

State of California
AIR RESOURCES BOARD

Resolution 81-2

May 21, 1981

Agenda Item No. 81-10-1

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "Board") to adopt standards, rules and regulations necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Section 41512 of the Health and Safety Code has authorized the Board to establish by regulation a schedule of fees to cover the cost of securing samples of air pollution emissions as authorized by Section 41510 of the Health and Safety Code;

WHEREAS, the Board has adopted such a schedule and related provisions in Sections 91200-91206 of Title 17, California Administrative Code;

WHEREAS, Assembly Bill 3067 (Stats. 1980 Ch. 1283) amends Section 41512 of the Health and Safety Code to authorize imposition of source testing fees only for tests conducted to determine compliance with permit conditions or state or local laws or regulations relating to air pollution, and to require the Board to adopt procedures by which an operator may request that compliance testing be conducted by an independent testing service, which request may be denied by the Board for good cause;

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

WHEREAS, the Board finds that it is necessary to amend Sections 91200-91206, and adopt Sections 91207-91220 of Title 17, California Administrative Code, to delete authorization of imposition fees for tests conducted for purposes other than determining compliance; to redefine "source" and define "responsible party"; to update the fee schedule to reflect increased costs and the need for new tests; to clarify the existing regulations and make them more concise and non-sexist; and to provide a framework for owners or operators to request compliance testing by independent testers, Board evaluation of such requests, and the conduct and followup of tests by independent testers;

WHEREAS, the Board finds that for its enforcement program to be effective, all compliance testing, including tests by independent testers, must be conducted in a manner in which the integrity and accuracy of the tests are assured, the Board has the ability to conduct tests without advance notice to the operator and to respond quickly in unforeseeable situations, and the test results are useable, particularly in subsequent court proceedings which may arise;


WHEREAS, the Board finds that the regulations set forth in Attachment A hereto would have no substantial adverse environmental impact, and therefore no alternatives and/or mitigation measures are required; and

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.

NOW, THEREFORE BE IT RESOLVED, that the Board hereby amends Section 91200 through 91206 and adopts Sections 91207 through 91220 of Article 2, Subchapter 5, Chapter 1, Part III of Title 17, California Administrative Code, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED, that the Executive Officer is directed to evaluate the practical effects of the amended regulations, and in particular the provisions relating to good cause and conflict of interest, and to recommend to the Board any revisions which may be deemed appropriate.

I certify that the above is a true and correct copy of Resolution 81-2 as adopted by the Air Resources Board


Sally Rump, Board Secretary

Repeal Subchapter 5, Article 2 in Title 17, California Administrative Code.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

Adopt Subchapter 5, Article 2, as amended.

Subchapter 5. Emission Data, Sampling, and Credentials for Entry

Article 2. Source Testing Fees

91200. Scope and Policy; Definition. (a) The fee schedules in this Subchapter shall not supersede or preempt any rule or regulation of any air pollution control district governing fees for source testing.

(b) ~~The fee schedules in this Subchapter shall be effective statewide.~~ The following definitions apply for the purposes of this Subchapter only.

(c) (1) "Source" means (i) any permit unit, article, machine, equipment or other contrivance which may cause the issuance of air contaminants; or (ii) any substance, such as fuel or an architectural coating, the content, characteristics, manufacture, sale, distribution or use of which is restricted by any State or local law, rule, regulation or order relating to air pollution.

(2) "Responsible party" means (i) in reference to sources defined in Subsection (b)(1)(i) of this Section, the owner, operator, or user of a source; or (ii) in reference to sources defined in Subsection (b)(1)(ii) of this Section, the manufacturer who produced the substance in its entirety, the user of the substance, or any seller or offeror for sale of the substance.

(3) "Independent tester" means a person, other than an employee of the State Board, who engages in the testing of sources to determine compliance with State or local laws or regulations relating to air pollution.

