



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

## **STAFF REPORT**

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

**May 10, 2017**

## TABLE OF CONTENTS

1.	EXECUTIVE SUMMARY.....	1
2.	BACKGROUND.....	2
3.	PROPOSED FEE AMENDMENTS FOR FYE 2018	
	3.1 OVERVIEW OF PROPOSED AMENDMENTS.....	5
	3.2 PROPOSED RULE AMENDMENTS.....	8
4.	FEE REVENUE AND COSTS OF PROGRAM ACTIVITIES .....	13
5.	STATUTORY AUTHORITY FOR PROPOSED FEE INCREASES.....	15
6.	ASSOCIATED IMPACTS/RULE DEVELOPMENT REQUIREMENTS	
	6.1 EMISSIONS IMPACTS.....	17
	6.2 ECONOMIC IMPACTS.....	17
	6.3 ENVIRONMENTAL IMPACTS.....	19
	6.4 STATUTORY FINDINGS.....	20
7.	RULE DEVELOPMENT PROCESS.....	20
8.	PUBLIC COMMENTS.....	21
9.	CONCLUSIONS.....	28
	Appendix A – Cost Recovery Policy.....	A-1
	Appendix B – Proposed Regulatory Language – Regulation 3: Fees.....	B-1

## **1. EXECUTIVE SUMMARY**

Air District staff has prepared proposed amendments to Air District Regulation 3: Fees for Fiscal Year Ending (FYE) 2018 (i.e., July 1, 2017 to June 30, 2018) 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 2018 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 2017 Cost Recovery Study (a copy of which is available on request) shows that for the most-recently completed fiscal year (FYE 2016), fee revenue recovered 82 percent of program activity costs.

Over the past several years, the Air District has been developing the infrastructure for consistent and efficient permit evaluation and processing, and completing projects intended to develop and improve programs within the Engineering Division. To improve program efficiency, the Air District is actively transitioning to the Production System, an on-line permitting system for the regulated community for high-volume source categories including gas stations, dry cleaners, and auto-body shops, and is expanding this system for additional source categories. 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.

In May 2016, the Air District moved into 375 Beale Street. The vision for 375 Beale Street includes the sharing of limited business operations and technology functions between the Air District, Metropolitan Transportation Commission, and the Association of Bay Area Governments. These shared services between the partner agencies may result in some cost savings.

The Air District continues to be fiscally prudent by building its reserves in an effort set to address future pension and other post-employment benefits obligations, future capital equipment and facility needs, and uncertain fiscal situations either at local or State or federal level or external factors affecting the economy that could impact the District's ability to balance its budgets to fund the day-to-day operations. 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.

Opportunities for further cost containment measures will be developed and documented in the next Air District Cost Recovery Study. The Air District expects to release a

Request for Proposals for this Air District Cost Recovery Study in the next few months.

The projected cost recovery percentage for FYE 2017 is expected to be approximately 82%. This is based on the FYE 2016 permit fees expected to be collected compared to the salary and other expenditures budgeted included filled vacancies and added 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 results of the 2017 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 (2.7%), 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 2.7 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 \$263 in annual permit renewal fees. For larger facilities, increases in annual permit renewal fees would range between 3.5 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 \$1.85 million relative to fee revenue that would be expected without the amendments.

Air District staff recommends that the Board of Directors receive testimony on April 19, 2017 regarding the proposed amendments to Regulation 3: Fees. Air District staff also recommend that the Board of Directors consider adoption of the proposed amendments to Regulation 3: Fees with an effective date of July 1, 2017, 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 21, 2017.

## **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 2016) using the methodology established by Matrix Consulting Group. The 2017 Cost Recovery Study indicates that the overall cost recovery rate in FYE 2016 was 82%.

### 3. PROPOSED FEE AMENDMENTS FOR FYE 2018

#### 3.1 OVERVIEW OF PROPOSED AMENDMENTS

A 2017 cost recovery study was 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 2.7%, the annual increase from 2015 to 2016 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>
<b>95 – 100% of costs</b>	<b>2.7%</b>	<b>M, U</b>
<b>85 – 95% of costs</b>	<b>7%</b>	<b>F, G3, T</b>
<b>75 – 84% of costs</b>	<b>8%</b>	<b>D, P</b>
<b>Less than 75% of costs</b>	<b>9%</b>	<b>A, E, G1, G2, G4, H, I, K, R, S, V</b>

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 2.7 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.

