



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

FINAL STAFF REPORT

PROPOSED AMENDMENTS TO BAAQMD REGULATION 3: FEES

MAY 6, 2009

**Engineering Division
Bay Area Air Quality Management District**

1. EXECUTIVE SUMMARY

District staff has prepared proposed amendments to District Regulation 3: Fees, for Fiscal Year Ending (FYE) 2010 (i.e., July 1, 2009 to June 30, 2010) that would increase revenue to enable the District to address increasing regulatory program activity costs, and continue to move toward more complete cost recovery. A recently updated Cost Recovery Study indicates that a significant cost recovery gap exists. For the most recently completed fiscal year (FYE 2008), fee revenue covered just 55 percent of direct and indirect program costs.

Reducing the cost recovery gap has become a particularly important part of the District's budgetary needs as county revenue derived from property taxes (the District's primary source of general fund revenue used to fill the cost recovery gap) is projected to decline over the next several years. The District will also continue to implement cost containment measures to address budgetary issues associated with the general economic downturn.

The proposed fee amendments would increase fee revenue in FYE 2010 by approximately \$2.6 million from projected revenue levels in the FYE 2009 budget, representing an increase of 9.3 percent. For reference, the most recent annual increase in the Consumer Price Index (CPI) for the Bay Area (i.e., from Calendar Year 2007 to 2008) was 3.3 percent.

District staff is proposing amendments to existing fee schedules that are based on the magnitude of the cost recovery gap for each schedule. The fee schedule for refinery flares would be increased by 50 percent to provide more complete recovery of the District's costs of implementing and enforcing the District's rules for flare monitoring and control. Other fee schedules with large cost recovery gaps would be increased by 15 percent. Fee schedules with less significant cost recovery gaps would be increased by 12 percent, 9 percent, 6 percent, or 3 percent, based on the extent to which the schedule recovers the District's costs. Fee schedules with no cost recovery gaps would not be increased. Fees that are administrative in nature would be increased by 6 percent.

A new Indirect Source Review (ISR) fee schedule is proposed for the purpose of recovering District costs associated with an ISR Rule that the District intends to develop. The ISR Rule would address the adverse impacts of growth on local and regional air quality and climate change. The ISR Rule is expected to apply to various development projects and require that an application for an Air Quality Impact Assessment be submitted for District review and approval. The new ISR fee schedule would include an application filing fee and an application evaluation fee. The application evaluation fee would be based on the District's actual costs of evaluating the application, and the filing fee would be credited towards the evaluation fee. The new fee schedule would also include an offsite emission reduction fee, but the details of this fee would be determined at a later date.

The current \$200 court reporter fee for hearings before the District's Hearing Board would be changed to a fee to recover the actual court reporter appearance and transcript costs. Finally, the provision to charge back fees, which currently applies to permit applicants who file after the effective date of a permit requirement, would be amended to also apply to persons subject to equipment registration who file after the effective date of a registration requirement.

The proposed fee amendments would increase annual permit renewal fees for most small businesses that require District permits by \$15 to \$80. One exception to this is for retail gasoline dispensing facilities, most of which would have permit renewal fee increases of \$100 to \$300. The annual permit renewal fees for the five Bay Area refineries, the District's highest fee payers, would increase by an average of \$150,000.

2. BACKGROUND

State law authorizes the District to assess fees to generate revenue to recover the cost of District air pollution programs (i.e., the District's full direct and indirect expenditures for personnel, services and supplies, and capital outlay, related to implementing and enforcing air quality programs and regulations affecting stationary sources of air pollution). The largest portion of District fees is collected under provisions that allow the District to impose permit fees sufficient to recover the full costs of programs related to permitted sources. The District is also authorized to assess fees for: (1) areawide or indirect sources of emissions which are regulated, but for which permits are not issued by the District, (2) sources subject to the requirements of the State Air Toxics Hot Spots Program (Assembly Bill [AB] 2588) and, (3) activities related to the District's Hearing Board involving variances or appeals from District decisions on the issuance of permits.

The District has established, and regularly updates, a fee regulation under these authorities (District Regulation 3: Fees). Currently, 46 percent of the District's general fund operating budget is derived from fees imposed in accordance with this regulation.

The District has analyzed whether these fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the costs of related program activities. In 1999, a comprehensive review of the District's fee structure and revenues was completed by the firm KPMG Peat Marwick LLP (*Bay Area Air Quality Management District Cost Recovery Study, Final Report: Phase One – Evaluation of Fee Revenues and Activity Costs; February 16, 1999*). This 1999 Cost Recovery Study indicated that fee revenue did not nearly offset the full costs of program activities associated with sources subject to fees as authorized by State law. Property tax revenue (and in some years, fund balances) had consistently been used to close this cost recovery gap.

The District Board of Directors adopted an across-the-board fee increase of 15 percent, the maximum allowed by State law, for FYE 2000 as a step toward more complete cost recovery. In each of the next five years, the District adjusted fees only to account for inflation (with the exception of FYE 2005 for which the District also approved further

increases in Title V fees and a new processing fee for renewals of permits to operate).

