

**ATTACHMENT FOR
AGENDA ITEM NO. 18**

**Consider a Resolution Approving
Revisions to District Rules and Policies**

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 300. DISTRICT FEES

(Adopted 9-1-74; Revised 1-18-78, 5-31-78, 6-14-78, 5-20-81, 8-18-82, 6-13-83, 3-8-84, 7-19-84, 5-15-85, 7-17-85, 6-11-86, 3-25-87, 6-10-87, 9-16-87, 6-20-88, 12-14-88, 6-14-89, 1-17-90, 6-13-90, 6-26-91, 6-9-93, 11-17-93, 6-15-94, 5-17-95, 6-21-95, 6-19-96, 6-18-97, 6-17-98, 6-16-99, 6-21-00, 6-20-01, 6-19-02, 6-18-03; 6-16-04; 6-15-05; 6-21-06; 6-20-07; 6-18-08; and 6-17-09; and Proposed for Revision 6-16-10.)

CONTENTS

PART 1	GENERAL.....	3
1.1	Purpose.....	3
1.2	Applicability	3
1.3	Exemptions	3
1.4	Effective Date	3
1.5	References.....	3
PART 2	DEFINITIONS.....	4
2.1	Affected Pollutants	4
2.2	Annual Renewal Fee.....	5
2.3	Billable Emissions	5
2.4	Hourly Staff Rate	5
2.5	Volatile Organic Compound (VOC).....	5
PART 3	PERMIT FEES.....	5
3.1	Filing Fee	5
3.2	Permit to Operate	6
3.3	Authority to Construct	7
3.4	Transfer in Interest.....	7
3.5	Transfer of Location	8
3.6	Identical Replacement.....	8
3.7	Permit Granted by Hearing Board	9
3.8	Revising Permit Terms or Conditions	9
3.9	Withdrawal or Denial.....	10
3.10	Multiple Locations	10
3.11	Government Agencies.....	10

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

3.12	Professional Services, Materials, and Equipment Charges to Applicants for, or Holders of, District Permits.....	11
3.13	CEQA Compliance	11
3.14	Payment of Fees	12
PART 4	ANNUAL RENEWAL FEES (ARFs).....	12
4.1	Renewing Permits	12
4.2	Renewal Procedure; Sources with Annual Emissions Less than 300 Tons per Year	13
4.3	Renewal Procedure; Sources with Annual Emissions Greater than or Equal to 300 Tons per Year	13
4.4	Emission Statements	14
4.5	Annual Renewal Fee Determination; All Sources with Annual Emissions Less than 300 Tons Except Gasoline Dispensing Facilities with Phase II Vapor Recovery Systems, Wastewater Treatment Facilities, NESHAP Sources, and Methyl Bromide Fumigation Chambers.....	15
4.6	Annual Renewal Fee Determination; All Facilities Required to Submit Permit Compliance Data, Monthly or Annual Reports.....	16
4.7	Annual Renewal Fee Determination; Gasoline Dispensing Facilities with Phase II Vapor Recovery Systems	17
4.8	Wastewater Treatment Facilities Fee Schedule	18
4.9	Annual Renewal Fee Determination; NESHAPs Sources	19
4.10	Annual Renewal Fee Determination; Methyl Bromide Fumigation Chambers.....	19
4.11	Annual Renewal Fee Determination; Authorities to Construct	19
4.12	Annual Renewal Fee Determination; Toxics Program Sources	20
PART 5	DELINQUENCY PENALTIES.....	20
5.1	Permit Fee and Annual Renewal Fee Delinquency Penalties.....	20
5.2	Extension of Payment Period by the APCO	22
5.3	Waiver of Penalty by the APCO	22
PART 6	EMISSION REDUCTION CREDIT FEES	22
6.1	Emission Reduction Credits (ERCs).....	22
PART 7	MISCELLANEOUS FEES	23
7.1	Other Professional Services, Materials, Equipment Charges	23

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 1 GENERAL

1.1 Purpose

This Rule provides the mechanisms for assessing fees for the issuance and renewal of Permits to Operate, Authorities to Construct, and other permit actions in the District's permit system; and to recover District costs for requested services, materials, or equipment.

1.2 Applicability

This Rule shall apply to all owners and operators of stationary sources which are required by District Rule 200 (Permits Required) to obtain an Authority to Construct or Permit to Operate; and to requesters of District services, materials, or equipment.

1.3 Exemptions

There are no exemptions from this Rule.

1.4 Effective Date

This Rule, as most recently revised, is effective on July 1, ~~2009~~2010.

1.5 References

The provisions of this Rule derive from California Health and Safety Code Section 42300 et seq., relating to district permit systems and fees. The requirement for Emission Statements derives from Section 182 of the federal Clean Air Act. Related or referenced District Rules include: 101 (Definitions); 200 (Permits Required); 201 (Permits Not Required); 217 (Annual Review of Permits); 301 (Permit Fee Schedules); 305 (Fees for Air Toxic Emissions Inventories and Risk Assessments); 308 (Title V: Federal Operating Permit Fees); 424 (NESHAPs); and 436 (Title V: General Prohibitory Rule).

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 2 DEFINITIONS

2.1 Affected Pollutants

These species include:

- 2.1.1 all pollutants for which an ambient air quality standard has been established by the United States Environmental Protection Agency or the California Air Resources Board, as well as the precursors to such pollutants; and
- 2.1.2 all pollutants regulated by the United States Environmental Protection Agency under the federal Clean Air Act or by the California Air Resources Board under the California Health and Safety Code; and
- 2.1.3 all the pollutants which the United States Environmental Protection Agency, after notice and opportunity for public comment, or the California Air Resources Board or the District, after public hearing, determine may have significant adverse effect on the environment, the public health, or the public welfare; and
- 2.1.4 include, but are not limited to:
 - 2.1.4.1 volatile organic compounds (VOC),
 - 2.1.4.2 nitrogen oxides (NO_x),
 - 2.1.4.3 sulfur oxides (SO_x),
 - 2.1.4.4 particulate matter less than 10 micrometers in aerodynamic diameter (PM₁₀),
 - 2.1.4.5 total suspended particulates (TSP),
 - 2.1.4.6 carbon monoxide (CO),
 - 2.1.4.7 vinyl chloride,
 - 2.1.4.8 asbestos,
 - 2.1.4.9 beryllium,
 - 2.1.4.10 lead,
 - 2.1.4.11 mercury,
 - 2.1.4.12 fluorides,
 - 2.1.4.13 sulfuric acid mist,
 - 2.1.4.14 hydrogen sulfide,
 - 2.1.4.15 total reduced sulfur compounds, and
 - 2.1.4.16 reduced sulfur compounds.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

2.2 Annual Renewal Fee

A fee to be paid by permittees for the annual renewal of Permits to Operate and Authorities to Construct. The Annual Renewal Fee is determined by reference to the provisions of Part 4 of this Rule, and is a necessary prerequisite to the renewal of all permits. More than one annual renewal fee determination under the provisions of Part 4 may be applicable in calculating the total Annual Renewal Fee for a permit.

2.3 Billable Emissions

The quantity of the combined annual emissions of nitrogen oxides (expressed as nitrogen dioxide), total organic gases (except those containing sulfur), gaseous sulfur compounds, expressed as sulfur dioxide, ammonia, all particulate matter, and carbon monoxide. The billable emissions are rounded to the nearest ton for amounts greater than or equal to 300 tons; to the nearest tenth of a ton for amounts less than 300 tons. Annual renewal fees for all Permits to Operate and Authorities to Construct which are determined with reference to annual emissions shall be based upon the billable emissions from each permit unit or source as determined by this Rule or the District's Fee Determination Protocol.

2.4 Hourly Staff Rate

\$~~113~~116 per hour.

2.5 Volatile Organic Compound (VOC)

As defined in District Rule 101 (Definitions).

PART 3 PERMIT FEES

3.1 Filing Fee

Every applicant for an Authority to Construct or a Permit to Operate any article,

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

machine, equipment, or other contrivance for which an Authority to Construct or Permit to Operate is required by State law or District rule shall pay a filing fee of ~~\$156~~160.

- 3.1.1 Any filing fee shall be tendered along with the application for which it is due. Any application for an Authority to Construct or Permit to Operate shall not be complete until the filing fee and applicable permit fee(s) are paid.

3.2 Permit to Operate

Every applicant for a Permit to Operate for an existing source, which does not presently hold any current District permit, shall, in addition to the filing fee prescribed herein, pay the permit fee(s) prescribed by the applicable schedule(s) set forth in District Rule 301 (Permit Fee Schedules).

- 3.2.1 The permit fee(s) determined from Rule 301 shall be tendered along with the completed application and the filing fee. An application for a Permit to Operate is not complete until the applicable permit fee(s) and filing fee are paid.

- 3.2.2 In the event any additional permit fee is incurred prior to issuance of the Permit to Operate, the applicant shall pay the additional fee within 30 days of the District's subsequent billing(s). Additional permit fees are incurred when the applicant requests revisions to the project, or where, due to some other circumstance, the District's actual cost to complete the permit process, based on the hourly staff rate, exceeds the Rule 301 fee(s) paid.

- 3.2.2.1 The District may bill the applicant for additional permit fee(s) incurred when it has completed its processing of the application. The Permit to Operate shall be issued upon receipt of the applicant's payment of this final billing. If no additional permit fee has been incurred, the Permit to Operate shall be issued upon the District's completion of its evaluation and determination that the requested permit may be issued.

- 3.2.2.2 Alternatively, the District may bill the applicant periodically for additional permit fee(s) incurred in the course of a project of long duration. Upon good cause, the District may suspend action on the application until payment of periodic billing statements is received, but such suspension is not mandatory. The Permit to Operate shall be issued upon the District's completion of its processing of the application and receipt of the applicant's payment of the final billing statement.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

3.3 Authority to Construct

Every applicant for an Authority to Construct for a new source or for modification(s) to an existing source shall, in addition to the filing fee prescribed herein, pay the permit fee(s) prescribed by the applicable schedule set forth in District Rule 301 (Permit Fee Schedules).

- 3.3.1 The permit fee(s) determined from Rule 301 shall be tendered along with the completed application and the filing fee. An application for an Authority to Construct is not complete until the applicable permit fee(s) and filing fee are paid.
- 3.3.2 In the event any additional permit fee is incurred prior to issuance of the final Permit to Operate, the applicant shall pay the additional fee within 30 days of the District's subsequent billing(s). Additional permit fees are incurred when the applicant requests revisions to the project, or where, due to some other circumstance, the District's actual cost to complete the permit process, based on the hourly staff rate, exceeds the Rule 301 fee(s) paid.
- 3.3.2.1 The District may bill the applicant for additional permit fee(s) incurred when it has completed its processing of the application. The final Permit to Operate for the project shall be issued upon receipt of the applicant's payment of this final billing. If no additional permit fee has been incurred, the final Permit to Operate shall be issued upon the District's completion of its evaluation and determination that the final Permit to Operate may be issued.
- 3.3.2.2 Alternatively, the District may bill the applicant periodically for additional permit fee(s) incurred in the course of a project of long duration. Upon good cause, the District may suspend action on the application until payment of periodic billing statements is received, but such suspension is not mandatory. The final Permit to Operate shall be issued upon the District's completion of its processing of the application and receipt of the applicant's payment of the final billing statement.

3.4 Transfer in Interest

Where an application is filed for the transfer from the prior permittee to a successor in interest of a Permit to Operate or an Authority to Construct, and where no alteration, addition, or change in location of the permitted equipment has been made, the applicant shall, in addition to the filing fee prescribed in Section 3.1 herein, pay a fee based on

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

the District's actual cost to complete the permit process, based on the hourly staff rate.

- 3.4.1 Only a valid Permit to Operate or Authority to Construct may be transferred. If any such permit has not been renewed by payment of the Annual Renewal Fee pursuant to Section 4.1 or 6.1, or a fee pursuant to Rule 305, for which a billing statement is outstanding, the transfer of ownership fee shall include the outstanding Annual Renewal Fee or Rule 305 fee. The transfer in interest fee shall not include any Part 5 delinquency penalties associated with the outstanding Annual Renewal Fee or Rule 305 fee, except where the successor in interest includes any person who was a partner or equity holder in the transferring business.
- 3.4.2 Any transfer in interest fee shall be tendered along with the application for which it is due. Any application for transfer of an Authority to Construct or Permit to Operate shall not be complete until the transfer in interest fee is paid and a completed Annual Renewal Information Request is submitted, if such Information Request is outstanding at the time of application.

3.5 Transfer of Location

Where an application is filed for a revised Permit to Operate by reason of a transfer of the location of already-permitted equipment, where there is no change in ownership and no modification of the transferred equipment, the applicant shall, in addition to the filing fee prescribed in Section 3.1 herein, pay a fee based on the District's actual cost to complete the permit process, based on the hourly staff rate.

