

Air Pollution Control District Governing Board
San Diego County Air Pollution Control District
AGENDA ITEM # 03

DATE: **October 14, 2021**

TO: Air Pollution Control District Governing Board

SUBJECT:

PUBLIC HEARING: RECEIVE PRESENTATION FOR PROPOSED AMENDMENTS TO RULE 40 – PERMIT AND OTHER FEES AND RULE 42 – HEARING BOARD FEES

REQUESTED ACTION:

1. Open a public hearing on the proposed amendments to Rule 40 – Permit & Other Fees and Rule 42 – Hearing Board Fees; receive a presentation from staff and receive and consider public comments.
2. Find that the revenues being generated by the fee rates currently set forth in Rule 40 – Permit & Other Fees and Rule 42 – Hearing Board Fees are insufficient to fully recover the costs of District programs to which revenues from those fees are applied, as described in the Cost Recovery and Fee Analysis Consolidated Report – April 2021 (Attachment A) and find that the additional revenues that would be generated by the proposed rule revisions would be used for District operating expenses and costs including employee wage rates and fringe benefits, purchasing supplies and equipment, or meeting the financial reserve needs of the District.
3. Find that the requested action is exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines section 15273 because the additional fee revenues that would be generated by adjustments that could result from the adoption of proposed amendments to Rule 40 – Permit & Other Fees and Rule 42 – Hearing Board Fees will be used for the purposes set out in that section, including operating expenses and purchasing or leasing supplies, equipment or materials.

OVERVIEW:

The mission of the San Diego County Air Pollution Control District (District) is to improve air quality to protect public health and the environment. Accordingly, the District operates a county-wide permitting program for stationary (fixed) sources of air pollution pursuant to federal and State law. Stationary sources encompass large industrial facilities including power plants and landfills and smaller commercial establishments such as gas stations and dry cleaners. A facility’s permit outlines the actions they must take to comply with air pollution control requirements and protect air quality, the environment, and public health.

District Rule 40 sets the fees for District permitting and other services, such as inspections and source testing, related to the implementation of the stationary source permitting program. Rule 42 sets the fees for petitioning the District Hearing Board for various actions such as permit appeals and variances (i.e., temporary relief) from air pollution control requirements. Proposed amendments to Rule 40 and Rule 42 include minor clarifications, the removal of outdated language, and updates to various fees consistent with the direction of the Governing Board on May 21, 2021, as detailed in Attachments B and C and summarized in the table below:

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Fee Category	Permit Application Fixed	Permit Renewal	Source Testing	Asbestos Notifications	Hearing Board	Time & Material	Processing Fee
% Fee Increase	15%	15%	15%	25%	25%	15%	15%

Today’s hearing is to receive a presentation and consider public comments on the proposed amendments to Rule 40 and Rule 42. At the conclusion of the comment process, the Board may instruct staff concerning any amendments to the proposed rules that it concludes would be appropriate. A second public hearing is scheduled for December 9, 2021, to consider adoption of the proposed rule amendments. If adopted, the proposed amendments will become effective on January 1, 2022, which will allow for testing of the new fees, revised invoicing, and outreach to stakeholders prior to implementation.

Rule 40 currently allows permit holders and applicants to submit a written request to split the payment of permit renewal and initial application evaluation fees due to financial hardship. In these instances, the first payment, including an administrative fee, must be deposited prior to the permit renewal due date or with the initial application, as applicable, and the second payment is then due 60 days later. Additionally, the District has recognized the economic impacts due to the ongoing pandemic and has accepted written requests to waive late fees for businesses facing financial hardships. District staff is reviewing these split payment provisions for potential options to provide greater flexibility, such as allowing for a greater number of payments spread out over a longer period of time and will return to the Board with proposed recommendations for consideration on December 9, 2021.

FISCAL IMPACT:

There is no fiscal impact associated with today’s requested action to receive a presentation and consider public comments on the proposed amendments to Rule 40 and Rule 42. If adopted on December 9, 2021, these proposed amendments will result in additional revenues up to \$1.4 million per fiscal year, which would increase the District’s cost recovery percentage for its stationary source permit program from the current 66% to approximately 78% and would reduce annual stationary source permit program revenue deficits from \$4 million to approximately \$2.6 million.

PUBLIC ENGAGEMENT AND OUTREACH:

The District held a public meeting on August 31, 2021, to discuss and receive input on the draft proposed amendments to Rule 40 and Rule 42. A meeting notice was mailed to each permit holder, applicant, registration holder, and chamber of commerce in the region. Additionally, a meeting notice was posted on the District’s website and distributed to interested parties, including through the District’s electronic mail service. The public meeting was attended by seven stakeholders, representing businesses and facilities that are subject to permit fees and other fees. The District received comments related to the current and future full cost recovery efforts and impacts to businesses facing financial hardships. The District issued a public meeting report responding to comments and questions concerning the proposed fees (Attachment E).

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ENVIRONMENTAL STATEMENT:

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15273, which exempts projects that involve the establishment or modification of charges by public agencies for the purpose of meeting operating expenses, purchasing supplies and equipment, or meeting financial reserve needs, as described in the Cost Recovery and Fee Analysis Consolidated Report – April 2021 (Attachment A).

PREVIOUS RELEVANT BOARD ACTIONS:

On May 21, 2021 (Item #1), the District Governing Board directed the Interim Air Pollution Control Officer to implement a regulatory process, which includes industry and community partners, to amend Rule 40 and Rule 42 to increase fees with the goal of achieving full cost recovery consistent with the recommendations of the Cost Recovery Taskforce.

ATTACHMENT(S):

- Attachment A: Cost Recovery & Fee Analysis Consolidated Report
- Attachment B: Change Copy of Rule 40
- Attachment C: Change Copy of Rule 42
- Attachment D: Comparison of Current and Proposed Fee Schedules
- Attachment E: Public Meeting Report

SUBMITTED BY:

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