

FINAL REGULATION ORDER

Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations

Note: The amendments are shown in *italics* to indicate additions and ~~strikeout~~ to show deletions. Subsection headings shown in bold are to be printed in italics.

Adopt or amend sections 90800.8 through 90803, title 17, California Code of Regulations, to read as follows (section 90802 is shown for completeness; it has not been amended):

§ 90800.8. Fee Requirements for the 1997-1998 and Subsequent Fiscal Years

(a) Applicability.

(1) 1997-1998 Fiscal Year.

(A) Notification to Districts. *No later than 15 days after the operative date of this section, the executive officer shall provide written notice to each district of his/her 1997-1998 fiscal year determinations, as of January 29, 1998, for all of the items in section (c)(1) through (c)(6). The written notices may reflect modifications to the determinations based on information received by the executive officer after January 29, 1998, in which case the notices shall include a brief explanation of the modifications.*

(B) Collection and Transmittal of the Fees to the State Board. *Each district that is notified that it must remit a specified dollar amount to the state board for the 1997-1998 fiscal year shall transmit that dollar amount to the state board by June 15, 1998, for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected by the district from the facilities in the district that are identified in the executive officer's notification as meeting the criteria in section (c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.*

(2) 1998-1999 and Subsequent Fiscal Years. *Sections (b) through (e) apply for the 1998-1999 fiscal year and for any subsequent fiscal year in which the state board is authorized by state law to require districts to impose additional permit fees on nonvehicular sources within their jurisdiction, to be expended by the state board for the purposes of recovering costs of additional state programs related to nonvehicular sources.*

- (b) **Submittal of Information by Districts.** *No later than April 1 of the preceding fiscal year, each district shall submit all of the information identified in section (c)(4) to the executive officer in writing.*
- (c) **Preliminary Determination of Fees to be Assessed.** *No later than May 1 of the preceding fiscal year, the executive officer shall make preliminary determinations of all of the items in section (c)(1) through (c)(6), and shall provide written notice of the determinations to each district and to each facility identified in accordance with section (c)(4). The notice shall state that written comments regarding the preliminary determinations received by the executive officer by June 1 of the preceding fiscal year will be considered by the executive officer in reaching final determinations.*
- (1) **Needed Revenues.** *The revenues needed to recover the costs of the state board for additional state programs related to nonvehicular sources in the fiscal year. The revenues shall not exceed the amount authorized by state law for any fiscal year, and for the 1997-1998 and 1998-1999 fiscal years shall not exceed \$3,000,000 per fiscal year.*
- (2) **Adjustment Amount.** *An additional adjustment amount, not to exceed 3 percent of the needed revenues, designed to recover unforeseen reductions in collections due to unexpected business closures and bankruptcies.*
- (3) **Carry-over Revenues.** *The amount of revenues collected in the previous fiscal year in excess of the needed revenues for that fiscal year.*
- (4) **Emissions of Facilities Subject to Fees.** *For each district, (i) the name and address of each permitted facility that emitted 500 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available for all affected districts, and (ii) the total tons of each identified facility's emissions during the referenced calendar year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. A facility shall not be included if its emissions would otherwise be included solely because the facility is in a district which is designated in section 60201 as not having attained the state ambient air quality standard for ozone solely as a result of ozone transport identified in section 70500, title 17, California Code of Regulations.*

(5) **Fee per ton.** *The fee per ton for the fiscal year, calculated in accordance with the following formula:*

$$\text{Fee per ton} = \frac{R + A - C}{E}$$

Where

R = The needed revenues identified in accordance with section (c)(1)

A = The adjustment amount identified in accordance with section (c)(2)

C = Carry-over revenues determined in accordance with section (c)(3)

E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all permitted facilities in the state identified in accordance with section (c)(4)

(6) **Amount to be Remitted From Each District.** *For each district, the dollar amount to be transmitted to the state board, calculated in accordance with the following formula:*

$$\text{Amount to be transmitted} = F * D$$

Where

F = Fee per ton as calculated in accordance with section (c)(5)

