

## BAY AREA AIR QUALITY MANAGEMENT DISTRICT

### RESOLUTION No. 2023 – 06

#### **A Resolution of the Board of Directors of the Bay Area Air Quality Management District Amending Regulation 3 (Fees) and Determining the Amendments Statutorily Exempt from the Requirements of the California Environmental Quality Act (“CEQA”)**

WHEREAS, a public hearing has been properly noticed in accordance with the provisions of Health & Safety Code sections 40725;

WHEREAS, in 2005 the Bay Area Air Quality Management District (“District”) retained the accounting firm of Stonefield Josephson, Inc. to conduct a study of the District’s fee structure for permitted and non-permitted sources in order to determine whether or not fee revenue from these regulated sources was sufficient to pay for the costs of those regulatory activities and services;

WHEREAS, Stonefield Josephson, after a thorough analysis of the District’s fee structure, revenues, and associated costs, found that District fee revenue have not been sufficient to offset the costs of associated regulatory activities and reported this and other findings in *Bay Area Air Quality Management District Cost Recovery Study, Final Report, March 30, 2005* (“2005 Cost Recovery Study”);

WHEREAS, Stonefield Josephson also found that: (1) despite an across-the-board fee increase of 15 percent in fiscal year ending (FYE) 2000 and adjustments during the subsequent 5 years for inflation, a significant cost recovery gap still existed; and (2) for FYE 2004, fee revenue covered only about 60 percent of direct and indirect program activity costs, leaving a gap of approximately \$13 million to be filled with property tax revenue;

WHEREAS, Stonefield Josephson, based on its findings, recommended that, if the identified revenue gap was to be reduced, fees should be increased by more than annual cost of living adjustments over a period of time;

WHEREAS, in each year from 2005 through and including 2022, the Board approved amendments to Regulation 3 – Fees to increase fees to address this revenue gap and to move toward full alignment between permit fee revenues and associated District permit-related activities and services;

WHEREAS, in September 2010, the District contracted with Matrix Consulting Group to complete an updated Cost Recovery and Containment Study (“2011 Cost Recovery and Containment Study”) based on cost and revenue data for FYE 2010;

WHEREAS, the 2011 Cost Recovery and Containment Study indicated that a significant cost recovery gap continued to exist, with fee revenues for FYE 2010 covering only 62 percent of the direct and indirect costs of program costs;

WHEREAS, in the 2011 Cost Recovery and Containment Study, Matrix Consulting Group recommended that the District adopt a Cost Recovery Policy to guide future fee amendments;

WHEREAS, on March 7, 2012, the Board adopted a Cost Recovery Policy (“2012 Cost Recovery Policy”) that provides as a general policy that the District should fully recover the costs of regulatory program activities by assessing fees to regulated entities, that the District should amend Regulation 3 – Fees in order to increase the overall recovery of the District’s direct and indirect costs of program costs to 85 percent by the end of FYE 2016, and further, that the District should continue to amend specific fee schedules in consideration of cost recovery analyses conducted at the fee schedule level, with larger increases adopted for schedules with larger cost recovery gaps;

WHEREAS, in September 2017, the District contracted with Matrix Consulting Group to complete an updated Cost Recovery and Containment Study (“2018 Cost Recovery and Containment Study”) based on cost and revenue data for FYE 2017;

WHEREAS, a primary focus of the 2018 Cost Recovery and Containment Study was to improve the District’s accounting for indirect costs and overhead in its cost recovery efforts;

WHEREAS, in July 2021, the District contracted with Matrix Consulting Group to complete an updated Cost Recovery and Containment Study (“2022 Cost Recovery and Containment Study”) based on cost and revenue data for FYE 2021;

WHEREAS, 2022 Cost Recovery and Containment Study focused on the District’s accounting for indirect costs and overhead in its cost recovery efforts and options to reach 100 percent cost recovery of the District’s direct and indirect costs of fee-based program costs;

