



Ventura County  
Air Pollution  
Control District

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Richard H. Baldwin  
Air Pollution Control Officer

February 21, 1997

Clerk of the Board  
California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

STATE OF CALIFORNIA  
AIR RESOURCES BOARD  
RECEIVED 2/21/97  
BY BOARD SECRETARY

*15-day comment*  
MHS  
Legal  
TSD

Subject: Proposed Amendments to the Emission Inventory Criteria and Guidelines Report Adopted Pursuant to the Air Toxics "Hot Spots" Information and Assessment Act of 1987

Dear Sir or Madam:

The Ventura County Air Pollution Control District has reviewed the February, 1997 version of the above referenced document (Report) and has the following comments regarding changes to the document since the July, 1996 public hearing.

1. Priority score exemption

Section II.J exempts most facilities from further compliance if they have priority scores  $\leq 1$ . Section IV.A.(1)(a) designates facilities as "low level" for update purposes if they have priority scores  $\leq 1$  and are denied exemption under Section II.J. It is not clear how designation as a low level facility fits with the requirement to document emissions in Section II.J.(1)(b). Would facilities have to be denied exemption under Section IV.A.(5)? The Report does not specify which update category facilities would fall into if they are denied exemption under IV.A.(5).

2. Timing for prioritization of reinstated and updated facilities

The timing for prioritizing facilities that are reinstated after being exempt or that submit updated emission inventories is unclear. The Report states that the district is allowed 90 days to prioritize these facilities from the date of receipt of the emission inventory update. The phrase "receipt of the emission inventory update" is not defined. The first paragraph of Section V.E.(2) seems to say that the 90 day clock does not start if the district has notified the facility operator that the report needs corrections. The final sentence of section V.E.(2) simply states that districts shall reprioritize facilities within 90 days of receipt of the update report. It appears that this final sentence negates all or part of the preceding subsections regarding timing for facility prioritization.

The VCAPCD has considered reports to be "received" when they are first submitted by the facility operator, even if they are deficient and require correction or clarification. This allows the facility operator to be in compliance with applicable deadlines for report submittal. If the new 90 day clock for prioritization is deemed to start at this point, the VCAPCD might be forced to change this practice and consider reports "received" only when an approvable report is submitted. This would put facilities that make an honest effort to comply in violation of the report submittal deadline. I believe that the 90 day clock should be stopped when corrections to a report are requested by a district.

### 3. Different cutoff dates for different categorization activities

Three different cutoff dates are used in the Report for different designations: January 1, April 1, and August 1, as follows:

- Section II.J.(1) says that facilities with a score  $\leq 1$  on or before January 1 of a given year are exempt for that and subsequent years. Section III.A. says that facilities that drop below 10 TPY and meet specified criteria by January 1 of a given year are exempt for that and subsequent years. Section III.C says that facilities that discontinue an Appendix E "Any SIC" activity and meet specified criteria by January 1 of a given year are exempt for that and subsequent years.
- Section IV.A.(2) says that facilities designated "low level" by April 1 of a given year are exempt from update requirements due on or after August 1 of that year. Similarly, Section IV.B.(2) says that facilities designated "intermediate level" by April 1 of a given year are required to comply with "intermediate level" update requirements due on or after August 1 of that year, and Section IV.C(2) says that facilities designated "high level" by April 1 of a given year are subject to "high level" update requirements due on or after August 1 of that year. Section IV.F uses the same dates for redesignation of the reporting levels for reprioritized facilities.
- Section III.B. says that facilities that are removed from district surveys and meet specified criteria by April 1 of a given year are exempt for that and subsequent years.
- Sections V.E.(1) and V.E.(2) say that any facility prioritized by August 1 of a given year is not subject to requirements for unprioritized facilities for that or subsequent years.

The use of multiple dates is confusing and creates potential problems with fee assessment. The CARB AB 2588 Fee Regulation uses facility status as of April

I prior to the fiscal year in question as the date for designating categories for fee assessment. It is important that the dates for determining program requirements and fees be coordinated. We cannot afford to have facilities subject to reporting that do not have to pay fees. Alternatively, we cannot charge fees to facilities that are not subject to the program.

