State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

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

Public Hearing Date: July 28, 1994
Public Availability Date: October 20, 1994
Deadline for Public Comment: November 7, 1994

At a public hearing held on July 28, 1994, the Air Resources Board (ARB/Board) considered the adoption of amendments to the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), sections 90700 through 90705, Titles 17 and 26, California Code of Regulations (CCR). This Fee Regulation provides for the recovery of the anticipated costs of the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and some local air pollution control and air quality management districts (districts) to implement the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code section 44300 et seq.). A facility may be subject to the Act and the Fee Regulation if: 1) it manufactures, formulates, or releases one or more of the toxic substances on the list of Substances to be Inventoried, Appendix A of the Emission Inventory Criteria and Guidelines Regulation (CCR sections 93300 through 93355); or 2) it is listed in a current toxics use or toxic emission survey, inventory, or report compiled by a district.

The proposed amendments to the Fee Regulation, presented to the ARB at the July 28, 1994, hearing are described in detail in the Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation (Staff Report), released on June 10, 1994. Additional proposed amendments presented for consideration at the hearing are described in this notice.

For fiscal year 1994-95, the Fee Regulation establishes each district's share of the State's cost and fee schedules for 12 districts that requested the ARB's assessment of fees. Pursuant to Health and Safety Code section 44380, these 12 districts provided anticipated district Hot Spots Program (Program) costs, approved by the district's governing board, to the ARB prior to April 1, 1994. The remaining 22 districts must adopt district Hot Spots fee rules that provide for the recovery of their portion of the State's cost and their districts' costs. For these 22 districts, the amended regulation will establish only each district's share of the State's cost of implementing the Program.

At the hearing, after considering the ARB staff's recommendation and the public testimony, the ARB approved Resolution 94-51, directing the Executive Officer to adopt sections 90700 through 90705, Titles 17 and 26, CCR, in accordance with the procedures set forth in Government Code sections 11346.4-11346.8, after making the regulation available to the public for a period of 15 days and making modifications, as appropriate, in light of public comments received. The ARB also noted and approved several modifications to the proposed regulation which had not been included in the Notice of Public Hearing and the Staff Report.

Modifications to the proposed regulation presented at the July 28, 1994 hearing are as follows:

Modifications to the number of facilities used to calculate each district's share of the State's costs (Table 1) and facility fees (Table 3): On July 8, 1993, the ARB approved a new method for calculating the distribution of the State's cost and facility fees. This program category method uses the number of facilities each district has in the various Hot Spots Program categories. This same method, with minor modifications described in the Staff Report, is being used for fiscal year 1994-95.

The following districts provided updated facility numbers prior to the board hearing: 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 Air Pollution Control Districts (APCD); the Bay Area, Feather River, Lake County, Mendocino County, Mojave Desert, Northern Sierra, Sacramento Metropolitan, Shasta County, South Coast, and the Yolo-Solano Air Quality Management Districts (AQMD); and the Great Basin Unified, Monterey Bay Unified, and San Joaquin Valley Unified APCDs.

These facility count updates affect the distribution of the State's cost in all 34 districts (Table 1). The updates to facility numbers will also modify facility fees (Table 3) in the Imperial, Kern, Lassen, Mariposa, Santa Barbara, and Tuolumne County APCDs; the Great Basin Unified and the San Joaquin Valley Unified APCDs; and the Mendocino County, Mojave Desert, South Coast, and Yolo-Solano AQMDs.

Modification to State Board adoption of fees: At the hearing, modifications to section 90704 were proposed and approved. A new subsection 90704(a) clarifies that the State Board shall annually adopt a regulation that meets the requirements of Health and Safety Code section 44380. To conform with the statute, a new subsection 90704(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. A new subsection, 90704(c), was proposed and approved at the hearing to allow a district the option of adopting its own fee rule as a substitute for the State's Fee Regulation, provided certain criteria are met.

Modification specifying the information districts must include on Hot Spots invoices sent to facilities: A modification to subsection 90705(a)(1) was approved by the ARB at the hearing. This modification specifies that invoices sent by districts to facilities to recover State and district Program costs must include: 1) facility name and address; 2) district name, contact person, and phone number; 3) billing date, invoice number, and applicable fiscal year; 4) small business applicability criteria; and 5) a statement saying the bill is required by the Health and Safety Code section 44380.

In addition, the following modifications to the Fee Regulation are proposed:

Modification to definition of "Plan and Report Facility": To conform with changes in the Emission Inventory Criteria and Guidelines Regulation, CCR, sections 93300-93355, a modification is proposed to the definition of "Plan and Report Facility" in section 90701(p). The proposed definition would include facilities submitting an update summary form, instead of the previously required biennial summary form.

Update of indexes used to calculate an industrywide State cost of $15: Because of industrywide facility count updates provided by districts, the industrywide indexes for calculating the distribution of the State's cost were adjusted from 0.014 to 0.012 for core cost, and from 0.031 to 0.026 for risk assessment cost. This modification keeps the State's cost associated with these facilities at $15.

