

BOARD MEETING DATE: June 6, 2008

AGENDA NO. 40

PROPOSAL: Adopt Rule 314 – Fees for Architectural Coatings

SYNOPSIS: Proposed Rule 314 - Fees for Architectural Coatings sets fees for manufacturers of architectural coatings to recover the cost of AQMD programs, and will provide staff with architectural coating quantity and emissions information for planning, compliance, and rule development.

COMMITTEE: Stationary Source, February 15, 2008, April 25, 2008 and May 16, 2008; Administrative April 11, 2008 Reviewed

RECOMMENDED ACTION:

Adopt the attached resolution:

1. Certifying the Notice of Exemption for Proposed Rule 314 – Fees for Architectural Coatings; and
2. Adopting Rule 314 – Fees for Architectural Coatings.

Barry R. Wallerstein, D.Env.
Executive Officer

EC:LT:LB

Background

The AQMD's fee system has evolved over the years. In 1990, KPMG Peat Marwick performed a Fee Assessment Study which determined, among other things, that permit processing fees did not fully cover the costs of performing this program and recommended a flat emissions fee for low emitters, which was ultimately adopted a number of years later. In 1995, KPMG Peat Marwick completed a second Fee Assessment Study which again recommended increasing permit processing fees, but also recommended an "emissions based operating fee" which would be based on potential to emit rather than actual emissions. Industry generally opposed this

concept and it was not adopted. In 1999, the AQMD retained Thompson, Cobb, Bazilio & Associates, P.C., Certified Public Accountants and Management Consultants, to conduct an independent analysis of the stationary source fee structure. The AQMD also established a Fee Structure Advisory Committee, composed of representatives from industry, including small businesses, environmental groups, and AQMD staff. The report recognized that area source non-permitted VOC emissions, such as architectural coatings, were the bulk of stationary emissions and should be the target for AQMD control and revenue generation efforts. However, the potential number of sources was beyond the number manageable through a traditional permitting program. The most significant problem that control of area sources posed was enforcement of regulations. Obtaining the cooperation of a large population of consumers and collecting information on sources and emissions would be an overwhelming task. A successful program would have to be focused on a smaller population, such as manufacturers or distributors of the regulated products. At the same time the program would have to collect fees to fund program operations.

During Fiscal Year 2000-2001 the Governing Board directed staff to establish a special Revenue Committee to assist the AQMD in developing revisions to its fee rules to stabilize revenue. The major focus of this committee's effort was the identification and assessment of several short- and long-term potential funding sources in support of AQMD programs as well as the costs. The Revenue Committee made several important recommendations that were included in the rule amendments approved by the Governing Board in May 2001. One of the recommendations was a fee on area sources. The Committee also recommended a manufacturers' fee for area sources. In June 2004, the Governing Board, in response to this recommendation, adopted fees to recover the costs associated with notification and tracking of emissions from decontamination of soil projects; recovery of costs associated with laboratory analysis of non-compliant samples taken in the field for compliance verification; recovery of Plan audits, verification, evaluation, inspection and tracking costs for area source rules such as open burning and old vehicle scrapping; and fees for enforcement inspections for statewide registered portable equipment, which are all considered area sources.

At the Board's direction to assess fees on area sources, staff is proposing Rule 314 to recover the cost of regulating the architectural coatings program, one of the largest controlled emitters of VOC emissions in the AQMD, and include that program's fair share of AQMD costs that are apportioned among all AQMD programs such as personnel and payroll, as well as a fair share of emissions fee supported programs, such as air monitoring, the Multiple Air Toxics Study, etc. The proposed rule will also provide staff with architectural coating quantity and emissions information for planning, compliance, and rule development. The cost of the Proposed Rule 1113 Program, which includes the strengthening of the enforcement and laboratory efforts dedicated to the program, is projected to be approximately \$4.2 million, which equates to approximately 7.1¢ per

gallon, based on estimated quantity of coatings, and is anticipated to be passed on to the end-user by the manufacturers. Staff estimates the proposed rule will impact approximately 200 architectural coatings manufacturers.

With an estimated 15,000 sources including registered contractors and architectural coating retail stores (does not include architects, specifiers, non-registered contractors, active painting sites and the do-it-yourself market) regulated by Rule 1113, the proposed program should result in approximately 3,000 inspections per year with 750 to 800 samples of architectural coatings collected for laboratory VOC analysis to determine compliance, which is considered to be statistically significant to assess a supportable compliance rate.

Proposal

Proposed Rule 314 requires Architectural Coatings Manufacturers, which distribute or sell their manufactured architectural coatings into or within the AQMD for use in the AQMD and are subject to Rule 1113 - Architectural Coatings, to submit an Annual Quantity and Emissions Report beginning in 2009 and each subsequent calendar year for the previous calendar year. The proposed fees, when fully implemented, will be 3.6 cents per gallon and \$246 per ton of VOC emissions. Fees will be phased-in over three years with the fee rate set in 2009 to recover approximately one-half the cost of the Rule 1113 Program, three-fourths of the cost in 2010 and the full cost of the Program recovered in subsequent years. The fee will be determined based on the quantity of coatings as well as the cumulative emissions from the quantity of coatings distributed or sold for use in the AQMD.

The proposed rule noticed for public hearing on June 6, 2008, has been amended to include a requirement for architectural coatings manufacturers to provide a list to the AQMD of all their distributors located in the U.S.; an exemption for fees for any coatings containing 5 or less grams of VOC per liter of material to further incentivize the development, marketing and use of lower-VOC coatings; and other language clarifying the intent of the proposal including clarifications from comments received at the May 21, 2008 Public Consultation Meeting. Staff has revised the provisions for AQMD registered manufacturers acquiring other AQMD registered manufacturers to preclude the successor manufacturer from obtaining a new manufacturers ID number. Requirements for reporting VOC have been separated to include information on coatings as supplied and as thinned for solvent based coatings. Provisions for late payment surcharge have been revised to apply only to fees that are past due. The confidentiality provision of the rule has been clarified to establish that detailed justification for a claim of confidentiality is required only in the event of a public records request.

Key Issues

During the rulemaking process, staff has resolved numerous issues presented by industry, including withdrawing the pre-registration requirements and special labeling requirements, developing a simplified fee structure, and proposing a phased-in fee over three years. Industry's key concerns, are summarized below, along with staff's response:

Issue: More time is need for rulemaking.

Response: Staff extended the rulemaking scheduling by postponing the public hearing from February to June 2008 in order to meet with NPCA and other industry members to resolve concerns pertaining to rule language, fee structure, and the reporting form and have made significant progress. Although some issues remain, a further delay in the rulemaking may not result in further significant progress in resolving those issues. Further delay would also compress the initial implementation schedule. Sufficient time for companies to adjust to this fee program has been one of the concerns expressed by the industry that we have attempted to address as the proposed rule has evolved. An example is the proposed three year phase-in.

Issue: An enhanced compliance program is unnecessary.

Response: Currently, there is only one inspector FTE allocated to Rule 1113 – Architectural Coatings enforcement, even though this area source continues to be one of the largest emitters of VOCs (23 tons per day in 2010) within our regulatory authority and non-compliance could result in significant excess emissions. The current level of enforcement results in so few inspections and coating samples for analysis that they are considered to be statistically insignificant to ascertain a compliance rate. As with any other program, enforcement of the rule is the key to safeguarding emission reductions. Staff has discussed the need for the proposed enhanced compliance program with the industry, and has a detailed assessment justifying the need for more compliance presence in the staff report. Further, in the adopting resolution, staff has committed to a review and report on the implementation of the program enhancement.

Issue: CARB Fees are duplicative for the same emissions

Response: Although CARB is involved with certain aspects of an Architectural Coatings program, particularly assisting smaller air districts, their activities are not the same as those the AQMD is mandated to do for air quality, including the implementation of an adequate regulatory

program for architectural coatings. Staff believes the most equitable way to assess fees to recover our costs for the architectural coatings program is to apply them to the coating manufacturers based on quantity sold and emissions. CARB also assesses fees to recover their costs to coating manufacturers based on emissions, but these fees cover CARBs costs only.

Issue: The proposed rule does not provide incentive to lower emissions.

Response: The emission fee component is designed to provide an incentive to lower emissions. Further, the revised staff proposal includes an exemption for fees for any coatings with 5 or less grams of VOC per liter of material to further incentivize the development, marketing and use of lower-VOC coatings.

Issue: Manufacturers have expressed concerns about paying fees that will be used to support enforcement efforts directed at end users.

Response: Staff has revised the proposal so that one FTE to be devoted to end-user enforcement will be supported by other AQMD revenues, and has reduced the anticipated revenues and fee rate for the quantity-based fee accordingly.

Issue: Subsequent to the set hearing for Proposed Rule 314, the National Paint and Coatings Association (NPCA) wrote to the AQMD that the proposed rule is unfair because it only applies to manufacturers who distribute or sell their manufactured architectural coatings into or within the AQMD, excluding those distributors that ship coatings into the AQMD from warehouses located outside the AQMD, which NPCA stated may account for 10% to 15% of the volume sold in the AQMD. However, in a follow-up letter, NPCA estimated that amount may be larger since architectural coatings sold through mass merchant or “big box” stores are 30% of total sales on a national basis.

Response: During the rule development process, staff’s initial proposal required manufacturers to account for all the volume of coatings they manufacture, supply, sell, offer for sale or solicit for sale for use in the AQMD. Some manufacturers said that it would be too burdensome to track their manufactured coatings once they were released to a second or third party distributor and they were not sure the distributors would provide them with an accurate volume count. NPCA said the unaccounted architectural coatings volume was believed to be small (NPCA did not provide the requested volume) and probably a wash

considering that some coatings were shipped into the AQMD and then later shipped out of the AQMD without being subtracted from the total volume. NPCA said this is the same agreement manufacturers have with CARB to report architectural coatings for CARB Surveys and related fees. However, in response to NPCA's recent comments, dated April 21, 2008, which are contradictory to their earlier written and oral comments requesting to exclude the volume of coatings distributed outside the AQMD, staff has amended the proposed rule to require manufacturers to provide the AQMD with a list of all of their U.S. distributors on an annual basis. Staff is then committed to working with distributors to try and determine the extent of architectural coatings that may not be accounted for in the proposed required annual quantity and emissions reports. Staff is also committing to return to the Board within 120 days with amendments to the rule incorporating distributors to the extent appropriate. Staff has contacted several major manufacturers that sell architectural coatings to "big box" stores and those manufacturers have stated that they track sales into the AQMD particularly for compliance purposes, considering that AQMD Rule 1113 – Architectural Coatings has more stringent VOC limits than other parts of California and the U.S. Since these manufacturers are able to track detailed volume distributed to these "big box" stores, staff believes the majority of the coatings distributed to these stores will be reported.

Issue: One manufacturer requested that the exemption for less than 5 g/l of VOC coatings be limited to coatings that do not use acetone or other "highly flammable" exempt solvents.

Response: Staff does not believe this revision is needed because acetone is in the same range for flammability as existing solvents used in higher VOC coatings, so any incentive for use of acetone will not increase fire risks beyond existing levels. Also, approximately 1.7% of the volume of less than 5 g/l coatings use exempt solvents which may include acetone, and staff believes the use of acetone is unlikely to increase substantially as it is not compatible with the formulations for very low VOC coatings. This issue has been extensively analyzed and addressed in staff reports developed for Rule 1113. A concern has also been raised regarding the use of flammable cleanup solvents. However, staff does not have any evidence to support a claim that a trend toward zero or very low VOC paints would result in greater use of flammable solvents.

Issue: Staff should consider a reactivity based approach.

Response: The AQMD continues to support the concept of reactivity. The AQMD recently (Sep 07) organized a Reactivity Roundtable to discuss the state of science, the need to assess PM2.5 contribution, and most importantly toxicity for this approach. The conclusion, supported by USEPA, was that additional work needs to be done in this area before a reactivity-based approach can be utilized. USEPA is currently working on the National AIM rule and is not planning to incorporate reactivity, as they have for the Aerosol Coating rule. The AQMD will continue to participate in the national and state programs, as well as potentially participate in funding additional reactivity related research. Until AQMD determines that reactivity is an appropriate basis for regulation, staff would not support basing fees on reactivity since it cannot be assumed that pollution will be reduced.

Issue: One commenter suggested that increased use of acetone, incentivized by the less-than 5 g/l VOC exemption, presents a CEQA issue.

Response: As set forth above, staff does not believe the exemption will result in any increased risk. Moreover, the adoption of a fee schedule, which is subject to a statutory exemption from CEQA, remains exempt even if there may be adverse environmental impacts, as no further analysis is required beyond determining that a statutory exemption applies. Remy & Thomas "Guide to CEQA", (2007) p112, 115, CEQA Guidelines §15061.

Issue: It was suggested that recycled coatings be exempt from fees, since the recycled portion would have already been subject to fees in its initial formulation.

Response: Staff would not oppose such an exemption if it were limited to the post-consumer paint portion of recycled coatings.

Issue: At the Public Consultation Meeting on May 21, 2008, it was suggested that manufacturers should not have to pay for inspections occurring at retail outlets (other than those the manufacturers are associated with).

Response: When AQMD staff discovers a coating that does not comply with Rule 1113 on sale at a retail outlet, staff investigates whether the manufacturer as well as the retailer is responsible for the violation. The fact that in some cases the manufacturer does not turn out to be responsible does not mean that the inspection is unrelated to manufacturer compliance. The situation is similar to industrial inspections, which are still related to the industry even if a particular

inspection does not result in any violations. Moreover, if paint is found at a retail outlet which has VOC exceeding allowable levels, although according to the label the paint is compliant, then the manufacturer is responsible.

Issue: Some commenter's state they would be willing to pay for the existing architectural coatings program, but believe there is insufficient justification for the proposed enhanced program.

Response: The architectural coatings fee rule has been structured to be phased-in over three years, with one-half of the final amount to be recovered in the first year. The first years projected revenues (approximately \$2.1 million) are somewhat less than the costs of the existing program including a fair share of emissions fee supported costs, so if the Board were to choose to adopt only the first year, this comment would be satisfied.

Issue: NPCA's request for information made on October 23, 2007, was not formally answered.

Response: The items requested in NPCA's letter have been provided where feasible. (a) Alleged overlap between CARB fee and AQMD fee: In responses to comments staff explains the differences between the work performed by CARB staff and AQMD staff relative to architectural coatings. (b) Rates of compliance, including a breakdown between manufacturer and retail compliance: Staff has explained that there have been insufficient inspections to generate a statistically sound compliance rate. However, a large percentage of instances of noncompliance at retail outlets involve manufacturer culpability. In the period March 25, 2008 through May 8, 2008, nine potential manufacturer violations were discovered during inspections of nineteen (19) retail stores. Thirty-two (32) percent of stores were non-compliant, with sixty-eight (68) percent compliant. AQMD does not believe it can disclose to NPCA the product volumes involved in the violations that resulted in 293 excess tons of emissions as requested, since manufacturers typically claim their product volume is a trade secret. (c) Analysis of each of the fee structures under consideration by AQMD, including the structures suggested by stakeholders: AQMD provided an analysis of the fee structures then under consideration at the public workshop on November 8, 2007. AQMD evaluation of the fee structures suggested by stakeholders is found in responses to comments: (d) Structure and amount of fees paid by other area and stationary sources. Much of this information was provided at the Public

Workshop on November 8, 2007. The fee structure is found in the AQMD's fee rules, Regulation III. The amount of fees paid, such as permit processing, emissions, and annual operating fees is included in AQMD's budget. (e) Analysis of options for addressing various distribution mechanisms: Stakeholders initially suggested coatings distributed through mechanisms where the manufacturer does not know the ultimate destination and should not be included in the rule. Subsequently, in response to NPCA comment, staff revised the proposal to gather information from manufacturers regarding distributors, plus propose rule amendments to include distributors as appropriate. (f) Analysis of the impacts of the rule: Staff has included a socioeconomic analysis in the staff report for the rule.

Issue: There should be a "cap" placed on fees.

Response: State law already imposes a cap on AQMD fee revenues under Health & Safety Code §40523. Adjusted for CPI, AQMD fee revenues, even with the proposed architectural coatings fees, are well below the "40523 cap".

Emission Inventory and Emission Reduction

The proposed rule does not explicitly affect air quality or emissions although the proposed fee structure may provide an incentive to a manufacturer to lower total emissions by marketing a larger volume of low VOC coatings. Staff does not plan to claim any emission reductions in the State Implementation Plan (SIP) as a result of this fee program.

CEQA

The AQMD has reviewed the proposed project pursuant to State CEQA Guidelines §15002(k)(1). Proposed fee Rule 314 is exempt pursuant to CEQA Guidelines §15273 (Rates, Tolls, Fares and Charges) and Public Resources Code §21080(b)(8). A Notice of Exemption has been prepared in accordance with state CEQA Guidelines §15062 for the proposed project and will be filed with the county clerks immediately following the adoption of the proposed rule. A copy has been included as an attachment to this Board letter.

Socioeconomic Analysis

The proposed amendments do not directly affect air quality or emissions limitations. Therefore, a socioeconomic assessment is not necessary or required. Nonetheless, staff conducted a socioeconomic analysis to assess the total impacts for all the actors in the four-county economy and it was determined that the cost of this rule would have few impacts on the relative cost of production and delivered price for all the industries in the four-county area. As a result, the proposed rule is not expected to have impacts on

competitiveness at the industry level.

Authority to Assess Fees

California Health and Safety Code Section 40522.5 establishes the AQMD's authority 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, to recover the costs of programs related to these sources. Under California law, the primary authority for controlling emissions from architectural coatings is vested in the air pollution control districts (APCDs).

Implementations and Resources

The Architectural Coatings Program began in 1977. For the past 10 to 15 years the AQMD has allocated approximately 8 full time equivalent positions to the Architectural Coatings Program at a current cost of \$2.44 million which includes the architectural coatings program's fair share of emissions fee supported program costs such as air monitoring. Staff is proposing to enhance the current Program to a total of 18 full time equivalent positions that upon final implementation over three years will be funded in total by architectural coatings manufacturers at a cost of approximately \$4.2 million. One inspector FTE will be funded through other resources and will focus on end-user inspections, including thinning practices and it is anticipated that the share of end-user related laboratory fees that are not paid by the end-users themselves will be supported by other AQMD resources and included in the "one inspector FTE." The enhanced program is necessary to ensure the SIP committed VOC emission reductions for architectural coatings are real, permanent, quantifiable, and enforceable.

Attachments

- A. Summary of Proposed Amendments
- B. Rule Development Process Flow Chart
- C. Key Contacts
- D. Resolution
- E. Rule Language
- F. Final Staff Report
- G. Final Staff Report, Appendix A, Table 1
- H. CEQA – Notice of Exemption

ATTACHMENT A

Summary of Proposed Amendments to Rule 314 – Fees for Architectural Coatings

- Architectural Coatings Manufacturers that distribute or sell products into and within the District must:
 - Apply for a manufacturer identification (ID) number.
 - Submit an Annual Quantity and Emissions Report certified by a Responsible Party.
 - Maintain sufficient records to verify data necessary to determine annual architectural coating sales and VOC emissions in the AQMD, and compliance with applicable rules and regulations.
- Proposed Fee Structure:
 - \$168.62 for a Manufacturer ID number application, and
 - The annual quantity of architectural coatings distributed or sold into or within the AQMD for use in the AQMD and their associated VOC emissions. The proposed fees at full implementation are 3.6 cents per gallon and \$246 per ton of VOC emissions. Fees will be phased-in over three years, beginning at one-half the final levels in 2009 for sales and associated emissions reported in 2008 and fully implemented in 2011 and each subsequent calendar year for the sales and associated emissions for the previous calendar year.
 - Coatings with 5 grams or less of VOC per liter of material are exempt from the quantity and emissions fees.
- Procedures for:
 - Amending the Annual Quantity and Emissions Reports,
 - Refund of fees for overpayment, and
 - Fee payments and late filing surcharges.
- A provision for the confidentiality of reported information subject to the provisions of the California Public Records Act.
- A violation section that states “It shall be a violation of this rule for any Architectural Coatings Manufacturer that does not have a manufacturer ID number issued by the AQMD to distribute or sell their manufactured architectural coatings into or within the AQMD for use in the AQMD.”
- Test methods as specified in Rule 1113 to determine VOC content of the coatings.
- Amendments are proposed to the rule originally noticed for public hearing on May 2, 2008 that include a requirement for architectural coatings manufacturers to provide a list to the AQMD of all their distributors located in the U.S. in order for staff to investigate the amount of coatings entering the AQMD from distributors outside the

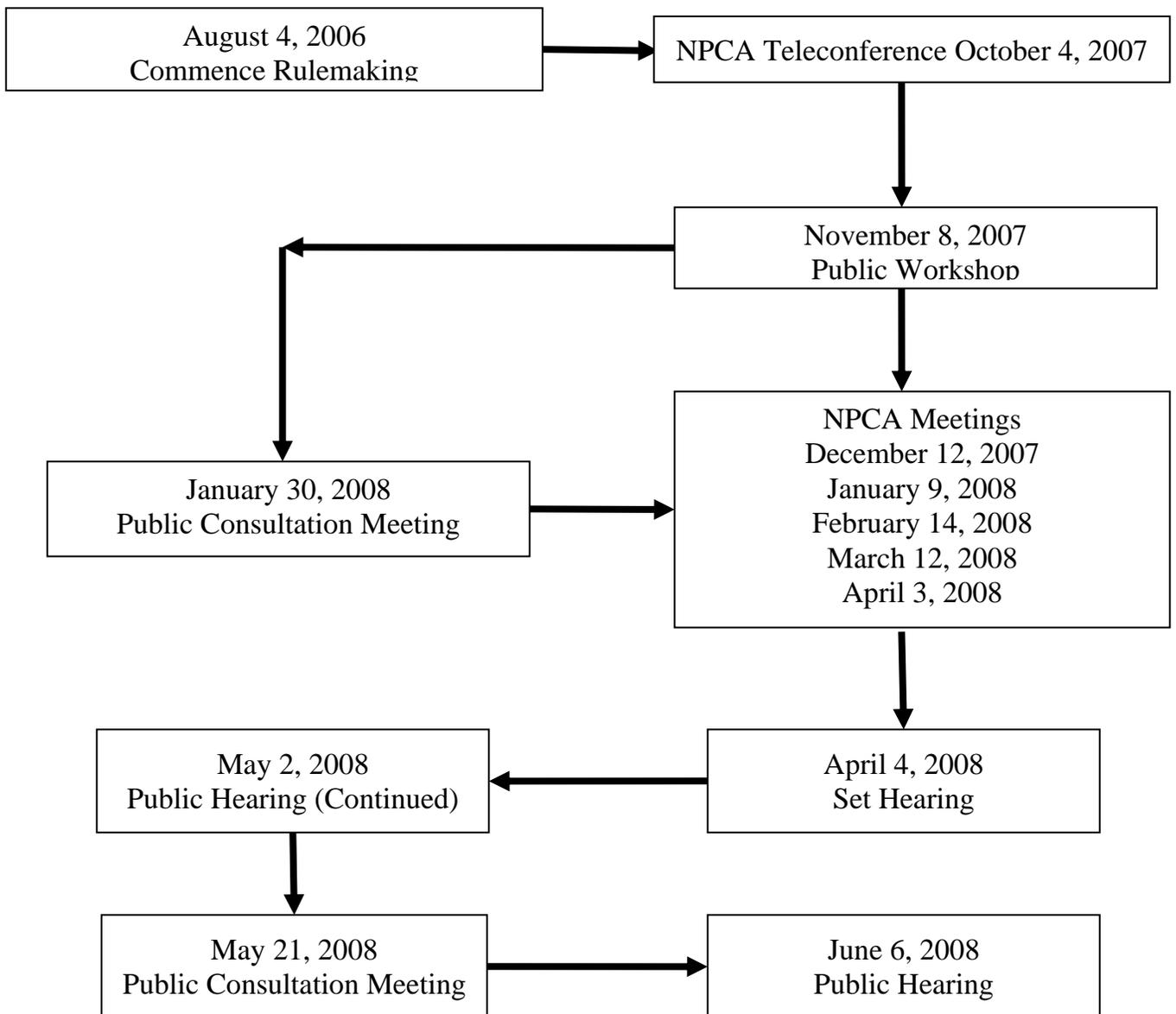
Summary of Proposed Amendments to Rule 314 – Fees for Architectural Coatings

AQMD.

ATTACHMENT B

RULE DEVELOPMENT PROCESS

PROPOSED AMENDED RULE 314 – Fees for Architectural Coatings



Total Time Spent in Rule Development: 22 Months

ATTACHMENT C

<u>KEY CONTACTS</u>		
Mike	Butler	Behr
Jennifer	Wolfenden	Benjamin Moore
Billy	Evans	Dunn-Edwards Paint
Robert	Wendoll	Dunn-Edwards Paints
Howard	Berman	Dutko Worldwide
Marl	Barbour	Eastman
Patrick	Lutz	EPs/CCA
Joseph	Tashjian	Ellis Paint Company
Fred	Anwari	Frazee Paint
Fernando	Pedroza	Frazee Paint
Jeff	Margulies	Fulbright & Jaworski
Jim	Kantola	ICI Paints
Jim	Boyce	Insl-X Superior Coating System
John	Day	Henry Company
Curtis	Coleman	Law Offices of Curtis Coleman
Robert	Gross	PPG Architectural Finishes, Inc.
Dwayne	Fuhlhage	PROSOCO
Dave	Darling	National Paint & Coatings Association
Alison	Keane	National Paint & Coatings Association
James	Baker	RCMA
Madelyn	Harding	Sherwin-Williams Company
Richard	Mikol	Tremco
Paul	Sara	Valspar
Mike	Kacner	Valspar
John	Long	Vista Paint Corporation
Dave	Carey	W.R. Meadows
Catherine	Jacobson	3M

A T T A C H M E N T D

RESOLUTION FOR

PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATINGS

RESOLUTION NO. 2008-

A Resolution of the Governing Board of the South Coast Air Quality Management District certifying that Proposed Rule 314 – Fees for Architectural Coatings is exempt from the requirements of the California Environmental Quality Act (CEQA).

A Resolution of the AQMD Governing Board adopting Rule 314 – Fees for Architectural Coatings.

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines that Proposed Rule 314 – Fees for Architectural Coatings, is considered a "project" pursuant to the CEQA; however, the South Coast Air Quality Management District Board hereby determines that the proposal is statutorily exempt from the requirements of CEQA pursuant to CEQA Guidelines §15273 – Statutory Exemption for Rates, Tolls, Fares and Charges and Public Resources Code §21080(b)(8), and that the fees are for the purposes of meeting operating expenses including employee wage rates and fringe benefits, and for purchasing or leasing supplies, equipment, or materials in that the proposed fees will recover the costs of the architectural coatings program as set forth in Table 8 of the staff report and upon full implementation will recover the costs of the expanded architectural coatings program as set forth in Table 13 of the staff report, and will recover the architectural coatings fair share of emissions fee supported costs (excluding exclusively permit related costs), as set forth in Appendix A, Table 1 and Table 10 of the staff report; and

WHEREAS, the AQMD has had its regulatory program certified pursuant to Public Resources Code Section 21080.5 and has conducted CEQA review and analysis pursuant to such program (Rule 110); and

WHEREAS, AQMD staff has prepared a Notice of Exemption (NOE) for Rule 314, as proposed to be adopted, that is completed in compliance with CEQA Guidelines §15002(k)(1) – Three Step Process, and §15061 (b)(1) – Review for Exemption (By Statute); and

WHEREAS, the staff report, the CEQA NOE, the Board letter, and other supporting documentation was presented to the AQMD Governing Board and that the Board has reviewed and considered the entirety of this information prior to approving the project; and

WHEREAS, the AQMD Governing Board has determined that a need exists to adopt Rule 314 – Fees for Architectural Coatings to recover the costs of AQMD programs related to these sources; and

WHEREAS, the AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Sections 39002, 40000, 40001, 40440,

40441, 40522.5, 40523, 40702, 40725 through 40728, and 41508 of the California Health and Safety Code; and

WHEREAS, The AQMD Governing Board has determined that Rule 314 – Fees for Architectural Coatings is written and displayed so that the meaning can be easily understood by persons directly affected; and

WHEREAS, the AQMD Governing Board has determined that Rule 314 – Fees for Architectural Coatings, as proposed, is in harmony with, and not in conflict with, or contradictory to, existing statutes, court decisions, or state or federal regulations; and

WHEREAS, the AQMD Governing Board has determined that Rule 314 – Fees for Architectural Coatings, as proposed, does not impose the same requirements as any existing state or federal regulation, and the proposed rule is necessary and proper to execute the powers and duties granted to, and imposed upon, the AQMD; and

WHEREAS, the AQMD Governing Board references the following statutes which the AQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001 (rules to achieve ambient air quality standards), 40440(a) (rules to carry out the Air Quality Management Plan), and 40522.5 (fees for area sources); and

WHEREAS, the AQMD Governing Board has determined that the Socioeconomic Impact Assessment is consistent with the provisions of the March 17, 1989 and October 14, 1994, Board Resolution for rule adoption and Health and Safety Code Sections 40440.8, 40728.5 and 40920.6; and

WHEREAS, the AQMD Governing Board has reviewed and considered the staff's findings related to cost and employment impacts of Proposed Rule 314 – Fees for Architectural Coatings set forth in the socioeconomic impact assessment, and hereby finds and determines that cost and employment impacts are as set forth in that assessment; and

WHEREAS, the AQMD Governing Board has actively considered the Socioeconomic Impact Assessment and has made a good faith effort to minimize such impacts; and

WHEREAS, a public hearing has been properly noticed in accordance with all provisions of Health and Safety Code, Section 40725; and

WHEREAS, the AQMD Governing Board has held a public hearing in accordance with all provisions of law; and

WHEREAS, the AQMD Governing Board has determined that Proposed Rule 314, in addition to the proposal for recovering specific program costs is necessary to fund the AQMD FY 07-08 budget; and

WHEREAS, the AQMD Governing Board finds and determines that proposed new fees for Architectural Coatings programs are necessary because they accurately reflect levels of effort that are necessary to recover the reasonable costs of the District programs related to architectural coatings, and the proposed expansion of those programs, including a fair share of the costs apportioned to all emissions fee payers; and

WHEREAS, the AQMD Governing Board finds and determines that the proposed new fees are equitably apportioned and reasonably related to the fee payer's benefits from, and burdens on, the regulatory system, in that costs of the enforcement program including fee registry and auditing are reasonably related to the amount of paints sold or distributed in the District, while the other costs of programs related to architectural coatings, including a fair share of emissions fee supported programs, are reasonably related to the amount of emissions produced (San Diego Gas & Electric Co. v San Diego County APCD (1988) 203Cal.App.3d 1132; and

WHEREAS, the AQMD Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications adopted which have been made to Rule 314 – Fees for Architectural Coatings since notice of public hearing was published do not significantly change the meaning of the proposed rule within the meaning of Health and Safety Code §40726 and would not constitute significant new information pursuant to CEQA Guidelines §10588.5; and

WHEREAS, the AQMD specifies the manager of Rule 314 as the custodian of the documents or other materials which constitute the record of proceedings upon which the adoption of this proposed rule is based, which are located at the South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California; and

NOW, THEREFORE, BE IT RESOLVED, that the South Coast Air Quality Management District Board does hereby certify the Notice of Exemption for Rule 314 – Fees for Architectural Coatings, as proposed to be adopted, completed in compliance with CEQA Guidelines §15002(k)(1) - Three Step Process, §15061(b)(1) – Review for Exemption and §15273 – Rates, Tolls, Fares and Charges. This information was presented to the Governing Board, whose members reviewed, considered, and approved the information therein prior to acting on Proposed Rule 314; and

BE IT FURTHER RESOLVED that the AQMD Governing Board directs staff to provide the Stationary Source Committee with annual status reports on information related to architectural coatings, including inspections, compliance testing, and enforcement actions; and

BE IT FURTHER RESOLVED that the AQMD Governing Board directs staff to evaluate the compliance rate for architectural coatings 3 or 4 years after full rule implementation, and to recommend to the Governing Board any increase or decrease in Rule 1113 compliance staff which is considered appropriate based on the observed compliance rate; and

BE IT FURTHER RESOLVED that the AQMD Governing Board directs staff to explore the possibility of shifting the fee from manufacturers to end-users by means of a point-of-sale fee collected at retail, and include any other methods to equitably implement the architectural coatings program; and such evaluation to be submitted to the Governing Board for its review prior to May 1, 2010; and

BE IT FURTHER RESOLVED that the AQMD Governing Board directs staff, within 120 days of rule adoption, to develop an amendment for Board consideration to include distributors, selling or distributing architectural coatings into or within the AQMD, in submitting Annual Quantity and Emissions Reports, and pay any applicable fees; and

BE IT FURTHER RESOLVED that the AQMD Governing Board directs staff to annually evaluate the fees collected under Rule 314 and to limit the recommended fee increase for the subsequent year or offer rebates to the manufacturers, as necessary, if a surplus occurs or recommend to increase fees for the subsequent year if a shortage occurs; and

BE IT FURTHER RESOLVED that the AQMD Governing Board directs AQMD staff to develop work program codes to track the time dedicated to architectural coatings related work, including separate codes for compliance efforts focusing on manufacturers and end-users and that staff shall annually calculate the costs charged during the previous year to these work program codes, in order to determine the annual costs of the program; and

BE IT FURTHER RESOLVED, that the AQMD Governing Board does hereby adopt, pursuant to the authority granted by law, Rule 314 – Fees for Architectural Coatings, as set forth in the attached, and incorporated herein by this reference.

