



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

April 19, 2017

Via Email

Janet Whittick
CCEEB
101 Mission Street, Suite 1440
San Francisco, CA 94105
janetw@cceb.org

Dear Ms. Whittick,

This email is in response to your comment letter dated March 29, 2017. Thank you for your comments on the proposed amendments to Regulation 3 – Fees for Fiscal Year 2018.

Comment 1: CCEEB comments that fees, cost recovery, and amendments to Regulation 3 be done within the broader context of the District's annual budget. CCEEB also comments that they appreciated staff's 3/22/17 presentation to the Budget and Finance Committee on the proposed FYE 2018 budget and found it very helpful that the District extended the Regulation 3 comment deadline to allow time for public review of the budget documents. CCEEB further notes that the staff report for Regulation 3 has not yet been released.

Air District Response to Comment 1: The Air District staff follow a consistent practice of determining fee increases in the context of cost recovery and budgeting on an annual basis. The Air District staff anticipate costs and propose the budget and necessary fee increases accordingly. We thank CCEEB for its acknowledgement of our efforts to make our rule development process transparent and to solicit input from interested parties. The Supplementation Supporting Information Report was released on March 14, 2017. On March 23, 2017, both the Draft Staff Report for Regulation 3 and the 2017 Cost Recovery Study were released and posted on the Air District's website at: <http://www.baaqmd.gov/rules-and-compliance/rule-development/public-hearings>.

Comment 2: CCEEB comments that they look forward to working with staff next year on an update to the District's cost recovery and cost containment study, and recommend that program evaluations be included as part of this effort.

Air District Response to Comment 2: The Air District staff will be working on an update to its cost recovery and containment study this year. A request for proposals was sent out recently to potential contractors. We plan to invite CCEEB to participate on the Steering Committee for this study.

Comment 3: CCEEB comments that between the proposed budget document and draft amendments to Regulation 3, it is currently unclear what activities or costs are driving increases to program expenditures. CCEEB requests information on how Schedule T fees are being allocated across District climate change activities, what additional expenditures are planned in the near future, and how many facilities are assessed fees under Schedule T.

Air District Response to Comment 3: Schedule T fees, alongside the District's non-fee-related revenue, are used to support all District climate change activities, which are continuing to expand. These include activities taking place through Joint Policy Committee, Advisory Council, our Climate Protection program, and technical efforts to produce the Regional Climate Action Plan and the 2017 Clean Air Plan which will be presented to the Board this year. The 855 facilities with Air District GHG emissions in the inventory are assessed fees under Schedule T.

Comment 4: CCEEB comments that similar increases have been made to other fees schedules, for example, to Title V fees. Citing certain figures for District expenditures, CCEEB expresses concern about increases in District expenses and suggests that understanding what factors are contributing to increases could help identify options for cost containment.

Air District Response to Comment 4: Fee schedule rate increases have been set in the attempt to achieve the cost recovery goal set in 2011. Fee schedule revenue increases are a combination of the annual rate increases and year-to-year changes in the sources and emissions at regulated facilities. In the case of the Title V revenue, it appears a higher level of permitting activity at facilities in FYE2013 and FYE2015-FYE2016 was the major contributing factor. The expenditure figures CCEEB cites are from consolidated statements. Consolidated expenditure includes General Fund as well as all grant-related activity. General Fund expenditure is expected to increase 30% over the period from FYE2010-FYE2018. In cost allocation, indirect expenditures come from some General Fund programs and are allocated to all District activities, including the grant programs.

Comment 5: CCEEB requests information on Schedule W: Petroleum Refining Emissions Tracking Fees on the actual costs for Reg. 12-15 implementation, the rate of cost recovery, or estimated costs for 2017-2018. CCEEB commented that this issue is of concern given that Reg. 12-15 inventories are not being used to assess state non-vehicular source fees; rather, refineries are being asked to submit a separate and additional inventory based on the District's general reporting requirements. CCEEB asks for an explanation why Reg. 12-15 inventories are not being used for these purposes, or the current status of Reg. 12-15 engineering reviews.

Air District Response to Comment 5: This fiscal year, District staff have been working on the detailed Refinery Emissions Inventory Guidelines, participating in working meetings, and other work activities associated with Regulation 12, Rule 15.

The District staff will be better able to evaluate the rate of cost recovery for Schedule W after we have more data to evaluate. The issue about which emissions inventory is used by the state to assess non-vehicular source fees is outside the scope of these proposed amendments to Regulation 3 and should be addressed with the California Air Resources Board.

Comment 6: CCEEB expresses concern that Regulation 3 proposes new fees related to implementation of proposed Regulation 11, Rule 18 although Reg. 11-18 rule development is ongoing.

