

State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER THE ADOPTION OF PERMIT FEE REGULATIONS
FOR NONVEHICULAR SOURCES PURSUANT TO THE CALIFORNIA CLEAN AIR ACT

Public Hearing Date: April 26, 1996
Agenda Item No.: 96-3-2

I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking ("staff report"), entitled "Public Hearing to Consider the Adoption of Permit Fee Regulations for Nonvehicular Sources Pursuant to the California Clean Air Act," released March 8, 1996, is incorporated by reference herein.

Following a public hearing on April 26, 1996, the Air Resources Board (the "Board" or "ARB"), by Resolution 96-14, approved the adoption of the proposed California Clean Air Act Nonvehicular Source Fee Regulations. In approving the regulations, the Board directed the Executive Officer to adopt the regulations after making them available to the public for 15 days, provided that the Executive Officer considered written comments received during this period and made modifications as might be appropriate based on the comments received. The Board also directed the Executive Officer to present the regulations to the Board for further consideration if warranted. The subject regulations are contained in Title 17, California Code of Regulations (CCR), sections 90800-90803.

The regulations as approved by the Board differ from those initially proposed by the staff and made available with the staff report on March 8, 1996. The modifications to the initial proposal include a recalculation of the fee rate. This change was due to several emission changes reported by districts and a change in the carry-over rate from previous years. These revisions were circulated for public review in a 15-day comment period. No comments were received on these revisions during the 15-day comment period. The double underline and strikeout format presented in the 15-day package has been omitted for the final regulations attached here.

The regulations as approved are intended to provide the Board with net revenues of \$3.0 million in fees (see staff report). These funds are necessary to partially defray the additional costs of California Clean Air Act programs related to nonvehicular sources as budgeted for the 1996-97 fiscal year (see Attachment 1).

The Board has determined that this regulatory action will result in a mandate to local air pollution control and air quality management districts in the form of administrative costs in assessing and collecting the fees. These costs are not expected to exceed five percent of the fees to be collected. However, the Board finds that these costs are not reimbursable pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, because the districts have the authority, pursuant to Health and Safety Code section 39612 and the implementing regulations, to collect and retain fees sufficient to cover these costs.

The Board has determined that local agencies other than air pollution control or air quality management districts will incur costs in complying with the fee regulations. These local agencies are subject to the fee requirements because they operate facilities which emit 500 tons or more per year of any nonattainment pollutant or precursor and thus the fee regulations do not impose unique requirements on local governments. (See County of Los Angeles vs. State of California (1987) 43 Cal.3d 46.)

The regulations do not impose a mandate on school districts.

The Board has further determined that no alternative considered by 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 than the action taken by the Board. No alternatives were proposed that would lessen any adverse impact on businesses.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

During the 45-day comment period before the April 25, 1996, public hearing, the staff verified and accepted several changes in emission estimates submitted by districts. These changes are part of an ongoing process that allows ARB to quantify the most current estimates of 1994 emissions. Changes to emission estimates were submitted by Bay Area Air Quality Management District, Imperial County Air Pollution Control District, Mojave Desert Air Quality Management District, San Diego County Air Pollution Control District, and San Joaquin Valley Unified Air Pollution Control District. These changes resulted in an overall increase in emissions subject to fees of 324 tons per year, and a resulting decrease in the per ton emission rate from \$18.92 per ton to \$18.78 per ton.

The Board received one written comment from the public during the 45-day comment period prior to the Board hearing which is summarized below. No comments were presented at

the Board hearing. No written comments were received during the 15-day comment period following the Board hearing.

1. Comments:

One comment was received from The Society of the Plastics Industry. They are a lobbying group based in Washington, D.C. representing all segments of the plastics industry. While the Society does not have any members that are affected by this regulation, the Society submitted a letter expressing its general opposition to fees assessed upon businesses. The letter notes that many facilities pay permit fees and local district fees, in addition to the California Clean Air Act fees.

Agency Response:

The Legislature has already made the policy decision that very large polluters (more than 500 tons per year) should share some of the financial burden borne by society to research issues related to the pollution these very large facilities emit. The 500 tons per year threshold was set by the Legislature, and modification of that threshold is not within the Board's discretion.