Attached is a copy of Board Resolution 94-51, approving the above described regulatory action. Attachment A to this resolution, the Air Toxics Hot Spots Fee Regulation, contains the approved regulatory language. In the Fee Regulation, the modifications described above are indicated with a double underline consisting of a solid line and a dashed line to indicate a proposed addition to the proposal originally contained in the Staff Report; a dashed line through the text indicates a proposed deletion to the original proposal. (The draft Fee Regulation in the Staff Report, made available with the Notice of Public Hearing, indicated proposed additions with a single underline and deletions with a diagonal slash.)

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 90700 through 90705, as approved, after making the modified regulatory language and additional supporting documents and information available to the public for comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

The materials described above and all other documentation relied upon in this regulatory action are available for public inspection at the ARB's Public Information Office, 2020 L Street, Sacramento, CA 95814,

(916) 322-2990. For further information concerning the proposed revisions, please contact Genevieve Shiroma, Chief, Toxic Air Contaminant Identification Branch, at (916) 322-7072.

Written comments must be submitted to the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than November 7, 1994, for consideration by the Executive Officer prior to final action. Only comments relating to the modifications or supporting documents and information described in this notice, will be considered by the Executive Officer.

Attachments

Attachment A

Proposed Amendments to the Air Toxics Hot Spots Fee Regulation For Fiscal Year 1994-95

Note: Language to be added is double underlined and language to be removed is dashed through.

SUBCHAPTER 3.6 AIR TOXICS "HOT SPOTS" FEE REGULATION

Article 1. General

90700. Purpose and Mandate.

(a) This regulation provides for the establishment of fees to pay for the cost of implementing and administering the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the "Act"; Stats 1987 ch 1252; Health and Safety Code Section 44300 et seq.).

(b) Each district with jurisdiction over facilities meeting the criteria set forth in Section 90702(a)(1), (a)(2), and (a)(3) shall annually collect from the operator of each such facility, and each operator shall pay, fees which shall provide for the following:

(1) Recovery of anticipated costs to be incurred by the State Board and the Office to implement and administer the Act, as set forth in Table 1 of this regulation, and

(2) Recovery of anticipated costs to be incurred by the district to implement and administer the Act, including but not limited to the cost incurred to: review emission inventory plans, review emission inventory data, review risk assessments, verify plans and data, and administer this regulation and the Air Toxics "Hot Spots" program.

NOTE: Authority cited: Sections 39600, 39601, and 44380, Health and Safety Code. Reference: Sections 44320, and 44380, Health and Safety Code.

90701. Definitions.

(a) "Air pollution control district" or "district" has the same meaning as defined in Section 39025 of the Health and Safety Code.

(b) "Audit and Plan Facility" means a facility that is required by the district, by April 1 of the calendar year prior to the fiscal year, to prepare a Risk Reduction Audit and Plan in accordance with Sections 44390 through 44394 of the Health and Safety Code.

<u>(c) "Audit and Plan Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(b), and has more than five processes as determined by six-digit Source Classification Codes (SCC).</u>

(d) "Audit and Plan Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(b), and has three to five processes as determined by six-digit SCC.

(e) "Audit and Plan Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(b), and has one or two processes as determined by six-digit SCC.

(~~e~~f) "Criteria pollutant" means, for purposes of this regulation, total organic gases, particulate matter, nitrogen oxides or sulfur oxides.

(~~d~~g) "Facility" has the same meaning as defined in Section 44304 of the Health and Safety Code.

(~~e~~h) "Facility Program Category" means a list of facilities provided to the Air Resources Board by the districts by April 1 of the calendar year prior to the fiscal year, which lists the facilities which meet the definitions in Section 90701 (b), (c), (d), (e), ~~(f), (g),~~ (i), (j), (k), (l), (m), ~~(n), (o),~~ (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), ~~and~~ (z), (aa), and (af).

(~~f~~i) "Industrywide Facility" means a facility that qualifies to be included in an industrywide emission inventory prepared by an air pollution control district pursuant to Health and Safety Code Section 44323, or an individual facility which emits less than 10 tons per year of each criteria pollutant, falls within a class composed of primarily small businesses, as defined by subsection (~~v~~ab) below, and whose emissions inventory report was prepared by the air pollution control district.

(~~g~~j) "Notification Facility" means a facility that is required by the district by April 1 of the calendar year prior to the fiscal year, to notify the public of the potential health risk associated with the air toxics emissions from that facility pursuant to Health and Safety Code Section 44362(b).

(k) "Notification Facility (Complex)" means a facility that meets the criterion set forth in Section 90701(j), and has more than five processes as determined by six-digit Source Classification Codes (SCC).

(l) "Notification Facility (Intermediate)" means a facility that meets the criterion set forth in Section 90701(j), and has three to five processes as determined by six-digit SCC.

