

**State of California**



**California Environmental Protection Agency**

**AIR RESOURCES BOARD**

**Staff Report**

**INITIAL STATEMENT OF REASONS FOR  
PROPOSED AMENDMENTS TO THE NONVEHICULAR SOURCE,  
CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE  
REGULATIONS**

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**Prepared by:**

**Emission Inventory Branch  
Planning and Technical Support Division**

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Principal Author

Don Rake  
Emission Inventory Analysis Section  
Planning and Technical Support Division

Reviewed and Approved by:

Michael FitzGibbon, Manager, Emission Inventory Analysis Section  
Bob Fletcher, Chief, Planning and Technical Support Division

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This report and related materials for this rulemaking are available on the ARB Internet site for this rulemaking at [www.arb.ca.gov/regact/feereg04/feereg04.htm](http://www.arb.ca.gov/regact/feereg04/feereg04.htm). In addition, written copies may be obtained from the Board's Public Information Office, 1001 I Street, 1<sup>st</sup> Floor, Environmental Services Center, Sacramento, California 95814, (916) 322-2990.

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or

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## TABLE OF CONTENTS

<b><u>Content</u></b>	<b><u>Page</u></b>
I. Introduction and Background	1
II. Proposed Amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations	3
III. Potential Impacts	8
IV. Recommendation	12
V. References	13
Appendices	
A. Proposed Amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations	
B. Public Workshop Notice	
C. Nexus Calculations for Consumer Products and Architectural Coatings for FY 2004-2005	
D. California Business Impacts of Proposed Amendments to the Proposed Amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations	
E. Facility Fees Data for FY 2003-2004 and Preliminary Facility Fees Data for FY 2004-2005	

## I.

### **INTRODUCTION AND BACKGROUND**

The Legislature enacted Health and Safety Code section 39612 as part of the California Clean Air Act of 1988. As originally enacted, section 39612 empowered the Air Resources Board (ARB or Board) to assess fees on nonvehicular sources (i.e. facilities) that were authorized by air pollution control and air quality management districts (districts) permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors. The total amount of assessed fees was capped at \$3 million, and the fees were to be used by the ARB only for the purposes of recovering the costs of additional State programs related to nonvehicular sources.

Pursuant to Health and Safety Code section 39612, the Board approved the California Clean Air Act (CCAA) Nonvehicular Source Fee Regulations in 1989. The original regulations included 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 each subsequent year between 1990 and 1996, the Board approved amendments to the fee regulations identifying the amount of fees to be collected by each district for the following fiscal year. In 1998, the Board adopted amendments for fiscal years 1997-1998 and 1998-1999, which eliminated the need for annual rulemakings. The 1998 amendments established a process under which the ARB Executive Officer identifies the fees to be assessed in each fiscal year and notifies the districts and affected facilities. The process also insures that districts and affected facilities have the opportunity to provide input on the amount of the assessments.

In 2003, the Legislature enacted AB10X (Stats. 2003, Chapter 1X), which amended section 39612 and added section 39613 to the Health and Safety Code. AB 10X made a number of changes to existing law, including: (1) increasing the cap on stationary source fees from \$3 million to \$13 million for fiscal year (FY) 2003-2004, and allowing the limitation on the total amount of funds collected from stationary sources to be adjusted annually thereafter for inflation; and (2) expanding the universe of stationary sources subject to the fees by specifying that the fees are to be collected from stationary point sources (i.e. facilities) authorized by district permits to emit 250 tons (instead of the previous 500 tons) or more per year of any nonattainment pollutant or its precursors.

In addition, AB 10X authorized the ARB for the first time to assess fees on manufacturers of consumer products and architectural coatings. The fees may be assessed on those manufacturers whose total sales of consumer products or architectural coatings will result in the emission in California of 250 tons per year or greater of volatile organic compounds (VOCs). The ARB must use these fees solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings.

In July 2003, the Board approved regulations to collect the fees authorized by AB10X. The regulations assess uniform fees (on a dollar per ton basis) on large nonvehicular sources (facilities) and large manufacturers of consumer products and architectural coatings. The

full text of the current regulations can be found on the ARB's web site at <http://www.arb.ca.gov/regact/feereg03/feereg03.htm>.

For FY 2003-2004, the Legislature authorized the ARB to collect \$17.4 million in fees from facilities and manufacturers of consumer products and architectural coatings. For FY 2004-2005, the Legislature authorized the ARB to collect an additional \$2.6 million, for a total of \$20 million in fees.

In this rulemaking, the staff is proposing amendments to the existing fee regulations which implemented the provisions of sections 39612 and 39613 of the Health and Safety Code. The proposal provides for the assessment of supplemental fees in excess of \$17.4 million to be assessed and collected from facilities. The remaining \$17.4 million would continue to be collected on a uniform basis as specified in the existing regulations.

The staff's proposal was the subject of a public workshop held on September 14, 2004. For the public workshop, the staff notified representatives of the districts, all facilities and manufacturers of consumer products and architectural coatings currently subject to the fee regulations, and other interested parties who have expressed an interest in these rulemaking activities. A copy of the workshop notice is included as Appendix B.

## II.

### **PROPOSED AMENDMENTS TO THE NONVEHICULAR SOURCE, CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS**

#### A. OVERVIEW OF THE PROPOSED AMENDMENTS

The proposed amendments establish a procedure to collect supplemental fees from facilities. The supplemental fees would be collected only in fiscal years where the State Legislature has authorized the ARB to collect fees in excess of \$17.4 million. The amount in excess of \$17.4 million would be collected as supplemental fees from facilities, and the remaining \$17.4 million would continue to be collected on a uniform basis as specified in the existing regulations.

The supplemental fees would be collected beginning in FY 2004-2005. The procedure would assure that the affected sources continue to have the opportunity to provide input on the fee assessments on an annual basis. The proposed amendments follow the same basic procedures as the existing regulations, with one significant exception. The proposed supplemental fees would be assessed only on large stationary sources (“facilities”) which emit 250 tons or more per year of nonattainment pollutants or precursors. The rationale for assessing the fees only on facilities is discussed below.

The provisions of the existing fee regulations will not be changed, other than to add the mechanism to assess the supplemental fee on facilities. A complete copy of the proposed regulations is presented in Appendix A. The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing fee regulations.

#### B. RATIONALE FOR ASSESSING SUPPLEMENTAL FEES ONLY ON FACILITIES

The ARB staff is proposing that the supplemental fees be assessed solely on facilities in order to avoid fee “nexus” problems regarding consumer products and architectural coatings manufacturers.

California law requires that there must be an adequate “nexus” between a fee and the program activities funded by the fee. If an adequate nexus does not exist, the “fee” may be an illegal “tax.” Health and Safety Code section 39613 specifically states that the fees collected from manufacturers of consumer products and architectural coatings are to be used solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings, as determined by the Board. The nexus for the fee regulations reflects the point at which the fees assessed on a source category (i.e. consumer products and architectural coatings) are greater than the resources expended on the control of emissions from that source category.

In last year’s rulemaking the ARB staff used two different approaches to calculate the nexus

for consumer products and architectural coatings. The first method was based on emissions and the second was based on a determination of program costs.<sup>1</sup> Based on these two methods the ARB staff determined that the nexus for consumer products and architectural coatings would be between \$7.6 million and \$8.9 million. The low end of this range (\$7.6 million) was calculated using an emissions-based approach, and the high end (\$8.9 million) was calculated by determining the program costs for the ARB's consumer products and architectural coatings programs.

There are year-to-year changes in data that can affect the emissions-based nexus calculations for consumer products and architectural coatings. The emissions-based nexus is influenced by changes in the emissions inventory and changes in the portion of the ARB's budget authorized for stationary sources. (The ARB's program cost analysis is not affected because the workload, personnel, and overall program costs are expected to remain the same for the foreseeable future.) In FY 2004-2005, the ARB's stationary source budget was reduced from \$39.6 million to \$38.2 million. In addition, the emission inventory also changed; the percentage of the stationary source emissions from consumer products was less in FY 2004-2005 than it was in FY 2003-2004. Using the same methodology to calculate the emissions as last year's rulemaking (see Appendix C), the emissions-based nexus for FY 2004-2005 for consumer products and architectural coatings would be approximately \$6.9 million. Since the nexus calculations using program costs is unchanged, the nexus for consumer products and architectural coatings would be between \$6.9 million and \$8.9 million for FY 2004-2005.

For facilities, California law also requires that an adequate nexus must exist. However, the nexus for facilities is significantly higher than it is for consumer products and architectural coatings, because the emissions contributions from facilities is significantly higher. The emissions-based nexus for facilities would be approximately \$26 million for FY 2004-2005. However, section 39612(f) imposes a cap on the fees for facilities at \$13 million for FY 2003-2004. In each subsequent year, this limitation can be increased by an amount not to exceed the annual percentage change in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. Thus, as a practical matter, the nexus for facilities is the statutorily-mandated cap.

