

April 24, 2019

Via Email

Bob Brown
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Dear Mr. Brown,

This email is in response to your comment letter dated March 21, 2019. The Bay Area Air Quality Management District (Air District) has received your comments on proposed Regulation 3: Fees.

Comment 1: WSPA comments that they were unable to reconcile that the Air District is not recovering 85% of costs for managing the regulatory activities for the five Bay Area refineries that last year paid approximately \$12 million total in fees (estimated) according to WSPA's blind survey of its members.

Air District Response to Comment 1: The 85% minimum cost recovery target set by the Board in 2013 is based on overall cost recovery, which considers all the fee schedules for all facilities and source categories. The overall cost recovery is the appropriate basis to use for the target, since the Air District regulates over 10,000 facilities with over 24,000 sources and each is impacted by the fees charged. The Air District does not calculate cost recovery on a facility basis. It does so on a fee schedule and overall basis.

Currently, the Air District has a significant number of staff assigned to refinery regulatory enforcement, permitting, monitoring and rule development. The Air District is also working on many projects associated with the petroleum refineries, including developing improved emission factors for fugitive emission leaks from heavy liquid service components, reviewing FCCU optimization studies and implementing Regulation 12, Rule 15 Refinery Emission Tracking rule including development of emission inventory guidelines; reviewing inventories and crude slates; and reviewing and approving air monitoring plans.

Comment 2: WSPA asserts that the Air District's fee increases since 2000 have outpaced the other major air districts in California.

Air District Response to Comment 2: In light of the Air District's previous discussions with WSPA regarding cost recovery and the fee regulation, the Air District would like to remind WSPA that the fee increases have been part of the Air District's effort to address a very large

deficit between fee revenue and program costs. The goal has been to decrease the cost recovery gap in existing fees and programs and to adequately fund new programs as the Air District undertakes them. The Air District has worked since 2000 to close pre-existing large cost recovery gaps in many of the fee schedules. The Board of Directors adopted a policy with a goal to attain 85% cost recovery. This necessitated fee increases greater than the rate of inflation. All of this underscores the fact that comparison with other air districts is not meaningful without a thorough understanding of each district's fee schedule structure, basis for increases, costs and expenditures.

Comment 3: WSPA claims that its member refineries routinely experience permit processing times of 5 months or more.

Air District Response to Comment 3: The Air District gives high priority to the timely review of permit applications and renewals. Permit processing times can vary depending on how long it takes for the applicant to complete the application submission, how long it takes for the California Environmental Quality Act (CEQA) review process to be completed, and how long it takes the Air District to evaluate the application. Refinery permit applications can be some of the more complex and controversial to evaluate due to the inter-connectedness of many of the process units and equipment at the facilities and due to the controversial nature of the projects. To help reduce permit processing times, the Air District has reorganized the Engineering Division and has assigned backup or secondary engineers for each refinery. The Engineering Division is focusing on reducing overdue permit applications by updating its procedures for handling incomplete permit applications and prioritizing the work assigned to the evaluating engineers. To maintain consistency and efficiency, the Division continuously reviews its formal training program and is currently working on updating policies, procedures, permit manuals and permit templates.

Comment 4: WSPA states that their members have experienced very high fees relative to the complexity of the application and the processing time for authority to construct renewal applications and emission reduction credit applications.

Air District Response to Comment 4: Fees for both types of applications are charged according to the source specific fee schedule. These applications may seem straightforward, but both require careful review and evaluation.

Although it may appear to the applicant that it is simple and routine to review authority to construct renewal applications and banking applications, they can be complex and time-consuming for the Air District to review and process. Authority to construct renewal applications can require either a "substantial use" determination or a determination that the project meets current Best Available Control Technology (BACT) and offsets requirements. Substantial use determinations can require requesting and evaluating equipment purchase and installation records and documentation as well as site visits. Compliance with BACT can require clearinghouse searches as well as researching equipment and installation costs. In

addition, as with all Air District permitting actions, renewals of authorities to construct must be analyzed for compliance with CEQA.

To be able to issue emission reduction credits (ERCs), the evaluation must demonstrate that emissions reductions are in excess of reductions required by applicable regulatory requirements, and that they are real, permanent, quantifiable, and enforceable and not subject to limitations in Regulation 2-4-303. This is an extremely complicated process where staff must determine whether emissions require adjustment due to RACT, BARCT, District rules and regulations in effect or contained in the most recently adopted Clean Air Plan (2017) and permit conditions. A demonstration must then be made that emissions are not simply being shifted elsewhere in the air basin. RACT and BARCT searches are done nationwide. BAAQMD regulations reflect the scrutiny required by providing 30 calendar days for a banking application completeness determination as opposed to a 15-working day (22 calendar day) completeness determination period for a standard application. Depending upon the credits received, the value of the offsets eclipse the banking application fees (BAAQMD POC ERCs \$5000-\$7000 per ton and NOx ERCs \$9000-\$18000 per ton in 2017, *ARB Emission Reduction Offset Transaction Costs, Summary Report for 2017*, <https://www.arb.ca.gov/nsr/erco/erc17.pdf>).

Comment 5: WSPA comments that the Air District staff should improve staff coding of time, so that level of effort by staff or costs to administer regulatory programs are more transparent to the public.

