

**ATTACHMENT E**

**FINAL STAFF REPORT**

**EXISTING RULE 40  
PERMIT AND OTHER FEES**

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San Diego County Air Pollution Control District  
Rule Development Section

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## EXECUTIVE SUMMARY

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 required actions to comply with air pollution control requirements and protect air quality, the environment, and public health. District Rule 40 – Permit and Other Fees, sets the fees for District permitting and other services, such as inspections and source testing, related to the implementation of the stationary source permitting, source testing, and asbestos programs.

District staff worked with Matrix Consulting Group (Consultant) to update the Cost Recovery Study analysis from last fiscal year (FY 2025-26) based upon new inputs associated with staffing, costs, and workload, as well as any changes in fee structures. The Consultant recommended and District staff proposes implementation of a Fiscal Year 2026-27 cost recovery scenario detailed in the FY 2026-27 Cost Recovery Analysis Report - November 2025).<sup>1</sup>

Proposed Fiscal Year 2026-27 amendments to Rule 40 include:

- The addition of a flat fee provision for sources not subject to Time & Material (T&M) emission inventory fees, to recover costs for conducting mandated reviews for emissions inventory services;
- Additional split payment flexibility for payment of application fees;
- Clarifications on the applicability of certain processing, application, permit revision, and late fees;
- Consolidation of asbestos fees;
- Revisions to various fees consistent with the recommendations from the Consultant, as detailed in Attachment B, including:
  - Recommendations to increase various fees by up to 15% based on the current cost recovery estimates for each individual fee schedule;
  - Reductions to specific fee schedules, where appropriate; and
  - Conversion to time and materials (T&M) fees for all permit applications

Increases in stationary source permitting fees are limited as required by California Health and Safety Code Section 41512.7. This limitation is being met by limiting the proposed increases for fixed permit application fees, permit renewal fees, time & material charges, and processing fees, to not more than 15%.

There are no revisions proposed to Rule 42 – Hearing Board Fees at this time. Increasing these fees may result in the Hearing Board fees becoming cost prohibitive, without having a significant revenue impact upon the District since these fees comprise a very small amount of the revenue and costs for the District.

The following statements summarize important elements of the proposed rulemaking:

### Comparative Analysis

An analysis comparing proposed amended Rule 40 with applicable requirements of federal and local regulations (“Comparative Analysis”) is not required because the proposed amendments do not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements.

#### Socioeconomic Impact Assessment

An assessment of the socioeconomics impacts of proposed amended Rule 40 is not required because it will not significantly affect air quality or emissions limitations.

#### California Environmental Quality Act (CEQA)

The proposed fee-based administrative amendments to Rule 40 are categorically exempt from the provisions of CEQA pursuant to California Code of Regulations, Title 14, Section 15273, which exempts projects that involve the establishment or modification of charges by public agencies for the purpose of meeting operating expenses (including employee salary and benefits), purchasing supplies and equipment, or meeting financial reserve needs. Additionally, pursuant to CEQA Guidelines Section 15061(b)(3), the proposed amendments which are administrative in nature are exempt from CEQA as they will not have a significant effect on the environment.

#### Environmental Justice

The proposed amendments to Rule 40 promote public engagement and transparency; and will help to fund the District's commitments to advancing policies, programs, and services that achieve environmental justice and equity. Fees for the District recover costs for permitting, and other programs and services, and support the District's vision of "Clean Air for All".

## **I. INTRODUCTION**

Rule 40 – Permit and Other Fees is used to establish all fees charged by the San Diego County Air Pollution Control District (District), as authorized by the Air Pollution Control District Governing Board, except for those specified in Rule 42 – Hearing Board Fees. These include, but are not limited to, fees for: applications, permits and registrations, renewals, source testing, asbestos demolition or renovation notifications, emission inventory, and various other program specific fees. Rule 40 is also used to determine refunds, forfeitures, and insufficient payment of fees, as applicable. Given that estimated costs and revenues for these services will fluctuate year to year due to shifts in staffing levels, program costs, level of effort, and other factors, Rule 40 is periodically updated to ensure that District fees are appropriately recovering costs associated with providing these services.

## **II. BACKGROUND**

California Health and Safety Code Sections 41512 and 42311 allow the District to recover the full costs applicable to emission sources not included within a permit system such as asbestos fees, source testing fees, emission inventory fees, and Hearing Board fees, as well as costs associated with the renewal, evaluation, and issuance of permits. These sections also provide limits on fee increases for permit to operate and authority to construct permits, restricting aggregate revenue increases to 15% annually. Based upon this legal authority, the District has a goal to review its fees every year to ensure that all fee-related costs are captured, and maximum cost recovery is achieved.

