

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: September 23, 2009

***Consideration and Approval of Proposed Regulation Changes for the Bond Program
Pertaining to General Fees, Small Business Assistance Fund Fees, and Provisions Relating to
Small Business Financings***

Prepared by: *Patricia Tanous*

Summary. Staff requests approval to amend and file emergency regulations to modify the General Fees, Small Business Assistance Fund (SBAF) Fees, Eligibility for Assistance, and Assistance sections of the CPCFA regulations. To accomplish these changes it requires modification of the regulations:

- 1) To revise Section 8034 – General Fees to include a new category of fees;
- 2) To revise Section 8035 – Small Business Assistance Fund Fees to lower the fees;
- 3) To revise Section 8042 – Eligibility for Assistance to define eligibility; and
- 4) To revise Section 8043 – Assistance to clarify who is eligible for assistance.

The primary driver as these changes is to offer a SBAF fee reduction to encourage companies to accelerate issuance of tax-exempt bonds through CPCFA. Additionally, the changes address an issue with fees for a possible new structure for financings.

Upon approval staff will proceed concurrently with the emergency and permanent rulemaking process.

Background. CPCFA funded projects are subject to two fees: A General Fee of two tenths of one percent (.002) and a SBAF fee of up to one percent (.01) of the face value of the bonds issued.

The General Fee is charged to large businesses and is used to pay salary expenses, benefits, office space rent, supplies, contract services with the Information Technology Department, personnel services, etc. for CPCFA. Furthermore, these fees are used for the California Recycle Underutilized Sites (CALReUSE) Assessment Program, and the Sustainable Communities Grant and Loan Program (SCGL). These fees also enable CPCFA to provide assistance to the California Industrial Development Financing Advisory Commission (CIDFAC) and the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) in the form of personnel and loans to fund costs of implementing new programs. Additionally, the SBAF fees are used for the California Capital Access Program (CalCAP).

The SBAF fees that are collected from large businesses are used to help small businesses pay for some of the costs of issuing bonds (i.e., Fees charged by issuer's counsel, bond counsel, underwriter, underwriter counsel, financial advisors, trustee, State Treasurer's Office Agent for Sale, California Debt Limit Allocation Committee, California Debit and Investment Advisory Commission, etc.).

Business Model. Although CPCFA is facing financial challenges (in September 2008 staff recommended, and the Board approved, a restructuring of the SBAF subsidy formula, in effect cutting the program by approximately 50%), staff is looking to temporarily reduce the SBAF fees to encourage large businesses to issue bonds. Staff feels that due to the current economic downturn in the United States, and more importantly the State of California, a temporary reduction would be beneficial to encourage businesses to continue to expand. Depending on the reaction of the companies, staff may look at making a permanent fee adjustment during the permanent regulation process.

As of September 23, 2009 CPCFA has not issued any new bonds for this calendar year. At the August 2009 authority meeting, the Board authorized the issuance of three bonds. Two of the authorized bond issues are for a large company to issue a total of \$139,000,000 of bonds. These issues will contribute up to \$1,126,000 to the SBAF fund. The remaining authorization is for a small business to issue up to \$3,200,000 in bonds, and when issued, the company will receive \$181,200 in SBAF subsidy.

Summary of Changes.

Substantive Regulation Changes

- 1. Section 8034 - General Fees (Administrative Fee).** Addition of a new annual fee category. Any bond issued that is not eligible for allocation of volume cap will be assessed a fee of one tenth of one percent (.001) of the face value of the bonds issued, and then an annual fee of five one-hundredths of one percent (.0005) of the outstanding balance yearly (minimum annual fee of \$1,000 and a maximum annual fee of \$75,000). The initial fee of one tenth of one percent (.001) would be waived for small businesses, as defined in Title 4, Division 11, Section 8020.

It is standard practice among the other issuing authorities to charge an annual fee. Typically, issuers charge between five (5) and twenty (20) basis points (or .05% to .2%) per year. Please see Attachment A for a fee comparison chart for further details.

- 2. Section 8035 - Small Business Assistance Fund Fees.** Reduce the current maximum SBAF fee from one percent (.01) to sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued.

Clarifying Regulation Changes

- 1. Section 8042 - Eligibility for Assistance.** Addition of a section defining the types of projects that will now be required to pay the annual fee under Section 8034 – General Fees.
- 2. Section 8043 – Assistance.** Clarification of eligibility related to Section 8042. Projects that are not eligible for volume cap allocation would be required to pay general fees, as outlined in Section 8034 (a).