Air District Response to Comment 5: The annual Air District Cost Recovery Report that is published along with the proposed fee regulation and staff report contains a line item for ‘Direct Labor Costs’ by fee schedule in the figure that shows “Fee Revenue and Program Costs by Fee Schedule”. However, in an effort to ensure the accuracy and transparency of staff time coding, the Air District staff has taken several recent actions:

- Creating an employee timecoding handbook with complete descriptions of permit related activities
- Issuing a formal employee timecoding handbook
- Creating a Cost Recovery Timekeeping Video
- Expanding District-Wide Timekeeping Training
- Holding quarterly oversight meetings on employee labor coding
- Scheduling a meeting with WSPA and CCEEB to explain and demonstrate coding of staff time

Comment 6: WSPA requests that the Board provide details of how staff time and other expenditures are funded by each Fee Schedule.

Air District Response to Comment 6: Staff coding of time is the basis for allocation of all expenditures in the Air District and has been shown in all cost recovery presentations since 1999. Permit Fee revenue information is available by fee schedule as well as by individual source. As part of the Air District Cost Recovery Policy, periodic cost recovery review is performed by an

outside consultant. The latest review was performed in 2018 by the Matrix Consulting Group. WSPA was invited to comment and ask questions on the Matrix Cost Recovery and Containment Report.

Comment 7: WSPA asserts that several Fee Schedules (Schedule M, P, T, and X) and regulation sections use emissions to set fee amounts for what seem to be similar services, which results in a lack of transparency for the public to understand what services are covered.

Permit to Operate fees within Schedules B (Combustion of Fuel), C (Storage Tanks), and F (Misc. Sources) assign an amount for refinery emission units. The fee has no explanation of what is being collected. The fixed amounts do not seem to reflect recovery of costs for staff work efforts.

Air District Response to Comment 7: Schedule M (Major Stationary Source Fees) is a fee that was adopted in 1990 to help recover the costs associated with all activities associated with regulating the Air District's largest emitting complex facilities. Normally, the greater the emissions from a facility, the more complex and resource-intensive the work to regulate the facility. This is the general premise for the emissions-based Fee Schedules. However, as emissions are reduced, these facilities realize a decrease in fees, which is further incentive for these facilities to reduce emissions. Schedule P (Major Facility Review), Schedule T (Greenhouse Gases), and Schedule X (Community Air Monitoring) are associated with specific programs and staff timecoding is based on time spent on these programs. Fees are based on an initial assessment of costs for service and are updated annually based on cost recovery calculations on a fee schedule basis. Schedule X fees were based on the capital costs to set up community monitoring stations amortized over 10 years.

Source or equipment-based fee schedules (such as Schedules B, C and F) are based on initial level of service required to regulate the specified sources and annual cost recovery for each schedule is used to determine fee amendments.

Comment 8: WSPA requests that Simpson & Simpson CPAs (S&S) be hired to conduct an analysis of how staff code their time to the fee Schedules for each permitted entity and issue a report to the public. WSPA also requests that adoption of the fee increases be suspended until the S&S analysis is completed.

Air District Response to Comment 8: The Matrix Consulting Group's Cost Recovery Study has recently completed the requested analysis for all permitted entities. As stated in the response to Comment #1, the Air District does not calculate cost recovery on a facility basis. It does so on a fee schedule and overall basis. Moreover, in 2005 and thereafter in each year from 2007 on, the Air District has conducted an annual Cost Recovery and Containment Study that made available along with the proposed fee regulation and staff report. As with past studies, the 2018 Cost Recovery and Containment Study also contains the requested information in detail in the figures that show "Fee Revenue and Program Costs by Fee Schedule". Accordingly, we see no reason either to hire S&S to audit Matrix's analysis or to suspend the adoption of fee increases.

Finally, we note that the Air District invited WSPA to comment and ask questions on the subject Cost Recovery and Containment Report when first completed by Matrix Consulting in 2018.

Comment 9: WSPA requests that the Air District establish a public working group between staff, the regulated community, and stakeholders to review and make recommendations to the Board to realign fees for the appropriate level of service.

Air District Response to Comment 9: Periodically since 2005, the Air District has hired an outside firm to conduct a Cost Recovery Study to thoroughly analyze the District's fee structure, revenues and associated costs in order to determine whether or not fee revenue from these regulated sources was sufficient to pay for the costs of those regulatory activities and services. In each year between the third-party analyses, Air District staff prepared an update of the most recent study using the same methodology. Each Cost Recovery Study has revealed the Air District's fee revenue to fall significantly short of its program costs. The Air District bases its fees and proposed increases to them on the Cost Recovery Studies' assessment of costs to provide service and cost recovery calculations on a fee schedule basis. To obtain the Board of Directors' set goal of 85% cost recovery, fee adjustments are made according to the Matrix Consulting Group's recommendations to close the gap between revenue and costs of providing service. Fees are therefore already 'aligned' with the level of service. The costs to service facilities have changed due to factors beyond our control including, but not limited to more stringent regulatory requirements; controversial nature of refinery permits; and compliance with CEQA.

The Air District staff provides the regulated community, stakeholders and the public many opportunities to provide comment and discuss the proposed changes to the fee regulation in meetings and workshops. WSPA was invited to participate in the 2018 Matrix Consulting Group's Cost Recovery Study work group where it was discussed in depth how costs are tracked and allocated. The District will continue discussions with WSPA, industry, stakeholders and the public.

Thank you for your comments.

Regards,
--Barry

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