- 3.5.1 Only a valid Permit to Operate may be transferred. If any such permit has not been renewed by payment of the Annual Renewal Fee pursuant to Section 4.1 or 6.1, or a fee pursuant to Rule 305, for which a billing statement is outstanding, the transfer of location fee shall include the outstanding Annual Renewal Fee or Rule 305 fee.
- 3.5.2 Any transfer of location fee shall be tendered along with the application for which it is due. Any application for transfer of location shall not be complete until the transfer of location fee is paid and a completed Annual Renewal Information Request is submitted, if such Information Request is outstanding at the time of application.

3.6 Identical Replacement

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

Where an application is filed for a revised Permit to Operate by reason of an identical replacement of an entire permitted unit or a component thereof, where a revision to the equipment description of the existing permit is necessary, the applicant shall pay only the filing fee required by Section 3.1.

- 3.6.1 Any such filing fee shall be tendered along with the application for which it is due. Any application for an identical replacement is not complete until the filing fee is paid.

3.7 Permit Granted by Hearing Board

In the event a Permit to Operate or Authority to Construct is granted by the Hearing Board after denial by the Air Pollution Control Officer, the permit fee provisions prescribed by Sections 3.2 or 3.3 shall apply, except that the applicable fee shall be paid within 30 days of the date of billing by the District.

3.8 Revising Permit Terms or Conditions

Where an application is filed requesting revisions to the terms or conditions of an existing Permit to Operate, or when the District issues a revised Permit to Operate pursuant to Rule 217 (Annual Review of Permits), the applicant shall pay the actual cost incurred by the District in processing the application or completing the Rule 217 revisions. Such fee shall be paid within 30 days of the date of billing by the District, and shall be based on the hourly staff rate and the staff time expended in processing the application or completing the Rule 217 permit revisions.

- 3.8.1 Any application requesting revisions to the terms or conditions of an existing Permit to Operate shall be accompanied by a filing fee of ~~\$156~~160, and the application shall not be complete until the filing fee is paid.
- 3.8.2 The revised Permit to Operate requested by the applicant shall be issued upon the District's receipt of the applicant's payment of the revision fee pursuant to Section 3.8.
- 3.8.3 The revised Permit to Operate initiated by the District pursuant to Rule 217 shall be issued upon its completion. The Rule 217 revision fee incurred pursuant to Section 3.8 above may be billed along with the next annual permit renewal fee billing issued by the District pursuant to Part 4 below, or it may be billed separately, upon the

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

District's election.

- 3.8.4 The annual renewal date of any revised Permit to Operate shall continue to be the anniversary date of the original permit.

3.9 Withdrawal or Denial

When an application for any of the above permit actions is submitted to the District it initiates action by the District, which commits staff resources in reliance upon the request of the applicant. In the event an applicant withdraws or cancels its application, or the District denies the requested Permit to Operate or Authority to Construct, the resources expended by the District in processing the application become an obligation owing to the District as follows:

- 3.9.1 Any filing fee, transfer of ownership fee, transfer of location fee, or identical replacement fee, prescribed by Sections 3.1, 3.4, 3.5, or 3.6, is utilized in the initial processing of the application and is non-refundable upon any withdrawal or denial.
- 3.9.2 The unused portion of any permit fee paid pursuant to Section 3.2 or 3.3 shall be refunded by the District after an application has been withdrawn or denied. The unused portion shall be determined by subtracting the time spent on the application times the hourly staff rate from the amount of the fee paid by the applicant.
- 3.9.3 The actual time spent by the District in processing any application for a revision to permit terms or conditions, pursuant to Section 3.8, shall be billed by the District based on the hourly staff rate upon withdrawal or denial of the application. Such fee shall be paid within 30 days of the date of billing, and constitutes a legal obligation owing to the District for work done in reliance upon the applicant's request.

3.10 Multiple Locations

When any permit has been issued to operate movable equipment, or to operate equipment at more than one location, only one annual renewal fee will be charged. The annual renewal date will be the anniversary date of the issuance of the original permit.

3.11 Government Agencies

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

Federal, State, or local governmental agencies, offices, or special districts shall pay the fees set forth in this Rule to the extent allowed under Chapter 2, Division 7, Table 1 of the California Government Code (commencing with Section 6103) and Chapter 55, Part 3, Division 26 of the California Health and Safety Code (commencing with Section 42311).

3.12 Professional Services, Materials, and Equipment Charges to Applicants for, or Holders of, District Permits

Where the District supplies professional services, courtesy inspections, materials, or equipment at the request of any applicant for, or holder of, a District permit, the requesting party(ies) shall pay the actual cost incurred by the District in providing such services, materials or equipment. Such fee shall be based on the hourly staff rate and the staff time spent performing the services, and upon the actual cost of any materials and equipment supplied, and shall be paid within 30 days of the date of billing by the District. The District may bill for such services, materials or equipment either in conjunction with the next annual renewal fee billing or it may issue billing statements periodically for work it has completed. Where the request is from a small, identifiable group of permittees, the fee may be prorated among them.

- 3.12.1 District costs for such services, materials or equipment may not be recovered pursuant to this Section where funding is otherwise available from other fee schedules. The District may elect to provide such services, materials or equipment without charge or at reduced cost to promote legitimate District interests.

3.13 CEQA Compliance

Where the District performs any of the requirements of the California Environmental Quality Act (CEQA) in connection with its evaluation and issuance of any Permit to Operate or Authority to Construct, the applicant or permit holder shall pay the actual cost incurred by the District in performing such requirements. Such fee shall be an addition to any other permit fee(s) determined pursuant to this Rule, and shall be based on the hourly staff rate and the staff time spent performing the requirements plus the actual cost of any contractors retained to perform any of the requirements, and it shall be paid within 30 days of the date of billing by the District.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

3.14 Payment of Fees

3.14.1 No Permit to Operate or Authority to Construct shall be issued to any applicant until any applicable fee pursuant to this Rule, and any other fee obligation of the applicant arising under any other District rule, is paid in full.

3.14.2 All fees prescribed by this Rule must be paid in full by check or money order within the time periods specified. Partial payments are not accepted and will not constitute satisfaction of the obligation established by this Rule, nor will they suspend the running of the period of time during which payments must be made. In the event fees are not paid within the periods set forth herein, the provisions of Part 5 shall apply.

PART 4 ANNUAL RENEWAL FEES (ARFs)

4.1 Renewing Permits

Every Permit to Operate and Authority to Construct issued by the District is valid for a period of one year from the date of its issuance or renewal. Each Permit to Operate and Authority to Construct is renewable one year after the date of issuance, and annually thereafter, upon payment of the Annual Renewal Fee determined in accordance with all applicable provisions of this Part. When a Permit to Operate is issued for a project previously issued an Authority to Construct, the annual renewal date of the Permit to Operate shall remain the same as the renewal date of the Authority to Construct.

4.1.1 Any Permit to Operate or Authority to Construct which is not renewed in accordance with the provisions of this Part shall expire and become void as provided in Part 5. After such expiration of any Permit to Operate or Authority to Construct, continued operation, building, or modification of the subject unit or facility is prohibited until such time as a complete application for a replacement Permit to Operate or Authority to Construct is submitted to the District.

4.1.2 Any Rule 217 permit revision fee which has accrued pursuant to Section 3.8 within the prior 12 months shall be included on the Annual Renewal Fee billing statement(s) issued by the District.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

- 4.1.3 No Permit to Operate or Authority to Construct may be renewed until all outstanding fees pursuant to this Rule, and any other fee obligation(s) of the permit owner arising under any other District rule, are paid in full.

4.2 Renewal Procedure; Sources with Annual Emissions Less than 300 Tons per Year

The District shall notify the permittee by mail of the Annual Renewal Fee due and the date by which it must be submitted to the District. The Annual Renewal Fee and the Rule 217 revision fee, if any, must be submitted within the time period specified in the renewal fee billing statement in order to complete the renewal of the Permit(s) to Operate or Authority(ies) to Construct.

- 4.2.1 As requested by the District, any source whose combined annual emissions of affected pollutants from all aggregated permit units are less than 300 tons per year, as determined by the District, shall complete and return the Inventory Reporting Form(s) as provided by the District within the time period specified. Failure to timely complete and submit the Form(s) may result in suspension of the Permit to Operate or Authority to Construct.

4.3 Renewal Procedure; Sources with Annual Emissions Greater than or Equal to 300 Tons per Year

All sources whose combined annual emissions of affected pollutants from all aggregated permit units are greater than or equal to 300 tons per year, as determined from the District's annual renewal emission determination for the facility's operations two years prior, shall complete the Inventory Reporting Form(s) provided by the District within the time period specified. Failure to timely complete and submit the Form(s) may result in suspension of the Permit to Operate or Authority to Construct.

- 4.3.1 The District will determine the permittee's Billable Emissions and Annual Renewal Fee; the Annual Renewal Fee shall be based on \$138,142 per ton of Billable Emissions.

For facilities with annual emissions greater than or equal to 300 tons per year as of June 18, 1997, the Billable Emissions will be based on the four-year emission average for calendar years 1998 through 2001. For any facility not such a major source as of June 18, 1997, but newly-determined to be such a major source after June 18, 1997, aAnnual rRenewal fFees will be determined from the average of the

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

first four year period representative of normal operation for that source. Until ~~this~~ such consecutive four year period is ~~attained~~ has occurred, the ~~major source~~ Annual Renewal Fees for such sources will be based upon the yearly average of emissions commencing on the date the facility was determined to be such a source averaged for the partial period.

The following paragraph shall be in effect through June 30, 2011:

The District will issue semi-annual billing statements to recover the Annual Renewal Fee plus any Rule 217 revision fee. Every permittee shall submit each semi-annual fee payment within the time period specified in each semi-annual billing statement in order to successfully complete the renewal of the Permit to Operate or Authority to Construct. The annual renewal of each Permit to Operate or Authority to Construct held by the permittee is complete upon the submission of the final semi-annual fee payment.

The following paragraph shall be effective on July 1, 2011:

The District shall notify the permittee by mail of the Annual Renewal Fee due and the date by which it must be submitted to the District. The Annual Renewal Fee and the Rule 217 revision fee, if any, must be submitted within the time period specified in the renewal fee billing statement in order to complete the renewal of the Permit(s) to Operate and/or Authority(ies) to Construct.

4.3.2 Annual Renewal Fee Reduction For Non-Operational Periods

Commencing Fiscal Year 2009/2010, permittees whose operations do not result in emission of pollutants from stationary equipment during any continuous six-month period in a District fiscal year (July 1 – June 30) may request a refund of 25% of the annual renewal fee paid for that fiscal year. This request must be submitted to the District within 30 days of the end of the six-month non-operational period.

The APCO shall have discretion to approve a refund request where there may have been incidental or de-minimis operation of permitted equipment for brief periods of time, for example for routine maintenance or upkeep, provided that the emissions were minimal.

4.4 Emission Statements

For all sources whose combined annual emissions from the entire facility are greater

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

than 25 tons of either nitrogen oxides (NO_x) or volatile organic compounds (VOC), as derived from the District's annual renewal emission determination, the permittee shall submit an Emission Statement for each Permit to Operate and Authority to Construct as described below, in accordance with the mandatory provisions of Section 182(a)(3)(B)(ii) of the federal Clean Air Act. In addition, the District may require any other permittee to submit an Emission Statement where the District has reason to believe the facility's annual emissions should be certified by the permittee.

- 4.4.1 Any permittee receiving an Emission Statement form from the District shall certify the process information and annual emissions described therein by completing the Emission Statement. Such certification shall be made by an official of the permittee having authority to represent it. Upon certification the permittee shall return the completed Emission Statement to the District.
- 4.4.2 In the event the permittee determines it cannot certify the information on the Emission Statement it shall prepare a statement indicating what it believes its process information and annual emissions actually were during the reporting period of the Emission Statement, along with a detailed explanation of its rationale therefor, signed by a responsible representative of the permittee, and return it to the District along with the original Emission Statement form.
- 4.4.3 The requirement to submit an Emission Statement shall not alter the time period for completing a permittee's renewal of any Permit to Operate or Authority to Construct by the payment of the applicable Annual Renewal Fee.

4.5 Annual Renewal Fee Determination; All Sources with Annual Emissions Less than 300 Tons Except Gasoline Dispensing Facilities with Phase II Vapor Recovery Systems, Wastewater Treatment Facilities, NESHAP Sources, and Methyl Bromide Fumigation Chambers

An annual renewal fee for each Permit to Operate or Authority to Construct held by sources with combined emissions of affected pollutants from all aggregated permit units of less than 300 tons per year shall be determined according to the following schedule:

Billable Emissions per Permit; Tons per Year	Annual Renewal Fee
0 - < 0.1	\$138 <u>142</u>

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

0.1 - < 1	\$207212
1 - < 2	\$275282
2 - < 5	\$413424
5 - < 8	\$567582
8 - < 10	\$1,0861,114
10 - < 20	\$1,6021,644
20 - < 30	\$2,7802,852
30 - < 45	\$3,9564,059
45 - < 60	\$4,8374,963
60 - < 80	\$5,7185,867
80 - < 100	\$6,2976,461
100 - < 150	\$6,8657,043
150 - < 200	\$8,3148,530
200 - < 250	\$9,76310,017
250 - < 300	\$12,12612,441

4.6 Annual Renewal Fee Determination; All Facilities Required to Submit Permit Compliance Data, Monthly or Annual Reports

In addition to any other annual renewal fees required by other applicable Sections of this Rule , the District may impose an hourly or flat fee based on the schedule below for the purpose of recovering its estimated cost for planning, preliminary evaluation, sampling, sample analysis, calculations, and report preparation with respect to samples of emissions, or other emissions or general compliance determinations when such activity is necessary to determine compliance with permit conditions or with any state or local law, order, rule or regulation relating to air pollution:

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

Facilities with monthly reporting requirements not subject to Annual Federal Operating Permit Fees under the provisions of Rule 308 (Title V: Federal Operating Permit Fees):	\$ <u>752772</u>
Facilities with Process Statement requirements pursuant to Rule 436.5.1 (Title V: General Prohibitory Rule) and not subject to Annual Federal Operating Permit Fees under the provisions of Rule 308 (Title V: Federal Operating Permit Fees):	\$ <u>376386</u>
All other emissions or general compliance evaluations:	based on hourly staff rate.

