

Yolo-Solano Air Quality Management District  
1947 Galileo Court, Suite 103  
Davis, CA 95618  
(530)757-3650  
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**YOLO-SOLANO**  
AIR QUALITY MANAGEMENT DISTRICT

**PROPOSED AMENDMENTS TO  
RULE 4.4, HEARING BOARD FEES**

PRELIMINARY STAFF REPORT

June 25, 2021

Prepared by: Kenny Doss, Senior Air Quality Specialist  
Reviewed by: Jeff Pinnow, Compliance Manager

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## I. EXECUTIVE SUMMARY

On September 8, 2021, the Yolo-Solano Air Quality Management District (District) Board of Directors will consider amendments to Rule 4.4, Hearing Board Fees. The 5-member Hearing Board members are appointed by the District Board of Directors and meet on an as-needed basis to consider variance applications, abatement orders, and permit disputes. The District assesses fees to conduct Hearing Board matters to recover costs to review Hearing Board petitions and to conduct hearings before the Hearing Board.

The main amendments being proposed to Rule 4.4 are as follows:

- Update formatting and content to align with current District rule making policies
- Consolidate, renumber, or reorganize sections to improve rule structure
- Simplify fee structure and increase fees to recover the actual costs incurred by the District to administer Hearing Board proceedings
- Add provision to adjust Hearing Board fees based on California Consumer Price Index

The proposed amendments will not have a significant or detrimental effect on the environment. Therefore, staff prepared a Notice of Exemption to satisfy the requirements of the California Environmental Quality Act (CEQA). The notice states that the revisions to Rule 4.4 are exempt from the requirements of CEQA pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment.

### A. BACKGROUND

#### History

Rule 4.4 was adopted on June 10, 1992. The rule was revised on March 8, 2000 to increase fees and change the fee structure to include an initial filing fee and a supplementary fee to more accurately recover actual costs incurred by the District.

#### Overview of source category

Rule 4.4 potentially affects all current and potential sources of air pollution within the jurisdiction of the District since all air pollution sources may be involved in Hearing Board proceedings at any time. This also includes manufacturers of products used within the jurisdiction of the District which may emit air contaminants as product manufacturers have the ability to petition for a product variance before the Hearing Board.

## II. DISCUSSION OF PROPOSED RULE 4.4 AMENDMENTS

The proposed amendments to Rule 4.4 are as follows:

### **Section 100    General**

Added and removed wording for clarity and efficiency.

### **Section 200    Definitions**

Removed all definitions from section as they are no longer necessary based on the revised fee structure set forth in Section 300.

### **Section 300 Standards**

Sections 301 and 302: Fee categories for each application are based on whether the petition is subject to a hearing pursuant to emergency variance proceedings as specified in Rule 5.2, or any other Hearing Board proceeding as specified in Rule 5.1.

Section 301: Fees for each type of petition are increased to account for cost recovery for District staff time spent on processing and administering Hearing Board proceedings.

Section 302: The time spent on processing applications for each type of petition increased to reflect the amount of staff time currently utilizes to administer Hearing Board proceedings. Specification to state that supplementary fees shall be paid based on the District Time and Materials Labor Rate if staff time used to process petitions exceeds the time specifications stated in the rule.

Section 303: Specifies that a waiver or reduction of fees request, if desired, shall be submitted at time of application.

Section 305: The District records all Hearing Board proceedings and does not generate transcripts of the proceedings. Section changed to reflect that a recording of proceedings may be providing based on the cost of preparing the recording.

### **Section 400 Administrative Requirements**

Section 402: Added to allow annual fee adjustments based on actual Hearing Board related costs and the California Consumer Price Index. The fee adjustments shall be approved by the District Board of Directors.

## **III. COMPARISON WITH OTHER APPLICABLE REGULATIONS AND REQUIREMENTS**

Health and Safety Code Section 40727.2 requires districts to prepare a written comparative analysis of any new control standard that identifies all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology (BACT) that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the District. Since there are no new control standards being proposed with this rule, this requirement is not applicable.

## **IV. IMPACTS OF THE PROPOSED RULE**

### Emissions Impacts

The proposed amendments to not impose any new emission limits or standards. Therefore, the District does not expect the proposed amendments to impact emissions.

### Cost Effectiveness

CH&SC Section 40703 requires the District, in the process of the adoption of any rule or regulation, to consider and make public its findings related to the cost effectiveness of the rule. Cost effectiveness for rulemaking purposes is calculated by dividing the cost of air pollution controls required by the rule by the amount of air pollution reduced. The amendments to this rule will not impact emissions and therefore cost effectiveness calculations cannot be performed.

