

TITLES 17 AND 26. CALIFORNIA AIR RESOURCES BOARD

ADOPTION OF AMENDMENTS TO THE AIR TOXICS HOT SPOTS FEE REGULATION

UPDATED INFORMATIVE DIGEST OF ACTION

Actions and Sections Affected: Amendment of 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).

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 Air Resources Board (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.

An earlier 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 canceled due to pending legislation that, if passed, would affect the overall Program. A Notice of Cancellation was issued informing the public of this action.

Description of the Regulatory Action: At a public hearing held on January 25, 1996 the ARB staff proposed amendments to the Fee Regulation for fiscal year 1995-96 for the ARB's consideration. After considering the ARB staff's recommendation and the public comments, the amendments contained in Resolution 96-2, were approved by the ARB at the January 25, 1996 hearing. A Notice of Public Availability of Modified Text was issued on March 6, 1996 to describe additional amendments that were proposed and approved at the public hearing. A Notice of Public Availability of Supporting Documents and Information was issued on May 1, 1996. Titles 17 and 26, CCR, sections 90700-90705 are affected by adoption of these amendments. The amendments approved by the ARB are described below.

Two-Phased Approach for Further Streamlining the Program: The ARB approved a two-phased approach to further streamline the Program. Under Phase I the ARB staff recommended an interim step to reduce the State's cost and provide exemptions from the Fee Regulation for fiscal year 1995-96 for facilities that present a low health risk to the surrounding public. The second phase of the streamlining effort would occur concurrently with Phase I but will be completed in fiscal year 1996-97. In Phase II, ARB staff will propose amendments to the Emission Inventory Criteria and Guidelines Regulation to further streamline the reporting requirements and the applicability criteria. After proposing these amendments, ARB staff will propose amendments to the Fee Regulation for fiscal year 1996-97.

Exemptions from the Fee Regulation: Facilities can qualify for an exemption from the Fee Regulation in three ways. The exemptions are listed in new section 90702(b) of the Fee Regulation. A facility is 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; or
- 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; or
- 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.

These exemptions were included in the Staff Report. At the hearing the ARB approved an additional de minimis exemption for facilities with ethylene oxide sterilizers.

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 Hot Spots fee in fiscal year 1995-96.

Modification to the Method to Distribute the State's Cost: Because of the exemptions, a further modification was made to the method to distribute the State's cost. In the June 1995 Staff Report, a cost per facility was calculated and the State's cost was distributed based on updated facility counts received from the air districts in May 1995. Each calculated State cost per facility will remain unchanged from this distribution. This change reduces the State's cost per facility by

about 19 percent compared to fiscal year 1994-95. For each exempted facility the State's cost previously assessed that facility will be subtracted from its air district's cost total.

Reduction in the State's Cost: In the Staff Report ARB staff proposed a State's cost of \$2,804,000. At the hearing the ARB approved changes that reduce the State's cost further to \$2,654,151. With an adjustment factor of five percent added to this amount, the State's cost to be recovered through the Fee Regulation is \$2,786,859 (this amount may differ slightly from the amount shown in Table 1 of the Fee Regulation due to rounding).

Fee for Risk Assessments Being Reviewed by the State: Section 90700(b)(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 OEHHA 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)(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)(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 ensure consistency among air districts in counting 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)(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 Air Pollution Control District (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 is added to this cost to arrive at the facility's fee.

Provisions for Facility Count Verification: Section 90704(e)(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 because the OEHHA is implementing a fee-for-service system for risk assessment reviews, the section is no longer needed.

Shortfall Recovery: Section 90705(d)(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 revisions extend the allowed time period from the current one year to four years. This provision gives the air districts greater flexibility in determining facility fees.

Air District Shares of State Cost: The amendments to the Fee Regulation 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.

Air Districts Requesting State Adoption of Fee Schedules: The amendments add fee schedules for the Calaveras and Placer County APCDs. The amendments delete fee schedules for Kern County APCD and for the South Coast Air Quality Management District (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 regulation again establishes 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 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 facilities emitting less than ten tons per year of any criteria pollutant that are listed in Appendices E-I or E-II to the Emission Inventory Criteria and Guidelines Regulation. On average, non-exempt facilities will realize cost-per-facility fee reductions of about 16 percent compared to fiscal year 1994-95.

The following 22 air districts will adopt district rules to recover their Program costs in fiscal year 1995-96: the Amador, Colusa, El Dorado, Glenn, Kern, Modoc, San Diego, San Luis Obispo, Siskiyou, Tehama, and Ventura County APCDs; the Feather River, Monterey Bay Unified and Northern Sonoma Unified APCDs; the Butte, Lake, and Shasta County AQMDs; 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 delete the toxic inventories of the Monterey Bay Unified APCD and the South Coast AQMD, and the Mojave Desert AQMD supplied an updated title for its 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 was extended to December 15, 1995.

Comparable Federal Regulations

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.