

## TITLES 17 AND 26. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS HOT SPOTS FEE REGULATION.

The Air Resources Board (ARB) will conduct a public hearing at the time and place noted below to consider amendments to the Air Toxics Hot Spots Fee Regulation.

DATE : January 25, 1996

TIME : 9:30 A.M.

PLACE : Air Resources Board  
Board Hearing Room, Lower Level  
2020 L Street  
Sacramento, California

This item will be considered at a two-day meeting of the ARB commencing at 9:30 a.m., January 25, 1996 and, continuing at 8:30 a.m., January 26, 1996 if necessary. This item may not be considered until January 26, 1996. Please consult the agenda for this meeting, which will be available at least ten days before January 25, 1996 to determine the day on which this item will be considered.

### INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Proposed Actions and Sections Affected: Proposed amendments to sections 90700-90705, Titles 17 and 26, California Code of Regulations (CCR) and Appendix A to sections 90700-90705 (The Air Toxics Hot Spots Fee Regulation).

The objective of the Air Toxics Hot Spots Fee Regulation (Fee Regulation) is to recover the costs of the State and the local air pollution control and air quality management districts (air districts) to implement and administer the Air Toxics Hot Spots Information and Assessment Act. The fees assessed through this regulation are used to inventory toxic air emissions, prioritize facilities for preparation of risk assessments, review risk assessments, notify the public of potential health risks from exposure to the emissions, and provide guidance to the facilities in reducing the potential risk from exposure to the emissions. The regulation specifically allocates the State's costs among the air districts, and establishes facility fees for the air districts that have requested ARB adoption of facility fee schedules.

A Staff Report was issued in June 1995 containing the initial fiscal year 1995-96 amendments to the Fee Regulation. However, the hearing on the proposed amendments was cancelled due to pending legislation that, if passed, would affect the overall Program. That legislation, Assembly

Bill 564, authored by Assemblyman Cannella, has now been held over for reconsideration next year.

**Background:** The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code section 44300 et seq.) established a program to inventory air toxics emissions from facilities in California and to assess the potential risk to public health from exposure to these emissions. The Act also requires that the public be notified of any potentially significant health risks associated with the emissions from high risk facilities. These high risk facilities must reduce their toxic emissions below the level of significance within five years. The Act specifies activities which must be carried out by the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and air districts, to implement the Act. The Act requires the ARB to adopt a fee regulation to ensure that costs incurred by the State and air districts in implementing and administering the Hot Spots Program (Program) are recovered by assessing fees on facilities subject to the requirements of the Act (Health and Safety Code section 44380).

To implement the Act, the ARB first adopted the Fee Regulation in 1988. Each year, the ARB staff, in consultation with the Fee Regulation Committee which is comprised of the air districts and the OEHHA, prepares amendments to the Fee Regulation for the ARB's consideration. Annual revisions have been needed to ensure that the State's and air districts' costs of implementing the Program will be recovered.

Air districts may recover their Program costs and their portion of the State's cost by adopting their own fee rules or by requesting the ARB to adopt a fee schedule for them. If an air district requests the ARB to adopt their fee schedule, it must submit its air district Program costs, approved by its air district governing board, to the ARB by April 1, prior to the applicable fiscal year. Twelve air districts submitted district board approved costs for fiscal year 1995-96 and are requesting ARB adoption of facility fee schedules.

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 established an air quality program unique to the State of California. No parallel federal requirement exists at this time. There is no federal fee which targets Hot Spots facilities. Accordingly, there is no conflict or duplication between this Fee Regulation and current federal regulations.

**Significant Changes:** The ARB staff is proposing several major amendments to the Fee Regulation for fiscal year 1995-96.

**Two-Phased Proposal for Further Streamlining the Program:** The staff of the ARB is proposing a two-phased approach to further streamline the Program. Under Phase I of the proposal, the ARB staff is recommending an interim step that would provide exemptions from the Fee Regulation for fiscal year 1995-96 for facilities that present a low health risk to the surrounding public. These exemption proposals would reduce the State's cost significantly because we would not redistribute the revenue lost as a result of the exemptions to facilities remaining subject to

the Fee Regulation but rather, would adjust Program activities. The second phase of the streamlining effort would occur concurrently with Phase I but would be completed in fiscal year 1996-97. In Phase II, ARB staff would propose amendments to the Emission Inventory Criteria and Guidelines Regulation to further streamline the reporting requirements and the applicability criteria. The amendments to the Fee Regulation for fiscal year 1996-97 would occur concurrently.