Attachment

DATE: _____

CLERK OF THE BOARD

A T T A C H M E N T E

PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATINGS

Single underline text shows new language added to the rule subsequent to the Set Hearing.

Double underline text shows new language added to the rule subsequent to the May 2, 2008 Public Hearing.

PROPOSED RULE 314

FEEES FOR ARCHITECTURAL COATINGS

(a) Purpose

The purpose of this rule is to recover the District's cost of implementing the architectural coatings program and programs related to architectural coatings, and the revenues shall only be used for such purposes. California Health and Safety Code Section 40522.5 provides authority for the District to adopt a fee schedule on areawide or indirect sources of emissions which are regulated, but for which permits are not issued by the District, to recover the costs of programs related to these sources.

(b) Applicability

This rule applies to architectural coatings manufacturers that distribute or sell their manufactured architectural coatings into or within the District for use in the District and are subject to Rule 1113 - Architectural Coatings. This rule does not apply to architectural coatings sold in this District for shipment and application outside of this District or to aerosol coating products.

(c) Definitions

For the purpose of this rule, the following definitions shall apply:

- (1) AEROSOL COATING PRODUCT means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground marking and traffic marking applications.
- (2) ANNUAL QUANTITY AND EMISSIONS REPORT includes the quantity of each architectural coating distributed or sold into or within the District for use in the District during each calendar year, reported as gallons and their associated VOC content, as supplied, reported in grams per liter, for each product in all container sizes.
- (3) APPURTENANCES are accessories to a stationary structure, including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, large fixed stationary tools, signs, motion picture and television production sets, and concrete forms.
- (4) ARCHITECTURAL COATINGS are any coatings applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

- (5) ARCHITECTURAL COATINGS MANUFACTURER is any company or person that imports, manufactures, produces, packages, or repackages architectural coatings for sale or distribution for use in the District.
- (6) COATING is a material which is applied to a surface in order to beautify, protect, or provide a barrier to such surface.
- (7) EXEMPT COMPOUNDS are as defined in Rule 102 - Definition of Terms.
- (8) FORMULATION DATA is the actual product recipe which itemizes all the ingredients contained in a product including VOCs and the quantities thereof used by the manufacturer to create the product. Material Safety Data Sheets (MSDS) are not considered formulation data.
- (9) GRAMS OF VOC PER LITER OF COATING, LESS WATER AND LESS EXEMPT COMPOUNDS, is the weight of VOC per combined volume of VOC and coating solids and can be calculated by the following equation:

$$\frac{\text{Grams of VOC per Liter of Coating, Less Water and Less Exempt Compounds}}{\text{Water and Less Exempt Compounds}} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

- Where:
- W_s = weight of volatile compounds in grams
 - W_w = weight of water in grams
 - W_{es} = weight of exempt compounds in grams
 - V_m = volume of material in liters
 - V_w = volume of water in liters
 - V_{es} = volume of exempt compounds in liters

For coatings that contain reactive diluents, the Grams of VOC per Liter of Coating, Less Water and Less Exempt Compounds, shall be calculated by the following equation:

$$\frac{\text{Grams of VOC per Liter of Coating, Less Water and Less Exempt Compounds}}{\text{Water and Less Exempt Compounds}} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

- Where:
- W_s = weight of volatile compounds emitted during curing, in grams
 - W_w = weight of water emitted during curing, in grams
 - W_{es} = weight of exempt compounds emitted during curing, in grams
 - V_m = volume of the material prior to reaction, in liters
 - V_w = volume of water emitted during curing, in liters
 - V_{es} = volume of exempt compounds emitted during curing, in liters

- (10) GRAMS OF VOC PER LITER OF MATERIAL is the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where: W_s = weight of volatile compounds in grams
 W_w = weight of water in grams
 W_{es} = weight of exempt compounds in grams
 V_m = volume of the material in liters

- (11) PRODUCT is an architectural coating which is identified by means of a unique product code and product name or product line (if applicable), as written on the container label and that is subject to one of the coating category VOC limits specified in Rule 1113 paragraphs (c)(1) or (c)(2) Table of Standards.
- (12) PRODUCT LINE is a group of coatings that:
- (A) Belong to the same coating category in Rule 1113 Table of Standards,
 - (B) Have the same vehicle technology (solvent or water),
 - (C) Are of the same resin type,
 - (D) Are recommended for the same use (either interior, exterior or dual use),
 - (E) Have the same form (either single- or multiple-component form),
 - (F) Do not exceed a coating (regulatory) VOC range of 25 grams per liter between the highest and lowest coating in the group, and
 - (G) If included in the Averaging Compliance Option Program, meet subparagraphs (A) to (G) of this definition and have all grouped products either above a limit or below a limit.
- (13) RESPONSIBLE PARTY for a corporation is a corporate officer or an authorized representative so delegated by a corporate officer. Delegation of an authorized representative must be made in writing to the Executive Officer. A responsible party for a partnership or sole proprietorship is the general partner or proprietor, respectively.
- (14) VOLATILE ORGANIC COMPOUND (VOC) is as defined in Rule 1113 – Architectural Coatings.
- (d) Requirement to Obtain a Manufacturer Identification (ID) Number
- (1) An architectural coatings manufacturer subject to this rule at any time during the calendar year 2008 shall apply to the District for a manufacturer ID number on or

before December 31, 2008. An architectural coatings manufacturer that becomes subject to this rule in any year subsequent to calendar year 2008 shall apply to the District for a manufacturer ID number on or before December 31 of that year.

- (2) Change or Acquisition of an Architectural Coatings Manufacturer
 - (A) When there is a Change-change or acquisition of an architectural coatings manufacturer with a District issued manufacturer ID number, the successor architectural coatings manufacturer shall apply for a manufacturer ID number on or before December 31 of the calendar year of the change or acquisition, unless the successor architectural coatings manufacturer already has a District issued manufacturer ID number. ~~At the time t~~The successor manufacturer applies for a new manufacturer ID number, the application and the Annual Quantity and Emissions Report shall include the previous architectural coatings manufacturer ID number in their Annual Quantity and Emissions Report for the first year after the change or acquisition.
 - (B) Acquisition of an architectural coatings manufacturer shall not be considered a change in ownership if the architectural coatings manufacturer who is acquired continues to file Annual Quantity and Emissions Reports and pay fees under its District issued ID number.
- (e) Requirement to Submit an Annual Quantity and Emissions Report
 - (1) For each calendar year (January 1 through December 31) beginning with 2008 and continuing with each subsequent calendar year, an architectural coatings manufacturer shall, in a format determined by the Executive Officer, submit to the District by April 1 of the following calendar year (the official reporting due date) an Annual Quantity and Emissions Report signed by a responsible party certifying that all information submitted (including electronic submittal) is true and correct. The Annual Quantity and Emissions Report shall include, but not be limited to, the following:
 - (A) Manufacturer information including the manufacturer ID number issued by the District;
 - (B) Each architectural coating product code and product name or product line (if applicable);
 - (C) Whether the coatings are waterborne or solventborne;
 - (D) Whether the coatings are for interior, exterior, or dual use;
 - (E) The applicable coating category listed in the Table of Standards in Rule 1113 – Architectural Coatings;

- (F) The grams of VOC per liter of coating, less water and less exempt compounds for each product as ~~recommended~~supplied for use by the manufacturer;
 - (G) The grams of VOC per liter of material for each product as ~~recommended~~supplied or for multi-component coatings as recommended for use by the manufacturer. Additionally, for solvent-based coatings, grams of VOC per liter of material with maximum thinning allowed with a VOC, as listed in the Technical Data Sheet, shall also be included.
 - (H) Total annual quantity of each product distributed or sold into or within the District for use in the District, as supplied, and reported in gallons for all container sizes; and
 - (I) For any product with VOC content higher than the applicable limit in Rule 1113, an indication whether the product has been sold under any of the following provisions of Rule 1113 – Architectural Coatings:
 - (i) Sell-through provisions
 - (ii) Averaging Compliance Option ~~Plan.~~
 - (iii) Small container exemption
 - (iv) Other (with explanation).
- (2) An architectural coatings manufacturer that acquires another architectural coatings manufacturer shall provide the information specified in subparagraph (e)(1)(A) through (e)(1)(I) for the acquired architectural coatings manufacturer for the entire calendar year.
- (f) Recordkeeping
- Architectural Coatings Manufacturers shall:
- (1) Maintain a copy of the signed application form submitted to the District to obtain the manufacturers ID number, and the written response from the District issuing a manufacturer ID number. The copies shall be maintained for five (5) years beyond the date on each document, and made available upon request by the Executive Officer.
 - (2) Maintain records to verify data used to prepare the Annual Quantity and Emissions Report ~~determine annual volumes and VOC emissions~~ from architectural coatings distributed or sold into or within the District for use in the District and compliance with applicable rules and regulations. The records shall be maintained for five (5) years and made available upon request by the Executive Officer. Such records shall include but not be limited to:

- (A) Product formulation records (including both grams of VOC per liter of coating and grams of VOC per liter of material):
 - (i) Laboratory reports [including percent weight of non-volatiles, water, and exempts (if applicable); density of the coating; and raw laboratory data] of test methods conducted as specified in paragraph (m)(1) or
 - (ii) Product formulation data or physical properties analyses, as applicable, with a VOC calculation demonstration; and
- (B) Production records including, if applicable, batch tickets with the date of manufacture, batch weight and volume; and
- (C) Distribution records:
 - (i) Customer lists or store distribution lists or both (as applicable) and
 - (ii) Shipping manifests or bills of lading or both (as applicable); and
- (D) Sales records consisting of point of sale receipts or invoices to distributors or both, as applicable.

(g) Fees

(1) Manufacturer ID Number Fee

An architectural coatings manufacturer applying for a manufacturer ID number with the District as specified in paragraphs (d)(1) and (d)(2) shall pay a non-refundable application fee of \$168.62 at the time of submitting the application.

(2) Annual Quantity and Emissions Fees

(A) An architectural coatings manufacturer shall begin paying fees at the rates specified below, on or before April 1, 2009 and each subsequent April 1 (the official due date). Fees are based on the annual quantity and emissions of architectural coatings distributed or sold into or within the District for use in the District for the previous calendar year.

Phased-in Fee Rate

- (i) April 1, 2009 pay an annual quantity fee of \$~~0.02~~0.18 per gallon of paint and an annual emission fee of \$123 per ton of VOC emissions.
- (ii) April 1, 2010 pay an annual quantity fee of \$~~0.03~~0.27 per gallon of paint and an annual emission fee of \$185 per ton of VOC emissions.

- (iii) April 1, 2011 and each subsequent April 1, pay an annual quantity fee of \$0.~~04~~036 per gallon of paint and an annual emission fee of \$246 per ton of VOC emissions.
 - (B) If an architectural coatings manufacturer submits the Annual Quantity and Emissions Report in such a manner that District staff has to manually enter the data into the District database, then the architectural coatings manufacturer shall pay at the time of submittal a non-refundable fee of \$276.20 for the first two hours of District time. The architectural coatings manufacturer shall be assessed additional fees at the rate of \$138.12 per hour for any additional time beyond the first two hours.
- (h) Request to Amend the Annual Quantity and Emissions Report and Refund Request of Emission Fees
 - (1) An architectural coatings manufacturer shall submit a written request (referred to as an “Amendment Request”) for any proposed revisions to previously submitted Annual Quantity and Emissions Reports. Amendment requests submitted after one (1) year from the official due date of the subject Annual Quantity and Emissions Report shall include a non-refundable standard evaluation fee of \$276.20. In addition, evaluation time beyond two hours shall be assessed at the rate of \$138.12 per hour not to exceed 10 hours. Amendment requests received within one year (1) from the official due date of a previously submitted Annual Quantity and Emissions Report shall not incur any such evaluation fees. The Amendment Request shall include all supporting documentation and revised applicable reports.
 - (2) An architectural coatings manufacturer shall submit a written request (referred to as a “Refund Request”) to correct the previously submitted Annual Quantity and Emissions Report and request a refund of overpaid fees. Refund Requests must be submitted within one (1) year from the official due date of the subject Annual Quantity and Emissions Report to be considered valid. The Refund Request shall include a revised Annual Quantity and Emissions Report and all applicable supporting documentation. If the Refund Request submitted results in a refund, then the architectural coatings manufacturer shall incur no evaluation fee. If the refund request results in no refund, then the architectural coatings manufacturer shall pay the standard evaluation fee and the hourly evaluation fees, as appropriate, specified in paragraph (h)(1).

(i) Fee Payments and Late Surcharge

- (1) Fee payments are the responsibility of the architectural coatings manufacturer.
- (2) If both the fee payments and the Annual Quantity and Emissions Report for the previous calendar year are not received by May 30, they shall be considered late; and a surcharge for late payment shall be imposed for fees past due as set forth in paragraph (i)(3). Architectural coatings manufacturers subject to paragraph (d)(2) on or after July 1 of the reporting year shall have an additional 6 months, or any additional time approved by the Executive Officer, to submit the fee payments and the Annual Quantity and Emissions Report for the acquired architectural coatings manufacturer. For the purpose of this paragraph, the fee payments and the Annual Quantity and Emissions Report shall be considered to be timely received by the District if it is postmarked on or before May 30. If May 30 falls on a Saturday, Sunday, or a state holiday, the fee payments and Annual Quantity and Emissions Report may be postmarked on the next business day following the Saturday, Sunday, or the state holiday with the same effect as if they had been postmarked on May 30.
- (3) If fee payments ~~and~~for the Annual Quantity and Emissions Report (including any unreported quantity and emissions) are not received within the time prescribed by paragraph (i)(2), a late payment surcharge shall be assessed on the fees past due and added to the ~~original amount of the fees~~ rate in paragraph (g)(2)(A) past due, according to the following schedule:

Less than 30 days	5% of reported <u>past due</u> amount
30 to 90 days	15% of reported <u>past due</u> amount
91 days <u>to one year</u>	25% of reported <u>past due</u> amount
<u>More than one year</u>	<u>50% of past due amount</u>

~~(4) The fees for any unreported quantity and emissions are past due and payable to the District according to the fee rate in paragraph (g)(2)(A), and further increased by fifty percent (50%). The fee rate to be applied shall be the fee rate in effect for the year in which the quantity and emissions are actually reported, and not the fee rate in effect for the year the quantity and emissions actually occurred.~~

~~(5)~~(4) Fee Payment Subject to Validation

Acceptance of a fee payment does not constitute validation of the emission data.

(j) Service Charge for Returned Checks

Any person who submits a check to the District on insufficient funds or on instructions to stop payment, absent an overcharge or other legal entitlement to withhold payment, shall be subject to a \$25.00 service charge.

(k) Confidentiality of Information

Subject to the provisions of the California Public Records Act (Govt. Code § 6250-6276.48) information submitted to the Executive Officer may be designated as confidential. The designation must be clearly indicated on the reporting form, identifying exactly which information is deemed confidential. District guidelines require a detailed and complete basis for such claim in the event of a public records request.

(l) Violation

It shall be a violation of this rule for any architectural coatings manufacturer to distribute or sell their manufactured architectural coatings into or within the District for use in the District, without having a manufacturer ID number issued by the District, within the time specified in subdivision (d).

(m) Test Methods

For the purpose of this rule, test methods are as specified in Rule 1113.

(n) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances. In the event any of the exceptions to this rule are held by judicial order to be invalid, the persons or circumstances covered by the exception shall instead be required to comply with the remainder of this rule.

(o) Distributor(s) List

On or before January 1, 2009, and each subsequent January 1, all architectural coatings manufacturers subject to this rule shall provide to the District a list of all U.S. distributors to whom they supply architectural coatings, including but not limited to private label coatings and toll manufactured coatings. The list shall be in a format determined by the Executive Officer and shall include the distributors name, address, contact person and phone number.

(e) Exemption

Notwithstanding the provisions of subparagraph (g)(2), fees shall not be assessed on coatings with 5 or less grams of VOC per liter of material.

A T T A C H M E N T F

FINAL STAFF REPORT FOR

PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATINGS

Underlined and ~~strikeout~~ text show changes to the Staff Report subsequent to the Set Hearing

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

**FINAL STAFF REPORT FOR
PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATINGS**

~~May-June~~ 2008

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EXECUTIVE SUMMARY

The purpose of Proposed Rule 314 - Fees for Architectural Coatings is to recover the program costs to the AQMD for establishing and implementing Rule 1113 – Architectural Coatings and include that program’s fair share of AQMD costs that are apportioned among all AQMD programs, such as personnel, payroll, etc., as well as costs supported by emissions fees, such as emissions inventory and air monitoring. The proposed rule will also provide staff with information on architectural coating quantity used and related emissions for future planning, compliance, and rule development. The current Rule 1113 Program includes staff assigned to inspections, planning and rule development, laboratory services, legal, administrative, and monitoring and analysis as well as support personnel. In addition to the current program, staff is proposing that the Rule 1113 Program be enhanced to include additional inspectors to conduct a sufficient number of inspections and collect samples to assess a supportable compliance rate for this emission source. Additional chemists for sample analysis and an air quality specialist for fee report audits are also included in the proposed program. The enhanced program will be phased-in over the next three years. Such enhancements will ensure maintaining a high level of compliance from architectural coatings, the largest emissions source category under AQMD’s regulatory authority.

The Rule 1113 Program affects any person, who manufactures, supplies, sells, offers for sale, solicits, or field applies architectural coatings within the AQMD. Since the application of architectural coatings does not require a permit or notification to the AQMD, and occurs for short durations throughout the basin at unknown locations, staff is proposing that an Annual Quantity and Emissions Report and fees be made the responsibility of the manufacturers of architectural coatings, rather than end-users as suggested by the special Revenue Committee. This same approach has been implemented in some programs such as water heater certification.

The cost of the Proposed Rule 1113 Program, which includes the strengthening of the enforcement and laboratory efforts dedicated to the program, and a fair share of costs supported by emissions fees is projected to be approximately \$4.44.2 million for 2009-10, which equates to approximately 7.57.1¢ per gallon, based on estimated quantity of coatings, and is anticipated to be passed on to the end-user by the manufacturers. Staff estimates the proposed rule will impact approximately 200 architectural coatings manufacturers.

Although the proposed rule does not explicitly call for emission reductions, the proposed fee structure may provide an incentive to a manufacturer to lower total emissions by marketing a larger volume of low volatile organic compound (VOC) coatings. Experience with other stationary source emissions fee based programs indicate a similar beneficial trend in terms of lowering emissions. However, such emission reduction benefits cannot be quantified at this time; since at this time, staff is unable to estimate the potential quantity shift towards lower VOC coatings above and beyond the applicable VOC limits, as a result of this fee program. Therefore, this proposed rule will not be submitted to claim emission reductions in the State Implementation Plan (SIP).

The AQMD has reviewed the proposed project pursuant to State CEQA Guidelines §15002(k)(1). Proposed ~~fee~~-Rule 314 is exempt pursuant to CEQA Guidelines §15273. A Notice of Exemption ~~will be~~has been prepared in accordance with state CEQA Guidelines

§15062 for the proposed project and will be filed with the county clerks immediately following the adoption of the proposed rule.

BACKGROUND

The AQMD's mission is to protect public health from air pollution. To meet its financial needs the AQMD utilizes a system of evaluation fees, annual operating fees, emission fees, Hearing Board fees, penalties/settlements and investments that generate approximately 72% of its revenues. The remaining 28% of its revenues are from an Environmental Protection Agency grant, California Air Resources Board subvention, and California Clean Air Act Motor Vehicle fees.

The AQMD's fee system has evolved over the years. In 1990, KPMG Peat Marwick performed a Fee Assessment Study which determined, among other things, that permit processing fees did not fully cover the costs of performing this program and recommended a flat emissions fee for low emitters, which was ultimately, adopted a number of years later. In 1995, KPMG Peat Marwick completed a second Fee Assessment Study which again recommended increasing permit processing fees, but also recommended an "emissions based operating fee" which would be based on potential to emit rather than actual emissions. Industry generally opposed this concept and it was not adopted. In 1999, the AQMD retained Thompson, Cobb, Bazilio & Associates, P.C., Certified Public Accountants and Management Consultants, to conduct an independent analysis of the stationary source fee structure. The AQMD also established a Fee Structure Advisory Committee, composed of representatives from industry, including small businesses, environmental groups, and AQMD staff. The focus was primarily on permit processing, annual operating and emission fees to determine if the fee structure at that time: (a) was adequate, efficient, and cost based; (b) was appropriately allocated and recoverable by stationary source fee assessments; and (c) to propose a modified or revised stationary source fee schedule and if necessary, develop and design a new fee structure. The report recognized that area source non-permitted VOC emissions, such as architectural coatings, were the bulk of stationary emissions and should be the target for AQMD control and revenue generation efforts. However, the potential number of sources was beyond the number manageable through a traditional permitting program. The most challenging problem that control of area sources posed was enforcement of regulations. Obtaining the cooperation of a large population of consumers and collecting information on sources and emissions would be an overwhelming task. A successful program would have to be focused on a smaller population, such as manufacturers or distributors of the regulated products. At the same time the program would have to collect fees to fund program operations. At the time of this report, it was concluded that the AQMD with its limited resources should delay instituting an area source fee program and concentrate on on-road mobile and other sources of criteria emissions. However, the AQMD must eventually include area sources in its control programs and the AQMD should plan for an area source control program, with supporting fees, on an ongoing basis. This paragraph is a summary from the document titled "AQMD Fee Structure Study, March 1999."

During Fiscal Year 2000-2001, the Governing Board directed staff to establish a special Revenue Committee to assist the AQMD in developing revisions to its fee rules to stabilize revenue. The major focus of this committee's effort was the identification and assessment of several short- and long-term potential funding sources in support of AQMD programs, as well as the costs. The

Revenue Committee made several important recommendations that were included in the rule amendments approved by the Governing Board in May 2001. One of the recommendations was a fee on area sources. The Committee also recommended a manufacturers' fee for area sources. In June 2004, the Governing Board, in response to this recommendation, adopted fees to recover the costs associated with notification and tracking of emissions from decontamination of soil projects; recovery of costs associated with laboratory analysis of non-compliant samples taken in the field for compliance verification; recovery of Plan audits, verification, evaluation, inspection and tracking costs for area source rules such as open burning and old vehicle scrapping; and fees for enforcement inspections for statewide registered portable equipment, which are all considered area sources. At the Board's direction to assess fees on area sources, staff is proposing the following rule to recover the cost of regulating the architectural coatings program, one of the largest controlled emitters of VOC emissions in the AQMD. This paragraph is a summary from the document titled "Final Staff Report, Proposed Amended Regulation III – Fees, June 2, 2006.

The above reports are incorporated by reference herein and available by contacting Naveen Berry, (909)-396-2363. Volumes I and II of the AQMD's [FY08-09](#) Draft Budget and Draft Work Program are also available for review.

Staff originally proposed Rule 222.1 – Filing and Registration of Architectural Coatings which in summary would have required architectural coating manufacturers to pre-register their products prior to their being manufactured, supplied, sold, offered for sale or solicited for sale for use in the AQMD. During the rule development process, which included a Public Workshop, a Public Consultation Meeting and numerous meetings with industry, comments from industry were compelling enough for staff to propose allowing manufacturers to submit an end-of-the-year Quantity and Emissions Report without pre-registration of all products to be sold in the AQMD. The Quantity and Emissions Report will contain information specific to the AQMD, but similar to that found in survey reports submitted to CARB every four to five years for California sales of architectural coatings. At this time, staff considers this approach to meet the needs of the AQMD while providing the requested flexibility to industry; therefore, staff is no longer proposing Rule 222.1 and is now incorporating the reporting requirements into Proposed Rule 314. Staff will evaluate the effectiveness of the end-of-the-year reporting through further audits and will be prepared to make programmatic adjustments, including reconsidering the pre-registration approach, if necessary.

PROPOSED RULE

PROPOSED RULE 314 - FEES FOR ARCHITECTURAL COATINGS

The purpose of the rule is to recover the AQMD cost of the Architectural Coatings Program and that program's fair share of AQMD costs that are apportioned among all AQMD programs, such as personnel, payroll, etc., as well as the program's fair share of costs supported at least in part by emissions fees, such as air monitoring. The rule establishes the fees for any architectural coatings manufacturer that distributes or sells their manufactured architectural coatings into or within the AQMD for use in the AQMD and is subject to Rule 1113 - Architectural Coatings.

The proposed rule will include:

- A requirement for architectural coatings manufacturers to apply for a manufacturer's identification (ID) number.
- Submittal of an Annual Quantity and Emissions Report certified by a responsible party.
- A recordkeeping section requiring maintenance of sufficient records to verify data necessary to determine annual architectural coating sales and VOC emissions in the AQMD, and compliance with applicable rules and regulations.
- Fees for:
 - Submitting an application for a required manufacturer ID number.
 - The annual quantity of architectural coatings distributed or sold into or within the AQMD for use in the AQMD and their associated VOC emissions. Fees will be phased-in over three years beginning with fifty percent of the fee rate in 2009 for sales and associated emissions reported in 2008. Seventy-five percent of the fee rate will be charged the second year and the fee rate fully implemented in 2011 and each subsequent calendar year for the sales and associated emissions for the previous calendar year. The proposed rule includes an exemption from fees for any ultra low VOC coatings with a VOC content of 5 or less grams per liter of material.
- Procedures for:
 - Amendments to the Annual Quantity and Emissions Reports.
 - The refund of fees for overpayment.
 - Fee payments and late filing surcharges.
 - Returned checks.
- A provision for the confidentiality of reported information, subject to the provisions of the California Public Records Act.
- A violation section that states "It shall be a violation of this rule for any architectural coatings manufacturer to distribute or sell their manufactured architectural coatings into or within the District for use in the District, without having obtained a manufacturer ID number issued by the District, within the time specified in subdivision (d)" of the proposed rule.
- Test methods as specified in Rule 1113 to determine VOC content of the coatings.

- A U.S. distributors list provided by the architectural coatings manufacturers to the AQMD, on or before January 1, 2009 and each subsequent calendar year. The list will consist of all U.S. distributors to whom the manufacturer supplies architectural coatings.

FEE STRUCTURE

Initially, under Proposed Rule 314, staff proposed four fee options listing the benefits and draw backs of each. After numerous discussions with the public as well as with the coatings industry, which asked for a simple fee structure with an incentive to reduce emissions, staff is proposing a hybrid fee system to recover the Proposed Rule 1113 Program Costs, estimated at \$4.42 million by fiscal year 2009-10. In order to estimate the fee for manufacturers, staff used the latest available data from the 2001 and 2005 CARB Architectural Coating Surveys. The quantities sold and the emissions were then adjusted to 2010 by a growth of three (3) percent per year, which was the indicated average annual growth rate from previous CARB surveys. The projected quantity and emissions included coatings sold in all container sizes.

The hybrid fee structure shown in Table 3 has two components:

- A quantity fee which is designed to provide a relatively predictable and consistent revenue stream to cover salaries including benefits and overhead costs for staff working on compliance, laboratory support, and emissions data and revenue collection. Staff believes that the amount of time for inspections and laboratory analysis is proportional to the volume of coatings initially supplied by the manufacturers and subsequently sold through retail outlets and used by a variety of end-users. For the AQMD, previous CARB surveys show architectural coatings sales volume of approximately 50 million gallons and as many as 18,000 different products under numerous coating categories. For Rule 1113 compliance review there are many different kinds of inspections, including big box retail outlets that have thousands of paint cans from numerous different architectural coatings manufacturers which requires a great deal of time to inspect. In contrast, an inspection of an end-user may only include one or two different products with a few paint cans. This quantity fee portion is expected to generate approximately \$2.13 million per year as detailed later in this report which is the approximate cost, as summarized in Table 1. As explained in the section entitled “Proposed Program” beginning on page 20 below, the equivalent of one AQ Inspector II FTE has been subtracted from the program to be supported by the architectural coatings fee and will be supported by other revenue (BP ARCO Settlement funds).

Table 1 – Quantity Fee Allocation (Upon Full Implementation)

Position	Staff	% of time	Time (Hrs/Year)	Annual Cost
AQ Inspector II	65	100	10,400 2,480	\$ 831,121 997,345
AQ Chemist	6	100	12,480	1,109,280
AQ Specialist	1	100	2,080	192,166
Totals	132	FTEs*		\$ 2,132,567 298,791

* Full Time Equivalent (FTE) Positions

- An emissions fee which may not provide as consistent of a revenue stream as the quantity fee, since revenues may fluctuate depending on the VOC content of products sold and the total emissions in the Basin. However, the emissions fee component is important since it provides a financial incentive towards the marketing of lower VOC products. The emissions fee is designed to cover fluctuating costs such as surveys, technology assessments, rule development, AQMP updates, development of the reporting system, product purchases, legal representation, administrative support, training, and monitoring. These staff positions typically have year to year differing amounts of time devoted to the Architectural Coatings Program. The emission fee will also cover architectural coatings fair share of emission fee supported programs, as detailed later in this report. This emission fee portion is expected to generate approximately \$2.1 million per year as detailed later in this report and summarized in Table 2.

Table 2 – Emission Fee Allocation (Upon Full Implementation)

Position	Staff	% of time	Time (Hrs/Year)	Annual Cost
Sr. Office Assistant	1	55.0%	1,144	\$ 68,762
AQ Inspector III	1	33.0%	686	58,078
Sr AQ Chemist	1	100.0%	2,080	195,422
Principal AQ Chemist	1	25.0%	520	54,865
AQ Specialist	2	100.0%	4,160	384,332
Senior AQ Engineer	1	20.0%	416	41,033
Senior Staff Specialist	1	25.0%	520	50,518
Program Supervisor	2	40.0%	1,664	175,568
Program Supervisor	1	5.0%	104	10,973
P&R Manager	2	10.0%	416	48,821
Sr Deputy District Counsel	1	33.0%	686	82,358
Sr Deputy District Counsel	1	5.0%	104	12,478
Assistant DEO	1	5.0%	104	13,505
Subtotal	6	FTEs		\$ 1,196,712
Emission Fee Supported Program Cost <u>(See Table A, Appendix A)</u>				884,623
TOTAL				\$ 2,081,335

The actual fee revenue will be determined by the Annual Quantity and Emissions Reports submitted by the approximately 200 architectural coatings manufacturers for the previous year. This hybrid approach provides a direct incentive to reduce emissions, offsetting the increased cost of ensuring compliance for manufacturers with a higher quantity of sales, and stabilizing the fee increases as volumes shift between the VOC limits. Staff is proposing that the fees be phased-in over three years.

