

**SACRAMENTO METROPOLITAN  
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **May 23, 2013**

**To:** Board of Directors  
Sacramento Metropolitan Air Quality Management District

**From:** Larry Greene  
Executive Director/Air Pollution Control Officer

**Subject:** Adopt Resolutions Approving Amendments to Rule 205 – Community Bank and Priority Reserve Bank and Rule 306 – Air Toxics Fees and Open a Public Hearing for Rule 107 – Alternative Compliance and Rule 301 – Permit Fees – Stationary Source

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**Recommendations**

1. Conduct a public hearing for Rule 205- Community Bank and Priority Reserve Bank (District Bank) and Rule 306 – Air Toxics Fees
  2. Adopt attached resolutions approving Rule 205-Option 3 and Rule 306-Option B
  3. Conduct the first of two public hearing for Rule 107- Alternative Compliance and Rule 301- Permit Fees – Stationary Source (Permit Fees)
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**Executive Summary**

At the February 28, 2013 and April 25, 2013 Board hearings, Staff presented information describing our need to increase fees to balance the budget in future fiscal year (FY) to maintain necessary staffing levels, and restore prudent fund balances. For the past several years, stationary source program revenues have not been sufficient to cover the program costs, and the District has been using the existing stationary source fund balance, i.e. reserve funds, to make up the differences. Despite many cost-saving actions, including reducing 6 positions from the stationary source programs, the District is expected to consume the remaining stationary source fund balance by the middle of FY13/14. The District has reached a critical point, and action to increase fees is needed.

Staff is recommending increases under four fee rules, listed in Table 1. Two of the rules require two separate hearings, and two can be approved today. Staff is also proposing a range of 20 options that respond to Board and industry concerns. The number of options is large because several policy decisions must be made, and each decision has a different effect on the fee outcome. To narrow the options, staff proposes that the Board make two policy decisions today.

Table 1- Summary of Rule Actions

<b>Rule</b>	<b>Hearings Required</b>	<b>Action Date</b>	<b>Number of Options</b>	<b>Number of Options after May 23<sup>rd</sup> policy decision</b>
205 – District Bank	1	May 23	3	N/A
306 – Air Toxics Fees	1	May 23	2	N/A
301 – Permit Fees	2	July 25	12	3
107*- Alternative Compliance	2	July 25	1	3

\*The fee that was included in Rule 107 is being incorporated into Rule 301, see options under Rule 301.

Policy Decisions:

- 1) District Bank Fees: Decide whether to impose the entire District Bank program cost on credit purchasers or distribute some portion to all permit holders.  
Staff recommendation – Distribute costs to all permit holders, because the program benefits all sources. (Rule 205, Option 3)
- 2) Administrative Division Manager: Decide whether to restore the Administration Division Manager Position in FY14/15.  
Staff recommendation – Restore Administration Division Manager position because the position is needed and only increases fees by 0.5%. (Rule 306, Option B).
- 3) Fund Balance: In July, decide whether to delay increasing the fund balance under the Rule 301 increases. This also requires the Board to decide whether to allow sources an option to delay part of the increase for one year.  
Staff recommendation – Begin building fund balance now, and do not include an option to defer. This provides the greatest financial stability and avoids administrative costs of a fee-deferral option. (Rule 301, Option 4B)

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## Attachments

The following table identifies the attachments to this memo.

Item	Attachment
Board Resolution for Rule 205	A
Board Resolution for Rule 306	B
Proposed Amendments for Rule 205 (with options)	C
Proposed Amendments for Rule 306 (with options)	D
Proposed Amendments for Rule 107 and Rule 301 (with options)	E
Staff Report for Rule 205 (including comments and responses)	F
Staff Report for Rules 107, 301, and 306 (including comments and responses)	G
Written Comments	H
Evidence of Public Notice	I

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## Background

The District currently does not meet state and federal health standards for ozone, and state health standards for particulate matter with an aerodynamic diameter of 10 microns or less (PM10), and particulate matter with an aerodynamic diameter of 2.5 microns or less (PM2.5). State and federal laws require the District to attain the health standards for these nonattainment pollutants, maintain compliance with health standards for other pollutants, and protect the public from emissions of toxic air contaminants. Control of pollution from stationary sources is the

primary function of the District<sup>1</sup>. A robust District stationary source program is essential to the local business community because it provides timely permits, adequate and consistent environmental review, reduces the likelihood of state and federal interventions in local business permitting and compliance decisions, and allows the District to tailor air pollution control measures to meet local community needs. Local implementation maintains a level playing field for compliant businesses and provides quick responses to citizen complaints.