(m) "Notification Facility (Simple)" means a facility that meets the criterion set forth in Section 90701(j), and has one or two processes as determined by six-digit SCC.

(~~k~~n) "Office" means the Office of Environmental Health Hazard Assessment.

(~~l~~o) "Operator" has the same meaning as defined in Section 44307 of the Health and Safety Code.

(~~j~~p) "Plan and Report Facility" means a facility that by April 1 of the calendar year prior to the fiscal year, has been required by the district to prepare an individual plan and report in accordance with Sections 44340, 44341, and 44344 of the Health and Safety Code. This includes facilities completing an update plan, an update report, a ~~biennial~~ an update summary form, and facilities in the Santa Barbara ~~APCD~~ County Air Pollution Control District that were categorized as intermediate priority for health risk assessment, and had a health risk assessment prepared for them by the district.

(~~k~~q) "Plan and Report Facility (Complex)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~j~~p), and has more than five processes as determined by six-digit Source Classification Codes (SCC).

(~~l~~r) "Plan and Report Facility (Intermediate)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~j~~p), and has three to five processes as determined by six-digit SCC.

(~~m~~s) "Plan and Report Facility (Simple)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~j~~p), and has one or two processes as determined by six-digit SCC.

(~~n~~t) "Risk Assessment-District Facility" means a facility that by April 1 of the calendar year prior to the fiscal year, has been required by the district to prepare a health risk assessment in accordance with Section 44360(b) of the Health and Safety Code, and whose risk assessment has not yet been approved by the district.

(~~o~~u) "Risk Assessment-District Facility (Complex)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~n~~t), and has more than five different processes as determined by six-digit SCC.

(~~p~~v) "Risk Assessment-District Facility (Intermediate)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~n~~t), and has three to five different processes as determined by six-digit SCC.

(~~q~~w) "Risk Assessment-District Facility (Simple)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~n~~t), and has one or two different processes as determined by six-digit SCC.

(~~r~~x) "Risk Assessment-State Facility" means a facility whose risk assessment was received by the Office between April 1, ~~1992~~ 1993, and March 31, ~~1993~~ 1994.

(~~s~~y) "Risk Assessment-State Facility (Complex)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~r~~x), and has more than five different processes as determined by six-digit SCC.

(~~t~~z) "Risk Assessment-State Facility (Intermediate)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~r~~x), and has three to five different processes as determined by six-digit SCC.

(~~u~~aa) "Risk Assessment-State Facility (Simple)" means a facility that meets the ~~criteria~~ criterion set forth in Section 90701(~~r~~x), and has one or two different processes as determined by six-digit SCC.

(~~v~~ab) "Small Business" means a facility which is independently owned and operated and has met the following criteria in the preceding year: 1) the facility has 10 or fewer employees; 2) the facility's total annual gross receipts are less than $1,000,000; and 3) the total annual gross receipts of the California operations ~~of the business~~ the facility is part of are less than $5,000,000. All oil producers in the San Joaquin Valley Unified Air Pollution Control District will be judged by the criteria of San Joaquin Valley Unified Air Pollution Control District Rule 2201, subsections 3.29.1 - 3.29.3 (Operative October 21, 1993) to determine overall facility size and boundaries for purposes of qualifying as a small business.

(~~w~~ac) "Source Classification Codes" means number codes created by the United States Environmental Protection Agency used to identify processes associated with point sources that contribute emissions to the atmosphere.

(~~x~~ad) "State costs" means the reasonable anticipated cost which will be incurred by the State Board and the Office to implement and administer the Act, as shown in Table 1 of this part.

(~~y~~ae) "Supplemental Fee" means the fee charged to cover the costs of the district to review a health risk assessment containing supplemental information which was prepared in accordance with the provisions of Section 44360(b)(3) of the Health and Safety Code.

(~~z~~af) "Survey Facility" means a facility which emits less than ten tons per year of criteria pollutants, and which falls in any class listed in Appendix E-II to Sections 93300 et seq. of Title 17 of the California Code of Regulations.

(~~aa~~ag) "Total organic gases" or "TOG" means all gases containing carbon, except carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

NOTE: Authority cited: Sections 39600, 39601, 44380, and 44380.5, Health and Safety Code. Reference: Sections 44320, 44380, and 44380.5, Health and Safety Code.

Article 2. Applicability

90702. Facilities Covered.

(a) Except for facilities exempted by Health and Safety Code Section 44324, this regulation applies to any facility which:

(1) manufactures, formulates, uses, or releases any of the substances listed by the State Board pursuant to Health and Safety Code Section 44321 and contained in Appendix A to Sections 93300 et seq. of Title 17 of the California Code of Regulations, which is incorporated by reference, or any other substance which reacts to form a substance so listed, and releases 10 tons per year or greater of any criteria pollutant, or

(2) is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by an air pollution control district and referenced in Appendix A, or

(3) manufactures, formulates, uses or releases any listed substance or any other substance which reacts to form any listed substance, and which releases less than 10 tons per

year of each criteria pollutant and falls in any class listed in Appendix E to Sections 93300 to ~~93354~~ 93355 of Title 17 of the California Code of Regulations.