Table 3 – Per Gallon Fee and Per Ton Emission Fee

QUANTITY FEE			
Date (April 1)	Fee per Gallon	Quantity* (Gallons)	Estimated Annual Revenue**
2009	\$0.0182	59,320,072	Approximately \$1.21 M
2010	\$0.03027		Approximately \$1.86 M
2011 +	\$0.04036		Approximately \$2.31 M

Note: Estimated quantity of coatings at 5 or less g/l material VOC has been subtracted

and

PER TON EMISSION FEE			
Date (April 1)	Fee per Ton	Emissions* (tons per year)	Estimated Annual Revenue
2009	\$123.00	8,469	Approximately \$1.0 M
2010	\$185.00		Approximately \$1.6 M
2011 +	\$246.00		Approximately \$2.1 M

* The estimated quantity and emissions are averaged over the three year phase-in between 2009 and 2011

** The proposed exemption from fees for ultra-low VOC products is expected to reduce the annual revenues by approximately \$100,000 (not reflected in Table 3). No modification to the quantity fee to compensate for this exemption is being proposed at this time.

The public also proposed additional fee options, including a flat fee per manufacturer (seller’s permit fee), a service fee based on actual staff time with that architectural coatings manufacturer, and a consumer based fee at the retail level. Staff recognizes that these proposed fee options may have certain merit, but are not within the typical scope of the AQMD or do not adequately recognize manufacturers that have an abundance of low-VOC products that emit a lower overall emissions.

AUTHORITY TO ASSESS FEES

The California Health and Safety Code establishes the AQMD’s authority to adopt rules and regulations, including fee schedules intended to cover the actual costs of implementing programs to clean the air. Sections 40506 and 40510 establish the authority to adopt fees for permits and variances. For point sources, AQMD Regulation III – Fees, sets fees in three major categories:

- 1) Permitting, including permit processing and annual renewals of permits to stationary sources;
- 2) Annual Emission Fees for facilities that emit toxic or criteria air contaminants; and
- 3) Other revenue related to services provided by the AQMD including variances from the Hearing Board, compliance monitoring and testing, review of emission control plans, registration programs and certain training programs.

In addition, California Health and Safety Code Section 40522.5 establishes the AQMD’s authority 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, to recover the costs of programs related to these sources. Under California law, the primary authority for controlling emissions from architectural coatings is vested in the air pollution control districts (APCDs).

FEES CURRENTLY ASSESSED TO POINT SOURCES (VOC)

Stationary Sources are required to obtain permits to install and operate any equipment that may release air contaminants; for example, stationary sources (point sources) that manufacture coatings and/or apply coatings in facilities are required to obtain operating permits to operate specific equipment, such as paint blending and paint spray booths. In addition to the fees for obtaining a permit for certain types of equipment, the point sources pay annual permit renewal (operating) fees to renew their permits and continue to operate their permitted equipment. Table 4 provides a partial list of specific Regulation XI coating rules that stationary sources are subject to (the listed rules regulate VOCs).

Table 4 – Summary of Regulation XI Rules

Rule 1104 – Wood Flat Stock Coating Operations	Rule 1126 – Magnet Wire Coating Operations
Rule 1106 – Marine Coating Operations	Rule 1128 - Paper, Fabric and Film Coating Operations
Rule 1106.1 – Pleasure Craft Coating Operations	Rule 1132 – Further Control of VOC Emissions from High Emitting Spray Booth Facilities
Rule 1107 – Coating of Metal Parts and Products	Rule 1136 – Wood Products Coatings
Rule 1113 – Architectural Coatings	Rule 1141.1 - Coatings and Ink Manufacturing
Rule 1115 – Motor Vehicle Assembly Line Coating Operations	Rule 1145 – Plastic, Rubber and Glass Coatings
Rule 1124 – Aerospace Assembly and Compound Manufacturing	Rule 1151 – Motor Vehicle and Mobile Equipment Non-assembly Line Coating Operations
Rule 1125 – Metal Container, Closure, and Coil Coating Operations	

Lastly, point sources pay annual emission fees as specified in Regulation III; however, any architectural coatings that may be used at these facilities are excluded from the emissions on which fees are paid (General Instruction Booklet for the Annual Emissions Reporting Program). The fees allow the AQMD to recover the costs for regulating these point sources to reduce air pollution, as well as pay for other supporting programs, including but not limited to, air monitoring, planning, and rulemaking.

The staff proposal does not include applying the current stationary source emission fee schedule to architectural coatings emissions.

Table 5 summarizes hypothetical fee impact on architectural coating manufacturers, if they were assessed the same annual emissions fees as point sources, pursuant to Rule 301. The table is broken into the top ten companies by sales and all other companies combined. The fees have been calculated using data submitted by coating manufacturers as part of the 2001 CARB Survey, adjusted for the AQMD, and 2005-06 Rule 301 emission fee rates. Similar to point sources, manufacturers with sales volumes causing emissions less than four tons per year would

be exempt from paying Table III emission fees, but would be assessed a flat annual emission fee [Refer to Rule 301 (e)(4) and (e)(5)]. Using the 2000 sales and emission data reported in the 2001 CARB Survey, 80 companies with sales volumes that cause total emissions of 78 tons per year would be subject to the flat fee provision. In cases where a parent company consists of a series of subsidiaries, the parent company would be subject to fees if the total VOC emissions from all of the subsidiaries were equal to 4 tons or greater per year.

As a part of the 2001 CARB Survey, 109 companies including subsidiaries, out of 189, reported sales of coatings that caused VOC emissions of 4 tons or greater per year.

Table 5 - Potential Impact of Current Regulation III Emission Fees

Manufacturer	2000 Sales (Gallons)	2000 Annual Emissions (tons/year)	Emission Fees/Year (R301 Table III 05-06)	Cost per Gallon
TOP TEN				
A	1.1 - 5.4 Million 74% of Total Sales	410	\$392,107	\$0.19 - \$0.43
B		274	\$251,086	
C		552	\$539,515	
D		864	\$863,335	
E		889	\$889,933	
F		1,586	\$1,613,053	
G		1,054	\$1,061,347	
H		1,707	\$1,738,668	
I		1,465	\$1,487,324	
J		2,065	\$2,111,374	
ALL OTHERS				
Others	11.1 Million 26% of Total Sales	7,168	\$5,700,885	\$0.49*
TOTAL	43.8 Million	18,034	\$16,647,527	

* Sales weighted average cost per gallon for all other companies. Small companies average a greater emission rate per gallon due to niche Rule 1113 specialty coating categories with a lower volume of sales but higher VOC limits.

Table 5 summarizes the fees that could be collected, if the AQMD assessed fees for architectural coatings in the same manner as emissions fees collected from point sources, would be almost 4 times more than the fees proposed under this draft proposal. However, point sources within the AQMD are affected by numerous AQMD programs, some of which are not applicable to area sources such as architectural coatings, and therefore are typically allocated higher fees.

EMISSIONS

To protect the public health and welfare, federal and state standards limit concentration levels of air contaminants in ambient air. An emission inventory of air pollutants and their sources is essential to identify the major contributors of air contaminants to provide an important foundation for improving air quality and public health. Emission inventories tell us what

quantities of various pollutants are being emitted to the air, where they are being emitted, who is emitting them, and when they are being emitted. Information necessary to produce an emission inventory for the Basin is collected by the AQMD and other governmental agencies, including CARB, California Department of Transportation, and Southern California Association of Governments. Each of these agencies is responsible for collecting data and developing methodologies required to generate a comprehensive emissions inventory. AQMD staff uses emissions data to develop control measures that improve air quality to attain federal and state air quality standards and to reduce air toxics exposures. Emission inventories are also inputs to air quality modeling used on a regional basis to develop attainment plans. Architectural coatings is among the largest source categories under AQMD's regulatory authority and a key component of its attainment strategy. Therefore, accurate characterization of emissions from this source category and maintaining of current and future emission reduction gains are vital to ensuring steady and timely progress toward attainment.

CARB SURVEYS

CARB has historically gathered architectural coatings emission data for the state of California through periodic manufacturer surveys. Currently, AQMD staff relies on such CARB surveys for sales and emission data. Architectural coatings surveys have been conducted every four to five years, with surveys conducted for coating sales in 1975, 1980, 1984, 1988, 1990, 1996, 2000 and 2004, as shown in Table 6. Staff has noticed that even though California's population has increased from approximately 21.5 million people in 1975 to over 36 million people in 2004 the sales volume has gone up due in part to more square footage per home and more frequent turnover in residences, but the overall emissions from architectural coatings have dropped due to lower regulated VOC limits as discussed in the 2007 Annual Status Report on Rule 1113. In order for staff to more accurately reflect the emission reductions achieved by Rule 1113 amendments to lower the VOC content of architectural coatings, annual distribution and sales of architectural coatings into or within the AQMD for use in the AQMD are essential. Typically, staff in the past has relied on three to six year old data for rule development and Air Quality Management Plans. The data provided by CARB is for all of California, and the AQMD portion of the sales and emissions are estimated based on population proration, which may not be a completely accurate assessment since the assumption is that the products reported are evenly distributed in the whole state. Considering that the AQMD has had more stringent VOC limits for numerous categories for years, this assumption creates a significant level of uncertainty for the architectural coating emission inventory, which happens to be one of the largest emission sources under AQMD regulatory authority. In developing its analysis for this proposal, staff initially relied on the "2005 Architectural Coatings Survey Draft Report" and updated the information with the "2005 Architectural Coatings Survey Final Report" to the extent the underlying new data was available.

Table 6 – California (CA) Sales and Emission Trends

Sales Year ¹	Quantity (gallons)	Emissions ²	
		tons/day	tons/year
1975 ³	48,206,000	113.0	41,245
1980 ³	60,489,756	136.7	49,896
1984	58,481,000	133.9	48,874
1988	77,875,598	115.2	42,048
1990	77,056,724	106.0	38,690
1996	87,495,639	99.4	36,281
2000	98,455,172	109.7	40,041
2004	110,407,721	94.7	34,566

¹ Sales and emission data from CARB 2005 Architectural Coatings Survey Final Report

² Data includes small containers; thinning and clean-up or additive emissions not included

³ Survey Data and Reports are not comprehensive

The 2001 CARB Survey identified more than 98 million gallons of architectural coatings sold in California in 2000, with emissions of 110 tons per day (tpd), without thinning and cleanup solvents. The most recent CARB 2005 Architectural Coatings Survey Final Report lists 2004 California sales of nearly 111 million gallons sold with emissions of 95 tpd, without thinning and cleanup solvents. Solvent-based coatings comprised 12% of the total coating sales, whereas 88% of the coatings were waterborne formulations. Since the survey data is for the whole state, the impact of the emissions to local APCDs is based on a percent of their population to the state population. Using 2006 U.S. Census estimated data, the population of the four counties within the AQMD is 16,976,264 or 46 percent of the State population of 36,457,549. With some of the high desert emission sources in Los Angeles, San Bernardino and Riverside Counties regulated by adjoining APCDs, the populations of the portions of the three counties within the jurisdiction of the AQMD and Orange County make up approximately 45 percent of the State population. Therefore, the AQMD VOC emission impact from architectural coatings was estimated to be approximately 49 tpd during 2000 and 43 tpd during 2004.

AIR QUALITY MANAGEMENT PLAN (AQMP)

The AQMD has been charged with developing and updating an AQMP with programs to attain federal and state air quality standards for non-attainment air pollutants such as ozone and PM₁₀. An effective AQMP relies on an adequate emission inventory. Area source inventories that rely on percentages of California inventories lack precision. At the regional level, the AQMD is responsible for stationary sources which are divided into two major subcategories, as well as certain other (non-vehicular) sources:

- 1) Point sources which are emission sources at one or more permitted facilities with a specific address such as a manufacturing facility with permitted equipment for producing architectural coatings, power plants, chemical plants, refineries, etc.
- 2) Area sources which consist of many small emission sources for which locations may not be specifically identified. This would include locations where architectural coatings are

applied such as at residential sites, commercial and institutional facilities, hospitals, industrial sites, military bases, etc.

Using data from the 2007 AQMP, Table 7 summarizes the annual average VOC emission inventory in tpd for architectural coatings compared to all stationary sources such as non-mobile fuel combustion, waste disposal, industrial processes, petroleum production and marketing, cleaning and surface coatings, and other types of solvent evaporation processes including pesticides/fertilizers, and asphalt paving/roofing. The future years are based on projections that account for scheduled reductions, as well as population adjustments.

Table 7 – VOC Emission Inventory (tpd)

SOURCE	2002	2005	2008	2010	2020
Architectural Coatings	49	39	23	23	26
Total Point & Area Sources*	192	166	143	145	158
Percent	25%	23%	16%	16%	16%

* Includes architectural coatings and excludes consumer products regulated by CARB

The emission data shows the application of architectural coatings to be a substantial portion of VOC emissions from both permitted point sources and non-permitted areawide sources.

While the proposed fee program for architectural coating does not establish new enforceable emission limits that would lead to additional reductions in the inventory, its emission fee component, however, is anticipated to provide an incentive for the manufacture, marketing and use of lower VOC coatings and this may result in further emission reductions from this source category.

RULE 1113 – ARCHITECTURAL COATINGS PROGRAM BACKGROUND

Architectural coatings are used to enhance the appearance of and to protect homes, office buildings, factories and other structures, and their appurtenances on a variety of substrates. The coatings are field applied primarily by brush, roller, or spray guns; and those applying those coatings include homeowners, painting contractors, or maintenance personnel. Volatile organic compound emissions from architectural coatings contribute to the formation of ozone and particulate matter (PM), both PM_{2.5} and PM₁₀ (particulate matter less than 2.5 and 10 microns in size), two pollutants that exceed the state and national ambient air quality standards. Ozone and PM are two of the AQMD’s most serious regional air quality problems and the most difficult to reduce to healthful levels. For the last 30 years the AQMD has regulated Rule 1113 - Architectural Coatings, which is the single largest non-mobile source of VOC emissions, other than consumer products that are regulated by CARB.

Rule 1113 – Architectural Coatings was first adopted in 1977, and has undergone numerous amendments since then. Because architectural substrates cannot be painted within an enclosure vented to an air pollution control device, the VOC emissions have historically been reduced by lowering the VOC content of the coatings. Staff has conducted numerous technology assessments of low-VOC products, with oversight from the Technical Advisory Committee

(TAC), an Ad Hoc group consisting of academia, CARB representatives, industry representatives and representatives from the National Paint and Coating Association (NPCA). Furthermore, staff regularly conducts field surveys of retail stores to evaluate the types and number of products with low-VOC limits. CARB provides survey data that includes the market penetration of architectural coatings that meet the low-VOC limits. The requirements for lower VOC limits have resulted in significant VOC reductions over the past ten years, as demonstrated by the CARB surveys and store shelf surveys, which indicate a broad range of VOCs for products in the same category; for example, the current VOC limit for flats is 100 g/l, but the actual VOC of available coatings ranges from 0 to 100 g/l. This is also the case for most coating categories in Rule 1113.

PROGRAM IMPLEMENTATION

The architectural coatings rule applies to any person who manufactures, supplies, sells, offers for sale, applies, or solicits the field application of architectural coatings for use in the AQMD. Since most of these sources are not required to obtain permits, it is difficult to know their exact number and locations. However, in 2004 the area source team conducted a Rule 1113 outreach/survey highlighting recent amendments and requesting product information from approximately 4,400 sources including painting contractors, coating distributors, coating retail stores, paint manufacturers and architects/specifiers. The sources for the survey were found through a yellow page web-search and did not include all the construction sites where architectural coatings were being applied throughout the AQMD. The Contractors State License Board in late 2006 listed 17,816 active licenses and 2,632 inactive licenses for the state under category C-33 – Paint Contractors Licenses. Assuming the AQMD demographically contains 45 to 46% of California’s population, approximately 9,000 to 10,000 paint contractors along with the homeowner or “do-it-yourself painter” are estimated to buy 60 million gallons annually (2004 sales grown by 3% per year out to 2010) of architectural coatings in the AQMD by 2010. The CARB 2005 Architectural Coatings Survey Final Report shows over 12,000 individual products and product lines, with an estimated total number of coatings estimated to be 18,000. The 2005 survey also cites one industry source as indicating that professional paint contractors accounted for almost 70% of the architectural coating sales in 2000 for the Western United States¹. Therefore, staff conservatively estimates the total number of sources to be 15,000 scattered over the 10,743 square miles of the AQMD portions of Los Angeles, Riverside, and San Bernardino Counties, and all of Orange County. It is further assumed that the number of users and locations are distributed within this area based on population density.

The current Rule 1113 Program includes staff assigned to inspections, planning and rule development, laboratory services, legal, administrative, and monitoring and analysis as well as support personnel.

The Area Source Compliance Staff conducts Rule 1113 inspections including investigating and resolving complaints, obtaining and analyzing evidence to determine the date of onset, cause, and extent of violations, which may involve issuing and resolving Notices to Comply and

¹ Scott Detivaux and Chuck Bangert, “Regional Variation in the Architectural Coatings Market – It Is Not One Market!”, Paint & Coatings Industry, September 2001.

Notices of Violations and participating in Hearing Board relief. Compliance staff also helps to develop, conduct and analyze architectural coating surveys; maintain annual reports; help conduct Averaging Compliance Option audits; as well as aid in technology assessments for rule development. Currently, only one inspector is allocated to conducting compliance activities for this large source of VOC emissions, with an inadequate number of inspection stops to determine a statistically supported compliance rate. A majority of the current level of compliance review is focused on manufacturers and other retail outlets that involve purchase and VOC testing of the coatings offered for sale, with minimal focus on end-user inspections thus testing the compliance of manufacturers with Rule 1113. Due to the phased-in approach for collecting fees for architectural coatings, the inspection program will also be phased-in.

The Planning and Rule Development staff coordinates SIP related activities such as rule development; maintaining and updating the emissions inventories for sources incorporated into the SIP; conducting rule technology assessments, conducting Averaging Compliance Option audits; soliciting public input through meetings and workshops, testing and analyzing products; and evaluating cost-effectiveness.

Laboratory Services staff provides support by analyzing the VOC content of architectural coatings for rule compliance and technology assessments, as well as supporting the development and evaluation of test methods for VOC analysis.

Legal and Administrative staff provide support for rule development, SIP submittals, AQMP updates, and compliance issues.

PROGRAM COSTS

The following sections discuss the current program costs, including details on salaries with benefits, overhead costs, and the fair share of emissions fees supported (EFS) program costs as well as costs that are apportioned among all AQMD programs. Furthermore, the proposed program costs and the need for an enhanced compliance program to be able to statistically support compliance rates are also included. All costs are projected to 2009-10.

CURRENT PROGRAM COST

In order to determine the cost of the current Rule 1113 Program, costs are segregated into three categories: a) staff costs, b) share of the AQMD overhead costs and c) share of the EFS program costs, with all three costs projected to 2009-10, which is about the same time-frame when the proposed fees would first be assessed.

1) Projected 2009-10 Hourly Rate with Benefits:

Table 8 summarizes the Current Program Cost, including specific staff positions, percent of time each is currently associated with the Rule 1113 Program, their hourly rate with benefits, and annual total costs. The table also summarizes the overhead costs and the share of emission fee supported program costs, discussed below, attributed to emissions from architectural coatings.

Table 8 – Current Program Cost Projected to 2009-10

Position	Activity ¹	Staff	% of time	Time (Hrs/Year)	Hourly Rate with Benefits	Annual Cost
Office Assistant	C/RD/TA	1	10.0%	208	\$27	\$ 5,649
AQ Inspector II	C/RD/TA	1	100.0%	2,080	\$50	104,098
AQ Inspector III	A/C/RD/TA	1	33.0%	686	\$55	37,576
AQ Chemist	C/TA	3	100.0%	6,240	\$59	368,260
Sr AQ Chemist	C/RD/TA	1	20.0%	416	\$64	26,659
Principal AQ Chemist	C/RD/TA	1	20.0%	416	\$76	31,467
AQ Specialist	A/C/RD/TA	2	100.0%	4,160	\$63	260,078
Senior Staff Specialist	A/C/RD/TA	1	25.0%	520	\$67	34,987
Program Supervisor	C/RD	1	40.0%	832	\$76	62,933
P&R Manager	C/RD/TA	2	10.0%	416	\$87	36,396
Sr Deputy District Counsel	C/LR/RD/TA	1	33.0%	686	\$90	61,856
Sr Deputy District Counsel	LR/RD/TA	1	5.0%	104	\$90	9,372
Assistant DEO	C/AER/RD/TA	1	5.0%	104	\$100	10,399
Total				16,869		\$ 1,049,729
Total Number of Full Time Equivalent (FTE) Positions				8.11		
FTE hours per year				2,080		
					Overhead Subtotal	503,850
					Share of EFS Programs Subtotal	884,623
Total Current Direct Rule 1113 Program Cost						\$ 2,438,202

¹ A - Audit (Averaging Compliance Option)
AER – Annual Emissions Reports
C – Compliance
LR – Legal Review
RD - Rule Development
TA - Technology Assessment

The percent of time for each staff member was determined by the responsible supervisors based on their knowledge of the staff time spent on Rule 1113 Program activities. The AQMD did not have a work program code specific to architectural coatings work at the time staff identified the FTEs spent on architectural coatings. However, the Board Resolution for rule adoption directs staff to implement specific work program codes, including identifying work spent on end-users, so the AQMD will have more precise labor tracking in the future. The Board Resolution also directs staff to adjust fees as needed or even pay refunds, based on information developed in the future. The projected 2009-10 hourly rate with benefits includes a benefit rate of 32.68% and is determined by dividing the projected cost of the AQMD-wide staff benefit package (\$24,219,370) by the projected total staff salaries (\$74,110,870). The benefit rate of 32.68% is then multiplied times the hourly rate for each staff position. The total cost, including hourly rate with benefits for the current staff working on the Rule 1113 Program, equals \$1,049,729.

2) Projected 2009-10 Overhead Cost:

The overhead cost projected for 2009-10 is obtained by dividing both the projected General Agency Support expenditure component (\$21,022,185) and the projected Operational Support component (\$29,486,756) by the number of full time equivalent (FTE) positions of 813 (excludes additional Rule 1113 positions not currently funded) to determine the cost for each FTE (\$62,127). This amount is then multiplied by the number of FTEs in the Rule 1113 Program. The total projected overhead cost for the current staff working on the Rule 1113 Program is \$503,850. Overhead costs are currently allocated over the entire AQMD work program based on FTEs, and this method has been used to allocate projected 2009-10 costs.

- General Agency Support consists of AQMD-wide expenditures. Examples are building debt services, utilities, insurance, security, housekeeping, building and equipment maintenance, and rents and leases. This category is also known as “District General” in the budget. Since District General expenditures are incurred in support of the entire AQMD, they are allocated to all work program lines based on FTEs (\$25,858 per FTE). These costs can be found in Volume I of the Draft Budget & Draft Work Program, under the “District General” tab.
- Operational Support consists of Division-specific expenditures such as administrative/office/management activities and AQMD-wide expenditures that support the entire AQMD. Examples are finance, human resources, information management, Executive Office, Governing Board, and legislative activities. The Division-specific expenditures are allocated within a particular Division based on the FTEs within that Division (\$7,568 per FTE). The AQMD-wide expenditures are allocated across all work program lines based on FTEs since the nature of the Operational Support expenditures benefit all the Divisions within the AQMD (\$28,701 per FTE). Detailed descriptions of each of these work program activity lines, which are allocated over the entire work program, are found in Volume II of the Draft Budget & Draft Work Program, which are incorporated by reference herein.

3) Projected 2009-10 Emissions Fees Supported (EFS) Program Cost:

The AQMD has traditionally used emissions-based operating fees to pay for a portion of its programs in the areas of planning, rule development, air monitoring, and outreach activities. These are the same types of costs which the California Court of Appeals has held can properly be supported by emissions-based fees. The Court has upheld using emissions-based fees to support “indirect” costs, i.e., those costs that are related to the overall program but which cannot be directly attributed to any specific permit activity. (San Diego Gas & Electric Co. v San Diego County APCD (1988) 203Cal.App.3d 1132, 1136; 250 Cal Rptr 420, 422). There are five non-attainment (criteria) pollutants for which fees are charged based on reported annual emissions:

- Volatile Organic Compounds (VOC),
- Oxides of Nitrogen (NOx),
- Oxides of Sulfur (SOx),

- Carbon Monoxide (CO), and
- Particulate Matter (PM).

A detailed description of the method of allocating FTEs to work program lines, allocating costs to different revenue categories, and the total of emissions fee supported costs is found in Appendix A. These include programs which are related to emissions, but not to any particular source category, such as air monitoring, the Multiple Air Toxics Study, etc. Once the total costs from emissions fee supported programs was identified, staff subtracted those emissions fee supported costs which are exclusively related to permitted sources, and therefore not properly supported by architectural coatings emissions fees. An example is “Rulemaking/RECLAIM”.

Next, staff determined the share of the remaining emissions fee supported costs attributable to VOC emissions in relation to total emissions. Staff then subtracted the costs of the current architectural coatings program from that total, on the assumption that most of these costs are currently being supported by emissions fees, but in the future will be supported by architectural coatings fees. To leave these costs in the emissions fee total might double-count these costs. (This approach is conservative, and minimizes total emissions fees costs to which architectural coatings fees will contribute, because some of the costs of architectural coatings programs are currently being supported by “other” revenues, and thus need not be subtracted from emissions fees.)

Finally, staff determined the share of VOC emissions that are contributed by architectural coatings in relation to total VOC emissions, which represents the fair share of emissions fee supported programs which are attributable to architectural coatings and will be paid by the architectural coatings emissions fees. To obtain the cost per ton for the architectural coatings emissions fee, the total costs derived above attributable to architectural coatings was divided by the total tons of annual emissions from architectural coatings.

Table 9 shows annual emissions reported by point sources and their projected emissions out to fiscal year 2009-10.

Table 9 – Reported and Projected Annual Emissions

Criteria Pollutant	Fiscal Years								A Arch Coating & Solvent Emissions Included ³
	Annual Emission Report ¹ (tpd)				Projected Emissions ² (tpd)				
	01-02	02-03	03-04	04-05	06-07	07-08	08-09	09-10	
VOC	50	50	43	40	42	41	40	39	70
NO _x	55	41	40	37	44	42	40	39	39
SO _x	23	20	18	17	14	14	14	14	14
CO	69	55	55	49	57	57	57	57	57
PM	14	13	12	13	17	17	17	17	17
Total								166	197

¹ Actual Reported Emissions

² Projected NO_x and SO_x emissions for RECLAIM facilities includes allocated emissions since the actual data is not yet available.

³ Excludes emissions associated from facilities with less than four tons per year of emissions.

The 2007 AQMP projects architectural coatings emission inventory for 2010 to be 23.13 tpd and the cleaning and coatings non-permitted degreasing emission inventory for 2010 to be 7.56 tpd. Both the architectural coatings inventory and the non-permitted degreasing inventory have been added to the annual emissions reported VOC inventory in Table 9, column A. The following shows how staff derived the total VOC share and then the architectural coatings share of the total projected annual reported emission inventory:

$$\text{Total VOC Share is } 70 \div 197 = 35.41\%$$

This is calculated by dividing the total VOC inventory, which includes the VOC emissions from architectural coatings and the cleaning and coatings non-permitted degreasing (70 tpd), by the total emissions of all criteria pollutants (197), as summarized in Table 9 above.

$$\text{Architectural Coatings Share is } 23 \div 70 = 33.24\%$$

(It is noted that numbers may not exactly match due to rounding)

This is calculated by dividing the architectural coatings inventory (23 tpd) by the total VOC inventory (70 tpd), which includes the VOC emissions from architectural coatings and the cleaning and coatings non-permitted degreasing

Appendix A includes a detailed explanation of the “Emissions Fees Supported Costs” as well as Table 1 that projects the Fiscal Year 2009-10 cost of EFS programs to be supported by emissions fees at \$24,039,475. The total projected cost of EFS programs not exclusively related to permitted sources is estimated to be \$11,903,135. The VOC share is projected to be 35.41% or \$4,214,900 of those EFS programs not exclusively related to permitted sources. Since the AQMD is already incurring the salary, benefits and overhead cost of \$1,553,579 for the current Rule 1113 Program, that amount is subtracted from VOCs share of the EFS programs cost prior to calculating architectural coatings share which is \$884,623. This is summarized in Table 10.

Table 10 - Summary of Appendix A, Table 1

Total Projected 2009-10 EFS Program Cost	\$24,039,475
Less Cost of EFS Programs Exclusively Related to Permitted Sources	(12,136,340)
Cost of EFS Programs Not Exclusively Related to Permitted Sources ¹	A \$11,903,135

VOC Share of Cost (35.41% of A)	\$4,214,900
Less Cost of the Current Rule 1113 Program	(1,553,579)
Total	B \$2,661,321

Architectural Coatings Share of Total Cost (33.24% of B)	\$884,623
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¹ Excludes costs associated with billing and posting payments for facilities with less than four tons per year of emissions

PROPOSED PROGRAM

With an estimated 15,000 sources including registered contractors and architectural coating retail stores (does not include architects, specifiers, non-registered contractors, active painting sites and

the do-it-yourself market) regulated by Rule 1113, staff is proposing to continue the current program with an increase in staff including ~~five~~four (54) additional inspectors, three (3) chemists to analyze coatings in a timely manner and one (1) Air Quality (AQ) Specialist to be added to the Annual Emissions Reporting Program. One additional inspector FTE will be funded from other resources and will focus on end-user compliance checks, including thinning practices. The remaining inspector FTEs will focus on manufacturer-related compliance issues. It is anticipated that a portion of a chemist FTE will also focus on end-user samples. End-users found in violation pay for their own sample analysis under Rule 304(e). Work associated with end-users not found in violation will be included within the one FTE supported by other resources referred to above or otherwise supported by other AQMD resources, not the fees established by Proposed Rule 314.

Inspectors

It is estimated that the five new inspectors and the current Rule 1113 inspector will each conduct on average ten field inspections per week, resulting in approximately 3,000 inspections per year (Refer to the response to comment on page 46 explaining why 3,000 inspections are needed per year). Due to the proposed phased-in approach of the fee collection, the field inspections will continue to be focused on ~~divided between~~ architectural coating retail outlets, with an anticipated increase of ~~and job sites~~ inspections in 2011 using the enhanced compliance resources. One additional inspector FTE will be funded from other resources to focus on end-user compliance checks, including the review of thinning practices. Retail outlets will include architectural coatings manufacturer-owned stores, lumber yards, tile and stone outlets, independent paint stores, hardware stores, big box hardware stores and retail stores that sell architectural coatings. Contractor job sites will include residential sites such as apartments, condominiums and housing development projects; commercial sites such as malls, strip malls, educational institutions, hospitals; and industrial sites such as refineries, public utilities, highway construction, and industrial complexes. These inspections mainly include a thorough review of paint containers, acquisition of paint samples from unopened containers, as well as to some degree, sampling paint from the spray gun or tray to assess any thinning with a solvent that may be done by the end-user. However, collection of a sample from the spray gun or tray is infrequent since it is often very difficult for an inspector to time the inspection during actual painting. Furthermore, with consideration for the significant reduction in solvent-based coatings volume, estimated to be less than 5% in 2010, the likelihood of locating the use of solvent-based coatings is expected to lessen. To determine compliance with Rule 1113 inspectors will be assigned to randomly collect five percent of the retail samples for VOC analysis and 10% of the coatings in the averaging provision option of the rule. At job sites, inspectors will collect all solvent based coatings (as supplied and as applied) for analysis and randomly sample waterborne coatings. Two CARB reports entitled “Improvement of Emission Inventories for Industrial Coatings and Thinning and Cleanup Solvents” found that, in general, commercial painters and households preferred the use of non-exempt mineral spirits and lacquer thinners over exempt acetone for the thinning of architectural coatings which could raise the VOC content of the coatings above the Rule 1113 VOC limits. Staff has conducted thinning studies in the past and found that when thinned, coatings are not typically thinned in excess of the applicable VOC limits. It is important for compliance staff to re-evaluate the extent of thinning that may occur. However, this continues to represent a *de minimis* number of the compliance issues found, with the majority of compliance notices being issued to manufacturers and distributors for supplying non-compliant coatings.

