



# Fire Safe San Mateo County

February 13, 2013 Meeting Minutes

## Attendance:

**Guido Ciardi** – San Francisco Public Utility District  
**Philippe S. Cohen** – Jasper Ridge Biological Preserve  
**Rich Sampson** – CAL FIRE  
**Todd Lando** – Urban Forestry Associates  
**Brian Malone** – Midpeninsula Regional Open Space District  
**Christine Reed** – Central County Fire Department  
**Andy Hubbs** – CAL FIRE  
**Lori Cuesta** – Western ECI / PG&E  
**Pamela Noyer** – San Mateo County Parks  
**Jim Palisi** - Redwood City  
**Stephen Kraemer** - San Mateo County Parks  
**John Romandia** – Black Cat Construction  
**Doug Tolar** – BAAQMD

## Call to order

9:35 am. Guido Ciardi calls the meeting to order.

## Correspondence

- No correspondence noted.

## Refreshments

John Romandia offers to provide refreshments at the March 13, 2013 meeting.

## Board of Directors Review

Executive Board members have agreed to hold the following positions, to be re-evaluated in one

year:

- Guido Ciardi, President
- Philippe S. Cohen, Vice President
- Rich Sampson, Secretary
- Denise Enea, Treasurer

Directors:

- CAL FIRE
  - Rich Sampson
- Coastside Fire Protection District
  - Clayton Jolly
- San Mateo County Fire
  - Andy Hubbs
- Jasper Ridge:
  - Philippe S. Cohen
- Midpeninsula Regional Open Space District
  - Brian Malone
- San Mateo County Parks
  - Stephen Kraemer
- PG&E
  - Lori Cuesta
- Woodside Fire Protection District
  - Denise Enea
- San Francisco Public Utility District
  - Guido Ciardi
- Redwood City
  - Jim Palisi

## **New Business/Correspondence**

- Living With Fire Update
  - Todd Lando made contact with Rich Blacker, General Manager at FAIRA (Fire Agencies Insurance Risk Authority). Rich expressed that FAIRA has an interest in sponsoring the Living With Fire update.
  - Todd Lando will provide Rich with a detailed request for funding as the project progresses.
  - VFIS has a partnership with FAIRA. Rich Blacker will seek input from them for potential sponsorship/partnership.
  - Firemen's Fund is sending application materials for funding.
- Grant Update:

- Huddart Park Federal Fuel Dollars has 6 weeks of work remaining. No additional funds will be available when the funding dries up.
- CAL FIRE funds update:
  - CAL FIRE is looking for backup plans for application of unused fuel reduction money.
  - Projects must be CEQA ready, shovel ready.
  - Funding expires 12/2013.
  - Funding is specifically for CAL FIRE resources to be used on fuel reduction projects.
    - Primarily hand crews, but some funds might be used for engines.
  - Funding available mid-summer 2013, until December.
  - Fire Safe San Mateo submitted letters of interest from Town of Burlingame and Hillsborough, as well as a list of County Parks and Woodside continuing projects.
- Todd Lando met with Ed Cooney of Hillsborough to review their recent RFP for fuels management, and request for funding.
  - Toured city park areas that are to be treated beginning in 2013.
  - Submitted request to CAL FIRE for funding.
- Clearinghouse Grant:
  - May 31 deadline.

### **BAAQMD: Bay Area Air Quality Project Fees**

- Douglas Tolar, Senior Air Quality Specialist, Compliance and Enforcement - 415 749-5118
- Fee proposal is going through the public workshop process.
- Would be an amendment to Regulation 3: Fees.
- 8 workshops total, 6 have been completed.
- Workshops scheduled for 2/26/2013 in Point Reyes, and 2/27/2013 in Fairfield.
- Fee proposal may affect burning projects in San Mateo County.
- BAAQMD staff anticipates briefing its board in March or April, with public hearings in June, for potential adoption July 1, 2013.
- A handout titled "Workshop Report" was handed out (see appendix A).
- Summary:

The draft amendments to Regulation 3 would establish open burning fees by adding a new fee schedule, Schedule V. The goal of proposed Schedule V is to recover 85% of the estimated \$377,000/year cost of the District's Open Burning Program.

The draft fee amendments to Regulation 3 would apply to each type of open burn allowed under District Regulation 5. Open burning activities subjected to the proposed fees would include: (1) Allowable fires that require notification to the District prior to burning; (2) Wildland Vegetation Management fires (prescribed burns) and Marsh Management fires that require an District-approved smoke management plan and receiving an acreage burning allocation from the District prior to burning; (3) Stubble

fires that require receiving an acreage burning allocation from the District prior to burning; and (4) Filmmaking fires and Public Exhibition fires that require an District approved petition prior to burning.

