the facility's status to Industrywide and assessed a fee of \$100 to the facility for fiscal year

1992-93. Fees for fiscal year 1994-95 for industrywide facilities in the SCAQMD are waived.

56. Comment: Costs assessed to a company should be related to current toxic health risks as the McCorquodale legislation directs. (High: written)

Response: The ARB staff agrees with this comment and incorporates its Responses to Comments 7, 10, 20, 21, 22, 25 and 32 herein. The methodology does comply with the McCorquodale legislation. The method for distributing the State's cost was developed to address Senate Bill 1378 (now Health and Safety Code section 44380(a)(3)) and the ARB's directive to base fees on toxic emissions. Section 44380(a)(3) requires all fees to be based on toxic emissions and facility priority to the extent practicable. 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. In general, lower priority facilities pay the lowest fees. Risk assessment related costs are divided only among higher risk facilities.

57. Comment: The ARB staff proposed a 40 percent reduction in future fees due to the change in reporting requirements from two to four years. Toxic emissions are decreasing, so costs should be reduced more than 40 percent. (High: written)

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 3, 28, 37 and 43 herein. The 40 percent reduction in the State's cost by fiscal year 1997-98 will be accomplished by reducing costs for almost all aspects of the Program. Because of the change in reporting requirements, the ARB, in future fiscal years, will be able to reduce the costs for emission inventory work. This reduction is already reflected in the five-year plan. However, the plan is reevaluated every year to see if further reductions in cost can be made. Because the statewide air toxics database is not yet complete, it is not possible to determine whether decreases in overall toxic emissions have occurred. Furthermore, decreases in toxics emissions do not necessarily relate to decreases in Program costs. Many tasks funded through fees are programmatic in nature and are not directly related to the amount of toxics emitted. Examples of these tasks are development of risk assessment guidelines, development of risk reductions guidelines, and validation of emissions data.

58. Comment: The Metal Finishing Association of Southern California recommends allocation of Hot Spots funds to collect ambient air monitoring data. Staff should collect ambient air monitoring data to validate results of the dispersion model used for estimating health risk and to track progress achieved as a result of the Program. (High: written)

Response: The ARB staff disagrees with this comment and incorporates its Response to Comment 12 herein. Hot Spots fees, by law, can only be used to carry out Program activities outlined in the statute, or for

tasks that make compliance with the law less burdensome to affected facilities. Toxics air monitoring is not specified in the statute and to use fees for this would require the law to be amended. After the air toxics database is completed and validated, it can be used to track toxic emission reductions when facilities update their toxic emissions information. Perhaps the monitoring the commenter suggests may be accomplished through other funding sources.

59. Comment: We appreciate the ARB opening up the process and providing opportunities to comment on the proposed amendments. The ARB staff has communicated extensively with business representatives during the process of developing the amendments to the Fee Regulation. (Sturdavant, Murray, Sickenger, Tuck, Caufield, Phelan, Foss, CIOMA)

Response: The ARB staff acknowledges and appreciates this comment.

60. Comment: We support the proposed amendments to the Fee Regulation. (Sturdavant, Leyden, Sickenger, Tuck, Phelan)

Response: The ARB approved the proposed amendments to the Fee Regulation at the July 28, 1994 hearing.

Comments Received During the October 20, 1994 Notice of Public Availability of Modified Text

61. Comment: Funding for review of the air toxics reporting documents should be directed toward high emitters. (Jontz: 17)

Response: This comment is not directed to the amendments proposed in the October 20, 1994 Notice of Public Availability of Modified Text. The method to distribute the State's cost and calculate facility fees was approved at the July 28, 1994 hearing and were not part of the October 24, 1994 Notice. Furthermore, the ARB staff disagrees with this comment, incorporates its Responses to Comments 7, 20, 22, 32 and 33 herein, and responds as follows. Briefly, because a statewide, approved toxics emissions inventory is not yet complete, it is not possible to base fees on toxic emissions. All facilities in the Program are assessed a fee unless they meet specific criteria that exempts them. However, higher fees are assessed to higher priority facilities.

