



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

## **STAFF REPORT**

### **PROPOSED AMENDMENTS TO BAAQMD REGULATION 3: FEES**

**May 31, 2016**

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## **1. EXECUTIVE SUMMARY**

Air District staff has prepared proposed amendments to Air District Regulation 3: Fees for Fiscal Year Ending (FYE) 2017 (i.e., July 1, 2016 to June 30, 2017) that would increase revenue to enable the Bay Area Air Quality Management District (Air District) to continue to effectively implement and enforce regulatory programs for stationary sources of air pollution. The proposed fee amendments for FYE 2017 are consistent with the Air District's Cost Recovery Policy, which was adopted on March 7, 2012 by the Air District's Board of Directors (see Appendix A). This policy states that the Air District should amend its fee regulation, in conjunction with the adoption of budgets for FYE 2013 through FYE 2016, in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent. The policy also indicates that amendments to specific fee schedules should continue to be made in consideration of cost recovery analyses conducted at the fee schedule level, with larger increases being adopted for the schedules that have the larger cost recovery gaps.

A recently completed 2016 Cost Recovery Study (a copy of which is available on request) shows that for the most recently completed fiscal year (FYE 2015), fee revenue recovered 83 percent of program activity costs.

Over the past several years, the Air District has implemented aggressive cost containment measures including maintaining historically high staff vacancy rates and reducing capital expenditures.

The projected cost recovery percentage for FYE 2016 is expected to be approximately 80%. This is based on the FYE 2016 permit fees expected to be collected compared to the salary and other expenditures budgeted (plus 11 new positions). This projected drop of cost recovery 83% to 80% between FYE 2015 and FYE 2016 is primarily due to filling vacancies and adding new positions in order to support mandated stationary source programs, ensure that core functions will be maintained at levels necessary to adequately service the regulated community, and address key policy initiatives such as the Refinery Emissions Reduction Strategy and the Climate Action Work Program.

The drop in cost recovery percentage for FYE 2016 is less than originally projected (approximately 76%), as the Air District planned to fill 19 additional positions to support air quality permitting and compliance programs in FYE 2016. However, the Air District has only ended up filling 11 of these positions to date.

The results of the 2016 Cost Recovery Study were used to establish proposed fee amendments for each existing fee schedule based on the degree to which existing fee revenue recovers the regulatory program activity costs associated with the schedule. Based on this approach, the fee rates in certain fee schedules would be raised by the annual increase in the Bay Area Consumer Price Index (2.2%), while other fee schedules would be increased by 7, 8, or 9 percent. Several fees that are administrative in nature (e.g. permit application filing fees and permit renewal processing fees) would be increased by 2.2 percent.

The proposed fee amendments would increase annual permit renewal fees for most small businesses that require Air District permits by less than \$100, with the exception of gas stations with more than four, three-product gasoline dispensing nozzles, which would have larger fee increases (e.g., a typical gas station with 10, three-product gasoline dispensing nozzles would have an increase of \$272 in annual permit renewal fees). For larger facilities, increases in annual permit renewal fees would range between 7 and 15 percent due to differences in the facility's size, type of emission sources, pollutant emission rates and applicable fee schedules. In accordance with State law, the Air District's amendments to Regulation 3 cannot cause an increase in overall permit fees by more than 15 percent in any calendar year. The proposed fee amendments would increase overall Air District fee revenue in FYE 2017 by approximately \$3.6 million relative to fee revenue that would be expected without the amendments.

Air District staff recommends that the Board of Directors adopt the proposed amendments to Regulation 3: Fees with an effective date of July 1, 2016, and approve the filing of a CEQA Notice of Exemption following the 2<sup>nd</sup> public hearing scheduled to consider this matter on June 15, 2016.

## **2. BACKGROUND**

State law authorizes the Air District to assess fees to generate revenue to recover the reasonable costs of regulatory program activities for stationary sources of air pollution. The largest portion of Air District fees is collected under provisions that allow the Air District to impose permit fees sufficient to recover the costs of program activities related to permitted sources. The Air District is also authorized to assess fees for: (1) area-wide or indirect sources of emissions which are regulated, but for which permits are not issued by the Air District, (2) sources subject to the requirements of the State Air Toxics Hot Spots Program (Assembly Bill 2588), and (3) activities related to the Air District's Hearing Board involving variances or appeals from Air District decisions on the issuance of permits. The Air District has established, and regularly updates, a fee regulation (Air District Regulation 3: Fees) under these authorities.

The Air District has analyzed whether fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the costs of related program activities. In 1999, a comprehensive review of the Air District's fee structure and revenue was completed by the firm KPMG Peat Marwick LLP (*Bay Area Air Quality Management District Cost Recovery Study, Final Report: Phase One – Evaluation of Fee Revenues and Activity Costs*, KPMG Peat Marwick LLP, February 16, 1999). This 1999 Cost Recovery Study indicated that fee revenue did not nearly offset the full costs of program activities associated with sources subject to fees as authorized by State law. Property tax revenue (and in some years, reserve funds) had been used to close this cost recovery gap.

The Air District Board of Directors adopted an across-the-board fee increase of 15

percent, the maximum allowed by State law for permit fees, for FYE 2000 as a step toward more complete cost recovery. The Air District also implemented a detailed employee time accounting system to improve the ability to track costs by program activities moving forward. In each of the next five years, the Air District adjusted fees only to account for inflation (with the exception of FYE 2005, in which the Air District also approved further increases in Title V permit fees and a new permit renewal processing fee).

In 2004, the Air District funded an updated Cost Recovery Study. The accounting firm Stonefield Josephson, Inc. completed this study in March 2005 (*Bay Area Air Quality Management District Cost Recovery Study, Final Report*, Stonefield Josephson, Inc., March 30, 2005). This 2005 Cost Recovery Study indicated that a significant cost recovery gap continued to exist. The study also provided cost recovery results at the level of each individual fee schedule based on detailed time accounting data. Finally, the contractor provided a model that could be used by Air District staff to update the analysis of cost recovery on an annual basis using a consistent methodology.

For the five years following the completion of the 2005 Cost Recovery Study (i.e., FYE 2006 through 2010), the Air District adopted fee amendments that increased overall projected fee revenue by an average of 8.9 percent per year. In order to address fee equity issues, the various fees were not all increased in a uniform manner. Rather, individual fee schedules were amended based on the magnitude of the cost recovery gap for that schedule, with the schedules with the more significant cost recovery gaps receiving more significant fee increases. In FYE 2009, the Air District's fee amendments also included a new greenhouse gas (GHG) fee schedule. The GHG fee schedule recovers costs from stationary source activities related to the Air District's Climate Protection Program. In FYE 2011, the Air District adopted an across-the-board 5 percent fee increase, except for the Title V fee schedule (Schedule P) which was increased by 10 percent (the Air District's 2010 Cost Recovery Study indicated that Fee Schedule P recovered only 46 percent of program activity costs).

In September 2010, the Air District contracted with the firm Matrix Consulting Group to complete an updated analysis of cost recovery that could be used in developing fee amendments for FYE 2012 and beyond. This study also included a review of the Air District's current cost containment strategies, and provided recommendations to improve the management of the Air District's costs and the quality of services provided to stakeholders. The study was completed in March 2011 (*Cost Recovery and Containment Study, Bay Area Air Quality Management District, Final Report*, Matrix Consulting Group, March 9, 2011). The 2011 Cost Recovery and Containment Study concluded that, for FYE 2010, overall fee revenue recovered 64 percent of related program activity costs. The study also provided cost recovery results at the level of each individual fee schedule based on detailed time accounting data, and provided a methodology for Air District staff to update the analysis of cost recovery on an annual basis using a consistent methodology.

The results of the 2011 Cost Recovery and Containment Study were used to establish fee amendments for FYE 2012 that were designed to increase overall fee revenue by 10

percent (relative to fee revenue that would result without the fee amendments). In order to address fee equity issues, the various fees were not all increased in a uniform manner. Rather, existing fee schedules were amended based on the magnitude of the cost recovery gap for that schedule, with the schedules with the more significant cost recovery gaps receiving more significant fee increases. Based on this approach, the fee rates in several fee schedules were not increased, while the fee rates in other fee schedules were increased by 10, 12, or 14 percent.

One of the recommendations made by Matrix Consulting Group in their 2011 Cost Recovery and Containment Study indicated that the Air District should consider the adoption of a Cost Recovery Policy to guide future fee amendments. Air District staff initiated a process to develop such a Policy in May 2011, and a Stakeholder Advisory Group was convened to provide input in this regard. A Cost Recovery Policy was adopted by the Air District's Board of Directors on March 7, 2012 (see Appendix A). This policy specifies that the Air District should amend its fee regulation, in conjunction with the adoption of budgets for FYE 2013 through FYE 2016, in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent. The policy also indicates that amendments to specific fee schedules should continue to be made in consideration of cost recovery analyses conducted at the fee schedule-level, with larger increases being adopted for the schedules that have the larger cost recovery gaps.