In 2020, the State Auditor issued a report regarding the District,<sup>2</sup> which identified that fee-related expenses were not being fully recovered. As a result of these findings, the District conducted its first external fee evaluation in 2021,<sup>3</sup> with study results presented and adopted by the District Governing Board in May 2021. Before implementing associated fee increases which took effect on January 1, 2022, the District had not raised fees in three years.

At the end of 2021, the District worked with Matrix Consulting Group to prepare an update to the study conducted earlier in 2021. This update incorporated staffing and budgetary adjustments as well as several fee program modifications. The results of this analysis were presented and adopted by the Board for

implementation on July 1, 2022. In each subsequent year, the District has worked with Matrix Consulting Group to conduct updates to the Cost Recovery Analysis for annual Board adoption and implementation.

As part of the continuing effort to ensure that fees cover the costs associated with their activities and that fee-related services are offset by fee-related revenue, the District is now proposing to add a flat fee provision for sources not subject to Time & Material (T&M) emission inventory fees, to allow the District to recover costs associated with emissions inventory services and update its fees for implementation on February 12, 2026 (emissions inventory flat fee provision) and July 1, 2026 (amendments to existing fees), and has updated the analysis from last year based on new inputs associated with staffing, costs, workload volume, and updates to include projected costs and revenues associated with the fee for service related to emissions inventory services.

### **III. CONTROL TECHNOLOGIES**

This section is not applicable to Rule 40. Rule 40 is an administrative rule that does not control nor impact any emissions; therefore, no control technologies apply to this rule.

### **IV. SUMMARY OF PROPOSED RULE REQUIREMENTS**

A summary of proposed Fiscal Year 2026-27 amendments to Rule 40 are included below:

- Add a flat fee provision for sources not subject to Time & Material (T&M) emission inventory fees to allow the District to recover costs for conducting reviews for emissions inventory services for specific types of facilities. These facilities would pay a flat rate in lieu of the T&M fee that was implemented in the previous fee update. In general, larger, more complex facilities would pay the T&M fee, while smaller or simpler types of facilities would be charged the flat fee. Facilities subject to emissions inventory requirements would either pay this proposed new fixed fee OR pay the existing T&M fee; they would not be billed both. There is currently no dedicated fee-related mechanism for recovering these particular emissions inventory costs included in District Rule 40.
- Additional split payment flexibility for payment of application fees to allow for payment to be made in four equal installments over 90 days due to financial hardship. This proposed amendment aligns with the existing split fee payment provisions for annual operating fees.
- Clarifications on the applicability of certain processing, application, permit revision, and late fees. These include processing fees for Change of Ownership, Identical Replacement, or non-operational status equipment, additional evaluation fees for compliance with federal New Source Performance Standards (NSPS), permit revision fees, and late fees for renewal of expired or retired permits.
- Consolidation of asbestos demolition and renovation fees into one single fee.
- Revisions to various fees consistent with the recommendations from the Consultant, as detailed in Attachment B, including:
  - Recommendations to increase various fees by up to 15% based on the current cost recovery estimates for each individual fee schedule;
  - Reductions to specific fee schedules where appropriate to ensure that they do not exceed the maximum justifiable full cost; and
  - Conversion to time and materials (T&M) fees for all permit applications to ensure that fees more accurately reflect the actual staff time and resources required to process each application, thereby promoting fairness and cost recovery across permit types as time spent on these applications are more variable. Fees for registration applications, which are generally more standardized and require less staff time, are proposed to remain fixed to maintain consistency and predictability for applicants.

There are no revisions proposed to Rule 42 – Hearing Board Fees at this time. Increasing these fees may result in the Hearing Board fees becoming cost prohibitive, without having a significant revenue impact upon the District since these fees comprise a very small amount of the revenue and costs for the District.

A line-by-line comparison between existing and proposed fee schedules 1-91 can be reviewed on the District's website at <https://www.sdapcd.org/content/dam/sdapcd/documents/rules/rule-workshops/021226/rule-40-summary-fee-schedules.pdf>.

## **V. NUMBER OF SOURCES AND EMISSIONS SUBJECT TO THE RULE AND EMISSION IMPACTS**

There are approximately 8,000 active permits that are subject to the annual operating fees in District Rule 40. Additionally, the District receives approximately 500 permit applications and 1,300 asbestos notifications annually that are subject to initial application fees and asbestos demolition and renovation fees. District staff also conducts over 200 source tests annually for emission units which require source testing to determine compliance and are subject to the applicable source test fees. The proposed flat emission inventory fee provision would apply over time to approximately 4,500 smaller or simpler types of facilities that are now subject to additional requirements based on new state mandates. The proposed amendments to Rule 40 will result in no emission impacts, as this is an administrative rule.

