SCENARIO 2 (6%)

(Adopted September 2, 1977)(Amended May 5, 1978)(Amended March 5, 1982)
(Amended August 5, 1983)(Amended October 5, 1984)(Amended January 6, 1989)
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(Amended May 19, 2000)(Amended May 11, 2001)(Amended May 3, 2002)
(Amended June 6, 2003)(Amended July 9, 2004)(Amended June 3, 2005)

PROPOSED AMENDED RULE 303. HEARING BOARD FEES

(a) Filing and Appearance Fees

(1) Every applicant or petitioner in a proceeding before the Hearing Board shall pay to the Clerk of the Board, at the time of filing, a filing fee for each petition in accordance with the schedule set forth in Table III.

(2) If the hearing runs more than one day, supplemental appearance fees shall be assessed pursuant to Table III for each additional day of the hearing, unless otherwise ordered by the Hearing Board.

(b) Filing Fee Refunds

(1) In the event the Hearing Board reverses in total an appealed decision of the Executive Officer, the filing fee specified in subdivision (a) shall be refunded to the petitioner.

(2) In the event that the petition is withdrawn, and the petitioner notifies the Clerk of the Board in writing not less than four (4) days prior to the scheduled appearance, or the hearing is not held for any other reason, the petitioner shall be entitled to a refund of fifty percent (50%) of the filing fees.

(c) Publication Fees

Every petitioner for relief which requires published notice shall pay to the Clerk of the Board a fee to cover the actual cost of publication of notice(s) of hearing. The fee shall be due and payable within fifteen (15) days of the notification in writing of the amount due.

(d) Excess Emission Fee

(1) Each applicant or petitioner for a variance from these Rules and Regulations shall pay to the Clerk of the Board, in addition to the filing fees required in subdivision (a) an emission fee in accordance with the

schedule set forth in Table I, based on the total emissions discharged during the variance period in excess of that allowed by these rules or permit conditions, other than those described in subdivision (e) below. If the amount of the excess emission fee is less than that specified in subdivision (f), the applicant or petitioner shall pay the higher amount, unless otherwise ordered by the Hearing Board.

(2) In cases where the Hearing Board determines that calculations or estimations of excess emissions cannot be made, the petitioner shall pay the amount set forth in subdivision (f), unless otherwise ordered by the Hearing Board.

(3) In the event that more than one rule and/or permit condition limiting the discharge of the same contaminant is violated, the excess emission fee shall be based on the excess emissions resulting from the violation of the most stringent rule or permit condition. For the purposes of this subdivision, opacity rules and particulate mass emissions shall not be considered rules limiting the discharge of the same contaminant.

(e) Excess Visible Emission Fee

Each applicant or petitioner for a variance from Rule 401 and/or Health and Safety Code Section 41701 shall pay to the Clerk of the Board, in addition to the filing fees required in subdivision (a) above, and the excess emission fees required in (d) above (if any), an emission fee based on the difference between the percent opacity allowed by Rule 401 and/or Health and Safety Code Section 41701 and the percent opacity of the emissions allowed under the variance. Such fees shall be calculated in accordance with the schedule set forth in Table II.

(f) Minimum Excess Emission Fees

The excess emission fee remitted, regardless of calculations, shall be no less than $30.26~~28.55 for FY 04-05 and $28.55 for FY 05-06 and thereafter~~ for each day on which the excess emissions occur or are expected to occur at each facility during the variance period, unless otherwise ordered by the Hearing Board.

(g) Adjustment of Excess Emission Fees

The Hearing Board may adjust the excess emission fee required by subdivisions (d), (e), and (f) of this rule, at the request of the petitioner or upon motion of the Hearing Board, based on evidence regarding emissions presented at the time of the hearing.

(h) Small Business Eligibility

(1) Petitioners that meet the definition of Small Business as set forth in Rule 102- Small Business shall be assessed twenty percent (20%) of the fees required by subdivisions (d), (e), or (f), whichever is applicable.

(2) A request for exception as a small business shall be made by the petitioner under penalty of perjury on a declaration form provided by the Executive Officer, which shall be submitted to the Clerk of the Board at the time of filing of a petition for a variance.

(i) Group Variance Fees

(1) Petitioners filing as a group for a variance shall jointly pay the total filing fee specified in Table III. Each petitioner shall individually pay excess emission fees for their facility or product(s), as specified in subdivisions (d), and (e), or (f) whichever is applicable.

