

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider adoption of new section 90800.7 and amendments to section 90803, Title 17, California Code of Regulations, which would require local air pollution control and air quality management districts to collect permit fees from major nonvehicular sources of nonattainment pollutants and their precursors to fund part of the Board's California Clean Air Act program for nonvehicular sources for the fiscal year 1996-97.

DATE: April 25, 1996

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the Board which will commence at 9:30 a.m., on April 25, 1996, and may continue at 8:30 a.m., April 26, 1996. Please consult the agenda for the meeting, which will be available at least 10 days before April 25, 1996, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Proposed adoption of new section 90800.7 and amendment to section 90803, Title 17, California Code of Regulations (CCR).

In the California Clean Air Act (the "Act," Stats. 1988, ch. 1568), the Legislature imposed a number of requirements on the Board and the air pollution control and air quality management districts and provided a mechanism to help defray the state costs of implementing the Act.

To offset the increased costs of additional state programs related to nonvehicular sources, the Legislature, in section 39612 of the Health and Safety Code, authorized the Board, beginning—July 1, 1989, to require districts to collect fees from holders of permits for facilities which emit 500 tons or more per year of any nonattainment pollutant or its precursors. The total amount of funds collected by these fees, exclusive of district administrative costs, may not exceed \$3,000,000 in any fiscal year. The authorization to assess fees expires on July 1, 1997.

In 1989, the Board approved adoption of sections 90800-90803, Title 17, CCR, establishing the California Clean Air Act Nonvehicular Source Fee Regulations including the fee rate and amounts to be remitted to the ARB by the districts for the first year of the program, fiscal year 1989-90.

In 1990, the Board approved amendments to the regulations and a new section, section 90800.1, to provide funding for the second year of the program, fiscal year 1990-91. Again, fee rates and amounts to be remitted to the ARB were included.

In 1991, the Board approved amendments to the regulations and a new section, section 90800.2, to provide funding for the third year of the program, fiscal year 1991-92. Again, fee rates and amounts to be remitted to the ARB were included. Approved amendments to section 90801 included a specification that the area designations to be used will be those that are in effect on July 1 of the fiscal year for which fees will be collected. Also in section 90801, reactive organic gas was included as a precursor to both suspended particulate matter (PM10) and visibility reducing particles. Also, section 90803 was amended to be applicable to fees collected under section 90800.2.

In 1992, the Board approved section 90800.3, to provide funding for the fourth year of the program, fiscal year 1992-93. Again, fee rates and amounts to be remitted to the ARB were included. Also, section 90803 was amended to be applicable to fees collected under new section 90800.3.

In 1993, the Board approved section 90800.4, to provide funding for the fifth year of the program, fiscal year 1993-94. As in 1992, fee rates and amounts to be remitted to the ARB were included and section 90803 was amended to be applicable to fees collected under new section 90800.4.

In 1994, the Board approved section 90800.5, to provide funding for the sixth year of the program, fiscal year 1994-95. Fee rates and amounts to be remitted to the ARB were again included. The Regulations were amended to exempt from the regulations any facility which would be subject to the regulations solely because the facility is in a district which has been designated as nonattainment for ozone because of overwhelming transport. In addition, section 90803 was amended to include emission quantification errors as one of the possible bases for districts 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. Also, section 90803 was amended to be applicable to fees to be collected under new section 90800.5.

In 1995, the Board approved section 90800.6, to provide funding for the seventh year of the program, fiscal year 1995-96. Fee rates and amounts to be remitted to the ARB were included and section 90803 was amended to be applicable to fees collected under new section 90800.6.

Proposed new section 90800.7, Title 17, CCR, specifies the fee rate and amounts to be remitted to the ARB for the 1996-1997 fiscal year, which is the eighth and final year of the current nonvehicular source permit fee program. Section 90803 would be amended to be applicable to fees to be collected under new section 90800.7.

