

State of California
AIR RESOURCES BOARD

STAFF REPORT

PUBLIC HEARING TO CONSIDER THE ADOPTION OF NEW SECTION 90800.7 AND
AMENDMENTS TO SECTION 90803, TITLE 17, CALIFORNIA CODE OF REGULATIONS,
REGARDING THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE PROGRAM

Date of Release: March 8, 1996
Scheduled for Consideration: April 25, 1996

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ACKNOWLEDGMENTS

This report was prepared with the help of the staff from other divisions at the Air Resources Board. We particularly thank Artavia Edwards and Victoria Davis of the ARB's Office of Legal Affairs; Rich Bradley and Debora Popejoy of the ARB's Technical Support Division; Larry Morris and Merrienne McDonald of the ARB's Administrative Services Division; and Reza Mahdavi of the ARB's Research Division for their contributions.

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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: March 8, 1996
Scheduled for Consideration: April 25, 1996

I. INTRODUCTION AND BACKGROUND

This report discusses a proposal of the staff of the Air Resources Board (ARB) to adopt a regulation that requires 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 regulation is contained in Attachment A to this report. Also in Attachment A is a proposed minor amendment to a support regulation.

Fees transmitted to the ARB will be used to help defray the costs to the ARB of implementing mandates of the Act related to nonvehicular sources during fiscal year 1996-97, the eighth and final 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.

The Board approved new and amended regulations at its May 1990, April 1991, April 1992, April 1993, April 1994 and April 1995, meetings to provide continuing funding for fiscal years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96, respectively. The fees for the second, third, fourth, fifth, sixth and seventh years of the program were based on emissions for calendar years 1988, 1989, 1990, 1991, 1992 and 1993, respectively.

To provide ongoing funding for the eighth year of the program, the staff recommends that the Board continue the existing permit fee program by adopting the proposed addition to the fee regulations to provide for the collection of fees for fiscal year 1996-97. The proposal, which is similar to regulations adopted by the Board for previous years of the fee program, was developed after consultation with affected districts and industries. A

onsultation meeting was held on February 7, 1996. Districts, natives of all facilities that were identified as being potentially to the fees, and the public were notified of the meeting. A copy of ing notice is included as Attachment C. Facilities that would be to the proposed fees and the facilities' emissions are listed in nt D.

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

In order to recover some of the costs of the state programs required .ct related to nonvehicular sources, the Act authorizes the Board to the districts, beginning July 1, 1989, to collect additional permit facilities which are located in designated nonattainment areas and it 500 tons or more per year of any nonattainment pollutant or its rs from equipment authorized to operate by district permit.

By law, the total fee amount to cover program costs, exclusive of administrative costs, may not exceed \$3,000,000 in any fiscal year. may be assessed annually through June 30, 1997. This is the final this program. For fiscal year 1996-97, the proposed amount to be d for nonvehicular Clean Air Act program expenditures is \$2,844,527.

The ARB uses the fees collected pursuant to this authority to y defray the costs of implementing the nonvehicular requirements of Specifically, the fees have been used to partially or wholly fund owing activities at the ARB. When the authorization of this fee y expires after the 1996-97 fiscal year, many of the listed efforts significantly reduced or, in some cases, eliminated.

- Monitoring - To meet the need for additional ambient air quality monitoring data to satisfy Act requirements for appropriate designations of areas and to determine the possible effects of transport, the ARB established and maintains 9 new monitoring sites--7 in the Mountain Counties Air Basin and 2 in Kern County. Monitoring equipment was also added to several existing sites.
- Emission Inventory - Accurate emission inventories are critical for determining which pollution sources to control, assessing the effectiveness of State and district control measures, and documenting progress in meeting the Act's goal of reducing ozone precursor and carbon monoxide emissions by 5 percent per year, on average. The ARB is continuously developing new and more complete data to update and refine current and forecasted emission inventories for use by districts in their plan updates.
- Photochemical Reactivity - The ARB conducts and sponsors research into the propensity of hundreds of compounds to form ozone in the atmosphere. A small amount of a highly reactive organic compound could cause the formation of more ozone than a larger amount of a less reactive organic gas. Knowledge of reactivity gives the ARB and the districts the ability to target emission control strategies on those compounds that have the

largest effects on ozone formation. Businesses are also provided greater flexibility by allowing them to switch to more environmentally-friendly materials rather than to directly control emissions.

