



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS' REGULAR MEETING

July 2, 2003

A meeting of the Bay Area Air Quality Management District Board of Directors will be held at 9:45 a.m. in the 7th floor Board room at the Air District headquarters, 939 Ellis Street, San Francisco, California. The meeting will also be held at a teleconference located at 1058 Main Street, Cotuit, Massachusetts.

Questions About an Agenda Item

The name, telephone number and e-mail of the appropriate staff person to contact for additional information or to resolve concerns is listed for each agenda item.

Meeting Procedures

The public meeting of the Air District Board of Directors begins at 9:45 a.m. The Board of Directors generally will consider items in the order listed on the agenda. However, any item may be considered in any order.

After action on any agenda item not requiring a public hearing, the Board may reconsider or amend the item at any time during the meeting.

BOARD OF DIRECTORS' REGULAR MEETING A G E N D A

WEDNESDAY
JULY 2, 2003
9:45 A.M.

BOARD ROOM
7TH FLOOR

CALL TO ORDER

Opening Comments
Swearing in of Board Member
Roll Call
Pledge of Allegiance
Commendations/Proclamations

Scott Haggerty, Chairperson

Clerk of the Boards

PUBLIC COMMENT PERIOD

Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3
Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 939 Ellis Street, San Francisco, CA, at least 72 hours in advance of a regular meeting and at each teleconference location, if any. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Board's subject matter jurisdiction. Speakers will be limited to three (3) minutes each.

CONSENT CALENDAR (ITEMS 1 – 7)

Staff/Phone (415) 749-

1. Minutes of June 18, 2003

M. Romaidis/4965
mromaidis@baaqmd.gov

2. Communications

W. Norton/5052
exec@baaqmd.gov

Information only

3. Report of the Advisory Council

B. Hanna/4962
bhanna@napanet.net

4. Notification of Execution of Contract in Excess of \$20,000

T. Lee/4905
tlee@baaqmd.gov

Notification is hereby given of the execution of a contract totaling \$34,850 for 114 billboards and 20 bus shelters for the second phase of the smoking vehicle program's advertising campaign to run mid-July to mid-August 2003.

5. Authorize Executive Officer/APCO to execute grant agreement to receive funds from the California Air Resources Board (CARB) Fleet Zero Emission Vehicle Incentive Program (Fleet ZIP)

T. Perardi/4667
tperardi@baaqmd.gov

Authorize Executive Officer/APCO to receive Fleet ZIP grant from the CARB for two Nissan Altra Electric Vehicles leased by the District.

6. Approve Establishment of New Classification Entitled High School Intern **W. Norton/5052**
exec@baaqmd.gov

The Board will consider establishing a new classification entitled High School Intern.

7. Approve Resolution Adjusting the District's Maximum Medical Contribution Declared to the California Public Employees' Retirement System (CalPERS) **W. Norton/5052**
exec@baaqmd.gov

The Board of Directors will consider approval of resolution adjusting the District's maximum medical contribution declared to CalPERS for management, confidential, represented employees and retirees.

COMMITTEE REPORTS AND RECOMMENDATIONS

8. Report of the **Stationary Source Committee** Meeting of June 18, 2003

CHAIR: M. deSaulnier

W. Norton/5052

exec@baaqmd.gov

Action(s): Referral to Board of Directors approval of Environmental Audit, Inc. as the contractor to conduct the California Environmental Quality Act (CEQA) processes and prepare CEQA documents for the Air District's proposed plans and rules and authorize the Executive Officer/APCO to execute a contract not to exceed \$200,000 with Environmental Audit, Inc.

PUBLIC HEARING

9. Final Public Hearing to Adopt Amendments to Schedule L: Asbestos Operations and Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks and Approval of CEQA Notice of Exemption **B. deBoisblanc/4704**
bdeboisblanc@baaqmd.gov

At the May 21, 2003 Regular Meeting of the Board, the Board of Directors approved a 1.6% increase in permit fees. The Board of Directors will consider the same 1.6% increase for fees for non-permitted activities, such as Asbestos Operations, Excavation of Contaminated Soil and Removal of Underground Storage Tanks to adjust those fees by the 1.6% increase in the CPI. Approval of California Environmental Quality Act (CEQA) notice of exemption is also requested.

OTHER BUSINESS

10. Status Report on SB 288 New Source Review Restoration Act of 2003

W. Norton/5052

exec@baaqmd.gov

Staff will give the Board of Directors a briefing on SB 288 and staff will receive direction on the Air District's position.

11. Report of the Executive Officer/APCO
12. Chairperson's Report

CLOSED SESSION

13. Conference with Legal Counsel

Existing Litigation:

Pursuant to Government Code Section 54956.9(a), a need exists to meet in closed session with legal counsel to consider the following cases:

Communities for a Better Environment and Transportation Defense and Education Fund v. Bay Area AOMD, Metropolitan Transportation Commission, Association of Bay Area Governments, and California Air Resources Board, San Francisco Superior Court, Case No. 323849

OPEN SESSION

14. Board Members' Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

15. Place of Next Meeting - 9:45 a.m., Wednesday, July 16, 2003 -939 Ellis Street, San Francisco, CA 94109

16. Adjournment

WCN:mag

CONTACT CLERK OF THE BOARD - 939 ELLIS STREET SF, CA 94109

(415) 749-4965
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities notification to the Clerk's Office should be given at least 3 working days prior to the date of the meeting, so that arrangements can be made accordingly.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: June 23, 2003

Re: Board of Directors' Meeting Minutes

RECOMMENDED ACTION:

Approve attached minutes of the Board of Directors meeting of June 18, 2003.

DISCUSSION

Attached for your review and approval are the minutes of the Board of Directors' meeting of June 18, 2003.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET - SAN FRANCISCO, CALIFORNIA 94109

Draft Minutes: Board of Directors Regular Meeting – June 18, 2003

Call To Order

Opening Comments: Chairperson Haggerty called the meeting to order at 9:49 a.m.

Roll Call: Present: Scott Haggerty, Chair, Harold Brown, Maria Ayerdi, Roberta Cooper, Mark DeSaulnier, Jerry Hill, Liz Kniss (9:59 a.m.), Nate Miley, Julia Miller, Mark Ross, John Silva, Pam Torliatt, Marland Townsend, Gayle Uilkema, Shelia Young.

Absent: Chris Daly, Jake McGoldrick, Dena Mossar, Tim Smith, Brad Wagenknecht.

Pledge of Allegiance: Director Ross led the Board in the Pledge of Allegiance.

Commendations/Proclamations: The Board recognized Christine Schaufelberger, Acting Compliance and Enforcement Division Director, upon her retirement from the Air District after 35 years of service.

Public Comment Period: There were none.