The draft fee amendments are consistent with the District's Cost Recovery Policy, which was adopted on March 7, 2012 by the District's Board of Directors (see Appendix A) and similar to fees charged by other air districts in the state for open burning activities. This policy indicates that the costs of regulatory program activities should be fully recovered by assessing fees to regulated entities. The policy also indicates that the District should amend its fee regulation in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent by the end of FYE 2016. Pursuant to the California Environmental Quality Act (CEQA), the District concluded that the proposed fee amendments are statutorily exempt from CEQA pursuant to State CEQA Guidelines Section 15273.

- Philippe S. Cohen expressed concern about potential delays in burn dates, resulting in project delays. "Does the potential for a delay causing increased fees make it more likely that a burn manager will take risks?"
  - Mr. Tolar responded that the proposed \$98 fee is a "prior notification fee" and would apply to the entire burn window outlined in any initial application proposal.
  - Burn project approval periods are determined by the proposing agency, so the proposing agency should take this concern into account when writing an application.
  - BAAQMD will consider the possibility of rolling the fee over for projects that are not implemented.
- Christine Reed asked for clarification on the per-property basis of the fee for fire training purposes, since a single burn permit may cover multiple properties.
  - The fee, as proposed, would be required per-property, so multiple notification fees may be required for burns covered under a single permit.
- Jim Palisi asked about filmmaking and public exhibition fires. Should applicants approach BAAQMD before contacting the Fire Department?
  - Mr. Tolar responded that pyrotechnic displays are not considered open burning - specifically fireworks. Burning of fuel and other open flames would require the notification fee, as proposed.
- Pile burning projects bigger than 10 acres are considered prescribed burns. This will not change under the proposed changes to regulation 3.
- Hazard reduction burns are often related to PRC 4291. If a property owner burns material to comply with 4291, they would be subjected to the \$98 notification fee, as a hazardous material fire notification fee.
- If it is not related to 4291, and exceeds 10 acres, it would be covered by Regulation 5, Prescribed Burning Regulations.

### **CDCR Training Update:**

- Training was held January 30, 2013 at Woodside Fire.

### **Urban Forestry Associates Update:**

- Website update:
  - New website is ready, in draft form. Final draft to be discussed at March meeting.
- Fundraising
  - Contact has been made with FAIRA, VFIS, and Firemen's Fund.
  - FAIRA is interested in funding some or all of the 2013/2014 Living With Fire update and printing.

### **Agency Roundtable:**

#### **San Francisco Water - Guido Ciardi**

- PG&E gas line project on SF Water property is progressing quickly.
- Visible along the 280 corridor.
- Water is at 140% of normal, but a dry March (expected) will change that quickly.

#### **Midpeninsula Regional Open Space District - Brian Malone**

- Long term vision plan update.
  - Citizens Advisory Committee being formed.
- District submitted many projects for the San Mateo CWPP.
  - Will provide a list to FSSM.

#### **San Mateo County Parks - Pamela Noyer**

- Wunderlich fuels projects are wrapped up for the season.
- Huddart Park update:
  - Progressing nicely.
  - Should extend through end of March.
  - Dry weather is helping projects move quickly.

#### **San Mateo County Fire - Andy Hubbs**

- See CAL FIRE funding opportunity, above.

#### **Central County Fire District - Christine Reed**

- Christine Reed met with Lori Cuesta in Hillsborough to view distribution line issues near eucalyptus grove.
  - Line breakages have occurred from falling eucalyptus limbs.

- Owner was happy with PG&E's responsiveness.

**CAL FIRE** - Rich Sampson

- CAL FIRE has started to see spotting outside of pile burns, with some minor escapes near ridgetops.

**PG&E** - Lori Cuesta

- Crews are currently working in the San Mateo and Belmont area.
- Tree work will be done along Sand Hill Road.
  - No removals, but limbing and pruning.
- Joel is looking for info to use with the Living With Fire Revision.
  - Add a page on power-line safety.
- San Bruno Public Safety and Reliability Program is a big, local project.

**Jasper Ridge Biological Preserve, Stanford University** - Philippe S. Cohen

- Met with Catherine Capriles from Palo Alto Fire Department regarding a thermal early fire detection system.
- Pilot program would cost \$6850 per week to TEST the system.
- Manufacturer can't provide performance data.
- Based on cost, the project is now stalled.