- Ozone Precursor Transport - Studies on transport are conducted to establish the origin of the pollution contributing to the violation of state ambient air quality standards. Transport studies are reviewed and revised every three years based on new monitoring and modeling information. The studies identify those air basins that contribute to the formation of ozone in downwind air basins. Consequently, they enable the ARB and the districts to target emission controls on the sources that cause the problems and to not impose unneeded controls on sources that do not.
- Nonattainment Area Designations - In response to Act requirements, the ARB established and continues to refine criteria for determining the status of areas in complying with state ambient air quality standards. Area designations of attainment, nonattainment, nonattainment-transitional, or unclassified are reviewed and updated annually.
- Air Quality Indicators - The ARB develops indicators that measure the success of control programs in improving air quality and reducing population exposure. Both districts and the ARB use the indicators to assess progress made toward achieving the State ambient ozone standard and other standards. Without the indicators, the districts and the ARB would have to rely only on estimated changes in emissions and on other less reliable interpretations of air quality data. Neither of these options provide the same assurance that control programs are actually and effectively improving air quality.
- Air Quality Simulation Modeling - Air quality simulation modeling is a valuable tool in assessing the type and quantity of emissions reductions necessary to attain air quality standards. The ARB staff assists districts in developing and applying state-of-the-art photochemical grid models for use in attainment planning and transport analysis. As part of that assistance, the ARB developed guidelines on photochemical modeling in 1990, revised them in 1992, and continues to work on ensuring that models reflect the latest information and data. The ARB staff gives priority to providing ozone modeling assistance to air districts with insufficient resources or expertise.
- Plan Development Assistance - The ARB provides technical assistance to districts for the preparation of plans that satisfy both state and federal planning requirements. Assistance includes development of planning-related guidance documents and transmitting planning-related policy regarding the control of nonattainment pollutants. Staff also reviews and presents plans and plan updates for Board approval at a noticed public hearing. Legal staff reviews Board resolutions, interprets the Act, and provides guidance at Board hearings.

- Consumer Products Standards - The Act requires the ARB to develop and implement consumer products standards to reduce hydrocarbon emissions. Staff developed, and the Board adopted, standards for 27 categories of consumer products. Work is underway to develop standards for the remaining 93 product categories. The development of consumer products standards involves extensive research using surveys, industry meetings, literature, and workshops. Technical analyses must be conducted on current formulations and on the technical and commercial feasibility of future standards. Staff then develops alternative strategies, each of which examines the potential emission reductions and potential impact on sales and market share.
- Rule Review - The Act requires that reasonably available control technology (RACT) or best available retrofit control technology (BARCT) be required by districts on stationary sources to reduce emissions. The ARB determines what technologies conform to RACT and BARCT criteria in the Act. To do so, the ARB conducts technical investigations; works to develop consensus with districts, industry, and community organizations; and publishes the results as public guidance documents. The ARB also evaluates district rules to ensure they are consistent with the guidance.
- Enforcement - The ARB is conducting a nationally recognized outreach program to educate manufacturers, distributors, and retailers on how to comply with consumer products regulations. Advisories and handbooks, already developed, will be reviewed periodically and updated. Staff also responds to manufacturer requests for information, conducts inspections of retail and industrial facilities, and gathers information to identify unknown manufacturers.

The proposed fee amounts to be collected by districts for the eighth year of the program were calculated based on available emission data for calendar year 1994, 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.

The identification of nonattainment pollutants within each district for the purpose of this year's proposed amendments is based on the action taken by the Board on November 16, 1995, to designate areas of the state as nonattainment 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.

Existing regulations authorize districts to recover their administrative costs of collecting the fees by adding to the fees, amounts 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 for each of the first seven years of the fee program, fiscal years 1989-90 through 1995-96. The staff is proposing the adoption of a new section 90800.7 which will provide for fees to be collected for the eighth year of the program, fiscal year 1996-97. Also, similar to past years, the staff recommends the Board adopt the amendment which will add the words, "or section 90800.7" to section 90803 - Failure of Facility to Pay Fees.