## **VI. COMPARATIVE ANALYSIS**

### Statutory Requirements

Prior to adopting, amending, or repealing a rule or regulation, California Health and Safety Code Section 40727 requires findings of necessity, authority, clarity, consistency, non-duplication, and reference, as defined therein. As part of the consistency finding and to ensure proposed rule requirements do not conflict with or contradict other District or federal regulations, Health and Safety Code Section 40727.2(a) requires the District to perform a written analysis identifying and comparing the air pollution control standards and other provisions of proposed amended Rule 40 with existing or proposed District rules and guidelines and existing federal rules, requirements, and guidelines applying to the same source category. Health and Safety Code Section 40727.2(g) further states that if proposed new or amended rule or regulation does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements, an air district may elect to comply with subdivision (a) by finding that the proposed new or amended rule or regulation falls within one or more of the categories specified in this subdivision.

### Analysis

The District finds that an analysis comparing proposed amended Rule 40 with applicable requirements of federal and local regulations (“Comparative Analysis”) is not required pursuant to Section 40727.2(g) of the California Health and Safety Code because the proposed amendments do not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements. The proposed amendments to Rule 40 are intended to ensure that District fees are appropriately recovering costs associated with the services provided.

## **VII. ECONOMIC IMPACTS AND COST-EFFECTIVENESS**

### Statutory Requirements

California Health & Safety Code [40703](#) requires that in adopting any regulation, a district shall consider, pursuant to Section 40922, and make available to the public, its findings related to the cost effectiveness of a control measure, as well as the basis for the findings and the considerations involved. A district shall make reasonable efforts, to the extent feasible within existing budget constraints, to make specific reference to

the direct costs expected to be incurred by regulated parties, including businesses and individuals. The district shall also comply with California Health & Safety Code [40920.6\(a\)](#) pertaining to cost-effectiveness of best available retrofit control technology as applicable.

#### Analysis

Cost effectiveness accounts for the cost of emission reductions, typically expressed in dollars spent per pound or ton of emissions reduced. The District finds that a cost effectiveness evaluation (including an evaluation of incremental cost-effectiveness and other costs) is not applicable to Rule 40 pursuant to Section 40920.6(a), since it is an administrative rule that does not require emission reduction, nor does it require new or additional control equipment installation.

## **VIII. SOCIOECONOMIC IMPACT ASSESSMENT (IF APPLICABLE)**

#### Statutory Requirements

Per California Health & Safety Code [40728.5](#) (if applicable), whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation. The district board shall actively consider the socioeconomic impact of regulations and make a good faith effort to minimize adverse socioeconomic impacts, as defined below. This section does not apply to the adoption, amendment, or repeal of any rule or regulation that results in any less restrictive emissions limit if the action does not interfere with the district's adopted plan to attain ambient air quality standards or does not result in any significant increase in emissions.

#### Analysis

The District finds that an assessment of the socioeconomic impacts of proposed amended Rule 40 is not required pursuant to Section 40728.5(a) of the California Health and Safety Code, as the proposed amendments will not significantly affect air quality or emissions limitations. The proposed amendments will not impact any emissions as Rule 40 is an administrative rule.

## **IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION / PROCESS**

CEQA is a state law that requires state and local agencies to identify the significant environmental impacts of projects and to avoid or mitigate those impacts, if feasible. CEQA requires environmental review of certain actions, including rule development projects. District staff conducted a review of whether CEQA applies to the adoption of proposed amended Rule 40. The District finds that proposed administrative amendments to Rule 40 are categorically exempt from the provisions of CEQA pursuant to California Code of Regulations, Title 14, 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 FY 2026-27 Cost Recovery Analysis Report (November 2025).<sup>1</sup> Additionally, pursuant to CEQA Guidelines Section 15061(b)(3), the proposed amendments which are administrative in nature are exempt from CEQA as they will not have a significant effect on the environment.

## **X. ENVIRONMENTAL ANALYSIS**

#### Statutory Requirements – Environmental Analysis of the Expected Methods of Rule Compliance

Pursuant to California Public Resources Code Section [21159](#), an agency listed in Section 21159.4 (i.e., air districts) shall perform an environmental analysis of the reasonably foreseeable methods of compliance at the time of adopting a rule of regulations of the following types:

- Installation of pollution control equipment.
- Performance standard (i.e., process or raw material changes or product reformulation) or treatment requirement, including a rule or regulation that requires the installation of pollution control equipment or a performance standard or treatment requirement pursuant to California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

In the preparation of the analysis, the District may utilize numerical ranges or averages where specific data is not available; however, the District shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include all of the following:

- An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
- An analysis of reasonably foreseeable feasible mitigation measures.
- An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.
- For a rule or regulation that requires the installation of pollution control equipment adopted pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), the analysis shall also include reasonably foreseeable greenhouse gas emission impacts of compliance with the rule or regulation.
- The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.