### Socioeconomic Impacts

California Health and Safety Code Section 40728.5 (a) requires the District, in the process of the adoption of any rule or regulation, to consider the socioeconomic impact if air quality or emission limits may be significantly affected. However, districts with a population of less than 500,000 persons are exempt from the provisions of Section 40728.5 (a). The District's population is estimated to be approximately 331,600 and well below the 500,000-person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

### Incremental Cost Effectiveness

CH&SC Section 40920.6 requires an assessment of the incremental cost-effectiveness for proposed regulations relative to ozone, Carbon Monoxide (CO), Sulfur Oxides (SOx), Nitrogen Oxides (NOx), and their precursors. Incremental cost-effectiveness is defined as the difference in control costs divided by the difference in emission reductions between two potential control options that can achieve the same emission reduction goal of a regulation. Again, the District does not expect any emissions changes from these amendments, so no incremental cost-effectiveness analysis can be done.

### Impacts to the District

The proposed rule amendments will increase the fees associated with Hearing Board proceedings. An increase in fees as part of the rule amendments will assist the District in recovering the financial cost of administering hearings before the Hearing Board. An annual fee adjustment based on the California Consumer Price Index will also ensure that fees pertaining to Hearing Board proceedings are appropriately recovered in the future.

## **V. ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE**

California Public Resource Code Section 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance. The analysis must include the following information:

1. An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
2. An analysis of the reasonably foreseeable mitigation measures.
3. An analysis of the reasonably foreseeable alternative means of compliance with the rule or regulation.

The District does not expect any change in emissions from this rule amendment. Therefore, an evaluation under this section cannot be performed.

The proposed rule amendments will have neither a significant nor detrimental effect on the environment or humans due to unusual circumstances. In addition, the proposed amendment is considered to be an action taken to maintain and protect the environment. Therefore, staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Staff prepared a Notice of Exemption (NOE) to meet the CEQA Guidelines (Attachment B).

## VI. REGULATORY FINDINGS

Section 40727(a) of the California Health & Safety Code (H&SC) requires that prior to adopting or amending a rule or regulation, an air district's board make findings of necessity, authority, clarity, consistency, nonduplication, and reference. The findings must be based on the following:

1. Information presented in the District's written analysis, prepared pursuant to H&SC Section 40727.2;
2. Information contained in the rulemaking records pursuant to H&SC Section 40728; and
3. Relevant information presented at the Board's hearing for adoption of the rule.

The required findings are:

Necessity: It is necessary for the District to adopt this amended rule in order to ensure uniform written procedures for fees related to Hearing Board activities and appropriately recover costs to effectively administer proceedings before the Hearing Board. [H&SC Section 40727(b)(1)]

Authority: The District is authorized to adopt rules and regulations by California Health and Safety Code, Sections 40001, 40702, 40716, 41010 and 41013. [H&SC Section 40727 (b)(2)]

Clarity: The proposed rule is written so that the meaning can be easily understood by the persons directly affected by it. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule. [H&SC Section 40727(b)(3)]

Consistency: The proposed rule does not conflict with and is not contradictory to, existing statutes, court decisions, or state or federal regulations. [H&SC Section 40727(b)(4)]

Non-Duplication: The proposed rule does not duplicate any state laws or regulations, regarding the attainment and maintenance of state and federal air quality limits. [H&SC Section 40727(b)(5)]

Reference: The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule. [H&SC Section 40727(b)(6)]

**VII. PUBLIC COMMENTS AND STAFF RESPONSES**

Staff will hold a public workshop on August 3, 2021, to discuss the proposed amendments to Rule 4.4. Notification will be sent to surrounding Air Districts, City Managers within the District, building/planning/community development departments within the YSAQMD, all city and county libraries within the District, all Board members, and all affected sources.

A copy of the public workshop notice, the draft staff report, and draft rule language, will be posted on the District's web page prior to the public workshop.

