

UPDATED INFORMATIVE DIGEST

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

Sections Affected: Adoption of new sections 90805 and 90806; and 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 these 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 Adopted Regulatory Action

In this rulemaking the ARB adopted amendments to the existing fee regulations. New section 90805 provides for the collection of supplemental fees from facilities.

The supplemental fees will 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 will be collected from facilities. The remaining \$17.4 million will continue to be collected on a uniform basis from facilities, manufacturers of consumer products, and manufacturers of architectural coatings. The adopted 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 adopted 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 adopted amendments allow each district the option to collect the supplemental fees instead of having ARB collect them. Districts who choose this option will follow the same process specified in the existing regulations. For FY 2004-2005, however, the adopted amendments specify that the ARB will collect the supplemental fees because 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 ARB also adopted 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 apply to both the existing fees and the supplemental fees, and allow ARB to comply with possible future changes in State law without having to modify the regulations.

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

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