

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE 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 California Clean Air Act Nonvehicular Source Fee Regulations. The amendments would establish a process for assessing yearly fees on nonvehicular sources, consumer products manufacturers, and architectural coatings manufacturers for the 2003-2004 and subsequent fiscal years.

DATE: July 24, 2003

TIME: 9:00 a.m.

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

This item will be considered at a two-day meeting of the Board which will commence at 9:00 a.m., July 24, 2003, and may continue at 8:30 a.m., July 25, 2003. This item may not be considered until July 25, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before July 24, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-4011 or amalik@arb.ca.gov as soon as possible. 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 90800.75, 90800.9 and 90804; and proposed amendments to sections 90800.8, 90801, 90802, and 90803, title 17, California Code of Regulations (CCR).

Background

Health and Safety Code section 39612 was enacted by the Legislature as part of the California Clean Air Act of 1988. As originally enacted, section 39612 empowered the ARB to assess fees on nonvehicular sources that were authorized by local air district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors. The total amount of assessed fees was capped at

\$3,000,000, and the fees are to be used by the ARB only for the purposes of recovering the costs of additional state programs related to nonvehicular sources.

Pursuant to Health and Safety Code section 39612, the Board approved the California Clean Air Act Nonvehicular Source Fee Regulations in 1989. The original regulations included the fee rate and amounts to be remitted to the ARB by the air pollution control and air quality management districts (districts) for the first year of the program, fiscal year 1989-90. In each subsequent year between 1990 and 1996, the Board approved amendments to the fee regulations identifying the amount of fees to be collected by each district for the following fiscal year. In 1998, the Board adopted amendments which eliminated the need for annual rulemakings. The 1998 amendments established a process under which the ARB Executive Officer identifies the fees to be assessed in each fiscal year and notifies the districts and affected facilities. The process also insures that districts and affected facilities have the opportunity to provide input on the amount of the assessments.

In 2003, the Legislature enacted AB 10X (Stats. 2003, Chapter 1X), which made a number of changes to existing law. AB 10X amended Health and Safety Code section 39612 by: (1) increasing the cap on stationary source permit fees from \$3,000,000 to \$13,000,000 for fiscal year 2003-2004, and allowing the fees to be adjusted annually thereafter for inflation; (2) expanding the universe of stationary sources subject to the fees by specifying that the fees are to be collected from nonvehicular sources authorized by local air district permits to emit 250 tons (instead of the previous 500 tons) or more per year of any nonattainment pollutant or its precursors; and (3) authorizing the ARB to collect the fees directly, instead of requiring the districts to first collect the fees and then transmit them to the ARB.

In addition, AB10X authorizes the 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 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.

Description of Proposed Regulatory Action

In this rulemaking, the staff is proposing amendments to the existing fee regulations to implement the provisions of AB 10X. For stationary point sources (i.e., facilities) the amendments provide for the Executive Officer to assess annual fees on facilities authorized by local air district permits to emit 250 or more tons per year of any nonattainment pollutant or its precursors. Districts would no longer be required to collect the fee from facilities, but each district would instead have the option to collect the fees if they choose to do so. The

ARB would collect the fees directly in all districts that do not choose this option. In

other respects, the basic fee assessment process for facilities is the same as the existing process.

The proposed amendments would also provide for the Executive Officer to assess annual fees on manufacturers of consumer products and architectural coatings whose total sales will result in VOC emissions in California of 250 tons per year or greater. The fee assessment process for manufacturers is essentially the same as that for facilities, except that ARB would collect these fees directly from manufacturers in all cases; districts would not have the option of collecting the fees on behalf of the ARB.

Like the existing regulations, the proposed regulations would continue to provide for: (1) the collection of the emission fees on a dollar-per-ton basis; (2) the recovery of administrative costs by the districts if they chose to collect the fees from facilities; and (3) the imposition of additional fees on sources that do not pay in a timely manner.

Finally, the proposed amendments establish an abbreviated fee assessment process for fiscal year 2003-2004, 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 fee determinations will be as of the July 24, 2003 hearing date, unless the Executive Officer makes a modification that is based on subsequently received information, and the modification is explained in the final assessment notification. This approach will insure that by the time of the Board hearing the districts, facilities, and manufacturers are aware of and have a chance to comment on the anticipated amounts and basis for the fees.

The Governor's budget for fiscal year 2003-2004 proposes that the ARB collect a total of \$13 million in fees from stationary sources, consumer products manufacturers, and architectural coatings manufacturers. However, if the Legislature approves a budget recommendation of the Legislative Analyst's Office to increase the fees by \$4.4 million, the ARB would be authorized to collect \$17.4 million in fees from these sources for fiscal year 2003-2004.

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

AVAILABILITY OF DOCUMENTS AND 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.

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA

95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (July 24, 2003).

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:

- 1) For general questions on the proposed regulatory action:
Mr. Don Rake, Planning and Technical Support Division,
(916) 322-7304, e-mail drake@arb.ca.gov.
- 2) For questions on Nonvehicular Sources:
Mr. Don Rake, Planning and Technical Support Division,
(916) 322-7304, e-mail drake@arb.ca.gov;
- 3) For questions on Consumer Products:
Ms. Judy Yee, Stationary Source Division,
(916) 322-9148, e-mail jyee@arb.ca.gov; and
- 4) For questions on Architectural Coatings:
Mr. Jim Nyarady, Stationary Source Division,
(916) 322-8273, email jnyarady@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 & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. 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.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

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/feereg03/feereg03.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 fiscal year 2003-2004, facilities operated by three local agencies have been identified as being subject to the fees. The aggregate cost to these three local agencies will be approximately \$141,000 to \$188,000 for this fiscal year. These costs, as well as any permit 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 local air pollution control and air quality management districts (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. 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 section 39612(e) and (f)(1), and proposed section 90800.9(e), 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, but this impact is not expected to be significant.

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 2003-2004, approximately 104 facilities in the state are expected to be assessed permit fees 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 could result in an increased cost to individual facilities of \$14,000 to \$500,000. Approximately 24 companies involved in the manufacturer of architectural coatings that are sold in the State would be subject to the fees. This could result in an increased cost to individual architectural coatings manufacturers of approximately \$14,000 to \$342,000 per year, depending on the amount of emissions generated by the manufacturer. Approximately 54 manufacturers of consumer products would be subject to the fees. This could result in an increased cost to individual consumer products manufacturers of approximately \$14,000 to \$404,000 per year.

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 State of California, and minimal or no impacts on the expansion of businesses currently doing business within 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 regulations will affect small businesses. No facilities subject to the proposed regulations are considered to be small businesses. However, some consumer products manufacturers and architectural coatings manufacturers subject to the proposed regulations are considered to be small businesses.

Before taking final action on the proposed regulatory action, 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, July 23, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: **feereg03@listserv.arb.ca.gov** and received at the ARB by **no later than 12:00 noon, July 23, 2003**.

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 July 23, 2003**.

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 HEARING PROCEDURES

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; section 9600(a), Government Code; and Article 4, section 8(c)(1) of the California Constitution.

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, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: May 27, 2003

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.