In 2004, the District Board of Directors approved funding for an updated Cost Recovery Study. The accounting firm Stonefield Josephson, Inc. completed this study in March 2005 (*Bay Area Air Quality Management District Cost Recovery Study, Final Report; March 30, 2005*). This 2005 Cost Recovery Study indicated that a significant cost recovery gap continued to exist.

For the three years following the completion of the 2005 Cost Recovery Study (i.e., FYE 2006, FYE 2007, and FYE 2008), the District adopted fee amendments that increased overall projected fee revenue by an average of about 7 percent per year. In order to address fee equity issues, the various fees were not all increased in a uniform manner. Rather, individual fee schedules were amended based on the magnitude of the cost recovery gap for that schedule, with the schedules with the more significant cost recovery gaps receiving more significant fee increases.

For the current FYE 2009, the District adopted fee amendments using an approach that was similar to what was used for the three prior years, but that also included a new greenhouse gas (GHG) fee schedule. The GHG fee schedule recovers costs from stationary source activities related to the District's Climate Protection Program. Including the GHG fee schedule, the FYE 2009 fee amendments increased fee revenue by an estimated 13.9 percent from the prior fiscal year.

District staff has recently completed an updated analysis of cost recovery (*Bay Area Air Quality Management District 2009 Cost Recovery Study, March 2009*) using the methodology established by Stonefield Josephson, Inc. in their 2005 study. This 2009 Cost Recovery Study indicates that the cost recovery gap was \$21 million in FYE 2008, with fee revenue covering 55 percent of program costs. For FYE 2008, cost recovery was impacted significantly by expenditures on deferred maintenance related to the District's facilities and information systems. In addition, the cost of prefunding Other Post Employment Benefits (OPEB) was addressed for the first time in FYE 2008.

For FYE 2010, District staff has developed proposed amendments to Regulation 3 using an approach that is similar to what was used over the past four years. On an overall basis, it is estimated that the amendments would increase fee revenue by \$2.6 million in FYE 2010 from projected revenue levels in the current fiscal year budget, representing an increase of 9.3 percent. On an inflation-adjusted basis, the increase is 6 percent (the increase in the annual CPI for urban wage earners for the California Bay Area from calendar year 2007 to 2008, as reported by the California Department of Industrial Relations, Division on Labor Statistics and Research was 3.3 percent).

Reducing the cost recovery gap has become a particularly important part of the District's budgetary needs as county revenue derived from property taxes (the District's primary source of general fund revenue used to fill the cost recovery gap) is projected to decline by an estimated 10 percent over the next several years. The District will also continue to implement cost containment measures to address budgetary issues

associated with the general economic downturn. Nonetheless, staff has projected that fees will need to be increased by an average of 10 percent per year over the next several years in order to balance the budget in FYE 2012.

Projected fee revenue for FYE 2010 is provided in Table 1, based on District staff's proposed amendments to Regulation 3. These figures are approximations, as actual fee revenue depends on a variety of factors, some of which are difficult to predict (e.g., year-to-year fluctuations in industrial activities).

Table 1. Projected Fee Revenue for FYE 2010

Permit Fees	
New & Modified Permit Fees, Permit to Operate Renewal Fees, Title V Fees	\$26,161,000
Greenhouse Gas Fees	\$1,149,000
Other Fees	
AB 2588 Fees (includes State pass-through)	\$639,000
Asbestos, and Soil Excavation, Notification Fees	\$2,132,000
Registration Fees	\$250,000
Hearing Board Fees	\$36,000
Total	\$30,367,000

3. PROPOSED FEE AMENDMENTS FOR FYE 2010

3.1 OVERVIEW OF PROPOSED AMENDMENTS

The District's fee proposal for FYE 2010 includes percentage increases for most existing fees. The proposed increase for an individual fee schedule is based on the magnitude of the cost recovery gap for that schedule. The proposed amendments for existing fee schedules are as follows:

1. The following fee schedule would be increased by 50 percent:

Schedule G-5: Miscellaneous Sources

2. The following fee schedules would be increased by 15 percent:

- Schedule A: Hearing Board
- Schedule D: Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals
- Schedule E: Solvent Evaporating Sources
- Schedule K: Solid Waste Disposal Sites
- Schedule M: Major Stationary Source Fees
- Schedule S: Naturally Occurring Asbestos Operations

3. The following fee schedules would be increased by 12 percent:

- Schedule G-1: Miscellaneous Sources
- Schedule P: Major Facility Review Fees

4. The following fee schedules would be increased by 9 percent:

- Schedule F: Miscellaneous Sources
- Schedule G-2: Miscellaneous Sources
- Schedule H: Semiconductor and Related Operations
- Schedule I: Dry Cleaners
- Schedule L: Asbestos Operations

5. The following fee schedule would be increased by 6 percent:

- Schedule B: Combustion of Fuels

6. The following fee schedules would be increased by 3 percent:

- Schedule N: Toxic Inventory Fees
- Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks
- Schedule T: Greenhouse Gas Fees

7. The following fee schedules would not be increased:

- Schedule C: Stationary Containers for the Storage of Organic Liquids
- Schedule G-3: Miscellaneous Sources
- Schedule G-4: Miscellaneous Sources
- Schedule R: Equipment Registration Fees

In addition to these percentage increases in existing fee schedules, a new Fee Schedule U: Indirect Source Review Fees, is proposed for FYE 2010. Schedule U would be structured to recover the actual costs of District review of ISR applications. The fees specified under Schedule U would not apply until after the District adopts an ISR Rule.