Staff has updated the cost recovery analysis for the most recently completed fiscal year (FYE 2015) using the methodology established by Matrix Consulting Group. The 2016 Cost Recovery Study indicates that overall cost recovery rate in FYE 2015 was 83 percent.

### **3. PROPOSED FEE AMENDMENTS FOR FYE 2016**

#### **3.1 OVERVIEW OF PROPOSED AMENDMENTS**

The results of the 2016 Cost Recovery Study (a copy of which is available on request) were used to establish proposed fee amendments for existing fee schedules based on the degree to which existing fee revenue recovers the activity costs associated with the schedule. Based on this approach, the fee rates in certain fee schedules would be increased by 7, 8, or 9 percent. Other fee schedules would be raised by 2.2%, the annual increase from 2014 to 2015 in the Bay Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) as reported by the United States Bureau of Labor Statistics. The specific basis for these proposed fee amendments is summarized in Table 1 as follows:

**Table 1. Proposed Fee Changes Based on Cost Recovery by Fee Schedule**

<b>Revenue from Fee Schedule as a Percentage of Program Activity Costs</b>	<b>Fee Increase</b>	<b>Affected Fee Schedules</b>
Revenue exceeds 95% of costs	2.2%	B, C, G-5, L, M, N, Q, U
Revenue is 85 to 95% of costs	7%	T
Revenue is 75 to 84% of costs	8%	F, G-3, P
Revenue is less than 75% of costs	9%	A, D, E, G-1, G-2, G-4, H, I, K,R, S, V

In addition to the proposed amendments to fee schedules, Air District staff is proposing to increase several administrative fees that appear in the Standards section of Regulation 3 by 2.2 percent. This includes permit application filing fees and permit renewal processing fees. Existing permit fees are well below the point of full cost recovery, and these fee increases are proposed to help the Air District reduce its cost recovery gap.

**Change to Schedule T: Greenhouse Gas Fees**

The purpose of Schedule T: Greenhouse Gas Fees is to recover the Air District’s costs of its Climate Protection Program activities related to stationary sources. Schedule T fees are assessed to permitted facilities in proportion to the annual emissions of Greenhouse Gases (GHGs) expressed on a carbon dioxide equivalent (CDE) basis, excluding any emitted biogenic carbon dioxide. The GHG emissions are calculated based on data reported to the Air District for the most recent 12-month period prior to billing.

For the proposed amendments for FYE 2017, the Air District proposes to update the Global Warming Potentials for the GHGs listed in Schedule T to the most recent values reported in the Intergovernmental Panel on Climate Change (IPCC), 5th Assessment Report, 2014. This is expected to result in a negligible effect on the Schedule T fees charged.

Also, the Air District proposes to update the GHG compound list in Schedule T to be consistent with the GHGs for which California Air Resources Board (CARB) reporting is required. To do this, the Air District is adding HFC-245fa, HFC-365mfc, and nitrogen trifluoride. CARB does not require reporting for HCFCs, but HCFCs are not yet phased out and several of the HCFCs are in the Air District’s current fee schedule. The Air District currently inventories (HCFC-141b, HCFC-225ca, and HCFC-225cb), so these three GHGs will be added for cost recovery.

**New Schedule W – Petroleum Refining Emissions Tracking Fees**

This new fee schedule would apply to five Bay Area petroleum refineries that will be subject to the annual emissions inventory, crude slate reporting and air monitoring plan submittals of proposed Air District's Regulation 12, Rule 15 that is scheduled for adoption consideration on April 20, 2016. This new fee schedule would also apply to the following five Regulation 12, Rule 15 support facilities:

- Chemtrade West sulfuric acid plant (BAAQMD Plant No. 23)
- Eco Services sulfuric acid plant (BAAQMD Plant No. 22789)
- Air Products and Chemicals hydrogen plant (BAAQMD Plant No. 10295)
- Air Liquide hydrogen plant (BAAQMD Plant No. 17419)
- Phillips 66 coke calcining plant (BAAQMD Plant No. 21360)

These fees are intended to recover the Air District's costs associated with reviewing the required reports and plan submittals of proposed Regulation 12, Rule 15.

Engineering Division staff estimates for reviewing the initial emissions inventory and crude slate reports associated with Regulation 12, Rule 15 are shown below in Table 2. Costs include the detailed review by senior engineering and technical staff and approval by management of each refinery's: annual emissions inventory (criteria and toxic pollutants) and air monitoring plans. This work also involves getting the emissions inventory into the Air District database and reviewing crude slate reports upon request. Each year after the initial report submittals, it is assumed that about half of those engineering resources will be required to review each annual report submitted by each refinery.

The Meteorology, Measurement, and Rules Division estimates that the Air District's costs to review the Regulation 12, Rule 15 air monitoring plans would be \$7,500 each.

**Table 2. Proposed Schedule W – Estimated Cost for Engineering Review**

<i>Role</i>	<i>Hourly Rate</i>	<i>+80% Benefits, Leave, Indirect Costs</i>	<i>Hours</i>	<i>Estimated Cost</i>
<i>Senior Air Quality Engineer</i>	\$57.19	\$102.94	450	\$46,323.90
<i>Supervising Air Quality Engineer</i>	\$63.05	\$113.49	80	\$ 9,079.20
<i>Air Quality Engineering Manager</i>	\$71.60	\$128.88	20	\$ 2,577.60
<i>Air Quality Engineering Director</i>	\$86.45	\$155.61	10	\$ 1,556.10
<b><i>Totals</i></b>			<b>560</b>	<b>\$59,536.80</b>

Engineering staff estimates for review of the initial emissions inventory reports from Rule 12-15 support facilities are calculated below based on the Engineering Division cost estimate for reviewing Rule 12-15 annual emissions inventory reports and crude slate reports (\$60,000) and using a ratio of total sources at the support facilities divided by total sources subject to Rule 12-15.

- Number of sources at support facilities = 100
- Number of sources at refineries = 1711

Rule 12-15 Support Facility Fee: Initial emissions inventory report review:

- $\$60,000 \times (100/1811) = \$3,313$  (or about \$3,300)

Refinery Fee: Initial emissions inventory report review:

- $\$60,000 \times (1711/1811) = \$56,687$  (or about \$57,000)
- A recent revision to the Rule 12-15 that will no longer require crude slate report submittals will result in less reviews. Assuming crude slate report review would cost 5% less (equivalent to 28 hours less), the refinery fee is about \$54,000.

Each year after the initial report submittals, it is assumed that about half of those engineering resources will be required to review each annual report submitted by each support facility.

### **New Schedule X – Major Stationary Source Community Air Monitoring Fees**

This new fee schedule would recover the costs associated with the proposed Air District Community Air Monitoring Program.

The goal of the Community Air Monitoring Program is to establish air monitoring stations in areas where major stationary sources may contribute to impacts in local communities not fully represented by the Air District's current air monitoring network. Data from these newly established monitoring locations would be used to compare air quality in potentially impacted communities with air quality measurements at other Air District sites.

Schedule X would apply to facilities that emit 35 tons per year or more of Organics, Sulfur Oxides, Nitrogen Oxides, Carbon Monoxide, and/or PM<sub>10</sub> within an area representative of air quality measured by a proposed Air District community air monitoring location. Proposed locations will utilize EPA protocols established in 40 Code of Federal Regulations part 58 to specify representativeness of air quality near stationary sources included in Schedule X. For the purposes of Schedule X, facilities within the scale of representativeness that represents air quality of communities impacted by nearby stationary sources are those facilities the Air District identifies as the largest stationary source contributors to potential impacts in the local communities to be monitored as defined by the above-referenced EPA monitoring

regulations.

The first communities to have air monitoring stations established will be those in the vicinity of the five petroleum refineries. At this time, the Air District identifies the following five primary potential stationary source contributors (shown in **bold** below) and the other significant facilities in the area, each of which would be subject to the proposed fee in Schedule X:

- **Chevron Richmond Refinery**, Levin Richmond, Chemtrade West US LLC, and West Contra Costa County Landfill
- **Phillips 66 Rodeo Refinery**, Phillips 66 Carbon Plant, Air Liquide, and Crockett Cogeneration
- **Shell Martinez Refinery** and Eco Services
- **Tesoro Avon Refinery**, Martinez Cogen, Plains Products Terminals LLC, Air Products and Chemical, and Central Contra Costa County Sanitary
- **Valero Benicia Refinery**

Later, other communities with major stationary sources will have monitoring stations installed in their communities. The Air District will continue operation of these stations for a minimum of three years in order to ensure representative data is collected, but may determine that monitoring resources are better utilized in other applications.

The January 2016 report titled “Socio-Economic Analysis of Proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking” provides an installed cost estimate of \$1,450,000 for a community air monitoring station.