Attachment B is a redline version of those portions of the regulations that highlights the proposed amendments.

Regulatory Process. After Authority approval to amend the existing regulations, emergency and permanent 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 amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the permanent rulemaking process. The permanent rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the permanent rulemaking process, the staff will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested persons, and post the notice, text, and initial statement of reasons on our website. The notice starts the OAL 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 permanent 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 as permanent regulations 30 days later.

Timeline. Outline below is the estimated schedule.

Emergency Regulations

| | |
|--------------------|--|
| September 23, 2009 | The Board approves the emergency regulations. |
| September 28, 2009 | Emergency regulations filed with OAL. |
| October 8, 2009 | Public comment period ends. |
| October 12, 2009 | OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect. |
| April 12, 2010 | Emergency regulations expire. |

Permanent Regulations

| | |
|--------------------|--|
| October 12, 2009 | 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. |
| October 26, 2009 | OAL publishes Notice and 45-day public comment period begins. |
| December 10, 2009 | Public comment period regarding proposed regulations ends. |
| December 16, 2009* | Results of public hearing requests, if any, are presented at CPCFA Board meeting. Present permanent regulations to Authority for adoption if no public comments are received |

| | |
|-------------------|---|
| | warranting modification of the proposed regulatory changes. |
| December 17, 2009 | Deliver permanent regulation package to OAL for 30-day review. |
| January 18, 2010 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. |
| February 18, 2010 | 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:

| | |
|-------------------|--|
| December 17, 2009 | Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period. |
| January 4, 2009 | 15-day comment period ends. |
| January 5, 2009 | Deliver permanent regulation package to OAL for 30-day review. |
| February 5, 2009 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. |
| March 8, 2009 | Permanent regulations become effective. |

Recommendation. Staff recommends adoption of a resolution to amend the CPCFA regulations and authorize staff to undertake emergency and permanent rulemaking proceedings and other actions related to regulation revisions.

RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY
AND PERMANENT RULEMAKING PROCEEDINGS AND OTHER ACTIONS
RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT
PROCEDURES

September 23, 2009

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) and 44559.5(f) 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 at this time to administer the Program.

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its Provisions Relating to Small Business Financings set forth in Article 4 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted 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 September 23, 2009 meeting are hereby approved in substantially the form submitted. The Chair or Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with the public notice and comment procedures and file such regulations, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as permanent regulations.

Section 2. The Chair or 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.

Fee Structure

| | Type of Project | Bond Rating | Issuance Fees | | | | | Application Fee | Administrative Fee |
|--------|---|---------------|--|---|---|--|------------------|---------------------------------|--|
| | | | Up to \$10M | \$10-15 M | \$15-20M | \$20-95M | Over \$95M | | |
| CPCFA | All Projects | | 20 bp's (Small Business are exempt from these fees) *Application fees are applied to payment of these fees if project is financed | | | | | 5 bp's (min \$250, max \$5,000) | N/A |
| CHFA | Private Facility with annual gross revenues \$2.5 M or more | | 7.5 bp's of aggregate amount of issue, up to a max of \$300,000 | | | | | \$500 | 20 bp's of bonds outstanding annually, max \$150,000 |
| | Private Facility with annual gross revenues less than \$2.5 M | | \$1,000 | | | | | | The lesser of 20 bp's of bonds outstanding or \$500* |
| | Public Facility | | | | | | | | The lesser of 20 bp's of bonds outstanding or \$500 |
| I-Bank | All Projects | | 25 bp's | \$25,000 + 15 bp's of amount above \$10 M | \$32,500 + 10 bp's of amount above \$15 M | \$37,500 + 5 bp's of amount above \$20 M | \$75,000 | \$1,500 | \$500 per year |
| CMFA | Solid Waste | "A" or better | 25 bp's | | | \$50,000 + 10 bp's | | \$2,500 | 5 bp's per year |
| | | Less than "A" | | | | \$50,000 + 12.5 bp's | | | 10 bp's per year |
| | Non Profit | "A" or better | 20 bp's | 5 bp's (Max Fee \$75,000 per transaction) | | | | | 1.5 bp's per year |
| | | Less than "A" | | 10 bp's (Max Fee \$100,000 per transaction) | | | | | |
| IDB | "A" or better | 25 bp's | | | \$50,000 + 10 bp's | | 10 bp's per year | | |
| | Less than "A" | | | | \$50,000 + 12.5 bp's | | | | |
| CSCDA | Solid Waste | | 20 bp's (Min \$15,000) | | | \$40,000 + 5 bp's over \$20 M | | \$5,000 per borrower, per year | Up to first \$100MM: 3 bp's >\$100MM and <\$1B: 2 bp's >\$1B: 1.5 bp's |
| | IDB | | 25 bp's (Min \$10,000) | | | N/A | | \$5,000 per borrower, per year | 12.5 bp's (Conduit) 40 bp's (CSCDA Program) |
| CEBA | Non Profit & IDB | | 25 bp's | \$25,000 + 15 bp's of amount above \$10 M | \$32,500 + 10 bp's of amount above \$15 M | \$37,500 + 5 bp's of amount above \$20 M | \$75,000 | \$1,500.00 | \$500 Annual Fee |