This trend is expected to continue due to the low-VOC limits for most categories under Rule 1113 – Architectural Coatings and the predominant volume of waterborne coatings, estimated to be over 95% by 2010. Accordingly staff estimates that less than one FTE of time will be spent on end-user issues. Thus, one FTE of time will be supported by other AQMD resources, and the equivalent dollars will not be collected from the architectural coating fees. Staff anticipates that approximately 750 to 800 architectural coating samples will be collected each year for analysis of for their VOC content. In addition, these inspectors will investigate and resolve Rule 1113 complaints, obtain and analyze evidence which may involve issuing and resolving Notices to Comply and Notices of Violations and participate in Hearing Board relief. They will also help to develop, conduct and analyze architectural coating surveys; maintain annual reports; help conduct Averaging Compliance Option audits; as well as aid in technology assessments for rule development. The proposed enhanced enforcement presence, coupled with the enhanced product analysis will ensure that compliance with Rule 1113 is maintained high with high statistical confidence levels, safeguarding current and future emission reduction benefits from this source category.

Chemists

AQMD chemists perform VOC analysis by U.S. EPA Reference Test Method 24 on coatings samples, as well as a more detailed and time intensive analysis for the low VOC coatings, for which Method 24 could result in high errors. Assuming that approximately 750-800 Rule 1113 samples will be collected per year, and most are below 100 g/l VOC, the more detailed direct injection analysis will likely be applied. This analysis, while still undergoing revisions toward greater efficiency, will require gravimetric screening and gas chromatographic- mass spectrometric-flame ionization analysis. At maximum efficiency and automation, this analysis will require at least two and a half days of staff time per sample, or approximately 1000 staff-days per year for an anticipated 400 samples. This translates to an estimated five full-time Chemists for Rule 1113 analysis. The remaining 400 samples, if analyzed by the simpler gravimetric method, will require one full-time Chemist per year. Certain commenter's suggested that two and a half days per sample is unjustified. The following explains why such time is needed.

The analysis of coatings for compliance purposes requires rigorous quality control (QC). The results from the AQMD laboratory must be legally defensible in order for our Rules to be enforceable. As a result, the gas chromatographic- mass spectrometric-flame ionization analysis performed at the AQMD contains more thorough QC requirements than are currently included in the most widely accepted method - ASTM D6886 *Standard Test Method for Speciation of the Volatile Organic Compounds in Low VOC content Waterborne Air-Dry Coatings by Gas Chromatography*.

The AQMD chemists, unlike manufacturers who are simply confirming the VOC content of their formulations, have no foreknowledge of the chemical composition of coatings that the laboratory receives. A considerable amount of time and effort is spent identifying all of the VOCs that are detected in the diverse coatings that the AQMD laboratory analyzes. ASTM Method D6886 lists sixty six possible VOCs in waterborne air-dry coatings; the AQMD laboratory has detected each of these as well as others that are not listed. Manufacturers frequently introduce new coalescing aides into the market place, making the identification of VOCs present an ongoing effort. In

addition, ASTM Method D6886 only suggests preparing standards for the 5 most common VOCs, the AQMD laboratory identifies and quantitates all VOCs that are detected. Further, the AQMD laboratory performs a more rigorous calibration. ASTM Method D6886 only requires a one point calibration, whereas the AQMD laboratory performs a five point calibration for each VOC identified in the coating. And lastly, the other critical step in the QC process is reviewing the data. Each sample analysis undergoes three levels of review to ensure that the results are accurate and defensible.

AQMD staff feels strongly that the VOC testing remains in-house to protect the quality of the results. The AQMD laboratory has worked for decades with consulting, academic, and production laboratories in the realm of paint and coatings testing, with varied results. Problems have been encountered with methods as simple as EPA Reference Method 24, which is a relatively straightforward, non-instrumented laboratory procedure. For example, during a technology assessment for Rule 1113 the performance testing laboratory conducted VOC analysis for the coatings as part of the project. The results from ten of thirty-one coatings that were analyzed did not agree with the manufacturers published VOC values. The AQMD laboratory analyzed the VOC content of those ten coatings with drastically different results from those obtained by the performance testing laboratory as shown in Table 11. The errors from the commercial laboratory were the result of a combination of issues, including calculation errors and mismeasured values.

Table 11 – Comparison of VOC analysis

Published VOC Content (g/l)	Commercial laboratory VOC Content (g/l)	SCAQMD laboratory VOC Content (g/L)	Commercial laboratory Percent Water	SCAQMD laboratory Percent Water
145	308	150	41.73 %	44.45 %
150	308	150	35.63 %	37.96 %
282	111 ¹	270	N/A	0.03 %
120	290 ²	120	35.04 %	41.35 %
118	7	100	47.36 %	43.58 %
250 (max)	106	50	39.0 %	40.84 %
118	212	99	36.13 %	42.84 %
141	227	160	41.02 %	44.19 %
15	261	330	74.8 %	73.98 %
0	315	260	75.6 %	77.33 %

1. Based on the values provided for % Non-Volatile, density, and % water, the VOC content = 270 g/L.
2. Based on the values provided for % Non-Volatile, density, and % water, the VOC content = 220 g/L.

The calculation of the VOC of coating magnifies the error in the water analysis, especially for high-water, low-VOC coatings. The formula subtracts the water from both the numerator and the denominator which compounds any error in the measurements. In addition, the calculation of the denominator is especially sensitive to error because subtracting the large water value results in a small denominator with some degree of uncertainty. Dividing by this small number yields a large number with an increased degree of uncertainty.

As the analysis becomes more complicated, the need for experience and an extensive QA/QC program becomes even more critical. “Exempts” analyses conducted in parallel between AQMD

and two other laboratories have led to similar results. The AQMD uncovered errors due to use of alternate procedures outside of the method's applicability, calculation errors, and poor sample mixing.

Because of the specialized nature of paint and coating testing, there is neither a reservoir of experienced laboratories, nor is there a state or national certification program for VOC testing to ensure the quality of the analysis. In point of fact, AQMD has not located any commercial laboratory that currently performs ASTM D6886 or similar methods. One lab that staff recently contacted said they perform Method 24 testing but do not perform ASTM D6886; however if they were to conduct the testing, it would take approximately 5 hours per sample at a cost of \$1,500 each, which roughly equates to the cost estimates for the AQMD chemists. Staff also calculated that 800 samples analyzed at \$1,500 each result in an overall greater cost (\$1.2 million) than the chemists cost indicated in the proposed program (\$1.1 million which includes \$736,520 for 6 chemists plus overhead of approximately \$62,000 per chemist). As discussed above on page 20, laboratory costs related to end-users will be funded either by the end-users themselves pursuant to Rule 304(e), or included within the one FTE to be funded from other AQMD revenues.

Air Quality (AQ) Specialist

The AQ Specialist responsibilities will include assigning and tracking manufacturers ID numbers, verification of manufacturers ID numbers to allow manufacturers access to the web-based reporting system, tracking annual quantity and emissions reports, conducting quality control for validation and completion of the annual reports, tracking reported emissions and updating emissions inventories, and working with Finance for underpayment of fees or refunds. Currently the AQMD receives between 2,200 and 2,400 annual emission reports per year from point sources. With a staff of five persons, 265 audits were conducted in 2006 and 300 audits in 2007 with an average of 53 to 60 audits per person each year. Staff anticipates receiving approximately 200 proposed Annual Quantity and Emissions Reports, of which a subset will be audited each year.

Compliance Program

Based on the number of sources estimated for architectural coatings, staff has compared other programs under the AQMD jurisdiction, based on number of sources and total emissions, to analyze compliance activity, compliance issues, and estimated emissions from non-compliance issues. Rule 1113 has been for the most part a self-inspection program with a few dedicated inspections and more recently, due to the change in VOC limits, one inspector assigned to the Rule 1113 program. The following summarizes the justification for a need to enhance the current compliance program for architectural coatings:

- 1) The numbers of Rule 1113 inspections are insufficient to determine compliance as shown in Table 12, which compares compliance activities for Rule 1113 with Rule 461 – Gasoline Transfer and Dispensing. AQMD believes that without in-field enforcement, compliance cannot be assured as indicated by experiences with Rule 461 and Rule 403 below. Rule 461 sources (service stations) are permitted units which emit less daily VOC emissions than Rule 1113, but the program has a dedicated compliance staff of 18

inspectors. The 1995 amendment of Rule 461 incorporated a self-compliance program that was implemented on July 1, 1996. The program included requirements to complete an AQMD approved training program and conduct daily inspection/maintenance, conduct a periodic compliance audit by an AQMD-certified auditor, and maintain daily and periodic inspection forms and repair logs. To support the self-compliance program, the AQMD staff provided both periodic and daily inspection training to those who requested it. In 1996 and 1997, the AQMD conducted several audits to assess compliance with Rule 461. The audit results revealed poor compliance rates and seriously compromised program effectiveness that resulted in significant levels of VOCs remaining uncontrolled and released to the atmosphere. Ninety percent of the gasoline dispensing facilities (GDFs) were out of compliance with the rule requirements resulting in 81% receiving Notices of Violations and 52% receiving Notices to Comply, with excess VOC emissions estimated to be between 6.8 and 18.9 tpd. In 1998, AQMD staff inspected 2,987 retail GDFs and found only 23% of the inspected facilities were operating in compliance with R461 requirements.

Rule 463 – Organic Liquid Storage became the first rule selected by the AQMD in 1989 to test a new enforcement tool, self-inspection and compliance reporting for above-ground stationary tanks that store organic liquids such as crude oil, gasoline, jet fuel, and various other petroleum products. Before 1989, the AQMD conducted compliance inspections of regulated industries with as much frequency as resources would allow, with priority given to significant emission sources. However, the increasing complexity and diversity of regulations adopted to achieve emission reductions necessitated the development of innovative approaches to enforcement techniques. New, proactive enforcement methods were evaluated to determine the best approach to effective enforcement, maximum emission reductions, and the efficient use of field enforcement staff. Between January 1, 1990 and December 31, 1990, twelve companies, including BP ARCO (then under the name of ARCO), volunteered 513 floating roof tanks for a Rule 463 Compliance Reporting Program. The program was very successful. Approximately 1,050 inspections were conducted on 492 floating tank roofs. Tank inspection frequency increased from once per year to twice per year. 134 company inspectors were trained and certified. The company-conducted inspection compliance rates rose from a low of 69.8% during the first month of the program to a 90% compliance level for the final six months. AQMD-conducted audit and random inspections yielded an increase in the compliance level from 86% during the first six months to an average of 97% compliance for the last six months of the program. Based on this success, the AQMD amended Rule 463 in 1994 and made all tanks of certain types subject to the program. Between 1994 and 2002, the industry eliminated its in-house inspectors and chose to hire outside contractors to perform the inspections and to prepare the reports. In early 2002, the AQMD audited the reports submitted by BP ARCO and found that the reports submitted in the 1999 to 2002 timeframe showed no violations of Rule 463 requirements and virtually no repairs. Following this report audit in June of 2002, the AQMD sent a properly trained and equipped team of inspectors to perform a comprehensive inspection of floating roof tanks at BP ARCO. BP ARCO, despite repeated demands for entry, refused to allow AQMD staff to inspect the tanks. As a result of BP ARCO's refusal to allow the inspection, the AQMD obtained an inspection warrant authorizing immediate access to the tanks by AQMD inspectors. On June 24, 2002, the AQMD with the assistance of the Los Angeles

County Sheriff served the warrant to BP ARCO. After several days of inspection, the AQMD found less than 20% of tanks subject to Rule 463 were in compliance. Many of these tanks had multiple counts of noncompliance. As a result, 12 Notices of Violation were issued to BP ARCO, documenting thousands of counts of noncompliance. The AQMD is obligated under the Health and Safety Code to enforce all air pollution violations observed by AQMD inspectors. Enforcement includes the assessment of civil penalties as authorized under the Health and Safety Code. The violations resulted in penalties of \$103 million.

Comparisons are also made in Table 12 with point source coating rules regulating emissions from permitted equipment for metal coatings (Rule 1107), wood coatings (Rule 1136), automotive coatings (Rule 1151); and solvent cleaning (Rule 1171) which is another area source rule regulating non-permitted sources. Architectural Coatings Rule 1113 had the lowest percent inspection rate due to the limited resources. As set forth in responses to comments, page 50, AQMD believes 3,000 annual inspections are needed to obtain a statistically supportable compliance rate.

- 2) As a part of Rule 1113 Averaging Compliance Option Plan audits, sample collection and VOC testing of averaged products is imperative to have a higher level of confidence in the effectiveness of the program. The program allows a manufacturer to sell some high-VOC products by offsetting their excess emissions by selling a lot of ultra-low-VOC products. At the end of a compliance period the emissions should be neutral as if the manufacturer had sold products that meet the VOC limits in Rule 1113 Table of Standards. Without additional compliance staff to collect samples of coatings that are included in the Averaging Plans, staff will continue to rely only on paper audits which will not meet the needs of this regulatory program. AQMD experience with programs such as RECLAIM demonstrates that audits based solely on information submitted by the regulated industry are not sufficient to ensure compliance.
- 3) The scheduled VOC reductions in numerous architectural coatings categories will require additional compliance activity to ensure Rule 1113 emissions from low VOC products are real, permanent and quantifiable; and therefore additional staff is needed to conduct inspections and collect samples, as well as laboratory staff for sample analysis. Based on other targeted inspection programs, staff has determined that a lack of routine inspections may result in decreased compliance, as found during Rule 1171 targeted compliance inspections conducted in 2007. This 2007 follow-up targeted inspection program indicated a 15% decrease in compliance rates, from 91% in 2001 to 76% in 2007.

Primarily due to large volume of products sold, non-compliant architectural coating products can result in significant excess emissions. During a targeted inspection program in 2005 and 2006, Rule 1113 inspections and subsequent identification of non-compliance data have shown that just six coating products manufactured by five companies emitted 293 tons of excess emissions over approximately one year, which equates to 0.8 tpd. The coating VOC content expressed in grams per liter for the six coatings is listed first, with the coating VOC in effect at the time of the violations as the second number: 760-400; 735-250; 350-200; 670-350; 395-100; and 725-400. These six coatings resulted in 5 of 16 Notices of Violations issued for non-compliant coatings in

2005-06. With the limited number of inspections and only one full-time inspector, staff is not able at this time to make an educated guess as to the compliance rate for the Architectural Coatings Program. However, NOV's issued since November of 2003 have been to distributors and manufacturers, with none issued to end users. Typically, when our Inspectors visit construction sites, although they may not see painting in progress, they are able to issue NTC's to end users and where circumstantial evidence indicates the receipt of and application of non-compliant products they have on occasion, issued NOV's to distributors and manufacturers in those cases. The majority of the NOV's are based on samples purchased directly at points of sales where both the distributor and manufacturer have been found culpable.

- 4) That is precisely why additional compliance and laboratory staff are proposed for the Architectural Coatings Program. For the most part, the Architectural Coatings Program has allowed for ~~a~~ self-inspection, and during the targeted inspection program, non-compliance issues were found that resulted in significant VOC emissions. With the changes in the VOC limits of Rule 1113 over the last several years, it is imperative to have a strong compliance review to ensure that the emission reductions are real. In comparison to the excess VOC emissions from non-compliance with Rule 1113, recent rule making has targeted emission sources for less than one ton per day of emission reductions such as Rule 1173 for 0.57 tpd in 2002, Rule 1107 for 0.8 tpd in 2005, Rule 1113 for 0.69 tpd in 2006, and Rule 1173 for 0.4 tpd in 2007.

Table 12 – Compliance Inspections

Rule	Emissions ¹ (tpd)	No. of Facilities ²	Compliance Notices ³ 2005 and 2006			Percent Inspected
			Total NTC	Total NOV	Inspections	
Rule 461	17	5,000	1,922	862	3,675	74%
Rule 1107	3	1,265	59	6	922	73%
Rule 1136	1	780	98	18	950	122%
Rule 1151	6	1,730	104	17	1,826	106%
Rule 1113	23	15,000	7	16 ⁴	339	2%
Rule 1171	6	40,000	516	38	3,364	8%

¹ Emission data from 2007 AQMP for 2010

² Facility data obtained from staff reports

³ Compliance Notices include Notices to Comply & Notices Of Violation from AQMD CLASS Database

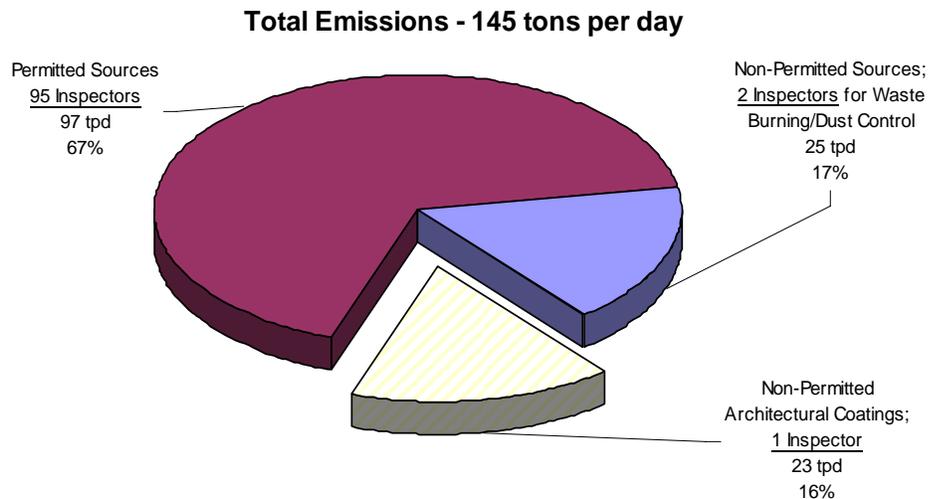
⁴ 7 of the 16 NOV's for Rule 1113 were to architectural coatings manufacturers. The NTC were written to manufacturers to provide sales and emission data.

The above table does not necessarily compare the compliance rates but demonstrates the limited number of inspections conducted for architectural coatings compared to other source categories. The listed number of inspectors dedicated to enforcing Rule 1113 does not lend itself to an adequate inspection rate and determination of a statistically supportable compliance rate for this source category, which happens to be the largest VOC emissions source category under AQMD's regulatory authority. Staff statistically determined using a 95% confidence level that a minimum of 3,000 inspections per year

for three to four years may provide a statistically supportable compliance rate for the estimated 15,000 sources subject to Rule 1113, ensuring current and future emission reduction benefits are maintained. This small number of inspected sources shown in Table 12, also supports the notion that the industry conducts self-compliance, but based on the lack of success of other self-compliance programs and further corroborated by the level of non-compliance found during a targeted inspection period, staff is proposing to enhance the compliance staff by allocating ~~three-two~~ inspectors for Los Angeles County and one for each of the other three counties to perform Rule 1113 inspections. Additionally, one inspector FTE will be allocated from other resources to focus on inspections of end-users, specifically to assess any thinning with a VOC that may be done by an end-user.

- 5) Figure 1 summarizes the VOC emissions in tpd emitted from permitted sources (revenue source) and non-permitted sources under AQMD’s regulatory authority and the assigned inspectors for each which also emphasizes the discrepancy between compliance resources dedicated to fee-paying point sources compared to non-fee-paying areawide sources. While the level of enforcement resources dedicated to permitted sources is necessary and appropriate due to the level of complexity associated with regulatory requirements and permit conditions, Figure 1 clearly amplifies the need for additional enforcement resources for architectural coatings due to their related contribution to the emissions inventory. Except for the audits associated with the Averaging Program, which can be very resource intensive, it is acknowledged that the level of enforcement complexities between permitted sources and architectural coatings may be quite dissimilar and enforcement resources may not have to be distributed proportionately to the emission inventory contribution. The statistical analysis described above indicates that the additional five inspectors will be adequate.

Figure 1 – Permitted vs. Non-Permitted Sources



PROPOSED PROGRAM COST

Table 13 summarizes the staff positions and the percent of time associated with the Rule 1113 Program, their hourly rate with benefits, their overhead costs and share of EFS program costs, for both the current and proposed enhanced program. The shaded rows represent AQMD staff positions (only one AQ Specialist position) including benefits and overhead that will be paid for by the proposed quantity based fee. The remaining positions will be funded by the emissions portion of the proposed fees.

Table 13 - Proposed Program Cost Projected to 2009-10

Position	Activity ¹	Staff	New Position	% of time	Time (Hrs/Year)	Hourly Rate with Benefits	Annual Cost
Sr. Office Assistant	C/F/RD/TA	1		55.0%	1,144	\$30	\$ 34,592
AQ Inspector II	C/RD/TA	1	54	100.0%	10,400 12,480	\$50	520,488 624,585
AQ Inspector III	C/A/F/RD/TA	1		33.0%	686	\$55	37,576
AQ Chemist	C/TA	3	3	100.0%	12,480	\$59	736,520
Sr AQ Chemist	C/RD/TA	1		100.0%	2,080	\$64	133,296
Principal Chemist	AQ C/RD/TA	1		25.0%	520	\$76	39,333
AQ Specialist	A/C/AER/F/RD/TA	2	1	100.0%	6,240	\$63	390,117
Senior Engineer	AQ A/AER/F	1		20.0%	416	\$69	28,608
Senior Specialist	Staff C/RD/TA	1		25.0%	520	\$67	34,987
Program Supervisor	A/C/AER/F/RD/TA	2		40.0%	1,664	\$76	125,866
Program Supervisor	C/RD	1		5.0%	104	\$76	7,867
P&R Manager	C/AER/F/RD/TA	2		10.0%	416	\$87	36,396
Sr Deputy District Counsel	C/LR/RD/TA	1		33.0%	686	\$90	61,856
Sr Deputy District Counsel	LR/RD/TA	1		5.0%	104	\$90	9,372
Assistant DEO	C/AER/F/RD/TA	1		5.0%	104	\$100	10,399
					39,645 37,565	Subtotal	\$2, 207,272 311,369
Total Number of Full Time Equivalent (FTE)					189.06		
FTE hours per year					2,080		
Overhead Rate							\$1,122,014 1,184,141
Share of EFS Programs Subtotal							884,623
Total Future Projected Rule 1113 Program Cost							\$4,213,909380,133

¹ A - Audit (Averaging Compliance Option)
AER – Annual Emissions Reports
C – Compliance
F - Fees
LR – Legal Review
RD - Rule Development
TA - Technology Assessment

One additional inspector FTE will be funded from other resources and will focus on end-user compliance checks. Therefore, the estimated cost of the proposed program has been reduced by the total cost of one inspector FTE, which is well above the estimated cost of conducting the end-user inspections to review of thinning practices and conduct VOC testing. As the enhanced program is fully implemented over the next three years, staff will separately track the inspection resources dedicated to compliance review of manufacturers and of end-users that may thin the supplied coatings with a VOC solvent.

Costs not included in the Proposed Rule 1113 Program are staff time that will be reallocated to receive the manufacturer's application for an AQMD issued manufactured ID number and time to maintain the database for tracking and auditing the architectural coatings sales and emission data. Additional costs not included are laboratory equipment and its maintenance, inspector vehicles and computers as well as material supply costs.

CEQA

The AQMD ~~is reviewing~~has reviewed the proposed project pursuant to State CEQA Guidelines §15002(k)(1) and §15273 – Statutory Exemption for Rates, Tolls, Fares and Charges, ~~and will prepare any appropriate CEQA document based on the evaluation.~~ A Notice of Exemption has been prepared in accordance with state CEQA Guidelines §15062 for the proposed project and will be filed with the county clerks immediately following the adoption of Proposed Rule 314. [Pub. Res. Code §21080\(b\)\(8\).](#)

SOCIO-ECONOMIC IMPACT ANALYSIS

Proposed Rule 314 does not result in direct emission changes. The economic impact of this rule on manufacturers of architectural coatings is estimated to be \$~~4.44.2~~ million. If the cost were fully passed onto end users of architectural coatings, the paint price might increase by \$~~0.075~~071 per gallon.

Staff used the latest sales and emissions data available from the CARB 2005 Survey to estimate the cost of the proposed fees for some of the approximately 200 companies that will be affected by the Proposed Rule 314 as summarized in Table 14. The top 10 manufacturers are those listed in the CARB 2005 Survey based on sales volume. In order to estimate the fee impact on the architectural coatings manufacturers by 2010, the 2004 sales volume was increased by 3% per year and the 2004 emissions were reduced by 46%, due to Rule 1113 amendments that reduced the VOC limits in 2005, 2006, 2007 and 2008.

Table 14 – Estimated Fee Impact

Manufacturers	2004 Sales Volume	2004 Annual Emissions (t/y)	2010 Estimated Annual Emission (t/y)	Estimated Fee
Top Ten	81%	237	128	\$ 101,217 <u>108,964</u>
		435	235	119,601 <u>126,483</u>
		393	212	132,357 <u>124,340</u>
		752	406	205,689 <u>195,110</u>
		943	509	317,070 <u>297,893</u>
		1,027	555	365,246 <u>342,366</u>
		1,535	830	452,496 <u>427,672</u>
		2,006	1,083	521,555 <u>496,046</u>
		1,576	851	529,963 <u>497,898</u>
		1,791	967	592,376 <u>556,930</u>
All Others	19%	4,888	2,640	1,091,184 <u>1,054,830</u>
Totals	100%	15,583	8,416 ¹	\$ 4.44 <u>4.2</u> Million

¹ Table 3 has projected emissions for 2010 of 8,469 tons per year, which is based on the AQMP; where as Table 14 projected emissions for 2010 of 8,416 tons per year are based on actual 2004 emissions adjusted to 2010.

A socioeconomic analysis was performed based on available information to determine the impacts of the staff proposal. Based on their 2004 sales in California in the 2005 CARB architectural coatings survey and their projected sales and emissions in 2010, the top 10 manufacturers of architectural coatings (four of them located in southern California) would each pay from a little over \$100,000 to ~~approximately less than~~ \$600,000 to the AQMD under the proposed rule. The payment ranges from 0.01 to 0.23 percent of their 2007 revenue and reflects an overall average of 0.03 percent of their 2007 revenue.²

Twenty-six of the manufacturers in the 2005 CARB survey are located or have manufacturing facilities in the AQMD. These companies are projected to pay \$15 to ~~close to less than~~ \$600,000 in 2010 under the proposed rule. Out of the 26 companies, 16 would pay under \$10,000, 6 between \$15,000 and \$24,000, and 4 between \$130,000 and \$600,000. Based on the revenue data from 21 out of the 26 manufacturers, the payment is 0.01 to 0.42 percent of their 2007 revenue and also reflects an overall average of 0.03 percent of their 2007 revenue.³ It is projected that the total payment by all the manufacturers selling architectural coatings to southern California is \$~~4.4~~4.2 million under the proposed rule.

²The revenue data came from <http://www.coatingsworld.com/articles/2007/07/2007-top-companies-report.php> and <http://www.hoovers.com/>.

³ Ibid.

MACROECONOMIC IMPACTS

The macroeconomic impact of PR 314 is examined via the REMI model. The model (version 9.0.3) is used to assess the total socioeconomic impacts of a policy change. The model links the economic activities in the counties of Los Angeles, Orange, Riverside, and San Bernardino. The REMI model for each county is comprised of a five block structure that includes (1) output and demand, (2) labor and capital, (3) population and labor force, (4) wages, prices and costs, and (5) market shares. These five blocks are interrelated. Within each county, producers are made up of 66 private non-farm industries, three government sectors, and a farm sector. Trade flows are captured between sectors and borders as well as across counties and the rest of U.S. Market shares of industries are dependent upon their product prices, access to production inputs, and local infrastructure. The demographic/migration component has 160 ages/gender/race/ethnicity cohorts and captures population changes in births, deaths, and migration.

The assessment herein is performed relative to a baseline economic growth trajectory in the four counties without PR 314. Direct effects of PR 314 have to be assessed and used as inputs to the REMI model in order for the model to assess the total (direct, secondary, and induced) impacts for all the actors in the four-county economy on an annual basis and across a user-defined horizon (2009 to 2020).

Assuming the entire PR 314 fee on architectural coatings will be passed on to end users, it is estimated that, at a maximum, the price of coatings will increase by 7.57.1¢ a gallon. Direct effects of PR 314 include the 7.57.1¢ per gallon increase multiplied by the total number of projected gallons from 2009 to 2020 (total revenue). The range of prices of a gallon of paint is from \$10 for contractor grade to \$100 for some high performance industrial maintenance coatings.

To determine the impacts of PR 314 on employment and other socioeconomic impacts, staff used 80 percent of the anticipated fee revenue as input to the analysis. This is because the net effect of the total revenue is only 80 percent of the proposed program cost (\$4.4-2 million) due to the fact that the fair share of emission fee supported programs attributed to architectural coatings is currently supported by fees from other programs at approximately 20 percent of the total revenue. The 80 percent of the total revenue is then distributed to professional paint contractors and do-it-yourself painters based on a split of 70:30 between them.⁴ The AQMD will use the revenue to support additional personnel necessary for enhancing compliance review and emission inventory for the architectural coatings program.

Table 15 shows the employment impact of PR 314 by industry for selected years on the four-county economy. On average, between 2009 and 2020, 52 jobs would be forgone. The government sector is projected to result in jobs created, while the remaining sectors would have jobs forgone. When compared to the total number of jobs in the economy (last column of Table 15), the projected job impacts of PR 314 are relatively small.

⁴S. Detivaux and C. Bangert, “Regional Variation in the Architectural Coatings Market—It Is Not One Market!” Paint and Coatings Industry, September 2001.

There are few impacts of PR 314 on the relative cost of production and delivered price for all the industries in the four-county area. The magnitude is less than one-hundredth of one percent. As a result, PR 314 is not expected to have impacts on competitiveness at the industry level.

Table 15 - Employment Impact by Industry

Industry	2010	2015	2020	Average Annual (2009-2020)	Average Annual Baseline (2009-2020)
Forestry, Fishing, Other	0	0	0	0	22,146
Mining	0	0	0	0	11,299
Utilities	0	0	0	0	29,496
Construction	-8	-12	-11	-10	581,380
Manufacturing	-4	-7	-9	-6	794,861
Wholesale Trade	-1	-4	-4	-3	451,728
Retail Trade	-5	-9	-9	-8	1,071,857
Transportation & Warehousing	-1	-2	-2	-1	330,718
Information	-1	-2	-3	-2	357,535
Finance, Insurance	-3	-5	-6	-5	486,265
Real Estate, Rental, Leasing	-6	-10	-11	-9	539,905
Profess, Tech Services	-3	-7	-9	-6	916,811
Management of Co., Enterprises	-1	-1	-1	-1	135,412
Admin., Waste Services	-2	-7	-8	-6	859,304
Educational Services	-1	-2	-3	-2	253,445
Health Care, Social Asst.	0	-2	-3	-1	1,054,191
Arts, Entertain., Recreation	-1	-2	-2	-2	313,057
Accom., Food Services	-4	-6	-7	-6	769,195
Other Services (excl Gov)	-6	-7	-8	-7	664,908
Government	25	25	26	25	1,138,686
Farm	0	0	0	0	7,139
Total	-22	-61	-71	-52	10,809,431

The sum of individual numbers in Columns two through five may not be the same as the total due to rounding.

DRAFT FINDINGS

Health and Safety Code Section 40727 requires that prior to adopting, amending or repealing a rule or regulation, the AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the hearing. The draft findings are as follows:

Necessity - The AQMD Governing Board has determined that a need exists to adopt Rule 314 – Fees for Architectural Coatings to recover the costs of AQMD programs related to these sources.

Authority - The AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40522.5, 40702, and 41508.

Clarity - The AQMD Governing Board has determined that Rule 314 – Fees for Architectural Coatings is written and displayed so that the meaning can be easily understood by persons directly affected.

Consistency - The AQMD Governing Board has determined that the adoption of Rule 314 – Fees for Architectural Coatings is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

Non-Duplication - The AQMD Governing Board has determined that the adoption of Rule 314 – Fees for Architectural Coatings do not impose the same requirement as any existing state or federal regulation, and the proposed amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, the AQMD.

Reference - In adopting the Rule, the AQMD Governing Board references the following statutes which the AQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001 (rules to achieve ambient air quality standards), 40440(a) (rules to carry out the Air Quality Management Plan), and 40522.5 (fees for area sources).

CONCLUSION AND RECOMMENDATION

Staff recommends that Rule 314 be adopted to recover the AQMD program cost of regulating architectural coatings and to provide staff with architectural coating quantity and emissions information for planning, compliance, and rule development.

