

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

**DRAFT
STAFF REPORT**

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

March 16, 2004

Prepared by:

Brian Bateman
Director of Engineering Division

Reviewed by:

Peter Hess
Deputy Air Pollution Control Officer

1. EXECUTIVE SUMMARY

The Bay Area Air Quality Management District is continuing an annual process of realigning fees more closely with the District's costs of the related program activities as recommended in the Cost Recovery Study prepared by KPMG for the District in 1999. In accordance with the recommendations of this study, staff is proposing that all District fees, with the exception of Title V fees, be increased by 1.9 percent, which corresponds to the increase in the Consumer Price Index (CPI) that occurred in the Bay Area from 2002 to 2003. A much larger increase in Title V annual fees (i.e., for facilities with Major Facility Review or Synthetic Minor permits) of 20 percent is proposed because the District's costs related to this program are much higher than the fees currently collected. The District is also proposing several additional miscellaneous amendments to the District's fee regulation that are believed to be appropriate. Overall, the proposed fee amendments are expected to increase the District's total fee revenue by 3 percent, or about \$546,000, for FY 2004-2005 as compared to the prior fiscal year. The proposed effective date of the amendments to the District's fee regulation is July 1, 2004.

2. BACKGROUND

The District collects fees to help pay for the costs of implementing and enforcing air pollution programs, as delineated in District Regulation 3: Fees. The six general categories of fees collected are: (1) Operating/New & Modified Permit Fees, (2) Title V Fees, (3) AB 2588 Fees, (4) Asbestos Fees, (5) Soil Excavation and Landfill Fees, and (6) Hearing Board Fees. Projected fee revenue for the District's current fiscal year, FY 2003-2004 (covering the period July 1, 2003 to June 30, 2004), is given in Table 1.

Table 1. Projected Fee Revenue for FY 2003-2004

Permit Fees	
Operating/New & Modified Permit Fees	\$15,296,000
Title V Fees	\$1,040,000
Other Fees	
AB 2588 Fees	\$630,000
Asbestos Fees	\$1,270,000
Soil Excavation and Landfill Fees	\$6,000
Hearing Board Fees	\$35,000
Total	\$18,277,000

A study of fee revenue, and program activity costs, was completed for the District in 1999 by KPMG. Prior to this study, the District made adjustments to fees irregularly, and in a manner that did not keep pace with inflation. The 1999 KPMG Cost Recovery Study concluded that this practice, in part, had caused District fee revenue to fall well below actual program costs and also contributed to the depletion of the District's reserve accounts. The study recommended that the District begin to review fee revenue and program costs on an annual basis and, at a minimum, adjust fees every year as necessary to account for inflation.

For the past five years, the District has followed the recommendations of the 1999 KPMG Cost Recovery Study by making regular annual increases to fees at the start of each fiscal year. In the first of those years, FY 1999-2000, fees were increased by 15 percent (12 percent general fee increase plus a 3 percent CPI adjustment) in order to bring fee revenue closer to actual program costs. In each of the following four years, fees were increased using a CPI adjustment to keep pace with inflation. Table 2 shows the history of District permit fee increases for the period FY 1991-1992 through FY 2003-2004.

Table 2. District Fee Revenue Increase History

FISCAL YEAR	CPI INCREASE (%)	FEE INCREASE (%)
FY 1991-1992	4.0	10.0
FY 1992-1993	3.2	0.0
FY 1993-1994	2.6	0.0
FY 1994-1995	1.4	1.25
FY 1995-1996	2.1	0.0
FY 1996-1997	2.2	0.0
FY 1997-1998	3.1	0.0
FY 1998-1999	2.7	3.1
FY 1999-2000	3.0	15.0*
FY 2000-2001	4.3	4.3
FY 2001-2002	4.4	4.4
FY 2002-2003	5.3	5.3
FY 2003-2004	1.6	1.6

* Includes a 12% general fee increase plus a 3% CPI increase.

2. PROPOSED FEE AMENDMENTS FOR FY 2004-2005

2.1 OVERVIEW OF PROPOSED AMENDMENTS

For the upcoming fiscal year, FY 2004-2005, the District is proposing to continue implementing the recommendations of the 1999 KPMG Cost Recovery Study to align District fee revenue more closely with the costs of the related programs. The District is proposing to increase all fees for FY 2004-2005, with the exception of Title V fees, using a CPI adjustment of 1.9 percent. The 1.9 percent figure corresponds to the increase in the annual CPI that occurred for the California Bay Area (San Francisco, Oakland and San Jose) from calendar year 2002 to 2003, as reported by the California Department of Industrial Relations, Division on Labor Statistics and Research. This CPI adjustment would generate an additional estimated \$327,500 in fee revenue.