An example of a problem with the lack of coordination between the CARB Fee Regulation and the Report is the case of facilities exempted under Section II.J.(1). If a facility was designated with a priority score  $\leq 1$  in October, 1996 (prior to January 1, 1997), it would be exempt in 1997 and beyond. The district was required in July, 1996 to submit facility category data, based on facility status as of April 1, 1996 to CARB for the 1996-97 fee regulation. The facility prioritized in October, 1996 was reported to CARB for 1996-97 fees as "unprioritized". It was therefore counted in determining the district's share of state costs. It seems that the facility is now exempt, and the district will be unable to charge fees in 1997. The district will not have any practical way to collect fees to cover state costs for this facility. This is a real issue for Ventura County. We have 14 facilities that were initially prioritized between April 1, 1996 and January 1, 1997 that have scores  $\leq 1$ . These facilities are responsible for  $> 13\%$  of the District's share of state cost. This amount cannot be reasonably made up from the few facilities not limited for fee payment under AB 564. Similar situations are likely to occur in future years with any facilities that are initially prioritized and determined to be exempt between April 1 of one year and January 1 of the following year.

4. Potentially major HAP sources with score  $< 1$

Language regarding the status of facilities with priority scores  $\leq 1$  that emit potentially major amounts of federal HAPs is confusing. Section IV.A.(1)(e) states that facilities with priority scores  $\leq 1$  that emit potentially major amounts of federal HAPs shall not be designated "low level". Section IV.B.(3) states that a facility with a priority score  $> 1$  that emits potentially major amounts of HAPs shall be designated "intermediate level", unless it is "high level". There seems to be no designation for facilities with priority scores  $\leq 1$  that emit potentially major amounts of HAPs; they are not "low level" and they are not "intermediate level" (and would not be "high level" because they don't exceed the "intermediate level" criteria).

5. HRA results - at an actual receptor

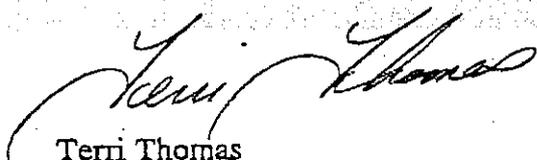
Section IV.A.(1)(b) states that facilities with risk assessments showing risks of  $< 1$  in a million and hazard indices  $< 0.1$  at an actual receptor are designated "low level". These facilities are exempted from future update reporting

requirements. The CARB AB 2588 Fee Regulation states that facilities with risk assessments showing risks of  $<1$  in a million and hazard indices  $<0.1$  are not required to pay fees. The phrase "at an actual receptor" was deleted from the fee regulation. If the fee regulation was interpreted to mean that fee exemption based on risk assessment results is based on risks at the MEI or the PMI, some facilities would be subject to fees but exempt from reporting requirements.

The above difference between the Report and the CARB fee regulation existed when the December, 1996 version of the CARB Fee Regulation was released, and is not related to changes made to the Report since the July, 1996 public hearing. This comment is being made at this time because when the CARB Fee Regulation was released with the phrase "at an actual receptor" deleted, I verbally commented to CARB staff concerning this issue and was led to believe that the language in the Report would be amended to ensure that the same facilities would be subject to fees and reporting requirements.

Thank you for this opportunity to comment. If you have any questions, please contact me at 805/645-1405.

Sincerely,



Terri Thomas  
Supervisor, Air Toxics Section

# MINING ASSOCIATION

*"The California Mining Association is dedicated to the advancement of responsible mining and the education of the public to the vital role of minerals and mining in our society."*

February 21, 1997

STATE OF CALIFORNIA  
AIR RESOURCES BOARD  
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California Air Resources Board  
P. O. Box 2815  
Sacramento, CA 95812

*15-Day Comment*

*MHS  
Legal  
TSD*

Attention: Clerk of the Board

**Re: Notice of Public Availability of Modified Text of Proposed Amendments to Air Toxics "Hot Spots" Emission Inventory Criteria and Guidelines Report; Public Hearing of July 25, 1996**

The following comments regarding the subject Modified Text, proposed under the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the "Act"), are submitted on behalf of the California Mining Association (CMA) and its member companies. CMA's diverse membership includes large and small mining operations producing a variety of mineral commodities in California. CMA not only represents the hard-rock mining industry, such as gold, silver and tungsten, but also industrial minerals, such as gypsum, borates and rare earth elements, as well as construction aggregates, such as rock, sand gravel.