4.7 Annual Renewal Fee Determination; Gasoline Dispensing Facilities with Phase II Vapor Recovery Systems

4.7.1 Non-Assisted Systems - An annual renewal fee for each Permit to Operate for gasoline dispensing facilities with a non-assisted Phase II vapor recovery system shall be determined by the following formula:

$$\text{Fee} = a + b$$

where "a" = a nozzle fee determined by multiplying the total number of gasoline nozzles at the facility times \$4344 per nozzle; and

"b" = a throughput fee based on the gasoline throughput at the facility, determined with reference to the schedule in subsection 4.7.3.

4.7.2 Assisted Systems - An annual renewal fee for each Permit to Operate for gasoline dispensing facilities with an assisted Phase II vapor recovery system shall be determined by the following formula:

$$\text{Fee} = a + b$$

where "a" = a nozzle fee determined by multiplying the total number of gasoline nozzles at the facility times the number of grades dispensed by each nozzle times \$4344 per nozzle; and

"b" = a throughput fee based on the annual gasoline throughput at the facility, determined with reference to the schedule in subsection 4.7.3.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

4.7.3 Gasoline Throughput Fee Schedule

Gasoline Throughput; Gallons per Year	Throughput Fee "b"
0 - < 100,000	\$ <u>212</u> <u>218</u>
100,000 - < 400,000	\$ <u>339</u> <u>348</u>
400,000 - < 800,000	\$ <u>501</u> <u>514</u>
800,000 - < 1,200,000	\$ <u>667</u> <u>684</u>
1,200,000 - < 1,600,000	\$ <u>831</u> <u>853</u>
1,600,000 - < 2,000,000	\$ <u>1,074</u> <u>1,102</u>
2,000,000 - < 3,000,000	\$ <u>1,630</u> <u>1,672</u>
3,000,000 and greater	\$ <u>1,630</u> <u>1,672</u> + \$ <u>543</u> <u>557</u> for each additional million gallons or fraction thereof above 3,000,000 gallons

4.8 Wastewater Treatment Facilities Fee Schedule

An annual renewal fee for each Permit to Operate for wastewater treatment facilities, separate from permits for ancillary equipment, shall be determined according to the following schedule:

Average Flow; Gallons per Day	Throughput Fee
0 - < 500,000	\$ <u>138</u> <u>142</u>
500,000 - < 1,000,000	\$ <u>230</u> <u>236</u>
1,000,000 - < 2,000,000	\$ <u>409</u> <u>420</u>
2,000,000 - < 3,000,000	\$ <u>588</u> <u>603</u>
<u>3</u> ,000,000 - < <u>34</u> ,000,000	\$ <u>909</u> <u>933</u>

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

4,000,000 - < 5,000,000	\$1,1681,198
5,000,000 - < 6,000,000	\$1,4271,464
6,000,000 - < 7,000,000	\$1,6871,731
7,000,000 - < 8,000,000	\$1,9471,998
8,000,000 and greater	\$1,9471,998 + \$260267 for each additional million gallons or fraction thereof above 8,000,000 gallons

4.9 Annual Renewal Fee Determination; NESHAPs Sources

An annual renewal fee for all aggregated Permits to Operate for facilities which are subject to the requirements contained in District Rule 424 Part 4, Subpart M (National Emission Standards for Asbestos) shall be ~~\$12,126~~12,441 for each entire facility.

4.10 Annual Renewal Fee Determination; Methyl Bromide Fumigation Chambers

A methyl bromide fumigation chamber operator holding a valid permit issued by a County Agricultural Commissioner who is implementing the 1996 Memorandum of Understanding between the Monterey, San Benito and Santa Cruz County Agricultural Commissioners and the District, shall be exempt from any Annual Renewal Fee for the District Permit to Operate that fumigation chamber, unless circumstances have arisen during the year which require District resources to be expended. In such cases an annual renewal fee of ~~\$138~~142 shall be paid upon notice by the District.

4.11 Annual Renewal Fee Determination; Authorities to Construct

An annual renewal fee for each Authority to Construct (ATC) held by sources with combined emissions of affected pollutants of less than 300 tons per year from all aggregated permit units shall be determined by the following formula:

$$\text{Fee} = \text{\$138142} + e$$

where:

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

"e" is an emission fee, as determined by the District in accordance with Section 4.5, 4.7, 4.8, 4.9 or 4.10 of this rule, for the operation of any article, machine, equipment or other contrivance as specified within the Authority to Construct, and which does not hold a valid permit to operate.

4.12 Annual Renewal Fee Determination; Toxics Program Sources

In addition to any other annual renewal fee determinations required by other Sections of this Rule, all Permits to Operate and Authorities to Construct issued for sources of toxic air contaminant emissions, with the exception of sources subject to Section 4.9 of this Rule, shall be assessed an annual toxics program fee of ~~\$7274~~ per permit unit.

PART 5 DELINQUENCY PENALTIES

5.1 Permit Fee and Annual Renewal Fee Delinquency Penalties

If any fee payment required pursuant to Part 3 or Part 4 of this Rule is not submitted within 30 days of the issuance date of the District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.

- 5.1.1 For purposes of this Part any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.
- 5.1.2 If no fee payment is submitted within the time prescribed by Section 5.1.1, a delinquency penalty of 50 percent of the amount of the billed fee, to a maximum of \$5,000, shall be added to the amount of fee due.
- 5.1.3 If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.
- 5.1.4 If an Annual Renewal Fee (Part 4), requested revision fee, or Rule 217 revision fee

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

(Section 3.8) payment is delinquent and the fee plus the delinquency penalty is not received within 60 days of the issuance date of the District's billing statement, the delinquency penalty shall be increased to 75 percent of the original amount due, to a maximum of \$7,500.

- 5.1.5 If, in the case of a failure to pay permit fees required pursuant to Part 3 (except Section 3.8), the delinquent fee plus penalties assessed pursuant to Section 5.1.2 are not received within 90 days of the issuance date of the District's billing statement, the permittee shall be considered to be in default of its permit fee obligation and its Permit to Operate or Authority to Construct is denied and that further operation of the subject equipment without a valid permit is prohibited. Such denial shall not preclude the applicant from submitting another permit application and beginning the process anew, although the delinquent fee and all penalties shall become an obligation owing to the District, which may be recovered along with any permit fee from such new application.
- 5.1.6 If, in the case of a failure to pay Rule 217 revision fees (Section 3.8), or Annual Renewal Fees (Part 4), the delinquent Annual Renewal Fee plus penalties assessed pursuant to Section 5.1.4 are not submitted within 90 days of the issuance date of the District's billing statement, any affected Permit to Operate or Authority to Construct shall automatically expire and that further operation of the subject equipment without a valid permit is prohibited. In the event the person whose permit has expired applies for a new permit, the unpaid Annual Renewal Fee and all penalties shall be recovered along with any permit fee from such new application.
- 5.1.7 If, in the case of a failure to pay the permit fee for a permit issued by the Hearing Board (Section 3.7), the delinquent fee plus penalty assessed pursuant to Section 5.1.2 is not received within 60 days of the issuance date of the District's billing statement, the delinquency penalty shall be increased to 75 percent of the original amount due, to a maximum of \$7,500.
- 5.1.7.1 If the delinquent permit fee plus penalties assessed pursuant to Sections 5.1.2 and 5.1.7 are not submitted within 90 days of the issuance date of the District's billing statement, the permittee shall be in default of its fee obligation and in violation of this Rule. In such case, the Air Pollution Control Officer shall petition the District Hearing Board to hold a hearing to determine whether any or all of the facility's permits should be revoked pursuant to Health and Safety Code Section 42307.
- 5.1.7.2 After the District has initiated a permit revocation action through the filing of

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

an accusation with the Hearing Board, but before the revocation hearing is held, the permittee may still cure its default by submitting all outstanding fees, plus delinquency penalties and a ~~\$390~~400 revocation initiation fee.

- 5.1.7.3 If any Permit to Operate is revoked by the Hearing Board on account of such default, it may be reinstated or replaced with a new permit, upon written request of the permittee and upon full payment of all outstanding fees, penalties, revocation initiation fee, and a reinstatement fee of ~~\$589~~604.

5.2 Extension of Payment Period by the APCO

The 30-day payment period for fee payment required pursuant to Part 3 or Part 4 of this Rule may be extended for extraordinary circumstances at the discretion of the Air Pollution Control Officer (APCO). The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.

5.3 Waiver of Penalty by the APCO

The penalty for fee delinquency may be waived for extraordinary circumstances at the discretion of the APCO, provided that there have been no prior delinquencies. The adequacy of cause to waive the penalty shall be decided on a case-by-case basis by the APCO.

PART 6 EMISSION REDUCTION CREDIT FEES

6.1 Emission Reduction Credits (ERCs)

To the extent that ERCs are credited to the ERC Registry developed pursuant to Rule 215, and for the ERCs to remain valid, the fees specified in Sections 6.1.1 and 6.1.2 below shall be paid within 30 days of the issuance of the District's billing statement. ERC Banking Certificates are not in effect and cannot be traded or used in any manner unless the appropriate fees required herein have been fully paid.

6.1.1 ERC Registry Fee

Every applicant shall pay an initial registration fee of ~~\$457~~469 for registration in the

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

ERC Registry. However, if the District determines that this fee does not fairly represent the District's engineering, inspecting, and evaluation costs in processing the subject application, the District shall assess an additional registry fee based on the actual estimated costs incurred by the District in processing the application at the hourly staff rate. Registry fees assessed under this schedule may be appealed to the Hearing Board in accordance with Regulation VI provisions.

6.1.2 Annual Registry Fee

Every person registered in the ERC Registry shall pay an annual banking fee of ~~\$153~~157. However, the District may assess an additional annual registry fee based on the actual estimated costs incurred by the District in maintaining the subject ERC Registry account at the hourly staff rate. Annual registry fees assessed under this schedule may be appealed to the Hearing Board in accordance with Regulation VI provisions.

PART 7 MISCELLANEOUS FEES

7.1 Other Professional Services, Materials, Equipment Charges

Where the District supplies professional services, courtesy inspections, materials, or equipment at the request of any person not subject to the provisions of Section 3.12, the requesting party(ies) shall pay the actual cost incurred by the District in providing such services, materials or equipment. Such fee shall be based on the hourly staff rate and the staff time spent performing the services, and upon the actual cost of any materials and equipment supplied, and shall be paid within 30 days of the date of billing by the District. Where the request is from a small, identifiable group of requesters, the fee may be prorated among them. The District may elect to provide such services, materials or equipment without charge or at reduced cost to promote legitimate District interests.

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**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 301. PERMIT FEE SCHEDULES

(Adopted 9-1-74; Revised 9-16-76, 5-31-78, 5-20-81, 8-18-82, 6-13-83, 7-19-84, 12-13-84, 7-17-85, 6-11-86, 12-17-86, 6-10-87, 9-16-87, 6-20-88, 12-14-88, 6-14-89, 6-13-90, 6-26-91, 5-17-95, 6-21-95 ; 6-18-97; 6-17-98; 6-16-99; 6-21-00; 6-20-01; 6-19-02; 6-18-03; 6-16-04; 6-15-05; 6-21-06; 6-20-07; 6-18-08; ~~and~~ 6-17-09; and Proposed for Revision 6-16-10.)

CONTENTS

- Schedule 1 - General Permit Fees
- Schedule 2 - Equipment Which Has Lost Permit Exemption
- Schedule 3 - Gasoline Dispensing Facilities
- Schedule 4 - Emission Fees
- Schedule 5 - Toxic Air Contaminants
- Schedule 6 - Public Notification

Pursuant to Rule 300 (District Fees), fees shall be determined from the subsequent schedules. Schedule 4, 5 and 6 fees are in addition to fees from Schedules 1, 2 and 3.

