

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AB 2588 AIR TOXICS "HOT SPOTS" EMISSION INVENTORY CRITERIA AND GUIDELINES REGULATION

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the AB 2588 Air Toxics "Hot Spots" Emission Inventory Criteria and Guidelines (Guidelines) Regulation.

DATE: November 16, 2006

TIME: 9:00 a.m.

PLACE: California Public Utilities Commission
Auditorium
505 Van Ness Avenue
San Francisco, California 94102

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., November 16, 2006, and may continue at 8:30 a.m., November 17, 2006. This item may not be considered until November 17, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before November 16, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette, or computer disk. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected

Proposed amendment to title 17, California Code of Regulations (CCR), section 93300.5 and the AB 2588 Air Toxics "Hot Spots" Emission Inventory Criteria and Guidelines Report (including appendices), incorporated by reference in title 17, CCR, section 93300.5, last amended on May 15, 1997.

Background

The Air Toxics "Hot Spots" Information and Assessment Act ("Hot Spots" Act or Program; AB 2588; Stat. 1987, ch 1252; Health and Safety Code Sections 44300

through 44394) provided one of the fundamental building blocks of California's air toxics program. Subsequent legislation (SB 1731) in 1992 established a mechanism to reduce significant risks to health protective levels. The "Hot Spots" Act, as amended, requires the Board to compile and maintain a list of substances presenting a threat to public health. Facilities manufacturing, formulating, using, or releasing any of the listed substances must prepare an emissions inventory plan, implement the plan, and report to the air quality management district or air pollution control district (district). Facilities with higher prioritization scores, based on the emission inventory, must prepare, and submit to the district, a risk assessment in accordance with the guidelines established by the Office of Environmental Health Hazard Assessment (OEHHA). Upon approval of the health risk assessment, the operator of the facility must provide notice to exposed persons of the results of the health risk assessment. In addition, if the risk assessment identifies a significant risk, the facility operator must conduct an airborne toxic risk reduction audit, develop a plan to implement risk reduction measures, and implement the plan to reduce the risk below the significant risk level.

The Emission Inventory Criteria and Guidelines Report, including its appendices ("Guidelines Regulation," which is incorporated by reference in Title 17, California Code of Regulations, Section 93300.5) provides direction and criteria to facilities on how to compile and submit air toxics emission data required by the "Hot Spots" Program. The Guidelines Regulation describes those facilities that must comply, outlines procedures for preparing updates to the emission inventories and reporting requirements for specific classes of facilities whose emissions of all criteria pollutants did not exceed ten tons per year, and lists substances that must be inventoried.

The objective of the "Hot Spots" Act is to collect emission data on air toxics emitted in California so that nearby residents are notified of significant risks associated with those facilities posing unacceptable localized health risks, and that the facilities take steps to reduce those risk to health protective levels.

After the last update to the Guidelines Regulation in 1997, much has happened with respect to our understanding of toxic air pollution. Most notably, diesel particulate matter (diesel PM) was listed as a toxic air contaminant (TAC) by ARB in 1998 after an extensive review and evaluation of the scientific literature by OEHHA. Diesel PM is the most important TAC and contributes over 70 percent of the estimated risk from air toxics today. In September 2000, ARB approved the "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles" (Diesel Risk Reduction Plan) which initiated a multi-year effort to reduce exposures from diesel PM throughout the State. The Diesel Risk Reduction Plan established the goal of reducing diesel PM emissions and the associated cancer risk by 85 percent in 2020. Pursuant to the Diesel Risk Reduction Plan, ARB has adopted several air toxic control measures to reduce diesel PM, including the "Airborne Toxic control Measure for Stationary Compression Ignition Engines" (stationary engine ATCM), which was adopted in 2004. In addition, health effects values for some toxic air pollutants have been updated and risk assessment methodologies have been adopted by OEHHA.

Staff is proposing amendments to the Guidelines Regulation to reflect these developments described above and to harmonize to the extent possible, the “Hot Spots” Program with actions taken by ARB to address diesel engines.

Description of the Proposed Regulatory Action

The proposed amendments to the Guidelines Regulation incorporate four basic modifications to the Guidelines Regulation:

- Create new Section XI that specifies “Hot Spots” requirements for diesel engines that harmonize with the stationary engine ATCM and proposed amendments to the ATCM to incorporate requirements for in-use diesel engines used in agricultural operations;
- Augment the existing 3,000 gallon diesel fuel reporting threshold with an additional 20 engine hours per year total at a facility reporting threshold for diesel engines;
- Incorporate by reference the OEHHA Health Risk Assessment Guidelines and new health values, and update the list of substances; and
- Add definitions for diesel engines, emergency operations and other terms that are consistent with the ATCM for stationary diesel engines.

By aligning the “Hot Spots” reporting requirements for stationary diesel engines in Section XI of the Guidelines Regulation, we are leveraging the inventory reporting and risk reduction activities that are already occurring under the stationary engine ATCM. Including definitions related to diesel engines ensures clarity in the procedures and consistency with the existing ATCM for stationary diesel engines. Using the same definitions in multiple regulations simplifies compliance with requirements. In addition, by aligning the “Hot Spots” requirements with the proposed amendments to the stationary engine ATCM to incorporate requirements for in-use diesel engines used in agricultural engines, we are ensuring that operators of agricultural engines will not be subject to duplicative requirements and that the risk from all engines is adequately addressed.