Consent Calendar (Items 1 - 7)

1. Minutes of June 4, 2003
2. Communications. Correspondence addressed to the Board of Directors
3. Report of the Advisory Council.
4. Monthly Activity Reports. *Division Activities for the month of May 2003*
5. Approval of Proposed Amendments to Administrative Code Division III Section 7.3 Probation Period.

Approved proposed amendments to the District's Administrative Code Division III Section 7.3 Probation Period. The proposed amendments are for employees appointed to management and confidential positions, as noticed at the Board of Directors meeting of June 4, 2003.

6. Approval of Inflation Factor Agreement with Marin County Redevelopment Agency.

The retroactive agreement allows for annual increases in the base assessed value of taxable property in the redevelopment area. This will translate into annual savings of \$344 for fiscal year 2002 and \$372 for fiscal year 2003 in the contribution amount.

7. Notification of Purchase Order in Excess of \$20,000

The Public Information and Outreach Division notified the Board of purchase orders issued in excess of \$20,000. Purchase Order #41071 issued to Creative Express for the printing of 234 billboard sheets in the amount of \$21,443.78 for the smoking vehicle advertising campaign. Purchase order #41074 issued to Creative Express for placement with Next Media for gas station pump top ads at 43 stations for the smoking vehicle campaign in the amount of \$30,100.00.

Director Townsend requested information on Item 4 under the Information Systems Division Report with respect to Oracle's action to buy out PeopleSoft, which is also taking over J.D. Edwards, and how this will impact the District's database programs. William C. Norton, Executive Officer/APCO, stated that the District has looked into the acquisition of PeopleSoft/J.D. Edwards and are comfortable with that, but the District is a little apprehensive about Oracle and has some concerns about statements made about terminating PeopleSoft employees. If it is determined there are problems, the District would take the appropriate actions. Mr. Norton stated that the agreement has been signed and the District should move forward.

Board Action: Director Townsend moved approval of the above Consent Calendar items; seconded by Director Miller; carried unanimously without objection.

Committee Reports and Recommendations

8. Report of the Legislative Committee Meeting of June 9, 2003

Action(s): The Committee recommended adoption of positions on the following bills:

Bill	Brief Description	Committee Recommendation
SB 288 (Sher)	New source review restoration act of 2003.	<i>Oppose current language, but support intention and seek amendments</i>
AB 170 (Reyes)	Mandates that, over time, local governments in the San Joaquin Valley adopt air quality elements in their general plans.	<i>Watch</i>
AB 1409 (Wolk)	Allows buses longer than 40 feet to have bike racks in front.	<i>Support</i>

Director Torliatt presented the report and stated that the Committee met on Monday, June 9, 2003. Staff presented a list of new legislation and recommended agency position on each bill. Staff highlighted, and there was discussion on, the following bills: SB 288 (Sher), AB 170 (Reyes), and AB 1409 (Wolk). The Committee recommends that the Board adopt positions on the bills as stated in the list provided.

Staff also reported that the three bills that would fund the Carl Moyer Program are dead. There was also discussion on property tax issues that could affect the Air District. There was discussion on setting up a legislative day in Sacramento. The next Legislative Committee meeting is tentatively scheduled for Monday, July 14, 2003. Director Torliatt recommended that Tom Addison, Advanced Projects Advisor, brief the Board on SB 288 (Sher).

Mr. Addison stated that the potential amendments to the bill were reviewed late yesterday and that the amendments are helpful in that they address the citizen suit provisions as well as not weakening California's existing New Source Review (NSR) program. Mr. Addison reiterated that the intent of the bill is good, but there could still be problems with the proposed amendments. Brian Bunger, Counsel, stated that the citizen suit provision of the bill has been changed so that public agencies are taken out of that provision. Mr. Bunger added that there is an existing Writ of Mandate process that provides a way to challenge agency decisions. Mr. Bunger also stated that until the language is amended, EPA could automatically find the Air District out of compliance with the new NSR program. The District is willing to work with the proponents of the bill on these issues and to move it forward.

Chairperson Haggerty requested a motion on AB 170 and AB 1409 before further discussion on SB 288 takes place.

Board Action: Director Torliatt moved that the Board adopt the recommendations of the Legislative Committee on AB 170 (Reyes) and AB 1409 (Wolk); seconded by Director Young; carried unanimously without objection.

The following people came forward to speak on SB 288 (Sher):

Richard Drury Adams & Broadwell So. San Francisco, CA 94080	Carl Zichella Sierra Club Sacramento, CA 95814	Azibuike Akaba Communities for a Better Environment Oakland, CA 94612
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There was discussion on the following:

- Several Board members have not had the opportunity to read the bill or the proposed amendments.
- The Board could consider tabling this bill until the amendments have been reviewed.
- Staff indicated it is not a good bill as written.
- The Board should take a position that is not just "support" or "oppose."

Board Action: Director Miller moved that the Board support SB 288 (Sher) and seek amendments to the bill; seconded by Director H. Brown.

There was discussion on the following:

- There is opposition to the language and if the Board “Supports” the bill, it means the Board supports the language in the bill.
- The bill is out of the Senate now and in the Assembly; and it is scheduled to be heard on July 7th in the Policy Committee.

Director Miller amended the motion to “support” and seek changes in the language and with the amendments; Director H. Brown accepted the amendment.

Board Action: Director Townsend offered a substitute motion that the Board “watch” SB 288 (Sher) and seek amendments; seconded by Director Silva. Chairperson Haggerty accepted the substitute motion. Director Kniss suggested that someone from Senator Sher’s office come to the next Board meeting to talk to the Board about the bill. The motion then passed on the following roll call:

AYES: Ayerdi, Cooper, Hill, Kniss, Miley, Silva, Torliatt, Townsend, Uilkema, Young, Haggerty.

NOES: H. Brown, DeSaulnier, Miller, Ross.

ABSENT: Daly, McGoldrick, Mossar, Smith, Wagenknecht.

9. Report of the Mobile Source Committee Meeting of June 12, 2003

Action(s): The Committee recommended approval of the following:

- A) Allocation of \$800,000 in FY 2003/2004 Transportation Fund for Clean Air Regional Funds for the continuation of the District’s Vehicle Incentive Program;*
- B) Approval of proposed FY 2003/2004 policy revisions to the Vehicle Incentive Program;*
- C) Approval of Air District’s continued participation in implementing the California Air Resources Board’s (CARB) 2003 Carl Moyer program in the San Francisco Bay Area;*
- D) Authorize the Executive Officer/APCO to enter into necessary agreements and contracts with CARB and with approved applicants to implement the Carl Moyer program;*
- E) Approval of the Revised 2003 procedures for allocation of Carl Moyer program incentives;*
- F) Authorize the Air District’s continued participation in implementing the California Air Resources Board’s Lower Emission School Bus Program in the Bay Area; and*
- G) Approve proposed revision to the Lower Emissions School Bus Program to lower the maximum school district co-payment for a school bus purchase, expand the available options to reduce emissions for in-use diesel school buses, and require participating school districts to retrofit all eligible diesel school buses in their fleet.*

Director Young presented the report and stated that the Committee met on Thursday, June 12, 2003 and staff presented a report on the Vehicle Incentive Program (VIP) and reviewed the revisions to the Program for the FY 2003/04 cycle. The revisions would enhance the cost-effectiveness of the VIP Program. There were two speakers on this agenda item. The Committee recommends that the Board:

- Allocate \$800,000 in FY 2003/2004 of Transportation Fund for Clean Air Regional Funds for the continuation of the District's VIP; and
- Approve the VIP Program guidelines.

