

Yolo-Solano Air Quality Management District
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YOLO-SOLANO
AIR QUALITY MANAGEMENT DISTRICT

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

FINAL STAFF REPORT

September 8, 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 actions. The District assesses fees to recover costs to process Hearing Board petitions and 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 to process applications for each type of petition increased to reflect the amount of staff time currently utilized to administer Hearing Board proceedings. Added wording to clarify that supplementary fees shall be paid by the petitioner 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 held a public workshop on August 3, 2021 to discuss the proposed amendments to Rule 4.4. Notification was 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, was posted on the District's web page prior to the public workshop.

The District invited the public to submit written comments no later than August 17, 2021. The District did not receive any written comments from the public in regards to the proposed changes to Rule 4.4.

ATTACHMENT A

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

RULE 4.4 HEARING BOARD FEES

ADOPTED June 10, 1992

REVISED March 8, 2000

REVISED September 8, 2021

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100 GENERAL

101 **PURPOSE:** To establish fees to be charged for petitions to the Hearing Board for the Yolo Solano Air Quality Management District (District).

102 **APPLICABILITY:** The provisions of this Rule shall apply to petitions to the Hearing Board pursuant to District Rules 5.1, ~~PROCEDURE BEFORE THE HEARING BOARD~~, and 5.2, ~~UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE~~.

~~11010~~ **EXEMPTIONS:** The Air Pollution Control Officer (APCO) shall not be required to pay the fees required by this Rule.

~~200~~ DEFINITIONS

~~201~~ **GENERAL VARIANCE:** A variance for any petition specified in Rule 5.1, ~~PROCEDURES BEFORE THE HEARING BOARD~~, section 402.5, except for subsection 402.5.a(vi).

~~202~~ **VARIANCE MODIFICATION:** A variance for a modification to a general variance.

~~203~~ **EMERGENCY VARIANCE:** A variance for any condition specified in Rule 5.2, ~~UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE~~.

300 STANDARDS

301 **FILING FEES:** Each petitioner, including any public agency, shall pay filing fees according to the schedule specified in Table 1.

TABLE 1. FILING FEES

Petition Type	Fee
General Variance <u>Hearing P</u> <u>pursuant to Rule 5.1</u>	\$1,248 <u>\$1,117</u>
Variance Modification	<u>\$1,117</u>
Emergency Variance <u>Hearing P</u> <u>pursuant to Rule 5.2</u>	\$399 <u>\$149</u>

302 **SUPPLEMENTARY FEES:** In the event a petition takes longer to process than the times specified in Table 2, the petitioner shall pay supplementary fees equal to the additional hours multiplied by the Time and Materials Labor Rate of \$113 per hour ~~specified in Rule 4.1, PERMIT FEES - STATIONARY SOURCE~~.

TABLE 2. PETITION PROCESSING TIME

Petition Type	Hours
General Variance <u>Hearing P</u> <u>pursuant to Rule 5.1</u>	7.5 <u>3</u>
Variance Modification	<u>3</u>
Emergency Variance <u>Hearing P</u> <u>pursuant to Rule 5.2</u>	3 <u>1</u>

303 **WAIVER OR REDUCTION OF FEES:** A petitioner may request a waiver or reduction of fees required by this Rule ~~if the petitioner notifies the District in writing at least seven (7) working days prior to the hearing at the time of application.~~ Fees may be waived or reduced if the petitioner provides evidence to the APCO and the APCO determines that payment of such fees would cause financial hardship to the petitioner.

304 **REFUND OF FEES:**

304.1 In the event the Hearing Board reverses the decision of the APCO in an appeal to a permit decision, any fees paid by the petitioner as required by this Rule shall be refunded.

304.2 In the event a petition is withdrawn, and the petitioner notifies the District in writing seven (7) working days prior to the hearing, the petitioner shall receive a refund of fees paid to the District minus the actual costs incurred by the District.

305 **TRANSCRIPT RECORDINGS:** Any person requesting a ~~transcript recording~~ of a hearing shall pay the cost of preparing the ~~transcript recording~~.

400 **ADMINISTRATIVE REQUIREMENTS**

401 ~~Payment of Fees~~ **PAYMENT OF FEES:** Filing fees are due and payable at the time of filing a petition. If required pursuant to Section 302, supplementary fees are due and payable prior to the issuance of the Hearing Board's final Findings and Orders.

402 **CONSUMER PRICE INDEXING OF FEES:** ~~Beginning on July 1, 2022, the Air Pollution Control Officer~~ APCO District may adjust the fees prescribed by this ~~R~~rule on an annual basis (rounded to the nearest whole dollar) following approval by the District Board of Directors. The rate change shall be determined considering the actual hearing board related costs and the California Consumer Price Index (CPI) as provided in California Health and Safety Code Section 42311(h). The rate change shall be based on the "All Urban Consumers" category of the California CPI, between April (two calendar years before the adjustment) and April (one calendar year before the adjustment).

