State of California
AIR RESOURCES BOARD

Resolution 03-20

July 24, 2003

Agenda Item No.: 03-6-5

WHEREAS, section 39003 of the Health and Safety Code identifies the Air Resources Board (ARB or Board) as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Board to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature enacted section 39612 of the Health and Safety Code as part of the California Clean Air Act of 1988;

WHEREAS, as originally enacted, section 39612 of the Health and Safety Code empowered the Board to assess fees on nonvehicular sources (facilities) that were authorized by air pollution control and air quality management district (district) permits to emit 500 tons per year or more of any nonattainment pollutant or its precursors, and the total amount of assessed fees was capped at $3,000,000 per year;

WHEREAS, pursuant to Health and Safety Code section 39612, the Board approved the California Clean Air Act Nonvehicular Source Fee Regulations in 1989, and amended the regulations in the years from 1990 through 1996 and 1998;

WHEREAS, facilities, consumer products, and architectural coatings are large contributors in California of nonattainment pollutants or their precursors;

WHEREAS, in 2003 the Legislature enacted Assembly Bill 10X (AB 10X; Stats. 2003, ch. 1X) to shift more of the Board's stationary source budget from the General Fund to fee-supported programs;

WHEREAS, AB 10X amended section 39612 of the Health and Safety to: (1) increase the cap on stationary source permit fees from $3 million to $13 million for fiscal year 2003-2004, and allow the fees to be adjusted annually thereafter for inflation; (2) expand the universe of facilities subject to the fees by specifying that the fees are to be collected from facilities authorized by district permits to emit 250 tons or more per

year of any nonattainment pollutant or its precursors; and (3) authorize the Board to collect the fees directly instead of requiring the districts to first collect the fees and transmit them to the Board;

WHEREAS, AB10X also authorizes the ARB for the first time to assess fees on manufacturers of consumer products and architectural coatings; AB10X added section 39613 to the Health and Safety Code, which authorizes the Board to assess fees on manufacturers whose total sales of consumer products and architectural coatings will result in the emission in California of 250 tons or more per year of volatile organic compounds (VOC);

WHEREAS, Health and Safety Code section 39613 specifies that the fees on manufacturers are to be expended by the ARB solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings;

WHEREAS, as outlined in the Governor's March 18, 2003 letter to the Legislature on AB 10X, the expenditure of the fees must be related to the activities of those paying the fees and should not exceed reasonable and necessary costs of the ARB to implement its programs as appropriated in the Budget Act;

WHEREAS, the staff has proposed regulatory amendments, set forth in Attachment A hereto, to implement the provisions of AB10X;

WHEREAS, the proposed amendments would establish a mechanism under which the ARB's Executive Officer identifies the fees to be assessed for each fiscal year;

WHEREAS, the proposed amendments would require the Executive Officer to assess fees on facilities which emit 250 tons or more per year of any nonattainment pollutant or precursor, and to assess fees on manufacturers whose total sales of consumer products and architectural coatings will result in VOC emissions in California of 250 tons or more per year;

WHEREAS, under the proposed amendments:

> The total amount of fees assessed for any fiscal year cannot exceed the amount authorized by the State Legislature for that fiscal year;
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> The total amount of fees assessed in each fiscal year would reflect the revenues needed to recover the costs in the fiscal year for ARB programs, plus an "adjustment amount" of up to three percent to recover unforeseen reductions in collections, and less any carry-over excess revenues from the previous fiscal year;
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> A fee per ton is then determined by dividing the total fees to be assessed by the total tons of applicable emissions, based on the most recent statewide data available for facilities, consumer products manufacturers, and architectural coatings manufacturers;

The dollar amount to be transmitted to the ARB for each emission source is then determined by multiplying the fee per ton by the total tons of applicable emissions from the source;

WHEREAS, for the 2004-2005 fiscal year and any subsequent fiscal year in which the assessment of fees is authorized, the proposed amendments would require the Executive Officer to notify affected companies of the Executive Officer's preliminary determination of the fee amounts to be assessed and the data on which these amounts are based; after considering any comments regarding the preliminary determination, the Executive Officer would notify the affected companies of the final determination of fee amounts;

WHEREAS, based on comments received during the 45-day comment period prior to the public hearing, staff has proposed modifications to the original proposal; these modifications are set forth in Attachment B to this resolution;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code and the Board has considered the testimony presented by interested persons and the staff;

WHEREAS, in consideration of the staff report, written comments, and public testimony it has received, the Board finds that:

The State of California is experiencing a significant imbalance between revenues and expenditures;