The District is proposing to increase Title V fees by a more significant margin. The costs of the District's Title V program activities currently exceed Title V fee revenue by a wide margin. For example, the District's costs of Title V program activities for FY 2002-2003, including program overhead costs, were about \$2.3 million, while Title V fee revenue for that period was \$1.0 million. In order to align fee revenue more closely with the costs of the program, the District is proposing to increase Title V annual fees for FY 2004-2005 by about 20 percent. The proposed amendments in Title V fees would generate an additional estimated \$218,500 in fee revenue.

The following additional amendments to the District's fee regulation are also proposed:

- a. Eliminate fees for transferring permits to operate due to owner/operator changes.
- b. Raise the minimum up-front fee for Waters Bill public notifications from \$914 to \$2000 per application. Add a provision to refund any portion of this fee that exceeds the actual costs to prepare and distribute the public notice.
- c. Require that the appellants of third party Hearing Board appeals pay court reporter fees of \$114 or the cost per day if the hearing is solely dedicated to one Docket. The cost for the Hearing Board to have a court reporter present at the hearings is currently \$200 for a half day and \$300 for a full day.
- d. Change the fees for decorative chrome plating operations that have a permitted capacity of 500,000 amp-hours per year or less from Schedule G-1 to Schedule F, thereby reducing permit to operate fees for affected sources from \$543 to \$130.
- e. Add a specific fee of \$179 for mechanical floor mastic removal operations that have now become subject to District Regulation 11, Rule 2: Asbestos Demolition, Renovation, and Manufacturing.
- f. Increase application fees for synthetic minor operating permits, and Major Facility Review (MFR) permits, and application fees to revise these permits, to more accurately reflect the District's costs of evaluating and processing these applications.
- g. Set the fees for identical source replacements to be the same as the fees required for installing a new source. Clarify that the fee for source alterations that do not increase emissions is only a filing fee.
- h. Clarify that sources that are modified without a required authority to construct are subject to late fees.

In total, the proposed amendments to Regulation 3: Fees would generate an additional estimated \$546,000 in District fee revenue for FY 2004-2005. This represents a 3 percent increase in overall projected fee revenue relative to the current fiscal year.

2.2 PROPOSED RULE AMENDMENTS

The complete text of the proposed changes to District Regulation 3: Fees, is included in Appendix A of this document in strikeout (old) and underline (new) format.

Amendments are proposed for the following sections and schedules of Regulation 3 that would increase applicable fees by the target 1.9 percent CPI adjustment (note that, due to rounding, the proposed change in any particular fee might be slightly higher than, or slightly lower than, 1.9 percent):

- Section 3-302: Fees for New and Modified Sources
- Section 3-309: Duplicate Permit
- Section 3-311: Banking
- Section 3-312: Emission Caps And Alternate Compliance Plans
- Section 3-320: Toxic Inventory Fees
- Schedule A: Hearing Board (Including Excess Emissions Fees)
- Schedule B: Combustion of Fuel
- Schedule C: Stationary Containers for the Storage of Organic Liquids
- Schedule D: Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals
- Schedule E: Solvent Evaporating Sources
- Schedule F: Miscellaneous Sources (Including Schedules G-1, G-2, G-3, and G-4)
- Schedule H: Semiconductor and Related Operations
- Schedule I: Dry Cleaners
- Schedule K: Solid Waste Disposal Sites
- Schedule L: Asbestos Operations
- Schedule M: Major Stationary Source Fees
- Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks

In addition, the District portion of variable F_T , the total amount of fees to be collected, used to calculate fees for Schedule N: Toxic Inventory Fees, is proposed to be

increased using the 1.9 percent CPI adjustment. This change does not require any modifications to the language of Schedule N. (The smaller State portion of F_T established by the California Air Resources Board is expected to be unchanged in FY 2004-2005).

Additional amendments are proposed for the following sections and schedules of Regulation 3:

- Section 3-307: Transfers

The District is proposing to eliminate fees for transferring permits to operate to a new owner/operator of record. This administrative function can now be accomplished at a minimal cost to the District. These transfer fees have also historically not been collected by the District due to potential delays that may result in the permit renewal process, so the proposed amendments would not decrease fee revenue.