**Meeting adjourned 11:03 am**

Respectfully submitted by Todd Lando



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

## **WORKSHOP REPORT**

### **DRAFT AMENDMENTS TO BAAQMD REGULATION 3: FEES AND REGULATION 5: OPEN BURNING**

**January 2013**

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# **WORKSHOP REPORT**

## **DRAFT AMENDMENTS TO BAAQMD REGULATION 3: FEES AND REGULATION 5: OPEN BURNING**

### **1. EXECUTIVE SUMMARY**

The draft amendments to Regulation 3 would establish open burning fees by adding a new fee schedule, Schedule V. The goal of proposed Schedule V is to recover 85% of the estimated \$377,000/year cost of the District's Open Burning Program.

The draft fee amendments to Regulation 3 would apply to each type of open burn allowed under District Regulation 5. Open burning activities subjected to the proposed fees would include: (1) Allowable fires that require notification to the District prior to burning; (2) Wildland Vegetation Management fires (prescribed burns) and Marsh Management fires that require an District-approved smoke management plan and receiving an acreage burning allocation from the District prior to burning; (3) Stubble fires that require receiving an acreage burning allocation from the District prior to burning; and (4) Filmmaking fires and Public Exhibition fires that require an District-approved petition prior to burning.

The draft fee amendments are consistent with the District's Cost Recovery Policy, which was adopted on March 7, 2012 by the District's Board of Directors (see Appendix A) and similar to fees charged by other air districts in the state for open burning activities. This policy indicates that the costs of regulatory program activities should be fully recovered by assessing fees to regulated entities. The policy also indicates that the District should amend its fee regulation in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent by the end of FYE 2016.

Pursuant to the California Environmental Quality Act (CEQA), the District concluded that the proposed fee amendments are statutorily exempt from CEQA pursuant to State CEQA Guidelines Section 15273.

### **2. BACKGROUND**

State law authorizes the District to assess fees to generate revenue to recover the reasonable costs of regulatory program activities for stationary sources of air pollution. The largest portion of District fees is collected under provisions that allow the District to impose permit fees sufficient to recover the costs of program activities related to permitted sources. The District is also authorized to assess fees for area-wide or indirect sources of emissions which are regulated, but for which permits are not issued by the District. This authority applies to the draft fee amendments because the open burning activities subject to Regulation 5 are regulated area-wide sources of emissions

for which permits are not issued by the District. The District has established, and regularly updates, a fee regulation (District Regulation 3: Fees) under these authorities.

## **2.1 HISTORY OF DISTRICT COST RECOVERY EFFORTS**

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

The District Board of Directors adopted an across-the-board fee increase of 15 percent, the maximum allowed by State law for permit fees, for FYE 2000 as a step toward more complete cost recovery. The District also implemented a detailed employee time accounting system to improve the ability to track costs by program activities moving forward. In each of the next five years, the District adjusted fees only to account for inflation (with the exception of FYE 2005, in which the District also approved further increases in Title V permit fees and a new permit renewal processing fee).

In 2004, the District funded an updated Cost Recovery Study. The accounting firm Stonefield Josephson, Inc. completed this study in March 2005 (*Bay Area Air Quality Management District Cost Recovery Study, Final Report*, Stonefield Josephson, Inc., March 30, 2005). This 2005 Cost Recovery Study indicated that a significant cost recovery gap continued to exist. The study also provided cost recovery results at the level of each individual fee schedule based on detailed time accounting data. Finally, the contractor provided a model that could be used by District staff to update the analysis of cost recovery on an annual basis using a consistent methodology.

For the five years following the completion of the 2005 Cost Recovery Study (i.e., FYE 2006 through 2010), the District adopted fee amendments that increased overall projected fee revenue by an average of 8.9 percent per year. In order to address fee equity issues, the various fees were not all increased in a uniform manner. Rather, individual fee schedules were amended based on the magnitude of the cost recovery gap for that schedule, with the schedules with the more significant cost recovery gaps receiving more significant fee increases. In FYE 2009, the District's fee amendments also included a new greenhouse gas (GHG) fee schedule. The GHG fee schedule recovers costs from stationary source activities related to the District's Climate Protection Program. In FYE 2011, the District adopted an across-the-board 5 percent fee increase, except for the Title V fee schedule (Schedule P) which was increased by 10 percent (the District's 2010 Cost Recovery Study indicated that Fee Schedule P recovered only 46 percent of program activity costs).

