

Updated Informative Digest

Sections Affected: Adoption of section 90800.5 and amendment to section 90803, Title 17, California Code of Regulations (CCR).

In the California Clean Air Act (the "Act," Stats. 1988, ch. 1568), the Legislature imposed a number of requirements on the Air Resources Board (the "Board" or "ARB") and the air pollution control and air quality management districts and provided a mechanism to help defray the state costs of implementing the Act.

To offset the increased costs of additional state programs required by the Act related to nonvehicular sources, the Legislature, in section 39612 of the Health and Safety Code, authorized the Board, beginning July 1, 1989, to require districts to collect fees from holders of permits for facilities which emit 500 tons or more per year of any nonattainment pollutant or its precursors. The total amount of funds collected by these fees, exclusive of district administrative costs, may not exceed \$3,000,000 in any fiscal year. The authorization to assess fees expires on July 1, 1997.

In 1989, the Board adopted sections 90800-90803, Title 17, CCR, establishing the California Clean Air Act Nonvehicular Source Fee Regulations including the fee rate and amounts to be remitted to the ARB by the districts for the first year of the program, fiscal year 1989-90.

In 1990, the Board adopted amendments to the regulations and a new section, section 90800.1, to provide funding for the second year of the program, fiscal year 1990-91. Again, the fee rate and amounts to be remitted to the ARB were included.

In 1991, the Board adopted amendments to the regulations and a new section, section 90800.2, to provide funding for the third year of the program, fiscal year 1991-92. Again, the fee rate and amounts to be remitted to the ARB were included. Approved amendments to section 90801 included a specification that the area designations to be used will be those that are in effect on July 1 of the fiscal year for which fees will be collected. Also in section 90801, reactive organic gas was included as a precursor to both PM10 and visibility reducing particles. Section 90803 was amended to be applicable to fees collected under section 90800.2.

In 1992, the Board adopted amendments to the regulations and a new section, section 90800.3, to provide funding for the fourth year of the program, fiscal year 1992-93. The fee rate and amounts to be remitted to the ARB were included. Section 90803 was amended to be applicable to fees to be collected under new section 90800.3.

In 1993, the Board adopted amendments to the regulations and a new section, section 90800.4, to provide funding for the fifth year of the program, fiscal year 1993-94. The fee rate and amounts to be remitted to the ARB were included. Section 90803 was amended to be applicable to fees to be collected under new section 90800.4.

The approved new section 90800.5, Title 17, CCR, specifies the fee rate and amounts to be remitted to the ARB for the 1994-95 fiscal year, which is the sixth year of the nonvehicular source permit fee program. Section 90803 was amended to be applicable to fees to be collected under new section 90800.5.

As with the fee regulations for the first five years, the approved regulations provide for: 1) the collection of the emission fees by districts on a dollar-per-ton basis, 2) the recovery of administrative costs by the districts, 3) the imposition of penalties on facilities that do not pay in a timely manner, and 4) the release of districts from the fee collection requirements for demonstrated good cause.

The fee rate is calculated based on the cost of state programs related to nonvehicular sources under the Act (\$3,000,000) and the amount of emissions of nonattainment pollutants or their precursors from sources subject to the fee regulation. Excess revenues collected by this program in prior years are carried over and used to reduce fees in fiscal year 1994-95. The regulations provide for the assessment of \$2,718,872 which includes a carry over of \$281,128 from fiscal year 1992-93.

The approved regulations specify that fees shall be based on the estimated 1992 emissions from each facility as determined on or before April 14, 1994. Fees shall be collected by the affected districts from permitted sources which are located in nonattainment areas and are identified as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors in 1992. Nonattainment areas are those in which air pollutant concentrations violate state ambient air quality standards. Nonattainment areas are identified in sections 60200-60209, Title 17, CCR. A new provision in section 90800.5(b) provides for exclusion from the fees of emissions from a facility if the emissions would be subject to the fees solely because the facility is in a district which is designated by the Board as not having attained the state ambient air quality standard for ozone solely as a result of ozone transport. The regulations also require the collection of fees from sources identified after April 14, 1994, as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors during 1992.