## SUMMARY OF BOARD ITEM

**ITEM # 03-6-5:** PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

**STAFF RECOMMENDATION:** Adopt amendments to the existing fee regulations to implement the provisions of Assembly Bill (AB) 10X.

**DISCUSSION:** The Governor signed AB 10X as one of the reforms necessary to address the State's current budget deficit. AB 10X authorizes the Air Resources Board (ARB) to partially replace environmental program reductions from the General Fund with fee revenues.

AB 10X authorizes the ARB to impose fees on large facilities and manufacturers of consumer products and architectural coatings. The fee amount is expected to be in the range of $13 million to $17.4 million, depending on the amount identified in the final State budget. Fees on facilities may be adjusted in future years for inflation in an amount not to exceed changes in the California Consumer Price Index.

Currently, facilities emitting 500 or more tons per year of any nonattainment pollutant or precursor pay the fees. The amendments would reduce the threshold to 250 tons per year of any nonattainment pollutant or precursor, which would increase the number of facilities subject to the fees from about 60 to 95. The amendments would also provide for an annual fee on manufacturers of consumer products and architectural coatings whose total sales in California will result in volatile organic compound emissions of 250 tons per year or greater.

The amendments provide for the ARB to collect the fees directly from facilities in each local air pollution control and air quality management district, unless a district chooses to collect the fees instead of having the ARB collect them. In other respects, the basic fee assessment process for facilities is the same as the process in the existing regulation. The fee assessment process for manufacturers of consumer

products and architectural coatings is essentially the same as that for facilities, except that ARB would collect these fees directly from manufacturers in all cases.

Like the existing regulations, the proposed regulations would continue to provide for: (1) the collection of the fees on a dollar-per-ton of emissions basis; (2) the recovery of administrative costs by the districts if they choose to collect the fees from facilities; and (3) the imposition of additional fees on sources that do not pay in a timely manner.

Finally, the proposed amendments establish an abbreviated fee assessment process for fiscal year 2003-2004 to ensure there is adequate time to collect the fees in this fiscal year.

The recommendation was developed in consultation with districts and companies potentially subject to the provisions of the amended regulations. In addition to the public comment period, staff conducted two public workshops to solicit input on the proposal.

**SUMMARY AND IMPACTS:** Adoption of these amendments would result in the assessment of fees in the amount identified in the final State budget. These fees are expected to be from $13 million to $17.4 million, as compared to the $3 million annually collected under the current program. This translates to about $57 to $76 per ton of emissions.

The amendments would become effective on the later of two dates: on the date the amendments are filed with the Secretary of State by the Office of Administrative Law, or the 91st day after adjournment of the special session of the Legislature at which AB 10X was passed.

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

## NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the California Clean Air Act Nonvehicular Source Fee Regulations. The amendments would establish a process for assessing yearly fees on nonvehicular sources, consumer products manufacturers, and architectural coatings manufacturers for the 2003-2004 and subsequent fiscal years.

DATE: July 24, 2003

TIME: 9:00 a.m.

Location: California Environmental Protection Agency
Air Resources Board
Auditorium, Second Floor
1001 "I" Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board which will commence at 9:00 a.m., July 24, 2003, and may continue at 8:30 a.m., July 25, 2003. This item may not be considered until July 25, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before July 24, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-4011 or amalik@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

### INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed adoption of new sections 90800.75, 90800.9 and 90804; and proposed amendments to sections 90800.8, 90801, 90802, and 90803, title 17, California Code of Regulations (CCR).

### Background

Health and Safety Code section 39612 was enacted by the Legislature as part of the California Clean Air Act of 1988. As originally enacted, section 39612 empowered the ARB to assess fees on nonvehicular sources that were authorized by local air district 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 $3,000,000, and the fees are 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 Nonvehicular Source Fee Regulations in 1989. The original regulations included the fee rate and amounts to be remitted to the ARB by the air pollution control and air quality management districts (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 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 AB 10X (Stats. 2003, Chapter 1X), which made a number of changes to existing law. AB 10X amended Health and Safety Code section 39612 by: (1) increasing the cap on stationary source permit fees from $3,000,000 to $13,000,000 for fiscal year 2003-2004, and allowing the fees to be adjusted annually thereafter for inflation; (2) expanding the universe of stationary sources subject to the fees by specifying that the fees are to be collected from nonvehicular sources authorized by local air district permits to emit 250 tons (instead of the previous 500 tons) or more per year of any nonattainment pollutant or its precursors; and (3) authorizing the ARB to collect the fees directly, instead of requiring the districts to first collect the fees and then transmit them to the ARB.

In addition, AB10X authorizes 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 fees on manufacturers are to be expended by the ARB solely to mitigate or reduce air pollution in the state created by consumer products and architectural coatings.

**Description of Proposed Regulatory Action**

In this rulemaking, the staff is proposing amendments to the existing fee regulations to implement the provisions of AB 10X. For stationary point sources (i.e., facilities) the amendments provide for the Executive Officer to assess annual fees on facilities authorized by local air district permits to emit 250 or more tons per year of any nonattainment pollutant or its precursors. Districts would no longer be required to collect the fee from facilities, but each district would instead have the option to collect the fees if they choose to do so. The

ARB would collect the fees directly in all districts that do not choose this option. In other respects, the basic fee assessment process for facilities is the same as the existing process.

The proposed amendments would also provide for the Executive Officer to assess annual fees on manufacturers of consumer products and architectural coatings whose total sales will result in VOC emissions in California of 250 tons per year or greater. The fee assessment process for manufacturers is essentially the same as that for facilities, except that ARB would collect these fees directly from manufacturers in all cases; districts would not have the option of collecting the fees on behalf of the ARB.

Like the existing regulations, the proposed regulations would continue to provide for: (1) the collection of the emission fees on a dollar-per-ton basis; (2) the recovery of administrative costs by the districts if they chose to collect the fees from facilities; and (3) the imposition of additional fees on sources that do not pay in a timely manner.

Finally, the proposed amendments establish an abbreviated fee assessment process for fiscal year 2003-2004, 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 fee determinations will be as of the July 24, 2003 hearing date, unless the Executive Officer makes a modification that is based on subsequently received information, and the modification is explained in the final assessment notification. This approach will insure that by the time of the Board hearing the districts, facilities, and manufacturers are aware of and have a chance to comment on the anticipated amounts and basis for the fees.

The Governor's budget for fiscal year 2003-2004 proposes that the ARB collect a total of $13 million in fees from stationary sources, consumer products manufacturers, and architectural coatings manufacturers. However, if the Legislature approves a budget recommendation of the Legislative Analyst's Office to increase the fees by $4.4 million, the ARB would be authorized to collect $17.4 million in fees from these sources for fiscal year 2003-2004.

There are no federal regulations that are comparable to the proposed fee regulations.

## AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes a summary of the potential environmental and economic impacts, and environmental justice considerations of the proposal.

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I

Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (July 24, 2003).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact persons:

1) For general questions on the proposed regulatory action:
Mr. Don Rake, Planning and Technical Support Division,
(916) 322-7304, e-mail drake@arb.ca.gov.

2) For questions on Nonvehicular Sources:
Mr. Don Rake, Planning and Technical Support Division,
(916) 322-7304, e-mail drake@arb.ca.gov;

3) For questions on Consumer Products:
Ms. Judy Yee, Stationary Source Division,
(916) 322-9148, e-mail jyee@arb.ca.gov; and

4) For questions on Architectural Coatings:
Mr. Jim Nyarady, Stationary Source Division,
(916) 322-8273, email jnyarady@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board staff has compiled a record for this rulemaking action, which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/feereg03/feereg03.htm

## COSTS TO PUBLIC AGENCIES, BUSINESSES, AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

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.

The proposed regulatory action will impose a mandate upon and create costs to some local agencies. For fiscal year 2003-2004, facilities operated by three local agencies have been identified as being subject to the fees. The aggregate cost to these three local agencies will be approximately $141,000 to $188,000 for this fiscal year. These costs, as well as any permit fees that may be paid in subsequent fiscal years by any local agency, are not reimbursable state mandated costs pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, 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.

The Board's Executive Officer has also determined that individual local air pollution control and air quality management districts (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; Health and Safety Code section 39612(e) and (f)(1), and proposed section 90800.9(e), title 17, CCR, authorize districts to recover these administrative costs from facilities subject to the fees.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impact on private persons and businesses. The Executive Officer has initially determined that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action, but this impact is not expected to be significant.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to

compete with businesses in other States, or on representative private persons. In fiscal year 2003-2004, approximately 104 facilities in the state are expected to be assessed permit fees under the proposed regulations. Among the operators of these facilities are major oil and gas producers, utilities, and major manufacturing enterprises. The proposed regulatory action could result in an increased cost to individual facilities of $14,000 to $500,000. Approximately 24 companies involved in the manufacturer of architectural coatings that are sold in the State would be subject to the fees. This could result in an increased cost to individual architectural coatings manufacturers of approximately $14,000 to $342,000 per year, depending on the amount of emissions generated by the manufacturer. Approximately 54 manufacturers of consumer products would be subject to the fees. This could result in an increased cost to individual consumer products manufacturers of approximately $14,000 to $404,000 per year.

In accordance with Government Code section 11346.3, the Executive Officer has initially determined that the proposed regulatory action will have minimal or no impacts on the creation or elimination of jobs within the State of California, minimal or no impacts on the creation of new businesses or the elimination of existing businesses within State of California, and minimal or no impacts on the expansion of businesses currently doing business within State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR section 4, that the regulations will affect small businesses. No facilities subject to the proposed regulations are considered to be small businesses. However, some consumer products manufacturers and architectural coatings manufacturers subject to the proposed regulations are considered to be small businesses.

Before taking final action on the proposed regulatory action, the ARB must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

## SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than **12:00 noon, July 23, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: **feereg03@listserv.arb.ca.gov** and received at the ARB by **no later than 12:00 noon, July 23, 2003.**

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon July 23, 2003.**

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

## STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 39612 and 39613 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39500, 39600, 39612, and 39613 of the Health and Safety Code; section 9600(a), Government Code; and Article 4, section 8(c)(1) of the California Constitution.

## HEARING PROCEDURES

The public hearing to consider this matter will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: May 27, 2003

*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 Web-site at www.arb.ca.gov.*

State of California
AIR RESOURCES BOARD

# INITIAL STATEMENT OF REASONS FOR PROPOSED AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

**Date of Release: June 6, 2003**
**Scheduled for Consideration: July 24, 2003**

**Prepared by:**

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

**Air Quality Measures Branch and Measures Assessment Branch**
**Stationary Source Division**

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 commercial products constitute endorsement or recommendation for use.

## ACKNOWLEDGMENTS

This report was prepared with the help of other staff from the Air Resources Board. We particularly thank Robert Jenne of the ARB's Office of Legal Affairs; Judy Tanimoto and Valinda Debbs of the ARB's Administrative Services Division; Reza Mahdavi of the ARB's Research Division; Andy Delao of the ARB's Planning and Technical Support Division, and Susan Wyman of the ARB's Chairman's Office for their contributions.

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# 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 Assembly Bill (AB) 10X (Stats. 2003, Chapter 1X), which made a number of changes to existing law. AB 10X amended Health and Safety Code section 39612 by: (1) increasing the cap on stationary source permit fees from $3 million to $13 million for fiscal year 2003-2004, and allowing the fees to be adjusted annually thereafter for inflation, in an amount not to exceed the California Consumer Price Index; (2) expanding the universe of facilities subject to the fees by specifying that the fees are to be collected from 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; and (3) authorizing the ARB to collect the fees directly, instead of requiring the districts to first collect the fees and then transmit them to the ARB.

In addition, AB 10X authorizes 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 more of volatile organic compounds (VOCs). The fees on manufacturers are to be expended by the ARB solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings.

AB 10X is a budget balancing measure that is intended to shift more of ARB's Stationary Source budget from the General Fund to fee supported programs. It is a permanent change to ARB's baseline budget and does not sunset at any future date.

*Description of Proposed Regulatory Action.* In this rulemaking, the staff is proposing amendments to the existing fee regulations to implement the provisions of AB 10X. The amendments provide for the Executive Officer to assess annual fees on facilities authorized by district permits to emit 250 or more tons per year of any nonattainment pollutant or its precursors. Districts would no longer be required to collect the fees from facilities, but each district would instead have the option to collect the fees if they choose to do so. The ARB would collect the fees directly in all districts that do not choose this option. In other respects, the basic fee assessment process for facilities is the same as the existing process.

The proposed amendments would also provide for the Executive Officer to assess annual fees on manufacturers of consumer products and architectural coatings whose total sales will result in VOC emissions in California of 250 tons per year or greater. The fee assessment process for manufacturers is essentially the same as that for facilities, except that ARB would collect these fees directly from manufacturers in all cases; districts would not have the option of collecting the fees on behalf of the ARB.

Like the existing regulations, the proposed amended regulations would continue to provide for: (1) the collection of the emission fees on a dollar-per-ton basis; (2) the recovery of administrative costs by the districts if they choose to collect the fees from facilities; and (3) the imposition of additional fees on sources that do not pay in a timely manner.

Finally, the proposed amendments establish an abbreviated fee assessment process for fiscal year 2003-2004, 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 fee determinations will be as of the July 24, 2003 hearing date, unless the Executive Officer makes a modification that is based on subsequently received information, and the modification is explained in the final assessment notification. This approach will insure that, by the time of the Board hearing, the districts, facilities, and manufacturers are aware of and have a chance to comment on the anticipated amounts and basis for the fees.

The Governor's budget for fiscal year 2003-2004 assumes that the ARB will collect a total of $13 million in fees from facilities, consumer products manufacturers, and architectural coatings manufacturers and makes a corresponding reduction in General Fund appropriation. The Legislature is considering a recommendation from the Legislative Analyst's Office to increase the fees by $4.4 million more with another corresponding cut in the General Fund. If that proposal is passed by the Legislature and approved by the Governor, the ARB would need to collect a total of $17.4 million in fees from these sources for fiscal year 2003-2004.

*Description of Public Outreach.* The staff's proposal was the subject of a public workshop held on May 1, 2003. Staff plans to hold an additional workshop on June 24, 2003. Districts, representatives of all facilities and manufacturers of consumer products and architectural coatings identified as being potentially subject to the fees, and the general public were notified of the May workshop and will be notified of the June 24 workshop. A copy of the May 1, 2003, meeting notice is included as Appendix C. In addition, stakeholder workgroups were formed for consumer products and architectural coatings. Three conference call have been held to date with these workgroups and more are planned for later in June and early July. We have also had numerous interactions (telephone conversations, meetings, and exchange of e-mails) with the stakeholders and the districts regarding the emission estimates and the regulatory process.

## II.
## PROPOSED AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

### A. OVERVIEW OF MAJOR ELEMENTS

The proposed amendments would establish a mechanism under which the ARB Executive Officer would identify the fees to be assessed and transmitted in fiscal year 2003-2004 and in subsequent fiscal years. The mechanism would eliminate the need for future annual rulemakings, while assuring that the affected sources have the opportunity to provide input on the fee assessments on an annual basis. Because of the limited time remaining in fiscal year 2003-2004, the proposed amendments establish an abbreviated mechanism for the first year and affected businesses would be required to transmit the collected fees to the ARB or the district within 60 days of receipt of the final fee determination. The final fee determination will be issued within 30 days of the operative date of the regulation (see proposed section 90800.8(a)(2)(A)). The staff anticipates that the final fee determination will be available by the end of 2003.

The provisions of the existing fee regulations that have been generally applicable will continue in effect except that the threshold created by AB 10X for which fees may be assessed has been lowered from 500 to 250 tons per year. The list of air contaminants that constitute nonattainment pollutants and precursors would remain intact, as would the principle that a district's nonattainment status for each pollutant or precursor in a given fiscal year would be based on whether the district is designated nonattainment in ARB regulations (section 60201, title 17, California Code of Regulations (CCR)) as of July 1 of the fiscal year. Districts will continue to be permitted to collect additional fee amounts to cover their administrative costs in collecting the fees if they are delegated this task by the ARB, including additional late fees.

### B. OPERATIVE DATE (SECTION 90800.75)

Section 90800.75 specifies that the proposed amendments shall become operative on the latter of the following dates:

(a) the date on which the amendments are filed with the Secretary of State by the Office of Administrative Law, or

(b) the 91st day after adjournment of the special session of the Legislature at which AB 10X (Stats. 2003, chapter 1X) was passed.

It is necessary to specify the date on which the amendments will become legally operative because AB 10X was passed at a special session of the Legislature (i.e., the 2003-2004 First Extraordinary Session of the Legislature). The California Constitution provides that bills passed at a special session of the Legislature do not become operative until the 91st day after adjournment of the special session (see Article 4, section (8)(c)(1), California Constitution, and Government Code section 9600(a)). Since

the proposed amendments cannot become operative until the enabling legislation (AB 10X) becomes operative, it is necessary to identify the operative date of the amendments as the 91st day after adjournment of the special session. A specific calendar date could not be identified at the time the proposed amendments were released for public comment, because the 2003-2004 special session had not yet been adjourned and the operative date of AB 10X was not yet known.

Some members of the regulated community have questioned whether the ARB can adopt regulations before the enabling statute becomes legally operative. There is a 1955 Attorney General's opinion which directly addresses this issue and concludes that state agencies can do this so long as the regulations specify that they will not become operative until the statute becomes operative (see 26 Ops. Cal. Atty. Gen. 141, Sept. 1955). Section 90800.75 was designed to meet this condition. The Office of Administrative Law (OAL) also takes the position that regulations meeting this condition can be adopted and submitted to OAL for approval before the statute's operative date, and that OAL can approve the regulations prior to the operative date (assuming, of course, that all applicable requirements of the Administrative Procedures Act have been met.)