Staff summarized the District's Vehicle Buy Back Program and noted that the Program is governed by the Air Resources Board's (ARB) Voluntary Accelerated Light-duty Vehicle Retirement regulation. A total of 16,484 vehicles have been scrapped through the end of April 2003. The dismantler scrapping contracts were recently revised, adding a total of \$1,500,000 to the existing contracts. Staff noted that the State Vehicle Retirement Program has been suspended since December 2001. The Committee requested staff provide information on what counties the scrapped vehicles come from and information on the Bureau of Automotive Repair low-income program when vehicles fail a smog check.

Staff presented a report on the Carl Moyer Program, which provides grants to reduce emissions of NO_x in the Bay Area. The Air District has received approximately \$3.2 million to distribute as incentives. Staff reviewed the proposed procedures for distribution of the funds and the proposed schedule. The Committee recommends that the Board:

- Approve the Air District's participation in implementing the ARB 2003 Carl Moyer Program in the San Francisco Bay Area;
- Authorize the Executive Officer/APCO to enter into all necessary agreements and contracts; and
- Approve the revised 2003 procedures for allocating the Carl Moyer Program incentives in the Bay Area, with a change to Procedure No. 7 that any old diesel engine must be destroyed, with the exception of public safety vehicles and school buses, which would have to have emission control equipment installed if they were to be sent outside the Bay Area.

It was noted that control equipment will be installed on the school buses that will be sent to San Felipe, Mexico.

The Committee received a report on the Lower Emission School Bus Program. The Air District has approximately \$3.4 million to distribute as incentives. Staff reviewed the requirements, the proposed policies for the program, and the schedule. The Committee recommends that the Board:

- Authorize the Air District implementation of CARB's Lower Emission School Bus Program in the Bay Area;
- Authorize the Executive Officer/APCO to enter into all necessary agreements and contracts; and
- Approve proposed revisions to the Lower Emissions School Bus Program to lower the maximum school district co-payment for a school bus purchase, expand the

available options to reduce emissions from in-use diesel school buses, and require participating school districts to retrofit all eligible diesel school buses in their fleet.

Staff was requested to provide information on what can be done with regard to idling garbage trucks. In addition, staff was requested to look into school districts' interest in providing bus service and to consider the Air District partnering with MTC to help coordinate or provide this. The next meeting of the Committee will be at the Call of the Chair.

Board Action: Director Young moved that the Board approve the recommendations of the Mobile Source Committee; seconded by Director Cooper; carried unanimously without objection.

10. Report of the Public Outreach Committee Meeting of June 16, 2003

Director Ross presented the report and stated that the Committee met on Monday, June 16, 2003 and staff presented a report on the Air District's summertime Spare the Air campaign, which began on June 2nd and runs through October 17th. Staff noted there was a press conference held in Livermore to announce free transit on the Livermore Amador Valley Transit Authority's (LAVTA) bus service on Spare the Air days. The cost for this program is \$85,000, with \$55,000 from the Air District and \$30,000 from LAVTA. Staff also reported that the Air District is working with school districts to sign up for Spare the Air notifications and with refineries to reduce their emissions voluntarily on Spare the Air days. The Committee requested staff provide them with a copy of the draft letter and check list that is being sent to WSPA asking that their association join the Spare the Air program.

Staff reported on the Lawn Mower Buyback Programs held in the Spring of 2003. The Air District sponsored six events and Alameda County did a seventh event. Staff is coordinating with the City of San Francisco to use some remaining funds for an event that is tentatively scheduled for September 2003. Staff noted that the District would need to find a source of funding for next year's program. Staff was also given direction to hold an event at the Home Depot in Livermore. The Committee requested that staff provide the modeling that would show the percent of time the wind is carrying pollution to the East Bay and Tri-Valley areas.

The Committee received an update on the activities of the Resource Teams. The Contra Costa EJ Resource Team is doing a project concentrating on doing a report card for the area focused on the Chevron Refinery and making information about Chevron more easily available and distributed to the community.

In San Francisco, the EJ Resource Team is working with Community Advocates on an air pollution mapping project. Maps of neighborhoods are being mailed out to community members and they will mark on the map where they think air pollution is coming from. The group will then compile the information and have the District look at it, and the information would then be disseminated to the community. There was discussion on mission statements for the teams and it was noted that the East Palo Alto team would be considering a formal mission statement at its next meeting. The East Palo Alto team is interested in getting information on air pollution in its area and is in the process of asking the ARB to install an air monitoring trailer in the East Palo Alto area.

Staff reviewed the referrals from the last meeting and the Committee directed staff to discontinue the Clean Air Calendar for at least one year and to use that money for part of the lawn mower buy back program. Staff provided a status report on the Air District's video contract and project. The next meeting of the Committee will be at the Call of the Chair.

Board Action: Director Ross moved that the Board approve the Public Outreach Committee Report; seconded by Director Cooper; carried unanimously without objection.

Public Hearing

11. Final Public Hearing and Adoption of Proposed District Budget for FY 2003/2004

The District's Budget for FY 2003/2004 represents the input over the past several months from staff, Board members, and the public. The Budget and Finance Committee reviewed this item on April 23rd and May 7, 2003. The Board of Directors conducted a public hearing on June 4, 2003.

There being no speakers, Director Townsend moved to close the public hearing at 10:42 a.m.; seconded by Director DeSaulnier; carried unanimously without objection.

Board Action: Director Cooper moved the Board adopt the Proposed District Budget for FY 2003/2004; seconded by Director Townsend; carried unanimously with the following Board members voting:

AYES: H. Brown, Ayerdi, Cooper, DeSaulnier, Hill, Kniss, Miley, Miller, Ross, Silva, Torliatt, Townsend, Uilkema, Young, Haggerty.

NOES: None.

ABSENT: Daly, McGoldrick, Mossar, Smith, Wagenknecht.

Adopted Resolution No. 2003-03: A Resolution to Approve the Budget for the Fiscal Year Ending June 30, 2004 (FY 2003-2004) and Various Budget Related Actions

Other Business

12. Approval of Fringe Benefit Adjustments for Management and Confidential Employees

The labor contract approved by the Board on May 15, 2002, provided annual salary and benefits adjustments for union-represented employees. This recommendation is to approve a comparable salary and benefits adjustment for management and confidential employees for FY 2003-04.

