RULE 308. FEES FOR AIR TOXICS "HOT SPOTS" PROGRAM

Adopted 2/9/93; Revised 1/22/97)

A. APPLICABILITY This Rule shall apply to any stationary source which is subject to the requirements of the Air Toxics "Hot Spots" Information and Assessment Act, and:

1. Manufactures, formulates, uses, or releases a listed substance or any other substance which reacts to form any listed substance and emits ten (10) tons per year (tpy) or greater of any criteria pollutant or is listed in any current District toxics use or toxics air emission survey, inventory, or report, or

2. Manufactures, formulates, uses, or releases a listed substance or any other substance which reacts to form any listed substance and emits less than ten (10) tpy of any criteria pollutant and is included in any class listed in Appendix E to the latest version of the Emissions Inventory Criteria and Guidelines Report, as incorporated by reference in Section 93300.5 of Title 17 of the California Code of Regulations.

B. DEFINITIONS

1. "APCO": The Air Pollution Control Officer or his/her designee.

2. "Approved Toxic Emissions Inventory": An inventory of toxic pollutants completed for the purpose of estimating toxic emissions from a facility. The inventory must be approved by the Air Pollution Control District. In the event that a recent toxic emissions inventory report is not available from the owner the District may, at its discretion, prepare a toxic emissions inventory report based on the best available data to the District for the purposes of assigning a prioritization score.

3. "Criteria Pollutant": Total organic compounds or gases, particulate matter, nitrogen oxides, or sulfur oxides.

4. "Complexity": The determination of complexity of a facility is made by the District. It is a function of the number of processes at the facility, the number of devices that make up each process, the degree of difficulty in estimating facility emissions, and the degree of difficulty in modeling toxic releases. The greater the number of processes or devices and the more time and effort required to verify toxic emissions, the greater the complexity of a facility.

5. "Economic Poison": Pursuant to Section 12753 of the 1996 California Food and Agricultural Code (CFAC), Title 3, Chapter 2, Article 1, any spray adjuvant or any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in Section 12754.5 (CFAC), which may infest or be detrimental to vegetation, man, animals, or households, or be

present in any agricultural or nonagricultural environment whatsoever. A spray adjuvant is defined as any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, which is intended to be used with another economic poison as an aid to the application or effect of the other economic poison, and sold in a package that is separate from that of the economic poison other than a spray adjuvant with which it is to be used.

6. "Listed Substance": Any substance listed by the Air Resources Board pursuant to Health and Safety Code Section 44321 and contained in Appendix A of the Emissions Inventory Criteria and Guidelines Report, as incorporated by reference in Section 93300.5, Title 17 of the California Code of Regulations.

7. "Modeling": A mathematical methodology used to estimate the concentration of toxic emissions released from a facility. Models shall be limited to those approved by the Environmental Protection Agency or Air Resources Board.

8. "Owner": For the purposes of this Rule the owner and/or operator of a facility or business subject to this Rule. "Owner" or "operator" may be used interchangeably.

9. "Prioritization Score": A facility's numerical score for cancer health effects or non-cancer health effects, as determined by the District pursuant to the prioritization and categorization methodology adopted by the District Board by resolution on November 20, 1990. The methodology is referred to as the dispersion adjustment procedure and is consistent with the July 1990 version of the Facility Prioritization Guidelines prepared by the California Air Pollution Control Officers Association and approved by the Air Resources Board. The prioritization score shall be based on the most recent complete, District-approved toxic emissions inventory report.

10. "Process": An emission unit such as, but not limited to, coating operations; plating; printing; tankage; internal combustion engines for pumps, co-generation, or generators; marine vessel loading and unloading; combustion units including boilers and heaters; oil extraction equipment; distillation; and fugitive emissions from valves and flanges.

C. EXEMPTIONS

1. Any facility with a prioritization score equal to or less than ten (10) shall be exempt from State fees, as described in Section D.1.

2. Any facility whose District-approved health risk assessment shows a cancer risk of less than one in a million and a health hazard index of less than 0.1, regardless of any prioritization score determined prior to the health risk assessment, shall be exempt from State fees, as described in Section D.1.

