

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Preliminary Draft Staff Report Proposed Amended Regulation III – Fees

Including:

Proposed Amended Rule 301 - Permitting and Associated Fees
Proposed Amended Rule 303 - Hearing Board Fees
Proposed Amended Rule 306 - Plan Fees
Proposed Amended Rule 307 – Fees for Air Toxics Emissions Inventory
Proposed Amended Rule 307.1 - Alternative Fees for Air Toxics Emissions Inventory
Proposed Amended Rule 308 - On-Road Motor Vehicle Mitigation Options Fees
Proposed Amended Rule 309 - Fees for Regulation XVI
Proposed Amended Rule 311 - Air Quality Investment Program (AQIP) Fees
Proposed Amended Rule 313 – Authority to Adjust Fees and Due Dates

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
LEGISLATIVE HISTORY.....	2
RULEMAKING HISTORY.....	4
PROPOSED AMENDMENTS	4
A - PROPOSED AMENDMENTS WITH A FISCAL IMPACT	4
B - PROPOSED AMENDMENTS WITH MINIMAL OR NO FISCAL IMPACT.....	9
LEGAL ISSUES.....	13
LEGAL FRAMEWORK.....	13
COSTS SUPPORTED BY PERMIT RELATED FEES	14
NECESSITY FINDING.....	14
EQUITY FINDING	15
AQMP & LEGAL MANDATES.....	15
CEQA & SOCIOECONOMIC ANALYSIS.....	15
RESOURCE IMPACTS.....	16
FINDINGS.....	16
APPENDIX A – SUMMARY OF PREVIOUS AMENDMENTS	A1

EXECUTIVE SUMMARY

Regulation III – Fees, establishes the fee rates and schedules associated with permitting, annual renewals, emissions and other activities that help fund most of AQMD's regulatory programs and services. Permitting, annual renewals and emissions fees provide approximately 60% of the AQMD budget. The AQMD is currently in the process of finalizing the Budget for FY 2009-2010. The proposed Fiscal Year 2009-2010 (FY 09-10) Budget and Work Program are hereby incorporated by reference in this report. Staff is proposing a limited number of amendments to Regulation III to better align program revenues with program costs. A few of the proposed fee amendments were formulated to recover costs for mandated programs and better align some other program revenues with program costs that have typically never been fully recovered, or to reduce fees being over charged . Other proposed amendments clarify rule provisions and have minor fee adjustments. Staff is also proposing administrative amendments that have no revenue impact. Staff is not proposing a CPI increase for this fiscal year. Specific proposals that may have an estimated fiscal impact for FY 2009-10 include:

1. Establish a fee for expedited (emergency) review of Procedure 4 and 5 Plans at fifty percent surcharge, to recover the cost of expedited emergency Procedure 4 and 5 Plan Evaluation requests which are responded to by staff on any unscheduled emergency basis;
2. Improve recovery of the cost of the initial Rule 2202 Employee Commute Reduction Program new Employee Transportation Coordinator training classes by increasing the fee to better recover training program costs;
3. Recover partially the costs for reviewing and enforcing of Smoke Management Plans, Burn Management Plans, Emergency Burn Plans and Post Burn Evaluation Reports which are mandatory pursuant to the provisions of Rule 444 as amended on November 7, 2008;
4. Cost Recovery fee for conducting High Average Vehicle Ridership (AVER) No-Fault Inspections requested by employers subject to Rule 2202;
5. Allow for the amendment of Employee Commute Reduction Programs (ECRP) that are alternative compliance option plans for parity with amendments allowed to Rule 2201 registrations;
6. Increasing the additional-day fee for Appeal petitions to establish parity with Group Variance petitions;
7. Establish new equipment categories for boilers fired on: Landfill/Digester Gas < 5 MMBTU/hr as Schedule B, 5-20 MMBTU/hr as Schedule C, > 20-50 MMBTU/hr as Schedule D and > 50 MMBTU/hr as Schedule F to replace the current two categories for this type of equipment;
8. Reclassifying “Plasma Arc Cutting” from the current higher fee Schedule C to the lower B1 fee schedule.

LEGISLATIVE HISTORY

California Health and Safety (H&S) Code § 40500 et. seq. establishes the authority of the District to “adopt fee schedules for the issuance of variances and permits to cover the cost of planning, inspections, and monitoring related thereto” and to assess fees for the approval of plans for the control of air contaminants and regulatory programs affecting indirect and area sources (H&S Code §§ 40522 and 40522.5).

With the enactment of SB 802 (Lewis) in October 1993, total fees collected by AQMD in successive years was limited to an amount equivalent to the amount of fees collected in FY 1993-94, adjusted annually to reflect any subsequent increase in the California Consumer Price Index (CPI). This bill also prohibited increasing individual permit fees by more than the CPI. In 1994, SB 1853 (Polanco) revised the CPI baseline range from January 1 of the previous year to January 1 of the current year. In 1995, SB 962 (Russell) restored some of the flexibility to adjust fees that SB 802 removed. Under SB 962, AQMD can increase individual permit fees in excess of the California CPI based on the Governing Board’s findings supported by relevant information that a fee increase is necessary and will be equitably apportioned. However, the increase must be phased in over a two-year period. This evidence must appear in the rulemaking record, and must include a written explanation of how a fee increase meets these requirements, set forth in California H&S Code §§ 40510, 40510.5, and 40523, as follows:

- § 40510: (a) The Legislature finds and declares as follows:
- (1) Total fees collected by the south coast district must continue to be capped in order to prevent the imposition of undue financial burden upon regulated sources.
 - (2) There is a need to provide for greater flexibility in establishing and amending fees within the total fee cap to ensure a fair apportionment of fee payment responsibilities.
 - (3) Fees based solely on the quantity of emissions created by a source should not be indexed to the emission potential, or to a percentage of emissions trading units, as that term is used in Sections 39616 and 40440.1, held by that source so as to prevent payments of those fees from decreasing if emissions decline.
 - (4) Before making any individual fee increases in excess of the percentage increase of the California Consumer Price Index for the preceding calendar year, findings of fact should be made, supported by relevant information in the public record, that the fee increase is necessary and will provide an equitable apportionment of fee payment responsibilities, and the increase should be phased in to void sudden adverse impacts on regulated sources.