D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all permitted facilities in the district identified in accordance with section (c)(4)

(d) **Final Determination of Fees to be Assessed.** *No later than July 1 of the fiscal year, after considering any comments submitted by June 1 of the preceding fiscal year, the executive officer shall make final determinations of all of the items in section (c)(1) through (c)(6), and shall provide written notice of the determinations to each district and to each facility identified in accordance with section (c)(4).*

(e) **Collection and Transmittal of the Fees to the State Board.**

(1) *Each district that is notified pursuant to section (d) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board by January 1 of the fiscal year, for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected by the district from the facilities in the district that are*

identified in the executive officer's final determination as meeting the criteria in section (c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(2) In addition to the amount transmitted in accordance with section (e)(1), a district shall, for any facility identified by the executive officer as meeting the criteria in section (c)(4) after the executive officer's notification under (d), transmit to the state board for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(5) multiplied by the total tons of the facility's emissions, during the calendar year used to determine emissions in accordance with section (c)(4), of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. The amount transmitted shall be collected by the district from the newly identified facility, and shall be in addition to permit and other fees already authorized to be collected from the facility.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

§ 90801. Definitions.

- (a) "Facility" means any nonvehicular source which requires a permit from the district.
- (b) "Nonattainment pollutant" means any substance for which an area is designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.
- (c) "Nonattainment precursor" means any substance which reacts in the atmosphere to contribute to the production of a nonattainment pollutant or pollutants in an area designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.
- (d) For the purposes of this subchapter, "nonattainment pollutants and precursor" shall be defined as follows:

<i>Substance</i> <i>(as listed in section 70200, Title 17, CCR):</i>	<i>nonattainment pollutant/precursor:</i>
Ozone	reactive organic gases
Sulfur Dioxide	oxides of nitrogen
Sulfates	oxides of sulfur
Nitrogen Dioxide	oxides of sulfur
Carbon Monoxide	oxides of nitrogen
Suspended Particulate Matter (PM ¹⁰)	carbon monoxide
Visibility Reducing Particles	suspended particulate matter (PM ¹⁰), oxides of nitrogen, oxides of sulfur
Hydrogen Sulfide	reactive organic gases
Lead	suspended particulate matter (PM ¹⁰), oxides of nitrogen, oxides of sulfur
	reactive organic gases
	hydrogen sulfide
	lead

(e) “Operator” means the person who owns or operates a facility or part of a facility.

(f) “District” means an air pollution control district or an air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

§ 90802. Fee Payment and Collection.

(a) Each district shall notify and assess the operator of each facility subject to permit fees, as provided for in these regulations, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator of the fee assessment notice.

(b) Each district shall assess an additional fee on operators failing to pay the fee within 60 days of receipt of the fee assessment notice. The district shall set the late fee in an amount sufficient to pay the district’s additional expenses incurred by the operator’s untimely payment.

- (c) Any fees submitted to the state which exceed costs to the state of additional state programs authorized or required by the California Clean Air Act of 1988, related to nonvehicular sources shall be carried over by the state of expenditure for these purposes.
- (d) Each district may recover administrative costs to the district of collecting the fees pursuant to these regulations. At the request of the State Board, a district shall provide to the State Board, within 30 days of the request, substantiation of administrative costs.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

§ 90803. Failure of Facility to Pay Fees.

In the event any district is unable to collect the assessed fee from any source due to circumstances beyond the control of the district, including but not limited to facility closure, emission quantification errors, or refusal of the operator to pay despite permit revocation and/or other enforcement action, such district shall notify the Executive Officer of the State Board. For demonstrated good cause, the district may be relieved from that portion of the fees the district is required to collect and remit to the state as set forth in section 90800 or section 90800.1 or section 90800.2 or section 90800.3 or section 90800.4 or section 90800.5 or section 90800.6 or section 90800.7 *or* 90800.8. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to these regulations.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.