**Table 3. Proposed Schedule X – Community Air Monitoring Cost Model**

Proposed Schedule X - Community Air Monitoring Cost Model				
Installed Cost Per Monitor	\$1,450,000			
Number of Monitors	5			
Following the methodology of the District's <a href="#">BACT/TBACT Workbook</a> to annualize the total installed capital costs,				
Interest Rate	4%			
Years (n)	10			
		Per Monitor	Total	
Capital Recovery Factor	0.123	\$178,350	\$891,750	
Tax	0.01	\$14,500	\$72,500	
Insurance	0.01	\$14,500	\$72,500	
General & Administrative	0.02	\$29,000	\$145,000	
Operations & Maintenance	0.05	\$72,500	\$362,500	
Annualized Cost	\$1,544,250			

As shown in the above table, the total annualized cost is about \$1.5 million for five monitors over 10 years.

The Schedule X fee rate of \$60.61/ton was calculated by weighting the criteria pollutant emissions of all 62 Bay Area facilities that emit 35 tons per year or more to recover the total annualized cost for the proposed community air monitoring stations.

Only major facilities located within the vicinity, meaning within an area intended to be representative, as defined by EPA monitoring regulations, of air quality measured by a proposed community air monitor location, would be subject to the Schedule X fees. The fees charged under Schedule X to the five refineries and the other major facilities identified above will recover only about \$1 million of the \$1.5 million of the annual costs for the proposed community air monitoring stations.

### **3.2 PROPOSED RULE AMENDMENTS**

The complete text of the proposed changes to Air District Regulation 3: Fees, has been prepared in strikethrough (deletion of existing text) and underline (new text) format, and is included in Appendix B. Proposed fee increases have been rounded to the nearest whole dollar. Additional details on the proposed fee amendments follow.

- Section 3-302: Fees for New and Modified Sources

The proposed amendment to Section 3-302 is a 2.2 percent increase in the filing fee for permit applications for new/modified sources and abatement devices, from \$452 to \$462.

- Section 3-302.3: Fees for Abatement Devices

The proposed amendment to Section 3-302.3 is a 2.2 percent increase in the filing fee, from \$452 to \$462. Also, a maximum cap of \$10,000 is proposed, since this is sufficient to recover costs for these applications.

- Section 3-304: Alteration

The proposed amendment to Section 3-304 would require that an existing gasoline dispensing facility would pay a fee of 1.75 times the filing fee; from \$452 to \$800. A considerable level of effort is required by Air District staff to review these alteration applications. The proposed fee would help recover the costs of permit activity, source test verification, and compliance/enforcement activities related to gasoline dispensing facility alterations.

- Section 3-309: Duplicate Permit or Registration

The proposed amendment to Section 3-309 is a 2.2 percent increase in the duplicate permit or registration fee, from \$76 to \$78.

- Section 3-311: Banking

The proposed amendment to Section 3-311 is a 2.2 percent increase in the filing fee for banking applications, from \$452 to \$462.

- Section 3-312: Emission Caps and Alternative Compliance Plans

No change in regulatory language is proposed for subsection 3-312.1, which requires an additional annual fee equal to fifteen percent of the facility's Permit to Operate fee for facilities that elect to use an Alternative Compliance Plan (ACP) for compliance with Regulation 8, or Regulation 2, Rule 2. These ACP fees would change along with the proposed changes in Permit to Operate renewal fees listed in Table 1 for sources in Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, G-5, H, I, and K.

The proposed amendment to subsection 3-312.2 is a 2.2 percent increase in the annual fee for a facility that elects to use an ACP contained in Regulation 2, Rule 9: Interchangeable Emission Reduction Credits. The fee for each source included in the ACP would be increased from \$1,144 to \$1,169 and the maximum fee would be increased from \$11,445 to \$11,692.

- Section 3-318: Public Notice Fee, Schools

The proposed amendment to Section 3-318.1 and 3-318.2 is a 2.2 percent increase in the fee, from \$2,100 to \$2,146 per application.

- Section 3-327: Permit to Operate, Renewal Fees

The processing fees for renewal of Permits to Operate specified in subsections 3-327.1 through 3-327.6 would be increased by 2.2 percent.

- Section 3-329: Fee for Risk Screening

No change in regulatory language is proposed for Section 3-329: Fee for Risk Screening. Increases in risk screening fees are instead specified in Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, G-5, H, I, and K. For each applicable fee schedule, the base fee for each application that requires a Health Risk Screening Analysis would be increased by 2.2 percent from \$441 to \$452. The portion of the risk screening fee that is based on the type of source involved would be changed along with the proposed changes in Permit to Operate renewal fees listed in Table 1 for sources in Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, G-5, H, I, and K.

- Section 3-337: Exemption Fee

The proposed amendment to Section 3-337 is a 2.2 percent increase in the filing fee for a certificate of exemption, from \$452 to \$462.

## **Fee Schedules:**

### **Schedule A: Hearing Board Fees**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule A would be increased by 9 percent. The schedules of fees for excess emissions (Schedule A: Table I) and visible emissions (Schedule A: Table II) would also be increased by 9 percent.

### **Schedule B: Combustion of Fuel**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule B would be increased by 2.2 percent. The base fee for a health risk screening analysis for a source covered by Schedule B would be increased by 2.2 percent from \$452 to \$462.

### **Schedule C: Stationary Containers for the Storage of Organic Liquids**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule C would be increased by 2.2 percent. The base fee for a health risk screening analysis for a source covered by Schedule C would be increased by 2.2 percent from \$452 to \$462.

### **Schedule D: Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule D would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule D, which would be increased by 2.2 percent from \$452 to \$462. For bulk plants, terminals or other facilities subject to Schedule D, Part B., the base fee for a health risk screening analysis is included in the Risk Screening Fee (RSF) for the first TAC source in the application.

### **Schedule E: Solvent Evaporating Sources**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule E would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule E, which would be increased by 2.2 percent from \$452 to \$462.

### **Schedule F: Miscellaneous Sources**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule F would be increased by 8 percent. The base fee for a health risk screening analysis for a source covered by Schedule F would be increased by 2.2 percent, from \$452 to \$462. The base fee for a health risk screening analysis in Schedule F is included in the RSF for the first TAC source in the application.

### **Schedule G-1: Miscellaneous Sources**

Based on the cost recovery methodology listed in Table 1, the fees in Schedule G-1 would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule G-1, which would be increased by 2.2 percent from \$452 to \$462. The base fee for a health risk screening analysis in Schedule G-1 is included in the RSF for the first TAC source in the application.

#### Schedule G-2: Miscellaneous Sources

Based on the cost recovery methodology listed in Table 1, the fees in Schedule G-2 would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule G-2 which would be increased by 2.2 percent from \$452 to \$462. The base fee for a health risk screening analysis in Schedule G-2 is included in the RSF for the first TAC source in the application.

#### Schedule G-3: Miscellaneous Sources

Based on the cost recovery methodology listed in Table 1, the fees in Schedule G-3 would be increased by 8 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule G-3, which would be increased by 2.2 percent from \$452 to \$462. The base fee for a health risk screening analysis in Schedule G-3 is included in the RSF for the first TAC source in the application.

#### Schedule G-4: Miscellaneous Sources

Based on the cost recovery methodology listed in Table 1, the fees in Schedule G-4 would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule G-4, which would be increased by 2.2 percent from \$452 to \$462. The base fee for a health risk screening analysis in Schedule G-4 is included in the RSF for the first TAC source in the application.

#### Schedule G-5: Miscellaneous Sources

Based on the cost recovery methodology listed in Table 1, the fees in Schedule G-5 would be increased by 2.2 percent. The base fee for a health risk screening analysis for a source covered by Schedule G-5 (included in the RSF for the first TAC source in the application), would be increased by 2.2 percent from \$452 to \$462. The base fee for a health risk screening analysis in Schedule G-5 is included in the RSF for the first TAC source in the application.

#### Schedule H: Semiconductor and Related Sources

Based on the cost recovery methodology listed in Table 1, the fees in Schedule H would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule H, which would be increased by 2.2 percent from \$452 to \$462.

#### Schedule I: Dry Cleaners

Based on the cost recovery methodology listed in Table 1, the fees in Schedule I would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule I, which would be increased by 2.2 percent from \$452 to \$462.

#### Schedule K: Solid Waste Disposal Sites

Based on the cost recovery methodology listed in Table 1, the fees in Schedule K would be increased by 9 percent, except for the base fee for a health risk screening analysis for a source covered by Schedule K, which would be increased by 2.2 percent from \$452 to \$462.

#### Schedule L: Asbestos Operations

Based on the cost recovery methodology listed in Table 1, the fees in Schedule L would be increased by 2.2 percent.

#### Schedule M: Major Stationary Source Fees

Schedule M is an emissions-based fee schedule that applies to various permitted facilities emitting 50 tons per year or more of organic compounds, sulfur oxides, nitrogen oxides, and/or PM<sub>10</sub>. Air District staff is proposing a 2.2 percent increase in the Schedule M fee rate based on the annual increase in the Bay Area Consumer Price Index.