## **New Fees for Proposed Rule 11-18: Reduction of Risk from Air Toxic Emissions at Existing Facilities**

Proposed Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities (Rule 11-18) represents a continuation of the Air District's longstanding efforts to reduce health risk in the Bay Area resulting from the emission of toxic air contaminants from stationary sources. The Air District Board of Directors is scheduled to consider the adoption of Rule 11-18 in May 2017.

Under Rule 11-18, the Air District would use annual toxic emissions inventories from each affected facility to conduct a site-specific Health Risk Assessment (HRA) to assess the potential for adverse health effects to the public from exposure to emissions of toxic air contaminants from the facility.

Using the results of the HRAs, the Air District would determine whether a facility's health risk impact exceeds any risk action level established in the Rule. Facilities that pose a health risk in excess of any risk action level would be required either to demonstrate that all significant sources of toxic emissions at the facility are controlled by Best Available Retrofit Control Technology for Toxic Pollutants (TBARCT), or to reduce the health risk below the risk action level through the implementation of a Risk Reduction Plan. Any facility required to implement a Risk Reduction Plan would first submit the Plan to the Air District for staff review and public comment.

### **Proposed Rule 11-18 – Estimated Costs and Fees**

The Air District proposes new fees to help recover the costs for facility-wide Health Risk Assessments (HRAs) and Risk Reduction Plans required pursuant to proposed Rule 11-18. These fees would only become effective upon Board adoption of proposed Rule 11-18, and would be charged only in the event a facility-wide HRA or a Risk Reduction Plan is required pursuant to proposed Rule 11-18.

#### Estimated Proposed Rule 11-18 Costs:

The Air District has prepared and distributed a Request for Qualifications and has reviewed proposals from several Facility-Wide Health Risk Assessment contractors.

Based on the proposals received:

- For major facilities with many or large toxic emissions sources (e.g., refineries, chemical plants, large power plants, etc.), the Facility-Wide HRA total cost ranges from \$75,000 to \$100,000.
- For other facilities, the Facility-Wide HRA total cost depends on the number of toxic emissions sources, and the time, materials, and personnel required to conduct the analyses.
  - Medium-sized facilities would range from \$10,000 to \$75,000.
  - Smaller-sized facilities would range from \$1,000 to \$10,000.



There are approximately 75 Facility-Wide Health Risk Assessments that are expected to be submitted and conducted during FYE 2018.

**11 major facilities (refineries, large power plants):**

- **11 facilities x \$87,500 = \$962,500**

**18 medium facilities:**

- **18 facilities x \$42,500 = \$765,000**

**47 smaller facilities:**

- **47 facilities x \$5,500 = \$258,500**

**Total = \$1,986,000**

No Risk Reduction Plans are scheduled for submittal and review in FYE 2018, so no costs are estimated for this for FYE 2018 costs. Future costs for Risk Reduction Plan review and approval will range from \$1,500 to \$32,000 per facility depending on the number of sources at the facility subject to risk reduction pursuant to proposed Rule 11-18. The maximum cost for Rule 11-18 Risk Reduction Plan review is estimated in the below table.

**Table 2. Estimated Maximum Cost for Rule 11-18 Risk Reduction Plan Review**

	\$/hr	+202% fringe benefits and indirect costs	Hours	Estimated Cost
<b>Air Quality Engineer</b>	<b>\$53.01</b>	<b>\$107.08</b>	<b>250</b>	<b>\$26,770.05</b>
<b>Senior Air Quality Engineer</b>	<b>\$58.44</b>	<b>\$118.05</b>	<b>20</b>	<b>\$2,360.98</b>
<b>Supervising Air Quality Engineer</b>	<b>\$64.44</b>	<b>\$130.17</b>	<b>20</b>	<b>\$2,603.38</b>
<b>Air Quality Engineering Manager</b>	<b>\$73.17</b>	<b>\$147.80</b>	<b>2</b>	<b>\$295.61</b>
<b>Director of Engineering</b>	<b>\$88.35</b>	<b>\$178.47</b>	<b>1</b>	<b>\$178.47</b>
<b>Totals</b>				<b>\$32,208.48</b>

### Estimated Proposed Rule 11-18 Fee Revenues:

Based on the proposed Regulation 3 Amendments, the Air District estimates FYE 2018 fee revenue sufficient to recover the Air District's costs for the 75 Facility-Wide Health Risk Assessments that are planned to be submitted and conducted during FYE 2018.

In FYE 2018, no fee revenue due to the submittal of Risk Reduction Plans is expected, since no Risk Reduction Plans are scheduled for submittal associated with Rule 11-18. Future costs for Risk Reduction Plan review are expected to be approximately 100% recovered by the fee revenue calculated pursuant to proposed Section 3-341.

