

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

Staff Report: Initial Statement of Reasons
For Proposed Rulemaking

Proposed Amendments to the
Air Toxics "Hot Spots" Fee Regulation
for Fiscal Year 2001-2002

ACKNOWLEDGMENTS

This staff report and proposed regulation were developed by the staff from the Planning and Technical Support Division with assistance from the Office of Environmental Health Hazard Assessment (OEHHA), the Air Toxics "Hot Spots" Fee Regulation Committee, and the staffs from other divisions and offices at the Air Resources Board.

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EXECUTIVE SUMMARY

The Air Toxics “Hot Spots” Information and Assessment Act of 1987¹ established an annual fee program for the California Air Resources Board (ARB) and local air pollution control and air quality management districts (districts) to recover the costs of implementing the program. This year the staff is proposing to update the Fee Regulation² for fiscal year 2001-2002 and to amend the regulation to eliminate the need for the Board to revisit this fee regulation on an annual basis in the future. These proposed revisions will significantly streamline the administration of the annual “Hot Spots” fee program. This will allow the staff to reduce the amount of resources needed to administer the fee program and to devote more resources towards the actual goals of the “Hot Spots” program. These goals include identifying the sources of toxic air pollution emissions in California and gaining a better understanding of the risks posed by toxic air pollutants.

The purpose of the Fee Regulation is to recover the State’s Program costs to implement the Air Toxics “Hot Spots” Information and Assessment Act of 1987 (the Act) by allocating portions of the State costs among the districts. The Fee Regulation allocates the State costs among the districts and requires each district to collect and submit fees to the ARB to recover their district’s portion of the State’s Program costs. The proposed Fee Regulation also contains fee schedules to recover district Program costs for five districts that requested the ARB to include them in the Fee Regulation. The five districts whose fee regulations are included in this proposal are listed in Table ES-1. The remaining 30 districts must adopt their own fee schedule.

Table ES-1

Five Districts Included in the Fee Regulation

Antelope Valley APCD
Great Basin Unified APCD
Lassen County APCD
Mojave Desert AQMD
Santa Barbara County APCD

The staff proposes to continue to use the same calculation method to allocate fees among the districts that was adopted for the past four years. This method is based on the health risk of facilities in each district as determined by their prioritization scores or health risk assessment results. We are proposing to amend the Fee Regulation by updating the fee tables found in the Fee Regulation to use the most current facility Program data submitted by

1 Health and Safety Code sections 44300-44394, Stats. 1987, Ch. 1252; as amended by Stats. 1989, Ch. 1254; Stats. 1990, Ch. 1432; Stats. 1992, Ch. 375; Stats. 1992, Ch. 1162; Stats. 1993, Ch. 1037; Stats. 1993, Ch. 1041; and Stats. 1996, Ch. 602.

2 Title 17, California Code of Regulations, sections 90700-90705.

the districts. Based on the staff proposal and current facility program data, most districts will see reductions in the amount of the State costs as shown in Table ES-2.

Table ES-2

Distribution of State Costs Among Districts

<u>District</u>	<u>State Costs 1999-2000</u>	<u>State Costs 2000-2001</u>	<u>(Proposed) State Costs 2001-2002</u>
Amador	2,552	1,346	105
Antelope Valley	10,133	9,263	8,248
Bay Area	80,022	83,371	47,877
Butte	10,435	9,296	4,433
Calaveras	0	0	0
Colusa	0	0	0
El Dorado	7,488	3,738	6,441
Feather River	5,015	12,492	535
Glenn	455	455	0
Great Basin	10,488	5,109	5,004
Imperial	10,775	10,775	9,655
Kern	729	589	140
Lake	0	0	70
Lassen	3,129	3,129	2,009
Mariposa	507	507	507
Mendocino	4,519	4,720	7,555
Modoc	70	70	0
Mojave Desert	27,053	22,295	22,015
Monterey	7,994	5,985	4,109
North Coast	7,207	1,502	67
Northern Sierra	7,185	7,215	805
Northern Sonoma	70	70	0
Placer	12,018	11,147	10,945
Sacramento	9,232	9,232	19,647
San Diego	114,896	138,231	114,116
San Joaquin Valley	81,347	53,023	45,435
San Luis Obispo	350	350	560
Santa Barbara	39,668	35,888	28,688
Shasta	12,757	12,054	10,682
Siskiyou	6,275	5,873	5,628
South Coast	684,077	578,153	485,025
Tehama	67	67	1,257
Tuolumne	834	700	700
Ventura	43,833	49,996	29,968
Yolo-Solano	5,698	5,698	5,978
TOTAL	1,206,878	1,082,339	\$878,204

The estimated total cost for the State and districts to implement the Program for fiscal year 2001-2002 is approximately \$3.67 million. Of the total cost, \$880,000 is the State's cost. Of this amount, \$350,000 supports the ARB activities and \$530,000 supports the Office of Health Hazard Assessment (OEHHA) as shown in Figure ES-1. In future years, we expect State Program costs to decline slowly from this year's \$880,000, well under the statutory cap of \$1,350,000 that took effect in fiscal year 1998-99. The Program was substantially streamlined in the late 1990's, with additional measures to streamline the Fee Program being proposed to take effect in fiscal year 2002-2003.

Figure ES-1

Distribution of Costs

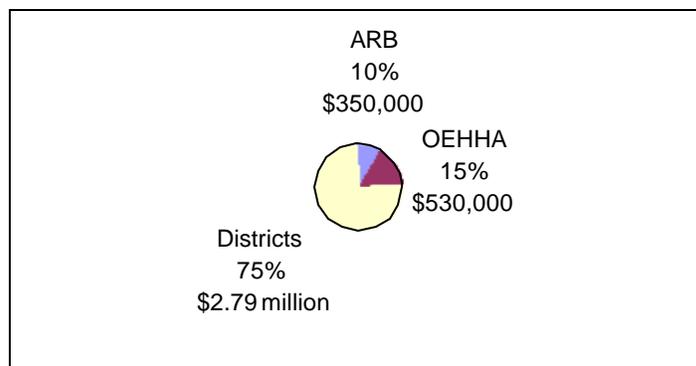
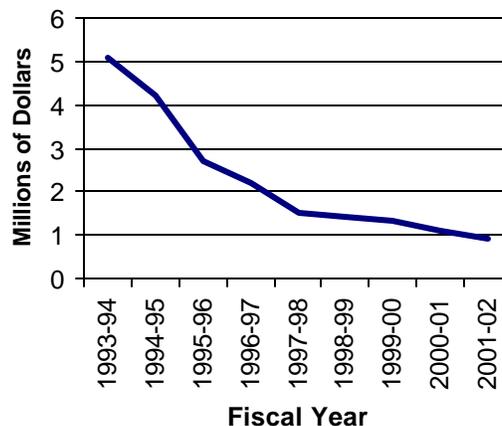


Figure ES-2 shows the trend in State Program costs since fiscal year 1993-94. Over the last 8 years, the revenues generated by this fee program have declined. This has been due

Figure ES-2

Trend in State Costs



to legislative changes to the program, certain classes of facilities being exempted from the fee program, and, most importantly, reductions in toxic emissions from facilities. While the State costs dropped rapidly during the first four years covered in Figure ES-2, the last four years have seen the State costs leveling off. This is the result of keeping the fees for fee categories the same, while incorporating small year-to-year changes in the number of facilities subject to the Program.