Schedule 1
General Permit Fees

Any article, machine, equipment or other contrivance for which a permit is required and which is not Equipment Which Has Lost Permit Exemption (Schedule 2) or Gasoline Dispensing Equipment (Schedule 3) shall be assessed a permit fee of ~~\$709~~727. However, if the Air Pollution Control Officer determines that the revenue provided by this Rule does not fairly represent the District's costs in processing the subject permit application, the Air Pollution Control Officer shall assess a permit fee based on the actual costs incurred by the District in processing the application at a rate of ~~\$143~~116 per hour of District staff time expended, which shall be rounded to the nearest whole hour.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

Schedule 2
Equipment Which Has Lost Permit Exemption

Any article, machine, equipment or other contrivance for which a permit exemption has been lost due to revision to District Rule 201 (Sources not Requiring Permits) shall be assessed a permit fee of ~~\$225~~231. However, if the Air Pollution Control Officer determines that the revenue provided by this Rule does not fairly represent the District's costs in processing the subject permit application, the Air Pollution Control Officer shall assess a permit fee based on the actual costs incurred by the District in processing the application at a rate of ~~\$113~~116 per hour of District staff time expended, which shall be rounded to the nearest whole hour.

Schedule 3
Gasoline Dispensing Facilities

The fee shall be determined as follows:

Phase I

Any new gasoline dispensing facility which is installing Phase I vapor recovery equipment or any gasoline dispensing facility which is proposing modifications to the Phase I vapor recovery equipment shall be assessed a permit fee of ~~\$714~~733.

Phase II

Any gasoline dispensing facility which is proposing the disconnection without modification of Phase II vapor recovery equipment shall be assessed a permit fee of ~~\$714~~733.

Any new gasoline dispensing facility which is installing Phase II vapor recovery equipment or any gasoline dispensing facility which is proposing the modification or addition of Phase II vapor recovery equipment shall be assessed a permit fee of ~~\$714~~733 plus a fee of ~~\$43~~44 for each nozzle.

Phase I and Phase II

Any new gasoline dispensing facility which is installing Phase I and Phase II vapor recovery equipment or any gasoline dispensing facility which is proposing modifications to the Phase I vapor recovery equipment and disconnection or addition of Phase II vapor recovery equipment shall be assessed a permit fee of ~~\$951~~976 plus a fee of ~~\$85~~87 for each nozzle.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

Installation of In Station Diagnosis System

Any gasoline dispensing facility which is installing an In Station Diagnosis (ISD) system or is replacing an ISD system with a system certified under a different executive order shall be assessed a permit fee of ~~\$1,017~~1,043.

Schedule 4
Emission Fees

In addition to other fees required, any article, machine, equipment or other contrivance which does not hold a valid District Authority to Construct or Permit to Operate shall be assessed an emissions fee, as determined by the District accordance with Section 4.3.1, 4.5, 4.7.3, 4.8, 4.9 or 4.10 of Rule 300.

Schedule 5
Toxic Air Contaminants

In addition to other fees required, each permit application for any equipment/operation which may emit or has the potential to emit any toxic air contaminant(s) (TACs), as defined in Rule 1000, shall be assessed a ~~\$156~~160 fee.

Schedule 6
Public Notification

In addition to other fees required, projects for which permits are issued following public notice published in newspapers shall pay a public notification fee of ~~\$470~~482 for the project.

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**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 302. SOURCE TESTING AND ANALYSES: FEES AND REQUIREMENTS

(Adopted 8-24-83; Revised 12-13-84, 12-19-90, 6-26-91, 6-9-93, 6-21-95, 6-18-97; 6-17-98; 6-16-99; 6-21-00; 6-20-01; 6-19-02; 6-18-03; 6-16-04; 6-15-05; 6-21-06; 6-20-07; ~~and~~ 6-18-08; and Proposed for Revision 6-16-10.)

CONTENTS

PART 1	GENERAL	2
1.1	Purpose.....	2
1.2	Applicability	2
1.3	Exemptions	2
1.4	Effective Date	2
1.5	References.....	2
PART 2	DEFINITIONS	3
2.1	Financial Hardship.....	3
PART 3	REQUIREMENTS	3
3.1	Authority to Require Information	3
PART 4	SCHEDULE OF ANALYSES AND TESTING FEES	4
4.1	Fee Schedule	4
4.2	Multiple Testing.....	5
4.3	Sources of Questionable Compliance	5
PART 5	CREDIT FOR OTHER FEES PAID	5
5.1	Emission Sources	5

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 1 GENERAL

1.1 Purpose

This Rule specifies the requirements and schedule of fees for source sampling, testing, or inspecting as authorized by Sections 41511 and 41512 of the Health and Safety Code.

1.2 Applicability

The provisions of this Rule shall apply, notwithstanding the provisions of Rule 201 (Sources Not Requiring Permits), to the owner or operator of any article, machine, equipment or other contrivance which may cause the issuance of any air contaminant.

1.3 Exemptions

1.3.1 Right to Petition

The owner or operator of a source may petition the Air Pollution Control Officer, no later than 30 days after receipt of the subject analyses and testing fee statement, to be excused from payment of such fees, or a portion of such fees, on the grounds that payment of such fees would cause a demonstrable financial hardship.

1.3.2 APCO Exemption of Fees

Based on evidence provided, the Air Pollution Control Officer may exempt the owner or operator of the subject source from payment of all or a portion of the fees otherwise required by this Rule.

1.4 Effective Date

This Rule, as mostly recently revised, is effective on July 1, ~~2008~~2010.

1.5 References

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

The following are related or referenced District Rules and Regulations: Rule 200 (Permits Required); 201 (Permits Not Required); 301 (Permit Fee Schedules); and 412 (Sulfur Content of Fuels).

PART 2 DEFINITIONS

2.1 Financial Hardship

For the purposes of this Rule, a demonstrable financial hardship shall consist of adequate evidence as is capable of demonstrating that full payment will prevent the respective owner or operator from meeting other financial obligations as they come due, or will cause the taking of property or the practical closing and eliminating of a lawful business without a corresponding benefit in air pollution reduction.

PART 3 REQUIREMENTS

3.1 Authority to Require Information

- 3.1.1 When the Air Pollution Control Officer finds that any inspection, test, sampling, or analysis, including any source testing of emissions is necessary to determine the nature, extent, or amount of pollutants being discharged into the atmosphere, or to determine compliance with permit conditions or with any federal, State, or local law, order, rule or regulation relating to air pollution, including potential emissions which may endanger the health, comfort or repose of the public, or which may have a tendency to cause injury or damage to business or property, the Air Pollution Control Officer may order the inspection of a source or its records, performance testing, collection of emission samples, or the analysis or evaluation of such samples, by either qualified personnel of the District, an independent contractor selected by the Air Pollution Control Officer, or by the source itself or its contractor.
- 3.1.2 Whenever the Air Pollution Control Officer orders any inspection, test, collection, or analysis of emissions pursuant to this Rule, which are undertaken to determine compliance with permit conditions or any federal, State, or local law, order, rule or regulation relating to air pollution, the owner or operator of the subject premises shall pay the full costs of such activities, for which the said sum is not to exceed the actual estimated cost of the sample collection, analysis or testing thereof, unless exempted by the APCO for good cause.
- 3.1.3 Such payment shall be made in full by the owner or operator of the premises within 30 days of notification thereof by either the District or the independent contractor conducting the activities.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

3.2 Authority to Require Determination of Emissions

3.2.1 Whenever the Air Pollution Control Officer finds that certain information is necessary to determine the amount or character of emissions from any air pollution emission source, he/she may require the owner or operator of any such source to take any action which he determines is reasonable for the determination of the amount or character of such emissions from such source.

3.2.2 No person shall fail or refuse to comply fully with the terms of any order issued by the Air Pollution Control Officer under authority of this Rule.

PART 4 SCHEDULE OF ANALYSES AND TESTING FEES

4.1 Fee Schedule

For the purposes of this Rule the following schedule of sampling, analyses, and testing fees shall determine the fees charged by the District for the respective activities indicated:

Schedule of Analyses and Testing Fees

Subsection	Type of Test	Fee
4.1.1	Continuous analyzer for criteria gaseous emission testing	\$2,3652,426 plus \$ 113 <u>116</u> per hour for every staff hour in excess of 20 staff hours
4.1.2	Visible emission evaluation test	\$113 <u>116</u> plus \$ 113 <u>116</u> per hour for every staff hour in excess of one staff hour
4.1.3	Optical microscopy	\$3637 per sample

4.1.2 If the Air Pollution Control Officer determines that no schedules provided by this Rule fairly represent the District's costs incurred in conducting such sampling, analyses or tests, the Air Pollution Control Officer may assess a fee different from the schedule which fairly reflects the District's costs incurred.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

4.1.3 Fees for sampling, analyses or tests not referenced above shall be assessed by the Air Pollution Control Officer and shall not exceed the actual estimated costs of such sampling, analyses, or tests.

4.2 Multiple Testing

Nothing in this Rule shall be construed to prevent the Air Pollution Control Officer from assessing fees for multiple testing, or for multiple samples and analyses, where the same is necessary to determine compliance with any federal, State or local law, order, rule or regulation relating to air pollution including potential emissions which may endanger the health, comfort or repose of the public.

4.3 Sources of Questionable Compliance

If any of the sampling, analyses or tests conducted pursuant to this Rule indicate that the subject source is not in compliance, or raise reasonable doubt of the source's complying with all federal, State and local regulations, the Air Pollution Control Officer may require additional sampling, analyses and/or testing as he determines necessary, and may also require use of an independent tester for such additional tests. In such event, the owner or operator shall pay for each additional test in accordance with the schedule of fees set forth in this Rule.

PART 5 CREDIT FOR OTHER FEES PAID

5.1 Emission Sources

Where the owner or operator of a source has paid initial permit fees pursuant to Rule 301 (Permit Fee Schedules), sampling, analyses and testing fees authorized by this Rule, which have been incurred as part of the permit evaluation process, shall only be due and payable to the extent of the actual cost to the District for such activity, as determined by the Air Pollution Control Officer, which exceeds the difference between the estimated cost of all permit services performed by the District and the sum total of those initial permit fees paid by the owner or operator pursuant to Rule 301 for the subject source.

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**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 305. FEES FOR RISK ASSESSMENTS, RISK NOTIFICATIONS, AND RISK
REDUCTION PLANS AND REPORTS

(Adopted 11/9/88; and Revised 1/18/89, 5/16/90, 5/15/91, 6/26/91, 4/15/92, 5/12/93, 5/25/94, 4/26/95, 12/20/95, 6/19/96, 6/18/97, 6/17/98, 6/16/99, 6/21/00, 6/20/01, 6/19/02, 6/18/03; 6/16/04; 6/15/05; 6/21/06; 6/20/07; ~~and~~ 6/18/08; and Proposed for Revision 6/16/10).

CONTENTS

PART 1	GENERAL.....	2
1.1	Purpose.....	2
1.2	Applicability	2
1.3	Exemptions	2
1.4	Effective Date	2
PART 2	DEFINITIONS.....	2
2.1	Air Release or Release	2
2.2	District	3
2.3	Facility	3
2.4	Facility State Fee	3
2.5	Operator	3
2.6	Public Notification Process.....	3
2.7	Risk Audits	3
2.8	Risk Reduction Plans	4
2.9	Supplemental Risk Assessment	4
PART 3	FEES	4
3.1	Fee Determination.....	4
3.2	Fee Payment and Collection	5
3.3	Fee Penalty	5
3.4	Transfer of Fees Collected.....	6

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to provide revenue to implement the requirements of the Air Toxics "Hot Spots" Information and Assessment Act of 1987 as provided in Health and Safety Code Section 44300 through 44394, and District Rule 1003. The fees required pursuant to this Rule shall be in addition to permit and other fees currently required.

1.2 Applicability

This Rule applies to any facility which manufactures, formulates, uses, or releases any of the substances listed by the California Air Resources Board, pursuant to the California Health and Safety Code Section 44320, or any other substance that reacts to form a substance so listed, unless the facility is determined to be exempt as defined in Rule 1003, Section 1.3.

1.3 Exemptions

Facilities that do not meet the applicability definition are exempt from fees.

1.4 Effective Date

This Rule, as most recently revised, is effective July 1, ~~2008~~2010.

PART 2 DEFINITIONS

2.1 Air Release or Release

Any activity that may cause the issuance of air contaminants, including the actual or potential spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the ambient air and that results from the routine operation of a facility or that is predictable, including, but not limited to, continuous and intermittent releases and predictable process upsets or leaks.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

2.2 District

The Monterey Bay Unified Air Pollution Control District unless otherwise specified herein.

2.3 Facility

Every structure, appurtenance, installation, and improvement on land which is associated with a source of air releases or potential air releases of a hazardous material, as identified by the District.

2.4 Facility State Fee

The individual facility fees determined by the State Air Resources Board and the California Office of Environmental Health Hazard Assessment methodology. The amounts are based on the State Rule found in the *Air Toxics "Hot Spots" Information and Assessment Act*, Subchapter 3.6, *Air Toxics "Hot Spots" Fee Regulation*, Section 90700-90705. The fees in the Rule are set annually by the California Air Resources Board and the California Office of Environmental Health Hazard Assessment implement and administer the Act.

2.5 Operator

The person who owns or operates a facility or part of a facility.