(4) "Executive Officer" means the Executive Officer of the State Board or his or her authorized representative.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91201. Source Testing Fee Schedule. (a) Whenever the Executive Officer ~~of the State Board or his or her authorized representative~~ finds that it is necessary to determine ~~the extent and amount of emissions from~~ compliance of any air-pollution-emission source with permit conditions or with any State or local law, order, rule, or regulation relating to air pollution, including confirmation of the reliability, accuracy and precision of any in-stack monitoring equipment, ~~said officer or representative~~ he or she may require the testing of such source ~~by the collection of emissions samples and the analysis of such samples~~ by qualified personnel of the State Board, or by an independent contractor to the State Board, or by an independent tester specified by the responsible party upon approval by the Executive Officer.

(b) For testing conducted by the State Board's personnel or an independent contractor to the Board, ~~the responsible party operator or owner of the source~~

(3) "Independent tester" means a person, other than an employee of the State Board, who engages in the testing of sources to determine compliance with State or local laws or regulations relating to air pollution.

(4) "Executive Officer" means the Executive Officer of the State Board or his or her authorized representative.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91201. Source Testing Fee Schedule. (a) Whenever the Executive Officer ~~of the State Board or his or her authorized representative~~ finds that it is necessary to determine ~~the extent and amount of emissions from~~ compliance of any air-pollution-emission source with permit conditions or with any State or local law, order, rule, or regulation relating to air pollution, including confirmation of the reliability, accuracy and precision of any in-stack monitoring equipment, ~~said officer or representative~~ he or she may require the testing of such source ~~by the collection of emissions samples and the analysis of such samples~~ by qualified personnel of the State Board, or by an independent contractor to the State Board, or by an independent tester specified by the responsible party upon approval by the Executive Officer.

(b) For testing conducted by the State Board's personnel or an independent contractor to the Board, ~~the responsible party operator or owner of the source~~

shall pay a fee in accordance with the following schedule to cover the cost of planning, preliminary evaluation, sampling, sample analysis, calculations, and report preparation with respect to samples of emissions secured from the source. The fees listed in the schedule shall be the maximum fees and shall be reduced by the Executive Officer if the actual cost to conduct a specific test is less. Fees for any compliance test not listed in the schedule shall be determined by the Executive Officer based on the cost to conduct the test.

Estimated costs to perform source tests and other special tests.¹

Type-of-Test	Fee
Source-Tests	
Basic-test ² -and Particulate-Matter-Test	\$1,155.00
Sulfur-Dioxide-Test	175.00/sample
Sulfuric-Acid-Mist-(including-sulfur trioxide)-and-Sulfur-Dioxide-Test	120.00/sample
Oxides-of-Nitrogen-Test ²	150.00/sample
Hydrogen-Sulfide-Test ²	80.00/sample
Fluorides-Test	70.00/sample
Carbon-Monoxide-Test ³	305.00/sample
Total-Hydrocarbon-Test ³	50.00/sample
Continuous-24-hour-Analyzer-Test	50.00/sample
Continuous-Four-hour-Analyzer-Test	1,110.00/day
Gas-Chromatographic-Analysis-of Unknown-Pollutants ³	185.00/test
Sulfur-Content-of-Fuel-Test ³	270.00/sample
	25.00/test
Special-Tests	
Reid-Vapor-Pressure-Test	35.00/test
Vinyl-Chloride-Monitoring-Test	25.00/sample
Visible-Emission-Evaluation-Test	330.00/evaluation
Particulate-Fallout-Testing	75.00/sample
Floating-Roof-Tank-Inspection	145.00/inspection
Vapor-Recovery-System-Inspection	55.00-1,760.00/ inspection
Valve-and-Flange-Leak-Test	1.15/test

- 1:---Estimated fees for any test not listed above shall be determined by the Executive Officer.
- 2:---The basic test fee applies only to source test, total source test fees consist of the basic test fee plus the fee for each of the specific tests performed.
- 3:---If this test is not conducted in conjunction with the activities which comprise the basic test, the basic test fee will not be charged, however, additional fees to cover the estimated costs of planning, preliminary evaluation, sampling, sample analysis, calculations and report preparation for such tests will be charged.