- Section 3-318: Public Notice Fee, Schools

The District is authorized, under Section 42301.6(b) of the California Health and Safety Code, to collect fees from permit applicants to recover the cost of preparing and distributing public notices required under the "Waters Bill" provisions of State law. The District is proposing to increase the "up-front" fee required for permit applicants subject to these requirements from \$914 to \$2000. The costs of preparing and distributing these public notices have increased significantly in the last year due to the adoption of more complex notification procedures (e.g., which now include posting of information on the District web-site, and language translations of public notices when appropriate), and the outsourcing of mailing functions. The \$2000 figure represents an average cost of completing a typical public notice of this type.

Collecting a larger portion of the Waters Bill public notice costs up-front will reduce the number of applications that have to be invoiced a second time to recover costs. This will in turn reduce delays in issuing permits, because permits cannot be issued until all applicable permit fees are paid. The District is also proposing to add a provision (subsection 3-318.3) that would require the District to refund any portion of the \$2000 up-front fee that is not needed to recover costs. With this provision, the proposed amendments will not result in an increase in fees when compared to the existing fee language.

- Schedule A: Hearing Board Fees, Item 18: Court Reporter Fee

Pursuant to Health and Safety Code Sections 42311(h) and 42364(a), the District Board of Directors may adopt a schedule of fees for Hearing Board services provided the fees do not exceed the estimated cost of operating the program. The current fees do not fully recover costs of running the Hearing Board program. Over the last several years, the court reporter fees charged to the Hearing Board have risen significantly. Currently, small businesses and third parties are exempt from paying the court reporter fee as

stated in Item 18 of Regulation 3, Schedule A.

To provide for greater equity, the District recommends that the appellants of third party appeals, which could take several days of hearings to complete, pay the same court reporter fee as companies that are not small businesses. These companies and third parties would then pay \$114 or the cost per day if the hearing were solely dedicated to one Docket. The cost for the Hearing Board to have a court reporter present at the hearings is currently \$200 for a half day and \$300 for a full day. This amendment does not provide for full compensation for the work of the Hearing Board, but it is moving more toward the concept that the "user of the service pays for the service." Small businesses would continue to be exempt from payment of the court reporter fees. In addition, the Hearing Board has the authority to excuse a fee for any person who certifies under penalty of perjury that payment of the fees would cause an unreasonable hardship.

- Schedule G-1, Electroplating Equipment

There are two different general types of chrome plating: hard chrome plating (also sometimes called "engineering chrome plating") and decorative chrome plating. Hard chrome plating involves applying a fairly heavy coating of chromium, usually measured in thousandths of an inch, for wear resistance, lubricity, oil retention, and other purposes. In decorative chrome plating, an exceptionally thin layer of chromium, measured in millionths of an inch rather than in thousandths, is applied over a layer of plated nickel. The emissions of hexavalent chromium generated from a hard chrome plating operation are much greater than the emissions generated from a similarly sized decorative chrome plating operation. Multiple scrubbers or filters therefore must control the emissions from hard chrome operations, while decorative chrome plating operations generally use process emission controls.

Permit fees for both decorative and hard chrome plating operations are currently based on Schedule G-1. The permit to operate fee for Schedule G-1 sources is currently \$533. The District is proposing to add a cutoff in Schedule G-1 for decorative chrome plating operations at 500,000 amp-hours per year of permitted capacity. Decorative plating operations at or below this cutoff level would be subject to lower Schedule F permit fees, that are more representative of the costs of District permitting and enforcement activities for these sources. The permit renewal fees for these smaller decorative plating operations would be reduced to \$130 per source. Making this change would not have a significant impact on fee revenue due to the small number of sources involved.

- Schedule L: Asbestos Fees, Item 7: Asbestos Mastic Removal

In July 2003, the District began regulating mechanical floor mastic removal under District Regulation 11, Rule 2: Asbestos Demolition, Renovation, and Manufacturing, after EPA clarified that this was a regulated activity. These operations typically involve the use of solvent with a rotating mechanical buffing device equipped with abrasive

pads, and have minimal potential for asbestos emissions.

The existing asbestos operation fees are based on the quantity of material removed. Most floor mastic removal jobs involve large quantities of removed material that, under the existing fee structure, would result in fees that are excessive in relation to the District's costs of processing the notifications and conducting inspections. The District therefore decided to temporarily waive the existing fee for floor mastic removal, until a new fee could be established that would better reflect the District resources required. The District is now proposing to add a fee of \$179 that is specific to asbestos mastic removal (Schedule L, Item 7) that is representative of the costs associated with processing the notification and performing inspections.

- Schedule P: Major Facility Review Fees

The District estimates the cost of various program activities using biweekly tracking of staff employee time charges against specific programs. These time-allocation data indicate that the costs of the District's Title V program activities far exceed Title V fee revenue. For example, the District's costs of Title V program activities for FY 2002-2003 (including program overhead costs) were about \$2.3 million, while Title V fee revenue was only \$1.0 million.