2.6 Public Notification Process

The process of public notifying all property addresses within the risk area set by the Board requiring public notification.

2.7 Risk Audits

Reports sent to the District which describe the significant contributors to the total air risk from a facility.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

2.8 Risk Reduction Plans

Reports sent to the District describing how emissions can be reduced to most effectively reduce the total air risk from a facility.

2.9 Supplemental Risk Assessment

A risk assessment that does not follow the methodology of the District.

PART 3 FEES

3.1 Fee Determination

3.1.1 Public Notification Fees

Sources required to complete the Public Notification Process are required to pay for the cost of District time at ~~\$113~~116 per hour, postage, and the cost of the mailing service to provide the public notification mailings.

3.1.2 Audit and Plan Fees

Sources required to prepare a Risk Audit and Risk Reduction Plan are required to pay for the cost of District time at ~~\$113~~116 per hour for the review effort.

3.1.3 Supplemental Risk Assessment Fee

Sources electing to prepare a supplemental risk assessment report are required to pay a fee of ~~\$113~~116 per hour for the District risk assessment review.

3.1.4 State Fee

Facilities identified in the State Fee Rule, *Air Toxics "Hot Spots" Information and Assessment Act*, Subchapter 3.6, *Air Toxics "Hot Spots" Fee Regulation*, Section 90700-90705, shall pay in accordance with the State fee schedule.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

3.2 Fee Payment and Collection

A statement will be sent to each affected source stating the amount required. Payment is required within 30 days or the fee will be considered past due. The 30-day payment period for fee payment may be extended for extraordinary circumstances at the discretion of the District Air Pollution Control Officer (APCO). The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.

3.3 Fee Penalty

If any fee payment required pursuant to this Rule is not submitted within 30 days of the issuance date of the District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.

3.3.1 For purposes of this Part any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.

3.3.2 If no fee payment is submitted within the time prescribed by Section 3.3.1 above, a delinquency penalty of 50 percent of the amount of the billed fee, to a maximum of \$500.00, shall be added to the amount of fee due.

3.3.3 If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.

3.3.4 If a fee payment is delinquent and the fee plus the delinquency penalty is not received within 60 days of the issuance date of the District's billing statement, the delinquency penalty shall be increased to 100 percent of the original amount due, to a maximum of \$1,000.00.

3.3.5 If, in the case of a failure to pay the fees required pursuant to this part, the delinquent fee plus penalties assessed pursuant to Section 3.3.2 and 3.3.4 above are not submitted within 90 days of the date of the District's first statement issuance pursuant to Section 3.3.1 of this Rule, the facility shall be considered to be in default of its fee obligation and in violation of this Rule. In such case the Air Pollution Control Officer shall immediately petition the District Hearing Board to hold a hearing to determine whether any or all of the facility's permits should be revoked pursuant to Health and Safety Code Section 42307.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

- 3.3.5.1 After the District has initiated a permit revocation action through the filing of an accusation but before the revocation of any permit pursuant to Health and Safety Code Section 42307, the facility may still cure its default by submitting all outstanding fees plus delinquency penalties and a ~~\$390~~400 revocation initiation fee.
 - 3.3.5.2 If any Permit to Operate is revoked by the Hearing Board on account of such default, it may be reinstated upon written request of the facility and upon full payment of all fees, penalties, revocation initiation fee, and a reinstatement fee of ~~\$589~~604.
 - 3.3.5.3 Should any individual, partnership, corporation or other entity, be in default of its responsibilities under Rule 305, it shall not be issued any permit or authority to construct under Rule 200 until such obligation is satisfied in full. For the purposes of this Rule, "other entity" shall include any entity in which a principal or equity holder is in default of Rule 305.
 - 3.3.5.4 The District may also pursue any other remedy allowed by law.
 - 3.3.6 The penalty for fee delinquency may be waived for extraordinary circumstances at the discretion of the APCO. The adequacy of cause to waive the penalty shall be decided on a case-by-case basis by the APCO.
- 3.4 Transfer of Fees Collected

The Air Pollution Control Officer shall transfer the revenues required by the State by this Rule, and subchapter 3.6, sections 90700-90705 of the State's Air Toxic "Hot Spots" Fee Regulation, to the California Air Resources Board for deposit in the Air Toxics Inventory and Assessment Account.

Any fee revenues received by the District which exceed District and State costs shall be carried over for expenditure in the subsequent fiscal year.

* * * * *

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 306. ASBESTOS NESHAP FEES

(Adopted 5-13-92; Revised 6-21-95; 6-17-98; 6-16-99; 6-21-00 6-20-01; 6-19-02, 6-18-03; 6-16-04; 6-15-05; 6-21-06; 6-20-07; ~~and~~ 6-18-08; and Proposed for Revision 6-16-10.)

CONTENTS

PART 1	GENERAL.....	2
1.1	Purpose.....	2
1.2	Applicability	2
1.3	Exemptions	3
1.4	Effective Date	3
1.5	References and Related Rules.....	3
PART 2	DEFINITIONS.....	3
2.1	Category I Nonfriable ACM.....	3
2.2	Category II Nonfriable ACM.....	4
2.3	Demolition	4
2.4	Facility	4
2.5	Facility Component.....	4
2.6	Friable Asbestos Material	4
2.7	Regulated Asbestos-Containing Material (RACM).....	5
2.8	Renovation	5
PART 3	ADMINISTRATIVE REQUIREMENTS	5
3.1	Fee Determination for Single Notification	5
3.2	Fee Determination for Annual Notification.....	5
3.3	Billing Statement	5
PART 4	FEE DETERMINATION	6
4.1	Explanation of Terms Used in Determining the Fee	6
4.2	Demolition Project With No Asbestos Present.....	6
4.3	Demolition Project Involving Asbestos Removal	6
4.4	Demolition or Renovation Projects Involving Multiple Structures	7
4.5	Schedule of Fees	7

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 5 DELINQUENCY PENALTIES..... 8
 5.1 Asbestos NESHAP Fee Penalties 8
 5.2 Extension of Payment Period by the APCO 9
 5.3 Waiver of Penalty by the APCO..... 9

PART 1 GENERAL

1.1 Purpose

This Rule provides the fee requirements for persons subject to Rule 424, Section 4 Subpart M, National Emission Standards for Asbestos.

1.2 Applicability

This Rule applies to any person subject to Rule 424, Section 4 Subpart M, National Emission Standards for Asbestos (40 CFR 61 Subpart M), who is required by that rule to submit a written Notification of Demolition and Renovation to the District, including:

- 1.2.1 any owner or operator of any demolition activity, regardless of whether any asbestos is present in the facility to be demolished; and
- 1.2.2 any owner or operator of a renovation activity where the total amount of Regulated Asbestos-Containing Material (RACM) to be stripped, removed or otherwise disturbed is at least 260 linear feet on pipes, 160 square feet on other facility components or 35 cubic feet if off of facility components.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

1.3 Exemptions

The following demolition and renovation activities, for which 40 CFR 61 Subpart M requires the submission of the Notification of Demolition and Renovation, are exempt from the fee requirements of this Rule:

- 1.3.1 activities at public schools (K through 12) which are subject to the Asbestos Hazards Emergency Response Act (AHERA); and
- 1.3.2 demolitions of structures which are located in unincorporated areas for which the following conditions exist:
 - 1.3.2.1 the inspection which is required by 40 CFR 61.145 (a) finds that there are no asbestos-containing materials, including Category I and Category II nonfriable asbestos-containing materials, and
 - 1.3.2.2 the total floor area of the structure to be demolished is less than 500 square feet.

1.4 Effective Date

This Rule, as most recently revised, is effective July 1, ~~2008~~2010.

1.5 References and Related Rules

The provisions of this Rule derive from: Title 40 of the Code of Federal Regulations (CFR), Part 61, Subpart M, National Emissions Standards for Asbestos; from California Health and Safety Code (HSC) Sections 42300 *et seq.*; and HSC Sections 42311 *et seq.* Related or referenced District Rules include 200 (Permits Required) and 424 (National Emission Standards for Hazardous Air Pollutants).

PART 2 DEFINITIONS

2.1 Category I Nonfriable ACM

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

Asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy (PLM).

2.2 Category II Nonfriable ACM

Any material, excluding Category I nonfriable asbestos-containing material, containing more than 1 percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, PLM that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

2.3 Demolition

The wrecking or taking out of any load-supporting structural member of a facility, together with any related handling operations, or the intentional burning of any facility.

2.4 Facility

Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For the purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building.

2.5 Facility Component

Any part of a facility including equipment.

2.6 Friable Asbestos Material

Any material, containing more than 1 percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, PLM that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If it is intended to

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

leave material in place during a demolition, PLM point counting is the method to be used to verify it contains no more than 1% RACM, if the material has been identified as containing any asbestos.

2.7 Regulated Asbestos-Containing Material (RACM)

Means (a) friable asbestos material, (b) category I nonfriable ACM that has become friable, (c) category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

2.8 Renovation

Altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

PART 3 ADMINISTRATIVE REQUIREMENTS

3.1 Fee Determination for Single Notification

Upon receipt of the Notification required by Rule 424, the District shall determine the appropriate fee(s) pursuant to the Schedule of Fees in Section 4.5.

3.2 Fee Determination for Annual Notification

Upon receipt of an annual Notification of nonscheduled renovations operations pursuant to 40 CFR 61.145 (b)(3)(ii), the District shall determine the fee(s) by applying the aggregate of all estimated unscheduled renovation amounts based on the Schedule of Fees in Section 4.5

3.3 Billing Statement

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

After determination of the appropriate fee(s), the District shall generate a billing statement for the Asbestos NESHAP fee(s) and transmit it to the appropriate party. This Asbestos NESHAP bill shall be due and payable 30 days after the statement is issued by the District. In the event that all or part of the fee prescribed in the statement is not paid in accordance with these provisions within this 30-day period, the provisions of Section 5.1 of this Rule shall apply.

PART 4 FEE DETERMINATION

4.1 Explanation of Terms Used in Determining the Fee

For the purpose of determining the appropriate fee required by this Rule, "Type of Project" in the Schedule of Fees in Section 4.5 refers to the amount of RACM which could be removed or disturbed in a demolition and/or renovation project, and includes the following meanings:

- 4.1.1 Linear feet refers to asbestos material covering pipes.
- 4.1.2 Square feet refers to the surface area of asbestos-containing material on other facility components.
- 4.1.3 Cubic feet refers to the volume of asbestos-containing material which has been removed from facility components and for which the linear footage and/or square footage cannot be determined.

4.2 Demolition Project With No Asbestos Present

If a written Notification of Demolition and Renovation is required to be submitted to the District, a Fee of ~~\$315~~\$323 will be charged for the demolition of a structure where no asbestos is present.

4.3 Demolition Project Involving Asbestos Removal

Where a demolition project includes the removal of asbestos-containing material from the facility prior to the wrecking of the structure, the removal is treated as a separate

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

renovation project for purposes of determining the fees. Therefore, a separate fee is charged for the demolition project and for the renovation project, although both project types may be included in a single Notification.

4.4 Demolition or Renovation Projects Involving Multiple Structures

- 4.4.1 Where a demolition project includes multiple structures, each independent structure is treated as a separate project for purposes of determining the fees. Therefore a separate fee is charged for the demolition of each structure, although a single Notification may include all the structures.
- 4.4.2 Where a renovation project includes multiple structures, the aggregate of all RACM is used in determining the fees.

4.5 Schedule of Fees

<u>Type of Project</u>	<u>Fee</u>
4.5.1 Demolitions of structures involving: less than 160 sq. ft. RACM, or less than 260 linear ft. RACM less than 35 cubic ft. RACM (including where no asbestos is present)	\$ <u>315,323</u>
4.5.2 Demolitions or Renovations involving: between 160 and 999 sq. ft. RACM, or between 260 and 499 linear ft. RACM 35 cubic ft. or greater RACM	\$ <u>548,562</u>
4.5.3 Demolitions or Renovations involving: between 1000 and 1499 sq. ft. RACM, or between 500 and 749 linear ft. RACM	\$ <u>706,724</u>
4.5.4 Demolitions or Renovations involving: between 1500 and 1999 sq. ft. RACM, or between 750 and 999 linear ft. RACM	\$ <u>864,886</u>
4.5.5 Demolitions or Renovations involving: between 2000 and 4000 sq. ft. RACM, or	\$ <u>1,018,1,044</u>

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

between 1000 and 2000 linear ft. RACM

- 4.5.6 Demolitions or Renovations involving:
greater than 4000 sq. ft. RACM, or \$1,1661,196
greater than 2000 linear ft. RACM

PART 5 DELINQUENCY PENALTIES

5.1 Asbestos NESHAP Fee Penalties

If any fee payment required pursuant to Part 3 of this Rule is not submitted within 30 days of the issuance date of the District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.