<u>Type of Test</u>	<u>Fee</u>
<u>Continuous Analyzer Gaseous Emissions Test with Van</u>	<u>\$1,620.00 plus \$55.00/hour</u>
<u>Non-continuous Emission Testing¹</u>	<u>1,230.00 plus specific sample fee listed below</u>
<u>Particulate Matter Test</u>	<u>230.00/sample</u>
<u>Sulfur Dioxide Test</u>	<u>145.00/sample</u>
<u>Sulfuric Acid Mist (including sulfur trioxide) and Sulfur Dioxide Test</u>	<u>205.00/sample</u>
<u>Oxides of Nitrogen Test</u>	<u>90.00/sample</u>
<u>Hydrogen Sulfide Test</u>	<u>120.00/sample</u>
<u>Fluorides Test</u>	<u>400.00/sample</u>
<u>Carbon Monoxide Test</u>	<u>70.00/sample</u>
<u>Total Hydrocarbon Test</u>	<u>60.00/sample</u>
<u>Gas Chromatographic Analysis of Unknown Pollutants</u>	<u>110.00/sample</u>
<u>Vinyl Chloride Test</u>	<u>100.00/sample</u>
<u>Reid Vapor Pressure Test</u>	<u>45.00/test</u>
<u>Ambient Vinyl Chloride Test</u>	<u>100.00/sample</u>
<u>Visible Emission Evaluation Test</u>	<u>450.00/evaluation</u>
<u>Particulate Fallout Testing</u>	<u>75.00/sample</u>
<u>Floating Roof Tank Inspection</u>	<u>185.00/inspection</u>
<u>Vapor Recovery System Inspection</u>	<u>70.00-2,170.00/inspection</u>
<u>Valve and Flange Leak Test</u>	<u>1.75/test</u>
<u>Laboratory Fuel Analysis</u>	
<u>Carbon, Hydrogen, Nitrogen and Sulfur</u>	<u>30.00/sample</u>
<u>Ash</u>	<u>75.00/sample</u>
<u>Density</u>	<u>60.00/sample</u>
<u>Heat Content</u>	<u>180.00/sample</u>
<u>Water</u>	<u>75.00/sample</u>
<u>Asphaltenes</u>	<u>75.00/sample</u>
<u>Distillation</u>	<u>50.00/sample</u>

1. --- Estimated fees for any test not listed above shall be determined by the Executive Officer.
2. --- The basic test fee applies only to source test, total source test fees consist of the basic test fee plus the fee for each of the specific tests performed.
3. --- If this test is not conducted in conjunction with the activities which comprise the basic test, the basic test fee will not be charged, however, additional fees to cover the estimated costs of planning, preliminary evaluation, sampling, sample analysis, calculations and report preparation for such tests will be charged.

<u>Type of Test</u>	<u>Fee</u>
<u>Continuous Analyzer Gaseous Emissions Test with Van</u>	<u>\$1,620.00 plus \$55.00/hour</u>
<u>Non-continuous Emission Testing¹</u>	<u>1,230.00 plus specific sample fee listed below</u>
<u>Particulate Matter Test</u>	<u>230.00/sample</u>
<u>Sulfur Dioxide Test</u>	<u>145.00/sample</u>
<u>Sulfuric Acid Mist (including sulfur trioxide) and Sulfur Dioxide Test</u>	<u>205.00/sample</u>
<u>Oxides of Nitrogen Test</u>	<u>90.00/sample</u>
<u>Hydrogen Sulfide Test</u>	<u>120.00/sample</u>
<u>Fluorides Test</u>	<u>400.00/sample</u>
<u>Carbon Monoxide Test</u>	<u>70.00/sample</u>
<u>Total Hydrocarbon Test</u>	<u>60.00/sample</u>
<u>Gas Chromatographic Analysis of Unknown Pollutants</u>	<u>110.00/sample</u>
<u>Vinyl Chloride Test</u>	<u>100.00/sample</u>
<u>Reid Vapor Pressure Test</u>	<u>45.00/test</u>
<u>Ambient Vinyl Chloride Test</u>	<u>100.00/sample</u>
<u>Visible Emission Evaluation Test</u>	<u>450.00/evaluation</u>
<u>Particulate Fallout Testing</u>	<u>75.00/sample</u>
<u>Floating Roof Tank Inspection</u>	<u>185.00/inspection</u>
<u>Vapor Recovery System Inspection</u>	<u>70.00-2,170.00/inspection</u>
<u>Valve and Flange Leak Test</u>	<u>1.75/test</u>
<u>Laboratory Fuel Analysis</u>	
<u>Carbon, Hydrogen, Nitrogen and Sulfur</u>	<u>30.00/sample</u>
<u>Ash</u>	<u>75.00/sample</u>
<u>Density</u>	<u>60.00/sample</u>
<u>Heat Content</u>	<u>180.00/sample</u>
<u>Water</u>	<u>75.00/sample</u>
<u>Asphaltenes</u>	<u>75.00/sample</u>
<u>Distillation</u>	<u>50.00/sample</u>