Exemptions from the Fee Regulation: We propose to exempt facilities from the Fee Regulation in three ways. The proposed exemptions are listed in new section 90702(b) of the Fee Regulation. A facility would be exempt from the distribution of the State's cost if:

- a) its prioritization score is less than 0.1 for cancer and non-cancer risk;
- b) its approved risk assessment result shows a potential cancer risk of less than one case per one million persons and a total hazard index of less than 0.1.
- c) it is a printing shop, wastewater treatment plant, crematorium, or boat or ship building and repair facility and meets an established de minimis throughput criterion.

For facilities located in air districts whose fee schedules are included in the State's Fee Regulation, these same exemptions would be applied, and facilities that meet at least one of the criteria would not pay a fee in fiscal year 1995-96.

Modification to the Method to Distribute the State's Cost: Because of our proposal to exempt facilities, we are proposing a further modification to the method to distribute the State's cost. In the June 1995 Staff Report, we calculated a cost per facility and distributed the State's cost based on updated facility counts received from the air districts in May 1995. We now propose that each calculated cost per facility remain unchanged from this distribution. This proposal reduces the State's cost per facility by about 19 percent compared to fiscal year 1994-95. For each exempted facility, we would subtract the State's cost previously assessed that facility from its air district's cost total in the June 1995 Staff Report. We are not recovering any costs associated with the exemptions by increasing the State's cost to facilities remaining subject to the Fee Regulation. This proposal ensures that all air districts costs are reduced or unchanged from what was proposed in the June Staff Report. On average, as a result of the exemptions, air district shares of the State's cost are reduced by about 13.5 percent compared to the June proposal.

Reduction in the State's Cost: The proposed exemptions will reduce the State's cost. The cost to be recovered through fees for fiscal year 1994-95 was \$4,237,000. The June 1995 Staff Report contained a proposed State cost of \$3,650,000, already a 14 percent reduction compared to last year. This cost reflected an accelerated Program plan reduction of \$587,000. Now, with our exemption proposals, the State's cost is reduced by an additional \$846,000. As a result of the accelerated Program plan cut and the cost reductions resulting from the exemptions, the State's cost for fiscal year 1995-96 will be reduced to \$2,804,000. This reduction of over \$1.4 million

dollars reduces our cost by over 34 percent. We are continuing to receive updated facility counts from the air districts that reflect the proposed exemptions. These changes will be presented at the ARB hearing in January 1996 and the State's cost will be adjusted accordingly. With an adjustment factor of five percent added to this amount, the State's cost to be recovered through the Fee Regulation is \$2,944,200 (this amount may differ slightly from the amount shown in Table 1 of the Fee Regulation due to rounding).

**Other Proposed Amendments to the Fee Regulation for Fiscal Year 1995-96 include:**

- 1) modification to section 90700(b), subpart (1), addition of section 90703(c), and addition of section 90704(i), to establish the basic method which will be used to assess the fees for risk assessments submitted to the State for review after March 31, 1995;
- 2) modifications and two additions to the definitions in section 90701 of the Fee Regulation;
- 3) modification to the code references in section 90701 and section 90703 to reflect the new definitions, new sections, and deleted sections;
- 4) addition of section 90702(b)-(d), modification of section 90703(a), addition of section 90703(b), modification of section 90704(a), modification of section 90704(b)(2), (d)(2), and (h); modification of section 90705(a), and (c) to clarify applicability of the regulation;
- 5) modification to section 90704(d), subpart (1) to explain the purpose of Table 2 in the regulation;
- 6) modification of section 90704(d), subpart (2) to explain the use of the new State Industrywide Facility category in calculating air districts' shares of State costs;
- 7) modification to section 90704(d), subpart (3) to update the State costs for risk assessments for facilities located in the Santa Barbara County Air Pollution Control District (APCD);
- 8) addition of a new subpart (3) to section 90704(e), to require air districts to document and substantiate changes to facility counts;
- 9) deletion of section 90704(i), referencing the start of labor-tracking by the OEHHA;
- 10) modification of section 90705(d), subpart (1), to extend the time period to carry over shortfalls in revenue;

- 11) changes to the amounts in Table 1 of the Fee Regulation that each of the 34 air districts would remit to recover the reasonably anticipated cost of the State;
- 12) updates to the list of air districts requesting the ARB to adopt fee schedules for them and removal of the air districts that are adopting district fee rules;
- 13) updates to Table 2 which lists the air districts' costs to be recovered by the Fee Regulation;
- 14) updates to facility fees in Table 3 of the Fee Regulation;
- 15) updates to the air district specified flat fees for Survey and Industrywide facilities listed in Table 4 of the Fee Regulation;
- 16) updates to Appendix A "Air Pollution Control District Air Toxic Inventories, Reports, or Surveys";
- 17) modification of the resource indexes for State Industrywide facilities; and
- 18) modification to extend the date for which air districts may update their facility counts to December 15, 1995.