62. Comment: The current Fee Regulation penalizes emitters with a greater variety of processes over those emitters with greater emission volume or toxicity. Numerous process types do not translate to greater emissions. This approach is not consistent with the McCorquodale legislation. (Jontz: 17)

Response: This comment is not directed at the October 20, 1994 Notice of Public Availability of Modified Text. The method to distribute the State's cost and calculate facility fees was approved at the

July 28, 1994 hearing, and were not part of the October 24, 1994 Notice. Furthermore, the ARB staff disagrees with this comment, incorporates its Responses to Comments 7, 20, 22, 32 and 33 herein, and responds as follows. Briefly, the fee methodology considers both workload and risk priority. The number of processes, or SCCs, are the workload component of the fee. The number of processes is not intended to be a surrogate for the volume of toxic emissions. Health and Safety Code section 44380(a)(3) requires fees to be based on toxics emissions and risk priority to the extent practical. Because fees are tied to risk priority, the current program category method complies with the Health and Safety Code.

63. Comment: As the Program matures and facilities lower emissions, the districts and the ARB should observe a shrinking burden from the Program. Fees should be reduced accordingly and not merely be reallocated to other State programs. (Jontz: 17)

Response: This comment is not directed at the October 20, 1994 Notice of Public Availability of Modified Text. Furthermore, the ARB staff disagrees with this comment, incorporates its Responses to Comments 15 and 28 herein, and responds as follows. The State does agree that as the Program matures costs should be reduced. To that end, a five year plan has been prepared that, absent new legislation, will reduce the State's overall cost by 40 percent. However, by law, Hot Spots fees can only be used to fund Hot Spots Program activities. No Hot Spots funds have been or will be diverted to fund other programs.

64. Comment: Ventura County APCD is very concerned about the large increase that has occurred in the amount of revenues our district is to remit to cover State costs. (Baldwin)

Response: The ARB staff agrees that a district should be concerned about its Program cost. However, there are several reasons why the costs for Ventura County APCD (VCAPCD) are increasing as compared to its 1993-94 fiscal year cost. The basis for distributing the State's cost is tied to risk priority. Higher risk facilities are assessed a higher portion of the State's cost. A facility categorized as a State risk assessment is a high risk facility whose risk assessment is being reviewed by the OEHHA. These types of facilities fall into the higher fee categories. In fiscal year 1993-94 the VCAPCD had only one of these types of facilities. For fiscal year 1994-95 the VCAPCD has six State risk assessment facilities. This is the primary reason the District's cost is increasing. Next year, if the same method is used, if VCAPCD has fewer high risk facilities, its State cost should be lower.

65. Comment: We are pleased with the decrease in total State cost, but this has not translated to a reduction in the amount of revenues the VCAPCD is to remit to the State. (Baldwin)

Response: The ARB staff incorporates its Response to Comment 64 herein. Although the State's cost is reduced by \$933,000, VCAPCD's cost is increasing because of the increase in high priority facilities in the District.

66. Comment: Six districts are assessed 85 percent of the State's total cost. Compared to fiscal year 1993-94, all of these districts' State costs for fiscal year 1994-95 have decreased except for VCAPCD. This was not the case when the Fee Regulation was approved by the ARB in July.

Response: The ARB staff disagrees with this comment and incorporates its Responses to Comments 64 and 65 herein. The six districts this commenter refers to are the BAAQMD, SCAQMD, the San Diego County APCD, VCAPCD, the Monterey Bay Unified APCD, and the SJVUAPCD. These six districts contain 85 percent of the Program's facilities and 85 percent of the State's revenues are collected from these six districts. Of these six districts, all except the VCAPCD have decreased costs compared to their fiscal year 1993-94 cost. However, the reasons their costs have decreased are primarily due to having fewer State risk assessment facilities than they did in fiscal year 1993-94. Of these six districts, all except VCAPCD and the BAAQMD had fewer risk assessments being reviewed by the OEHHA. These reductions in the number of high priority facilities result in a lower total State cost for the other four districts. While these districts decreased their number of high priority facilities, the VCAPCD increased their number. In fiscal year 1993-94 VCAPCD had only one State risk assessment facility. For fiscal year 1994-95 this District has six high priority facilities. This is why the VCAPCD's State cost is increasing.