REFERENCES

California Air Resources Board 2001 Architectural Coatings Survey, Final Report, October 2003.

California Air Resources Board 2005 Architectural Coatings Survey, Draft Report, September 2006.

California Air Resources Board 2005 Architectural Coatings Survey, Final Report, December 2007.

South Coast Air Quality Management District, Rule 222 – Filing Requirements for Specific Emission Sources Not Requiring a Written Permit Pursuant to Regulation II, March 2004.

South Coast Air Quality Management District, Rule 301 - Permitting and Associated Fees, June 2006.

South Coast Air Quality Management District, Final Staff Report for Proposed Amended Regulation III – Fees, June 2006.

South Coast Air Quality Management District, General Instruction Book for the 2005-2006 Annual Emissions Reporting Program.

South Coast Air Quality Management District, Proposed Modifications to the Draft 2007 Air Quality Management Plan, Appendix III, February 2007.

Fee Assessment Study, RPMG Peat Marwick, March 1990.

Fee Assessment Study, RPMG Peat Marwick, March 6, 1995.

Fee Structure Study, Thompson, Cobb, Bazilio & Associates, PC, March 1999.

South Coast Air Quality Management District, Staff Report, Proposed Amended Rule 461-Gasoline Transfer and Dispensing, April 14, 2000.

South Coast Air Quality Management District, Annual Status Report on Rule 1113 – Architectural Coatings, September 7, 2007.

South Coast Air Quality Management District, Draft Budget & Draft Work Program, Fiscal Year 2007-2008.

[South Coast Air Quality Management District, Draft Budget & Draft Work Program, Fiscal Year 2008-2009.](#)

People of the State of California, Case No. BC291876, ex rel. South Coast Air Quality Management District, Complaint for Civil Penalties, Health & Safety Code Sections 42402, et. seq.; 42403, BP West Coast Products LLC, a Limited Liability Company; a Delaware Corporation.

COMMENTS AND RESPONSES

During the rule making process, both oral and written questions, comments, and suggestions were received and reviewed by staff and are summarized in this section. After the review, staff revised the proposed amendments to reflect many of the comments and suggestions. If comments regarding the same topic were received from different individuals, staff summarized the topic into one comment and response.

PUBLIC WORKSHOP HELD ON NOVEMBER 8, 2007

Comment: This Rule making is going to have a significant impact on the coatings industries and since you have provided a significant amount of information the group will need time for review. We do not believe that your schedule allows that. I want to reiterate that you are giving us about a month to look everything over and put together comments. This is an unreasonable time frame to try to get any kind of substantial comments to you. We have a significant number of issues to discuss.

Response: *In order to give industry additional time to review and comment on the proposed rule and to meet with staff, the Final Hearing for the Board to consider adopting Proposed Rule 314 has been postponed from February 1, 2008 to May 2 June 6, 2008.*

Comment: The AQMD budget information on the website indicates that you have had some very significant budget surpluses over the last several years with \$38.4 million, \$36.7 million and \$42.5 million for 2004, 2005 and 2006 respectively. Based on the considerable AQMD net assets as per AQMD's 2006 financial report, there is no need to impose a fee on the coatings industry and there is definitely no need to double the current Rule 1113 program. AQMD's unreserved fund balance in the general fund (46.8% of total general fund revenues) is above the policy guidelines set by the Board for budgetary and planning purposes (maintain an unreserved fund balance at 15% of General Fund revenues).

***Response:** In Fiscal Year 2005-2006, the Unreserved Fund Balance in the General Fund was higher than 15 percent, as stated further on page v of the Fiscal Year 2005-2006 Comprehensive Annual Financial Report, due to several significant one time penalty settlements reached with air pollution violators (major one-time settlements of \$8.3 million, \$6.0 million, and \$9.25 million in 2004, 2005 and 2006 respectively). These were not, however, budget surpluses of \$38.4 million, as alleged. Instead, these numbers represent fund balances. However, in Fiscal Year 2006-07, as evidenced in the audited financial statements approved by the Governing Board in January 2008, a substantial portion of this unreserved fund balance (69% of the undesignated) was used for long term debt reduction, thereby reducing AQMD's overall program cost.*

The AQMD does not fully recover the program cost of its fee supported activities. Since FY 1991-92, the AQMD has reduced staffing and program costs despite increased program requirements. The budget for fiscal year 2007-08 was \$125.5 million and included 813 funded positions. Compared to the early nineties when AQMD staffing was at 1163 positions, this reflects 30% less staffing and a modest increase of 11% over the FY 1991-92 budget. Adjusting today's dollar for inflation, this expenditure proposal is 36% less than the FY 1991-92 adopted budget.

Despite these reductions and the success of several streamlining measures adopted by the Board, fee revenues do not recover the full cost of AQMD's stationary programs, as evidenced in our consolidated financial reports. In order to bring the agency's fee revenues in line with its program costs and reduce the agency's dependence on one time revenues (penalties) to balance its budget, the Board, in FY 2006-07, approved a cost recovery plan related to permit processing, annual operating permit renewals, and annual operating emission fees; in addition to program cost reductions tied to retirement and long-term debt further reduced the unreserved fund balance. In December 2006, the AQMD invested \$19.1 million in a Guaranteed Investment Contract resulting in budget savings of \$23 million over the eight-year period (an average of \$2.9 million per year), which will provide approximately \$3.0 million in annual budgeted debt service payments through 2014, and made a one-time \$10 million prepayment to the San Bernardino County Employees' Retirement Association to further reduce the AQMD's unfunded liability which resulted in an average annual budget savings of approximately \$1.1 million over a 20-year period.

Regardless of the financial position of the District, the total emissions fees supported program costs as well as the staff costs are being borne by other stationary source emitters and mobile sources as well as other revenues, and architectural coatings have

not paid their fair share though this industry continues to be one of the largest VOC emitters. The adopted 2008-2009 budget includes approximately \$1 million in projected revenues from architectural coatings.

Comment: We feel that with the various regulations and now the fee rule that the AQMD is once again focusing on our industry and our industry alone. You should go after all the other area sources as well as you noted in your presentation. We have significant problems with this fee right now in that we believe our industry is faced with a major housing recession. We anticipate slower sales growth and this is a really bad time to be going after our industry.

Response: *This objective is to have a fee program that recovers program costs, equitably from all sources of emission under AQMD's jurisdiction. Please be reminded that Architectural Coatings is the largest emission source category under AQMD's regulatory authority without a mechanism to recover program implementation costs. Other Area Source Programs that already have associated fees are water heater certification, car crushing, dust control, demolition and asbestos abatement, contaminated soils, portable equipment inspections and non-compliant coating laboratory analysis of inspection acquired coatings. In the future, staff will be reviewing all Area Sources Programs to determine the cost to regulate these programs and the most efficient way to recover that cost. The AQMD continually strives to optimize its multitude of programs and evaluate mechanisms to recover its costs. To date, the AQMD has not collected fees from the architectural coatings industry (except for averaging plans), even though they have been regulated for 30 years. Under the proposal AQMD is only proposing to recover its costs, as allowed under Health & Safety Code §40522.5. Stationary sources are typically assessed a higher rate than architectural coatings manufacturers will have to pay under this proposal. Staff also notes that during past time periods of a downturn in the housing market from 1990 to 1996, architectural coatings sales still increased.*

Comment: We believe that our share of the VOC inventory, the portion of the VOC inventory that comprises Architectural and Industrial Maintenance (AIM) coatings, is relatively small. The way that you show it, it looks bigger than it really is. You claim this is justification for five new inspectors. Even if you were to make a dent using these inspectors, it is not going to account for many VOC reductions.

Response: *Staff is not sure what statistics the commenter is using to determine that architectural coatings portion of the VOC emission inventory for the AQMD is smaller than the inventory discussed in the "Emissions" section of the Staff Report. Staff uses the inventory of sales and emissions data submitted by the architectural coatings manufacturers to CARB in response to the CARB survey questionnaires conducted every four to five years. Staff conservatively took into consideration that the architectural coatings inventory should drop approximately 46% from 2004 to 2010 due to lower VOC limits in Rule 1113 that became effective in 2005, 2006, 2007, and a significant reduction in the flat coating category emission inventory due to a lower VOC limit of 50 g/l effective in July 2008. As explained in this staff report, the 2007 AQMP and at the Public Workshop held in November 2007, architectural coatings in 2010 are estimated to be 23 tons per day (tpd) which equates to approximately 16% of the total non-vehicular VOC*

emission inventory of 145 tpd (excludes consumer products regulated by CARB). The 2010 architectural coatings emission inventory of 23 tpd alone, even without the other justifications discussed in this staff report, justifies the enhanced Rule 1113 Program with additional inspectors. The inventories and reductions may be moving in the right direction, but to ensure these reductions are real and permanent, the program implementation must be accompanied with credible enforcement presence in the field to inspect the conservatively estimated 15,000 sources. In the CARB 2001 and 2005 Surveys manufacturers reported selling over 18,000 and 15,000 different products, respectively, in California. In analyzing the detailed data provided by manufacturers, staff has found that some manufacturers report sales of coatings that are non-compliant with the CARB Suggested Control Measure, with significantly higher VOC limits and that are not compliant with Rule 1113. How do we find these non-compliant coatings without compliance inspections? Staff believes the impact on emission reductions throughout the AQMD could be significant given the limited compliance inspections with Notices of Violations issued in the past. Therefore, staff is proposing a modest increase in compliance staff to be able to determine a supportable compliance rate.

Comment: You also claim that coating manufacturers can pass the fees onto our customers. We believe that this is not the case. You claim that you don't need to do a CEQA analysis, but we believe that this fee will force or will push consumers and contractors to go to other air districts or other states to pick up products because of the cost differential. We believe that you need to take a look at that in your CEQA analysis because you are going to lose emission reductions.

Response: *The proposed rule is estimated to cost the end-user approximately ~~7.57.1~~ cents per gallon on average. Whether or not the fee is passed on to the end-user will depend upon each manufacturer. According to the California Environmental Quality Act, Statutes and Guidelines §15273, CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of meeting operating expenses, including employee wage rates and fringe benefits. Proposed Rule 314 is a fee rule and does not regulate emissions. The suggestion that architectural coating manufacturers think that consumers and contractors may buy non-compliant coatings in surrounding air districts for use in the South Coast Air Basin appears to support staff's proposal for the enhanced proposed Rule 1113 Program with additional inspectors to prevent the loss of emissions reductions from Rule 1113 amendments. Regardless, given the current costs of gasoline and other transportation fuels, it is highly unlikely that contractors and consumers will traverse long distances to defray the anticipated nominal price increase of the coating product.*

Comment: The commenter believes retailers and distributors have to be involved in obtaining the sales information the AQMD is looking for. Without them you are not getting an accurate picture of what is being sold in the AQMD and one of your goals seems to be getting accurate sales information. I will give you a couple of examples: a) Sherwin Williams owns a warehouse in Nevada. It is from Nevada that we ship products into the State and into the AQMD. We have suppliers that manufacture coatings sold in our retail stores. Those coatings come to us in Nevada and the manufacturer of that coating does not know it is coming into the AQMD. b)

Likewise, when we ship to someone else's warehouse in Nevada, we don't know whether the coatings are coming into South Coast or not. The proposed registration program will not account for all of the coatings that are distributed in the AQMD because manufacturers are not always the responsible party or brand owner of the products. Very often retailers, particularly national chains of retailers, may take delivery of products from coatings manufacturers outside the AQMD or even outside the State. It is entirely internal to their operations as to where those coatings go. By the same token there may be distribution out of the State that we can't account for either. Manufacturers may have no idea, at all, where those coatings are ending up; therefore, we can't report them as being sold in the AQMD. For the CARB Surveys, their staff felt that the amount that might be distributed into the State is probably counterbalanced by the amount that is distributed out of the State, so they consider it a wash. But, we really don't know. Unless this program reaches the retail base, the AQMD will not be collecting fully accurate information on the coatings that are being distributed here.

Response: *Proposed Rule 314 defines an Architectural Coatings Manufacturer as any company or person that imports, manufactures, produces, packages, or repackages architectural coatings for sale or distribution into or within the AQMD for use in the AQMD. In the example above, either the manufacturer or distributor of the coatings sold for use in the AQMD would be responsible to complete the proposed Annual Quantity or Emissions Report for the previous calendar year sales. Both the manufacturer and distributor would need to coordinate with each other to make sure the coatings have been reported only once. A list of zip codes within the AQMD's jurisdiction is on the web at www.aqmd.gov. Go to the drop-down menu "inside the AQMD" then click on "about the AQMD" go to "jurisdiction" then "cities" and click on the list of zip codes. Architectural Coatings Manufacturers should be able to track distribution or sales of products sold into or within the AQMD for use in the AQMD by zip codes. Staff audits of manufacturers "Averaging Compliance Option Plans", an alternative compliance option that provides flexibility to manufacturers by allowing the sale of higher VOC coatings, has found that the manufacturing company is able to report sales of products distributed to other companies. The Averaging Compliance Option requires manufacturers to keep distribution records such as customer lists and/or store distribution lists along with shipping manifests (bills of lading) and point-of-sale receipts or invoices to local distributors. All of this has been provided by the manufacturers using the Averaging Provision to comply with the VOC limits in Rule 1113. Staff is proposing identical records be kept in Proposed Rule 314. It would appear that if tracking coatings sold to other distributors benefits the manufacturer, they are able to track the coatings into the AQMD. However, after listening to comments from industry, staff has revised the rule so manufacturers are only responsible to report and pay fees on their architectural coatings distributed or sold into or within the AQMD for use in the AQMD. Further, staff has now proposed that manufacturers supply AQMD with information regarding their U.S. distribution by January 1, 2009., and that AQMD staff will propose an amendment to address distribution.*

Comment: The Proposed Rule defines "responsible party." I am having trouble with that terminology, because in the State of California, as well as in many other States, that specific term is used to indicate the name on the label, such as when there is a signature line on the back and the company name is on the label. That is in the consumer products regulation, but it is very

widespread. It is confusing to refer to the responsible party as a person within the company. Simple recommendations would be to call it the “reporting person,” or “contact person,” as you do in the Averaging Compliance Option, where you refer to a “contact person.” There may be confusion, among people, who are dealing with the consumer products regulation and I don’t think that is it critical to this rule, what you call the person.

***Response:** The Averaging Compliance Option, Rule 1113, Appendix A section (C) number 6 also requires a statement, signed by a “responsible party” for the manufacturer to certify that all information submitted for the Averaging Compliance Option Plan to be true and correct. To be consistent with Rule 1113 “Responsible Party” will also be used in Proposed Rule 314, as manufacturers that take advantage of the flexibility are already familiar with the term.*

Comment: Proposed Rule 222.1 (d)(2) requires all products that might be sold as an architectural coating to be registered. This is an issue because the manufacturer can’t be sure whether or not the retailer is selling the product over the counter as an architectural coating or for some other use. So every single product would have to be registered and categorized as an architectural coating even though a large number of those coatings are not for architectural use. This is an unreasonable burden on manufacturers. From our point of view it would be far more practical to provide you a list of the architectural coatings that the manufacturer knows were shipped into the AQMD. We should not have any illusion about capturing 100% of the quantity and emissions from architectural coatings. But I think you can get sufficiently accurate and probably better information than the CARB survey, specific to the basin by identifying the majority of the major manufacturers and the major retailers who are not directly controlled by manufacturers, and then simply require reporting at the back end through an annual survey process.

***Response:** After numerous comments regarding registration of architectural coatings prior to their being distributed or sold into or within the AQMD for use in the AQMD, staff has amended the proposed rule language to allow Architectural Coatings Manufacturers to submit an Annual Quantity and Emissions Report after the products have been distributed or sold into or within the AQMD for use in the AQMD. However, staff will evaluate the effectiveness of this practice and may reconsider pre-registration of architectural coatings distributed or sold into or within the AQMD for use in the AQMD, if staff audits discover the Annual Quantity and Emissions Reports submitted do not provide a reasonable emission inventory and is not enforceable.*

Comment: We have another problem with this registration issue. We have products that were shipped into the AQMD in 2005. We have now discontinued those products, do I register them or not? The product is no longer being made. Are you expecting a registration because you may find it in the field? If that is the case, I would have to continue registering all of the products we ever shipped because that product might still be out there on a store shelf.

***Response:** Since staff has changed the requirement from a pre-registration to an Annual Quantity and Emissions Report of architectural coatings after they are distributed or sold into or within the AQMD for use in the AQMD, this concern is no longer an issue.*

Comment: Proposed Rule 222.1 requires the manufacturer to provide the VOC content of the coating. Does that mean as packaged or as used. When you get into reactive siloxane, which it turns out has extremely low VOC in the package, but which reacts with concrete when in use and gives off alcohol producing VOC far higher than what is in the container. Over time the VOC changes, what VOC do you want in this report?

***Response:** The VOC content in the revised Proposed Rule 314 requires both the coating VOC and material VOC to be reported as supplied or for multi-component coatings as recommended for use by the manufacturer. Additionally, for solvent-based coatings, grams of VOC per liter of material with maximum thinning allowed with a VOC, as listed in the Technical Data Sheet, shall also be included.*

Comment: Section (e) requires manufacturers to change every label of every product they make and the proposed rule language is allowing slightly more than a year to do it. That is not adequate time. I don't think the specifics of a symbol, as long as it is a discreet symbol, as we had negotiated on the Averaging Compliance Option in Rule 1113 will be a problem, but the time period won't work. In order to make it work we would have to stop all of the label production right now and dedicate staff full-time to be doing nothing but change every single label. The cost of these two rules is going to be enormous, but I will definitely try to give you some estimate. If you think you will need new staff, we are probably going to have two full-time people doing nothing but managing this, the way you have it currently set up. We do not consider that acceptable.

***Response:** The purpose of the proposed label requirement in Rule 222.1 was to aid AQMD inspectors in identifying which of the approximately 15,000 to 18,000 product lines that include 50 to 60 million gallons of architectural coatings sold in the AQMD were not registered. Registration prior to manufacturing, supplying, selling, offering for sale or soliciting for sale would only allow compliant products to be registered which would help architectural coating manufacturers world-wide to know the VOC requirements of Rule 1113, thus assisting the enforceability of the rule. Registration prior to manufacturing, supplying, selling, offering for sale or soliciting for sale would also allow the inspectors to know the coating category listed in Rule 1113 Table of Standards to which the coating belongs and to identify products included in the sell-through or averaging provisions of Rule 1113. However, after staff received comments from industry regarding the difficulty of registering products prior to distributing or selling, staff has modified Rule 314 language to require an end-of-the year Annual Quantity and Emissions Report after distributing or selling architectural coatings into or within the AQMD for use in the AQMD. The labeling requirement will be dropped anticipating that manufacturers will only report the sale of compliant products. However, staff may reconsider pre-registration and label requirements if staff audits merit this need.*

Comment: In Section (f), Recordkeeping, subsection (2), Maintaining Records, subsection Distribution Records, I was unsure why you needed to know all of our customers? All the customer lists and relationships to what you are asking for or all the production records, keeping in mind that I am a National company and I produce a whole lot of gallons, compared to how many gallons may be sold here. That is an enormous amount of data for the entire data base. I

am not sure why you need shipping manifests, bills of lading and sales records from the point of sale, or invoices to my distributors.

Response: *Proposed Rule 314 language requires specific records to be maintained by the Architectural Coatings Manufacturer that were used to calculate emissions and track coating volumes reported in the Annual Quantity and Emissions Report. During audits of the reported quantity and emissions, staff should be able to track a product from production to point-of-sale for the AQMD area only.*

Comment: Most company's fiscal year is on an annual basis, which means our records are on an annual basis, which makes our life complex when we are dealing with two half-years rather than one full year's data. Some manufacturers complete an averaging plan which is usually based on a calendar year. It would be much easier to do an averaging plan, and then put in the products that were not in the averaging plan and then use that as the basis for the fees. But, now you are really kind of requiring us to do two sets of records, for two different time periods. It would be appreciated if you would consider the reporting period for a calendar year rather than a fiscal year.

Response: *After hearing and receiving comments from industry, Rule 314 language has been revised to reflect a calendar year rather than a fiscal year for submitting information in the Annual Quantity and Emissions Report.*

Comment: In Rule 222.1 under Compliance dates for a Change in Architectural Coating Manufacturer, apparently you want us, within 30 days of acquiring a company, to inform you, so that we can get a new ID number. What difference does it make that the ownership of a company, changed, at that point? You apparently want an update on the emissions and quantity within 30 days of acquisition, since the last report. This is extremely burdensome, particularly for companies, like mine that keep acquiring companies. By that point we may not have figured if they have an ID number or if they sell paint in the AQMD. If there is an ID number we will find out and we will deal with it. I certainly think you could require us to inform you in a timely manner but not in 30 days. Within 30 days of an acquisition we have access to the data but haven't made any sense out of that data. Usually it is clear in the acquisition who is responsible for what problems.

Response: *If an Architectural Coatings Manufacturer changes, Rule 314 has been revised to require the new Architectural Coatings Manufacturer to file for a company ID number by the end of the year of the change in manufacturers. However, if the new Architectural Coatings Manufacturer already has an ID number and reports the quantity and emissions from the previous Architectural Coatings Manufacturer in their Annual Quantity and Emissions Report and pay the fees for both manufacturers, no further filing will be necessary. For such acquisitions, the revised rules allow an additional 60 days for submitting the Annual Quantity and Emissions Report for that company.*

Comment: In Rule 222.1 Section (k), Confidentiality of Information, AQMD guidelines require a detailed and complete basis for such claim. So when I tell you that on slide 12, today, you revealed confidential business information for ten companies, you probably will say that we didn't file that information with you. The information on slide 12 was the emissions and

gallage of 12 companies. Those gallonage, unless you were very careful had already been reported because of AB 10X fee paid through CARB. So, unless you took a year different from those, you revealed the information of gallons for ten companies. That is confidential business information. We have concerns about that, and we have concerns about the handling of confidential business information and I should remind you that pretty much every thing you have asked for, other than the VOC content, is confidential business information.

Response: *The AQMD complies with the provisions of the California Public Records Act (California Government Code Section 6250 et Seq.), and specifically with Government Code Section 6254.5(a), regarding the disclosure of confidential data. For this reason, staff specifically used eight year old 2000 sales data rather than the four year old 2004 sales data and did not divulge the identify of the manufacturers. Staff will ensure that volume data, both individual and cumulative, as well as individual emission data will be considered confidential; whereas, the product information and cumulative emission data will be considered part of public record.*

Comment: You have two tables that set a price per gallon on the basis of VOC content, which is the less water, less exempt solvent VOC, I am suspecting. Some products, let's say 48 grams per liter, might emit more than a product of 59 grams per liter but they are going to get charged less. So it would seem to me, strange as it sounds, that the Table is not quite fair. Just to point that out to you.

Response: *The tables you are referring to are for illustration purposes only to give industry an idea of the proposed fee that could have been associated with a gallon of paint at various VOC ranges under one fee option. Your assumption that the VOC range was based on the coating VOC is correct. When staff reviewed the coating data provided by the manufacturers to CARB for the 2001 Survey, 48 g/l coatings volume of solids ranged from 22% to 53% while 59 g/l coatings volume of solids ranged from 25% to 58%. With the difference in solids content it is possible to have a coating with a VOC less than another coating and still produce more emissions since emissions are calculated using the material VOC of the coating. We also recognize that this issue may occur if the 48 g/l coating is solvent-based, and the 59 g/l coating is water-based. As indicated, each approach has strengths and drawbacks which cannot be completely integrated since the industry specialty product lines are diverse in their formulations and coatings raw materials, solids contents and additives can affect the VOC emissions. The final proposal does not include this approach, but focuses on total volume and total emissions for fee calculations.*

Comment: In addition, the two Tables, Options 3 and 4 make for perfect sense, except there was one number in there that made no sense. You have overlapped, or at least you seem to have overlapped. You have, for example, third down is 101 to 275 and that makes sense, but the one above it says from 25 to 100. So I wasn't sure if you really meant if something is really exactly 25 grams per liter, it goes into the second tier and not the bottom tier. If it's 24.9999, it's apparently the bottom tier. I just wasn't sure if you really meant that, or not. In other words, they are not in equal chunks, is what I am trying to say. It was the second one. 25 to whatever the second number was. It was from 25 up that were confusing.

Response: *As stated in the previous response, the tables you were referring to are for illustration purposes only to give industry an idea of the cost of a gallon of paint at various VOC ranges. The ranges have been revised to account for every possible VOC range. The final proposal does not include this approach, but focuses on total volume and total emissions for fee calculations.*

Comment: Throughout the rules you mention things due 60 days, after some date. I want to reiterate 60 days is not sufficient time to provide you an accurate report. I would recommend a minimum of four months.

Response: *Rule 314 language has been revised to require the Annual Quantity and Emission Report to be completed by April 1 of each year for the preceding year. Both the Annual Quantity and Emissions Report and the fee payments are considered timely received by the AQMD if they are postmarked on or before May 30. Rule language also provides up to one additional year for the manufacturer to amend their Annual Quantity and Emissions Report without paying additional evaluation fees and also allows for manufacturers that acquire other manufacturers to delay submittal of the report for the acquired manufacturer by 60 days beyond April 1, 2009.*

Comment: I appreciated the discussion of the four fee options. I thought it was important to point out to you that if you think you are giving an incentive to reduce emissions by charging less for low-VOC products and then you say the fees would increase as the emissions go down, you have removed the incentive. I can speak with authority on that subject because of the AB10X CARB fees on architectural coatings, which is supposed to collect a certain amount of money every year, but as the emissions have gone down the rate has gone up significantly. As a result even with reduced emissions we are paying more every single year. So it counter balances any incentive to reduce VOCs.

Response: *Staff recognizes the complexity of the fee collection issue and therefore has a goal to design the rule to recover the cost of the Architectural Coatings Program in the simplest and yet equitable manner. However, one of the potential benefits of this approach is that the incentive may not go away since a shrinking emission inventory would more likely cause the AQMD to not seek additional emission reductions from this source category.*

Comment: One of the slides for Rule 222.1 mentioned that one of the goals would be to make an accessible listing of compliant coatings for the public. Will the list include grandfathered products that are compliant? What about exempt container sizes?

Response: *The database will allow the public to observe all products sold during a calendar year. The database will include information that will let the public know if a particular coating was sold in a small container, was part of an averaging plan, sold through the sell-through provisions or meets the VOC limits for the specific coating category. However, with the removal of the requirement to register products this database will not be as complete as originally anticipated.*

Comment: Under the proposal to enhance the Rule 1113 Program staff, the discussion mentioned wanting more inspectors. As an industry we are hoping that you are not continuing to revise Rule 1113 and thus you seem to have two people dedicated to rule development. Perhaps these people will not be needed and you could have two inspectors instead.

***Response:** Since rule development is only part of the responsibility of such staff, staff designated for rule development will continue to work on the program through rule interpretations, technology assessments, emissions evaluations, coordination with other regional, state and federal agencies. Furthermore, this staff will work on continued research on test methods, reactivity based approaches and other related work. It is noted that rule making is conducted to not only achieve additional emissions reductions but also provide relief to the industry when they are unable to meet a compliance date.*

Comment: On page 10 of the Staff Report, Table 4 VOC emissions inventory in terms of per day, you provide what appeared to be two sources. Architectural Coatings as a source and Other Point & Area Sources as a source. Normally that would be a percent of Architectural Coatings vs. the Total. The percent you give is not that.

***Response:** Staff appreciates the comment and has changed the word “Other” to “Total” Point and Area Sources. The 49 tpd VOC emission inventory for 2002 was reported by the architectural coatings manufacturers. The 192 tpd of VOC emissions includes the 49 tons from architectural coatings. Therefore, architectural coatings in 2002 were 25% of the Total Point and Area Sources emission inventory of 192 tpd.*

Comment: The registration rule is unnecessary; we see this as creating significant new burdens for manufacturers, as well as a new category of crimes and imposing new administrative burdens on staff. The amount of information that you get and that will require your handling and processing is not going to enable you to do any better job of reducing emissions from architectural coatings. I can not understand the desire on the AQMD’s part to get more information on the coatings that are actually distributed here in the South Coast area, as opposed to simply taking a fraction of the coatings that are reported in the CARB survey every four or five years, which admittedly is over a long span of time. We don’t see any reason why the AQMD could not simply request a survey to be completed by manufacturers who distribute products in the South Coast area and get better quality information than the CARB survey is getting because of its longer time span and statewide scope. That wouldn’t require any product registration or any advanced information of the kind that is in this rule, just as CARB doesn’t correctly request that kind of information.

***Response:** After numerous comments regarding registration of architectural coatings prior to their being distributed or sold into or within the AQMD for use in the AQMD, staff had modified its proposal to allow architectural coatings manufacturers to submit an Annual Quantity and Emissions Report after the products have been distributed or sold into or within the AQMD for use in the AQMD. However, staff will evaluate the effectiveness of this practice and may reconsider pre-registration of architectural coatings prior to their being distributed or sold into or within the AQMD for use in the AQMD if staff audits discover the Annual Quantity and Emissions Reports submitted*

after distribution or sales does not provide a reasonable emission inventory and is not enforceable.

Comment: The fee rule is inappropriate at this time. We are an industry that is very much tied to the home building and remodeling and renovation industries, which as you must know is currently at the forefront of a deepening recession. In fact, I heard an economic forecast, just this morning that projected homes in the Los Angeles area are expected to lose 25% to 40% of their value over the next five years. In other words, we're just getting into this process; we are nowhere near bottoming out. What we thought might have been resolved in 2008 is now stretching into 2009, 2010 and beyond. Since most of the users of architectural coatings are homeowners, who use these coatings for the purpose of maintaining and preserving their homes and attempting to hang onto what declining value they may have, we see this as being something that is potentially unacceptable to them, when we have to explain to them that the costs of these products are going up because of a hidden tax imposed by the South Coast. In effect the fee program, of course, raises the cost of goods sold and we have to recover that by raising the prices on the products. We feel the four options that were described are inefficient at raising the fees because of the high transaction costs involved both in terms of what's required of manufacturers in reporting and determining the assessment of the fee among the manufacturers and what staff has to do in processing that information. What that means is that a relatively large fraction of the fees raised, has to cover the administrative costs on the AQMD's end, and there is a significant cost burden also imposed on manufacturers, who have to generate the information and report the information to the AQMD in order to satisfy any of these options.

***Response:** The data (Table 4 – California Sales and Emission Trends) discussed in the Staff Report shows that sales, during the last down-swing in the housing market, actually grew from 77million gallons to 87.5 million gallons during the six years from 1990 to 1996. The percent change in growth was 13.5 percent. As discussed in the staff report, the average cost that will need to be passed on to the consumer is approximately 7.57.1 cents per gallon. Staff has also addressed the commenter's concern about administrative cost to both the manufacturers and the AQMD by revising Rule 314 reporting requirements as discussed in the response immediately above. However, it is noted that the architectural coatings industry has never paid emission fees, and those costs have been offset by the AQMD by using other revenue sources. Staff appreciates that there is never good timing for fee rules; however, continuing the current practice of recovering architectural coatings program costs from other sectors of our industry is also highly unfair and inequitable.*

Comment: There are at least three additional options that we would like to raise as worthy of your consideration. One would be a "flat fee", per responsible party, or brand owner, whether that be a manufacturer or retailer, whichever party is responsible for first introducing a product into the stream of commerce here within the basin. By flat fee, what I mean is, it amounts to basically a seller's permit fee that is for those parties who wish to sell architectural coatings in the basin. They would register with the AQMD as sellers, and pay a sellers permit fee. If the total fee amount was established at a reasonable base, I think that would exclude any future costs and would also exclude the EFS Programs costs. If the cost was down to the 1.5 million of actual, direct and directly related overhead costs for staff time on the Architectural Coatings Program. If we divided that among 200 manufacturers, that winds up being \$7,500 a piece! The

second would be a “fee for service” as rendered such as inspections, analysis of coatings, reviews of averaging, etc. The third would be a “consumer based fee at the retail level.”

