

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Bond Program Staff Summary
Meeting Date: December 17, 2013

*Consideration and Approval of Amendment to Regulations Pertaining to Refunding Fees for
the Bond Program*

Prepared by: *Andrea Gonzalez*

Summary.

Staff requests approval of an emergency rulemaking to modify the manner in which the refunding fee is assessed on certain bond issuances, to reduce the costs of refinancing. Staff is proposing to file emergency regulations to amend and add section (d) to § 8034 of the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations to waive certain general fees in certain refinancing structures. Upon the Board’s approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background.

The Authority has three types of fees that it can charge to applicants seeking and/or receiving bond financing: application fees, general fees and Small Business Assistant Fund Fees (SBAF). Due to current economic environment, the SBAF fee for large businesses is temporarily waived until June 30, 2015 pursuant to Section 8035(e) of the CPCFA regulations (4 CCR § 8035(e)).

Under the Authority’s regulations, the borrower must pay fees for reasonable and necessary administrative and program expenses connected with the sale of bonds. CPCFA has previously adopted regulations pertaining to the refunding of bond issuances to: require a new request for financing the refunding of bonds; charge a fee in conjunction with the refunding bond issue requested; and obtain reimbursement for costs and expenses associated with the refunding issue.

Currently, the fee charged for the refunding of a prior sale of bonds approved by the Authority is two tenths of one percent (.002) of the face value of the bonds issued. This fee is expected to cover staff administrative costs during the life of the bonds.

Proposed Amendment to Regulation.

Staff proposes to add subdivision (d) to Section 8034 of the CPCFA regulations as follows (change is underlined):

§ Section 8034(d). Notwithstanding subsections (a) and (b), where the financing requested is a refunding of a prior sale of bonds previously approved by the Authority and the refunding is included as part of an application which also requests new financing by the same applicant for a new proposed project, the Authority shall have the discretion to charge the applicant the Authority’s reasonable and necessary expenses allocable to the refunding request in lieu of the fee described in subsection (b) normally applicable to refundings.

Need for Regulation Change.

Business investment in California using tax-exempt bonds has declined noticeably during the economic downturn beginning in 2008. Even as economic activity begins to rebound in California, the cost of financing is still prohibitive in many cases, particularly for small businesses which cannot absorb the transaction costs. In addition, the cost of conventional financing is currently very low, based on today’s interest rates, rendering the Authority’s bond issuances less attractive for many borrowers especially where the application costs exceed the benefits of the tax-exempt status. As a result, the Authority’s Private Activity Bond (PAB) Allocation has largely gone unused. CPCFA currently has \$2.9 billion in Carryforward Allocation available. Available allocation is listed in the table below.

Total 2010 – 2012 Available Carryforward Allocation Available	<u>\$2,958,017,653</u>
Solid Waste Disposal	\$1,578,737,825
Sewage Facilities	\$282,518,769
Water Furnishing	\$1,096,761,059

In order to utilize the allocation before it expires, CPCFA needs both small and large businesses to issue PABs. CPCFA staff anticipates that the proposal to charge actual costs in lieu of the refunding fee formula will noticeably reduce the transaction costs for most refundings, and will entice small and large businesses to analyze their current outstanding debt and structure, consider restructuring their outstanding debt, and issue PABs with CPCFA. CPCFA would still charge the standard application fee on the new money portion of these transactions, which is structured to reasonably compensate the Authority for its expenses associated with the sale and post-issuance compliance of bonds. The CPCFA administrative account is currently sustainable and the proposed amendment is not anticipated to have a negative effect on CPCFA administrating its programs in the foreseeable future. Moreover, the proposed regulations would simply give the Authority the discretion to reduce the refunding fee for these refunding transactions coupled with a new money financing, thereby permitting the Authority to apply the standard formula for the refunding fee in the event it was warranted.

Regulatory Process.

Upon the Board’s approval to amend the existing regulations as proposed, emergency and regular rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed emergency regulations within 5 calendar days after the Authority files the regulations with OAL for review. OAL has up to 10 calendar days to review or deny emergency regulations. Assuming OAL approves this amendment as an emergency, the emergency regulations are effective for 180 days during which the Authority will begin the regular rulemaking process to conform the emergency regulations as permanent.

To begin the regular rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The

Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

December 10, 2013	5-day Notice of Emergency Rulemaking posted on CPCFA website and sent to Interested Parties.
December 17, 2013	The Board approves the emergency regulations.
December 17, 2013	Emergency regulations filed with OAL.
December 22, 2013	Public comment period ends.
December 27, 2013	OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect.
June 25, 2014	Emergency regulations expire.

Permanent Regulations

February 18, 2014	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
February 28, 2014	OAL publishes Notice and 45-day public comment period begins.
April 14, 2014	Public comment period regarding proposed regulations ends.
April 15, 2014	The Board approves the permanent regulations.
April 21, 2014	Deliver permanent regulation package to OAL for 30-day review*
June 12, 2014	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

April 21, 2014	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
April 30, 2014	15-day comment period ends.
May 5, 2014	Deliver permanent regulation package to OAL for 30-day review.
June 16, 2014	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Recommendation.

Staff recommends approval of the proposed resolution to amend regulations concerning CPCFA general fees and to authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to CPCFA's bond program refunding fees.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY AUTHORIZING EMERGENCY RULEMAKING PERTAINING
TO THE REFUNDING FEES FOR THE BOND PROGRAM**

December 17, 2013

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted as emergency regulations at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the December 17, 2013 meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as regular regulations.

Section 2. The Chair, Executive Director or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 8034. General Fees.

The Authority charges the following fees for reasonable and necessary administrative and program expenses connected with the sale of bonds:

(a) Where the financing requested is not eligible for allocation of volume cap pursuant to 26 U.S.C. Section 146, the Authority charges a fee for reasonable and necessary administrative and program expenses connected with the sale of the bonds. For an applicant who is not a small business as defined in Section 8020, the fee shall be one tenth of one percent (.001) of the face value of the bonds issued. In addition, the Authority will charge an annual fee each year for the life of the financial assistance in the amount of five one-hundredths of one percent (.0005) of the remaining balance of the financial assistance, with a minimum annual fee of \$1,000 and a maximum annual fee of \$75,000.

(b) In all other financings, the fee shall be two tenths of one percent (.002) of the face value of the bonds issued.

(c) The applicant shall also reimburse the Authority for all reasonable and necessary out of pocket expenses which the Authority may incur at the applicant's request and all other expenses direct or indirect, properly allocable to the proposed financing. Unless paid out of the proceeds of the bonds issued, all fees for a particular proposed financing shall be paid by the applicant and deposited in the Authority Fund. The Authority shall be authorized to use general fees deposited in the Authority Fund to support Authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 7 of this Division 11.

(d) Notwithstanding subsection (a) and (b), where the financing requested is a refunding of a prior sale of bonds previously approved by the Authority and the refunding is included as part of an application which also requests new financing by the same applicant for a new proposed project, the Authority shall have the discretion to charge the applicant the Authority's reasonable and necessary expenses allocable to the refunding request in lieu of the fee described in subsection (b) normally applicable to refundings.

NOTE: Authority cited: Section 44520, Division 27, Health and Safety Code.

Reference: Sections 44520, 44525 and 44537.5, Division 27, Health and Safety Code.