In 2007, the District hired an independent consultant to evaluate the existing fees for the stationary source programs and to provide recommendations to fully recover the program costs. The fee study, completed in 2009, recommended several changes to meet program costs, including fee increases. The fee rule increases were deferred to minimize the impacts on local businesses during the economic downturn. Instead, the District took many actions, including those recommended by the fee study, to improve program efficiencies, increase revenues, and reduce costs. These cost saving actions included eliminating approximately 6 positions from the stationary source programs.

Staff continues to analyze the revenues and expenditures for the stationary source programs. Despite the actions mentioned above, revenues from the stationary source programs are not sufficient to fully recover program costs, and the stationary source fund balance has reached a critically low level. The following table summarizes the shortfalls in the local permit program, Title V permit program, air toxics program and the District Bank projected for FY13/14, if fees are not increased.

Table 2: Summary of Revenue Shortfall

Program	Cost	Revenue	Program Shortfall	
Local Permit Program	\$5,209,679	\$4,714,400	\$495,279	10%
Title V Permit Program	\$186,234	\$65,134	\$121,100	65%
Air Toxics Program	\$168,490	\$84,126	\$84,274	50%
District Bank	\$126,943	\$67,840	\$59,103	47%

Actions to increase fees are needed in FY13/14 budget and future budget years to eliminate shortfalls, thereby maintaining the essential role of the stationary source programs.

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### Summary of Policy Decisions

- 1) District Bank Fee: Decide whether to impose the entire District Bank program cost on credit purchasers or distribute some portion to all permit holders.

The staff's original proposed increase recouped the program cost solely through the fees paid by credit purchasers. This resulted in significant fee increases; for example, Aerojet's District Bank fees would have increased from \$6,321 to \$14,595. As discussed in the comment section below, Aerojet requested that the District phase the fee in over a 3-5 year period. Instead, when staff re-evaluated the fee, we determined that the Board should consider spreading part of the program cost across all permit holders. This issue is discussed below in the Rule 205 fee section. This approach lowers the cost to purchasers. For example, Aerojet's new fee would be \$7,301 rather than the \$14,595 originally proposed.

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<sup>1</sup> California Health and Safety Code Section 40000.

Decision Ramifications:

- a. If distribute among all permit holders (Rule 205, Option 3):
  - i. Reduces Rule 205 fees by half for credit purchasers, and Rule 301 fee increases will be slightly higher (0.6% or less.)
  - ii. Eliminates Rule 205, Options 1 and 2, and Rule 301 Options 1A, 1B, 2A, 2B, and 3A, and 3B, because each of these options assumed the entire program costs are being borne by credit purchasers.
- b. If impose solely on credit purchasers:
  - i. Results in significant fee increases for the District's 14 credit purchasers
  - ii. Must decide whether:
    1. the entire Rule 205 fee increase take effect in FY 13/14 (Rule 205, Option 1) or
    2. the Rule 205 fee increase should be phased over 3 years (Rule 205 Option 2).

Staff recommendation – Distribute costs to all permit holders and do not phase in the increase by adopting Rule 205, Option 3.

Rationale - Allocating half of the District bank costs to businesses with active loans and the other half to all permitted sources recognizes that the bank provides a benefit to all permit holders. By maintaining the integrity of the Bank, the District preserves the opportunity for businesses to access the banked credits if needed for a business expansion or short-term relief from another rule requirement. Spreading the program costs also increases the financial stability of the Bank, because it will not be dependent on the fees paid by the more limited number of businesses actually accessing the credits at any given time.

- 2) Administrative Division Manager: Decide whether to restore the Administration Division Manager Position in FY14/15.

Decision Ramification:

- a. This increases fees Rules 301 and 306 fees slightly (0.5% or less)
- b. Approving staff's recommendation eliminates all of the "A" options from Rules 301 and 306, because each of the "a" options assume no Administrative Division Manager costs.

Staff recommendation – Restore Administration Division Manager position and adopt Rule 306, Option B.