The approximately \$880,000 proposed to be collected to support State activities for fiscal year 2001-2002 is more than an 80 percent reduction since fiscal year 1993-94 and a 19 percent reduction from fiscal year 2000-2001. This total reduction in costs is commensurate with the reduction in workload resulting from the 1996 streamlining measures adopted in the Emission Inventory Criteria and Guidelines Report and also reflects the fact that many of the original tasks mandated by the Act are now completed or nearing completion. As revenues from the fees continue to decline, more measures to streamline the program become necessary in order to continue the implementation of this Program while relying on declining resources.

The staff is proposing to streamline the Fee Program further by requesting that the Board delegate authority for the administration of the annual "Hot Spots" Fee Program to the Executive Officer of the ARB. The fees for each fee category have remained stable over the last few years, and the staff does not anticipate any need for major changes in the way the fees are currently calculated or collected. Because the fee program now has become a stable process, the staff believes that minor year-to-year adjustments in State program costs no longer merit the Board's annual review and approval. This proposal will maintain the fees for each fee category at fiscal year 2001-2002 levels for the foreseeable future. This fee method has received extensive public review and comment from the past five years. If it becomes necessary to make substantive changes to the Fee Regulation, the staff will return to the Board to amend the Regulation.

This change in process will significantly streamline the annual update and collection of fees to recover State Program costs. The staff anticipates that it will substantially reduce the resources necessary to administer the program. Streamlining the process will allow more resources to be allocated to implement the Program. It will also provide districts and affected facilities with more time to collect, review, and update the toxic emission data used to calculate the fees. This additional time will help address a concern frequently raised by facilities subject to the fees that the fees do not reflect up-to-date emission information.

The Act requires districts to adopt a fee regulation to recover the district Program costs, but the Act also allows districts to make a request to the ARB to adopt a fee regulation for them. However, converting the fee program to an annual administrative process will make it no longer feasible for the ARB to adopt local fee regulations. To address this issue, the ARB staff has worked with the staffs of the affected districts to develop a new method for recovering the costs of implementing the program for districts that have not adopted their own local fee regulation. Beginning in fiscal year 2002-2003, if a district has not adopted its own fee regulation, this proposal will authorize such districts to recover district program costs from facilities that are subject to the State Fee Regulation. This amount may be up to, but

shall not exceed, the State Program cost on a per-facility basis. Simply put, the maximum total fee for a facility in a district with no local fee regulation would be twice the State cost. One half of this would go to the State, and the other half would go to the district. The total fee for a facility could be less if the district needed less than the full amount of the State cost to recover its district program costs. This provision would in no way preclude districts from adopting their own fee regulations.

This option is designed primarily to allow small districts with low program costs to recover the cost of implementing the program without the need for adopting a local fee regulation. Because most districts' program costs exceed the State cost and most districts have already adopted their own fee regulation, we anticipate few districts will take advantage of this option. This change may require some districts to adopt their own fee regulation if they intend to recover their district costs at fiscal year 2001-2002 levels. This proposal ensures that this State-adopted district fee value complies with H&SC Section 44380(a)(3), which requires the fees for facilities to be based on their emissions, and that facilities in districts using this option will have the certainty of knowing the ceiling for their district fees.

To help keep the Board, districts, and the public informed about the Program, the ARB staff will prepare an annual status report that will summarize how the State Program costs were assessed and how the funds are being used by the State. In addition, an accounting of the district Program costs for districts using this provision will be included in the status report. This report will be made available to the Board, the districts, and the public 90 days after the Executive Officer has determined the State fees for the applicable fiscal year.

The proposal to amend the Fee Regulation for fiscal year 2001-2002 was developed in consultation with the Air Toxics "Hot Spots" Fee Regulation Committee (Committee). The Committee includes representatives from the districts, the ARB, and the OEHHA. The full text of the existing regulation, and the proposed changes to the regulation are located in Appendix I and II of this Staff Report, respectively.

The ARB staff does not anticipate any potential adverse impacts on the environment due to the implementation of these proposed amendments to the Fee Regulation. The Fee Regulation may continue to provide indirect environmental benefits because the fees may be an incentive for businesses to reduce air toxics emissions and the health risks associated with those emissions.

Although some businesses could experience greater reduction in their profitability than others, overall, California businesses are able to absorb the costs of the fees without significant adverse impact on their profitability. However, the proposed changes to the Fee Regulation may adversely impact businesses operating with little or no margin of profitability. This could include impacts on the ability of California businesses to compete with businesses in other states, an impact on the creation or elimination of jobs and businesses within California, and the expansion of businesses currently doing business within California. Economic and environmental impacts are described in more detail in Chapter IV.

The ARB staff will be holding a public workshop in September 2001, in Sacramento to take public comments. The staff will send workshop notices to over 3,000 facility operators and members of the public.

The staff recommends that the Board adopt the proposed amendments to the Fee Regulation for fiscal year 2001-2002. The proposed changes are described in detail in this staff report.

I.

INTRODUCTION

The Air Toxics “Hot Spots” Fee Regulation implements a process to recover the Air Resources Board (ARB or Board) and the Office of Environmental Health Hazard Assessment (OEHHA) Program costs for implementing the Air Toxics “Hot Spots” Information and Assessment Act of 1987³ (AB 2588 or the Act) by allocating portions of the State costs to the air pollution control and air quality management districts (districts). It also requires each district to provide to the ARB the districts’ share of the State’s costs. This report presents a description of how the ARB staff has determined the fees for facilities that are subject to the “Hot Spots” Program.