In September 2010, the District contracted with the firm Matrix Consulting Group to complete an updated analysis of cost recovery that could be used in developing fee amendments for FYE 2012 and beyond. This study also included a review of the District's current cost containment strategies, and provided recommendations to improve the management of the District's costs and the quality of services provided to stakeholders. The study was completed in March 2011 (*Cost Recovery and Containment Study, Bay Area Air Quality Management District, Final Report, Matrix Consulting Group, March 9, 2011*). The 2011 Cost Recovery and Containment Study concluded that, for FYE 2010, overall fee revenue recovered 62 percent of related program activity costs. The study also provided cost recovery results at the level of each individual fee schedule based on detailed time accounting data, and provided a methodology for District staff to update the analysis of cost recovery on an annual basis using a consistent methodology.

The results of the 2011 Cost Recovery and Containment Study were used to establish fee amendments for FYE 2012 that were designed to increase overall fee revenue by 10 percent (relative to fee revenue that would result without the fee amendments). In order to address fee equity issues, the various fees were not all increased in a uniform manner. Rather, existing fee schedules were amended based on the magnitude of the cost recovery gap for that schedule, with the schedules with the more significant cost recovery gaps receiving more significant fee increases. Based on this approach, the fee rates in several fee schedules were not increased, while the fee rates in other fee schedules were increased by 10, 12, or 14 percent.

## **2.2 DISTRICT COST RECOVERY POLICY**

One of the recommendations made by Matrix Consulting Group in their 2011 Cost Recovery and Containment Study indicated that the District should consider the adoption of a Cost Recovery Policy to guide future fee amendments. District staff initiated a process to develop such a Policy in May 2011, and a Stakeholder Advisory Group was convened to provide input in this regard. A Cost Recovery Policy was adopted by the District's Board of Directors on March 7, 2012 (For the full text of the Policy, see Appendix A). This policy indicates that the District should amend its fee regulation in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent by the end of FYE 2016.

Staff has updated the cost recovery analysis for the most recently completed fiscal year (FYE 2011) using the methodology established by Matrix Consulting Group. This 2012 Cost Recovery Study indicates that overall cost recovery increased to 69 percent in FYE 2011.

The costs of the District's Open Burning Program have not been evaluated in previous cost recovery studies because there have not been any open burning fees to consider. However, the adoption of the draft fee amendments including the new Schedule V Open

Burning fee schedule would allow to District to evaluate the Open Burning Program costs in future annual cost recovery analyses.

### **3. DRAFT FEE AMENDMENTS**

This section provides a description of the draft amendments to Regulation 3: Fees and Regulation 5: Open Burning. The full text of these draft proposals can be found in Appendix B and Appendix C of this report.

#### **3.1 DRAFT AMENDMENTS TO REGULATION 3 AND PROPOSED SCHEDULE V**

Draft proposed Schedule V would add a new fee schedule for open burning activities allowed by District Regulation 5. Draft proposed Schedule V is structured to recover 85% of the cost of the District's Open Burning Program, which is estimated to be approximately \$377,000/year.

##### Prior District Notification Fee

The draft proposed fee amendments would primarily apply to those burners required under Regulation 5 to provide notification to the District prior to burning. The twelve (12) allowable fire types currently subject to the Regulation 5 prior notification requirement include both agricultural and non-agricultural burning activities. These fires typically account for more than 95% of the estimated total number of open burns conducted annually in the District. Furthermore, the District's 2011 Annual Burning Report to CARB, which is based on notifications received from burners, indicates that the majority of the estimated amount of material burned in the Bay Area can be attributed to agricultural fires and in particular to Orchard Pruning & Attrition fires conducted in Sonoma, Napa, and Santa Clara Counties.

##### Wildland Vegetation Management Fire (Prescribed Burning) Fee

The draft proposed fee amendments would also apply to any Wildland Vegetation Management fire (prescribed burning) and those fires that, by definition in Regulation 5, are regulated as Wildland Vegetation Management fires. Specifically, this means that the proposed fees for prescribed burning would also apply to any Forest Management fire, Range Management fire, Hazardous Material fire not related to Public Resources Code Section 4291, and any Crop Replacement fire for the purpose of establishing an agricultural crop on previously uncultivated land fire, that is expected to exceed 10 acres in size or burn piled vegetation cleared or generated from more than 10 acres of land.