For FY 2003-2004, the ARB staff billed facilities approximately \$10.8 million and large manufacturers of consumer products and architectural coatings approximately \$6.6 million. The sum of these two amounts equals the authorized recovery of \$17.4 million. If the ARB had been authorized to collect only a total of \$17.4 million for FY 2004-2005, the ARB staff would have billed facilities about \$10.6 million and large manufacturers of consumer products and architectural coatings about \$6.8 million (based on preliminary data). (Fees are assessed only on those manufacturers whose total sales of consumer products or architectural coatings will result in the emission in California of 250 tons per year or greater

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<sup>1</sup> ARB Staff Report, "Initial Statement of Reasons for Proposed Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations, June 6, 2003 and the ARB report entitled "Consumer Products and Architectural Coatings Program Costs," November 13, 2003.

of volatile organic compounds. Fees are not assessed on all manufacturers or on all emissions.) These amounts would have been within the emissions-based nexus for all categories.

In FY 2003-2004, the Budget Act shifted \$17.4 million of the ARB's Stationary Source budget from the General Fund to fee supported programs. For FY 2004-2005, an additional \$2.6 million budget shift from the General Fund to fees was included in the Budget Act, resulting in a total of a \$20 million shift in funding to fees. The ARB anticipates that this will be a permanent change to ARB's baseline budget. If the ARB were to collect the entire \$20 million from all source categories under the existing regulations, the fees assessed on manufacturers of consumer products and architectural coatings would be approximately \$7.8 million and would significantly exceed the lower emissions-based threshold for the nexus determination. Assessing the entire \$2.6 million on facilities (up to the statutory cap specified in Health and Safety Code section 39612(f)) would avoid any potential nexus problems with consumer products and architectural coatings, because these sources would only pay approximately \$6.8 million.

Although the ARB could collect the \$7.8 million from consumer products and architectural coatings manufacturers and still be within the \$8.9 million nexus threshold based on program costs, the staff's proposal reflects a conservative approach by insuring that lower emissions-based nexus threshold will not be exceeded. The proposal also insures that the emissions-based nexus will not be exceeded in future years if the Legislature continues to authorize the ARB to collect fees in excess of \$17.4 million. Finally, this approach is consistent with discussions between ARB staff and Legislative staff regarding the fee provisions in the FY 2004-2005 State budget.

#### C. PROPOSED AMENDMENTS TO FEE REQUIREMENTS FOR FISCAL YEAR 2004-2005 AND SUBSEQUENT FISCAL YEARS

The proposed amendments follow the same basic procedures as the existing fee regulations with the exception that they apply only to facilities. The facilities subject to the supplemental fees are the same ones that must pay fees under the existing regulations. The supplemental fees would be collected only in fiscal years where the State Legislature has authorized the ARB to collect fees in excess of \$17.4 million. The amount in excess of \$17.4 million would be collected as supplemental fees from facilities.

Proposed new section 90805 outlines the basic procedures for the supplemental fees and includes the following provisions:

- specifies that the proposed amendments apply in any fiscal year in which the Legislature has authorized the Board to collect fees in excess of \$17.4 million;
- clarifies that under no circumstances will the total amount of fees collected from facilities exceed the amount authorized by Health and Safety Code section 39612(f) or other provisions of State law;

- authorizes an increase in revenues consistent with changes in the California Consumer Price Index, if necessary to collect the revenues authorized by the Legislature for any fiscal year;
- authorizes an adjustment amount of revenues, not to exceed three percent, to recover unforeseen reductions in supplemental fee collections due to unexpected business closure and bankruptcies (The same three percent adjustment amount is also specified in the existing regulations.);
- specifies that the facilities subject to the supplemental fees are the same facilities that are subject to the existing fee regulations;
- specifies the procedures to be used to calculate the fee per ton and the individual fees per facility (These procedures are the same as those specified in the existing regulations.);
- provides for a preliminary and final determination of supplemental fees that allows for review by the districts and each affected facility; and
- specifies the timeframe for submittal of the fees to the Board for both existing and newly identified facilities and sets forth the procedures for assessing late fees (These provisions also parallel those specified in the existing regulations).

As with the existing regulations, the proposed amendments (section 90805(e)) would allow each district the option to collect the supplemental fees instead of having the ARB collect them. Districts who choose this option would follow the same process specified in the existing regulations. For FY 2004-2005, however, the proposed amendments specify that the ARB is to collect the supplemental fees because it is likely that only limited time will remain in this fiscal year by the date the amendments are approved by the Office of Administrative Law and become legally operative. The supplemental fees for FY 2004-2005 will be based on the emissions data submitted by facilities under the existing regulations.

The staff is also proposing the adoption of a new section 90806, which includes two new provisions in order to address possible future changes in State law. The first provision directs the ARB Executive Officer to comply with any future direction from the Legislature that particular amounts or percentages are to be collected from the categories of nonvehicular sources, consumer products, or architectural coatings. The second provision directs the ARB Executive Officer to use any modified emissions threshold (i.e. different from the existing 250 tons per year threshold) enacted by the Legislature. These provisions would apply to both the existing fees and the supplemental fees, and would allow the ARB to comply with possible future changes in State law without having to modify the regulations.

Finally, the proposed amendments modify existing sections 90800.8(c) and 90803, title 17, CCR, to reference the new supplemental fee provisions. These modifications will insure that all of the regulatory fee provisions work together with no contradictions.

#### D. ESTIMATED SUPPLEMENTAL FEES FOR FISCAL YEAR 2004-2005

The supplemental fee on facilities would be calculated as follows. The amount of emissions is approximate because, at the time this report was written, emissions from affected sources are still preliminary and have not yet been finalized.

$$\text{Supplemental Fee per ton} = \frac{S + A - C}{SE}$$

Where

S = The needed supplemental fee revenues.

SE = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from all permitted facilities in the state.

A = The adjustment amount.

C = Carry-over balance.

Sample calculation:

S = \$2.6 million

SE = 116,500 tons

A = 3 percent of \$2.6 million, or \$78,000

C = 0

Supplemental Fee per ton = \$23 per ton

The dollar amount to be transmitted to the state board, in addition to the amount remitted under section 90800.8(c)(7), would be calculated in accordance with the following formula:

$$\text{Amount to be transmitted} = SF * SD = \$2.678 \text{ million}$$

Where SF = \$23 per ton

SD = 116,500 tons

A preliminary determination of the estimated supplemental fees that would be assessed under this proposal can be found in Appendix E. Appendix E also shows the fees assessed for FY 2003-2004 and preliminary estimated fees for FY 2004-2005.

### III.

#### **POTENTIAL IMPACTS**

##### A. ENVIRONMENTAL IMPACTS

The California Environmental Quality Act (CEQA) and ARB policy require an analysis to determine the potential adverse environmental impacts of proposed regulations. Because the ARB's program involving the adoption of regulations has been certified by the Secretary of Resources (Public Resources Code, Section 21080.5, Exemption of specified regulatory programs), the CEQA environmental analysis requirements are allowed to be included in the ARB Staff Report (i.e. this Initial Statement of Reasons) in lieu of preparing an environmental impact report or negative declaration. In addition, the ARB will respond in writing to all significant environmental points raised by the public during the public review period or at the Board hearing. These responses will be contained in the Final Statement of Reasons for the proposed amendments to the fee regulations.

Staff evaluated the potential environmental impacts from the proposed rulemaking action, and determined that no significant adverse environmental impacts are likely to occur. There may be an environmental benefit because additional fees could provide an incentive for sources to reduce emissions.

##### B. ECONOMIC IMPACTS

The effect of this proposal is that facilities would pay more than they would under the existing regulations (and consumer products and architectural coatings manufacturers would pay correspondingly less) in any fiscal year where the Legislature has authorized the ARB to collect fees in excess of \$17.4 million. The total statewide dollar cost to California businesses would remain unchanged; the proposed amendments would simply redistribute some of these costs from one group of businesses (i.e. consumer products and architectural coatings) to another (i.e. facilities). The amount of this redistribution would vary from year to year depending on the State budget authorized by the Legislature. For FY 2003-2004, the Legislature authorized the ARB to collect \$17.4 million in fees from facilities and manufacturers of consumer products and architectural coatings. For FY 2004-2005, the Legislature authorized the ARB to collect an additional \$2.6 million, for a total of \$20 million in fees.

Under the existing regulations, the ARB would collect the entire \$20 million on a uniform basis from all sources subject to the regulations, and facilities would pay approximately \$12.2 million of this amount (based on the ARB's preliminary estimate of their emissions). Under the proposed amendments the ARB would still collect \$20 million in fees, but facilities would pay approximately \$13.2 million for FY 2004-2005. This represents a fee increase of \$1 million for facilities, with a corresponding \$1 million decrease in the amount paid by consumer products and architectural coatings manufacturers.

## 1. Public Agencies

Local agencies will incur some costs as a result of the proposed regulations. The Board's Executive Officer has determined that the regulations will not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 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 discussed below, or other non-discretionary savings to state or local agencies. Individual districts may incur some administrative costs as a result of the proposed regulatory action if a district chooses to collect fees from facilities instead of the ARB. However, districts are not mandated by the proposed regulations to collect the fees; a district would incur no administrative costs unless it chooses to collect the fees itself. In addition, any administrative costs incurred by a district are not reimbursable State mandated costs because of the districts' authority to recover the costs through fee assessments; HSC section 39612(e) and (f)(1), and section 90800.9(c)(4), title 17, CCR, authorize districts to recover these administrative costs from facilities subject to the fees.

