

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations. The amendments would establish a process for assessing supplemental fees for the 2004-2005 and subsequent fiscal years.

DATE: November 18, 2004

TIME: 9:00 a.m.

Location: California Environmental Protection Agency  
Air Resources Board  
Central Valley Auditorium, Second Floor  
1001 I Street  
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board which will commence at 9:00 a.m. on November 18, 2004, and may continue at 8:30 a.m. on November 19, 2004. This item may not be considered until November 19, 2004. Please consult the agenda for the meeting, which will be available at least 10 days before November 18, 2004, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed adoption of new sections 90805 and 90806; and proposed amendments to sections 90800.8 and 90803, title 17, California Code of Regulations (CCR).

### **Background:**

In 2003, the Legislature enacted AB10X (Stats. 2003, Chapter 1X), which amended section 39612 and added section 39613 to the Health and Safety Code.

AB 10X made a number of changes to existing law, including: (1) increasing the cap on stationary source fees from \$3 million to \$13 million for fiscal year (FY) 2003-2004, and allowing the limitation on the total amount of funds collected from stationary sources to be adjusted annually thereafter for inflation; and (2) expanding the universe of stationary sources subject to the fees by specifying that the fees are to be collected from stationary point sources (i.e. facilities) authorized by district permits to emit 250 tons (instead of the previous 500 tons) or more per year of any nonattainment pollutant or its precursors.

In addition, AB10X authorized ARB for the first time to assess fees on manufacturers of consumer products and architectural coatings. The fees may be assessed on those manufacturers whose total sales of consumer products or architectural coatings will result in the emission in California of 250 tons per year or greater of volatile organic compounds (VOCs). The ARB must use these fees solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings.

In July 2003, the Board approved regulations to collect the fees authorized by AB10X. The regulations assess uniform fees (on a dollar per ton basis) on large nonvehicular sources (facilities) and large manufacturers of consumer products and architectural coatings. The full text of the current regulations can be found on ARB's web site at <http://www.arb.ca.gov/regact/feereg03/feereg03.htm>.

For FY 2003-2004, the Legislature authorized ARB to collect \$17.4 million in fees from facilities and manufacturers of consumer products and architectural coatings. For FY 2004-2005, the Legislature authorized the ARB to collect an additional \$2.6 million, for a total of \$20 million in fees.

### **Description of Proposed Regulatory Action**

In this rulemaking the staff is proposing amendments to the existing fee regulations. Proposed new section 90805 provides for the collection of supplemental fees from facilities. The supplemental fees would be collected only in fiscal years where the State Legislature has authorized ARB to collect fees in excess of \$17.4 million. Any amount in excess of \$17.4 million would be collected from facilities. The remaining \$17.4 million would continue to be collected on a uniform basis from facilities, manufacturers of consumer products, and manufacturers of architectural coatings, as specified in the existing regulations. The proposed amendments also clarify that under no circumstances will the total amount of fees collected from facilities exceed the amount authorized by Health and Safety Code section 39612(f) or other provisions of State law.

The proposed amendments follow the same basic procedures as the existing regulations with the exception that they apply only to facilities. The facilities subject to the supplemental fees are the same facilities that must pay fees under the existing regulations.

As with the existing regulations, the proposed amendments would allow each district the option to collect the supplemental fees instead of having ARB collect them. Districts who choose this option would follow the same process specified in the existing regulations. For FY 2004-2005, however, the proposed amendments specify that the ARB is to collect the supplemental fees because it is likely that only limited time will remain in this fiscal year by the date the amendments are approved by the Office of Administrative Law and become legally operative. The supplemental fees for FY 2004-2005 will be based on the emissions data submitted by facilities under the existing regulations.

The staff is also proposing the adoption of a new section 90806, which includes two new provisions in order to address possible future changes in State law. The first provision directs ARB Executive Officer to comply with any future direction from the Legislature that particular amounts or percentages are to be collected from the categories of nonvehicular sources, consumer products, or architectural coatings. The second provision directs ARB Executive Officer to use any modified emissions threshold (i.e., different from the existing 250 tons per year threshold) enacted by the Legislature. These provisions would apply to both the existing fees and the supplemental fees, and would allow ARB to comply with possible future changes in State law without having to modify the regulations.

Finally, the proposed amendments modify existing sections 90800.8(c)(1) and 90803, title 17, CCR, to reference the new supplemental fee provisions. These modifications will insure that all of the regulatory fee provisions work together with no contradictions.

There are no federal regulations that are comparable to the proposed fee regulations.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes a summary of the potential environmental and economic impacts, and environmental justice considerations of the proposal. The report is entitled: "Initial Statement of Reasons for Proposed Amendments to the NonVehicular Source, Consumer Products, and Architectural Coatings Fee Regulations".

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's web site listed below, or may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, CA 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (November 18, 2004).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified in this notice, or may be accessed on the web site listed below.



Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact persons: Mr. Don Rake, Planning and Technical Support Division, (916) 322-7304, e-mail drake@arb.ca.gov, or Mr. Michael FitzGibbon, Planning and Technical Support Division, (916) 445-6243, e-mail mfitzgib@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at [www.arb.ca.gov/regact/feereg04/feereg04.htm](http://www.arb.ca.gov/regact/feereg04/feereg04.htm).

### **COSTS TO PUBLIC AGENCIES, BUSINESSES, AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The Board's Executive Officer has determined that the regulations 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.

The proposed regulatory action will impose a mandate upon and create costs to some local agencies. For FY 2004-2005, facilities operated by three local agencies have been identified as being subject to the supplemental fees. The aggregate cost to these three local agencies should be approximately \$20,000 for FY 2004-2005 in addition to about \$80,000 that will be paid in fees under the existing regulation. These costs, as well as any 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 Board's Executive Officer has also determined that individual districts may incur some administrative costs as a result of the proposed regulatory action if a district chooses to collect fees from facilities instead of the ARB collecting fees. 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 sections 39612(e) and 39612(f)(1), and section 90800.9(c), title 17, CCR, authorize districts to recover these administrative costs from facilities subject to the fees.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impact on private persons and businesses. The Executive Officer has initially determined that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other States, or on representative private persons. In fiscal year 2004-2005, approximately 82 facilities in the State are expected to be assessed under the proposed regulations. Among the operators of these facilities are major oil and gas producers, utilities, and major manufacturing enterprises. The proposed regulatory action would result in an increased cost to individual facilities of \$6,000 to \$225,000, which is in addition to the \$24,000 to \$900,000 paid under the existing regulation.

In accordance with Government Code section 11346.3, the Executive Officer has initially determined that the proposed regulatory action will have minimal or no impacts on the creation or elimination of jobs within the State of California, minimal or no impacts on the creation of new businesses or the elimination of existing businesses within the State of California, and minimal or no impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR section 4, that the proposed regulations will not affect small businesses. No facilities subject to the proposed regulations are considered to be small businesses.

Before taking final action on the proposed regulations, the ARB must determine 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 action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

## **SUBMITTAL OF COMMENTS**

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than **12:00 noon, November 17, 2004**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814

Electronic mail is to be sent to: **feereg04@listserv.arb.ca.gov** and received at the ARB by **no later than 12:00 noon, November 17, 2004**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, November 17, 2004**.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

## **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under that authority granted in sections 39600, 39601, 39612 and 39613 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39500, 39600, 39612, and 39613 of the Health and Safety Code.

## **HEARING PROCEDURES**

The public hearing to consider this matter will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result

from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon  
Executive Officer

Date: September 21, 2004

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.arb.ca.gov](http://www.arb.ca.gov).*