In draft Schedule V, staff proposes new fee requirements for each prescribed burning project. The proposed fee would be determined by the proposed acreage to be burned, as described in the smoke management plan submitted by the burner for District approval. The proposed fee would range from a minimum of \$425 (for 50 acres or less), to \$575 (for more than 50 acres but less than or equal to 150 acres), and \$750

(for more than 150 acres). In addition, the fee paid would be valid for the burn project approval period. Any burning after this time period would be subject to a new fee.

#### Marsh Management Fire (Marsh Burning) Fee

The draft proposed fee for Marsh Management fires would be determined for each property and based on the proposed acreage to be burned, as described in the smoke management plan submitted by the burner for District approval. The proposed fee would range from a minimum of \$350 (for 50 acres or less), to \$475 (for more than 50 acres but less than or equal to 150 acres), and \$600 (for more than 150 acres). The fee paid would be valid for either a spring or fall burning period. Any burning after one of these time periods would be subject to a new fee.

#### Stubble Fire (Stubble Burning) Fee

The draft proposed fee amendments in Schedule V would also apply to Stubble burners required by Regulation 5 to receive an acreage burning allocation from the District prior to burning. The proposed stubble fire fee would be determined for each property by the proposed acreage to be burned. The proposed fee would range from a minimum of \$250 (for 25 acres or less) to a maximum of \$500 (for more than 150 acres). The fee paid would be valid for one stubble burn season (September 1 – December 31 time period) per calendar year.

#### Filmmaking and Public Exhibition Fire Fee

Any person who conducts a Filmmaking fire or a Public Exhibition fire would also be subject to the draft proposed fee amendments. According to Regulation 5, these two fire types require the burner to submit an open burning petition that must be approved by the District before burning. The proposed fee paid would be valid for the burn project approval period.

Also included in the draft proposed fee amendments are provisions that would require all burning fees be non-refundable and that fees be paid before conducting the burn.

The effective date of the proposed fee amendments has not been determined. However, to be consistent with the District's Cost recovery policy to amend its fee regulation in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent by the end of FYE 2016, District staff anticipates an effective date no later than July 1, 2015.

Other air districts in the state have existing fees in effect for both agricultural and non-agricultural burning. Several air districts close to the District with open burning fees include the Sacramento Metropolitan Air Quality Management District (SMAQMD), the Yolo-Solano County AQMD, Butte County AQMD and the San Joaquin Valley Air Pollution Control District (SJVAPCD). The District's proposed fee schedule is similar to

the open burning fees paid by burners in the SJVAPCD, South Coast Air Quality Management District, and Placer County APCD.

### **3.2 PROPOSED AMENDMENTS TO REGULATION 5 (NEW SECTION 5-411)**

The draft proposed amendments to Regulation 5 are non-substantive and are only intended to serve as a simple cross-reference between Regulation 5 and the proposed fee amendments in Regulation 3.

## **4. STATUTORY AUTHORITY FOR PROPOSED FEES**

The District is a regional regulatory agency, and its fees are used to recover the costs of issuing permits, performing inspections, and other associated regulatory activities. The District's fees fall into the category specified in Section 1(e) of Article XIII C of the California Constitution which specifies that charges of this type assessed to regulated entities to recover regulatory program activity costs are not taxes. The amount of fee revenue collected by the District has been clearly shown to be much less than the costs of the District's regulatory program activities both for permitted and non-permitted sources.

The District's fee regulation, with its various fee schedules, is used to allocate regulatory program costs to fee payers in a manner which bears a fair or reasonable relationship to the payer's burden on, or benefits received from, regulatory activities. Permit fees are based on the type and size of the source being regulated, with minimum and maximum fees being set in recognition of the practical limits to regulatory costs that exist based on source size. Add-on fees are used to allocate costs of specific regulatory requirements that apply to some sources but not others (e.g., health risk screening fees, public notification fees, alternative compliance plan fees). Emissions-based fees are used to allocate costs of regulatory activities not reasonably identifiable with specific fee payers.

Since 2006, the District has used annual analyses of cost recovery performed at the fee-schedule level, which is based on data collected from a labor-tracking system, to adjust fees. These adjustments are needed as the District's regulatory program activities change over time based on changes in statutes, rules and regulations, enforcement priorities, and other factors.

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

H&S Code section 42311(g) authorizes air districts to adopt a schedule of fees to be assessed on area-wide or indirect sources of emissions, which are regulated but for

which permits are not issued by the air district, to recover the costs of air district programs related to these sources. This section provides the authority for the District to collect asbestos fees (including fees for Naturally Occurring Asbestos operations), soil excavation reporting fees, registration fees for various types of regulated equipment, and fees for Indirect Source Review.