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

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. The Board also assesses fees for facilities pursuant to AB 2588, the "Air Toxics Hot Spots Information and Assessment Act of 1987"; this fee regulation is amended annually.

IV. DISCUSSION OF PROPOSED REGULATIONS

A. SUMMARY OF MAJOR PROVISIONS

The proposed regulations would require districts to collect from facilities subject to the regulations (listed in Attachment D), fees for transmittal to the ARB for fiscal year 1996-97. The following provisions are included in the proposed regulations:

- o The regulations are applicable for the 1996-97 fiscal year (the eighth year of the program), July 1, 1996, to June 30, 1997;
- o The affected districts are those which are designated as of July 1 of the year for which fees are being collected (1996) as being entirely or partially¹ nonattainment for state ambient air quality standards for ozone, sulfur dioxide, sulfates, nitrogen dioxide, carbon monoxide, suspended

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

particulate matter (PM₁₀), visibility reducing particles, hydrogen sulfide or lead, except under certain circumstances where the Board has found that the district is designated nonattainment for ozone because of overwhelming transport;

- o Districts with facilities subject to the proposed fee regulations must collect additional permit fees from those facilities;
- o The 1994 statewide emission data are to be used as the basis for the fees;
- o Districts must transmit the fees to the ARB no later than 180 days after the effective date of these fee regulations.

B. SUMMARY OF RELATED REGULATIONS

The following provisions are included in previously adopted support regulations:

- o Districts may recover their administrative costs associated with assessing and collecting the fees;
- o Districts must collect fees as set forth in these regulations;
- o In the event that excess revenue is collected for any fiscal year, this excess revenue shall be carried over for expenditure during future years.

In calculating the proposed fees for fiscal year 1996-97, 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 some years, an adjustment was added to the assessed fees for use as a reserve to cover possible nonpayment of fees resulting from the unanticipated closing of businesses or other reasons that might result in a shortfall 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 1996-97. Therefore, no upward adjustment of the fees will be necessary this year.

C. 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, hearing; these were 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 D.

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 or its precursor that is emitted. In 1994 the regulations were amended to provide that fees would not be assessed under certain circumstances on facilities located in areas that are designated nonattainment for ozone because of overwhelming transport. This is discussed further in subsection D.

Fees would be collected for emissions of only six of the nine substances for which state ambient air quality standards exist. Fees are not assessed for emissions of visibility reducing particles, hydrogen sulfide, and lead for the following reasons. 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 two 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.

D. THE EFFECT OF REDESIGNATIONS

The initial designation of nonattainment areas was approved 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 has annually considered amendments to the designations. For fiscal year 1995-96, those designations effective on July 1, 1995, were used.

Although in 1993 the Mountain Counties Air Basin was designated nonattainment for the state ozone standard, 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, some districts in the Mountain Counties Air Basin are not subject to the planning requirements of the CCAA. As a result of this determination, the regulations approved in 1994 included a provision that excludes from this fee program, emissions from facilities that would be subject to the 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.

The Board amended the regulations for fiscal year 1991-92 to base the fees on the nonattainment area designations in effect as of July 1 of the fiscal year to which the fee regulations apply (subsections 90801(b) and (c) of the regulations). The Office of Administrative Law (OAL) may not

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)

have approved the amendments adopted by the Board at its November 16, 1995, hearing, by the time of the Board hearing on these proposed fee regulations. However, even if the new redesignations are not approved by OAL, facilities that are expected to be subject to the proposed regulations would be unaffected by the new redesignations.

E. EMISSION DATA FOR 1994 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 and were considered the best estimate of actual emissions from the affected facilities. For the second through the seventh years, fees were based on 1988 through 1993 emissions, respectively. The staff is proposing that fees for fiscal year 1996-97 be based on 1994 emissions for the same reasons.