Rationale – The position has been unfunded since FY10/11 when the former Administration Division Manager accepted the District's two-year service credit incentive for early retirement. The cost of that early retirement incentive was fully recouped in FY11/12. Currently, the responsibilities for the position have been reassigned to the Program Coordination Division Manager. The increase associated with restoring this position is very small.

- 3) Fund Balance: In July, decide whether to delay increasing the fund balance under the Rule 301 increases. If the Board opts for delay, then it must decide whether to allow sources an option to defer a portion of the increase for one year by paying a 25% fee.

Decision Ramifications:

- a. Building fund balance now means:
  - i. higher FY13/14 fees, but
  - ii. smaller fee increases in the subsequent 4 years, and
  - iii. the fees at the end of the 5 year period are slightly lower than other options

- iv. This eliminates Rule 301, Options 2 and 5, because those options assume phase-in costs.
- b. Delay building fund balance results in
  - i. smaller fee increase in FY13/14,
  - ii. consistent % fee increases over the 5 year phase-in, and
  - iii. higher fees at the end of the 5 year period.
  - iv. This eliminates Rule 301, Options 1,3,4, and 6, because those options assume no phase-in costs.

Staff recommendation – Begin building fund balance now, and do not include an option to defer part of the FY13/14 fee. To do this, the Board would select Rule 301, Options 1 or 4. If Board agreed with the staff recommendations for #1 and #2 also, then the Board would select Rule 301, Options 4B.

Rationale – Beginning to build fund balance now provides the District the greatest financial stability and yields a slightly lower fee at the end of the 5-year period. Staff recommends against giving permit holders the option to defer on the added grounds that it is administratively difficult to implement.

The Policy Decisions and fee options are summarized in the following Table 3.

Table 3: Summary of Proposed Rule Options

Rule Number	Option	FY13/14	FY14/15	FY15/16	FY16/17	FY17/18	May 23 <sup>rd</sup> Decision			July 25 <sup>th</sup> Decision	
							Is cost of credit bank shared w/ all permit holders?	Is the Admin. Division Manager restored?	Does building the fund balance begin now or be delayed?	Does the business have an option to defer part of the first year fee increase?	
301 Local Permit Fees	1A	15%	3.6%	3.6%	3.6%	3.6%	No	No	Now	No	
	1B	15%	4.1%	4.1%	4.1%	4.1%					
	2A	6.9%	6.9%	6.9%	6.9%	6.9%	No	Yes	Delay		
	2B	7.2%	7.2%	7.2%	7.2%	7.2%					
	3A	6.9%	12.35%	3.6%	3.6%	3.6%	No	Yes	Now	Yes	
	3B	6.9%	12.85%	4.1%	4.1%	4.1%					
	4A	15%	4.2%	4.2%	4.2%	4.2%	No	Yes	Now	No	
	4B	15%	4.7%	4.7%	4.7%	4.7%					
	5A	7.2%	7.2%	7.2%	7.2%	7.2%	Yes	Yes	Delay		
	5B	7.5%	7.5%	7.5%	7.5%	7.5%					
	6A	7.2%	12.7%	4.2%	4.2%	4.2%	No	Yes	Now	Yes	
	6B	7.2%	13.2%	4.7%	4.7%	4.7%					
301 Title V	A (1-6)	New fee structure	15%	15%	6.5%	---	N/A	No	Now	No	
	B (1-6)		15%	15%	7.5%	---					
205 District Bank	1 <sup>1</sup>	\$2,085 <sup>2</sup>	---	---	---	---	No	N/A	Now	No	
	2 <sup>1</sup>	\$1,297 <sup>2</sup>	\$1,691	\$2,085	---	---					
	3 <sup>3</sup>	\$1,043 <sup>2</sup>	---	---	---	---	Yes		Now		
306 Toxic Fees	A <sup>4</sup>	\$116 <sup>5</sup>	---	---	---	---	No	No	Now	No	
	B <sup>6</sup>	\$118 <sup>5</sup>	---	---	---	---					

--- No fee increase, but possible Consumer Price Index increase

1- This option eliminates Rule 301 Options 4, 5, and 6

2- Current fee is \$903

3- This option eliminates Rule 301 Options 1,2, and 3

4- This option eliminates all of the B Options in Rule 301

N/A – This question is not applicable to this rule.