## **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 2.7 percent increase in the filing fee for permit applications for new/modified sources and abatement devices, from \$462 to \$474.

Also, proposing a new fee equal to the risk screening fee to help recover the costs for each HRA scenario above three HRA scenarios in any permit application pursuant to Regulation 2, Rule 5.

- **Section 3-302.3: Fees for Abatement Devices**

The proposed amendment to Section 3-302.3 is a 2.7 percent increase in the filing fee, from \$462 to \$474, and the not to exceed value will be increased from \$10,000 to \$10,270.

- **Section 3-309: Duplicate Permit or Registration**

Staff proposes to delete fees for Duplicate Permits and Duplicate Registrations in Section 309, since these requests are increasingly fulfilled using email, which results in lower costs.

- **Section 3-311: Banking**

The proposed amendment to Section 3-311 is a 2.7 percent increase in the filing fee for banking applications, from \$462 to \$474.

- **Section 3-318: Public Notice Fee, Schools**

The proposed amendment to Section 3-318.1 and 3-318.2 is a 2.7 percent increase in the fee, from \$2,146 to \$2,204 per application.

- Section 3-320: Toxic Inventory Fees

The proposed amendment to Section 3-320 is a 2.7 percent increase from \$9,141 to \$9,388.

- 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 2.7 percent.

- Fees for Risk Screening
  - Staff proposes to replace all references in Regulation 3 to “health risk screening analysis” with the phrase “health risk assessment”.
  - Section 3-329

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 2.7 percent from \$441 to \$474. 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 2.7 percent increase in the filing fee for a certificate of exemption, from \$462 to \$474.

## **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.

Staff also proposes to amend Fee Schedule A: Hearing Board Fees (Table I) to include diesel exhaust particulate matter in the schedule of toxic air contaminants subject to

excess emissions fees. Diesel exhaust particulate matter is a subset of PM<sub>2.5</sub> that is emitted by diesel engines. Although diesel PM accounts for a small portion (less than 10%) of the overall PM<sub>2.5</sub> emission inventory, it has been called out for special attention by the ARB because of its toxicity. In 1998, in response to a comprehensive health assessment of diesel exhaust, ARB formally identified diesel PM as a toxic air contaminant (TAC), a special class of air pollutants that can impair public health even at very low exposures or dosages. TACs can cause both acute and chronic effects, including cancer. Diesel exhaust also contains more than 40 other TACs, including carcinogens such as benzene, arsenic, nickel, and formaldehyde. The Air District performed an analysis of TACs for its Community Risk Evaluation (CARE) program and found that diesel PM accounts for approximately 85% of the total cancer risk from TACs in the Bay Area. Diesel PM has been the focus of control efforts by both ARB and the Air District.

#### Schedule B: Combustion of Fuel

Based on the cost recovery methodology listed in Table 1, the fees in Schedule B would not be increased.

#### 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 not be increased.

#### 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 8 percent, except for the base fee for a health risk assessment for a source covered by Schedule D, which would be increased by 2.7 percent from \$462 to \$474.

#### 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 assessment for a source covered by Schedule E, which would be increased by 2.7 percent from \$462 to \$474.

#### Schedule F: Miscellaneous Sources

Based on the cost recovery methodology listed in Table 1, the fees in Schedule F would be increased by 7 percent. The base fee for a health risk screening analysis for a source covered by Schedule F would be increased by 2.7 percent, from \$462 to \$474. 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 2.7 percent from \$462 to \$474. 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 2.7 percent from \$462 to \$474. 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 7 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 2.7 percent from \$462 to \$474. 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 2.7 percent from \$462 to \$474. 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 not be increased.

### 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 2.7 percent from \$462 to \$474.

The proposed amendments would revise Fee Schedule H: Semiconductor and Related Operations, to directly calculate the fee based on the gross throughput of organic solvent processed.

#### 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 2.7 percent from \$462 to \$474.

#### 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 2.7 percent from \$462 to \$474.

#### Schedule L: Asbestos Operations

Based on the cost recovery methodology listed in Table 1, the fees in Schedule L would not be increased.

#### 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 2.7 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 not be increased. 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 2018.

However, the SL factor in Fee Schedule N: Toxic Inventory Fees, would be updated to recover current costs and higher California Air Resources Board AB2588 annual fees 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 Q would not be increased.

#### 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 T: Greenhouse Gas Fees

Based on the cost recovery methodology listed in Table 1, the fees in Schedule T would be increased by 7 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 2.7 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.

#### Schedule W: Petroleum Refining Emissions Tracking Fees

Based on the cost recovery methodology listed in Table 1, the fees in Schedule W would not be increased.