The staff of the ARB is proposing to continue to use the current method for calculating fees and make only minor amendments to the Air Toxics “Hot Spots” Fee Regulation (Fee Regulation) for fiscal year 2001-2002. The staff is proposing significant changes to the process for administering the program in future years. These proposals will streamline the program and provide more flexibility to the ARB and districts in implementing the “Hot Spots” fee program. This will allow the staff to reduce the amount of resources needed to administer the fee program and to devote more resources towards the actual goals of the “Hot Spots” program. These goals include identifying the sources of toxic air pollution emissions in California and gaining a better understanding of the risks posed by toxic air pollutants. The amendments proposed will update the fee tables found in the Fee Regulation based on the most current facility Program data submitted by the districts to the ARB. Staff is proposing a State budget for the Air Toxics “Hot Spots” Program for fiscal year 2001-2002 of \$880,000.

The same method will be used to calculate districts’ share of State costs as in fiscal year 2000-2001. That method assigns facilities to Program fee categories based on their prioritization scores and health risk assessment results.

The following is a summary of the major provisions of the proposed Fee Regulation.

Fiscal Year 2001-2002

- A proposed State budget for this Program of \$880,000 for fiscal year 2001-2002. The Program’s proposed budget represents a 19 percent reduction from fiscal year 2000-2001.

3 Health and Safety Code sections 44300-44394, Stats. 1987, Ch. 1252; as amended by Stats. 1989, Ch. 1254; Stats. 1990, Ch. 1432; Stats. 1992, Ch. 375; Stats. 1992, Ch. 1162; Stats. 1993, Ch. 1037; Stats. 1993, Ch. 1041; and Stats. 1996, Ch. 602.

- The current method for allocating fees to the districts continues to be based on facilities' health risk assessment results and prioritization scores.
- The Fee Regulation tables will be updated based on current facility Program data submitted by the districts to the ARB by July 1, 2001.
- Fee amounts for facility categories are proposed to remain unchanged from fiscal year 2000-2001.
- Fee schedules are proposed for five districts that requested to be included in the State Fee Regulation, based on a method similar to the methodology proposed for State fees. These districts are the Antelope Valley, Great Basin Unified, Lassen County, and Santa Barbara County AQMD, as well as the Mojave Desert AQMD.

Revisions Effective in Fiscal Year 2002-2003

- Delegate the administration of the annual update of the State Program costs and fee collection to the Executive Officer of the ARB and continue the fee rates contained in the fiscal year 2001-2002 fee regulation.
- Authorize districts that have not adopted a local fee regulation to recover district costs of implementing the program based on the State Program costs.

The State fees for fiscal year 2001-2002 will support a number of essential State activities. The ARB will maintain the Program by continuing to collect and provide air toxics emission data to the public, inform the public of the potential health risks, and work with facilities to reduce those risks. Specifically, the ARB staff will continue to collect emissions data for facilities of greatest concern; conduct quality control checks of those data; develop air toxics emission factors; implement electronic data submittal procedures; and provide emissions data to the public, government agencies, and the regulated community. The ARB staff will also continue to provide technical assistance to facilities for risk reduction audits and plans and other regulatory efforts needed to implement the Program.

The OEHHA will complete the health risk assessment guidelines and develop health values for those substances currently on the list of substances to be reported. In addition, OEHHA will continue to review health risk assessment results in coordination with the districts.

The following chapters present information on Program costs and facility fees, the existing regulation and proposed changes, the economic and environmental impacts of the proposed changes, and an evaluation of alternatives. The Appendices present the Proposed Regulation Order as well as details on the basis and calculations of the fees and the economic impacts.

II.

PROGRAM COSTS AND FACILITY FEES

A. INTRODUCTION

Chapter II contains a description of the State and districts costs of the Program and how the State costs are proposed to be allocated to the 35 districts for collection. Total costs to the State and districts for fiscal year 2001-2002 will be \$3.67 million. The State's costs are 25 percent of the total and the districts' costs are 75 percent of the total.

B. PROPOSED STATE COSTS FOR FISCAL YEAR 2001-2002

Staff is proposing a total State Program cost of \$880,000 in fiscal year 2001-2002 to be recovered through fees. The ARB's share of the proposed State cost is \$350,000, and the OEHHA's share is \$530,000. Specific activities related to these proposed costs are summarized in Table 1. This budget represents a 19 percent or \$200,000 reduction from fiscal year 2000-2001. This reduction is a result of keeping the fees per Program fee category unchanged and the reduction in the number of fee-paying facilities. Staff believes that this reduction will not interfere with the State's ability to implement the Program. The method for allocating fees to the districts is explained in Appendix III.

Beginning with fiscal year 1998-99, State statutes now limit the State's costs to implement the "Hot Spots" Program to \$1,350,000 (H&SC section 44380(e)). In addition, changes in legislation adopted in 1996 exempt facilities from paying State fees based on their health risks. This has dramatically reduced the number of facilities subject to "Hot Spots" Program fees.

The Fee Regulation distributes the State's Program costs among all facilities subject to fees. The costs for the ARB and OEHHA to implement the Program are shown in Table 1. All facilities that are subject to the Act are subject to the Fee Regulation unless expressly exempted under H&SC sections 44324, 44344.4, or 44380.1, or under section 90702(c) of the Fee Regulation.

Table 1

Program Costs for the ARB and OEHHA

		PYs*	Staff Cost	Contract Cost	Total
ARB	Regulation Development and Implementation	1.3	\$100,000	\$0	\$100,000
ARB	Air Toxics Emission Database Maintenance	1.0	\$76,000	\$60,000	\$136,000
ARB	Emission Data Collection and Validation	1.1	\$84,000	\$0	\$84,000
ARB	Risk Assessment & Notification Assistance	0.2	\$15,000	\$0	\$15,000
ARB	Develop Risk Reduction Guidelines	0.2	\$15,000	\$0	\$15,000
	subtotal	3.8	\$290,000	\$60,000	\$350,000
OEHHA	Health Effects Value Update	0.0	\$0	\$24,000	\$24,000
OEHHA	Risk Assessment Guideline Update	3.5	\$264,000	\$0	\$264,000
OEHHA	Exposure Assessment/ Uncertainty Methods Update	0.5	\$38,000	\$0	\$38,000
OEHHA	Health Risk Assessment Tracking	1.3	\$100,000	\$0	\$100,000
OEHHA	District/Board Assistance	1.4	\$104,000	\$0	\$104,000
	subtotal	6.7	\$506,000	\$24,000	\$530,000
	ARB subtotal	3.8	\$290,000	\$60,000	\$350,000
	OEHHA subtotal	6.7	\$506,000	\$24,000	\$530,000
	TOTAL	10.5	\$796,000	\$84,000	\$880,000

* PY is equal to a position and is an approximation.