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Attachment A

Agenda Item – 4.B.

Attachment B

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 ~~a fee~~ 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.

§ 8035. Small Business Assistance Fund Fees.

(a) The Authority shall charge an applicant who is not a small business as defined in Section 8020 a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance Fund (SBAF). The amount of the fee shall be sixty-six one-hundredths of one percent (~~.01 .0066~~) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided, that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are refinanced with or converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of seven-tenths thirty-six one hundredths of one percent (~~.007 .0036~~) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees,

each fee shall be the maximum that can legally be charged.

(b) The Authority shall refund a portion of the fee charged pursuant to subdivision (a) of this section if the occurrence of a subsequent event causes the original fee to exceed the amount allowed by federal tax law provisions, causing the bonds to lose their tax exempt status. The refund shall be the difference between the original fee charged and the maximum fee subsequently determined to be chargeable by bond counsel approved by the Authority.

(c) The Authority shall refund a portion of the fee charged if, in the judgment of the Authority, the amount in the Small Business Assistance Fund account exceeds the amount needed to operate the Small Business Assistance Fund program and to assist small businesses obtain financing. If the Authority makes a refund pursuant to this subdivision, the amount of the refund payable to each applicant shall be computed by multiplying the total amount to be refunded by the percentage each applicant contributed in fees to the total fees collected pursuant to this section.

(d) If an applicant refinances existing bonds with the issuance of new bonds, it shall receive a credit against the fee charged pursuant to this section in an amount equal to the net Small Business Assistance Fund fees paid on the earlier bonds.

§ 8042. Eligibility for Assistance.

(a) An applicant, to be eligible for assistance, shall meet the following criteria:

- (1) It shall be a small business as defined in Section 8020.
- (2) It shall seek financing for a project that complies with the Act (commencing with Health and Safety Code Section 44500).
- (3) In connection with assistance in accordance with Section 8043 of this article, it shall seek financing that is no less than \$500,000.
- (4) It shall demonstrate a financial capability to make debt service payments and shall provide such collateral security (in the form of deeds of trust, security agreements, reserves, third party guarantees or other methods) as may be required by the holders of the bonds, the lender in a conventional loan, and the Authority as guarantor.

(b) An applicant shall receive assistance, provided sufficient funds are available, when the following conditions are satisfied:

- (1) The Authority has accepted the applicant's request for financing pursuant to Section 8032.
- (2) The Authority has determined that the applicant is eligible pursuant to subdivision (a) of this section.
- (3) The Authority issues bonds to finance the applicant's project or the Authority approves a guarantee of a conventional loan which will finance the applicant's project.

(c) This section shall not apply where the financing requested is not eligible for the allocation of volume cap pursuant to 26 U.S.C. Section 146.

§ 8043. Assistance.

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, will most effectively assist the application to (i) achieve financing for the project; (ii) obtain a bond rating of “A” from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority’s judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the “prime rate” then prevailing):

- (1) Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees to due to other state agencies, accounting fees, consultant’s fees, and other expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant’s fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for attorney fees, staff time, or other expenses related to the application for financing.
- (2) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.
- (3) Guarantee to the bond holder, conventional lender or provide of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$2,000,000.
- (4) Provide financing assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

(b) The Authority shall waive the fees it charges pursuant to Section 8034 for all applicants meeting the conditions contained in Section 8042~~(b)~~.

(c) The Authority alone is authorized to approve assistance. The commitment to provide assistance shall be valid only when it is included in a written contract executed by both the Authority and applicant or group of applicants.