#### Schedule X: Major Stationary Source Community Air Monitoring Fees

Based on the cost recovery methodology listed in Table 1, the fees in Schedule X would not be increased.

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

On an overall basis, the 2017 Cost Recovery Study (a copy of which is available on request) concluded that, for FYE 2016, fee revenue recovered 82 percent of regulatory program activity costs, with revenue of \$40 million and costs of \$49 million. This resulted

in a shortfall, or cost recovery gap, of \$9 million which was filled by county tax revenue. The proposed fee amendments for FYE 2018 are projected to increase overall Air District fee revenue by approximately \$1.85 million relative to fee revenue levels that would be expected without the amendments. Revenue in FYE 2018 is expected to remain below the Air District's regulatory program costs for both permitted and non-permitted sources.

The projected cost recovery percentage for FYE 2017 is expected to be approximately 82%. This is based on the FYE 2017 permit fees expected to be collected compared to the salary and other expenditures budgeted (plus new positions). This projected cost recovery of 82% is primarily due to filling vacancies and adding new positions 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.

For years, the Air District has implemented aggressive cost containment measures that included reducing capital expenditures and maintaining a hiring freeze that resulted in historically high staff vacancy rates.

In FYE 2018, the Air District proposes to fill more of these vacancies 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.

Over the past several years, the Air District has also been developing the infrastructure for consistent and efficient permit evaluation and processing, and complete projects intended to develop and improve programs within the Engineering Division. To improve program efficiency, the Air District is actively transitioning to the Production System, an on-line permitting system for the regulated community for high-volume source categories including gas stations, dry cleaners, and auto-body shops, and is expanding this system for additional source categories. 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 is currently working to design, test and deploy the next phase that will incorporate additional device types and functionality. 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.

In May 2016, the Air District moved into 375 Beale Street. The vision for 375 Beale Street includes the sharing of limited business operations and technology functions between the Air District, Metropolitan Transportation Commission, and the Association of Bay Area Governments. A shared services component was implemented prior to move-in, including personnel and shared business operations, IT license and maintenance agreements required for a shared services component for the agencies. The shared services component includes general services and technology functions,



personnel, conference room scheduling, conference room set-up, video conferencing, webcasting, copy/print/mail production and distribution, shared fleet management, shuttle service, wellness center, email, calendaring, telephone systems, wireless network, internet connectivity, printing, electronic file storage, and server rooms maintenance. These shared services between the partner agencies may result in some cost savings.

Future projections anticipate adequate revenue to meet projected expenditures with the assumption of continued attention to cost and permit fee analysis. The Air District continues to be fiscally prudent by building its reserves in an effort set to address future pension and other post-employment benefits obligations, future capital equipment and facility needs, and uncertain fiscal situations either at local or State level or external factors affecting the economy that could impact the District's ability to balance its budgets to fund the day-to-day operations. 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.

Opportunities for further cost containment measures will be developed and documented in the next Air District Cost Recovery Study. The Air District expects to release a Request for Proposals for this Air District Cost Recovery Study in the next few months.

## **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. 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, except for 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	\$263	\$3,614
Dry Cleaner (permitted)	One machine: 1,400 lb/yr Perc emissions	\$39	\$666
Dry Cleaner (registered)	One machine: 800 lb/yr VOC emissions	\$19	\$225
Auto Body Shop	one spray booth: 400 gal/yr paint 100 gal/yr cleanup solvent	\$46	\$622
Back-up Generator	One 365 hp engine	\$2*	\$332

\*Represents a 2.7% increase in the Permit Renewal Processing Fee.

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.

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 2018 annual permit fee increase for the five Bay Area refineries would range from approximately 13.1 to 15.0 percent. The annual permit fee increase for power generating facilities shown in Table 6 would range from approximately 3.5 to 3.7 percent. Projected FYE 2018 fee increases are based on TYE 2017 material throughput data. Table 5 and 6 also include current Permit to Operate fees paid and historical annual fee increases.