These proposed changes to the Fee Regulation for fiscal year 1995-96 are discussed in more detail below.

Fee for Risk Assessments Being Reviewed by the State: Section 90700(b), subpart (1) was modified, and sections 90703(c), and 90704(i) were added to establish the method by which fees will be assessed for risk assessments submitted to the State for review after March 31, 1995. Each air district will be billed for the actual costs that OEHHHA incurs in its review of individual risk assessments, in accordance with Health and Safety Code section 44361(c). An estimate of the economic impact of this change is included in the Initial Statement of Reasons (Staff Report).

Definition Modifications: Section 90701(h) was updated to modify an existing definition for Facility Program Category. The modification clarifies that the list of facilities includes facility name and identification number. In this same definition, we also deleted the requirement for air districts to submit a list of Survey facilities and added that air districts must supply a list of their State Industrywide facilities. Section 90701(i) was modified to delete reference to the small business definition contained in the Fee Regulation. Deleting this reference makes the Fee Regulation consistent with the Emission Inventory Criteria and Guidelines Regulation, which defines small business in section 93301(m). The definition for Risk Assessment-State Facility in section 90701(x) was also modified to update the specified period of applicability. A new definition for State Industrywide facility was added in section 90701(af). The new definition

is used in the calculation of the air districts' shares of the State's costs. A definition for Standard Industrial Classification (SIC) Code is being added to section 90701. An SIC Code is a numerical code which describes a type of business.

Code References: Code references in sections 90701, 90702, 90703, 90704, and 90705 were modified to reflect new alphanumeric notation as a result of adding the new definitions, adding sections, and deleting a section.

Applicability: Sections 90703(a), 90704(a), 90704(b)(2), 90704(d)(2), 90704(h), 90705(a), and 90705(c) were modified, and sections 90702(b)-(d) and 90703(b) were added to clarify applicability. The additions and modifications clarify which facility categories will be used to calculate the air districts' shares of the State's cost, which facilities will be exempted, and which facility categories will be used as the basis for billing. The changes clarify which sections apply to air districts that are adopting their own fee rules and which sections apply to air districts whose fee schedules are included in the State Fee Regulation.

Purpose of Table 2: Section 90704(d), subpart (1) was modified to clarify that the State costs from Table 1 and the air district costs from Table 2 are used to calculate the facility fees in Table 3.

State Industrywide Facility Category: Section 90703(b) was added, and section 90704(d), subpart (2) was modified, to explain the use of the new State Industrywide Facility category in the calculation of the air districts' shares of the State cost. The number of State Industrywide Facilities is used to make consistent among air districts the counting of facilities that qualify to be included in Industrywide inventories prepared by the air districts, belong to certain Standard Industrial Classifications, and meet other criteria. However, air districts still have the option to use the fees for Industrywide Facilities listed in Table 4 to bill facilities.

State Cost for Santa Barbara Risk Assessments: Section 90704(d), subpart (3) was updated to reflect a new State cost for State review of health risk assessments. This updated cost applies to facilities whose health risk assessments were prepared by the Santa Barbara County APCD using an automated computer program approved by the ARB. For such facilities, the Risk Assessment-State (Intermediate) facilities and Risk Assessment-State (Complex) facilities will pay a lower State cost. The appropriate district cost would be added to this cost to arrive at the facility fee.

Provisions for Facility Count Verification: Section 90704(e), subpart (3) was added to require air districts to provide documentation to the ARB if changes are made to prior-year facility counts. The air districts are required to provide the name, facility identification number, previous category of the affected facility, current category of the facility, previous Source Classification Codes of the facility, and current Source Classification Codes of the facility. The air district shall also provide the Standard Industrial Classification Code for facilities being added to the State Industrywide category.

Delete Reference to Labor-Tracking: Section 90704(i) was added last year, and states that the OEHHA will begin labor-tracking in fiscal year 1994-95. That action has been completed, and with the new proposal for OEHHA to implement a fee-for-service system for risk assessment reviews, the section is no longer needed.