- (b) The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related hereto. Every person applying for a variance or a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule.
- (c)
 - (1) The fees may be varied in accordance with the quantity of emissions and the effect of those emissions on the ambient air quality within the south coast district.
 - (2) The fees shall not be indexed to the potential emissions from, or to a percentage of the emissions trading units, as that term is used in Sections 39616 and 40440.1, held by, any source.
- (d) Subject to the limits established by this section and Sections 40500.1 and 40523 and the requirements of Section 40510.5, this section shall not prevent the district from establishing or amending an individual permit renewal or operating permit fee applicable to a class of sources to recover the reasonable district costs of permitting, planning, enforcement, and monitoring which that class will cause to district programs. In establishing the fee applicable to a class of sources, the district may consider the impact on air quality of the emissions from that class.

§ 40510.5: In addition to the limits on total fee collections established by Sections 40500.1 and 40523, the south coast district board shall not increase any existing permit fee by a percentage greater than any percentage increase in the California Consumer Price Index for the preceding calendar year, unless the board complies with both of the following requirements:

- (a) The district board shall make a finding, based upon relevant information in a rulemaking record, that the fee increase is necessary and will result in an apportionment of fees that is equitable. This finding shall include an explanation of why the fee increase meets the requirements of this section and Section 40510.
- (b) The fee increase shall be phased in over a period of at least two years.

§ 40523: The total amount of fees collected by the south coast district in any fiscal year shall not exceed the amount of fees collected by the district in the 1993-1994 fiscal year, except that the amount may be adjusted annually in the 1994-1995 fiscal year and subsequent fiscal years to reflect any increase in the California Consumer Price Index, for the preceding calendar year, from January 1 of the prior year to January 1 of the current

year, as determined by the Department of Industrial Relations. This limitation shall not affect or limit the fees, which may be imposed and collected pursuant to a state, or a federal mandate imposed on or after January 1, 1994.

Additional statutes authorize the collection of fees to cover the costs of regulation of indirect and area-wide sources (H&S Code § 40522.5); and to recover costs for the approval of plans for the control of emissions of air contaminants, to cover the costs of related review, planning, inspection, and monitoring (H&S Code § 40522).

RULEMAKING HISTORY

AQMD Regulation III – Fees, describes activities for which fees are required and sets rates and schedules for the amount of fees to be charged. Regulation III is amended each year in support of AQMD’s annual budget. California H&S Code §§ 40510, 40510.5, and 40523 authorize AQMD to increase fees consistent with an annual increase in the California CPI and allow increasing individual fees by a greater amount if the Board makes the required findings of necessity and equitable apportionment. For a more detailed history of prior fiscal year amendments already approved and adopted by the Governing Board see Appendix A at the end of this staff report.

PROPOSED AMENDMENTS

Proposed amendments to Regulation III are listed in the two sub-sections below. The first sub-section “A - Proposed Amendments With A Fiscal Impact” lists proposed amendments that are anticipated to have a fiscal impact, generate revenues to better recover program costs, or are a fee reduction better aligning fees with program costs. These items are listed in rank order of estimated revenue (based on the latest available data). The second sub-section “B- Proposed Amendments With Minimal Or No Fiscal Impact” lists proposed amendments that are anticipated to have minimal or no fiscal impact, including amendments being proposed to provide emphasis and clarification for existing language, administrative amendments, or corrections. These items are listed in sequential rule number order, based on the current numbering before any proposed amendments.

A - Proposed Amendments With a Fiscal Impact

301(u)(6) Establish a Fee for Expedited (Emergency) Review Fee for Procedure 4 & 5 Plans
301 Table VI

Cost Recovery

Estimated Revenue: \$135,000

A 50% surcharge is proposed for evaluating any procedure 4 & 5 plans on an expedited basis. These are typically for projects requiring an immediate (emergency) inspection due to an asbestos disturbance in violation of R1403 and/or an evaluation of procedure 4 or 5 plans due to an emergency

clean-up. Staff needs to respond on an emergency basis to projects requiring documentation of asbestos violations prior to a clean-up and/or evaluate and approve procedure 4 or 5 clean-up plans on an expedited basis so as to not delay the decontamination clean-up project. The numerous expedited responses for asbestos contaminated sites places an undue burden on District resources that was not anticipated and is not being recovered by the current Procedure 4&5 plan evaluation fees. It is recommended that a 50% fee surcharge be assessed on all Procedure 4 or 5 plans that require expedited inspection and/or evaluation.

The amendment is necessary to better recover specific emergency expedited program costs and it is equitable since it recovers costs specific to complying with mandatory program requirements.

308(g)(2)

Improve Cost Recovery of Initial Rule 2202 ETC Training Classes

Cost Recovery

Estimated Revenue: \$82,000

Rule 2202 requires that employers subject to the rule designate a program representative to attend the mandatory 1 time 8-hr class that certifies the individual to be able to prepare and implement the Employer Commute Reduction Program at the employer's worksite. Historically, AQMD has charged a minimal fee for this class, but not an amount that covers AQMD expenses. This proposal would increase the fee amount to cover 70% of the cost, which would be \$154.81 per attendee. This proposal is for cost recovery purposes. Cost involved include: staff time, class materials, facility rental and minimal snacks. The current fee for the class is \$64.23. However, actual current cost for AQMD to provide the class is \$221.16. The proposed fee, to cover the cost incurred by AQMD, is \$154.81 per attendee. The training fee is a one time cost per employee representative. Employers subject to the rule may designate more than one employee to be trained. However, only one trained employee is mandated by Rule 2202. Trained persons separating their employment status with the employer must be replaced by a newly designated trained employee.

