

**ATTACHMENT E**

**FINAL STAFF REPORT**

**EXISTING RULE 40  
PERMIT AND OTHER FEES**

November 2024

San Diego County Air Pollution Control District  
Rule Development Section

Completed by: Stephanie Nicholas, Chief, Administrative Services

Reviewed by: Nick Cormier, Supervising Air Resources Specialist  
Mike Watt, Deputy Director

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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 2024-25) 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 2025-26 cost recovery scenario detailed in the FY 2025-26 Cost Recovery Analysis Report August 2024).<sup>1</sup>

Proposed Fiscal Year 2025-26 amendments to Rule 40 include:

- The addition of a provision to Rule 40 to recover costs for conducting reviews for emissions inventory services; and
- Updating various fees consistent with the recommendations from the Consultant, as summarized in the table below.

FY 2025-26 Fee Category	Initial Application Fees (Fixed)	Permit Renewal Fees	Source Testing Fees	Asbestos Notification Fees	Hearing Board Fees	Time & Material Fees	Processing Fees
Proposed % Fee Changes	(2%) to 15%	(1%) to 15%	8% to 15%	<1% to 10%	0%	(7%) to 15%	15%

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 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.

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, 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 September 2022 & November 2023, the District began working with Matrix Consulting Group to conduct the next updates to the Cost Recovery Analysis for implementation on July 1, 2023, and July 1, 2024, respectively.

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 provision to allow the District to recover costs associated with emissions inventory services and update its fees for implementation on January 1, 2025 (emissions inventory provision) and July 1, 2025 (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 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 2025-26 amendments to Rule 40 are included below:

- Add a provision to Rule 40 to allow the District to recover costs for conducting reviews for emissions inventory services. These charges would be assessed on specific facilities with multiple emission units based on newly expanded state mandates and District requirements. Due to the varying size and complexity of these types of facilities, the time it takes to evaluate emission data can fluctuate significantly based on the type of permit and quality of data submitted. Accordingly, a Time and Material (T&M) approach was chosen to ensure that each facility is fairly assessed for the time and effort spent on its particular review. There is currently no dedicated fee-related mechanism for recovering these particular emissions inventory costs included in District Rule 40.
- Update various fees consistent with the recommendations from the Consultant, as summarized in the following table:

FY 2025-26 Fee Category	Initial Application Fees (Fixed)	Permit Renewal Fees	Source Testing Fees	Asbestos Notification Fees	Hearing Board Fees	Time & Material Fees	Processing Fees
<b>Proposed % Fee Changes</b>	(2%) to 15%	(1%) to 15%	8% to 15%	<1% to 10%	0%	(7%) to 15%	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.

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/111424/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 emission inventory fee provision would apply to approximately 200 facilities with multiple emission units that have historically been part of the emissions inventory program and 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 finds 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 2025-26 Cost Recovery Analysis Report (August 2024).<sup>1</sup>

## **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 July 15, 2024, a notice of public workshop to be held on July 31, 2024, 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 provision to recover costs associated with the preparation of emissions inventories.

On August 27, 2024, a Public Notice regarding the first Governing Board hearing on September 12, 2024, 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 July 31, 2024, 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 65 participants, including 54 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 July 31, 2024, workshop and District responses are provided below:

#### **1. WORKSHOP COMMENT**

As a small business, permit fees have gone up significantly over the past few years. Will the new emissions inventory charges be a percentage of what is already paid?

#### **DISTRICT RESPONSE**

If adopted, the provision in Rule 40 that will allow the District to charge for emissions inventory services will apply to approximately 200 facilities with multiple emission units that have historically been part of the emissions inventory program and are now subject to additional requirements based on new state mandates and will be based on actual T&M labor spent to perform the service.

#### **2. WORKSHOP COMMENT**

Why has San Diego County APCD chosen to perform the emissions calculations for each facility in the region, when other air districts, like South Coast Air Quality Management District (AQMD), opt to have the facilities prepare and submit the emission calculations for review by the District?

