



June 2, 2021

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

Bill Quinn
President

California Council for Environmental and Economic Balance
101 Mission Street, Suite 1440
San Francisco, CA 94105

Dear Mr. Quinn:

Thank you for your April 30, 2021 Public Hearing comments on the Proposed Budget and Draft Amendments to Regulation 3: Fees for FYE 2022.

Below are your comments and the BAAQMD's responses.

Comment 1: *CCEEB encourages the pursuit of increased efficiency in the Air District's operations and supports the Administration Committee's recommendation to engage consultants to conduct a management performance audit on staff activities and work production.*

BAAQMD Response to Comment 1: The Air District staff continually seeks to increase the efficiency of its operations and looks forward to working with the consultants on the management performance audit.

Comment 2: *Community Benefit Fund – CCEEB comments that 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. CCEEB supports paying for emission reductions as appropriate and notes that Article XVI, Section 6 of the California Constitution prohibits the gifting of public funds to any person or entity and CCEEB requests a legal analysis of how Community Benefit funds are used and distributed.*

BAAQMD Response to Comment 2: The Air District will work with the Community Advisory Council currently under development to create a framework for possible uses of the Community Benefit Fund. Staff will ensure that framework is consistent with relevant statutes.

Comment 3: *CCEEB appreciates the measures the Air 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. CCEEB suggests that we are still in the midst of the pandemic and the Bay Area economy has not recovered to pre-COVID levels, so CCEEB requests that the Air District again postpone any fee increases and the new Criteria Pollutant and Toxic Emissions Reporting (CTR) fee for the upcoming fiscal year.*

BAAQMD Response to Comment 3: The Air District staff has been closely tracking the Bay Area economy and effects of the pandemic. The fee amendment recommendations proposed for this fiscal year have been made with this information considered.

While the Bay Area's economy has been initially recovering slower from the impacts of Covid-19 than other metropolitan areas around the country and taking longer due to stricter shutdowns, economic activity has picked up considerably and robustly since the beginning of 2021.

This rebound in economic activity is evidenced by stronger hiring across all sectors of the Bay Area's economy and higher prices paid both by producers and consumers in the Bay Area, including very different global energy prices. Compared with last year's uncertainty for the economic path of the Bay Area's economy given the unknown and untested strategies to contain the virus, this year the situation is very different. Now, the country has a clear and safe way to put the virus behind us. 2021 is projected to be one of the best for the country's and Bay Area's economy since World War II, thanks to strong federal spending geared toward economic recovery efforts.

Because of the expectations of historically higher economic growth and higher than average inflation – even if temporary – postponing fee increases for the next fiscal year would not be fiscally prudent for the Air District in this economic environment.

Comment 4: *CCEEB comments that, pursuant to California Health & Safety Code Sections 40271-40275, the Air District receives property tax revenue every year that accounts for about 34% of the FYE 2022 general fund revenues. CCEEB asserts that this revenue stream helps to stabilize Air District revenues in the event of economic downturns like the one we are currently experiencing, and that Health & Safety Code Section 40271 anticipates that the property tax revenue received will be utilized for the next fiscal year. CCEEB also observes that it appears that the Air 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. Thus, CCEEB suggests there is fiscal space for BAAQMD to delay any aggressive fee increases until the local economy is on a more stable footing.*

BAAQMD Response to Comment 4: California State Law allows the Air District to recover up to 100% of permit related cost through fees. While property tax revenue is currently being used to fill the gap to cover permit-related activities, this is only intended until the Air District is able to reach its goal of 100% cost recovery. General Fund Reserves should not be used to support on-going costs. While the Air District currently has a healthy reserve, the Air District must be fiscally prudent with its reserves to weather any potential long-term economic recovery or uncertainties.

Comment 5: *CCEEB comments that the Air District has a cost recovery goal of 85%. 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 Air District first needs to focus on cost effectiveness of its current operations.*

BAAQMD Response to Comment 5: The Board of Directors is currently having this policy discussion and will provide further direction to staff. The Air District is currently working on hiring both a management consultant and looking at working with Matrix to reexamine cost recovery.