Staff is also proposing to increase the following administrative fees (that are not associated with fee schedules) by 6 percent:

- Section 3-302: New and modified source filing fee
- Section 3-309: Duplicate permit fee
- Section 3-311: Banking filing fee and withdrawal fee
- Section 3-312: Regulation 2, Rule 9 Alternative Compliance Plan fee
- Section 3-327: Permit to Operate renewal processing fee
- Section 3-329: Fee for Risk Screening (base fee for each application specified in the applicable fee schedule)

In addition to these percentage increases in existing fee schedules and administrative fees, staff is proposing the following miscellaneous amendments: (1) the current \$200 court reporter fee for hearings before the District's Hearing Board would be changed to a fee to recover actual court reporter appearance and transcript costs, and (2) the provision to charge back fees, which currently applies to permit applicants who file after the effective date of a permit requirement, would be amended to also apply to persons subject to equipment registration who file after the effective date of a registration requirement.

3.2 PROPOSED RULE AMENDMENTS

The complete text of the proposed changes to District Regulation 3: Fees, has been prepared in strikethrough (deletion of existing text) and underline (new text) format, and is included in Appendix A. A detailed description of the proposed amendments follows.

- Section 3-101: Description

The term "Indirect Source Review" has been added to this section because provisions for assessing fees for ISR are being established.

- Section 3-302: Fees for New and Modified Sources

The proposed amendment for Section 3-302 is a 6 percent increase in the filing fee for permit applications (rounded to the nearest whole dollar), from \$318 to \$337.

- Section 3-303: Back Fees

The existing back fee provision in Section 3-303 applies only to equipment subject to permit requirements. If a permit application is submitted after the date that a permit is required for a particular source, this provision allows the District to collect fees prorated back to the effective date of the permit requirement (up to a limit of five years). The District has recently established equipment registration requirements for various smaller sources of air pollution. The proposed amendments to Section 3-303 would extend the back fee provision to also apply to equipment registrations. It should be noted that persons that fail to register sources with the District in a timely manner are subject to a

late fee of 10 percent under Section 3-405.4, and may also be subject to civil penalties.

- Section 3-309: Duplicate Permit

The proposed amendment for Section 3-309 is a 6 percent increase in the fee for a duplicate Permit to Operate (rounded to the nearest whole dollar), from \$65 to \$69 per permit.

- Section 3-311: Banking

The proposed amendment for Section 3-311 is a 6 percent increase in the filing fee for banking applications (rounded to the nearest whole dollar), from \$318 to \$337.

- Section 3-312: Emission Caps and Alternative Compliance Plans

No change in regulatory language is proposed for Section 3-312.1, which requires an additional annual fee equal to 15 percent of the facility's Permit to Operate fee for facilities that elect to use an Alternative Compliance Plan (ACP) for compliance with Regulation 8, or Regulation 2, Rule 2. These ACP fees would increase along with any increase in a facility's Permit to Operate renewal fees for sources in Schedules B, D, E, F, G-1, G-2, H, K, and I.

The proposed amendment for Section 3-312.2 is a 6 percent increase in the annual fee (rounded to the nearest whole dollar) for a facility that elects to use an Alternative Compliance Plan (ACP) contained in Regulation 2, Rule 9: Interchangeable Emission Reduction Credits. The fee for each source included in the ACP would be increased from \$802 to \$850, and the maximum fee would be increased from to \$8,027 to \$8,509.

- Section 3-320: Toxic Inventory Fees

The maximum toxic inventory fee for a small business specified in Section 3-320.1 would be increased by 6 percent (rounded to the nearest whole dollar) from \$7,306 to \$7,744.

- Section 3-327: Permit to Operate, Renewal Fees

The processing fees for renewal of Permits to Operate specified in Sections 3-327.1 through 3-327.6 would be increased by 6 percent (rounded to the nearest whole dollar).

- Section 3-329: Fee for Risk Screening

No change in regulatory language is proposed for Section 3-329: Fee for Risk Screening. Increases in risk screening fees are instead specified in Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, G-5, H, I, and K. For each applicable fee schedule, the base fee for each application that requires a Health Risk Screening Analysis would be increased by 6 percent from \$318 to \$337. The portion of the risk screening fee that is

based on the type of source involved would be increased by 6 percent for sources covered by Schedule B; by 9 percent for sources covered by Schedules F, G-2, H and I; by 12 percent for sources covered by Schedule G-1; by 15 percent for sources covered by Schedules D, E, and K; and by 50 percent for sources covered by Schedule G-5. There would be no increase (except for the increase in the base fee) for sources covered by Schedules C, G-3, and G-4.

- Section 3-335: Indirect Source Review Fees

A new Section 3-335 has been added to indicate that applicants who must file an Air Quality Impact Assessment pursuant to District rules for a project that is deemed to be an indirect source shall pay a fee based on the new Schedule U: Indirect Source Review Fees. The District intends on establishing in an upcoming rulemaking the requirement to file an application for an Air Quality Impact Assessment for various development projects that are indirect sources of air pollution.