The draft proposed fee amendments are in accordance with all applicable authorities. Based on the results of the 2012 Cost Recovery Study, the District fees subject to this rulemaking are in amounts no more than necessary to cover the reasonable costs of the District's regulatory activities, and the manner in which the District fees allocate those costs to a payor bear a fair and reasonable relationship to the payor's burdens on the District regulatory activities relative to those activities.

## **5. ASSOCIATED IMPACTS & OTHER RULE DEVELOPMENT REQUIREMENTS**

### **5.1 EMISSIONS IMPACTS**

There will be no direct change in air emissions as a result of the draft proposed fee amendments because the proposal will not impact anyone's ability to conduct open burning under existing Regulation 5.

### **5.2 ECONOMIC IMPACTS**

The draft proposed fee amendments are designed to generate fee revenue totaling \$320,000/year, which is 85% of the current estimated \$377,000 cost of the District's Open Burning Program. The fee revenue expected from the proposal is consistent with the District's Cost Recovery Policy to recover 85% of the costs of regulatory program activities by assessing fees to regulated entities by the end of FYE 2016.

The District must, in some cases, consider the socioeconomic impacts and incremental costs of proposed rules or amendments. Section 40728.5(a) of the California H&S Code requires that socioeconomic impacts be analyzed whenever a district proposes the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations. The draft proposed fee amendments will not significantly affect air quality or emissions limitations, and so a socioeconomic impact analysis is not required.

### **5.3 ENVIRONMENTAL IMPACTS**

The California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. Certain types of agency actions are, however, exempt from CEQA requirements. The draft proposed fee amendments are exempt from the requirements of the CEQA under Section 15273 of the CEQA Guidelines, which state: "CEQA does not apply to the

establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies...." (See also Public Resources Code Section 21080(b)(8)). The draft proposed amendments to Regulation 3 including proposed Schedule V and Regulation 5 are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines, Section 15273. The amendments add new District fees that will be used to recover operating expenses of its Open Burning Program. As a result, the District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

#### **5.4 STATUTORY FINDINGS**

Pursuant to H&S Code section 40727, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The draft proposed amendments to Regulation 3:

- Are necessary to fund the District's efforts to attain and maintain federal and state air quality standards, and to reduce public exposure to toxic air contaminants;
- Are authorized by H&S Code sections 42311(g), 42311.2, 41512.5 and 40 CFR Part 70.9;
- Are clear, in that the amendments are written so that the meaning can be understood by the affected parties;
- Are consistent with other District rules, and not in conflict with any state or federal law;
- Are not duplicative of other statutes, rules or regulations; and
- Reference H&S Code sections 42311(g), 42311.2, 41512.5 and 40 CFR Part 70.9.

#### **6. RULE DEVELOPMENT PROCESS**

District staff initiated this rule development effort in June 2012. Meetings with external stakeholders and public workshops are being planned collaboratively with the District's Communications & Outreach Division to enhance public outreach and engagement of interested and affected parties during the rule development process. Subsequent to the workshops, the District will make revisions to the draft as appropriate and set a public hearing for the District's Board of Directors to consider adoption of a final proposal.

Under H&S Code section 41512.5, the adoption or revision of fees for non-permitted sources requires two public hearings that are held at least 30 days apart from one another. This provision applies to the proposed fee amendments including new Schedule V: Open Burning in Regulation 3.

#### **7. CONCLUSIONS**

District staff finds that the draft proposed fee amendments meet the findings of necessity, authority, clarity, consistency, non-duplication and reference specified in H&S Code section 40727. The draft proposed amendments:

- Are authorized by H&S Code sections 42311, 42311.2, 41512.5, 44380 and 40

CFR Part 70.9;

- Are clear, in that the amendments are written so that the meaning can be understood by the affected parties;
- Are consistent with other District rules, and not in conflict with any state or federal law;
- Are not duplicative of other statutes, rules or regulations; and
- Reference H&S Code sections 42311, 42311.2, 41512.5, 44380 and 40 CFR Part 70.9.

The draft proposed fee amendments will be used by the District to recover the costs of performing open burning inspections, and other associated regulatory activities. Based on the results of the 2012 Cost Recovery Study (a copy of which is available on request), the District fees subject to this rulemaking are in amounts no more than necessary to cover the reasonable costs of the District's regulatory activities, and the manner in which the District fees allocate those costs to a payor bear a fair and reasonable relationship to the payor's burdens on the District regulatory activities and benefits received from those activities.