#### CMA'S CONCERNS AND REQUESTS:

The "Staff Report: Initial Statement of Reasons for Proposed Rulemaking," released June 7, 1996, describes these amendments as the second phase of a two-phased effort to streamline the Air Toxics Hot spots Program (page 1). While much of the proposal appears to accomplish this objective, which CMA supports, still of great concern to CMA is Section II (E) (3) of the proposed Modified Text.

This section (the "regulation") applies the emissions inventory requirements under the Program to facilities which emit less than 10 tons per year of criteria pollutants, are not included in the classes of facilities specifically listed in Appendix E of the Modified Text, but still may be included by a local air district as "posing concern to public health." This regulation would empower local air districts to bring under the Air Toxics "Hot Spots" Program small mine operators on an ad hoc and potentially arbitrary basis, without adequate objective criteria to guide their decisions.



Compliance with the inventory requirements can be expensive, and represents a significant burden to small mine operators. Specifically, we request that Section II (E) (3) be deleted. Alternatively, we request that Section II (E) (3) (a) be amended to either provide for specific ARB regulatory criteria or specific local air district regulatory criteria, for the inclusion of such facilities. At a minimum, as discussed with Staff, to help insure statewide consistency among districts in applying the regulation, there should be a requirement for The ARB's concurrence with a local district's decision to subject a facility to the inventory requirements. There are other provisions for such ARB concurrence throughout the regulation (e.g., Section II (J) (1), pg. 16; Section IV (A) (1), pg. 22; Section IX (D) (2), pg. 58).

CMA proposed amendments of Section II (E) (3) (a) are set forth in Attachment I.

#### THE REGULATION IS NOT AUTHORIZED UNDER THE ACT

With respect to so-called "less than 10 tons per year facilities," the Act, at Health and Safety Code Section 44322 (c), specifically provides:

For those facilities that release, or have the potential to release, less than 10 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, the state board shall, on or before July 1, 1990, prepare and submit a report to the Legislature Identifying the classes of those facilities to be included in this part and specifying a timetable for their inclusion." (Emphasis supplied.)

It seems obvious from the foregoing that what the Legislature intended was to itself first review the proposed classes of small facilities that would be brought into the Program. This has been done through the report submitted by the Air Resources Board. While some adjustments of the identified classes may be permissible under Section 44322 (c), the proposal to empower local air districts to bring into the program still unidentified small facilities, of no previously identified class, and without specific legislative direction as contemplated by Section 44322 (c), is contrary to the legislative intent and is not authorized by law.

Instead, a district would be allowed to bring these small facilities into the Program based on an "initial assessment" of the facility's emissions leading to a prioritization score indicating a potential risk to health, or even on the basis that, "... the District has identified the emissions from the facility as being of health concern to the community ....." Under Health and Safety Code Section 44360 (a), a prioritization is not made until completion of the emissions inventory for facilities in the various specified classes. The proposed regulation reverses this order without statutory authority.

THE REGULATION ESTABLISHES AN UNFAIR EVALUATION CRITERION FOR SMALL FACILITIES WHICH IS NOT APPLIED TO LARGER FACILITIES AND IS NOT AUTHORIZED BY THE ACT.

Section II (E) (3) (a) (I) provides that facilities may be included in the inventory requirements if,

“...there is a reasonable basis for determining that the facility may individually or in combination with other facilities pose a potential risk to public health...” (Emphasis supplied.)

The proceeding language thus could include a small facility as a result of a neighboring facility's emissions. This could potentially result in an insignificant facility being included because of a neighbor's significant emissions.

