

State of California
AIR RESOURCES BOARD

STAFF REPORT

PUBLIC HEARING TO CONSIDER THE ADOPTION OF NEW SECTION 90800.5 AND
AMENDMENTS TO SECTION 90803, TITLE 17, CALIFORNIA CODE OF REGULATIONS,
REGARDING THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE PROGRAM

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Prepared by:

Stationary Source Emission Inventory Branch
Technical Support Division

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the California Air Resources Board and approved for publication.
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Principal Author

Don Rake
Technical Support Division

Reviewed and Approved by

Terry McGuire, Chief, Technical Support Division
Gary Agid, Assistant Chief, Technical Support Division
Linda Murchison, Chief, Stationary Source Emission Inventory Branch
Dale Shimp, Manager, Emission Inventory Special Projects Section

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State of California
AIR RESOURCES BOARD

Staff Report: Initial Statement of Reasons
for Proposed Rulemaking

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

Date of Release: February 25, 1994
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I. INTRODUCTION AND BACKGROUND

This report discusses a proposal of the staff of the Air Resources Board (ARB) to adopt regulations that require the air pollution control and air quality management districts to assess permit fees on nonvehicular sources of air pollution as authorized by the California Clean Air Act of 1988 (the "Act" or "CCAA", Stats. 1988, ch. 1568). The proposed regulations are contained in Attachment A to this report.

Fees transmitted to the ARB will be used to defray the costs to the ARB of implementing mandates of the Act related to nonvehicular sources in fiscal year 1994-95, the sixth year of the fee program. The fees are authorized by section 39612 of the Health and Safety Code (Attachment B).

At its June 9, 1989, meeting, the Board approved adoption of sections 90800-90803, Title 17, California Code of Regulations (CCR) for the first year of the program. These sections establish the CCAA Nonvehicular Source Fee Regulations, including the fee rate and the total amount to be remitted by each affected district for fiscal year 1989-90. The fees for the first year of the program were based on emissions for calendar year 1987.

Subsequently, the Board approved amendments to the regulations at its May 1990, April 1991, April 1992, and April 1993, meetings, to provide continuing funding for fiscal years 1990-91, 1991-92, 1992-93, and 1993-94, respectively. The fees for the second, third, fourth, and fifth year of the program were based on emissions for calendar year 1988, 1989, 1990, and 1991, respectively.

To provide ongoing funding for the sixth year of the program, the staff recommends that the Board continue the existing permit fee program by adopting the proposed amendments to the fee regulations to provide for the collection of fees for fiscal year 1994-95. The proposal was developed after consultation with affected districts and industries. A public consultation meeting was held on February 9, 1994. Districts, representatives of all facilities that were identified as being potentially subject to the fees, and the public were notified of the meeting. A copy of the meeting notice is included as Attachment C. Facilities that would be subject to the proposed fees and their emissions are listed in Attachment D.

The Act requires attainment of state ambient air quality standards by the earliest practicable date. As part of this mandate, the Act requires the ARB and the air pollution control and air quality management districts to take various actions to reduce air pollution from motor vehicles, industrial facilities, and other emission sources.

In order to recover costs of the state programs required by the Act related to nonvehicular sources, the Act authorizes the Board to require the districts, beginning July 1, 1989, to collect additional permit fees for facilities which are located in designated nonattainment areas and which are authorized by district permit to emit 500 tons or more per year of any nonattainment pollutant or its precursors. The proposed fee amounts to be collected by districts for the sixth year of the program were calculated based on available emission data for calendar year 1992, which are the most recently available statewide emission data. Districts have established permit systems for nonvehicular sources of air pollution pursuant to Health and Safety Code sections 42300, 42301 and 42310. Therefore, the facilities affected by the proposed fee regulations are those facilities which are permitted by the districts and emit 500 tons or more per year of any nonattainment pollutant or its precursors. The staff is proposing a change in the regulations to address fees for facilities in districts not attaining the state ambient air quality standard for ozone because of overwhelming transport. This is discussed in Section IV.C. of this report.

The identification of nonattainment pollutants within each district is based on the action taken by the Board at public hearings on June 9, 1989, November 8, 1990, November 14, 1991, December 10, 1992, and November 18, 1993, to designate areas of the state as nonattainment areas for certain pollutants (Reference: sections 60200-60209, Title 17, CCR). Precursors of nonattainment pollutants are identified in section 90801, Title 17, CCR, approved by the Board on April 11, 1991.

By law, the total fee amount to cover program costs, exclusive of district administrative costs, may not exceed \$3,000,000 in any fiscal year. The fees may be assessed annually through June 30, 1997. For fiscal year 1994-95, the proposed amount to be collected for nonvehicular Clean Air Act program expenditures is \$2,718,872.

Existing regulations authorize districts to recover their administrative costs of collecting the fees by adding to the fees an amount sufficient to cover those costs. As provided in Health and Safety Code section 39612(e), this additional fee amount is not included in the total fees subject to the \$3,000,000 cap. The current regulations further require districts to transmit the fees provided for in the regulations to the ARB to be forwarded to the State Controller for deposit in the Air Pollution Control Fund. The staff is not proposing any changes to these provisions.

II. RECOMMENDATION

The existing regulations provide for fees to be collected for each of the five years of the fee program, fiscal years 1989-90, 1990-91, 1991-92, 1992-93, and 1993-94. The staff is proposing the adoption of a new section of the regulations which will provide for fees to be collected for the sixth year of the program, fiscal year 1994-95. The staff is also proposing a change in the regulations to address fees for facilities in

areas not attaining the ozone standard because of overwhelming transport which is discussed in section IV.C. of this report.

The staff recommends that the Board adopt the proposed fee regulations discussed in this report and contained in Attachment A to this report.

III. RELATIONSHIP TO OTHER FEE PROGRAMS

This report discusses a proposal for assessing fees on large nonvehicular sources pursuant to the CCAA. In addition to the fees on nonvehicular sources, the Act provides the ARB with the authority to assess fees for the certification of motor vehicles and engines sold in the state. The motor vehicle fee program was the subject of a separate regulatory proposal adopted by the Board in 1989 providing for the collection of fees from motor vehicle manufacturers on an annual basis in an amount sufficient to cover the costs of implementing the CCAA mandates relating to mobile sources (Reference: Health and Safety Code section 43019, Title 13, CCR, sections 1990-1992). The motor vehicle fee regulations do not need to be amended by the Board each year.

IV. DISCUSSION OF PROPOSED REGULATIONS

A. SUMMARY OF MAJOR PROVISIONS

The proposed regulations would require districts that have facilities subject to the regulations (listed in Attachment D) to collect the fees for transmittal to the ARB for fiscal year 1994-95. The following provisions are included in the proposed regulations:

- o The regulations are applicable for the 1994-95 fiscal year (the sixth year of the program), July 1, 1994 to June 30, 1995;
- o The subject districts are those which are designated as of July 1 of the year for which fees are being collected as being entirely or partially¹ nonattainment for state ambient air quality standards for ozone, sulfur dioxide, sulfates, nitrogen dioxide, carbon monoxide, suspended particulate matter (PM₁₀), visibility reducing particles, hydrogen sulfide or lead, except in certain circumstances where the district is designated nonattainment for ozone because of overwhelming transport (this is discussed further under subsection C).
- o Districts with facilities subject to the proposed fee regulations must collect additional permit fees from facilities which emitted 500 or more tons per year of any nonattainment pollutant or its precursors;

-
1. Fees are imposed only for sources of nonattainment pollutants or precursors within the area of the district designated as nonattainment for the corresponding substance listed in section 70200, Title 17, CCR.

- o The 1992 statewide emission data are to be used as the basis for the fees;
- o Districts may recover their administrative costs associated with assessing and collecting the fees;
- o Districts must transmit the fees to the ARB no later than 180 days after the effective date of these fee regulations;
- o Districts must collect fees sufficient to cover a part of the ARB's costs of implementing the Act for the fiscal year 1994-95;
- o In the event that excess revenue is collected for any program year, this revenue shall be carried over for expenditure during future years.

In calculating the proposed fees for fiscal year 1994-95, the program cost of \$3,000,000 was reduced by the amount of fees collected in excess of program costs for prior fiscal years pursuant to section 90802(c), Title 17, CCR.

In past years, an adjustment was added to the assessed fees for use as a reserve to cover nonpayment of fees resulting from the unanticipated closing of businesses or other reasons that might result in a shortfalls in fees collected. However, based on past history of the fee collections for this program, the staff anticipates that there will be sufficient reserves on hand to cover uncollectable fees in fiscal year 1994-95. The staff is therefore recommending that no upward adjustment of the fees be applied this year.

