

State of California
AIR RESOURCES BOARD

Resolution 98-1

January 29, 1998

Agenda Item No.: 98-1-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (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 in 1988 enacted the California Clean Air Act of 1988 (Stats. 1988, ch. 1568) to address the problem of air pollution in California;

WHEREAS, in the California Clean Air Act the Legislature declared that attainment of the Board's health-based ambient air quality standards is necessary to protect public health, particularly of children, older people, and those with respiratory diseases and directed that these standards be attained at the earliest practicable date;

WHEREAS, the California Clean Air Act directs the Board to perform numerous tasks related to both vehicular and nonvehicular sources of air pollution;

WHEREAS, section 39612 of the Health and Safety Code as enacted in the California Clean Air Act authorized the Board to require, from July 1, 1989 through June 30, 1997, air pollution control and air quality management districts (districts) to impose additional permit fees of up to \$3 million per year on nonvehicular sources which emit 500 tons per year or more of any nonattainment pollutant or its precursors in order to recover costs of additional state programs related to nonvehicular sources authorized or required by the California Clean Air Act;

WHEREAS, in 1997 the Legislature enacted Assembly Bill 1583 (Stats. 1997 ch. 713, Shelly) to authorize the Board to require districts to impose additional permit fees of up to \$3 million for the 1997-1998 and 1998-1999 fiscal years in order to recover costs of additional state programs related to nonvehicular sources;

WHEREAS, sections 90800-90803, title 13, California Code of Regulations, have provided the regulatory framework for administration of the California Clean Air Act nonvehicular source fee program, and for each fiscal year from 1989-1990 through 1996-1997 the Board has adopted a new regulation that has identified the amount of fees that each district has been required to impose on nonvehicular sources which emit 500 tons per year or more of any nonattainment pollutant or its precursors, based on the most recent available statewide emission inventory data;

WHEREAS, the staff has proposed regulatory amendments, set forth in Attachment A hereto, that would establish a mechanism under which the ARB Executive Officer would identify the fees to be assessed and transmitted by each district in fiscal years 1997-1998 and 1998-1999, and in any subsequent fiscal year in which the ARB is authorized by state law to require such fees;

WHEREAS, under the proposed amendments:

The total amount to be assessed in a fiscal year would reflect the revenues needed to recover the costs in the fiscal year for additional ARB programs related to nonvehicular sources, up to the maximum amount authorized by the Legislature, 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;

A fee per ton is then determined by dividing the total to be assessed by the total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all of the permitted facilities in the state based on the most recent statewide data available; and

The dollar amount to be transmitted to the ARB by each district is then determined by multiplying the fee per ton by the total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all of the permitted facilities in the district;

WHEREAS, for the 1998-1999 fiscal year and any subsequent fiscal year in which the assessment of fees is authorized, the proposed amendments would require the Executive Officer to advise the districts and affected nonvehicular sources, at least two months prior to the start of the fiscal year, of his or her preliminary determination of the fees 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 advise the districts and affected sources of the final determination of fee amounts by the start of the fiscal year and the districts would be required to transmit the specified amount to the Board by January 1 of the fiscal year;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which 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;

WHEREAS, the Board finds that:

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

The regulations adopted herein are necessary and appropriate to implement section 39612 of the Health and Safety Code;

The proposed amendments will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, the expansion of businesses currently doing business within California, or the ability of California businesses to compete with businesses in other states;

The proposed amendments will not affect small businesses because the proposed regulations affect only major nonvehicular sources, none of which are small businesses;

The proposed amendments will not have a significant adverse economic impact on the affected sources, on other businesses or private persons affected, or on the districts, which are authorized to recover the administrative costs of collecting the fees;

The Board has determined that no alternative considered would be more effective in carrying out the purpose for which the proposed amendments are proposed or would be as effective and less burdensome to affected private parties; and

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 hereby adopts section 90800.8, and amends sections 90801 and 90803, title 17, California Code of Regulations, as set forth in Attachment A hereto.

I hereby certify that the above is a true and correct copy of Resolution 98-1, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Proposed Amendments to the California Clean Air Act Nonvehicular Fee Regulations, sections 90800.8 through 90803, title 17, California Code of Regulations, as set forth in Attachment A to the Staff Report released December 12, 1997.