The new reporting threshold is needed to ensure that emissions from diesel engines that result in potential exposures to nearby receptors are brought into the “Hot Spots” Program and are properly evaluated and addressed under the “Hot Spots” Program. The current 3,000 gallon diesel fuel reporting threshold is not health protective, given the cancer potency for diesel PM.

The proposed amendments also incorporate the OEHHA Health Risk Assessment Guidance Manual and health values, which have already gone through a public process and were adopted by OEHHA in 2003. The ARB staff is also proposing amendments to the Guidelines Regulation which will update the list of substances required to be reported from facilities subject to the program. Nine new substances

are being proposed for inclusion in the “Hot Spots” list of substances for which emissions must be quantified. Minor changes to existing substances are also being proposed, such as correction to Chemical Abstracts Service numbers, or correction of the chemical name.

In addition, there are several miscellaneous changes to the Guidelines Regulation, including definitions, reporting formats and procedures for screening health risk assessments, which align “Hot Spots” procedures with existing district program needs.

COMPARABLE FEDERAL REGULATIONS

The “Hot Spots” Act established an air quality program unique to the State of California. At this time, no equivalent federal requirement targets “Hot Spots” facilities. Accordingly, there is no conflict or duplication between the Guidelines Regulation and current federal regulations.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: “Initial Statement of Reasons for Proposed Rulemaking for the Proposed Amendments to the Emission Inventory Criteria and Guidelines Report for the Air Toxics “Hot Spots” Program.”

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB’s web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on **November 16, 2006**.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB’s web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Dale Shimp, Manager of the Environmental Justice Section, at (916) 324-7156 or by email at dshimp@arb.ca.gov, or Chris Halm, Air Pollution Specialist (916) 323-4865, chalm@arb.ca.gov.

Further, the agency representative and designated back-up contact person to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the

proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/hotspot06/hotspot06.htm

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed amendments are presented below.

The Executive Officer has determined that the proposed regulatory action will create costs, as defined in Government Code section 11346.5(a)(6), to State agencies. The costs to ARB to implement and administer the Air Toxics "Hot Spots" Program, including the amended Guidelines Regulation, will be recovered by fees authorized by H&SC section 44380 and sections 90700-90705 of title 17, CCR. Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings in the federal funding to any state agency or program, or impose other nondiscretionary costs or savings to local agencies, except as described below.

The Executive Officer has determined that the proposed amendments will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the "Hot Spots" 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 pay for the mandated Program (H&SC section 44380). These fees are intended to recover the costs of district implementation of the Air Toxics "Hot Spots" Program, including compliance with the proposed amendments.

The Executive Officer has determined that the proposed amendments will impose a mandate upon and create costs to some public agencies that manage entities such as publicly owned treatment works or correctional facilities. These facilities will be impacted by the proposed amendments to the extent they operate diesel engines and the risks are above district threshold levels. The costs of complying with the Regulation are not reimbursable within the meaning of section 6, article XIII B, California Constitution and Government Code sections 17500 et seq., because these facilities are authorized to levy service charges to cover the costs associated with the mandated Program.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on public and private facilities. ARB staff estimates that the cost for compliance with the proposed amendments to the Guidelines Regulation to be approximately

8.1 million dollars. This corresponds to about 2 million dollars annually for the years 2007-2010. This cost, which is based on 2006 dollars, represents the costs associated with compliance with the "Hot Spots" program such as inventory reporting, health risk assessment, State and district fees, and risk reduction.

Facilities will be potentially subject to "Hot Spots" State and district fees if their cancer risk exceeds 1 per million. Because the ATCM satisfies many of the "Hot Spots" requirements, the minimum State fee of \$35 will be assessed for facilities subject to "Hot Spots" with only diesel engines, like schools, hospitals, and amusement parks. Facilities already subject to "Hot Spots" fees are still subject to the same State fee rates in section 90700-90705, title 17, California Code of Regulations, which range from \$67 to \$6,363.

California businesses are affected by the proposed annual cost of compliance with the amendments to the extent that the implementation of the proposed amendments reduces their profitability. Overall, most affected businesses will be able to absorb the costs of the proposed amendments with no significant adverse impacts on their profitability. This finding is based on the staff's analysis of the estimated change in "return on owner's equity" (ROE). The analysis found that the overall change in ROE to be negligible. As the proposed amendments would not alter significantly the profitability of most businesses, staff does not expect a noticeable change in employment, business creation, elimination, or expansion, and business competitiveness in California.

Therefore, the Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other state, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying

out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, November 15, 2006**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal : <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require, that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, and 44342. This action is proposed to implement, interpret and make specific sections 41805.5, 44320, 44321, 44322, 44323, 44324, 44325, 44340, 44341, 44342, 44343, 44344, 44344.4, 44344.5, 44344.7, 44346, 44360, and 44365 of the Health and Safety Code. Section 6254.7 of the Government Code, and 17, CCR, Sections 90700-90705, Appendix A.

HEARING PROCEDURES

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 Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the

proposed regulatory action; in such event 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 ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990. The document will also be posted on the web site listed above.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: September 19, 2006