

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF FEE REGULATIONS PURSUANT TO THE ATMOSPHERIC ACIDITY PROTECTION 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 90621.4 and amended section 90622, Title 17, California Code of Regulations, requiring local air pollution control and air quality management districts to collect permit fees from major nonvehicular sources of sulfur oxides and nitrogen oxides to fund, in part, the Board's Atmospheric Acidity Protection Program for fiscal year 1993-94.

DATE: April 8, 1993

TIME: 9:30 a.m.

PLACE: Embassy Suites Hotel
Queen of the Lake Ballroom
4130 Lake Tahoe Boulevard
South Lake Tahoe, California

This item will be considered at a one-day meeting of the Board which will commence at 9:30 a.m., April 8, 1993, at the time and place stated above.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Proposed adoption of new section 90621.4 and a conforming amendment to section 90622, Title 17, California Code of Regulations (CCR).

In the Atmospheric Acidity Protection Act of 1988 (Health and Safety Code sections 39900-39911), the Legislature made a finding that the deposition of atmospheric acidity resulting from other than natural sources is occurring in various regions of California, and that the continued deposition of this acidity, alone or in combination with other man-made pollutants and naturally occurring phenomena, could have potentially significant adverse effects on public health, the environment, and the economy. The Legislature directed the Board to adopt and implement the Atmospheric Acidity Protection Program (AAPP), to determine the nature and extent of potential damage to public health and the state's ecosystems which may be expected to result from atmospheric acidity, and to develop measures which may be needed for the protection of public health and sensitive ecosystems within the state. To enable the Board to carry out these activities, the Act authorized the Board to require the districts, beginning July 1, 1988, to impose additional variance and permit fees on nonvehicular sources which emit 500 tons or more per year of either sulfur oxides or nitrogen oxides. The total amount of funds collected from additional fees, exclusive of district costs, shall be

\$1,500,000 for any fiscal year or the amount appropriated from state funds by the Legislature for the AAPP, whichever is less.

During the first year of the program, the Board adopted sections 90620-90623, Title 17, CCR, establishing the Atmospheric Acidity Protection Act fee program including the fee rate and amounts to be remitted to the ARB by the districts. The regulations, which were based on emissions data for calendar year 1987, were applicable for the first year (July 1, 1989 - June 30, 1990) of the Board's five-year research and monitoring effort. Subsequently, the Board approved amendments to the regulations at its May 10, 1990; April 11, 1991; and April 9, 1992 meetings to provide funding for the second through fourth years of the program, fiscal years 1990-91 through 1992-93. The fees for the second through fourth years of the program were based on emissions for calendar years 1988 through 1990, respectively.

Proposed new section 90621.4 will apply to fiscal year 1993-94, the fifth and final year of the program. As with the fee regulations for the first four years, this section would provide for the collection of emission fees by districts on a dollar-per-ton basis and the forwarding of collected fees to the ARB. The regulations specify that permit fees shall be collected from sources that have emitted 500 tons per year or more of sulfur oxides or nitrogen oxides during the period from January 1, 1991 through December 31, 1991. The fees to be collected by districts would be based upon emissions data for calendar year 1991, the most recent year for which statewide emissions data are available. The proposed regulations specify that emissions shall be estimated from data as determined on or before January 29, 1993. ~~The regulations would also require the collection of fees from sources identified after January 29, 1993 as having emitted 500 tons or more per year of sulfur oxides or nitrogen oxides during 1991.~~

The specific dollar-per-ton value would be calculated by dividing the total amount to be collected by the total estimated emissions of sulfur oxides and nitrogen oxides from sources emitting 500 tons or more per year of sulfur oxides or nitrogen oxides. The maximum amount of fees to be collected for fiscal year 1993-94 is \$1,500,000. In order to ensure collection of \$1,500,000, the regulations provide for the assessment of approximately \$1,270,000 in fees. The total assessment reflects a reduction of \$231,000 that has been carried over to fiscal year 1993-94 from excess assessments that have been received from previous years.

Since the proposed fees are for the final year of the program no adjustment is being proposed. Hence, a conforming amendment is proposed to delete section 90622(e) of the regulations that provides for carryover of excess funds to future years.

Existing regulations authorize districts to recover their administrative costs of collecting fees by adding to the fees an amount sufficient to cover those costs. As provided in Health and Safety Code section 39909 this additional fee amount is not included in the total fees subject to the maximum \$1,500,000 that may be collected. The staff is not proposing any changes to this provision.

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. The Staff Report, the full text of the proposed regulations, the Atmospheric Acidity Protection Act

Five-Year Research Plan (1989), and any other information on which the proposal is based will be available and may be obtained at the Board's Public Information Office, 2020 "L" Street, Sacramento, CA 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing.

Further inquiries regarding this matter should be directed to Manjit Ahuja, Manager, Acid Deposition and Aerosol Research Section, at (916) 323-1502, P.O. Box 2815, Sacramento, CA 95812.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The Board's Executive Officer has determined that the proposed fee 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 noted 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. Local air pollution control and air quality management districts will incur administrative costs in collecting the fees. These costs, which are not expected to exceed five percent of the fees collected, are not reimbursable state-mandated costs because 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 that will be subject to the fee regulations, will be approximately \$12,000. These costs are not reimbursable state-mandated costs pursuant to Government Code section 17500 et seq. because the fees apply generally to all nonvehicular sources in the state which emit 500 tons or more per year of sulfur oxides or nitrogen oxides and, therefore, do not impose unique requirements on local agencies. Moreover, the affected local agencies can recover their costs through the assessment of service charges or fees.

The aggregate costs to federal agencies which are subject to the fee regulations will be approximately \$23,000. 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 proposed regulations would require the collection of permit fees from specified nonvehicular sources of sulfur oxides or nitrogen oxides. The proposed fee rate is approximately \$8.00 per ton of sulfur oxides or nitrogen oxides that were emitted in 1991. The cost to affected businesses will therefore vary according to the magnitude of the 1991 emissions from the affected businesses. The Executive Officer has determined that adoption of these regulations will not have a significant adverse economic impact on small businesses or other businesses. No facilities that would be subject to the proposed fees have been identified as small businesses. The data relied upon in making these determinations are included in the Staff Report. The Executive Officer has also determined that the potential cost impact on private persons or businesses directly affected by the proposed action will be insignificant.

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, CA 95812, no later than 12:00 noon, April 7, 1993, 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 regulation.

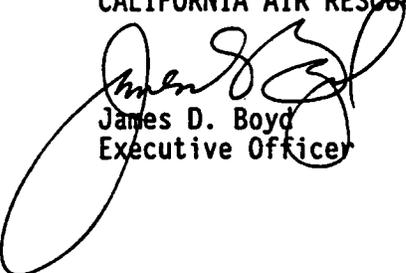
STATUTORY AUTHORITY AND HEARING PROCEDURES

These regulations are proposed under that authority granted in sections 39600, 39601, 39904 and 39906 of the Health and Safety Code. The regulations are proposed to implement, interpret and make specific sections 39002, 39500, 39600, 39904 through 39910 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 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 that text of the modified regulations from the Board's Public Information Office, 2020 "L" Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD



James D. Boyd
Executive Officer

Date: February 9, 1993