5- Current fee is \$60

6- This option eliminates all of the A Options in Rule 301

### Discussion of Proposed Rule Amendments

To fully recover the program cost, maintain necessary staffing levels, and restore prudent fund balance, Staff is proposing amendments to four rules:

#### Rule 205 – Community Bank and Priority Reserve Bank:

Rule 205 provides an option for loaning emissions reduction credits from the District banks in lieu of purchasing credits from other businesses. Credits are used for mitigating emissions increases or as an alternative to traditional rule compliance, usually to extend compliance deadlines. In addition to paying the market rate for the credit, businesses pay an annual loan renewal fee of \$903 per active loan. This renewal fee covers the staff costs to secure replacement emission reduction credits to sustain the bank for future business needs. These costs include implementing the Wood Stove and Fireplace Change Out Program<sup>2</sup>. Staff has developed several options to increase the annual loan renewal fee. Staff recommends adopting Option 3. Adopting Rule 205, Option 3 also eliminates Rule 301, Options 1, 2, and 3 for reasons discussed below.

Option 1: Allocate the entire cost of the District Bank to the sources who are borrowing credits from the District Bank. This option fully recovers the program cost in the first year. There are currently 50 active loans secured by 14 sources. The annual renewal fee for this option is \$2,085 per active loan, beginning on the date of adoption.

Option 2: Same as Option 1, but phase the fee increase in over the next three years. For the first two years, the annual loan renewal fees will not fully recover the program cost. The program shortfall in those years will be covered by the existing stationary source fund balance. The annual renewal fees for the next three years are shown below:

	FY13/14 <sup>3</sup>	FY14/15	FY15/16
Annual Renewal Fee	\$1,297	\$1,691	\$2,085

Option 3: Allocate half the cost of the District Bank to the sources who are taking loans from the District bank and half to all permitted sources. A viable District Bank is a benefit to all permit holders because it provides the opportunity for any permitted source to access the District Bank in the future. The annual renewal fee for this option is \$1,043 per active loan. If this option is selected, the fee increase amounts in Rule 301 must increase to cost recover the remaining District Bank costs. These slightly higher fee increases are proposed in Options 4A, 4B, 5A, 5B and 6 for Rule 301.

In addition to the proposed fee increase, Staff is proposing to add a provision that authorizes the APCO to adjust the annual renewal fee relative to the change in the California Consumer Price Index (CPI), but only when the adjustment is proposed as part of the annual budget process.

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<sup>2</sup> Portion of the Woodstove Program costs are covered by Land Use Mitigation Fees.

<sup>3</sup> The fee actually is implemented on the date of rule adoption through the 1st year after date of rule adoption. The fiscal years are used in this table for brevity.

Rule 301 – Permit Fees – Stationary Source:

This rule establishes or revises fees for processing new or modifying existing permits, issuing and amending Title V permits, renewing local and Title V permits, processing credit applications, and depositing or withdrawing credits from the District Bank. Staff is proposing to add new fees, revise the Title V fee structure, and increase all fees over the next several years to fully recover the program cost and restore prudent fund balance.

The proposed new and revised fees are the following:

- Change of Name: Staff is proposing a fee for a name change on a permit. The fee is \$66 for the first permit and \$28 for each additional permit. This fee recovers Staff's time to update the permit(s) and the information in the permit database. This revision simply substitutes a set fee in place of the past practice of charging staff's hourly rates.
- Source Test Fee for Gasoline Dispensing Facilities (GDFs): Staff is proposing to formalize existing policies on source test fees for GDFs. According to the policy, GDFs have been assessed a lower source test fee because the current source test fee (\$1,307) is too high relative to the time required for testing gasoline storage and dispensing equipment. The proposed source test fees for GDFs are \$234 for underground tanks, \$117 for aboveground tanks, and \$78 for facilities required to do only Phase I vapor recovery testing.
- Alternative Compliance Application Processing Fee: This fee is currently established in Rule 107 – Alternative Compliance. All alternative compliance applications require a new permit or revisions to an existing permit. Therefore, Staff is proposing to move the alternative compliance application processing fee of \$91 per hour to Rule 301 and increase the fee to \$105 per hour.
- Public Notification Fee: Staff is proposing to add a publication fee that requires the applicant to cover the cost associated with public notification. Notifications usually include publishing notices in a newspaper regarding the approval or disapproval of an application. In the past, the District has absorbed this cost.