No State agencies have been identified as operating facilities that would be subject to the supplemental facility fees for fiscal year 2004-2005. Three local agencies (the Los Angeles Department of Water and Power, the Imperial Irrigation District, and the City of Long Beach SERRF Project) have been identified as being potentially subject to the supplemental fees. The combined costs to these local agencies for fiscal year 2004-2005 are expected to be approximately \$20,000 for the amendments proposed. The total cost to the local agencies (which include the amounts assessed pursuant to the original regulations) is approximately \$100,000. Local agencies are required to pay permit fees but these costs would not be reimbursable State mandated costs pursuant to Government Code section 17500 et seq. because the fee regulations apply generally to all facilities in the State which emit 250 tons or more per year of nonattainment pollutants or their precursors and, therefore, do not impose unique requirements on local government agencies.

## 2. Businesses

The proposed regulations would require the collection of supplemental fees from specified facilities based on the sources' emissions. The fee per facility will be determined based on the amount of emissions. The cost to affected businesses will therefore vary according to the magnitude of emissions. The cost of the supplemental fees to an individual facility is estimated to range from a minimum of approximately \$6,000 to a maximum of approximately \$225,000 (see Appendix E). The total fees, including amounts assessed pursuant to the original regulations, would range from about \$29,000 to \$1,100,000.

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 California and the nation, both in size and financial strength. A detailed analysis of the economic impact of the proposed regulations on businesses is included in Appendix D.

In FY 2004-2005, a total of 82 facilities are affected by the proposed supplemental fee regulations. Among the operators of these businesses are major oil and gas producers, utilities, and major manufacturing enterprises. It is estimated that the average return on owners' equity for all affected businesses for which financial data are available would have declined by less than 0.01 percent in FY 2004-2005. 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. The proposed regulations will also have no significant impact on the ability of California businesses to compete with businesses in other state.

### C. EVALUATION OF ALTERNATIVES

Government Code Section 11346.14 in part requires a description of the alternatives to the proposed regulations that the ARB considered. The ARB staff identified the following alternatives:

1. Assess supplemental fees on all industry types for which fees are authorized.

Increased fees could be imposed under the existing regulations, which imposes uniform fees (on a dollar per ton basis) on large facilities and on manufacturers of consumer products and architectural coatings. This option was not chosen because of fee nexus considerations on consumer products and architectural coatings manufacturers. (See discussion above in Section II B)

2. Do not collect the full budgeted fee amount.

The proposed increase in fees of \$2.6 million reflects the amount of General Funds cut from the ARB's budget for fiscal year 2004-2005. To not offset the \$2.6 million reduction would restrict the ARB's existing ability to mitigate and control pollution, thereby endangering public health.

### D. ENVIRONMENTAL JUSTICE

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. The proposed fees could have the impact of businesses reducing their emissions in order to reduce their fees and could thereby have a beneficial impact on air quality. The proposed fees are also necessary to ensure the ongoing operation of ARB's Environmental Justice Programs which are expressly aimed at improving air quality in disproportionately affected areas.



#### IV.

#### **RECOMMENDATION**

To provide the additional funding authorized by the State budget for FY 2004-2005, the staff recommends that the Board adopt the proposed amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations to provide for the collection of supplemental fees for FY 2004-2005 and subsequent fiscal years. This would be effected by adopting new sections 90805 and 90806; and amending sections 90800.8 and 90803, title 17, CCR, as contained in Appendix A.

V.

**REFERENCES**

The Complete Administrative Rulemaking file submitted to the Office of Administrative Law for the 2003 Amendments to the California Nonvehicular Source Fee Regulations. (Note: Many of the rulemaking documents can be found at the following internet address:  
<http://www.arb.ca.gov/regact/feereg03/feereg03.htm>

Budget Act of 2004, Chapter 208, Statutes of 2004.

California Consumer Price Index Tables  
<http://www.dir.ca.gov/DLSR/CPI/EntireCCPI.PDF>

**Appendix A**

**PROPOSED AMENDMENTS TO THE NONVEHICULAR SOURCE,  
CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS**

## Proposed Regulation Order

### AMENDMENTS TO THE NONVEHICULAR SOURCE, CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS

Note: The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to show deletions.

*Adopt new sections 90805 and 90806 and amend sections 90800.8 and 90803, title 17, California Code of Regulations (CCR), Division 3, Chapter 1, Subchapter 3.8, to read as follows:*

#### **90800.75. Operative Date.**

The amendments to this subchapter filed with the Secretary of State on February 5, 2004 are operative on February 5, 2004.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code

#### **90800.8. Fee Requirements for the 2003-2004 and Subsequent Fiscal Years.**

(a) *Applicability.*

(1) This subchapter applies to:

(A) Any facility that emits 250 tons or more annually of any nonattainment pollutant or precursor, as provided in section 90800.8(c)(4), and

(B) Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's consumer products or architectural coatings resulted in VOC emissions of 250 tons or more during a calendar year, as provided in section 90800.8(c)(5).

(2) 2003-2004 Fiscal Year.

(A) *Notification to Districts, Facilities, Consumer Products Manufacturers, and Architectural Coatings Manufacturers.* No later than 30 days after the operative date of this section, the Executive Officer shall provide written notice to each district, facility operator, consumer products manufacturer, and architectural coatings manufacturer of his/her 2003-2004 fiscal year fee determinations, as of July 24, 2003, for all of the items in section (c)(1) through (c)(7). The written notices may reflect modifications to the determinations based on information received by the Executive Officer

after July 24, 2003, in which case the notices shall include a brief explanation of the modifications.

(B) *Transmittal of the Fees to the State Board.* Each facility operator, consumer products manufacturer, and architectural coatings manufacturer that is notified by the Executive Officer that it must remit a specified dollar amount to the state board for the 2003-2004 fiscal year shall transmit that dollar amount to the state board for deposit into the Air Pollution Control Fund within 60 days after receipt by the operator or manufacturer of the fee determination notice. The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(3) *2004-2005 and Subsequent Fiscal Years.* Sections (b) through (e) apply for the 2004-2005 fiscal year and for any subsequent fiscal year in which the state board is authorized by state law to impose fees on nonvehicular sources, consumer products manufacturers, and architectural coatings manufacturers.

(4) *Expenditure of Fees.* The fees collected from facilities are to be expended by the state board only for the purposes of recovering costs of additional state programs related to nonvehicular sources. The fees collected from consumer products manufacturers and architectural coatings manufacturers are to be expended by the state board solely to mitigate or reduce air pollution in the state created by consumer products and architectural coatings.

(b) *Submittal of Information by Districts.* No later than April 1 of the preceding fiscal year, each district shall submit all of the information identified in section (c)(4) to the Executive Officer in writing.

(c) *Preliminary Determination of Fees to be Assessed.* No later than May 1 of the preceding fiscal year, the Executive Officer shall make preliminary determinations of all of the items in sections 90800.8 (c)(1) through (c)(7) and 90805(b), and shall provide written notice of the preliminary determinations to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5). The notice shall state that written comments regarding the preliminary determinations received by the Executive Officer by July 1 of the fiscal year will be considered by the Executive Officer in reaching final determinations.

(1) *Needed Revenues.* Except as provided in section 90805, ~~the~~ revenues needed to recover the costs of the state board for additional state programs related to nonvehicular sources, consumer products, and architectural coatings in the fiscal year. The revenues shall not exceed the

amount authorized by state law for any fiscal year, and for the 2003-2004 fiscal year shall not exceed the amount specified in subdivision (f)(1) of Health and Safety Code section 39612 or such other amount as specified by the State Legislature. For fiscal year 2004-2005 and subsequent fiscal years, the total revenues collected from facilities may include a percentage increase in revenues by an amount not to exceed the annual percentage change in the California Consumer Price Index, as provided in Health and Safety Code section 39612(f)(2), if such an increase is necessary to collect the revenues authorized by the State Legislature for any fiscal year.

(2) *Adjustment Amount.* An additional adjustment amount, not to exceed 3 percent of the needed revenues, designed to recover unforeseen reductions in collections due to unexpected business closures and bankruptcies.

(3) *Carry-over Balance.* The amount collected in the previous fiscal year in excess of or less than the needed revenues for that fiscal year.

(4) (A) *Emissions of Facilities Subject to Fees.* Except as otherwise provided in subsections (c)(4)(B) and (c)(4)(C), for each district, (1.) the name and address of each permitted facility that emitted 250 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available for all affected districts, and (2.) the total tons of each identified facility's emissions during the referenced calendar year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 250 tons or more in the year.

(B) For the South Coast Air Quality Management District (SCAQMD) only, the amount of each facility's emissions specified in subsection (c)(4)(A) shall be determined on a fiscal year instead of a calendar year basis. Emissions from facilities in the SCAQMD shall be determined for the fiscal year that begins during the most recent calendar year for which emission estimates are available for all affected districts. For example, if the 2001 calendar year is the most recent calendar year for which emission estimates are available for all affected districts, then all districts except the SCAQMD would identify facilities and submit facility emissions for the 2001 calendar year, and the SCAQMD would identify facilities and submit facility emissions for the 2001-2002 fiscal year.

(C) A facility shall not be included if its emissions would otherwise be included 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.

(5) *Consumer Products Manufacturers and Architectural Coatings Manufacturers Subject to Fees.* Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's consumer products or architectural coatings resulted in VOC emissions in the State of 250 tons or more during the same calendar year identified for facilities pursuant to section 90800.8(c)(4)(A).