Other factors for consideration include the following:

- Pursuant to California Public Resources Code Section 21159(b), the preparation of an Environmental Impact Report (EIR) at the time of adopting a rule or regulation shall be deemed to satisfy this section.
- Pursuant to California Public Resources Code Section 21159(d), a project-level analysis is not required.
- Pursuant to California Public Resources Code Section 21159(f), the analysis is not intended, and may not be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to Section 21159.

#### Analysis – Environmental Analysis of the Expected Methods of Rule Compliance

District Rule 40 is an administrative rule that sets fees for District permitting and other services, such as inspections and source testing, related to the implementation of the stationary source permitting, source testing, and asbestos programs. Therefore, an analysis of expected methods of compliance is not required.

## **XI. ENVIRONMENTAL JUSTICE / UNDER-RESOURCED COMMUNITY ANALYSES**

The proposed amendments to Rule 40 promote public engagement and transparency; and will help to fund the District's commitments to advancing policies, programs, and services that achieve environmental justice and equity. Fees for the District recover costs for permitting, and other programs and services, and support the District's vision of "Clean Air for All".

## **XII. RULE DEVELOPMENT / PUBLIC PARTICIPATION PROCESS**

Pursuant to California Health and Safety Code Section 41512.5, the District is required to hold two Governing Board hearings for the adoption or revision of fees applicable to emission sources not included within a permit system, such as asbestos fees, source testing fees, emission inventory fees, and Hearing Board fees:

- The first Governing Board hearing shall be held at least 30 days prior to the Governing Board meeting at which the adoption or revision of the proposed fee schedule is to be considered.
- California Health and Safety Code Section 42311 also requires:
  - Sending out a Public Notice through the mail at least 14 days in advance of a Governing Board meeting to adopt or revise fees for the evaluation, issuance, and renewal of permits, to all interested parties (e.g., permit holders, applicants, chambers of commerce in the region).
  - The District to make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged, and the revenue sources anticipated to provide the service.

On the day the Public Notice is mailed, the Public Notice along with the supporting cost information is posted on the District's website and the link is distributed to interested parties through the District's electronic mail service and posted on various District social media accounts.

- Pursuant to H&SC 40725, the noticing requirements for all rule-adoption/amendment hearings shall include the following:
  - Publishing the Public Notice in the newspaper 30 days prior to the adoption hearing.

On the day the Public Notice is published in the newspaper, the Public Notice along with the supporting information is also posted on the District's website, distributed to interested parties through the District's electronic mail service, posted on various District social media accounts, and sent to chambers of commerce in the region and the California Air Resources Board (CARB). If amendments to Rule 40 have been adopted, an email is distributed to interested parties through the District's electronic mail service with links to amended rule(s) and to the District's website where the Governing Board adoption package can be found. Finally, the complete Governing Board package is submitted to CARB for approval.

On October 3, 2025, a notice of public workshop to be held on October 27, 2025, was sent to all interested parties including each air quality permit holder and chamber of commerce in the region, subscribers to the District's email notification service, CARB, and posted to the District's website and social media for stakeholders to provide input regarding amendments to Rule 40 for a new proposed flat fee provision to recover costs associated with the preparation of emissions inventories.

On November 24, 2025, a Public Notice regarding the first Governing Board hearing on December 11, 2025, was sent to approximately 15,000 recipients including each air quality permit holder and chamber of commerce in the region, subscribers to the District's email notification service, CARB, and posted to the District's website providing an opportunity to submit written comments.

#### Public Workshop

During the October 27, 2025, public workshop, the District provided an overview of the emissions inventory program, proposed Rule 40 changes for emissions inventory cost recovery, and next steps for the proposed new emissions inventory and Fiscal Year 2025-26 fee amendments to 24 participants, including 17 public attendees. Input and feedback from workshop attendees were solicited and encouraged to continue until the second Governing Board Hearing for adoption. The workshop was recorded and posted to the District's website. A summary of the comments from the October 27, 2025, workshop and District responses are provided below:

## **1. WORKSHOP COMMENT**

What additional services can facilities expect as a result of the implementation of this new fixed emission inventory fee and does the District anticipate any staffing increases as the new state mandated emission inventory requirements phase in over the next few years?

