

California Environmental Protection Agency



Air Resources Board

Final Statement of Reasons for Rulemaking;
Including Summary of Comments and Agency Responses

PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE NONVEHICULAR SOURCE, CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS

Public Hearing Date: November 18, 2004
Agenda Item No: 04-10-5

AIR RESOURCES BOARD

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PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE, CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS

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I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations (ISOR), released to the public on October 1, 2004, provides a description of the rationale and necessity for the proposed action, and is incorporated by reference herein.

On November 18, 2004, the Air Resources Board (ARB or Board) conducted a public hearing to consider amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations contained in sections 90800.75 - 90804, title 17, California Code of Regulations (CCR). The proposed action consists of the adoption of new sections 90805 and 90806 and amendments to sections 90800.8 and 90803, title 17, CCR, as authorized by sections 39612 and 39613 of the Health and Safety Code. At the public hearing on November 18, 2004, the Board approved Resolution 04-40, which adopted the proposed amendments with no revisions to the proposed regulatory language. This Final Statement of Reasons (FSOR) updates the ISOR by summarizing the comments received at the public hearing and during the 45-day public comment period preceding the hearing.

The ARB has determined that this regulatory action will not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 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, except as discussed below, or other non-discretionary savings to State or local agencies.

This regulatory action will impose a mandate upon and create costs to some local agencies. For fiscal year (FY) 2004-2005, facilities operated by three local agencies have been identified as being subject to the fees (i.e., the Los Angeles Department of Water and Power, the Imperial Irrigation District, and the City of Long Beach Southeast Resource Recovery Facility Project). The aggregate cost of the supplemental fees to these three local agencies should be approximately \$20,000 for FY 2004-2005. The total cost to these local agencies

(i.e., the cost imposed by the existing fee regulations plus the cost of the supplemental fees imposed by the proposed amendments) should be approximately \$104,000. These costs, as well as any permit fees that may be paid in subsequent fiscal years by any local agency, are not reimbursable state mandated costs pursuant to Part 7 (commencing with section 17500), division 4, title 2 of the Government Code, because the fee regulations apply generally to all facilities in the State which emit 250 tons or more per year of nonattainment pollutants or their precursors, and therefore do not impose unique requirements on local government agencies.

The ARB has also determined that individual local air pollution control and air quality management districts (districts) may incur some administrative costs as a result of the proposed regulatory action if a district chooses to collect fees from facilities for transmittal to the ARB. However, districts are not mandated by the proposed regulations to collect the fees; a district would incur no administrative costs unless it chooses to collect the fees itself. In addition, any administrative costs incurred by a district are not reimbursable state mandated costs because of the districts' authority to recover the costs through fee assessments; Health and Safety Code section 39612(e) and (f)(1), and proposed section 90800.9(e), title 17, CCR, authorize districts to recover these administrative costs from facilities subject to the fees.

The ARB has determined that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of 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 or businesses, than the action taken by the ARB.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received only two comments on the proposed amendments. The first comment was an e-mail received from Cory Mallam on October 28, 2004. The second comment consists of oral testimony made at the November 18, 2004 Board hearing by Corey Nickchen of Guardian Industries, Kingsberg, California. Each of these comments is summarized and responded to below.

1. Comment: Please consider not assessing the ARB fee. I am a local painting contractor and I have just received a letter from my paint supplier stating that they will now be assessing the new ARB fee to all of my purchases. They are not going to pay the fee; they are going to pass it on to me, an overburdened small business. I am already having a hard time staying in business in California. This is really just another hidden tax, not a fee. I pay plenty of taxes and insurance already. Just because your budget was cut does not give you the right to impose these "fees". Why doesn't the government give up some of its luxury items to cut costs and stop bending over its citizens and small businesses? This is unfair and wrong. (Cory Mallam)

Agency Response: The commenter is objecting to fee regulations previously approved by the ARB in 2003. The proposed amendments to the existing fee regulations will not result in fee increases on manufacturers of architectural coatings (e.g., paint). The effect of the proposal is that consumer products and architectural coatings manufacturers would pay less than they would under the existing regulations (and facilities would pay correspondingly more) in any year where the Legislature has authorized the ARB to collect fees in excess of \$17.4 million. Therefore, the proposed amendments should improve the situation for the commenter, not make it worse.

Regarding the existing fee regulations, each architectural coatings manufacturer has the choice of whether to pass on the costs of the fees to their customers or absorb the costs themselves. Even if a paint manufacturer chooses to pass on the entire cost of the fee to its customers, however, staff does not believe that a significant economic impact will occur since the typical increase in cost from the fee regulations is expected to be two to five cents per gallon of paint. This is not a significant increase since a typical gallon of paint costs about \$15 to \$20.

We disagree with the commenter's opinion that the fee regulations are really a tax and not a fee. This issue is thoroughly addressed in the FSOR for the existing fee regulations adopted in 2003 (see pages 31-54 of the 2003 FSOR). The 2003 FSOR is part of the administrative record for the proposed regulatory action; it is included in the references for the 2004 ISOR. Finally, the response to the following comment addresses the commenter's suggestion that the ARB should absorb the cuts in its budget in order to reduce or eliminate the amount of the assessed fees.

2. Comment: The ARB should consider other options instead of assessing all of the supplemental fees on facilities. One option would be to assess some percentage of the supplemental fees on facilities, such as 75 percent, and assess the remaining percentage on manufacturers of consumer products and architectural coatings. Other possible options include staying with the formula used in the existing fee regulation, or reducing the ARB's budget so that the amount of the supplemental fees can be reduced.
(Guardian Industries, Kingsberg, California)

Agency Response: The ARB has considered all reasonable alternatives to assessing the supplemental fees on facilities. These alternatives and the rationales for rejecting them are discussed on pages 3-5 and 10 of the ISOR. As discussed in the ISOR (pages 3-5), the fundamental reason why the ARB decided to assess the entire amount of the supplemental fees on facilities fees is to avoid fee nexus problems regarding consumer products and architectural coatings manufacturers. Such nexus problems could arise if the ARB did not amend the existing fee regulations, or if the ARB used an approach whereby facilities were assessed a smaller percentage of the supplemental fees.

The ARB also considered collecting less than its authorized budget amount in order to reduce the amount of the fees. This option was rejected because collecting less than the full amount of the ARB's authorized budget would hamper

the ARB's ability to mitigate and control air pollution, to the detriment of public health. The ARB's budget has been carefully scrutinized by the Governor and the Legislature and it has been significantly reduced over the past four years. We believe that any further reduction in funding would compromise the ARB's ability to adequately sustain its Stationary Source program.