<u>Type of Test</u>	<u>Fee</u>
<u>Metals</u>	\$ <u>295.00/sample</u>
<u>Bromine Number</u>	<u>50.00/sample</u>
<u>Lead</u>	<u>15.00/sample</u>

Other Laboratory Analysis

<u>Water, Volatile Organic Compounds and Density (paints)</u>	<u>50.00/sample</u>
<u>Methane</u>	<u>40.00/sample</u>
<u>Total Hydrocarbon</u>	<u>30.00/sample</u>
<u>Hydrocarbons (with one to nine carbons)</u>	<u>55.00/sample</u>
<u>Molecular Weight Determination of Vapor Hydrocarbons</u>	<u>75.00/sample</u>
<u>Molecular Weight Determination of Liquid Hydrocarbons</u>	<u>50.00/sample</u>
<u>Hydrogen Sulfide</u>	<u>30.00/sample</u>
<u>Percent Water</u>	<u>30.00/sample</u>
<u>Asbestos (air filter sample)</u>	<u>444.00/sample</u>
<u>Particle Size Distribution</u>	
<u>Optical Microscopy</u>	<u>148.00/sample</u>
<u>Particle Size Distribution</u>	
<u>Electron Microscopy</u>	<u>296.00/sample</u>

Notes:

1. Source test fees may also include additional cost of laboratory analysis as required.

~~(c)--Where testing is conducted by the owner or operator on behalf of the State Board the fee shall be limited to the actual cost of observation, evaluation and reporting of the test and test data by the Executive Officer or his or her authorized representative, and shall not exceed \$18.25.~~

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91202. Additional Testing. (a) Where test results indicate that a source is in compliance with permit conditions or with any all State or and-federal local laws, order, rule or and regulations relating to air pollution,

the responsible party operator-or-owner-of-the-source shall be assessed the applicable fees in Section 91201 only once per each 12-month period. This limitation shall not restrict the State Board from requiring conducting additional testing at its own expense. The Executive Officer may assess fees for multiple testing, or for multiple samples, where the same is necessary to determine compliance. ~~or-quantify emissions-for-inventory-purposes.~~

(b) If the test results indicate that the specific source tested is not in compliance with permit conditions or with any ~~all~~ State and or local federal laws, order, rule, or regulation relating to air pollution, and-regulations, the Executive Officer ~~or-his-or-her-authorized-representative~~ may require such additional source tests as may be necessary and may also exclude use of an independent tester for such additional tests. In such event, the owner-or-operator responsible party shall pay for each additional test in accordance with the schedule of fees set forth in Section 91201 until compliance is achieved and confirmed.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91203. Fee Payment. (a) After completion of the ~~tests,~~ testing conducted by the State Board directly or by a contractor to the State Board, the ~~owner-or-operator~~ responsible party shall be notified by the Accounting Office of the State Board, in writing, of the fees to be paid for such tests and of preliminary results. ~~or-for~~

the responsible party operator-or-owner-of-the-source shall be assessed the applicable fees in Section 91201 only once per each 12-month period. This limitation shall not restrict the State Board from requiring conducting additional testing at its own expense. The Executive Officer may assess fees for multiple testing, or for multiple samples, where the same is necessary to determine compliance. or-quantify emissions-for-inventory-purposes.