NOTE: Authority cited: Sections 39600, 39601, 44321, and 44380, Health and Safety Code. Reference: Sections 44320, 44321, 44322, and 44380, Health and Safety Code.

Article 3. Fees

90703. District Board Adoption of Fees.

Except for the districts that have fulfilled all of the requirements specified in Section 90704(a~~b~~), every district shall annually adopt a rule or regulation which recovers the costs specified in 90700(b), unless the district rule or regulation contains a specific provision for automatic readoption of the rule or regulation annually by operation of law.

(a) The State Board shall calculate each district's share of state costs on the basis of the number of facilities in program categories as defined in Sections 90701(b), (c), (d), (e), ~~(f),~~ ~~(g),~~ (i), (j), (k), (l), (m), ~~(n),~~ ~~(o),~~ (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), ~~and~~ (z), and (aa).

NOTE: Authority cited: Sections 39600, 39601, 44321, and 44380, Health and Safety Code. Reference: Sections 44320, 44321, 44322, and 44380, Health and Safety Code.

90704. State Board Adoption of Fees.

(a) The State Board shall annually adopt a regulation which meets the requirements of Health and Safety Code section 44380(a).

(a~~b~~) The State Board ~~shall~~ may annually adopt a fee schedule which assesses a fee upon the operators of facilities subject to this regulation, and which identifies and provides for the recovery of both state costs and district costs to administer and implement the Act pursuant to Section 90700(b), for facilities located in districts that have completed all of the following requirements:

(1) The district board has approved, and adopted by resolution, the cost of implementing and administering the Act for the applicable fiscal year as specified in 90700(b)(2);

(2) The district has submitted a written request specifying the amount to be collected for the applicable fiscal year, through fees established by the State Board regulation, as calculated pursuant to Section 90704~~(c)~~, ~~(d)~~, (e), and(f), (g), and (h) and including documentation of the calculations;

(3) The district has submitted the resolution, request and documentation specified in subsections (1) and (2) to the State Board by April 1 preceding the applicable fiscal year.

(c) Any district whose fee schedule is included in this regulation pursuant to Section 90704(b)(1) - (3) may, as a substitute for this regulation, adopt a district fee rule that meets the requirements of section 90700(b), provided that the district informs the Executive Officer of the State Board in writing.

(~~b~~d) Calculation of Fees.

(1) The State Board shall establish the fee applicable to each facility for the recovery of state and district costs and shall notify each district in writing by December 1 of each year of the amount to be collected from each facility and of the amount of revenue which the district must remit to the State Board for reimbursement of state costs, as set forth in Table 1. When calculating the fees, the State Board shall take into account and allow for the unanticipated closing of businesses, nonpayment of fees, and other circumstances which would result in a shortfall in anticipated revenue.

(2) The State Board shall calculate fees on the basis of the facility program category as set forth by the district by April 1 preceding the applicable fiscal year, except for facilities covered by Section 90704(~~d~~f) and (e~~g~~).

(3) A Risk Assessment-State Facility (Intermediate or Complex) that is located in the Santa Barbara County Air Pollution Control District, and had its risk assessment prepared by the district using an automated risk assessment program approved by the Air Resources Board, will be assessed the following State costs for purposes of distribution of State Costs and facility fees: Risk Assessment-State (Intermediate) - ~~$1,535~~ $1,632. Risk Assessment-State (Complex) - ~~$1,780~~ $1,909.

(~~e~~e) Fees Based on Facility Program Category.

(1) The State Board shall provide a flat fee per facility based on the facility program category of the facility as set forth in Table 3. The program categories are Plan and Report (Simple), Plan and Report (Intermediate), Plan and Report (Complex), Risk Assessment-District (Simple), Risk Assessment-District (Intermediate), Risk Assessment-District (Complex), Risk Assessment-State (Simple), Risk Assessment-State (Intermediate), Risk Assessment-State (Complex), ~~Notification and Audit and Plan~~ Notification (Simple), Notification (Intermediate), Notification (Complex), Audit and Plan (Simple), Audit and Plan (Intermediate), and Audit and Plan (Complex).

(2) A facility that becomes subject to the Act after State Board adoption of the Fee Regulation, and is required to prepare an Inventory Plan and Report during the applicable fiscal year, shall pay the Plan and Report (Simple) fee for that fiscal year.

(~~d~~f) Specified Flat Fees

(1) A Survey Facility shall be assessed the flat fee specified in Table 4, Column A. An Industrywide Facility shall be assessed the flat fee specified in Table 4, Column B. If a facility was previously assessed, and has paid, a fee pursuant to the program categories specified for Column A or B of Table 4, subsequent fees pursuant to Column A or B of Table 4 shall be waived by the district, if the district determines that there are insignificant costs with respect to said facility under the Act.