(6) *Fee per ton.* The fee per ton for the fiscal year, calculated in accordance with the following formula:

$$\text{Fee per ton} = \frac{R + A - C}{E}$$

Where

R = The needed revenues identified in accordance with section (c)(1)

A = The adjustment amount identified in accordance with section (c)(2)

C = Carry-over balance determined in accordance with section (c)(3)

E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from all permitted facilities in the state identified in accordance with section (c)(4), plus the total tons of VOCs emitted in annual amounts of 250 tons or more from consumer products and architectural coatings sold in the state as identified in accordance with section (c)(5).

(7) *Amount to be Remitted From Each Facility Operator, Consumer Products Manufacturer, or Architectural Coatings Manufacturer.* The dollar amount to be transmitted to the state board, calculated in accordance with the following formula:

$$\text{Amount to be transmitted} = F * D$$

Where

F = Fee per ton as calculated in accordance with section (c)(6)

D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from a permitted facility identified in accordance with section (c)(4), or the tons of VOCs emitted in annual amounts of 250 tons or more for a manufacturer, as identified in accordance with section (c)(5)

(d) *Final Determination of Fees to be Assessed.* No later than August 1 of the fiscal year, after considering any comments submitted by July 1 of the fiscal year, the Executive Officer shall make final determinations of all of the items in section (c)(1) through (c)(7), and shall provide a written fee determination notice to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5).

(e) *Transmittal of the Fees to the State Board.*

(1) Each facility operator, consumer products manufacturer, and architectural coatings manufacturer that is notified pursuant to section (d) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board for deposit into the Air Pollution Control Fund within 60 days after receipt of the fee determination notice as specified in section 90802(a). The amount transmitted shall be collected by the state board from the facilities and manufacturers identified in the Executive Officer's final determination as meeting the criteria in section (c)(4) or (c)(5). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(2) (A) *Newly Identified Facilities:* In addition to the amount transmitted in accordance with section (e)(1), the Executive Officer shall, for any facility identified by the Executive Officer as meeting the criteria in section (c)(4) after the Executive Officer's notification under section (d), notify the facility operator and collect for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(6) multiplied by the total tons of the facility's emissions, during the year used to determine emissions in accordance with section (c)(4), of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 250 tons or more in the year. The operator of each newly identified facility shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer. The amount collected by the state board from the newly identified facility shall be in addition to permit and other fees already authorized to be collected from the facility.

(B) *Newly Identified Manufacturers.* The Executive Officer shall, for any consumer products manufacturer or architectural coatings manufacturer identified by the Executive Officer as meeting the criteria in section (c)(5) after the Executive Officer's notification under section (d), notify the consumer products manufacturer or architectural coatings manufacturer and collect for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(6) multiplied by

the total tons of VOCs emitted from consumer products or architectural coatings sold by such manufacturer during the calendar year used to determine emissions in accordance with section (c)(5). Each newly identified manufacturer shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer. The amount collected by the state board from the newly identified manufacturer shall be in addition to permit and other fees already authorized to be collected from the manufacturer.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **90800.9. Optional Process for Districts to Collect Fees from Facilities.**

- (a) Notwithstanding the provisions of sections 90800.8 and 90802, each district shall have the option for any fiscal year to collect fees from facilities within the district instead of having the state board collect the fees. A district that chooses to collect fees from facilities pursuant to this section shall follow the process set forth below in section 90800.9(b) or (c). For districts that do not choose to collect fees from facilities, the Executive Officer shall follow the process specified in sections 90800.8 and 90802. Districts shall not have the option to collect fees from consumer products manufacturers and architectural coatings manufacturers.
- (b) *2003-2004 Fiscal Year.*
  - (1) *Notification.* A district that chooses to collect fees from facilities for the 2003-2004 fiscal year shall notify the Executive Officer no later than 10 days after the operative date of this section. No later than 30 days after the operative date of this section, the Executive Officer shall provide written notice to each district and facility operator, as specified in section 90800.8(a)(2)(A).
  - (2) *Collection and Transmittal of Fees to the State Board.* Each facility operator notified under section 90800.8(a)(2)(A) shall transmit the specified dollar amount to the district within 60 days of notification. No later than 90 days after notification under section 90800.8(a)(2)(A), each district shall transmit the fees to the state board for deposit in the Air Pollution Control Fund. The amount transmitted shall be collected by the district from all facilities in the district that are identified in the Executive Officer's notification. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. Districts shall assess late fees and may recover administrative costs for the 2003-2004 fiscal year as provided in sections 90800.9 (c)(3) and (c)(4).

- (c) *2004-2005 and Subsequent Fiscal Years.* A district that chooses to collect fees on facilities for the 2004-2005 fiscal year or any subsequent fiscal year shall notify the Executive Officer on or before April 1 of the preceding fiscal year, and the district and the Executive Officer shall follow the process set forth below in subsections (c)(1) through (c)(5).
- (1) *Notification to Districts by the Executive Officer.* No later than May 1 of the preceding fiscal year, the Executive Officer shall notify the district of the preliminary determination of fees to be assessed on each facility as provided in section 90800.8(c). No later than August 1, of the fiscal year, the Executive Officer shall notify the district of the final determination of fees to be assessed on each facility as provided in section 90800.8(d).
- (2) *Notification to Facilities by the District.* Each district shall notify and assess the operator of each facility subject to permit fees, as provided for in this subchapter, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator of the fee determination notice.
- (3) *Late Fees.* Each district shall assess an additional fee on operators failing to pay the fee within 60 days of receipt of the fee determination notice. The district shall set the late fee in an amount sufficient to pay the district's additional expenses incurred by the operator's untimely payment.
- (4) *Recovery of Administrative Costs.* Each district may recover administrative costs to the district of collecting the fees pursuant to this subchapter. At the request of the Executive Officer, a district shall provide to the Executive Officer, within 30 days of the request, substantiation of administrative costs.
- (5) *Collection and Transmittal of Fees to the State Board.* Each district that is notified pursuant to section 90800.9(c)(1) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board by January 1 of the fiscal year for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected by the district from the facilities in the district that are identified in the Executive Officer's final fee determination as meeting the criteria in section 90800.8(c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.
- (d) *Newly Identified Facilities.* In addition to the amounts transmitted in accordance with section 90800.9(b)(2) and (c)(5), a district shall, for any facility identified by the Executive Officer as meeting the criteria in section 90800.8(c)(4) after the Executive Officer's notification under section 90800.8(a)(2)(A) or 90800.8(d), transmit to the state board for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton

calculated using the formula in section 90800.8(c)(6) multiplied by the total tons of the facility's emissions, during the year used to determine emissions in accordance with section 90800.8(c)(4), of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 250 tons or more in the year. The operator of each newly identified facility shall transmit the assessed dollar amount to the district within 60 days after receipt of the fee determination notice from the Executive Officer. The amount transmitted shall be collected by the district from the newly identified facility, and shall be in addition to permit and other fees already authorized to be collected from the facility. The district shall transmit any fees received from the facility to the state board by January 1 of the fiscal year, or, for fees received by the district on or after December 31, within 30 days after receiving the fees from the facility.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **90801. Definitions.**

For the purposes of this subchapter, the following definitions apply:

- (a) "Architectural Coating" means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this subchapter.
- (b) "Architectural Coatings Manufacturer" means: (1) any company or person that imports, manufactures, produces, packages, or repackages architectural coatings for sale or distribution in the State of California; and (2) for an architectural coatings manufacturer under the control of a holding or parent company, the holding or parent company.
- (c) "Company" means any firm, association, partnership, business trust, corporation, joint-stock company, limited liability company, or similar organization.
- (d) "Consumer Product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings. As used in this subchapter, the term "consumer product" shall also refer to

aerosol adhesives, including aerosol adhesives used for consumer, industrial, and commercial uses.

- (e) "Consumer Products Manufacturer" means: (1) any company, firm, or establishment which is listed on a consumer product's label; if the label lists two companies, firms, or establishments, the consumer products manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the label; and (2) for a consumer products manufacturer under the control of a holding or parent company, the holding or parent company.
- (f) "District" means an air pollution control district or an air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.
- (g) "Executive Officer" means the Executive Officer of the state board or his or her delegate.
- (h) "Facility" means any nonvehicular source which requires a permit from the district.
- (i) "Holding or parent company" means any company that has control over another company. For the purposes of this subchapter, a company has control over another company if:
  - (1) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote more than 50 percent of the voting securities of the other company; or
  - (2) the company controls in any manner the election of a majority of the directors or trustees or individuals exercising similar functions of the other company; or
  - (3) the company has the power to exercise, directly or indirectly, a controlling influence over the management or policies of the other company.
- (j) "Nonattainment pollutant" means any substance for which an area is designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.

(k) "Nonattainment pollutants and precursors" shall be defined as follows:

Substance (as listed in section 70200, Title 17, CCR):	nonattainment pollutant/precursor:
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

(l) "Nonattainment precursor" means any substance which reacts in the atmosphere to contribute to the production of a nonattainment pollutant or pollutants in an area designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.

(m) "Operator" means the person who owns or operates a facility or part of a facility.