B. DEFINITIONS OF NONATTAINMENT POLLUTANTS AND PRECURSORS

The Board approved definitions of nonattainment pollutants and nonattainment precursors as part of the fee regulations at its June 9, 1989, meeting; these remained unchanged in 1990, but were subsequently changed in 1991. For purposes of the fee regulations, a "nonattainment pollutant" is any pollutant emitted in an area which is designated as nonattainment for that pollutant by sections 60200-60209, Title 17, CCR, for a state ambient air quality standard identified in section 70200, Title 17, CCR. A "nonattainment precursor" is any substance emitted in a nonattainment area known to react in the atmosphere that contributes to the production of a nonattainment pollutant or pollutants. Because area designations may change from year to year, the Board in 1991 amended the fee regulations to clarify which designations apply in each fiscal year. This is discussed further in subsection C.

A list of nonattainment pollutants and their precursors is provided in Table 1. Facilities in areas which are designated nonattainment for one or more of the substances listed in Table 1 may be subject to fees based on the amount of the pollutant and/or its precursor that is emitted. An exception is being proposed in the regulations for certain cases where facilities are located in areas that are designated nonattainment for ozone because of overwhelming transport (this is discussed further in subsection C). In actuality, only six of the nine substances are included in the fee process at this time. The three substances not subject to the fee process

Table 1

NONATTAINMENT POLLUTANTS AND NONATTAINMENT PRECURSORS

<u>Substance</u> (as listed in section 70200 Title 17, CCR):	<u>nonattainment</u> <u>pollutant/precursors:</u>
Ozone	reactive organic gases oxides of nitrogen
Sulfur Dioxide	oxides of sulfur
Sulfates	oxides of sulfur
Nitrogen Dioxide	oxides of nitrogen
Carbon Monoxide	carbon monoxide
Suspended Particulate Matter (PM10)	suspended particulate matter (PM10) oxides of nitrogen oxides of sulfur reactive organic gases
Visibility Reducing Particles	suspended particulate matter (PM10) oxides of nitrogen oxides of sulfur reactive organic gases
Hydrogen Sulfide	hydrogen sulfide
Lead	lead

(Reference: section 90801(d), Title 17, CCR)

are visibility reducing particles, hydrogen sulfide and lead. In 1989 the Board adopted a new monitoring method for visibility reducing particles, but data are not yet available for most areas on which to base area designations. Consequently, all areas remain unclassified for this substance except Lake County, which has been designated as attainment. Hydrogen sulfide is not included in the fee process because there are no sources emitting 500 tons or more per year of that pollutant in the three nonattainment areas of the state. Finally, all areas of the state are currently designated attainment for lead; therefore, no fees have been assessed for this pollutant.

Table 1 reflects two changes to the definition of precursors which were adopted by the Board for the 1991 program. The remaining pollutant/precursor relationships presented in Table 1 are discussed in detail in the Staff Report for the fee regulations for the first year of the program.

C. THE EFFECT OF REDESIGNATIONS

The initial designation of nonattainment areas was approved for adoption by the Board at its June 9, 1989, meeting. Those designations were used for establishing the CCAA fees for the first two years of the program, fiscal years 1989-90 and 1990-91. The Act requires the Board to review the designations annually and to update them as necessary. Pursuant to that requirement, the Board considered and approved for adoption amendments to the designations at its November 8, 1990, meeting. Those designations were used for establishing the CCAA fees for the third year of the program, fiscal year 1991-92. The Board considered and approved for adoption additional amendments to the designations at its November 15, 1991, meeting. Those designations were used for establishing the CCAA fees for the fourth year of the program, fiscal year 1992-93. The Board considered and approved for adoption additional amendments to the designations at its December 10, 1992, meeting. Those designations were not used for establishing the CCAA fees for the fifth year of the program, fiscal year 1993-94 because the new designations were not effective by July 1, 1993, as required by the regulations. Those designations were used to establish the CCAA fees for this fiscal year but, under the staff's proposal, no new sources will be subject to the fees because of the new designations.

Among the amendments to the designations was the determination that much of the Mountain Counties Air Basin is nonattainment for the state ozone standard. However, at its August 1993 meeting, the Board determined that overwhelming transport from the Broader Sacramento Area and from the San Joaquin Valley caused all the violations of the state ozone standard in the Mountain Counties Air Basin. This determination was based on airflow patterns, exceedance characteristics, and by the relative ozone precursor emissions within the Mountain Counties and the two upwind areas. Because of this determination, districts in the Mountain Counties are not subject to the planning requirements of the CCAA.

Amador County is the only district within the nonattainment portion of the Mountain Counties Air Basin which currently has a facility emitting 500 or more tons per year of any nonattainment pollutant or precursor. As

part of the Mountain Counties Air Basin, Amador County is not subject to the planning requirements of the CCAA due to overwhelming transport. Because of this, the proposed regulations include a provision that excludes from compliance with the regulations, facilities that would be subject to the fees because the facility is in a district designated nonattainment for ozone solely as a result of ozone transport. If the Board approves this provision, the facility in Amador County would not be subject to the fees, and facilities in the same circumstance would not be subject to the fees.

The Board amended the regulation for fiscal year 1991-92 to tie the fee program to the designations that are effective as of July 1 of the fiscal year to which the fee regulation applies; these changes were approved for adoption in subsections 90801(b) and (c) of the regulation. Thus, for the current proposal, the designations that are effective on July 1, 1994, would be applicable throughout the entire fiscal year 1994-95. Because it is not certain whether the amendments approved for adoption by the Board at its November 18, 1993, hearing, will be in effect at the time of the Board hearing on the proposed fee regulation, the fees contained in the proposed regulation for fiscal year 1994-95 may not reflect the 1992 emissions from all facilities potentially subject to the CCAA fees. However, if the new redesignations are effective by July 1, 1994, any facilities that are subsequently identified that should have been subject to the fee program will be subject to the fee rate contained in the proposed regulation. Preliminary data indicate that the November 1993 designation changes will not result in the addition or deletion of any facilities subject to the CCAA fees.

D. EMISSION DATA FOR 1992 AS THE BASIS FOR THE FEES

The fee regulations approved for adoption by the Board in 1989 included a provision specifying that the fees would be based on 1987 emissions because these data were the most recently available statewide emission data and were considered the best estimate of actual emissions from the affected facilities. For the second, third, fourth, and fifth years, fees were based on 1988, 1989, 1990 and 1991 emissions, respectively. The staff is proposing that fees for fiscal year 1994-95 be based on 1992 emissions for the same reasons. The staff's intent is to continue to review emission estimates annually and the fee schedules proposed for adoption in future years of the program will be adjusted appropriately.

The staff established a cutoff date of February 4, 1994, for finalizing the 1992 emission estimates to be used in this staff report. Those permitted facilities identified as emitting 500 tons or more of nonattainment pollutants or their precursors during calendar year 1992 were included in the fee calculation for this proposal. This cutoff date was established to allow the staff time to finalize the fee basis of this proposal before initiating the rulemaking process. The data presented in this report reflect the ARB staff's best estimate, as of February 4, 1994, of 1992 emissions from facilities that would be subject to the fees. These emission data are summarized in Table 2 together with the fees to be assessed each district. The determination of fees is discussed in subsection E of this report.

TABLE 2
CALIFORNIA CLEAN AIR ACT
NONVEHICULAR SOURCE FEE PROGRAM

EMISSIONS OF NONATTAINMENT POLLUTANTS OR PRECURSORS*
FROM FACILITIES THAT EMITTED 500 OR MORE TONS IN
CALENDAR YEAR 1992

DISTRICT	NO. OF FACILITIES	EMISSIONS OF NONATTAINMENT POLLUTANTS OR PRECURSORS (TONS IN 1992)					PROPOSED FEES (\$ (**))
		ROG	NOx	SOx	PM10	CO	
Bay Area	15	12,421	31,869	17,265			\$958,315
Imperial	2		1,580				24,598
Kern (SEDAB)	4		5,755		695		100,416
Mojave Desert	10		20,151				313,720
Monterey Bay	2		7,667				119,363
Sacramento	1					2,550	39,700
San Diego	3	2,158	2,981				80,006
San Joaquin Unified	20	2,884	25,048	516			442,891
San Luis Obispo	3		3,745	3,432			111,735
South Coast	16	5,343	16,543	3,788		6,230	496,695
Ventura	2		2,019				31,433
TOTAL	78	22,806	117,358	25,001	695	8,780	\$2,718,872

* Based on designations of areas as "nonattainment" in sections 60200-60209, Title 17, CCR

** The values in this column are calculated by dividing \$2,718,872 by the total statewide emissions subject to this regulation, and multiplying that value by the total emissions subject to this regulation in a district. Because the per-ton fee of \$15.57 has been rounded off, the proposed fee for an individual district will not be exactly equal to the total emissions in the district multiplied by \$15.57.