- Fee Schedules

The fees contained in each existing fee schedule in Regulation 3 would be increased by either 3 percent, 6 percent, 9 percent, 12 percent, 15 percent, or 50 percent (rounded to the nearest whole dollar, in most cases) as summarized in Section 3.1 of this report, with the exception of the following fee schedules, which would have no increase in fees: Schedule C: Stationary Containers for the Storage of Organic Liquids, Schedule G3: Miscellaneous Sources, Schedule G4: Miscellaneous Sources, and Schedule R: Equipment Registration Fees.

With the exceptions noted below, three-year average cost recovery figures (covering the period July 1, 2005 to June 30, 2008) were used to establish the percentage increase for each existing fee schedule based on the following criteria:

Table 2. Criteria for Determination of Fee Increases Based on Cost Recovery Data

Fee Revenue as a Percentage of Costs	Fee Increase
40 percent or less	15 percent
41 to 55 percent	12 percent
56 to 70 percent	9 percent
71 to 85 percent	6 percent
86 to 100 percent	3 percent
Greater than 100 percent	None

Schedule A: Hearing Board Fees

The \$200 Court Reporter fee in Section 18 of Schedule A would be changed to a fee that represents the actual Appearance and Transcript costs incurred for the Hearing Board Docket. This approach is considered more appropriate than a flat fee, and is currently used in Section 18 for Court Reporter fees for hearings that are solely dedicated to a single Docket in a given day. Court reporters currently require an Appearance Fee of about \$150. If transcripts are produced, an additional charge of about \$8 per page is incurred. A typical hearing produces about 50 pages of transcript, resulting in a Transcript Cost of about \$400. Therefore, the existing \$200 fee covers just over one-third of the typical cost of a court reporter's services.

It is important to note that the Hearing Board may excuse payment of the Court Reporter fee based on a finding of unreasonable hardship.

Schedule G-3: Miscellaneous Sources

The fee increase for Schedule G-3 was based on FYE 2008 revenue and activity data, rather than a three-year average. This was done because prior to FYE 2008, refinery flares (now in Schedule G-5) were included in Schedule G-3. The FYE 2008 activity data for Schedule G-3 is therefore most representative of the sources that are currently covered by that schedule.

Schedule G-5: Miscellaneous Sources

The fee increase for Schedule G-5 was based on FYE 2008 revenue and activity data, rather than a three-year average. This was done because District staff began specifically tracking activity data for Schedule G-5 in FYE 2008 after that schedule was initially adopted.

A 15 percent increase was initially proposed for Schedule G-5, but this proposal was revised to a 50 percent increase on March 24, 2009. The 50 percent increase is justified because existing fees collected under Schedule G-5 covers only a small fraction of the District's costs of regulating these sources (for FYE 2008, fee revenue from Schedule G-5 covered less than 30 percent of program activity costs). The revision was based in part on suggestions that District staff received from the Board of Directors' Budget and Finance Committee.

Schedule G-5 covers refinery flares that are subject to District Rule 12-11: Flare Monitoring at Petroleum Refineries, and Rule 12-12: Flares at Petroleum Refineries. District staff resources associated with refinery flares have increased sharply in recent years due to the adoption of Rules 12-11 and 12-12. Rule 12-11, adopted June 4, 2003, requires each refinery to submit a detailed monthly monitoring report to the District for each subject flare, and flare emissions data are posted on the District website. In addition, flow verification reports are required to be submitted for review every six months.

Rule 12-12, adopted July 20, 2005, specifies that refinery flaring is prohibited unless it is consistent with an approved Flare Minimization Plan (FMP), and all commitments due under that plan have been met. The initial FMPs were required to be submitted to the District by August 1, 2006. FMPs updates must be submitted on an annual basis thereafter. Prior to installing or modifying equipment that may contribute to flaring, FMPs must also be updated to address the new or modified equipment. Finally, Rule 12-12 requires the refineries to submit reports to the District that provide detailed information regarding the cause of individual flaring events. The FMP process is considered to be one in which new opportunities to reduce flaring emissions are sought on an ongoing basis based on improvements in the design and operation of refinery process equipment.

For the annual period July 1, 2007 to June 30, 2008, the District's direct costs associated with refinery flares were \$867,500. These costs may decrease to some extent over the next several years if flaring events associated with the startup and shutdown of refinery process units is reduced.

Permit fee revenue collected under Schedule G-5 for the last fiscal year was \$305,000. Increasing the fees for refinery flares by 50 percent would increase overall annual permit fees for these sources to about \$442,000. This would more fully recover the District's ongoing costs associated with implementation and enforcement of Rules 12-11 and 12-12. The annual permit renewal fee for each flare would be \$18,635.

With the proposed change to Schedule G-5, and the other proposed fee amendments, it is estimated that the annual permit renewal fees for the five Bay Area refineries would increase by 9.4 percent from the current fiscal year, with the largest increase for an individual facility being 11 percent.