The proposal is necessary and equitable because it better recovers costs specific to the training program.

This adjustment is necessary to better recover costs and equitable since training is provided to the regulated community, generating revenues of approximately \$24,000/annually; costs to District staff alone exceed \$96,000/annually

**306(b) and
306 (i)(1)**

Cost Recovery for New Smoke and Burn Plan Evaluation Requirements

Cost Recovery

Estimated Revenue: \$19,000 to \$44,000

The proposed fees shall be assessed for filing and evaluating Smoke Management Plans (SMP) and Burn Management Plans (BMP), and for evaluating Post Burn Evaluation Reports (PBER) and Emergency Burn Plans (EBP). This is not a new program, but the BMP, PBER and EBP are

new plan requirements in Rule 444 adopted on November 7, 2008. The fees for a SMP and BMP would include filing fees and plan evaluation fees. If an inspection is required to approve the plan, then the inspection fee will also apply. The fees will recover some of the cost burden associated with implementing Rule 444 - Open Burning. The AQMD has been implementing the Open Burn program since rule adoption in 1976 without recovering any costs. The AQMD receives approximately 28 SMPs per year, expects to receive 38 BMPs, and for all those plans received, PBERs will be required. These fees will not cover the cost burden of running the open burn program, which includes numerous inspections, travel time, staffing the burn line, and issuing and reviewing permits. The proposed fees will recover the costs associated with plan review. The fees will only apply when SMPs, BMPs or PBERs are required, i.e. for large burn projects. Staff expects that SMPs will be received annually as forestry organizations conduct vegetative prescribed burns on an ongoing basis. For a large farm, more than one BMP is possible (the highest for a farm in 2007 was 5). Fees for EBP evaluations will only apply when emergency burning is required to save crops from freezing. The majority of burns typically occur in the farm sector, followed by the government sector (fire departments and forestry organizations), the agricultural services sector, and refineries. The fees will only apply to the large open burn projects greater than 10 acres which is why they typically only affect fire departments, forestry organizations and large agricultural operations. The fee is necessary and equitable since it better recovers specific program costs as follows:

Fee Structure and Rates

Plan	Fee Type	Fee Amount *	Estimated Labor Hours
BMP and SMP	Filing fee	\$112.30	
	Evaluation fee	\$112.30 / hour	1 – 2
	Inspection fee	\$112.30 / hour	0 – 2
APBER and EBP	Evaluation fee	\$112.30 / hour	0.5 - 1

* There is a small business discount available of 50% for the above fees.

308(c)(2)(E) Cost Recovery Fee for Inspection of High AVER No-Fault Inspections

Cost Recovery

Estimated Revenue: 50 Projected High AVR No-Fault worksites (30 sites < 500 employees; 20 sites > 500 employees). Projected Additional

Fee Revenue:

\$19,650 (\$39,500 x 50%) in FY 09-10

\$39,300 in FY 10-11

Rule 2202 allows employers to request an on-site High AVR No-Fault Inspection when the worksite meets or exceeds the AVR target. Upon successful completion of the High AVR No-Fault Inspection, the annual filing fees are currently waived. These filing fees range between \$693 and \$927, depending on the number of employees at the worksite and the type of submittal (single or multi-site). Staff is proposing to phase out the waiving of filing fees for High AVR No-Fault audits over a two-year period to recover the costs of conducting these on-site audits. During the first year of implementation (FY 2009-10,) employers would be required to pay 50% of the corresponding filing fees. During the 2nd year of implementation (FY 2010-11 and thereafter), employers would pay the full filing fees.

This amendment is recommended because the Plan processing/review and the on-site auditing costs are not currently recovered by the District. High AVR No-Faults are optional for the employer. Alternatively, the employer would need to pay a filing fee ranging from \$693 to \$927 to submit a single site Annual Program. It is necessary and equitable since this fee will allow the District to recover the costs of Plan processing/review and conducting on-site High AVR No-Faults for employers that voluntarily request these types of audits. The goal of this proposal is to phase out waiving the High AVR audit fees over a two- year period. The proposed fee for a High AVR No-Fault will be 50% of the corresponding filing fees during the first year of implementation (FY 2009-10). The second year of implementation (FY 2000-11 and thereafter), employers would pay the full filing fees.

308(c)(2)(C) Allowing for the Amendment of Employee Commute Reduction Programs (ECRPs)

Cost Recovery

Estimated Revenue: \$12,000

Rule 308 contains a provision for amendments to Rule 2202 Registrations, however, there is no such provision for amendments to the alternative compliance option called Employee Commute Reduction Programs (ECRP). This proposed amendment will introduce this type of transaction allowing employers to make changes to their already approved ECRPs. As established in Rule 308, the current amendment fee for Rule 2202 Registrations is 50% of the initial submittal fee. The proposed fee for amendment of ECRPs is also 50% of the initial submittal fee.

Projected number of ECRP amendments approximately 30 worksites (20 sites < 500 employees; 10 sites > 500 employees)

$$\$693.16 \times 20 \times 50\% \cong \$7,000$$

$$\$926.92 \times 10 \times 50\% \cong \$5,000$$

$$\text{Total} = \$12,000$$

This amendment is necessary and equitable since it establishes parity among rule compliance options and also to provide employers the opportunity to amend employee commute reduction programs once the program has been approved. The ability to amend compliance options is

303 Table III

currently available to Rule 2202 Registrations only. The introduction of this proposed amendment will allow employers under the alternative ECRP compliance option to make changes to their submissions when needed.