To date, the Program has been applied on a facility basis. Published CAPCOA guidelines for performing health risk assessments focus upon estimating cancer burden and non-cancer health effects based only on individual facility emissions, and not also with respect to its neighbor's emissions.

Therefore, the proposed modification established an unfair evaluation criterion for small facilities which was not applied to larger facilities.

Secondly, such a criterion is not authorized by the Act. It is clear that the Act provides only for criteria and guidelines with respect to emissions inventory plans on a “site-specific” basis. (Health and Safety Cod Section 44342). All references throughout the Act are in terms of a specific facilities only.

THE REGULATION DOES NOT PROVIDE SUFFICIENT CLARITY TO SATISFY EITHER THE ACT OR THE REQUIREMENTS OF THE CALIFORNIA ADMINISTRATIVE PROCEDURE ACT

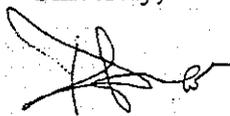
As Stated, the Act requires legislative approval of specified classes of facilities to be included in the less than 10 tons per year category. Section II (E) (3) designates no such particular class.

This also is contrary to the California Administrative Procedure Act, which contains the reasonable requirements that, not only must a regulation adopted by a state agency be authorized by law, but that it also must have clarity. (Govt.. Code Section 11329.1) “Clarity” is defined in Govt.. Code Section 11349 as “. . . written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” The above factors provide no such clear meaning to small operators as to the regulatory requirements. There should be specific objective criteria for the inclusion in the Program of small facilities not within the classes listed in Appendix E, adopted either by the ARB or by the local air district.

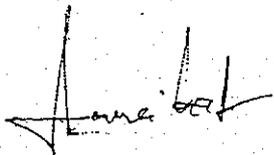
The regulation is also unclear in that there is the proximity of "other facilities" is ignored. This could be interpreted equally as meaning a neighboring facility, or all facilities emitting a given contaminant in the same air basin.

We appreciated the opportunity to provide this comment.

Sincerely,



Denise Jones  
Executive Director



James E. Good  
General Counsel

cc: CMA Executive Committee  
Interested Parties

ATTACHMENT I  
TO  
COMMENTS OF CALIFORNIA MINING ASSOCIATION

In Section II (E) (3) (a) (I), at page 14, amend as follows:

- (3) Facilities emitting less than 10 tons per year of criteria pollutants and identified by the District as posing concern to public health.
- (a) This regulation applies to any facility which does not otherwise belong to a class of facilities listed in Appendix E, but is a facility in any SIC that is identified by the district in accordance with this section and for which the district has made an initial assessment of the emissions from the facility, and the district has made a written determination, and the state board concurs, that:
- (I) Based on a regulation adopted by the district governing board (or the state board) setting forth the specific criteria that could apply to such facility, there is a reasonable basis for determining that the facility may individually or in combination with other facilities post a potential risk to public health exceeding the levels for prioritization score, cancer or non-cancer risk, or de minimis levels specified in Section IV.A. for "low levels" facilities , or the district has identified the emissions from the facility as being of particular health concern to the community, and

GRESHAM, SAVAGE, NOLAN & TILDEN, LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP

FOR THE FIRM:  
James E. Good

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(909) 884-2171 • (909) 684 2171 • (619) 243-2889  
FACSIMILE (909) 888 2120

WILLIAM GUTHRIE (1836-1947)  
DONALD W. JOHNSON (1927-1989)  
JOHN R. LONERGAN (RETIRED 1976)

February 21, 1997

FAX ONLY: 916/322-4737

California Air Resources Board  
P. O. BOX 2815  
Sacramento, CA 95812

Attention: Clerk of the Board

Re: Notice of Public Availability of Modified Text of  
Proposed Amendments to Air Toxics "Hot Spots"  
Emission Inventory Criteria and Guidelines Report;  
Public Hearing of July 25, 1996

*15-Day Comment*  
*MHS Legal*  
*TSD*

STATE OF CALIFORNIA  
AIR RESOURCES BOARD  
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The following are comments regarding the subject Modified Text, proposed under the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the "Act"). I previously testified on this matter on behalf of the California Mining Association (CMA) and its member companies.