When the Fee Regulation was approved by the ARB at the July 28, 1994 hearing, both the BAAQMD's and the VCAPCD's costs were increased compared to their 1993-94 cost. However, during the 45-day comment period prior to the hearing, the BAAQMD provided a revised facility count in response to an industrywide survey conducted by ARB staff. The BAAQMD's cost reduction is due to this revised facility count. The ARB staff informed the ARB of this change and incorporated the revised facility count in the October 20, 1994 Notice of Public Availability of Modified Text.

67. Comment: This is the second year using the same method to calculate revenues to be remitted to the State, and the Program has been in existence for seven years. Therefore, it is difficult to understand the large, erratic shifts in facility counts that occurred between fiscal years 1993-94 and 1994-95. (Baldwin)

Response: This comment is not directed to the amendments proposed in the October 20, 1994 Notice of Public Availability of Modified Text. However, the ARB staff responds as follows. The SJVUAPCD and SCAQMD both discovered large errors in their databases that resulted in overestimating the number of facilities and the facilities' complexity for the fiscal year 1993-94 Fee Regulation. Because these errors resulted in large shortfalls, ARB staff did review documentation of the errors and determined that the revised facility counts for fiscal year 1994-95 are accurate and reflect the

facilities in each district. These errors did result in large facility count shifts between these two fiscal years.

68. Comment: Large shifts in facility counts occurred in several districts after the July board hearing which are reflected in the [October 20, 1994] version of the Fee Regulation. It is not clear why these changes occurred, how errors of this magnitude went unnoticed in 1993-94 and prior to the board hearing on the 1994-95 regulation in July, or if the revised values have been reviewed for accuracy. (Baldwin)

Response: The ARB staff disagrees with this comment and incorporates its Response to Comment 67 herein. At the hearing on July 28, 1994 the record for the Fee Regulation was closed. Therefore, no facility count revisions were accepted after the hearing. Updated facility counts were provided during the 45-day comment period prior to the board hearing. At the hearing the ARB was informed of these facility count updates and of the impact the changes would have on fees. These updated facility counts are incorporated in the October 20, 1994 Notice of Public Availability of Modified Text.

The ARB staff must rely on all districts to provide accurate information about the facilities in their district.

69. Comment: Verification of all district lists [of facilities] is needed before the regulation is finalized. (Baldwin)

Response: The staff agrees with this comment and believes that this verification currently takes place. Because the districts have the primary authority to regulate stationary sources in the State, the ARB staff must rely on each district to provide accurate facility counts based on guidance provided by the ARB staff. The ARB staff compares the districts' submissions with one another and with their submissions from previous years. The facility counts were corrected in this normal course of gathering and checking data for the proposed amendments, so further verification activities would appear to be unnecessary.

70. Comment: The industrywide category should only include those facilities that actually have been or will be included in an industrywide inventory. There does not seem to be a legal provision for subjecting facilities to the full reporting requirements of the Program and then shifting them to the industrywide category for updates. (Baldwin)

Response: This comment is not directed to the amendments proposed in the October 20, 1994 Notice of Public Availability of Modified Text. However, the ARB staff incorporates its Response to Comment 24 herein, and responds as follows. By the definition contained in section 90701(i) of the Fee Regulation, only facilities that are or will be included in an industrywide inventory prepared by its district should be categorized as industrywide facilities. In accordance with Health and Safety Code section 44323, each district has the authority to determine which categories of

facilities should be included in industrywide emission inventories. Therefore, the types and numbers of industrywide facilities may vary among districts.