#### **DISTRICT RESPONSE**

The District acknowledges that some air districts opt to collect facility calculations and then review them. Other air districts calculate emissions like San Diego County APCD, and some air districts do a combination of both. It has been found that reviewing calculations submitted by facilities can be just as costly, if not more, than having pre-selected calculation methods. Other districts, also require emission inventory fees to review the calculations. San Diego County APCD currently does not "complete" calculations; rather, the District has pre-set calculation methods in the Emissions Inventory System (EIS) to complete the calculations. Each facility has the ability to change these calculations themselves and then District staff reviews them for accuracy upon submittal.

#### **3. WORKSHOP COMMENT**

A benefit of the system used by South Coast AQMD and other air districts is a reduction in the amount of "back and forth" discussions between the District and the facility, which means reduced staff costs and less time required to complete the process. If San Diego County APCD were seeking to save staff costs and processing time, why does the District continue to use a process that is different than South Coast AQMD?

### **DISTRICT RESPONSE**

The District publishes all default emission factors used to calculate air emissions. These emission factors are incorporated into the District's Emission Inventory System (EIS) portal, which calculates emissions to ensure transparency and a level playing field. Generally, any "back and forth" discussions between the District and facilities occur when incomplete information is submitted via the EIS portal, or when the facility proposes an unsubstantiated alternate calculation methodology.

Air districts that collect emission calculations, as opposed to emission data, are still required to review those emission calculations to ensure accuracy. This review can also result in "back and forth" discussions and a lengthier process depending on how the calculations are conducted and submitted.

Ultimately, the District must comply with the mandated programs which require air districts to complete inventories as accurately as possible.

### **4. WORKSHOP COMMENT**

The current proposal lacks transparency in that facilities are charged T&M by the District, while in other districts, emission fees are charged based upon how much the facility pollutes, resulting in a direct relationship between the amount of the fee and the extent of the facility's impact.

### **DISTRICT RESPONSE**

The District acknowledges the comment. We currently document and track time in preparing Emission Inventory Reports. This information is currently available upon request. Additionally, the District recognizes there are opportunities to enhance transparency and is in the preliminary stages of developing tools to provide more insight into Time & Material charges, which would include the nature of the tasks performed, amount of time, and labor rates.

### **5. WORKSHOP COMMENT**

Charging T&M does not necessarily translate to cost recovery as long as the District is not transparent about the basis for T&M charged.

### **DISTRICT RESPONSE**

The District acknowledges the comment. Charging T&M ensures the District is accurately and fairly recovering the costs associated with the preparation of an Emission Inventory Report for each individual facility. The cost to the facility will be only the time spent evaluating that facility. As noted above, the District is in the preliminary stages of developing tools to provide more insight into their Time & Material charges.

### **6. WORKSHOP COMMENT**

A \$300 hourly rate for staff time is unreasonably high. None of the private sector consultants who assist in the preparation of emission inventories charge an hourly rate that high.

### **DISTRICT RESPONSE**

The District acknowledges the comment. The proposed fee increases 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. 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.

## **7. WORKSHOP COMMENT**

How much money did the District receive in the EPA grant and how is it being applied?

### **DISTRICT RESPONSE**

The District received a one-time grant from the EPA for approximately \$219,000 and the funding was used to offset partial costs of the emission inventory program for one year.

## **8. WORKSHOP COMMENT**

What is the legal justification for the District to require that facilities pay the full estimated fee at the time of submission in order for the Health Risk Assessment (HRA) to be deemed submitted? We believe that State law requires that facilities submit the HRAs, but we are unaware of any legal requirement to pay a fee before the District will accept an HRA. If a fee was required, we think it would be more appropriate for a base fee to be charged at submission, followed later by a final fee based upon the complexity of the review and the actual resources required to complete the review.

### **DISTRICT RESPONSE**

The District acknowledges the comment. The required HRA fees have been previously adopted under District Rule 40 and are not part of this proposal. The purpose of requesting fees for the review of HRAs upfront is to maintain transparency and provide applicants with an estimate of the review costs, allowing them to incorporate this fee into their budgets.

The District bases the fee estimate on the complexity of the facility, its emission sources, and previous experience in reviewing similar HRAs. This estimate is sent to the applicant along with a notification requiring the HRA's preparation. The notification provides the facility six months to submit the HRA and the estimated fees, allowing sufficient time for budgeting.

## **9. WORKSHOP COMMENT**

Will the new emissions inventory costs be in addition to the air contaminant emissions fee that already exists? Is the new fee serving a separate and different purpose? We recommend that the District look at what it is trying to recover and work backwards. How can facilities get the labor data associated with the evaluation?