- 5.1.1 For purposes of this Part any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.
- 5.1.2 If no fee payment is submitted within the time prescribed by Section 5.1.1, a delinquency penalty of 50 percent of the amount of the billed fee, to a maximum of \$5,000, shall be added to the amount of the fee due.
- 5.1.3 If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.
- 5.1.4 If a fee payment is delinquent and the fee plus the delinquency penalty is not received within 60 days of the issuance date of the District's billing statement, the delinquency penalty shall be increased to 75 percent of the original amount due, to a maximum of \$7,500.
- 5.1.5 If, in the case of a failure to pay Asbestos NESHAP fees required pursuant to Part 3, the delinquent fee plus penalties assessed pursuant to Section 5.1.4 are not submitted within 90 days of the issuance date of the District's billing statement, the appropriate party shall be considered to be in default of its Asbestos NESHAP fee obligation and in violation of this Rule. This fee plus penalties constitutes a legal obligation owing

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

to the District for work done in furtherance of the project for which notification was issued to the District, and may be recovered in any appropriate civil action.

5.2 Extension of Payment Period by the APCO

The 30-day payment period for fee payment required pursuant to Part 3 of this Rule may be extended for extraordinary circumstances at the discretion of the Air Pollution Control Officer (APCO). The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.

5.3 Waiver of Penalty by the APCO

The penalty for fee delinquency may be waived for extraordinary circumstances at the discretion of the APCO, provided that there have been no prior delinquencies. The adequacy of cause to waive the penalty shall be decided on a case-by-case basis by the APCO.

* * * * *

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 308. TITLE V: FEDERAL OPERATING PERMIT FEES

(Adopted November 17, 1993; Revised June 21, 1995, June 19, 1996 , June 18, 1997; June 17, 1998; June 16, 1999; June 21, 2000; June 20, 2001; June 19, 2002; June 18, 2003; June 16, 2004; June 15, 2005; June 21, 2006; June 20, 2007; ~~and~~ June 18, 2008; and Proposed for Revision June 16, 2010.)

CONTENTS

1.1	Purpose.....	2
1.2	Applicability	2
1.3	Exemptions	2
1.4	Effective Dates.....	2
1.5	References.....	2
PART 2	DEFINITIONS.....	2
2.1	Air Pollution Control Officer (APCO)	3
2.2	District	3
2.3	Federal Clean Air Act (the Act).....	3
2.4	Federal Operating Permit (FOP).....	3
2.5	Federally Enforceable Conditions	3
2.6	National Ambient Air Quality Standards (NAAQS)	3
2.7	Permit.....	3
2.8	State Implementation Plan (SIP).....	4
2.9	Title V	4
2.10	United States Environmental Protection Agency (USEPA)	4
PART 3	REQUIREMENTS.....	4
3.1	Application Fees	4
3.2	Federal Operating Permit Fee	4
3.3	Evaluation Fees.....	5
PART 4	ADMINISTRATIVE REQUIREMENTS	5
4.1	Annual Federal Operating Permit Fees (AFOPF).....	5
4.2	Federal Operating Permit Fee Penalties.....	6
4.3	Extension of Payment Period by the APCO	7
4.4	Waiver of Penalty by the APCO	7

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to provide funding for the issuance and enforcement of Federal Operating Permits (FOPs) which meet the requirements of Title V of the Federal Clean Air Act and amendments (the Act). The fees required pursuant to this Rule shall be in addition to fees for District permits to operate and other fees required by other District rules.

1.2 Applicability

The provisions of this Rule shall apply to any facility that is required to apply for and maintain a Federal Operating Permit pursuant to Rule 218 (Title V: Federal Operating Permits).

1.3 Exemptions

Reserved.

1.4 Effective Dates

This Rule, as most recently revised, is effective on July 1, ~~2008~~2010.

1.5 References

The requirements of this Rule arise from the provisions of the Federal Clean Air Act and its amendments (42 U.S.C Section 7401 *et seq.*); and USEPA regulations setting forth the requirements for an Operating Permit Program (Final Rule, 40 CFR Part 70). Referenced or related District Rules include: 218 (Title V: Federal Operating Permits); and 300 (District Fees).

PART 2 DEFINITIONS

2

~~6/180/86/16/10~~

Proposed Rule 308 (Title V: Federal Operating Permit Fees)

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

2.1 Air Pollution Control Officer (APCO)

The Air Pollution Control Officer for the Monterey Bay Unified Air Pollution Control District.

2.2 District

The Monterey Bay Unified Air Pollution Control District (MBUAPCD).

2.3 Federal Clean Air Act (the Act)

Federal Clean Air Act and its amendments (42 U.S.C Section 7401 *et seq.*)

2.4 Federal Operating Permit (FOP)

A Federal Operating Permit issued under the provisions of Rule 218.

2.5 Federally Enforceable Conditions

Those conditions on a permit which require compliance with a federally enforceable requirement, as defined in District Rule 218.

2.6 National Ambient Air Quality Standards (NAAQS)

Air quality standards set by the Administrator of the United States Environmental Protection Agency to protect public health and welfare and, in general, consisting of primary and secondary standards. Primary standards are to protect the public health, while secondary standards are intended to protect the public welfare, e.g., plants, crops, and materials.

2.7 Permit

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

In this Rule, permit means a Federal Operating Permit unless otherwise noted.

2.8 State Implementation Plan (SIP)

The plan which is required by the Act to be submitted by each State, and approved by the USEPA, to achieve and maintain federal ambient air quality standards (NAAQS).

2.9 Title V

Title V (Federal Operating Permits Program) of the Clean Air Act.

2.10 United States Environmental Protection Agency (USEPA)

The Administrator or appropriate delegate of the United States Environmental Protection Agency.

PART 3 REQUIREMENTS

3.1 Application Fees

3.1.1 Every applicant for an initial FOP, or the renewal or modification of an existing FOP, shall pay a filing fee of ~~\$43116~~ \$323.

3.1.2 Every applicant for a change of ownership where a FOP has been issued under Rule 218 shall pay a filing fee of ~~\$43116~~, plus a fee based on the District's actual cost to complete the permit process, at ~~\$43116~~ per hour of staff time.

3.2 Federal Operating Permit Fee

Initially, the FOP Fee is due on an annual basis commencing upon the first annual renewal date of the facility's District Permit(s) to Operate. Upon issuance of the FOP, the annual renewal date will become the date of issuance of the FOP and the Annual Federal Operating Permit Fee (AFOPF) will be due one year after the date of permit

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

issuance and annually thereafter. The AFOPF shall be calculated as set forth in Section 4.1 of this Rule. This AFOPF shall be due and payable 30 days after a statement is issued by the District. In the event all or part of the fee prescribed in the statement is not paid in accordance with these provisions within this 30-day period, the penalties prescribed by Section 4.2 of this Rule shall apply.

3.3 Evaluation Fees

Every applicant who files a FOP application with the APCO pursuant to Section 3.1 of Rule 218 shall, in addition to the filing fee prescribed herein, pay an evaluation fee of ~~\$443~~116 per hour for every District staff hour necessary to complete the FOP evaluation pursuant to Rule 218. This evaluation fee shall be due and payable 30 days after a statement is issued by the District. The FOP shall be issued upon receipt of the applicant's payment of this fee. In the event all or part of the fee prescribed in the statement is not paid in accordance with these provisions within this 30-day period, the penalties prescribed by Section 4.2 of this Rule shall apply.

PART 4 ADMINISTRATIVE REQUIREMENTS

4.1 Annual Federal Operating Permit Fees (AFOPF)

All sources subject to this Rule shall complete the Annual Renewal Information Request provided by the District within the time period specified in the Request. Failure to timely complete and submit the Request may result in suspension of the FOP.

- 4.1.1 The District will determine the permittee's AFOPF based upon the permittee's Billable Emissions, as defined by Section 2.3 of Rule 300 (Permit Fees), multiplied by the dollar amount per ton shown in Section 4.1.2 of this Rule. The minimum AFOPF shall be ~~\$752~~772 per year.

For facilities with annual Billable Emissions greater than or equal to 300 tons per year as of June 18, 1997, the Billable Emissions will be based on the four-year rolling emission average for calendar years 1998 through 2001. For any facility newly determined to be such a major source after June 18, 1997, AFOPFs will be determined from the average of the first four year period representative of normal operation. Until this consecutive four year period is attained, major source

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

AFOPFs will be averaged for the partial period.

4.1.2 The AFOPF dollar amount per ton of emissions will be adjusted annually, if necessary, during the District's budget process based upon the CPI as required by the Act and upon the emissions inventory for sources subject to Rule 218. Presently, the fees are ~~\$23.67~~24.29 per ton of emissions.

4.1.2.1 The AFOPF fees for landfill gas emissions from municipal solid waste landfills are ~~\$2.28~~2.34 per ton of landfill gas emissions.

4.2 Federal Operating Permit Fee Penalties

If any fee payment required pursuant to Part 3 of this Rule is not submitted within 30 days of the issuance date of the District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.

4.2.1 For purposes of this Part any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.

4.2.2 If no fee payment is submitted within the time prescribed by Section 4.2.1, a delinquency penalty of 50 percent of the amount of the billed fee, to a maximum of \$5,000, shall be added to the amount of the fee due.

4.2.3 If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.

4.2.4 If a fee payment is delinquent and the fee plus the delinquency penalty is not received within 60 days of the issuance date of the District's billing statement, the delinquency penalty shall be increased to 75 percent of the original amount due, to a maximum of \$7,500.

4.2.5 If, in the case of a failure to pay evaluation fees required pursuant to Part 3, the delinquent fee plus penalties assessed pursuant to Section 4.2.4 are not submitted within 90 days of the issuance date of the District's billing statement, the permittee shall be considered to be in default of its evaluation fee obligation and in violation of this Rule. In such case the APCO shall immediately notify the applicant that its FOP

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

is denied and that further operation of the subject equipment without a valid permit is prohibited. Such denial shall not preclude the applicant from submitting another permit application and beginning the process anew, although the delinquent fee and penalty shall become an obligation owing to the District, which may be recovered along with any permit fee from such new application.

- 4.2.6 If, in the case of a failure to pay AFOPF required pursuant to Part 3, the delinquent AFOPF plus penalties assessed pursuant to Section 4.2.4 are not submitted within 90 days of the issuance date of the District's billing statement, the FOP shall automatically expire for failure to renew. In such case, the District shall immediately notify the permittee that its FOP has expired and that further operation of the subject equipment without a valid permit is prohibited. Such expiration shall not preclude the permittee from submitting an application for a replacement permit, although the delinquent fee and penalty shall become an obligation owing to the District, which may be recovered along with any permit fee from such new application.

4.3 Extension of Payment Period by the APCO

The 30-day payment period for fee payment required pursuant to Part 3 of this Rule may be extended for extraordinary circumstances at the discretion of the Air Pollution Control Officer (APCO). The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.

4.4 Waiver of Penalty by the APCO

The penalty for fee delinquency may be waived for extraordinary circumstances at the discretion of the APCO, provided that there have been no prior delinquencies. The adequacy of cause to waive the penalty shall be decided on a case-by-case basis by the APCO.

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**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 309. HEARING BOARD FEES

(Adopted June 19, 2002; June 18, 2003; June 16, 2004; June 15, 2005; June 21, 2006; June 20, 2007; ~~and~~ June 18, 2008; and Proposed for Revision June 16, 2010.)

CONTENTS

PART 1	GENERAL.....	1
1.1	Purpose.....	2
1.2	Applicability	2
1.3	Exemptions	2
1.4	Effective Dates.....	2
1.5	References.....	2
PART 2	DEFINITIONS.....	2
2.1	Emergency Variance.....	2
2.2	Health & Safety Code (HSC).....	3
2.3	Increments of Progress.....	3
2.4	Intervention.....	3
2.5	Variance	3
PART 3	REQUIREMENTS.....	3
3.1	Application Fees	3
3.2	Excess Emission Fee.....	4
3.3	Excess Visible Emission Fee	5
3.4	Minimum Fees	5
PART 4	ADMINISTRATIVE REQUIREMENTS	6
4.1	Application Fees	6
4.2	Applicability of Excess Emission Fees.....	6
4.3	Fee Determination.....	6
4.4	Hearing Board Adjustment of Excess Emission Fees.....	6
4.5	Excess Emission Fee Payment.....	6
4.6	Discretionary Powers.....	6
4.7	Public Agencies	7
PART 1	GENERAL	

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

1.1 Purpose

The purpose of this Rule is to provide funding for Hearing Board Activities.

1.2 Applicability

The provisions of this Rule shall apply to any person or facility that applies for a variance, or appeals a permit decision.

1.3 Exemptions

Reserved.

1.4 Effective Dates

This Rule, as most recently revised, is effective on July 1, ~~2008~~2010.

1.5 References

The requirements of this Rule arise from California Health & Safety Code Sections 40701.5, and 40800 *et seq.* Referenced or related District Rules include: Regulation VI (Hearing Board Rules).

PART 2 DEFINITIONS

2.1 Emergency Variance

A variance issued pursuant to HSC Section 42359.5.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

2.2 Health & Safety Code (HSC)

The California Health and Safety Code.

2.3 Increments of Progress

Identified compliance milestones with identified due dates which are included as a condition for the issuance of a variance.

2.4 Intervention

To become involved as a third party to a pending variance application, for the protection of one's own interests.