(b) If the test results indicate that the specific source tested is not in compliance with permit conditions or with any all State and or local federal laws, order, rule, or regulation relating to air pollution, and-regulations, the Executive Officer or-his-or-her-authorized-representative may require such additional source tests as may be necessary and may also exclude use of an independent tester for such additional tests. In such event, the owner-or-operator responsible party shall pay for each additional test in accordance with the schedule of fees set forth in Section 91201 until compliance is achieved and confirmed.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91203. Fee Payment. (a) After completion of the tests, testing conducted by the State Board directly or by a contractor to the State Board, the owner-or-operator responsible party shall be notified by the Accounting Office of the State Board, in writing, of the fees to be paid for such tests and of preliminary results. or-fer

~~the-observation-and-evaluation-of-such-tests:~~ The failure to pay any such fee within 30 days of the receipt of the notice shall constitute grounds for the revocation or suspension of the permit to operate the equipment tested. The Executive Officer ~~or-his-or-her-authorized-representative~~ may request the district air pollution control officer to revoke or suspend any permit until the required fees are paid, in accordance with Health and Safety Code Sections 42304-42309.

(b) ~~Upon-payment-of-the-required-fees,~~ The responsible party owner-or-operator-of-the-source shall be entitled to receive a copy of the source test results, if the testing was conducted by the State Board or an independent contractor to the State Board, as soon as such test results have been verified and finalized.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91204. Financial Hardship Exemption. (a) The responsible party owner-or-operator-of-a-source may petition the Executive Officer ~~of-the-Board,~~ no later than 30 days after receipt of the fee notice described in Section 91203, to be excused from payment of fees, or a portion of such fees, on the grounds that payment of such fees would cause a demonstrable financial hardship.

(b) For the purposes of this Section, a demonstrable financial hardship shall consist of such evidence as is capable of demonstrating that full payment will prevent the responsible party owner-or-operator-of-the-source

from meeting other financial obligations as they come due, or will cause the taking of property or the practical closing and eliminating of a lawful business.

(c) Based on the evidence provided, the Executive Officer may exempt the responsible party owner-or-operator of-a-source from payment of all or a portion of the fees otherwise required under Section 91203.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

~~91205:--Technology-Testing-Exemption:--The-Executive Officer-may-exempt-the-owner-or-operator-of-a-source from-payment-of-all-or-a-portion-of-the-fees-otherwise due-pursuant-to-this-Subchapter-where-the-Executive Officer-determines-that-testing-should-be-conducted exclusively-for-the-purpose-of-determining-the-effectiveness or-reliability-of-a-specific-control-method,-technology or-device.~~

~~NOTE:--Authority-cited:--§§-39601-and-41512,-Health and-Safety-Code.--Reference:--§§-41510-and 41512,-Health-and-Safety-Code.~~

91206 91205. Small Business. (a) A small business shall not be required to pay any fees otherwise applicable under Section 91201. A "small business," for the purposes of this Section, shall be as defined in Subsection (1), Section 1896, Title 2 of the California Administrative Code.

(b) Any owner-or-operator responsible party who desires to establish eligibility for non-payment of fees pursuant to Subsection (a) shall do so by filing a

from meeting other financial obligations as they come due, or will cause the taking of property or the practical closing and eliminating of a lawful business.

(c) Based on the evidence provided, the Executive Officer may exempt the responsible party owner-or-operator of-a-source from payment of all or a portion of the fees otherwise required under Section 91203.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

~~91205:--Technology-Testing-Exemption:--The-Executive Officer-may-exempt-the-owner-or-operator-of-a-source from-payment-of-all-or-a-portion-of-the-fees-otherwise due-pursuant-to-this-Subchapter-where-the-Executive Officer-determines-that-testing-should-be-conducted exclusively-for-the-purpose-of-determining-the-effectiveness or-reliability-of-a-specific-control-method, technology or-device.~~

~~NOTE:--Authority-cited:--§§-39601-and-41512, Health and-Safety-Code;--Reference:--§§-41510-and 41512, Health-and-Safety-Code.~~

91206 91205. Small Business. (a) A small business shall not be required to pay any fees otherwise applicable under Section 91201. A "small business," for the purposes of this Section, shall be as defined in Subsection (1), Section 1896, Title 2 of the California Administrative Code.