### **DISTRICT RESPONSE**

The District has enhanced its Emission Inventory Program to maximize efficiencies including the implementation of an online Emission Inventory System (EIS) to capture air emission data and calculate emissions using standard and accurate emission calculations as well as adopting revisions to Rule 19.3 to require submission of emission data via EIS to eliminate staff time spent on data entry. There is currently no dedicated fee-related mechanism for recovering emissions inventory costs associated with facilities not subject to the time and material fee included in Rule 40. Currently, these costs are covered through other funding sources, rather than fees for service, which conflicts with the District's audit findings that require fee-related services to be offset by fee-related revenue. The proposed new fixed emission inventory fee will help to recover the costs for emission inventory services associated with implementation of the new state mandated requirements. At this time, the District does not anticipate additional staffing increases will be needed to implement the phase in of these requirements.

## **2. WORKSHOP COMMENT**

The District should provide documentation justifying the rate of the proposed emissions inventory fixed fee. The documentation should include sufficient details such that parties subject to the proposed fixed fee can determine whether the proposed fee complies with Section 42311(a) of the Health and Safety Code and meets the burden of proof that Proposition 26 (2010) requires of local governments to demonstrate that the proposed fee is not a tax (California Constitution, Article XIII C, Section 1[e]).

### **DISTRICT RESPONSE**

Staff applied a methodology consistent with that described in the FY 2026-27 Cost Recovery Analysis Report - November 2025<sup>1</sup> to develop a proposed fee for facilities that were not previously subject to emission inventory fees. Amendments to State law adopted in 2021 expanded the emission inventory program to include these additional facilities. The proposed fee is designed to recover the District's costs associated with preparing emission inventory reports for these sources.

The proposed fee was derived using labor data to estimate the time required to prepare inventories for the newly included facilities. Specifically, based on labor data review, staff estimated that preparation of each inventory requires approximately 0.8 hours of Associate Engineer labor. Multiplying the calculated labor by the fully burdened hourly rate of \$323.69 results in a total cost of \$259 per inventory

As explained in the FY 2026-27 Cost Recovery Analysis Report - November 2025<sup>1</sup>, these emission inventory fees comply with Proposition 26 requirements as they are fees for a government service (and therefore not a tax) and that the emissions inventory fees are reasonably related to the District's staff burden in processing the emission inventory reports. To date, the District has been subsidizing costs of the emission inventory work with other revenues; the emissions inventory fee is designed to collect the appropriate fee for this service for costs for programs related to permitted stationary sources that are not otherwise funded, as allowed under H&S Code Section 42311(a).

A summary of written comments received and District responses are provided below:

## **1. WRITTEN CORRESPONDENCE**

The District should clarify how the proposed fixed fee, applied uniformly across various emission source types, bears "a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (Prop. 26).

### **DISTRICT RESPONSE**

As noted in the response above, the proposed fee is designed to recover the District's costs associated with preparing emission inventory reports for those sources subject to amendments to State law adopted in 2021 that expanded the emission inventory program to include these additional facilities.

The proposed fee was derived using labor data to estimate the time required to prepare inventories for the newly included facilities. Specifically, based on labor data review, staff estimated that preparation of each inventory requires approximately 0.8 hours of Associate Engineer labor. Multiplying the calculated labor by the fully burdened hourly rate of \$323.69 results in a total cost of \$259 per inventory.

### **2. WRITTEN CORRESPONDENCE**

The District should clarify the annual process for rate adjustment of this fixed fee, should it be adopted, following analysis of fee revenues. HSC 42311(a) states, "The fees assessed under this section shall not exceed, for any fiscal year, the actual costs for district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover."

### **DISTRICT RESPONSE**

The District applies the methodology described in the FY 2026-27 Cost Recovery Analysis Report - November 2025<sup>1</sup> each year as part of the cost recovery process to calculate the full cost (direct and indirect) associated with each fee line item assessed by the District, including the proposed new fixed emission inventory fee. Therefore, for each individual fixed fee, renewal fee, source test fee, asbestos, or hearing board item, it is ensured that the total fee proposed or recommended does not exceed the full cost of providing the service.

### **3. WRITTEN CORRESPONDENCE**

The District should clarify any plans to implement program efficiencies that would result in a reduced fee rate in the future.

### **DISTRICT RESPONSE**

The District is committed to streamlining processes to reduce costs for regulated entities while maintaining air quality standards. The District will continue to implement measures to improve efficiency and minimize delays in application processing. These efforts include developing and implementing screening tools to streamline Health Risk Assessments, providing regular training opportunities to ensure consistency and accuracy, and creating standardized engineering evaluation templates and guidance documents to simplify reviews. In addition, policies and procedures are regularly reviewed and updated for clarity and accessibility, and the team maintains ongoing meetings with leadership to provide timely guidance and address emerging issues. The District is also updating application forms to ensure completeness and accuracy, further reducing processing times. Through these actions, the District remains focused on efficiency, transparency, and collaboration to support regulated entities effectively.