Schedule I: Dry Cleaners

Fee revenue from Schedule I is less than 40 percent of program costs, which could justify a higher percentage fee increase than the 9 percent increase proposed. Permit fee revenue from dry cleaners has declined significantly in recent years as new Perc dry cleaners are prohibited, and non-Perc dry cleaners have qualified for permit exemptions. This revenue shortfall has been addressed by recent changes in District regulations that require permits for the largest non-Perc dry cleaners, and equipment registrations for smaller facilities. Considering that additional revenue will be derived from dry cleaners with these new requirements, staff believes that a 9 percent fee increase is appropriate for Schedule I.

Schedule M: Major Stationary Source Fees

The District cannot directly evaluate Schedule M (which is an emissions-based fee that applies to various types of sources) for cost recovery, but rather distributes the revenue from Schedule M into the appropriate source-specific permit fee schedules when

evaluating cost recovery for those schedules. A 15 percent increase for Schedule M is considered appropriate because revenue from this schedule has been reduced (on an inflation-adjusted basis) due to declining emissions, without a commensurate reduction in District activity costs.

Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks

Fee revenue for Schedule Q has been very low in recent years, as relatively few reports that trigger a fee under Rule 8-40 have been submitted to the District. Due to the low level of activity, invoices to collect these fees in many cases were not sent by District staff. Staff believes that a 3 percent increase in fees for Schedule Q is appropriate.

Schedule R: Equipment Registration Fees

The fees for Schedule R were added in 2007 and 2008, and most of these have not yet become effective. Because of this, no increases in registration fees under Schedule R are proposed for FYE 2010. The proposed revisions to Schedule R are limited to several minor grammatical improvements.

Schedule T: Greenhouse Gas Fees

District staff began specifically tracking activity data for Schedule T in FYE 2009 after that schedule was initially adopted. Due to a lack of at least one full year of activity data for this schedule, a cost recovery analysis could not be completed. Staff believes that a 3 percent "cost of living adjustment" for Schedule T is appropriate because activity levels for the Climate Protection Program in the next fiscal year are expected to be at least as high as activity levels in the current fiscal year.

The focus of District efforts related to AB-32 implementation has shifted from the development of the Scoping Plan to the development and implementation of the Plan's measures. The majority of this work must be completed by December 31, 2010, with most regulations and other initiatives going into effect by January 1, 2012. This means that more than 20 Scoping Plan measures will need to be adopted by CARB in 2009 and 2010.

Air districts are expected to play a prominent role in the implementation and enforcement of many of the Scoping Plan's stationary source measures. On February 26, 2009, CARB adopted one of the initial Scoping Plan measures for stationary sources, which applies to semiconductor facilities. The new semiconductor rule establishes the air districts as being the primary agencies responsible for implementation and enforcement of the rule. Initial emissions reports are due to be submitted to the District in 2011, along with permit applications for any required emission control equipment.

It should be noted that CARB has begun development of an AB 32 Administrative Fee

regulation, and is expected to bring this regulation to their Board for consideration of adoption in the first half of 2009. These fees are intended to recover State agency costs associated with AB 32, and not air district costs. CARB has indicated that it may establish district fees within individual GHG regulations, but none have been established to date. District staff may propose adjustments to the fee rate in Schedule T in the future if upcoming CARB regulations result in an additional source of revenue to recover Climate Protection Program activity costs.

Schedule U: Indirect Source Review Fees

Schedule U was not included in the initial District fee proposal, but was added with a public notice issued on March 18, 2009.

The District has initiated development of an Indirect Source Review (ISR) Rule to address the adverse impacts of growth on local and regional air quality and climate change. District staff anticipates proposing an ISR Rule for consideration by the District's Board of Directors in 2010. The proposed ISR Rule is one of several elements of a more comprehensive approach to address health concerns in communities that are disproportionately impacted by poor air quality and to minimize the cumulative effects of land use decisions on local and regional air quality. This multifaceted approach will coordinate ongoing efforts at the District and develop and implement key enhancements to existing District programs. This will provide a cohesive strategy that will assist in the growth of the Bay Area while protecting public health and minimizing impacts on climate.

Indirect sources are development projects that generate or attract motor vehicle trips, and also may include other sources of emissions, such as fireplaces, home heating and cooling and landscape maintenance equipment, that indirectly cause air pollutant emissions that can adversely affect local and regional air quality. Health and Safety Code Section 40716 grants explicit authority to air districts to "...adopt and implement regulations to ...reduce or mitigate emissions from indirect and areawide sources of air pollution." The District currently implements various programs to reduce emissions from indirect sources, including: Transportation Fund for Clean Air grants for bicycle facilities, traffic calming, shuttles and other projects; promotion of air quality elements in local general plans; review and comment on CEQA documents; and cooperation with other regional agencies and stakeholder groups.

The Bay Area is not yet in attainment of state ozone standards, so the region must implement all feasible measures to reduce the precursor pollutants that form ozone: nitrogen oxides and volatile organic compounds. Further Study Measure FS-18 of the District's 2005 Ozone Strategy proposed additional evaluation of an ISR Rule to assist the region in meeting health based ambient air quality standards and requirements in the California Clean Air Act. In addition, air districts throughout the State are required to adopt all feasible measures as expeditiously as practicable. The San Joaquin Valley Unified APCD's Rule 9510 Indirect Source Regulation, was adopted in December 2005. Imperial County APCD also has adopted and is implementing an ISR rule.

