UPDATED INFORMATIVE DIGEST

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

Sections Affected: Adoption of new sections 90800.75, 90800.9 and 90804; and 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 As originally enacted, section 39612 empowered the ARB to assess fees on nonvehicular sources that were authorized by local air district permits to emit 500 tons or more per year of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 Adopted Regulatory Action

In this rulemaking, the ARB adopted 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 are no longer required to collect the fee from facilities, but each district instead has the option to collect the fees if they choose to do so. The ARB will 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 amendments 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 the ARB will collect these fees directly from manufacturers in all cases; districts do not have the option of collecting the fees on behalf of the ARB.

Like the existing regulations, the adopted regulations 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 amendments establish an abbreviated fee assessment process for fiscal year 2003-2004, because only limited time will remain in the 2003-2004 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 insures that the districts, facilities, and manufacturers are aware of and have a chance to comment on the anticipated amounts and basis for the fees. The final Budget Act of 2003 (Stats. 2003, Chapter 157) authorizes the ARB collect a total of $17.4 million in fees from stationary sources, consumer products

manufacturers, and architectural coatings manufacturers for fiscal year 2003-2004.

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