### **4. WRITTEN CORRESPONDENCE**

The District should clarify whether revenues from existing Rule 40 Annual Operating Fees, such as the Emission Unit Renewal Fee and the Air Contaminant Emissions Fee, are currently being used to cover costs associated with the emissions inventories that would be subject to the proposed fixed fee and whether the rate of such Annual Operating Fees will be reduced in the future in accordance with HSC 42311(a).

### **DISTRICT RESPONSE**

Because there is no dedicated funding source for recovering emissions inventory costs associated with facilities not subject to the time and material fee included in Rule 40, a combination of revenues from various sources has been used to cover these costs. These include vehicle registration fee revenues, air contaminant emissions fee revenue, fund balance, and one-time grant funding. Other components of the existing Annual Operating Fees outlined in Rule 40, including emission unit renewal fees which are used to recover costs for annual compliance inspections, are not used to cover costs associated with emission inventory services. As noted in the response above, the District applies the methodology described in the FY 2026-27 Cost Recovery Analysis Report - November 2025<sup>1</sup> each year as part of the cost recovery process to calculate the full cost (direct and indirect) associated with each fee line item assessed by the District and recommends adjustments to various fees as appropriate to ensure that the total fee proposed or recommended does not exceed the full cost of providing the service.

### **5. WRITTEN CORRESPONDENCE**

For full transparency, recommend that the District provide all information related to rate increase, especially those related to Prop 26 requirements. It is important for the regulated community to have full access to all overhead costs that are considered in developing the fully burdened rates. The documentation should include sufficient details such that interested parties can determine whether the proposed fee complies with Section 42311(a) of the Health and Safety Code and meet Proposition 26 (2010) requirement of local governments to demonstrate that the proposed fee is not a tax.

### **DISTRICT RESPONSE**

The FY 2026-27 Cost Recovery Analysis Report - November 2025<sup>1</sup> provides an explanation of the annual cost recovery process used to calculate the full cost - both direct and indirect - associated with each fee line item assessed by the District. This process ensures that proposed fees do not exceed the full cost of providing services, as required under the California Health and Safety Code and Prop 26.

The calculation of hourly labor rates reflects costs associated with the services provided under each program area which includes:

- **Direct Costs:** Salaries and benefits for staff working on the program, program-specific services and supplies, internal administrative time, and supervisory support.
- **Indirect Costs:** Approximately \$57 of the hourly labor rate accounts for Districtwide support services such as finance, human resources, legal services, administrative support, and information technology.

This cost structure ensures that fees are directly tied to the resources necessary to provide permitting, inspection, emission inventory, and source testing services required to maintain mandated stationary source regulatory programs efficiently and transparently while addressing the recommendations from the 2020 State Auditors Report<sup>2</sup> and the Governing Board adopted cost recovery plan<sup>4</sup>. The District remains committed to ongoing coordination with stakeholders on enhanced transparency related to program costs and continued implementation of streamlining efforts to reduce costs wherever feasible.

### **6. WRITTEN CORRESPONDENCE**

Recommend that District continue to implement program efficiencies that would result in a reduced fee rate in the future.

### **DISTRICT RESPONSE**

In addition to the information provided under the response to written correspondence #3 above, the District remains open to suggestions from stakeholders on ways to further streamline the application process. While most applications are processed within an expected timeframe, those that take longer

typically are submitted with incomplete information or involve more complex regulatory requirements, such as compliance with CEQA. Rather than denying permits, the District works collaboratively with regulated entities to modify proposals so they meet all applicable air quality regulations. This approach ensures compliance but can extend processing times, and as mandated by law, the District must recover the associated costs.

## **7. WRITTEN CORRESPONDENCE**

The proposed revision to Section (f)(12) of Rule 40 is difficult to follow. Recommend a rewrite to help clarify applicability of the proposed new fixed emission inventory fee.

### **DISTRICT RESPONSE**

In response to this comment, the District is proposing the following revisions to Section (f)(12):

#### **(12) Emissions Inventory**

(i) The owner or operator of any facility subject to District Rule 19.3 Subsections (c)(1)(i), (c)(1)(ii), (c)(1)(iii) that is not described in District Rule 40(f)(12)(ii)(A), or (c)(1)(vi) of District Rule 19.3, or subject to Section 93401(a), 17 CCR, Section 93401(a) – General Applicability, or for Criteria Air Pollutants and Toxic Air Contaminants (CTR) (State 17 CCR, Section 93400 et seq.) shall pay the actual time and material costs incurred by the District to prepare or revise an Emissions Inventory Report in accordance with District Rule 19.3. District staff costs shall be determined using the labor rates specified in Fee Schedule 94 – Time and Material (T+M) Labor Rates. Any funds deposited in excess of actual costs incurred shall be refunded.