Under federal law (40 CFR Section 70.9), the fees collected by the District to support its Title V program must be sufficient to cover program costs. These fees are provided for in Schedule P and are collected in addition to the annual renewal fees paid by each Title V facility. Because fees are currently insufficient to cover costs, the District is proposing to increase Title V fees to bring overall Title V revenue closer to the actual program costs.

The proposed amendments to Schedule P include a reorganization of the schedule into four sections as follows: Item 1: MFR/Synthetic Minor Annual Fees, Item 2: Synthetic Minor Application Fees, Item 3: MFR Application Fees, and Item 4: MFR Public Notice Fees. The MFR/Synthetic Minor Annual Fees account for about 98 percent of the District's total Title V fee revenue. These fees include MFR Source Fees, MFR Emissions Fees, and MFR/Synthetic Minor Monitoring Fees. The District is proposing to increase these MFR/Synthetic Minor Annual Fees by 20 percent.

The District is proposing further increases to permit fees that are applicable to applications filed for a new MFR permit or Synthetic Minor permit, and applications filed to revise an existing MFR permit or Synthetic Minor permit. The proposed fees are more representative of the District's actual costs of evaluating and processing these permit applications. The proposed application fees will also provide greater equity by collecting more fees from facility's that require more frequent permit revisions. The proposed increases in MFR and Synthetic Minor permit application fees are expected to generate additional fee revenue of approximately \$30,000 for FY 2004-2005.

The proposed amendments include a new filing fee for each application for an MFR permit or Synthetic Minor permit, or an application to revise these permits. The

proposed filing fee is \$259, which is the same as the filing fee for applications for authorities to construct and permits to operate.

The proposed application fees to revise existing MFR permits have been increased from \$152 per source modified to: (1) \$273 per source modified for minor revisions, and (2) \$364 per source modified for significant revisions. The proposed MFR Permit Shield Fees are \$182 per shielded source or group of sources, as compared to the current fee of \$386 per shielded source or group of sources. It should be noted, however, that applications to establish or revise a permit shield for an existing MFR permit would also be subject to the proposed MFR Significant Revision Fee of \$364 per source modified (compared to the current MFR Permit Revision Fee of \$152 per source modified).

Finally, the application fees for a new Synthetic Minor permit, and the application fees to revise an existing Synthetic Minor permit, are to be increased from \$152 to \$182 per source. The fee for revisions would be assessed only for each source that is being modified.

- Fees for Source Replacements and Alterations

Regulation 3-304 currently indicates that applicants that are replacing sources with identical equipment must pay only a filing fee. The District is proposing to remove this provision, so that the permit fees for identical source replacements will be the same as for non-identical source replacements, and any other type of new source requiring an authority to construct and permit to operate (i.e., a filing fee plus both the initial fee and permit to operate fee).

An identical source replacement is defined as a “New Source” in District Regulation 2-1-232.4. The scope and complexity of a permit evaluation for an identical replacement is therefore no different from that of a non-identical replacement, or any other type of new source. All replacement sources, both identical and non-identical, are given new source numbers and are potentially subject to New Source Review and toxic risk screening requirements. The filing fee currently required of identical source replacements does not cover the District’s costs of processing these applications.

Making this change should not have a significant impact on fee revenue due to the very small number of such applications that are received for identical replacements. Existing sources are usually replaced with new and improved sources and rarely with entirely identical sources.

The District is also proposing to clarify the fees for source alterations. An application for a replacement of components with non-identical components is considered an alteration as defined in District Regulation 2-1-233. Regulation 3-304 currently specifies that an application for replacement of components with non-identical components shall pay fees for a change in conditions. If the alteration does not increase emissions, this is considered an administrative condition change subject only to a filing fee. An alteration that results in an increase in emissions, however, is defined as a “modified source” in

Regulation 2-1-234, and is subject to Regulation 3-302: Fees for New and Modified Sources. The proposed language in Regulation 3-304 has been modified to clarify that alterations that do not increase emissions are subject only to a filing fee.

One specific type of alteration that typically does not result in emission increases is the addition or deletion of gas collection system components at a landfill. Currently, these landfill gas collection system changes are charged a filing fee plus half of the initial fee, in accordance with Schedule K, Part 1c. Per the proposed language of Regulation 3-304, collection system alterations should be charged only a filing fee when these alterations do not result in emission increases. The District is proposing to delete Part 1c of Schedule K to prevent inconsistencies with Regulation 3-304.