(~~e~~g) Other Flat Fees

(1) Pursuant to the provisions of Section 44380.5 of the Health and Safety Code, the supplemental fee which may be assessed upon the operator of a facility, to cover the direct costs to the district to review the information supplied, shall be $2,000.

(2) The maximum fee which a small business, as defined in Section 90701(~~a~~ab), shall pay will be ~~$700~~ $300. The districts shall provide to ~~ARB~~ the Air Resources Board by April 1 of the calendar year prior to the fiscal year, the number of

facilities in each facility program category meeting the small business definition.

(3) If in the judgment of a district the action will not result in a shortfall in revenue, a district may request the fee for the Plan and Report (Simple) category be set at no more than ~~$1,000~~ $800.

(4) If in the judgment of a district the action will not result in a shortfall in revenue, a district may request the fee for the Risk Assessment-District (Simple) category be set at no more than $2,000.

(~~f~~h) Costs to be recovered by the regulation adopted by the State Board pursuant to Section 90704 shall be calculated as follows: Each district board shall approve its anticipated costs to implement and administer the Act. ~~Before submitting this program cost information to the State Board, the district shall~~ The Air Resources Board will subtract from this amount anticipated revenues from collection of the flat fee specified in Section 90704(~~d~~f)(1); and any excess revenues obtained by the district pursuant to Section 90705(c). When submitting board-approved program costs to the State Board, the district shall include a breakdown of how the collected fees will be used.

(~~g~~i) In fiscal year 1994-95, the Office shall initiate a program of labor tracking of risk assessment review for purposes of management review and accountability.

NOTE: Authority cited: Sections 39600, 39601, and 44380, Health and Safety Code. Reference: Sections 44320, 44322, 44380, and 44380.5, Health and Safety Code.

90705. Fee Payment and Collection.

(a) Each district shall notify and assess the operator of each facility subject to this regulation in writing of the fee due. Except as provided in Sections 90703, 90704(~~d~~f), and 90704(~~e~~g), each district shall use the facility program category as the basis for billing. The operator shall remit the fee to the district within 60 days after the receipt of the fee assessment notice or the fee will be considered past due. If an operator fails to pay the fee within 60 days of this notice, the district shall assess a penalty of not more than 100 percent of the assessed fee, but in an amount sufficient, in the district's

determination, to pay the district's additional expenses incurred by the operator's non-compliance. If an operator fails to pay the fee within 120 days after receipt of this notice, the district may initiate permit revocation proceedings. If any permit is revoked it shall be reinstated only upon full payment of the overdue fee plus any late penalty, and a reinstatement fee to cover administrative costs of reinstating the permit.

(1) The invoices sent by the districts to the facilities shall contain, but not be limited to, the the following information: name and address of the facility; name, address, and phone number contact of the district sending the bill, date of bill, invoice number, fiscal year for which the bill is being sent, where to send the remittance, an indication of whether or not a small business cap is applicable, and the following statement: "The California Health and Safety Code Section 44380 requires the collection of fees from facilities subject to the requirements of the Air Toxics Hot Spots Information and Assessment Act of 1987."

(b) Each district shall collect the fees assessed by or required to be assessed by this regulation. After deducting the costs to the district to implement and administer the program, each district shall transmit to the State Board the amount the district is required to collect for recovery of state costs pursuant to Section 90700(b)(1), as set forth in Table 1, on or before April 1 of each year. Checks shall be made payable to the State Air Resources Board. The State Board shall forward the revenues to the State Controller for deposit in the Air Toxics Inventory and Assessment Account.

(c) Any fee revenues received by a district for which fees have been adopted pursuant to Section 90704 which exceed district and state costs shall be reported to the State Board and shall be retained by the district for expenditure in the next two fiscal years.

(d) In the event a district does not collect sufficient revenues to cover both the district program costs and the portion of the state costs which the district is required to remit to the State Board due to circumstances beyond the control of the district, including but not limited to plant closure or refusal of the

source operator to pay despite permit revocation and/or other enforcement action, such district shall notify the Executive Officer of the State Board and may for demonstrated good cause be relieved by the Executive Officer from an appropriate portion of the fees the district is required to collect and remit to the state.

Documentation of the circumstances resulting in the shortfall shall be submitted to the ARB upon request. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to this regulation.

(1) A district for which the State Board has adopted a fee schedule pursuant to Section 90704 may, upon notifying the Executive Officer of the State Board, carry over such shortfall in revenue to the fiscal year after which the shortfall was discovered and add the shortfall amount to the program costs for such subsequent fiscal year.

Notes: Authority cited: Sections 39600, 39601, and 44380, Health and Safety Code. Reference: Section 44380, Health and Safety Code.