Shortfall Recovery: Section 90705(d), subpart (1) was modified to extend the time period during which an air district with a State Board adopted fee schedule may carry over a revenue shortfall. The proposed revisions extend the allowed time period from the current one year to a proposed four years. This provision gives the air districts greater flexibility in determining facility fees.

Air District Shares of State Cost: The proposed amendments to the Fee Regulation would change the amount that each of the State's 34 air districts must remit (Table 1 of the Fee Regulation) to the State to recover the reasonably anticipated costs of the State to administer the Program for fiscal year 1995-96. This change is proposed to account for changes in facility numbers among the air districts, facilities qualifying for an exemption, as well as the decrease in the State's cost. As discussed earlier, the State's cost for fiscal year 1995-96 has been reduced to \$2,804,000. Each air district's share of the State's costs includes a five percent adjustment factor to allow for nonpayment and uncertainty in the facility category information.

Air Districts Requesting State Adoption of Fee Schedules: The proposed amendments would add fee schedules for the Calaveras and Placer County APCDs. The amendments would delete fee schedules for Kern County APCD and for the South Coast Air Quality Management District (South Coast AQMD). The Kern County APCD and South Coast AQMD, as well as 20 other air districts, are required by law to adopt district fee rules for fiscal year 1995-96 (see Health and Safety Code section 44380(a)(2)).

The proposed regulation would again establish fee schedules for the following ten air districts: the Imperial, Lassen, Mariposa, Mendocino, Santa Barbara, and Tuolumne County APCDs; the Great Basin, and San Joaquin Valley Unified APCDs; and the Mojave Desert and Yolo-Solano AQMDs.

The method used to calculate facility fees for the above 12 air districts is the same basic method used for calculating the distribution of the State's costs in the June 1995 Staff Report. For these air districts, an adjustment factor of five percent is added to the air districts' costs to be recovered to allow for nonpayment, uncertainty in the facility category information, and uncertainty in the number of businesses that meet the small business cap provision. The same Program Categories are used for air district costs as for State costs, but different resource indexes are assigned for air district costs than for the State's costs. Each air district's cost to be recovered is divided by the sum of the products to arrive at a unit cost for a Plan and Report (Simple) facility. This air district unit cost is multiplied by the other Program category indexes to arrive at a district cost per facility.

The fee schedules in the Fee Regulation for the above 12 air districts include cost-per-facility fees. Flat fees are specified by each air district for all facilities emitting less than ten tons per year of any criteria pollutant. The Survey (facilities required to complete a one-time survey) and Industrywide facilities (facilities that qualify to have their emission inventory completed by the air district as part of an Industrywide emission inventory) would pay a facility fee between \$15 and \$125. If a Survey or Industrywide facility has paid a fee once, and the air district will not expend significant resources on the facility, the fee may be waived by the air district. Excluding industrywide facilities, our proposals will exempt over 14 percent of facilities from paying any fee. On average, non-exempt facilities will realize fee reductions of about 16 percent compared to fiscal year 1994-95.

The following 22 air districts have chosen to adopt district rules to recover the Program costs in fiscal year 1995-96: the Amador, Butte, Colusa, El Dorado, Glenn, Kern, Lake, Modoc, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, and Ventura County APCDs; the Feather River, Monterey Bay Unified and Northern Sonoma Unified APCDs; and the Bay Area, North Coast Unified, Northern Sierra, Sacramento Metropolitan, and South Coast AQMDs.

Air Districts' Costs to be Recovered: Table 2 of the Fee Regulation was updated to reflect changes in each air district's cost to be recovered for the ten air districts again requesting ARB adoption of facility fees. Air district costs to be recovered for the Calaveras and Placer County APCDs were added to Table 2. The Kern County APCD's and South Coast AQMD's costs were deleted from Table 2. For all air districts requesting ARB adoption of facility fees, a five percent adjustment factor is added to the air district's cost to be recovered to allow for nonpayment, uncertainty in the facility category information, and uncertainty in the number of businesses that meet the small business cap provision.

Changes to Table 3 of the Fee Regulation: Facility fees in Table 3 of the Fee Regulation were changed to reflect the State's new cost for each facility program category and changes in the air district's cost. Facility fees were added for the Calaveras and Placer County APCDs. Facility fees for the Kern County APCD and South Coast AQMD were deleted.