The staff established a cutoff date of February 13, 1996, for finalizing the 1994 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 1994 were included in the fee calculation for this proposal. This cutoff date was established to allow the staff time to finalize the fees proposed in this report before initiating the rulemaking process. The data presented in Table 2 of this report were the best available data as of February 13, 1996, for 1994 emissions from facilities subject to the fees. The determination of fees is discussed in subsection F of this report.

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 (h)(1). The latter information will be used to determine whether 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 1994 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 1994 would also be subject to the fees pursuant to section 90800.7(c). A similar provision was adopted by the Board for the first seven years of the program (sections 90800(c), 90800.1(c), 90800.2(c), 90800.3(c), 90800.4(c), 90800.5(c), and 90800.6(c), Title 17, CCR).

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 1994

DISTRICT	NO. OF FACILITIES	EMISSIONS OF NONATTAINMENT POLLUTANTS OR PRECURSORS (TONS IN 1994)					PROPOSED FEES (\$ (**))
		ROG	NOx	SOx	PM10	CO	
Bay Area	16	11,887	34,243	16,119			\$1,177,751
Imperial	2		1,297				24,539
Kern (SEDAB)	3		4,672				88,394
Mojave Desert	10		18,015		743		354,901
Monterey Bay	2		9,444	1,536			207,742
San Diego	3	2,139	2,981				96,870
San Joaquin Unified	15	1,261	14,615				300,374
San Luis Obispo	2		1,943	2,619			86,313
South Coast	14	1,724	14,069	5,352	1,022	3,141	478,827
Ventura	2		1,523				28,815
TOTAL	69	17,011	102,802	25,626	1,765	3,141	\$2,844,527

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

** The values in this column are calculated by dividing \$2,844,527 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 \$18.92 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 \$18.92.

(February 13, 1996)

F. 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 = An 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).

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 regulations require that the excess amount shall be carried over by the state and applied to future year expenditures.

Because the regulations require 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 through 1995-1996 downward by an amount equal to the excess collected, respectively, during fiscal years 1990-91 through 1993-1994. For fiscal year 1994-1995, 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, 1993-94, 1994-1995 and 1995-96 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 \$154,765 is being carried forward from previous years and being

applied to fiscal year 1996-97. Therefore, proposed fees for fiscal year 1996-97 are adjusted downward by that amount.

For the fiscal year 1996-97 fee proposal the staff proposes using the same formula with the following dollar amounts:

- T = \$3,000,000 program costs for fiscal year 1996-97
- A = \$0 (zero) adjustment factor*
- C = (\$154,765) carry-over revenue collected from previous years
- E = Emissions in the 1994 calendar year subject to the fees

Using the above dollar-per-ton emission fee formula, a fee of \$18.92 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 is based on 1994 emission data. The emission data and fees to be assessed each affected district are summarized in Table 2 of this report.

* There will be adequate reserves to cover any uncollectable fees in 1996-97. Therefore, no upward adjustment of the fees will be necessary this year.

G. RECOVERY OF DISTRICTS' ADMINISTRATIVE COSTS

The staff is not proposing changes to the portion of the regulations, adopted in 1989 and continued through 1995, 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 30 days of the request. The 30 day period provides the districts with sufficient time to compile and submit the requested data. 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.

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

The regulations adopted in 1989 and continued through 1995 also provide a mechanism that releases a district from the responsibility for remitting fees that are for demonstrated good cause not collectible. In addition, section 90803 was amended to include emission quantification errors as one of the possible bases for a district to be relieved from a portion of the fees. As in the past, a district must still demonstrate good cause before relief from fees may be granted. Examples of other situations

for which these provisions 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.

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 and the Imperial Irrigation District. The aggregate cost to these local government agencies in complying with the regulations will be approximately \$41,000. 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 Naval Petroleum Reserve, 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 \$36,000. 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 \$18.92 per ton of nonattainment pollutants or their precursors as determined based on the amount of these pollutants emitted in 1994. 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 \$10,000 to approximately \$550,000 for a multi-facility business.

The staff believes that the adoption of the fee program will not have a significant 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 not be significant. A review of the facilities listed in the inventory used for the fiscal year 1996-97 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(h)(1). 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(b) 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 mechanism 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.).

