State of California
AIR RESOURCES BOARD

Resolution 93-48

July 8, 1993

Agenda Item No.: 93-8-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board ("ARB" or the "Board") to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature found in the Air Toxics "Hot Spots" Information and Assessment Act of 1987 ("the Act", Health and Safety Code section 44300 et seq.) that facilities manufacturing or using hazardous substances may be exposing nearby populations to toxic air releases on a routine basis and that it is in the public interest to ascertain the nature and quantity of hazardous releases from specific sources which may create air toxics "hot spots";

WHEREAS, the Act sets forth a program to develop air toxics emission inventories and to assess the risk to public health from exposure to these emissions;

WHEREAS, On November 14, 1988, effective December 15, 1988, the Board adopted the Fee Regulation set forth in section 90700 et seq. of Title 17 of the California Code of Regulations pursuant to Health and Safety Code section 44380(a), which assessed a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts ("districts"), and the Department of Health Services (hereinafter the Office of Environmental Health Hazard Assessment, or the "Office") to implement and administer the Act;

WHEREAS, the Board has amended the Fee Regulation each year since 1988 to reflect changes in the emission inventory, the sources subject to the Act's requirements, and the state and district costs of implementing the Act;

WHEREAS, Health and Safety Code section 44380(a) was amended in 1990 to require that the Board adopt a regulation which requires all districts, except for districts that have submitted specified information to the Board prior to April 1 of each year, to adopt rules which assess a fee upon the operator of every facility subject to the Act in order to recover the costs to the Districts, the Board and the Office to implement and administer the Act, and this Fee Regulation was amended accordingly on December 31, 1991, effective January 30, 1992;

WHEREAS, the amendments to the 1992-93 fee schedule approved by the Board on August 14, 1992 and adopted by the Board on May 7, 1993, set forth in section 90700 et seq. of Title 17 of the California Code of Regulations pursuant to Health and Safety Code section 44380(a), provided for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts, and the Office to implement and administer the Act in fiscal year 1992-93;

WHEREAS, Board staff, in consultation with the districts and the fee regulation committee originally convened pursuant to the 1987 Act, has developed amendments to the fee regulation for fiscal year 1993-94 which have been discussed with the public at seven consultation meetings;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, changes have been proposed to the originally noticed text of the regulations based on information presented by the Districts regarding costs of implementing the Act and facility program categories, among other things;

WHEREAS, based upon the information presented by the staff and the written and oral comments received prior to and at the hearing, the Board finds that:

1. The proposed amendments would allocate state costs among the districts based on facility program categories;

2. The Calaveras, Kern, Lassen, Placer, San Bernardino, Santa Barbara, and Tuolumne Air Pollution Control Districts (APCDs), the Great Basin and San Joaquin Valley Unified APCDs, and the Mendocino, Sacramento Metropolitan and South Coast Air Quality Management Districts (AQMDs) have requested that the Board adopt a fee schedule for them, and have submitted to the Air Resources Board the districts' program costs, approved by the district boards, prior to April 1, 1993, and that for these districts, the proposed amendments to the fees in the regulation are based on program costs approved by the district boards and on facility program categories; or on fees otherwise determined by the district to be reasonable for facilities designated as Survey or Industrywide;

3. The Amador, Butte, Colusa, El Dorado, Glenn, Imperial, Mariposa, Modoc, Northern Sonoma, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama and Ventura County APCDs, the Feather River, Monterey Bay Unified, and Yolo-Solano APCDs, and the Bay Area, Lake, North Coast Unified, and Northern Sierra AQMDs will be

adopting district Air Toxics Hot Spots Program fee rules for fiscal year 1993-94;

4. The revenues to be assessed pursuant to the proposed fee regulation are reasonably necessary to recover the anticipated program costs which will be incurred by the Board, the districts, and the Office to implement and administer the Act's provisions in fiscal year 1993-1994;

5. On the basis of a financial analysis conducted to indicate the economic impacts on affected facilities resulting from the fees proposed in this regulation, the staff has determined that the proposed amendments may have a significant adverse economic impact on businesses, or on private persons directly affected by the regulation; and

6. Because the Board is sensitive to current adverse economic conditions, we are proposing a reduction from the Governor's proposed budget for the Air Toxics Hot Spots Program for fiscal year 1993-94 of $457,000; and

7. 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.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 90700-90705, Title 17, California Code of Regulations including the appendix referenced therein, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to adopt sections 90700-90705, Title 17, California Code of Regulations after making them available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to revise the facility program categories as necessary to reflect needed revisions brought to the Board's attention through July 8 only, and to accept no further revisions after that date.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to provide a 15-day period in which the public may review and comment on the modifications which the Board has approved to the original proposal.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to direct the Air Resources Board to work with the Office of Environmental

Health Hazard Assessment on the Five Year Program Plan, and report to the Board on the status of the Plan at the next year's hearing to consider amendments to the Fee Regulation.

I hereby certify that the above is a true and correct copy of Resolution 93-48, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Board Secretary