CONCERNS AND REQUESTS

The "Staff Report: Initial Statement of Reasons for Proposed Rulemaking," released June 7, 1996, describes these amendments as the second phase of a two-phased effort to streamline the Air Toxics Hot Spots Program (page 1). While much of the proposal appears to accomplish this objective, still of great concern is Section II(E)(3) of the proposed Modified Text.

This section (the "regulation") applies the emissions inventory requirements under the Program to facilities which emit less than 10 tons per year of criteria pollutants, are not included in the classes of facilities specifically listed in Appendix E of the Modified Text, but still may be included by a local air district as "posing concern to public health." This regulation would empower local air districts to bring under the Air Toxics "Hot Spots" Program small mine operators on an ad hoc and potentially arbitrary basis, without adequate objective criteria to guide their decisions.

Compliance with the inventory requirements can be expensive, and represents a significant burden to small mine operators. Specifically, it is requested that Section II(E)(3) be deleted. Alternatively, it is requested that Section II(E)(3)(a) be amended to provide for specific ARB or local air district regulatory

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criteria for the inclusion of such facilities. At a minimum, as discussed with Staff, to help insure statewide consistency among districts in applying the regulation, there should be a requirement for the ARB's concurrence with a local district's decision to subject a facility to the inventory requirements. There are other provisions for such ARB concurrence throughout the regulation (e.g., Section II(J)(1), p. 16; Section IV(A)(1), p. 22; Section IX(D)(2), p. 58).

Proposed amendments of Section II(E)(3)(a) are set forth in Attachment I.

THE REGULATION IS NOT AUTHORIZED UNDER THE ACT

With respect to so-called "less than 10 tons per year facilities," the Act, at Health and Safety Code Section 44322(c), specifically provides:

For those facilities that release, or have the potential to release, less than 10 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, the state board shall, on or before July 1, 1990, prepare and submit a report to the Legislature identifying the classes of those facilities to be included in this part and specifying a timetable for their inclusion." (Emphasis supplied.)

It seems obvious from the foregoing that what the Legislature intended was to itself first review the proposed classes of small facilities that would be brought into the Program. This has been done through the report submitted by the Air Resources Board. While some adjustments of the identified classes may be permissible under Section 44322(c), the proposal to empower local air districts to bring into the program still unidentified small facilities, of no previously identified class, and without specific legislative direction as contemplated by Section 44322(c), is contrary to the legislative intent and is not authorized by law.

Instead, a district would be allowed to bring these small facilities into the Program based on an "initial assessment" of the facility's emissions leading to a prioritization score indicating a potential risk to health, or even on the basis that, "...the District has identified the emissions from the facility as being of health concern to the community...." Under Health and Safety Code Section 44360(a), a prioritization is not made until completion of the emissions inventory for facilities in the various specified classes. The proposed regulation reverses this order without statutory authority.

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THE REGULATION ESTABLISHES AN UNFAIR EVALUATION CRITERION FOR SMALL FACILITIES WHICH IS NOT APPLIED TO LARGER FACILITIES AND IS NOT AUTHORIZED BY THE ACT.

Section II(E)(3)(a)(i) provides that facilities may be included in the inventory requirements if,

"...there is a reasonable basis for determining that the facility may individually or in combination with other facilities pose a potential risk to public health..."  
(Emphasis supplied.)

The proceeding language thus could include a small facility as a result of a neighboring facility's emissions. This could potentially result in an insignificant facility being included because of a neighbor's significant emissions.

To date, the Program has been applied on a facility basis. Published CAPCOA guidelines for performing health risk assessments focus upon estimating cancer burden and noncancer health effects based only on individual facility emissions, and not also with respect to its neighbor's emissions.

Therefore, the proposed modification establishes an unfair evaluation criterion for small facilities which was not applied to larger facilities.

Secondly, such a criterion is not authorized by the Act. It is clear that the Act provides only for criteria and guidelines with respect to emissions inventory plans on a "site-specific" basis. (Health and Safety Code Section 44342.) All references throughout the Act are in terms of a specific facilities only.