Changes to Specified Fees: Flat fees specified by the air districts for Survey and Industrywide facilities in Table 4 were updated. Flat fees for the Kern County APCD and South Coast AQMD were deleted. Flat fees for the Calaveras and Placer County APCDs were added. Fees in Table 4 range from \$15 to \$125.

Changes to Appendix A: Appendix A of the Fee Regulation was changed to reflect deleted toxic inventories by the Monterey Bay Unified APCD and the South Coast AQMD, and an updated title for the Mojave Desert AQMD inventory.

Modification of Resource Indexes for State Industrywide Facilities: The resource indexes for State Industrywide facilities were modified to keep the cost associated with these facilities at \$15.

Date Change for Updating Facility Counts: The deadline for updating facility counts for the distribution of the State's cost and calculating facility fees for fiscal year 1995-96 is being extended to December 15, 1995.

#### AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a plain English summary of the regulation is included in the Initial Statement of Reasons, Executive Summary.

A Staff Report is available which includes the Initial Statement of Reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strike-out format, may be obtained from the California Air Resources Board, Public Information Office, 2020 L Street, Sacramento, California 95814, at least 45 days prior to the scheduled hearing. The ARB staff has compiled a record which includes all information upon which the proposal is based. Copies of the documents may be obtained through the Public Information Office, 2020 L Street, Sacramento, California 95814.

Further inquiries regarding this matter should be directed to Genevieve A. Shiroma, Chief, Air Quality Measures Branch, Stationary Source Division, P.O. Box 2815, Sacramento, California 95812, (916) 322-7072.

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the ARB's Executive Officer concerning the cost or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The ARB's Executive Officer has determined that the amended Fee Regulation will impose a mandate upon and create costs to the air districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement to the air districts pursuant to Government Code sections 17500 et seq. and section 6 of Article XIII B of the California Constitution because the air districts have the authority to levy fees sufficient to pay for the mandated Program (Health and Safety Code section 44380). These fees are intended to recover the full costs of air district implementation of the Air Toxics Hot Spots Program, including compliance with the amended Fee Regulation. The estimated fiscal year 1995-96 air district costs to implement the amended Fee Regulation are approximately \$610,000.

The Executive Officer has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some publicly-owned treatment works (POTWs). POTWs are subject to the Fee Regulation if they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Regulation (Title 17, CCR, sections 93300-93355), release the specified quantity of at least one of the four criteria pollutants, and are classified by the air district in one of the prescribed Program categories. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, Article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated Program. Based on the proposal in the June 1995 Staff Report we estimated the total cost for POTWs to comply with the Fee Regulation to be \$120,446 for fiscal year 1995-96. As the result of the proposed exemption for wastewater treatment plants, we estimate POTWs cost of compliance will be reduced to \$70,530.

The Executive Officer has determined that the amended Fee Regulation does not create cost or savings in federal funding to any State agency or program.

The Executive Officer has also determined that the amended Fee Regulation will impose costs on affected State agencies. The costs to the ARB to implement and administer the Air Toxics Hot Spots Program, including the amended Fee Regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of Title 17, CCR. The costs for the ARB to develop and implement the amended Fee Regulation are estimated to be \$152,000.

Other affected State agencies (e.g., universities, hospitals, correctional institutions, laboratories) that must pay fees pursuant to the amended Fee Regulation as emitters of specified pollutants should be able to absorb their costs within existing budgets and resources. Costs to these State agencies were estimated to total \$142,318 in the June 1995 Staff Report. As a result of the exemptions we now estimate that the cost for these facilities' compliance would be reduced to \$117,510 for fiscal year 1995-96.

The Board's Executive Officer has determined, pursuant to Government Code 11346.5(a)(3)(B), that the regulation will affect small business.

In developing the proposal, the staff has determined there is a potential cost impact on private persons or businesses directly affected by the regulation. The Executive Officer has also determined that adopting these amendments may have a significant adverse economic impact on some businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states, based on an assessment of the evidence available in the record.

Accordingly, the following information is provided pursuant to Government Code section 11346.5(a)(7):

- (A) Identification of the types of businesses that would be affected.

All businesses that emit a criteria pollutant and a listed substance (Health and Safety Code sections 44320-44322; Title 17, CCR, section 90702) must pay a Hot Spots fee, (Health and Safety Code sections 44380-44382; Title 17, CCR, sections 90703-90705) unless specified conditions have been met, and will be affected by these proposed amendments. Businesses that are operating with little or no margin of profitability may experience significant adverse impacts by paying these fees. Appendix VII of the Staff Report includes a list, which may be modified, of the categories of businesses that may be included in the scope of this regulation.