The draft proposed amendments to Regulation 3 are exempt from the requirements of CEQA under Section 15273 of the CEQA Guidelines.

## **Appendix A**

# **Cost Recovery Policy for Bay Area Air Quality Management District Regulatory Programs**

**(Adopted March 7, 2012)**

# **COST RECOVERY POLICY FOR BAY AREA AIR QUALITY MANAGEMENT DISTRICT REGULATORY PROGRAMS**

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## **PURPOSE**

WHEREAS, the District has the primary authority for the control of air pollution from all sources of air emissions located in the San Francisco Bay Area, other than emissions from motor vehicles, in accordance with the provisions of Health & Safety Code sections 39002 and 40000.

WHEREAS, the District is responsible for implementing and enforcing various District, State, and federal air quality regulatory requirements that apply to non-vehicular sources.

WHEREAS, the District's regulatory programs involve issuing permits, performing inspections, and other associated activities.

WHEREAS, the District is authorized to assess fees to regulated entities for the purpose of recovering the reasonable costs of regulatory program activities, and these authorities include those provided for in California Health and Safety Code sections 42311, 42364, and 44380.

WHEREAS, the District's fees fall within the categories provided in Section 1(e) of Article XIII C of the California Constitution, which indicates that charges assessed to regulated entities to recover regulatory program activity costs, and charges assessed to cover the cost of conferring a privilege or providing a service, are not taxes.

WHEREAS, the District has adopted, and periodically amends, a fee regulation for the purpose of recovering regulatory program activity costs, and this regulation with its various fee schedules, is used to allocate costs to fee payers in a manner which bears a fair or reasonable relationship to the payer's burden on, or benefits received from, regulatory activities.

WHEREAS, the District analyzes whether assessed fees result in the collection of sufficient revenue to recover the costs of related program activities; these analyses have included contractor-conducted fee studies completed in 1999, 2005, and 2011, and annual District staff-conducted cost recovery updates completed in 2006 through 2010. Each fee study and cost recovery update completed revealed that

District fee revenue falls significantly short of recovering the costs of related program activities.

WHEREAS, the District's most recently completed fee study (*Cost Recovery and Containment Study, Bay Area Air Quality Management District, Final Report, Matrix Consulting Group, March 9, 2011*) concluded that in Fiscal Year Ending (FYE) 2010, the District recovered approximately 62 percent of its fee-related activity costs, resulting in an under-recovery of costs (i.e., a cost recovery gap), and a subsidy to fee payers, of approximately \$16.8 million, and that this cost recovery gap resulted despite the implementation of a number of strategies to contain costs.

WHEREAS, cost recovery analyses have indicated that the District's Fee Schedule P: Major Facility Review Fees, which establishes fees for program activities associated with the Title V permit program, has under-recovered costs by an average of \$3.4 million per year over the period FYE 2004 through FYE 2010.

WHEREAS, the District's Board of Directors has recognized since 1999 that the District's cost recovery gap has been an issue that needs to be addressed, and since that time has adopted annual fee amendments in order to increase fee revenue.

WHEREAS, in addition to fee revenue, the District receives revenue from Bay Area counties that is derived from property taxes, and a large portion of this tax revenue has historically been used on an annual basis to fill the cost recovery gap.

WHEREAS, the tax revenue that the District receives varies on a year-to-year basis, and cannot necessarily be relied on to fill the cost recovery gap and also cover other District expenses necessitating, in certain years, the use of reserve funds.

WHEREAS, tax revenue that the District receives, to the extent that it is not needed to fill the cost recovery gap, can be used to fund initiatives or programs that may further the District's mission but that lack a dedicated funding source.

WHEREAS, it may be appropriate as a matter of policy to establish specific fee discounts for small businesses, green businesses, or other regulated entities or members of the public, where tax revenue is used to cover a portion of regulatory program activity costs, and the

District's existing fee regulation contains several fee discounts of this type.

## **POLICY**

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Bay Area Air Quality Management District that:

**(1) Cost Containment** –In order to ensure that the costs of its regulatory programs remain reasonable, the District should continue to implement feasible cost containment measures, including the use of appropriate best management practices, without compromising the District's effective implementation and enforcement of applicable regulatory requirements. The District's annual budget documents should include a summary of cost containment measures that are being implemented.

**(2) Analysis of Cost Recovery** – The District should continue to analyze the extent to which fees recover regulatory program activity costs, both on an overall basis, and at the level of individual fee schedules. These cost recovery analyses should be periodically completed by a qualified District contractor, and should be updated on an annual basis by District staff using a consistent methodology.