(ii) The owner or operator of any facility subject to one of the following requirements shall pay a fixed fee of \$259 for preparation and revision of an Emissions Inventory Report (State 17 CCR, Section 93400 et seq.):

(A) Any facility subject to AB2588 Emission Inventory Criteria and Guidelines Report (EICG) – Appendix E requirements for Smaller Facilities as described in Subsection (c)(1)(iii) of District Rule 19.3, and as specified in 17 CCR, Section 93300.5, Emission Inventory Criteria and Guidelines Report (EICG) – Appendix E (Requirements for classes of facilities emitting less than 10 tons per year of criteria pollutants) the AB 2588 Air Toxics “Hot Spots” Emission Inventory Criteria and Guidelines Regulation (EICG Regulation) – Appendix E requirements for Smaller Facilities,

(B) Any Industry-Wide facility subject to AB2588 Emission Inventory Criteria and Guidelines Report (EICG) as described in Subsection (c)(1)(iv) of District Rule 19.3, or

(C) Any facility subject to Criteria Pollutant and Toxics Reporting (CTR) – Additional Applicability as described in Subsection (c)(1)(v) of District Rule 19.3, and as specified in 17 CCR, Section 93401(a)(4), Additional Applicability, of for Criteria Air Pollutants and Toxic Air Contaminants.

## **8. WRITTEN CORRESPONDENCE**

As a business owner, I am adamantly opposed to the APCD allowing any more fees and fines against small businesses and causing the taxpayers to pay for more outrageous administrative fees.

### **DISTRICT RESPONSE**

The District acknowledges the comment.

#### 1<sup>st</sup> Governing Board Hearing

During the December 11, 2025, public hearing, the District provided an overview of the draft Rule 40 changes, the cost recovery analysis methodology, and estimated costs and revenues associated with the proposed revisions to the Governing Board and members of the public in attendance. Input and feedback from hearing attendees was solicited and encouraged to continue until the second Governing Board Hearing for adoption. Spanish interpretation services were available during the hearing, and a recording of the hearing was also posted to the District's website. A summary of the comments from the December 11<sup>th</sup> Public Hearing and corresponding District responses are provided below:

#### **1. PUBLIC HEARING COMMENT**

A \$300 hourly rate for staff time is unreasonably high. None of the private sector air quality consultants charge an hourly rate that high. What steps is the District taking to control costs and maximize the efficiency of staff working on permit applications?

### **DISTRICT RESPONSE**

The proposed fee amendments are consistent with a multi-year cost-recovery plan adopted by the Governing Board on May 21, 2021.<sup>4</sup> Additionally, the Cost Recovery analysis uses Governing Board approved budgeted costs including salary and benefits, and services and supplies. Some of the largest factors that go into hourly rates are beyond the control of the District such as salary and benefits, workers compensation, health benefits and pension costs. As noted in the response to written correspondence #3 above, the District continues to look for ways to reduce costs for our operations as well as costs to our customers by implementing process improvements and efficiencies to reduce increases to fees and hourly rates while at the same time working to achieve maximum cost recovery.

#### **2. PUBLIC HEARING COMMENT**

The District should enhance transparency by including additional detail on invoices sent to facilities for time & material charges including descriptions of the work that was done.

## **DISTRICT RESPONSE**

The District agrees that invoices should include more specific details about the services provided to enhance transparency. For permit applications, established procedures guide engineers to clearly communicate the reasons additional funding is required. In most cases, these charges are associated with incomplete applications, changes to the equipment or processes after applications were submitted and reviewed, requests to change draft permit conditions, or necessary modifications to projects to ensure compliance with applicable air quality regulations. Additionally, the District's leadership team remains available to work directly with any regulated entity that seeks clarification or additional information regarding the need for supplemental funds.

On January 13, 2026, a Public Notice regarding the second Governing Board Hearing on February 12, 2026, was published in a local newspaper and posted on the District's website. The notice was also sent to all interested parties who have subscribed to the District's email notification service, chambers of commerce in the region, and the California Air Resources Board to provide an opportunity to submit written comments.

### **Rule Change Copy Formatting**

The District uses specific formatting procedures in draft rule change copies, as shown in the following table, that are released for public review. This ensures all changes can be adequately tracked by staff and the public throughout the rule development process.