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

	Annual % Permit Fee Increase (Fiscal Year Ending)					Current Permit Fee (in millions)
	2014	2015	2016	2017	2018 Projected	
Chevron	3.4	12.1	9.3	14.7	13.1	\$3.64
Shell	1.2	12.4	5.8	15.0	15.0	\$3.12
Phillips 66	1.2	9.3	3.4	14.6	13.9	\$1.59
Valero	7.2	8.4	11.9	15.0	15.0	\$1.87
Tesoro	5.5	13.0	21.7	13.3	15.0	\$2.42

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

	Annual % Fee Increase (Fiscal Year Ending)					Current Permit to Operate Fee
	2014	2015	2016	2017	2018 Projected	
Delta Energy	13.5	16.9	12.6	4.8	3.7	\$ 459,600
Los Medanos	11.3	15.0	15.0	4.8	3.5	\$ 326,900
Gateway	3.3	15.0	19.8	4.5	3.6	\$ 320,300
Crockett Cogen	2.1	15.0	11.5	7.9	3.5	\$ 222,700

### 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 February 1, 2017, 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 14, 2017, 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 22, 2017 to discuss the initial Regulation 3 fee proposal.

On March 22, 2017 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 17, 2017. An initial public hearing to consider testimony on the proposed amendments has been scheduled for April 19, 2017. A second public hearing, to consider adoption of the proposed fee amendments, has been scheduled for June 7, 2017, or as soon thereafter as the matter may be heard. If adopted, the amendments would be made effective on July 1, 2017.

## **8. PUBLIC COMMENTS**

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

The District held a public workshop on February 22, 2017 to discuss draft amendments to Regulation 3: Fees. There was one attendee plus the webcast audience. Written comments were received on the Regulation 3, Fees proposal as follows: (1) Janet Whittick of the California Council for Environmental and Economic Balance (CCEEB), (2) Sue Gustafson of Valero Refining Company – California (Valero), (3) Manraj Natt and Kweal Krishan of the American Petroleum and Convenience Store Association (APCA), and Bob Brown of the Western States Petroleum Association (WSPA).

#### **Workshop Comment 1: CCEEB and Valero**

- Requested for more information on cost and fee estimates for proposed Rule 11-18.

#### **Air District Response to Workshop Comment 1:**

- Prepared, posted, and distributed to the commenters a Supplementary Supporting Information document that provides the requested information.

#### **Workshop Comment 2: CCEEB and Valero**

- Requested for more information on cost assessment and cost containment efforts.

#### **Air District Response to Workshop Comment 2:**

- Prepared, posted, and distributed to the commenters a Supplementary Supporting Information document that provides the requested information.

#### **Workshop Comment 3: CCEEB**

- Asked whether the 15% limit on annual permit fee increases found in California Health and Safety Code section 41512.7 applies to the proposed Rule 11-18 fees.

#### **Air District Response to Workshop Comment 3:**

- Air District responded at the public workshop that the 15% limit on permit fee increase applies only to existing permit fees, and therefore does not apply to the proposed Rule 11-18 fees.

#### **Workshop Comment 4: APCA**

- Requested for justification for increase in Fee Schedule D, Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals.

#### **Air District Response to Workshop Comment 4:**

- The proposed amendments to Fee Schedule D would increase fee revenue to help the District recover a greater share of the costs the District incurs in implementing and enforcing its regulatory programs. Last year, the Air District only recovered about 79% of the costs for regulating Schedule D facilities. For a typical gasoline dispensing facility, we estimate that the fee increase would be \$263 per year.

#### **Workshop Comment 5: WSPA**

- **WSPA expresses general concern with the District fees, including the level of refining industry fee increases, which WSPA characterizes as higher than that for other sectors and the Consumer Price Index, and with the transparency around fee development and cost containment.**

**Air District Response to Workshop Comment 5:** The Air District's fee increases over the past decade 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 sources at large industrial facilities, such as at the Bay Area refineries. 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 the key information on the District's budget, cost containment, and fee assessment.

#### **Workshop Comment 6: WSPA**

- **WSPA expressed concern with the District assessing a fee for proposed Regulation 11-18, which has yet to be adopted. WSPA commented that fees should be proposed only after a rule has been adopted and program and implementation costs have been accurately and transparently assessed.**

**Air District Response to Workshop Comment 6:** These proposed fees are intended to recover the District's costs associated with implementation of proposed Regulation 11, Rule 18, which is scheduled for Board of Directors adoption consideration in July 2017. Based on the proposed Regulation 11, Rule 18 Draft Staff Report (Table 5, page 34), the District anticipates that HRAs may be required starting in 2017. Therefore, the District needs these fees included in these proposed fee amendments for FYE 2018.

The District believes that the HRAs are needed and that the program proposal has been adequately developed. Also, the District has completed the Request for Qualifications process, which has identified many consultants qualified and capable of conducting these important HRAs.

#### **Workshop Comment 7: WSPA**

- **WSPA expressed concern regarding the District's progress in cost recovery closure and asks that this issue be addressed more comprehensively.**

**Air District Response to Workshop Comment 7:** The Air District will be working on an update to its comprehensive cost recovery and containment study this year. A Request for Proposals was distributed recently. The Air District plans to invite WSPA to participate on the Steering Committee for the study.