2.5 Variance

Official approval to exceed existing permit or regulatory requirements.

PART 3 REQUIREMENTS

3.1 Application Fees

3.1.1 ~~\$730~~749 for each application for variance exceeding 90 days, in accordance with HSC Section 42350, including applications on behalf of a class of applicants, which meet the requirements of the Hearing Board Rules for a valid and proper class action for variance, plus \$366 for each hearing in addition to the first hearing necessary to dispose of said variance application.

3.1.2 ~~\$511~~524 for each application for variance not exceeding 90 days, in accordance with HSC Section 42350, including applications on behalf of a class of applicants, which meet the requirements of the Hearing Board Rules for a valid and proper class action for variance, plus ~~\$366~~376 for each hearing in addition to the first hearing necessary to dispose of said variance application.

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

- 3.1.3 ~~\$511524~~ for each application to modify a variance, in accordance with HSC Section 42356, plus ~~\$366376~~ for each hearing in addition to the first hearing on said application to modify a variance, necessary to dispose of the modification application.
- 3.1.4 ~~\$511524~~ for each application to modify a variance's schedule of Increments of Progress or Final Compliance Date, in accordance with HSC Section 42357, plus ~~\$366376~~ for each hearing in addition to the first hearing on an application to modify the schedule of a variance, necessary to dispose of the modification application.
- 3.1.5 ~~\$511524~~ for each application for approval of a Schedule of Increments of Progress in accordance with HSC Section 41703, plus ~~\$366376~~ for each hearing in addition to the first hearing on said application for approval of a schedule of Increments of Progress, pursuant to HSC Section 41703.
- 3.1.6 ~~\$366376~~ for each application for an emergency variance, in accordance with HSC Section 42359.5.
- 3.1.7 ~~\$511524~~ for each application for Hearing Board review of the District's denial of a permit in accordance with HSC Section 42302, plus ~~\$366376~~ for each hearing in addition to the first hearing on said application for review.
- 3.1.8 ~~\$511524~~ for each application for Hearing Board review of the District's issuance of a permit in accordance with HSC Section 42302.1, plus ~~\$366376~~ for each hearing in addition to the first hearing on said application for review.
- 3.1.9 ~~\$511524~~ for each application for Hearing Board review of the District suspension of a permit in accordance with HSC Section 42306, plus ~~\$366376~~ for each hearing in addition to the first hearing on said application for review.
- 3.1.10 ~~\$511524~~ for each application for intervention in a pending variance action pursuant to Section 5.7 of Regulation VI, plus ~~\$366376~~ for each hearing in addition to the first hearing in which any intervener participates as a party.
- 3.2 Excess Emission Fee

Each applicant for a variance shall pay to the Clerk of the Hearing Board, in addition to

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

the filing fee required, an excess emission fee based on the difference between the emissions allowed by the District rules and the maximum emissions, other than those described in Section 3.3 below, allowed by the variance. The fee shall be ~~\$0.50~~0.51 per pound of excess emissions.

3.3 Excess Visible Emission Fee

Each applicant for a variance from a limitation upon the opacity of emissions shall pay to the Clerk of the Hearing Board, in addition to any filing fees required and any excess emission fee required by Section 3.2 above, an excess visible emission fee based on the difference between the percent opacity allowed by the limitation and the maximum percent opacity of the emissions allowed from the source or sources operating under the variance, in accordance with the fee set forth in Subsection 3.3.1 below.

In the event more than one rule limiting the discharge of the same contaminant is violated, the excess emission fee or excess visible emission fee shall consist of the sum of fees for all individual excesses. For the purpose of this Rule, opacity rules and particulate mass emission rules shall not be considered rules limiting the discharge of the same contaminant.

3.3.1 Excess Visible Emission Fee

For each source excessive opacity emissions the fee is calculated as follows:

$$\text{Fee} = (\text{Opacity* allowed by variance} \\ - \text{opacity allowed by rules}) \times \\ \text{number of days allowed in variance} \times \text{\$1.401.44}$$

* Where the opacity equals the maximum opacity of emissions in percent (not decimal equivalent) allowed by the variance. Where the emissions are darker than the degree of darkness equivalent to the allowed Ringelmann number, the percentage equivalent of the excess degree of darkness shall be used as "Opacity".

3.4 Minimum Fees

When a variance is granted from a rule or rules which limit the discharge of air contaminants, such that an excess emission fee or excess visible emission fee is due, a

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

fee of a least ~~\$366~~376 shall be applied.

PART 4 ADMINISTRATIVE REQUIREMENTS

4.1 Application Fees

All application fees shall be submitted with the application with the exception of application fees for emergency variances which must be submitted within four (4) days of receipt of the application.

4.2 Applicability of Excess Emission Fees

The provisions of Section 3.2 above shall apply only to those rules or statutes that specify quantitative emission limits.

4.3 Fee Determination

The excess emission fee shall be calculated based upon the requested number of days of operation under variance multiplied by the excess emissions per day allowed by the variance, as set forth in Sections 3.2 and 3.3 above.

4.4 Hearing Board Adjustment of Excess Emission Fees

The Hearing Board may adjust the excess emission fee required by Sections 3.2 and 3.3 based on evidence regarding emissions presented at the time of the hearing.

4.5 Excess Emission Fee Payment

The excess emission fee required by Sections 3.2 and 3.3 shall be paid within ten (10) days of the effective date of the variance.

4.6 Discretionary Powers

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

When it is determined by the Hearing Board that payment of fees required by Sections 3.2 and 3.3 would present an economic hardship to the petitioner, the petitioner may be exempted from such fees, or a portion of them.

4.7 Public Agencies

Public agencies qualifying under Government Code Section 6103 shall be exempt from payment of excess emission fees.

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**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

RULE 310. AGRICULTURAL DIESEL ENGINE REGISTRATION FEES

(Adopted May 16, 2007; Revised June 18, 2008; and Proposed for Revision June 16, 2010.)

CONTENTS

PART 1	GENERAL.....	2
1.1	Purpose.....	2
1.2	Applicability	2
1.3	Exemptions	2
1.4	Effective Dates.....	2
1.5	References.....	2
PART 2	DEFINITIONS.....	2
2.1	Air Pollution Control Officer (APCO)	2
2.2	District	3
2.3	In-Use Diesel Engine.....	3
2.4	New Diesel Engine	3
2.5	Owner or Operator	3
PART 3	REQUIREMENTS.....	3
3.1	Application Fees	3
3.2	Annual Registration Fees.....	4
PART 4	ADMINISTRATIVE REQUIREMENTS	4
4.1	Information Requests.....	4
4.2	Registration Fee Penalties.....	4
4.3	Extension of Payment Period by the APCO	5
4.4	Waiver of Penalty by the APCO.....	6

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to provide funding for the issuance and enforcement of Registrations for Agricultural Diesel Engines.

1.2 Applicability

The provisions of this Rule shall apply to any facility that is required to apply for and maintain a Diesel Engine Registration pursuant to Rule 220 (Agricultural Diesel Engine Registration).

1.3 Exemptions

Reserved.

1.4 Effective Dates

This Rule is effective on July 1, ~~2008~~2010.

1.5 References

The requirements of this Rule arise from the provisions of Health and Safety Code Sections 39656, 39659, and 39666. Referenced or related District Rules include: 220 (Agricultural Diesel Engine Registration); and 1010 (Air Toxic Control Measure for Stationary Compression Ignition Engines).

PART 2 DEFINITIONS

2.1 Air Pollution Control Officer (APCO)

2

~~6/18/08~~6/16/10

Proposed Rule 310 (Agricultural Diesel Engine Registration Fees)

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

The Air Pollution Control Officer for the Monterey Bay Unified Air Pollution Control District.

2.2 District

The Monterey Bay Unified Air Pollution Control District (MBUAPCD).

2.3 In-Use Diesel Engine

A diesel engine that is not a New Diesel Engine.

2.4 New Diesel Engine

A diesel engine that is purchased on or after March 1, 2008.

2.5 Owner or Operator

Any person subject to the requirements of this Rule, including but not limited to:

2.5.1 an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation including but not limited to, a government corporation; and

2.5.2 Any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

PART 3 REQUIREMENTS

3.1 Application Fees

3.1.1 Every applicant for an in-use diesel engine registration shall pay the following fees:

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

3.1.1.1 ~~\$314319~~ for the first engine and ~~\$156160~~ for each additional engine registered to the same owner or operator if the applications are submitted to the District after February 29, 2008.

3.1.2 Every applicant for a new diesel engine registration shall pay the following fees:

3.1.2.1 ~~\$156160~~ for the first engine and ~~\$7880~~ for each additional engine registered to the same owner or operator provided the application(s) are submitted to the District within 90 days of purchase.

3.1.2.2 ~~\$314319~~ for the first engine and ~~\$156160~~ for each additional engine registered to the same owner or operator if the applications are not submitted to the District within 90 days of purchase.

3.2 Annual Registration Fees

The owner or operator of each individual operational diesel engine which is registered shall pay an annual registration fee of ~~\$5758~~. The owner or operator of each individual non-operational diesel engine which is registered shall pay an annual registration fee of ~~\$2930~~.

These fees will be billed annually in the month of July and shall be due and payable 30 days after a statement is issued by the District. In the event all or part of the fee prescribed in the statement is not paid in accordance with these provisions within this 30-day period, the penalties prescribed by Section 4.2 of this Rule shall apply.

PART 4 ADMINISTRATIVE REQUIREMENTS

4.1 Information Requests

All owners or operators subject to this Rule shall complete any Information Requests provided by the District within the time period specified in the Request. Failure to timely complete and submit the Request may result in suspension of the Registration.

4.2 Registration Fee Penalties

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

If any fee payment required pursuant to Part 3 of this Rule is not submitted within 30 days of the issuance date of the District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.

- 4.2.1 For purposes of this Part any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.
- 4.2.2 If no fee payment is submitted within the time prescribed by Section 4.2.1, a delinquency penalty of 50 percent of the amount of the billed fee, to a maximum of \$5,000, shall be added to the amount of the fee due.
- 4.2.3 If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.
- 4.2.4 If a fee payment is delinquent and the fee plus the delinquency penalty is not received within 60 days of the issuance date of the District's billing statement, the delinquency penalty shall be increased to 75 percent of the original amount due, to a maximum of \$7,500.
- 4.2.5 If, in the case of a failure to pay the annual fees required pursuant to Part 3, the delinquent annual fees plus penalties assessed pursuant to Section 4.2.4 are not submitted within 90 days of the issuance date of the District's billing statement, the Registration shall automatically expire for failure to renew. In such case, the District shall immediately notify the Owner or Operator that the Registration has expired and that further operation of the equipment without a valid registration is prohibited. Such expiration shall not preclude the Owner or Operator from submitting an application for a replacement Registration, although the delinquent fee and penalty shall become an obligation owing to the District, which may be recovered along with any Registration fee from such new application.

4.3 Extension of Payment Period by the APCO

The 30-day payment period for fee payment required pursuant to Part 3 of this Rule may be extended for extraordinary circumstances at the discretion of the Air Pollution Control Officer (APCO). The adequacy of cause to extend the period shall be decided

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION III
FEES**

on a case-by-case basis by the APCO.

4.4 Waiver of Penalty by the APCO

The penalty for fee delinquency may be waived for extraordinary circumstances at the discretion of the APCO, provided that there have been no prior delinquencies. The adequacy of cause to waive the penalty shall be decided on a case-by-case basis by the APCO.

* * * * *

PROPOSED APPENDIX H

SCHEDULE OF COSTS

The District has established a list of costs for reproducing and mailing certain items which are requested on a recurring basis. These charges reflect a basic charge plus estimated postage for standard mailing procedures and are subject to change without notice. Individuals who wish to receive material using other mailing mechanisms (eg. express mail) must pay any additional mailing charges.

District Rules and Regulations	\$ 156.00 <u>160.00</u> each
Annual Air Monitoring Data Summaries	\$ 17.00 each
Board and Advisory Committee Agenda	\$ 52.00 <u>53.00</u> per year
Board Packets	\$ 184.00 <u>189.00</u> per year
Advisory Committee Packets	\$ 124.00 <u>127.00</u> per year
Special Notice Requests	\$ 37.00 <u>38.00</u> per year
Administrative Code	\$ 58.00 <u>60.00</u> each
Air Quality Management Plan	\$ 47.00 <u>48.00</u> each
Copies	\$ 0.11 per page

MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT

<Protocol >

Subject: **Mutual Settlement Program** Final: X
Adoption Date: 9-16-98; revised 6-21-00; 6-20-01; 6-19-02; Pages: 9
6-18-03; 6-16-04; 6-15-05; 6-21-06; 6-20-07; ~~and Revised 6-18-08;~~ and
Proposed for Revision 6-16-2010

This Protocol document describes District mutual settlement procedures for violations of air quality rules and regulations, and is intended to provide guidance to District personnel regarding the duties associated with that process.

PURPOSE

The Mutual Settlement Program provides a forum to resolve significant violations of air quality regulations without formal legal proceedings. The operation of a local mutual settlement program provides an opportunity for direct District and respondent interaction to settle violations and achieve compliance.