#### Schedule N: Toxic Inventory Fees

Based on the cost recovery methodology listed in Table 1, the base fee in Sections 2 and 3 would be increased by 2.2% from \$86 to \$88. The value of the variable  $F_T$ , the total amount of fees to be collected, used to calculate fees for Schedule N is proposed to be remain unchanged for FYE 2017.

#### Schedule P: Major Facility Review Fees

Based on the cost recovery methodology listed in Table 1, the fees in Schedule P would be increased by 8 percent.

#### Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage

## Tanks

Based on the cost recovery methodology listed in Table 1, the fees in Schedule T would be increased by 2.2 percent, from \$164 to \$168.

## Schedule R: Equipment Registration Fees

Based on the cost recovery methodology listed in Table 1, the fees in Schedule R would be increased by 9 percent.

## Schedule S: Naturally Occurring Asbestos Operations

Based on the cost recovery methodology listed in Table 1, the fees in Schedule S would be increased by 9 percent.

## Schedule U: Indirect Source Review Fees

Based on the cost recovery methodology listed in Table 1, the fees in Schedule U would be increased by 2.2 percent.

## Schedule V: Open Burning

Based on the cost recovery methodology listed in Table 1, the fees in Schedule V would be increased by 9 percent.

## **4. FEE REVENUE AND COSTS OF PROGRAM ACTIVITIES**

On an overall basis, the 2016 Cost Recovery Study (a copy of which is available on request) concluded that, for FYE 2015, fee revenue recovered 80 percent of regulatory program activity costs, with revenue of \$32.6 million and costs of \$41 million. This resulted in a shortfall, or cost recovery gap, of \$8.4 million which was filled by county tax revenue. The proposed fee amendments for FYE 2017 are projected to increase overall Air District fee revenue by approximately \$3.6 million relative to fee revenue levels that would be expected without the amendments. Revenue in FYE 2017 is expected to remain below the Air District's regulatory program costs for both permitted and non-permitted sources.

Over the past several years, the Air District has implemented aggressive cost containment measures including maintaining historically high staff vacancy rates and reducing capital expenditures.

The projected cost recovery percentage for FYE 2016 is expected to be approximately 80%. This is based on the FYE 2016 permit fees expected to be collected compared to the salary and other expenditures budgeted (plus 11 new positions). This projected drop of cost recovery 83% to 80% between FYE 2015 and FYE 2016 is primarily due to filling

vacancies and adding new positions in order to support mandated stationary source programs, ensure that core functions will be maintained at levels necessary to adequately service the regulated community, and address key policy initiatives such as the Refinery Emissions Reduction Strategy and the Climate Action Work Program.

The drop in cost recovery percentage for FYE 2016 is less than originally projected (approximately 76%), as the Air District planned to fill 19 additional positions to support air quality permitting and compliance programs in FYE 2016. However, the Air District has only ended up filling 11 of these positions to date.

In FYE 2017, the Air District is proposing to fill more of these vacancies in order to support mandated stationary source programs, ensure that core functions will be maintained at levels necessary to adequately service the regulated community, and to further address key policy initiatives such as the Refinery Emissions Reduction Strategy and the Climate Action Work Program. In order to improve program efficiency, the Air District has recently initiated an on-line permitting system for high-volume source categories including gas stations, dry cleaners, and auto-body shops, and is expanding this system for additional source categories. Staff will continue to identify and maintain a level of effort to achieve Air District mandates and continually monitor the pattern of revenues versus expenditures.

## **5. STATUTORY AUTHORITY FOR PROPOSED FEE INCREASES**

The Air District is a regional regulatory agency, and its fees are used to recover the costs of issuing permits, performing inspections, and other associated regulatory activities. The Air District's fees fall into the category specified in Section 1(e) of Article XIII C of the California Constitution which specifies that charges of this type assessed to regulated entities to recover regulatory program activity costs are not taxes. The amount of fee revenue collected by the Air District has been clearly shown to be much less than the costs of the Air District's regulatory program activities both for permitted and non-permitted sources.

The Air District's fee regulation, with its various fee schedules, is used to allocate regulatory program costs to fee payers in a manner which bears a fair or reasonable relationship to the payer's burden on, or benefits received from, regulatory activities. Permit fees are based on the type and size of the source being regulated, with minimum and maximum fees being set in recognition of the practical limits to regulatory costs that exist based on source size. Add-on fees are used to allocate costs of specific regulatory requirements that apply to some sources but not others (e.g., health risk screening fees, public notification fees, alternative compliance plan fees). Emissions-based fees are used to allocate costs of regulatory activities not reasonably identifiable with specific fee payers.

Since 2006, the Air District has used annual analyses of cost recovery performed at the fee-schedule level, which is based on data collected from a labor-tracking system, to

adjust fees. These adjustments are needed as the Air District's regulatory program activities change over time based on changes in statutes, rules and regulations, enforcement priorities, and other factors.

State law authorizes air districts to adopt fee schedules to cover the costs of various air pollution programs. California Health and Safety Code (H&S Code) section 42311(a) provides authority for an air district to collect permit fees to cover the costs of air district programs related to permitted stationary sources. H&S Code section 42311(f) further authorizes the Air District to assess additional permit fees to cover the costs of programs related to toxic air contaminants. H&S Code section 41512.7(b) limits the allowable percentage increase in fees for authorities to construct and permits to operate to 15 percent per year.

H&S Code section 44380(a) authorizes air districts to adopt a fee schedule that recovers the costs to the air district and State agencies of the Air Toxics Hot Spots Program (AB 2588). The section provides the authority for the Air District to collect toxic inventory fees under Schedule N.

H&S Code section 42311(h) authorizes air districts to adopt a schedule of fees to cover the reasonable costs of the Hearing Board incurred as a result of appeals from air district decisions on the issuance of permits. Section 42364(a) provides similar authority to collect fees for the filing of applications for variances or to revoke or modify variances. These sections provide the authority for the Air District to collect Hearing Board fees under Schedule A.

H&S Code section 42311(g) authorizes air districts to adopt a schedule of fees to be assessed on area-wide or indirect sources of emissions, which are regulated but for which permits are not issued by the air district, to recover the costs of air district programs related to these sources. This section provides the authority for the Air District to collect asbestos fees (including fees for Naturally Occurring Asbestos operations), soil excavation reporting fees, registration fees for various types of regulated equipment, for Indirect Source Review, and fees for open burning.

The proposed fee amendments are in accordance with all applicable authorities. Based on the results of the 2016 Cost Recovery Study (a copy of which is available on request), the Air District fees subject to this rulemaking are in amounts no more than necessary to cover the reasonable costs of the Air District's regulatory activities, and the manner in which the Air District fees allocate those costs to a payer bear a fair and reasonable relationship to the payer's burdens on the Air District regulatory activities and benefits received from those activities. Permit fee revenue (after adoption of the proposed amendments) would still be well below the Air District's regulatory program activity costs associated with permitted sources. Similarly, fee revenue for non-permitted area wide sources would be below the Air District's costs of regulatory programs related to these sources. Hearing Board fee revenue would be below the Air District's costs associated with Hearing Board activities related to variances and permit appeals. Fee increases for authorities to construct and permits to operate would be less than 15 percent per year.

## **6. ASSOCIATED IMPACTS AND OTHER RULE DEVELOPMENT REQUIREMENTS**

### **6.1 EMISSIONS IMPACTS**

There will be no direct change in air emissions as a result of the proposed amendments.

### **6.2 ECONOMIC IMPACTS**

The Air District must, in some cases, consider the socioeconomic impacts and incremental costs of proposed rules or amendments. Section 40728.5(a) of the California H&S Code requires that socioeconomic impacts be analyzed whenever an air district proposes the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations. The proposed fee amendments will not significantly affect air quality or emissions limitations, and so a socioeconomic impact analysis is not required.

Section 40920.6 of the H&S Code specifies that an air district is required to perform an incremental cost analysis for a proposed rule, if the purpose of the rule is to meet the requirement for best available retrofit control technology or for a feasible measure. The proposed fee amendments are not best available retrofit control technology requirements, nor are they a feasible measure required under the California Clean Air Act; therefore, an incremental cost analysis is not required.

The financial impact of the proposed fee amendments on small businesses is expected to be minor. Many small businesses operate only one or two permitted sources, and generally pay only the minimum permit renewal fees. For the facilities shown in Table 4, increases in annual permit and registration renewal fees would be under \$100, with the exception of a typical service station with ten, multiproduct gasoline nozzles.