WHEREAS, in December 2022, the Board of Directors updated the Cost Recovery and Containment policy which included a 100 percent cost recovery of the District’s direct and indirect costs of fee-based program costs;

WHEREAS, the 2023 Cost Recovery Report indicates that a \$9.7 million cost recovery gap continues to exist with fee revenues for FYE 2020 to 2022 covering only 84 percent of the direct and indirect costs of program costs;

WHEREAS, the Board of Directors has determined for FYE 2024 there is a need to increase fees to further reduce the misalignment between permit fee revenues and associated District permit-related activities and services and to further reduce the misalignment between fee revenues for non-permitted sources and associated District activities and services related to those sources;

WHEREAS, District staff proposed to increase fee schedules with a cost recovery fee percentage greater than or equal to 100 percent but less than 110 percent by the annual Consumer Price Index for Bay Area Urban Wage Earners and Clerical Workers (CPI-W) and fee schedules with a cost recovery fee percentage less than 100 percent by 15 percent where the cost recovery fee percentage is based on the previous three-year average;

WHEREAS, District staff proposed to increase administrative fees by CPI-W;

WHEREAS, District staff proposed a new emission banking fees to clarify and, recover the costs associated with work not previously being charged a fee;

WHEREAS, District staff proposed a new fee for renewing an Authority to Construct to recover the costs associated with work not previously being charged a fee;

WHEREAS, District staff proposed new fees for the evaluation of plans, processing of petitions and review of reports to recover the costs associated with work not previously being charged a fee;

WHEREAS, District staff consolidated language for Industry Compliance School from rule sections and moved the language into a new section 400;

WHEREAS, District staff proposed the increase of the Risk Assessment fee for Stationary Containers for the Storage of Organic Liquids in Schedule C to align the calculation with the filing fee;

WHEREAS, District staff proposed the increase of the Risk Assessment fee for existing Gas Dispensing Facilities in Schedule D.A by 15 percent;

WHEREAS, District staff proposed reclassifying metal shredding operations with a capacity of less than or equal to 150 tons per hour to Schedule G2 and metal shredding operations with a capacity of greater than 150 tons per hour to Schedule G3;

WHEREAS, District staff proposed to delete Schedule U;

WHEREAS, District staff discussed the proposed amendments to Regulation 3 – Fees at a virtual public workshop on February 16, 2023;

WHEREAS, the Finance and Administration Committee of the Board of Directors held regularly scheduled public meeting on April 5, 2023, at which the proposed amendments to Regulation 3 were discussed, at which oral or written presentations could be made on the subject of the proposed amendments, and the proposal was decided upon for the public hearing;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on May 3, 2023, to consider the proposed amendments to Regulation 3 in accordance with all provisions of law;

WHEREAS, an additional public hearing is required by Health and Safety Code section 41512.5 for fees applicable to sources not included within the District's permit system, specifically, the proposed amendment of the following fee schedules: Schedule L: Asbestos Operations, Schedule Q: Excavation of Contaminated Soil and Removal of Underground Storage Tanks, Schedule R: Equipment Registration Fees, Schedule S: Naturally Occurring Asbestos Operations, Schedule U: Indirect Source Fees and Schedule V: Open Burning;

WHEREAS, on May 4, 2023, District staff published in newspapers the notice of public hearings required by Health and Safety Code sections 40725 and also distributed and published on the District's website a request for public comments and input on the proposed amendments to Regulation 3;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a second public hearing on June 7, 2023, to consider the proposed amendments to Regulation 3 related to non-permitted sources in accordance with all provisions of law;

WHEREAS, the Board of Directors obtains its authority to adopt, amend or repeal rules and regulations from sections 40702, 42311, 42311.2, 41512.7, 42364 and 40725 through 40728 of the Health & Safety Code and Title 40, Code of Federal Regulations, Part 70.9;