(2) The Publication Fee required by subdivision (c) shall be totaled and divided equally among the petitioners.

(j) Adjustment of Fees

If, after the term of a variance for which emission fees have been paid, petitioner can establish, to the satisfaction of the Executive Officer, that (1) emissions were less than those upon which the fee was based, or (2) excess emission fee calculations are otherwise incorrect, a pro rata refund shall be made. If the amount of the excess emissions fee is less than that specified in subdivision (f), the applicant or petitioner shall pay the higher amount, unless otherwise ordered by the Hearing Board.

(k) Fee Payment/Variance Revocation

(1) Excess emission fees required by subdivisions (d), (e), and (f) shall be due and payable to the Clerk of the Board within fifteen (15) days of notification in writing that the fees are due, unless otherwise ordered by the Hearing Board.

(2) Failure to pay any assessed fees within fifteen (15) days of written notification that fees are due may be cause for the Hearing Board to issue further orders as may be appropriate, including but not limited to revocation of a variance. Such notification may be given by personal service or by deposit, postpaid, in the United States mail, and shall be due

fifteen (15) days from the date of personal service or mailing. For the purpose of this rule, the fee payment shall be considered to be received by the District if it is postmarked by the United States Postal Service on or before the expiration date stated on the fee billing notice. If the expiration date falls on a Saturday, Sunday, or a state holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the expiration date.

(l) Request for Time Extension of Payment Due

Whenever this rule requires fees to be paid by a certain date, the petitioner may, for good cause, request the Executive Officer to grant an extension of time, not to exceed ninety (90) days, within which the fees shall be paid. Any request for extension of time shall be presented in writing, and accompanied by a statement of reasons demonstrating good cause as to why the extension should be granted.

(m) Discretionary Powers

Any person may allege that payment of any of the fees within this rule, excluding publication fees, will cause an unreasonable hardship or is otherwise inequitable. Such petitioner may be excused from payment of such fees or a portion thereof by order of the Hearing Board if the Board, in its discretion, determines after hearing evidence thereon that payment of such fees would cause financial or other unreasonable hardship to the petitioner or is otherwise inequitable. The Hearing Board, on its own motion, may also waive all or any portion of any fee(s) except the Publication Fee.

(n) Transcript Fees

Any person requesting a transcript of the hearing shall pay the cost of such transcript. The parties to hearings and pre-hearing proceedings may be directed by the Hearing Board to pay the cost of transcripts necessary for the Hearing Board's determination of the matter, in such proportion as the Hearing Board may order.

(o) Government Agencies

(1) This rule shall not apply to petitions filed by the Executive Officer.

(2) Federal, state or local government agencies or public districts shall pay all fees.

(p) Waiver of Fees

All fees associated with this rule shall be waived for any petition for a variance filed as the direct and proximate result of any event declared to be a "state of emergency" by local, state, or federal authorities.

(q) Service Charge for Returned Check

Any person who submits a check to the District that is returned due to insufficient funds, or for which that person issues instructions to stop payment on the check, absent an overcharge or other legal entitlement to withhold payment, shall be subject to a $31.97~~30.16 for FY 04-05 and $30.16 for FY 05-06 and thereafter~~ service charge.

(r) Effective Date of Fee Schedules

Appearance and excess emission fees shall be those in effect at the time of the hearing dates.

TABLE I
SCHEDULE OF EXCESS EMISSIONS FEES

Air Contaminants	Dollars Per Ton ~~FY 04-05~~	~~Dollars Per Ton FY 05-06 and thereafter~~
Organic gases, except methane and those containing sulfur	$~~870.05~~4,611.27	$~~870.05~~
Carbon Monoxide	$~~8.52~~45.16	$~~8.52~~
Oxides of nitrogen (expressed as nitrogen dioxide)	$~~521.96~~2,766.39	$~~521.96~~
Gaseous sulfur compounds (expressed as sulfur dioxide)	$~~608.69~~3,226.06	$~~608.69~~
Particulate matter	$~~608.69~~3,226.06	$~~608.69~~