Response: *For the flat fee, the commenter is suggesting that the architectural coatings manufacturers should not have to pay their fair share of the emission fee supported (EFS) programs as discussed in the staff report and continue to have stationary sources pay for all of these programs. Assuming the base fee only included staff salaries and overhead for a total of approximately \$1.5 million for the current Rule 1113 Program costs, the commenter is suggesting that small companies that sell from 10 to 1000 gallons per year of coatings in the AQMD would have to raise their price from \$750 to \$7.50 per gallon, respectively. Staff believes the small manufacturers would find that fee unfair and unacceptable. The second suggestion would not distribute the cost across the industry equitably. If inspections only included products sold by the manufacturers supplying the most coatings, then most likely the total cost of the enhanced compliance program would be spread over only 10 companies and the cost to each would be approximately \$440,000 and the other 190 companies would pay nothing. If on the other hand, there is an enforcement action taken against a smaller company and all costs had to be recovered from that company, the financial impact to that company could be overwhelming. This is the reason why, as a matter of past practice, AQMD has offered to distribute enforcement costs across all industries and opposed to targeting specific companies. The consumer based option is not practical in that it would require the AQMD to know every single retail store that sells architectural coatings and find a way to have the fee collected and distributed by that seller. The administration of such a program would be extremely burdensome and expensive, which would result in an increased program costs, resulting in higher fees.*

Comment: As to this idea of what may be covered or recoverable under the specific legislative authority of Health and Safety Code, §4522.5, which authorizes the AQMD to recover the costs of AQMD programs related to these sources. The legislature could have used the word “cover”, but they didn’t. They used the word “recover”, and based on the legal analysis that our counsel has provided us, what this means is that the AQMD has to cover its costs in one budget cycle, before it can recover them in the next budget cycle. That would bar the collection of anticipated future costs. Also, those costs have to be related to these sources and what we understand, that means is directly related. Not related simply by virtue of both being in existence. That would carve out the ESF program costs, which are not in any way directly related to architectural coatings. The true test to determining what amount of costs may be recoverable, under this specific authorization is to ask “how much less the AQMD would be spending, if it did not regulate architectural coatings.” That is the amount that you should recover.

Response: *The Health and Safety Code allows the AQMD to recover its costs from area sources, which are estimated to be ~~\$4.4~~4.2 million for the Architectural Coatings Program, as detailed in the staff report. The commenter suggests that the use of the term “recover” means AQMD would need to incur costs in one year, say 2010, but not “recover” them until the next year, 2011. The AQMD does not agree that the legislature meant to preclude recovering year 2010 costs with year 2010 fees. The term “cost recover” is frequently used in the context of recovering the full costs of a program. If the commenter’s approach were correct, an agency that did not have other sources of*

revenue could never initiate an area source enforcement program because there would be no funds to support the first year of operation. The commenter also suggests that the term “related to” means AQMD may only recover costs that would not exist if AQMD did not regulate architectural coatings. There are a number of AQMD costs that are incurred partly because of architectural coatings. We believe AQMD may recover a fair share of costs that are related to architectural coatings emissions, such as planning, air monitoring, personnel, payroll, etc. Architectural coatings emissions contribute to pollution in the air, thus contributing to the need for air monitoring and these other costs. These are similar costs to the costs that the court of Appeals has held may properly be recovered by emissions fees, under Health and Safety Section 42311, which also uses the term “related to.” *SDG&E vs. San Diego County APCD.*

Comment: I noticed that there is a kind of a switcheroo going on between the responsible parties, you have identified approximately 200 manufacturers and then when it comes to a discussion of your enforcement activities, you said there are 15,000 facilities that would need to be inspected. The majority of those 15,000 sources are not under the control of the 200 responsible parties as manufacturers. We are talking now the retail base of the region. The majority of those are independently owned, or parts of national chains, or whatever, but not directly under the control of paint manufacturers. We would be happy to see the fee paying base expanded to 15,000 facilities, but otherwise, our comparisons, in terms of enforcement activities should be in terms of the 200 manufacturers.

Response: As explained in the Staff Report, the Rule 1113 Program affects any person, who manufactures, supplies, sells, offers for sale, solicits, or field applies architectural coatings within the AQMD. Since the application of architectural coatings does not require a permit or notification to the AQMD, and occurs for short durations throughout the basin at unknown locations, staff is proposing that the Annual Quantity and Emissions Report and fees be the responsibility of the manufacturers of architectural coatings, rather than end-users, as recommended by the special committee on the AQMD fee structure. It is anticipated that manufacturers will pass on the cost to the end-user, as has been stated by at least one commenter.

Comment: I am curious about the six coatings, from five manufacturers that one of the slides indicated were responsible for 293 tons of excess emissions. Could you provide more information about the volume and VOC content of those coatings, not identifying the coatings or the manufacturers, which, of course, would be confidential information, but just with a little more technical information that we could understand how that was calculated. Also, I don't see that there was any basis to assume that this is any indication of widespread non-compliance in our industry. In fact, I think an equally plausible explanation that the AQMD happened to identify the only six coatings that were not compliant, during that year. I have to congratulate you on the effectiveness of your enforcement program.

Response: Please refer to the Staff Report discussion regarding non-compliance of architectural coatings on page 18.

Comment: If the AQMD feels there is a problem with widespread non-compliance with the rule, industry would like to propose that we engage in a co-funded research project to investigate

the extent of potential non-compliance. We don't think there is one, particularly, now that we have advanced to the point in the Rule 1113 that many categories of coatings are simply gone. We see the potential for non-compliance has having been reduced significantly and we frankly don't see that there is any potential for rampant non-compliance that would warrant doubling the enforcement program for architectural coatings. This is an offer, I guess that we would like to discuss with you, the idea of engaging in a joint cooperative study upfront to determine whether or not there is an enforcement problem or compliance problem that needs to be addressed.

***Response:** Staff is proposing to take the enhanced Rule 1113 Program to the Board. If the proposal is adopted, implementation will most likely begin in 2009, and after three or four years of inspections, staff will be able to evaluate the rate of compliance for manufacturers, distributors, retail stores, and painting contractors. If the compliance rate is relatively high, then the scope of the program could be reevaluated at that time. However, during previous targeted inspections, non-compliance was found supporting the need for more compliance review. Furthermore, the AQMD conducts independent compliance inspections with an element of surprise that may not be possible under a joint task force.*

Comment: AQMD staff commented earlier that some of the fee structure options that were proposed may have air quality impacts, to the extent that it may be related to VOC contents or VOC emissions. I think that we should recognize at this point that those potential air quality impacts may be beneficial or they may be adverse, depending on what the response of consumers to the increased fees on certain products might be. For example, to the extent that the fee amount per gallon is related to the VOC content of the product and presumably manufacturers would raise the prices on those products to cover that, there could be a significant substantial increase in the higher VOC products, even though those might be the best performing products for certain needs and anything other than that would be inadequate. But, since these fees would be collected based on pricing within the basin, presumably, we are surrounded by other AQMD's, Ventura, for example, were these fees would not apply and presumably the costs on similar products would be much lower. We know that some professional painting contractors will drive 50 miles to save a nickel per gallon if they are buying in volume. There is certainly an opportunity for those contractors once in a paint retail outlet, say in Ventura County, where they are suddenly faced with a variety of products, which are no longer available in the SCAQMD, who knows what purchases they may make, and how that might affect coatings that are brought into the basin for non-compliant uses. I think we need to investigate the potential for adverse air quality impacts related to these proposed fee structures, as well as any potentially beneficial air quality impacts.

***Response:** It sounds like the commenter is in agreement with staff that an enhanced compliance program, especially in communities near AQMD's border with other air pollution air districts, is necessary. However, with the limited number of Rule 1113 Program inspections, staff does not have any information that would suggest that the commenter's concern is valid. In the proposed fee options, the highest rate per gallon is anticipated to be approximately 37 cents for those coatings with a VOC content of 275 grams per liter or higher, which for a project using five gallons of this higher-VOC coating would cost the end-user an additional \$1.85. However, this fee option is no longer being proposed under the revised fee rates. Costs are estimated to increase about*

7.57.1¢ per gallon, although it will be up to the individual manufacturer how to recover those costs. Given the price of a gallon of gasoline, it does not appear to be cost-effective for a painting contractor to drive very far to save an insignificant amount on a gallon of paint when the cost could be passed on to the customer. If architectural manufacturers are aware of sales of non-compliant coatings for use in the AQMD to contractors buying from their retail stores located near borders with the AQMD, they can anonymously phone our complaint line, and help the AQMD with compliance activities.

Comment: The commenter would like to point out that most of the options, in fact, four of the options that are being considered as fee structure options would have anti-competitive impacts in that they disproportionately impact the cost of goods sold by manufacturers who do a major share of their business in the South Coast AQMD, as opposed to manufacturers who sell a smaller percentage of their products to the total market here.

***Response:** The AQMD does not believe the proposal leads to anti-competitive impacts. In the example given above, local companies with a majority of sales in the SCAQMD may be impacted; however, these same companies typically have a cost advantage in shipping products a shorter distance compared to manufacturers outside of the SCAQMD. Companies with larger service territories, broader customer base, and better financial standing may have more leverage on dealing with the additional cost of doing business than smaller companies without such advantages, other things being equal. However, each company's operation is unique and in constant flux. Analysis at individual company level is not possible given the dearth of financial data.*

Comment: Do experimental products in usually small samples, such as five gallons, have to have a registration label and be registered, before it goes to somebody? It is not technically sold, but sometimes larger batches are. Also, with new VOC regulations, we may go through five different variations of a formula. Each one scaled up and tried in the field, before we finally settle on something. If we have to register every one of those before we actually try it out and sell it, you are almost defeating the purpose of trying to come up with new formulas that are better, with lower VOC making it more difficult to do our product development.

***Response:** Rule 314 has been revised to require architectural coatings manufacturers to submit an Annual Quantity and Emissions Report after the products have been distributed or sold into or within the SCAQMD for use in the SCAQMD. The labeling requirement has been dropped.*

PUBLIC CONSULTATION MEETING HELD ON JANUARY 30, 2008

If comments regarding the same topic were received at both the Public Workshop held on November 8, 2007 and the Public Consultation Meeting, no further comment and response was written.

Comment: The AQMD failed to provide adequate justification to implement Rule 314. The data utilized is outdated and the limited amount of compliance data reviewed is inadequate and does not support the need for this rule. If the AQMD needs to step-up enforcement, do more with less.

Response: *The above comment supports the discussion in the Staff Report that the AQMD cannot any longer rely on three to seven year old CARB survey data for planning and rule development because it is outdated. The proposed Annual Quantity and Emissions Report would provide the AQMD with the annual updates of manufacturers' sales data and associated emissions for architectural coatings used in the AQMD. However, for the purposes of Proposed Rule 314 – Fees for Architectural Coatings, the 2005 CARB Survey data is the best data currently available, which was used by staff to project potential sales and VOC emissions for 2009-2010. Even though the data is outdated, staff used the data to provide architectural coatings manufacturers an estimate of the average cost per gallon the industry should be paying the AQMD to recover its costs of establishing and implementing the Rule 1113 Program. If the Proposed Rule 314 fees for architectural coatings manufacturers is underestimated or overestimated by using the outdated data, staff will adjust the fees for the subsequent year after the Annual Quantity and Emissions Reports are submitted with the most up-to-date information. Staff has requested that NPCA provide 2007 sales and emission data and NPCA stated that they are currently collecting the information from the top ten architectural coatings manufacturers in the AQMD market, but staff has not received the requested data as of February 28, 2008. The data that NPCA has said they will provide to staff from the top ten manufacturers may not provide data that gives an adequate estimation of the 2007 sales and emissions considering there are approximately 200 manufacturers that potentially manufacture, supply, sell, offer for sale, distribute or solicit for sale architectural coatings in the AQMD; however, this information will greatly assist staff in developing a fee rate that may not require adjustments beyond the anticipated CPI adjustments for future years. NPCA did verbally indicate that based on 8 of the top 10 companies, the emissions and volumes seem to be underestimated, and will result in under-collection of fees the first year. However, in the event there is an under-collection of fees, the AQMD will adjust the applicable fees for the subsequent year to recover the right amount prospectively and not retroactively.*

Comment: The United States is currently teetering on the brink of recession. The U.S. Government has recognized this and has developed a bipartisan stimulus plan for both consumers and industry. The last thing a government entity should do at a time like this is to increase business costs. Manufacturers' selling architectural coatings have faced numerous challenges during the last several years including increased raw material costs and higher transportation costs that have compressed profit margins. Simply passing the cost on to the end-user is not an answer because once the price gets too high end-users simply will not buy.

Response: *Other fee payers are being impacted by the current business climate in the same manner as architectural coatings manufacturers. Staff has estimated that the cost to the end-user will be on average ~~7.57.1~~ cents per gallon. Staff does not believe that ~~7.57.1~~ cents per gallon will deter consumers from using architectural coatings to maintain their most valuable asset.*

Comment: Ultimately the goal of the AQMD is to reduce air emissions. As written Rule 314 is flawed in that it does not spur innovation and help promote air emission reductions. There is no incentive for coatings manufacturers to improve their products by reducing VOC emissions.

Response: *The purpose of all Regulation III rules is to set equitable fee rates to sources of emissions within the AQMD to help fund the costs of the AQMD programs to reduce air contaminants. When possible, staff sets the emissions fee rates higher for those point and area sources emitting the most emissions; therefore, creating an incentive for an individual facility or manufacturer to reduce their emissions to reduce the fees paid to the AQMD. Past experience with stationary source emission fee programs reveals significant emission reduction benefits resulting from such programs. The proposed rule includes an exemption for fees for any coatings with 5 or less grams of VOC per liter of material to further incentivize the development, marketing and use of lower-VOC coatings.*

Comment: How can manufacturers pass along the proposed fee to end-users for 2008 when manufacturers do not know what that fee is going to be and they have not accounted for this fee in their budgets? Manufacturers will be forced to absorb the cost of the fee for products sold in 2008 since the first fee will be due on or before April 1, 2009.

Response: *Manufacturers are well aware of the cost of the proposed rule, estimated to be on average ~~7.57.1~~¢ per gallon, as staff discussed this fee in October 2007. Other manufacturers have indicated that they may not be able to pass this cost on to end-users and therefore the first four months of 2008 will not make an impact. However, staff has revised the language in Proposed Rule 1113 to phase—in over three years, the implementation of the proposed fee program in an effort to ease and reduce its financial impact.*

Comment: The reality of this proposed rule is that those that comply will be paying to enforce compliance for those companies that do not comply. Isn't this the job of the AQMD in the first place? Why should the paint and coatings industry pay for this, when they are already paying annual permit fees to the AQMD already?

Response: *Staff explained in the background of the Staff Report that the AQMD utilizes a system of evaluation fees, annual operating fees, emission fees, Hearing Board fees, penalties/settlements and investments that generate approximately 72% of its revenue. The remaining 28% of its revenues are from an Environmental Protection Agency grant, CARB subvention funds, and California Clean Air Act Motor Vehicle fees. A few of the 200 manufacturers that will be affected by Proposed Rule 314 pay annual operating fees for the equipment used in the manufacture of architectural coatings; however, architectural coatings manufacturers do not pay fees on the emissions from the coatings they manufacture (for profit) to be used in the AQMD. Initially, if the Board approves Rule 314, those companies that comply may pay for the AQMD staff to find those few companies that do not comply, assuming there is additional compliance staff to identify any non-compliant manufacturers. However, this is no different from other AQMD programs. Staff needs to inspect a significant number of sources and does not know in advance which sources are in noncompliance. Furthermore, Proposed Rule 314 has been revised to explicitly state that a manufacturer that does not obtain an ID number from the AQMD and continues to distribute or sell architectural coatings into or within the AQMD for use in the AQMD, is considered to be in violation. The AQMD further plans to maintain a list of manufacturers with ID numbers on its website. The proposed*

programming principal and concept is not dissimilar to the programs AQMD implements to recover costs from other regulated sources. The proposed compliance program will continue to focus its inspection resources on manufacturer related compliance, including the inspections at active job sites. These inspections mainly include a thorough review of paint containers, acquisition of paint samples from unopened containers, as well as to some degree, sampling paint from the spray gun to assess any thinning with a solvent that may be done by the end-user. However, collection of a sample from the spray gun or tray is infrequent since it is often very difficult for an inspector to time the inspection during actual painting. Furthermore, with consideration for the significant reduction in solvent-based coatings volume, estimated to be less than 5% in 2010, the likelihood of locating the use of solvent-based coatings is expected to lessen. Lastly, as the enhanced program is fully implemented over the next three years, staff will separately track the inspection resources dedicated to compliance review of manufacturers and end-users that may thin the supplied coatings with a VOC solvent. The initial proposal to enhance compliance resources by five inspector FTEs is revised to four inspector FTEs, reducing the estimated cost of the proposed architectural coatings program from \$4.4 million to \$4.2 million. As indicated in the staff report, one additional inspector FTE will be funded from other resources to do end-user reviews for thinning practices. Based on an estimate of time and related costs for anticipated solvent-based sample collection and testing to assess thinning practices, the reduction of costs associated with one inspector FTE is significantly greater than the anticipated costs.

Comment: The AQMD should consider an approved products list that distributors, contractors and public entities would be required to consult, prior to using or specifying a product. Products not on the list would be prohibited from use within the AQMD.

***Response:** During the Public Consultation Meeting, several manufacturers disagreed with this comment and at the end of the meeting the original commenter retracted this request. However, this request was similar to staff's original proposal to have a pre-registration of architectural coatings prior to their being distributed or sold into or within the AQMD for use in the AQMD.*

Comment: Another incentive to consider would be to place bounty hunting in the regulation. If an organization provides a lead, on a suspect non-compliant company, that results in successful fines and penalties the company providing the lead would get some relief from the fee normally paid.

***Response:** AQMD often relies on leads provided by third parties in prioritizing the deployment of its limited enforcement resources. Such leads are critical to maintaining a level playing field among competing regulated entities. Staff believes maintaining a level playing field is strong enough incentive that renders the bounty hunting approach unnecessary and inappropriate. Under the bounty hunting approach, AQMD could be accused of enforcing Rule 1113 to collect fines to cover the costs of the Program when focusing on specific manufacturers. Staff currently responds to complaints regarding Rule 1113 non-compliance which may or may not result in a penalty. If a penalty is assessed, the fine goes into the AQMD general fund.*

Comment: Penalties under this program should go directly back into this program and not the general fund. If funds collected are high enough, companies completing the survey and paying the fee should receive relief.

***Response:** Penalties and settlements are not used to reduce direct compliance costs. Smaller penalties are included in the general fund to help cover costs of programs with insufficient revenue, such as Public Records Act. Revenue collected from larger violations is used to further emission reduction programs, small business assistance, public outreach, and to provide incentives to achieve early compliance, as well as other programs not supported by AQMD fees.*

Comment: The Staff Report indicates that AQMD considers this to be an exempt project under CEQA guidelines §15273, but there are comments in the Staff Report about how there are going to be emission reductions using the hybrid fee approach which would require manufacturers to pay more for higher VOC products with the effect of reducing emissions. The commenter agrees that if the proposed rule just imposes a fee, that it is exempt from CEQA. Either it's just a fee or there is some regulatory purpose for this regulation. If there is a regulatory purpose, then CEQA would apply.

***Response:** Proposed Rule 314 is a fee regulation to recover the cost to the AQMD of implementing the Architectural Coatings Program. As stated in previous staff responses, CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of meeting operating expenses, including employee wage rates and fringe benefits. The proposed rule language has been revised to assess a fee on the reported quantity of architectural coatings distributed or sold into or within the AQMD for use in the AQMD and the associated emissions based on a flat rate per ton rather than a VOC range. The Staff Report has never indicated that the AQMD would be requesting SIP approvable emission reductions from this proposed rule. Rule 314 does not have a regulatory purpose, even though it may provide an incentive to reduce emissions.*

Comment: There seems to be a problem with the AQMD's projected emissions just based on a review of the average material VOC factors – even considering the reductions in the flat limit – the emission factor drops off by half – the emission factor for the 2010 seems to be too low, so the VOC emissions may be too low – the proposed fee structures may not collect the funds AQMD is estimating.

***Response:** When staff used the 2001 and 2005 CARB survey data (the latest data available) staff used the material VOC to calculate emissions for each product code and product name reported to CARB by the manufacturers. Then staff took into consideration the Rule 1113 amendments, that reduced VOC limits in 2005, 2006, 2007, and those that will take effect in 2008 as well as the historical growth in architectural coatings sales, to estimate the fees necessary to recover the AQMD Rule 1113 Program costs, including the enhanced program costs. Staff recognizes that for the first year the fees may be underestimated or overestimated and will adjust the fees in subsequent years to cover Rule 1113 Program costs prospectively and not retroactively. This is precisely why staff*

has requested NPCA to report the 2007 sales; which, as stated above, staff has yet to receive for the top 10 manufacturers.

Comment: The current distribution product among the “VOC Ranges” is heavily weighted against higher VOC coatings above 100 g/l. Further, the fee structure specifically targets coatings that AQMD has determined need a higher VOC content.

***Response:** Initially, staff developed several emission fee options for manufacturer’s consideration. One of the options proposed higher fees for those coatings with higher VOC content because they emitted more pollutants. Staff uses this same tiered approach with point sources and believes this provides an incentive for a manufacturer to decrease the VOC content of their coatings, if they want to pay a lower fee. Even though Rule 1113’s Table of Standards allows a higher VOC content for some of the 34 different coating categories, staff is aware that for most of these categories manufacturers are producing coatings with a much lower VOC content than what is allowed. For instance, the VOC content for clear wood finishes is 250 g/l; however, numerous manufacturers produce clear wood finishes at 0 g/l. There may be one or two coating categories that cannot have a lower VOC content such as Shellac but these categories are small volume sellers. Based on the comments, staff has narrowed the proposed fee structure to assess fees on total emissions and not on VOC content of different coatings.*

Comment: As AQMD staff has stated – a major goal of the registration and fee program is to identify and quantify non-compliant architectural coatings products in the AQMD. However, the number of architectural coatings related Compliance Notices per the number of inspections results in only a 7% non-compliance rate which is comparable to the lowest rates of non-compliance for other highly inspected sources and as such, expansion of the current program is not warranted.

***Response:** Staff agrees with the commenter that a major goal is to identify non-compliant coatings used in the AQMD. Staff listened to manufacturers’ concerns during public and one-on-one meetings and decided to drop the requirement for manufacturers to pre-register their architectural coatings because of the burden on industry even though the pre-registration would have been the most cost-effective means for the AQMD to check on compliance. Staff is also aware that the European Union (EU) is beginning to implement its new Registration, Evaluation, and Authorization of Chemicals (REACH) regulation that seeks to formally account for each and every use of a given chemical sold or distributed in the EU, either in pure form or as part of a formulated product like paint. The commenter is referring to Table 12 of the Staff Report regarding the compliance notices per number of inspections and yes, if one divides the total number of notices by the number of inspections it reflects a 7% non-compliance rate for architectural coatings, but Table 12 also indicates that only 2% of the potential sources were inspected, while the other coatings rules have had from 73% to 122% of the sources inspected. In any case, the AQMD does not consider inspecting 2% of the potential sources an adequate number of inspections to determine a statistically supportable compliance rate for the Rule 1113 Program. As explained in the Staff Report, staff believes that 20% of the approximately 15,000 sources should be inspected each year over a three to four year time-frame to determine the compliance rate.*

Comment: The AQMD proposal lacks adequate justification for the increase in staff (9 employees) and doubling of the current Rule 1113 program, especially considering the compliance record of the industry to date. A key factor to consider with regard to inspections is the historic number of violations found per number of inspections conducted. A review of Table 12 indicates a 7%, 8%, 7%, 7% and 16% rate NTC/NOV issuance per inspection for Rule 1107, Rule 1136, Rule 1151, Rule 1113, and Rule 1171, respectively. This data indicates that compliance with Rule 1113 is comparable to compliance with other rules. Consequently, there is no need for 5 additional inspectors to monitor compliance with Rule 1113. Further, the coatings industry questions the need for 3 additional chemists since information from industry suggests that only one additional chemist would be needed to analyze the anticipated additional AIM samples that are to be collected under the “enhanced” program.

***Response:** As stated in the previous response, the AQMD does not consider inspecting 2% of the facilities an adequate number of inspections to determine a statistically supportable compliance rate for the Rule 1113 Program. The data in Table 12 could also be analyzed to show that Rules 1107, 1136, 1151, all point source coatings rules, had a total of 3,698 inspections for an estimated 2010 emissions of 10 tpd, while architectural coatings had 339 inspections for an estimated 23 tpd of VOC emissions. A review of Figure 1 in the Staff Report shows the number of inspectors assigned to both permitted and non-permitted sources of VOC emissions. Staff disagrees with the comment that the Staff Report lacks adequate justification for increasing staff assigned to the proposed Rule 1113 Program. The need for additional staff is explained under the section on the Proposed Program. Since the Rule 1113 Program has been under-staffed, there is no historical data to indicate the number of inspections or samples required to determine a statistically supportable compliance rate. Therefore, staff used “sampling” which is a statistical practice to yield some knowledge about a population of concern. The population of concern in this case is the conservatively estimated 15,000 sources subject to Rule 1113. Just how many inspections (samples) are necessary to obtain a compliance rate that is representative of the estimated 15,000 sources (population)? The larger the sample, the more certain one can be that the answer truly reflects the population. Without historical compliance data, staff used the population of 15,000, a confidence interval (margin of error) of 1.5 and a confidence level of 95% to obtain the number of inspections of approximately 3,000. Staff believes it is necessary to use a conservative confidence interval for the number of inspections because of the heterogeneous sources that will be inspected. If the AQMD uses the current Rule 1113 inspector and five additional new inspectors to conduct on average ten field inspections per week, it will take approximately 3,000 inspections per year and 5 years to get to all 15,000 sources. If staff used the same margin of error and confidence level to obtain the number of coatings that will need to be collected for compliance analysis, then 1,762 samples will need to be collected and analyzed. However, staff felt that initially a confidence interval of 3 could be used due to the homogenous nature of the coating samples. Using the confidence interval of 3 and a confidence level of 95% staff estimated that approximately 800 samples will need to be collected and analyzed. In summary, staff believes a minimum of 3,000 inspections per year with approximately 800 coating samples collected for analysis is necessary to derive a statistically supportable compliance rate for architectural coatings subject to Rule 1113. This level of*

inspections, with continued focus on retail outlets and distributors, will be phased-in over the next three years.

Comment: By overlapping with the CARB AB10X fees, the proposed fee does not meet the “necessity” and “non-duplication” criteria of the Health and Safety Code for rule adoption. AQMD claims that the programs are different, but it is clear that CARB and AQMD do many of the same things: emissions inventory, analysis of feasibility of technology in various categories, planning/AQMP, rule implementation (with CARB being involved in AQMD rulemaking). The only real area of non-overlap is enforcement, and all that AQMD has offered for justification is that the CARB data is not good enough for the local rulemaking.

Given the fact that the AQMD fee may be as much as 5 times the AB10X fee, any overlap must be identified and corrected since both AQMD and CARB should not collect fees for overlapping regulatory services on the same products sold in AQMD. This constitutes “double jeopardy” where coating manufacturers are being forced to pay twice for the same emissions and also in part paying twice for the same work. We believe that CARB should share its fee revenues with AQMD as appropriate, rather than AQMD duplicating the fee. Specifically, NPCA suggests that AQMD/CARB use shared funds to cover any costs associated with the “enhanced” Rule 1113 Program.

***Response:** The local air districts in California have the legal authority and the necessity to regulate architectural coatings to reduce emissions and demonstrate progress forward, meeting the state and federal ambient air quality standards for ozone and fine particulates. Therefore the AQMD meets the “necessity” criteria of the Health and Safety Code that allows the Governing Board to determine that a need exists to adopt Rule 314 to recover the costs of AQMD programs related to architectural coatings. The AQMD Rule 1113 Program is not duplicative of the CARB Architectural Coatings Program. The two agencies conduct different activities for determining architectural coatings impact on the air quality for the State of California and the AQMD. Even if a person assumed all the activities were under the same authority, the cost of the CARB and AQMD Architectural Coatings Programs would both be necessary. Because of the severity of the air pollution in the South Coast Air Basin and the magnitude of this emission source category, AQMD often takes the lead in coatings technology assessments, developing rule amendments, CEQA and socioeconomic analyses, in support of these amendments, enforcement and outreach activities for which AQMD seeks to recover its costs. AQMD does not seek to recover costs incurred by architectural coatings related activities conducted by CARB, and therefore staff does not agree with the overlapping argument presented in the comment. The CARB Program includes special studies, developing a Suggested Control Measure for those local air districts that do not have the staff to develop their own architectural coatings rule, that often rely in large part on analyses and amendments developed by AQMD, conducting surveys of architectural coatings every four to five years, coordinating the reactivity analysis of solvents used in architectural coatings, and analyzing test methods for VOC content. Proposed Rule 314 will require an annual report by manufacturers similar to the CARB surveys and staff is willing to share that data with CARB for those coatings used in the AQMD. The proposed report does not require the same level of reporting such as the solvent data used for the CARB reactivity study and Rule 1113 does not have as many*

speciated coating categories as those suggested by CARB. The proposed fee for the enhanced Rule 1113 Program includes revenue for enforcement activity which is clearly AQMD's responsibility. CARB only participates in the Rule 1113 rulemaking to the extent of providing four to five year old survey data. Lastly, the proposed fee is not five times greater than the CARB fee. CARB assessed architectural coatings manufacturers that emit over 250 tons of VOC emissions a total of \$3,152,053 for the fiscal Year 2006-2007. Rule 314 proposes to collect revenues of \$4.42 million to recover AQMD's cost to regulate architectural coatings. In summary, the biggest difference between the CARB and AQMD architectural coatings program is that the AQMD by state law is responsible for the enforcement of architectural coatings.

Comment: Since AQMD is proposing the additional resources in large part to determine the level of compliance, there is no "necessity" in creating a permanent addition to the program budget. AQMD should include a "sunset" provision for the additional \$1.9 million, which could be revisited only if the Board concludes at the expiration of the sunset period that additional resources are necessary for the purposes that AQMD is now specifying (primarily enforcement). Further, any assessment of the effectiveness of the AIM fee enforcement program should not look at the number of compliance inspections or compliance notices handed out. Instead AQMD should assess the effectiveness of enforcement program on the resulting excess emissions that may result from the compliance program finding these non-compliant coatings. The "sunset" provision should include a set amount of excess emissions from non-compliant coatings that would be considered acceptable. If excess emissions are found to be above this set amount then the enforcement program would be continued. If the excess emissions are found to be below this set amount then the enforcement program would be scaled down. It is important that this compliance assessment only be done for coatings manufacturers and not include retailers, distributors and contractors. If AQMD finds considerable non-compliance with retailers, distributors and/or contractors, AQMD should shift the fee burden onto these sectors.

Response: *Staff is not proposing a "sunset" provision on the regulation of any source of emissions in the AQMD. ~~It would be irresponsible for this agency to consider not enforcing Rule 1113 for which SIP emission reductions have been requested and approved.~~ As explained in the Staff Report and other staff reports, self-inspection programs have consistently resulted in high rates of non-compliance as was the case when a targeted inspection program was conducted for architectural coatings. However, staff will agree to commit in a Board Resolution, to a three to four year compliance review to determine the rate of compliance for architectural coatings and make a recommendation to increase or decrease the Rule 1113 proposed compliance staff based on findings. The overall compliance rate will be the determining factor, and the various sources of non-compliance will not be used in the compliance review, since VOC emissions will result from non-compliance regardless of who committed the non-compliance activity. The activity by manufacturers is the root cause of the VOC emissions and should not be isolated, and will continue to be the main focus of the compliance program. However, an inspector FTE funded from other resources will be used to evaluate end-users that may thin the coatings with a VOC solvent.*

Comment: The comparison of the fees that could be assessed under Regulation III is misleading. The fees can only be assessed based on the cost of the regulatory program for

coatings, and those fees are based on a different regulatory program, so they cannot form a proper basis of comparison.

Response: *Staff chose to include the fees that would be assessed under Regulation III in the Staff Report, not because the Rule 1113 Program costs \$16 million, but to show the architectural coatings industry what their fees would be if they paid the same rate that stationary sources pay and have been paying for three decades.*

Comment: The AQMD should first start out with an Annual Quantity and Emissions Report form using an Excel Spreadsheet format. Once the Report form has been used for a couple of years, AQMD could then move to the use of an online database – where manufacturers could upload their data via the internet.