(b) Any owner-or-operator responsible party who desires to establish eligibility for non-payment of fees pursuant to Subsection (a) shall do so by filing a

written statement, under penalty of perjury, that the business is a small business, as defined.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91206. Request for Independent Tester. (a) By August 1, 1981, or by June 1 of any year thereafter, any responsible party who seeks to have compliance testing performed by an independent tester for the following fiscal year shall inform the Executive Officer in writing of this desire. If no such request is made, then compliance testing for the fiscal year may be conducted by the Executive Officer or by an independent contractor to the State Board.

(b) All requests for an independent tester shall include the name(s) of the independent testers, the type of source or sources to be tested, the type of test or tests to be performed, and a statement by the responsible party that it will comply with the requirements of Sections 91208-91212 of this Subchapter and that the designated independent tester has agreed to perform any necessary source testing.

(c) Independent testers shall in all cases be subject to approval by the Executive Officer.

(d) At any time a responsible party which has previously designated an approved independent tester pursuant to Subsection (a) of this Section may apply for the substitution, addition or removal of a designation of an independent tester. No such change shall be effective for at least 60 days following the application.

(e) The Executive Officer may compliance test any source and charge a fee to the responsible party for the cost of such test, notwithstanding a request for an independent tester, if any of the following conditions prevail:

(1) The responsible party has not designated an independent tester to the Executive Officer by August 1, 1981 or by June 1 for any year thereafter.

(2) The Executive Officer has found the designated independent tester(s) non-approvable.

(3) The designated independent tester has not timely submitted information requested by the Executive Officer pursuant to Section 91207(a).

(4) A violation has been found by the most recent source test conducted within a year prior to the proposed current source test; provided, however, that such restriction shall only apply for the specific source found in violation.

(5) The Executive Officer has determined that other good cause exists to deny the request.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91207. Approval of Independent Testers. (a)

Independent testers may be approved for performing any of the tests listed in Section 91201 of this Subchapter or such other tests as deemed appropriate by the Executive Officer to determine compliance of a source with applicable laws and rules. Such approval can be accomplished by a

(e) The Executive Officer may compliance test any source and charge a fee to the responsible party for the cost of such test, notwithstanding a request for an independent tester, if any of the following conditions prevail:

(1) The responsible party has not designated an independent tester to the Executive Officer by August 1, 1981 or by June 1 for any year thereafter.

(2) The Executive Officer has found the designated independent tester(s) non-approvable.

(3) The designated independent tester has not timely submitted information requested by the Executive Officer pursuant to Section 91207(a).

(4) A violation has been found by the most recent source test conducted within a year prior to the proposed current source test; provided, however, that such restriction shall only apply for the specific source found in violation.

(5) The Executive Officer has determined that other good cause exists to deny the request.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91207. Approval of Independent Testers. (a)

Independent testers may be approved for performing any of the tests listed in Section 91201 of this Subchapter or such other tests as deemed appropriate by the Executive Officer to determine compliance of a source with applicable laws and rules. Such approval can be accomplished by a

potential tester's writing the Executive Officer and specifying the test(s) for which approval is sought. The potential tester shall then provide any necessary data requested by the Executive Officer which can substantiate the potential tester's qualifications for performing the noted test(s).

(b) Approval of an independent tester may be withdrawn at any time if the approved tester fails to comply with the requirements specified in Sections 91215-91218 of this Subchapter or fails to provide the type and quality of data required by the Executive Officer.

(c) Upon disapproval or withdrawal of approval of an independent tester, the Executive Officer shall send by certified mail a written statement of the reasons for such action to the independent tester, and to any responsible party requesting or using such tester.