Board Action: Director Torliatt moved Board approval of the salary and fringe benefits adjustments for management and confidential employees; seconded by Director Cooper.

There was discussion on non-Board of Director appointed management employees receiving an additional \$50.00 per month Fringe Benefit Allowance. Director Townsend suggested a friendly amendment to the motion that the Board approve the salary adjustments and fringe benefits, except the additional \$50.00 and Mr. Norton would negotiate the issue with the affected parties and bring that portion back to the Board for consideration at a later date. Directors Torliatt and Cooper accepted the amendment.

Board Action: Director Torliatt moved Board approval of the salary and fringe benefits adjustments for management and confidential employees, with the additional \$50.00 per month fringe benefit allowance for non-Board of Director appointed management employees to be brought back to the Board at a later date for further consideration; seconded by Director Cooper; carried unanimously without objection with the following Directors voting:

AYES: H. Brown, Ayerdi, Cooper, DeSaulnier, Hill, Kniss, Miley, Miller, Ross, Silva, Torliatt, Townsend, Uilkema, Young, Haggerty.

NOES: None.

ABSENT: Daly, McGoldrick, Mossar, Smith, Wagenknecht.

Adopted Resolution No. 2003-04: A Resolution to Amend Non-Board of Director Appointed Management and Confidential Employee Salary and Fringe Benefits

13. Report of the Executive Officer/APCO. Mr. Norton reported that there are no agenda items for August and recommended that the August Board meetings be cancelled. Chairperson Haggerty cancelled the Board meetings of August 6th and 20th, 2003.
14. Chairperson's Report. Chairperson Haggerty stated he had no report.

Director Kniss requested staff research the feasibility of Board members participating in a Board meeting via telephone.

Closed Session (The Board adjourned to Closed Session at 10:50 a.m.)

15. Conference with Legal Counsel

Existing Litigation

Pursuant to Government Code Section 54956.9(a), a need existed to meet in closed session with legal counsel to consider the following cases:

Communities for a Better Environment and Transportation Defense and Education Fund v. Bay Area AQMD, Metropolitan Transportation Commission, Association of Bay Area Governments, and California Air Resources Board, San Francisco Superior Court, Case No. 323849

Communities for a Better Environment and Our Children's Earth Foundation v. Bay Area Air Quality Management District, Valero Refining Company-California, et al., San Francisco Superior Court, Case No. CPF03502678

Open Session (The Board reconvened to Open Session at 10:57 a.m.)

Brian Bunger, Counsel, stated that the Board met in Closed Session and on the first case the Board authorized Counsel, if the decision is adverse to the District from the trial court, to appeal that decision. The vote was unanimous.

Mr. Bunger reported on the second case and stated that the Board provided direction to Counsel to resolve the remaining issues with the settlement and to move forward with the case.

16. Board Members' Comments: There were none.
17. Time and Place of Next Meeting - 9:45 a.m., Wednesday, July 2, 2003, 939 Ellis Street, San Francisco, California.
18. Adjournment: The meeting was adjourned at 10:59 a.m.

**Mary Romaidis
Clerk of the Boards**

mr

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and
Members of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: June 20, 2003

Re: Report of the Advisory Council

RECOMMENDED ACTION:

Receive and file.

DISCUSSION

Attached for your review are draft minutes of the Advisory Public Health Committee meeting of May 19, 2003, and the draft minutes of the Air Quality Planning Committee meeting of May 27, 2003.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: James Corraza

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Interoffice Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: Teresa Lee, Director
Public Information and Outreach

Date: June 20, 2003

Re: Notification of Execution of a Contract in excess of \$20,000

RECOMMENDED ACTION

Receive and file.

DISCUSSION

In accordance with the District's Administrative Code, Division II, Fiscal Policies and Procedures, Section 4.3, the Board is hereby notified of the execution of a contract for 114 billboards and 20 bus shelters for the second phase of the smoking vehicle program's advertising campaign to run mid-July to mid-August 2003. The contract was awarded to Viacom because its per unit cost was \$35 to \$50 less (depending on type of billboard) than the other major billboard company, Clear Channel Outdoor.

The contractor selection process conformed to the District's Administrative Code, Fiscal Policies and Procedures, Section 4.6 (a) (6) which specifies that the contract resulting from a competitive process be awarded to the bidder "offering the best value for quality goods and services."

BUDGET CONSIDERATION/FINANCIAL IMPACT

The total for this contract is \$34,850. Because staff performed negotiation for this contract, the District saved the usual 15% advertising agency commission. Funds have been allocated in the 2003-04 budget.

Respectfully submitted,

Teresa Lee, Director
Public Information and Outreach

Prepared by: Lucia Libretti

FORWARDED: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Interoffice Memorandum

To: Chairperson Haggerty and Members of the Board of Directors
From: Tom Perardi, Director of Planning and Research
Date: June 25, 2003
Re: CARB Fleet Zero Emission Vehicle Incentives

RECOMMENDED ACTION:

Authorize the Chairperson to sign a letter to the California Air Resources Board (CARB) accepting a grant of \$22,000 from the California Air Resources Board's Fleet Zero Emission Vehicle Incentive Program (Fleet ZIP), and authorize the Executive Officer/APCO to execute a corresponding Grant Agreement with CARB, and Approve transfer of the incentive funds to Nissan USA per terms of our lease agreement with Nissan.

DISCUSSION

On December 19, 2002, the California Air Resources Board (CARB) issued a call for applications for its Fleet Zero Emission Vehicle Incentive Program (Fleet ZIP). This program offered incentives of up to \$11,000 per vehicle for qualified electric vehicles purchased or leased after May 1, 2002. The Air District submitted an application on March 3, 2003 requesting Fleet ZIP incentives for two Nissan Altra electric vehicles. The Air District ordered these vehicles in June 2002 and took possession of the vehicles in fall 2002 for a three-year lease period.

On May 27, 2003, we received notice from CARB awarding \$22,000 in Fleet ZIP incentives for the two Nissan Altra electric vehicles. We received the CARB grant award letter too late to include this item on the agenda for the June 12, 2003 Mobile Source Committee meeting. To receive these funds, the Board of Directors must provide an acceptance letter (draft attached) and authorize the Executive Officer to execute a Grant Agreement with CARB.

BUDGET CONSIDERATION/ FINANCIAL IMPACT

None. The Air District will authorize CARB to pay the incentive funds directly to Nissan USA. The benefit of this incentive is reflected in the reduced cost of the vehicles, per terms of the lease agreement.

Respectfully submitted,

Thomas Perardi
Planning and Research Director

Prepared by: David Burch, Sr. Environmental Planner

FORWARDED: _____

BAY AREA AIR QUALITY MANGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: June 25, 2003

Re: Consider Establishing New Classification of High School Intern

RECOMMENDATION

Approve establishing the new classification of High School Intern.

