State of California
AIR RESOURCES BOARD

STAFF REPORT

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

Date of Release: December 12, 1997
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I. INTRODUCTION AND BACKGROUND

This report discusses a proposal of the staff of the Air Resources Board (ARB), that the Board adopt a regulation that requires the air pollution control and air quality management districts to continue to assess permit fees on large, nonvehicular sources of air pollution to help defray the costs to the ARB of continued implementation of mandates of the California Clean Air Act of 1988 (the "Act" or "CCAA", Stats. 1988, ch. 1568) during fiscal years 1997-98 and 1998-99, and in future years if the authority to assess the fees is extended. Assembly Bill 1583 (Stats. 1997, ch. 713) reinstated and extended the authority to assess fees originally granted to the ARB by the CCAA through June 30, 1999. This authority had become inoperative on July 1, 1997. The proposed regulatory language is contained in Attachment A to this report. The fees are authorized by section 39612 of the Health and Safety Code (Attachment B).

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. Additionally, AB 1583 mandates that the ARB give priority for expenditure of these permit fees to be collected to specified activities. These activities are discussed later in this report.

In order to recover some of the costs of the state programs required by the Act and AB 1583 related to nonvehicular sources, the Act and subsequently AB 1583 authorized 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 emit 500 tons or more per year of any nonattainment pollutant or its precursors from equipment authorized to operate by district permit. Districts have established permit systems for nonvehicular sources of air pollution pursuant to Health

and Safety Code sections 42300, 42301 and 42310. 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, 1999.

The proposal, which is similar to prior regulations adopted by the Board for the CCAA fee program, is the subject of a public consultation meeting scheduled for December 10, 1997. 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. However, this proposal differs from those of earlier years in that 1) the regulation being proposed will cover both fiscal years 1997-98 and 1998-99 as authorized by AB 1583 and future years if the fee authority is extended; and 2) the fee regulation will contain the formula used for calculating the fee amount rather than specifying the dollar amount to be collected by each district. This structural change is being proposed because of the short time frame that exists between approval of AB 1583 and the first fiscal year for which the fees will be assessed.

The ARB has used the fees collected pursuant to the Act to partially defray the costs of implementing the nonvehicular requirements of the Act, which have significantly exceeded $3,000,000 per year. AB 1583 identifies a number of activities which should be given priority for the expenditure of the fees. These priorities include the following activities:

Air Quality Indicators: identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air quality standards.

Population Exposure: establishing a uniform methodology for assessing population exposure to air pollutants.

Emission Inventory: updating the emission inventory, including emissions that cause or contribute to the nonattainment of ambient air quality standards.

Mitigation of Transport: identifying, assessing, and establishing mitigation requirements for the effects of interbasin transport of air pollutants.

Nonvehicular Source Control Measures: updating the ARB's guidance to districts on ranking control measures for nonvehicular sources based on the cost effectiveness of those measures in reducing air pollution.

The fee amounts to be collected by each district for each fiscal year will be calculated based on the most recent calendar year for which emission estimates for all affected districts are available. This means that the fees for fiscal year 1997-98 will be based on available emission data for calendar year 1995, which are the most recently available statewide emission data, and the fee amounts to be collected by districts for fiscal year 1998-99 are expected to be based on available emission data for calendar year 1996.

The identification of nonattainment pollutants and precursors within each district for the purpose of the proposed amendments for fiscal year 1997-98 is based on the action taken by the Board on November 21, 1996, to designate areas of the state as nonattainment for certain pollutants (Reference: Sections 60200-60209, Title 17, CCR). The identification of nonattainment pollutants and precursors within each district for the purpose of the proposed amendments for fiscal year 1998-99 will be based on the designations that are effective on July 1,1998 (Reference: Sections 60200-60209, Title 17, CCR). Precursors of nonattainment pollutants are identified in section 90801, Title 17, CCR.

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

To provide funding authorized by AB 1583, the staff recommends that the Board adopt the proposed fee regulations to provide for the collection of fees for fiscal years 1997-98 and 1998-99, and in future years if the fee authority is extended. This would be effected by adopting new section 90800.8, and amending sections 90802 and 90803, Title 13, CCR, as contained in Attachment A.

III. RELATIONSHIP TO OTHER FEE PROGRAMS

This report discusses a proposal for assessing fees on large, nonvehicular sources pursuant to AB 1583 and possible future authorization to assess fees. 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 additional costs of implementing the CCAA mandates relating to mobile sources (Reference: Health and Safety Code section 43019, Title 13, CCR, sections 1990-1992). The Board also assesses fees for facilities pursuant to AB 2588, the "Air Toxics Hot Spots Information and Assessment Act of 1987."