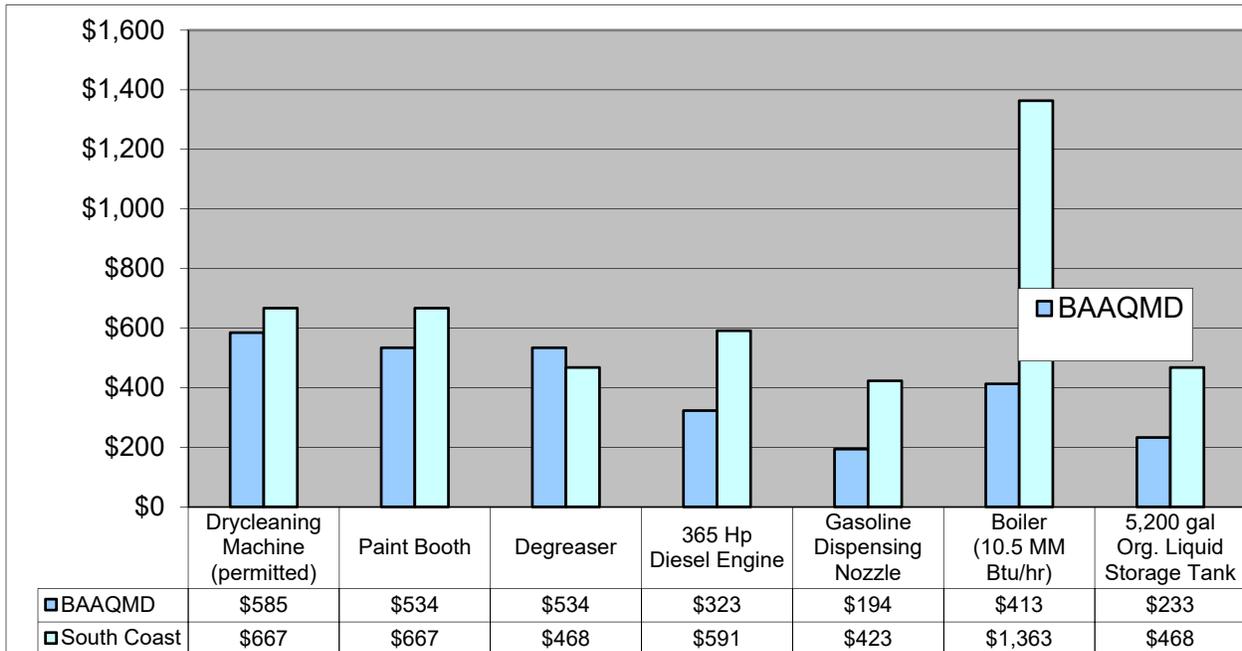
**Table 4. Changes in Annual Permit/Registration Renewal Fees for Typical Small Businesses**

Facility Type	Facility Description	Fee Increase	Total Fee
Gas Station	10 multi-product gasoline nozzles	\$272	\$3,402
Dry Cleaner (permitted)	One machine: 1,400 lb/yr Perc emissions	\$42	\$627
Dry Cleaner (registered)	One machine: 800 lb/yr VOC emissions	\$17	\$206
Auto Body Shop	one spray booth: 400 gal/yr paint 100 gal/yr cleanup solvent	\$42	\$576
Back-up Generator	One 365 hp engine	\$7	\$330

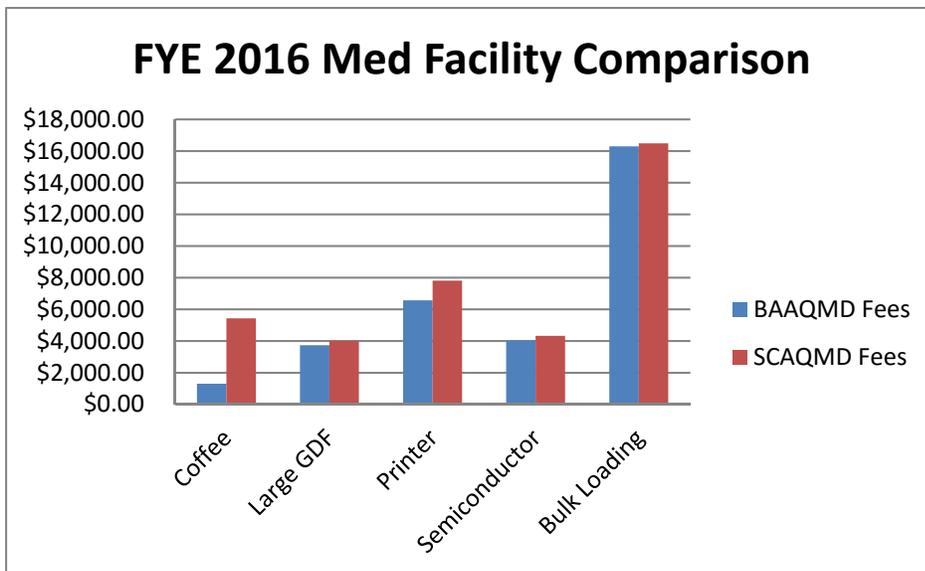
For reference, Air District permit fees are generally well below that of the South Coast AQMD, the other major metropolitan air district in the state with a cost of living similar to that of the Bay Area. South Coast AQMD staff have indicated that their fee revenue recovers a much higher percentage of associated program activity costs (i.e., over 90 percent) relative to the Bay Area AQMD.

A comparison of permit renewal fees recently completed by Air District staff for twelve different categories of small and medium-sized sources are provided in Figures 1 and 2 as follows:

**Figure 1. Comparison of FYE 2016 Bay Area AQMD and South Coast AQMD Permit Renewal Fees for Various Small Sources**



**Figure 2. Comparison of FYE 2016 Bay Area AQMD and South Coast AQMD Permit Renewal Fees for Various Medium Sources**



For larger facilities such as refineries and power plants, increases in annual permit renewal fees would cover a considerable range due to differences in the facility's size, mix of emission sources, pollutant emission rates and applicable fee schedules. As shown in Table 5, the FYE 2017 annual permit fee increase for the five Bay Area refineries would range from approximately 7 to 10 percent, excluding Schedule X. The annual permit fee increase for the power generating facilities shown in Table 6 would range from

approximately 4 to 8 percent. Projected FYE 2017 fee increases are based on FYE 2016 material throughput data. Tables 5 and 6 also include current Permit to Operate fees paid and historical annual fee increases.

**Table 5. Refinery Permit to Operate Fee Comparison**

	<b>Annual % Permit Fee Increase (Fiscal Year Ending)</b>					<b>Current Permit Fee (in millions)</b>
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<i><b>2017 Projected Without Schedule X</b></i>	<i><b>2017 Projected With Schedule X</b></i>	
Chevron	3.4	12.1	9.3	7.2	14.7	\$2.90
Shell	1.2	12.4	5.8	7.6	15.0	\$2.51
Phillips 66	1.2	9.3	3.4	10.1	15.0	\$1.34
Valero	7.2	8.4	11.9	9.4	15.0	\$1.38
Tesoro	5.5	13.0	21.7	7.9	15.0	\$1.76

**Table 6. Power Plant Permit to Operate Fee Comparison**

	Annual % Fee Increase (Fiscal Year Ending)					Current Permit to Operate Fee
	2013	2014	2015	2016	2017 <i>Projected</i>	
Delta Energy	4.3	13.5	16.9	12.6	4.8	\$ 411,400
Los Medanos	-0.4	11.3	15.0	15.0	4.8	\$ 302,400
Gateway	-0.5	3.3	15.0	19.8	4.5	\$ 246,400
Crockett Cogen	1.6	2.1	15.0	11.5	7.9	\$ 196,800

### 6.3 ENVIRONMENTAL IMPACTS

The California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. Certain types of agency actions are, however, exempt from CEQA requirements. The proposed fee amendments are exempt from the requirements of the CEQA under Section 15273 of the CEQA Guidelines, which state: "CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies...." (See also Public Resources Code Section 21080(b) (8)).

Section 40727.2 of the H&S Code imposes requirements on the adoption, amendment, or repeal of air district regulations. It requires an air district to identify existing federal and air district air pollution control requirements for the equipment or source type affected by the proposed change in air district rules. The air district must then note any differences between these existing requirements and the requirements imposed by the proposed change. This fee proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements. Therefore, section 40727.2 of the H&S Code does not apply.

## **6.4 STATUTORY FINDINGS**

Pursuant to H&S Code section 40727, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments to Regulation 3:

- Are necessary to fund the Air District's efforts to attain and maintain federal and state air quality standards, and to reduce public exposure to toxic air contaminants;
- Are authorized by H&S Code sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9;
- Are clear, in that the amendments are written so that the meaning can be understood by the affected parties;
- Are consistent with other Air District rules, and not in conflict with any state or federal law;
- Are not duplicative of other statutes, rules or regulations; and
- Reference H&S Code sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9.

## **7. RULE DEVELOPMENT PROCESS**

On January 22, 2016, the Air District issued a notice for a public workshop to discuss with interested parties an initial proposal to amend Regulation 3, Fees. Distribution of this notice included all Air District-permitted and registered facilities, asbestos contractors, and a number of other potentially interested stakeholders. The notice was also posted on the Air District website. On February 11, 2016, the Air District issued a revised notice and posted it on the Air District website. A public workshop and simultaneous webcast was held on February 18, 2016 to discuss the initial Regulation 3 fee proposal.