Toxic Air Contaminants	Dollars Per Pound ~~FY 04-05~~	~~Dollars Per Pound FY 05-06 and thereafter~~
Ammonia	$~~0.02~~0.11	~~$0.02~~
Asbestos	$~~3.84~~20.35	~~$3.84~~
Benzene	$~~1.28~~6.78	~~$1.28~~
Cadmium	$~~3.84~~20.35	~~$3.84~~
Carbon tetrachloride	$~~1.28~~6.78	~~$1.28~~
Chlorinated dioxins and dibenzofurans (26 species)	$~~6.39~~33.87	~~$6.39~~
Ethylene dibromide	$~~1.28~~6.78	~~$1.28~~
Ethylene dichloride	$~~1.28~~6.78	~~$1.28~~
Ethylene oxide	$~~1.28~~6.78	~~$1.28~~
Formaldehyde	$~~0.27~~1.43	~~$0.27~~
Hexavalent chromium	$~~5.11~~27.08	~~$5.11~~
Methylene chloride	$~~0.06~~0.32	~~$0.06~~
Nickel	$~~2.54~~13.46	~~$2.54~~
Perchloroethylene	$~~0.27~~1.43	~~$0.27~~
1,3-Butadiene	$~~3.84~~20.35	~~$3.84~~
Inorganic arsenic	$~~3.84~~20.35	~~$3.84~~

Toxic Air Contaminants	Dollars Per Pound ~~FY 04-05~~	~~Dollars Per Ton FY 05-06 and thereafter~~
Beryllium	$~~3.84~~20.35	~~$3.84~~
Polynuclear aromatic hydrocarbons (PAHs)	$~~3.84~~20.35	~~$3.84~~
Vinyl chloride	$~~1.28~~6.78	~~$1.28~~
Lead	$~~1.28~~6.78	~~$1.28~~
1,4-Dioxane	$~~0.27~~1.43	~~$0.27~~
Trichloroethylene	$~~0.11~~0.58	~~$0.11~~

TABLE II
SCHEDULE OF EXCESS VISIBLE EMISSION FEE

For each source with opacity emissions in excess of twenty percent (20%), the fee is calculated as follows:

Fee = (Opacity* equivalent - 20) x number of days on which the violation is expected to occur x $7.42~~1.40 for FY 04-05 and $1.40 for FY 05-06 and thereafter~~

For each source with opacity emissions in excess of forty percent (40%) (where the source is exempt from Rule 401 and in violation of California Health and Safety Code Section 41701), the fee is calculated as follows:

Fee = (Opacity* equivalent - 40) x number of days on which the violation is expected to occur x $7.42~~1.40 for FY 04-05 and $1.40 for FY 05-06 and thereafter~~

* Where "Opacity" equals 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."

TABLE III - FILING FEE SCHEDULE

	Large Business	Small Business
VARIANCE (Interim, Short, Regular, Emergency) and Alternate Operating Condition(s)		
◊ Interim and Short or Interim and Regular ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$1,195.32~~1,127.66~~ ~~$1,127.66~~	$214.36~~202.23~~ ~~$202.23~~
◊ Short (without interim) ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$956.26~~902.13~~ ~~$902.13~~	$214.36~~202.23~~ ~~$202.23~~
◊ Regular (without interim) ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$956.26~~902.13~~ ~~$902.13~~	$214.36~~202.23~~ ~~$202.23~~
◊ Emergency or Ex Parte Emergency ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$956.26~~902.13~~ ~~$902.13~~	$214.36~~202.23~~ ~~$202.23~~
◊ Variance plus Alternate Operating Condition(s~~)~~ ~~FY 04-05~~ ~~FY 05-06 and thereafter~~)	$1,434.38~~1,353.19~~ ~~$1,353.19~~	$214.36~~202.23~~ ~~$202.23~~
Plus, for each hearing day in addition to the first hearing day necessary to dispose of the petition, the additional sum of ~~for~~ ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$535.43~~505.12~~ ~~$505.12~~	$106.98~~100.92~~ ~~$100.92~~
PRODUCT VARIANCE		
Filing Fee ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$1,434.38~~1,353.19~~ ~~$1,353.19~~	$214.36~~202.23~~ ~~$202.23~~
Plus, for each hearing day in addition to the first hearing day necessary to dispose of the petition, the additional sum of ~~for FY 04-05~~ ~~FY 05-06 and thereafter~~	$535.43~~505.12~~ ~~$505.12~~	$106.98~~100.92~~ ~~$100.92~~
GROUP VARIANCE		
Two ~~Petitioners FY 04-05~~ ~~FY 05-06 and thereafter~~	$1,075.78~~1,014.89~~ ~~$1,014.89~~	--
Three ~~Petitioners FY 04-05~~ ~~FY 05-06 and thereafter~~	$1,673.44~~1,578.72~~ ~~$1,578.72~~	--
Four or More ~~Petitioners FY 04-05~~ ~~FY 05-06 and thereafter~~	$2,390.64~~2,255.32~~ ~~$2,255.32~~	--
Plus, for each hearing day in addition to the first		