If the 2003-2004 First Extraordinary Session of the Legislature ends relatively soon, it is possible that the proposed amendments will not be approved by OAL until some date later than the 91st day after adjournment of the special session. This is why proposed section 90800.75 specifies that the proposed amendments shall become operative on the latter of two dates: on the 91st day after adjournment of the special session, or the date the amendments are filed with the Secretary of State by OAL.

Finally, it should be noted that under the Administrative Procedures Act, regulations normally become operative 30 days after OAL approval (see Government Code section 11343.4). However, OAL has the power to approve an earlier effective date if the agency requests one and demonstrates good cause. The ARB intends to request that the proposed amendments become effective on the same date that OAL approves them. Staff anticipates that this request will be granted, since it is necessary that the ARB begin the process of collecting the AB 10X fee revenues as early as possible during the 2003-2004 fiscal year. This is why proposed section 90800.75 specifies that the amendments will become effective when they are filed with the Secretary of State, instead of 30 days thereafter.

## C. FEE REQUIREMENTS FOR THE 2003-2004 AND SUBSEQUENT FISCAL YEARS (SECTION 90800.8)

Section 90800.8 is being amended in general to include language that implements the AB 10X provisions that add consumer products and architectural coatings manufacturers as fee payers; lowers the emissions threshold for payments of fees from 500 tons per year to 250 tons per year; clarifies the expenditure of fees; allows fees to be adjusted for inflation; and specifies the costs to be recovered.

For facilities, the overall formula proposed for assessing fiscal year 2003-2004 fees is the same as the formula proposed for subsequent fiscal years, but the timetable for transmittal of the fees to the ARB is different in consideration of the July 2003 Board hearing. Amendments are being proposed to section 90800.8 to clarify that this same formula will be applicable to manufacturers of consumer products and architectural coatings. The amendments will also ensure that manufacturers of consumer products and architectural coatings will have the same opportunity currently enjoyed by districts and facilities to provide updated emission inventory data that would affect the amount of the fee.

The staff is proposing that fees be based on emissions for the most recent calendar year for which emission estimates for all affected facilities and manufacturers are available. For the first year, fiscal year 2003-2004, the fees would be based on emissions in 2001, since these data are now available.

The fees would be allocated among the affected facilities and manufacturers on an equal dollars per ton of emissions basis throughout the State. The total tons of emissions for each facility would consist of the total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more, or in the case of consumer products and architectural coatings, by statewide sales which result in the emission of 250 tons or more of VOCs. The emissions from these facilities and manufacturers are added together. The resulting total number of tons of emissions would be subject to the fees. The revenues needed are divided by the number of tons of emissions subject to the proposed regulation to obtain the dollar per ton fee rate for that particular year. As has previously been the case, a facility will be exempt if it is in a district which is designated nonattainment for the State ambient air quality standard for ozone solely as a result of ozone transport.

The fee mechanism provides revenues needed to recover the costs of ARB programs related to facilities, consumer products, and architectural coatings. The fees may be affected by two adjustments described in the following paragraphs, and may not exceed the amount authorized by State law for any fiscal year. In addition, 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 HSC section 39612(f)(2), if such an increase is necessary to collect the revenues authorized by the State Legislature for any fiscal year.

The first adjustment is an increase of up to three percent to cover shortfalls in revenues from the fees resulting from the undercollection of funds. Previous experience with the CCAA fee program has shown that it is not always possible to collect the full amount of the fees because of factors such as facility closure or emission estimation errors. The Board has approved adjustments in earlier years of the CCAA fee program because the Board was concerned that a shortfall in funds would seriously disrupt the programs that had been entrusted to the ARB to implement.

The second adjustment is a decrease to offset any excess fees collected in prior years. Any excess funds collected are to be carried over and applied to reduce fees in following years.

The following formulas would be used to calculate the fees:

(1) Fee per ton = (R + A – C) / E

Where

R = Revenues (dollars) needed by the ARB to recover costs associated with the nonvehicular sources, consumer products, and architectural coatings in the specified fiscal year.

A = An adjustment to cover unforeseen reductions in collections such as would occur from bankruptcies or unanticipated closings of businesses, not to exceed three percent of revenues needed (dollars);

C = Carry-over balance from prior fiscal year (dollars); and

E = The total tons of nonattainment pollutants and precursors individually emitted in annual amounts of 250 tons or more by facilities plus emissions of VOCs from architectural coatings and consumer products if a manufacturer's sales will result in annual emissions of 250 tons or more.

(2) Fee amount to be transmitted to the ARB = F * D

Where

F = Fee per ton (dollar per ton) as calculated under above formula; and

D = The tons of nonattainment pollutants and precursors individually emitted in annual amounts of 250 tons or more by facilities, or emissions of VOCs resulting from the sale of architectural coatings and consumer products if a manufacturer's sales will result in annual emissions of 250 tons or more.

The proposed amendments establish an abbreviated fee assessment process for fiscal year 2003-2004, 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 fee determination will be as of the July 24, 2003 hearing date, unless the Executive Officer makes a modification that is based on subsequently received information and the modification is explained in the final determination notification. This approach will insure that, by the time of the Board hearing, the districts, facilities, and the manufacturers are aware of and have a chance to comment on the anticipated amounts and basis for the fees. Staff's preliminary estimate of the fiscal year 2003-2004 fees is referenced in Section I of this chapter.

The amendments also give the Executive Officer 30 days after the operative date of the section, instead of 15 days to provide written notice to facilities and manufacturers of the fiscal year 2003-2004 fee determination. This change gives the staff more time to evaluate any requested changes to emissions that may be received after July 24, 2003. In addition, a change is being proposed to the provision regarding carry-over of revenues. Revenue was changed to balance to clarify that there may not always be revenue carried over. There could also be a shortfall in revenue to be addressed.

In order to assess fees equitably for facilities and manufacturers of architectural coatings or consumer products, fees would also be assessed on any facility or manufacturer of consumer products or architectural coatings that meets the fee criteria but is not identified until after the fees have been assessed (section 90800.8(e)(2)(A) and (B), and section 90800.9(d), title 17, CCR). The Board previously adopted a similar provision for the CCAA nonvehicular source fee program facilities.

## D. OPTIONAL PROCESS FOR DISTRICTS TO COLLECT FEES FROM FACILITIES (SECTION 90800.9)

AB 10X authorizes the ARB to impose fees directly on nonvehicular sources (facilities) within a district's jurisdiction, or as an alternative, provide for district collection of the fees. The latter option was retained because some districts prefer to serve as the ARB's fee collector.

Proposed section 90800.9 implements section 39612(b)(1)(A) of AB 10X, which provides, at the request of a district and with the approval of the Executive Officer, that a district may collect fees on facilities within the district instead of having the ARB collect the fees. The district would assess the fees and then transmit those fees to the ARB. The amendments make it clear that the districts may collect fees from facilities but may not have the option to collect fees from consumer products manufacturers and architectural coatings manufacturers. This is appropriate because the State Board holds the emissions information needed for assessment of fees on these manufacturers.

Pursuant to AB 10X, the proposed amendment in section 90800.9 also provides for collection by districts of additional fee amounts to cover their administrative costs for collecting the fees. Districts' costs are in addition to the fees mandated by this proposal, and are expected to add no more than 5 percent based on past experience. The proposed amendments in section 90800.9(c)(4) require districts to substantiate the administrative costs and to provide supporting information to the ARB upon request. The information must be provided within 30 days of the request. These requirements allow the ARB to ensure that the fee collection program is effectively implemented and that funds necessary to implement the requirements of AB 10X are available to the ARB. The proposed amendments in section 90800.9(c)(3) also require districts to impose late fees on facilities that do not submit assessed fees in a timely manner to cover the additional administrative costs the districts incur in collecting late fees.

## E. DEFINITIONS (SECTION 90801)

Section 90801, "Definitions," provides all the terms used in the regulation which are not self-explanatory. An existing definition, "Nonattainment Pollutant and Precursors" is described below to help clarify the emissions basis for the nonvehicular source fee assessments. Eight additional new definitions are proposed.

### 1. Nonattainment Pollutant and Nonattainment Precursor

For the purpose of assessing fees on facilities, a "nonattainment pollutant" is any pollutant emitted in an area which is designated as nonattainment for that pollutant by sections 60200-60209, title 17, CCR, for a State ambient air quality standard identified in section 70200, title 17, CCR. A "nonattainment precursor" is any substance emitted in a nonattainment area known to react in the atmosphere that contributes to the production of a nonattainment pollutant or pollutants.

A list of nonattainment pollutants and nonattainment precursors is provided in Table 1. Facilities in areas which are designated nonattainment for one or more of the substances listed in Table 1 may be subject to fees based on the amount of the pollutant or its precursor that is emitted. Fees are currently collected for emissions of only six of the nine substances for which State ambient air quality standards exist. Fees are not assessed for emissions of visibility reducing particles, hydrogen sulfide, and lead for the following reasons. In 1989, the Board adopted a new monitoring method for visibility reducing particles, but data are not yet available for most areas on which to base area designations. Consequently, all areas remain unclassified for this substance except Lake County, which has been designated as attainment. Hydrogen sulfide is not included in the fee process because there are no sources emitting 250 tons or more per year of that pollutant in the two nonattainment areas of the State. Finally, all areas of the State are currently designated attainment for lead; therefore, no fees have been assessed for this pollutant.

**Table 1**
**Nonattainment Pollutants and Nonattainment Precursors**

| *Substance (as listed in section 70200, title 17, CCR):* | *Nonattainment Pollutant/Precursors:* |
|---|---|
| Ozone | reactive organic gases<br>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)<br>oxides of nitrogen<br>oxides of sulfur<br>reactive organic gases |
| Visibility Reducing Particles | suspended particulate matter (PM10)<br>oxides of nitrogen<br>oxides of sulfur<br>reactive organic gases |
| Hydrogen Sulfide | hydrogen sulfide |
| Lead | lead |

While suspended particulate matter less than 2.5 microns (PM2.5) is in the process of being defined in section 70200, title 17, CCR, as a nonattainment pollutant, it is not being included as a nonattainment pollutant for the purposes of this proposal. The reason for this is that all precursors of PM2.5 other than directly emitted PM2.5 (NOx, SOx, ROG) would already be subject to the fees as precursors to other pollutants. Directly emitted PM2.5 would not be subject to the fees because PM2.5 is a subset of PM10, and if directly emitted PM2.5 emissions were to be billed, facilities emitting PM2.5 would be billed twice for the same emissions, i.e. for their PM10 and PM2.5 emissions that are part of the PM10.

2. Proposed New Definitions

We propose to add eight new definitions to section 90801 of the regulation. These definitions are necessary to implement the provisions of HSC section 39613 that give ARB the authority to assess fees on consumer products and architectural coatings manufacturers. We are proposing new definitions for architectural coating, architectural coatings manufacturer, company, consumer product, consumer products manufacturer, Executive Officer, holding or parent company, and volatile organic compound. These definitions are needed in the regulation to clarify what constitutes a consumer product or architectural coating, the business entities responsible for their manufacture, and which ingredients in these products are VOCs and hence subject to fees under the provisions of HSC section 39613. The definitions of "consumer product" and "VOC" are

long-standing and were taken directly from the Consumer Products Regulations, section 94508(a)(30) and (a)(129), title 17, CCR.

F. FEE PAYMENT AND COLLECTION (SECTION 90802)

The proposed amendments would require the ARB Executive Officer to notify the operator of each facility and each manufacturer of consumer products and architectural coatings of the fee due. An additional fee would be assessed for payments that become past due 60 days after receipt of the final fee determination. Fees collected which exceed or are less than the costs to the State of State programs authorized and required by the State Legislature will be carried over for adjustment to the fees assessed in the subsequent fiscal year. It is necessary to amend this section to clarify that the consumer products and architectural coatings manufacturers are fee payers as authorized by AB 10X and to carry through the change that fees will be collected by the ARB, unless the optional process described in section 90800.9 is exercised.

G. FAILURE OF FACILITY TO PAY FEES (SECTION 90803)

In this section we are proposing an amendment that provides a mechanism that releases a district from the responsibility for remitting fees that are, for demonstrated good cause, not collectible. Under this amendment, as in the past, a district must demonstrate good cause before relief from fees may be granted. Examples of situations for which these provisions would apply include such events as facility closure, refusal of the facility operator to pay the fees despite reasonable efforts by the district to collect the fees, and emission quantification errors. In such cases, and where applicable, ARB will directly pursue appropriate remedies.

H. SEVERABILITY (SECTION 90804)

Proposed section 90804 is a severability clause to express the intent that if one element of a regulation is invalidated, the remainder can still be enforced. Because the Legislature intends for ARB to assess the fees, staff believes that if one or more sections of the proposed regulation is found to be invalid, the remaining sections of the regulation should remain intact.

I. ESTIMATED FEES FOR FISCAL YEAR 2003-2004

Based on currently available information, the staff anticipates that the fee rate formula will apply for fiscal year 2003-2004 as follows:

R = $13,000,000 program costs for fiscal year 2003-2004;

A = $390,000 adjustment (3 percent of $13,000,000);

C = $0 (zero), since no revenues have carried over from previous years; and

E = 234,999 tons, representing the statewide emissions in the 2001 calendar year subject to the fees.

Fee rate ($/ton) = ($13,000,000 + $390,000 - $0) /234,999 tons = $56.98 per ton

Alternatively, if the final approved amount for fees to be assessed is $17,400,000, the fee per ton would be calculated as follows:

R = $17,400,000 program costs for fiscal year 2003-2004;

A = $522,000 adjustment (3 percent of $17,400,000);

C = $0 (zero), since no revenues have carried over from previous years; and

E = 234,999 tons, representing the statewide emissions in the 2001 calendar year subject to the fees.

Fee rate ($/ton) = ($17,400,000 + $522,000 - $0) /234,999 tons = $76.26 per ton

Appendix E shows staff's preliminary estimate of emissions and fees for the facilities and the manufacturers of consumer products and architectural coatings for fiscal year 2003-2004. Staff has included these preliminary estimates so that facilities and manufacturers will have an opportunity to comment on them during the 45-day public comment period.

# III.
# EMISSIONS USED AS BASIS FOR FEES

## A. BACKGROUND

Emission inventories provide an important foundation for improving air quality and public health. Emission inventories tell us what quantities of various pollutants are being emitted to the air, where they are being emitted, who is emitting them, and when they are being emitted. ARB uses emission data to develop control measures that improve California's air quality as we work to attain health-based air quality standards and to reduce air toxics exposures. Emission inventory information supports numerous ARB programs including diesel particulate measures, emission reduction strategies for motor vehicles, other mobile sources, fuels and consumer products, as well as neighborhood level assessments. Emission inventories are also inputs to air quality modeling used on a regional basis to develop attainment plans.

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 regulation. More importantly, through the emission inventory, we determine which facilities, companies, and manufacturers emit pollution in excess of the 250 tons per year threshold established by the fee regulation. For more detailed information on those sources exceeding the 250 tons per year threshold, please see Appendix E.

## B. FACILITIES

### 1. Background

In California, districts develop, adopt, and enforce stationary point source (facilities) rules and regulations within their jurisdictions. The districts have the primary responsibility for inventorying and controlling emissions from facilities, and have been performing these tasks since the 1960s. Facilities include industrial and commercial facilities such as refineries, power plants, manufacturing operations, gas stations, and dry cleaners. Generally, emission estimates from facilities are reported directly to the districts. The districts then transmit the information to the ARB for incorporation into the statewide inventory.

As part of the stationary source program, the ARB works with the districts to reduce emissions from stationary sources to comply with State and federal laws. The functions include developing suggested control measures for reducing emissions from stationary sources as required by the California Clean Air Act, and providing guidance on control technologies for stationary sources.

2. Applicability Threshold

Fees will be assessed on those facilities located in nonattainment areas whose applicable pollutants or precursors are equal to or greater than 250 tons per year in 2001. Fees are based on the actual pollutant or precursor emissions.

3. Methodology for Determining Billable Emissions for Facilities

In California, the districts are responsible for developing and maintaining the emission inventory from facilities within their jurisdiction. The ARB works with the districts to develop the statewide emission inventory of facilities. Working with the districts, ARB used the following process to determine which facilities are subject to fees:

- Staff compiles a list of all district reported emissions from facilities and their criteria pollutant/precursor emissions of 250 or more tpy.

- Staff then determined which of the facilities are in nonattainment areas for either ozone, PM10, and CO. Those in ozone nonattainment areas will be billed for their ROG and NOx emissions as ROG and NOx are the precursors to ozone formation.

  *(The nonattainment designations used to determine whether a permitted facility in an area is subject to the fees is based on the nonattainment designation in effect the first day of the fiscal year (CCR section 90801(b) and (c)). For fiscal year 2003-2004, those designations effective on July 1, 2003, will be used. For fiscal year 2004-2005, those designations effective on July 1, 2004, will be used.)*

- Those in PM10 nonattainment areas will be billed for their ROG, NOx, SOx, and PM10 emissions as these are the precursors to PM10 formation.

- Those in CO nonattainment areas will be billed for their CO emissions.

Those in multiple nonattainment areas are billed on all applicable pollutants and precursors. For example, Los Angeles County is nonattainment for ozone, PM10, and CO and so facilities are billed for all five pollutants (ROG, NOx, SOx, CO, and PM10). Once the billable pollutants are determined for each facility based on their location in a nonattainment area, the emission threshold of 250 tpy is then applied. Only those billable pollutants that also equal or exceed the threshold individually are billed.