BACKGROUND

The District is planning to establish a formal High School Student Internship Program. The purpose of the Program is to reach out to the Community and contribute to the citizens we serve by the creation of youth jobs. Through this Program, high school students would learn about the District, our operations, and our mission. The District intends to use high school interns in the Community Outreach/Environmental Justice Program and Spare the Air Program. The High School Student Internship Program would benefit both the District and the Communities we serve.

The new classification of High School Intern has been specifically developed to meet the needs of this new Program. The qualifications are directed at high school students and are appropriate for this class. This would be an unrepresented classification. The pay rate would be set at a flat rate of \$8.25 per hour.

In order to implement this Program, it will be necessary to adopt this class specification and the associated pay rate.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no direct financial impact to establish this classification. Positions hired into this classification will be funded using temporary salaries already budgeted.

Respectfully Submitted,

William C. Norton
Executive Officer/APCO

Prepared by: Diane M. Iwata
Reviewed by: Wayne Tanaka

HIGH SCHOOL INTERN

DEFINITION

Under close supervision, performs various basic level clerical and some administrative support work in a division or office while gaining practical work experience.

DISTINGUISHING CHARACTERISTICS

This is a temporary trainee, non-career position. This class provides the opportunity to expose high school students to the District, its operations, and its mission.

EXAMPLES OF DUTIES (Illustrative Only)

Performs a wide variety of routine support services to a division or office including the Environmental Justice program, such as basic data entry, stuffing envelopes and sending out mailers, sorting mail, photocopying, filing, answering phone calls, conducting surveys and providing general information to customers.

Learns and applies policies, procedures, and practices in the area assigned.

Researches and/or obtains and compiles information of a routine nature.

May assist in community outreach efforts.

May schedule meetings between members of the District staff and Bay Area environmental groups, neighborhood associations, and other relevant groups.

May assist in preparing reports, letters and related documents.

QUALIFICATIONS

Knowledge of:

Proper English usage, spelling, and punctuation.

Basic standards of employment.

Ability to:

Communicate with supervisor and co-workers.

Perform basic computer functions and learn how to use personal computer word processing and spreadsheet software to produce various written documents.

Learn job-related skills, and/or apply educational experience and knowledge pertinent to the assigned area.

Learn and/or apply social skills, experience and knowledge pertinent to the assigned area.

High School Intern

July 2003

Page 2 of 2

Student Qualification Requirements:

Must be continually enrolled in and attending a high school (summer enrollment is not required).

Must be at least 16 years of age, have completed the 10th grade and have a grade point average of 2.5 or higher. Students who have graduated from high school are not eligible.

High school students under the age of 18 must obtain an appropriate work permit.

BAY AREA AIR QUALITY MANGEMENT DISTRICT

Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: June 25, 2003

Re: Consider Adjusting the District's Maximum Medical Contribution
Declared to California Public Employees' Retirement System
(CalPERS)

RECOMMENDATION

Approve adjusting the District's Maximum Medical Contribution declared to CalPERS for management, confidential, and represented employees and retirees.

BACKGROUND

Based on the MOU, effective July 1, 2003 the fringe benefit allowance for represented employees will be the total of the lowest health plan premium rate for an employee and two or more dependants offered by CalPERS, and the dental plan and vision plan premium rates for an employee plus dependents. At the June 18, 2003, Board of Director's meeting, this same formula was also adopted for management and confidential employees.

CalPERS requires the District to declare a maximum contribution amount that employees and retirees can use to assist them in purchasing medical insurance. Historically, the maximum contribution amount has been calculated by using the total fringe benefit allowance minus the cost of single dental and single vision coverage. Since fringe benefit allowance amounts vary within employment categories for active employees and retirees, this formula can no longer be applied. Therefore, since the new fringe benefit allowance formula is calculated based on the lowest health premium rate for an employee and two or more dependants offered by CalPERS, it is recommended that this same amount be declared to CalPERS as the District's Maximum Medical Contribution for management, confidential, and represented employees and retirees. At this time, the rate is \$673.95 per month.

Based on CalPERS' requirements the earliest that this resolution can be effective is September 1, 2003.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no fiscal impact.

Respectfully Submitted,

William C. Norton
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Resolution No. 2003-____

**A Resolution to Fix the District's Contribution Under the
Public Employees' Medical and Hospital Care Act**

WHEREAS, Government Code Section 22825.6 provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22825 of the Act (\$16.00);

WHEREAS, the Bay Area Air Quality Management District is a local agency contracting under the Act;

WHEREAS, the Executive Officer/Air Pollution Control Officer has advised the Board of Directors of the Bay Area Air Quality Management District that based upon calculations related to costs for certain mandatory employee insurance coverages, the maximum amount available for health care insurance under the Public Employees' Medical and Hospital Care Act is \$673.95 per month for active management employees, active confidential employees, and active represented employees;

WHEREAS, the aforesaid amount would be equally available to retired management, confidential, and represented employees;

WHEREAS, this Board desires to fix the contribution amounts as describe above.

NOW, THEREFORE, BE IT RESOLVED that the employer's contribution made by the Bay Area Air Quality Management District for each employee or annuitant shall be the amount necessary to pay the cost of his or her enrollment, including enrollment of his or her family members, in the Public Employees' Medical and Hospital Care Act health benefit plan or plans provided that it shall be no more than \$673.95 per month for management employees, confidential employees, and represented employees, effective September 1, 2003.

The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director _____, seconded by Director _____, on the _____ day of _____ 2003 by the following vote of the Board:

AYES:

NOES:

ABSENT:

ATTEST:

SCOTT HAGGERTY
Chairperson of the Board of Directors

GAYLE B. UILKEMA
Secretary of the Board of Directors

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: May 28, 2003

Re: Report of the Stationary Source Committee Meeting of June 18, 2003

RECOMMENDED ACTION:

Consider approval of Environmental Audit, Inc., as the contractor to conduct the California Environmental Quality Act (CEQA) processes and prepare CEQA documents for the Air District's proposed plans and rules and authorize the Executive Officer/APCO to execute contract not to exceed \$200,000.

DISCUSSION

The Committee met on Wednesday, June 18, 2003. Due to a lack of a quorum the Committee would like the Board of Directors to consider approval of Environmental Audit, Inc. to conduct the CEQA process and prepare CEQA documents for the District. Chairperson, Mark deSaulnier will give a summary of the meeting.

The attached staff reports were presented to the Committee.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: Peter Hess

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and
Members of the Board of Directors

From: William C. Norton,
Executive Officer/APCO

Date: June 20, 2003

Re: Adopt Proposed Amendments to Regulation 3: Fees and Approve California
Environmental Quality Act (CEQA) Notice of Exemption

RECOMMENDED ACTION

Approve proposed amendments to Regulation 3: Fees and incorporate into the District's Fiscal Year 2003/2004 Budget as approved at the June 18, 2003 Board of Directors meeting and approve CEQA notice of exemption.

