California Council for Environmental and Economic Balance
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April 30, 2021

Mr. Barry Young
Senior Advanced Projects Advisor, Engineering
Bay Area Air Quality Management District
Submitted Electronically to byoung@baaqmd.gov

RE: FYE 2022 Proposed Budget and Draft Amendments to Regulation 3: Fees

Dear Mr. Young,

Thank you for the opportunity to provide comments on the FYE 2022 Proposed Budget and the Draft Amendments to Regulation 3: Fees for FYE 2022. We submit the following comments on behalf of the California Council for Environmental and Economic Balance (CCEEB). CCEEB is a nonpartisan, nonprofit coalition of business, labor, and public leaders that advances strategies for a healthy environment and sound economy. CCEEB represents many facilities that operate in the Bay Area Air Quality Management District (BAAQMD or District) and are subject to Regulation 3.

FYE 2022 Proposed Budget

CCEEB appreciates the hard work of staff in developing the proposed budget for FYE 2022 and the several detailed presentations provided to the Board and the public.

Management Performance Audit

CCEEB strongly encourages the pursuit of increased efficiency in all the District's operations. We support the recommendation of Chair Cindy Chavez and the Administration Committee to engage subject matter experts reporting independently to the Board to conduct a management performance audit on staff activities and work production. CCEEB believes such an audit is a particularly helpful tool to ensure that District work processes are efficient and deliver necessary services at the lowest cost. This is especially important given the significant staffing increases proposed by the FYE 2022 budget.

Community Benefit Fund

The proposed budget includes an initial $1 million for the development of a Community Benefit Fund that would provide monetary resources for projects in impacted communities to reduce exposure to air pollution and address public health impacts. This fund concept was developed partly in response to community members and organizations requesting funding to perform their own air quality improvement work. CCEEB supports paying for emission reductions as appropriate, but notes that Article XVI, Section 6 of the California Constitution prohibits the gifting of public funds to any person or entity. CCEEB requests a careful legal analysis of how Community Benefit funds are used and distributed.

Draft Amendments to Regulation 3: Fees

CCEEB appreciates the measures the District took to address COVID-19 economic impacts to businesses during the current fiscal year, particularly the decision to forego increases to existing fee schedules. Unfortunately, we are still in the midst of the pandemic and the Bay Area economy has not recovered to pre-COVID levels. Many businesses are shut down or at partial operations, and their economic future remains uncertain. We believe it would be prudent for the District to again postpone any fee increases and the new Criteria Pollutant and Toxic Emissions Reporting (CTR) fee for the upcoming fiscal year. CCEEB notes that even without fee increases in the next fiscal year, the District is on track to meet its 85% cost recovery goal and is even seeing permit fee revenues exceed projections.

Fortunately, pursuant to California Health & Safety Code Sections 40271-40275, the District receives property tax revenue every year that accounts for about 34% of the FYE 2022 general fund revenues. This significant and predictable revenue stream helps to stabilize District revenues in the event of economic downturns like the one we are currently experiencing. Health & Safety Code Section 40271 anticipates that the property tax revenue received will be utilized for the next fiscal year. However, it appears that the District regularly shifts a significant portion of this revenue to its reserves, which have increased about 23% per year over the last decade to levels that are now nearly three times the Board's policy goal – even after reducing the fund balance by about $24 million in 2017 and 2019 via property acquisitions. This suggests there is fiscal space for BAAQMD to delay any aggressive fee increases until the local economy is on a more stable footing.

Cost Recovery

As previously mentioned, the District has a cost recovery goal of 85% and has met that goal for the past few years. Some members of the Board have expressed a desire to establish a goal of 100% cost recovery for future years. Before embarking on such a goal, CCEEB believes that the District first needs to focus on cost effectiveness of its current operations, which it can accomplish in part by initiating a management performance audit as suggested by the Administration Committee. For fiscal years ending 2015-2020, cost recovery has remained steady at 83-86% over the period, following the stated goal to achieve 85% recovery. But, the total implied costs for the District's delivery of fee services have increased nearly 7% per year, which is more than three times the rate of inflation over this period. If these cost increases had been held at the rate of inflation over this period, the District would already be achieving 100% cost recovery.