Increasing Additional-Day Fees for Appeal Petitions to Establish Parity with Group Variance Petition Additional-Day Fees

Cost Recovery

Estimated Revenue: \$9,000

The Hearing Board hears three types of cases: Variance, Appeal, and Order for Abatement (O/A). There is a filing fee schedule established for Variances and Appeals which covers processing of the petition and a hearing before the Board. There are no fees associated with Orders for Abatements (O/As), as the District is the petitioner in such matters, except in instances where a company operating under an existing O/A may file a petition seeking a modification of the O/A. The variance category is divided into subcategories, i.e., variance, product variance, group variance, with slight variations in filing fees. In addition to the initial filing fee, there is a separate fee for each hearing day in addition to the first hearing day necessary to dispose of the petition. This fee is the same for variance (interim, short, regular, emergency), product variance, and appeals; but about 50 percent more for group variances. This proposal is to increase the additional-day fee for appeal petitions to the same amount as that for group variance petitions.

Variance hearings rarely take more than one day, and in instances where they do, the second day will usually not take the entire day, and other cases will be heard on the additional day. Group variances, of which there may be only one or two each year, if any at all, may take two or three full days of hearings and may be the only matter to be heard on those days; thus, there is a higher fee. Appeal hearings are complex matters and can take many days for the Board to hear testimony on and reach a decision, and the Hearing Board usually reserves those days so that no other cases are heard.

This proposal is necessary and equitable since there was a shortfall/deficit of over \$800,000 in Hearing Board revenue for FY 2007-08. The proposed fee increase is expected to result in a minor cost recovery of approximately \$8,000 to \$9,000 per year; however, it is primarily an issue of equity.

The current fee is \$583.27; the proposed revised fee is \$874.95, an increase of \$291.68. Because it is not possible to predict in advance what the Hearing Board case load will be like for an upcoming year, it is difficult to estimate the amount of additional revenue to be generated in successive years by the proposed fee increase. Statistical data indicates that the Hearing Board hears on average two appeal cases each year, and the average length of appeal hearings are about 15 days. The product of the proposed increase of \$291.68 and 30 days equals the projected estimated \$9,000.

301 Table 1B New Equipment Categories for Boilers Fired on Landfill/Digester Gas

Cost Recovery

Estimated Revenues \$7,000

Propose new Equipment Categories for Boilers fired on Landfill/Digester Gas:

- < 5 MMBTU/hr as Schedule B,
- 5-20 MMBTU/hr as Schedule C,
- > 20-50 MMBTU/hr as Schedule D, and
- > 50 MMBTU/hr as Schedule F

Currently, there are two schedules listed for boilers fired on landfill/digester gas – schedule B for <10 MMBTU/hr and schedule F for >10 MMBTU/hr.

This amendment is recommended for consistency among the permit processing fees for boilers fired on landfill gas and digester gas with the fee rates of boilers fired on other fuels. Boilers >50 MMBTU/hr will remain as Schedule F due to the permit processing requirements for these boilers. The industries of concern are landfills and sewage treatment plants.

There is impact to one facility - Los Angeles City, Terminal Island, in the amount of \$1,513.96 in annual operating dues in FY 08-09. The impact to AQMD is about \$7,000 in annual operating fees in FY 08-09 for the 43 permitted boilers. There is minimal impact in permit processing revenue as there are very few applications submitted each year for these boilers. A total of two applications were processed in 2007.

The new categories for these boilers are equitable and necessary for consistency with the fees for boilers fired on other fuels.

301 Table 1B Reclassifying “Plasma Arc Cutting” from Schedule C to B1

Cost Realignment

Estimated Revenue: (\$19,000)

Data and analysis indicates that annual renewal fee Schedule B1 for this equipment is better representative than Schedule C.

The amendment is necessary to assess the appropriate fee and equitable since the fee is limited to recovering actual costs.

B - Proposed Amendments With Minimal or No Fiscal Impact

301(c)(1)(F) Fees for Processing Identical ERC Applications

Clarification

Estimated Revenue: None

Fees for Permit Processing for Identical Equipment and Processing of Applications for Short Term Emission Reduction Credits

Under Rule 301, when applications are submitted in accordance with the provisions of subparagraphs (c)(1)(A), (c)(1)(D), (c)(1)(E), (c)(1)(I), paragraphs (c)(3) or (c)(4) concurrently for identical equipment or for change of title or alteration/modification of short term emission reduction

credits, full fees for the first ~~equipment~~ application, and fifty percent (50%) of the applicable ~~permit~~ processing fee for each additional ~~equipment~~ application shall be assessed. The provisions of this subparagraph do not apply to Certified Equipment Permits, Registration Permits, Non Road and Qualifying Engine Permits, and the exceptions mentioned in paragraphs (c)(3)(A), (c)(3)(B), and (c)(3)(C). This subparagraph shall, upon request of the applicant, apply to applications which have been received before July 1, 1996, but not yet been processed or which have not received final determination regarding applicable permit processing fees.

**301(c)(2)(A),
301(c)(2)(C),
301(k)(7) and
301(m)(5)**

Change of Operator Application Rejection For Unpaid Fees Due

Clarification

Estimated Revenue: None

The current rule requires that all fees due are paid before an application for a Change of Operator (C/O) can be accepted. The system flags if a fee is either delinquent or due and will not allow the acceptance of C/O applications. Under current procedures staff rejects the application and informs the previous operator regarding fees due that must be paid before the application can be accepted. When the application for C/O is resubmitted with fees due but in the meantime other fees, such as Hot Spots, are billed to the previous operator, the application for C/O again cannot be accepted due to the new fees due. There have been cases where the applications have been returned at least twice or three times for additional fees, frustrating the permit applicants. The proposed amendment is to:

1. Not accept Change of Operator applications if there are any delinquent fees; and,
2. Once the application is accepted, require the new operator to pay all fees due to the previous operator before the Change of Operator application can be approved; and,
3. If fees due are not paid within 90 days after they are notified in writing, and the application will be cancelled.