Rule 301 – Local Permit Fees

Staff is proposing to increase fees and phase the increases in over 5 years. All existing fees will be increased from FY13/14 through FY17/18<sup>4</sup>. The proposed fee increase amount will depend on which of the several options is selected. Each option involves a different approach to phasing in the increase over a five-year period. The key factors that determine the fee increase amounts are: the time to restore the fund balance, the addition of the Administration Division Manager position, and the method for distributing the District Bank costs. Each of the Options is summarized below as well as in the proceeding Table 3:

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<sup>4</sup> One exception is the Alternative Compliance fee which increases over 6 years through FY18/19 to reach the same Time and Materials Labor Rate fee as the other Labor Rate fees in the rule.

Option 1A: 15% in FY13/14 and 3.6% increase each year from FY14/15 to FY17/18 for all fees except the hourly rate<sup>5</sup>

- immediately begins to restore fund balance
- does not restore the Administration Division Manager position
- does not include any District Bank costs

Option 1B: 15% in FY13/14 and 4.1% increase each year from FY14/15 to FY17/18

- immediately begins to restore fund balance
- restores the Administration Division Manager position in FY14/15
- does not include any District Bank costs

Option 2A: 6.9% increase each year from FY13/14 to FY17/18

- delays restoring fund balance, and then builds fund balance at a slower rate
- does not restore the Administration Division Manager position
- does not include any District Bank costs

Option 2B: 7.2% increase each year from FY13/14 to FY17/18

- delays restoring fund balance, and then builds fund balance at a slower rate
- restores the Administration Division Manager position in FY14/15
- does not include any District Bank costs

Option 3: This option modifies Option 1 to add a provision that allows sources to elect to defer part of the initial fee increases for FY13/14 with a 25% deferral fee.

Option 3A: Allows sources to defer 7% of the Option 1 FY13/14 fee. The effective fee increases are 6.9% in FY13/14, 12.35% in FY14/15, and 3.6% in FY15/16 through FY17/18

- immediately begins to restore fund balance
- does not restore the Administration Division Manager position
- does not include any District Bank costs

Option 3B: Allows sources to defer 7% of the Option 1 FY13/14 fee. The effective fee increases are 6.9% in FY13/14, 12.85% in FY14/15, and 4.1% in FY15/16 through FY17/18

- immediately begins to restore fund balance
- restores the Administration Division Manager position in FY14/15
- does not include any District Bank costs

Option 4A: 15% in FY13/14 and 4.2% increase each year from FY14/15 to FY17/18 for all fees except the hourly rate

- immediately begins to restore fund balance
- does not restore the Administration Division Manager position
- distributes 50% of the District Bank costs

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<sup>5</sup> In all Rule 301 options the percent increase listed does not apply to the hourly rates. The fee increases for the hourly rates are higher than listed above. The increases for the hourly rates are not included in the summary because they account for only 2% of Rule 301 revenues, principally from the gas station (GDF) source test fees. There are three hourly rates and the increases for each are specified in Section 404.

Option 4B: 15% in FY13/14 and 4.7% increase each year from FY14/15 to FY17/18

- immediately begins to restore fund balance
- restores the Administration Division Manager position in FY14/15
- includes 50% of the District Bank costs

Option 5A: 7.2% increase each year from FY13/14 to FY17/18

- delays restoring fund balance, and then builds fund balance at a slower rate
- does not restore the Administration Division Manager position
- includes 50% of the District Bank costs

Option 5B: 7.5% increase each year from FY13/14 to FY17/18

- delays restoring fund balance, and then builds fund balance at a slower rate
- restores the Administration Division Manager position in FY14/15
- includes 50% of the District Bank costs

Option 6: This option modifies Option 4 to add a provision that allows sources to elect to defer part of the initial fee increases for FY13/14 with a 25% deferral fee.