Table 1

Revenues to be Remitted to Cover State Costs by Air Pollution Control District

Air Pollution Control District	Revenues to be Remitted		
Amador	8,877	9,693	10,916
Bay Area	413,433	654,293	377,205
Butte	25,430	29,286	33,500
Calaveras	1,200	795	795
Colusa	23,751	21,905	24,648
El Dorado	6,717	7,744	8,453
Feather River	18,233	15,867	17,615
Glenn	21,840	15,281	17,141
Great Basin	12,235	12,657	14,820
Imperial	17,273	23,750	26,620
Kern	55,092	17,556	18,917
Lake	4,318	4,559	4,841
Lassen	3,838	3,954	4,541
Mariposa	480	820	884
Mendocino	8,877	17,085	19,470
Modoc	0		
Mojave Desert	80,586	77,341	84,750
Monterey	126,464	55,433	61,971
North Coast	8,876	11,647	13,163
Northern Sierra	22,311	31,378	12,520
Northern Sonoma	5,038	5,539	6,317
Placer	32,627	34,242	39,815
Sacramento	102,835	97,612	51,612
San Diego	301,627	220,552	247,524
San Joaquin Valley	812,333	639,523	631,510
San Luis Obispo	61,773	34,891	39,652
Santa Barbara	66,934	77,568	86,172
Shasta	42,092	25,680	26,159
Siskiyou	1,439	2,010	2,203
South Coast	2,967,806	2,086,802	2,321,802
Tehama	4,318	6,824	7,598
Tuolumne	7,677	15,335	17,642
Ventura	116,843	147,109	168,135
Yolo-Solano	45,342	44,180	49,934
Total	5,428,515	4,448,911	4,448,845

Table 2

District Costs to be Recovered Through the Fee Regulation

Air Pollution Control District		Anticipated District Costs*	
Calaveras	0		
Great Basin	5,500	2,375	
Imperial		10,582	
Kern	64,234	34,112	
Lassen	3,000	2,161	
Mariposa		0	
Mendocino	26,714	23,565	
Mojave Desert	376,089	~~303,376~~	302,476
Placer	47,559		
Sacramento	42,314		
San Joaquin Valley	1,830,600	~~1,168,600~~	1,115,815
Santa Barbara	188,475	203,625	
South Coast	4,192,961	3,076,734	
Tuolumne	23,800	9,000	
Yolo-Solano		~~21,995~~	20,635

* These amounts do not include program costs which will be recovered by the flat fees described in Section 90704~~(d)~~(f), or may reflect adjustments for excess or insufficient revenues pursuant to Section 90705(c) and (d)(1).

Table 3

Cost per Facility by District and Facility Program Category

Air Pollution Control District	Plan and Report (Simple)			Plan and Report (Intermediate)			Plan and Report (Complex)			Risk[1] Assessment (Simple)			Risk[2] Assessment (Simple)		
~~Calaveras~~	~~480~~			~~720~~											
Great Basin	~~533~~	~~560~~	638	~~930~~	~~945~~	1082	~~1891~~	~~1681~~	1945						
Imperial		~~565~~	629		~~960~~	1057		~~1731~~	1860						
Kern	~~850~~	~~711~~	794		~~1398~~	1552	~~4742~~	~~3192~~	3509						
Lassen	~~874~~	~~889~~	973												
Mariposa		~~490~~	554												
Mendocino	~~1000~~	~~800~~		~~2911~~	~~3341~~	3497									
Mojave Desert	~~1000~~	~~800~~		~~5920~~	~~4655~~	4956	~~18321~~	~~14048~~	14857		~~2000~~		~~1730~~		
~~Plumas~~	~~951~~			~~2134~~			~~5674~~								
~~Sacramento~~	~~580~~			~~1043~~			~~2030~~						~~1730~~		
San Joaquin Valley	~~811~~	~~800~~		~~1715~~	~~1945~~	2179	~~4270~~	~~5013~~	5599	~~900~~	~~1297~~	1452	~~1730~~	~~1558~~	1763
Santa Barbara	~~844~~	~~1123~~	1249	~~1811~~	~~2634~~	2916	~~4395~~	~~7311~~	8058	~~900~~	~~1756~~	1944		~~2017~~	2255
South Coast	~~810~~	~~913~~	976	~~1711~~	~~2005~~	2097	~~4284~~	~~5212~~	5326	~~900~~	~~1336~~	1398	~~1730~~	~~1597~~	1708
Tuolumne				~~2380~~	~~1418~~	1527	~~8322~~	~~3258~~	3425						
Yolo-Solano		~~561~~	621		~~949~~	1033		~~1695~~	1780		~~633~~	689			

[1] Risk assessment under review by the district.

[2] Risk assessment submitted to OEHHA from April 1, ~~1992~~ 1993 through March 31, ~~1993~~ 1994.