Appendix E shows that, based on our most recent calculations, 95 facilities that emitted 140,038 billable tons will be subject to the fees. Table 2 shows the list of facilities subject to fees.

**Table 2**
**Summary of Facility Fee Data**

| District | Facility Name | 2001 Billable Tons |
|---|---|---|
| Bay Area | Valero Refining Company | 9,935 |
| Bay Area | Tesoro Refining and Marketing | 7,112 |
| Bay Area | Martinez Refining Company | 5,847 |
| South Coast | Chevron Products Co. | 5,608 |
| Mojave Desert | Cemex - Black Mountain Quarry | 5,187 |
| Bay Area | Chevron Products Company | 5,136 |
| Mojave Desert | TXI Riverside Cement Company | 4,595 |
| South Coast | Arco Products Co. | 4,406 |
| Kern County | California Portland Cement Co. | 4,357 |
| San Luis Obispo County | Tosco Santa Maria Refinery | 3,739 |
| North Coast Unified | PG&E-Humboldt Bay Plant | 3,700 |
| Bay Area | Mirant Delta, LLC. | 3,459 |
| South Coast | Mobil Oil Corp. (EIS Use) | 3,234 |
| Bay Area | Phillips 66 Company - San Francisco | 2,966 |
| Mojave Desert | Mitsubishi Cement 2000 | 2,845 |
| Bay Area | Hanson Permanente Cement | 2,490 |
| South Coast | Equilon Enterprises LLC. | 2,414 |
| Bay Area | Tosco Refining Company | 2,322 |
| Kern County | National Cement Co. | 2,305 |
| Mojave Desert | IMC Chemicals, Inc. | 2,274 |
| South Coast | Tosco Refining Company | 2,191 |
| Monterey Bay Unified | Duke Energy Moss Landing LLC. | 2,173 |
| South Coast | El Segundo Power, LLC. | 2,083 |
| Mojave Desert | Southern California Gas Co. | 1,917 |
| South Coast | AES Alamitos, LLC. | 1,800 |
| San Joaquin Valley Unified | Pilkington North America, Inc. | 1,703 |
| Santa Barbara County | Celite Corporation | 1,669 |
| South Coast | Tosco Refining Company | 1,651 |
| Kern County | Lehigh Southwest Cement Co. | 1,580 |
| South Coast | Reliant Energy Etiwanda, LLC. | 1,515 |
| Monterey Bay Unified | RMC Pacific Materials | 1,502 |
| Mojave Desert | Reliant Energy | 1,426 |
| San Joaquin Valley Unified | Guardian Industries Corp. | 1,403 |
| San Joaquin Valley Unified | Occidental of Elk Hills, Inc. | 1,276 |
| San Diego County | Cabrillo Power I LLC., Encina | 1,164 |
| Bay Area | Mirant Delta, LLC. | 1,164 |

| Table 2 (con't)<br>Summary of Facility Fee Data | | |
|---|---|---|
| Mojave Desert | Southern California Gas Co. | 1,157 |
| Mojave Desert | PG&E Topock Compressor Station | 1,140 |
| South Coast | Ultramar Inc. (NSR Use Only) | 1,089 |
| San Joaquin Valley Unified | Aera Energy LLC. | 988 |
| South Coast | Filtrol Corp. | 952 |
| South Coast | California Portland Cement Co. | 925 |
| South Coast | LA City, DWP Scattergood Generation | 899 |
| South Coast | AES Huntington Beach LLC. | 852 |
| San Luis Obispo County | Duke Energy Morro Bay | 838 |
| Kern County | U.S. Borax | 808 |
| San Joaquin Valley Unified | Owens-Brockway Glass Container | 761 |
| Antelope Valley | Antelope Valley Aggregate Inc. | 691 |
| South Coast | Arco CQC Kiln | 681 |
| Bay Area | Owens-Brockway Glass Container | 635 |
| San Joaquin Valley Unified | Gallo Glass Company | 625 |
| Mojave Desert | PG&E Hinkley Compressor Station | 579 |
| Mojave Desert | AFG Industries Inc. | 578 |
| Bay Area | Mirant Potrero, LLC. | 568 |
| San Joaquin Valley Unified | AG Formulators, Incorporated | 566 |
| San Joaquin Valley Unified | Chevron USA Inc. | 545 |
| San Joaquin Valley Unified | Conagra Foods | 498 |
| Shasta County | Lehigh Southwest Cement Co. | 494 |
| San Joaquin Valley Unified | Saint-Gobain Containers, Inc. | 489 |
| San Joaquin Valley Unified | Chevron USA Inc. | 484 |
| South Coast | AES Redondo Beach, LLC. | 481 |
| Shasta County | Wheelabrator Shasta E.C.I. | 477 |
| San Joaquin Valley Unified | Kern River Cogeneration Co. | 470 |
| South Coast | Tamco | 465 |
| San Joaquin Valley Unified | Sycamore Cogeneration Co. | 448 |
| Imperial County | Imperial Irrigation District | 445 |

| Table 2 (con't)<br>Summary of Facility Fee Data | | |
|---|---|---|
| San Joaquin Valley Unified | Aera Energy LLC. | 423 |
| Bay Area | Rhodia Inc. | 419 |
| South Coast | Southern California Edison Co. | 416 |
| Bay Area | New United Motor Manufacturing | 413 |
| Colusa County | PG&E Delevan Compressor Station | 387 |
| Bay Area | Allied Waste Industries | 377 |
| San Joaquin Valley Unified | Wood Colony Millworks | 342 |
| North Coast Unified | Samoa-Pacific Cellulose, LLC. | 339 |
| San Joaquin Valley Unified | Covanta Stanislaus, Inc. | 339 |
| South Coast | Long Beach City, SERRF Project | 330 |
| Mojave Desert | Ace Cogeneration Co. | 329 |
| Bay Area | Owens Corning | 321 |
| Shasta County | Shasta Paper Company | 317 |
| Mojave Desert | Southern California Gas Co. | 311 |
| Bay Area | Gilroy Energy Center, LLC. | 311 |
| Antelope Valley | Granite Construction Inc., Littlerock | 297 |
| South Coast | Tabc, Inc. | 296 |
| San Diego County | Duke Energy-South Bay Power Plant | 294 |
| South Coast | Tomkins Industries Inc. | 293 |
| South Coast | MCP Foods Inc. | 291 |
| South Coast | Reynolds Metals Co. (EIS Use) | 288 |
| Santa Barbara County | Orcutt Hill I.C. Engines | 279 |
| Bay Area | Ball Metal Beverage Container | 279 |
| San Joaquin Valley Unified | Styrotek Inc. | 273 |
| Mojave Desert | AFFTC/Air Force Research Laboratory | 271 |
| San Joaquin Valley Unified | Star Building Systems | 269 |
| Bay Area | Owens Brockway Glass Container | 254 |
| Shasta County | Pacific Gas & Electric | 254 |
| Mojave Desert | Speedcut | 250 |
| | | **140,038** |

## C. ARCHITECTURAL COATINGS

### 1. Background

Architectural coatings are coatings that are applied to stationary surfaces, such as walls, roofs, and pavement for the purpose of providing a protective barrier or a functional or decorative marking to that surface. Traditional examples include paints, primers, stains and varnishes, but architectural coatings may also include products such as industrial maintenance coatings, traffic markings, roof coatings, and swimming pool coatings. Emissions of VOCs from architectural coatings accounted for roughly 138 tons per day (including thinning and cleanup) in California in 2001.

In California, districts develop, adopt, and enforce stationary source rules within their jurisdictions to reduce emissions in order to achieve and maintain State and federal air quality standards. The districts have the primary responsibility for controlling emissions from architectural coatings, and have been regulating these products since the 1970s. The ARB's role in the regulation of architectural coatings has been to provide technical assistance to the districts in the form of industry surveys and research. The survey data form the basis of the emissions inventory for architectural coatings. The ARB has also provided guidance to the districts through the development and adoption of a suggested control measure (SCM) for architectural coatings. The original SCM was adopted in 1977, and was amended in 1985, 1989, and 2000.

The development of the 2000 SCM (ARB, 2000a; ARB, 2000b; ARB, 2000c) included a two year public process. Since 2000, ARB staff has been assisting districts throughout the State in adopting their architectural coatings rules based on the SCM. To date, 18 districts have adopted the 2000 SCM.

In addition to the 2000 SCM and the most recent 2001 industry survey, the ARB has worked with industry and the districts on a variety of technical topics relating to the regulation of architectural coatings. Recent subjects include implementing an averaging compliance option, performing technology assessments for category limits as they become effective, and investigating the feasibility of reactivity-based limits.

### 2. Applicability Threshold

Fees will be assessed on those manufacturers whose VOC emissions, from sales of architectural coatings products in California, are equal to or greater than 250 tons per year in 2001. Fees will be based on the actual quantity of VOC emissions.

### 3. Methodology for Determining VOC Emissions for Architectural Coatings

The ARB conducts periodic surveys of the architectural coatings industry to determine the volumes and emissions of coatings sold by individual manufacturers in California, and collects, among other statistics, the VOC contents associated with those products. Companies determine the VOC contents through formulation data or through use of the

U.S. Environmental Protection Agency's (U.S. EPA) Method 24 test method. The most recent survey was performed in 2001, and collected data on calendar year 2000 sales (ARB, 2003).

To determine the total VOC emissions attributable to a manufacturer's products, the following calculation is used:

[VOC emissions, tons/year] = [VOC Actual, grams/liter] x [Sales, gallons/year] x [1 ton/907,180 grams] x [3.785 liters/gallon]

where VOC Actual is defined as: $VOC_{Actual} = \frac{W_{vm} - W_w - W_e}{V_c}$

and

| | | | |
|---|---|---|---|
| | $W_{vm}$ | = | Total weight of volatile materials (VOC + water + exempt compounds) in the coating, in grams |
| | $W_w$ | = | Weight of water in the coating, in grams |
| | $W_e$ | = | Weight of exempt compounds in the coating, in grams |
| | $V_c$ | = | Total volume of the coating, in liters |

VOC Actual is also known as VOC Material.

The total VOC emissions for a manufacturer's sales in California is determined by summing the VOC emissions calculated for each product.

In cases where a parent company consists of a series of subsidiaries, the parent company is subject to fees if the total VOC emissions from all of the subsidiaries is greater than or equal to 250 tons per year.

Since the fee assessments are based on calendar year 2001 emissions, the year 2000 VOC emissions reported for a manufacturer's product(s) were adjusted as follows:

a) VOC emissions were reduced assuming the manufacturer met the July 2001 South Coast Air Quality Management District's (SCAQMD) VOC limit for flat coatings;

b) For manufacturers that did not reformulate their flat coatings to meet SCAQMD's 2001 VOC limit because they used the averaging option under SCAQMD's architectural coatings rule (SCAQMD, 2002), the VOC emissions were then increased to account for these manufacturers' flat coatings above the limit; and

c) The resulting manufacturers' emissions were then increased by multiplying the adjusted emissions by the rate of growth of the architectural coatings inventory between calendar years 2000 and 2001.

This rate of growth is approximately one percent, and it is primarily based on growth in dwelling units.

Table 3 shows the list of architectural coatings manufacturers subject to the proposed fee regulations and their 2000 and 2001 emissions. As shown in Table 3, the emissions estimated for 2001 are very similar to the reported emissions for 2000.

The fee per ton and the list of affected manufacturers for the 2003-2004 fiscal year are preliminary.

**Table 3**
**List of Architectural Coatings Manufacturers Subject to the Proposed Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations**

| Count | Company Name | Parent Company | Notes | Total Statewide Emissions in 2000 (Includes Quarts) TPY | Adjusted Total Statewide Emissions in 2001 (Includes Quarts) TPY |
|---|---|---|---|---|---|
| 1 | Sherwin-Williams Co. | | | 4,586 | 4,613 |
| 2 | Masco Corporation | | | 4,395 | 4,383 |
| | Behr Process Corp. | Masco | *1* | *3,521* | *3,500* |
| | Masterchem Industries | Masco | *1* | *874* | *883* |
| 3 | Dunn-Edwards | | | 3,789 | 3,827 |
| 4 | Smiland Paint | | | 3,649 | 3,679 |
| 5 | ICI Paints | | | 3,252 | 3,281 |
| 6 | RPM, Inc. (total) | | | 3,221 | 3,255 |
| | Carboline Company | RPM | *1* | *73* | *74* |
| | The Euclid Chemical | RPM | *1* | *4* | *4* |
| | Plasite | RPM | *1* | *54* | *55* |
| | Rust-Oleum | RPM | *1* | *728* | *736* |
| | Stoncor Group, Inc. | RPM | *1* | *84* | *85* |
| | Tremco Incorporated | RPM | *1* | *1,002* | *1,012* |
| | William Zinsser & Co. | RPM | *1* | *1,276* | *1,289* |
| 7 | Frazee Industries | | | 3,042 | 3,021 |
| 8 | Kelly-Moore Paint | | | 2,314 | 2,338 |
| 9 | Henry Company | | | 1,226 | 1,238 |
| 10 | Ace Hardware | | | 980 | 966 |
| 11 | TMT Pathway LLC | | | 911 | 920 |
| 12 | Benjamin Moore & Co. | | | 813 | 821 |
| 13 | Vista Paint Corporation | | | 609 | 615 |
| 14 | PPG Industries, Inc. | | | 562 | 568 |
| 15 | Duckback Products | | | 497 | 502 |
| 16 | Valspar Corporation | | | 462 | 466 |
| 17 | United Gilsonite | | | 439 | 444 |
| 18 | Gardner-Gibson, Inc. | | | 434 | 438 |
| 19 | Tropical Asphalt L.L.C. | | | 403 | 408 |
| 20 | Gemini Industries, Inc. | | | 391 | 395 |
| 21 | Evr-Gard Coatings | | | 371 | 367 |
| 22 | Parks Corporation | | | 285 | 288 |
| 23 | Performance Coatings | | | 274 | 277 |
| 24 | NCP Coatings, Inc. | | | 248 | 251 |
| *Notes: 1 – Not included in total at bottom* | | **Total:** | | **37,154** | **37,361** |

## D. CONSUMER PRODUCTS

### 1. Background

As part of the 1988 California Clean Air Act, the California State Legislature gave the ARB the authority and responsibility to achieve the maximum technologically and commercially feasible reactive organic gas (ROG) emission reductions from consumer products. For the purposes of the consumer products element of this report, ROG and VOC are equivalent.

A consumer product is defined as a chemically formulated product used by household and institutional consumers. Consumer products include, but are not limited to: detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products such as antiperspirants and hairsprays; home, lawn, and garden products; disinfectants; sanitizers; automotive specialty products; and aerosol coatings.

The consumer products industry is a dynamic industry, comprised of large and small manufacturers, processors, and marketers of consumer products. It provides households, institutions, and industrial customers with the products that are used in their everyday lives.

Consumer products are a significant source of VOC emissions in California and contribute to the formation of both ground level ozone and PM10, which are two of the criteria air pollutants of greatest concern in California. Although each consumer product may seem to be a small source of emissions, the cumulative use of these products by nearly 35 million Californians results in a significant quantity of VOC emissions. The aggregated mass of VOCs emitted during use, the statewide distribution of consumer products, and the proportional relationship between consumer products sales and population all contribute to making consumer products one of the largest categories of non-vehicular, man-made VOC emissions in California. The VOC emissions from consumer products accounted for about 265 tons per day in California in 2001.

Additionally, pursuant to California HSC section 39650 et. seq., the ARB is required to identify and control toxic air contaminants (TACs). Section 39655 defines a TAC as "... an air pollutant which may cause or contribute to an increase in mortality or serious illness, or which may pose a hazard to human health." Some types of consumer products also contain compounds identified as TACs. Examples of TACs that are used in consumer products include solvents such as trichloroethylene (TCE) and toluene, which are also VOCs. Other examples of TACs used in some consumer products are methylene chloride (MeCl) and perchloroethylene (Perc), which are specifically exempted from the consumer products regulations' VOC definitions in recognition of their very low ozone-forming capability. The Consumer Products Regulations (ARB, CP Reg) and the Automotive Maintenance and Repair Activities Airborne Toxic Control Measure for Emissions of Chlorinated Toxic Air Contaminants (ARB, 2000d) have taken steps to eliminate MeCl, Perc, and TCE in many consumer products. However, there

are still some categories of products containing TACs, such as paint removers and strippers, which may need to be evaluated in the future.

2. Applicability Threshold

Pursuant to California HSC section 39613, the ARB is to impose a fee for any consumer product, as defined by section 41712, sold in California if a manufacturer's total sales of consumer products will result in the emission in California of 250 tons per year or greater of VOCs. It should be noted that the applicability threshold is based solely on the VOCs emitted from the use of consumer products in California and does not include emissions resulting from the manufacturing process. How VOC emissions are attributed to individual consumer products manufacturers is discussed below.

3. Methodology for Determining VOC Emissions for Consumer Products Manufacturers

The ARB maintains a VOC emissions inventory for consumer products and aerosol coatings. This inventory was developed by periodically conducting detailed surveys of the consumer products industry. These surveys gather comprehensive data on the formulations and sales of consumer products and provide economic information on the manufacturers, retailers, and private labelers as well. Not only do they form the basis of our consumer products VOC emissions inventory, but formulation information from these surveys has allowed ARB to develop regulations that achieved needed emission reductions while not compromising the technical or commercial feasibility of the products. Emission totals, on a per-company basis, were developed for the 2001 base year using data from these surveys.