- (B) Description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

To comply with these proposed amendments, businesses will have to pay the fees assessed on them. These proposed amendments will not result in any additional reporting, recordkeeping, or other compliance requirements, beyond keeping records of payment.

- (C) The ARB staff finds that the amendment of this regulation may have a significant adverse economic impact on businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states. The ARB staff has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Submissions may also include the following considerations which more closely apply to these amendments:

- (I) The establishment of differing payment requirements or timetables which take into account the resources available to businesses.

- (ii) Exemption or partial exemption from the fee requirements for businesses.
- (iii) Any other alternative that would lessen any adverse impact the fees may have on businesses.

In accordance with Government Code section 11346.3, the Executive Officer has determined that for businesses operating with little or no margin of profitability, the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

In considering the proposed amendments, the ARB must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The imposition of the fees and the requirement that the fees, in the aggregate, cover costs of implementing the Program, are mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses and allows a fee waiver for facilities in two Program categories if certain criteria are met. Additionally, exemptions are proposed that will relieve lower risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

#### SUBMITTAL OF COMMENTS

On June 9, 1995 the ARB published a Notice of Public Hearing on the proposed amendments to the Fee Regulation for fiscal year 1995-96. However, the public hearing originally scheduled for July 27, 1995 was subsequently cancelled.

This Notice of Public Hearing concerns a revised proposal for the Fee Regulation for fiscal year 1995-96. Written comments relating to the revised proposal and presented at workshops concerning the revised proposal will be considered by the ARB and will be included in the rulemaking record (Government Code section 11347.3(a)(6)). Please be advised that, in order to ensure that all written comments are related to the revised proposal and not to the June 1995 proposal, the ARB will not consider any written comments submitted before the date of this notice and such comments will not be included in the rulemaking record. If you submitted written comments before the date of this notice and you wish the ARB to consider them in connection with the revised proposal, please resubmit your comments in writing.

At the public hearing, the public may present comments relating to this revised matter orally or in writing. To be considered by the ARB, written submissions must be addressed to and

received by the ARB Secretary, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, or 2020 L Street, 5th floor, Sacramento, California 95814, no later than 12:00 noon, January 25, 1996 or received by the Board Secretary at the hearing.

The ARB requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least ten days prior to the hearing. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

### STATUTORY AUTHORITY AND HEARING PROCEDURES

Amendments to the Fee Regulation are proposed pursuant to the authority granted to the ARB in sections 39600, 39601, 44321, 44380, and 44380.5 of the Health and Safety Code. The purpose of the Fee Regulation is to implement, interpret, and make specific sections 44320, 44321, 44322, 44361, 44380, and 44380.5 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications, if the modifications are sufficiently related to the proposed text such that the public was adequately placed on notice that the regulatory language, as modified, could result from the proposed regulatory action. Such modifications are expected to include but are not limited to the following:

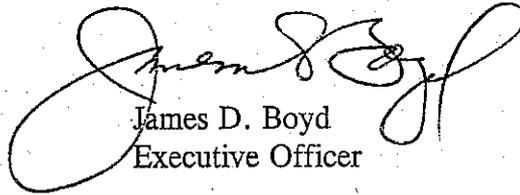
- (1) An air district's share of the State's costs may be revised on the basis of it updating the number of facilities in the previously mentioned Program categories, changes to the State's budget, or adjustments to the resource indexes.
- (2) The specified amounts of fees may be adjusted, on the basis of updates to numbers of facilities in the previously mentioned Program categories, changes to the State's budget, or adjustments to the resource indexes.
- (3) Fees specified by air districts may be changed on the basis of information being provided by each such air district.
- (4) Changes to Appendix A of the regulation in response to information provided between this date and the public hearing.

- (5) Changes to definitions in response to information provided between this date and the public hearing.
- (6) Changes to the exemption proposals.

In the event that such modifications are made, the full regulatory text with the modifications clearly indicated will be made available to the public for written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Air Resources Board Public Information Officer, 2020 L Street, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

This is a statewide regulation. Once adopted by the ARB, the fee schedule will be applicable to all covered facilities in the 12 air districts for which the proposed amendments would provide fee schedules. The remaining 22 air districts will be required to adopt district rules to comply with the Fee Regulation.

CALIFORNIA AIR RESOURCES BOARD



James D. Boyd  
Executive Officer

Date: November 28, 1995