**(3) Cost Recovery Goals** – It is the general policy of the District, except as otherwise noted below, that the costs of regulatory program activities be fully recovered by assessing fees to regulated entities. In order to move towards this goal, the District should amend its fee regulation over the next four years, in conjunction with the adoption of budgets for Fiscal Year Ending (FYE) 2013 through FYE 2016, in a manner sufficient to increase overall recovery of regulatory program activity costs to 85 percent. Amendments to specific fee schedules should also be made in consideration of cost recovery analyses conducted at the fee schedule-level, with larger increases being adopted for the schedules that have the larger cost recovery gaps. This includes Fee Schedule P: Major Facility Review Fees, which has been determined to under-recover costs by a significant amount. Newly adopted regulatory measures should include fees that are designed to recover increased regulatory program activity costs associated with the measure, unless the Board of Directors determines that a portion of those costs should be covered by tax revenue. Tax revenue should also continue to be used to subsidize existing fee discounts that the District provides (e.g., for small businesses, green

businesses, and third-party permit appeals), and to cover the cost of the District's wood smoke enforcement program.

BE IT FURTHER RESOLVED that this resolution is non-binding in the case of unforeseen financial circumstances, and may also be reconsidered or updated by the District's Board of Directors.

## **Appendix B**

### **Draft Amendments to Bay Area Air Quality Management District Regulation 3: Fees**



prescribed burning and, as such, is subject to the prescribed burning operation fee in Section 3. below.

<sup>2</sup> Upon the determination of the APCO that heavy winter rainfall has prevented this type of burning, the burn period may be extended to no later than June 30.

For Disease and Pest, Hazardous Material, Fire Training, Contraband, Irrigation Ditches, and Flood Control fires, the operation fee paid will be in effect for one year (from the fee payment date). Any burning subsequent to any of the above time periods shall be subject to an additional open burning operation fee.

c. Any person who provided notification required under Regulation 5, Section 406, who seeks to burn an amount of material greater than the amount listed in that initial notification, shall provide a subsequent notification to the District under Regulation 5, Section 406 and shall pay an additional open burning operation fee prior to burning.

2. Any Marsh Management fire conducted pursuant to Regulation 5, Section 401.13 is subject to the following fee, which will be determined for each property by the proposed acreage to be burned:

a. OPERATION FEE:	<u>\$350</u>	<u>for 50 acres or less</u>
	<u>\$475</u>	<u>for more than 50 acres but less than or equal to 150 acres</u>
	<u>\$600</u>	<u>for more than 150 acres</u>

b. The fee paid for a marsh management fire will be in effect for a Fall or Spring burning period, as specified in Regulation 5, Subsection 401.13. Any burning subsequent to either of these time periods shall be subject to an additional open burning operation fee.

3. Any prescribed burning conducted pursuant to Regulation 5, Section 401.15 is subject to the following fee, which will be determined for each prescribed burning project by the proposed acreage to be burned:

a. OPERATION FEE:	<u>\$425</u>	<u>for 50 acres or less</u>
	<u>\$575</u>	<u>for more than 50 acres but less than or equal to 150 acres</u>
	<u>\$750</u>	<u>for more than 150 acres</u>

b. The operation fee paid for a prescribed burn project will be in effect for the burn project approval period. Any burning subsequent to this time period shall be subject to an additional open burning operation fee.

4. Any filmmaking fire conducted pursuant to Regulation 5, Section 401.16 and any public exhibition fire conducted pursuant to Regulation 5, Section 401.17 is subject to the following fee:

a. OPERATION FEE: \$505

b. The operation fee paid for a filmmaking or public exhibition fire will be in effect for the burn project approval period. Any burning subsequent to this time period shall be subject to an additional open burning operation fee.

5. Any stubble fire conducted pursuant to Regulation 5, Section 401.5 that requires a person to receive an acreage burning allocation prior to ignition is subject to the following fee, which will be determined for each property by the proposed acreage to be burned:



## **Appendix C**

### **Draft Amendments to Bay Area Air Quality Management District Regulation 5: Open Burning**

## REGULATION 5 OPEN BURNING

### Proposed New Reference in Regulation 5 Index:

5-411 Open Burning Fees

### Proposed New Section in Regulation 5

**5-411 Open Burning Fees:** Notification, smoke management plans, acreage burning allocations, and petitions as required by the provisions in this regulation will be subject to the fees contained in Regulation 3, Schedule V.