Our current consumer products VOC emissions inventory is based on information gathered in the 1997 ARB Consumer and Commercial Products Survey (ARB, 1997 CP Survey) and the 1997 ARB Aerosol Coating Survey (ARB, 1997 AC Survey). We are currently conducting the 2001 Consumer Products and Commercial Products Survey (ARB, 2001 Survey), but the 2001 Survey only covers 48 categories of the inventory and is still in the compilation process. Therefore, the 1997 surveys represent the latest and most comprehensive information available. Changes were made to both sales and emissions in order to reflect population growth as well as VOC standards taking effect between 1997 and 2001. We discuss below the specific adjustments made to 1997 data to create a "2001 Inventory."

The ARB developed a per-company emissions determination for 2001 using information gathered from the ARB 1997 CP Survey and Aerosol Coating Surveys (ARB, 1997 AC Survey). The ARB 1997 CP Survey gathered information on 100 categories of consumer products. While it is recognized that these categories by no means reflect the entirety of the consumer products inventory, information gathered during the comprehensive 1990 U.S. EPA Consumer Products Survey indicated that these 100 categories represented all but about 20 tons per day of the VOC emissions from consumer products. This 20 tons per day represents the "small categories," which are

comprised of hundreds of minor product categories such as toothpastes, hair depilatories, eye-liners, and many specialty products. Companies selling products in these categories range from small to large, many of which also sell products in some of the 100 categories that were surveyed. Since the emissions from these categories are individually small, the emissions attributed to the companies selling within these categories are likewise small. Therefore, gathering data for companies selling products in the small categories would not be expected to significantly change the emissions of companies over the 250 ton per year threshold.

The following list reflects specific changes made to the consumer products data set:

a) The 1997 sales data for consumer products were grown using California Department of Finance population data for 1997 and 2001. These data show approximately a 1.3 percent increase in population per annum for four years.

b) All VOC standards that took effect during these years were acknowledged by assuming the VOC content for products that were above the respective standard had been formulated to the VOC limit for the category. However, not all products were adjusted to the VOC limit for their respective category. Since the survey was conducted for VOC emissions inventory purposes, many products were reported that are under ARB jurisdiction but for various reasons are excluded from the VOC standards. Frequently these are specialty products. Products that did not appear to be subject to the standard did not have their VOC content adjusted. A list of the limits that took effect is provided below.

| Category | VOC Limit (% by Weight) |
|---|---|
| Carpet and Upholstery Cleaners | |
| Aerosols | 7 |
| Non-aerosols (ready to use) | 3 |
| Non-aerosols (dilutable) | 0.1 |
| Hair Sprays | 55 |
| Crawling Bug Insecticide (All forms) | 20 |
| Personal Fragrance Product | |
| With 20 percent or less fragrance | 75 |
| With more than 20 percent fragrance | 65 |
| Spot Removers | |
| Aerosols | 25 |
| Non-aerosols | 8 |

(Source: ARB, CP Reg)

c) Non-complying products that were clearly subject to the VOC standard for their category were adjusted to the VOC limit if they were being sold within a "sell-through" period. State law and the consumer products regulation grant manufacturers a three-year "sell-through" period, during which products manufactured prior to the effective date of the VOC limit for a particular category may continue to be sold in California. This provision allows retailers time to sell off any remaining "non-compliant" products that may be warehoused or on their store shelves, and is enforceable by date codes that must be present on all consumer products. This adjustment to the VOC limit is justified because most consumer products do not remain on store shelves for more than one year.

d) Fragrances that were already on the market up until the time of the Phase II Consumer Products Regulation (ARB, 1991) are exempt from the VOC limits (i.e., the so-called "grandfather clause"). The regulation was intended to target new products being brought to market. This grandfather clause was acknowledged in adjustments for sell-through in the fragrance categories. Adjustments were made only for products with VOC contents between 75-80 percent for the greater than and equal to 20 percent fragrance category and for products between 65-70 percent VOC for the greater than 20 percent fragrance category. If a product contained greater than 80 percent VOC in the less than and equal to 20 percent fragrance category, which had a limit of 80 percent VOC, it was assumed to be selling under the grandfather clause, and its VOC content was not adjusted. Similar logic was used in the greater than 20 percent fragrance category, which had a limit of 70 percent VOC. Limits of 75 and 65 percent VOC took effect in the less than and equal to 20 percent and greater than 20 percent categories, respectively, in 1999.

e) Paint thinners were surveyed in the ARB 1997 CP Survey and their emissions are included with emissions from consumer products sold by these companies. Because the architectural coatings surveys do not cover these products, paint thinner emissions can only be attributed to specific manufacturers through consumer products survey data, and therefore, are included in the consumer products company specific emissions data rather than that for architectural solvent-borne coatings. However, emissions from paint thinners are included in the architectural coatings inventory by assuming that one pint of thinner is used for each gallon of solvent-borne paint. Paint thinners are not included in each architectural coatings company's emissions for the purpose of determining fees.

f) Cold process roof cements, which were surveyed both in the ARB 1997 CP Survey and the 2001 Architectural Coatings Survey (ARB, 2003), were not included with the consumer products emissions. Although the architectural coatings survey only covers products larger than 16 ounces,

most of these products are sold in larger quantities and would be captured in the architectural coatings survey. In addition, since product size is not always listed in the consumer products database, it is difficult to determine the products that were not covered by the architectural coatings survey. Also, some manufacturers consider these products to be adhesives, and as such, are regulated by districts and should not be considered consumer products (see subsection i below).

g) Charcoal lighter fluids were assumed to emit 0.02 pounds VOC per start, with nine starts per quart at 6.9 pounds per gallon.

h) No market coverage adjustments were made to the per-company emissions. These factors are used to adjust the emissions inventory to account for sales and emissions from companies that did not report. They are not applicable to per-company emissions.

i) Many products in the adhesives and sealants categories that were reported in the ARB 1997 CP Survey are packaged in containers greater than 16 ounces and are regulated by the districts rather than the ARB. These larger size products emit approximately 20 tons per day of VOCs. Emissions from these products were not included in the per-company totals.

j) Low vapor pressure (LVP) VOCs are not currently included in the per company emissions for consumer products. Because we did not require speciation of these compounds in our 1997 surveys, we do not at this time have the ability to determine what portion of manufacturer's reported LVP VOC content is likely to evaporate, and therefore did not include these compounds in our emission estimates. With future consumer product surveys, as we gain more information on the types of LVP VOCs and their potential to evaporate, we intend to include in per-company emission estimates the LVP VOCs that are likely to see an atmospheric fate.

The ARB 1997 AC Survey is believed to be an accurate snapshot of the entirety of the aerosol coatings market. No adjustments were necessary to the data set since ARB assumes no growth in this industry statewide until 2001 and no growth in the South Coast until 2010 due to "lock-up" laws. These lock-up laws attempt to address the graffiti problem in the Los Angeles area by requiring vendors of aerosol coatings to market these products from locked shelves, and prohibit sales to minors. These measures have resulted in little or no growth in the sales of these products. Further, no VOC standards took effect between 1997 and 2001; therefore no adjustments to the data were needed. The VOC emissions from companies selling both consumer products and aerosol coatings were combined.

The Mid-term Measures 1994/1995 Consumer Products Survey (ARB, 1994/1995 Survey) gathered information on a subset of the consumer products inventory, most

categories of which were resurveyed in the 1997 Survey. The exceptions to this are the soap categories. Heavy-duty hand cleaners, liquid laundry soaps, and hand dish soap were not resurveyed. The data from the Mid-term Measures 1994/1995 Consumer Products Survey were grown by population to 1997 and incorporated into the inventory. Since some of these data would be seven years old in 2001, and with the poor market coverage in the soaps categories, these data were not included in the per-company emissions totals.

Our preliminary determination of the adjusted 2001 VOC emissions for the 2003-2004 fiscal year shows that there are 54 companies that emit 250 tons or more per year. Companies that reported separately in the 1997 survey had emissions combined if the companies are controlled under a single parent or holding company. These 54 companies sell products covering nearly every sector of the consumer products market, and collectively their emissions comprise nearly 60 percent of the total emissions from consumer products. Table 4 lists the types of industries and the product categories that will be affected by fees. Table 5 lists the affected consumer products manufacturers for the 2003-2004 fiscal year and the preliminary determinations of 2001 emissions. The total combined emissions are 57,600 tons per year.

**Table 4**
**List of Industries with Affected Consumer Products Manufacturers**

| SIC or NAICS Code | Types of Affected Industry or Product Categories |
|---|---|
| 2079 | edible fats and oils |
| 2834 | pharmaceutical preparations |
| 2835 | in vitro and in vivo diagnostic substances |
| 2840; 2874; 5169 | chemicals and allied products |
| 2841 | soaps and other detergents |
| 2842 | special cleaning, polishing, and sanitation preparations |
| 2844 | perfumes, cosmetics, and other toilet preparations |
| 2850 | paints, varnishes, lacquers, enamels, and allied products |
| 2851 | paints and allied products |
| 2879 | pesticides and agricultural chemicals |
| 2891 | adhesives and sealants |
| 2899 | chemical preparations |
| 2992 | lubricating oils and greases |
| 3635 | household vacuum cleaners |
| 5072 | hardware stores |
| 5087 | cosmetics, beauty supplies, and perfume stores |
| 5112 | stationary and office supplies |
| 5122 | drug, drug proprietaries, and sundries |
| 5149 | groceries and related products |
| 5198 | paints, varnishes, and supplies |
| 5199 | nondurable goods |
| 5311 | department stores |
| 5399 | miscellaneous general merchandise stores |
| 5411 | grocery stores |
| 5912 | pharmacies and drug stores |
| 7389 | business services |

**Table 5**
**List of Consumer Products Manufacturers Subject to the Proposed Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations**

| Count | Company Name | Parent Company | Notes | Adjusted Total Statewide Emissions in 2001 TPY |
|---|---|---|---|---|
| 1 | W.M. Barr | | | 5,460 |
| 2 | S.C. Johnson & Son Inc. | | | 4,201 |
| 3 | Sherwin Williams Co. | | | 3,771 |
| 4 | Unilever HPC USA | | | 2,739 |
| 5 | Reckitt Benckiser | | | 2,690 |
| 6 | Perrigo Company Of Tennessee | Cumberland Swan Holdings, Inc. | | 2,355 |
| 7 | RPM, Inc. (total) | RPM, Inc. | | 2,311 |
| | Rust-Oleum Corporation | RPM, Inc. | *1* | 1003 |
| | DAP | RPM, Inc. | *1* | 677 |
| | Bondo/Mar-Hyde Corporation | RPM, Inc. | *1* | 534 |
| | Testor Corporation | RPM, Inc. | *1* | 64 |
| | Kop-Coat , Inc. | RPM, Inc. | *1* | 21 |
| | Chemspec | RPM, Inc. | *1* | 12 |
| | Mohawk Finishing Products, Inc. | RPM, Inc. | *1* | 0 |
| 8 | William Zinsser & Company | | | 2,256 |
| 9 | The Clorox Company | | | 1,898 |
| 10 | Bristol Myers Squibb Company | | | 1,739 |
| 11 | The Valvoline Company | | | 1,691 |
| 12 | Ace Hardware Corporation | | | 1,684 |
| 13 | Proctor & Gamble | | | 1,446 |
| 14 | Willert Home Products, Inc. | | | 1,368 |
| 15 | WD-40 | | | 1,260 |
| 16 | Packaging Service Co., Inc. | | | 1,223 |
| 17 | The Gillette Company | | | 957 |
| 18 | Zep Manufacturing Company | Acuity Specialty Products, Inc. | | 897 |
| 19 | Shell Oil Products US (total) | | | 886 |
| | Pennzoil Products Company/ Pennzoil-Quaker State Company | Shell Oil Products US | *1* | *630* |
| | Blue Coral-Slick 50, Ltd/ Pennzoil-Quaker State Company | Shell Oil Products US | *1* | *256* |
| 20 | Sunnyside Corporation | | | 836 |
| 21 | 3M | | | 822 |

**Table 5 (con't)**
**List of Consumer Products Manufacturers Subject to the Proposed Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations**

| Count | Company Name | Parent Company | Notes | Adjusted Total Statewide Emissions in 2001 TPY |
|---|---|---|---|---|
| 22 | Berryman Products, Inc. | | | 786 |
| 23 | Lilly Industries | | | 775 |
| 24 | Meguiar's Inc. | | | 748 |
| 25 | Penn Champ, Inc | Bissell Homecare, Inc. | | 692 |
| 26 | Lesco | | | 657 |
| 27 | Mary Kay Inc. | | | 656 |
| 28 | Monsanto Co. | | | 606 |
| 29 | Macco Adhesives | ICI Paints | | 585 |
| 30 | Radiator Specialty Company | | | 582 |
| 31 | IPS Corporation | | | 560 |
| 32 | Sebastian International | | | 514 |
| 33 | Alberto-Culver USA, Inc. | | | 469 |
| 34 | American Stores Company | | | 461 |
| 35 | Wal Mart Stores, Inc. | | | 460 |
| 36 | Maintex Inc. | | | 452 |
| 37 | Moc Products Co., Inc. | | | 444 |
| 38 | United Industries Corp. | | | 441 |
| 39 | Coty, Inc. | | | 439 |
| 40 | Triangle Pacific Corporation | | | 404 |
| 41 | Oatey Company | | | 386 |
| 42 | CWC (formerly PCCW) | | | 376 |
| 43 | Sara Lee Household and Body Care USA | Sara Lee Corporation | | 364 |
| 44 | Kar Products | | | 330 |
| 45 | The Valspar Corp. | | | 327 |
| 46 | BASF Corporation | | | 317 |
| 47 | Lamaur Corporation | | | 305 |
| 48 | Revlon Consumer Products Corp. | | | 304 |
| 49 | CRC Industries, Inc | Berwind Group | | 299 |
| 50 | Safeway, Inc. | | | 286 |
| 51 | Volkswagen Of America | | | 284 |
| 52 | Cosmair Inc. | | | 276 |
| 53 | Parfums de Coeur | | | 272 |
| 54 | Avon Products Inc. | | | 253 |
| *Notes: 1- Not included in total at bottom* | | **Total:** | | **57,600** |

# IV.
# ASSEMBLY BILL 10X FEES DISCUSSION

## A. BACKGROUND

Under the proposed 2003-2004 fiscal year State budget, funding for the ARB will be reduced by $12 million from State general fund revenues. The ARB has absorbed $2 million of this proposed reduction through budget reductions of its own, and AB 10X grants the ARB the authority to collect the remaining $10 million through emission based fees. Currently, facilities collectively pay $3 million per year in fees, which are authorized by HSC section 39612. The Governor's Proposed Budget would bring total fees to $13 million per year. The Legislative Analyst's Office (LAO) has also suggested an additional $4.4 million reduction in State general funding for ARB, which would require the imposition of additional fees to recover the LAO suggested funding reduction.

AB 10X establishes the following conditions, which are set forth in HSC sections 39612 and 39613:

- fees can be collected only from facilities and the manufacturers of consumer products and architectural coatings with annual emissions of 250 tons or more per year;
- fees from facilities are collectively capped at $13 million per year, and are to be expended only for the purposes of recovering costs of State programs related to facilities; and
- fees from manufacturers of consumer products and architectural coatings are not capped at any numerical amount, but are to be used solely to mitigate or reduce air pollution in the State created by consumer products and architectural coatings.

## B. STATIONARY SOURCE PROGRAM

In the proposed 2003-2004 fiscal year budget, the ARB is projected to expend $39.6 million on its stationary source program. The sources covered under this program include many diverse sources such as power plants and refineries, manufacturing facilities, gas stations, agricultural and prescribed burning, consumer products, and architectural coatings. A description of the ARB's activities related to the stationary source program budget is included in the Governor's Budget Summary (Governor, 2003a) and the Governor's Proposed 2003-2004 Budget (Governor, 2003b).

To effectively understand the contribution from these sources to California's air quality problems, ARB conducts extensive statewide monitoring of ambient ozone, particulate matter, and carbon monoxide concentrations. In order to understand where the pollution comes from, ARB develops and maintains statewide emission inventories for all sources of air pollutants. ARB also sponsors research on the reactivity of air pollutants and the atmospheric processes that contribute to ozone and particulate

matter formation. The emission inventory and research results are then used in air quality modeling analyses to determine the emissions level necessary to attain the federal and State mandated air quality standards.

1. Facilities

HSC section 39612 currently authorizes the ARB to require districts to impose additional fees on facilities. AB 10X amended section 39612 to lower the threshold emission level from 500 to 250 tons or more per year of any nonattainment pollutant or its precursors. AB 10X also raises the cap on total fees from facilities from $3 million to $13 million per year, and further provides that the total amount of fees collected may be increased by an amount not to exceed the annual percentage change in the California Consumer Price Index.

Several divisions of the ARB perform activities to understand, regulate, and enforce rules for the pollution coming from stationary sources. These divisions include the Stationary Source, Enforcement, Monitoring and Laboratory, Planning and Technical Support and Research Divisions. Collectively, these efforts are an integral and necessary part of mitigating and reducing the emissions from these products.

*Stationary Source Division:* The Stationary Source Division provides support to the stationary source program by: 1) supporting the districts in their efforts to control air pollution from the stationary sources under their jurisdiction; 2) managing a database of Best Available Control Technologies (BACT) to facilitate the transfer of technologies among districts facing growth from similar sources; 3) helping districts comply with federal permit program requirements; 4) developing areawide emission inventories to better direct district resources in their efforts to control air pollution; 5) providing guidance and technical documents evaluating the technological feasibility and control effectiveness of many pollution control methods, giving the districts a technical foundation for rulemaking; and 6) developing suggested control measures to assist districts in developing regulations.