The District ISR Rule would require that development projects above specified sizes prepare an Air Quality Impact Assessment for District review. Project impacts above certain thresholds would need to be mitigated through changes in the project design, and/or through the payment of offsite emission mitigation fees. The offsite emission mitigation fees would be used by the District to fund projects to reduce emissions in the Bay Area.

The District is proposing to add Schedule U for the purpose of assessing administrative and mitigation fees associated with implementation of the upcoming ISR Rule. The proposed fees are preliminary estimates and could be amended as the ISR Rule is developed. The proposed Schedule U includes an application filing fee of \$533 for residential projects, and \$796 for non-residential and mixed-use projects. These fees are based on estimated minimum staff resources (i.e., 8 hours and 12 hours for residential and non-residential projects, respectively) for reviewing an Air Quality Impact Assessment. The application evaluation fee is set to recover the District's actual costs of evaluating the application, and the filing fee would be credited towards the evaluation fee. The new fee schedule would also include an offsite emission reduction fee, but the details of this fee would be determined at a later date.

4. PROJECTED FEE REVENUE AND COSTS OF PROGRAM ACTIVITIES

With the proposed amendments, the District's total projected fee revenue for FYE 2010 is \$30.4 million. The 2009 Cost Recovery Study indicated that, for the last complete fiscal year analyzed (FYE 2008), the District's total regulatory program activity costs were \$46.3 million.

5. STATUTORY AUTHORITY FOR PROPOSED FEE INCREASES

State law authorizes air districts to adopt fee schedules to cover the costs of various air pollution programs. H&S Code section 42311(a) provides authority for an air district to collect permit fees to cover the costs of air district programs related to permitted stationary sources. H&S Code section 42311(f) further authorizes the District to assess additional permit fees to cover the costs of programs related to toxic air contaminants. H&S 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.

H&S 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 air district, to recover the costs of air district programs related to these sources. This section provides the authority for the District to collect asbestos fees (including fees for Naturally Occurring Asbestos operations), soil excavation reporting fees, registration fees for various types of regulated equipment, and the proposed fees for Indirect Source Review.

H&S Code section 44380(a) authorizes air districts to adopt a fee schedule that recovers the costs to the air district and the State of the Air Toxics Hot Spots Program (AB 2588). The section provides the authority for the District to collect toxic inventory fees under Schedule N.

H&S 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 air 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. The section provides the authority for the District to collect Hearing Board fees under Schedule A.

The proposed fee amendments are in accordance with all applicable authorities provided in the California Health and Safety Code. Based on the results of the 2009 Cost Recovery Study, permit fee revenue after adoption of the proposed amendments would still be well below the District's direct and indirect program activity costs associated with air quality programs covering permitted sources. Similarly, Hearing Board fee revenue would still be below the District's program activity costs associated with Hearing Board activities related to variances and permit appeals. Finally, fee revenue from non-permitted areawide sources would not exceed the District's program activity costs for these sources.

6. ASSOCIATED IMPACTS AND OTHER RULE DEVELOPMENT REQUIREMENTS

6.1 EMISSIONS IMPACTS

There will be no direct increase or decrease in air emissions as a result of the proposed amendments.

6.2 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 H&S 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 H&S Code specifies that an air 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 considered best available retrofit control technology requirements, nor are they 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 minor. Many small businesses operate only one or two permitted sources, and generally pay only the minimum permit renewal fees. Table 3 provides a summary of typical annual permit renewals fees projected for FYE 2010 for various sizes of dry cleaners, auto body shops, gasoline stations, and facilities with only diesel engine backup generators (BUGs), along with the estimated increase in renewal fees relative to the current FYE 2009.

Table 3. Projected Typical Annual Permit Renewal Fees for FYE 2010, and Increases in Renewal Fees Relative to FYE 2009

Facility Size →	Small		Medium		Large	
	Total Fee	Increase	Total Fee	Increase	Total Fee	Increase
Dry Cleaner	\$403	\$26	\$444	\$28	\$1,226	\$75
Auto Body Shop	\$330	\$38	\$330	\$38	\$656	\$75
Gasoline Station	\$850	\$104	\$1,632	\$203	\$2,415	\$302
Diesel BUG Facility	\$319	\$14	\$398	\$18	\$1,142	\$78

Table Notes

- Small Dry Cleaner: One machine, 50 gal/yr Perc
- Medium Dry Cleaner: One machine; 150 gal/yr Perc
- Large Dry Cleaner: Two machines; 400 gal/yr Perc
- Small Autobody Shop: One Booth; 100 gal/yr paint; 50 gal/yr cleanup
- Medium Autobody Shop: One Booth; 200 gal/yr paint; 75 gal/yr cleanup
- Large Autobody Shop: Two Booths; 500 gal/yr paint; 200 gal/yr cleanup
- Small Gasoline Station: Four triple product nozzles
- Medium Gasoline Station: Eight triple product nozzles
- Large Gasoline Station: Twelve triple product nozzles
- Small Diesel BUG Facility: One 500-HP diesel engine
- Med. Diesel BUG Facility: One 1500-HP diesel engine
- Large Diesel BUG Facility: Two 2000-HP diesel engines

For reference, District permit fees are generally well below that of the South Coast AQMD, the other major metropolitan air district in the state with a cost of living similar to that of the Bay Area. A comparison of permit renewal fees completed for the facility types given in Table 3 indicated that South Coast AQMD fees are approximately 40 percent higher than District fees, on average.