This will streamline the process for accepting C/O applications and reduce the back and forth of rejecting applications for fees due and at the same time ensure that the District collects all the fees due before the Change of Operator is granted.

**301(i)(4) and
301 Table IIB**

Assessing the Actual Cost for Publication of Public Notices

Clarification

Estimated Revenue: Minimal

This amendment is a clarification and an enhancement to an existing program. A set fee is established in Rule 301 Table IIB for Rule 212(g) and Title V Public Notice Preparation and Publication. However, these established fees are often not representative of the actual costs. The amended fee is based on the actual cost of the publication of public notices. The overall impact is expected to have minimal fiscal impact.

301(n)

Multiple Identical Procedure 5 Plan Submittals

Administrative Amendment

Estimated Revenue: None

For all pre-approval requests of identical procedure 5 plans submitted in accordance with Rule 1403(d)(1)(D)(i)(V)(2), the full fee will be charged for the first pre-approval evaluation, and fifty percent (50%) of the applicable fee will be charged for each subsequent identical procedure 5 plan evaluation.

301 Table IB New Equipment Categories for Landfill Gas Collection Systems

Administrative Amendment

Estimated Revenue: None

The following proposal is to add additional categories to Landfill Gas Collection Systems based on the number of wells as follows:

Landfill Gas Collection (< 10 Wells), Schedule B;

Landfill Gas collection (10-50 Wells), Schedule C;

Landfill Gas Collection (>50 Wells), Schedule D.

Currently, there is only one schedule (Schedule D) for all Landfill Gas Collection systems.

The proposed breakdown of schedules has already been in practice. The practice has been to accept the applications for Landfill Gas Collection systems based on the number of wells, thus there is no fiscal impact.

This amendment is necessary and equitable in order to make processing fees and annual operating fees reflect actual costs. Landfill Gas Collection systems are categorized under one schedule (Schedule D) in Rule 301 despite the differences in numbers of wells and the sizes of the facilities. Applying the different schedules based on the number of wells better reflects the actual costs associated with the permit processing requirements and the annual inspections and/or notifications associated with the gas collection system.

301 Table IB New Equipment Category for Microturbines

Administrative Amendment

Estimated Revenue: None

New Equipment Category is proposed for microturbines to be listed as Gas Turbine (Microturbine only), Schedule A. There is currently not a category for microturbines. Microturbines are exempt per Rule 219(b)(2) only if burning natural gas, methanol, and/or liquefied petroleum gas. Microturbines fired on other fuels require a permit. There is currently no equipment category listed in Rule 301 for microturbines. Schedule A is proposed for the microturbines.

It is necessary and equitable to change the rule language to include microturbines as stated above. Microturbines require the simplest permit processing, thus Schedule A is proposed. There is no impact to any industry nor AQMD for this amendment as microturbine permits have already been processed under Schedule A.

- 301 Table IB Cadmium or Nickel Plating Tank/Lines**
Administrative Change
Estimated Revenue: None
Equipment Schedule should be the same as for Chrome Plating tanks as they both require health risk assessment. The Schedule B1 and C have the same permit processing fee. However, the recommendation is to assign Schedule B1 for the Cadmium or Nickel Plating Lines instead of Schedule C. Chrome plating operations are subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) and the State Air Toxics Control Measure (ATCM) and also AQMD's Rule 1469. There is no source specific rule for cadmium or nickel plating tanks. Compared to the Chrome plating operations, less time is required to inspect a nickel or cadmium plating line as the inspector does not have to check for additional rule compliance. In addition, chrome plating operations are inspected once every quarter, unlike the nickel or cadmium plating operations that are inspected once a year. There is no fiscal impact since this is current practice.
- 304(i) Extension of the Time Period For Paying for District Emissions Testing From 30 to 60 Days**
Administrative Change
Estimated Revenue: None
- 306(i)(1) No Evaluation Fee (Only Filing Fee) Charged for Plans Submitted in Compliance with Rule 1415 - Reduction of Refrigerant Emissions from Stationary Refrigeration and Air Conditioning Systems**
Clarification
Estimated Revenue: Undetermined
Since January 1, 1996, Rule 1415(d)(2)(C) has biennially required owners/operators of stationary systems containing more than 50 pounds of a Class I or Class II refrigerant to submit a registration plan for all systems at any given facility. This has enabled the District to maintain data on the number of systems, the amount and type of refrigerant charged to those systems annually, and the audits and maintenance completed on those systems annually. The data obtained has been instrumental in the further development of Federal regulations and local State efforts to create a statewide rule. Short of that, the amount of time and materials required to process these registration plans every two years has been minimal, requiring no evaluations. This proposed clarification is to ensure that there is no evaluation fee attached to these plan registrations, however the Rule 306 initial plan filing fee will still be charged.
- 307.1(c) Extending the AB2588 Fee to Unpermitted Emergency/Standby Diesel ICE Engines**
307.1 Table I
Administrative Change
Estimated Revenue: Minimal/None
Under the current version of the Rule 307.1, facilities with only permitted

emergency diesel engines are subject to fees. This has resulted in a loop-hole in the rule since there are many facilities (about 1,500) with emergency diesel engines plus other minor equipment that are neither subject to this fee or any other AB2588 Program fees. Additionally, AQMD staff has devoted much time and effort developing rules to reduce impacts from diesel internal combustion engines (ICE) (e.g., Rules 1470 and 1472). In order to recover AQMD costs and to close the loop-hole in Rule 307.1, it is proposed that the fee be extended to any facility with a diesel ICE that is not currently subject to AB2588 fees. The amendment is recommended to essentially eliminate a loop hole in which facilities with emergency diesel engines are not paying any AB2588 fees. The current situation is not equitable since facilities with diesel ICEs and other minor equipment are not paying AB2588 fees, whereas facilities with just emergency diesel engines are paying fees. The proposed amendment is also necessary to recover AQMD costs of developing Rules 1470 and 1472. The intent is to make this proposed rule change revenue neutral since, while more facilities are billed it will be at a lower rate such that the revenue generated is unchanged from FY 2007-08. The fee for this category is reduced from \$146.90 to \$110.00, however the number of facilities impacted by the fee is anticipated to increase from approximately 4,500 to 6,000.