#### **Workshop Comment 8: WSPA**



- **WSPA appreciates the District's inclusion of Supplemental Supporting Information provided on March 14, 2017 to address general cost containment efforts and cost assessment analysis for the proposed rules. WSPA requests that a Workshop Report or Staff Report document accompany future annual Regulation 3 rule amendments at the same time the proposed rule amendments are published or during the Workshop at the latest.**

**Air District Response to Workshop Comment 8:** We are glad to hear that the Supplemental Supporting Information document was helpful to you. The Air District staff will make every effort to release supporting information for future proposed amendments to Regulation 3: Fees once it is ready for public review.

**Workshop Comment 9: WSPA**

- **WSPA asks whether proposed Regulation 3-341 Fee/or Risk Reduction Plan is for the number of sources associated with the entire facility, or only for sources for which a Risk Reduction Plan is proposed. WSPA also expressed concern regarding the basis for some of the District's cost estimates related to the review of HRAs.**

**Air District Response to Workshop Comment 9:** The fee is based on the number of sources subject to risk reduction per Regulation 11-18-301. That includes sources subject to Section 11-18-301.1 and 11-18-301.2. District staff estimated the initial review costs for the Risk Reduction Plan based on District engineering staffs experience with similar processes. The District also encourages WSPA to submit any recommendations it may have on ways to streamline this review process.

**Workshop Comment 10: WSPA**

- **WSPA requests that the District complete a cost assessment and document cost-containment details to support the proposed fees.**

**Air District Response to Workshop Comment 10:** The 2017 Cost Recovery Study has been completed and posted on the District website for the 4/19/2017 Board Hearing date at: <http://www.baaqmd.gov/rules-and-compliance/rule-development/public-hearings>.

**Workshop Comment 11: WSPA**

- **WSPA comments that for transparency, budget, cost containment and fee assessment should be addressed together in one comprehensive document. WSPA comments that specifically, the proposed historical fee percentage increases and cost containment for certain categories should be available for side-by-side comparison in both the Regulation 3 Fees document, as well as the Budget and Finance Committee document. WSPA asserts that fees for the refining sector have increased between 7% and 9% annually and that cost containment is only being addressed for the whole District, not for the refining sector. WSPA asks that cost containment be more detailed and by sector.**

**Air District Response to Workshop Comment 11:** 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 the key information on the District's budget, cost containment, and fee assessment.

**Workshop Comment 12: WSPA**

- **WSPA requests that the Risk Assessment Fee should be refundable per Regulation 3-305 Cancellation or Withdrawal: Fees if the BAAQMD has not conducted that Risk Assessment prior to an application being cancelled or withdrawn.**

**Air District Response to Workshop Comment 12:** The District agrees with this proposal and will propose this amendment to Section 3-305.

**Workshop Comment 13: WSPA**

- **WSPA comments that full cost recovery assessment has not been conducted since 2011 (for 2010 data). WSPA understands that the District expects to release a Request for Proposal for an Air District Cost Recovery Study in the next few months. WSPA appreciates this effort. WSPA asks that this Cost Recovery Study include a clear analysis and justification of the District's cost containment efforts for the heavy industry subset of the overall budget, and explanation for fees assessments. Further, WSPA asks that the analysis include explanation why the 5% cost recovery closure has not been attained and what new measures the District is planning to implement to contain costs going forward.**

**Air District Response to Workshop Comment 13:** In response to your specific comments on the District's cost recovery status and schedule fee increases, the Cost Recovery Study we will be undertaking will identify the drivers of fee-related costs as well as the appropriate methods and consequent results. It will also point to any possible cost-saving measures. However, with the exceptions of Schedules T, W, and X, schedules are not specific to refineries or to the heavy industry sector, so a vertical analysis for those sectors or industries would not be possible.

**Workshop Comment 14: CCEEB**

- **CCEEB comments that fees, cost recovery, and amendments to Regulation 3 be done within the broader context of the District's annual budget. CCEEB also comments that they appreciated staff's 3/22/17 presentation to the Budget and Finance Committee on the proposed FYE 2018 budget and found it very helpful that the District extended the Regulation 3 comment deadline to allow time for public review of the budget documents. CCEEB further notes that the staff report for Regulation 3 has not yet been released.**

**Air District Response to Workshop Comment 14:** The Air District staff follow a consistent practice of determining fee increases in the context of cost recovery and budgeting on an annual basis. The Air District staff anticipate costs and propose the budget and necessary fee increases accordingly. We thank CCEEB for its acknowledgement of our efforts to make our rule development process transparent and to solicit input from interested parties. The Supplementation Supporting Information Report was released on March 14, 2017. On March 23, 2017, both the Draft Staff Report for Regulation 3 and the 2017 Cost Recovery Study were released and posted on the Air District's website at: <http://www.baaqmd.gov/rules-and-compliance/ruledevelopment/public-hearings>.