3. Any facility where economic poisons are employed in their pesticidal use is not subject to Section D.1 of this Rule. Pesticidal use does not include the manufacture or formulation of pesticides.

D. REQUIREMENTS

1. To cover annual State costs for administering the Air Toxic "Hot Spots" (ATHS) program:

a. The operator of each stationary source which meets the criteria of Section A and with a facility cancer or non-cancer prioritization score of greater than ten (10) shall pay a State-mandated fee proportionate to the extent of the releases identified in the toxics emissions inventory and the level of priority assigned pursuant to Section 44360 of the Health and Safety Code, as specified in Title 17, California Code of Regulations, Sections 90700 to 90705.

b. The requirement to pay State fees shall be based on the most recent District-approved toxic emissions inventory report. A prioritization score determined after a health risk assessment has been approved may supersede the results of the health risk assessment, if the prioritization score is based on a more recent toxic emissions inventory, updated release characteristics, or a re-determined distance to the nearest receptor, following the receipt of the health risk assessment by the District.

c. A facility that is subject to this Rule for any part of the fiscal year shall be subject to State fees for the entire fiscal year. State fees shall not be apportioned for any part of a fiscal year.

d. A facility shall be assessed State fees based on the highest priority score assigned to the facility for the fiscal year. The fiscal year shall be that year stated in the invoice from the Air Resources Board.

e. The magnitude of the State fee shall be based solely on the adjusted value of the annual invoice from the Air Resources Board for the Air Toxics Hot Spots (ATHS) Program. The adjusted annual invoice shall equal the sum of the amount invoiced by the Air Resources Board for that fiscal year plus any balance remaining from previous years minus any over payment from previous years.

f. State fees shall be apportioned to the facility according to the category to which the facility is assigned by the District. The category assignment shall be based on the degree of complexity for that facility and the facility prioritization score or the results of the health risk assessment.

g. Unprioritized and industry-wide sources subject to this Rule shall pay State fees in the amount specified by the Air Resources Board, as defined by the applicable version of the Air Toxics "Hot Spots" Fee Regulation.

2. District's costs for administering toxics-related programs including the ATHS program are covered by initial permit and permit renewal fees, as specified in District Rule 302, Schedule of Fees. Sources subject to the ATHS program but not under District permit shall pay a fee according to Subsection D.2.b:

   a. Each permitted facility shall be assessed a portion of the initial Permit to Operate Fee and the renewal fee, as described in District Rule 302. The amount shall be determined by the APCO and shall be based on District costs for implementing toxics-related programs including the ATHS program.

   b. The operator of each stationary source which meets the criteria of Subsection A and is not under District permit shall pay a fee of up to one hundred dollars ($100.00) to cover District costs for implementing toxics related programs including the ATHS program. The amount of this fee shall be determined by the APCO and be based on the number of District hours required to implement the non-permitted subgroup's portion of the program.

E. COMPLIANCE SCHEDULE

1. The District shall notify and assess the operator of each stationary source subject to Section A of this Rule in writing of the fee due. The operator shall remit the fee to the District within thirty (30) calendar days of the date of the fee assessment notice.

2. If the fees are not paid within thirty (30) calendar days after the statement of the fee has been issued, the APCO shall promptly notify the owner of the past due fee by certified mail (second notice). If the past due fee is not paid within thirty (30) calendar days after the second notice has been issued, the District shall assess an additional administrative civil penalty of not more than one hundred percent (100%) of the assessed fee, but in an amount sufficient in its determination, to pay the District's additional expenses incurred by the non-compliance. The APCO shall issue to the owner a statement which reflects the increased fee and send that statement to said owner by certified mail. If an owner fails to pay within sixty (60) days after issuance of the most recent statement, the District may initiate permit revocation proceedings.

3. If any permit is revoked, it shall be reinstated only upon full payment of the overdue fee plus any late penalty, and a reinstatement fee of a minimum of one hundred dollars ($100.00) to cover the administrative costs of reinstating the permit. The reinstatement fee shall be based on the total number of hours of District time spent multiplied by the current District hourly rate.