(n) "Volatile Organic Compound" or "VOC" means any compound containing at least one atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, and excluding the following:

- (1) methane, methylene chloride (dichloromethane), 1,1,1-trichloroethane (methyl chloroform), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), chlorodifluoromethane (HCFC-22), 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), trifluoromethane (HFC-23), 1,1,2,2-tetrafluoroethane

(HFC-134), 1,1,1,2-tetrafluoroethane (HFC-134a), pentafluoroethane (HFC-125), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), cyclic, branched, or linear completely methylated siloxanes, the following classes of perfluorocarbons:

- (A) cyclic, branched, or linear, completely fluorinated alkanes;
  - (B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  - (C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  - (D) sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine; and
- (2) the following low-reactive organic compounds which have been exempted by the U.S. EPA: acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), and perchloroethylene (tetrachloroethylene).

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

#### **90802. Fee Payment and Collection.**

- (a) The Executive Officer shall notify and assess the operator of each facility, each consumer products manufacturer, and each architectural coatings manufacturer subject to fees, in writing of the fee due as provided in subsections (a)(2), (c), (d), and (e)(2) of section 90800.8. At the request of a holding or parent company, the Executive Officer shall provide separate written notice of their individual fee determinations to each consumer products or architectural coatings manufacturer within the holding or parent company. The fee shall be past due 60 days after receipt by the operator or manufacturer of the fee determination notice.
- (b) *Late Fees.* The Executive Officer shall assess an additional fee on operators, consumer products manufacturers, and architectural coatings manufacturers failing to pay the fee within 60 days of receipt of the fee determination notice. The Executive Officer shall set the late fee in an amount sufficient to pay the state board's additional expenses incurred by the operator's or manufacturer's untimely payment.
- (c) Any fees submitted to the state which exceed or are less than the costs to the state of additional state programs authorized or required by State

Legislature shall be carried over by the state for adjustment to the fees assessed in the subsequent fiscal year.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **90803. Failure of Facility to Pay Fees.**

For districts exercising the option to collect fees as provided in sections 90800.9 or 90805, in the event any district is unable to collect the assessed fee from any source due to circumstances beyond the control of the district, including but not limited to facility closure, emission quantification errors, or refusal of the operator to pay despite permit revocation and/or other enforcement action, such district shall notify the Executive Officer. For demonstrated good cause, the district may be relieved from that portion of the fees the district is required to collect and remit to the state as set forth in sections 90800.8 and 90800.9. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to these regulations.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **90804. Severability.**

Each part of this subchapter is deemed severable, and in the event that any part of this subchapter is held to be invalid, the remainder of this subchapter shall continue in full force and effect.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **90805. Supplemental Fee Assessments for Facilities**

(a) Applicability. This section applies in any fiscal year in which the State Legislature has authorized the state board to collect fees in excess of \$17.4 million to recover the costs of additional state programs related to nonvehicular sources, consumer products, and architectural coatings.

(b) Determination of Supplemental Fees to be Assessed

(1) Needed Supplemental Fees. The Executive Officer shall determine the needed revenues as specified in section 90800.8(c)(1). If the needed revenues are equal to or less than \$17.4 million, the revenues shall be collected from facilities, consumer products manufacturers, and architectural coatings manufacturers as provided in sections 90800.8 to 90803. If the needed revenues are in excess of \$17.4 million, the amount in excess of \$17.4 million shall be collected as supplemental fees from facilities, as

provided in the following subsections. The total revenues collected from facilities pursuant to this subchapter:

(A) shall not exceed the amount authorized by Health and Safety Code section 39612(f) or other provisions of State law, and

(B) may include a percentage increase in revenues by an amount not to exceed the annual percentage change in the California Consumer Price Index, as provided in Health and Safety Code section 39612(f)(2), if such an increase is necessary to collect the revenues authorized by the State Legislature for any fiscal year.

(2) *Adjustment Amount.* An additional adjustment amount, not to exceed 3 percent of the needed supplemental fee revenues, designed to recover unforeseen reductions in collections due to unexpected business closures and bankruptcies.

(3) *Carry-over Balance.* The amount of supplemental fees collected in the previous fiscal year in excess of or less than the needed supplemental fee revenues for that fiscal year.

(4) *Emissions of Facilities Subject to Supplemental Fees.* Any facility identified in section 90800.8(c)(4) is subject to the supplemental fee. The total emissions of each facility subject to the fee shall be determined as provided in section 90800.8(c)(4).

(5) *Supplemental Fee per ton.* The supplemental fee per ton for the fiscal year shall be calculated in accordance with the following formula:

$$\text{Supplemental Fee per ton} = \frac{S + A - C}{SE}$$

Where

S = The needed supplemental fee revenues identified in accordance with section 90805(b)(1).

SE = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from all permitted facilities in the state identified in accordance with section 90800.8(c)(4).

A = The adjustment amount identified in accordance with section (b)(2).

C = Carry-over balance determined in accordance with section (b)(3).

(6) Supplemental Fee Amount to be Remitted from each Facility Operator. The dollar amount to be transmitted to the state board, in addition to the amount remitted under section 90800.8(c)(7), shall be calculated in accordance with the following formula:

$$\text{Amount to be transmitted} = \text{SF} * \text{SD}$$

Where

SF = Fee per ton as calculated in accordance with section 90805(b)(5).

SD = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from a permitted facility identified in accordance with section 90800.8(c)(4).

(c) Preliminary and Final Determination of Supplemental Fees to be Assessed.

(1) The Executive Officer shall make a preliminary determination of the supplemental fees to be assessed as specified in section 90800.8(c).

(2) The Executive Officer shall make a final determination of the supplemental fees to be assessed as specified in section 90805(b), and shall provide a written final fee determination notice to each district and to each facility operator identified in accordance with section 90800.8(c)(4).

(3) The Executive Officer may include the preliminary and final supplemental fee determinations in the written notices provided under sections 90800.8(c) and 90800.8(d), or may use separate notices for the supplemental fees.

(4) For the 2004-2005 fiscal year, the Executive Officer is not required to provide a preliminary determination notice for the supplemental fees, and the final supplemental fee determination notice shall be provided no later than 30 days after the operative date of this section. For the 2005-2006 and subsequent fiscal years, the fee determination notices shall be provided within the time periods specified in sections 90800.8(c) and 90800.8(d), or as soon thereafter as practicable.

(d) Transmittal of the Supplemental Fees to the State Board

(1) Each facility operator that is notified pursuant to section 90805(c) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board for deposit into the Air Pollution Control Fund within 60 days after receipt of the fee determination notice. The supplemental fees shall be in addition to any other fees already authorized to be collected from such sources, including the fees collected pursuant to sections 90800.8 and 90802.

(2) Newly Identified Facilities. Newly identified facilities are subject to the supplemental fees in the same manner that they are subject to the fees collected pursuant to sections 90800.8(e)(2)(A) and 90802. The Executive Officer shall collect the supplemental fees using the process for newly identified facilities specified in section 90800.8(e)(2)(A). The operator of each newly identified facility shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer.

(e) Optional Process for Districts to Collect Supplemental Fees from Facilities

(1) 2004-2005 Fiscal Year. Districts shall not have the option to collect supplemental fees from facilities for the 2004-2005 fiscal year.

(2) 2005-2006 and Subsequent Fiscal Years. Beginning with the 2005-2006 fiscal year, each district shall have the option for any fiscal year to collect supplemental fees from facilities instead of having the state board collect the fees. A district that chooses to collect the supplemental fees shall follow the process specified in section 90800.9(c) and (d) for fees collected pursuant to sections 90800.8 and 90802.

(f) Fee Payment and Collection.

(1) The Executive Officer shall notify and assess the operator of each facility subject to the supplemental fees in writing of the fee due as provided in this section. The fee shall be past due 60 days after receipt by the operator of the fee determination notice.

(2) Late Fees. The Executive Officer shall assess an additional fee on operators failing to pay the supplemental fee within 60 days of receipt of the fee determination notice. The Executive Officer shall set the late fee in an amount sufficient to pay the state board's additional expenses incurred by the operator's untimely payment.

(3) Any supplemental fees submitted to the state which exceed or are less than the costs to the state of additional state programs authorized or required by the State Legislature shall be carried over by the state for adjustment to the supplemental fees assessed in the subsequent fiscal year.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

### **90806. Compliance with State Legislature Modifications**

- (a) If the State Legislature in any fiscal year specifies particular amounts or percentages that are to be collected from the categories of nonvehicular sources, consumer products, or architectural coatings, the Executive Officer shall comply with the Legislature's direction notwithstanding the provisions of this subchapter.
- (b) If the State Legislature modifies the 250 tons per year threshold specified in section 39612(d) or section 39613 of the Health and Safety Code, the modified threshold for nonvehicular sources, consumer products, or architectural coatings that is specified by the State Legislature shall be used in this subchapter instead of the existing 250 tons per year threshold.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Co

**Appendix B**

**PUBLIC WORKSHOP NOTICE**



**Terry Tamminen**  
Agency Secretary

# Air Resources Board

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**Alan C. Lloyd, Ph.D.**  
Chairman

1001 I Street • P.O. Box 2815  
Sacramento, California 95812 • [www.arb.ca.gov](http://www.arb.ca.gov)



**Arnold Schwarzenegger**  
Governor

August 31, 2004

Dear Sir or Madam:

The Air Resources Board (ARB/Board) invites you to participate in a public workshop to discuss proposed amendments to the nonvehicular source, consumer products, and architectural coatings fee regulations. The amendments are necessary to implement provisions of the fiscal year (FY) 2004-2005 budget that shifts an additional \$2.6 million from the ARB's General Fund support to fees. The workshop is scheduled as follows:

Date: Tuesday, September 14, 2004

Time: 1:30 p.m. to 3:30 p.m.