THE REGULATION DOES NOT PROVIDE SUFFICIENT CLARITY TO SATISFY EITHER THE ACT OR THE REQUIREMENTS OF THE CALIFORNIA ADMINISTRATIVE PROCEDURE ACT

As stated, the Act requires legislative approval of specified classes of facilities to be included in the less than 10 tons per year category. Section II(E)(3) designates no such particular class.

This also is contrary to the California Administrative Procedure Act, which contains the reasonable requirements that, not only must a regulation adopted by a state agency be authorized by law, but that it also must have clarity. (Govt. Code Section 11329.1.) "Clarity" is defined in Govt. Code Section 11349 as "...written or

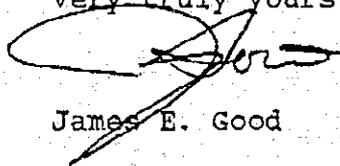
California Air Resources Board  
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Page 4

displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." The above factors provide no such clear meaning to small operators as to the regulatory requirements. There should be specific objective criteria for the inclusion in the Program of small facilities not within the classes listed in Appendix E, adopted either by the ARB or by the local air district.

The regulation is also unclear in that the proximity of "other facilities" is ignored. This could be interpreted equally as meaning a neighboring facility, or all facilities emitting a given contaminant in the same air basin.

I appreciate the opportunity to provide this comment.

Very truly yours,



James E. Good

JEG:bb  
Attachment 1

n:\VEG\CMAAR\Comments

## ATTACHMENT I

In Section II(E)(3)(a)(i), at page 14, amend as follows:

- (3) Facilities Emitting Less Than 10 Tons Per Year of Criteria Pollutants and Identified By the District As Posing Concern to Public Health.
- (a) This regulation applies to any facility which does not otherwise belong to a class of facilities listed in Appendix E, but is a facility in any SIC that is identified by the district in accordance with this section and for which the district has made an initial assessment of the emissions from the facility, and the district has made a written determination, and the state board concurs, that:
- (i) Based on a regulation adopted by the district governing board [or the state board] setting forth the specific criteria that could apply to such facility, there is a reasonable basis for determining that the facility may ~~individually or in combination with other facilities~~ pose a potential risk to public health exceeding the levels for prioritization score, cancer or non-cancer risk, or de minimis levels specific in Section IV.A. for "low level" facilities, ~~or the district has identified the emissions from the facility as being of particular health concern to the community~~, and

County of **Glenn**

15-Day Comment  
MHS TSD  
Legal

STATE OF CALIFORNIA  
AIR RESOURCES BOARD  
RECEIVED 2-21-97  
BY BOARD SECRETARY

**AIR POLLUTION CONTROL DISTRICT**

February 21, 1997

ED ROMANO, Air Pollution Control Officer  
Director: Underground Storage Tanks

**COMMENTS**

RE: AB2588 (H&SC 544300-44394) amendments to Title 17 CCRS 93300.5 and Report incorporated by reference therein:

The Glenn County Air Pollution Control District has the following concerns regarding Statewide Portable Equipment Registration Program (California H&SC 541750-41755):

•What are the implications for the California air districts regarding AB2588 reporting, recordkeeping, fees and implementation for registered portable equipment.

-Will the State assess, evaluate, and collect the fees?

-Or are the districts responsible for fee recovery under AB2588?

Rick Steward, GCAPCD  
Kevin Tokunaga, GCAPCD

KEVIN F. TOKUNAGA  
GLENN COUNTY  
AIR POLLUTION CONTROL DISTRICT

P.O. BOX 351  
Willows, CA 95988  
Phone: (916) 934-6500  
FAX: (916) 934-6503

## FAX TRANSMISSION

**To:**

<small>NAME</small> Pat Hutchens	<small>DATE AND TIME OF TRANSMISSION</small> February 21, 1997
<small>COMPANY</small> Clerk of the Board	<small>FAX NUMBER</small> 916.322-4737

**From:**

<small>NAME</small> RICK STEWARD/KEVIN.TOKUNAGA, GCAPCD
--

**Reference:**SUBJECT

ATTACHED

**Message:**

AB2588 comments
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