(d) An independent tester may request reconsideration of the decision of the Executive Officer to disapprove or withdraw approval of such tester. The request must be received by the Executive Officer within 30 days after mailing the written statement described in Subsection (c), and shall contain all evidence the independent tester asserts justifies reconsideration. The Executive Officer may rescind the disapproval or withdrawal if he or she determines that the independent tester satisfies the applicable requirements of this Subchapter. A written statement of the reasons for the Executive Officer's decision shall

be transmitted in accordance with Subsection (c) of this Section.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91208. Conflict of Interest. (a) An independent tester shall not be allowed to conduct a compliance source test pursuant to this Subchapter if:

(1) It is owned in whole or part by the responsible party of the source; or

(2) In the 12 months preceeding the test, the independent tester has received gross income from the responsible party, other than as a result of source test contracts entered into pursuant to this Subchapter, in excess of \$100,000, or in excess of ten percent of the independent tester's gross annualized revenues; provided that for the purposes of this Subsection, "independent tester" and "responsible party" shall include any entity under common ownership with such tester or party; or

(3) The independent tester manufactured or installed any emission control device or monitor utilized in connection with the specific source to be tested.

(b) An independent tester shall not utilize in a compliance test pursuant to this Subchapter any employee or agent who holds a direct or indirect investment in the responsible party of the source of \$1,000 or more, or who has directly received in the previous 12 months income in excess of \$250 from the responsible party of the source,

be transmitted in accordance with Subsection (c) of this Section.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91208. Conflict of Interest. (a) An independent tester shall not be allowed to conduct a compliance source test pursuant to this Subchapter if:

(1) It is owned in whole or part by the responsible party of the source; or

(2) In the 12 months preceeding the test, the independent tester has received gross income from the responsible party, other than as a result of source test contracts entered into pursuant to this Subchapter, in excess of \$100,000, or in excess of ten percent of the independent tester's gross annualized revenues; provided that for the purposes of this Subsection, "independent tester" and "responsible party" shall include any entity under common ownership with such tester or party; or

(3) The independent tester manufactured or installed any emission control device or monitor utilized in connection with the specific source to be tested.

(b) An independent tester shall not utilize in a compliance test pursuant to this Subchapter any employee or agent who holds a direct or indirect investment in the responsible party of the source of \$1,000 or more, or who has directly received in the previous 12 months income in excess of \$250 from the responsible party of the source,

or who is a director, officer, partner, employee, trustee, or holds any position of management in the responsible party of the source.

(c) If the Executive Officer determines that a compliance source test administered pursuant to this Subchapter was not conducted in accordance with the provisions of this Section, he or she may invalidate the results of the test and the tester may be subject to disqualification from further testing on the Board's behalf.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91209. Pretest Inspection Right of Entry. The responsible party which has requested testing by an independent tester must allow entry to both authorized representatives of the independent tester and authorized representatives of the Executive Officer for the purpose of conducting a pretest inspection.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91210. Right of Entry During Independent Testing. When a responsible party requests to be tested by an independent tester, the responsible party shall grant entry to the actual test site, without prior notice, to both the tester's authorized personnel and the Executive Officer's authorized personnel.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91211. Oversight. All testing requested by the Executive Officer and conducted by an independent tester may be observed by an authorized representative of the Executive Officer.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91212. Audit Testing of Independent Testers. Without prior notice the responsible party must allow personnel and equipment authorized by the Executive Officer entry for the purpose of testing the capability of the independent tester during the performance of a test.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91213. Availability of Independent Tester. The responsible party must notify the designated independent tester that he or she may be called upon to perform testing with at least 24-hours advance notice from the Executive Officer. If the tester cannot respond within the required time, then the Executive Officer may conduct the required testing. In such cases the responsible party will be charged for the testing in accordance with Section 91201, Title 17, California Administrative Code.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91214. Fee and Payment for Testing by Independent Testers. Fees and payment for testing conducted by independent testers shall be arranged by agreement between the

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NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

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NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