***Comment 6:** CCEEB asserts that 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 and, 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. Recognizing this, CCEEB believes it will be difficult to plan for and reach 100% cost recovery under existing spending practices as the Air District continues to make recommendations that will likely lead to cost increases greater than inflation.*

BAAQMD Response to Comment 6: The Air District staff is aware of the complexities with proposing a 100% cost recovery target and will conduct an appropriate analysis prior to any such recommendation.

Inflation in the Bay Area is different from the US average inflation, it is typically higher. If CCEEB is referring to "inflation" as a CPI index, there are several indexes. During some years, the Bay Area consumer CPI index more than doubles US average rate. While the US average CPI-U index for metropolitan areas during 2015-20 averaged under 2% per year, the Bay Area's averaged over 3.1% per year.

The fact that the Air District is trying to recover costs by increasing fees on an average of 6.8% across different schedules does not imply that the Air District's costs have increased on average 6.8%. Air District's costs do not necessarily mirror inflation, nor do any organization's costs, since inflation is an average index of consumer goods, a basket of goods and services, and organizations may or may not consume similar goods or services to an average consumer. Therefore, the comparison with the CPI-U is not relevant, since CPI-U does not accurately reflect Air District's costs.

***Comment 7:** CCEEB asserts that the Air District should examine its hiring plans and the resulting budget impact in the context of its long-term costs and revenue streams. 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 ongoing costs require sustainable funding sources. Larger stationary sources continue to reduce emissions and/or shut down, as we have seen in the current economic downturn and fee revenue diminishes. CCEEB suggests the Air District consider the strategic use of contract labor for one-time projects or surges in workload. For example, the Air 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.*

BAAQMD Response to Comment 7: Contractors and consultants are currently used for short term projects. Many of the Air District programs are understaffed and have been for many years. As part of the request for staff expansion this year, the Board is requiring the Air

District to undergo a management audit to examine how staff resources are deployed in certain areas that require staff increases.

Comment 8: *CCEEB comments that for some fee schedules, the Air 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 notes that, pursuant to Proposition 26, the Air District must demonstrate that fee amounts are no more than necessary to cover the reasonable costs of regulation. Therefore, it is incumbent upon the District to provide details on how the costs have been calculated.*

BAAQMD Response to Comment 8: The Air District is aware of the requirements of Proposition 26, and only proposes fee amendments which would comply with the proposition, as explained in the Rule Development Staff Report as part of the 2nd public hearing on the proposed fee amendments. Labor costs vary for the different programs from year to year. We are happy to help CCEEB better understand the Air District's cost recovery process.

When Schedule X was adopted, it was based on projected capital costs, amortized over 10 years, to set up a network of community air monitoring stations. There is no plan to collect Schedule X Fees after these amortized costs of the stations are collected. To date, Schedule X costs are associated with the evaluation of existing monitors, working with the affected communities, and planning, siting, and designing new monitors. Please contact Ila Perkins at iperkins@baaqmd.gov or (415) 749-8448 with questions on the community air monitoring station site selection and development, and Jerry Bovee at jbovee@baaqmd.gov or (415) 749-4601 with any other questions on the community air monitoring stations.

Air District's priorities are regularly evaluated and reallocated. Recent priorities have focused on odorous source types such as landfills and composting facilities. Specifically for Schedule C sources, the Air District is reviewing Regulation 8, Rule 5: Storage of Organic Liquids for rule development to meet AB 617 Best Available Retrofit Control Technology (BARCT) requirements. This effort would shift priorities and resources to the organic liquid storage tank category.

The one-year cost recovery percentage for Schedule P is shown in Figure 2 of the Air District's 2021 Cost Recovery Study as 109.0% for FYE 2020, and the 3-year average, which the Air District uses for cost recovery, is below 100%, at 93.6%. Thus, the proposed 7% change is recommended per the Air District's cost recovery methodology. Some of the activities covered by Schedule P include reviewing monthly CEM reports for each facility and approval of newly installed monitors. In addition, the following tasks are covered for approved CEMs and approved PEMs. On the CEMs side, it includes CEMS plan/modification approvals, RATA/Performance Specification plan/report review, FAT tests conducted by Air District staff, monthly report reviews and excess emission report reviews. Although we had to scale back FAT testing due to COVID, all other duty/task volumes have increased over the years. In addition, we expect our CEMs work to increase as we are looking into Manual of

Procedures revisions that will expand the acceptable pollutant types and QA/QC requirements related to CEMs.