### **Rule Development Change Copy Formatting Procedures**

	New Rule	Example Language	Revised Rule	Example Language
<b>Public Workshop Change Copy</b> (Prior to Public Workshop)	Normal text, no formatting needed	“Change of Ownership”	Single underline/ Single strikeout	<u>“Change of Ownership”</u> “Change of Ownership”
<b>Post-Workshop Change Copy</b> (Prior to Governing Board consideration)	Single underline/ Single strikeout	<u>“Change of Ownership”</u> “Change of Ownership”	Double underline/ Double strikeout	<u>“Change of Ownership”</u> “Change of Ownership”
<b>2<sup>nd</sup> Public Workshop Change Copy if needed</b> (After first workshop and prior to Governing Board consideration)	Double underline/ Double strikeout	<u>“Change of Ownership”</u> “Change of Ownership”	Single underline/ Single strikeout/ Italics	<u>“Change of Ownership”</u> <u>and location</u>
<b>Post 2<sup>nd</sup> Workshop Change Copy or other changes if needed</b>	Single underline/ Single strikeout/ Italics	<u>“Change of Ownership”</u> <u>and location</u>	Double underline/ Double strikeout/ Italics	<u>“Change of Ownership”</u> <u>and location</u>

### **XIII. OTHER RULE AMENDMENTS (IF APPLICABLE)**

There are no other ongoing rule amendments that are directly tied to the proposed amendments to Rule 40.

## **XIV. CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS**

### Statutory Requirements

Pursuant to California Health & Safety Code [40727](#), before adopting, amending, or repealing a rule or regulation, the district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, as defined in this section, based upon information developed pursuant to Section 40727.2, information in the rulemaking record maintained pursuant to Section 40728, and relevant information presented at the hearing. As used in this section, the terms listed below have the following meaning:

- “Necessity” means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.
- “Authority” means that a provision of law or of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.
- “Clarity” means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.
- “Consistency” means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.
- “Nonduplication” means that a regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.
- “Reference” means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

### Analysis

Proposed amended Rule 40 is not expected to negatively impact affected residents or industries including small businesses, nor affect employment or the economy of San Diego County. Findings made pursuant to H&SC Section 40727 for the list noted above have been included in the Governing Board Resolution for the proposed amended rule. Furthermore, if adopted, the proposed amendments will result in projected additional estimated revenues of up to \$1.2 million per fiscal year, which would increase the District’s estimated aggregate fee-for-service cost recovery percentage for its stationary source permitting, source testing, asbestos, and Hearing Board programs to approximately 97% and would reduce projected annual program related estimated revenue deficits to approximately \$475,000. The proposed amendments to Rule 40 are in line with the State Auditor’s 2020 recommendations<sup>2</sup> and will facilitate continued progress towards maximum cost recovery for the District’s stationary source regulatory programs. Decreased reliance on other revenue sources to cover the costs of implementing these stationary source programs creates potential opportunities to utilize those revenues to support other clean air programs and advance the District’s vision of Clean Air for All. As such, District staff recommends the Governing Board find that the proposed amendments are exempt from the requirements of CEQA, and to adopt the corresponding Board Resolution to amend Rule 40 as proposed.

This Staff Report addresses all the requirements specified in Health and Safety Code Sections 40725 through 40728.5 for rule development.

## XV. REFERENCES

<sup>1</sup> November 2025 Matrix Consulting Group Report:

<https://www.sdapcd.org/content/dam/sdapcd/documents/rules/rule-workshops/021226/cost-recovery-analysis-nov2025.pdf>

<sup>2</sup> 2020 State Auditors Report:

<https://www.auditor.ca.gov/pdfs/reports/2019-127.pdf>

<sup>3</sup> 2021 Matrix Consulting Group Report:

[https://www.sdapcd.org/content/dam/sdapcd/documents/governing-board/meetings/120921/Item3\\_Attachment%20B-Rules%2040%2042%20Cost%20Recovery%20Fee%20Analysis%20Report.pdf](https://www.sdapcd.org/content/dam/sdapcd/documents/governing-board/meetings/120921/Item3_Attachment%20B-Rules%2040%2042%20Cost%20Recovery%20Fee%20Analysis%20Report.pdf)

<sup>4</sup> May 21, 2021 Air Pollution Control District Governing Board Agenda Item #1:

[https://www.sdapcd.org/content/dam/sdapcd/documents/governing-board/meetings/052121/Item%201\\_052121\\_Cost%20Recovery%20Taskforce\\_Board%20Letter.pdf](https://www.sdapcd.org/content/dam/sdapcd/documents/governing-board/meetings/052121/Item%201_052121_Cost%20Recovery%20Taskforce_Board%20Letter.pdf)