BACKGROUND

All District fees except for the Schedule L: Asbestos Operations and Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks were increased by 1.6 percent effective July 1, 2003, as a result of the amendments approved at the May 21, 2003, meeting of this Board.

Consistent with the recommendations contained in 1999 KPMG report commissioned by the District, the District is proposing to complete the process of adjusting all District fees and fee schedules by 1.6 percent. This increase is equal to the 2002 Consumer Price Index (CPI) adjustment for the California Bay Area (San Francisco, Oakland and San Jose). The proposed amendments, coupled with the increases for the previous three fiscal years, will assure that District's fee revenues are sufficient to fund its regulatory activities at current levels while maintaining District reserve accounts.

DISCUSSION

Today's proposal to increase fees for Schedule L: Asbestos Operations and Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks by 1.6 percent will complete the fee increases for fiscal year 2003/2004.

A Public Workshop was held on March 21, 2003, to discuss the proposed revisions to Regulation 3, Schedule L: Asbestos operations and Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks. Notices detailing the proposed amendments, were sent to all interested parties announcing the workshop and the public hearing. No representatives of industries affected by today's proposal attended the workshop and the District received no written comments regarding the proposal.

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, such as the BAAQMD, that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. If an agency's approval action on a project is considered exempt, CEQA does not apply. The District's proposed fee increase is statutorily exempt from the requirements of the California Environmental Quality Act as stated in the 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 21800(b)(8).

The details of the staff proposal are contained in the attached Regulation 3 fee schedules L and Q in ~~strikeout~~ and underline format. A copy of the staff report is also attached.

The effective date of the proposed fee increases to Schedule L: Asbestos Operations and Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks is July 2, 2003.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: William DeBoisblanc

Attachments

- A. Fee Schedules L and Q in ~~Strikeout~~/Underline format
- B. Staff Report

SCHEDULE L
ASBESTOS OPERATIONS

(Adopted July 6, 1988)

1. Asbestos Operations conducted at single family dwellings are subject to the following fees:
 - a. OPERATION FEE: ~~\$8687~~ for amounts 100 to 500 square feet or linear feet.
~~\$316321~~ for amounts 501 square feet or linear feet to 1000 square feet or linear feet.
~~\$459466~~ for amounts 1001 square feet or liner feet to 2000 square feet or linear feet.
~~\$631641~~ for amounts greater than 2000 square feet or linear feet.
 - b. Cancellation: ~~\$4142~~ of above amounts non-refundable, for notification processing.
2. Asbestos Operations, other than those conducted at single family dwellings, are subject to the following fees:
 - a. OPERATION FEE: ~~\$242246~~ for amounts 100 to 159 square feet or 100 to 259 linear feet or 35 cubic feet
~~\$354357~~ for amounts 160 square feet or 260 linear feet to 500 square or linear feet or greater than 35 cubic feet.
~~\$511519~~ for amounts 501 square feet or linear feet to 1000 square feet or linear feet.
~~\$752764~~ for amounts 1001 square feet or liner feet to 2500 square feet or linear feet.
~~\$10731090~~ for amounts 2501 square feet or linear feet to 5000 square feet or linear feet.
~~\$14741498~~ for amounts 5001 square feet or linear feet to 10000 square feet or linear feet.
~~\$18751905~~ for amounts greater than 10001 square feet or linear feet.
 - b. Cancellation: ~~\$416118~~ of above amounts non-refundable for notification processing.
3. Demolitions (including zero asbestos demolitions) conducted at a single-family dwelling are subject to the following fee:
 - a. OPERATION FEE: ~~\$4142~~
 - b. Cancellation: ~~\$4142~~ (100% of fee) non-refundable, for notification processing.
4. Demolitions (including zero asbestos demolitions) other than those conducted at a single family dwelling are subject to the following fee:
 - a. OPERATION FEE: ~~\$473176~~
 - b. Cancellation: ~~\$416118~~ of above amount non-refundable for notification processing.
5. Asbestos operations with less than 10 days prior notice (excluding emergencies) are subject to the following additional fee:
 - a. OPERATION FEE: ~~\$286291~~
6. Asbestos demolition operations for the purpose of fire training are exempt from fees.
(Amended 9/5/90; 1/5/94; 8/20/97; 10/7/98; 7/19/00; 8/1/01, 6/5/02)

SCHEDULE Q
~~AERATION~~ EXCAVATION OF CONTAMINATED SOIL AND
REMOVAL OF UNDERGROUND STORAGE TANKS
(Adopted January 5, 1994)

1. Persons ~~aerating~~ excavating contaminated soil or removing underground storage tanks subject to the provisions of Regulation 8, Rule 40, Section 401, 402, 403 or 405 are subject to the following fee:
 - a. OPERATION FEE: \$146,118

Amended 7/19/00; 8/1/01, 6/5/02)

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROPOSED AMENDMENTS TO

BAAQMD

REGULATION 3, FEES

**FINAL
STAFF REPORT**

Prepared by

**William de Boisblanc
Director of Permit Services Division,**

June 18, 2003

Reviewed by

**Peter Hess
Deputy Air Pollution Control Officer**

EXECUTIVE SUMMARY

The Bay Area Air Quality Management District is continuing the process of realigning permit fees and other District fees on an annual basis 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 recommending that all District fees be increased by 1.6 percent, which corresponds to the increase in the Consumer Price Index (CPI) for the California Bay Area (San Francisco, Oakland and San Jose). Since the proposed fee adjustment is so modest this year, permit revenues are expected to be relatively unchanged for FY 03-04, but could actually decline considering the sluggish economy of the Bay Area.

The recommended increases in District fees for FY 03-04 are listed below.

1. Permit Fee Revisions

- A 1.6% Consumer Price Index adjustment in a) the filing fee for New and Modified Sources (Reg. 3-302), b) the banking filing and withdrawal fees (Reg. 3-311), and (c) the fees for alternate compliance plans (Reg. 3-312).
- A 1.6% Consumer Price Index adjustment on Fee Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, H, I, K, M, N, and P.

2. Asbestos Operations and Excavation of Contaminated Soil

- A 1.6% Consumer Price Index adjustment for Schedule L, Asbestos Operations and Schedule Q, Excavation of Contaminated Soil and Removal of Underground Storage Tanks. Also, minor word changes to Sections 3-105 and 3-322 and Schedule Q substituting Excavation for Aeration to clarify the intent of the rule.

3. Hearing Board Fees

- A 1.6% Consumer Price Index adjustment in the all Hearing Board Fees of Schedule A including the excess emission fees. Also, the \$275 fee for each application for intervention by a third party has been eliminated.