On March 23, 2016 Air District staff is scheduled to provide a briefing on the proposed fee amendments to the Air District Board of Directors' Budget and Finance Committee.

Under H&S Code section 41512.5, the adoption or revision of fees for non-permitted sources requires two public hearings that are held at least 30 days apart from one another. This provision applies to Schedule L: Asbestos Operations, Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks, Schedule R: Equipment Registration Fees, Schedule S: Naturally Occurring Asbestos Operations, Schedule U: Indirect Source Fees, and Schedule V: Open Burning. A Public Hearing Notice for the proposed Regulation 3 will be published on March 18, 2016. An initial public hearing to consider testimony on the proposed amendments has been scheduled for April 20, 2016. A second public hearing, to consider adoption of the proposed fee amendments, has been scheduled for June 15, 2016. If adopted, the amendments would be made effective on July 1, 2016.

## **8. PUBLIC COMMENTS**

### **8.1 Public Workshop Comments - Regulation 3, Fees**

The District held a public workshop on February 18, 2016 to discuss draft amendments to Regulation 3, Fees. Written comments were received on the Regulation 3, Fees proposal as follows: 1) Steven Yang of Chevron Richmond Refinery, and 2) Janet Whittick of the California Council for Environmental and Economic Balance (CCEEB).

#### **Workshop Comment 1: Steven Yang (Chevron Richmond Refinery):**

- Requested more time to provide comments.
- Requested more background details on Schedule X and the proposed Community Air Monitoring Program.

#### **Response to Comment 1:**

- Extended the comment period to May 11, 2016.
- The staff report and the Community Air Monitoring Program description posted on the Air District website provided the additional background details.

#### **Workshop Comment 2: Janet Whittick (California Council for Environmental and Economic Balance):**

- Requested more time to provide comments.
- Requested more background details on Schedule X and the proposed Community Air Monitoring Program.
- Requested the cost recovery report and more background on cost containment.

#### **Response to Comment 2:**

- Extended the comment period to May 11, 2016.
- The staff report and the Community Air Monitoring Program description posted on the Air District website provided the additional background details.
- The 2016 Cost Recovery Report was posted on the Air District website. The staff report, the 2016 Cost Recovery Report, and the 2016 Budget provided background on cost containment as well.

### **8.2 Public Hearing Comments - Regulation 3, Fees**

The District's Board of Directors held a public hearing on April 20, 2016 to consider testimony on the proposed amendments to Regulation 3, Fees. Written comments were received on the Regulation 3, Fees proposal as follows: 1) Bill Quinn of the California Council for Environmental and Economic Balance (CCEEB), (2) Berman Obaldia of the Western States Petroleum Association (WSPA), and (3) Eric Kleinschmidt of Air Liquide US (Air Liquide).

**CCEEB Comment 1:** CCEEB comments that cost recovery efforts should be matched with cost containment measures, particularly in relation to the permitting system and rule development. CCEEB asks the District to renew efforts to contain costs through efforts that enhance and streamline permitting processes and increase the efficacy of rule development processes.

**Response:** The Air District remains committed to its cost containment efforts, as well as to its ongoing efforts to increase the efficiency of its operations.

Over the years, the District has implemented a number of cost containment measures, such as reducing expenditures on services and supplies, as well as maintaining vacant staff positions. While the Air District is no longer maintaining a 10% staff position vacancy rate, the District has been judicious in filling staff vacancies. Approximately 70% of District expenditures are related to personnel costs. Between FYE 2010 and FYE 2015 the number of filled positions decreased from 340 FTE to 317 FTE, representing a substantial cost savings. The District is re-evaluating the level of service it provides to ensure stakeholder needs and expectations are met.

The FYE 2016 Budget projects filling some, but not all, of the District's personnel vacancies bringing filled seats to 334 FTE. The FYE 2016 Budget also includes modifications to District positions that recognize increased organizational efficiencies and staffing needs into the future.

In addition, the Air District has implemented a number of measures to increase the efficiency of its permitting processes. For instance, District staff found efficiencies in evaluating permit applications for high volume source categories, such as gas stations, in order to free up resources to handle projects with higher emissions impacts. The District is also actively transitioning to the Production System, which includes an online permitting system for the regulated community. These tools will increase efficiency and accuracy by allowing customers to submit applications, report data for the emissions inventory, pay invoices and have access to permit documents. The Division will also work to design, test and deploy the next phase that will incorporate additional device types and functionality.

The District's online permitting system (<http://www.baaqmd.gov/permits/apply-for-a-permit/online-permitting-system>) provides the regulated industry with the ability to submit permit applications, renew permits, update some facility information and access permit documents. Currently, the District plans to expand this system to a greater portion of the regulated industry in the next few years. Additional functionality and improvements will follow. Our goal with this system is to improve efficiency, accuracy and the customer experience.

**CCEEB Comment 2:** CCEEB recommends that public workshops and Board of Directors' consideration of future Reg. 3 amendments be held in conjunction with consideration of the District's annual budget.

**Response:** The District's annual budget process is currently closely intertwined with the

District's annual proposed amendments to Regulation 3: Fees. Each year, these parallel and related processes are presented to the Budget & Finance Committee and Board of Directors on either an identical or closely following schedule to ensure their inter-relatedness is understood by the Board of Directors. Proposed Regulation 3 amendments are also considered at the workshops and by the Board in relation to the District's annual budget.

**CCEEB Comment 3:** CCEEB comments that fee increases should reflect when an individual schedule reaches the 85 percent cost recovery goal; schedules at or above full cost recovery should not be increased. CCEEB asserts that total revenue collected under Schedule T (GHG Fees) is proposed to increase an additional 26.9% this year and Schedule P (Major Facility Review Fees) is proposed to increase an additional 11.8% this year.

**Response:** The 85 percent cost recovery goal pertains to the District's cost recovery as a whole, not to specific fee schedules. Even upon achieving an overall 85% cost recovery rate from District fees, certain fee schedules will yield a cost recovery above 85% while the cost recovery from other fees schedules will be below 85%. District staff disagrees with the commenter's stated values for the proposed increases to Schedule T (GHG Fees) and Schedule P (Major Facility Review Fees). Proposed Schedule T is increasing by 7% and proposed Schedule P is increasing by 8%. Both of these schedules called out have cost recovery gaps.

**CCEEB Comment 4:** In regard to Schedule T, CCEEB requests information on how these fees are being allocated to District programs, and the degree to which county property tax revenue is being used to cover costs for GHG activities not directly related to regulated stationary sources.

**Response:** Total GHG activities cost the District \$2.2 million in 2015, while fee revenue recovered was \$2.0 million. County property tax made up the difference. During 2015, the District's Climate Change Program (Program #608) devoted 1/3 of its staff time to regulated stationary sources at a cost of \$0.8 million. The rest of the GHG-related activity occurred in enforcement, source testing and permitting.

**CCEEB Comment 5:** CCEEB comments that Reg. 3 proposes a new Fee Schedule X for a program that has not yet been fully developed and has not been adopted.

**Response:** Schedule X fees are intended to recover the District's costs associated with the proposed District Community Air Monitoring Program, which was described in the April 14, 2016, Staff Report for this regulation. The District staff believes that the community air monitors are needed and the program has been adequately developed at this time to start setting up monitoring stations to collect data that would be used to compare air quality in potentially impacted communities with air quality measurements at other District sites.

**CCEEB Comment 6:** CCEEB comments that some facilities in the communities currently

identified for community air monitoring were not part of the Regulation 12-15 rule development process, and as such, did not participate in District discussions about the community air monitoring program.

**Response:** The District believes it has adequately noticed regulated facilities of this fee based on the fact that it distributed a notice of the January 22, 2016, public workshop to discuss the proposal to amend Regulation 3 (Fees) to all District-permitted facilities. A legal notice announcing the April 20, 2016, Public Hearing amendments to Regulation 3, including proposed Schedule X was also published in the newspapers of general circulation in the Bay Area. In addition, all of the fee amendment public hearing materials, including the staff report, draft regulation, cost recovery report, and community air monitoring program description were posted online on the District website and announced to the rule development interested parties list.

**CCEEB Comment 7:** CCEEB requests to better understand staff assumptions for calculating Schedule W, which it characterizes as a high cost estimate. CCEEB wants the opportunity to adjust Schedule W in the future based on actual staff time needed to perform inventory work. CCEEB also asks the District to track and report actual staff hours needed, as well as to recommend ways to streamline this process in subsequent years.

**Response:** District staff estimated the initial review costs for the Annual Emissions Inventory Reports from each refinery based on District engineering staff's experience with similar processes (flare minimization rule, etc.). The District will track and report actual staff hours spent for the reviews of the annual emissions inventory reports and monthly crude slate reports, so that Schedule W fees may be adjusted in the future, if needed. The District also encourages CCEEB to submit any recommendations it may have on ways to streamline this review process.