Air District Response to Comment 6: These proposed fees are intended to recover the District's costs associated with implementation of proposed Regulation 11, Rule 18, which is scheduled for Board of Directors adoption consideration in July 2017. The fees relate to health risk assessments that would be required under proposed Regulation 11, Rule 18, and would only be implemented if the Air District Board of Directors adopts Regulation 11, Rule 18.

Comment 7: CCEEB is grateful to the Air District staff for the March 14, 2017, Supplemental Supporting Information (SSI) report on proposed Reg. 11-18 fees. CCEEB asks the following questions regarding the SSI report:

- *Which consultants have been contracted, and what information did consultants use to estimate HRA costs?*
- *What constitutes a "medium" facility versus a "small" facility?*
- *How many, if any, HRAs will be completed by District staff in FY2018? How would costs differ if District staff conducted HRAs?*
- *What staff resources are needed to review the work of third-party consultants, and at what cost?*
- *Would it be more efficient—and provide more accurate information—if the District instead approved HRA consultants and allowed facilities to directly contract with them?*
- *How will costs for HRAs and review of risk reduction plans be assessed in cases where a facility disagrees with District analysis or determinations?*
- *How is staff calculating Regulation 3 increases for businesses subject to Reg. 11-18 but not part of Phase 1 (FY2018)? Would staff calculate the fee increase in the year the schedule was approved, or the year it was applied to a facility? If calculated for the year approved but not assessed, does this unintentionally circumvent Health and Safety Code requirements that limit total fee increases to 15 percent per year?*

Air District Response to Comment 7:

There have been no consultants contracted for the HRAs. The Request for Qualification (RFQ) and RFQ Questions and Answers are available at: <http://www.baaqmd.gov/about-the-air-district/request-for-proposals-rfp-rfq/closed-rfp-rfq> (RFQ No. 2016-006, Health Risk Assessments for Toxic Risk Reduction Regulations).

The RFQ documents are also available by following the below links:

- [RFQ for Health Risk Assessments for Toxic Risk Reduction Regulations](#) (357 Kb PDF, 8 pgs., posted 11/23/16)
[RFQ 2016-006 Questions and Answers](#) (354 Kb PDF, 2 pgs., posted 11/29/16)

Medium facilities typically have more complex sources to model and more sources than small facilities.

Per Board of Directors instructions, all the Regulation 11-18 HRAs are expected to be conducted by third-party consultants and/or the Air District staff. The proposed Regulation 11-18 fees should be sufficient to cover the District staff resources needed for this work. The HRAs must reflect the independent judgement of the District.

In cases where the facility disagrees with the District analysis or determinations, the proposed Regulation 11-18 fees assessed would be the same as where the facility agrees. We expect the usual back-and-forth with the facilities to resolve issues and disagreements.

For the years after FY2018, the calculation method is the same. It is calculated based on the Fee Schedules in place at the time the Regulation 11-18 HRA is required and is based on the Risk Assessment Fee contained in each fee schedule and whether the source is designated a TAC source or not.

Comment 8: CCEEB strongly recommends removing related fees from this year's Regulation 3 amendments. CCEEB notes that fee schedules approved next spring and effective July 1, 2018 would still be timely for the first phase of Regulation 11-18 HRAs. CCEEB asserts that approving Reg. 3 amendments ahead of Reg. 11-18 raises legal questions related to CEQA and the prejudging of Reg. 11-18 before any environmental review has been completed.

Air District Response to Comment 8: Air District staff believes that the proposal for Regulation 11-18 is sufficiently developed, so we know what fee structure makes sense for the rule and what our costs will be. If Regulation 11-18 as adopted differs substantially from what is now contemplated, we can amend the fee.

Air District staff do not believe that the proposed Regulation 3 fees for Regulation 11-18 raise legal questions related to CEQA. Enacting and collecting fees to recover program costs is exempt under CEQA. Thus, while a new regulatory program may be a project subject to review under CEQA, the creation of a fee structure to recover the cost of a new regulatory program is not. Similarly, setting in place a cost recovery fee structure to support a new regulatory program does not constitute an approval of the project, especially in a case like the proposed fees for Regulation 11-18, which will only come into effect if the proposed program is enacted.

Comment 9: CCEEB requests to meet with staff on draft Regulation 11, Rule 18 to better understand the proposed requirements and implementation plan, which may improve our understanding of the BAAQMD Draft Staff Report: Draft Regulation 12, Rule 16: Petroleum Refining Facility-Wide Emissions Limits and Draft Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities, October 2016, page 32.

Air District Response to Comment 9: Air District staff would be happy to meet with CCEEB concerning the proposed requirements of draft Regulation 11, Rule 18, and draft Regulation 12, Rule 16. To set up these requested meetings, contact Gregory H. Nudd, Rule Development Manager, at gnudd@baaqmd.gov or (415) 749-4786.

Regards,



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