Location: Air Resources Board  
Monitoring and Laboratory Division  
1309 T Street  
Sacramento, California 95814

For FY 2003-2004, to partially offset a General Fund reduction, the Legislature authorized the ARB to collect \$17.4 million in fees, which resulted in a cost-per-ton of approximately \$86.50. The FY 2004-2005 budget was enacted with a \$2.6 million increase to the AB 10X fees authorized by the Legislature for FY 2003-2004, making the total assessment \$20 million for this year. The proposed fee increase offsets a \$2.6 million reduction to the General Fund support for the ARB.

The Board approved the existing regulations in July 2003. The regulations assessed fees on large nonvehicular sources (facilities) and large manufacturers of consumer products and architectural coatings. The full text of the existing regulations can be found on the ARB's web site: <http://www.arb.ca.gov/regact/feereg03/feereg03.htm>.

The ARB staff is proposing to assess the entire \$2.6 million increase on large facilities that emit 250 tons or more per year of nonattainment pollutants or precursors. Based on the emissions data for FY 2004-2005, we estimate the supplemental fee to be approximately \$23.00/ton. The final fee is subject to change pending confirmation of emissions subject to the fees. The remaining \$17.4 million in fees would continue to be collected on a uniform basis as specified in the existing regulations. The Board is tentatively scheduled to consider the proposal at its November 18, 2004, public hearing.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Website:*  
<http://www.arb.ca.gov>.

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California Environmental Protection Agency

Sir/Madam  
August 31, 2004  
Page 2

At the workshop, ARB staff will present an overview of the modifications to the existing fee regulations. A copy of the proposed regulations is attached. At least 45 days before the hearing, the ARB staff will post the staff report and proposed regulations on the web site at: [http://www.arb.ca.gov/emisinv/nscpac\\_fees/nscpac\\_fees.htm](http://www.arb.ca.gov/emisinv/nscpac_fees/nscpac_fees.htm).

The workshop will also be available through an internet webcast at the following address: <http://www.calepa.ca.gov/broadcast>. You may send questions on-line during the workshop by e-mail to [onair@arb.ca.gov](mailto:onair@arb.ca.gov). The workshop title should be placed in the subject line, followed by your question in the body of the e-mail. To participate by teleconference, please call 1-888-889-6348, using the pass code FEES. The leader for the call will be Ms. Sue Wyman.

If you have special accommodation needs that cannot be met by attending the workshop via the webcast site shown above, or if you have language needs, please contact Ms. Wyman at (916) 445-9477 or by e-mail at [swyman@arb.ca.gov](mailto:swyman@arb.ca.gov), as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service to attend the workshop by telephone.

Sincerely,

/s/

Robert D. Fletcher, Chief  
Planning and Technical Support Division

Attachment

cc: Mr. Don Rake, Air Pollution Specialist  
Emissions Inventory Analysis Section  
Planning and Technical Support Division  
Air Resources Board

Mr. Michael FitzGibbon, Manager  
Emission Inventory Analysis Section  
Planning and Technical Support Division  
Air Resources Board

Sir/Madam  
August 31, 2004  
Page 2

Ms. Sue Wyman, Air Pollution Specialist  
Environmental Justice Section  
Air Resources Board

**Appendix C**

**NEXUS CALCULATIONS FOR CONSUMER PRODUCTS AND  
ARCHITECTURAL COATINGS FOR FY 2004-2005**

## Appendix C

### Nexus Calculations For Consumer Products And Architectural Coatings For FY 2004-2005

#### A. Nexus Based on Emission Inventory Contribution

The emission inventory is crucial to the development and application of the proposed fee regulations. It is through the classifications within the emission inventory that the emission base is established for the fee regulations. More importantly, through the emission inventory, we determine which facilities and manufacturers emit pollution in excess of the 250 tons per year threshold established by the fee regulations.

The following is a description of how the ARB determined the appropriate emissions inventory base for the fee regulations. It is identical to the method used in last year's rulemaking on the amendments to the fee regulations

#### *Stationary Sources*

The major categories listed in ARB's stationary source emission inventory are:

1. Power Plants;
2. Petroleum Refining/Marketing;
3. Fuel Combustion (Boilers, Turbines, and Engines);
4. Industrial Processes (Food/Ag, Chemical, Mineral, Metal, etc.);
5. Waste Disposal (Open Burning, Landfills, Sewage Treatment, etc.);
6. Solvent Use (Cleaning Operations);
7. Non-Architectural Paints and Coatings;
8. Printing Emissions;
9. Adhesives and Sealants;
10. Electronics;
11. Consumer Products;
12. Architectural Coatings;
13. Pesticides;
14. Asphalt Paving/Roofing;
15. Residential (Natural Gas Water Heaters, Gas Stoves, Fireplaces, etc.);
16. Farming Operations;
17. Construction and Demolition;
18. Dust (Windblown, Paved and Unpaved Roads); and
19. Fires (Automotive and Structural).

To determine the appropriate emission base for purposes of the fee regulations, staff eliminated the source categories for which few or no resources are allocated to controlling emissions. Emissions from the following sources have been eliminated for fee purposes

because the ARB either expends little or no resources on controlling these categories or they are covered under ARB's mobile source program:

1. Windblown, Paved and Unpaved Roads, and Farming Operations Dust;
2. Asphalt Paving/Roofing;
3. Livestock Waste;
4. Construction and Demolition;
5. Pesticides;
6. Fires (Automobile and Structural);
7. Residential Fireplace and Water Heaters; and
8. Cooking.

The total emissions from the eight omitted categories are 1,280,041 tons per year in 2002. The remaining stationary source emissions of 750,414 tons per year are from those sources that the stationary source program focuses resources on controlling emissions.

Of the 750,414 tons per year of emissions from applicable sources in 2002, 648,083 tons per year, or 86 percent, are emitted from facilities (510,601 tons per year) and consumer products and architectural coatings (137,482 tons per year). Compared with the previous year, emissions from consumer products and architectural coatings dropped at a faster rate than emissions from facilities. The remaining 102,331 tons per year are emitted from other areawide sources such as agricultural and prescribed burning not subject to the fee regulations. Therefore, based on the emission inventory contribution of facilities, consumer products, and architectural coatings, these sources could reasonably be expected to support up to \$32.9 million or 86 percent of the State's fiscal year 2004-2005 budgeted expenditure of \$38.2 million on stationary source related activities.

Using the same logic to determine the relative share of fees that could be paid by subcategories of sources (in this case facilities, and consumer products and architectural coatings) leads to the following estimates:

- Facilities could be assessed up to 68 percent of total program costs (approximately \$26 million), up to the legislatively mandated cap of \$13 million per year plus changes in the California Consumer Price Index. The most recent annual percentage change in the CCPI was 2.3%, therefore the legislatively mandated cap is now at \$13,299,000.
- Consumer products and architectural coatings could be assessed up to 18 percent of total program costs (compared with 19 percent for fiscal year 2003-2004), or approximately \$6.9 million in fiscal year 2004-2005.

#### B. Nexus Based on Program Costs

After the fiscal year 2003-2004 emissions based nexus analysis contained in the Initial Statement of Reasons (ISOR) was released on June 6, 2003, some industry commenters expressed concern that this emissions-based approach may overstate the ARB's actual

costs for the consumer products and architectural coatings programs. These commenters believed that a different approach should be used—one that identifies the cost of specific personnel and other resources devoted to these programs.

In response to this request, staff prepared and added to the rulemaking record a document entitled “*Consumer Products and Architectural Coatings Program Costs.*” In this document, dated November 13, 2003, the ARB calculated consumer products and architectural coatings program costs by: (1) identifying by each ARB division the employment classifications of the 67 staff working on consumer products and architectural coatings; (2) determining the actual cost for each of the individual staff positions including annual salaries, benefits, and operating costs; (3) identifying other annual costs, by division, such as laboratory equipment maintenance contracts, laboratory supplies, laboratory facility leases, and other ongoing contracts; and (4) including the 15.7 percent annual overhead cost. This detailed programmatic analysis shows that the annual cost of the consumer products and architectural coatings programs is \$8.9 million. The program costs are the same for FY 2004-2005 because the workload, personnel, and other program costs are essentially unchanged and expected to remain so for the foreseeable future.

**Appendix D**

**CALIFORNIA BUSINESS IMPACTS OF  
PROPOSED AMENDMENTS TO THE NONVEHICULAR SOURCE, CONSUMER  
PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS**

## Appendix D

### California Business Impacts of Proposed Amendments to the Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations

#### Introduction

The existing fee regulations provide for the collection of uniform fees (on a dollar per ton basis) on large nonvehicular sources (facilities) and large manufacturers of consumer products and architectural coatings. The proposed amendments establish a mechanism to collect supplemental fees from facilities. The supplemental fees would be collected only in fiscal years where the State Legislature has authorized the Air Resources Board (ARB) to collect fees in excess of \$17.4 million. Any amount in excess of \$17.4 million would be collected from facilities. The remaining \$17.4 million would continue to be collected on a uniform basis from facilities, manufacturers of consumer products, and manufacturers of architectural coatings, as specified in the existing regulations.

