

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Haggerty and  
Members of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: April 14, 2004

Re: First of two Public Hearings to Adopt Proposed Amendments to Regulation 3: Fees

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RECOMMENDED ACTION

Staff recommend that the Board hold the first of two Public Hearings to adopt proposed amendments to District Regulation 3: Fees, and continue the public hearing on the proposed amendments as required by California law until June 2, 2004. At the June 2 hearing, staff will recommend that the Board adopt the amendments and authorize the filing of a CEQA Notice of Exemption.

SUMMARY OF PROPOSAL

The 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. The proposed amendments for FY 2004-2005 would increase the District's overall fee revenue by an estimated 8.5 percent, or \$1.55 million, as compared to the current fiscal year.

District staff propose that all 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. The CPI adjustment would generate an additional estimated \$327,500 in fee revenue.

A new processing fee for the annual renewal of permits to operate is also proposed. The processing fee would range from \$50 to \$500 depending on the number of permitted sources at the facility. For about three-quarters of the District-permitted facilities in the Bay Area, which have only one permitted source, the processing fee would be \$50. The new processing fee would generate an additional estimated \$673,000 in fee revenue.

Proposed changes in annual Title V fees, which apply to about 100 facilities with Major Facility Review (MFR) or Synthetic Minor permits, would increase Title V fee revenue by about 50 percent. This relatively large increase in Title V fees is being proposed because the estimated

costs of this program significantly exceed the revenue currently generated. The proposed increases in Title V fees would generate an additional estimated \$550,000 in fee revenue.

The District is also proposing several additional miscellaneous amendments to the District's fee regulation that are believed to be appropriate. The proposed effective date of the amendments to the District's fee regulation is July 1, 2004.

## BACKGROUND

The 1999 KPMG Cost Recovery Study indicated that District fee revenue was well below actual program costs. The costs of regulatory activities that are not recovered by fees are paid for by county property taxes and, where these county revenues are not adequate, by the District's fund balance. For the past five years, the District has followed the recommendations of the KPMG 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.

On February 26, 2004, the District issued a notice for a public workshop to discuss with interested parties an initial proposal to increase District fees for the upcoming FY 2004-2005. The workshop was held on March 19, 2004. The District staff's initial proposal was to increase all fees, with the exception of Title V fees, using the 1.9 percent CPI adjustment. For Title V fees, the initial proposal was for a 20 percent increase in annual Title V fees.

District staff provided a summary of the proposed fee amendments to the Board's Stationary Source Committee on March 22, 2004. The Committee expressed concern that the increase in permit fee revenue that would result from the District staff's initial proposal would leave a large gap between revenue collected and the District's costs of regulatory activities related to permitted sources, and recommended that staff consider adjusting permit fees to further narrow this gap. Based on this input, District staff revised the proposed amendments to include a larger increase in Title V fees and the new processing fee for renewal of permits to operate. Notice of the revised proposal was provided to all current permit holders and all persons on the District's Interested Parties list in a Workshop Notice dated April 2, 2004. The workshop to discuss the District's revised fee proposal is scheduled for April 23, 2004.

Under California Health and Safety Code section 41512.5, amendments to fees for non-permitted sources require two public hearings that are held at least 30 days apart from one another. This provision applies to Schedule L: Asbestos Operations, and Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks. Also, if any changes are made to a proposed regulation after public notice, "so substantial as to significantly affect the meaning of the proposed rule or regulation," California Health and Safety Code section 40726, requires the Board continue the public hearing and allow further testimony until at least the next regular meeting. In order to satisfy both these requirements, and to have the proposed amendments be effective at the beginning of the upcoming FY 2004-2005, the Board must continue the public hearing until June 2, 2004, and may adopt the amendments and all fee schedules at that time.

Any further revisions to the District staff proposal deemed necessary based on public comments received would be made well in advance of the second public hearing.

## DISCUSSION

Two categories of permit fees currently account for 90 percent of the District's overall fee revenue. Operating and New and Modified Permit Fees, which apply to a wide variety of facilities including gas stations, dry cleaners, petroleum refineries, and power plants, account for 84 percent of overall fee revenue. Title V fees, which are additional permit fees that apply to approximately 100 of the largest emitting facilities in the Bay Area, account for six percent of overall revenue.

The revenue from permit fees does not, however, fully cover the District's costs of regulatory activities related to permitted sources. On a percentage basis, the greatest gap between permit fee revenue and program costs exists for Title V fees. 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 revenue for that period was \$1.0 million, representing about 43 percent of full cost recovery for this fee category. The District's proposed fee amendments would increase Title V revenue to about 65 percent of full cost recovery for the category.

Based on the current fee schedules, it is estimated that overall permit fee revenue for FY 2004-2005 would cover 79 percent of the estimated District costs of regulatory activities associated with permitted sources, representing a shortfall of about \$4.4 million. The proposed permit fee increases would reduce this shortfall to about \$2.9 million, which represents 86 percent of full cost recovery. If the District should experience a significant unexpected financial occurrence during FY 2004-2005, the entire remaining shortfall could be recovered in FY 2005-2006 through a subsequent increase in permit fees. The District plans on having an updated cost recovery study completed during the next fiscal year and have included funding in the proposed budget for this purpose.

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. The District's proposed fee increase is statutorily exempt from the requirements of the California Environmental Quality Act as stated in CEQA Guidelines Section 15273: "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).

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Brian Bateman

Reviewed by: Peter Hess

Attachments:

1. Proposed Amendments to Regulation 3: Fees.
2. Staff Report for Amendments to Regulation 3: Fees