The annual permit renewal fees for the five Bay Area refineries, the District's highest fee

payers, would increase by an average of \$150,000. The largest of these facilities would see an increase in annual permit fees of about \$198,000.

District staff is sympathetic to businesses that are impacted by the current economic downturn, but feel that the additional fee revenue is needed to continue the District's core regulatory programs and other air quality initiatives. Even with these fee increases, overall District fee revenue will continue to fall well short of the point of full cost recovery. In general, District fee increases are expected to have a minor financial impact on businesses relative to other factors (e.g., the costs of property and labor).

6.3 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...." (See also Public Resources Code Section 21080(b)(8)).

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

6.4 STATUTORY FINDINGS

Pursuant to H&S 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 and maintain federal and state air quality standards, and to reduce public exposure to toxic air contaminants;
- Authorized by H&S 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 H&S Code sections 42311, 42311.2, 41512.7, 42364, 44380 and 40 CFR Part 70.9.

7. RULE DEVELOPMENT PROCESS

On January 29, 2009, the District issued a notice for a public workshop to discuss with interested parties an initial proposal to increase District fees. Distribution of this notice included all District-permitted facilities, asbestos contractors, and a number of other potentially interested stakeholders. The notice was also posted on the District website.

A public workshop was held on February 23, 2009. Nine members of the public attended the workshop. On February 25, 2009, District staff provided a briefing on the proposed amendments to the District Board of Directors' Budget and Finance Committee. A Public Hearing Notice was issued on March 16, 2009.

Schedule U was not included in the initial District fee proposal, but was added with a public notice issued on March 18, 2009. This notice was posted on the District website and distributed to approximately 900 stakeholders including the executives of various Bay Area agencies, city and county planning staff, and non-governmental organizations.

On March 24, 2009, a notice was issued indicating that the District's fee proposal had been revised to include a 50 percent increase for Schedule G-5 (covering refinery flares), rather than the 15 percent increase initially proposed. That notice was posted on the District website and provided to the five Bay Area refineries, along with the Western States Petroleum Association and California Council for Environmental and Economic Balance.

On March 30, 2009, District staff provided an update on the proposed fee amendments to the District Board of Directors' Budget and Finance Committee. The Committee provided direction to staff to continue rule development efforts based on the current staff proposal.

A public hearing to accept testimony on the proposed amendments was held on April 15, 2009. A second public hearing has been scheduled for May 20, 2009, to consider adoption of the proposed amendments. If adopted, the amendments would be made effective on July 1, 2009.

Under H&S Code section 41512.5, the adoption or revision of 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, Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks, Schedule R: Equipment Registration Fees, Schedule S: Naturally Occurring Asbestos Operations, and the proposed Schedule U: Indirect Source Review Fees. The two public hearings previously described fulfill the requirements of H&S Code section 41512.5.

8. PUBLIC COMMENTS

As of the date of this report, six sets of written comments had been received by the District on the fee proposal as follows: (1) William J. Quinn of California Council for Environmental and Economic Balance (CCEEB), (2) Najmeddin Ravan of Emeryville Chevron, (3) David Schonbrunn of Transportation Solutions Defense and Education Fund (TRANSDEF), (4) Camille Kustin and Kathryn Phillips of Environmental Defense Fund (EDF), (5) Jenny Bard of American Lung Association (ALA), and (6) Irvin Dawid, a resident of Palo Alto. Several other comments were provided orally at the public workshop held on February 23 (at which nine members of the public attended), at the Public Hearing held on April 15, or separately to District staff. A summary of the comments received, and District staff responses to these comments, follows.

Emeryville Chevron Comments: The commenter indicates that when his gas station was built in 1999 the District required a “balance system”. He indicates that within five years an “EVR vacuum system” was required to be installed at a cost of \$18,000. He indicates that two years ago the State Water Resources Control Board set a requirement for “EVR Phase II”, and that the costs of meeting this requirement are \$60,000 or more. He indicates that funds for loans were depleted by the time that he had filled out the loan application. The commenter indicates that fee increases would be an undue burden on small businesses at the worst time possible. He indicates that fees should not be increased in this bad economy, and that budget shortages should be filled from the reserve account or by cutting staff salaries.

Response: The District acknowledges the difficulties that small businesses are having in the economic downturn but believes that the proposed fee increases are needed to maintain core regulatory programs. The fee revenue collected from gas stations currently covers only about one-third of the District’s regulatory program activity costs.

Under the staff proposal, the annual permit renewal fee for the Emeryville Chevron facility would be increased by \$203. The District does not believe that this fee increase should have a significant financial impact on this business.

The District respectfully disagrees with some of the commenter’s statements relative to the vapor recovery upgrades completed at his facility. When this station was rebuilt in 1999, an existing balance system was replaced with a Vacuum Assist system, but this was not a requirement of the District or CARB. A balance system was an option, and in fact this was the type of system that was specified in the original Authority to Construct issued by the District for the project. Had a balance system been installed, the \$18,000 upgrade that the commenter mentions (completed in 2006) could have been avoided.