The effect of this proposal is that facilities would pay more than they would under the existing regulations (and consumer products and architectural coatings manufacturers would pay correspondingly less) in any fiscal year where the Legislature has authorized the ARB to collect fees in excess of \$17.4 million. The total statewide dollar cost to California businesses would remain unchanged; the proposed amendments would simply redistribute some of these costs from one group of businesses (i.e. consumer products and architectural coatings) to another (i.e. facilities). The amount of this redistribution would vary from year to year depending on the State budget authorized by the Legislature. For FY 2003-2004, the Legislature authorized the ARB to collect \$17.4 million in fees from facilities and manufacturers of consumer products and architectural coatings. For FY 2004-2005, the Legislature authorized the ARB to collect an additional \$2.6 million, for a total of \$20 million in fees. Under the existing regulations, the ARB would collect the entire \$20 million on a uniform basis from all sources subject to the regulations, and facilities would pay approximately \$12.2 million of this amount (based on the ARB's preliminary estimate of their emissions). Under the proposed amendments the ARB would still collect \$20 million in fees, but facilities would pay approximately \$13.2 million for FY 2004-2005. This represents a fee increase of \$1 million for facilities, with a corresponding \$1 million decrease in the amount to be paid by consumer products and architectural coatings manufacturers.

This section evaluates the potential economic impacts of the proposed fee regulations for nonvehicular sources, consumer products, and architectural coatings on business enterprises in California. Section 11346.3 of the Government Code requires that, in proposing to adopt or amend any administrative regulations, State agencies shall assess the potential for adverse economic impacts on California business enterprises and individuals. The assessment shall include a consideration of the impact of the proposed or amended regulations on the ability of California businesses to compete with businesses in

other states, the impact on California jobs, and the impact on California business expansion, elimination, or creation.

This analysis is based on a comparison of the annual return on owner's equity (ROE) for affected businesses before and after the inclusion of the fees. The analysis also uses publicly available information to assess the impacts on competitiveness, jobs, and business expansion, elimination, or creation. The purpose of this analysis is to indicate whether or not the annual fee would have significant adverse impacts on California businesses and individuals.

#### Affected Businesses

The proposed fee regulations impact all permitted facilities located in nonattainment areas that directly emit 250 tons or more per year of any nonattainment pollutant or its precursors. The ARB has identified 82 businesses that are subject to the proposed supplemental fee regulations. A company might own one or several businesses. The affected businesses fall into different industry classifications. A list of the industries we have identified is provided in Table 1.

**Table 1**  
**List of Industries with Affected Businesses**

<b>SIC Code</b>	<b>Industry</b>
1311	CRUDE PETROLEUM AND NATURAL GAS
1321	NATURAL GAS LIQUIDS
1442	CONSTRUCTION SAND AND GRAVEL
1474	POTASH/SODA/BORATE MINERALS
2421	SAWMILLS & PLANING MILLS, GNL
2611	PULP MILLS
2819	INDUSTRIAL INORGANIC CHEMICALS, NEC
2873	NITROGENOUS FERTILIZERS
2911	PETROLEUM REFINING
2999	PETROLEUM & COAL PRODUCTS, NEC
3086	PLASTICS FOAM PRODUCTS
3088	PLASTICS PLUMBING FIXTURES
3211	FLAT GLASS
3221	GLASS CONTAINERS
3241	CEMENT, HYDRAULIC
3273	READY-MIXED CONCRETE
3295	MINERALS, GROUND OR TREATED
3296	MINERAL WOOL
3312	BLAST FURNACES AND STEEL MILLS
3411	METAL CANS

3463	NONFERROUS FORGINGS
3711	MOTOR VEHICLES AND CAR BODIES
3713	TRUCK AND BUS BODIES
4911	ELECTRIC SERVICES
4922	NATURAL GAS TRANSMISSION
4923	GAS TRANSMISSION/DISTRIBUTION
4931	ELECTRIC & OTHER SERVICES COMBINED
4953	REFUSE SYSTEMS
9199	GENERAL GOVERNMENT, NEC
9711	NATIONAL SECURITY

## Study Approach

The approach used in evaluating the potential economic impact of the proposed annual fee on California businesses is as follows:

- (1) All affected businesses are identified from the ARB's 2002 emission inventory database. Standard Industrial Classification (SIC) codes reported by these businesses are listed in Table 1 above.
- (2) A sample of two to three typical businesses was selected from the list of affected facilities.
- (3) Annual fees for the fee program are estimated for each of these businesses based on the fee rates adopted by the Board for the FY 2003-2004.
- (4) The total annual fee for each business is adjusted for both federal and state taxes.
- (5) These adjusted fees are subtracted from net profit data and the results used to calculate the Return on Owners' Equity (ROE). The resulting ROE is then compared with the ROE before the subtraction of the adjusted fees to determine the impact on the profitability of the businesses. A reduction of more than 10 percent in profitability is considered to indicate a potential for significant adverse economic impacts. This threshold is consistent with the thresholds used by the U.S. Environmental Protection Agency and others.

## Assumptions

Using financial data from 2000-2002, staff calculated the ROEs, before and after the subtraction of the adjusted fees, for the selected businesses from each category. These calculations were based on the following assumptions:

- (1) All affected businesses are subject to federal and state tax rates of 35 percent and 9.3 percent, respectively; and
- (2) Affected businesses neither increase the prices of their products nor lower their costs of doing business through cost-cutting measures because of the fee regulations.

These assumptions, though reasonable, might not be applicable to all affected businesses.

## Potential Impact on Business

California businesses are affected by the proposed annual fee regulations to the extent that the implementation of the estimated fees reduces their profitability. Using ROE to measure profitability, we found that the average ROE for selected businesses from all categories would have declined by less than 0.01 percent in 2000-2002. This represents a small decline in the average profitability of the affected businesses. Assuming the fees continue in future years, their impact on business profitability is expected to be of the same magnitude.

First, some businesses are subject to higher fees than others due to the type of industry in which they are involved, the number of facilities which they operate, and the type and number of their devices and emitting processes. For individual facilities, the supplemental fee ranges from about \$6,000 to \$225,000. Second, the performance of businesses may vary from year to year. Hence, the 2000-2002 financial data used may not be representative of a typical-year performance for some businesses.

The potential impacts estimated here might be high because affected businesses probably would not absorb all of the increase in their costs of doing business. They would be able to either pass some of the cost on to consumers in the form of higher prices, reduce their costs, or both.

## Potential Impact on Consumers

No noticeable change in consumer prices is expected from the estimated fees for FY 2004-2005. This is because the proposed fees would have only a small impact on the profitability of affected businesses. The impact would have been less if we had used the incremental change in annual fees for nonvehicular sources rather than the total annual fees in this analysis.

## Potential Impact on Employment

Since the estimated fees impose a small cost impact on businesses, we expect no significant change in employment due to the imposition of the fees. However, the fees may impose a hardship on some businesses operating with little or no margin of profitability, affecting the creation of jobs in California.

## Impact on Business Creation, Elimination, or Expansion

No change is expected to occur in the status of California businesses as a result of the proposed fees. This is because the fees have no significant impact on the profitability of businesses in California. However, should the fees impose hardship on California businesses operating with little or no margin of profitability, some affected businesses may decide not to expand in California.

## Impact on Business Competitiveness

The proposed fees would have no material impact on the ability of California businesses to compete with businesses in other states. This is because the estimated fees do not impose a significant cost impact on California businesses.

## Conclusion

Affected businesses are owned and operated by large companies. These businesses would appear to be able to absorb the costs of the proposed annual fee regulations without a significant adverse impact on their profitability. Assuming the fees continue in future years, the expected impact would be of the same magnitude.

Since the estimated fees impose no significant cost impact on businesses, we expect no significant change in employment; business creation, elimination, or expansion; and business competitiveness.