PROGRAM DESCRIPTION

Notices of Violation are usually settled by mutual agreement between the District and the respondent. When a mutual settlement has been reached, and its obligations fulfilled, the respondent is released from further District liability for that incident. Settlements include civil penalties, emission reductions, and other alternatives detailed in the attached Mutual Settlement Schedule. The District's Mutual Settlement Program is operated from within the Compliance Division by District staff.

STATUTORY PROVISIONS

The California Health and Safety Code section 42403 grants authority to local Air Pollution Control Districts to impose civil penalties as set forth in sections 42400 and 42402 of up to \$50,000 per day for violations of air pollution rules and regulations, and provides guidance in assuring that penalties are commensurate with the severity of the violation.

CASE REVIEW

A mutual settlement case is initiated when evidence of a significant violation is discovered. Significant violations are defined as noncompliance events which do not qualify for handling as minor violations as set forth in the District's Minor Violation Rule 107, or for notices to correct issued to gasoline dispensing facilities in accordance with Health and Safety Code section 41960.2.

For significant violations, the Compliance Inspector documents the occurrence in a report of noncompliance. This report may include supporting documents, photographs and other evidence to document the incident. If a violation is discovered by District staff other than a Compliance Inspector, that person forwards a report of noncompliance along with any supporting evidence to the Compliance Division Supervising Inspector. The Supervising Inspector will advise the Compliance Inspector for the area in which the violation occurred of the incident, and may also forward all case documentation if additional case development or investigation is warranted.

The report of noncompliance is submitted for subsequent review by the Supervising Inspector, the Compliance Division Manager and the coordinator of the Mutual Settlement program, prior to issuance of a notice of violation. This review is to assure the report adequately evidences an actionable violation by the party identified as being responsible.

Upon concurrence that the report of noncompliance contains the required elements for prosecution, a notice of violation is processed for certified mailing to the respondent, with a copy to the Compliance Inspector.

NOTICES OF VIOLATION

A notice of violation is sent via certified mail to the person(s) legally responsible for the violation(s), detailing the date, place and circumstances surrounding the violation, and requesting information relating to the incident in the form of a questionnaire. The questionnaire is intended to allow the respondent(s) the opportunity to explain their perception of the incident and to elaborate on any corrective actions and preventative measures initiated to achieve and maintain compliance. Office conferences are encouraged in the text of the notice of violation, in the belief that such meetings to discuss compliance issues and settlement options are often the most productive method, leading to a better understanding by all parties.

A written response from the respondent is requested in the notice of violation to be completed and returned within a two week period unless an extension has been requested and granted.

RESPONSES TO NOTICES OF VIOLATION

When the response to the notice of violation is received by the District, it is routed to the Mutual Settlement Program Coordinator for review, who will forward a copy to the Compliance Inspector, requesting comments within one week. All elements of the response are taken into consideration during the mutual settlement process, including how the violation occurred, what actions were taken to remedy the violation, how rapidly corrective actions took place, and other circumstances important when considering settlement.

OFFICE CONFERENCES

Face-to-face meetings between the respondent and District staff are encouraged to enhance communication and cooperation during the mutual settlement process. Typically, management-level industry staff will meet with the District's Mutual Settlement Program Coordinator and the Compliance Inspector who documented the violation. Any number of respondent representatives may attend the meeting to enhance the effectiveness of the communication process. Other District staff may also attend office conferences when technical permitting or other issues are involved. These meetings may take place at the District office, the offices of the respondent, the physical location of the violation, or another site agreed upon by those involved.

During office conferences, the issues surrounding the violation, its correction and future avoidance are discussed. Reviewing the specific circumstances of the violation and the respondent's intentions at the time help to clarify the liability issues, and to assure the respondent understands the compliance requirements. Settlement options are also discussed at these meetings to further that process. More than one such meeting may take place prior to settlement of any given case.

SETTLEMENT OFFERS

Settlement offers are comprised of civil penalties which include two distinct penalty elements. An **economic benefit penalty**, intended to remove any financial gains associated with noncompliance, and a **gravity based penalty**, related to the severity of the violation.

Economic Benefit Penalties - Economic benefit is the term used to describe the financial gain realized by being out of compliance. It is important to remove any economic benefit of noncompliance in addition to the application of gravity based penalties. Economic benefit penalties are limited to the avoided costs that would have been incurred had the respondent operated in compliance.

Gravity Based Penalties - An initial gravity based penalty assessment is calculated using objective criteria to determine violation severity and to apply penalties of uniform impact commensurate with a respondent's ability to pay. The gravity based penalty calculation contained in the Mutual Settlement Schedule includes the emission impact of the violation, the willfulness with which the violation was committed, the violation history of the respondent, and the size of the respondent's business. The calculated gravity based penalty is then combined with the economic benefit penalty to establish a civil penalty used to guide the ultimate settlement of any given violation. The actual settlement offer may be entirely monetary, involve alternatives

to monetary penalties, or incorporate both elements. Reductions in the gravity based penalty are available for sources who voluntarily enhance compliance through improved procedures, whereas economic benefit penalties are applied without reduction to assure any gains achieved through noncompliance have been removed.

While standard objective criteria are used to determine civil penalties, a case by case determination will guide the specific settlement offer for each individual notice of violation. Settlement options are discussed with the source to arrive at a mutually acceptable resolution. The mutual settlement is then formalized in a written offer and mailed to the source.

MUTUAL SETTLEMENT AGREEMENTS

Settlement of a notice of violation may be accomplished in a variety of ways. Each violation settlement is determined on a case by case basis depending on its circumstances. Settlements include civil penalties and/or a combination of alternative settlement options. When a respondent has accepted and executed the terms of the settlement offer, a written release from liability is issued by the District which finalizes the mutual settlement case.

WHEN MUTUAL SETTLEMENT IS NOT ACHIEVED

If, during the course of mutual settlement negotiations, a settlement cannot be reached and the parties become deadlocked, or when the respondent has refused to participate, one or more of the following options will be utilized to bring closure to the mutual settlement case.

- **District filing suit in Small Claims Court.** Upon Board approval, a suit in small claims court may be filed against the responsible party to recover civil penalties.
- **District filing of a civil suit in municipal or Superior Court.** Upon Board approval, District Counsel may file a complaint against the respondent to recover civil penalties and/or to seek an injunction.
- **District referral to District Attorney's office.** Upon Board approval, cases which appear to involve criminal culpability are referred to the District Attorney's office by District Counsel for criminal prosecution.
- **District Petition for Abatement Order or Permit Revocation.** The District may petition the Hearing Board for an abatement order or permit revocation action in cases of continuing violations.
- **Violation placed into Abeyance.** For enforcement actions in which the respondent cannot be contacted or located for settlement, and which contain no known criminal elements, the notice of violation will be placed in abeyance for the duration of the three year statute of limitations period.

REFERRAL OF CASES TO STATE OR FEDERAL AGENCIES

For any case in which it has been determined that there may exist a conflict of interest between the respondent and the District, or when the investigation or prosecution requirements exceed the resources of the District, that case may be referred to either local, State or federal agencies.

PENALTY SHARING WITH FIRE DEPARTMENTS

Civil penalties received by the District as part of mutual settlements in open burning cases shall be shared with fire departments under the following circumstances.

- If the notice of violation is based solely on the incident report provided by the fire department which responded to an illegal open burn, 50% of the civil penalty shall be shared with the fire department.
- If the notice of violation required additional District investigation beyond the documentation provided by the fire department, 25% of the civil penalty shall be shared with the fire department.

REWARDS PROGRAM

A rewards program has been developed to establish a process for the payment of rewards to persons providing information contributing to the imposition of civil penalties in accordance with Health and Safety Code section 42405.1, and detailed in District Rule 108.

MUTUAL SETTLEMENT SCHEDULE

ECONOMIC BENEFIT PENALTIES

When a respondent has garnered an economic benefit from the act constituting a violation, that benefit shall be removed in addition to gravity based penalties. Economic benefit shall be calculated based on the avoided cost that would have been incurred by the respondent had he/she been in compliance. Economic benefit penalties are not subject to reduction, and are added to the calculated gravity based penalty to develop a monetary civil penalty.

GRAVITY BASED PENALTY SCHEDULE ELEMENTS

The penalty assessment factors listed in Health and Safety Code section 42403 are incorporated into this schedule to calculate civil penalties. Objective criteria that consider the emission impact of the violation, the willfulness with which the violation was committed, the violation history of the respondent, and the size of the respondent's business are used to determine the initial gravity based penalty. Affirmative actions taken by the respondent to enhance future compliance shall be used to reduce gravity penalties by as much as 30%.

DEFINITIONS

Minor emission	Failure to comply with emission control requirements, and/or; Emissions without significant impact or consequence to the environment, the public, or to property.
Significant emission	Emissions having a substantial impact or consequence to the environment, the public, or to property.
Prior violation	A violation of the same District rule or regulation, state statute or Hearing Board order within the past 3 years.
Negligence	A failure to take reasonable measures to prevent a violation from occurring.
With Knowledge	Having knowledge of a violation and failing to take immediate remedial action.
Intentional	A deliberate action known to be a violation.
Business Size	The gross annual business receipts, or for government and non-profit organizations, the annual operating budget.

GRAVITY BASED PENALTY CALCULATION

Gravity Based Penalty Calculation: \$~~146~~150 (A)(B)(C)(D)

The gravity based penalty is calculated by multiplying a \$~~146~~150 minimum penalty value by four factors, where:

A = The emission impact of the violation

B = The degree of willfulness of the violation

C = The violation history of the respondent

D = The business size of the respondent

Emission Impact	Multiplier (A)
None	x1
Minor	x2
Significant	x4

Degree of Willfulness	Multiplier (B)
Negligence	x1
With Knowledge	x2
Intentional	x4

Prior Violations	Multiplier (C)
None	x1
One Violation	x2
Two Violations	x4

Business Size	Multiplier (D)
Less than \$1,000,000	x1
\$1,000,000 to \$5,000,000	x2
Greater than \$5,000,000	x4

Increasing severity in each of the four elements increases the multiplier two fold. As an example, in a violation which did not result in any emissions, a multiplier of one is used. In a violation which resulted in minor emissions, the multiplier is doubled to two. Violations which resulted in significant emissions are doubled again resulting in a multiplier of four.

Any egregious or contumacious violations, including those involving a significant amount of toxic materials, may be prosecuted outside this Schedule, using the maximum penalties codified in the California Health & Safety Code sections 42402 through 42402.5 of up to \$50,000 per day or be referred to the District Attorney's office for criminal prosecution per sections 42400 through 42400.5. Likewise, the District may depart from this Schedule under unusual

circumstances, including but not limited to "acts of God" or other circumstances where the cause of the violation was entirely beyond the respondent's control.

GRAVITY PENALTY REDUCTIONS

Compliance Enhancement

Respondents who voluntarily implement any or all of the below listed measures to assure future compliance may receive a penalty reduction of up to 30%. Each affirmative action will reduce the gravity based penalty by 10% for a maximum of 30%. Compliance enhancement measures at a permitted facility must be included as permanent modifications to existing operating permit conditions where applicable.

- Installation of in-situ emission recording equipment.
- Improved maintenance procedures.
- Improved operational procedures.
- Improved office procedures.
- Other compliance measures approved by the District.

CIVIL PENALTIES

The calculated economic benefit penalty is added to the adjusted gravity based penalty to establish the civil penalty for which the District will settle the violation. At the discretion of the District, all or a portion of the civil penalty may be discharged using alternative options listed below.

ALTERNATIVE MUTUAL SETTLEMENT OPTIONS

Supplemental Environmental Projects (SEP)

Respondents who voluntarily reduce their facility emissions, or who undertake any other environmentally beneficial project, may apply the cost of such modifications or SEP to discharge all or part of an assessed civil penalty, if approved by the District. Below are examples of qualifying SEP measures:

- Installation of more effective emission control technology.
- Reformulation of products to reduce emissions.
- Modification to utilize lower polluting alternative fuels.
- Innovative measures taken to substantially reduce emissions.

- Funding an emission reduction program approved by the District.
- Other environmentally beneficial projects approved by the District.

Emission reduction measures at a permitted facility must be included as permanent modifications to existing operating permit conditions where applicable, and are not eligible for emission reduction credits. To be approvable, a SEP must be voluntary, beyond any already-applicable requirement, and must not result in an inappropriate collateral benefit to the respondent.

Educational Programs

Educational alternatives to monetary civil penalties promote future compliance through awareness training. The District operates or promotes programs that include:

- For violations with less than significant impacts involving simple negligence, such as small open burning violations, the District operates educational alternatives to civil penalties through the Compliance Assistance program.
- Other compliance promotion programs approved by the District

Economic Hardship

When a respondent has demonstrated that the payment of a monetary civil penalty would prove detrimental to their livelihood, economic hardship options are evaluated, which include:

- A periodic payment schedule within their budget.
- Performance of their trade at no cost to local government or nonprofit organizations, upon District approval.
- Other options approved by the District.