Because of the large amount of emissions generated by the facilities that would be subject to the proposed regulations, the staff 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.

Alternative 3: Assess fees only on emissions greater than 500 tons per year.

Changing the policy of charging fees on a per-ton basis to exclude the first 500 tons would reduce the total tons used to determine fees. This would increase the cost-per-ton fee by approximately 50%. In addition, this alternative would result in a few, very large facilities being responsible for a much larger proportion of the fees than is the case in the staff proposal. For example, Pacific Gas and Electric, which currently pays the highest total fees, would have its fees increased by approximately 14%, while a company that emits 501 tons per year would have its fees decreased by 99%.

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

Attachment A
Proposed Fee Regulations

NOTE: The proposed new section 90800.7 and amendment to existing section 90803 are shown in underline to indicate additions to existing regulations.

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PROPOSED

CALIFORNIA CLEAN AIR ACT
NONVEHICULAR SOURCE FEE REGULATIONS

Adopt New Section 90800.7
and Amend Section 90803
Subchapter 3.8, California Clean Air Act
Nonvehicular Source Fee Regulations,
as follows:

90800.7 Fee Requirements for Fiscal Year 1996-97.

- (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, 1994, through December 31, 1994, 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 \$18.92 per ton.
- (1) Bay Area Air Quality Management District:
one million one hundred seventy-seven thousand seven hundred fifty-one dollars (\$1,177,751);
- (2) Imperial County Air Pollution Control District:
twenty-four thousand five hundred thirty-nine dollars (\$24,539);
- (3) Kern County Air Pollution Control District:
eighty-eight thousand three hundred ninety-four dollars (\$88,394);

- (4) Mojave Desert Air Quality Management District:
three hundred fifty-four thousand nine hundred and one
dollars (\$354,901);
- (5) Monterey Bay Unified Air Pollution Control District:
two hundred seven thousand seven hundred forty-two
dollars (\$207,742);
- (6) San Diego County Air Pollution Control District:
ninety-six thousand eight hundred seventy dollars
(\$96,870);
- (7) San Joaquin Valley Unified Air Pollution Control
District:
three hundred thousand three hundred seventy-four
dollars (\$300,374);
- (8) San Luis Obispo County Air Pollution Control District:
eighty-six thousand three hundred thirteen dollars
(\$86,313);
- (9) South Coast Air Quality Management District:
four hundred seventy-eight thousand eight hundred
twenty-seven dollars (\$478,827);
- (10) Ventura County Air Pollution Control District:
twenty-eight thousand eight hundred fifteen dollars
(\$28,815);
- (11) Amador County Air Pollution Control District,
Butte County Air Quality Management 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,
Lake County Air Quality Management District,
Lassen County 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,
Sacramento Metropolitan Air Quality Management 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 Quality Management District:
zero dollars (\$0).

(b) Emissions from facilities identified by the Air Resources Board on or before April 25, 1996, as having emitted 500 tons or more per year of any nonattainment pollutant or precursors during the period January 1, 1994, through December 31, 1994, shall be used to determine compliance with this regulation. Emissions from a facility are excluded from compliance with this regulation if the emissions from the facility would be subject to this regulation 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, a district shall, for any facility identified after April 25, 1996, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during the

period from January 1, 1994, through December 31, 1994, transmit to the Board for deposit into the Air Pollution Control Fund eighteen dollars and ninety-two cents (\$18.92) 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.

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, emission quantification errors, 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 or section 90900.6 or section 90800.7. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to these regulations.

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 5, 1996

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 1996-97. This is the eighth and final year of the program.

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 seven years of the program.

The amendments we will propose will be based on the best estimate of emissions during calendar year 1994 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.

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 7, 1996
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 ARB. The proposal is scheduled for consideration at the ARB's April 1996 meeting.

If you have any questions, please contact Cheryl Taylor at (916) 324-7168.