IV. DISCUSSION OF PROPOSED REGULATIONS

A. SUMMARY OF MAJOR PROVISIONS

The proposed regulations would require districts to collect from sources subject to the regulations, fees for transmittal to the ARB for fiscal years 1997-98 and 1998-99 and for subsequent

fiscal years if the fee authority is extended beyond June 30, 1999. The following provisions are included in the proposed regulations:

- The regulations are applicable to the 1997-98 and 1998-99 fiscal years; and subsequent fiscal years if the fee authority is extended beyond June 30, 1999.

- The affected districts are those which are designated as of July 1 of the year for which fees are being collected as being entirely or partially 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 under certain circumstances where the Board has found that the district is designated nonattainment for ozone because of overwhelming transport;

- Districts must transmit the fees to the ARB no later than June 15, 1998, for fiscal year 1997-98. For fiscal year 1998-99 and subsequent years, fees will be due to the ARB no later than January 1 of the fiscal year. A detailed discussion of the method for determining the fee rates can be found in section “F” below.

B. SUMMARY OF RELATED REGULATIONS

The following provisions in previously adopted support regulations will also be applicable to this regulation:

- Districts may recover their administrative costs associated with assessing and collecting the fees;

- Districts must collect fees as set forth in these regulations;

- In the event that excess revenue is collected, this excess revenue shall be carried over to reduce the fees in the following 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, in

1991 the Board 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 nonattainment 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 nonattainment designations used to determine whether an area is subject to the fees is based on the nonattainment designation in effect the first day of the fiscal year (section 90801 (b) and (c)). For fiscal year 1997-98, those designations effective on July 1, 1997, will be used. For fiscal year 1998-99, those designations effective on July 1, 1998, will be used. The Board approved revisions to nonattainment designations at the November 13, 1997, Board hearing. These designations would not result in any change in the facilities subject to the CCAA nonvehicular source fees for FY 1998-99.

An exception to this provision applies to areas designated nonattainment for the state ozone standard, where the Board has determined that overwhelming transport caused all the violations of the state ozone standard. As a result of this determination, 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, are not subject to the fees.

Table 1

NONATTAINMENT POLLUTANTS AND NONATTAINMENT PRECURSORS

Substance (as listed in section 70200 Title 17, CCR):	Nonattainment Pollutant/Precursors:
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)

E. EMISSION DATA AS THE BASIS FOR THE FEES

The staff is proposing that fees be based on emissions for the most recent calendar year for which emission estimates for all affected districts are available. For the first year, fiscal year 1997-98, the fees would be based on emissions in 1995. 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 CCAA nonvehicular fees have been identified as a "small business."

In order to assess fees equitably for all permitted facilities which emitted 500 tons or more per year of any nonattainment pollutants or nonattainment precursors, facilities identified after the fee regulation inventory is established as having emitted 500 or more tons of nonattainment pollutants or precursors in the year on which the fees are based, would also be subject to the fees pursuant to section 90800.8(c). A similar provision was adopted by the Board for the previous seven years of the program (sections 90800(c), 90800.1(c), 90800.2(c), 90800.3(c), 90800.4(c), 90800.5(c), 90800.6(c), and 90800.7(c),Title 17, CCR).

F. DETERMINATION OF THE FEE RATE

Once all of the facilities that emit 500 tons per year of nonattainment pollutants or nonattainment precursors are identified, the emissions from all of these facilities are added together to get the total number of tons of emissions subject to the CCAA fees. The dollars needed is divided by the number of tons of nonattainment pollutants and nonattainment precursors subject to the proposed regulation to obtain the dollar per ton fee rate for that particular year. The total number of dollars needed is the $3,000,000 allowed in the CCAA which is adjusted by two adjustments described in the following paragraphs.

Previous experience with the CCAA fee program has shown that it is not always possible for districts to collect the full amount of the fees because of factors such as facility closure or emission estimation errors. To prevent shortfalls in revenues from the CCAA fees, the staff is proposing an adjustment of up to three percent to create a reserve to provide for the potential undercollection of funds. The Board has approved adjustments in earlier years of the CCAA fee program because the Board was concerned that a shortfall in funds would seriously disrupt the programs that had been entrusted to the ARB to implement. The three percent adjustment, which is based on previous experience with the CCAA fee program, is much smaller than the ten percent adjustment applied in the early years of the CCAA fee program.

The regulations require that any excess funds collected be carried over and applied to reduce fees in future years. For fiscal year 1997-98, there are no funds carried forward from previous years. For fiscal year 1998-99, any excess funds from fiscal year 1997-98 will be carried over to reduce the fees. For fiscal years subsequent to 1998-99, any excess funds carried over from previous years will be carried over to reduce fees in future years. Regardless of the adjustments described above, the net fees accruing to the ARB are still capped at $3,000,000 per year.