*Enforcement Division:* The Enforcement Division provides support to stationary source programs by: 1) conducting inspections of stationary sources, investigating complaints, and issuing notices of violations; 2) conducting odor and other air quality complaint investigations; 3) evaluating all variances from all districts to ensure compliance with Health and Safety Code requirements; 4) obtaining and analyzing evidence to determine the date of onset, cause, and extent of violations of air pollution regulations; 5) imposing reporting requirements on stationary sources required by a district to install and operate a continuous emissions monitor and on the districts receiving these reports; and 6) reviewing district rules for enforceability.

*Monitoring and Laboratory Division:* The Monitoring and Laboratory Division provides support to the stationary source program by measuring ambient levels of gaseous and particulate (solid and liquid aerosol) criteria and toxic air pollutants. These monitoring efforts are used in determining which areas of the State are nonattainment for the State

and federal ozone, particulate matter, and carbon monoxide air quality standards, and are used to facilitate the identification and control of toxic air contaminants in California.

*Planning and Technical Support Division:* The Planning and Technical Support Division provides support to the stationary source program by: 1) coordinating State Implementation Plan (SIP) related activities for all source types including stationary sources; 2) maintaining and updating the emissions inventories for these sources for incorporation into the SIP; and 3) conducting air quality data analyses, data reporting and modeling to determine the population exposure to ozone and particulate matter, and to determine the effectiveness of ozone, particulate matter, and carbon monoxide attainment strategies for SIP development and implementation.

*Research Division:* The Research Division conducts many studies related to air pollution from stationary sources. Examples include a study of NOx and VOC species profiles for gas fired stationary combustion sources and a study of the transport of emissions from fossil fuel power plants.

2. Consumer Products and Architectural Coatings

AB 10X provides that revenues collected from the imposition of the fee are to be used to mitigate or reduce air pollution in the State created by consumer products and architectural coatings, as determined by the State board, and that the revenues are to be expended solely for those programs. For manufacturers of consumer products and architectural coatings, the legislation does not impose a limit on the amount of fees generated, but does impose a restriction on the use of the fees.

The CCAA gave the ARB the authority to regulate consumer products in 1988. Since that time, the ARB has adopted and is implementing the following regulations to reduce the VOC emissions from consumer products: 1) Antiperspirants and Deodorants (1989); 2) Consumer Products Phase I Amendments (1990); 3) Consumer Products Phase II Amendments (1991); 4) Alternative Control Plan (1994); 5) Midterm Measures Amendments I (1997); 6) Midterm Measures Amendments II (1999); 7) Aerosol Coatings (1995, 1998 and 2000); and 8) the Hairspray Credit Program (1997). The ARB is continuing to develop regulations for consumer products to comply with the statutory mandate to achieve the maximum feasible reduction in VOC emissions from these sources.

Under California law, the primary authority for controlling emissions from architectural coatings is vested in the districts. However, the ARB often provides guidance and other assistance to the districts, including the development of model rules, such as the SCM for architectural coatings. Widespread regulation of architectural coatings began in 1977, when the ARB approved a SCM for architectural coatings. A number of districts adopted architectural coatings rules based on this SCM and on revisions to the SCM in 1985 and 1989. Given advances in coatings technologies and the need for further emissions reductions to attain health-based air quality standards in many districts, the ARB, in cooperation with the districts, evaluated the VOC content limits in the 1989 SCM and updated the SCM in 2000.

Updating the SCM was a two year effort and included the following activities: 1) a comprehensive survey of architectural coatings; 2) regular meetings with districts, U.S. EPA, and industry representatives; 3) an evaluation of durability and performance testing in various coating categories; 4) an evaluation of U.S. EPA's national architectural coatings rule; 5) technical analyses of all the coating categories proposed in the SCM; 6) an evaluation of alternatives to the SCM in a final program environmental impact report (ARB, 2000c); and 7) an analysis of the cost impacts. ARB staff also conducted eight public workshops and meetings with individual manufacturers and other interested parties from May 1998 through March 2000.

As discussed above, ARB performs monitoring, emission inventory development and maintenance, research, modeling, and other activities in support of understanding the contribution of these sources to California's air quality problems. In addition, several divisions of the ARB perform other activities to understand, regulate, and enforce rules for the pollution coming from consumer products and architectural coatings. These divisions include the Stationary Source, Monitoring and Laboratory, Enforcement, Research, and Planning and Technical Support Divisions. Collectively, these efforts are an integral and necessary part of mitigating and reducing the emissions from these products.

*Stationary Source Division:* The Stationary Source Division (SSD) is responsible for: 1) conducting surveys to determine the VOC emissions from consumer products and architectural coatings; 2) developing regulations to reduce the VOC emissions from consumer products, and SCMs to reduce the VOC emissions from architectural coatings; 3) developing new consumer products elements for the State Implementation Plan (SIP) for ozone; and 4) implementing statewide regulations for consumer products and implementing a statewide averaging program for architectural coatings. To implement the consumer products regulations, SSD staff: 1) performs technology assessments for upcoming standards; 2) issues product determinations; 3) reviews and approves innovative product exemptions; 4) reviews and approves alternative control plans; 5) reviews and approves variance applications; 6) develops and submits SIP amendments to the U.S. EPA for approval; and 7) works with the Enforcement Division (ED), Monitoring and Laboratory Division (MLD) and Office of Legal Affairs (OLA) to enforce the regulations. SSD staff also works with the Research Division staff to conduct reactivity research and other research related to VOC emissions, and to determine the potential impacts of exempting compounds from the VOC definitions for consumer products and architectural coatings.

To implement the 2000 SCM for architectural coatings, SSD staff: 1) assists districts to adopt the SCM (18 districts have adopted the SCM to date); 2) reviews and approves district rules and submits them to the U.S. EPA for approval; 3) performs technology assessments of upcoming standards; 4) reviews and approves statewide averaging plans for architectural coating rules; and 5) works with the ED, MLD, and the OLA to enforce the statewide averaging program. The ARB is currently implementing the statewide averaging provision in the 2000 SCM at the request of the districts. The ARB plans to update the 2000 SCM when we complete our evaluation of the feasibility of

achieving further VOC reductions through mass-based or reactivity-based control strategies. This update is expected to be a major undertaking that will require considerable ARB resources.

*Enforcement Division:* The Enforcement Division provides support to the consumer products and architectural coatings programs by: 1) collecting products for laboratory analysis to determine compliance with the consumer products regulations and the averaging provision of district architectural coatings rules; 2) writing advisories to interpret the regulations; 3) working with SSD on surveys; and 4) working with ARB's OLA to issue notices of violation to manufacturers that do not comply with the consumer products regulations.

*Monitoring and Laboratory Division:* The Monitoring and Laboratory Division provides support to the consumer products and architectural coatings programs by: 1) developing test methods to measure the VOC content of consumer products and architectural coatings, and to measure the reactivity of aerosol coatings; 2) testing consumer products to determine compliance with VOC limits; 3) testing aerosol coatings to determine compliance with reactivity limits; and 4) testing architectural coatings to determine compliance with the averaging provision in district rules. These efforts are in addition to MLD staff conducting ambient air monitoring to determine which areas of the State are nonattainment for the State and federal ozone and particulate matter air quality standards.

*Planning and Technical Support Division:* The Planning and Technical Support Division (PTSD) provides support to the consumer products and architectural coatings programs by: 1) maintaining and updating the emissions inventories for these sources for incorporation into the SIP; SIPs are air quality plans that are updated frequently to reflect the latest advances in science and control technologies and are required to show how nonattainment areas will attain ambient air quality standards; and 2) conducting air quality modeling to determine the population exposure to ozone and particulate matter, and to determine the effectiveness of ozone and particulate matter attainment strategies for SIP development and implementation.

## C. FEES STRUCTURE

### 1. Emission Inventory Contribution from Stationary Sources

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 regulation. 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 regulation.

*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 regulation, 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 categories are 748,141 tons per year in 2001. The remaining stationary source emissions of 773,318 tons per year are from those sources that the stationary source program focuses resources on controlling emissions.

Of the 773,318 tons per year of emissions from applicable sources in 2001, 674,138 tons per year, or 87 percent, are emitted from facilities, consumer products, and architectural coatings. The remaining 99,180 tons per year are emitted from other

areawide sources such as agricultural and prescribed burning not subject to the fee regulation. Therefore, based on the emission inventory contribution of facilities, consumer products, and architectural coatings, these sources could reasonably be expected to support up to $34.5 million or 87 percent of the State's annual expenditure of $39.6 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, up to the legislative restriction of $13 million per year; and

- consumer products and architectural coatings could be assessed up to 19 percent of total program costs, or approximately $7.6 million in fiscal year 2003-2004.

2. Uniform Fees Structure

The staff proposal would apply uniform fees (on a dollar per ton basis) to all facilities and the manufacturers of consumer products and architectural coatings with annual emissions of 250 tons or more per year. If the fiscal year 2003-2004 budget is approved with the proposed $13 million in fee revenue from these sources ($13.4 million with three percent adjustment), a fee of $56.98 per ton would be needed. Based on the available emission estimates this would include $8 million from facilities and $5.4 million from manufacturers of consumer products and architectural coatings. If the Legislative Analyst's proposal to collect an additional $4.4 million in fees is adopted into the approved budget, a fee of $76.26 per ton would be needed to collect a total of $17.4 million ($17.9 million with three percent adjustment). Based on the available emission inventory this would include $10.7 million from facilities and $7.2 million from manufacturers of consumer products and architectural coatings. These amounts are within the maximums allowed by the fee legislation and the relative shares discussed previously (the cap of $13 million for facilities or $7.6 million for consumer products and architectural coatings).

Staff believes that applying uniform fees to the affected source categories is the fairest and most equitable approach to implement the fee program. However, with this approach, the total fees for a category are based on its billable emissions rather than its relative contribution to the total stationary source inventory. Under AB 10X, the billable emissions from a category are determined by the 250 tons per year threshold, and, for stationary sources, the pollutant or precursor emitted and the attainment designation of the area in which the source is located for that pollutant or precursor. For example, although consumer products and architectural coatings contribute 19 percent or 147,737 tons per year to the stationary source inventory, they account for 40 percent of the total fees based on their billable emissions (94,961 tons per year). This is the case because the consumer product and architectural coating manufacturers that exceed the 250 tons per year threshold account for the majority of emissions from these

categories. On the other hand, although facilities contribute 68 percent or 526,401 tons per year to the stationary source inventory, they account for 60 percent of the total fees based on their billable emissions (140,038 tons per year). This is the case, because there are many small stationary point sources (less than 250 tons per year) that account for the majority of emissions from this category. With a uniform fee approach, the large emitters in each category are paying the same amount for each ton of pollution. Staff believes that this is consistent with the Legislature's intent to have large emitters defray some of the costs of the ARB's stationary source program.

# V.
# 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. the 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. Staff was able to identify only one potential adverse environmental impact, the potential for increased use of toxic air contaminants. This potential impact is discussed below, along with the reasons why staff concluded that this impact is not likely to occur.

### 1. Potential Environmental Impacts from Increased Use of Toxic Air Contaminants

A number of ingredients currently used in consumer products have been identified as Toxic Air Contaminants (TACs), some of which are exempted as VOCs because of their minimal photochemical reactivity. It is possible that imposing fees on VOC emissions may give manufacturers the incentive to reduce their VOC emissions by switching to more toxic, non-VOC solvents. While possible, there are many reasons why we believe this will not occur.

Non-VOC solvents that are TACs are rarely used in architectural coatings but are used in some categories of consumer products. The potential for their increased use has been a concern with each amendment of the consumer products regulation. To address this issue, ARB conducts an annual survey whereby the exempt VOC TACs, methylene chloride and perchloroethylene, are tracked. This has allowed the ARB to follow their use and take corrective action when needed. For example, in aerosol coatings, aerosol adhesives, and automotive maintenance and repair products, use of methylene chloride, trichloroethylene, and perchloroethylene are now prohibited. These measures have effectively deterred companies from using these exempt TACs. In addition, similar reporting requirements exist in all district architectural coatings rules based on the 2000 SCM.

Ethylene glycol is a TAC and is the second most used VOC in water-borne architectural coatings. However, its use will decrease as lower VOC limits come into effect. In addition, many companies already use propylene glycol, which is not a TAC, as a functional replacement for ethylene glycol in their coatings. We do not believe the proposed fee regulations will result in more ethylene glycol use.

There are other important deterrents that affect manufacturers' ability to use these exempt TAC solvents. Beyond the categories where their use is already prohibited, there are only very limited applications (such as in paint strippers) in which these ingredients are suitable for use due to their toxicity. They are never used in personal care products and only rarely used in household cleaning products. We believe their toxicity will continue to limit their inclusion in product formulations.

Labeling requirements under Proposition 65, California's Safe Drinking Water and Toxic Enforcement Act of 1986 (HSC 25249.6), are an additional deterrent from use of these TACs. Use of these TACs is also limited by low permissible exposure limits set by the United States Occupational Safety & Health Administration, and corporate policies against the use of TACs due to health and safety concerns.

2. Summary

Overall, staff anticipates that the environmental impacts resulting from this regulation will be minimal. There may be an environmental benefit due to reductions in the use of VOCs, but these are not expected to be large. Because many VOCs are TACs, it is possible that a reduction in the use of TACs may occur as well. A possible adverse environmental impact is the potential for an increase in the use of VOC-exempt TACs. As discussed above however, we consider this very unlikely given control strategies that prohibit their use in certain categories, and because they are only suitable for use in limited applications. Annual surveys continue to track their use, and should increases in the use of perchloroethylene or methylene chloride occur, additional measures will be taken to prohibit or limit their use.

B. ECONOMIC IMPACTS

1. Public Agencies

Local agencies will incur some costs as a result of the proposed regulation. 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 proposed 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 facility fees for fiscal year 2003-2004. 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 fees. The combined costs to these local agencies for fiscal year 2003-2004 are expected to range from $95,000 to $128,000. 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. A federal facility has been identified that would be subject to the fees. Federal facilities are required to comply with all State and local requirements relating to the control and abatement of air pollution to the same extent as private persons. (Clean Air Act 118, 42 U.S.C. section 4218.) This includes the payment of permit fees. (United States of America v. South Coast Air Quality Management District (1990) 748 F.Supp. 732; State of Maine v. Department of the Navy (1988) 702 F. Supp. 322.)

2. Businesses

The proposed regulations would require the collection of fees from specified facilities based on the sources' emissions. Fees would also be collected from manufacturers of architectural coatings and consumer products. The fee per facility and manufacturer 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 to an individual facility or manufacturer is estimated to range from a minimum of approximately $14,000 to a maximum of approximately $758,000 (see Appendix E).

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 regulation on businesses is included in Appendix D.

The staff believes that adoption of these regulations will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. In fiscal year 2003-2004, a total of 173 businesses are affected by the proposed fee regulations. Of the affected businesses, 95 are nonvehicular sources, 54 are consumer products manufacturers, and 24 are architectural coatings manufacturers. Among the operators of these businesses are

major oil and gas producers, utilities, major manufacturing enterprises, and large manufacturers and sellers of architectural coatings and consumer products. About 13 businesses or about 8 percent of the total affected businesses are considered to be small businesses. It is estimated that the average return on owners' equity for all affected businesses for which financial data are available would have declined by only about 0.02 to 0.03 percent in fiscal year 2003-2004. 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.

## 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 options:

1) Assess fees on a variable dollar per ton by industry type (facilities, architectural coatings manufacturers, and consumer products manufacturers).

   This option would divide up the total fees to be collected by category emissions. Thus, facilities, architectural coatings manufacturers, and consumer products manufacturers would each be billed some fraction of the total fees to be collected based on their share of the total emissions. Using this approach to divide the fees among these three sources would result in the billed stationary point sources paying about three times as much on a dollar per ton basis as the architectural coatings manufacturers. Staff believes that applying uniform fees to the affected source categories is the fairest and most equitable approach to implement the fees program. With a uniform fee approach, the large emitters in each category are paying the same amount for each ton of pollution. Staff believes that this is consistent with the Legislature's intent to have large emitters defray some of the costs of the ARB's stationary source program. Further discussion of a uniform fee approach is contained in Chapter IV. ARB staff recommends that this option be rejected, and the more equitable basis of an equal dollar per ton fee be used.

2) Assess billable tons as only those tons at or in excess of the 250 ton per year threshold.

   This option would charge a facility or company only for those tons of pollution emitted at or in excess of the 250 ton per year threshold. For example, if a company emitted only 250 tons of VOCs in the billing year, they would not be assessed 250 billable tons, but only one billable ton (250 - 249 = 1), while a company emitting 500 tons of VOC would be

billed for 251 tons (500 - 249 = 251). In this example, we can see that the company emitting double the pollution is not paying double the fees. Staff recommends this option be rejected in favor of a fairer basis of charging a facility or company for all of its emissions over the threshold, not just for the incremental difference over the 250 tons per year threshold.

3) Do not collect the full budgeted fee amount.

ARB has absorbed a $2 million budget cut, and is proposing to collect only $10 million from facilities and consumer product and architectural coating manufacturers to cover the $12 million General Fund reduction. To go beyond this $2 million dollar cut would restrict the ARB's existing ability to mitigate and control pollution thereby endangering public health. Staff recommends that only the $2 million cut be absorbed.