C. DISTRIBUTION OF STATE COSTS AMONG DISTRICTS

State costs are allocated among the districts using the number of facilities in each of the program categories and resource indices and are based on facility data received from the districts by July 1, 2001. The method for distributing State costs among the districts and the indices are described in Appendix III of this report.

The distribution of State costs among the districts for fiscal year 2001-2002 is shown in Table 2 of the Staff Report and Table 1 of the Fee Regulation. Table 2 in the Staff Report also compares the allocation of the State's costs among districts for fiscal year 1999-2000, 2000-2001 and fiscal year 2001-2002.

Table 2

Distribution of State Costs By District

<u>District</u>	<u>State Costs 1999-2000</u>	<u>State Costs 2000-2001</u>	<u>(Proposed) State Costs 2001-2002</u>
Amador	2,552	1,346	105
Antelope Valley	10,133	9,263	8,248
Bay Area	80,022	83,371	47,877
Butte	10,435	9,296	4,433
Calaveras	0	0	0
Colusa	0	0	0
El Dorado	7,488	3,738	6,441
Feather River	5,015	12,492	535
Glenn	455	455	0
Great Basin	10,488	5,109	5,004
Imperial	10,775	10,775	9,655
Kern	729	589	140
Lake	0	0	70
Lassen	3,129	3,129	2,009
Mariposa	507	507	507
Mendocino	4,519	4,720	7,555
Modoc	70	70	0
Mojave Desert	27,053	22,295	22,015
Monterey	7,994	5,985	4,109
North Coast	7,207	1,502	67
Northern Sierra	7,185	7,215	805
Northern Sonoma	70	70	0
Placer	12,018	11,147	10,945
Sacramento	9,232	9,232	19,647
San Diego	114,896	138,231	114,116
San Joaquin Valley	81,347	53,023	45,435
San Luis Obispo	350	350	560
Santa Barbara	39,668	35,888	28,688
Shasta	12,757	12,054	10,682
Siskiyou	6,275	5,873	5,628
South Coast	684,077	578,153	485,025
Tehama	67	67	1,257
Tuolumne	834	700	700
Ventura	43,833	49,996	29,968
Yolo-Solano	5,698	5,698	5,978
TOTAL	1,206,878	1,082,339	\$878,204

D. DISTRICT COSTS FOR FISCAL YEAR 2001-2002

The ARB staff estimates that the total cost of the 35 districts to implement the “Hot Spots” Program for fiscal year 2001-2002 will be \$2.7 million. Table 3 shows that district costs are decreasing for the majority of districts. In some cases, a district may have district costs listed in Table 3 and no State costs listed in Table 2. This may occur when a district has district tracking facilities that may be charged a district fee but are exempt from paying State fees. Table 3 also indicates which districts have requested that the ARB adopt their fee regulations.

E. DISTRICT FEE SCHEDULES

Five districts requested that the ARB adopt district fee schedules for them and submitted their Board-approved Program costs by April 1, 2001. These districts are identified in Table 3, along with their Board-approved Program costs. The individual facility fees for the five districts are calculated using the method described in Appendix III. The other 30 districts must adopt their own fee regulation to recover their costs.

Appendix III contains the equations that were used to calculate facility fees. Each facility’s total fee is the sum of the district fee portion and the State fee portion for facilities in that category. The State fee portion per category is the same for each district; however, the district fee portion per category may vary from district to district since district program costs vary as do the number of fee-paying facilities. District program costs in those five districts were approved by their respective district boards at public hearings.

The ranges of facility fees per category shown in Table 4 are for those districts for which the ARB is adopting a fee schedule. The actual fees for each Program category for each district are provided in Table 3 of the Fee Regulation. The ranges of fees shown in Table 4 are due to variations in fees among districts. Fee rates in those categories increase with increasing facility risks as seen in Table 4. Many factors affect a district’s costs of implementing the Program. These factors include but are not limited to the following:

- type and complexity of facilities located in each district,
- type and amount of listed toxic substances emitted,
- district overhead cost (regional variations in rent, salary base, etc.),
- amount of assistance the district provides to facilities in the Program.

Table 3

District Costs

	<u>Fiscal Year</u> <u>2000-2001</u>	<u>Fiscal Year</u> <u>2001-2002</u>
Districts Requesting ARB to Adopt a Fee Schedule (District Board approved costs)		
Antelope Valley	13,340	12,570
Great Basin	5,520	3,570
Lassen	2,089	2,489
Mojave Desert	35,135	31,985
Santa Barbara	50,000	50,000
Districts Adopting a Fee Schedule		
Amador	3,152	1,810
Bay Area	445,000	480,240
Butte	15,200	15,400
Calaveras	0	0
Colusa	2,000	2,000
El Dorado	7,480	7,480
Feather River	35,000	35,000
Glenn	1,250	2,000
Imperial	770	770
Kern	12,565	4,866
Lake	2,000	2,000
Mariposa	0	0
Mendocino	725	14,519
Modoc	0	0
Monterey	69,625	70,026
North Coast	2,500	0
Northern Sierra	27,500	27,500
Northern Sonoma	0	0
Placer	16,556	13,500
Sacramento	61,787	61,787
San Diego	251,000	290,000
San Joaquin Valley	232,757	209,481
San Luis Obispo	25,000	34,303
Shasta	12,000	12,000
Siskiyou	5,700	5,700
South Coast	1,400,000	1,336,861
Tehama	3,500	3,000
Tuolumne	4,450	4,450
Ventura	56,000	49,000
Yolo-Solano	1,375	9,609
TOTAL	2,800,976	\$2, 793,916

Table 4

**Proposed Facility Fees for those Districts
Requesting the ARB to Adopt a Fee Schedule***

Fee Category	State Portion of Fee	Total State and District Fee				
		Antelope Valley	Great Basin Unified	Lassen County	Mojave Desert	Santa Barbara County
A (simple)	\$1,674		2,555			
(medium)	2,009	7,113		4,498		
(complex)	2,344					
B (simple)	3,014					9,902
(medium)	3,349				10,428	10,642
(complex)	3,684	10,150			11,157	11,382
C (simple)	4,353					
(medium)	4,688					10,107
(complex)	5,023				13,676	
D (simple)	5,693					
(medium)	6,028					
(complex)	6,363					
E (simple)	402	800	780		800	
(medium)	603	4,143	1,170		4,143	
Complex)	804		1,560			
F (simple)	67				472	545
(medium)	100				708	818
(complex)	134				944	1,091
IW	35		25			60
DU		125	250		125	125

Fee Category	Fee Category Description
A	Priority Score > 10
B	Risk ≥ 10 < 50
C	Risk ≥ 50 < 100
D	Risk ≥ 100
E	Unprioritized
F	State Tracking Facility
IW	Industrywide
DU	District Update

- These amounts are taken from Table 3a-c in the Fee Regulation.