- Fees for Sources Modified without an Authority to Construct

Regulation 3-310 indicates that late fees must be paid for sources constructing without a required authority to construct. There is no explicit statement that sources that are modified without a required authority to construct are also subject to late fees. The proposed language in Regulation 3-310 has been modified to clarify that sources that are modified without an authority to construct are subject to late fees.

3. PROJECTED FEE REVENUE AND COSTS OF PROGRAM ACTIVITIES

With the proposed fee amendments, the District's total projected fee revenue for FY 2004-2005 will be about \$18.8 million. This figure is an approximation, as an accurate projection of permit fee and other fee revenues is very difficult because of many factors including, the local economy and fluctuations in industrial activities.

The District estimates the costs of various program activities using historical biweekly staff employee time charge data, and by other means when necessary. Table 3 contains a comparison of projected fee revenue (estimated assuming the proposed fee amendments are adopted) and projected program costs for FY 2004-2005.

4. STATUTORY AUTHORITY FOR PROPOSED FEE INCREASES

State law provides authorities for air districts to adopt fee schedules to cover the costs of various air pollution programs. The proposed fee amendments are in accordance with all applicable authorities provided in the Health and Safety Code, which follows.

Health & Safety Code Section 42311(a) provides authority for an air district to collect permit fees to cover the costs of district programs related to permitted stationary sources. These fees may not exceed the actual cost of permit programs in the preceding year with an adjustment for an increase in the CPI. Health & Safety Code Section 41512.7 limits the allowable percentage increase in fees for authorities to construct and permits to operate (i.e., operating/new and modified permit fees) to 15 percent per year.

Health & Safety Code Section 42311(g) authorizes air districts to adopt a schedule of fees to be assessed on areawide or indirect sources of emissions, which are regulated but for which permits are not issued by the district, to recover the costs of district programs related to these sources. This Section provides the authority for the District to collect asbestos, soil excavation and landfill fees.

Health & Safety 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 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.

Health & Safety Code Section 44380(a) authorizes the air district to adopt a fee schedule, which recovers the costs to the district and the State of the Air Toxics Hot Spots Program (AB 2588).

Table 3. Comparison of Projected Revenue and Costs of Program Activities for FY 2004-2005

Permit Fees	Projected Revenue	Costs of Program Activities
Operating/New & Modified Permit Fees	\$15,587,000	\$18,284,700
Title V Fees	\$1,258,000	\$2,428,700
Other Fees		
AB 2588 Fees	\$640,000	\$640,000
Asbestos Fees	\$1,294,000	\$1,324,000
Soil Excavation and Landfill Fees	\$6,000	\$6,700
Hearing Board Fees	\$37,000	\$175,000
Total	\$18,822,000	\$22,859,100

5. ASSOCIATED IMPACTS AND OTHER RULE DEVELOPMENT REQUIREMENTS

5.1 EMISSIONS IMPACTS

There will be no direct air emission increases or decreases as a result of the proposed fee amendments.

5.2 ECONOMIC IMPACTS

The District must, in some cases, consider the socioeconomic impacts and incremental costs of proposed rules or amendments. Section 40728.5(a) of the California Health and Safety Code requires that socioeconomic impacts be analyzed whenever a 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 California Health and Safety Code specifies that a 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 a feasible measure required under the California Clean Air Act. Therefore, an incremental cost analysis is not required.

The impact of the proposed fee amendments on small businesses is expected to be insignificant. Many small businesses operate only one or two sources, and generally pay only the minimum permit renewal fees. The annual minimum permit fee for each of these sources is currently \$128; under the proposal, this fee will be raised to \$130. The initial fee for a new permit will increase from \$179 to \$182 per source.

5.3 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....".

Section 40727.2 of the Health and Safety Code imposes requirements on the adoption, amendment, or repeal of air district regulations. It requires a district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The 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 does not apply.

5.4 STATUTORY FINDINGS

Pursuant to Health and Safety 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 District's efforts to attain federal and state air quality standards, and to reduce public exposure to toxic air contaminants;
- Authorized by Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9;
- Clear, in that the amendments are written so that the meaning can be understood by the affected parties;
- Consistent with other District rules, and not in conflict with any state or federal law;
- Not duplicative of other statutes, rules or regulation; and
- Implements and references Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9.

6. RULE DEVELOPMENT PROCESS

The proposed revisions to Regulation 3, Fees will be discussed at a Public Workshop to be held at the District office on March 19, 2004. Workshop notices will be sent to all current permit holders, asbestos contractors, and all persons on the District's Interested Parties list.