Table 3 (Continued)

Cost per Facility by District and Facility Program Category

Air Pollution Control District	Risk[1] Assessment (Intermediate)			Risk[2] Assessment (Intermediate)			Risk[1] Assessment (Complex)			Risk[2] Assessment (Complex)		
[illegible]												
Great Basin												
Imperial		~~1110~~	1207									
Kern				[illegible]			[illegible]	~~4298~~	4709	[illegible]		
Lassen												
Mariposa												
Mendocino	[illegible]	~~5078~~	5274	[illegible]							~~16188~~	17751
Mojave Desert	[illegible]			[illegible]			[illegible]	~~20579~~	21732	[illegible]		
[illegible]												
[illegible]	[illegible]			[illegible]			[illegible]			[illegible]		
San Joaquin Valley	[illegible]	~~2752~~	3077	[illegible]	~~4564~~	5282	[illegible]	~~7030~~	7844	[illegible]	~~11535~~	13357
Santa Barbara	[illegible]	~~3900~~	4306		~~3434~~	3716	[illegible]					8858
South Coast	[illegible]	~~2854~~	2940	[illegible]	~~4613~~	5200	[illegible]	~~7320~~	7435	[illegible]	~~11734~~	13085
Tuolumne	[illegible]						[illegible]					
Yolo-Solano		~~1092~~	1167					~~2052~~	2115			

[1]Risk assessment under review by the district.

[2]Risk assessment submitted to OEHHA from April 1, [illegible] ~~1992~~ 1993 through March 31, [illegible] ~~1993~~ 1994.

Table 3 (Continued)

Cost per Facility by District and Facility Program Category

Air Pollution Control District	Notification (Simple)	Notification (Intermediate)		Notification (Complex)		Audit & Plan (Simple)	Audit & Plan (Intermediate)	Audit & Plan (Complex)	
~~[illegible]~~									
Great Basin									
Imperial									
Kern									
Lassen									
Mariposa									
Mendocino									
Mojave Desert	~~37881~~	~~32852~~	35433	~~33634~~	36364				
~~[illegible]~~									
~~[illegible]~~									
San Joaquin Valley			16916		17847		~~18107~~	~~18890~~	
Santa Barbara									
South Coast									
Tuolumne								~~14503~~	16210
Yolo-Solano									

[1] Risk assessment under review by the district.

[2] Risk assessment submitted to OEHHA from April 1, ~~1992~~ 1993 through March 31, ~~1993~~ 1994.

Table 4

Fees for Survey and Industrywide Facilities

District	A Survey Facilities		B Industrywide Facilities	
Calaveras	100		100	
Great Basin	25		25	
Imperial	60		75	
Kern	100		250	
Lassen	100		100	
Mariposa	15		15	
Mendocino	100		100	
Mojave Desert	100		100	115
Placer	50		50	
Sacramento	100		100	
San Joaquin Valley	100		100	
Santa Barbara	75		75	
South Coast	25		25	
Tuolumne	100	15	30	15
Yolo-Solano	100		100	

Appendix A

District Air Toxic Inventories, Reports, and Surveys

Appendix A

Air Pollution Control District
Air Toxic Inventories, Reports or Surveys

1. Bay Area Air Quality Management District "Current BAAQMD Air Toxics Inventory. October 27, 1990."

2. Kern County Air Pollution Control District "District's Toxic Use List, Southeast Desert Portion of Kern County. February 14, 1992."

3. Sacramento Metropolitan Air Quality Management District "Sacramento Air Quality Management District Toxic Air Pollutant Emission Inventory For Sacramento County. June 1993."

4. San Bernardino County Air Pollution Control District "San Bernardino County APCD Toxics Inventory List. June 27, 1990."

5. San Diego County Air Pollution Control District "List of Semiconductor Manufacturers Using Toxic Gases (Arsine or Phosphine). May 1988."

6. San Joaquin Valley Unified Air Pollution Control District "San Joaquin Valley Unified APCD Toxics List. ~~March 31, 1993~~ February 25, 1994."

7. San Luis Obispo County Air Pollution Control District "San Luis Obispo County Air Pollution Control District Air Toxics Inventory List for AB 2588. May 3, 1990." "Additions to List of District's Toxics Inventory. January 6, 1994."

8. Santa Barbara County Air Pollution Control District "Current Santa Barbara County Air Pollution Control District List of Air Toxic Sources. May 27, 1992."

9. South Coast Air Quality Management District "Current SCAQMD Air Toxics Inventory List for AB 2588. May 11, 1990."

10. Monterey Bay Unified Air Pollution Control District "AB 2588 - Facilities Affected FY 92/93 & FY 93/94. April 8, 1993."