III.

EXISTING REGULATION AND PROPOSED CHANGES

A. INTRODUCTION

The proposed amendments to the Fee Regulation for fiscal year 2001-2002 are presented in this chapter. The ARB staff proposes to continue to use the methodology that was used in previous years to assess fees for State costs. This methodology bases fees on facilities' public health impacts. These health impacts are characterized by facility-specific prioritization scores and health risk assessment results. For those districts which have asked the Board to adopt their fee regulations, the staff proposes to again base district fees on a similar methodology. In addition, the staff proposes to continue to exclude facilities from the program fees based on prioritization scores, risk assessment results, and the de minimis activity levels defined for eight types of facilities.

The staff is also proposing revisions to streamline the fee program that will take effect in fiscal year 2002-2003. These proposed revisions will change the fee program from a regulation that must be revised every year into an annual administrative process. The change to an annual administrative process also will necessitate a change in the way districts that have not adopted a local "Hot Spots" fee regulation recover district costs.

B. SUMMARY OF EXISTING REGULATION

For fiscal year 2001-2002, the staff proposes to continue to use the same method used for fiscal year 2000-2001 for distributing the State's cost among districts and for calculating facilities' fees. This methodology bases fees on facility-specific prioritization scores and health risk assessment results and the complexity of the facility, which is based on the number of Source Classification Codes (SCCs) reported by facilities. This information is used to assign facilities to one of six risk categories plus an industrywide category. The method meets the goals of Senate Bill 1378 (McCorquodale; Statutes of 1992; Chapter 375) which amended H&SC section 44380(a)(3)). This method also meets the requirements of H&SC sections 44344.4 through 44344.7 and 44380 (e) which provides Program exemptions for those facilities thought to have the lowest risk.

The exemption applies to facilities whose prioritization scores for cancer and non-cancer health effects are both equal to or less than one, based on the results of the most recent emissions inventory or emissions inventory update. Those sections of the H&SC also exempt facilities from the State portion of Program fees if their prioritization scores for cancer and non-cancer health effects are both equal to or less than 10, based on the results of the most recent emissions inventory or emissions inventory update. These facilities must still submit quadrennial (every four years) emission inventory updates, and there are provisions that allow districts to assess fees to recover the costs of processing those updates. Those

sections of the H&SC also set forth reinstatement criteria for facilities exempted from the Program. Low risk facilities will continue to be exempted on the basis of prioritization scores and health risk assessments from the Program as facilities change their operations and districts provide updated facility information.

1. Fee Calculation Method

The fee calculation method is based on the number of facilities in seven Program categories (Facility Program Categories). This continues the ARB's commitment to meet the program goals set forth in H&SC section 44380(a)(3). That mandate requires that fees be set, to the maximum extent practicable, commensurate with the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that source by the district. The method also fulfills the requirements of sections 44344.4(a) and (b) that facilities with low prioritization scores be excluded from the Fee Regulation. Facilities demonstrating low risk based on the results of health risk assessments will also be excluded from the Fee Regulation. Facilities with high prioritization scores or demonstrating high risk are targeted by the Fee Regulation. Risk assessment results are used when available; prioritization scores are used when risk assessment results are not available.

2. Exemption from the Fee Regulation

The proposed regulation would continue to exempt facilities demonstrating low potential risks to the communities in which they do business. A facility will qualify for an exemption from fees in three ways:

- a) Prioritization Score: A facility that has a prioritization score (calculated by the district) of 10.0 or less for both cancer and non-cancer risk, and no risk assessment, shall be exempt from the State fee. A prioritization score is determined using health conservative assumptions for source parameters, distance to receptors, and meteorological conditions, to calculate a value that allows a district to categorize facilities for the purpose of performing a health risk assessment by examining the factors included under H&SC section 44360(a), including a facility's emissions and the potency of those emissions.
- b) Risk Assessment Results: A facility that prepared a health risk assessment or screening risk assessment, as required by its district, which shows a potential cancer risk, summed across all pathways of exposure and all compounds, of less than one case per one million persons, and a total hazard index, both acute and chronic, for each toxicological endpoint of less than 0.1 shall be exempt from the Fee Regulation. The risk assessment must also have been reviewed by the OEHHA and must be approved by the district in writing to qualify for this exemption.
- b) De Minimis Levels: Printing shops, wastewater treatment plants, crematoria, boat and ship building and repair facilities, and hospitals or veterinary clinics using ethylene

oxide are exempt from State fees if they operate at or below specified de minimis throughputs or usage, unless the facility was required to conduct a risk assessment by its district, and the results indicate the facility would not be exempt from fees. The intent of the exemptions is to provide an expedient way to exclude from fees, those facilities that clearly do not constitute or contribute to an air toxics hot spot.

De minimis activity levels can also be used to preclude new facilities from being brought in.

3. Designation of Facility Program Categories

Facilities are assigned to seven Facility Program Categories based upon each facility's risk assessment results or prioritization score. The Facility Program Categories, defined in the Fee Regulation, are summarized as follows:

- Unprioritized facility - a facility that has not been prioritized by its district.
- Tracking Facility - Composed of two subcategories: Both include facilities with Prioritization Scores 10.0 or greater, but
 - (1) facilities whose health risk assessment results indicate a risk of 1.0 to less than 10.0 cases per million and a total hazard index for each toxicological endpoint, both acute and chronic, of less than or equal to 1.0, or
 - (2) facilities whose health risk assessment results indicate a risk of less than 10.0 cases per million, and a total hazard index for each toxicological endpoint, either acute or chronic, of greater than or equal to 0.1, but less than or equal to 1.0.
- Prioritization score greater than 10.0 - for facilities whose prioritization score is greater than 10, but for which no risk assessment results are available.
- Risk of 10.0 to less than 50.0 cases per million, or a hazard index of greater than 1.0.
- Risk of 50.0 to less than 100.0 cases per million
- Risk of 100.0 cases per million or greater
- Industrywide facility - a facility which emits less than ten tons per year of criteria pollutants that is or will be in an industrywide inventory prepared by the district.

