

Final Statement of Reasons

For Rulemaking

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

Public Hearing Date: October 28, 1999

Agenda Item No.: 99-8-3

California Environmental Protection Agency



Air Resources Board

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AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses**

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I. GENERAL

On October 28, 1999, the Air Resources Board (ARB) conducted a public hearing to consider the adoption of amendments to Tables 1, 2, 3a, 3b, 3c and 4, in section 90705, as determined by sections 90701-90705, title 17, California Code of Regulations (CCR). After considering the staff's recommendation and the public's written comments, the ARB approved Resolution 99-36, the amendments to the Fee Regulation, section 90705, title 17, CCR. As required by Health and Safety Code section 44380, the Fee Regulation is designed to recover the anticipated costs incurred by the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) to implement the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code sections 44300-44394) for the 1999-2000 fiscal year.

The Fee Regulation establishes the share of the State's cost for each of the 35 air pollution control districts, or air quality management districts (districts). The Fee Regulation establishes fee schedules for five districts. Each of the remaining thirty districts must adopt a fee rule that provides for the recovery of its share of the State's costs as well as the district's costs.

At the hearing, the Board considered the staff's recommendation and the public comments. The Board then approved the proposed amendments with no modifications.

The following document, which provides additional information about this rulemaking, is incorporated by reference herein:

- (1) Staff Report: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1999-2000, released September 10, 1999.

Resolution 99-36 presents the findings of the Board and the Board's approval of the changes to the Fee Regulation. These changes are discussed in greater detail in the Staff Report (Initial Statement of Reasons, ISOR) made available to the public on September 10, 1999. These changes are summarized below.

- 1) Table 1 of the Fee Regulation was amended to reflect recalculations based on updated facility Program data.
- 2) Table 2 of the Fee Regulation was amended to reflect changes in the districts' Program costs for the five districts requesting ARB adoption of their fee schedule for fiscal year 1999-2000. District costs for Imperial County APCD were deleted from Table 2 since they did not request the ARB to adopt their fee schedule for fiscal year 1999-2000.
- 3) Facility fees in Table 3 of the Fee Regulation were amended to reflect changes in the districts' Program costs, updated facility counts in Program fee categories, and updated facility Program data for the districts requesting that the ARB adopt their fee schedule. Again, the information for the Imperial County APCD was deleted since they did not request the ARB to adopt their fee schedule.
- 4) Table 4 was amended to reflect changes in flat fees for Industrywide facilities and District Update facilities as specified by the districts. Again, flat fees for Industrywide facilities and District Update facilities in the Imperial County APCD were deleted from Table 4 since they did not request the ARB to adopt their fee schedule.

In accordance with section 11346.8 of the Government Code, the Board approved the amendment of section 90705, title 17, CCR.

The ARB has determined that this regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants. Health and Safety Code sections 44391 - 44394 require facilities, determined by a district to pose a potential significant health risk, to lower their emissions below the significance level. This regulatory fee action will also fund district and ARB implementation of this risk reduction effort.

The ARB determinations concerning the costs or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The ARB has determined that the amended Fee Regulation will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement to the districts pursuant to Government Code sections 17500 et seq. and section 6 of Article XIII B of the California Constitution because the districts have the authority to levy fees sufficient to recover costs of the mandated Program (Health and Safety Code section

44380). These fees are intended to recover the full costs of district implementation of the Air Toxics "Hot Spots" Program, including compliance with the amended Fee Regulation. The estimated fiscal year 1999-2000 district costs to implement the amended Fee Regulation are approximately 10 per cent of each district's total Program costs.

Pursuant to the amended regulation, some local and State government facilities must pay Hot Spots fees. In accordance with Health and Safety Code section 44320, these facilities are subject to the Fee Regulation because: 1) they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report incorporated by reference in title 17, CCR, sections 93300.5, and release the specified quantity of at least one of the four "criteria pollutants" (total organic gases, particulate matter, nitrogen oxides, or sulfur oxides); or 2) they are listed on any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district; and 3) they are not exempted under any of the exemption criteria. The local and State government facilities that are affected by Hot Spots fees are some publicly owned treatment works (POTWs), universities, hospitals, correctional institutions and laboratories.

The ARB has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some local 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 Report, release the specified quantity of at least one of the four criteria pollutants, and are classified by the district in one of the prescribed Facility Program fee 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. ARB staff estimates the total cost for POTWs to comply with the Fee Regulation to be \$17,934 for fiscal year 1999-2000.

The ARB has determined that adoption of the amended regulation will not create a significant cost to, or impose a mandate upon, local school districts. Currently, there are no local school districts subject to a "Hot Spots" Program fee.

The ARB 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 \$114,000. The Office of Environmental Health Hazard Assessment (OEHHA) incurs no cost to implement the Fee Regulation.

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 \$16,750 for fiscal year 1999-2000.

The ARB has determined that the amended Fee Regulation will not create costs or savings in federal funding to any State agency or program.

The ARB has determined, pursuant to Government Code 11346.5(a)(3)(B), that the regulation will affect small business. Based on an assessment made, the Executive Officer 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.

In accordance with Government Code section 11346.3, the ARB 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 has determined that no alternative considered by the agency would be more effective in carrying out the purposes 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 reasonable anticipated costs of implementing the Program, are mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses in those districts for which ARB is adopting a fee schedule. Additionally, exemptions will relieve lower risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

Furthermore, the ARB evaluated the alternatives to the proposed amendments submitted to the ARB pursuant to Government Code section 11346.5(a)(7). The ARB considered whether there is a less costly alternative, or combination of alternatives, which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments. The ARB determined that there is no

such alternative or combination of alternatives.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received one written comment in connection with the 45-day comment period following the release of the Initial Statement of Reasons. There was no oral testimony presented at the October 28, 1999 hearing. The comment received is summarized below, followed by the agency response.

General Comments Regarding the Proposed Amendments to the Fee Regulation for Fiscal Year 1999-2000 Received During the 45-Day Comment Period and at the October 28, 1999 Hearing

- (1) September 21, 1999 letter from Daniel A. Cunningham, Executive Director, Metal Finishing Association of Southern California, Inc., to Linda C. Murchison, Chief, Emission Inventory Branch, ARB. (Cunningham)

Comment: The letter from the Metal Finishing Association states that they would like to see the State budget for the Hot Spots Program be reduced further, and the flat fee for industrywide facilities raised from \$35 to \$80 in order to reduce the highest fees for the metal plating and finishing facilities.

Response: Facilities that belong to the Metal Finishing Association work with very toxic metals such as nickel and hexavalent chromium. In fact, hexavalent chromium is the second most potent carcinogen identified by the State. Many of the metal finishing facilities have toxics emissions resulting in very high public health risks. As a result, some of these facilities pay the higher fees in the Hot Spots program. However, we do not feel the fees are an unjust burden. Metal finishing facilities represent approximately four percent of the facilities paying fees, and account for about six percent of the total fees collected.

In addition, raising fees for the thousands of industrywide facilities may be a burden to that group. Industrywide facilities are small businesses such as gas stations, dry cleaners, and autobody shops. Many operate with low profit margins, and are subject to many additional fees from various county and State agencies. Fees for industrywide facilities have been raised twice in the last three years, so we believe keeping the fees for this group at last year's level is appropriate.

We also do not believe it is appropriate to reduce the State budget further. As tasks have been completed the State has moved aggressively to reduce the Program costs in the past. In fact, State costs have been reduced over 77% since the peak costs in fiscal year 1993-94, as described in the Staff Report released September 10, 1999. We are now at a maintenance level. Any further reductions

would impair the State's ability to maintain an effective Program.

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