

## FINAL REGULATION ORDER

### Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations

#### Subchapter 3.8. Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations

##### § 90800.75. Operative Date.

The amendments to this subchapter filed with the Secretary of State on February 5, 2004 are operative on February 5, 2004.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

##### § 90800.8. Fee Requirements for the 2003-2004 and Subsequent Fiscal Years.

(a) *Applicability.*

(1) This subchapter applies to:

(A) Any facility that emits 250 tons or more annually of any nonattainment pollutant or precursor, as provided in section 90800.8(c)(4), and

(B) Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's consumer products or architectural coatings resulted in VOC emissions of 250 tons or more during a calendar year, as provided in section 90800.8(c)(5).

(2) 2003-2004 Fiscal Year.

(A) *Notification to Districts, Facilities, Consumer Products Manufacturers, and Architectural Coatings Manufacturers.* No later than 30 days after the operative date of this section, the Executive Officer shall provide written notice to each district, facility operator, consumer products manufacturer, and architectural coatings manufacturer of his/her 2003-2004 fiscal year fee determinations, as of July 24, 2003, for all of the items in section (c)(1) through (c)(7). The written notices may reflect modifications to the determinations based on information received by the Executive Officer after July 24, 2003, in which case the notices shall include a brief explanation of the modifications.

(B) *Transmittal of the Fees to the State Board.* Each facility operator, consumer products manufacturer, and architectural coatings manufacturer that is notified by the Executive Officer that it must remit a specified dollar amount to the state board for the 2003-2004 fiscal year shall transmit that dollar amount to the state board for deposit into the Air Pollution Control Fund within 60 days after receipt by the operator or manufacturer of the fee determination notice. The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(3) *2004-2005 and Subsequent Fiscal Years.* Sections (b) through (e) apply for the 2004-2005 fiscal year and for any subsequent fiscal year in which the state board is authorized by state law to impose fees on nonvehicular sources, consumer products manufacturers, and architectural coatings manufacturers.

(4) *Expenditure of Fees.* The fees collected from facilities are to be expended by the state board only for the purposes of recovering costs of additional state programs related to nonvehicular sources. The fees collected from consumer products manufacturers and architectural coatings manufacturers are to be expended by the state board solely to mitigate or reduce air pollution in the state created by consumer products and architectural coatings.

(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)(7), and shall provide written notice of the preliminary determinations to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5). The notice shall state that written comments regarding the preliminary determinations received by the Executive Officer by July 1 of the 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, consumer products, and architectural coatings in the fiscal year. The revenues shall not exceed the amount authorized by state law for any fiscal year, and for the 2003-2004 fiscal year shall not exceed the amount specified in subdivision (f)(1) of Health and Safety Code section 39612 or such other amount as specified by the State Legislature. For fiscal year 2004-2005 and subsequent fiscal years, the total revenues collected from

facilities may include a percentage increase in revenues by an amount not to exceed the annual percentage change in the California Consumer Price Index, as provided in Health and Safety Code section 39612(f)(2), if such an increase is necessary to collect the revenues authorized by the State Legislature for any 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 Balance.* The amount collected in the previous fiscal year in excess of or less than the needed revenues for that fiscal year.

(4) (A) *Emissions of Facilities Subject to Fees.* Except as otherwise provided in subsections (c)(4)(B) and (c)(4)(C), for each district, (1.) the name and address of each permitted facility that emitted 250 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 (2.) 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 250 tons or more in the year.

(B) For the South Coast Air Quality Management District (SCAQMD) only, the amount of each facility's emissions specified in subsection (c)(4)(A) shall be determined on a fiscal year instead of a calendar year basis. Emissions from facilities in the SCAQMD shall be determined for the fiscal year that begins during the most recent calendar year for which emission estimates are available for all affected districts. For example, if the 2001 calendar year is the most recent calendar year for which emission estimates are available for all affected districts, then all districts except the SCAQMD would identify facilities and submit facility emissions for the 2001 calendar year, and the SCAQMD would identify facilities and submit facility emissions for the 2001-2002 fiscal year.

(C) 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) *Consumer Products Manufacturers and Architectural Coatings Manufacturers Subject to Fees.* Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's

consumer products or architectural coatings resulted in VOC emissions in the State of 250 tons or more during the same calendar year identified for facilities pursuant to section 90800.8(c)(4)(A).

(6) *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 balance determined in accordance with section (c)(3)

E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from all permitted facilities in the state identified in accordance with section (c)(4), plus the total tons of VOCs emitted in annual amounts of 250 tons or more from consumer products and architectural coatings sold in the state as identified in accordance with section (c)(5).

(7) *Amount to be Remitted From Each Facility Operator, Consumer Products Manufacturer, or Architectural Coatings Manufacturer.* 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)(6)

D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from a permitted facility identified in accordance with section (c)(4), or the tons of VOCs emitted in annual amounts of 250 tons or more for a manufacturer, as identified in accordance with section (c)(5)

(d) *Final Determination of Fees to be Assessed.* No later than August 1 of the fiscal year, after considering any comments submitted by July 1 of the fiscal year, the Executive Officer shall make final determinations of all of the items

in section (c)(1) through (c)(7), and shall provide a written fee determination notice to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5).