(February 4, 1994)

The districts have been asked to verify emissions from affected facilities and to indicate which of the facilities meet the definition of "small business" as specified in the Government Code Section 11342 (e). The latter information will be used to determine if the proposed regulations will affect any small businesses. To date, no facilities that would be subject to the proposed fees have been identified as a "small business." Any new information that would affect the emission estimates in Table 2 that is received after publication of this report will be presented to the Board at the hearing. The proposed fee rate and amounts to be remitted may be revised at the time of the public hearing if updated emission data are available at that time. New data may include the identification of additional facilities which emitted 500 tons or more of any nonattainment pollutant or precursor in 1992 or revised emission data for previously identified sources. The final inventory upon which the fee rate is established will reflect such additions and changes.

In order to assess fees equitably for all permitted facilities which emitted 500 tons or more per year of any nonattainment pollutants or their precursors, facilities identified after the fee regulation inventory is established as having emitted 500 or more tons of nonattainment pollutants or precursors in 1992 would also be subject to the fees pursuant to section 90800.5(c). A similar provision was adopted by the Board for the first five years of the program (sections 90800(c), 90800.1(c), 90800.2(c), 90800.3(c), and 90800.4(c), Title 17, CCR).

E. DETERMINATION OF FEES

For the fiscal years 1989-1990 and 1990-1991, the proposed fees were based on a dollar-per-ton emission fee that was calculated by using the following formula:

$$\text{Fee per ton} = \frac{T + A}{E}$$

Where

T = Total amount needed by the ARB in the specified fiscal year for implementing various provisions of the Act related to nonvehicular sources (dollars);

A = A 10 percent adjustment factor to cover unforeseen reductions in collections such as would occur from bankruptcies or unanticipated closings of businesses (dollars); and

E = The total nonattainment emissions from all permitted facilities in the state that emitted 500 tons or more per year of nonattainment pollutants or their precursors during a specified calendar year (tons).

As indicated by the formula, the adopted fee schedules for the first five years included an adjustment factor of 10 percent. It was believed that such an adjustment was necessary to avoid a potential undercollection of funds that could occur from unanticipated events such as business

closures. In approving the adjustment factor, the Board was concerned that a shortfall in funds would seriously disrupt the programs that had been entrusted to the ARB to implement. In the event, however, that the 10 percent adjustment results in excess revenues, section 90802(c) of the regulation requires that the excess amount shall be carried over by the state and applied to future year expenditures.

Because the regulation requires that any excess funds collected be carried over and applied to reduce fees in future years, the staff adjusted the fees for fiscal year 1991-92 downward by an amount equal to the excess collected during fiscal year 1989-90. Similarly, the staff adjusted the fees for fiscal year 1992-93 and 1993-94 downward by an amount equal to the excess collected respectively during fiscal years 1990-91 and 1991-92. For fiscal year 1992-93, nearly all assessments have been paid.

To account for both the revenue carried over from a prior fiscal year and the possibility of undercollection in the future, the staff based the fee schedule for fiscal years 1991-92, 1992-93, and 1993-94, on the following formula:

$$\text{Fee per ton} = \frac{T + A - C}{E}$$

Where T, A and E represent the same definitions as set forth above and C represents Carry-Over Revenues received in prior fiscal years. A total of \$281,128 is being carried forward from previous years and being applied to fiscal year 1994-95. Therefore, the staff is proposing that fees for fiscal year 1994-95 be adjusted downward by that amount.

For the fiscal year 1994-95 fee proposal the staff proposes using the same formula with the following dollar amounts:

T = \$3,000,000 program costs for fiscal year 1994-95
A = \$0 (zero) adjustment factor*
C = \$281,128 carry-over revenue collected from previous years
E = 174,640 tons in the 1992 calendar year

* The staff's experience with the collection of fees indicates that there will be adequate reserves to cover any uncollectable fees in 1994-95. The staff is therefore recommending that no upward adjustment of the fees be applied this year to cover uncollectable fees.

Using the above dollar-per-ton emission fee formula, a fee of \$15.57 per ton was calculated. The fee per ton was calculated by the ARB staff on the basis of information provided by districts with facilities that would be subject to the fees. Facilities that emitted 500 or more tons of more than one nonattainment pollutant or precursor will be assessed fees on the sum of the emissions of each of those pollutants or precursors. The calculation was based on 1992 emission data. The emission data and fees to be assessed each affected district are summarized in Table 2 of this report.

F. RECOVERY OF DISTRICTS' ADMINISTRATIVE COSTS

The staff is not proposing changes to the portion of the regulations, adopted in 1989 and continued in 1990, 1991, 1992, and 1993, which specify recovery of districts' administrative costs [section 90802 (d)]. The regulations provide for collection by districts of additional fee amounts to cover their administrative costs for collecting the fees. Districts' costs are in addition to the fees mandated by this proposal, and are expected to add no more than 5% based on past experience. The regulations [section 90802 (b)] require districts to substantiate the administrative costs and to provide related information to the ARB on request. The information must be provided within thirty days of the request. The thirty day period provides the districts with sufficient time to compile and submit the requested information. These requirements allow the ARB to ensure that the fee collection program is effectively implemented and that funds necessary to implement the requirements of the Act are available to the ARB. The regulations [section 90802 (b)] also require districts to impose late fees on facilities that do not submit assessed fees in a timely manner to cover the additional administrative costs the districts incur in collecting late fees.

G. IMPACT ON DISTRICT OF FAILURE OF FACILITIES TO PAY FEES

The regulations adopted in 1989 and continued in 1990, 1991, 1992, and 1993 also provide a mechanism that releases a district from the responsibility for remitting fees that are for demonstrated good cause not collectible. Revisions are not being proposed for this provision (section 90803). Examples of situations for which this provision would apply include such events as facility closure or refusal of the facility operator to pay the fees despite reasonable efforts by the district to collect the fees.

The districts and affected sources are given several opportunities to comment on the emissions used for the fee calculations during the rulemaking process. Relief from fee payment is provided to the districts under certain circumstances by the regulations (section 90803), but failure to provide accurate emission information within the rulemaking process is not an adequate justification for the districts or affected sources to decrease the invoice amount to be paid to the state.

V. POTENTIAL IMPACTS AND ISSUES

A. POTENTIAL ENVIRONMENTAL IMPACTS

The staff is not aware of any potential adverse impacts on the environment that would be attributable to the implementation of proposed revisions to the fee program. Resources obtained through this fee program will fund tasks which are expected to contribute to or result in improved air quality.

B. POTENTIAL ECONOMIC IMPACTS

1. PUBLIC AGENCIES

The Board's Executive Officer has determined that local agencies will incur some costs as a result of the proposed regulations. Air pollution control and air quality management districts will incur administrative costs in collecting fees. The Act authorizes the districts to recover these costs from facilities subject to the fees.

Local government agencies which have been identified that would be subject to the proposed fees are the Los Angeles Department of Water and Power, the Orange County Sanitation District, and the Imperial Irrigation District. The aggregate cost to these local government agencies in complying with the regulations will be approximately \$58,000. These costs are not reimbursable state-mandated costs because the fees apply generally to all facilities in the state and do not impose any unique costs requirement on local governments. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.) Moreover, the affected local agencies recover costs, such as the fees, through the assessment of service charges or fees.

The Board's Executive Officer has determined that the regulations will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency, except as described above, 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, or other nondiscretionary savings to local agencies.

One federal agency has been identified that would be subject to the proposed fees: the Elk Hills Gas Plants, located in the San Joaquin Valley portion of Kern County. The cost to this federal government agency in complying with the regulations will be approximately \$26,000. Federal facilities are required to comply with all state and local requirements relating to the control and abatement of air pollution to the same extent as private persons. (Clean Air Act 118, 42 U.S.C. section 4218.) This includes the payment of permit fees. (United States of America v. South Coast Air Quality Management District (1990) 748 F.Supp. 732; State of Maine v. Department of the Navy (1988) 702 F.Supp. 322.)

2. BUSINESSES

The proposed regulations would require the collection of fees from specified facilities. The proposed fee rate is \$15.57 per ton of nonattainment pollutants or their

precursors as determined based on the amount of these pollutants emitted in 1992. The cost to affected businesses will therefore vary according to the magnitude of facilities' emissions. The cost to an individual business is estimated to range from a minimum of approximately \$9,000 to approximately \$457,000 for a multi-facility business.

