

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

ADOPTION OF AMENDMENTS TO THE AIR TOXICS “HOT SPOTS FEE” REGULATION

UPDATED INFORMATIVE DIGEST OF ACTION

Actions and Sections Affected: Adopted amendments to tables referenced in sections 90700-90705, title 17, California Code of Regulations (CCR) (The Air Toxics “Hot Spots” Fee Regulation) and contained in section 90705.

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 air toxics emissions, prioritize facilities for preparation of risk assessments, review risk assessments (districts only), 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 air districts, and establishes facility fees for the air districts that have requested the Air Resources Board (ARB) to adopt their fee schedules.

Background: The Air Toxics “Hot Spots” Information and Assessment Act of 1987 (the 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 significant health risks associated with the emissions from high risk facilities. These high risk facilities must reduce their air toxics emissions below the level of significance within five years. The Act specifies activities that must be carried out by the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and the 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 Air Toxics “Hot Spots” Program (Program) are recovered through 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, ARB staff, in consultation with the Fee Regulation Committee, which is comprised of the air districts and OEHHA, reviews the Fee Regulation and prepares amendments for the ARB’s consideration. Annual revisions have been needed to ensure that the State’s and air districts’ costs of implementing the Program are recovered.

Air districts 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 its fee schedule, the air district must submit its Program costs, approved by its air district governing board, to the ARB by April 1, prior to the applicable fiscal year.

Five air districts submitted district board approved costs for fiscal year 1999-2000 and requested ARB adoption of facility fee schedules.

Description of the Regulatory Action: At a public hearing held on October 28, 1999, ARB staff proposed amendments to the Air Toxics "Hot Spots" Fee Regulation for fiscal year 1999-2000 for the ARB's consideration. After considering the staff's recommendation and public comments, the ARB passed resolution 99-36, which adopted amendments contained in the September 10, 1999 staff report. The amendments affect only Tables 1, 2, 3a, 3b, 3c and 4 in section 90705, as determined by sections 90700 through 90705, and Appendix A, Title 17, CCR. The Fee Regulation for fiscal year 1999-2000 adopted by the ARB is described below.

Reduction in the State's Cost: The proposed amendments found in the September 10, 1999 staff report and adopted by the ARB, include a reduction in the State costs to implement the Air Toxics "Hot Spots" Program of approximately \$63,000 for fiscal year 1999-2000. This represents a reduction of five percent compared to fiscal year 1998-99. State costs for fiscal year 1999-2000 will be approximately \$1,207,000. This represents a greater than 77 percent reduction in State revenues to implement and administer the Program from fiscal year 1993-94.

Air District Shares of State Cost: The amendments to the Fee Regulation change the amount that each of the State's 35 air districts must remit to the State (Table 1 of the Fee Regulation) to recover the reasonably anticipated State costs to administer the Program for fiscal year 1999-2000. These changes result from changes in facility risk and complexity information, numbers of facilities qualifying for exemptions, and State Program costs. As discussed earlier, the State's Program cost for fiscal year 1999-2000 will be \$1,207,000.

Air Districts Requesting State Adoption of Fee Schedules: The adopted amendments establish fee schedules for the following five air districts: Lassen and Santa Barbara County APCDs, the Antelope Valley and Great Basin Unified APCDs; and the Mojave Desert AQMD. The adopted amendments delete fee schedules for the Imperial County APCD.

The method used to calculate facility fees for the above five air districts is similar to the method used for calculating the State's fees. 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 Facility

Program Fee Categories are used for air district fees as for State fees, but different category indexes are assigned for air district fees than for the State's fees.

The fee schedules in the Fee Regulation for the five air districts that requested ARB to adopt their fee rule include cost-per-facility fees. The Industrywide facilities (facilities that qualify to have their emission inventories completed by the air district as part of an industrywide emission inventory according to Health and Safety Code section 44323) would pay facility fees between \$60 and \$95. If an Industrywide facility has paid a fee once and the air district will not expend significant resources on the facility, subsequent fees may be waived by the air district.

The following 30 air districts have chosen to adopt their own rules to recover the Program costs for fiscal year 1999-2000: Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Imperial, Kern, Lake, Mariposa, Modoc, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama, Tuolumne, and Ventura County APCDs; Feather River, Monterey Bay Unified, Northern Sonoma Unified, and San Joaquin Valley Unified APCDs; and Bay Area, Mendocino, North Coast Unified, Northern Sierra, Sacramento Metropolitan, South Coast, and Yolo-Solano AQMDs. These 30 air districts are required to adopt district fee rules that recover costs for fiscal year 1999-2000 (Health and Safety Code section 44380 (a)(2)).

Air Districts' Costs to be Recovered: Table 2 of the Fee Regulation was modified to reflect the district board-approved Program costs for fiscal year 1999-2000 for the air districts requesting ARB adoption of facility fees. District costs for the Imperial County APCD were deleted from Table 2 since they did not request the ARB to adopt their fee schedule.

Changes to Table 3 of the Fee Regulation: Facility fees in Table 3 of the Fee Regulation were changed to include changes in the air districts' costs, facility risk and complexity information, numbers of facilities qualifying for exemptions, and State Program costs. The information for the Antelope Valley APCD, the Great Basin Unified APCD, the Lassen County APCD, the Mojave Desert AQMD, and the Santa Barbara County APCD was amended to reflect more current data for each Facility Program Category. The Imperial County APCD was deleted since they did not request the ARB to adopt their fee schedule.

Changes to Specified Fees: Flat fees for Industrywide facilities and District Update facilities specified by the air districts in Table 4 of the Fee Regulation were revised. Flat fees for Industrywide facilities in Antelope Valley APCD and Great Basin APCD were revised to reflect changes in the amount of fees Industrywide facilities will be assessed in those districts. Flat fees for District Update facilities in the Great Basin Unified and the Lassen County APCDs were updated to reflect a change in the amount of fees those facilities will be assessed. The Imperial County APCD was deleted since they did not request the ARB to adopt their fee schedule.

Appendix A: No changes were made to Appendix A of the Fee Regulation, “Air Pollution Control District Air Toxic Inventories, Reports, and Surveys.”

Comparable Federal Regulations: The Act established an air quality program unique to the State of California. No parallel federal requirement exists at this time. There is no federal fee that specifically targets ‘Hot Spots’ facilities. Accordingly, there is no conflict or duplication between this Fee Regulation and current federal regulations.

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