Comment 9: *CCEEB asserts that the way the Air District determines and calculates its costs and how these costs determine fee increases remains opaque. CCEEB claims that in some cases, the records appear to indicate that staff recorded more hours than exist in a total working year. CCEEB requests an explanation of 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 seeks a clear description of how timekeeping is recorded, allocated to programs, and converted into costs that determine fee increases.*

BAAQMD Response to Comment 9: The Air District believes that the current opportunities for participation, comment and review provide transparency with the regulated entities. Going forward, the staff would welcome further dialog on the specifics of this request and will continue to work with the BAG and other interested entities improve this process.

Many staff work on 'engineering special projects' such as maintaining permit documents such as forms, the website, the Permit Handbook, Policies and Procedures, and the Best Available Control Technology Guidance. These activities are not coded to the direct permitting of stationary sources. Another example is staff training that is not specific to certain source category.

Comment 10: *Criteria Pollutant and Toxic Emissions Reporting Fee – CCEEB comments that Air District 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 is 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.

BAAQMD Response to Comment 10: Criteria Pollutant and Toxic Emissions Reporting, the Regulation 11-18: Reduction of Risk from Air Toxic Emissions at Existing Facilities, and Regulation 12-15: Petroleum Refining Emissions Tracking are separate programs. Although there is some data that that is shared, the requirements are different. The primary purpose of CTR is to report specific data to the California Air Resources Board. The 11-18 program requires additional information for modeling. The 12-15 program is used to track emissions trends with crude slate.

One purpose of the CTR fee is to fund the effort to program the Air District system to manage the new CTR requirements and provide tools for reporting. The proposed fee would be applied to all permitted facilities as they would be subject to CTR when fully implemented.

In 2021, the first phase of CTR impacts five (5) petroleum refineries and three (3) support facilities. The collection and processing of CTR data is currently being done in conjunction with 12-15 reporting. The Air District has tried to work with the facilities to streamline the data gathering process until a more efficient system is in place. Engineering and Assessment, Inventory and Modeling staff have spent considerable time to manually prepare inventories under California Emission Inventory Development and Reporting System (CEIDARS) and now CTR from these facilities for submittal to the California Air Resources Board. Despite this, we are committed to continue our streamlining efforts with the facilities. When the system changes are implemented, staff expects efficiency improvements for the regulated community and Air District staff.

Comment 11: *AB 617 Community Health Impact Fee – CCEEB comments that the Air District adopted a new AB 617 Community Health Impact fee for the current fiscal year and that it 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 Air District determined the existing AB 617 fee structure.*

BAAQMD Response to Comment 11: The Air District's Community Health Protection Program works with Bay Area communities to improve community health by reducing exposure to air pollutants in neighborhoods most impacted by air pollution. Air District staff work closely with the California Air Resources Board (CARB), other local air districts, community groups, community members, environmental organizations, regulated industries, and other key stakeholders to reduce harmful air pollutants. The AB 617 Community Health Impact fee was introduced and adopted on June 3, 2020. The rationale and analysis for the fee is fully described in the Rule Development Staff Report for the proposed amendments to Regulation 3 for Fiscal Year End 2021.

Comment 12: *CCEEB comments that AB 617 has been underfunded and that sustainable funding should be provided by the State rather than placing the burden on stationary sources. CCEEB supports the Air 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.*

BAAQMD Response to Comment 12: The Air District currently receives \$9 million per year in state funding for the Community Air Protection Program. Air District activities and expenditures are regularly provided to the California Air Resources Board. These grants do

not fully cover the costs of the program. Since stationary sources contribute to the air pollution that impacts these communities, it is reasonable that stationary sources should provide some funding to the program. Staff carefully tracks labor costs and other expenditures to ensure that the fee only covers activities to which stationary sources contribute. For example, community-scale ambient air quality monitoring is an eligible expense since stationary sources make up a portion of ambient air pollution. Other expenses are not considered appropriate for this funding and are paid from the state grant. For example, capacity building grants to community-based organizations in San Jose would not be appropriate for this funding.

Please contact me if you have any questions at byoung@baaqmd.gov or (415) 749-4721.

Regards,

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