**Workshop Comment 15: CCEEB**

- **CCEEB comments that they look forward to working with staff next year on an update to the District's cost recovery and cost containment study, and recommend that program evaluations be included as part of this effort.**

**Air District Response to Workshop Comment 15:** The Air District staff will be working on an update to its cost recovery and containment study this year. A request for proposals was sent out recently to potential contractors. We plan to invite CCEEB to participate on the Steering Committee for this study.

**Workshop Comment 16: CCEEB**

- **CCEEB comments that between the proposed budget document and draft amendments to Regulation 3, it is currently unclear what activities or costs are driving increases to program expenditures. CCEEB requests information on how Schedule T fees are being allocated across District climate change activities, what additional expenditures are planned in the near future, and how many facilities are assessed fees under Schedule T.**

**Air District Response to Workshop Comment 16:** Schedule T fees, alongside the District's non-fee-related revenue, are used to support all District climate change activities, which are continuing to expand. These include activities taking place through Joint Policy Committee, Advisory Council, our Climate Protection program, and technical efforts to produce the Regional Climate Action Plan and the 2017 Clean Air Plan which will be presented to the Board this year. The 855 facilities with Air District GHG emissions in the inventory are assessed fees under Schedule T.

**Workshop Comment 17: CCEEB**

- **CCEEB comments that similar increases have been made to other fees schedules, for example, to Title V fees. Citing certain figures for District expenditures, CCEEB expresses concern about increases in District expenses and suggests that understanding what factors are contributing to increases could help identify options for cost containment.**

**Air District Response to Workshop Comment 17:** Fee schedule rate increases have been set in the attempt to achieve the cost recovery goal set in 2011. Fee schedule

revenue increases are a combination of the annual rate increases and year-to-year changes in the sources and emissions at regulated facilities. In the case of the Title V revenue, it appears a higher level of permitting activity at facilities in FYE2013 and FYE2015- FYE2016 was the major contributing factor. The expenditure figures CCEEB cites are from consolidated statements. Consolidated expenditure includes General Fund as well as all grant-related activity. General Fund expenditure is expected to increase 30% over the period from FYE2010-FYE2018. In cost allocation, indirect expenditures come from some General Fund programs and are allocated to all District activities, including the grant programs.

#### **Workshop Comment 18: CCEEB**

- **CCEEB requests information on Schedule W: Petroleum Refining Emissions Tracking Fees on the actual costs for Reg. 12-15 implementation, the rate of cost recovery, or estimated costs for 2017-2018. CCEEB commented that this issue is of concern given that Reg. 12-15 inventories are not being used to assess state non-vehicular source fees; rather, refineries are being asked to submit a separate and additional inventory based on the District's general reporting requirements. CCEEB asks for an explanation why Reg. 12-15 inventories are not being used for these purposes, or the current status of Reg. 12-15 engineering reviews.**

**Air District Response to Workshop Comment 18:** This fiscal year, District staff have been working on the detailed Refinery Emissions Inventory Guidelines, participating in working meetings, and other work activities associated with Regulation 12, Rule 15. The District staff will be better able to evaluate the rate of cost recovery for Schedule W after we have more data to evaluate. The issue about which emissions inventory is used by the state to assess non-vehicular source fees is outside the scope of these proposed amendments to Regulation 3 and should be addressed with the California Air Resources Board.

#### **Workshop Comment 19: CCEEB**

- **CCEEB expresses concern that Regulation 3 proposes new fees related to implementation of proposed Regulation 11, Rule 18 although Reg. 11-18 rule development is ongoing.**

**Air District Response to Workshop Comment 19:** These proposed fees are intended to recover the District's costs associated with implementation of proposed Regulation 11, Rule 18, which is scheduled for Board of Directors adoption consideration in July 2017. The fees relate to health risk assessments that would be required under proposed Regulation 11, Rule 18, and would only be implemented if the Air District Board of Directors adopts Regulation 11, Rule 18.