## 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.

## VI.
## RECOMMENDATION

To provide the funding authorized by Assembly Bill 10X, the staff recommends that the Board adopt the proposed amendments to the California Clean Air Act Nonvehicular Source Fee Regulations to provide for the collection of fees for fiscal year 2003-2004 and subsequent fiscal years. This would be effected by adopting new sections 90800.75, 90800.9 and 90804; and amending sections 90800.8, 90801, 90802, and 90803, title 17, CCR, as contained in Appendix A.

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# Appendix A

## PROPOSED AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

# PROPOSED REGULATION ORDER

## Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations

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

Adopt new sections 90800.75, 90800.9 and 90804, and amend sections 90800.8, 90801, 90802, and 90803, Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 3.8, to read as follows:

## Subchapter 3.8. ~~California Clean Air Act~~ Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations

*[No changes are proposed to sections 90800.5 – 90800.7, which specify the fee requirements for the 1994-95, 1995-96, and 1996-97 fiscal years.]*

### § 90800.75. Operative Date.

The amendments to this subchapter adopted in 2003 shall become operative on the later of the following dates:

(a) the date on which the amendments are filed with the Secretary of State by the Office of Administrative Law, or

(b) the 91st day after adjournment of the special session of the Legislature at which Assembly Bill 10X (Stats. 2003, chapter 1X) was passed.

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; Section 9600(a), Government Code; Article 4, Section (8)(c)(1), California Constitution.

### § 90800.8. Fee Requirements for the ~~1997-1998~~ 2003-2004 and Subsequent Fiscal Years.

(a) *Applicability.*

(1) This subchapter applies to:

(A) Any facility that emits 250 tons or more in a calendar year 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) ~~(1) 1997-1998~~ 2003-2004 Fiscal Year.

(A) *Notification to Districts, Facilities, Consumer Products Manufacturers, and Architectural Coatings Manufacturers.* No later than ~~15~~ 30 days after the operative date of this section, the eExecutive ~~e~~Officer shall provide written notice to each district, facility operator, consumer products manufacturer, and architectural coatings manufacturer of his/her ~~1997-1998~~ 2003-2004 fiscal year fee determinations, as of ~~January 29, 1998~~ July 24, 2003, for all of the items in section (c)(1) through ~~(c)(6)~~ (c)(7). The written notices may reflect modifications to the determinations based on information received by the eExecutive ~~e~~Officer after ~~January 29, 1998~~ July 24, 2003, in which case the notices shall include a brief explanation of the modifications.

(B) ~~*Collection and*~~ *Transmittal of the Fees to the State Board.* Each ~~district~~ 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 ~~1997-1998~~ 2003-2004 fiscal year shall transmit that dollar amount to the state board ~~by June 15, 1998,~~ for deposit into the Air Pollution Control Fund within 60 days after receipt by the operator or manufacturer of the fee determination notice. ~~The amount transmitted shall be collected by the district from the facilities in the district that are identified in the executive officer's notification as meeting the criteria in section (c)(4).~~ The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(3) ~~(2) *1998-1999*~~ *2004-2005 and Subsequent Fiscal Years.* Sections (b) through (e) apply for the ~~1998-1999~~ 2004-2005 fiscal year and for any subsequent fiscal year in which the state board is authorized by state law to ~~require districts to~~ impose ~~additional permit~~ fees on nonvehicular sources ~~within their jurisdiction~~, 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 eExecutive eOfficer in writing.

(c) *Preliminary Determination of Fees to be Assessed.* No later than May 1 of the preceding fiscal year, the eExecutive eOfficer shall make preliminary determinations of all of the items in section (c)(1) through ~~(c)(6)~~ (c)(7), 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 eExecutive eOfficer by June 1 of the preceding fiscal year will be considered by the eExecutive eOfficer in reaching final determinations.

(1) *Needed Revenues.* 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 ~~1997-1998 and 1998-1999~~ 2003-2004 fiscal years ~~shall not exceed $3,000,000~~ the amount specified in subdivision (f)(1) of Health and Safety Code section 39612 or such other amount as specified by the State Legislature. ~~per fiscal year.~~ 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 ~~Revenues~~ Balance.* The amount ~~of revenues~~ collected in the previous fiscal year in excess of or less than the needed revenues for that fiscal year.

(4) *Emissions of Facilities Subject to Fees.* For each district, (A i) the name and address of each permitted facility that emitted ~~500~~ 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 (B ii) 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

~~500~~ 250 tons or more in the year. 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).

~~(5)~~ (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 ~~revenues~~ balance determined in accordance with section (c)(3)

E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of ~~500~~ 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).

~~(6)~~(7) *Amount to be Remitted From Each ~~District~~ Facility Operator, Consumer Products Manufacturer, or Architectural Coatings Manufacturer.* ~~For each district, t~~The dollar amount to be transmitted to the state board, calculated in accordance with the following formula:

Amount to be transmitted = F * D

Where

F = Fee per ton as calculated in accordance with section ~~(e)(5)~~ (c)(6)

D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of ~~500~~ 250 tons or more from ~~all~~ a permitted facility ~~facilities in the district~~ 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 July 1 of the fiscal year, after considering any comments submitted by June 1 of the preceding fiscal year, the eExecutive eOfficer shall make final determinations of all of the items in section (c)(1) through ~~(e)(6)~~ (c)(7), and shall provide a written fee determination notice ~~of the 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).

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

(1) Each ~~district~~ 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 ~~by January 1 of the fiscal year,~~ 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 ~~district~~ state board from the facilities and manufacturers ~~in the district that are~~ identified in the eExecutive eOfficer'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), ~~a district~~ the Executive Officer shall, for any facility identified by the eExecutive eOfficer as meeting the criteria in section (c)(4) after the eExecutive eOfficer's notification under section (d), ~~transmit to the state board~~ 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 ~~(e)(5)~~ (c)(6) multiplied by the total tons of the facility's emissions, during the calendar 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 ~~500~~ 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 ~~transmitted~~

~~shall be~~ collected by the ~~district~~ state board from the newly identified facility~~, and~~ 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, ~~and~~ 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, ~~and~~ 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 July 1, 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 calendar 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) ~~(a)~~ "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:

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; or

(B) 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

(C) the company has the power to exercise, directly or indirectly, a controlling influence over the management or policies of the other company.

(j)~~(b)~~ "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)~~(d)~~ ~~For the purposes of this subchapter, "n~~ "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<br>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)~~(c)~~ "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)~~(e)~~ "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:

(A) 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:

1. cyclic, branched, or linear, completely fluorinated alkanes;

2. cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

3. cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

4. sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine; and

(B) 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, ~~and~~ 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, ~~and~~ 39612, and 39613, Health and Safety Code.

**§ 90802. Fee Payment and Collection.**

(a) ~~Each district~~ The Executive Officer shall notify and assess the operator of each facility, each consumer products manufacturer, and each architectural coatings manufacturer subject to ~~permit~~ fees, as provided for in these regulations, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator or manufacturer of the fee ~~assessment~~ determination notice.

(b) *Late Fees.* ~~Each district~~ 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 ~~assessment~~ determination notice. The ~~district~~ Executive Officer shall set the late fee in an amount sufficient to pay the ~~district's~~ 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 the ~~California Clean Air Act of 1988, related to nonvehicular sources~~ State Legislature shall be carried over by the state for ~~expenditure for these purposes~~ adjustment to the fees assessed in the subsequent fiscal year.

~~(d) Each district may recover administrative costs to the district of collecting the fees pursuant to these regulations. At the request of the State Board, a district shall provide to the State Board, within 30 days of the request, substantiation of administrative costs.~~

NOTE: Authority cited: Sections 39600, 39601, ~~and~~ 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, ~~and~~ 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 section 90800.9, in ~~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 ~~of the State Board~~. 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 or section 90800.1 or section 90800.2 or section 90800.3 or section 90800.4 or section 90800.5 or section 90800.6 or section 90800.7 or~~ 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, ~~and~~ 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, ~~and~~ 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.

# Appendix B

## ASSEMBLY BILL 10X

# Assembly Bill No. 10

## CHAPTER 1

An act to amend Section 39612 of, and to add Section 39613 to, the Health and Safety Code, and to amend Section 13260 of, and to add Sections 13260.2 and 13260.3 to, the Water Code, relating to resources.

[Approved by Governor March 18, 2003. Filed with Secretary of State March 18, 2003.]

### LEGISLATIVE COUNSEL'S DIGEST

AB 10, Oropeza. Resources.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law authorizes each district to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district. Existing law also authorizes each district board to adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of those permits. Existing law authorizes the State Air Resources Board to require districts to impose additional permit fees on nonvehicular sources within their jurisdiction for the purposes of recovering costs of additional state programs related to those sources. Existing law requires that priority for expenditure of those permit fees be given to specified activities relating to air pollution from nonvehicular sources, and requires that those permit fees be collected from nonvehicular sources that are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors. Existing law also limits the total amount of funds collected by those permit fees, exclusive of district administrative costs, to $3,000,000 in any fiscal year.

This bill would authorize the state board to impose additional permit fees directly on nonvehicular sources within a district's jurisdiction. The bill would also authorize the state board to require a district to collect those fees, to establish a system for direct collection of those fees by the state board, and to contract with any other state agency for the collection of those fees. The bill would lower the threshold emission level for the imposition of the permit fees on nonvehicular sources by requiring those fees to be collected from nonvehicular sources that are authorized by the district to emit 250 tons or more per year of any nonattainment pollutant

or its precursors. The bill would increase the limit on the total amount of funds that may be collected by the districts in permit fees to $13,000,000 and would authorize the state board to increase that limitation 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. The additional duties for districts under this bill would impose a state-mandated local program.

(2) Existing law requires the state board to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, as defined, if the state board determines that the regulations are necessary to attain state and federal air quality standards, and that the regulations are commercially and technologically feasible and necessary. Existing law also requires the state board, on or before January 1 of each year, to report to the Governor and the Legislature on the expenditure of permit fees collected from nonvehicular sources.

This bill would require the state board to impose a fee for any consumer product and any architectural coating sold in the state, if a manufacturer's total sales of consumer products or architectural coatings will result in the emission in the state of 250 tons per year or greater of volatile organic compounds. The bill would require revenues collected from the imposition of the fee to be used to mitigate or reduce air pollution in the state created by consumer products and architectural coatings, as determined by the state board, and that the revenues be expended solely for those programs. The bill would require that the fees be transmitted to the Controller for deposit in the Air Pollution Control Fund, after deducting the administrative cost of collecting the fees. The bill would require the state board to include a report on the expenditure of permit fees collected from consumer products and architectural coatings in its report to the Governor and the Legislature on the expenditure of the permit fees collected from nonvehicular sources.

(3) Existing law makes a violation of any rule, regulation, permit, or order of the state board or of a district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(4) The Porter-Cologne Water Quality Control Act, with certain exceptions, imposes on a person for whom waste discharge requirements have been prescribed, an annual fee established by the State Water Resources Control Board, not to exceed $20,000, but subject to an annual adjustment, on the basis of total flow, volume, number of animals, threat to water quality, and area involved. Under the act, the fees are deposited in the Waste Discharge Permit Fund, which is expended, upon appropriation, for the purposes of carrying out the act. The act requires all or part of the fees to be refunded if waste discharge requirements are waived. The act makes a person failing to pay a waste

discharge fee, if requested to do so by a California regional water quality control board, guilty of a misdemeanor.

This bill, instead, would require each person who is required to file a waste discharge report to submit an annual fee according to a fee schedule established by the state board. The bill would require the total amount of annual fees to equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements. The bill would require each person that discharges waste in a manner regulated by the provisions of law that require filing of a waste discharge report to pay an annual fee to the state board, and would require the state board to establish a timetable by regulation, for the payment of the annual fee. The bill would require all or part of the annual fees to be refunded if the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state. The bill would delete a provision that exempts certain facilities for confined animal feeding and holding operations from the annual fee requirement. Because failure to pay the annual fee under certain circumstances is a crime, this bill would impose a state-mandated local program by expanding the scope of that crime. The bill would require the state board, in establishing the amount of the fee that may be imposed on confined animal feeding and holding operations, to consider factors relating to the size of the operation, the type and amount of discharge, the pricing mechanism of the commodities produced, the existing regulation of the operation, and whether the operation participates in a quality assurance program.

The bill would require the state board to establish a fee in an amount sufficient to recover its costs in reviewing, processing, and enforcing "no exposure" certifications issued to facilities that apply for those certifications in accordance with a general industrial stormwater permit. The bill would require revenue generated pursuant to this provision to be deposited in the Waste Discharge Permit Fund.

The bill would require the state board, on or before January 1 of each year, to report to the Governor and the Legislature on the expenditure of the annual fees on waste discharges.

(5) The bill would provide that the Legislature shall appropriate, on or before June 30, 2006, $58,104,000 from the General Fund to the Department of Water Resources for allocation to certain local entities to pay the state's share of certain nonfederal costs of flood control projects that have been adopted and authorized.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. Section 39612 of the Health and Safety Code is amended to read:

39612. (a) In addition to funds that may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board may impose additional permit fees on nonvehicular sources within a district's jurisdiction.

(b) (1) The state board may do any of the following with respect to the collection of fees on nonvehicular sources imposed pursuant to subdivision (a):

(A) Upon obtaining the concurrence of the district, require a district to collect the fees.

(B) Establish a system in which the state board collects the fees directly.

(C) Contract with any other state agency to collect the fees.

(2) If the state board establishes a system to collect fees pursuant to subparagraph (B) of paragraph (1) or contracts with another state agency to collect the fees pursuant to subparagraph (C) of paragraph (1), each district shall provide any information necessary to ensure the accurate and efficient collection of the fees from nonvehicular sources.

(c) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources. Priority for expenditure of permit fees collected pursuant to this section shall be given to the following activities:

(1) Identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air standards pursuant to subdivision (f) of Section 39607.

(2) Establishing a uniform methodology for assessing population exposure to air pollutants pursuant to subdivision (g) of Section 39607.

(3) Updating the emission inventory pursuant to Section 39607.3, including emissions that cause or contribute to the nonattainment of federal ambient air standards.

(4) Identifying, assessing, and establishing the mitigation requirements for the effects of interbasin transport of air pollutants pursuant to Section 39610.

(5) Updating the state board's guidance to districts on ranking control measures for stationary sources based upon the cost-effectiveness of those measures in reducing air pollution.

(d) The permit fees imposed pursuant to this section shall be collected from nonvehicular sources that are authorized by district permits to emit 250 tons or more per year of any nonattainment pollutant or its precursors.

(e) The permit fees collected pursuant to this section and Section 39613, after deducting the administrative costs of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

(f) (1) The total amount of funds collected by fees imposed pursuant to this section, exclusive of district administrative costs, may not exceed thirteen million dollars ($13,000,000) in any fiscal year, unless that limitation is increased pursuant to paragraph (2).

(2) The state board may increase the limitation on the total amount of funds collected as described in paragraph (1) 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.

(g) On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of permit fees collected pursuant to this section and Section 39613. The report shall include a report on the status of implementation of the programs prioritized for funding pursuant to subdivision (c).

SEC. 2. Section 39613 is added to the Health and Safety Code, to read:

39613. The state board shall impose a fee for any consumer product, as defined in Section 41712, sold in the state and any architectural coating sold in the state if a manufacturer's total sales of consumer products or architectural coatings will result in the emission in the state of 250 tons per year or greater of volatile organic compounds. Revenues collected from the imposition of this fee shall be used to mitigate or reduce air pollution in the state created by consumer products and architectural coatings, as determined by the state board, and shall be

expended solely for those programs.

SEC. 3. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) (A) Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs may include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out these actions.

(D) In establishing the amount of a fee that may be imposed on any confined animal feeding and holding operation pursuant to this section, including, but not limited to, any dairy farm, the state board shall consider all of the following factors:

(i) The size of the operation.

(ii) Whether the operation has been issued a permit to operate

pursuant to Section 1342 of Title 33 of the United States Code.

(iii) Any applicable waste discharge requirement or conditional waiver of a waste discharge requirement.

(iv) The type and amount of discharge from the operation.

(v) The pricing mechanism of the commodity produced.

(vi) Any compliance costs borne by the operation pursuant to state and federal water quality regulations.

(vii) Whether the operation participates in a quality assurance program certified by a regional water quality control board, the state board, or a federal water quality control agency.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, solely for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the

Legislature for those purposes is not reduced.

(e) Each person discharges waste in a manner regulated by this section shall pay an annual fee to the state board. The state board shall establish, by regulation, a timetable for the payment of the annual fee. If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.

(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivision (d). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision

(f) shall include a provision that annual fees shall not be imposed on those who pay fees under the national pollutant discharge elimination system until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the

injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(k) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit both of the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(*l*) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

SEC. 4. Section 13260.2 is added to the Water Code, to read:

13260.2. (a) The state board shall establish a fee in an amount sufficient to recover its costs in reviewing, processing, and enforcing "no exposure" certifications issued to facilities that apply for those certifications in accordance with a general industrial stormwater permit.

(b) Revenue generated pursuant to this section shall be deposited in the Waste Discharge Permit Fund.

SEC. 5. Section 13260.3 is added to the Water Code, to read:

13260.3. On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of annual fees collected pursuant to Section 13260.

SEC. 6. (a) The Legislature hereby finds and declares all of the following:

(1) Adjustments made to the Budget Act of 2002 in the 2003–04 First Extraordinary Session reverted fifty-eight million one hundred four

thousand dollars ($58,104,000) to the General Fund.

(2) These funds were originally appropriated by Section 8 of Chapter 326 of the Statutes of 1998 to pay for the state's share of the nonfederal costs of flood control projects that have been adopted and authorized in accordance with one or more of the following provisions of law:

(A) State Water Resources Law of 1945 (Ch. 1 (commencing with Sec. 12570) and Ch. 2 (commencing with Sec. 12639), Pt. 6, Div. 6, Wat. C.).