Option 6A: Allows sources to defer 6.8% of the Option 1 FY13/14 fee. The effective fee increases are 7.2% in FY13/14, 12.7% in FY14/15, and 4.2% in FY15/16 through FY17/18

- immediately begins to restore fund balance
- does not restore the Administration Division Manager position
- includes 50% of the District Bank costs

Option 6B: Allows sources to defer 6.8% of the Option 1 FY13/14 fee. The effective fee increases are 7.2% in FY13/14, 13.2% in FY14/15, and 4.7% in FY15/16 through FY17/18

- immediately begins to restore fund balance
- restores the Administration Division Manager position in FY14/15
- includes 50% of the District Bank costs

#### Rule 301 – Title V Permit Fees

In addition to our local permits, the Clean Air Act requires federal permits, known as Title V permits, for our 16 major sources. Those 16 sources pay both the Title V permit fee and the local permit fee. Federal regulations require that our Title V fee cover the costs of the Title V permit program. Therefore, the Title V increases will be phased over three years. Staff is proposing to replace the Title V hourly fee rate with a flat fee rate schedule. The current Title V fee is based on the actual time spent processing Title V permit applications (initial permits, renewals, and permit modifications) at the specified hourly rate<sup>6</sup>. The current fee structure is difficult to implement consistently because local permit work overlaps Title V work and takes additional effort to track. Staff is proposing a flat fee rate structure for each type of Title V application as shown in Table 4.

In addition, Staff is proposing to establish a new annual Title V fee to recover the costs that the District has not been able to recover in the past such as inspections, reporting, and training. To cover this portion of the Title V program cost, Staff is proposing a new annual Title V fee of \$214 per local permit. The number of local permits is indicative of

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<sup>6</sup> Rule 301, Section 308.12

the duration and complexity of inspections and provides a reasonable basis to apportion on-going annual Title V program costs.

The only policy decision that affects the Title V fee is the addition of the Administrative Division Manager position. There is no difference in FY13/14 (Table 4) or FY 14/15 from the policy decision. The difference in the fee increase is in FY 16/17 where with the Administrative Division Manager it is 7.5% and without the Administrative Division Manager it is 6.5%.

Table 4 – Title V Fees

Type of Title V Application	Proposed SMAQMD Fee for FY13/14
Application Filing Fee*	\$1,902 per application
Initial Title V Operating Permit	\$1,841 per local permit
Title V Operating Permit Renewal	\$801 per local permit
Significant Title V Permit Modification	\$5,308 per local permit modified
Minor Title V Permit Modification	\$2,700 per local permit modified
Administrative Title V Permit Amendment	\$538 per application

\*Application filing fee is required for each Title V application submitted.

#### Rule 306 – Air Toxics Fees:

This rule is used to implement the Air Toxics Program known in state law as the Air Toxics “Hot Spots” Information and Assessment Act of 1987. Staff is proposing to increase the fee for the industry-wide sources to recover the cost associated with collecting data for and performing and evaluating state mandated risk assessments on behalf of businesses in this source category. The current fee is \$60 per facility. The fee increase depends on which of the following options is selected. All options presented build a fund balance for the air toxics program. This cost is significantly lower than the cost incurred if each source performed its own risk assessment.

Option A: These options maintain current reduced Staffing levels. The proposed fee for each option is \$116 per facility in the Industry-wide Category.

Option B: These options restore an Administrative Division Manager in FY14/15. The proposed fee for each option is \$118 per facility in the Industry-wide Category.

In addition to the proposed fee increase, Staff is proposing to add a provision to authorize the Air Pollution Control Officer to adjust air toxics fees by the change in the CPI when the adjustment is proposed as part of the annual budget.

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#### **District Impacts**

The District is responsible for achieving and maintaining clean air standards in Sacramento County. The proposed fee increases are necessary to effectively implement the stationary source programs to meet state and federal requirements, and reduce emissions to achieve and maintain health-based air quality standards. If the proposed fee increases are not adopted, the District will exhaust available funds before the end of FY13/14, jeopardizing the District’s ability to meet its responsibilities.

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## **Emission Impacts**

The proposed amendments to Rules 107, 205, 301, and 306 will increase fees to recover the District's cost to administer the stationary source permit program, Title V program, air toxics program, and the District Bank. These amendments are administrative and do not establish emission standards.

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## **Environmental Review and Compliance**

Staff finds that the amendments to Rules 107, 205, 301, and 306 are exempt from California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines provide that the adoption or amendments of fee rules are not subject to CEQA. To claim this exemption, the District must find that the amendments are for the purpose of meeting operating expenses. Amendments to Rules 107, 205, 301 and 306 will increase fees to help recover the cost to implement the permit and air toxics programs.