Attachment D

Facilities and Emissions
Subject to the Proposed
Fee Regulations

Emissions of Nonattainment: Plants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Bay Area								
Alameda County								
	Owens-Brockway Glass Facility ID 30 Oakland		860				860	\$16,271
	New United Motor Manufacturing Facility ID 1438 Fremont	851					851	\$16,101
Contra Costa County								
	Chevron USA Facility ID 10 Richmond	3334	4635				7969	\$150,773
	Shell Oil Co. Facility ID 11 Martinez	1883	4456	2515			8854	\$167,518
	PG&E Facility ID 12 Pittsburg		6305	512			6817	\$128,978
	Tosco Corp. Facility ID 13 Martinez	3750	3163	4876			11789	\$223,048
	Unocal Corp. Facility ID 16 Rodeo	899	1683	600			3182	\$60,203
	PG&E Facility ID 18 Antioch		2950				2950	\$55,814

Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Union Chemicals Facility ID 22							
	Rodeo		565	1536			2101	\$39,751
	Dow Chemical Co. Facility ID 31							
	Pittsburg		790				790	\$14,947
	Anchor Glass Facility ID 1851							
	Antioch		510				510	\$9,649
	San Francisco County							
	PG&E, Evans Ave. Facility ID 24							
	San Francisco		1802				1802	\$34,094
	PG&E, Illinois St. Facility ID 26							
	San Francisco		1231				1231	\$23,291
	Santa Clara County							
	Kaiser Cement Corporation Facility ID 17							
	Cupertino		1695				1695	\$32,069
	Jefferson Smurfit Corporation Facility ID 732							
	Santa Clara		518				518	\$9,801
	Solano County							
	Exxon Corp. Facility ID 15							
	Benicia	1170	3080	6080			10330	\$195,444
Total Bay Area		11887	34243	16119			62249	\$1,177,751

Emissions of Nonattainment: 1. Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Imperial								
Imperial County								
	Imperial Irrigation District							
	Facility ID 15		503				503	\$9,517
	El Centro							
	Gold Fields Co. Mesquite							
	Facility ID 46		794				794	\$15,022
	Brawley							
Total Imperial			1297				1297	\$24,539

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Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Kern (SEDAB)	Kern county							
	Cal. Portland Cement Facility ID 9							
	Mojave		2252				2252	\$42,608
	Calaveras Cement Co. Facility ID 20							
	Monolith		896				896	\$16,952
	National Cement Co. Facility ID 21							
	Lebec		1524				1524	\$28,834
Total Kern (SEDAB)		4672				4672	\$88,394	

040

Emissions of Nonattainment/ Precursors or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Mojave Desert								
Riverside County								
	So. Cal. Gas Facility ID 3101437 Blythe		1588				1588	\$30,045
San Bernardino County								
	Mitsubishi Cement Fac. ID 11800001 Lucerne Valley		1466				1466	\$27,737
	North American Chemical Fac. ID 900002 Trona		2152				2152	\$40,716
	Riverside Cement Company Fac. ID 1200003 Oro Grande		3706				3706	\$70,118
	So. Cal. Edison-Coolwater Fac. ID 6900004 Daggett		789				789	\$14,928
	Southwestern Portland Cement Fac. ID 100005 Victorville		2800		743		3543	\$67,034
	PG&E, Hinkley Compressor Station Fac. ID 1500535 Hinkley		1808				1808	\$34,207
	PG&E, Topock Compressor Fac. ID 1500039 Needles		1254				1254	\$23,726

Emissions of Nonattainment Plants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Monterey Bay								
Monterey County								
	PG&E							
	Facility ID 25							
	Moss Landing		8418	1536			9954	\$188,330
Santa Cruz County								
	Lone Star Industrial Cement							
	Facility ID 11							
	Davenport		1026				1026	\$19,412
Total Monterey Bay			9444	1536			10980	\$207,742

Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
San Diego	SDG&E Co., South Bay Plant Facility ID 72 Chula Vista		1606				1606	\$30,386
	SDG&E Co., Encina Plant Facility ID 73 Carlsbad		1375				1375	\$26,015
	Kelco - Div. Merck & Co. Facility ID 118 San Diego	2139					2139	\$40,470
Total San Diego		2139	2981				5120	\$96,870

Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
San Joaquin Valley								
	Fresno County							
	PPG Industries Facility ID 948 Fresno		753				753	\$14,247
	Guardian Industries Facility ID 598 Kingsburg		1094				1094	\$20,698
	Union Oil Company of CA Facility ID 1659 Coalinga		702				702	\$13,282
Kern County								
	Texaco Refining and Marketing Facility ID 33 Bakersfield		700				700	\$13,244
	CaResources LLC Facility ID 1547 Western Kern		1356				1356	\$25,656
	Vintage Petroleum, Inc. Facility ID 1738 Kern County		629				629	\$11,901
	Mobil Oil Corp. Facility ID 1511 Bakersfield		553				553	\$10,463
	Chevron USA Inc. Facility ID 1127 Central Kern		512				512	\$9,687

Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Naval Petroleum Reserve Gas Plants							
	Facility ID 2234							
	Elk Hills	1261	658				1919	\$36,307
	Kern River Cogen.							
	Facility ID 88							
	Oiledale		2300				2300	\$43,516
	Sycamore Cogen. Co.							
	Facility ID 511.							
	Oiledale		2181				2181	\$41,265
	Chevron - Warren Gas Plant							
	Facility ID 2199							
	Lost Hills		559				559	\$10,576
	Kings County							
	PG&E							
	Facility ID 904							
	Avenal		664				664	\$12,563
	Madera County							
	Madera Glass Co.							
	Facility ID 801.							
	Madera		1163				1163	\$22,004
	San Joaquin County							
	Owens Illinois							
	Facility ID 593							
	Tracy		791				791	\$14,966
	Total San Joaquin Valley	1261	14615				15876	\$300,374

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Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
San Luis Obispo	Unocal Chemical Facility ID 4			1952			1952	\$36,932
	Arroyo Grande							
	PG&E							
	Facility ID 8		1943	667			2610	\$49,381
	Morro Bay							
				1943	2619			4562
Total San Luis Obispo								

Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
South Coast								
Los Angeles County								
	Owens-Brockway Glass Container Facility ID 7427							
	Vernon		570				570	\$10,784
	So. Cal. Edison Facility ID 18763							
	El Segundo		738				738	\$13,963
	ARCO Facility ID 800012							
	Carson	958	1607	1994	515	1108	6182	\$116,963
	Chevron USA, Inc. Facility ID 800030							
	El Segundo	766	1778	999	507	1311	5361	\$101,430
	LA Dept. Water & Power, Haynes Facility ID 800074							
	Long Beach		981				981	\$18,561
	LA Dept. Water & Power, Scattergood Facility ID 800075							
	Los Angeles		660				660	\$12,487
	Mobil Oil Corp. Facility ID 800089							
	Torrance		1449	746		722	2917	\$55,190
	So. Cal. Edison Facility ID 800125							
	Long Beach		756				756	\$14,304

Emissions of Nonattainment Pollutants or Precursors - 1994 tpy

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Union Oil Co. Facility ID 800144 Wilmington		1152	890			2042	\$38,635
	Texaco Refining & Marketing Facility ID 800223 Wilmington		1022	723			1745	\$33,015
	Union Oil Facility ID 800319 Carson		535				535	\$10,122
	Orange County							
	San Bernardino County							
	So. Cal. Edison Facility ID 800126 Huntington Beach		507				507	\$9,592
	Calif. Portland Cement Facility ID 800181 Colton		1688				1688	\$31,937
	So. Cal. Edison Facility ID 800224 Etiwanda		626				626	\$11,844
	Total South Coast	1724	14069	5352	1022	3141	25308	\$478,827

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Summary

Air District	ROG	NOX	SOx	PM10	CO	Total Emissions	Fees
Bay Area	11,887	34,243	16,119			62,249	\$1,177,751
Imperial		1,297				1,297	\$24,539
Kern (SEDAB)		4,672				4,672	\$88,394
Mojave Desert		18,015		743		18,758	\$354,901
Monterey Bay		9,444	1,536			10,980	\$207,742
San Diego	2,139	2,981				5,120	\$96,870
San Joaquin Valley	1,261	14,615				15,876	\$300,374
San Luis Obispo		1,943	2,619			4,562	\$86,313
South Coast	1,724	14,069	5,352	1,022	3,141	25,308	\$478,827
Ventura		1,523				1,523	\$28,815
Total Fees						150,345	\$2,844,527
Carry Over							\$154,765
Total Funds							\$2,999,292
Rate (\$/Ton) = (\$3,000,000 - \$154,765) / 150,345 = \$18.92 per Ton							