**Appendix E**

**FACILITY FEES DATA FOR FY 2003-2004 AND  
PRELIMINARY FACILITY FEES DATA FOR FY 2004-2005**

### Facility Fees Data for FY 2003-2004 and Preliminary Facility Fees Data for FY 2004-2005

District	Facility Name	FY 2003-2004 Facility Fees			FY 2004-2005 Facility Fees	Supplemental Facility Fees	Total Fees
		2001 Billable Emissions	\$17.4 Million (Approx \$84/ton)	2002 Billable Emissions (1)	\$17.4 million (Approx \$91/ton)	\$2.6 million (Approx \$23/ton)	\$20.0m (Approx \$114/ton for Facilities)
BA	Valero Refining Company	8,674	\$728,876	9,790	\$890,890	\$225,170	\$1,116,060
MOJ	Cemex - Black Mountain Quarry	6,752	\$567,371	5,187	\$472,017	\$119,301	\$591,318
BA	Tesoro Refining and Marketing	6,349	\$533,506	6,044	\$550,004	\$139,012	\$689,016
SC	Chevron Products Co.	5,632	\$473,257	6,400	\$582,400	\$147,200	\$729,600
SC	AES Alamitos, LLC.	5,296	\$445,023	2,497	\$227,227	\$57,431	\$284,658
BA	Shell Martinez Refining Company	4,829	\$405,781	5,295	\$481,845	\$121,785	\$603,630
BA	Chevron Products Company	4,609	\$387,294	5,529	\$503,139	\$127,167	\$630,306
KER	California Portland Cement Co.	4,348	\$365,362	4,200	\$382,200	\$96,600	\$478,800
SC	ExxonMobil Oil Corp.	4,320	\$363,010	5,046	\$459,186	\$116,058	\$575,244
MOJ	TXI Riverside Cement Company	4,186	\$351,750	6,079	\$553,189	\$139,817	\$693,006
SC	AES Redondo Beach, LLC.	3,425	\$287,803	380	\$34,580	\$8,740	\$43,320
SLO	Conoco Phillips Tosco Santa Maria Refinery	3,739	\$314,188	3,760	\$342,160	\$86,480	\$428,640
NCU	PG&E-Humboldt Bay Plant	3,700	\$310,911	903	\$82,173	\$20,769	\$102,942
SC	BP West Coast Products, LLC.	3,536	\$297,130	3,014	\$274,274	\$69,322	\$343,596
BA	Mirant Delta, LLC.	3,459	\$290,660	733	\$66,703	\$16,859	\$83,562
BA	Hanson Permanente Cement	2,490	\$209,235	1,792	\$163,072	\$41,216	\$204,288
SC	Conoco Philips	2,450	\$205,874	2,212	\$201,292	\$50,876	\$252,168
MOJ	Mitsubishi Cement 2000	2,243	\$188,479	2,845	\$258,895	\$65,435	\$324,330
MBU	Duke Energy Moss Landing LLC.	2,173	\$182,597	297	\$27,027	\$6,831	\$33,858
SC	Equilon Enterprises LLC.	2,094	\$175,959	1,697	\$154,427	\$39,031	\$193,458
BA	Conoco PhillipsTosco Refining Company	1,945	\$163,438	2,134	\$194,194	\$49,082	\$243,276
MOJ	Southern California Gas Co.	1,917	\$161,086	1,917	\$174,447	\$44,091	\$218,538
MOJ	IMC Chemicals, Inc.	1,786	\$150,078	2,352	\$214,032	\$54,096	\$268,128
KER	National Cement Co.	1,659	\$139,406	1,441	\$131,131	\$33,143	\$164,274
MBU	RMC Pacific Materials	1,502	\$126,213	1,544	\$140,504	\$35,512	\$176,016
BA	Phillips 66 Company - San Francisco	1,459	\$122,600	2,134	\$194,194	\$49,082	\$243,276
SJU	Guardian Industries Corp.	1,402	\$117,810	1,431	\$130,221	\$32,913	\$163,134
MOJ	Reliant Energy	1,291	\$108,483	909	\$82,719	\$20,907	\$103,626
SJU	Occidental of Elk Hills, Inc.	1,276	\$107,222	753	\$68,523	\$17,319	\$85,842
SC	California Portland Cement Co.	1,257	\$105,626	975	\$88,725	\$22,425	\$111,150

**Facility Fees Data for FY 2003-2004 and Preliminary Facility Fees Data for FY 2004-2005**

District	Facility Name	FY 2003-2004 Facility Fees			FY 2004-2005 Facility Fees	Supplemental Facility Fees	Total Fees
		2001 Billable Emissions	\$17.4 Million (Approx \$84/ton)	2002 Billable Emissions (1)	\$17.4 million (Approx \$91/ton)	\$2.6 million (Approx \$23/ton)	\$20.0m (Approx \$114/ton for Facilities)
SC	Conoco Phillips Tosco Refining Company	1,257	\$105,626	1,455	\$132,405	\$33,465	\$165,870
SJU	Pilkington North America, Inc.	1,240	\$104,197	1,249	\$113,659	\$28,727	\$142,386
SB	Celite Corporation	1,218	\$102,349	1,111	\$101,101	\$25,553	\$126,654
BA	Mirant Delta, LLC.	1,164	\$97,811	733	\$66,703	\$16,859	\$83,562
SD	Cabrillo Power I LLC., Encina	1,164	\$97,811	276	\$25,116	\$6,348	\$31,464
MOJ	Southern California Gas Co.	1,157	\$97,223	1,157	\$105,287	\$26,611	\$131,898
MOJ	PG&E Topock Compressor Station	1,140	\$95,794	1,140	\$103,740	\$26,220	\$129,960
SC	Ultramar Inc.	1,034	\$86,887	950	\$86,450	\$21,850	\$108,300
SJU	Aera Energy LLC.	989	\$83,106	1,127	\$102,557	\$25,921	\$128,478
KER	Lehigh Southwest Cement Co.	962	\$80,837	882	\$80,262	\$20,286	\$100,548
SC	El Segundo Power, LLC.	951	\$79,913	831	\$75,621	\$19,113	\$94,734
KER	U.S. Borax	883	\$74,198	1,005	\$91,455	\$23,115	\$114,570
SLO	Duke Energy Morro Bay	838	\$70,417	288	\$26,208	\$6,624	\$32,832
SJU	Owens-Brockway Glass Container	760	\$63,863	571	\$51,961	\$13,133	\$65,094
SJU	Gallo Glass Company	625	\$52,519	267	\$24,297	\$6,141	\$30,438
MOJ	PG&E Hinkley Compressor Station	579	\$48,653	579	\$52,689	\$13,317	\$66,006
MOJ	AFG Industries Inc.	578	\$48,569	578	\$52,598	\$13,294	\$65,892
BA	Mirant Potrero, LLC.	568	\$47,729	0	\$0	\$0	\$0
SJU	Chevron USA Inc.	545	\$45,796	591	\$53,781	\$13,593	\$67,374
SHA	Lehigh Southwest Cement Co.	494	\$41,511	527	\$47,957	\$12,121	\$60,078
SJU	Saint-Gobain Containers, Inc.	489	\$41,091	518	\$47,138	\$11,914	\$59,052
SJU	Chevron USA Inc.	484	\$40,671	591	\$53,781	\$13,593	\$67,374
BA	Owens-Brockway Glass Container	483	\$40,586	558	\$50,778	\$12,834	\$63,612
SHA	Wheelabrator Shasta E.C.I.	477	\$40,082	592	\$53,872	\$13,616	\$67,488
SJU	Kern River Cogeneration Co.	470	\$39,494	579	\$52,689	\$13,317	\$66,006
SJU	Sycamore Cogeneration Co.	448	\$37,645	472	\$42,952	\$10,856	\$53,808
SC	Southern California Edison Co.	435	\$36,553	319	\$29,029	\$7,337	\$36,366
SJU	Aera Energy LLC.	423	\$35,545	361	\$32,851	\$8,303	\$41,154
BA	New United Motor Manufacturing	413	\$34,704	581	\$52,871	\$13,363	\$66,234
COL	PG&E Delevan Compressor Station	387	\$32,520	356	\$32,396	\$8,188	\$40,584
SC	MCP Foods Inc.	386	\$32,436	0	\$0	\$0	\$0

### Facility Fees Data for FY 2003-2004 and Preliminary Facility Fees Data for FY 2004-2005

District	Facility Name	FY 2003-2004 Facility Fees			FY 2004-2005 Facility Fees	Supplemental Facility Fees	Total Fees
		2001 Billable Emissions	\$17.4 Million (Approx \$84/ton)	2002 Billable Emissions (1)	\$17.4 million (Approx \$91/ton)	\$2.6 million (Approx \$23/ton)	\$20.0m (Approx \$114/ton for Facilities)
SC	Reliant Energy Etiwanda, LLC.	361	\$30,335	0	\$0	\$0	\$0
NCU	Samoa-Pacific Cellulose, LLC.	339	\$28,486	351	\$31,941	\$8,073	\$40,014
SJU	Covanta Stanislaus, Inc.	339	\$28,486	337	\$30,667	\$7,751	\$38,418
SC	Lasco Bathware (formerly Tomkins Industries Inc.)	328	\$27,562	278	\$25,298	\$6,394	\$31,692
SC	Long Beach City, SERRF Project	315	\$26,469	316	\$28,756	\$7,268	\$36,024
BA	Gilroy Energy Center, LLC.	311	\$26,133	261	\$23,751	\$6,003	\$29,754
MOJ	Southern California Gas Co.	311	\$26,133	0	\$0	\$0	\$0
BA	Rhodia Inc.	307	\$25,797	358	\$32,578	\$8,234	\$40,812
SJV	Chevron USA Inc.	252	\$21,176	401	\$36,491	\$9,223	\$45,714
SC	LA City, DWP Scattergood Generation	304	\$25,545	311	\$28,301	\$7,153	\$35,454
MOJ	ACE Cogeneration Co.	295	\$24,789	296	\$26,936	\$6,808	\$33,744
SD	Duke Energy-South Bay Power Plant	294	\$24,705	0	\$0	\$0	\$0
SC	BP Wilmington	291	\$24,453	3,014	\$274,274	\$69,322	\$343,596
SC	Tabc, Inc.	286	\$24,033	278	\$25,298	\$6,394	\$31,692
BA	Ball Metal Beverage Container	279	\$23,444	280	\$25,480	\$6,440	\$31,920
SB	Orcutt Hill I.C. Engines	279	\$23,444	0	\$0	\$0	\$0
IMP	Imperial Irrigation District	271	\$22,772	272	\$24,752	\$6,256	\$31,008
SHA	Pacific Gas & Electric	254	\$21,344	254	\$23,114	\$5,842	\$28,956
	<b>Total Facilities</b>	<b>128,255</b>	<b>\$10,777,270</b>	<b>116,541</b>	<b>10,605,231</b>	<b>\$2,680,443</b>	<b>\$13,285,674</b>
(1) as of 9/14/2004							