Complexity - Source Classification Codes

Recognizing the range of complexity in facilities, we further divided each of the facility risk categories into subcategories on the basis of facility complexity. Facilities can be categorized by Source Classification Codes (SCC), which are number codes created by the United States Environmental Protection Agency to identify processes associated with point sources that contribute emissions. One or more SCCs can classify any operation that causes air pollution. Based on the districts' experience and the staff's analysis of facilities, a correlation has been established between the number of SCCs at a facility and the complexity of that facility. Each SCC represents a specific process or function that is logically associated with a point source of air pollution within a given source category.

For subdividing the fee categories according to complexity, the Fee Regulation defines a facility with one or two processes or district SCCs as "Simple"; a facility with three, four, or five processes (SCCs) as "Medium"; and a facility with more than five processes (SCCs) as "Complex".

4. Special Features of Current Regulation

Many of the facilities subject to the Act are small businesses. Because many small businesses may operate with limited cash reserves and low net incomes, they may not be able to absorb an increase in the cost of doing business. Therefore, the fee regulation contains a fee cap for small businesses.

Prior to fiscal year 1993-94, most small businesses paid low fees because they typically emitted less than 25 tons per year of criteria pollutants. Small businesses that are included in the Industrywide category still pay the lowest fees or may even qualify for fee waivers from the districts. However, under the fee structure of the current regulation, some small businesses could be subject to fees that would be detrimental to their profitability. To prevent undue hardship for these businesses, the Fee Regulation contains an upper fee limit of \$300 for any facility operating as a small business in the districts whose fee schedules are included in this Fee Regulation.

The cap for small businesses would apply to the facility fees for the five districts whose fee schedules are included in the State Fee Regulation.

5. Provisions for Facility Count Verification

The staff is proposing to continue requiring that districts provide documentation substantiating changes in facility Program data, including emission inventory updates. The information required continues to assist the staff in assigning facilities to the proper Facility Program Category for purposes of calculating the allocation of the State's costs. It also meets the requirements of H&SC section 44344.4(a) that prioritization scores be based on

the most recent emissions inventory or emissions inventory update. Without this information, the staff could not sufficiently validate facility counts provided by the districts.

C. PROPOSED CHANGES TO THE REGULATION

The following changes to the Fee Regulation are proposed for fiscal year 2001-2002. All changes to the proposed regulation are shown in Appendix II.

1. Update Table 1

Table 1 of the Fee Regulation lists the portion of the State costs each district is responsible for collecting from facilities located in their district. These amounts have been revised to reflect the most current facility Program data submitted by the districts to the ARB.

2. Update District Fee Schedules

Tables 2 and 3 of the Fee Regulation have been revised to reflect the district Program costs and facility fees in the five districts which have requested that the ARB adopt fee schedules for them in fiscal year 2001-2002. H&SC Section 44380 allows districts to request the ARB to adopt fee schedules for them provided the district submits its program costs to the ARB by April 1 of the fiscal year preceding the year to which the Fee Regulation applies.

For fiscal year 2001-2002, five districts have requested that the Board adopt fees for them and have fulfilled the requirements of H&SC section 44380. Those districts are the Antelope Valley, Great Basin, Lassen County, and Santa Barbara County APCDs; and the Mojave Desert AQMD. The proposed fee schedules (Table 3 of the Fee Regulation) reflect each district's share of the State's costs, as calculated by the ARB, and district Program costs that have been approved by the governing board of the district.

For these districts, the ARB will deduct the amount of a district's cost to be recovered from Industrywide facilities prior to distributing each district's allocation of State fees. If the district chooses to waive fees for Industrywide facilities, the State's allocation of fees that might have been recovered from these facilities will be distributed by the districts among facilities in other Facility Program Categories.

The five districts that requested that the ARB adopt district fee regulations for them have provided us with district costs for the fiscal year 2001-2002. The method used to calculate the district portion of the fees for the five districts is identical to that used for the State portion of the fees except that it is based on different resource indices as requested by the five districts. The individual facility fee is the sum of the appropriate district cost and the State Program cost. A detailed explanation of the fee calculation method is included in Appendix III.

3. Conversion to an Administrative Process in Fiscal Year 2002-2003

The fee rate for each Facility Program Category has remained constant over the last four years. However, the revenue generated by the Program has declined. This has been due primarily to facilities reducing their toxic emissions and being reclassified into lower Facility Program Categories that pay lower or no fees. These proposals will reduce the amount of resources needed to collect the fees and allow more resources to be applied to implementing the Program and reducing public risk due to toxic emissions.

In place of the annual Board adoption of the fee regulation, the staff is proposing that the Board delegate authority for the administration of the annual "Hot Spots" fee program to the Executive Officer. This would begin in fiscal year 2002-2003 and continue in subsequent years. So long as there are no significant changes in the State costs, the Air Toxics "Hot Spots" fee Program will be handled as an annual administrative process. To help keep the Board, districts, and the public informed about the program, the staff will prepare an annual status report that will summarize how the State program costs were assessed and how the funds are being used by the State.

For fiscal year 2001-2002, the districts must submit facility information to the ARB by April 1 for those districts that have requested that ARB adopt fees for them, and by July 1 for those districts that have adopted their own fee regulations. In the past, it has taken an additional 9-12 months to complete the regulatory process and for the ARB to invoice districts for their portion of the State costs. By converting the regulation into an administrative process, the deadline for districts to submit information can be postponed until September 1, with invoices being sent out around four months later. This will provide districts with additional time to collect and review facility emission data. With the Program no longer being a regulatory process, it will also provide the ARB and the districts more flexibility to incorporate last minute corrections to facility emission data.

As the fee program would be an annual administrative process, it will no longer be feasible for the ARB to adopt local fee regulations. To address this problem, ARB staff has worked with the staffs of the affected districts to develop a new method for recovering the costs of implementing the program for districts that have not adopted their own local fee regulation. Beginning in fiscal year 2002-2003, if a district has not adopted its own fee regulation, it will be authorized to recover its district costs from facilities that are subject to the State Fee Regulation in an amount up to, but not to exceed, the State Program cost on a per-facility basis. Simply put, the maximum total fee for a facility in a district with no local fee regulation would be twice the State costs. One half of this would go to the State, and the other half would go to the district. The total fee for a facility could be less if the district needed less than the full State cost to recover its district program costs. This provision would in no way preclude districts from adopting their own local fee regulations.