71. Comment: For future Fee Regulations, the method to determine the amount to be remitted to the State by districts needs to be changed so that it cannot be manipulated and can be easily verified independently. (Baldwin)

Response: This comment is not directed to the amendments proposed in the October 20, 1994 Notice of Public Availability of Modified Text. The ARB staff agrees that information provided for the Fee Regulations should not be manipulated and should be easily verifiable. It is each district's responsibility to provide accurate information, and the ARB staff believes that the districts provide the most accurate information they can.

72. Comment: The [program category] method was supposed to be an interim method. This method has now been carried over for a second year because sufficient toxics data are still not available. Based on the law, all data should have been submitted to the ARB by now. If sufficient toxics data are still not available and used for fiscal year 1995-96, the reason needs to be explained and something needs to be done to get the data complete as soon as possible. (Baldwin)

Response: This comment is not directed to the October 20, 1994 Notice of Public Availability of Modified Text. However, the ARB staff incorporates its Responses to Comments 7, 10, 20, 21, 22, 25, 32, 33 and 56 herein and responds as follows. Most districts have submitted their toxics emissions data as required. However, analysis by the ARB staff has found discrepancies and inaccuracies in the data supplied. All districts must submit correct and consistent emissions data before costs can be distributed equitably based on toxic emissions. The ARB staff is initiating a project to work with the districts to correct inaccurate data. This process should be facilitated by the development of user-friendly software that will allow emissions data to be transmitted electronically. Until the database is approved, the facility program category method may continue to be used. This method complies with Health and Safety Code section 44380(a)(3) because it reflects toxic emissions to the extent practicable.

73. Comment: Changes to the Fee Regulation have occurred after board approval virtually every year. This makes Office of Administrative Law approval of the regulation very late. This delays [district] fee rule adoption, collection of fees, and sometimes fees cannot be collected in the fiscal year they are being levied for. This confuses affected facilities. (Baldwin)

Response: Although this comment is not responsive to the October 20, 1994 Notice of Public Availability of Modified Text, the ARB staff responds as follows. It is true that changes have occurred that necessitate recirculating the Fee Regulation for public comment via a Notice of Public Availability of Modified Text. This is required by law. The ARB

endeavors to have the Fee Regulation adopted in a timely manner. This is not always possible because of the timelines specified for public review and comment of changes submitted by the districts.

74. Comment: Late changes need to be subject to close review and should be disallowed except in extraordinary circumstances. The regulation contains specific deadlines for information which should be adhered to. (Baldwin)

Response: The ARB staff agrees with this comment and incorporates its Response to Comment 69 herein. It is each district's responsibility to provide accurate, verifiable information for the Fee Regulation within the specified timeframes. Information received outside of the specified timeframes will not be considered.

75. Comment: ARB fees have become such a burden on the [Glenn County Air Pollution Control] District that we are unable to collect the necessary funds to operate the District's Program. (Romano)

Response: The ARB staff disagrees with this comment. All reasonable costs associated with the Program are to be recovered through assessing fees on facilities that are subject to the Act. The Glenn County APCD is required to implement the Program and recover its Program cost, and the State's cost through fees on facilities in the District. No shortfalls in the fees collected by this district have been experienced.

76. Comment: If the ARB continues to demand the same amount of financial support, the [Glenn County Air Pollution Control] District will not be able to operate a program except to collect the fees for the ARB. (Romano)

Response: This comment is not directed at the amendments proposed in the October 24, 1994 Notice. Nevertheless, the ARB staff disagrees with this comment and incorporates its Response to Comment 75 herein. By law, the District's Program cost, as well as the State's cost for the district, are to be recovered through assessing fees on facilities that are subject to the Act. Should a district fail to continue Program implementation, as specified in the Health and Safety Code section 44300 et seq., in accordance with section 44365 of the Health and Safety Code, the ARB may exercise the authority of the district.

The State's cost for fiscal year 1994-95 was reduced by \$933,000. This resulted in reducing Glenn County APCD's portion of the State's cost by over 20 percent as compared with their 1993-94 State cost. The State is not demanding the same amount of financial support as this commenter suggests. Moreover, the Fee Regulation contains a provision which deals with situations in which districts experience a shortfall in the amount of fees to be collected.