Various PAR III Rules The staff proposal also contains other administrative changes, corrections or clarifications with minimal or no fiscal impact.

LEGAL ISSUES

Legal issues specific to PAR III are addressed in the following sections.

Legal Framework

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 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 planning, monitoring, rule development and outreach programs from emissions-based fees. Mobile source fees also contribute a proportionate share for planning, rule development, monitoring, and outreach activities. Pursuant to state law, fee increases for individual permit fees are limited to the yearly change in California Consumer Price Index (CPI) unless specific findings are made.

Health and Safety Code section 40510.5 adopted in 1995, specifies that a permit fee may be raised by more than the change in the California CPI if the Governing Board makes a finding, based on evidence in the rulemaking record, that the fee increase “is necessary and will result in an apportionment of fees that is equitable” and that the fee increase will be “phased in over a period of at least two years.”

Costs Supported by Permit Related Fees

- 1. Emission Fees.** The District has traditionally used emissions-based fees to pay for the stationary source share of its programs in the areas of planning, rule development, air monitoring, and outreach activities.
- 2. Permit Fees.** Permit fees are used to support all permit and permit related activities including legal analysis and operational support.
- 3. Annual Operating Fees.** These fees are used to cover the costs of inspection, enforcement and related activities. These fees are also used to cover some permitting as well as planning and other functions related to permitting.
- 4. Other Costs.** In addition, certain indirect costs of operating the District are allocated proportionately over all District 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, building maintenance, 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. A proportionate share of these costs is also borne by mobile source fees obtained by the AQMD from the State as a result of vehicle registrations within the District.

Necessity Finding

The large majority of the District’s air quality programs are mandated by statute. Legal mandates for each item in the District’s work program are discussed and identified in the supporting documentation for the work program. Even programs not expressly mandated by statute are programs adopted to improve air quality and reduce exposure to unhealthful levels of air pollution, which is the District’s primary purpose as expressly stated in the Health and Safety Code, and hence are reasonably necessary. Ample opportunity is provided through the Budget Advisory Committee, Board committee meetings and public workshops for the Board to receive public input concerning whether any of the budgeted programs are not reasonably necessary. The Board’s finding of necessity will be based on the final budget and facts in the record.

The Fiscal Year 2009-10 Budget and Work Program will be finalized and available in mid-April. The proposed budget will maintain current programs, utilizing reserves to offset loss in revenues

due to the economic downturn. Staff is not proposing an across-the-board fee increase this fiscal year.

Equity Finding

Health and Safety Code section 40510.5(b) requires the Board to find that an increased fee will result in an equitable apportionment of fees when increasing fees beyond the CPI. It is reasonable to use emission-based and permit-related fees to apportion certain indirect costs. Such a system is reasonably related to the fee payers' benefits from and burdens on the regulatory system. 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 for permit processing and the specific fee increases imposed this year since the increase is based on the estimated labor costs of performing the work which also demonstrates that the fee increase is necessary. Such apportionment, based on labor costs, is equitable because each fee-payer pays the actual cost of services related to its permit. Annual operating fees are based upon three broad fee schedules which are roughly proportional to the amount of work related to compliance activities for such sources. Thus, the fee apportionment is equitable.

The fees are designed to align program costs and revenues. Fees adjustments address situations where sources are either not paying anything or not paying an equitable share of their program costs. The adjustments more appropriately and equitably align program costs and revenue. Fee increases are supported by staff estimates that indicate a current undercollection in their respective categories. An explanation of why each fee is equitably apportioned is found as part of the individual fee description under 'Proposed Amendments' in this report.

Without cost recovery, resources and associated programs will have to be significantly reduced. Currently, permit, annual renewal and emissions fees are structured for stationary sources based on actual AQMD staff level of effort and actual costs.

AQMP & LEGAL MANDATES

The fee rules are not part of the AQMP. California Health and Safety Code §§ 40500 et seq. established the authority to "adopt fee schedules for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto," and to assess fees for the approval of plans for the control of air contaminants and for regulatory programs affecting indirect and area sources (H&S §§ 40522 and 40522.5). California Health and Safety Code Sections 40500.1, 40510, 40510.5 and 40523 authorize AQMD to increase fees consistent with annual increases in the California Consumer Price Index (CPI).

CEQA & SOCIOECONOMIC ANALYSIS

AQMD staff has reviewed the proposed amendments to Rules 301, 303, 304, 304.1, 305, 306, 307.1, 308, 309, 311, and 313, and because the proposed project involves the modification and structuring of charges by public agencies for the purpose of meeting operating expenses and

financial reserve requirements, it is statutorily exempt from CEQA, pursuant to state CEQA Guidelines § 15273 – Rates, Tolls, Fares, and Charges. A Notice of Exemption will be filed with the county clerks immediately following adoption of the proposed project.

A Socioeconomic Assessment of the proposed amendments to Regulation III - Fees will be prepared and distributed to the public 30 days prior to the Public Hearing for this amendment.

RESOURCE IMPACTS

No additional resource impacts are expected.

FINDINGS

Before adopting, amending or repealing a rule, the AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference, as defined in Health and Safety Code Section 40727. The draft findings are as follows:

Necessity – The AQMD Governing Board has determined that a need exists to amend Regulation III – Fees, including Rules 301, 303, 304.1, 306, 307.1, 308, and 311 to fund the Fiscal Year 2004-05 Budget.

Authority – The AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Sections 40000, 40001, 40440, 40500, 40501.3, 40506, 40510, 40510.5, 40512, 40522, 40522.5, 40523, 40702, and 44380 of the California Health and Safety Code.