WHEREAS, the Board of Directors has determined that the proposed amendments to Regulation 3 are written or displayed so that its meaning can be understood by the persons directly affected by the regulation;

WHEREAS, the Board of Directors has determined that the proposed amendments to Regulation 3 are in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations;

WHEREAS, the Board of Directors has determined that the proposed amendments to Regulation 3 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;

WHEREAS, the Board of Directors by adopting the proposed amendments to Regulation 3 is implementing, interpreting, and making specific the provisions of Health & Safety Code section 42311 (fee schedule for district programs), section 41512.7 (allowable increases to authority to construct and permit to operate fees), and section 42364 (fees schedule for hearing board review of permit appeals);

WHEREAS, District staff has evaluated the proposed amendments to Regulation 3 and has determined that the proposed rulemaking project is statutorily exempt from the requirements of CEQA pursuant to Public Resources Code section 21080, subparagraph (b)(8) (the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies); and CEQA Guidelines section 15273 (statutory exemption for rates, tolls, fares and charges);

WHEREAS, District staff has determined that a socioeconomic analysis of the proposed amendments to Regulation 3 pursuant to Health & Safety Code section 40728.5 is not required because the amendments will not significantly affect air quality or emissions limitations within the meaning of that section;

WHEREAS, District staff has determined that an incremental cost-effectiveness analysis of the proposed amendments to Regulation 3 pursuant to Health & Safety Code section 40920.6 is not required because the amendments do not impose best available retrofit control requirements;

WHEREAS, District staff has prepared and presented to this Board, a detailed staff report relative to the subject matter of the proposed amendment which is incorporated by reference and attached hereto;

WHEREAS, District staff recommends adoption of the proposed amendments to Regulation 3 and its associated fee schedules; and

WHEREAS, this Board concurs with District staff's recommendations and desires to adopt the proposed amendments to Regulation 3 and associated schedules as described above and set forth in Attachment A hereto.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt, pursuant to the authority granted by law, the proposed amendments to Regulation 3 – Fees as set forth in Attachment A hereto and discussed in the staff report with instructions to staff to correct any typographical or formatting errors before final publication of the text of the proposed amended rule as adopted.

BE IT FURTHER RESOLVED that the effective date of the proposed amendments attached hereto shall be July 1, 2023.

BE IT FURTHER RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District has determined that its approval of the proposed amendments to Regulation 3 – Fees is statutorily exempt from the requirements of CEQA pursuant to Public Resources Code section 21080, subparagraph (b)(8) (the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies), and CEQA Guidelines section 15273 (statutory exemption for rates, tolls, fares and charges). The fees addressed by Regulation 3 are imposed for the purpose of meeting operating expenses and purchasing and leasing supplies, equipment, and materials.


The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of DIRECTOR GONZALEZ, seconded by VICE CHAIR HURT, on the 7<sup>th</sup> day of June, 2023 by the following vote of the Board:

AYES: MARGARET ABE-KOGA, JOHN J. BAUTERS, KEN CARLSON, NOELIA CORZO, JOHN GIOIA, JUAN GONZALEZ, ERIN HANNIGAN, DAVID HAUBERT, LYNDA HOPKINS, DAVINA HURT, TYRONE JUE, OTTO LEE, SERGIO LOPEZ, MYRNA MELGAR, NATE MILEY, RAY MUELLER, MARK ROSS, VICKI VEENKER, SHAMANN WALTON, STEVE YOUNG.

NOES: NONE.

ABSTAIN: NONE.

ABSENT: BRIAN BARNACLE, JOELLE GALLAGHER, DAVID HUDSON, KATIE RICE.

  
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JOHN J. BAUTERS  
Chairperson of the Board of Directors

ATTEST:

  
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LYNDA HOPKINS  
Secretary of the Board of Directors

**ATTACHMENT A**

**[PROPOSED AMENDED RULE]**

**Regulation 3: Fees**