The staff believes that the adoption of the fee program will have an insignificant adverse economic impact on businesses subject to the fees. The affected industries are among the largest in the state, both in size and financial strength. A detailed analysis of the economic impact of the proposed regulations on businesses is included in Attachment E: California Business Impacts of Permit Fee Regulations for Nonvehicular Sources.

The staff believes that adoption of these regulations will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The staff also believes that the potential cost impact on private persons or businesses directly affected by the proposed regulations will be insignificant. A review of the facilities listed in the inventory used for the fiscal year 1994-95 fees show that they are major oil and gas producers, utilities, and major manufacturing enterprises, none of which qualify as small businesses under Government Code section 11342(e). See Attachment D: Facilities and Emissions Subject to the Proposed Fee Regulations.

The staff believes that the proposed regulatory action 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, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in Attachment E.

The Executive Officer has determined that the regulations will not affect any small businesses.

C. EVALUATION OF ALTERNATIVES

Government Code section 11346.14 in part requires a description of the alternatives to the proposed regulations considered by the ARB. The following alternatives were identified by the ARB staff:

Alternative 1: Do not adopt revised fee regulations.

Tasks legislatively mandated for completion by the ARB can be completed only with additional resources. The Legislature intended that districts be required to collect fees from nonvehicular sources. This fee is the only

alternative provided for in the Act to obtain the needed additional resources. The staff therefore recommends that this alternative be rejected.

Alternative 2: Assess fees on a basis other than per ton of emissions.

The ARB staff considered allowing districts to assess fees based on a range of emissions (such as facilities that emitted 500 to 999 tons per year would be assessed one fee, facilities that emitted 1000 to 1499 tons per year would be assessed a higher fee, etc.).

The "per-ton" based fee in the staff's proposal is consistent with that of the Atmospheric Acidity Protection Act, for which fees were collected in previous fiscal years. The Atmospheric Acidity Protection Act program fees were legislatively mandated to be on a per-pound basis.

Because of the large amount of emissions generated by the facilities that would be subject to the proposed regulations, the staff also believes that it would be more equitable to the affected facilities to assess fees on a cost-per-ton basis. A facility that emits more will always be subject to higher fees than one which emits less.

For the reasons listed above, the staff recommends that this alternative be rejected.

Attachment A
Proposed Fee Regulations

PERMIT FEE REGULATIONS FOR NONVEHICULAR SOURCES
PURSUANT TO THE CALIFORNIA CLEAN AIR ACT

NOTE: The current regulations are not being repealed. The proposed new section 90800.5 and amendment to existing section 90803 are shown in underline to indicate additions to existing regulations.

PROPOSED

CALIFORNIA CLEAN AIR ACT
NONVEHICULAR SOURCE FEE REGULATIONS

Adopt New Section 90800.5
and Amend Section 90803
Subchapter 3.8, California Clean Air Act
Nonvehicular Source Fee Regulations¹,
as follows:

90800. Fee Requirements for Fiscal Year 1989-90.

- (a) No later than 180 days after the effective date of Sections 90800-90803, each district identified below shall transmit the dollar amount specified below to the Board for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected from facilities which are the holders of permits for sources which emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period from January 1, 1987, through December 31, 1987, inclusive. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. The fee to be charged shall be nine dollars and ninety-two cents (\$9.92) per ton.

- (1) Bay Area Air Quality Management District: six hundred seven thousand two hundred ninety-five dollars (\$607,295);

1. The current regulations are not being repealed. The proposed new section 90800.5 and amendment to existing section 90803 are shown in underline to indicate additions to existing regulations.

- (2) Butte County Air Pollution Control District: eight thousand nine hundred fifty-eight dollars (\$8,958);
- (3) Fresno County Air Pollution Control District: thirty-four thousand one hundred fifty-five dollars (\$34,155);
- (4) Kern County Air Pollution Control District: four hundred eighty-eight thousand eight hundred fifty-eight dollars (\$488,858);
- (5) Kings County Air Pollution Control District: six thousand two hundred ninety-nine dollars (\$6,299);
- (6) Monterey Bay Unified Air Pollution Control District: seventy-six thousand three hundred thirty-six dollars (\$76,336);
- (7) North Coast Unified Air Pollution Control District: forty-nine thousand five hundred seventy-one dollars (\$49,571);
- (8) Sacramento County Air Pollution Control District: eleven thousand nine hundred fourteen dollars (\$11,914);
- (9) San Bernardino County Air Pollution Control District: two hundred six thousand one hundred forty-two dollars (\$206,142);
- (10) San Diego County Air Pollution Control District: fifty-three thousand six hundred thirty-nine dollars (\$53,639);
- (11) San Joaquin County Air Pollution Control District: thirty-three thousand two hundred thirteen dollars (\$33,213);
- (12) San Luis Obispo County Air Pollution Control District: eighty-nine thousand two hundred thirty-two dollars (\$89,232);
- (13) Santa Barbara County Air Pollution Control District: twenty-four thousand eight hundred eighty dollars (\$24,880);

- (14) Shasta County Air Pollution Control District:
thirteen thousand nine hundred forty-eight dollars
(\$13,948);
 - (15) South Coast Air Quality Management District: five
hundred eighty-five thousand five hundred ninety
dollars (\$585,590);
 - (16) Stanislaus County Air Pollution Control District:
nine thousand seven hundred fifty-two dollars
(\$9,752);
 - (17) Ventura County Air Pollution Control District:
forty-eight thousand seven hundred eighteen dollars
(\$48,718).
- (b) Emissions from facilities identified on or before June 12, 1989, as having emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period January 1, 1987, through December 31, 1987, shall be used to determine compliance with these regulations.
- (c) In addition to the amount cited in subsection (a) above, a district shall, for any facility identified after June 12, 1989, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the period from January 1, 1987, through December 31, 1987, transmit to the Board for deposit into the Air Pollution Control Fund nine dollars and ninety-two cents (\$9.92) per ton of such pollutant or precursor.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

90800.1 Fee Requirements for Fiscal Year 1990-91.

- (a) No later than 180 days after the operative date of this section, each district identified below shall transmit the dollar amount specified below to the Board for deposit into the Air Pollution Control Fund. The amount transmitted

shall be collected from facilities which are the holders of permits for sources which emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period from January 1, 1988, through December 31, 1988, inclusive. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. The fee to be charged shall be twelve dollars and eighty-nine cents (\$12.89).

- (1) Bay Area Air Quality Management District: eight hundred fifty-four thousand five hundred six dollars (\$854,506);
- (2) Fresno County Air Pollution Control District: forty-eight thousand seven hundred thirty-nine dollars (\$48,739);
- (3) Imperial County Air Pollution Control District: ten thousand four hundred three dollars (\$10,403);
- (4) Kern County Air Pollution Control District: six hundred thirteen thousand one hundred twenty dollars (\$613,120);
- (5) Kings County Air Pollution Control District: eight thousand seven hundred seventy-eight dollars (\$8,778);
- (6) Monterey Bay Unified Air Pollution Control District: one hundred fifty-three thousand four hundred forty-eight dollars (\$153,448);
- (7) North Coast Unified Air Pollution Control District: seventy thousand one hundred sixty-three dollars (\$70,163);
- (8) Sacramento County Air Pollution Control District: twenty-three thousand nine hundred fifty dollars (\$23,950);
- (9) San Bernardino County Air Pollution Control District: three hundred forty-two thousand nine hundred eleven dollars (\$342,911);

- (10) San Diego County Air Pollution Control District:
eighty-eight thousand eight hundred two dollars
(\$88,802);
 - (11) San Joaquin County Air Pollution Control District:
forty-nine thousand two hundred ninety-three dollars
(\$49,293);
 - (12) San Luis Obispo County Air Pollution Control
District: one hundred forty-six thousand three
hundred seventy-one dollars (\$146,371);
 - (13) Santa Barbara County Air Pollution Control District:
eighteen thousand nine hundred eighty-eight dollars
(\$18,988);
 - (14) Shasta County Air Pollution Control District:
seventeen thousand seven hundred fifty dollars
(\$17,750);
 - (15) South Coast Air Quality Management District: seven
hundred eighty-one thousand one hundred eight
dollars (\$781,108);
 - (16) Stanislaus County Air Pollution Control District:
fourteen thousand five hundred sixty-six dollars
(\$14,566);
 - (17) Ventura County Air Pollution Control District:
fifty-seven thousand one hundred five dollars
(\$57,105).
- (b) Emissions from facilities identified by the Air Resources Board on or before November 28, 1990, as having emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period January 1, 1988, through December 31, 1988, shall be used to determine compliance with these regulations.
- (c) In addition to the amount cited in subsection (a) above, a district shall, for any facility identified after November 28, 1990, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the period from January 1, 1988, through December 31, 1988, transmit to the Board for deposit into the Air Pollution

Control Fund twelve dollars and eighty-nine cents (\$12.89) per ton of such pollutant or precursor.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612 Health and Safety Code.