4. Summary of Proposed Changes

At most the proposed changes are expected to increase the District's revenues from permit renewals by an estimated \$250,000 for FY 03-04. However, as stated above, revenues from all permitting activities including: Permit renewals, New and Modified permitting, Title V permitting, and AB2588 fees are expected to be approximately the same as during FY 02-03. The primary reasons for flat permit revenue projection are: the state of the economy and the projection of fewer major permit applications for refinery modifications and large new power plants.

Specifically, the following general fees and fee schedules of Regulation 3 will be revised.

- Regulation 3, Standards: Sections 302, 307, 309, 311, 312 and 315
- 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 and G-3)
- 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 P, Major Facility Review Fees
- Schedule Q, ~~Aeration~~ Excavation of Contaminated Soil and Removal of Underground Storage Tanks

EFFECTIVE DATE

The proposed effective date of the amendments above is July 1, 2003.

BACKGROUND

GENERAL FEE INCREASE

For the fifth year the District is relying on recommendations of the 1999 KPMG Cost Recovery Study in order to align District fee revenues more closely with the costs of the related programs. In the past the District often skipped adjusting the fee schedules to account for inflation. This practice, in part, caused District fee revenues to fall well below the actual program costs and also contributed to the depletion of the District's reserve accounts. In keeping with the recommendations of the KPMG Cost Recovery Study the District is proposing this 1.6 percent CPI adjustment of all District fees. The fee increase proposal for FY 03-04 should continue the process of bringing fees into alignment with related permit services costs. Table 1 below shows the history of permit fee increases starting in FY 1991-1992.

Table 1. Fee 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 3% CPI increase plus a 12% general fee increase.

**Proposed

The District's permit program activities that are eligible for revenue sources are estimated at \$20.4 million for FY 03-04. The District's projected permit fee revenue for the coming year is \$17.1 million. In addition, program activities related to the asbestos renovation/demolition program, soil excavation project evaluations and the Hearing Board activities that are eligible for revenue sources are estimated at \$1.4 million while revenue from these source are estimated at \$1.3 million.

Program Activities Eligible For Revenue Source

Permit Division Programs

- Operating Permit Fees \$12,206,000
- New & Modified Permits \$ 5,248,000
- Title V Permit Fees \$ 2,446,000
- AB 2588 Income \$ 483,000

Other Programs

- Asbestos Fees \$ 1,188,000
- Soil Excavation Fees \$ 23,000
- Hearing Board Fees \$ 172,000
- Total \$21,767,000

Projected Fee Revenue for FY03/03**Permit Fees**

- Operating/New
& Modified Permit Fees \$15,296,000
- Title V Permit Fees \$ 1,040,000
- AB 2588 Income \$ 750,000

Other Fees

- Asbestos Fees \$ 1,270,000
- Soil Excavation Fees \$ 6,000
- Hearing Board Fees \$ 35,000
- Total \$18,397,000

An accurate projection of permit and other revenues is very difficult because many factors including, the local economy, and normal fluctuations in major plant activities are impossible to accurately predict. Furthermore it should be noted that this analysis of projected cost of permit program activities only includes direct cost. Indirect costs of all District programs are estimated at approximately 40 percent of direct costs.

FUTURE RECOMMENDATIONS

In order to keep District permit fee revenues from falling below the cost of carrying out the District's permit related programs, in keeping with the recommendations of the KPMG "Cost Recovery Study", the District will continue to implement the following long-term measures:

- Permit fees will be reviewed annually and adjusted every year, as necessary to account for inflation.
- The District will continue to accurately track all employee time charges against specific programs and to use this data in the future to align District fee schedule, as closely as possible, so that fee revenues will cover the cost of related program activities.

STATUTORY AUTHORITY FOR PROPOSED PERMIT FEE INCREASES

Health & Safety Code Section 42311(a) authorizes the assessment of permit fees by the District. These fees may not exceed the actual cost of permit programs in the preceding year with an adjustment for the increase in the Consumer Price Index (CPI) for the California Bay Area (San Francisco, Oakland and San Jose).

In addition, Health & Safety Code Section 41512.7 establishes a statutory cap on the allowable annual percentage increase in permit fees and therefore limits the statutory authority for actual cost recovery for permit-related activities set forth in Health & Safety Code Section 42311. The 15 percent cap on annual percentage increase for authority-to-construct permits or permits to operate in subdivision (b) of Section 41512.7 impacts a local air pollution control district's ability to recover its actual costs as authorized in Section 42311, subdivision (a). This statutory limitation on the recovery of the costs of an air pollution control permit program is especially striking when an air pollution

control district discovers that the difference between current permit fee revenues and the actual cost of such permit programs is greater than 15 percent. In practice, the 15 percent annual increase limitation circumscribes existing statutory authority for a local air pollution control district to recover its “actual costs for district programs for the immediately preceding fiscal year” as set forth in Health & Safety Code Section 42311.

In conclusion, Health & Safety Code § 41512.7 limits actual cost recovery pursuant to Health & Safety Code § 42311. The staff proposal for permit fee revenues of \$16.7 million for FY 03-04 complies with the limits in Health & Safety Code § 42311, and the proposed CPI adjustment of 1.6 percent complies with the 15 percent limit in Health & Safety Code Section 41512.7.

OVERVIEW OF RULE CHANGES

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. The proposed amendments to the regulation and each fee schedule are summarized below:

REGULATION 3—STANDARDS

- **Section 3-302 Fees for New and Modified Source:** Increase the filing fee for permit applications from \$250 per source to \$254 per source. Increase the minimum initial fee for an Authority to Construct from \$176 to \$179 (see various fee schedules). Increase the minimum Permit to Operate fee from \$126 to \$128 (see various fee schedules).
- **Section 3-307 Transfers:** Increase the fees for transfer of permits by \$1 from \$50 per permit to \$51 per permit and increase the maximum fee per facility from \$1000 to \$1016. An applicant who qualifies as a small business shall pay one half of these fees...\$25.50 per permit up to a maximum fee per facility of \$508.
- **Section 3-309 Duplicate Permit:** An applicant for a duplicate permit to operate shall pay a fee of ~~\$50.00~~ 51.00 per permit.
- **Section 3-311 Banking:** Any applicant who wishes to bank emissions for future use, or convert an ERC into an IERC, shall pay a filing fee of ~~\$250~~254 per source plus the initial fee given in Schedules B, C, D, E, F, H, I or K. Where more than one of these schedules is applicable to a source, the fee paid shall be the highest of the applicable schedules. Any applicant for the withdrawal of banked emissions shall pay a fee of ~~\$250~~254.
- **Section 3-312 Emission Caps And Alternate Compliance Plans:** Increase fees for emission caps and alternate compliance plans from \$632 per source to \$642 per source, and raise the maximum fee from \$6320 to \$6420.

REGULATION 3—FEE SCHEDULES

- A 1.6% Consumer Price Index adjustment on all Fee Schedules A, B, C, D, E, F, G-1, G-2, G-3, G-4, H, I, K, L, M, P and Q.