Clarity – The AQMD Governing Board has determined that Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, and 311, as proposed to be amended, are written or displayed so that their meaning can be easily understood by the persons directly affected by them.

Consistency – The AQMD Governing Board has determined that Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, and 311, as proposed to be amended, are in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

Non-Duplication – The AQMD Governing Board has determined that Regulation III – Fees, including Rules 301, 303, 304, 304.1, 306, 307.1, 308, 309, and 311, as proposed to be amended, do not impose the same requirements as any existing state or federal regulation and are necessary and proper to execute the power and duties granted to, and imposed upon, the District.

Reference – The AQMD Governing Board, in amending these rules, references the following statutes which the AQMD hereby implements, interprets, or makes specific: Health and Safety Code Sections 40500, 40500.1, 40510, 40510.5, 40512, 40522, 40522.5, 40523, 41512, and 44380.

APPENDIX A – SUMMARY OF PREVIOUS AMENDMENTS

During FY 1989-90, an independent study conducted by KPMG Peat Marwick resulted in the basic structure of Rule 301, including:

- assessment of permit procedures based on complexity of review required and the emission potential of the equipment/process to be permitted;
- assessment of operating fees based on equipment complexity and level of source which correlates to the average level of effort; and
- assessment of emission fees based on a reduced threshold of four tons.

This study, subsequent studies referenced herein, and the staff reports for the 1990 amendments and all subsequent amendments to Regulation III are incorporated by reference in this staff report.¹

During 1994, a second independent fee study was conducted by KPMG Peat Marwick to evaluate the following fee-related issues:

1. AQMD's existing fee structure, including a full cost and revenue analysis of AQMD programs;
2. RTC allocation fees;
3. Fees for toxic air contaminants;
4. Feasibility of converting the current permit and operating fee system (BCAT/CCAT-based system) to a process classification system based on Source Classification Code (SCC); and
5. AQMD's long-term funding options.

The results of this study were presented to the AQMD Governing Board on March 10, 1995. Recommendations from this study were reviewed and the recommendation relating to toxic air contaminants was incorporated into amended Rule 301. However, this study also recommended an increase in fees to make permit program fees recover the full costs of the associated programs. This proposal was not implemented because AQMD staff recommended efforts to lower the costs of permit processing before seeking increases in permit fees.

In FY 1995-96, the change in the California CPI was 1.5%. In recognition that other governmental agencies, industrial entities, small businesses, and individual citizens had been adversely affected by the recent economic recession, a broad-based fee increase was not

¹ These documents are available by contacting the District at (909) 396-2000.

proposed for FY 1995-96. In addition, in FY 1995-96 the Board adopted and implemented a 4% rebate for annual operating fees, thus actually reducing the impact of these fees on a one-time basis.

To maintain a level of revenues necessary to support AQMD's legally-mandated functions of achieving and maintaining health-based state and federal air quality standards, the Board adopted an across-the-board increase in Regulation III fees for FY 1996-97 equal to the 1.2% change in the California CPI for 1995.

For FY 1997-98, the Board adopted an across-the-board increase in Regulation III fees equal to the 2.4% change in the California CPI for 1996. Because AQMD revenue sources, including emission fees, were decreasing as significant progress towards air quality attainment was made, the aggregate effect of this increase did not exceed the fee cap on revenue generated. Additionally, several other changes to the fee structure that more equitably aligned fees with the levels of effort required to accomplish these responsibilities were adopted.

For FY 1998-99, fees were increased by 2.2%, corresponding to the change in the California CPI for 1997, to offset the decline in income to AQMD from emission fees and to provide more equitable recovery of labor and other costs to process permits and perform field inspections. Also during this year, the Board adopted increases in fees for Title V permits processing and for gasoline fuel dispensing nozzles, to reflect increased services in these areas.

In July 1998 the California State Auditor published the results of their review of the AQMD budget. As part of their overall review of the AQMD budget and operations, the State Auditor recommended, in part, that the permit fees be set to cover the cost of processing; and that all facilities pay annual emissions fees including facilities smaller than the existing emissions fee threshold or 4 TPY. The auditor further recommended that the AQMD undertake efforts to streamline the permit process.

Meanwhile, two projects having bearing on the AQMD's fee structure and business practices were completed. The first major effort was the formation of a Permit Streamlining Task Force, an initiative from Dr. Burke, then Chairman of the AQMD Governing Board. The task force consisted of Board members, environmental professionals, and industry representatives. The group brought concrete recommendations to the Board, indicating how to expedite processing conventional, Title V and RECLAIM permits. Additionally, AQMD selected a contractor to study the permitting system and provide an independent set of recommendations directed to permit streamlining. Based on input from the contractor, industry, permit applicants, and AQMD staff, the Permit Streamlining Task Force proposed a set of recommendations to the Board at the March 12, 1999 meeting. Most of the recommendations have been implemented.

The other major effort was the fee structure study conducted by the independent management firm of Thompson, Cobb, Bazilio & Associates, PC (March 1999). Their report included the following recommendations:

1. The AQMD needs a cost information system to determine the cost of specific permit processes;
2. Fees be changed for different BCAT/CCAT items to align costs with fees, since the study found that permit fees significantly under-recover actual costs of permitting;
3. Adjustments be made to the annual operating and annual emissions fee such as a minimum annual emissions fee;
4. Adjustments be made for Title V fees; and
5. Eliminate small business discounts for permits.

The proposals for amending Regulation III adopted in May 2001 addressed several recommendations made by the independent consultant and the state auditor. The AQMD implemented the first item with the creation and implementation of the time tracking study. Items 2, 3, and 4 were adopted as part of the 2001 amendments. Staff continues to look at item 5 but has not recommended any changes to small business discounts.