90800.2 Fee Requirements for Fiscal Year 1991-92.

(a) No later than 180 days after the operative date of this section, each district identified below shall transmit the dollar amount specified below to the Board for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected from facilities which are the holders of permits for sources which emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period from January 1, 1989, through December 31, 1989, inclusive. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. The fee to be charged shall be eleven dollars and ninety cents (\$11.90) per ton.

- (1) Bay Area Air Quality Management District: eight hundred eleven thousand five hundred seven dollars (\$811,507);
- (2) Imperial County Air Pollution Control District: fifteen thousand five dollars (\$15,005);
- (3) Kern County Air Pollution Control District (SEDAB): seventy thousand four hundred sixty dollars (\$70,460);
- (4) Monterey Bay Unified Air Pollution Control District: one hundred twenty-three thousand seven hundred forty-nine dollars (\$123,749);

- (5) North Coast Unified Air Quality Management District: sixty-four thousand one hundred ninety-five dollars (\$64,195);
- (6) Sacramento Metropolitan Air Quality Management District: sixty-four thousand fifty-two dollars (\$64,052);
- (7) San Bernardino County Air Pollution Control District: three hundred seventeen thousand seven hundred sixty-one dollars (\$317,761);
- (8) San Diego County Air Pollution Control District: eighty-eight thousand seven hundred eighteen dollars (\$88,718);
- (9) San Joaquin Valley Unified Air Pollution Control District:
 - Fresno County Zone: seventy-seven thousand one hundred twenty-nine dollars (\$77,129);
 - Kern County Zone: four hundred thirty-nine thousand five hundred seventy-five dollars (\$439,575);
 - Kings County Zone: ten thousand one hundred sixty-two dollars (\$10,162);
 - Madera County Zone: eight thousand eight hundred five dollars (\$8,805);
 - San Joaquin County Zone: forty thousand sixteen dollars (\$40,016);
 - Stanislaus County Zone: fourteen thousand one hundred ninety-five dollars (\$14,195);
- (10) San Luis Obispo County Air Pollution Control District: one hundred twenty-seven thousand one hundred seventy-six dollars (\$127,176);
- (11) Santa Barbara County Air Pollution Control District: twenty-three thousand one hundred twenty dollars (\$23,120);
- (12) Shasta County Air Pollution Control District: seven thousand nine hundred ninety-six dollars (\$7,996);

- (13) South Coast Air Quality Management District:
seven hundred forty-three thousand eight hundred
twenty-five dollars (\$743,825);
 - (14) Ventura County Air Pollution Control
District: forty-five thousand four hundred
forty-two dollars (\$45,442).
- (b) Emissions from facilities identified by the Air Resources Board on or before April 11, 1991, as having emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period January 1, 1989, through December 31, 1989, shall be used to determine compliance with these regulations.
 - (c) In addition to the amount cited in subsection (a) above, a district shall, for any facility identified after April 11, 1991, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the period from January 1, 1989, through December 31, 1989, transmit to the Board for deposit into the Air Pollution Control Fund eleven dollars and ninety cents (\$11.90) per ton of such pollutant or precursor.

NOTE: Authority cited: Sections 39600, 39601 and 39612. Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612. Health and Safety Code.

90800.3 Fee Requirements for Fiscal Year 1992-93.

- (a) No later than 180 days after the operative date of this section, each district identified below shall transmit the dollar amount specified below to the Board for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected from facilities which are the holders of permits for sources which emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period from January 1, 1990, through December 31, 1990,

inclusive. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. The fee to be charged shall be thirteen dollars and twenty-nine cents (\$13.29) per ton.

- (1) Bay Area Air Quality Management District: eight hundred eight thousand six hundred fifty-eight dollars (\$808,658);
- (2) Imperial County Air Pollution Control District: twenty-seven thousand two hundred eighty-seven dollars (\$27,287);
- (3) Kern County Air Pollution Control District (SEDAB): ninety-five thousand three hundred sixty dollars (\$95,360);
- (4) Monterey Bay Unified Air Pollution Control District: one hundred twenty-two thousand sixty-three dollars (\$122,063);
- (5) North Coast Unified Air Quality Management District: thirty-seven thousand two hundred seventy-eight dollars (\$37,278);
- (6) Sacramento Metropolitan Air Quality Management District: fifty-five thousand one hundred nineteen dollars (\$55,119);
- (7) San Bernardino County Air Pollution Control District: three hundred thirty-nine thousand eighty-six dollars (\$339,086);
- (8) San Diego County Air Pollution Control District: eighty-four thousand eight hundred sixty-five dollars (\$84,865);

- (9) San Joaquin Valley Unified Air Pollution Control District: six hundred sixty thousand five hundred fifty-seven dollars (\$660,557), apportioned as follows:
- Fresno County Zone: eighty-three thousand nine hundred twenty-one dollars (\$83,921);
- Kern County Zone: four hundred ninety-six thousand eighty-nine dollars (\$496,089);
- Kings County Zone: sixteen thousand four hundred sixty dollars (\$16,460);
- Madera County Zone: ten thousand eight hundred ninety-four dollars (\$10,894);
- San Joaquin County Zone: forty thousand one hundred thirty-four dollars (\$40,134);
- Stanislaus County Zone: thirteen thousand fifty-nine dollars (\$13,059);
- (10) San Luis Obispo County Air Pollution Control District: one hundred fifteen thousand four hundred seventy-three dollars (\$115,473);
- (11) South Coast Air Quality Management District: six hundred twenty-eight thousand eight hundred six dollars (\$628,806);
- (12) Ventura County Air Pollution Control District: twenty-eight thousand four hundred forty-three dollars (\$28,443).

- (b) Emissions from facilities identified by the Air Resources Board on or before April 9, 1992, as having emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period January 1, 1990, through December 31, 1990, shall be used to determine compliance with these regulations.
- (c) In addition to the amount cited in subsection (a) above, a district shall, for any facility identified after April 9, 1992, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the period from January 1, 1990, through December 31, 1990, transmit to the Board for deposit into the Air Pollution Control Fund thirteen dollars and twenty-nine cents (\$13.29) per ton of such pollutant or precursor.

NOTE: Authority cited: Sections 39600, 39601 and 39612. Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612. Health and Safety Code.

90800.4 Fee Requirements for Fiscal Year 1993-94.

- (a) No later than 180 days after the operative date of this section, each district identified below shall transmit the dollar amount specified below to the Board for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected from facilities which are the holders of permits for sources which emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period from January 1, 1991, through December 31, 1991, inclusive. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. The fee to be charged shall be sixteen dollars and eleven cents (\$16.11) per ton.

- (1) Bay Area Air Quality Management District: nine hundred seventy-one thousand nine hundred fifty-one dollars (\$971,951);
- (2) Imperial County Air Pollution Control District: thirty-two thousand five hundred twenty-five dollars (\$32,525);
- (3) Kern County Air Pollution Control District (SEDAB): one hundred forty-four thousand one hundred seventy-eight dollars (\$144,178);
- (4) Monterey Bay Unified Air Pollution Control District: ninety-six thousand three hundred one dollars (\$96,301);
- (5) North Coast Unified Air Quality Management District: twenty-eight thousand three hundred thirty-six dollars (\$28,336);
- (6) Sacramento Metropolitan Air Quality Management District: ninety-six thousand ninety-two dollars (\$96,092);
- (7) San Bernardino County Air Pollution Control District: three hundred sixty-six thousand eight hundred eight dollars (\$366,808);
- (8) San Diego County Air Pollution Control District: ninety-five thousand nine hundred ninety-five dollars (\$95,995);
- (9) San Joaquin Valley Unified Air Pollution Control District: six hundred thirty-two thousand one hundred ninety-one dollars (\$632,191);

- (10) San Luis Obispo County Air Pollution Control District: one hundred twenty-one thousand two hundred fifty-four dollars (\$121,254);
- (11) South Coast Air Quality Management District: six hundred thirty-three thousand four hundred ninety-six dollars (\$633,496);
- (12) Ventura County Air Pollution Control District: twenty-four thousand four hundred seventy dollars (\$24,470);
- (13) Amador County Air Pollution Control District,
Butte County Air Pollution Control District,
Calaveras County Air Pollution Control District,
Colusa County Air Pollution Control District,
El Dorado County Air Pollution Control District,
Feather River Air Quality Management District,
Glenn County Air Pollution Control District,
Great Basin Unified Air Pollution Control District,
Mariposa County Air Pollution Control District,
Mendocino County Air Pollution Control District,
Modoc County Air Pollution Control District,
Northern Sierra Air Quality Management District,
Northern Sonoma County Air Pollution Control District,
Placer County Air Pollution Control District,
Santa Barbara County Air Pollution Control District,
Shasta County Air Quality Management District,
Siskiyou County Air Pollution Control District,
Tehama County Air Pollution Control District,
Tuolumne County Air Pollution Control District,
Yolo-Solano Air Pollution Control District:
zero dollars (\$0).
- (b) Emissions from facilities identified by the Air Resources Board on or before January 29, 1993, as having emitted 500

tons or more per year of any nonattainment pollutant or precursors during the period January 1, 1991, through December 31, 1991, shall be used to determine compliance with these regulations.