(B) Flood Control Law of 1946 (Ch. 3 (commencing with Sec. 12800), Pt. 6, Div. 6, Wat. C.).

(C) California Watershed Protection and Flood Prevention Law (Ch. 4 (commencing with Sec. 12850), Pt. 6, Div. 6, Wat. C.).

(b) The Legislature, on or before June 30, 2006, shall appropriate fifty-eight million one hundred four thousand dollars ($58,104,000) from the General Fund to the Department of Water Resources for allocation, in accordance with Section 8 of Chapter 326 of the Statutes of 1998, to the local entities with whom the state has agreements to pay the state's share of the nonfederal costs of flood control projects.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

# Appendix C

## PUBLIC WORKSHOP NOTICE

Winston H. Hickox
*Agency Secretary*

# Air Resources Board

Alan C. Lloyd, Ph.D.
Chairman
1001 I Street • P.O. Box 2815 • Sacramento, California 95812 • www.arb.ca.gov

Gray Davis
*Governor*

April 10, 2003

**PUBLIC WORKSHOP TO DISCUSS PROPOSED FEES ON NONVEHICULAR SOURCES, CONSUMER PRODUCTS AND ARCHITECTURAL COATINGS**

Dear Sir or Madam:

The Air Resources Board (ARB/Board) invites you to participate in a public workshop to discuss proposed fees on large nonvehicular sources of air pollution; large manufacturers, distributors and private labelers of consumer products; and large manufacturers of architectural coatings. The workshop is scheduled as follows:

Date: Thursday, May 1, 2003

Time: 1:00 to 4:00 p.m.

Location: Central Valley Auditorium
Cal/EPA Building
1001 I Street
Sacramento, California 95814

On March 18, 2003, the Governor signed Assembly Bill (AB) 10X (Oropeza) which authorizes the ARB to impose additional fees on nonvehicular sources that emit 250 tons or more per year of any nonattainment pollutant or its precursors. The fees are to be collected for the purposes of recovering the costs of state programs related to nonvehicular sources. AB 10X also authorizes the ARB to impose a fee for emissions from consumer products and architectural coatings sold in the state if a manufacturer's total sales will result in the emissions of 250 tons or more per year of volatile organic compounds. Revenues collected from the fees are to be used to mitigate or reduce air pollution in the State created by consumer products and architectural coatings.

*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.*



*Printed on Recycled Paper*

Information obtained at the workshop will be used by ARB staff to further develop a regulation to implement the provisions of AB 10X. The Board is tentatively scheduled to consider the proposal at its July 24, 2003 hearing.

At the workshop, ARB staff will present a draft regulation to implement the fee program: the applicability criteria; a preliminary list of affected fee payers; and a schedule for regulation development. We anticipate having this information available at the following web site before the workshop: www.arb.ca.gov/emisinv/nscpac_fees/nscpac_fees.htm. Copies of the information may be requested from the contact persons identified below.

Staff will answer questions related to the proposal at the workshop, and attendees will have the opportunity to provide comments. We would appreciate receiving any written comments by no later than May 14, 2003. Comments may be sent by e-mail to: drake@arb.ca.gov, or sent to the following address:

Don Rake
Planning and Technical Support Division
Air Resources Board
P. O. Box 2815
Sacramento, CA 95812

The workshop will also be webcast at http://www.calepa.ca.gov/broadcast. You may send questions on-line during the workshop by e-mail to 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 1-888-282-8354, using the pass code 12661. The leader for call in questions will be Sue Wyman. If you have problems calling in, please dial 916-296-3129, to speak with Sue on her cellular phone.

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 Sue Wyman at (916) 445-9477 or by e-mail at 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.

If you have questions on the various aspects of the proposal, please contact the following:

Stationary Sources: Don Rake at (916) 322-7304, email: drake@arb.ca.gov

Consumer Products: Judy Yee at (916) 327-5610, email: jyee@arb.ca.gov

Architectural Coatings: Jim Nyarady at (916) 322-8273, email: jnyarady@arb.ca.gov

Sincerely,

/s/

Randy Pasek, Ph.D., P.E.,
Chief
Emission Inventory Branch

cc: Judy Yee, Manager
Implementation Section
Stationary Source Division
Air Resources Board

Jim Nyarady, Manager
Strategy Evaluation Section
Stationary Source Division
Air Resources Board

Don Rake
Analysis Section
Emissions Inventory Branch
Air Resources Board

Sue Wyman
Air Pollution Specialist
Office of the Chair
Air Resources Board

# Appendix D

## CALIFORNIA BUSINESS IMPACTS OF PROPOSED AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

# Appendix D

## California Business Impacts of Proposed Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations

Introduction

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 regulation, 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 regulation 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, and all manufacturers of consumer products and architectural coatings whose VOC emissions from all products sold in California are 250 tons or more per year. The ARB has identified 173 businesses that are subject to the proposed fee regulations. Thirteen of these businesses are considered to be small businesses. Of the 173 businesses, 95 are nonvehicular sources, 54 are consumer product manufacturers, and 24 are architectural coating manufacturers. 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**

| SIC Code | Industry |
|---|---|
| 1311 | Crude Petroleum and Natural Gas |
| 1321 | Natural Gas Liquids |
| 1442 | Construction Sand And Gravel |
| 1474 | Potash/Soda/Borate Minerals |
| 1799 | Special Trade Contractors, Not Elsewhere Classified |

| SIC Code | Industry |
|---|---|
| 2033 | Canned Fruits And Vegetables |
| 2431 | Millwork |
| 2611 | Pulp Mills |
| 2672 | Paper Coated & Laminated, Not Elsewhere Classified |
| 2819 | Industrial Inorganic Chemicals, Not Elsewhere Classified |
| 2840 | Chemicals And Allied Products |
| 2841 | Soaps And Other Detergents |
| 2842 | Special Cleaning, Polishing, And Sanitation Preparations |
| 2844 | Perfumes, Cosmetics, And Other Toilet Preparations |
| 2850 | Paints, Varnishes, Lacquers, Enamels, And Allied Products |
| 2851 | Paints and Allied Products |
| 2873 | Nitrogenous Fertilizers |
| 2911 | Petroleum Refining |
| 2999 | Petroleum & Coal Products, Not Elsewhere Classified |
| 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 |
| 3324 | Steel Investment Foundries |
| 3411 | Metal Cans |
| 3421 | Cutlery |
| 3448 | Prefabricated Metal Buildings |
| 3713 | Truck And Bus Bodies |
| 3999 | Manufacturing Industries, Not Elsewhere Classified |
| 4911 | Electric Services |
| 4922 | Natural Gas Transmission |
| 4923 | Gas Transmission/Distribution |
| 4931 | Electric & Other Services Comb |
| 4939 | Combination Utility Service, Not Elsewhere Classified |
| 4953 | Refuse Systems |
| 5087 | Cosmetics, Beauty Supplies, And Perfume Stores |
| 5171 | Petroleum Bulk Stations/Terminals |
| 5198 | Paints, Varnishes, and Supplies |
| 9199 | General Government, Not Elsewhere Classified |
| 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 2001-emission inventory database or survey data. 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 nonvehicular sources, consumer product manufacturers, and architectural coating manufacturers.

(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 2003-4 fiscal year.

(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 about 0.02 to 0.03 percent in 2000-2. 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.

All businesses, however, would not be affected equally by the proposed fee regulations. As shown in Table 2, the change in profitability was higher for selected businesses in the architectural coating category than for those in the consumer product and nonvehicular source categories. This variation in the impact of the fee regulations can be attributed mainly to two factors. 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 example, for the proposed fees for fiscal year 2003-4, the estimated annual fees for businesses in the architectural coating category range from a high of about $350,000 to a low of about $14,000. For the consumer product category, it ranged from about $420,000 to $14,000, and for the nonvehicular source category it ranged from about $760,000 to $14,000. Second, the performance of businesses may vary from year to year. Hence, the 2000-2 financial data used may not be representative of a typical-year performance for some businesses.

**Table 2**
**Fee Impact on Owner's ROE in Affected Category**

| Affected Category | Category's Share | $13 Million | $17.4 Million |
|---|---|---|---|
| Architectural Coatings | 0.16 | 0.1% | 0.13% |
| Consumer Products | 0.24 | 0.01% | 0.02% |
| Nonvehicular Sources | 0.60 | 0.01% | 0.02% |
| **Weighted Average** | **1.00** | **0.02%** | **0.03%** |

The potential impacts estimated here might be high for the following reasons. First, the annual fees are not new to nonvehicular source businesses. These businesses pay for about 60 percent of the total fees. The impact of the fee as estimated here tends to be more severe than what it would be if we had used the incremental changes in fees rather than the total fees for those businesses already part of the previous fee program. Second, 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 fiscal year 2003-4. 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. In addition, most affected businesses are local and are not subject to competition from businesses in other states. The estimated fees, however, may have some adverse impact on the ability of some affected businesses especially in the architectural coating and consumer product categories to compete with similar businesses that are not subject to the proposed fee regulations.

Conclusion

Overall, most affected businesses are owned and operated by large companies. Of the 173 businesses affected by the estimated fees, only 13 businesses are considered to be small businesses. 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. Although small businesses would potentially experience a greater reduction in their profitability than others, the impact of the proposed fee regulations appears to be minuscule. 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

## PRELIMINARY ESTIMATE OF EMISSIONS AND FEES FOR FACILITIES AND MANUFACTURERS OF CONSUMER PRODUCTS AND ARCHITECTURAL COATINGS FOR FISCAL YEAR 2003-2004 AS OF JUNE 6, 2003

| 2003-4 Fee Reg (Fee Summary) | | | |
|---|---|---|---|
| | | Total Fees (With 3% Adj.) | |
| Category | 2001 Billable Tons | *$13 Million ($56.98/Ton)* | *$17.4 Million ($76.26/Ton)* |
| Architectural Coatings/Consumer Products | 94,961 | $5,410,878 | $7,241,727 |
| Facilities | 140,038 | $7,979,365 | $10,679,302 |
| | **234,999** | **$13,390,243** | **$17,921,029** |

| 2003-4 Fee Reg (Architectural Coatings List) - 250 TPY Threshold | | | |
|---|---|---|---|
| | 2001 Billable Emissions (Tons/Year) | Total Fees (With 3% Adj.) | |
| **Manufacturer Name** | ***VOC*** | ***$13 Million ($56.98/Ton)*** | ***$17.4 Million ($76.26/Ton)*** |
| The Sherwin-Williams Company | 4,613 | $262,849 | $351,787 |
| Masco Corporation (total) | 4,383 | $249,743 | $334,248 |
| Dunn-Edwards Corporation | 3,827 | $218,062 | $291,847 |
| Smiland Paint Company | 3,679 | $209,629 | $280,561 |
| ICI Paints | 3,281 | $186,951 | $250,209 |
| RPM, Inc. (total) | 3,255 | $185,470 | $248,226 |
| Frazee Industries | 3,021 | $172,137 | $230,381 |
| Kelly-Moore Paint Company, Inc. | 2,338 | $133,219 | $178,296 |
| Henry Company | 1,238 | $70,541 | $94,410 |
| Ace Hardware Corporation | 966 | $55,043 | $73,667 |
| TMT Pathway LLC | 920 | $52,422 | $70,159 |
| Benjamin Moore & Co. | 821 | $46,781 | $62,609 |
| Vista Paint Corporation | 615 | $35,043 | $46,900 |
| PPG Industries, Inc. | 568 | $32,365 | $43,316 |
| Duckback Products Inc. | 502 | $28,604 | $38,283 |
| Valspar Corporation | 466 | $26,553 | $35,537 |
| United Gilsonite Laboratories, Inc. | 444 | $25,299 | $33,859 |
| Gardner-Gibson, Inc. | 438 | $24,957 | $33,402 |
| Tropical Asphalt L.L.C. | 408 | $23,248 | $31,114 |
| Gemini Industries, Inc. | 395 | $22,507 | $30,123 |
| Evr-Gard Coatings | 367 | $20,912 | $27,987 |
| Parks Corporation | 288 | $16,410 | $21,963 |
| Performance Coatings Inc. | 277 | $15,783 | $21,124 |
| NCP Coatings, Inc. | 251 | $14,302 | $19,141 |
| | **37,361** | **$2,128,830** | **$2,849,149** |

| 2003-4 Fee Reg (Consumer Products List) - 250 TPY Threshold | | | |
|---|---|---|---|
| | 2001 Billable Emissions (Tons/Year) | Total Fees (With 3% Adj.) | |
| Manufacturer Name | *VOC* | *$13 Million ($56.98/Ton)* | *$17.4 Million ($76.26/Ton)* |
| W.M. Barr | 5,460 | $311,111 | $416,380 |
| S.C. Johnson & Son, Inc. | 4,201 | $239,373 | $320,368 |
| Sherwin Williams Co. | 3,771 | $214,872 | $287,576 |
| Unilever HPC USA | 2,739 | $156,068 | $208,876 |
| Reckitt Benckiser | 2,690 | $153,276 | $205,139 |
| Perrigo Company Of Tennessee (Brought by Cumberland Swan Holdings, Inc.) | 2,355 | $134,188 | $179,592 |
| RPM, Inc. | 2,311 | $131,681 | $176,237 |
| Parks Corporation | 2,256 | $128,547 | $172,043 |
| The Clorox Company | 1,898 | $108,148 | $144,741 |
| Bristol Myers Squibb Company | 1,739 | $99,088 | $132,616 |
| The Valvoline Company | 1,691 | $96,353 | $128,956 |
| Ace Hardware Corporation | 1,684 | $95,954 | $128,422 |
| Proctor & Gamble | 1,446 | $82,393 | $110,272 |
| Willert Home Products, Inc. | 1,368 | $77,949 | $104,324 |
| WD-40 | 1,260 | $71,795 | $96,088 |
| Packaging Service Co., Inc. | 1,223 | $69,687 | $93,266 |
| The Gillette Company | 957 | $54,530 | $72,981 |
| Acuity Specialty Products, Inc. | 897 | $51,111 | $68,405 |
| Shell Oil Products US | 886 | $50,484 | $67,566 |
| Sunnyside Corporation | 836 | $47,635 | $63,753 |
| 3M | 822 | $46,838 | $62,686 |
| Berryman Products, Inc. | 786 | $44,786 | $59,940 |
| Lilly Industries | 775 | $44,160 | $59,102 |
| Meguiar's Inc. | 748 | $42,621 | $57,042 |
| Bissell Homecare, Inc. | 692 | $39,430 | $52,772 |

| 2003-4 Fee Reg (Consumer Products List) - 250 TPY Threshold | | | |
|---|---|---|---|
| | 2001 Billable Emissions (Tons/Year) | Total Fees (With 3% Adj.) | |
| Manufacturer Name | *VOC* | *$13 Million ($56.98/Ton)* | *$17.4 Million ($76.26/Ton)* |
| Lesco | 657 | $37,436 | $50,103 |
| Mary Kay Inc. | 656 | $37,379 | $50,027 |
| Monsanto Co. | 606 | $34,530 | $46,214 |
| ICI Paints | 585 | $33,333 | $44,612 |
| Radiator Specialty Company | 582 | $33,162 | $44,383 |
| IPS Corporation | 560 | $31,909 | $42,706 |
| Sebastian International | 514 | $29,288 | $39,198 |
| Alberto-Culver USA, Inc. | 469 | $26,724 | $35,766 |
| American Stores Company | 461 | $26,268 | $35,156 |
| Wal Mart Stores, Inc. | 460 | $26,211 | $35,080 |
| Maintex Inc. | 452 | $25,755 | $34,470 |
| Moc Products Co., Inc. | 444 | $25,299 | $33,859 |
| United Industries Corp. | 441 | $25,128 | $33,631 |
| Coty, Inc. | 439 | $25,014 | $33,478 |
| Triangle Pacific Corporation | 404 | $23,020 | $30,809 |
| Oatey Company | 386 | $21,994 | $29,436 |
| CWC (Formerly PCCW) | 376 | $21,424 | $28,674 |
| Sara Lee Household abd Body Care USA | 364 | $20,741 | $27,759 |
| Kar Products | 330 | $18,803 | $25,166 |
| The Valspar Corp. | 327 | $18,632 | $24,937 |
| BASF Corporation | 317 | $18,063 | $24,174 |
| Lamaur Corporation | 305 | $17,379 | $23,259 |
| Revlon Consumer Products Corp. | 304 | $17,322 | $23,183 |
| Berwind Group | 299 | $17,037 | $22,802 |
| Safeway, Inc. | 286 | $16,296 | $21,810 |
| Volkswagen Of America | 284 | $16,182 | $21,658 |

| 2003-4 Fee Reg (Consumer Products List) - 250 TPY Threshold | | | |
|---|---|---|---|
| | 2001 Billable Emissions (Tons/Year) | Total Fees (With 3% Adj.) | |
| Manufacturer Name | *VOC* | *$13 Million ($56.98/Ton)* | *$17.4 Million ($76.26/Ton)* |
| Cosmair Inc. | 276 | $15,726 | $21,048 |
| Parfums de Coeur | 272 | $15,499 | $20,743 |
| Avon Products Inc. | 253 | $14,416 | $19,294 |
| | **57,600** | **$3,282,048** | **$4,392,578** |