The following formulas are proposed to be used to calculate the fees mandated and dollar amounts to be transmitted to the Board:

(1) Fee per ton = $\frac{R + A - C}{E}$

Where

R = Total revenue needed by the ARB in the specified fiscal year for implementing various provisions of the California Clean Air Act (Stats. 1988, ch. 1568) and Assembly Bill 1583 (Stats. 1997, ch. 713) related to nonvehicular sources (not to exceed three million dollars);

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

C = Carry-over revenues collected in prior fiscal years (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).

(2) Dollar Amount to be Transmitted from a district to the Board = F * D

Where

F = Fee per ton as calculated under subsection (1); and

D = The sum of the district's nonattainment emissions from all permitted facilities in the district that emitted 500 tons or more per year of nonattainment pollutants or nonattainment precursors during a specified year (tons).

Based on currently available information, for fiscal year 1997-98, the staff anticipates that the formula will apply as follows:

R = $3,000,000 program costs for fiscal year 1997-98:

A = 3 percent, or $90,000 adjustment:

C = $0 (zero) (No revenues were carried over from previous years because of the expectation that the 1996-97 fiscal year would be the last year of the CCAA fee program); and

E = Statewide emissions in the 1995 calendar year subject to the fees, as determined by the Executive Officer as of January 29, 1998.

For the fiscal year 1998-99 and any subsequent year in which the ARB is authorized by State law to require such fees, the proposed amendments require the Executive Officer to notify all districts and affected sources of the preliminary determinations on the fees to be assessed and the information on which the fees are based, by May 1 of the preceding year. Districts and affected sources will be given the opportunity to provide additional information that may change the preliminary determinations of emissions and fees. In determining the total amount to be assessed, the Executive Officer will first identify the revenues needed to recover the costs in the fiscal year for additional ARB programs related to nonvehicular sources. The staff proposes using the same formula as was used for fiscal year 1997-98 with the following dollar amounts:

R = $3,000,000 program costs for fiscal year 1998-99 and subsequent years

A = adjustment (to be determined)*

C = Carry-over from fiscal year 1997-98 and subsequent year fees

E = Emissions in the most recent calendar year for which emission estimates are available for all affected districts subject to the fees, as determined by the executive officer as of June 30 of the fiscal year for which the fees are being assessed.

* Will depend on how much of a reserve remains after collection of prior year fees. If a sufficient reserve is carried over from the fees collected for a fiscal year, the adjustment for the following fiscal year will be zero.

The fee per ton will be 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 one or more nonattainment pollutant or precursor will be assessed fees on the sum of the emissions of each of those pollutants or precursors. Attachment E contains the preliminary list of facilities subject to the fees and the estimate of their emissions and fees as of (DATE). For the 1997-98 fiscal year, the calculations will be based on 1995 emission data. For the 1998-99 and subsequent fiscal years, the calculations will be based on the most recent year for which emission estimates are available for all affected districts.

Since the first year of the CCAA fee program in 1989, the number of facilities subject to the CCAA fees has declined from 116 to 60 and the amount of emissions subject to the fees has decreased from a high of 259,900 tons to approximately 129,000 tons this year. The bulk of the decline has been due to the installation of improved emission controls or the development of improved emission estimation methods. As a result, the fee rate has increased from approximately $13 per ton to the

approximately $24 per ton projected for this year. About one half of the increase, approximately $5 per ton, occurred between the fees for this fiscal year, FY97/98, and the fees for the previous year, FY96/97. This large year-to-year increase is due to the following reasons: (1) there were large emission reductions due to updated emission estimates for power plants and refineries; (2) a number of facilities reduced their emissions below the 500 ton per year threshold and dropped out of the program; (3) there are no carry-over funds from previous years; and (4) because all reserve funds were used to reduce the fees for FY96/97, a new reserve had to be established for 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 1996, which provide for 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 percent based on past experience. The regulations [section 90802 (b)] require districts to substantiate the administrative costs and to provide supporting information to the ARB upon 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 between 1989 and 1996 also provide a mechanism that releases a district from the responsibility for remitting fees that are, for demonstrated good cause, not collectible. As in the past, a district must still demonstrate good cause before relief from fees may be granted. Section 90803 identified emission quantification errors as one of the possible bases for a district to be relieved from a portion of the fees. 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.

No local agencies have been identified that would be subject to the fees for fiscal year 1997-98. If any should be identified for fiscal year 1998-99 or subsequent years if the fee authority is extended by the Legislature, these costs would not be 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 may recover costs, such as the collection of the fee, 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 Air Basin portion of Kern County. The cost to this federal government agency in complying with the regulations will be approximately $24,000. 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 based on the facilities' emissions. The fee per facility for fiscal year 1997-98 and 1998-99 will be determined based on the amount of these pollutants emitted in 1995 and 1996, respectively. 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 $15,000 to a maximum of approximately $500,000 for a business that owns and operates multiple facilities in the State.

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 D: 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 1997-98 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).

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 D.

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