Response: *AQMD staff is developing the database and is confident its development will be completed and available on time for use by the architectural coating manufacturers. As a backup, should the database not be fully implemented the first year, staff is open to receiving the data in an Excel spreadsheet to be determined by the Executive Officer.*

Comment: Since the Annual Quantity and Emissions Report Form will overlap with the current required annual SCAQMD reports for small container exemption; recycled coatings; shellacs; and specialty primers, will the reporting requirements for these reports be repealed?

Response: *No, but since the information may be in the Annual Quantity and Emissions Report, no additional reports may be necessary after annual review of the data submitted to meet the requirements of Rule 1113. If the submitted data is adequate, staff may then propose deletion of those reporting requirements from Rule 1113.*

Comment: The report form should include a column for AIM product “Brand Names”

Response: *Staff agrees and has added the additional column for “brand names.”*

Comment: How will “low solid” AIM products be reported on the form since their VOC content is not expressed in g/l less water and exempt compounds. Would these be reported only in the Material VOC column?

Response: *Yes, the regulatory VOC content for low-solids is the material VOC and emissions are calculated with the material VOC.*

Comment: AQMD needs to analyze the impact of fee structures that would substantially increase the cost of higher VOC content and better performing products. Since these higher prices may result in lower usage of higher performing products overtime, this impact needs to be taken into account.

Response: *It is staff's belief that higher VOC does not correlate to higher performance. This issue has been analyzed in previous technology assessments by the AQMD, and determined by the California Court as an invalid argument. Therefore, this comment is not considered valid and no additional response is given. However, AQMD is not proposing a fee option that sets higher fees for higher VOC content coatings. Instead,*

the fee will include two components – per gallon and per ton of emissions. Individual manufacturers will decide how to recover these costs.

Comment: The California Health & Safety Code (Section 40522.5) authorizes SCAQMD to assess fees on areawide sources that are regulated, but for which permits are not issued, “to recover the costs of district programs related to these sources.” It does not authorize the AQMD to collect fees prospectively, in anticipation of establishing or expanding a program. In other words, the AQMD must cover its costs (in one budget cycle) before it may recover those costs (in the next budget cycle) – the fee can be assessed only to reimburse the AQMD for costs already expended – not to expand the program beyond current expenses.

***Response:** The AQMD does not agree with the commenter on the intent of the legislature on the word “recover”. The AQMD supports that Health and Safety Code Section 40527.5 allows the recovery of these fees. Regardless, staff’s revised proposal would phase-in fees over a three-year period. The first year fees at best will recover the cost of implementing the current program, while the recovery of cost of the proposed enhancements will commence the second and third year.*

Comment: There must be a nexus between the fee collected and the resources recently spent directly on the existing AIM (architectural and industrial maintenance) regulatory program. Since the “EFS” (emission fee supported) portion of the fee is not directly related to administering the AIM regulatory program, the fee should not include any EFS portion. In determining the extent of recoverable costs, the key question is: how much less would SCAQMD have spent if it did not regulate AIM coatings? That is the amount of costs that can be recovered by fees authorized under the Health & Safety Code. Simply put, the fee proposal is an unauthorized tax.

***Response:** As discussed in this Staff Report, the AQMD has traditionally used emissions-based operating fees to pay for a portion of its programs in the areas of planning, rule development, air monitoring, and outreach activities. These are the same types of costs which the California Court of Appeals has held can properly be supported by emissions-based fees. The Court has upheld using emissions-based fees to support “indirect” costs, i.e., those costs that are related to the overall program but which cannot be directly attributed to any specific permit activity. (*San Diego Gas & Electric Co. v San Diego County APCD* (1988) 203Cal.App.3d 1132, 1136; 250 Cal Rptr 420, 422). These activities are partly due to architectural coatings emissions and thus can be supported by fees on architectural coatings.*

Comment: A wide gap still remains between AQMD and industry with regard to the type of data that is to be collected under the Annual Quantity and Emissions Report. AQMD continues to assert that coatings manufacturers will be required to submit actual sales data on the Annual Quantity and Emissions Report. However, industry has consistently commented that coatings manufacturers know the amount of product shipped to retailers and distributors; however, manufacturers do not know what is actually sold in the AQMD. If AQMD staff desires more accurate data, than can be provided by manufacturers, the reporting requirement should be extended to wholesalers and retailers. Clearly, the question of what exactly is sold in AQMD must be properly answered. Retailers have a much better understanding of where products are

sold. This is especially true for products that are either manufactured in or shipped through AQMD but not actually sold in the AQMD. If the rule is finalized as written, and this issue is not properly addressed, significant amounts of AIM products will not be reported.

Response: *As explained in the Staff Report, obtaining the cooperation of a large population of unknown sources such as wholesalers and retailers and then trying to collect information on sales and emissions would be an overwhelming task that could result in a huge cost. After hearing industry concerns regarding the architectural coating sales they control and know, staff has revised the proposed rule language to require Architectural Coatings Manufacturers to report and pay fees on architectural coatings they distribute or sell into or within the AQMD for use in the AQMD.*

Subsequent to the set hearing for Proposed Rule 314, the National Paint and Coatings Association (NPCA) wrote to the AQMD that the proposed rule is unfair because it only applies to manufacturers who distribute or sell their manufactured architectural coatings into or within the AQMD, excluding those distributors that ship coatings into the AQMD from warehouses located outside the AQMD, which NPCA stated may account for 10% to 15% of the volume sold in the AQMD. However, in a follow-up letter, NPCA estimated that amount may be larger since architectural coatings sold through mass merchant or “big box” stores are 30% of total sales on a national basis.

During the rule development process, staff’s initial proposal required manufacturers to account for all the volume of coatings they manufacture, supply, sell, offer for sale or solicit for sale for use in the AQMD. Some manufacturers said that it would be too burdensome to track their manufactured coatings once they were released to a second or third party distributor and they were not sure the distributors would provide them with an accurate volume count. NPCA said the unaccounted architectural coatings volume was believed to be small (NPCA did not provide the requested volume) and probably a wash considering that some coatings were shipped into the AQMD and then later shipped out of the AQMD without being subtracted from the total volume. NPCA said this is the same agreement manufacturers have with CARB to report architectural coatings for CARB Surveys and related fees. However, in response to NPCA’s most recent comments, dated April 21, 2008, which are contradictory to their earlier written and oral comments requesting to exclude the volume of coatings distributed outside the AQMD, staff has amended the proposed rule to require manufacturers to provide the AQMD with a list of all their U.S. distributors on an annual basis. Staff is then committed to working with distributors to try and determine the extent of architectural coatings that may not be accounted for in the proposed required annual quantity and emissions reports. The proposed rule has been revised to require manufacturers to report their U.S. distributors to AQMD on or before January 1, 2009, and staff intends to prepare a rule amendment incorporating distributors, as appropriate, within 120 days. Staff has contacted several major manufacturers that sell architectural coatings to “big box” stores and those manufacturers have stated that they track sales into the AQMD particularly for compliance purposes, considering that AQMD Rule 1113 – Architectural Coatings has more stringent VOC limits than other parts of California and the U.S. Since these manufacturers are able to track detailed volume distributed to these “big box” stores, staff believes the majority of the coatings distributed to these stores will be reported.

Comment: A marked-up copy of the rule with specific clarity problems, errors and typos as mentioned at the January 30th Public Consultation meeting needs to be addressed before this rule can go in front of the Board.

***Response:** The commenter gave staff a copy of the marked-up copy of the rule on February 14, 2008 and after discussions with the coatings industry, staff has included many of the comments in the proposed rule for clarification. A comparison of the changes can be made by obtaining a copy of Proposed Rule 314 that was released to the public prior to the Public Consultation Meeting and the proposed rule language presented to the Board for adoption.*

Comment: Industry strongly opposes any architectural coatings fees. However, if the AQMD does proceed with an architectural coatings fee, we recommend that the fee be phased-in. Year 1, the manufacturers would complete the Annual Quantity and Emissions Report for 2008. Year 2 (2010), the manufacturers would pay one-third of the fee based on the Annual Quantity and Emissions Report for 2009. Year 3 (2011), the manufacturers would pay two-thirds of the fee based on the Annual Quantity and Emissions Report for 2010. Year 4 (2012), the manufacturers would pay the entire fee based on the Annual Quantity and Emissions Report for 2011. The AQMD is proposing a huge new fee with inadequate information regarding how much revenue the fee would generate and with inadequate time for coatings manufacturers to be able to generate the revenues needed to pay the fees. The phased-in approach addresses both deficiencies.

***Response:** Staff has provided manufacturers with a revenue estimate the proposed fee program will generate using the latest data available. However, Proposed Rule 314 has been revised to include a three year phased-in approach for fees based on the Annual Quantity and Emissions Report submitted each year by Architectural Coatings Manufacturers for coatings distributed or sold into or within the AQMD for use in the AQMD. For the first year, one-half the fee rate will be charged for both the reported quantity and emissions (refer to the write-up on “Proposed Rule” in the Staff Report and revised rule language in Proposed Rule 314), resulting in a revenue shortfall. For the second year, seventy-five percent of the fee rate will be charged and the full rate thereafter. This phased-in approach will provide manufacturers time to generate the revenues needed to pay the reduced fees for the first year, even though manufacturers claim that the fees cannot be passed to the end-user. If AQMD were to further delay implementation of fees for architectural coatings, there would be even greater under-collection of revenue. AQMD is already not collecting sufficient revenues to support its programs. Based on a thorough review of the AQMD Budget, the proposed four year phase-in approach is not possible without increasing fees for permitted sources above and beyond CPI adjustments or incurring a budget deficit.*

APPENDIX A - EMISSIONS FEES SUPPORTED COSTS

The following section discusses the way the AQMD's budget is prepared and approved, the work program, and the allocations of FTEs to each work program line. Then, the method of allocating costs to revenue categories is discussed. Finally, this section discusses the costs allocated to emissions fees, and how the architectural coatings fair share was determined.

A. BUDGET PROCESS

The AQMD has a comprehensive budget process, which establishes goals and objectives and monitors progress in meeting those goals and objectives.

Up to and including the budget adoption hearing by AQMD's Governing Board, the public and the business community have several opportunities to participate in the budget process. The opportunities include:

- Meetings of a budget advisory committee whose members include business and non-business representatives; these meetings are open to the public.
- Several public workshops—to discuss proposed changes to the fee rule and to discuss the proposed budget.
- Two public Governing Board hearings—one on the Goals and Objectives and one on the proposed budget and fee rules.

The preliminary Draft Budget and Work Program of the South Coast Air Quality Management District (AQMD) is available for public review and comment during the month of April. Two initial workshops are scheduled each year to discuss the proposal, one for the public and one for the Governing Board which is also open to the public.

Following input from the public, Budget Advisory Committee, and Governing Board the draft budget for the ensuing fiscal year is prepared and made available to the public. In May or June each year the AQMD Governing Board holds a public hearing on the adoption of a final proposed operating budget, including final fee schedules. The adopted budget becomes operative on July 1.

The draft budget consists of two volumes. The first volume is the Draft Budget and Draft Work Program that presents the primary information regarding proposed program revenues and expenditures for the new fiscal year and a forecast for the second and third years. The second volume is the Supporting Documentation, which contains detailed expenditure and program justifications supporting the draft budget and work program requests. The budget is a line-item budget structured by office. The budget is supplemented with a work program which estimates staff resources and expenditures along program and activity lines.

B. PROPOSED ARCHITECTURAL COATINGS FEES

Staff proposes two architectural coatings fees, one based on quantity of paint sold, and one based on total emissions from paint sold, for each manufacturer. Staff recommends that the direct costs of the current architectural coatings program (Table 8), and of the proposed enhanced program

(Table 13), be recovered partly by the quantity based fee. Those costs that are expected to be fairly consistent from year to year are to be recovered from the quantity based fee. Those costs that are more likely to vary from year to year are to be recovered from the emissions-based fee, which can be adjusted from year to year.

As discussed above, a quantity fee which is designed to provide a relatively predictable and consistent revenue stream has been designed to cover salaries including benefits and overhead costs for staff working on compliance, laboratory support, and emissions data and revenue collection. Staff believes that the amount of time for inspections and laboratory analysis is proportional to the number of gallons of coatings initially supplied by the manufacturers and subsequently sold through retail outlets and used by a variety of end-users. For the AQMD, previous CARB surveys show architectural coatings sales volume of approximately 50 million gallons and as many as 18,000 different products under numerous coating categories. For Rule 1113 compliance review there are many different kinds of inspections, including big box retail outlets that have thousands of paint cans from numerous different architectural coatings manufacturers which requires a great deal of time. In contrast, an inspection of an end-user may only include one or two different products with a few paint cans. This quantity fee portion, assuming it is established at 4 cents per gallon, is expected to generate approximately \$2.3 million per year. The covered costs of the proposed expanded program are summarized in Table 1 of the Staff Report.

An emissions fee for architectural coatings has also been designed which may not provide as stable of a revenue stream as the quantity fee, since revenues may fluctuate depending on the VOC content of products sold and the total emissions in the Basin. However, the emissions fee component is important since it provides a financial incentive towards the marketing of lower VOC products. The emissions fee is designed to cover fluctuating costs such as surveys, technology assessments, rule development, AQMP updates, development of the reporting system, product purchases, legal representation, administrative support, training, and monitoring. These staff positions typically have year to year differing amounts of time devoted to the Architectural Coatings Program. Table 2 of the Staff Report summarizes the proposed expanded program costs. The emission fee will also cover architectural coatings fair share of emission fee supported programs, as detailed later in this report. These costs for the year 2010 are estimated to be \$884,623, as discussed below. This emission fee portion is expected to generate approximately \$2.1 million per year.

C. DEVELOPMENT OF BUDGET AND EMISSIONS-FEE SUPPORTED PROGRAMS

The following subsections describe the methodology used to develop the AQMD work program, which describes each activity and the number of FTEs (Full Time Equivalent staffing) assigned to each line item. Then the method of allocating revenue categories to each line item is described. The various revenue categories are described, and the three types of permit-related fees are discussed in greater detail. Appendix A, Table 1 shows each work program line item and the number of FTEs and program costs associated with each line item. Appendix A, Table 1 also shows the percent of costs allocated to each revenue category for each line item. Because one of the purposes of the architectural coatings emissions-fee is to recover the fair share of emissions-fee supported costs, Appendix A, Table 1 shows the dollars allocated to emissions

fees (which currently includes emissions from certain area sources such as solvents). Finally, the method of determining architectural coatings fair share of emissions fees supported programs is described.

(i) GOALS AND OBJECTIVES

To carry out its mission the AQMD has developed a set of Goals and Objectives, which is evaluated and revised annually and presented at a public hearing. The following Goals have been established for FY 2008-09:

- I. Ensure expeditious progress toward meeting clean air standards and protecting public health.
- II. Ensure equitable treatment for all communities.
- III. Operate efficiently and in a manner sensitive to businesses, the public, and staff.

These goals are the foundation for the AQMD's Work Program. Each goal is supported by multiple activities, which target specific areas of program performance. A public hearing to receive input on the Goals and Objectives for FY 2008-09 was held on February 1, 2008.

(ii) AQMD WORK PROGRAM DESCRIPTION

The work program is a management planning system used to budget AQMD resources to specific activities in fulfillment of AQMD mandates. Each work program line identifies the amount of labor [number of full-time equivalent employees (FTEs)] budgeted to an activity, and the dollar amount of labor and certain overhead costs associated with those FTEs.

AQMD expenditures are organized into nine Work Program Categories which describe its program activities. These categories are: Policy Support; Monitor Air Quality; Develop Programs to Achieve Clean Air; Develop Rules to Achieve Clean Air; Advance Clean Air Technology; Timely Review of Permits; Ensure Compliance with Clean Air Rules; Customer Service; and Operational Support.

Each activity within the Work Program falls into one of the above categories. The Work Program ties the goals and objectives of the agency to each of its program activities, identifying resources, performance measures/outputs and legal mandates. A complete description of each program category along with a detailed work program sort by program is included in the section on Work Program. The justifications in support of each activity are contained in the second volume of the Draft Budget Supporting Documentation, which is incorporated by reference herein. The following describes each program category.

PROGRAM CATEGORIES

POLICY SUPPORT

Provide support staff to the Governing Board, Board committees, and various advisory and other groups such as the Advisory Council; the Air Quality Management Plan Advisory Group, the Ethnic Community Advisory Group; the Local Government and Small Business Assistance Advisory Group; the Mobile Source Air Pollution Reduction Review Committee (MSRC); the MSRC Technical Advisory Committee; the Home Rule Advisory Group; the Scientific,

Technical and Modeling Peer Review Advisory Group; the Children's Air Quality Advisory Board; as well as ad hoc committees established from time to time and various Rule working groups.

MONITORING AIR QUALITY

Operate and maintain within AQMD's jurisdiction a network of air quality monitoring sites for ozone, nitrogen oxides, sulfur oxides, particulate matter, carbon monoxide and other pollutants to obtain data regarding public exposure to air contaminants.

- (A) Analyze, summarize, and report air quality information generated from the monitoring sites.
- (B) Provide continuous records for assessment of progress toward meeting federal and state air quality standards.
- (C) Develop and prepare meteorological forecasts and models.
- (D) Respond to emergency requests by providing technical assistance to first-response public safety agencies.
- (E) Notify the public, media, schools, regulated industries and others whenever predicted or observed levels exceed the episode levels established under state law.

DEVELOP PROGRAMS TO ACHIEVE CLEAN AIR

Develop a regional Air Quality Management Plan (AQMP) to achieve federal and state ambient air quality standards and to meet all other requirements of the federal and California Clean Air Acts.

- (A) Analyze air quality data and provide an estimation of pollutant emissions by source category.
- (B) Develop pollutant control strategies and project future air quality using computer models and statistical analysis of alternative control scenarios.
- (C) Analyze issues pertaining to air toxics, acid deposition, and potential socioeconomic and environmental impacts (CEQA) of AQMD plans and regulations.
- (D) Conduct outreach activities to solicit public input on proposed control measures.

DEVELOP RULES TO ACHIEVE CLEAN AIR

Develop emission reduction regulations for sulfur dioxide, nitrogen dioxide, organic gases, particulate matter, toxics, and other pollutants to implement the regional AQMP and other legal mandates including Tanner Air Toxics Process (AB 1807), National Emission Standards for Hazardous Air Pollutants (NESHAPS), and Prevention of Significant Deterioration (PSD) requirements.

- (A) Provide an assessment of control technologies, evaluation of control cost, source testing and analysis of samples to determine emissions.
- (B) Test and analyze products and processes to demonstrate pollution reduction potential.

- (C) Solicit public input through meetings and workshops.
- (D) Prepare rules to provide flexibility to industry, ensure an effective permit program and increase rule effectiveness.

ADVANCE CLEAN AIR TECHNOLOGY

Identify technologies from anywhere in the world that may have application in reducing emissions from mobile and stationary sources in the AQMD's jurisdiction. Suggest strategies to overcome any barriers and, when appropriate, implement those strategies.

- (A) Identify short-term and long-term technical barriers to the use of low-emission clean fuels and transportation technologies.
- (B) Promote development and assess the use of clean fuels and low-emitting technologies.
- (C) Work with industry to promote research and development in promising low-emission technologies and clean fuels.
- (D) Provide technical and program support to the Mobile Source Air Pollution Reduction Review Committee (MSRC).
- (E) Conduct source tests and analysis of samples to assess effectiveness of low-emissions technology.

TIMELY REVIEW OF PERMITS

Ensure timely processing of permits for new sources based on compliance with New Source Review and other applicable local, state and federal air quality rules and regulations.

- (A) Process applications for Permits to Construct and/or to Operate for new construction, modification and change of operations of equipment from major and non-major sources.
- (B) Process initial facility permits and revisions to facility permits for RECLAIM and Title V sources.
- (C) Continue efforts to streamline and expedite permit issuance through:
 - (1) Equipment certification/registration programs
 - (2) Area sources registration/permit by Rule
 - (3) Streamline standard permits
 - (4) Privatization of permit processing and certification of permit processing professionals
 - (5) Permitting systems enhancement

ENSURE COMPLIANCE WITH CLEAN AIR RULES

Ensure compliance with AQMD rules for existing major and small stationary sources of all pollutants.

- (A) Verify compliance with AQMD rules through inspections, source tests samples, the certification of Continuous Emission Monitoring Systems (CEMS), and emissions audits.

- (B) Issue and resolve Notices of Violation when violations are discovered.
- (C) Respond to and resolve public complaints concerning air pollution.
- (D) Provide necessary administrative relief through the Hearing Board and mitigate any air pollution impacts.
- (E) Provide no-fault on-site inspections to facilities upon request.

OPERATIONAL SUPPORT

Provide operational support to facilitate overall air quality improvement programs.

- (A) Provide services that enable AQMD offices to function properly. Services include facility administration, human resources and financial services.
- (B) Provide information management services in support of all AQMD operations, including automation of permitting and compliance records, systems analysis and design, computer programming and operations, records management, and the library.
- (C) Provide legal support and representation on all policy and regulatory issues and all associated legal actions.

CUSTOMER SERVICE

- (A) Provide local government, business and the public with accesses and input into the regulatory and policy processes of the AQMD.
- (B) Assist cities and others with AB 2766 projects.
- (C) Interact with local, state and federal agencies as well as others to share air quality information, resolve jurisdictional questions, and implement joint programs.
- (D) Support air pollution reduction through implementation of comprehensive public information, legislative and customer service programs.
- (E) Provide small business assistance services and support economic development and business retention activities.
- (F) Make presentations to and meet with regulated organizations, individuals, public agencies and the media.
- (G) Notify all interested parties of upcoming changes to air quality rules and regulations through public meetings, workshops, and printed and electronic information.
- (H) Resolve permit- and fee-related problems.
- (I) Respond to Public Records Act requests.
- (J) Produce brochures, newsletters, television, radio and print media information and materials, and electronic information.
- (K) Respond to letters and Internet inquiries from the public and to media inquiries and requests.

(iii) METHOD OF ALLOCATING FTEs TO WORK PROGRAM LINES

As part of the budget request process, responsible managers from each AQMD Organizational Unit review their Work Plan (Work Program lines associated with their division) and allocates FTEs to each work program line, according to their knowledge of the amount of work being done in each work program line. All AQMD staff are required to fill out bi-weekly time records, recording the amount of time spent on each work program activity line item. The Finance office maintains time records and keeps track of the total time recorded against each line item.

To assist the responsible managers in allocating their FTEs to program activities in developing the budget, a report of actual FTEs for the previous fiscal year and actual FTEs year-to-date for the current year are provided to each Organizational Unit. Managers then compare their projected FTEs with actual FTEs expended on each work program line item and make any needed adjustments.

Each work program line identifies the amount of labor (number of full-time equivalent (FTE) employees budgeted to an activity and the dollar amount of labor and other direct costs (e.g., contracts, temporary services, capital outlays) associated with that activity.

(iv) DESCRIPTION OF REVENUE CATEGORIES

The following describes the various revenue categories. The Roman Numeral assigned below to each revenue category constitutes its unique identification number used in the line item description in the Draft Budget and Draft Work Program Volume II, Supporting Documentation.

I. ALLOCATABLE

A portion of AQMD revenue goes to offset the operational support costs of the AQMD. These costs include activities such as personnel, payroll, and information management.

II. ANNUAL OPERATING EMISSIONS FEES

All permitted facilities pay emissions fees. Each permitted facility pays a flat fee for all emissions permitted or not less than four tons per year. In addition, the facilities that emit more than four tons (from both permitted and nonpermitted equipment) of any of the following contaminants pay a fee based on tons of emissions that are four tons and greater: Oxides of Nitrogen (NO_x), Reactive Organic Gases (ROG), Specific Organic Gases (SPOG), Carbon Monoxide (CO), Sulfur Dioxide (SO_x), Particulate Matter (PM); and pay fees based on pounds of emissions of toxic contaminants. Facilities emitting 4 tons per year or more pay for emissions from permitted equipment as well as emissions from area sources which are regulated, but for which permits are not required, such as solvent use. However, emissions from the use of architectural coatings at permitted facilities are not, as of July 2008, included in emissions fees. Fees are also based on the REgional CLean Air Incentives Market (RECLAIM) program, a market incentive air pollution reduction program for NO_x and SO_x. As part of RECLAIM, stationary sources that emit greater than four tons per year receive an emissions cap for NO_x and SO_x and an annual rate of reduction. The emissions cap is expressed as RECLAIM trading credits (RTCs) and allows a facility to use the emissions on site, to transfer, or to sell the RTCs to another party. Along with annual operating permit fees, emissions fees are intended to cover AQMD's compliance, planning, rule making, monitoring, testing, source education, civil cases and stationary and area source research projects.

III. PERMIT PROCESSING FEES

Fees are to support a permit processing program that ensures that all equipment within the AQMD's jurisdiction are in compliance with AQMD Rules and Regulations. Applications that are filed, including those for operating new equipment, for change of operator, for change of permit conditions, and for equipment alteration/modification, require that a permit processing fee be paid at the time of filing. Included in this revenue category are fees charged for application evaluation (based on the average time required to evaluate the application for that type of equipment and issue the permit), NSR offsets, Environmental Impact Report evaluation, health risk assessment associated with issuing a permit. Permit fees are intended to recover the costs associated with evaluating equipment applications and issuing permits. This category also includes fees charged for evaluation of plans, including Rule 403 dust control plans, Rule 1118 flare monitoring plans, and Rule 1113 architectural coating averaging plans.

IV. ANNUAL OPERATING PERMIT RENEWAL FEES

Fees are for the mandated annual permit renewal program. All active permits must be renewed on an annual basis. Along with annual operating emissions fees, annual operating permit renewals are intended to cover programs such as AQMD's compliance, planning, rule making, monitoring, testing, source education, civil cases and stationary source research projects. This category also includes fees for inspection of equipment registered under the CARB "portable equipment registration program (PERP).

V. ENVIRONMENTAL PROTECTION AGENCY (EPA) GRANT

Grant funds are provided by EPA to maintain and support AQMD's administration of an active air quality program. Costs recovered with grant funds include costs associated with the performance of specific, agreed-upon activities, such as activities in the air monitoring and analysis areas.

VI. SOURCE TEST/SAMPLE ANALYSIS FEES

Source test fees and laboratory sample analysis fees recover some of the costs associated with testing of sources within the AQMD's jurisdiction. Fees charged include certain compliance tests and analyses performed under enforcement programs.

VII. HEARING BOARD FEES

Revenue is derived from filing of petitions for variances, daily appearance fees, and excess emissions fees. Hearing Board fees offset a portion of the costs of the Hearing Board.

VIII. CLEAN FUELS

The Department of Motor Vehicles (DMV) collects and subvenes to AQMD \$1.00 per vehicle registered within AQMD's jurisdiction pursuant to Vehicle Code 9250.11. These funds are used for clean fuels, transportation measures, and demonstration projects related to mobile sources according to the plan approved pursuant to H & S Section 40448.5. In addition, H & S 40512

authorizes the collection of a surcharge on certain stationary source emissions to be used for clean fuels and technology advancement related to stationary sources.

IX. MOBILE SOURCES

The DMV collects and subvenes to AQMD \$4.00 per vehicle registered within AQMD's jurisdiction. However, AQMD only retains \$1.20 per vehicle, with \$1.20 going to the MSRC for emission reduction projects and the remainder going to cities and counties for motor vehicle emission reduction programs. These funds are used to carry out AQMD programs for planning, monitoring, enforcement, and for technical studies related to the reduction of air pollution from motor vehicles, including a fair share of programs such as air monitoring and AQMP development which relate to both mobile and stationary sources.

X. AIR TOXICS "HOT SPOTS" FEES

Fees are collected to continue the state mandated program to develop and implement a health risk information and assessment program ("Hot Spots"). Costs recovered include a portion of the administrative, outreach, plan processing, and enforcement costs to implement this program.

XI. TRANSPORTATION PROGRAMS FEES

Plan fees are collected from employers who employ 250 or more employees at any worksite and are required to promote employee participation in trip reduction and ridesharing programs, or implement alternative mobile source emission reduction programs to offset the mobile source emissions generated from employee commutes. The fees collected recover a portion of the costs associated with filing, processing, and reviewing the plans.

XII - XIII. These revenue categories are no longer used.

XIV. SUBSCRIPTIONS

Revenue is collected to operate a subscription service for proposed and amended rules and for the Governing Board Agenda. The revenue collected recovers a portion of the costs associated with providing this service.

XV. CALIFORNIA AIR RESOURCES BOARD SUBVENTION

Funds are received each year from the California Air Resources Board to support an active air quality program.

XVII. OTHER REVENUE

Revenue received from the sources listed below may be applied to any program or service.

- Miscellaneous revenue derived from professional services the AQMD renders to other agencies, jury duty fees, witness fees, the sale of photocopies and data, laboratory approval program fees, source education class fees, and certified permit program exam fees.

- Interest revenue earned on AQMD's cash balances. However, interest attributable to special funds such as Clean Fuels remains with those funds.
- Lease income from leasing a portion of the AQMD's Headquarters facility.
- Penalties/Settlements revenue from civil penalties for violations of permit conditions, district rules or state law.
- Public Records Act revenue charged to recover a portion of the costs to provide AQMD data to the public, as required by the Public Records Act. Costs partially recovered are those associated with photocopying, printing, handling and mailing the data.

**(v) METHOD OF ALLOCATING WORK PROGRAM ACTIVITY LINES
TO REVENUE CATEGORIES**

The Revenue Category or Categories associated with each work program activity line are also reviewed as part of the budget request process. The proposed Revenue Categories for each work program line are reviewed and approved jointly by Organizational Unit management, Finance and Legal staff. Each work program activity is “funded,” based on a review of what sources of revenue are appropriate to cover any given activity.

Each work program activity is evaluated to determine the relative percentage share of labor effort identified in each of the activities to be allocated to each AQMD revenue category. Allocations to revenue source categories are based first on mandates and secondly based on the appropriateness of a certain revenue source to pay for a specific activity. For example, the Finance office maintains a work program line item 04130 for Clean Fuels Contract Administration, which is funded entirely from Clean Fuels funds. Planning, Rule Development & Area Sources maintains several work program lines devoted entirely to Toxics AB2588 activities, including reviewing risk assessments that are paid by air toxics fees. Other work program lines are funded by a combination of sources. For example, development of VOC rules is funded by a combination of emissions-based fees, annual operating fees, and CARB subvention. Some programs which are related to the total amount of emissions in the air, such as MATES III (Multiple Air Toxics Study), meteorology, and regional air quality modeling (26438, 26445, 26460), are allocated in part based on the percent of emissions contributed by mobile and stationary/area sources.

Certain expenditures are allocated over the relevant work program lines, since they are needed to support the AQMD but are not directly related to any particular work program line or revenue category. These include District General expenses, office overhead and AQMD-wide allocatable costs.

District General expenditures are overhead costs and include utilities, building maintenance, communication, insurance and principal and interest payments on AQMD facilities. District General costs are allocated to each work program line based on FTEs. These costs can be found in Draft Budget and Draft Work Program, Volume I, under “District General” tab. They are allocated over the entire work program in Appendix A, Table 1 and are not shown separately.

Office overhead expenditures are for administrative activities that serve the office solely. These are prorated over work program codes within the office based on FTEs in that office.

AQMD-wide allocatable expenditures are for administrative activities that serve all AQMD programs. AQMD-wide administrative and support service costs include Finance, Information Management, Human Resources and Payroll. These expenditures are prorated over all AQMD program expenditures to arrive at a “burdened” cost for each program.

Certain indirect costs of operating the AQMD are allocated proportionately over all AQMD programs. Many of these programs are identified in the work program as “operational support” and “policy support.” These costs include personnel, finance/payroll, information management, contracts administration, Governing Board and committee support, etc. The proportionate share of these costs to be borne by each program is determined by taking each program’s share of the total non-operational support budget and using that same share to determine apportioned costs of operational and policy support based on FTEs. These costs are identified as “Allocatable Overhead” in Appendix A, Table 1. These costs could also be properly attributed to emissions fees, *SDG&E v SDAPCD*, id.