As with the fee regulations for the first seven years, the proposed and amended regulations provide for: 1) the collection of the emission fees by districts on a dollar-per-ton basis, 2) recovery of administrative costs by the districts, 3) imposition of additional fees on facilities that do not pay in a timely manner, and 4) relief for districts from the fee collection requirements for demonstrated good cause.

The proposed fee rate was established based on the cost of state programs related to nonvehicular sources under the Act (\$3,000,000) and the amount of emissions of nonattainment pollutants or their precursors from sources subject to the fee requirements.

The proposed and amended regulations specify that fees shall be based on the estimated 1994 emissions from each facility as determined on February 13, 1996. Fees shall be collected by the affected districts from permitted sources which are located in nonattainment areas except when the nonattainment designation was found by the Board to be the result of overwhelming transport, and are identified as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors in 1994. Nonattainment areas are those in which air pollutant concentrations violate state ambient air quality standards. Nonattainment areas are identified in sections 60200-60209, Title 17, CCR. The regulations would also require the collection of fees from sources identified after February 13, 1996, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during 1994.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, 2020 "L" Street, Sacramento, California 95814, (916) 322-2990. The Board staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the staff person identified immediately below.

Further inquiries regarding this matter should be directed to Cheryl Taylor, Stationary Source Emission Inventory Branch, P.O. Box 2815, Sacramento, California 95812, (916) 324-7168.

COSTS TO PUBLIC AGENCIES, BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Board's Executive Officer has determined that the regulations will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, except as discussed below, or other nondiscretionary savings to local 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 the fees. These costs are not expected to exceed five percent of the fees collected. The Act authorizes the districts to recover these costs from facilities subject to the fees.

The aggregate cost to local government agencies other than air pollution control and air quality management districts which are subject to the fee regulations will be approximately \$41,000. These costs are based on emissions from local government agency facilities. These costs are not reimbursable state mandated costs pursuant to Government Code section 17500 et seq. because the fee regulations apply generally to all facilities in the state which emit 500 tons or more per year of nonattainment pollutants or their precursors and, therefore, do not impose unique requirements on local government agencies.

The aggregate cost to federal agencies which are subject to the fee regulations will be approximately \$36,000. These costs are based on emissions from federal facilities. 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, including the payment of permit fees.

The Executive Officer has determined that adoption and amendment 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 Executive Officer has also determined that the potential cost impact on private persons or businesses directly affected by the proposed regulations will be insignificant. Included among the facilities subject to the proposed regulations for the fiscal year 1996-97 fees are major oil and gas producers, utilities, and major manufacturing enterprises. See the Staff Report, Attachment D: Facilities and Emissions Subject to the Proposed Fee Regulations.

In accordance with Government Code section 11346.3, the Executive Officer has determined 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 the Staff Report in Attachment E.

The proposed regulations would require the collection of permit fees from specified facilities. The proposed fee rate is approximately \$18.90 per ton of nonattainment pollutants and their precursors that were emitted in 1994. The cost to affected businesses will therefore vary according to the magnitude of the 1994 emissions from the facilities. 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 based on 1994 emissions.

The regulations will not affect small businesses because all major nonvehicular sources are not considered small business.

In addition, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Board Secretary,

Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than 12:00 noon, April 24, 1996, or received by the Board Secretary at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulations.

STATUTORY AUTHORITY AND HEARING PROCEDURES

The regulations are proposed under that authority granted in sections 39600, 39601 and 39612 of the Health and Safety Code. The regulations are proposed to implement, interpret, or make specific sections 39002, 39500, 39600 and 39612 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 of the Government Code.

Following the public hearing, the Board may adopt the proposed regulations as proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulations with other modifications if the regulations as modified are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action; in such event, the full text of the regulations with the modifications clearly indicated will be made available to the public, for written comment, at least 15 days before they are adopted. The public may request the text of the modified regulations from the Board's Public Information Office, 2020 "L" Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD



for James D. Boyd
Executive Officer

Date: February 27, 1996