**2003-4 Fee Reg (Facility List) - 250 TPY Threshold**

| Air Basin | District | County | Facility Name | 2001 Billable Emissions (Tons/Year) | | | | | | Total Fees (With 3% Adj.) | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | ROG | NOX | SOX | CO | PM10 | TOTAL | $13 Million ($56.98/Ton) | $17.4 Million ($76.26/Ton) |
| SF | BA | SOLANO | Valero Refining Company | 0 | 2,962 | 6,973 | 0 | 0 | 9,935 | $566,096 | $757,643 |
| SF | BA | CONTRA COSTA | Tesoro Refining and Marketing | 649 | 1,959 | 4,504 | 0 | 0 | 7,112 | $405,242 | $542,361 |
| SF | BA | CONTRA COSTA | Martinez Refining Company | 1,048 | 3,101 | 1,326 | 0 | 372 | 5,847 | $333,162 | $445,892 |
| SC | SC | LOS ANGELES | Chevron Products Co. | 902 | 1,265 | 1,401 | 2,040 | 0 | 5,608 | $319,544 | $427,666 |
| MD | MOJ | SAN BERNARDINO | Cemex - Black Mountain Quarry | 0 | 4,483 | 427 | 0 | 277 | 5,187 | $295,555 | $395,561 |
| SF | BA | CONTRA COSTA | Chevron Products Company | 1,384 | 2,099 | 1,653 | 0 | 0 | 5,136 | $292,649 | $391,671 |
| MD | MOJ | SAN BERNARDINO | TXI Riverside Cement Company | 0 | 4,315 | 0 | 0 | 280 | 4,595 | $261,823 | $350,415 |
| SC | SC | LOS ANGELES | Arco Products Co. | 425 | 1,092 | 1,917 | 677 | 295 | 4,406 | $251,054 | $336,002 |
| MD | KER | KERN | California Portland Cement Co. | 0 | 3,279 | 743 | 0 | 335 | 4,357 | $248,262 | $332,265 |
| SCC | SLO | SAN LUIS OBISPO | Tosco Santa Maria Refinery | 0 | 0 | 3,739 | 0 | 0 | 3,739 | $213,048 | $285,136 |
| NC | NCU | HUMBOLDT | PG&E-Humboldt Bay Plant | 0 | 2,238 | 1,462 | 0 | 0 | 3,700 | $210,826 | $282,162 |
| SF | BA | CONTRA COSTA | Mirant Delta, LLC. | 0 | 3,459 | 0 | 0 | 0 | 3,459 | $197,094 | $263,783 |
| SC | SC | LOS ANGELES | Mobil Oil Corp. (EIS Use) | 638 | 730 | 682 | 1,184 | 0 | 3,234 | $184,273 | $246,625 |
| SF | BA | CONTRA COSTA | Phillips 66 Company - San Francisco | 559 | 1,647 | 760 | 0 | 0 | 2,966 | $169,003 | $226,187 |
| MD | MOJ | SAN BERNARDINO | Mitsubishi Cement 2000 | 0 | 2,245 | 0 | 0 | 600 | 2,845 | $162,108 | $216,960 |
| SF | BA | SANTA CLARA | Hanson Permanente Cement | 0 | 1,935 | 555 | 0 | 0 | 2,490 | $141,880 | $189,887 |
| SC | SC | LOS ANGELES | Equilon Enterprises LLC. | 374 | 1,044 | 996 | 0 | 0 | 2,414 | $137,550 | $184,092 |
| SF | BA | CONTRA COSTA | Tosco Refining Company | 0 | 610 | 1,712 | 0 | 0 | 2,322 | $132,308 | $177,076 |

| 2003-4 Fee Reg (Facility List) - 250 TPY Threshold | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 2001 Billable Emissions (Tons/Year) | | | | | | Total Fees (With 3% Adj.) | |
| Air Basin | District | County | Facility Name | ROG | NOX | SOX | CO | PM10 | TOTAL | $13 Million ($56.98/Ton) | $17.4 Million ($76.26/Ton) |
| MD | KER | KERN | National Cement Co. | 0 | 1,549 | 0 | 0 | 756 | 2,305 | $131,339 | $175,779 |
| MD | MOJ | SAN BERNARDINO | IMC Chemicals, Inc. | 0 | 1,948 | 0 | 0 | 326 | 2,274 | $129,573 | $173,415 |
| SC | SC | LOS ANGELES | Tosco Refining Company | 0 | 745 | 729 | 717 | 0 | 2,191 | $124,843 | $167,086 |
| NCC | MBU | MONTEREY | Duke Energy Moss Landing LLC. | 0 | 1,878 | 0 | 0 | 295 | 2,173 | $123,818 | $165,713 |
| SC | SC | LOS ANGELES | El Segundo Power, LLC. | 0 | 763 | 0 | 1,320 | 0 | 2,083 | $118,689 | $158,850 |
| MD | MOJ | RIVERSIDE | Southern California Gas Co. | 0 | 1,917 | 0 | 0 | 0 | 1,917 | $109,231 | $146,190 |
| SC | SC | LOS ANGELES | AES Alamitos, LLC. | 0 | 1,462 | 0 | 0 | 338 | 1,800 | $102,564 | $137,268 |
| SJV | SJU | SAN JOAQUIN | Pilkington North America, Inc. | 0 | 1,086 | 617 | 0 | 0 | 1,703 | $97,037 | $129,871 |
| SCC | SB | SANTA BARBARA | Celite Corporation | 0 | 451 | 1,218 | 0 | 0 | 1,669 | $95,100 | $127,278 |
| SC | SC | LOS ANGELES | Tosco Refining Company | 0 | 462 | 773 | 416 | 0 | 1,651 | $94,074 | $125,905 |
| MD | KER | KERN | Lehigh Southwest Cement Co. | 0 | 962 | 0 | 0 | 618 | 1,580 | $90,028 | $120,491 |
| SC | SC | SAN BERNARDINO | Reliant Energy Etiwanda, LLC. | 0 | 1,215 | 0 | 300 | 0 | 1,515 | $86,325 | $115,534 |
| NCC | MBU | SANTA CRUZ | RMC Pacific Materials | 0 | 928 | 574 | 0 | 0 | 1,502 | $85,584 | $114,543 |
| MD | MOJ | SAN BERNARDINO | Reliant Energy | 0 | 1,426 | 0 | 0 | 0 | 1,426 | $81,253 | $108,747 |
| SJV | SJU | FRESNO | Guardian Industries Corp. | 0 | 1,062 | 341 | 0 | 0 | 1,403 | $79,943 | $106,993 |
| SJV | SJU | KERN | Occidental of Elk Hills, Inc. | 733 | 543 | 0 | 0 | 0 | 1,276 | $72,706 | $97,308 |
| SD | SD | SAN DIEGO | Cabrillo Power I LLC., Encina | 0 | 1,164 | 0 | 0 | 0 | 1,164 | $66,325 | $88,767 |
| SF | BA | CONTRA COSTA | Mirant Delta, LLC. | 0 | 1,164 | 0 | 0 | 0 | 1,164 | $66,325 | $88,767 |
| MD | MOJ | SAN BERNARDINO | Southern California Gas Co. | 0 | 1,157 | 0 | 0 | 0 | 1,157 | $65,926 | $88,233 |
| MD | MOJ | SAN BERNARDINO | PG&E Topock Compressor Station | 0 | 1,140 | 0 | 0 | 0 | 1,140 | $64,957 | $86,936 |

**2003-4 Fee Req (Facility List) - 250 TPY Threshold**

| Air Basin | District | County | Facility Name | 2001 Billable Emissions (Tons/Year) | | | | | | Total Fees (With 3% Adj.) | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | ROG | NOX | SOX | CO | PM10 | TOTAL | $13 Million ($56.98/Ton) | $17.4 Million ($76.26/Ton) |
| SC | SC | LOS ANGELES | Ultramar Inc. (NSR Use Only) | 0 | 311 | 778 | 0 | 0 | 1,089 | $62,051 | $83,047 |
| SJV | SJU | KERN | Aera Energy LLC. | 0 | 988 | 0 | 0 | 0 | 988 | $56,296 | $75,345 |
| SC | SC | LOS ANGELES | Filtrol Corp. | 678 | 0 | 0 | 274 | 0 | 952 | $54,245 | $72,600 |
| SC | SC | SAN BERNARDINO | California Portland Cement Co. | 0 | 925 | 0 | 0 | 0 | 925 | $52,707 | $70,541 |
| SC | SC | LOS ANGELES | LA City, DWP Scattergood Generation | 0 | 586 | 0 | 313 | 0 | 899 | $51,225 | $68,558 |
| SC | SC | ORANGE | AES Huntington Beach LLC. | 0 | 852 | 0 | 0 | 0 | 852 | $48,547 | $64,974 |
| SCC | SLO | SAN LUIS OBISPO | Duke Energy Morro Bay | 0 | 838 | 0 | 0 | 0 | 838 | $47,749 | $63,906 |
| MD | KER | KERN | U.S. Borax | 0 | 289 | 0 | 0 | 519 | 808 | $46,040 | $61,618 |
| SJV | SJU | SAN JOAQUIN | Owens-Brockway Glass Container | 0 | 470 | 291 | 0 | 0 | 761 | $43,362 | $58,034 |
| MD | AV | LOS ANGELES | Antelope Valley Aggregate Inc. | 0 | 0 | 0 | 0 | 691 | 691 | $39,373 | $52,696 |
| SC | SC | LOS ANGELES | Arco CQC Kiln | 0 | 290 | 391 | 0 | 0 | 681 | $38,803 | $51,933 |
| SF | BA | ALAMEDA | Owens-Brockway Glass Container | 0 | 635 | 0 | 0 | 0 | 635 | $36,182 | $48,425 |
| SJV | SJU | STANISLAUS | Gallo Glass Company | 0 | 286 | 339 | 0 | 0 | 625 | $35,613 | $47,663 |
| MD | MOJ | SAN BERNARDINO | PG&E Hinkley Compressor Station | 0 | 579 | 0 | 0 | 0 | 579 | $32,991 | $44,155 |
| MD | MOJ | SAN BERNARDINO | AFG Industries Inc. | 0 | 578 | 0 | 0 | 0 | 578 | $32,934 | $44,078 |
| SF | BA | SAN FRANCISCO | Mirant Potrero, LLC. | 0 | 568 | 0 | 0 | 0 | 568 | $32,365 | $43,316 |
| SJV | SJU | FRESNO | AG Formulators, Incorporated | 0 | 566 | 0 | 0 | 0 | 566 | $32,251 | $43,163 |
| SJV | SJU | KERN | Chevron USA Inc. | 0 | 545 | 0 | 0 | 0 | 545 | $31,054 | $41,562 |
| SJV | SJU | STANISLAUS | Conagra Foods | 0 | 498 | 0 | 0 | 0 | 498 | $28,376 | $37,977 |

| 2003-4 Fee Reg (Facility List) - 250 TPY Threshold | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 2001 Billable Emissions (Tons/Year) | | | | | | Total Fees (With 3% Adj.) | |
| Air Basin | District | County | Facility Name | ROG | NOX | SOX | CO | PM10 | TOTAL | $13 Million ($56.98/Ton) | $17.4 Million ($76.26/Ton) |
| SV | SHA | SHASTA | Lehigh Southwest Cement Co. | 0 | 494 | 0 | 0 | 0 | 494 | $28,148 | $37,672 |
| SJV | SJU | MADERA | Saint-Gobain Containers, Inc. | 0 | 489 | 0 | 0 | 0 | 489 | $27,863 | $37,291 |
| SJV | SJU | KERN | Chevron USA Inc. | 0 | 0 | 484 | 0 | 0 | 484 | $27,578 | $36,910 |
| SC | SC | LOS ANGELES | AES Redondo Beach, LLC. | 0 | 481 | 0 | 0 | 0 | 481 | $27,407 | $36,681 |
| SV | SHA | SHASTA | Wheelabrator Shasta E.C.I. | 0 | 477 | 0 | 0 | 0 | 477 | $27,179 | $36,376 |
| SJV | SJU | KERN | Kern River Cogeneration Co. | 0 | 470 | 0 | 0 | 0 | 470 | $26,781 | $35,842 |
| SC | SC | SAN BERNARDINO | Tamco | 0 | 0 | 0 | 465 | 0 | 465 | $26,496 | $35,461 |
| SJV | SJU | KERN | Sycamore Cogeneration Co. | 0 | 448 | 0 | 0 | 0 | 448 | $25,527 | $34,164 |
| SS | IMP | IMPERIAL | Imperial Irrigation District | 0 | 445 | 0 | 0 | 0 | 445 | $25,356 | $33,936 |
| SJV | SJU | KERN | Aera Energy LLC. | 0 | 423 | 0 | 0 | 0 | 423 | $24,103 | $32,258 |
| SF | BA | CONTRA COSTA | Rhodia Inc. | 0 | 0 | 419 | 0 | 0 | 419 | $23,875 | $31,953 |
| SC | SC | LOS ANGELES | Southern California Edison Co. | 0 | 416 | 0 | 0 | 0 | 416 | $23,704 | $31,724 |
| SF | BA | ALAMEDA | New United Motor Manufacturing | 413 | 0 | 0 | 0 | 0 | 413 | $23,533 | $31,495 |
| SV | COL | COLUSA | PG&E Delevan Compressor Station | 0 | 387 | 0 | 0 | 0 | 387 | $22,051 | $29,513 |
| SF | BA | CONTRA COSTA | Allied Waste Industries | 377 | 0 | 0 | 0 | 0 | 377 | $21,481 | $28,750 |
| SJV | SJU | STANISLAUS | Wood Colony Millworks | 0 | 0 | 0 | 0 | 342 | 342 | $19,487 | $26,081 |
| NC | NCU | HUMBOLDT | Samoa-Pacific Cellulose, LLC. | 0 | 339 | 0 | 0 | 0 | 339 | $19,316 | $25,852 |
| SJV | SJU | STANISLAUS | Covanta Stanislaus, Inc. | 0 | 339 | 0 | 0 | 0 | 339 | $19,316 | $25,852 |
| SC | SC | LOS ANGELES | Long Beach City, SERRF Project | 0 | 330 | 0 | 0 | 0 | 330 | $18,803 | $25,166 |

**2003-4 Fee Reg (Facility List) - 250 TPY Threshold**

| Air Basin | District | County | Facility Name | 2001 Billable Emissions (Tons/Year) ROG | NOX | SOX | CO | PM10 | TOTAL | Total Fees (With 3% Adj.) $13 Million ($56.98/Ton) | $17.4 Million ($76.26/Ton) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| MD | MOJ | SAN BERNARDINO | Ace Cogeneration Co. | 0 | 329 | 0 | 0 | 0 | 329 | $18,746 | $25,090 |
| SF | BA | SANTA CLARA | Owens Corning | 0 | 321 | 0 | 0 | 0 | 321 | $18,291 | $24,479 |
| SV | SHA | SHASTA | Shasta Paper Company | 0 | 0 | 317 | 0 | 0 | 317 | $18,063 | $24,174 |
| MD | MOJ | SAN BERNARDINO | Southern California Gas Co. | 0 | 311 | 0 | 0 | 0 | 311 | $17,721 | $23,717 |
| SF | BA | SANTA CLARA | Gilroy Energy Center, LLC. | 0 | 311 | 0 | 0 | 0 | 311 | $17,721 | $23,717 |
| MD | AV | LOS ANGELES | Granite Construction Inc., Littlerock | 0 | 0 | 0 | 0 | 297 | 297 | $16,923 | $22,649 |
| SC | SC | LOS ANGELES | Tabc, Inc. | 296 | 0 | 0 | 0 | 0 | 296 | $16,866 | $22,573 |
| SD | SD | SAN DIEGO | Duke Energy-South Bay Power Plant | 0 | 294 | 0 | 0 | 0 | 294 | $16,752 | $22,420 |
| SC | SC | ORANGE | Tomkins Industries Inc. | 293 | 0 | 0 | 0 | 0 | 293 | $16,695 | $22,344 |
| SC | SC | ORANGE | MCP Foods Inc. | 291 | 0 | 0 | 0 | 0 | 291 | $16,581 | $22,192 |
| SC | SC | LOS ANGELES | Reynolds Metals Co. (EIS Use) | 288 | 0 | 0 | 0 | 0 | 288 | $16,410 | $21,963 |
| SCC | SB | SANTA BARBARA | Orcutt Hill I.C. Engines | 0 | 279 | 0 | 0 | 0 | 279 | $15,897 | $21,277 |
| SF | BA | SOLANO | Ball Metal Beverage Container | 279 | 0 | 0 | 0 | 0 | 279 | $15,897 | $21,277 |
| SJV | SJU | TULARE | Styrotek Inc. | 273 | 0 | 0 | 0 | 0 | 273 | $15,556 | $20,819 |
| MD | MOJ | SAN BERNARDINO | AFFTC/Air Force Research Laboratory | 0 | 271 | 0 | 0 | 0 | 271 | $15,442 | $20,666 |
| SJV | SJU | SAN JOAQUIN | Star Building Systems | 0 | 269 | 0 | 0 | 0 | 269 | $15,328 | $20,514 |
| SF | BA | ALAMEDA | Owens Brockway Glass Container | 0 | 254 | 0 | 0 | 0 | 254 | $14,473 | $19,370 |
| SV | SHA | SHASTA | Pacific Gas & Electric | 0 | 254 | 0 | 0 | 0 | 254 | $14,473 | $19,370 |
| MD | MOJ | SAN BERNARDINO | Speedcut | 0 | 250 | 0 | 0 | 0 | 250 | $14,245 | $19,065 |
| | | | | **9,900** | **79,970** | **36,121** | **7,706** | **6,341** | **140,038** | **$7,979,365** | **$10,679,302** |