The District agrees that the costs of complying with the CARB Enhanced Vapor Recovery (EVR) program (not the State Water Resources Control Board, which implements the underground storage tank program) have been significant for gas stations throughout California. The EVR program has also significantly increased the District’s costs of regulating gas stations, which are collectively a very significant source

of ozone precursor emissions in the Bay Area. The required upgraded vapor recovery equipment should significantly reduce emissions from these facilities and justify the resulting costs.

The District does not believe that reserve accounts should be used to balance the District's budget, unless other options are infeasible.

CCEEB Comments: The commenter indicates that he does not agree with the initial District fee proposal, which he characterizes as a "business-as-usual" approach. He indicates that extreme economic conditions are being faced throughout the economy, and that the proposed double-digit fee increases to most categories would have significant consequences to both small and large facilities. He indicates that the fee proposal would amount to well over \$100,000 annually for some of the largest Bay Area facilities. He indicates that California lost almost 500,000 jobs in the past year, and that struggling businesses are subject to fee increases at every level. He indicates that the District should take this universe of fees, and compliance costs, into account especially as AB 32 mandates roll out at the state level. The commenter suggests that the District set a goal to keep the District budget for the upcoming fiscal year below 2008/09 levels, and consider some limited use of reserve accounts. Finally, the commenter indicated that the proposed 50 percent increase in permit fees for refinery flares was too high, and questioned the legal authority for this increase.

Response: District staff is sympathetic to businesses that are impacted by the current economic downturn, but feel that the additional fee revenue is needed at this time as property tax revenue is expected to decline. Even with the proposed fee increases, overall fee revenue will continue to fall well short of the point of full cost recovery.

The proposed fee amendments are expected to increase annual permit renewal fees by more than \$100,000 for four Bay Area facilities, all of which are petroleum refineries. These facilities are not expected to suffer financial hardships from these fee increases.

Some facilities that have reduced production levels due to the economic downturn will likely see a reduction in their permit fees, even with the proposed increases in fee rates. This is the case for larger solvent users that fall under Fee Schedule E (e.g., the New United Motor Manufacturing, Inc. facility in Fremont), which pay fees based on reported solvent usage.

The 50 percent increase in permit fees for refinery flares is justified on a cost recovery basis. The District's costs of implementing and enforcing rules adopted for refinery flares are much higher than the existing permit fee revenue generated from these sources. The District interprets the 15 percent limit on permit fee increases in H&S Code section 41512.7 to apply in the aggregate to permit fees paid by a facility for renewal of their permits to operate or authorities to construct. Even with the 50 percent increase in fees for refinery flares, the permit fees for each affected facility will be increased by less than 15 percent per year.

TRANSDEF Comments: The commenter indicates that he strongly supports the adoption of an ISR Rule. He suggests, however, that the term “Indirect Source Mitigation Fee” be used rather than “Indirect Source Review”.

Response: The District does not believe that it is appropriate to name the new Fee Schedule U “Indirect Source Mitigation Fee”, because both application fees and mitigation fees are proposed. The term that the District has proposed to use for the mitigation fee is “Offsite Emission Reduction Fee”. This is similar to what the commenter proposes, but it is also believed to be more appropriate in that it correctly implies that the fee will be used for reducing emissions that are offsite (i.e., not a part of the proposed project).

EDF Comments: The commenters indicate that they support the proposed fee schedule. They suggest that all feasible onsite mitigation be required for a project before offsite mitigation is allowed.

Response: The proposed Fee Schedule U does not dictate the manner in which mitigation will be required under ISR – this will be determined in the upcoming ISR Rule. The District has noted the comments provided, and will consider them in the development of the ISR Rule.

ALA Comments: The commenter indicates that her organization supports the adoption of an ISR Rule and fee.

Response: The District looks forward to working with the ALA and other stakeholders in the development of an ISR Rule.

Irvin Dawid Comments: The commenter indicates that he supports the adoption of an ISR Rule and fee.

Response: The District looks forward to working with Mr. Dawid and other stakeholders in the development of an ISR Rule.

Other Comments: Two gas station owners (in addition to Mr. Ravan, who provided written comments that were previously summarized) complained about the EVR program and the high costs of several different types of equipment upgrades that have been required since the year 2000. These individuals indicated that permit fees should be reduced because of these EVR upgrade costs. Another commenter, an owner of an auto body shop, indicated that fees should not be increased during the economic downturn. Another commenter recommended that the District reduce costs rather than increase fees.

Response: The EVR program was established by CARB, and not the District. The program was adopted because existing vapor recovery equipment at gas stations was resulting in significant excess emissions. The EVR program is addressing this issue, albeit with increased costs to both the gas stations and the air districts. The cost

recovery analysis completed by the District indicates that the fee revenue received from gas stations covers only a small fraction of the District's costs of regulating these facilities. The District will reconsider the permit fees for gas stations in future years if program activity costs decline.

As was previously mentioned, the District is sympathetic to businesses that are impacted by the current economic downturn, but feel that additional fee revenue is needed to maintain core regulatory programs and other air quality initiatives. The District will continue to implement cost containment measures, and has included a number of these in the proposed FYE 2010 budget.