#### **Workshop Comment 20: CCEEB**

- **CCEEB is grateful to the Air District staff for the March 14, 2017, Supplemental Supporting Information (SSI) report on proposed Reg. 11-18 fees.**

**CCEEB asks the following questions regarding the SSI report:**

- Which consultants have been contracted, and what information did consultants use to estimate HRA costs?
- What constitutes a "medium" facility versus a "small" facility?
- How many, if any, HRAs will be completed by District staff in FY2018?
- How would costs differ if District staff conducted HRAs?
- What staff resources are needed to review the work of third-party consultants, and at what cost?
- Would it be more efficient-and provide more accurate information-if the District instead approved HRA consultants and allowed facilities to directly contract with them?
- How will costs for HRAs and review of risk reduction plans be assessed in cases where a facility disagrees with District analysis or determinations?
- How is staff calculating Regulation 3 increases for businesses subject to Reg. 11-18 but not part of Phase 1 (FY2018)? Would staff calculate the fee increase in the year the schedule was approved, or the year it was applied to a facility? If calculated for the year approved but not assessed, does this unintentionally circumvent Health and Safety Code requirements that limit total fee increases to 15 percent per year?

**Air District Response to Workshop Comment 20:**

There have been no consultants contracted for the HRAs. The Request for Qualification (RFQ) and RFQ Questions and Answers are available at: <http://www.baaqmd.gov/about-the-air-district/request-for-proposals-rfp-rfq/closed-rfp-rfq> (RFQ No. 2016-006, Health Risk Assessments for Toxic Risk Reduction Regulations).

The RFQ documents are also available by following the below links:

- [RFO for Health Risk Assessments for Toxic Risk Reduction Regulations](#) (357 Kb PDF, 8 pgs., posted 11/23/16)
- [RFO 2016-006 Questions and Answers](#) (354 Kb PDF, 2 pgs., posted 11/29/16)

Medium facilities typically have more complex sources to model and more sources than small facilities. Per Board of Directors instructions, all the Regulation 11-18 HRAs are expected to be conducted by third-party consultants and/or the Air District staff. The proposed Regulation 11-18 fees should be sufficient to cover the District staff resources needed for this work. The HRAs must reflect the independent judgement of the District. In cases where the facility disagrees with the District analysis or determinations, the proposed Regulation 11-18 fees assessed would be the same as where the facility agrees. We expect the usual back-and-forth with the facilities to resolve issues and disagreements.

For the years after FY2018, the calculation method is the same. It is calculated based on the Fee Schedules in place at the time the Regulation 11-18 HRA is required and is based on the Risk Assessment Fee contained in each fee schedule and whether the source is designated a TAC source or not.

#### **Workshop Comment 21: CCEEB**

- **CCEEB strongly recommends removing related fees from this year's Regulation 3 amendments. CCEEB notes that fee schedules approved next spring and effective July 1, 2018 would still be timely for the first phase of Regulation 11- 18 HRAs. CCEEB asserts that approving Reg. 3 amendments ahead of Reg. 11-18 raises legal questions related to CEQA and the prejudging of Reg. 11-18 before any environmental review has been completed.**

**Air District Response to Workshop Comment 21:** Air District staff believes that the proposal for Regulation 11-18 is sufficiently developed, so we know what fee structure makes sense for the rule and what our costs will be. If Regulation 11-18 as adopted differs substantially from what is now contemplated, we can amend the fee. Air District staff do not believe that the proposed Regulation 3 fees for Regulation 11-18 raise legal questions related to CEQA. Enacting and collecting fees to recover program costs is exempt under CEQA. Thus, while a new regulatory program may be a project subject to review under CEQA, the creation of a fee structure to recover the cost of a new regulatory program is not. Similarly, setting in place a cost recovery fee structure to support a new regulatory program does not constitute an approval of the project, especially in a case like the proposed fees for Regulation 11-18, which will only come into effect if the proposed program is enacted.

#### **Workshop Comment 22: CCEEB**

- **CCEEB requests to meet with staff on draft Regulation 11, Rule 18 to better understand the proposed requirements and implementation plan, which may improve our understanding of the BAAQMD Draft Staff Report: Draft Regulation 12, Rule 16: Petroleum Refining Facility-Wide Emissions Limits and Draft Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities, October 2016,page 32.**

**Air District Response to Workshop Comment 22:** Air District staff would be happy to meet with CCEEB concerning the proposed requirements of draft Regulation 11, Rule 18, and draft Regulation 12, Rule 16. To set up these requested meetings, contact Gregory H. Nudd, Rule Development Manager, at [gnudd@baaqmd.gov](mailto:gnudd@baaqmd.gov) or (415) 749-4786.

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

None received.

## **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. 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.



BAY AREA  
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DISTRICT

**DRAFT 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**