### **DISTRICT RESPONSE**

The District acknowledges the comment. The proposed new provision would allow the District to charge T&M specifically for the evaluation of the emissions inventory separate from the air contaminant emissions fee. While air contaminant emission fees have been used to help fund a portion of the emissions inventory program costs, there currently is no dedicated funding source to fully cover the costs of providing this service. Due to the increasing costs associated with expanded State mandates, and the varying size and complexity of these types of facilities, the time it takes to evaluate emission data can fluctuate significantly based on the type of permit and quality of data submitted. Therefore, a Time and Material approach is proposed to ensure that each facility is fairly assessed for the actual time and effort spent on their particular review. Facilities can request their labor data by reaching out to the Engineering Division for their specific project.

## **10. WORKSHOP COMMENT**

Commentor encouraged the District to adopt objective criteria for larger and smaller facilities, and look at other formats for charging.

### **DISTRICT RESPONSE**

The District acknowledges the comment. Over the next few years, the number of facilities subject to emission inventory requirements is expected to increase from approximately 200 to over 4,000 based on new State mandates. As a result, the District is proposing the implementation of a phased approach towards recovering these costs. To enable the initial phase of cost recovery for preparing emissions inventory reports, the District is proposing the new provision in Rule 40, effective January 1, 2025, that would apply to approximately 200 facilities with multiple emission units that have historically been part of the emissions inventory program and are now subject to additional requirements based on new State mandates. Since there is currently a significant fluctuation in time and effort expended to complete emission inventory evaluations for these facilities, based on the type of permit and quality of data submitted, a T&M approach is being proposed. As more data is collected, additional approaches can be considered.

### **11. WORKSHOP COMMENT**

Commentor had questions regarding the logistics and/or process for communicating, presenting, adjusting, and collecting the T&M fee.

### **DISTRICT RESPONSE**

At this time, invoicing logistics for the proposed emission inventory charges are still being finalized and will be communicated to rate payors before fees are implemented.

### **12. WORKSHOP COMMENT**

Commentor did not agree with emissions inventory proposal and noted that over the last several years, the District has reduced the number of fixed fee schedules and hourly rate classifications but in this instance, the District is proposing something new.

### **DISTRICT RESPONSE**

The District acknowledges the comment. Currently, the District does not have a dedicated funding source to recover the costs of preparing emissions inventory reports. The proposed T&M provision does not create a new fee schedule; instead, it provides a mechanism for the District to recover its costs, consistent with State law.

### **13. WORKSHOP COMMENT**

Commentor wanted additional information on how the fee would be determined. Additionally, requested a list of the 1,000+ new pollutants that the public can review.

### **DISTRICT RESPONSE**

This proposed fee would be based on the actual time & materials for District costs to evaluate and prepare emission inventory reports. The proposed first phase would be applicable to approximately 200 facilities with multiple emission units that have historically been inventoried. The list of pollutants can be found on CARB's website at:

<https://ww2.arb.ca.gov/sites/default/files/2022-10/Appendix%20A.pdf>

### **14. WORKSHOP COMMENT**

Commentor inquired if the District had considered adjusting the current air contaminant fee, since it has not been adjusted in many years.

### **DISTRICT RESPONSE**

The District acknowledges the comment. Over the next few years, the number of facilities subject to emission inventory requirements is expected to increase from approximately 200 to over 4,000, based on new State mandates. While air contaminant emission fees have been used to help fund a portion of

the emissions inventory program costs, there currently is no dedicated funding source to fully cover the costs of providing this service. As a result, the District is proposing the implementation of a phased approach towards recovering these costs. To enable the initial phase of cost recovery for preparing emissions inventory reports, the District is proposing the new provision in Rule 40, effective January 1, 2025, that would apply to approximately 200 facilities with multiple emission units that have historically been part of the emissions inventory program and are now subject to additional requirements based on new state mandates. Since there is currently a significant fluctuation in time and effort, a T&M approach is being proposed. As more data is collected, additional approaches can be considered.

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

### **1. WRITTEN CORRESPONDENCE**

How has the District funded the Emissions Inventory program in recent years?

