

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 8, 1993
Agenda Item No.: 93-6-1

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 February 19, 1993, is incorporated by reference herein.

Following a public hearing on April 8, 1993, the Air Resources Board (the "Board" or "ARB"), by Resolution 93-21, 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 February 19, 1993. The modifications to the initial proposal include a recalculation of the fee rate due to a number of emission changes reported by districts. The double underline and strikeout format presented in the 15-day package has been omitted for the final regulations. Single underlines in the final regulations indicate the adoption of a new section and the amendment of an existing section.

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 cover the additional costs of California Clean Air Act programs related to nonvehicular sources as budgeted for the 1993-94 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 small businesses.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

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

1. Comment: The San Joaquin Valley Unified Air Pollution Control District 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. (SJVUAPCD)

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 3090, California Clean Air Act Fees. 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.

2. Comment: The NCUAQMD expressed the view that the California Clean Air Act has focused on urban ozone nonattainment areas, and little has been done to benefit rural PM10 nonattainment areas. Therefore, fees based on the emissions of PM10 and PM10 precursors should be eliminated for ozone attainment and unclassified areas. (NCUAQMD)

Agency Response: The staff acknowledges that resources designated for implementing the California Clean Air Act may not be distributed evenly to all districts, but the responsibilities assigned to the ARB in these statutes are statewide in nature and may impact local air districts differently. This is because each district has different air quality problems and issues. The funding mechanism provided by the legislature does not address differences between districts and provides a uniform method of assessing fees based on nonattainment pollutants or their precursors. The statute does not direct or infer that the ARB is to attempt to direct the benefits to the districts individually, based on the fees collected in those districts. Because the ARB's efforts are statewide in nature, the ARB has not attempted to uniformly equalize the collection of fees with the distribution of benefits. The Board rejected the elimination of fees to areas designated as attainment or unclassified for ozone.

ATTACHMENT 1

AIR RESOURCES BOARD

CALIFORNIA CLEAN AIR ACT
 BUDGET ACT OF 1993, ITEM 3900-001-044
 (Dollars in Thousands)

	Position	Dollar
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>227</u>
BUDGET ACT OF 1993	67.0	8,341
FUNDING: AIR POLLUTION CONTROL FUND		\$8,341
(Vehicular Fees)		(5,341)
(Non-Vehicular Fees)		(3,000)

ASD/Fiscal
 5/18/93