(vi) AQMD FEE SYSTEM

To meet its financial needs, the AQMD utilizes a system of evaluation fees, annual operating fees, emissions based operating fees, Hearing Board fees, contracts, penalties/settlements and investments that generate approximately 73% of its revenues. The remaining 27% of its revenue are from an Environmental Protection Agency grant, California Air Resources Board subvention, and California Clean Air Act Motor Vehicle fees.

The AQMD currently receives the bulk of its funding (67%) from stationary and some area sources and relies on mobile source revenues and State subventions and federal grants to support a majority of the remaining costs in such program areas as air monitoring, regional modeling, emissions inventory, planning, rule making, and emergency response. Over the past seventeen years the AQMD has in all but five year’s held its general fee increases to the change in the California Consumer Price Index (CPI) and made significant reductions in its workforce and budget to offset declining revenues from Emission Fees. Beginning in FY 2006-07, the agency began implementing a cost recovery program that increased fees associated with permit processing and annual operating and emissions based operating fees by 10% annually for a three year period.

State law authorizes the AQMD to establish fees for permits to cover “the reasonable cost of permitting, planning, enforcement, and monitoring related thereto.” (Health & Safety Code 40510(b)). Related AQMD programs connected with stationary sources, such as rule development and outreach are also paid for by these fees. There are three basic types of permit-related fees: permit processing fees, annual renewal operating fees, and emissions-based operating fees. Traditionally, the AQMD has endeavored to recover its costs of permit processing from permit processing fees, its costs of inspection and enforcement from annual renewal operating fees, and its costs of programs, such as planning, monitoring, rule development and outreach programs from emissions-based operating fees. Permit processing fees have been based on actual time spent processing various types of equipment. The data supporting these fees was gathered by permit processing staff and is incorporated by reference herein, and available from Mohan Balagopalan, (909) 396-2704. Annual renewal operating fees are based on four basic schedules [Rule 301 (d)(2)] which are based on the size and complexity

of the equipment, which is roughly proportional to the amount of work needed to inspect and enforce AQMD rules.

The AQMD has traditionally used emissions-based operating fees to pay for its programs, such as planning, rule development, air monitoring, and outreach activities. These are the same types of costs, which the California Court of Appeal has held can properly be supported by emissions-based fees. The Court has upheld using emissions-based fees to support “indirect” costs, i.e., those costs that are related to the overall permitted source program but which cannot be directly attributed to any specific permit activity. (San Diego Gas & Electric Co. v. San Diego County APCD (1988) 203Cal.App.3d 1132, 1136; 250 Cal Rptr 420, 422.)

It is reasonable to use emissions-based fees to apportion certain indirect costs. Such a system is reasonably related to the fee payers’ benefits from and burdens on the regulatory system. San Diego Gas & Electric Co. v San Diego County APCD (1988) 203 Cal.App.3d 1132, 1147, 250 Cal.Rptr. 420, 430. Staff believes that this conclusion, which has been upheld by the courts, is sufficient to support a finding that the fee results in an equitable apportionment of fees.

The Proposed Rule 314 includes an emissions-based fee to be assessed on emissions from architectural coatings which will be used to pay for certain architectural coatings-related costs such as rule development, AQMP, technology assessments, development of the architectural coatings reporting system, and legal and administrative support. These costs are set forth in Table 2 of the Staff Report. In addition, the emissions-based fee will support the architectural coatings “fair share” of work that is related to emissions in general but not to any specific source, such as air monitoring, emissions inventory, outreach activities, and Prosecutor’s Office activities.

In recent years, some of the costs that are related to permitted sources, but not to any particular source, such as rule development for NOx rules, has been allocated to annual operating fees rather than emissions-based fees, since emissions fees are a declining source of revenue.

A T T A C H M E N T G

**FINAL STAFF REPORT, APPENDIX A, TABLE 1 FOR
PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATINGS**

WP Code	Program Category	Program	Activities/Outputs	Budgeted FTEs	FY 09-10 Work Expenditures w/ Division Overhead	Allocatable O.H.		ANNUAL OPERATING EMISSIONS FEES SUPPORTED PROGRAMS (exclusively permit-related)				EMISSIONS FEES SUPPORTED PROGRAMS ARCHITECTURAL COATINGS VALID TO SUPPORT (excluding exclusively permit-related)				Mobile Sources CLEAN (CLEANWOOD) & STATIONARY SOURCE	CARB SUBVENTIONS/STATE REVENUE	ANNUAL OPERATING FEES	PERMIT PROCESSING FEES	EPA GRANT/OTHER FEDERAL REVENUE	SOURCE TEST/SAMPLE ANALYSIS	HEARING BOARD	AIR TOXICS AS 208	TRANSPI PROGRAMS	SUBSCRIPTIONS	OTHER REVENUE	TOTAL	
						% Allocatable	Cost	%	Program Expenditures	Overhead Allocation	FY 09-10 Program Cost w/ Overhead	%	Program Expenditures	Overhead Allocation	FY 09-10 Program Cost w/ Overhead													
						\$	\$	\$	\$	\$	\$	\$	\$	\$	\$													
				11.00	\$ 2,573,450		\$ 1,453,535		\$ 21,649	\$ 3,357			\$ 823,842	\$ 102,176														
District Prosecutor																												
12025	OPER SUPPORT	Adm/Legal Research	Legal Research/Staff/Executive Management	0.25	137,490	100%	137,490																					100%
12058	COMPLIANCE	Adm/Office Management	Assign/Direct/Coordinate/Evaluate Div Activ	2.00																								div alloc
12115	COMPLIANCE	Case Disposition	Trial/Disposition-Civil Case/Injunctions	9.00	1,524,812				0	0		60%	914,887	196,005	1,110,892			5%	22%		8%		5%					100%
12154	COMPLIANCE	Compliance/NOV Administration	Review/Track/Prepare NOV's/MSAs	2.00	401,637																							100%
12185	COMPLIANCE	Database Management	Support IM/Develop Tracking System	0.50	89,893																							100%
12366	COMPLIANCE	Hearing Board/Legal	Hearing/Disposition-Variances/App/Recov	4.00	635,013																							100%
12380	COMPLIANCE	Interagency Coordination	Coordinate with other agencies	0.25	171,142			100%	171,142	9,074	180,216																	100%
12402	COMPLIANCE	Legal Advice/Mgmt & Staff	Legal Support/Representation Legal Matters	1.50	353,809	100%	353,809																					100%
12410	POLICY SUPPORT	Legislation	Support Pollution Reduction through Legis	0.05	42,641	100%	42,641																					100%
12416	POLICY SUPPORT	Legislative Activities	Lobbying: Supp/Promote/Influence Legis/Adm	0.05	576	100%	576																					100%
12465	COMPLIANCE	Mutual Settlement	Mutual Settlement Program	3.95	550,306			87%	478,766	124,735	603,501																	100%
12565	CUSTOMER SERV	Public Records Act	Comply w/ Public Requests for Information	0.05	17,402																							100%
12651	COMPLIANCE	Rules/Legal Advice	Legal Advice: AQMD Rules	0.20	170,566							60%	102,340	4,356	106,695			40%										100%
12805	COMPLIANCE	Training	Continuing Education/Training	0.10																								div alloc
12825	OPER SUPPORT	Union Negotiations	Legal Adv: Union Negotiations	0.05	8,989	100%	8,989																					100%
12826	OPER SUPPORT	Union Steward Activities	Represent Employees in Grievance Actions	0.05	8,989	100%	8,989																					100%
				24.00	\$ 4,113,270		\$ 552,495		\$ 649,908	\$ 133,809			\$ 1,017,227	\$ 200,360														
Administrative & Human Resources																												
16026	OPER SUPPORT	Adm/AQMD Mail	Posting/Mailing/Delivery	2.30	419,402	100%	419,402																					100%
16038	OPER SUPPORT	Adm/Office Management	Reports/Projects/Budget/Contracts	2.05																								div alloc
16060	OPER SUPPORT	Affirmative Action	Program Development/Monitoring/Reporting	0.75	136,761	100%	136,761																					100%
16080	COMPLIANCE	Auto Service/Vehicle Mgmt	Vehicle/Radio Repair & Maintenance	3.00	547,045	100%	547,045																					100%
16090	OPER SUPPORT	Building Maintenance	Repairs & Preventative Maintenance	8.00	1,469,038	100%	1,469,038																					100%
16092	OPER SUPPORT	Business Services	Building Services Admin/Contracts	2.00	364,697	100%	364,697																					100%
16122	POLICY SUPPORT	Children's AQ Agenda/Student	Children's AQ: Adm Student Int	0.00	25,776	100%	25,776																					100%
16225	OPER SUPPORT	Employee Benefits	Benefits Analysis/Orientation/Records	1.40	255,288	100%	255,288																					100%
16226	OPER SUPPORT	Employee Classification & Pay	Class & Salary Studies	0.30	56,073	100%	56,073																					100%
16228	OPER SUPPORT	Employee Examinations	Recruit Candidates for AQMD	3.70	722,189	100%	722,189																					100%
16232	OPER SUPPORT	Employee/Position Control	Track Positions/Workforce Analysis	0.40	72,939	100%	72,939																					100%
16233	OPER SUPPORT	Employee Relations	Meetings/Conferences/Labor-Mgmt/Grievances	3.00	547,045	100%	547,045																					100%
16255	OPER SUPPORT	Facilities Services	Phones/Space/Keys/Audio-Visual	2.00	369,697	100%	369,697																					100%
16540	CUSTOMER SERV	Print Shop	Printing/Collating/Binding	4.00	740,394	100%	740,394																					100%
16565	CUSTOMER SERV	Public Records Act	Comply w/ Pub Rec Act Requests	0.20	36,470		0																					100%
16640	OPER SUPPORT	Risk Management	Liability/Property/Workers' Comp/Self Ins	2.00	562,697	100%	562,697																					100%
16717	POLICY SUPPORT	Student Interns	Gov Bd/Student Intern Program	0.20	10,694	100%	10,694																					100%
16720	CUSTOMER SERV	Subscription Services	Rule & Governing Board Materials	1.70	310,492																							100%
				37.00	\$ 6,646,700		\$ 6,299,736		\$ -	\$ -			\$ -	\$ -														
Clerk of the Boards																												
17024	OPER SUPPORT	Adm/Governing/Hearing Board	Admin of AQMD Governing/Hearing Boards	1.00	193,018	20%	38,604																					100%
17275	OPER SUPPORT	Governing Board	GB Attend/Record/Monitor 12-15 Meetings	1.20	231,622	100%	231,622																					80%
17365	COMPLIANCE	Hearing Board	Hearing Board Attend/Rec/Monitor 250 Migs	3.70	741,268																							100%
17565	CUSTOMER SERV	Public Records Act	Comply w/ Public Requests for Information	0.05	9,651																							100%
17855	COMPLIANCE	Web Tasks	Implement/Maintain Fed Title V Variance	0.05	9,651	100%	9,651																					100%
				6.00	\$ 1,185,210		\$ 279,877		\$ -	\$ -			\$ -	\$ -														
Planning, Rules & Area Sources																												
26002	DEV AIR PROG	AB2766/Mobile Source	AB2766 Mobile Source Outreach	0.75	122,670																							100%
26007	CUSTOMER SERV	AB 2766/Mobile Source	AB2766 Provide Tech Assistance to Cities	1.00	163,560																							100%
26010	DEV AIR PROG	AQMP	Coordinate AQMP/Special Studies	1.00	203,560																							100%
26038	DEV AIR PROG	Adm/Office Management	PRA Office Coordination/Admin Activities	0.90																								div alloc
26040	PERMIT	Adm/Office Mgmt/AQ Implement	Admin: Modeling/New Leg/Small Sources	0.28																								div alloc
26042	COMPLIANCE	Adm/Office Mgmt/Compliance	Admin: Compl w AQMD Rules	0.25																								div alloc
26044	PERMIT	Adm/Office Mgmt/Permit & Fees	Admin: Resolve Perm/Fee Issues	0.10																								div alloc
26046	COMPLIANCE	Adm/Office Mgmt/Compliance	Admin: Compliance of Existing Sources	0.25																								div alloc
26048	POLICY SUPPORT	Adm/Prgm Mgmt/Policy	PRA Admin/Governing Board/Comm Support	1.25																								div alloc
26049	DEV AIR PROG	Adm/Prgm Mgmt/AQMP	PRA Admin/AQMP Development	0.75																								div alloc
26050	DEVELOP RULES	Adm/Rule Development	PRA Admin/Rule Development	1.00																								div alloc
26057	DEV AIR PROG	Adm/Transportation Prgm Mgmt	Administration Transportation Programs	0.75																								div alloc
26061	MONITOR AIR	Air Quality Evaluation	Air Quality Evaluation	0.75	122,670																							100%
26068	DEV AIR PROG	AQMD Projects	Prepare Environmental Assessments	4.00	734,242			0	0			35%	256,985	50,816	307,801	35%		30%									100%	
26076	COMPLIANCE	Area Sources Compliance	Area Source Compliance	6.50	1,198,143																							100%
26077	DEVELOP RULES	Area Sources Rulemaking	Develop/Amend/Area Source Rules/Credits	6.00	981,363			0	0																			

WP Code	Program Category	Program	Activities/Outputs	Budgeted FTEs	FY 09-10 Work Expenditures w/ Division Overhead	Allocatable O.H.		ANNUAL OPERATING EMISSIONS FEES SUPPORTED PROGRAMS (exclusively permit-related)				EMISSIONS FEES SUPPORTED PROGRAMS ARCHITECTURAL COATINGS VALID TO SUPPORT (excluding exclusively permit-related)				Mobile Sources CLEAN (BULEWOOD) & STATIONARY SOURCE	CARB SUBVENTIONS/STATE REVENUE	ANNUAL OPERATING FEES	PERMIT PROCESSING FEES	EPA GRANT/OTHER FEDERAL REVENUE	SOURCE TEST/SAMPLE ANALYSIS	HEARING BOARD	AIR TOXICS AB 2588	TRAINING PROGRAMS	SUBSCRIPTIONS	OTHER REVENUE	TOTAL
						% Allocatable	Cost	%	Program Expenditures	Overhead Allocation	FY 09-10 Program Cost w/ Overhead	%	Program Expenditures	Overhead Allocation	FY 09-10 Program Cost w/ Overhead												
26438	MONITOR AIR	MATES III	MATES III - Toxic Emiss Inv/Mode	0.20	32,712			0	0			23%	7,524	1,670	9,193	77%											100%
26445	MONITOR AIR	Meteorology	Model Development/Data analysis/Forecast	2.00	422,121			0	0			14%	59,097	10,163	69,260	77%											100%
26460	DEVELOP RULES	Modeling AQMD Regional	Rule Impact/Analyses/Model Development	4.75	851,913			0	0			14%	119,268	24,138	143,405	77%										100%	
26461	PERMIT	NSR/Modeling Permit Review	Model Permit Review/Risk Assessment	1.25	234,450			0	0																	100%	
26503	DEV AIR PROG	PM Strategies	PM10 Plan/Analyze/Strategy Development	5.00	81,780			0	0			50%	408,902	90,743	499,644		40%		100%							100%	
26530	MONITOR AIR	Photochemical Assessment	Photochemical Assessment	0.25	40,890			0	0			1%	409	91	500											100%	
26565	CUSTOMER SERV	Public Records Act	Comply w/ Public Requests for Information	0.05	8,178			0	0																	100%	
26600	DEV AIR PROG	Credit Generation Programs	Dev RFP/AQMP Ctl Strats/Inter	2.00	327,121			21%	68,696	15,245	83,940					65%										100%	
26602	COMPLIANCE	Railyard Emiss Inv & HRA	Railyard Emiss Inv & HRA	0.75	122,670	0%	0																			100%	
26620	COMPLIANCE	Refinery Pilot Project	Refinery Project Working Group	0.25	40,112	0%	0	100%	40,112	9,074	49,186															100%	
26643	PERMIT	Rule 222 Filing Program	Rule 222 Filing Program	0.20	57,712																					100%	
26645	COMPLIANCE	Rule 1610 Plan Verification	Old vehicle scrapping	0.50	81,780											100%										100%	
26654	DEVELOP RULES	Rulemaking/NOx	Rulemaking/NOx	1.00	163,560			40%	65,424	14,519	79,943															100%	
26655	DEVELOP RULES	NSR/Rulemaking	Develop/Amend NSR & Admin Rules	5.00	867,803			35%	303,731	63,520	367,251															100%	
26656	DEVELOP RULES	Rulemaking/VOC	Develop/Amend VOC Rules	10.00	1,635,605			0	0			40%	654,242	145,189	799,431											100%	
26659	DEVELOP RULES	Rulemaking/Toxics	Develop/Amend Air Toxic Rules	5.75	940,473			25%	235,118	52,177	287,295					75%										100%	
26661	DEVELOP RULES	Rulemaking/RECLAIM	RECLAIM Amend Rules/Related Issues	2.00	327,121			100%	327,121	72,594	399,716															100%	
26678	CUSTOMER SERV	School Siting	Identification of criteria/toxic emissions	0.10	16,356			100%	16,356	3,630	19,985															100%	
26685	DEV AIR PROG	Socio-Economic	Apply economic model/Socio-economic	3.50	669,162			0	0			80%	535,329	101,632	636,961			20%								100%	
26745	DEV AIR PROG	Telecommuting/Rideshare	District Rideshare/Telecommute Programs	0.50	81,780											100%										100%	
26789	MONITOR AIR	Toxic Inventory Development	Toxic Emission Inventory Study	1.00	163,560																		0%			100%	
26790	COMPLIANCE	Toxics AB 2588	AB2588/Review Report/Risk Assessment Plan	0.50	81,780																					100%	
26791	COMPLIANCE	Toxics AB 2588	Review AB2588 Facilities Model	3.90	637,886																					100%	
26792	COMPLIANCE	Toxics AB 2588 Industrywide	AB2588 Toxics Industry-wide	3.50	572,462																					100%	
26793	COMPLIANCE	Toxics AB 2588 Tracking	AB2588 Toxics Tracking	0.75	122,670																					100%	
26805	OPER SUPPORT	Training	Training	0.05																						div alloc	
26816	DEV AIR PROG	Regional Transportation Prgrms	Develop AQMP Measure/Develop/Amend Rules	0.50	81,780											93%										100%	
26825	OPER SUPPORT	Union Negotiations	Official Labor/Management Negotiations	0.01	1,635	100%	1,635																			100%	
26826	OPER SUPPORT	Union Steward Activities	Represent Employees in Grievance Actions	0.01	1,635	100%	1,635																			100%	
26833	CUSTOMER SERV	Rule 2202 Employee Training	Employee Training/Process Evaluation	1.50	245,341																					100%	
26834	DEV AIR PROG	Vehicle Rule 2202 Implan	2202 Pre/Sub Plans/Tech Eval	3.50	572,462											0%										100%	
26836	DEV AIR PROG	Vehicle Rule 2202 Support	2202 Tech Asst/Training/Associations	2.75	469,792																					100%	
26855	OPER SUPPORT	Web Tasks	Create/edit/review web content	0.10	16,356	100%	16,356																			100%	
				115.00	\$ 18,807,720		\$ 125,940		\$ 1,056,558	\$ 230,759		\$ 5,249,867	\$ 1,080,457													100%	
Information Management																											
27038	OPER SUPPORT	Adm/Office Management	Overall Direction/Coordination of IM	2.00	329,630	100%	329,630																			div alloc	
27160	OPER SUPPORT	Computer Operations	Operate/Manage Host Computer Systems	5.25	1,888,430	100%	1,888,430																			100%	
27184	OPER SUPPORT	Database Information Support	Ad hoc Reports/Bulk Data Update	1.00	265,065	100%	265,065																			100%	
27185	OPER SUPPORT	Database Management	Develop/Maintain Central Database	2.25	370,833	100%	370,833																			100%	
27370	OPER SUPPORT	Information Technology Svcs	Enhance Operating Efficiency/Productivity	2.75	494,941	100%	494,941																			100%	
27420	OPER SUPPORT	Library	General Library Services/Archives	1.25	226,019	100%	226,019																			100%	
27470	OPER SUPPORT	Network Operation/Telecomm	Operate/Maintain/Implement AQMD Telecomm	8.25	1,551,897	100%	1,551,897																			100%	
27480	OPER SUPPORT	Systems Development	Develop systems for special operating needs	5.25	560,648			0	0			70%	392,454	82,576	475,030			30%								100%	
27481	CUSTOMER SERV	Systems Development	Develop systems in support of District-wide	1.75	401,926	45%	180,867																			100%	
27565	CUSTOMER SERV	Public Records Act	Comply w/ Public Requests for Information	5.75	947,685																					100%	
27615	OPER SUPPORT	Records Information Mgmt Plan	Develop/Implement Records Management Plan	1.25	281,019	100%	281,019																			100%	
27616	OPER SUPPORT	Records Services	Records/Documents processing	3.75	829,056	10%	82,906																			100%	
27735	OPER SUPPORT	Systems Maintenance	Maintain Existing Software Programs	5.00	1,400,074			0	0			25%	350,019	45,371	395,390			25%	50%						100%		
27736	OPER SUPPORT	Systems Implementation	Fin/HR Peoplesoft Systems Implementation	1.50	447,222	100%	447,222																			100%	
27770	OPER SUPPORT	Title V	Dev/Maintain Title V Program	1.00	164,815																					100%	
27791	COMPLIANCE	Toxics AB 2588	AB 2588 Database Software Support	0.75	193,111																					100%	
27855	OPER SUPPORT	Web Tasks	Create/edit/review web content	1.25	276,019	100%	276,019																			100%	
				48.00	\$ 10,628,390		\$ 6,394,847		\$ -	\$ -		\$ 742,472	\$ 127,947													100%	
Public Affairs																											
35046	CUSTOMER SERV	Adm/Office Management	Admin Office/Units/Support Coordinate Staff	4.82																						div alloc	
35110	CUSTOMER SERV	Call Center/Central Operator	Receive/Transfer 42000 Calls	1.45	256,590			0	0			30%	76,977	15,789	92,766	10%		10%	50%							100%	
35111	COMPLIANCE	Call Center/Cut Smog	Smoking Vehicle Complaints	4.20	731,640																					100%	
35112	COMPLIANCE	Call Center/Field Support	Field Radio Communication Center Support	2.35	409,370			0	0			40%	163,748	34,119	197,867	10%			50%							100%	
35205	CUSTOMER SERV	Environmental Education	Curriculum Development/Project Coordination	0.25	43,550			0	0			35%	15,242	3,176	18,418	50%		15%								100%	
35240	CUSTOMER SERV	Environmental Justice	Impl AQMD Board's Environmental Justice	2.00	348,400			0	0			65%	226,640	47,186	273,646	0%		35%</									

WP Code	Program Category	Program	Activities/Outputs	Budgeted FTEs	FY 09-10 Work Program Expenditures w/ Division Overhead	Allocatable O.H.		(A)				(B)				Mobile Sources CLEAN (CLEANLOW) & STATIONARY SOURCE	CARB SUBVENTIONS/STATE REVENUE	ANNUAL OPERATING FEES	PERMIT PROCESSING FEES	EPA GRANT/OTHER FEDERAL REVENUE	SOURCE TEST/SAMPLE ANALYSIS	HEARING BOARD	AIR TOXICS AS 2009	TRANSPI PROGRAMS	SUBSCRIPTIONS	OTHER REVENUE	TOTAL
						% Allocatable	Cost	%	Program Expenditures	Overhead Allocation	FY 09-10 Program Cost w/ Overhead	%	Program Expenditures	Overhead Allocation	FY 09-10 Program Cost w/ Overhead												
							\$		\$	\$	\$		\$	\$	\$												
Engineering and Compliance																											
50038	CUSTOMER SERV	Adm/Office Management	Assign and Direct Projects	4.00																						div alloc	
50047	CUSTOMER SERV	Adm/Resource Management	Central Resource Coordinate/Track	4.00																						div alloc	
50070	COMPLIANCE	CARB PERP Program	CARB Statewide Equipment Reg Compliance	4.00	592,110													100%								100%	
50152	COMPLIANCE	Compliance/IM Related Activities	Assist IM: Design/Review/Test	0.50	74,014				100%	74,014	18,149	92,162															100%
50155	COMPLIANCE	Compliance Guidelines	Policy/Procedures/Memos/Manuals	0.50	74,014				100%	74,014	18,149	92,162															100%
50156	COMPLIANCE	Compliance/Support	Prov Compliance Info/Permit Conditions	3.00	444,083													5%	75%	20%						100%	
50157	COMPLIANCE	Compliance/Special Projects	Program Audits/Data Requests/Board Support	5.00	740,139																					100%	
50158	COMPLIANCE	Compliance Testing	R461/Combustion Equip Testing	1.00	194,027				100%	194,027	36,297	230,324														100%	
50200	CUSTOMER SERV	Economic Development	Permit Processing/Public Participation	0.10	14,803																					100%	
50210	MONITOR AIR	Emergency Response	Emerg Technical Assistance to Public Safety	0.25	37,007				60%	22,204	5,445	27,649						40%								100%	
50260	CUSTOMER SERV	Fee Review	Fee Review Committee	0.10	14,803	0%	0	40%		5,921	1,452	7,373														100%	
50276	CUSTOMER SERV	Advisory Group/Stationary Src	GB Stationary Source Advisory Group	0.25	37,007	100%																				100%	
50365	COMPLIANCE	Hearing Board/Variations	Variations/Orders of Abatement	1.50	222,042																					100%	
50367	PERMIT	Hearing Board/Appals	Appeals: Permits & Denials	0.50	74,014																					100%	
50375	COMPLIANCE	Inspections	Compliance/Inspection Follow-up	86.25	13,142,288																					100%	
50377	COMPLIANCE	Inspections/RECLAIM Audits	Audit/Compliance Assurance	24.00	3,552,665				100%	3,552,665	871,132	4,423,797						5%	85%	10%						100%	
50416	POLICY SUPPORT	Legislative Activities	Supp/promote/influence legis/Adm	0.25	37,007	100%																					100%
50425	CUSTOMER SERV	Lobby Permit Services	Support Permit Processing/Customer Service	1.00	148,027																					100%	
50475	PERMIT	NSR/Implementation	Implement NSR/Allocate ERCs	3.50	518,097													5%		86%	9%					100%	
50476	PERMIT	NSR/Data Cleanup	Edit/Update NSR Data	1.00	148,027				100%	148,027	36,297	184,324														100%	
50515	PERMIT	Permit Processing	Non Title V/Title III/RECLAIM	38.25	5,897,059													5%		95%						100%	
50517	PERMIT	Permit Processing/NSR	New Permits/Excluding Title III	35.85	5,306,793													5%		95%						100%	
50518	PERMIT	Permit Processing/RECLAIM	Process RECLAIM Permits	24.00	3,552,664													5%	20%	75%						100%	
50519	PERMIT	Permit Processing/Title III	Process Title III Permits	1.00	148,027																					100%	
50520	CUSTOMER SERV	Permit Processing/Pre-App	Pre-Application Mgs/General Prescreening	4.00	592,110																					100%	
50521	PERMIT	Permit Processing/Expedited Permit	Proc Expedited Permits (301OT)	0.50	74,014																					100%	
50523	PERMIT	Permit Streamlining	Permit Streamlining	4.00	592,110																					100%	
50538	DEV AIR PROG	Port Comm Marine Vessel Cr Gen	Port Comm Marine Vessel Cr Gen	1.00	148,027													100%								100%	
50550	COMPLIANCE	Public Complaints/Breakdowns	Complaint response/Resolve/Invest follow up	10.00	1,480,276				65%	962,180	235,931	1,198,111						5%	20%		10%					100%	
50565	CUSTOMER SERV	Public Records Act	Comply w/ Public Requests for Information	0.50	74,014																					100%	
50605	COMPLIANCE	RECLAIM/Implementation	Audit/Policy/Resolve Fee Issues	9.00	1,382,249				55%	483,787	114,336	598,123						5%	40%	20%						100%	
50650	DEVELOP RULES	Rulemaking	Develop/Amend/Implement Rules	0.50	74,014					0	0		90%	66,612	16,334	82,946										100%	
50657	DEVELOP RULES	Rulemaking/Support PRA	Provide Rule Development Support	0.50	74,014					0	0		95%	70,313	17,241	87,554										100%	
50678	COMPLIANCE	School Siting	Identify Haz Emission Sources near schools	1.00	148,027				100%	148,027	36,297	184,324														100%	
50680	COMPLIANCE	Small Business Assistance	Asst sm bus w/ Permit Process	0.50	74,014																					100%	
50690	CUSTOMER SERV	Source Education	Provide Technical Assistance to Industries	3.00	444,083													5%		5%	90%					100%	
50728	PERMIT	Support Staff/Programming	Assist IM: Design/Review/Test	2.25	333,063				10%	33,306	8,167	41,473														100%	
50751	COMPLIANCE	Title III Inspections	Title III Compliance/Inspect/Follow-up	1.00	148,027																					100%	
50752	DEVELOP RULES	Title III Rulemaking	Title III Develop/Implement Rules	0.25	37,007				50%	18,503	4,537	23,041														100%	
50771	COMPLIANCE	Title V Inspections	Title V Compliance/Inspection/Follow up	11.00	1,628,305				55%	895,568	219,598	1,115,165														100%	
50773	DEVELOP RULES	Title V & NSR Rulemaking Supp	Title V Rules Dev/Amend/Impl	0.25	37,007				100%	37,007	9,074	46,081														100%	
50774	PERMIT	Title V Permits	Title V Permit Processing	13.25	2,001,367																					100%	
50775	PERMIT	Title III & V Permits/NSR	Title V NSR Permit Processing	2.00	296,056																					100%	
50805	OPER SUPPORT	Training	District/Organizational Unit Training	3.50																						div alloc	
50825	OPER SUPPORT	Union Negotiations	Official Labor/Management Negotiations	0.10	14,803	100%		14,803																		100%	
50826	OPER SUPPORT	Union Steward Activities	Represent Employees in Grievance Actions	0.10	14,803	100%		14,803																		100%	
50850	COMPLIANCE	VEE Trains	Smoking Trains-Compliance/Inspect/Follow up	1.50	222,042																					100%	
50855	OPER SUPPORT	Web Tasks	Creation/Update of Web content	0.50	74,014	100%		74,014																		100%	
				310.00	\$ 44,932,270		\$ 177,634		\$ 6,649,251	\$ 1,614,860		\$ 136,925	\$ 33,575													\$ 12,136,741	
				813.00	\$ 130,612,900		\$ 23,994,158		\$ 9,627,067	\$ 2,275,668		\$ 11,902,735	\$ 10,122,441	\$ 2,014,299													\$ (233,606)
																											\$ 11,903,135
																											\$ 24,039,475
																											\$ (12,136,340)
																											\$ 11,903,135
																											\$ 4,214,900
																											\$ (1,553,579)
																											\$ 2,661,321
																											\$ 884,623



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

SUBJECT: NOTICE OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

PROJECT TITLE: PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATING MANUFACTURERS

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the South Coast Air Quality Management District (SCAQMD) is the Lead Agency and will prepare a Notice of Exemption for the project identified above.

Pursuant to CEQA, the SCAQMD is the Lead Agency and has reviewed the proposed Rule 314 pursuant to CEQA Guidelines §§15002 (k)(1) and 15061. The proposed project establishes fees for architectural coatings manufacturers who distribute or sell their manufactured architectural coatings into or within the SCAQMD area of jurisdiction for use in the SCAQMD area of jurisdiction. Because the purpose of the fees is to recover the program costs for implementing Rule 1113 – Architectural Coatings, it is statutorily exempt from CEQA pursuant to CEQA Guidelines §15273 - Rates, Tolls, Fares and Charges. A Notice of Exemption has been prepared pursuant to CEQA Guidelines §15062 - Notice of Exemption. The Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties immediately following the adoption of the proposed project.

Any questions regarding this Notice of Exemption should be sent to Michael Krause (c/o Planning, Rule Development & Area Sources) at the above address. Mr. Krause can also be reached at (909) 396-2706.

Date: June 6, 2008

Signature: Steve Smith

Steve Smith, Ph.D.
Program Supervisor
Planning, Rule Development &
Area Sources