This option is designed primarily to allow small districts with low program costs to recover the cost of implementing the program without the need for adopting a local fee regulation. Because most districts' program costs exceed the State cost and most districts have already adopted their own fee regulation, we anticipate few districts will take advantage of this

option. This change may require some districts to adopt their own fee regulation if they intend to recover their district costs at fiscal year 2001-2002 levels. This proposal ensures that this State-adopted district fee value complies with H&SC Section 44380(a)(3), and that facilities in districts using this option will have the certainty of knowing the ceiling for their district fees. In addition, an accounting of the district Program costs for districts using this provision will be included in the annual status report on the fee regulation.

The major advantage of this proposal will be to streamline the process of implementing the regulation. This proposal will reduce ARB staff time and minimize costs while providing more time and flexibility for districts, which will ensure that the information provided by districts to the ARB is the most accurate possible.

IV.

ECONOMIC AND ENVIRONMENTAL IMPACTS

A. INTRODUCTION

This chapter discusses the economic and environmental impacts from the fees assessed through this Fee Regulation. The ARB staff is not aware of any adverse economic impacts resulting from implementing the Fee Regulation. The economic impacts were determined using draft fees calculated based on facility Program data provided by the districts. For fiscal year 2001-2002, the staff is proposing that the fee levels for each of the facility program categories remain at fiscal year 2000-2001 levels. The ARB staff is also not aware of any adverse environmental impacts resulting from implementing the Fee Regulation. Program fees may have an indirect environmental benefit since they serve as an incentive to facility operators to reduce emissions and in the process, reduce their potential risk.

B. ECONOMIC IMPACT ANALYSES

The “Hot Spots” Act requires facilities subject to the Act to pay fees in accordance with the Fee Regulation. To comply with State law, before adopting any amendments to the Fee Regulation, ARB staff must evaluate the potential economic impacts of the fees. The staff does an analysis to determine if paying “Hot Spots” fees will have a fiscal impact on any State or local government agency. The staff conducts another analysis to determine the impact of the fees on California businesses. The economic impact analysis on businesses includes an evaluation of the ability of California businesses being assessed these fees to compete with similar businesses in other states. The staff also estimates if imposing these fees would cause a business to relocate, cease or commence operation, or hire or layoff employees, or any combination of these.

The staff performed the economic impact analyses using draft facility fees for fiscal year 2001-2002 for districts in the ARB Fee Regulation. Districts that are adopting their own fee rules provided us with estimates of fees for their facilities. For districts whose fee schedules are included in the Fee Regulation, draft fees were calculated based on the facility program category for facilities in those districts. For districts adopting their own fee rules, the staff used draft and adopted fee rules, as well as district personnel estimates of fees.

1. Fiscal Impact on Government Agencies

The ARB staff conducted a fiscal impact analysis for government agencies in July 2001. The analysis is included here as Appendix V. The Fee Regulation imposes two types of costs on State and local agencies. These are compliance costs to pay the fees and implementation costs to the State and districts to develop and implement the Fee Regulation.

a) State Government Agencies' Costs

The Fee Regulation will continue to impose costs on some State agencies that must comply with the requirements of the Act. An analysis by the staff indicates that State agencies will be able to absorb the fees assessed to them within existing budgets and resources. Hospitals, colleges and universities, and correctional facilities are examples of State-owned facilities that may have to pay "Hot Spots" fees. The fees for State agencies were estimated to range from \$0 to \$3,877. The total cost estimate for State-owned facilities is \$21,274.

By law, the Fee Regulation must recover all of the ARB's and OEHHA's costs for the Program. Developing and implementing the Fee Regulation is part of the ARB's implementation cost. The staff estimates that the ARB's cost to develop and implement the Fee Regulation for fiscal year 2001-2002 is \$100,000. This is approximately 11 percent of the total State portion of Program costs, \$880,000, for the ARB and the OEHHA.

b) Local Government Agencies' Costs

The adoption of the proposed regulation will continue to create costs and impose a State-mandated program upon local government agencies that will be required to pay the fees established. Potentially affected agencies include air districts; utilities, air, water, and solid waste facilities; school districts; hospitals; and publicly owned treatment works (POTWs). The staff estimated that fees assessed local governmental agencies would range from \$0 to \$12,201. The State and district costs assessed to local governmental agencies, other than the districts, were estimated to be \$129,725.

Implementing the amended Fee Regulation will create costs and impose a State-mandated local program upon the air pollution control districts. These costs are incurred because a district must set up a program to notify and collect fees from the operator of facilities subject to the Act. However, these district costs are not reimbursable by the State within the meaning of Section 6 of Article XIII B of the California Constitution and Government Code, section 17500 et seq., because the districts have the authority to levy fees sufficient to pay for the mandated program (Government Code section 17556(d)). The districts' costs to implement the amended regulation are estimated to be \$270,000.

The district costs for five districts will be recovered through the fee schedules in the proposed changes to the Fee Regulation. The Fee Regulation requires the remaining districts to adopt district rules to recover the district's costs and share of the State's costs. The total of districts' costs to be recovered is approximately \$2.7 million.

2. Impact on Non-Government Facilities

The amended regulation will continue to create costs and impose a State-mandated program on facilities that are subject to the Air Toxics "Hot Spots" Information and Assessment Act of 1987. As described in Chapter I, each of these facilities may be required to pay a "Hot Spots" fee in accordance with the Fee Regulation. However, because net State revenues

are proposed to decrease, the amendments to the current Fee Regulation will not alone create additional cost impacts on such facilities in the aggregate.

The ARB staff conducted an economic impact analysis to determine the potential economic impacts to different business sectors resulting from the fees proposed in this regulation. The staff is also required to estimate if imposing these fees would cause a business to relocate, cease or commence operation, or hire or layoff employees, or any combination of these. Appendix IV contains the detailed economic impact analysis. Included in this analysis is an evaluation of the ability of California businesses, subject to the Fee Regulation, to compete with similar businesses in other states.