#### **DISTRICT RESPONSE**

Because there is no dedicated funding source for the Emissions Inventory Program, 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. The proposed emission inventory fees align with the cost recovery plan adopted by our Governing Board in 2021,<sup>4</sup> and the California State Auditor Report.<sup>2</sup>

### **2. WRITTEN CORRESPONDENCE**

During the July 31, 2024, workshop, we discussed the unique process the District uses to collect emission inventory data and the fact that data is entered by facilities electronically via the third-party Emission Inventory System (EIS) Portal. Our understanding is that this process will not change. With that in mind, why is there a need to charge additional fees?

#### **DISTRICT RESPONSE**

Evaluation of an emission inventory includes review of data submitted and accurate and consistent calculation methods, as well as creating health risk prioritization scores per AB 2588. Some of these activities can include, but are not limited to, addressing inaccurate data sets such as satisfying gaps in the data reported and/or correcting incorrect data, applying accurate control efficiencies, review of chosen calculation methods/applying accurate calculation methods, quantification of newly added pollutants per AB 2588 and Criteria and Toxics Reporting (CTR), calculating accurate emission factors per preferred methods such as Continuous Emission Monitoring Systems (CEMS) and source test data/safety data sheets (SDS), creating receptor defined distances for prioritization scores, applying acute scenarios if applicable, and documentation of review/edits. The amount of time required to review an emission inventory data and prepare the inventory report is highly dependent on the data quality that is submitted to the District through EIS. To ensure consistency and a level playing field, the emissions are calculated in EIS utilizing established emission calculation methods. As noted above, the District does not have a dedicated funding source for the Emission Inventory Program, and as such, this proposal would establish a mechanism for the District to recover its costs for providing these services.

### **3. WRITTEN CORRESPONDENCE**

Regarding the additional fees proposed by the District, will the new process be that the additional fees are added to renewal invoices, or will individual invoices be generated and sent to each facility separately?

### **DISTRICT RESPONSE**

Since the proposal is to recover costs based on actual time spent to prepare or revise emission inventory reports, the District intends to generate a separate invoice that will be sent to each facility after work on the reports has been completed for each data year (similar to the process used for Title V reporting invoices). As noted above, the District is in the preliminary stages of developing tools for our customers to have more insight into their Time & Material charges.

### **4. WRITTEN CORRESPONDENCE**

The District received a letter dated September 3, 2024, which stated that as a small business, the facility was disheartened to see fees continuing to increase. The commentor also mentioned that many facilities are out of compliance and the District should focus more attention on those facilities which are out of compliance.

### **DISTRICT RESPONSE**

The District acknowledges the comment. District staff routinely conduct inspections of regulated facilities as well as investigating complaints of non-regulated facilities to ensure compliance with District rules.

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

During the September 12, 2024, 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 provided during the hearing, and a recording of the hearing was also posted to the District's website. A summary of the comments from the September 12<sup>th</sup> Public Hearing and corresponding District responses are provided below:

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

Commentor would like to see less back and forth in the emissions inventory evaluation process and increased transparency in providing information related to reviews and project charges. Additionally, the commentor noted that using a blended labor rate did not seem appropriate.

### **DISTRICT RESPONSE**

The District anticipates that as the emissions inventory program grows and facilities become more experienced in submitting data and evaluating requirements, this will result in a more streamlined process. The District will continue to provide outreach opportunities to discuss regulatory changes to help support facilities that are subject to these requirements. As noted previously, the District is in the preliminary stages of making tools available to facilities to increase transparency regarding emission inventory charges.

The District converted to a blended rate, starting in Fiscal Year 2022-23, for several reasons. Utilizing a blended rate ensures rate payors all pay the same for the same service, no matter who performs the service. Rate payors get a predictable hourly rate while standardizing billing rates on an average across all classifications. A blended rate allows the District to provide services, including application review by several levels of staff for one rate, to ensure all rate payors requesting the service pay the same for the same service.

On October 15, 2024, a Public Notice regarding the second Governing Board Hearing on November 14, 2024, 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.

### **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 \$1.5 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 96% and would reduce projected annual program related estimated revenue deficits to approximately \$600,000. 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> August 2024 Matrix Consulting Group Report:

<https://www.sdapcd.org/content/dam/sdapcd/documents/rules/rule-workshops/050924/FY24-25-Cost-Recovery-Analysis-Report-Apr2024.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)