As part of the adoption of the Fiscal Year 2000-2001 AQMD Budget and Regulation III, the Governing Board directed staff to establish a special Revenue Committee to assist the AQMD in developing revisions to its fee rule for FY 2001-2002 to help stabilize revenues. 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 review of staff proposed amendments to Regulation III that were designed to recover program costs. The Revenue Committee made several important recommendations that were included in the rule amendments approved by the Governing Board in May 2001. Those recommendations were:

1. A minimum emissions fee for all permitted sources (emissions flat fee);
2. "Non-permitted" emissions, including Rule 219 – exempt equipment and other area sources; and
3. A fee on area sources, which is being partially implemented by the non-permitted emissions fees, which covers area sources such as solvents.

The Committee also recommended a manufacturers' fee for area sources, a pre-application consultation fee, and a dollar penalty in lieu of missing data provisions in RECLAIM. These suggestions will continue to be evaluated by Regulation III and RECLAIM staff.

The Governing Board adopted amendments in May 2001 to address many of these issues. The amendments included:

1. Emissions fee of \$75.00 for all facilities with at least one written permit (phased in over two years);
2. An alignment of permit processing fees with actual costs based on the tracking data. Categories A, A1, and B were increased and D – H were decreased (phased in over two years); and

3. Emissions fees for equipment or processes not requiring a written permit. Emissions fees were assessed for facilities with a total of permitted and non-permitted emissions over threshold standards described in current Rule 301(e)(5). (phased in over three years).

In May 2002, the Governing Board adopted amendments that adjusted for the California CPI, amended selected special processing fees to better reflect actual costs and implemented the second year phase-in of the fee amendments adopted in 2001.

In June 2003, the following major proposed amendments were adopted by the Governing Board: an across the board CPI rate fee increase of 2%, extending the “Applicability” of ERCs to include Short Term ERCs, defining “Alternative Operating Condition”, payment of all delinquent facility, including toxic “Hot Spots”, fees prior to acceptance of any application for a change to a permit/facility permit condition(s), setting the fee for conversion of permanent ERCs to Short Term ERCs, granting the Executive Officer discretion to reinstate any permits canceled due to error on the part of the District, recovery of mileage expenses for employees commuting during overtime hours to work on optional expedited permit processing applications and other administrative amendments.

In June 2004, the following major proposed amendments were adopted by the Governing Board: an across the board rate fee increase of 3% to be implemented over two fiscal years (3% in FY 04-05 and 0% in FY 05-06), clarification of whether an application to amend a permit is processed as a Change of Condition or an Alteration/Modification, recovering the costs associated with Administrative permit changes for Schedule B and higher equipment, an increase in fees for asbestos/lead project notifications and tracking and the addition of two categories for projects >50,000 square feet and >100,000 square feet, conversion to a flat up-front fee for optional expedited permit processing, optional expedited processing of Continuous Emissions Monitoring System (CEMS), Fuel Sulfur Monitoring System (FSMS) and Alternative Continuous Emissions Monitoring System (ACEMS) and Protocol/Report Evaluation submittals, recovery of costs associated with notification and tracking of Rule 1149 – Storage Tank Degassing and Rule 1166 – Volatile Organic Compound 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 Audit, Verification, Evaluation, Inspection and Tracking Costs for area source rules such as: Rules 444 – Open Burning, 1113 – Architectural Coatings, and 1610 – Old Vehicle Scrapping, an across the board increase of \$17 in addition to the approved rate increase for all facilities subject to the AB 2588, overall increase in revenues in order to better recover program costs, and revisions to Rule 308 that maintain the rule language current with changes to Rule 2202 including an adjustment to better align the fee charged for MSERC transactions with processing costs which are comparable to Reclaim Trading Credit transaction processing costs.

In June 2005, the following major proposed amendments were adopted by the Governing Board: 1) to partially address significant under-recovery of consistent program costs, exacerbated by cost increases beyond AQMD’s control and exceeding the California Consumer Price Index (CPI), an across the board partial cost recovery fee adjustment of

6.0%; 2) Recovering Hearing Board Costs by increasing fees to recover all costs; 3) Compliance Cost Recovery for RECLAIM / Title V Facilities through a per device based fee to recover the increased costs of compliance activities at RECLAIM facilities. A per device fee of \$500 for Major, \$100 for Large and \$100 for Process units/devices is assessed per facility. Title V facilities pay an annual flat fee of \$300; 4) Recovering the Cost of Permitting “Crude Oil/Gas/Water Separation System (< 30 BPD)” by revising the source category from Schedule B to Schedule C equipment to reflect existing practice which recognizes the correct cost of processing; 5) Recovering the Cost of Certification of Certain Equipment Subject to Rule(s) 1111, 1121 and 1146.2 which recovers the cost of processing applications and issuing certifications/certified permits for certain equipment under the provisions of these rules to be grouped into families of similar units for compliance determination purposes. Certification is a voluntary program that benefits the applicant by having their equipment certified; 6) Recovering the Cost of Preparing Public Notices for Compliance with ERC/STC Issuance which recovers the cost to the District of preparing mandatory notices in compliance with the requirements for issuance of ERC and STC credits; 7) a “No Show” Cost Recovery Fee for Rule 461 – Gasoline Dispensing Equipment Scheduled Testing which recovers the resource cost of lost assigned inspector time when testing companies do not show up for or do not conduct Reverification, Performance and Pre-Backfill inspections as scheduled, and do not give prior notification to the District if the appointment is to be cancelled; 8) Recovering the Cost of Re-Issuance of Short Term Credits (STC’s) which recovers the cost of processing Short Term Credit applications which require the same resources to process as any other emission reduction credit application; 9) and other minor proposed administrative amendments are for correction and clarification.

For FY 06-07 through FY 08-09 the District Governing Board adopted a 30% increase in permit related fees, to better align program costs with revenues, phased in over the three years (10% each fiscal year.) All other fees were increased by the CPI for the applicable years (3.65% for FY 06-07, 3.3% for FY 06-07, and 4.1% for FY 06-07).