

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

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

Public Hearing Date: April 27, 1995
Agenda Item No.: 95-4-2

I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking ("staff report"), entitled "Public Hearing to Consider the Adoption of Permit Fee Regulations for Nonvehicular Sources Pursuant to the California Clean Air Act," released March 10, 1995, is incorporated by reference herein.

Following a public hearing on April 27, 1995, the Air Resources Board (the "Board" or "ARB"), by Resolution 95-19, approved the adoption of the proposed California Clean Air Act Nonvehicular Source Fee Regulations. In approving the regulations, the Board directed the Executive Officer to adopt the regulations after making them available to the public for 15 days, provided that the Executive Officer considered written comments received during this period and made modifications as might be appropriate based on the comments received. The Board also directed the Executive Officer to present the regulations to the Board for further consideration if warranted. The subject regulations are contained in Title 17, California Code of Regulations (CCR), sections 90800-90803.

The regulations as approved by the Board differ from those initially proposed by the staff and made available with the staff report on March 10, 1995. The modifications to the initial proposal include a recalculation of the fee rate due to several emission changes reported by districts. These revisions were circulated for public review in a 15-day comment period. No comments were received on these revisions during the 15-day comment period. The double underline and strikeout format presented in the 15-day package has been omitted for the final regulations.

The regulations as approved are intended to provide the Board with net revenues of \$3.0 million in fees (see staff report). These funds are necessary to partially defray the additional costs of California Clean Air Act programs related to nonvehicular sources as budgeted for the 1995-96 fiscal year (see Attachment 1).

The Board has determined that this regulatory action will result in a mandate to local air pollution control and air quality management districts in the form of administrative costs in assessing and collecting the fees. These costs are not expected to exceed five percent of the fees to be collected. However, the Board finds that these costs are not reimbursable pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, because the districts have the authority,

pursuant to Health and Safety Code section 39612 and the implementing regulations, to collect and retain fees sufficient to cover these costs.

The Board has determined that local agencies other than air pollution control or air quality management districts will incur costs in complying with the fee regulations. These local agencies are subject to the fee requirements because they operate facilities which emit 500 tons or more per year of any nonattainment pollutant or precursor and thus the fee regulations do not impose unique requirements on local governments. (See County of Los Angeles vs. State of California (1987) 43 Cal.3d 46.)

The regulations do not impose a mandate on school districts.

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board. No alternatives were proposed that would lessen any adverse impact on businesses.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

During the 45-day comment period before the April 27, 1995, public hearing, the staff verified and accepted several changes in emission estimates submitted by districts. These changes are part of an ongoing process that allows ARB to quantify the most current estimates of 1993 emissions. Changes to emission estimates were submitted by Kern County Air Pollution Control District, Mojave Desert Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District and San Luis Obispo Air Pollution Control District. These changes resulted in an overall reduction in emissions subject to fees of 6,384 tons per year, and a resulting increase in the per ton emission rate from \$17.04 per ton to \$17.75 per ton.

The Board received no written comments from the public during the 45-day comment period prior to the Board hearing. At the Board hearing, one industry representative provided comments which are summarized below. No written comments were received during the 15-day comment period following the Board hearing.

1. Comments:

Ted Holcombe, a representative from PG&E, provided comments at the hearing related to the equity of the program. Mr. Holcombe expressed concerns for facilities which emit just over the 500 ton per year threshold that are paying fees for the first 500 tons per year as well as for those emissions exceeding the threshold.

Agency Response:

Changing this policy to exclude the first 500 tons would reduce the total tons used to determine fees. This would increase the cost per ton. This method would assess a larger fee for the State's largest facilities. For example, PG&E fees would increase by 14%. The Board has determined that the current policy is preferable.

2. Comments:

Mr. Holcombe also had a comment regarding the carryover of fees. Currently, if the fees collected, including any contingency, exceed the annual target amount, the excess fees collected would be carried over to the following year. He suggested ARB should examine a process whereby the excess from the overcollection of fees could be refunded to the universe of facilities that contributed to these fees.

Agency Response:

This option has been considered by the board in previous year regulations. Since the universe of facilities changes very little from year to year, most facilities receive this credit in the form of a reduction in what they would remit in the following year. The Board has considered both options again this year and has decided that the current carryover procedure is preferable.

AIR RESOURCES BOARD
 (ATTACHMENT 1)
 CALIFORNIA CLEAN AIR ACT
 BUDGET ACT OF 1995, ITEM 3900-001-044
 (Dollars in Thousands)

	Positions	Dollars
BUDGET ACT OF 1989	54.0	\$ 6,635
Less Limited-Term Positions and One-Time Costs	-4.0	- 1,107
Plus Budget Change Proposals:		
#2. CA Clean Air Act	17.0	2,027
#2a. CA Clean Air Act - Data Processing	<u> -</u>	<u> 137</u>
BUDGET ACT OF 1990	67.0	7,692
Plus Baseline Adjustments/Inflation	<u> -</u>	<u> 186</u>
BUDGET ACT OF 1991	67.0	7,878
Plus Baseline Adjustments/Inflation	<u> -</u>	<u> 236</u>
BUDGET ACT OF 1992	67.0	8,114
Plus Baseline Adjustments/Inflation	<u> -</u>	<u> 185</u>
BUDGET ACT OF 1993	67.0	8,299
Plus Baseline Adjustments/Inflation	<u> -</u>	<u> 30</u>
BUDGET ACT OF 1994	67.0	8,329
Plus Baseline Adjustments/Inflation	<u> -</u>	<u> 84</u>
BUDGET ACT OF 1995	67.0	8,413
 FUNDING: Air Pollution Control Fund		 \$ 8,413
(Vehicular Fees)		(5,413)
(Non-Vehicular Fees)		(3,000)

ASD/Fiscal
7/17/95