

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Response**

**PUBLIC HEARING TO CONSIDER REGULATIONS REGARDING THE
ATMOSPHERIC ACIDITY PROTECTION PROGRAM FEES**

Public Hearing Date: April 8, 1993
Agenda Item: 93-6-2

I. GENERAL

The Staff Report: Initial Statement of Reasons for Proposed Rulemaking ("staff report"), released February 19, 1993 is incorporated herein by reference.

Following the April 8, 1993, public hearing the Air Resources Board (the "Board" or "ARB"), by Resolution 93-22, approved the adoption of the proposed Atmospheric Acidity Fee Regulations as contained in sections 90620-90623, Title 17, California Code of Regulations (CCR), with modifications. In approving the regulations, the Board directed the Executive Officer to adopt the regulations after making them available for public comment 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.

With the following exceptions in section 90621.4, the regulations as approved by the Board are identical to those initially proposed by the staff and made available with the staff report on February 19, 1993: (1) a recalculation of the fee rate due to a number of emission changes reported by districts (Attachment A), (2) the double underline and strikeout format presented in the 15-day package has been omitted for the final regulations, and (3) single underlines in the final regulations indicate the new section approved by the Board on April 8, 1993.

The regulations as approved are intended to provide the Board with net revenues of \$1.5 million in fees (see staff report). These funds are necessary to cover the costs to the Board of implementing the Atmospheric Acidity Protection Program (Stats. 1988, c. 1518) (Attachment B).

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 oxides of sulfur (SOx) or oxides of nitrogen (NOx) and thus 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.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

During the 45-day comment period before the April 8, 1993, public hearing, the Board received a written comment from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). No public comments were received at the Board hearing nor were any written comments received during the 15-day comment period.

Comment: The SJVUAPCD requested that the definition of a source for the purpose of determining emissions subject to the fees be revised to be consistent with the definition used in the District's New Source Review rule. This change would result in the reduction of emission rates for several facilities, totaling approximately 2,600 tons.

Agency Response: The reduction requested by the District was not the result of actual reductions in emissions, but was the result of the District re-interpreting the definition of major nonvehicular source in its rule 3080 for the Atmospheric Acidity Protection Program Fee. Previously, for purposes of this fee regulation, the District used its definition of major non-vehicular source, applicable to sources subject to the fees, to generally report contiguous oil field operations under common ownership or control as a single source. This year the District requested that emissions now be reported in terms of the District's definition of stationary source. The permit rule definition of stationary source contains an exception which allows contiguous oil field operations to be treated as two or more separate facilities whereas under the general permit rule they would be a single facility. The language of the exception makes the exception applicable to the definition of stationary source. However, if the exception from the stationary source rule were applied to the definition of major nonvehicular source as the District advocated, the result would be that six facilities would have fewer emissions subject to the fees and one facility would drop out of the program altogether. The Board rejected the request to reduce emissions based on this re-interpretation.

TABLE I
ATMOSPHERIC ACIDITY PROTECTION ACT
EMISSIONS FEES FOR 1993-94

1991 EMISSIONS FROM SOURCES EMITTING
500 TONS OR MORE PER YEAR
OF SULFUR OXIDES OR NITROGEN OXIDES

<u>DISTRICT</u>	<u>NO. OF SOURCES</u>	<u>EMISSIONS (TONS PER YEAR)</u>			<u>PROPOSED FEES ^{1/} ($\\$)</u>
		<u>SOx</u>	<u>NOx</u>	<u>Total</u>	
Bay Area	14	16,791	31,364	48,155	<u>393,426</u>
Imperial	2	-0-	1,299	1,299	<u>10,613</u>
Kern (SEDAB)	4	-0-	4,464	4,464	<u>36,471</u>
Monterey	3	-0-	5,978	5,978	<u>48,840</u>
North Coast	<u>1</u>	-0-	<u>522</u>	<u>522</u>	<u>4,265</u>
San Bernardino	11	-0-	22,770	22,770	<u>186,031</u>
San Diego	2	-0-	3,272	3,272	<u>26,732</u>
San Joaquin Unified	<u>21</u>	<u>4,883</u>	<u>29,895</u>	<u>34,778</u>	<u>284,137</u>
San Luis Obispo	3	4,088	3,439	7,527	<u>61,496</u>
South Coast	<u>14</u>	5,342	<u>19,648</u>	<u>24,990</u>	<u>204,167</u>
Ventura	2	-0-	1,519	1,519	<u>12,410</u>
TOTAL	<u>77</u>	<u>31,104</u>	<u>124,170</u>	<u>155,274</u>	<u>1,268,588^{2/}</u>

^{1/} Fee rate = $\$8.17$ per ton

^{2/} This amount is slightly less than \$1,269,000 (\$1,500,000 - \$231,000*) because of rounding of dollars.

* Carry-over revenues from previous collections

April 8, 1993

ATTACHMENT B

AIR RESOURCES BOARD

ATMOSPHERIC ACIDITY PROTECTION PROGRAM
BUDGET ACT OF 1993, ITEM 3900-001-044
(Dollars in Thousands)

	Position	Dollar
BUDGET ACT OF 1989		
ATMOSPHERIC ACIDITY PROTECTION PROGRAM, BCP 6	12.0	\$3,000
BUDGET ACTS OF 1990-93*		
ATMOSPHERIC ACIDITY PROTECTION PROGRAM	12.0	3,000
FUNDING:		
Motor Vehicle Account, State Transportation Fund		1,500
Reimbursements (Fees)		1,500

* This program is capped, H&S Code 39909, at a \$3 million expenditure level.

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