Attachment B

Resolution 94-51

State of California
AIR RESOURCES BOARD

Resolution 94-51

July 28, 1994

Agenda Item No.: 94-7-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board ("ARB" or the "Board") to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature found in the Air Toxics "Hot Spots" Information and Assessment Act of 1987 ("the Act", Health and Safety Code section 44300 et seq.) that facilities manufacturing or using hazardous substances may be exposing nearby populations to toxic air releases on a routine basis and that it is in the public interest to ascertain the nature and quantity of hazardous releases from specific sources which may create air toxics "hot spots";

WHEREAS, the Act sets forth a program to develop air toxics emission inventories and to assess the risk to public health from exposure to these emissions;

WHEREAS, November 14, 1988, effective December 15, 1988, the Board adopted the Fee Regulation set forth in section 90700 et seq. of Title 17 of the California Code of Regulations pursuant to Health and Safety Code section 44380(a), which assessed a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts ("districts"), and the Department of Health Services (hereinafter the Office of Environmental Health Hazard Assessment, or the "Office") to implement and administer the Act;

WHEREAS, the Board has amended the Fee Regulation each year since 1988 to reflect changes in the emission inventory, the sources subject to the Act's requirements, and the State and district costs of implementing the Act;

WHEREAS, Health and Safety Code section 44380(a) was amended in 1990 to require that the Board adopt a regulation which requires all districts, except for districts that have submitted specified information to the Board prior to April 1 of each year, to adopt rules which assess a fee upon the operator of every facility subject to the Act in order to recover the costs to the Districts, the Board and the Office to implement and administer the Act, and this Fee Regulation was amended accordingly on May 20, 1994, effective June 28, 1994;

WHEREAS, the amendments to the 1993-94 fee schedule approved by the Board on July 8, 1993, and adopted by the Board on May 20, 1994, set forth in section 90700 et seq. of Title 17 of the California Code of Regulations pursuant to Health and Safety Code section 44380(a), provided for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts, and the Office to implement and administer the Act in fiscal year 1993-94;

WHEREAS, Board staff, in consultation with the districts and the fee regulation committee originally convened pursuant to the 1987 Act, has developed amendments to the fee regulation for fiscal year 1994-95 which were discussed with the public at three public consultation meetings;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, changes have been proposed to the originally noticed text of the regulations based on information presented by the Districts regarding costs of implementing the Act and facility program categories, among other things;

WHEREAS, based upon the information presented by the staff and the written and oral comments received prior to and at the hearing, the Board finds that:

1. The proposed amendments would allocate State costs among the districts based on facility program categories;

2. The Imperial, Kern, Lassen, Mariposa, Santa Barbara, and Tuolumne County Air Pollution Control Districts (APCDs), the Great Basin and San Joaquin Valley Unified APCDs, and the Mendocino County, Mojave Desert, South Coast, and Yolo-Solano County Air Quality Management Districts (AQMDs) have requested that the Board adopt a fee schedule for them, and have submitted to the Air Resources Board the districts' program costs, approved by the district boards, prior to April 1, 1994, and that for these districts, the proposed amendments to the fees in the regulation are based on program costs approved by the district boards and on facility program categories; or on fees otherwise determined by the district to be reasonable for facilities designated as Survey or Industrywide;

3. The Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama and Ventura County APCDs, the Feather River and Monterey Bay Unified APCDs, and the Bay Area, Lake, North Coast Unified, Northern Sierra, and Sacramento Metropolitan AQMDs will be adopting district Air Toxics Hot Spots Program fee rules for fiscal year 1994-95;

4. The revenues to be assessed pursuant to the proposed fee regulation are reasonably necessary to recover the anticipated program costs which will be incurred by the Board, the districts, and the Office to implement and administer the Act's provisions in fiscal year 1994-95;

5. The program costs in the State budget include a permanent reduction of $183,000 in accordance with the five year plan presented in 1993, and the Air Resources Board and the Office of Environmental Health Hazard Assessment were able to carry-over an additional one-time savings of $750,000 from prior years;

6. On the basis of a financial analysis conducted to indicate the economic impacts on affected facilities resulting from the fees proposed in this regulation, the staff has determined that the proposed amendments impose no noticeable impact on the profitability of California businesses and will not cause a significant change in employment, business creation, elimination, or expansion; and business competitiveness. However, for some businesses operating with little or no margin of profitability, the proposed amendments may have a significant adverse economic impact on businesses, or on private persons directly affected by the regulation; including their ability to compete with similar businesses in other states, the creation, elimination, or expansion of jobs and businesses within the State;

7. This regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 90700-90705, Title 17, California Code of Regulations including the appendix referenced therein, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to adopt sections 90700-90705, Title 17, California Code of Regulations after making them available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to revise the facility program categories as necessary to reflect needed revisions brought to the Board's attention through July 28, 1994, only, and to accept no further revisions after that date.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to provide a 15-day period in which the public may review and comment on the modifications which the Board has approved to the original proposal.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to continue to implement the five year plan to reduce State costs.

I hereby certify that the above is a true and correct copy of Resolution 94-51, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Board Secretary