- (c) In addition to the amount cited in subsection (a) above, a district shall, for any facility identified after January 29, 1993, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the period from January 1, 1991, through December 31, 1991, transmit to the Board for deposit into the Air Pollution Control Fund sixteen dollars and eleven cents (\$16.11) per ton of such pollutant or precursor.

NOTE: Authority cited: Sections 39600, 39601 and 39612. Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612. Health and Safety Code.

90800.5 Fee Requirements for Fiscal Year 1994-95

- (a) No later than 180 days after the operative date of this section, each district identified below shall transmit the dollar amount specified below to the Board for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected from facilities which are the holders of permits for sources which emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period from January 1, 1992, through December 31, 1992, inclusive. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. The fee to be charged shall be fifteen dollars and fifty-seven cents (\$15.57) per ton.

- (1) Bay Area Air Quality Management District: nine hundred fifty-eight thousand three hundred fifteen dollars (\$958,315);

- (2) Imperial County Air Pollution Control District:
twenty-four thousand five hundred ninety-eight dollars
(\$24,598);
- (3) Kern County Air Pollution Control District (SEDAB):
one hundred thousand four hundred sixteen dollars
(\$100,416);
- (4) Mojave Desert Air Quality Management District:
three hundred thirteen thousand seven hundred twenty
dollars (\$313,720);
- (5) Monterey Bay Unified Air Pollution Control District:
one hundred nineteen thousand three hundred sixty-
three dollars (\$119,363);
- (6) Sacramento Metropolitan Air Quality Management
District: thirty-nine thousand seven hundred dollars
(\$39,700);
- (7) San Diego County Air Pollution Control District:
eighty thousand six dollars (\$80,006);
- (8) San Joaquin Valley Unified Air Pollution Control
District: four hundred forty-two thousand eight
hundred ninety-one dollars (\$442,891);
- (9) San Luis Obispo County Air Pollution Control District:
one hundred eleven thousand seven hundred thirty-five
dollars (\$111,735);
- (10) South Coast Air Quality Management District: four
hundred ninety-six thousand six hundred ninety-five
dollars (\$496,695);

(11) Ventura County Air Pollution Control District:
thirty-one thousand four hundred thirty-three dollars
(\$31,433);

(12) Amador County Air Pollution Control District,
Butte County Air Pollution Control District,
Calaveras County Air Pollution Control District,
Colusa County Air Pollution Control District,
El Dorado County Air Pollution Control District,
Feather River Air Quality Management District,
Glenn County Air Pollution Control District,
Great Basin Unified Air Pollution Control District,
Mariposa County Air Pollution Control District,
Mendocino County Air Pollution Control District,
Modoc County Air Pollution Control District,
North Coast Unified Air Quality Management District,
Northern Sierra Air Quality Management District,
Northern Sonoma County Air Pollution Control District,
Placer County Air Pollution Control District,
Santa Barbara County Air Pollution Control District,
Shasta County Air Quality Management District,
Siskiyou County Air Pollution Control District,
Tehama County Air Pollution Control District,
Tuolumne County Air Pollution Control District,
Yolo-Solano Air Pollution Control District:
zero dollars (\$0).

(b) Emissions from facilities identified by the Air Resources
Board on or before February 4, 1994, as having emitted 500
tons or more per year of any nonattainment pollutant or
precursors during the period January 1, 1992, through
December 31, 1992, shall be used to determine compliance
with these regulations. Emissions from a facility are
excluded from compliance with these regulations if the
emissions from the facility would be subject to these
regulations solely because the facility is in a district

which is designated in section 60201 as not having attained the state ambient air quality standard for ozone solely as a result of ozone transport identified in section 70500, Title 17, California Code of Regulations.

- (c) In addition to the amount cited in subsection (a) above and except as provided in subsection (b) above, a district shall, for any facility identified after February 4, 1994, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the period from January 1, 1992, through December 31, 1992, transmit to the Board for deposit into the Air Pollution Control Fund fifteen dollars and fifty-seven cents (\$15.57) per ton of such pollutant or precursor.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 40921, Health and Safety Code.

90801. Definitions.

- (a) "Facility" means any nonvehicular source which requires a permit from the district.
- (b) "Nonattainment pollutant" means any substance for which an area has been designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.
- (c) "Nonattainment precursor" means any substance which reacts in the atmosphere to contribute to the production of a nonattainment pollutant or pollutants in an area designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title

17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.

(d) For the purposes of this regulation, "nonattainment pollutants and precursors" shall be defined as follows:

Substance (as listed in Section 70200, Title 17, CCR):	nonattainment pollutant/precursor:
Ozone	reactive organic gases, oxides of nitrogen
Sulfur Dioxide	oxides of sulfur
Sulfates	oxides of sulfur
Nitrogen Dioxide	oxides of nitrogen
Carbon Monoxide	carbon monoxide
Suspended Particulate Matter (PM ₁₀)	suspended particulate matter (PM ₁₀), oxides of nitrogen, oxides of sulfur reactive organic gases
Visibility Reducing Particles	suspended particulate matter (PM ₁₀), oxides of nitrogen, oxides of sulfur reactive organic gases
Hydrogen Sulfide	hydrogen sulfide
Lead	lead

- e) "Operator" means the person who owns or operates a facility or part of a facility.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

90802. Fee Payment and Collection.

- (a) Each district shall notify and assess the operator of each facility subject to permit fees, as provided for in these regulations, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator of the fee assessment notice.
- (b) Each district shall assess an additional fee on operators failing to pay the fee within 60 days of receipt of the fee assessment notice. The district shall set the late fee in an amount sufficient to pay the district's additional expenses incurred by the operator's untimely payment.
- (c) Any fees submitted to the state which exceed costs to the state of additional state programs authorized or required by the California Clean Air Act of 1988 related to nonvehicular sources, shall be carried over by the state for expenditure for these purposes.
- (d) Each district may recover administrative costs to the district of collecting the fees pursuant to these regulations. At the request of the State Board, a district shall provide to the State Board, within 30 days of the request, substantiation of administrative costs.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

90803. Failure of Facility to Pay Fees.

In the event any district is unable to collect the assessed fee from any source due to circumstances beyond the control of the district, including but not limited to facility closure or refusal of the operator to pay despite permit revocation and/or other enforcement action, such district shall notify the Executive Officer of the State Board. For demonstrated good cause, the district may be relieved from that portion of the fees the district is required to collect and remit to the state as set forth in section 90800 or section 90800.1 or section 90800.2 or section 90800.3 or section 90800.4 or section 90800.5. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to this regulation.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

Attachment B
Section 39612
of the Health and Safety Code

Section 39612 of the Health and Safety Code

39612. (a) In addition to funds which may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board, beginning July 1, 1989, may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.

(b) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources.

(c) The permit fees imposed pursuant to this section shall be collected from nonvehicular sources which are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors.

(d) The permit fees collected by a district pursuant to this section, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

(e) The total amount of funds collected by fees imposed pursuant to this section, exclusive of district administrative costs, shall not exceed three million dollars (\$3,000,000) in any fiscal year.

(f) On or before January 1, 1993, the state board shall prepare and submit to the Legislature a report on the amounts of fees collected and the purposes for which the fees were expended.

(g) This section shall become inoperative on July 1, 1997, and as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

Attachment C

Notice of Consultation Meeting

AIR RESOURCES BOARD

2020 L STREET
P.O. BOX 2815
SACRAMENTO, CA 95812



January 4, 1994

Public Consultation Meeting:
California Clean Air Act Fee Regulations

The staff of the Air Resources Board (ARB) will be holding a public consultation meeting concerning regulations which are being proposed to implement fee provisions of the California Clean Air Act (CCAA) for fiscal year 1994-95. The fee provisions of the CCAA give the ARB the authority to require air pollution control and air quality management districts to impose additional permit fees on nonvehicular sources within their jurisdictions. We expect that the proposed regulations will be very similar to those approved for the first five years of the program.