- Schedule N: Increase the variable F_T (total amount of fees to be collected) by 1.6 percent due to the Consumer Price Index increase. This change does not require any modifications to the language of Schedule N.

RULE DEVELOPMENT PROCESS

The proposed revisions to Regulation 3, Fees were discussed at a Public Workshop held at the District's office on March 21, 2003. Almost 7000 notices were sent out announcing this workshop. The notices were sent to all current permit holders, all asbestos contractors and all persons on the District's Interested Parties list. Only one person, representing the Environmental Law and Justice Clinic (ELJC), attended the workshop.

ASSOCIATED IMPACTS

EMISSIONS IMPACTS

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

ECONOMIC IMPACTS

Health & Safety Code § 42311, subdivision (a) provides that an air pollution control district may recover, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources. In addition, a district may adopt, by regulation, 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 -- to recover the costs of district programs related to these sources. Health & Safety Code § 42311(g).

Based on this statutory authority, the District can recover its administrative and regulatory costs for programs related to stationary, area-wide and indirect sources under its jurisdiction. Therefore, the proposed amendments to Regulation 3 - Fees, by definition, are not expected to cause or create any adverse economic impacts. The fees merely represent cost recovery for important regulatory services. Finally, the proposed amended fee regulation will enable the District to continue to provide a consistent high level of service to the affected permit holders and fee payers.

Impact on small businesses is expected to be insignificant. Most small business only operate one or two sources which generally only pay the minimum permit renewal fee. The annual permit fee for each of these sources is currently \$126; under the proposal, this fee will be raised to \$128 per source. The initial fee for a new permit will increase from \$176 to \$179.

The proposal is anticipated to maintain District revenues at or near the same level as last fiscal year.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

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, such as the BAAQMD, that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. If an agency's approval action on a project is considered exempt, CEQA does not apply. The District's proposed fee increase is statutorily exempt from the requirements of the California Environmental Quality Act as stated in the 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 21800(b)(8).

CALIFORNIA HEALTH AND SAFETY CODE

Section 40728.5 of the Health and Safety Code requires districts to assess the socioeconomic impacts of amendments to regulations that, "...will significantly affect air quality or emissions limitations." This regulatory proposal has direct costs associated with the increase in permit fees, however, does not fall within the scope of an amendment that significantly affects air quality or emissions limitations. This section, therefore, does not apply.

Under Health and Safety Code Section 40920.6, the District is required to perform an incremental cost analysis for a proposed rule. This analysis is required, "Prior to adopting rules or regulations for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914...." The purpose of this section is to identify increments of technology that meet the emission reduction objectives of the proposed rule, where possible, and to calculate the cost-effectiveness of each increment. As this proposal does change regulatory standards or impose additional emission limitations, this section is not applicable.

Section 40727.2 of the Health and Safety Code imposes new 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.

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 are:

- Necessary to fund the District's efforts to attain federal and state air quality standards;
- Authorized by Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364 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 and 40 CFR Part 70.9.

The proposed amendments have met all legal noticing requirements and have been discussed with interested parties. Staff recommends adoption of the proposed amendments.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: June 23, 2003

Re: Status Report and Possible Action on SB 288 (New Source Review
Restoration Act of 2003)

RECOMMENDED ACTION:

Adopt “support” position on SB 288 (Sher) if amended per attached proposal.

BACKGROUND

This item is a continuation of the Legislative Committee report from the June 18, 2003, Board of Directors meeting. At that meeting, the Board ultimately adopted a “watch and seek amendments” position on the version of SB 288 that was in print at that time. Staff have subsequently drafted alternative language, and shared this language with the bill sponsors, author, and interested parties.

Staff continues to believe that the goal of maintaining a strong new source review program is critical to improving air quality. Staff believes that the attached amendments to SB 288 would accomplish this goal, while avoiding the unintended adverse consequences of the April 10, 2003, version of the bill. A copy of the April 10, 2003, version of the bill is also attached.

At the time of this mailing, staff has not heard from all parties on their reactions to the alternative proposal. Staff will update the Board of Directors on this issue as of July 2, 2003.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

AMENDMENTS SUPPORTED BY BAAQMD

(NOTE: This Language Would REPLACE the Existing 4/10/03 Version of SB288 In Its Entirety)

Substitute Language for SB 288 (Sher)

SECTION 1. Chapter 4.5 (commencing with Section 42500) is added to Part 4 of Division 26 of the Health and Safety Code, to read:

CHAPTER 4.5. NEW SOURCE REVIEW RESTORATION ACT OF 2003

42500. This article shall be known, and may be cited, as the New Source Review Restoration Act of 2003.

42501. The Legislature finds and declares all of the following:

(a) The people of the State of California have a primary interest in safeguarding the air quality in the state from degradation and in ensuring the enhancement of the air quality of the state. For over 25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.), has required major new and modified sources of air pollution to undergo "new source review," to ensure that those facilities reduce emissions to meet best available control technology or lowest achievable emission rate requirements, and to obtain offsets for any new emissions, and comply with other requirements to ensure that such new and modified sources do not adversely affect air quality.

(b) New source review has been a cornerstone of state efforts to reduce pollution from older industrial sources by requiring facilities to install the best available control technology when they undergo major modifications.

(c) On December 31, 2002, the Administrator of the United States Environmental Protection Agency ~~President of the United States~~ promulgated regulations that substantially alters the federal program of new source review (67 Fed. Reg. 80186-80289 (Dec. 31, 2002)).

(d) These new regulations threaten to undermine the air quality of the State of California and thereby threaten the health and safety of the people of the State of California.

(e) Section 7416 of Title 42 of the United States Code, contained in the federal Clean Air Act, protects the right of states to adopt air pollution control requirements that are more stringent than federal requirements. Moreover, the regulations provide that the states may adopt permitting programs that are "at least as stringent" as the new federal "revised base program" (67 Fed. Reg. 80241).

(f) The intent of this chapter is to preserve in state law the public health protections of new source review programs as they existed in local air districts on December 30, 2002.

(g) The program set forth in this chapter imposes more stringent standards than the new federal "revised base program" set forth in 67 Fed. Reg. 80186-80289.

Add new 42502

No district may revise or amend its new source review program to be less effective in improving air quality than the program that existed in that district on December 30, 2002 (hereinafter, "base program"). This requirement shall be enforced only by the state board. ~~or the United States Environmental Protection Agency.~~ If the state board finds, after a public hearing, that a district's revised or amended program is not, on an aggregate basis, equivalent to or more stringent than its base program ~~the program required by such regulations,~~ the state board may adopt for such district such rules as may be necessary to establish equivalency. In making the finding, the state board shall determine whether the permit system amendments satisfy the no-net-increase permitting program requirements of Chapter 10 of Part 3 (commencing with Section 40910, and including the provisions of Section 40918.5).