Recognizing this, CCEEB believes it will be difficult to plan for and reach 100% cost recovery under existing spending practices as the District continues to make recommendations that will likely lead to cost increases greater than inflation. The most recent example includes the proposal for an increase in staff from 415 to 441 full time employees. As Board Member Bauters noted at the March 17 Administration Committee meeting, large staff increases come with significant pension and OPEB obligations, and these new positions and costs must be justified against projected workload in the future. These are ongoing costs that require sustainable funding sources. As larger stationary sources continue to reduce emissions and/or shut down, as we have seen in the current economic downturn, fee revenue diminishes. The District must examine its hiring plans and the resulting budget impact in the context of its long-term costs and revenue streams. CCEEB suggests the District consider the strategic use of contract labor for one-time projects or surges in workload. For example, the District could utilize consultants or temporary employees to process permit applications, as has been recently done to conduct Rule 11-18 health risk assessments. Employing temporary contractors could allow the District to complete its work without taking on the long-term financial obligations for which there is not dependable funding.

Additionally, for some fee schedules, the District is already recovering more than 100% of its costs. For example, Schedule C shows a cost recovery of 220%, Schedule P shows a cost recovery of 109%, and Schedule X is recovering 1111% of its costs. We understand the proposed fee increases are based on an historical three-year average cost recovery, but we are concerned that the District has not demonstrated a justification for collecting fees in excess of 100% of costs. Charging fees in this manner could constitute a tax.

CCEEB reminds the District that, pursuant to Proposition 26, the burden of proof is on the District to demonstrate that fee amounts are no more than necessary to cover the reasonable costs of regulation. *See* California Constitution Art. XIII C, § 1(e). Therefore, it is incumbent upon the District to provide details on how the costs have been calculated.

Unfortunately, the way the District determines and calculates its costs and how these costs determine fee increases remains opaque. CCEEB requests clarity surrounding the use of timekeeping records to calculate fee increases. In several cases, the records appear to indicate that staff recorded more hours than exist in a total working year. Equally troubling is the staff's coding of ~9,000 hours for "engineering special projects," which comprises 7% of staff's total billing codes for FY 2020. It is unclear what work these hours are allocated for as they do not appear to support work associated with Engineering staff's primary functions, such as permit evaluations. CCEEB trusts there are reasonable explanations for these anomalies, but we are seeking a clear description of how timekeeping is recorded, allocated to programs, and converted into costs that determine fee increases.

Criteria Pollutant and Toxic Emissions Reporting Fee

Staff is proposing that each permitted facility shall pay a new CTR fee equal to 4.4% of the facility's annual total permit renewal fee, not to exceed $50,000. CCEEB appreciates the fee cap, but we are unable to understand the cost recovery basis for this fee, as it does not appear to reflect the amount of time that must be spent in determining and/or verifying emissions and reporting the information to the Air Resources Board. The 4.4% of a facility's total permit renewal fee does not adequately cover costs for permitting small sources, thus effectively shifting the financial burden to major sources.

Refineries in particular have a fee imposed by Regulation 12-15. Other facilities will report pursuant Regulation 11-18. It is our hope that the District streamlines its processes to avoid duplication of efforts and costs and suggest this could be an area ripe for further evaluation in a management performance audit.

AB 617 Community Health Impact Fee

The District adopted a new AB 617 Community Health Impact fee for the current fiscal year. The fee structure was changed just before adoption with no explanation as to how 6.7% of the permit renewal fees for Title V facilities may equate to proportionate emissions from these facilities versus other sources of emissions. CCEEB believes that the AB 617 fee places a disproportionate portion of program costs on permitted stationary sources, particularly major sources. AB 617 seeks to identify and reduce all emissions that may impact communities, and the bulk of the emissions, as the District is quite aware, is emitted by mobile sources. CCEEB is still seeking clarity on how the District determined the existing AB 617 fee structure.

CCEEB recognizes that AB 617 has been underfunded, but sustainable funding should be provided by the State rather than placing the burden on stationary sources. CCEEB supports the District joining other air quality management districts in seeking more State funding for the implementation of AB 617, given it is a state-mandated program. For any shortfall that may still exist, then only the portion of the shortfall equal to the relative contribution of the burden identified in AB 617 as arising from stationary sources should be charged to stationary sources. The remaining costs should be funded by property tax revenue from the counties as these represent burdens contributed by activities of the general public.

Again, we thank staff for this opportunity to comment on these significant concerns and look forward to continued engagement with BAAQMD to ensure the approaches for managing its activities are sustainable and cost-effective long term. Should you have questions or wish to discuss our comments in more detail, please contact Bill Quinn at billq@cceeb.org or (415) 512-7890 ext. 115.

Sincerely,

Bill Quinn

Bill Quinn
President, CCEEB

cc:

Mr. Damian Breen
Mr. Jeff McKay
Mr. Michael Carr