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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 on business enterprises in California pursuant to the California Clean Air Act (CCAA). Section 11346.3 of the Government Code requires that, in proposing to adopt or amend any administrative regulation, state agencies shall assess the potential for adverse economic impact on California business enterprises and individuals. The assessment shall include a consideration of the impact of the proposed or amended regulation on the ability of California businesses to compete with businesses in other states, the impact on California jobs, and the impact on California 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 1994 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.

Study Approach

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

- (1) All affected facilities are identified from responses to the ARB's 1994 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 adopted by the Board for the fiscal year 1996-97. Total fees are calculated for the program for each business. A business might own several facilities.

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
2631	Paperboard 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
3273	Ready-mixed Concrete
3711	Motor Vehicles and Passenger Car Bodies
4911	Electric Services
4922	Natural Gas Transmission
4923	Gas Transmission and Distribution
4931	Electric and Other Services Combined

- (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. This threshold is consistent with the thresholds used by the U.S. EPA and others.

Assumptions

Financial data for 1994 were available for only 22 of the estimated 34 affected businesses and three government agencies. Using these financial data, the ROEs before and after the subtraction of the adjusted fees were calculated for those 22 businesses. These calculations were based on the following assumptions.

- (1) All affected businesses are subject to federal and state tax rates of 35 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 fee regulations.

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

Potential Impact On Business

California businesses are affected by the proposed regulations to the extent that the implementation of the proposed fees reduces their profitability. Using ROE to measure profitability, we found that the average ROE for all affected businesses for which financial data were available declined by less than 0.1 percent. This represents a minuscule decline in the average profitability of the affected businesses.

All businesses, however, would not be affected equally by the proposed fee regulations. For the 22 businesses for which financial data were available, the change in profitability ranged from almost zero to a high of less than 4 percent. This variation in the impact of the 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 proposed CCAA fees for fiscal year 1996-97, the estimated annual fees for

businesses in the industries listed in Table 1 range from a high of about \$550,000 to a low of less than \$10,000. Second, the performance of businesses may vary from year to year. Hence, the 1994 financial data used may not be representative of a typical-year performance for some businesses.

The potential impacts estimated here might be high for the following reasons. First, the permit fees are not new to affected businesses. The impact of the fee as estimated here tends to be more severe than what it would be if we had used the incremental changes in fees rather than the total fees. Second, affected businesses probably would not absorb all of the increase in their costs of doing business. They would be able to either pass some of the cost on to consumers in the form of higher prices, reduce their costs, or both.

Potential Impact on Consumers

No noticeable change in consumer prices is expected from the proposed CCAA fees for fiscal year 1996-97. This is because the proposed 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 change in fees rather than the total fees in our analysis.

Potential Impact on Employment

Since the proposed fees impose no noticeable cost squeeze on businesses, we expect no significant change in employment due to the imposition of the fees. However, the CCAA fees may impose hardship on some businesses operating with little or no margin of profitability, affecting the creation of jobs in California.

Impact on Business Creation, Elimination, or Expansion

No change is expected to occur in the status of California businesses as a result of the proposed CCAA fees. This is because the fees have no significant impact on the profitability of businesses in California. However, should the CCAA fees impose hardship on California businesses operating with little or no margin of profitability, some affected businesses may decide not to expand in California.

Impact on Business Competitiveness

The proposed CCAA fees would have no material impact on the ability of California businesses to compete with businesses in other states. This is because the proposed CCAA fees do not impose a noticeable cost squeeze on 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 proposed fee regulations without a significant adverse impact on their profitability. Although some businesses would potentially experience a greater reduction in their profitability than others, the impact of the proposed fee regulations appears to be minuscule.

Since the proposed fees impose no noticeable cost squeeze on businesses, we expect no significant change in employment; business creation, elimination, or expansion; and business competitiveness.