The amendments we will propose will be based on the best estimate of emissions during calendar year 1992 from facilities subject to the fees. It is crucial that both districts and affected sources make every effort to ensure that the emission data to be used for the fee regulations are as accurate as possible. Failure to provide accurate emission information within the rulemaking process is not an adequate justification for the districts or affected sources to decrease the invoice amount to be paid to the state once the fee regulations have been adopted.

District staff and representatives from facilities that have been identified as being potentially subject to the proposed regulations are invited to participate in the meeting.

The public consultation meeting will be held at the time and place listed below:

Date: February 9, 1994
Time: 10:00 a.m.
Place: Air Resources Board
2nd Floor Conference Room
2020 L Street
Sacramento, California

This meeting will be conducted by the staff of the ARB's Technical Support Division. Comments received at the consultation meeting will be used to assist the ARB staff in preparing the proposal for consideration by the Board. The proposal is scheduled for consideration at the Board's April 1994 meeting.

If you have any questions, please contact Don Rake at (916) 322-7304.

Sincerely,

Linda C. Murchison

Linda C. Murchison, Chief
Stationary Source
Emission Inventory Branch
Technical Support Division

cc: Don Rake ✓
Stew Wilson, CAPCOA



Attachment D

Facilities and Emissions
Subject to the Proposed
Fee Regulations

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

CO

DISTRICT	FACILITY NAME	ROG	NOX	SOX	PM10
BAY AREA	OWENS-BROCKWAY GLASS FACILITY ID 30 OAKLAND		970		
	NEW UNITED MOTOR MANUFACTURING FACILITY ID 1438 FREMONT	1145			
	CHEVRON USA FACILITY ID 10 RICHMOND	4185	5328	1576	
	SHELL OIL CO. FACILITY ID 11 MARTINEZ	1972	4148	2464	
	PG & E FACILITY ID 12 PITTSBURG		5917	847	
	TOSCO CORP. FACILITY ID 13 MARTINEZ	2231	2502	4227	
	UNOCAL CORP. FACILITY ID 16 RODEO	846	1652	600	
	PG & E FACILITY ID 18 ANTIOCH		2831		
	UNION CHEMICALS FACILITY ID 22 RODEO		583	1603	
	DOW CHEMICAL CO. FACILITY ID 31 PITTSBURG				726

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

NOX SOX PM10 CO

FACILITY NAME ROG

DISTRICT

BAY AREA (CONT'D)

PG & E, EVANS AVE.
 FACILITY ID 24
 SAN FRANCISCO

1505

PG & E, ILLINOIS ST.
 FACILITY ID 26
 SAN FRANCISCO

1087

KAISER CEMENT & GYPSUM
 FACILITY ID 17
 CUPERTINO

1646

EXXON CORP.
 FACILITY ID 15
 BENECIA

1542

2974

5948

PACIFIC REFINING
 FACILITY ID 32
 HERCULES

500

TOTAL BAY AREA

12421

31869

17265

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG SOx PM10 CO

DISTRICT

IMPERIAL

IMPERIAL IRRIG. DIST.
 FACILITY ID 15
 EL CENTRO 768

GOLD FIELDS CO. MESQUITE
 FACILITY ID 46
 BRAWLEY 812

TOTAL IMPERIAL 1580

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG SOx PM10 CO

DISTRICT

KERN (SEDAB)

CAL PORTLAND CEMENT
 FACILITY ID 9
 MOJAVE 1848

CALAVERAS CEMENT CO.
 FACILITY ID 20
 MONOLITH 1243

NATIONAL CEMENT CO.
 FACILITY ID 21
 LEBEC 1740 695

U.S. BORAX
 FACILITY ID 28
 BORON 924

TOTAL KERN (SEDAB) 5755 695

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG SOx PM10 CO

DISTRICT
 MOJAVE DESERT

MITSUBISHI CEMENT FAC. ID 700000001 LUCERNE VALLEY			3082	
NORTH AMERICAN CHEMICAL FACILITY ID 700000002 TRONA			2202	
RIVERSIDE CEMENT FAC. ID 700000003 ORO GRANDE			2778	
SO. CAL. EDISON-COOLWATER FAC. ID 700000004 DAGGETT			933	
S'WESTERN PTLD CEMENT FAC. ID 700000005 VICTORVILLE			3078	
PG & E FAC. ID 700000035 HINKLEY			3015	
PG & E FAC. ID 700000039 NEEDLES			1904	
SO. CAL. GAS FAC. ID 700000065 NEWBERRY SPRINGS			1032	
SO. CAL. GAS HWY 95 FAC. ID 700000068 SOUTH NEEDLES			1380	
AFG INDUSTRIES FAC. ID 700000935 VICTORVILLE			747	
TOTAL MOJAVE DESERT			20151	

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG NOx SOx PM10 CO

DISTRICT

MONTEREY BAY

PG & E
 FACILITY ID 25
 MOSS LANDING

6904

LONE STAR IND CEMENT
 FACILITY ID 11
 DAVENPORT

763

TOTAL MONTEREY BAY

7667

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG NOx SOx PM10 CO

DISTRICT

SACRAMENTO

BLUE DIAMOND GROWERS
 FACILITY ID 67
 SACRAMENTO

2550

TOTAL SACRAMENTO

2550

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG NOx SOx PM10 CO

DISTRICT

SAN DIEGO

SDG & E CO.
 FACILITY ID 72
 CHULA VISTA 1606

SDG & E CO.
 FACILITY ID 73
 CARLSBAD 1375

KELCO DIV MERCK & CO
 FACILITY ID 118
 SAN DIEGO 2158

TOTAL SAN DIEGO

2158 2981

San Diego Air Quality Management District
 1000 North Broadway
 San Diego, California 92101
 (619) 594-1000

San Diego Air Quality Management District
 1000 North Broadway
 San Diego, California 92101
 (619) 594-1000

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG NOX SOX PM10 CO

DISTRICT

SAN JOAQUIN VALLEY

CHEVRON USA
 FACILITY ID 71
 COALINGA 729 516

UNION OIL CO.
 FACILITY ID 68
 COALINGA 2953

PPG INDUSTRIES
 FACILITY ID 75
 FRESNO 724

GUARDIAN INDUSTRIES
 FACILITY ID 77
 KINGSBURG 1042

TEXACO REFINING
 FACILITY ID 19
 BAKERSFIELD 619 511

ARCO OIL & GAS CO.
 FACILITY ID 201
 BAKERSFIELD 826 1235

SHELL-KERNRIDGE
 FACILITY ID 204
 MISSOURI TRIANGLE 2196

SANTA FE ENERGY
 FACILITY ID 211
 BAKERSFIELD 776

MOBIL OIL CORP
 FACILITY ID 247
 BAKERSFIELD 834

CHEVRON USA INC
 FACILITY ID 257
 BAKERSFIELD 606

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

DISTRICT FACILITY NAME ROG NOx SOx PM10 CO

SAN JOAQUIN VALLEY
 (CONT'D)

CHEVRON USA INC FACILITY ID 395 TAFT	517	1784			
ELK HILLS GAS PLANTS FACILITY ID 419	922	776			
KERN RIVER COGEN FACILITY ID 496 OILDALE		2013			
SYCAMORE COGEN CO. FACILITY ID 497 OILDALE		2154			
MIDWAY SUNSET COGEN FACILITY ID 568		876			
PG & E FACILITY ID 63 AVENAL		1865			
MADERA GLASS CO. FACILITY ID 18 MADERA		1064			
LIBBEY OWENS FORD FACILITY ID 8 LATHROP		1042			
OWENS ILLINOIS FACILITY ID 17 TRACY		799			
GALLO GLASS CO. FACILITY ID 9 MODESTO		1089			

TOTAL
 SAN JOAQUIN VALLEY

2884 25048 516

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

NOX SOX PM10 CO

ROG

FACILITY
 NAME

DISTRICT

SAN LUIS OBISPO

UNOCAL CHEMICAL
 FACILITY ID 4
 ARROYO GRANDE

2810

PG & E
 FACILITY ID 8
 MORRO BAY

3745

UNOCAL SMR
 FACILITY ID 13
 ARROYO GRANDE

622

TOTAL
 SAN LUIS OBISPO

3745 3432

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

FACILITY NAME ROG NOx SOx PM10 CO

DISTRICT

SOUTH COAST

OWENS-ILLINOIS FAC. ID 7427 VERNON		764			
SO CAL. EDISON FAC. ID 14052 REDONDO BEACH		1270			
ARCO UNIT NO. 1 FAC. ID 800012 CARSON	1676	1989	1718		
CHEVRON USA, UNIT N FAC. ID 800030 EL SEGUNDO	2001	2074	957		4522
DOUGLAS AIRCRAFT FAC. ID 800038 LONG BEACH					663
LA DEPT WATER & POWER FAC. ID 800074 LONG BEACH		1231			
LA DEPT WATER & POWER FAC. ID 800075 LOS ANGELES		700			
MOBIL OIL FAC. ID 800089 TORRANCE		2039	566		
SHELL OIL FAC. ID 800115 CARSON	510				
SO. CAL. EDISON FAC. ID 800125 LONG BEACH		1179			