Recovering program costs is critical to the Board's mission of reducing air pollution;

AB 10X, which was adopted by the California Legislature as a budget balancing measure, is intended to shift more of the Board's Stationary Source budget from the General Fund to fee-supported programs;

Adoption of the proposed amendments to the California Clean Air Act Nonvehicular Source Fee Regulations is necessary for the Board to carry out its legal responsibilities under division 26 of the Health and Safety Code;

The proposed mechanism for identifying the fees to be assessed and transmitted in each fiscal year will eliminate the need for future annual rulemakings, while assuring that affected companies have a meaningful opportunity to provide input on the size and allocation of the assessments;

It is appropriate to recover costs based on total ARB program costs for controlling emissions from facilities, consumer products, and architectural coatings;

Monitoring, emission inventory development and maintenance, research, developing test methods and testing products, computer modeling, enforcement, rule development and interpretation, and related activities performed by ARB staff are all integral and necessary parts of mitigating and reducing air pollution in California created by consumer products and architectural coatings;

The fairest and most equitable method of assessing the fees is to charge a uniform amount per ton of pollution emitted to sources with annual emissions of 250 tons or more per year; this approach insures that the largest emitters in each source category are paying the same monetary amount for each ton of pollution;

The fees assessed on facilities will be expended by the ARB only for the purposes of recovering the costs of state programs related to nonvehicular sources, as specified in Health and Safety Code section 39612;

The fees assessed on consumer products and architectural coatings manufacturers will be expended by the ARB solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings, as specified in Health and Safety Code section 39613;

The proposed amendments are necessary and appropriate to implement sections 39612 and 39613 of the Health and Safety Code;

The approach utilized in the proposed amendments is consistent with the provisions of AB 10X and with the Governor's March 18, 2003 letter to the Legislature regarding AB 10X;

The proposed amendments will not have a significant adverse economic impact on the affected companies or on other businesses or private persons affected;

The proposed amendments will not have an adverse impact on the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies associated with the ARB's environmental justice program;

No reasonable alternative considered by the ARB, or that has otherwise been identified and brought to the attention of the ARB, would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action;

WHEREAS, the Board has determined, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, that this regulatory action will not have any significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board is initiating steps toward the final adoption of the regulatory amendments set forth in Attachment A, with the modifications set forth in Attachment B, and further modifications to provide that fee payers shall have 60 instead of 30 days to pay the fee after receipt of the fee determination notice for the 2003-2004 fiscal year.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the regulatory amendments set forth in Attachment A, with the modifications set forth in Attachment B (as further modified by the Board), and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulatory amendments to the Board for further consideration if she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to continue working with stakeholders to explain the programs that fee revenues will be used to support, to explore options to utilize alternative fee calculation methods to more equitably allocate the required fees among all fee payers, and to address other issues that have been raised.

BE IT FURTHER RESOLVED that, to provide as much advance notice as possible before the operative date of the amendments, the Board directs the Executive Officer to provide preliminary written notification at the earliest practicable date to each facility operator, consumer products manufacturer, and architectural coatings manufacturer of the expected fees to be assessed for the 2003-2004 fiscal year.

BE IT FURTHER RESOLVED that the Board directs the staff to report back to the Board on the implementation of the fee assessment and collection process after it has been completed for the 2003-2004 fiscal year.

I hereby certify that the above is a true and correct copy of Resolution 03-20, as adopted by the Air Resources Board.

Alexa Malik, Clerk of the Board

Recv'd By
Office of the Secretary
JAN 13 2004
Resources Agency of California

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and
Response to Significant Environmental Issues

Item:	Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations
Approved By:	Resolution 03-20
Adopted by:	Executive Order G-03-068
Agenda Item:	03-6-5
Public Hearing Date:	July 24, 2003
Issuing Authority:	Air Resources Board
Comment:	A few comments were received identifying environmental issues pertaining to this regulatory action. These comments are summarized and responded to in the Final Statement of Reasons for this regulatory action, which is incorporated by reference herein. The Initial Statement of Reasons identified no significant adverse environmental impacts that would result from the proposed action.
Response:	N/A
Certified:	Alexa Malik, Regulations Coordinator Board Administration & Regulatory Coordination Unit
Date:	1/6/04

Recd & Filed
Office of the Secretary

JAN 13 2004

Resources Agency of California

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Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations (section 98000.75 - 90804, title17, California Code of Regulations), as set forth in Appendix A to the Initial Statement of Reasons, released June 6, 2003.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the Board hearing on July 24, 2003).