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## **Public Outreach and Comments**

Staff began the public process by holding an Industry Fee Task Force meeting with selected businesses regarding fee increases in Rules 301 and 306 on January 31, 2013. Staff subsequently added proposed fee increases for alternative compliance permits and renewal of loans from the District Bank, governed by Rule 205. On April 11, 2013, Staff held a public workshop on these fee increases. As directed by the Board, Staff also held another public workshop on May 14, 2013, to discuss in detail the proposed fee options for each fee rule. In addition, Staff discussed the proposed fee increases with the full Board and/or the Board's Personnel and Budget Subcommittee on February 28, April 11, and April 25, 2013.

For the two public workshops and today's public hearing, Staff posted public notices on the District's website, emailed the notices to interested parties, and sent notices by U.S. mail to all permit holders. In addition, the notices for the first public workshop on April 11, 2013 and today's public hearing were published in the Sacramento Bee.

The responses to oral and written comments from the Industry Fee Task Force meeting and the first public workshop are included in Attachments F and G. The comments from the second public workshop will be discussed at this Board hearing.

During the first public workshop written comment period, Staff received two comment letters, one from Aerojet and one from County of Sacramento, Department of Management and Recycling (Kiefer Landfill), regarding the proposed fee increases in Rules 205 and 301. These comments and Staff's responses are summarized below:

Rule 205 Comments: Both comment letters expressed concern about the large increase in the annual loan renewal fee. Aerojet suggested that the District phase-in the proposed fee increases over a period of either 3, 4, or 5 years to give them time to reallocate money and balance their budget to cover these costs. Kiefer Landfill suggested changing the fee structure so that the annual renewal fee is proportional to the size of the loan. The suggested fee structure would consist of fees for small, medium, and large size loans.

In response to comments, Staff developed options for Rule 205 for the Board to consider.

Option 2 phases in the proposed annual fee increase over three years. Staff used a 3-year period because the existing stationary source fund balance is not sufficient to cover the shortfall during a 5-year phase in period and this approach will consume the least amount of the existing stationary source fund balance. Option 3 allocates half of the cost to all permit holders and reduces the cost to the sources with District Bank loans. The proposed annual renewal fee in Option 3 is half of the proposed fee in Option 1.

Regarding to Keifer Landfill's specific comment, no changes were made. The amount of the loans does not affect the amount of Staff time to maintain and update the District Bank and to implement the emission reduction projects to create replacement credits. As such, Staff does not consider it appropriate to use different renewal fees for different sizes of loans.

Rule 301 Comments: Aerojet provided comments expressing concerns that the proposed fee increases will add regulatory burden disproportionate to their competitors in other states, adversely impact the job growth in the manufacturing sector, and are out of step with the state-level emphasis on controlling regulatory program costs and reducing the burdens on the regulated community. They also stated that the proposed fee increases will result in over a 70% increase in fees within the next three years.

Staff understands the potential impacts that the fee increases may cause to the regulated community; however, the proposed fee increases are necessary to effectively implement the stationary source programs to meet state and federal requirements and reduce emissions. The Sacramento area is ranked sixth on the list of U.S. cities with the worst ozone pollution. If we don't make required progress toward achieving air quality standards, EPA could impose sanctions that would impact businesses and suspend regional transportation funding. On the other hand, the Sacramento area meets the federal standard for fine particulate matter. Staff's effort to control sources, including unpermitted sources such as fireplaces and wood stoves, helped the region meet the federal health standard. As such, the District is not required to adopt additional control measures that would add costs to our permitted sources. To continue to avoid additional regulatory burden, the Sacramento area must remain in attainment.

The District has implemented several procedural changes to increase revenues and many cost saving actions to improve efficiency, and has reduced 6 staff positions related to the stationary source programs in order to avoid a fee increase since 2001. Staff has also worked hard to avoid imposing fees. Specifically, we put extensive effort into a successful push to avoid imposing Clean Air Act Section 185 fees on major sources like Aerojet. Section 185 fees for Aerojet would have been \$204,170, and the total fees that would have been due from all major sources are over \$4 million through 2011. We continue to work with EPA to formally terminate the Section 185 fee obligation. No additional fees were paid by our major sources to support our efforts on their behalf.