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

(1) Each facility operator, consumer products manufacturer, and architectural coatings manufacturer 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 for deposit into the Air Pollution Control Fund within 60 days after receipt of the fee determination notice as specified in section 90802(a). The amount transmitted shall be collected by the state board from the facilities and manufacturers identified in the Executive Officer's final determination as meeting the criteria in section (c)(4) or (c)(5). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(2) (A) *Newly Identified Facilities:* In addition to the amount transmitted in accordance with section (e)(1), the Executive Officer shall, for any facility identified by the Executive Officer as meeting the criteria in section (c)(4) after the Executive Officer's notification under section (d), notify the facility operator and collect for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(6) multiplied by the total tons of the facility's emissions, during the 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 250 tons or more in the year. The operator of each newly identified facility shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer. The amount collected by the state board from the newly identified facility shall be in addition to permit and other fees already authorized to be collected from the facility.

(B) *Newly Identified Manufacturers.* The Executive Officer shall, for any consumer products manufacturer or architectural coatings manufacturer identified by the Executive Officer as meeting the criteria in section (c)(5) after the Executive Officer's notification under section (d), notify the consumer products manufacturer or architectural coatings manufacturer and collect for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(6) multiplied by the total tons of VOCs emitted from consumer products or architectural coatings sold by such manufacturer during the calendar year used to determine emissions in accordance with section (c)(5). Each newly identified manufacturer shall transmit the assessed dollar amount to the state

board within 60 days after receipt of the fee determination notice from the Executive Officer. The amount collected by the state board from the newly identified manufacturer shall be in addition to permit and other fees already authorized to be collected from the manufacturer.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **§ 90800.9. Optional Process for Districts to Collect Fees from Facilities.**

- (a) Notwithstanding the provisions of sections 90800.8 and 90802, each district shall have the option for any fiscal year to collect fees from facilities within the district instead of having the state board collect the fees. A district that chooses to collect fees from facilities pursuant to this section shall follow the process set forth below in section 90800.9(b) or (c). For districts that do not choose to collect fees from facilities, the Executive Officer shall follow the process specified in sections 90800.8 and 90802. Districts shall not have the option to collect fees from consumer products manufacturers and architectural coatings manufacturers.
  
- (b) *2003-2004 Fiscal Year.*
  - (1) *Notification.* A district that chooses to collect fees from facilities for the 2003-2004 fiscal year shall notify the Executive Officer no later than 10 days after the operative date of this section. No later than 30 days after the operative date of this section, the Executive Officer shall provide written notice to each district and facility operator, as specified in section 90800.8(a)(2)(A).
  
  - (2) *Collection and Transmittal of Fees to the State Board.* Each facility operator notified under section 90800.8(a)(2)(A) shall transmit the specified dollar amount to the district within 60 days of notification. No later than 90 days after notification under section 90800.8(a)(2)(A), each district shall transmit the fees to the state board for deposit in the Air Pollution Control Fund. The amount transmitted shall be collected by the district from all facilities in the district that are identified in the Executive Officer's notification. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. Districts shall assess late fees and may recover administrative costs for the 2003-2004 fiscal year as provided in sections 90800.9 (c)(3) and (c)(4).
  
- (c) *2004-2005 and Subsequent Fiscal Years.* A district that chooses to collect fees on facilities for the 2004-2005 fiscal year or any subsequent fiscal year shall notify the Executive Officer on or before April 1 of the preceding fiscal

year, and the district and the Executive Officer shall follow the process set forth below in subsections (c)(1) through (c)(5).

(1) *Notification to Districts by the Executive Officer.* No later than May 1 of the preceding fiscal year, the Executive Officer shall notify the district of the preliminary determination of fees to be assessed on each facility as provided in section 90800.8(c). No later than August 1, of the fiscal year, the Executive Officer shall notify the district of the final determination of fees to be assessed on each facility as provided in section 90800.8(d).

(2) *Notification to Facilities by the District.* Each district shall notify and assess the operator of each facility subject to permit fees, as provided for in this subchapter, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator of the fee determination notice.

(3) *Late Fees.* Each district shall assess an additional fee on operators failing to pay the fee within 60 days of receipt of the fee determination 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.

(4) *Recovery of Administrative Costs.* Each district may recover administrative costs to the district of collecting the fees pursuant to this subchapter. At the request of the Executive Officer, a district shall provide to the Executive Officer, within 30 days of the request, substantiation of administrative costs.