The approach used in assessing the potential economic impact of the amended regulation on businesses is as follows:

- (1) A list of approximately 230 types of industries currently subject to the Fee Regulation was created from the facility program category data submitted by the districts.
- (2) A typical business from each affected industry was selected.
- (3) The highest fee (total of State and district fees), for districts for which the State is adopting a Fee Regulation, was estimated for each facility program category.
- (4) These fees were then applied to a typical business in the affected industries in each facility program category.
- (5) The estimated fees were adjusted for taxes because the profit data is reported on an after tax basis. Therefore, the costs (in this case the Program fee) must also be adjusted.
- (6) The Return on Equity (ROE) was calculated for each of the business categories by dividing the net profit by the net worth. The adjusted fees were then subtracted from net profit data. The results were used to calculate an adjusted ROE. The adjusted ROE was then compared with the ROE before the subtraction of the adjusted fees, to determine the impact on the profitability of the businesses. A reduction in profitability of 10 percent indicates a potential for significant adverse economic impact.

This economic analysis includes industries with a wide variety of products. For some additional industries with affected businesses, however, an analysis of the potential impact of the fees could not be performed because of the lack of financial data.

The staff concludes that, overall, California businesses seem to be able to absorb the costs of the fees without significant adverse economic impact on their profitability. Although some businesses would potentially experience a greater reduction in their profitability than others, most businesses appear to be able to absorb the fee. However, the imposition of the amended fees may have a significant adverse impact on some businesses operating with little or no margin of profitability.

a) Ability to Compete with Other States

Analysis by the staff indicates that, in general, imposing these fees will not hinder a business' ability to compete with similar businesses in other states. However, for some businesses, operating with little or no margin of profitability, assessing these fees may have a significant adverse impact on their ability to compete with similar businesses in other states.

b) Effect on Jobs and Businesses

This proposed regulation is not expected to affect the creation or elimination of jobs or businesses within the State. The staff's analysis also indicates that imposing these fees should not cause a business to cease or commence operation or relocate, or any combination of these. However, for some businesses operating with little or no margin of profitability, assessing these fees may have a significant adverse impact on the creation, elimination, or expansion of jobs and businesses within the State.

C. ENVIRONMENTAL IMPACT

The staff does not anticipate any potential adverse impacts on the environment attributable to implementation of the amendments proposed to the regulation. The Fee Regulation may continue to provide indirect environmental benefits because the fees recover the State's cost for emission data collection and analysis, and businesses can use these data to voluntarily reduce emissions. Also, businesses have incentives to reduce their emissions so that they will pay lower fees because the fees are calculated based on the level of emissions and risks.

Neither the current Fee Regulation, nor any of the proposed amendments require the installation of pollution control equipment, or a performance standard, or a treatment requirement within the meaning of Public Resources Code section 21159.

V.

EVALUATION OF ALTERNATIVES

A. INTRODUCTION

This chapter discusses the various alternatives that the ARB staff considered in determining how to distribute State costs to the districts for the collection of fees. The ARB staff's recommendation on adoption of the proposed amendments is also included. During the development of the Fee Regulation for fiscal year 1998-1999, ARB staff evaluated, in conjunction with district staff, the affected industries, environmental groups, other government agency staffs and the general public, two alternative methods to the current fee method. Those alternatives included basing a district's allocation of the State portion of Program costs on population and freezing the district's allocation for fiscal year 1998-1999 at the same level as fiscal year 1997-1998. Both of these alternatives have consequences requiring further discussion. The ARB staff concluded that all alternatives were inferior to keeping the current method and basing fees on the current facility Program data. This conclusion applies to fees for fiscal year 2001-2002 also.

B. EVALUATION OF ALTERNATIVES

Government Code section 11346.2(b)(4) requires us to describe the alternatives to the proposed regulation that were considered. We identified the following options:

Option 1: Distribute State costs to districts based on population.

ARB staff evaluated an alternative method of distributing State Program costs to the districts based on the percentage of the State's population residing in its jurisdiction. This would appear to be a relatively straight forward and simple method, but there are issues that complicate this method. Fees can only be assessed from facilities subject to the Program and subject to paying the State portion of costs. After the district's portion is calculated based on population, it would be up to each district to determine the facility's fees. Districts with similar populations, but different numbers of facilities subject to fees, would see vast inequities in facility fees for like facilities in different districts. Because of the inequities this method could generate, the Fee Regulation Committee recommended that the ARB not use this method to calculate the districts' allocations for fiscal year 1998-1999.

Option 2: Keep the current method for distributing State Program costs, based on current data. Request that the Board delegate authority of administering the Fee Program to the Executive Officer.

The Fee Regulation fulfills a very specific legal requirement under H&SC section 44380. The proposed changes are made in accordance with those legislative mandates. The method

currently used relates a facility's fees more directly with its toxics emissions. No alternative would be more effective in carrying out the legislative mandated purpose for which the regulation is proposed or would be as effective, equitable, and less burdensome to affected private persons.

If the Board delegates authority of administering the Fee Program to the Executive Officer, the annual update and collection of fees to recover State Program costs will be significantly streamlined. Streamlining the process will allow more resources to be allocated to implement the program and reduce pressure to increase the fee rate. It will also provide districts and affected facilities with more time to collect, review, and update the toxic emission data used to calculate the fees. This additional time will help address a concern frequently raised by facilities subject to the fees that the fees do not reflect up-to-date emission information. This proposal will also allow for more flexibility in administering the program.

Option 3: Continue to require the Fee Regulation to be a regulatory item, rather than the proposed administrative process.

Because the fee program now has become a stable process, the staff believes that minor year-to-year adjustments in State program costs no longer merit the Board's annual review and approval.

Option 2 will allow the staff to reduce the amount of resources needed to administer the fee program and to devote more resources towards the actual goals of the "Hot Spots" program. These goals include identifying the sources of toxic air pollution emissions in California and gaining a better understanding of the risks posed by toxic air pollutants.

C. RECOMMENDATION

Based on the results of our evaluation and our discussions with the Fee Regulation Committee, the ARB staff is currently inclined to stay with the current method of calculating fees. The ARB also needed to consider the "Hot Spots" statute that requires that fees be "to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that source by the district pursuant to Section 44360" into account when assessing alternatives. The staff believes that, from that mandate, it is clear that the authors intended that any fee method developed contain an emissions component, and a risk (priority) component if that is practicable. Neither of the first two alternatives fulfilled that requirement.

The option of continuing to require the Board to adopt fees is not cost effective compared with the proposed conversion of this regulatory item into an administrative process. This proposed change for fiscal year 2002-2003 is a change in process, not a change in the way facilities are assessed fees.

We recommend that the ARB adopt the proposed amendments to the Fee Regulation for fiscal year 2001-2002. These changes are described in more detail in Chapter III, and are contained in Appendix II to this report.