**WSPA Comment 1:** WSPA comments that the new fee schedules and fee increases imposed on the refineries over the past 10 years have been excessive compared to other sectors.

**Response:** The Air District's fee increases since 2005 have been part of the District's effort to address a very large deficit between the District's fee revenue and its program costs. The Air District's 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. Significant Air District expenditures stem from the regulation of large industrial facilities, the Bay Area refineries in particular. The District has worked over the past few years to close pre-existing large cost recovery gaps in many of the fee schedules to which the refineries are subject. For example, the 2005 Cost Recovery Study prepared by Stonefield Josephson, Inc., Schedule P, "Major Facility Review Fees," shows the District collected approximately 29% of associated District costs for work in that area in 2004. Last fiscal year, Schedule P collected about 83% of costs, which is still below the overall 85% cost recovery goal established for 2016 by the Air District Board of Directors.

Moreover, the amount by which refinery fees have increased is not out of step with fee increases for other large facilities. For example, Section 6.2 of this Staff Report, Economic Impacts, has a comparison of the refinery sector's fee increases versus the power plant sector. The fee increases proposed for the refineries are similar to those for the power plant sector, particularly considering the increased amount of staff resources being devoted to address and provide service to the refinery sector regulatory programs.

**WSPA Comment 2:** WSPA comments that it is inappropriate to request any cost increases for fee schedules that currently have stand-alone cost recovery greater than 100% cost recovery.

**Response:** The District staff anticipates our costs increasing again to meet or exceed the revenue we collected under some of the schedules in the previous budget year. In order to meet our Board-mandated target, fees are being requested to increase based on projected workload and costs.

**WSPA Comment 3:** WSPA comments that the District can do a better job of controlling costs by streamlining District work processes.

**Response:** See response to CCEEB Comment 1 above.

**WSPA Comment 4:** WSPA comments that its members have implemented a substantial amount of one-time capital costs to prepare to comply with the regulations associated with certain fee increases (Schedules W and X) and recent regulation amendments that have been enacted on the refinery sector (Regulation 8-18 Heavy Liquid Fugitives, Regulation 11-10 Cooling Tower Emissions, Regulation 12-15 Petroleum Refining Emissions Tracking), as well as substantial ongoing operating and maintenance costs to maintain compliance.

**Response:** District staff acknowledges the refinery sector's substantial costs to comply and to maintain compliance, but we believe that the proposed fees and fee increases are needed to maintain core regulatory programs and to support District refinery services.

**WSPA Comment 5:** WSPA comments that District services for WSPA members have declined. For example, WSPA claims that the time required to approve and renew a variety of facility permits have lengthened.

**Response:** The District is filling positions to improve our level of service, this increases gaps in cost recovery. Also the District is implementing measures to streamline and improve its Title V program and the timeliness of permits. District staff gives high priority to the timely review of permit applications and renewal of permits.

The District is actively transitioning to the Production System including an online permitting system for the regulated community. These tools will increase efficiency and accuracy by allowing customers to submit applications, report data for the emissions inventory, pay invoices and have access to permit documents. The District will also work

to design, test and deploy the next phase that will incorporate additional device types and functionality.

The District's online permitting system (<http://www.baaqmd.gov/permits/apply-for-a-permit/online-permitting-system>) provides the regulated industry with the ability to submit permit applications, renew permits, update some facility information and access permit documents. Currently, the District plans to expand this system to a greater portion of the regulated industry, including the refineries, in the next few years. Additional functionality and improvements will follow. Our goal with this system is to improve efficiency, accuracy and the customer experience.

Staff continuously updates policies, procedures, permit manuals and permit templates. Additional high priorities include auditing permit conditions for consistency, streamlining permitting/registration programs and training to implement current and new regulations.

**WSPA Comment 6:** WSPA requests for more details and examples of cost containment measures to provide more assurance that feasible cost containment measures have been explored and are being addressed.

**Response:** See response to CCEEB Comment 1 above.

**WSPA Comment 7:** WSPA asks how cost containment is addressed in the District's offer to pay for retirement incentives for long term employees and for the rehiring phase.

**Response:** District staff continually looks at existing positions with an eye to avoiding redundancy and maximizing efficiency in staff allocation among the District operating units.

**WSPA Comment 8:** WSPA supports the District's ownership and operation of community monitoring equipment to better assess impacts in various locations in the Bay Area.

**Response:** Thank you for supporting this concept.

**WSPA Comment 9:** WSPA comments that the assessment of Schedule X fees is premature. The District has not fully identified program structure, capital costs, or ongoing maintenance costs to fund this program. WSPA asks that Schedule X fee assessment be postponed until a full program assessment has been completed.

**Response:** See response to CCEEB Comment 5 above.

**WSPA Comment 10:** WSPA comments that ARB regulates non-stationary source emissions. With diesel trucks operating on all Bay Area roadways, WSPA asserts that one cannot assume those toxics are originating from refineries. WSPA believes that locating, funding, and maintaining community monitoring equipment and reporting coordinated results should be shared with CARB.

**Response:** CARB has primary regulatory authority for non-stationary sources in the California. The District's permit fee authority is limited to cost recovery for regulating stationary sources. If CARB provided a specific source of funding to the air districts for the purpose of recovering costs of activities related to non-stationary sources, District staff will re-examine the fee rate in Schedule X to avoid over-collection of fee revenue.

**WSPA Comment 11:** WSPA comments that since the District is interested in initially examining air quality near refineries and that air quality in these communities can be assessed compared to other communities, it is also important to monitor and compare the air in communities that are primarily comprised of non-stationary sources such as near airports, freeways, major ports, and railyards.

**Response:** The Community Air Monitoring Program will supplement, not replace, the District's other existing programs, including the Community Air Risk Evaluation (CARE) Program. While overall air pollution continues to decrease in the Bay Area, some communities still experience higher pollution levels than others. These communities are generally near pollution sources (such as freeways, busy distribution centers, and large industrial facilities) and negative impacts on public health in these areas are greater. The CARE Program aims to reduce these health impacts linked to local air quality. As part of the CARE Program, monitoring is used to determine pollution levels in impacted communities.

**WSPA Comment 12:** WSPA comments that because the initial Schedule X fee is primarily to procure and place community monitors over a 10-year period, that it should include a written provision for reduced ongoing maintenance fees, and a sunset date no later than year 10.

**Response:** The District will monitor and track the Schedule X fees collected and how the fees are spent and allocated so that the fee can be revised in the future to approximately meet program costs.

**WSPA Comment 13:** WSPA asserts that the BAAQMD is duplicating the efforts of the California Air Resources Board (CARB), who regulates GHG's under AB 32. WSPA states that refineries are regulated under the state's cap-and-trade program, which requires sources to purchase allowances and offsets to mitigate their emissions.

**Response:** District greenhouse gas fees are intended to recover District costs for Climate Protection Program activities related to stationary sources including the implementation of District Board directives, regulations, and federal/state regulatory requirements. Other District Climate Change mitigation efforts are funded by non-Schedule T sources such as General Fund county revenues.

Specific District GHG activities include the development of GHG emissions factors and

inventory, rule development, CEQA analyses, offset protocols, emissions banking, sources testing, and inspection of GHG emitting sources. In addition, the District engages in permitting and enforcement activities related to AB 32 Early Action Measures such as Semiconductor Operations, Municipal Solid Waste Landfills, and Refrigerants.

District staff is working closely with CARB to coordinate and complement climate protection efforts, and is tracking the implementation of AB 32, in order to avoid any conflicts, duplication, or inconsistencies in program requirements. For example, If CARB provides a specific source of funding to the air districts for the purpose of recovering costs of activities related to AB 32 implementation, District staff will re-examine the fee rate in Schedule T to avoid over-collection of fee revenue.

The State's AB-32 Greenhouse Gas Program and the District's Climate Action Work Program are two distinct and separate endeavors. The Board of Director's Climate Protection Resolution No. 2013-11 directs staff to lead a regional climate protection planning process that is complementary and consistent with state and local efforts.

The proposed GHG Fee Schedule is intended to recover the costs of climate protection activities related to stationary sources. The District has and will continue to use General Fund revenue to fund the portion of GHG programs not related to stationary sources. In the future, if CARB provides a specific source of funding to air districts for the purpose of recovering costs of activities related to AB 32 implementation, District staff will reexamine the fee rate in Schedule T to avoid the "double counting" of fee revenue.

**WSPA Comment 14:** WSPA questions the amount of fee increases over the past 10 years for Schedule A – Hearing Board Fees, stating that the Hearing Board members' compensation has not increased commensurately.

**Response:** Schedule A fees are charged to recover the District's costs associated with Hearing Board activities. The District's costs are incurred by the staff, primarily the District Counsel & Legal Office, Compliance & Enforcement, Engineering, and Meteorology, Measurement, & Rules for preparation, handling, and processing these activities. Schedule A fees apply to applicants for variances, appeals, or those seeking to revoke or modify variances or abatement orders or to rehear a Hearing Board decision. Based on the 2016 Cost Recovery Study, Schedule A's three-year average cost recovery for FYE 2013-2015, was only 5.0 percent, which is far below full cost recovery for this service.