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NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91214. Fee and Payment for Testing by Independent Testers. Fees and payment for testing conducted by independent testers shall be arranged by agreement between the

independent tester and the responsible party. In no case will the State Board be responsible for collection of fees for any independent tester.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91215. Confidentiality of Test Information. Without prior approval of the Executive Officer, the independent tester shall not disclose to the responsible party or the responsible party's personnel in advance of the test the dates, locations, or times of testing. The independent tester shall not disclose to the responsible party the results of the test prior to disclosure to the Air Resources Board. Failure to keep such information confidential for such a period may result in indefinite disqualification of the tester.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91216. Records and Reports. All original records made during testing requested by the State Board shall become the property of the State Board. All or part of such records may be requested by the Executive Officer at any time during or after the test period. All original records and the report of results from the tester should be provided to the Executive Officer no later than 30 days after the testing is complete. Failure to provide the required records or reports may result in disqualification of the tester for further testing required by the State Board.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91217. Conformity During Testing. An independent tester shall conform to reasonable requests made by the Executive Officer during the test period. Failure to conform as such may result in disqualification from testing as required by the State Board.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91218. Testimony. When requested by the Executive Officer, the independent tester shall provide testimony in court or other prosecutorial assistance related to violations discovered as a result of the independent tester's compliance source test. Charges of the independent tester to the State Board for such services shall not exceed the actual travel costs, the per diem rate for state employees applicable at the time of the services, and remuneration for personal services on an hourly basis not to exceed the hourly cost to the State of an employee of the State Board whose job functions are most closely equivalent to the functions of the representative of the independent tester rendering the personal services.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91219. Validity of Independent Tester's Compliance Test Data. Test data produced during compliance testing of a source by an independent tester will be reviewed by the

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91217. Conformity During Testing. An independent tester shall conform to reasonable requests made by the Executive Officer during the test period. Failure to conform as such may result in disqualification from testing as required by the State Board.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91218. Testimony. When requested by the Executive Officer, the independent tester shall provide testimony in court or other prosecutorial assistance related to violations discovered as a result of the independent tester's compliance source test. Charges of the independent tester to the State Board for such services shall not exceed the actual travel costs, the per diem rate for state employees applicable at the time of the services, and remuneration for personal services on an hourly basis not to exceed the hourly cost to the State of an employee of the State Board whose job functions are most closely equivalent to the functions of the representative of the independent tester rendering the personal services.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91219. Validity of Independent Tester's Compliance Test Data. Test data produced during compliance testing of a source by an independent tester will be reviewed by the

Executive Officer to determine its validity. If such data is determined after consultation with the independent tester and the responsible party to be invalid, the Executive Officer may require a repeat compliance test of the source.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

91220. Unannounced Testing. When there is reasonable cause to believe that a violation has occurred, is occurring, or will occur, the Executive Officer may test directly without prior notice and without allowing such testing to be conducted by an independent tester.

NOTE: Authority cited: §§ 39600, 39601 and 41512, Health and Safety Code. Reference: §§ 41510, 41511 and 41512, Health and Safety Code.

State of California
AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: Public Hearing to Further Consider Proposed Revisions to
Source Testing Fees and Requirements Specified in Article 2,
Subchapter 5, Chapter 1, Part III, Title 17, of the
California Administrative Code

Agenda Item No. 81-10-1

Public Hearing Date: May 21, 1981

Response Date: May 21, 1981

Issuing Authority: Air Resources Board

Comment: No comments were received at the hearing identifying
any significant environmental issues.

Response: N/A

Certified:

Sally Pump
Board Secretary

Date:

6/10/81

RECEIVED
Office of the Secretary

JUN 11 1981

Resources Agency of California

Memorandum

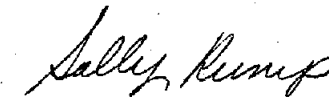
To : Huey D. Johnson
Secretary
Resources Agency

Date : June 11, 1981

Subject: Filing of Notice of
Decision of the Air
Resources Board

From : Air Resources Board

Pursuant to Title 17, Section 60007(b), and in compliance with Air Resources Board certification under section 21080.5 of the Public Resources Code, the Air Resources Board hereby forwards for posting the attached notice of decision and response to environmental comments raised during the comment period.



Sally Rump
BOARD SECRETARY

attachments
Resolution 81-2

RECEIVED
Office of the Secretary

JUN 11 1981

Resources Agency of California