ATTACHMENT B

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

RULE 4.4 HEARING BOARD FEES

ADOPTED June 10, 1992
REVISED March 8, 2000
REVISED September 8, 2021

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 - 402 CONSUMER PRICE INDEXING OF FEES

- 500 MONITORING AND RECORDS (INTENTIONALLY OMITTED)**

100 GENERAL

- 101 **PURPOSE:** To establish fees to be charged for petitions to the Hearing Board for the Yolo Solano Air Quality Management District (District).
- 102 **APPLICABILITY:** The provisions of this Rule shall apply to petitions to the Hearing Board pursuant to District Rules 5.1 and 5.2.
- 110 **EXEMPTIONS:** The Air Pollution Control Officer (APCO) shall not be required to pay the fees required by this Rule.

300 STANDARDS

- 301 **FILING FEES:** Each petitioner, including any public agency, shall pay filing fees according to the schedule specified in Table 1.

TABLE 1. FILING FEES

Petition Type	Fee
Hearing Pursuant to Rule 5.1	\$1,248
Hearing Pursuant to Rule 5.2	\$399

- 302 **SUPPLEMENTARY FEES:** In the event a petition takes longer to process than the times specified in Table 2, the petitioner shall pay supplementary fees equal to the additional hours multiplied by the Time and Materials Labor Rate of \$113 per hour.

TABLE 2. PETITION PROCESSING TIME

Petition Type	Hours
Hearing Pursuant to Rule 5.1	7.5
Hearing Pursuant to Rule 5.2	3

- 303 **WAIVER OR REDUCTION OF FEES:** A petitioner may request a waiver or reduction of fees required by this Rule at the time of application. Fees may be waived or reduced if the petitioner provides evidence to the APCO and the APCO determines that payment of such fees would cause financial hardship to the petitioner.

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- 304.1 In the event the Hearing Board reverses the decision of the APCO in an appeal to a permit decision, any fees paid by the petitioner as required by this Rule shall be refunded.

- 304.2 In the event a petition is withdrawn, and the petitioner notifies the District in writing seven (7) working days prior to the hearing, the petitioner shall receive a refund of fees paid to the District minus the actual costs incurred by the District.

305 **RECORDINGS:** Any person requesting a recording of a hearing shall pay the cost of preparing the recording.

400 ADMINISTRATIVE REQUIREMENTS

401 **PAYMENT OF FEES:** Filing fees are due and payable at the time of filing a petition. If required pursuant to Section 302, supplementary fees are due and payable prior to the issuance of the Hearing Board's final Findings and Orders.

402 **CONSUMER PRICE INDEXING OF FEES:** Beginning on July 1, 2022, the District may adjust the fees prescribed by this Rule on an annual basis (rounded to the nearest whole dollar) following approval by the District Board of Directors. The rate change shall be determined considering the actual hearing board related costs and the California Consumer Price Index (CPI) as provided in California Health and Safety Code Section 42311(h). The rate change shall be based on the "All Urban Consumers" category of the California CPI, between April (two calendar years before the adjustment) and April (one calendar year before the adjustment).

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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Lead Agency Contact Person: Mat Ehrhardt, Air Pollution Control Officer

Telephone Number: (530) 757-3650

Signature: _____ **Date:** _____ **Title:** _____

ATTACHMENT D
RESOLUTION NO. 21-05

RESOLUTION NO. 21-05

RESOLUTION AMENDING YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT RULES 4.4, 5.1, and 5.2

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, Rule 5.1 - PROCEDURE BEFORE THE HEARING BOARD, and Rule 5.2 - UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE, 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 reports 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 Rules 4.4, 5.1, and 5.2;

- b. Authority: Health and Safety Code section 40702 permits the District to amend District Rules 4.4, 5.1, and 5.2;
 - c. Clarity: District Rules 4.4, 5.1, and 5.2 as amended are written so that its meaning can be easily understood by the persons directly affected by it;
 - d. Consistency: District Rules 4.4, 5.1, and 5.2 as amended are in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations;
 - e. Nonduplication: District Rules 4.4, 5.1, and 5.2 as amended do not impose the same requirements as an existing state or federal regulation;
 - f. Reference: By adopting District Rules 4.4, 5.1, and 5.2, 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 Rules 4.4, 5.1, and 5.2 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 Rules 4.4, 5.1, and 5.2 as set forth in Exhibit 1 (Attachment A of the Staff Reports), 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 September, 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, Board Clerk

Hope Welton, District Counsel