

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR
ACT NONVEHICULAR SOURCE FEE REGULATIONS

Public Hearing Date: January 29, 1998
Agenda Item No.: 98-1-1

I. GENERAL

This rulemaking was initiated by the publication on December 12, 1997, of a notice of public hearing to consider amendments to the Air Resources Board (ARB or Board) regulations governing the California Clean Air Act nonvehicular source fee program. The amendments establish a mechanism for setting fees to be collected by local districts from major nonvehicular sources of nonattainment pollutants and their precursors to fund part of the ARB's California Clean Air Act program for nonvehicular sources for the fiscal years 1997-98 and 1998-99, and any subsequent fiscal years in which these fees are authorized by state law. A Staff Report (Initial Statement of Reasons for Proposed Rulemaking) was also made available for public inspection on December 12, 1997. The Staff Report, which is incorporated by reference herein, contained the text of the amendments as initially proposed by the staff, along with an extensive description of the rationale for the proposal. The proposed action consisted of the adoption of new section 90800.8 and amendments to sections 90801 and 90803, title 17, California Code of Regulations (CCR).

On January 29, 1998, the Board conducted a public hearing on the proposed action. There was no oral testimony from the public. The Board considered the two written comments that had been submitted since publication of the notice, and then approved Resolution 98-1, which adopted the amendments and new regulation as proposed. The Final Regulation Order included one editorial correction of an error in the Proposed Regulation Order — in the third to the last line of section 90800.8(c), “designations” was changed to “determinations.” Additionally, a typographical error in the section 90801(d) table was corrected.

The regulations are intended to provide the Board with net revenues of \$3.0 million per year in fees. These funds are necessary to partially defray the additional costs of California Clean Air Act programs related to nonvehicular sources for the 1997-98 and 1998-99 fiscal years. The regulations will also apply in future years if the authority to assess the fees is extended by the Legislature.

Fiscal Impacts. Except as discussed below, the regulations will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not

reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

Local agencies will incur some costs as a result of the regulations, in that air pollution control and air quality management districts will incur administrative costs in collecting the fees. Health and Safety Code section 39612 and section 90802(d), title 17, CCR, authorize the districts to recover these administrative costs from facilities subject to the fees. In administering the program for FY 1996-1997, most but not all districts assessed additional fees to cover their administrative costs. Applying the FY 1996-1997 district fee rates to the expected state fee assessments for FY 1997-1998 indicates that the districts will incur costs of approximately \$81,000 for which they will assess additional fees. The districts' administrative costs are not reimbursable state mandated costs because the districts have the authority to recover the costs through fee assessments.

No local agencies have been identified at this time as operating facilities that would be subject to the nonvehicular source permit fees for fiscal year 1997-98. If any local agencies are required to pay permit fees in subsequent fiscal years, these costs would not be reimbursable state mandated costs pursuant to Government Code section 17500 et seq. because the fee regulations apply generally to all facilities in the state which emit 500 tons or more per year of nonattainment pollutants or their precursors and, therefore, do not impose unique requirements on local government agencies.

Alternatives. The Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board. As noted on pages 7-8 of the Staff Report, the anticipated fee per ton this fiscal year is about \$24 per ton, an increase of about \$5 per ton over the fee for the 1996-1997 fiscal year. The reasons for this increase are: (1) there were large reductions in estimated emissions due to updated emission estimates for power plants and refineries; (2) a number of facilities reduced their emissions below the 500 ton per year threshold and dropped out of the program; (3) there are no carry-over funds from previous years; and (4) because all reserve funds were used to reduce the fees for fiscal year 1996-97, a new reserve had to be established for this year. As a result, a significant number of sources will have their fee go up even though they have not increased (or have modestly decreased) their emissions.

The ARB could avoid fee increases for sources that have not increased their emissions by maintaining last year's per ton fee of \$18.78. This approach, which would reduce the total fees collected by about 21 percent to about \$2.37 million, would be inappropriate and inconsistent with the Legislature's intent. In enacting Assembly Bill 1583 (stats. 1997, ch. 713) last fall, the Legislature reauthorized the ARB to assess California Clean Air Act nonvehicular source fees of up to \$3 million per year in fiscal years 1997-1998 and 1998-1999, for payment into the Air Pollution Control Fund. Around the same time, the legislature adopted the 1997 budget trailer bill (stats. 1997 ch. 928 (AB 1571)). Section 32 of this bill appropriated \$3 million from the Air

Pollution Control Fund to the ARB to help fund stationary source air pollution control activities. Together, these two actions reflect an evident legislative intent that the ARB require the imposition of the full \$3 million of fees for the 1997-1998 fiscal year.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

During the 45-day comment period prior to the Board hearing, the Board received two written comments from the public, which are summarized below. No comments were presented at the Board hearing.

1. Comment: As currently proposed, the ARB will be authorized to require districts to collect fees from holders of permits for facilities which emit 500 tons or more per year of any nonattainment pollutant or its precursors for state fiscal years 1997-1998 and 1998-1999. For fiscal year 1997-1998 each district will be responsible for transmitting its share of the assessment to ARB by June 15, 1998. Considering the 1998-1999 state fiscal year begins on July 1, 1998, it is possible that the fiscal 1998 fees could come due as early as late summer or fall of 1998. This not only represents a significant monetary outlay within a short period of time for the companies involved, for North American Chemical Company it will require two payments within a single company calendar year. NACC requests that payments for the Clean Air Act Fees be scheduled a full calendar year apart. This will ensure that these expenses will be distributed over a reasonable period of time and prevent all parties submitting fees from paying in one company fiscal year. This equitable payment schedule will also ensure the state receives all fees within its respective fiscal years. (North American Chemical Company)

Agency Response: Section 90800.8(a)(1)(B) provides that districts are to remit the fiscal year 1997-1998 fees by June 15, 1998, only 15 days before the end of the fiscal year. That late a date was necessitated by the fact that this rulemaking could not be initiated until after new Health and Safety Code section 39612 was approved by the Governor on October 5, 1997. For fiscal year 1998-1999, and any subsequent fiscal year in which the assessment of fees is authorized by law, section 90800.8(e)(1) provides that districts are to remit the fees to the ARB by January 1 of the fiscal year. In the longer term, it is preferable for the ARB to receive the funds by midway through the fiscal year, as the ARB's expenditures for stationary source programs are made throughout the fiscal year.

We recognize the shorter term implications for North American Chemical Company. ARB staff discussed these concerns with the company and the district within which it operates, the Mojave Desert Air Quality Management District. An agreement was reached under which the District will postpone collection of the fees for the 1998-1999 fiscal year without penalties until the beginning of the company's next business year.

2. Comment: The Mojave Desert Air Quality Management District requested that 1995 oxides of nitrogen (NO_x) emissions associated with the Southern California Gas Company facility in Blythe be reduced from 1587 tons per year to 693 tons per year.

Agency Response: This reduction in emissions, as well as a subsequent increase in emissions submitted by the Mojave Desert Air Quality Management District for another source, will be reflected in the Executive Officer's fee determinations for the 1997-1998 fiscal year. These changes resulted in an overall increase of 808 tons in emissions subject to fees in the District, and a resulting decrease in the per ton emission rate from \$23.95 to \$23.80. District staff has also told ARB that there may be additional emission changes in the near future. The changes should not significantly affect the current fee rate. This does not present any problems because the regulation allows the Executive Officer to revise the amount of emissions subject to the fee regulations after the Board hearing.