(5) *Collection and Transmittal of Fees to the State Board.* Each district that is notified pursuant to section 90800.9(c)(1) 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 fee determination as meeting the criteria in section 90800.8(c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(d) *Newly Identified Facilities.* In addition to the amounts transmitted in accordance with section 90800.9(b)(2) and (c)(5), a district shall, for any facility identified by the Executive Officer as meeting the criteria in section 90800.8(c)(4) after the Executive Officer's notification under section 90800.8(a)(2)(A) or 90800.8(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 90800.8(c)(6) multiplied by the total tons of the facility's emissions, during the year used to determine emissions in accordance with section 90800.8(c)(4), of all nonattainment pollutants or

precursors that were individually emitted by the facility in an amount of 250 tons or more in the year. The operator of each newly identified facility shall transmit the assessed dollar amount to the district within 60 days after receipt of the fee determination notice from the Executive Officer. 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. The district shall transmit any fees received from the facility to the state board by January 1 of the fiscal year, or, for fees received by the district on or after December 31, within 30 days after receiving the fees from the facility.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **§ 90801. Definitions.**

For the purposes of this subchapter, the following definitions apply:

- (a) “Architectural Coating” means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this subchapter.
- (b) “Architectural Coatings Manufacturer” means: (1) any company or person that imports, manufactures, produces, packages, or repackages architectural coatings for sale or distribution in the State of California; and (2) for an architectural coatings manufacturer under the control of a holding or parent company, the holding or parent company.
- (c) “Company” means any firm, association, partnership, business trust, corporation, joint-stock company, limited liability company, or similar organization.
- (d) “Consumer Product” means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings. As used in this subchapter, the term “consumer product” shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial, and commercial uses.



- (e) "Consumer Products Manufacturer" means: (1) any company, firm, or establishment which is listed on a consumer product's label; if the label lists two companies, firms, or establishments, the consumer products manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the label; and (2) for a consumer products manufacturer under the control of a holding or parent company, the holding or parent company.
- (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.
- (g) "Executive Officer" means the Executive Officer of the state board or his or her delegate.
- (h) "Facility" means any nonvehicular source which requires a permit from the district.
- (i) "Holding or parent company" means any company that has control over another company. For the purposes of this subchapter, a company has control over another company if:
  - (1) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote more than 50 percent of the voting securities of the other company; or
  - (2) the company controls in any manner the election of a majority of the directors or trustees or individuals exercising similar functions of the other company; or
  - (3) the company has the power to exercise, directly or indirectly, a controlling influence over the management or policies of the other company.
- (j) "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.
- (k) "Nonattainment pollutants and precursors" shall be defined as follows:

Substance	
(as listed in section 70200,	<i>nonattainment</i>
Title 17, CCR):	<i>pollutant/precursor:</i>

Ozone	reactive organic gases oxides of nitrogen
Sulfur Dioxide	oxides of sulfur
Sulfates	oxides of sulfur
Nitrogen Dioxide	oxides of nitrogen
Carbon Monoxide	carbon monoxide
Suspended Particulate Matter (PM10)	suspended particulate matter (PM10), oxides of nitrogen, oxides of sulfur reactive organic gases
Visibility Reducing Particles	suspended particulate matter (PM10), oxides of nitrogen, oxides of sulfur reactive organic gases
Hydrogen Sulfide	hydrogen sulfide
Lead	lead

- (l) "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.
- (m) "Operator" means the person who owns or operates a facility or part of a facility.
- (n) "Volatile Organic Compound" or "VOC" means any compound containing at least one atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, and excluding the following:
- (1) methane, methylene chloride (dichloromethane), 1,1,1-trichloroethane (methyl chloroform), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), chlorodifluoromethane (HCFC-22), 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), trifluoromethane (HFC-23), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1,2-tetrafluoroethane (HFC-134a), pentafluoroethane (HFC-125), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), cyclic, branched, or linear completely methylated siloxanes, the following classes of perfluorocarbons:
- (A) cyclic, branched, or linear, completely fluorinated alkanes;

- (B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  - (C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  - (D) sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine; and
- (2) the following low-reactive organic compounds which have been exempted by the U.S. EPA: acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), and perchloroethylene (tetrachloroethylene).

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

#### **§ 90802. Fee Payment and Collection.**

(a) The Executive Officer shall notify and assess the operator of each facility, each consumer products manufacturer, and each architectural coatings manufacturer subject to fees, in writing of the fee due as provided in subsections (a)(2), (c), (d), and (e)(2) of section 90800.8. At the request of a holding or parent company, the Executive Officer shall provide separate written notice of their individual fee determinations to each consumer products or architectural coatings manufacturer within the holding or parent company. The fee shall be past due 60 days after receipt by the operator or manufacturer of the fee determination notice.

(b) *Late Fees.* The Executive Officer shall assess an additional fee on operators, consumer products manufacturers, and architectural coatings manufacturers failing to pay the fee within 60 days of receipt of the fee determination notice. The Executive Officer shall set the late fee in an amount sufficient to pay the state board's additional expenses incurred by the operator's or manufacturer's untimely payment.

(c) Any fees submitted to the state which exceed or are less than the costs to the state of additional state programs authorized or required by State Legislature shall be carried over by the state for adjustment to the fees assessed in the subsequent fiscal year.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **§ 90803. Failure of Facility to Pay Fees.**

For districts exercising the option to collect fees as provided in section 90800.9, 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. 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 sections 90800.8 and 90800.9. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to these regulations.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **§ 90804. Severability.**

Each part of this subchapter is deemed severable, and in the event that any part of this subchapter is held to be invalid, the remainder of this subchapter shall continue in full force and effect.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.