Kiefer Landfill also provided comments specific to the Title V fees. Their concern was that the projected Title V fee increases for their facility were underestimated because the estimates did not include the projected fee revenues associated with future Title V permit modifications, such as minor or significant modifications.

The estimates of higher fees noted in the comment letter are based on specific, anticipated permit actions for Kiefer Landfill over the next four years. To use this estimate for all Title V sources for future modification is speculative. Staff cannot predict the specific number and type of future Title V applications from every Title V source or the actual amount of staff time that will be spent processing future Title V permit applications. Staff's Title V fee revenue projections for

each Title V facility were based on the annual average for all past permitting activities that occurred from FY07/08 through FY11/12 and the new annual fee for Title V permits. The five-year historical average was used to estimate future fees and is Staff's best estimate of future costs. The table shows the projected fees using Staff's five-year historical average and Kiefer Landfill's projected fees based on anticipated Title V permit modifications.

	FY13/14	FY14/15	FY15/16	FY16/17
District's estimates*	\$7,993	\$9,192	\$10,571	\$11,258
Kiefer Landfill's estimates	\$3,424	\$33,150**	\$14,185***	\$25,542

\*Based on 5-year historical average

\*\*Includes anticipated Title V permit modifications for flare and engine permits

\*\*\*Includes anticipated Title V permit modifications for green waste trommel screen permits

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### Non-substantive Change After Posting of Rules

The proposed amendments to Rule 205 and Rule 301 have been modified on April 30, 2013 after posting of the notice of public hearing on April 22, 2013. The changes in Rule 205 lowered the annual renewal fee to \$2,085 and this proposal became Option 1. Staff also added Options 2 and 3 for the Board's consideration and adoption. Option 2 and 3 also lowered the annual renewal fee<sup>7</sup>. The changes are nonsubstantive changes because they lessen the impacts with active loans. The changes in Option 3 were also discussed in concepts in the document "Summary of Options for Rule 301" posted on April 22, 2013.

The changes in Rule 301 added the fee increase amounts for Options 4A, 4B, 5A, 5B, and 6 for the Board's consideration. These changes were discussed in concepts in Option 4 in the document "Summary of Options for Rule 301" posted on April 22, 2013. The changes also modified the language in Section 404 for clarification<sup>8</sup>. The Board will consider adoption of Rule 301 at the July 25, 2013 hearing. Staff will post the final proposed rule language for the Board's consideration and adoption 30 days prior to that public hearing.

None of the changes were substantive because they did not preclude the public from thoroughly analyzing the fee changes or presenting knowledgeable comments. In addition, the public notice alerted the public to the existence of changes by stating "Staff is evaluating comments received following the Public Workshop and will discuss an additional option to respond to those comments during the May 23, 2013 Board Hearing. The option may distribute a portion of the costs associated with the District credit banks regulated by Rule 205 – Community Bank and Priority Reserve Bank because the viability of those credit banks may be needed by any permit holder in the future. If requested, this would increase the fee increase amounts shown in Section 402 rule language beginning in FY14/15. This increase is expected to be less than 1%."

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<sup>7</sup> Rule 205 Section 313.1.

<sup>8</sup> In Section 404 of Rule 301, the modified language explains if the fee increases exceed the limitation in the California Health and Safety Code, then the fee increases would be a lesser amount that is consistent with the California Health and Safety Code.

**Conclusion**

In spite of reduced staffing levels and other efficiency improvements, current fees do not cover stationary source programs costs. Staff is proposing to increase fees through amendments to Rules 107, 205, 301, and 306 to maintain the necessary Staff to effectively implement the stationary source programs and restore prudent fund balance.

Staff recommends that the Board adopt Option 3 for Rule 205. This option provides fair distribution of costs and provides greater stability in revenues for the District Bank. If the Board adopts Option 3 for Rule 205, then at the July 25, 2013 meeting, Staff will bring only Options 4A, 4B, 5A, 5B, and 6 for Rule 301 for the Board's consideration and adoption. Staff recommends Option 4B.

Staff also recommends that the Board adopt Option 1B for Rule 306. This option will help restore the Division Administrative Manager in FY14/15.

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Respectfully submitted,

Approved as to form:

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Larry Greene  
Executive Director/Air Pollution Control Officer

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Kathrine Pittard  
District Counsel

Attachments