**WSPA Comment 15:** WSPA requests that its comments on Schedule A are addressed in the cost containment report.

**Response:** WSPA references a document that they call "cost containment report". The District produces reports each year that are available for public review that provide revenue and expense information to the public. The annual District Budget, annual Cost Recovery Study, and annual Amendments to Regulation 3 (Fees) Staff Report contain all of the key information on the District's cost containment measures.

**Air Liquide Comment 1:** Air Liquide commented that, due to recent changes to Regulation 12-15, each petroleum refinery support facility will now be required to submit its own annual emissions inventory report to the Air District. The proposed fees for submitted annual emissions inventories and crude slate reports were estimated based on the review required on the petroleum refineries' reports, not for the support facilities' reports, so Air Liquide asked the District to consider reducing the fees in Schedule W for support facilities.

**Response:** The District has revised Schedule W based on its evaluation of the review required for the annual emissions inventory report from the support facilities. The support facility initial submittal fee in Regulation 3, Schedule W is \$3,300, and \$1,650 for subsequent years.

## 9. CONCLUSIONS

Air District staff finds that the proposed fee amendments meet the findings of necessity, authority, clarity, consistency, non-duplication and reference specified in H&S Code section 40727. The proposed amendments:

- Are necessary to fund the Air District's efforts to attain and maintain federal and state air quality standards, and to reduce public exposure to toxic air contaminants;
- Are authorized by H&S Code sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9;
- Are clear, in that the amendments are written so that the meaning can be understood by the affected parties;
- Are consistent with other Air District rules, and not in conflict with any state or federal law;
- Are not duplicative of other statutes, rules or regulations; and
- Reference H&S Code sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9.

The proposed fee amendments will be used by the Air District to recover the costs of issuing permits, performing inspections, and other associated regulatory activities. Based on the results of the 2016 Cost Recovery Study (a copy of which is available on request), the Air District fees subject to this rulemaking are in amounts no more than necessary to cover the reasonable costs of the Air District's regulatory activities, and the manner in which the Air District fees allocate those costs to a payer bear a fair and reasonable relationship to the payer's burdens on the Air District regulatory activities and benefits received from those activities. After adoption of the proposed amendments, permit fee revenue would still be below the Air District's regulatory program activity costs associated with permitted sources. Similarly, fee revenue for non-permitted sources would be below the Air District's costs of regulatory programs related to these sources. Fee increases for authorities to construct and permits to operate would not exceed 15 percent per year as required under H&S Code section 41512.7. The proposed amendments to Regulation 3 are exempt from the requirements of the CEQA under Section 15273 of the CEQA Guidelines.

Air District staff recommends that the Board of Directors adopt the proposed amendments to Regulation 3: Fees with an effective date of July 1, 2016, and approve the filing of a CEQA Notice of Exemption, following the 2<sup>nd</sup> public hearing scheduled to consider this matter on June 15, 2016.



BAY AREA  
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## **STAFF REPORT**

### **PROPOSED AMENDMENTS TO BAAQMD REGULATION 3: FEES**

#### **APPENDIX A COST RECOVERY POLICY (Adopted March 7, 2012)**

## **COST RECOVERY POLICY FOR BAY AREA AIR QUALITY MANAGEMENT DISTRICT REGULATORY PROGRAMS**

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### **PURPOSE**

WHEREAS, the District has the primary authority for the control of air pollution from all sources of air emissions located in the San Francisco Bay Area, other than emissions from motor vehicles, in accordance with the provisions of Health & Safety Code sections 39002 and 40000.

WHEREAS, the District is responsible for implementing and enforcing various District, State, and federal air quality regulatory requirements that apply to non-vehicular sources.

WHEREAS, the District's regulatory programs involve issuing permits, performing inspections, and other associated activities.

WHEREAS, the District is authorized to assess fees to regulated entities for the purpose of recovering the reasonable costs of regulatory program activities, and these authorities include those provided for in California Health and Safety Code sections 42311, 42364, and 44380.

WHEREAS, the District's fees fall within the categories provided in Section 1(e) of Article XIII C of the California Constitution, which indicates that charges assessed to regulated entities to recover regulatory program activity costs, and charges assessed to cover the cost of conferring a privilege or providing a service, are not taxes.

WHEREAS, the District has adopted, and periodically amends, a fee regulation for the purpose of recovering regulatory program activity costs, and this regulation with its various fee schedules, is used to allocate costs to fee payers in a manner which bears a fair or reasonable relationship to the payer's burden on, or benefits received from, regulatory activities.

WHEREAS, the District analyzes whether assessed fees result in the collection of sufficient revenue to recover the costs of related program activities; these analyses have included contractor-conducted fee studies completed in 1999, 2005, and 2011, and annual District staff-conducted cost recovery updates completed in 2006 through 2010. Each fee study and cost recovery update completed revealed that District fee revenue falls significantly short of recovering the costs of related program activities.

WHEREAS, the District's most recently completed fee study (*Cost Recovery and Containment Study, Bay Area Air Quality Management District*, Final Report, Matrix Consulting Group, March 9, 2011) concluded that in Fiscal Year Ending (FYE) 2010, the District recovered approximately 62 percent of its fee-related activity costs, resulting in an under-recovery of costs (i.e., a cost recovery gap), and a subsidy to fee payers, of approximately \$16.8 million, and that this cost recovery gap resulted despite the

implementation of a number of strategies to contain costs.

WHEREAS, cost recovery analyses have indicated that the District's Fee Schedule P: Major Facility Review Fees, which establishes fees for program activities associated with the Title V permit program, has under-recovered costs by an average of \$3.4 million per year over the period FYE 2004 through FYE 2010.

WHEREAS, the District's Board of Directors has recognized since 1999 that the District's cost recovery gap has been an issue that needs to be addressed, and since that time has adopted annual fee amendments in order to increase fee revenue.

WHEREAS, in addition to fee revenue, the District receives revenue from Bay Area counties that is derived from property taxes, and a large portion of this tax revenue has historically been used on an annual basis to fill the cost recovery gap.

WHEREAS, the tax revenue that the District receives varies on a year-to-year basis, and cannot necessarily be relied on to fill the cost recovery gap and also cover other District expenses necessitating, in certain years, the use of reserve funds.

WHEREAS, tax revenue that the District receives, to the extent that it is not needed to fill the cost recovery gap, can be used to fund initiatives or programs that may further the District's mission but that lack a dedicated funding source.

WHEREAS, it may be appropriate as a matter of policy to establish specific fee discounts for small businesses, green businesses, or other regulated entities or members of the public, where tax revenue is used to cover a portion of regulatory program activity costs, and the District's existing fee regulation contains several fee discounts of this type.

## **POLICY**

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Bay Area Air Quality Management District that:

**(1) Cost Containment** –In order to ensure that the costs of its regulatory programs remain reasonable, the District should continue to implement feasible cost containment measures, including the use of appropriate best management practices, without compromising the District's effective implementation and enforcement of applicable regulatory requirements. The District's annual budget documents should include a summary of cost containment measures that are being implemented.

**(2) Analysis of Cost Recovery** – The District should continue to analyze the extent to which fees recover regulatory program activity costs, both on an overall basis, and at the level of individual fee schedules. These cost recovery analyses should be periodically completed by a qualified District contractor, and should be updated on an annual basis by District staff using a consistent methodology.

**(3) Cost Recovery Goals** – It is the general policy of the District, except as otherwise noted below, that the costs of regulatory program activities be fully recovered by assessing fees to regulated entities. In order to move towards this goal, the District should amend its fee regulation over the next four years, in conjunction with the adoption of budgets for Fiscal Year Ending (FYE) 2013 through FYE 2016, in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent. Amendments to specific fee schedules should also be made in consideration of cost recovery analyses conducted at the fee schedule-level, with larger increases being adopted for the schedules that have the larger cost recovery gaps. This includes Fee Schedule P: Major Facility Review Fees, which has been determined to under-recover costs by a significant amount. Newly adopted regulatory measures should include fees that are designed to recover increased regulatory program activity costs associated with the measure, unless the Board of Directors determines that a portion of those costs should be covered by tax revenue. Tax revenue should also continue to be used to subsidize existing fee discounts that the District provides (e.g., for small businesses, green businesses, and third-party permit appeals), and to cover the cost of the District’s wood smoke enforcement program.

BE IT FURTHER RESOLVED that this resolution is non-binding in the case of unforeseen financial circumstances, and may also be reconsidered or updated by the District’s Board of Directors.



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## **STAFF REPORT**

### **PROPOSED AMENDMENTS TO BAAQMD REGULATION 3: FEES**

#### **APPENDIX B PROPOSED REGULATORY LANGUAGE REGULATION 3: FEES**