EMISSIONS OF NONATTAINMENT
 POLLUTANTS OR PRECURSORS
 TONS PER YEAR IN 1992

NOx SOx PM10 CO

FACILITY
 NAME

ROG

DISTRICT

DISTRICT	FACILITY NAME	ROG	NOx	SOx	PM10	CO	
SOUTH COAST (CONT'D)	UNION OIL CO. FAC. ID 800144 WILMINGTON		1173	527			
	TEXACO FAC. ID 800223 WILMINGTON	1156	1229				
	ORANGE CO. SANITATION FAC. ID 29110 HUNTINGTON BEACH					1045	
	SO. CAL. EDISON FAC. ID 800126 HUNTINGTON BEACH		548				
	CALIF. PORTLAND CEMENT FAC. ID 800181 COLTON		771				
	SO. CAL. GAS FAC. ID 18869 BLYTHE		1576				
			5343	16543	3788		6230
	TOTAL						
	SOUTH COAST						

DISTRICT	FACILITY NAME	ROG	EMISSIONS OF NONATTAINMENT POLLUTANTS OR PRECURSORS TONS PER YEAR IN 1992			
			NOx	SOx	PM10	CO
VENTURA	SCE MANDALAY GEN STATION FACILITY ID 13 OXNARD		931			
	SCE - ORMOND BEACH GEN STATION FACILITY ID 65 OXNARD		1088			
TOTAL VENTURA			2019			

Attachment E

**California Business Impacts of
Permit Fee Regulations for Nonvehicular Sources**

CALIFORNIA BUSINESS IMPACTS OF PERMIT FEE REGULATIONS FOR NONVEHICULAR SOURCES

Introduction

This section evaluates the potential economic impact of permit fee regulations for nonvehicular sources pursuant to the California Clean Air Act (CCAA) on business enterprises in California. A recent amendment to Section 11346.53 of the Government Code requires that, in proposing to adopt or amend any administrative regulation, state agencies shall assess not only the potential for adverse economic impact on California business enterprises and individuals, but also the ability of California businesses to compete with businesses in other states. Also a new section to the Government Code (Section 11346.54) requires state agencies to assess the potential impact of their regulations on California jobs and on business expansion, elimination, or creation.

This analysis is based on a comparison of the return on owner's equity (ROE) for affected businesses before and after the inclusion of the fees. The analysis also uses publicly available information to assess the impacts on competitiveness, jobs, and business expansion, elimination, or creation. The purpose of this analysis is to indicate whether or not the permit fee regulations would have significant adverse impacts on California businesses and individuals.

Affected Businesses

All permitted facilities which are located in nonattainment areas and identified as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors in 1992 are affected by the CCAA nonvehicular source fees. The affected businesses fall into different industry classifications. A list of these industries which we have been able to identify is provided in Table 1.

Table 1

List of Industries with Affected Businesses

<u>SIC CODE</u>	<u>INDUSTRY</u>
1041	Gold Ores
1311	Crude Petroleum and Natural Gas
1321	Natural Gas Liquids
1474	Potash, Soda, and Borate Minerals
2065	Candy and Other Confectionery Products
2421	Sawmills and Planting Mills

2812	Alkalies and Chlorine
2819	Industrial Inorganic Chemicals, Not Elsewhere Classified
2833	Medicinal Chemicals and Botanical Products
2911	Petroleum Refining
2999	Products of Petroleum and Coal, Not Elsewhere Classified
3211	Flat Glass
3221	Glass Containers
3241	Cement, Hydraulic
3711	Motor Vehicles and Passenger Car Bodies
3721	Aircraft
4911	Electric Services
4922	Natural Gas Transmission
4923	Natural Gas Transmission and Distribution
4924	Natural Gas Distribution
4931	Electric and Other Services Combined
7996	Amusement Parks

Study Approach

The approach used in evaluating the potential economic impact of the permit fee regulations on California businesses is as follows:

- (1) All affected facilities are identified from responses to the ARB's 1992 emission inventory list. Standard Industrial Classification (SIC) codes reported by these businesses are listed in Table 1.
- (2) Annual permit fees for the CCAA program are estimated for each of these facilities based on the fee rates proposed for fiscal year 1994-95. Total fees are calculated for the program for each business. A business might own several facilities.
- (3) The total annual permit fee for each business is adjusted for both federal and state taxes.
- (4) These adjusted fees are subtracted from net profit data and the results used to calculate the Return on Owners' Equity (ROE). The resulting ROE is then compared with the ROE before the subtraction of the adjusted fees to determine the impact on the profitability of the businesses. A reduction of more than 10 percent in profitability is considered to indicate a potential for significant adverse economic impacts.

Assumptions

Financial data for 1992 were available for only 24 of the estimated 44 affected businesses. Using these financial data, the ROEs before and after the subtraction of the adjusted fees were calculated for those 24 businesses. These calculations were based on the following assumptions.

- (1) All affected businesses are subject to federal and state tax rates of 34 percent and 9.3 percent respectively.
- (2) Affected businesses neither increase the prices of their products nor lower their costs of doing business through cost-cutting measures because of the permit fee regulations.

These assumptions, though reasonable, might not be applicable to all affected businesses.

Potential Impact On Business

California businesses are affected by the permit fee regulations to the extent that the implementation of the fees changes their profitability. Using ROE to measure profitability, we found that the average ROE for all affected businesses for which financial data were available changed by less than 0.01 percent. This represents a minuscule change in the average profitability of the affected businesses.

All businesses, however, would not be affected equally by the permit fee regulations. For the 24 businesses for which financial data were available, the change in profitability ranged from almost zero to a high of about 0.2 percent. This variation in the impact of the permit fee regulations can be attributed mainly to two factors. First, some businesses are subject to higher fees than others due to the type of industry in which they are involved, the number of facilities which they operate, and the type and number of their devices and emitting processes. For example, for the fiscal year 1994-95, the estimated annual fees for businesses in the industries listed in Table 1 range from a high of about \$460,000 to a low of about \$8,000. Second, the performance of businesses may vary from year to year. Hence, the 1992 financial data used may not be representative of a typical-year performance for some businesses.

The potential impacts estimated here might be on the high side for the following reasons. First, because 1992 financial data were used, generally a poor year for most businesses due to a sluggish national economy, the impact of the regulations as estimated here is likely to be more severe than what it would be in a more typical year. Second, affected businesses probably would not absorb all of the increase or decrease in their costs of doing business. They might be able to pass some of the cost or saving on to consumers in the form of higher or lower prices for their products or services.

Potential impact on Consumers

No noticeable change in consumer prices is expected from the permit CCAA fees for fiscal year 1994-95. This is because the fees would have only a minuscule impact on the profitability of affected businesses. The impact would have been less if we had used the incremental decrease in fees rather than the total fees in our analysis.

Moreover, most affected businesses were subject to the AAPA (Atmospheric Acidity Protection Act) fees last year. The elimination of these fees this year coupled with the decrease in the CCAA fee rate will result in a reduction in the overall fees for most affected firms in this fiscal year.

Potential Impact on Employment

Since the CCAA fees impose no noticeable impact on the profitability of businesses, we expect no significant change in employment due to the imposition of the fees.

Impact on Business Creation, Elimination, or Expansion

No change is expected to occur in the status of California businesses as a result of the CCAA fees. This is because the fees have no significant impact on the profitability of businesses in California.

Impact on Business Competitiveness

The CCAA fees would have little or no impact on the ability of California businesses to compete with businesses in other states. This is because the CCAA fees do not impose a noticeable impact on the profitability of California businesses. In addition, most affected businesses are local, and are not subject to competition from businesses in other states.

Conclusion

Overall, all affected facilities are owned and operated by large businesses. These businesses would appear to be able to absorb the costs of the permit fee regulations without a significant adverse impact on their profitability. Although some businesses would potentially experience a greater change in their profitability than others, the impact of the permit fee regulations appears to be minuscule.

Since the CCAA fees impose no noticeable impact on the profitability of California businesses, we expect no significant change in employment; business creation, elimination, or expansion; and business competitiveness.