hearing day necessary to dispose of the petition, the additional sum of ~~for FY 04-05 FY 05-06 and thereafter~~	$803.17~~757.71~~ $757.71

MODIFICATION OF EXISTING ORDERS INCLUDING FINAL COMPLIANCE DATE

◊ Modification of a Final Compliance Date and Extension of a Variance ~~FY 04-05 FY 05-06 and thereafter~~	$956.26~~902.13~~ $902.13	$214.36~~202.23~~ $202.23
◊ Modification of Order for Abatement (requested by respondent) ~~FY 04-05 FY 05-06 and thereafter~~	$956.26~~902.13~~ $902.13	$214.36~~202.23~~ $202.23
Plus, for each hearing day in addition to the first hearing day necessary to dispose of the petition, the additional of ~~sum for FY 04-05 FY 05-06 and thereafter~~	$535.43~~505.12~~ $505.12	$106.98~~100.92~~ $100.92

MODIFICATION OF EXISTING ORDERS EXCLUDING FINAL COMPLIANCE DATE

◊ Modification of Variance (Increments of Progress and Conditions~~) FY 04-05 FY 05-06 and thereafter~~)	$714.20~~673.77~~ $673.77	$214.36~~202.23~~ $202.23
◊ Interim Authorization (Increments of Progress) ~~FY 04-05 FY 05-06 and thereafter~~	$714.20~~673.77~~ $673.77	$214.36~~202.23~~ $202.23
Plus, for each hearing day in addition to the first hearing day necessary to dispose of the petition, the additional sum of ~~for FY 04-05 FY 05-06 and thereafter~~	$239.07~~225.54~~ $225.54	$107.71~~101.61~~ $101.61

	Large Business	Small Business
ADMINISTRATIVE TYPE OF HEARINGS		
◊ Administrative Hearings (issuance of subpoenas, waiver of fees, etc.) ~~FY 04-05 FY 05-06 and thereafter~~	$714.20~~673.77~~ $673.77	$214.36~~202.23~~ $202.23
Plus, for each hearing day in in addition to the first hearing day necessary to dispose of the petition, the additional sum of ~~for FY 04-05 FY 05-06 and thereafter~~	$239.07~~225.54~~ $225.54	$106.98~~100.92~~ $100.92
APPEAL		
Filing fee ~~FY 04-05 FY 05-06 and thereafter~~	$1,434.38~~1,353.19~~ $1,353.19	$214.36~~202.23~~ $202.23
Plus, for each hearing day in addition to the first		

hearing day necessary to dispose of the petition, the additional sum of ~~for FY 04-05~~ ~~FY 05-06 and thereafter~~	$535.43~~505.12~~ ~~$505.12~~	$106.98~~100.92~~ ~~$100.92~~
CONSENT CALENDAR Filing Fee ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$358.60~~338.30~~ ~~$338.30~~	$106.98~~100.92~~ ~~$100.92~~
Plus, for each hearing day in addition to the first hearing day necessary to dispose of the petition, the additional sum of ~~for FY 04-05~~ ~~FY 05-06 and thereafter~~	$209.19~~197.35~~ ~~$197.35~~	$106.98~~100.92~~ ~~$100.92~~
◊ In the event that the Board determines that there was insufficient documentation to consider the matter on the Consent Calendar, and the matter is scheduled for a hearing before the Board, petitioner shall pay an additional sum of ~~for FY 04-05~~ ~~FY 05-06 and thereafter~~	$597.65~~563.82~~ ~~$563.82~~	$214.36~~202.23~~ ~~$202.23~~
Plus, for each hearing day in addition to the first hearing day necessary to dispose of the petition, the additional sum of ~~for~~ ~~FY 04-05~~ ~~FY 05-06 and thereafter~~	$535.43~~505.12~~ ~~$505.12~~	$106.98~~100.92~~ ~~$100.92~~