**VIII. REFERENCES**

**ATTACHMENT A**

**PROPOSED RULE 4.4, HEARING BOARD FEES  
STRIKE-OUT UNDERLINE VERSION**



**ATTACHMENT B**

**PROPOSED AMENDMENTS TO RULE 4.4, HEARING BOARD FEES; CLEAN VERSION**

**ATTACHMENT C**

**NOTICE OF EXEMPTION FROM CEQA GUIDELINES**

**Notice of Exemption**

**To:**  Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

County Clerk  
County of Yolo  
625 Court Street Room 105  
Woodland, CA 95695

County Clerk  
Solano County  
600 Texas Street  
Fairfield, CA 94533

**From:** Yolo-Solano Air Quality Management District  
1947 Galileo Court, Suite 103  
Davis, CA 95618

**Project Title:** Revision of Rule 4.4 – HEARING BOARD FEES

**Project Location:** Yolo-Solano Air Quality Management District

**Project Description:** The District is proposing to amend Rule 4.4, HEARING BOARD FEES. The District is proposing to amend the rule to simplify the fee structure, increase fees to recover the actual costs incurred by the District to administer Hearing Board proceedings, and add a provision to adjust Hearing Board fees based on California Consumer Price Index.

**Name of Public Agency Approving Project:** Yolo-Solano Air Quality Management District

**Name of Person or Agency Carrying Out Project:** Yolo-Solano Air Quality Management District

Exempt Status:

- Ministerial
- Emergency Project
- Categorical Exemption (CEQA Guidelines Section 15308, Action by Regulatory Agency for Protection of the Environment)
- Statutory Exemption

**Reason why project is exempt:** The revision of Rule 4.4 is an action taken to maintain and protect the environment and is therefore exempt from CEQA because it constitutes a Class 8 categorical exemption pursuant to CEQA Guidelines 15308.

**Lead Agency Contact Person:** Mat Ehrhardt, Air Pollution Control Officer  
**Telephone Number:** (530) 757-3650

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Title:** \_\_\_\_\_

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**ATTACHMENT D**

**RESOLUTION NO. 21-XX**

RESOLUTION NO. 21-XX

RESOLUTION AMENDING YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT RULE 4.4

**WHEREAS**, California Health and Safety Code section 40702 provides that an air quality management district shall adopt rules and regulations as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by Division 26 of the Health and Safety Code; and

**WHEREAS**, Health and Safety Code section 40727 provides that before adopting, amending, or repealing a rule or regulation, a district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, based upon information developed pursuant to section 40727.2, information in the rulemaking record maintained pursuant to section 40728, and relevant information presented at the public hearing required by section 40725; and

**WHEREAS**, section 15308 of the CEQA Guidelines provides that actions taken by regulatory agencies as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, are categorically exempt from CEQA review (Class 8 Categorical Exemption); and

**WHEREAS**, Yolo-Solano Air Quality Management District staff identified requirements within Rule 4.4, HEARING BOARD FEES which required updating for consistency, clarity, and adequate cost recovery.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the Yolo-Solano Air Quality Management District hereby finds, authorizes, directs and declares as follows:

1. The Board of Directors has considered and hereby adopts by reference the staff report prepared in this matter.
2. The Board of Directors makes the following findings pursuant to Health and Safety Code section 40727:
  - a. Necessity: Information in the District's rulemaking record maintained pursuant to Health and Safety Code section 40728 demonstrates a need for amending District Rule 4.4;
  - b. Authority: Health and Safety Code section 40702 permits the District to amend District Rule 4.4;
  - c. Clarity: District Rule 4.4 as amended is written so that its meaning can be easily understood by the persons directly affected by it;

- d. Consistency: District Rule 4.4 as amended is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations;
  - e. Nonduplication: District Rule 4.4 as amended does not impose the same requirements as an existing state or federal regulation;
  - f. Reference: By adopting District Rule 4.4, the District meets the requirements of Health & Safety Code Sections 40702.
- 3. The Board of Directors finds that the District has complied with the procedural requirements set forth in Chapters 6 and 6.5 of Part 3 of Division 26 of the Health and Safety Code.
  - 4. The Board of Directors finds that amending District Rule 4.4 is an action taken by a regulatory agency as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, and is therefore categorically exempt from CEQA review as a Class 8 Categorical Exemption.
  - 5. The Board of Directors hereby amends District Rule 4.4 as set forth in Exhibit 1 (Attachment A of the Staff Report), which is attached and incorporated by reference. The amendment is effective September 8, 2021.

**PASSED AND ADOPTED** by the Board of Directors of the Yolo-Solano Air Quality Management District this 8th day of Month, 2021, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

\_\_\_\_\_  
Jim Provenza, Chair Board of Directors  
Yolo-Solano Air Quality Management District

Attest:

Approved as to Form:

\_\_\_\_\_  
Denise Almaguer, Clerk  
Board of Directors

\_\_\_\_\_  
Hope Welton, District Counsel

**ATTACHMENT E**

**WRITTEN COMMENTS RECEIVED**