

# **STAFF REPORT**

## **PROPOSED AMENDMENTS TO NCUAQMD REGULATION IV**

### **Rule 405**



**August 1, 2016**

## **Proposed Revisions to Regulation IV, Fees**

### **Rule 405, Stationary & Portable Source Fees**

#### **Sections proposed to be amended:**

(C) ATC Permit Evaluation Fee Schedules, Table 9 - Internal Combustion Engines

(D) PTO Annual Renewal Fee Schedules, Table 9 – Internal Combustion Engines

(D) PTO Annual Renewal Fee Schedules, (10.A.) Retail Gasoline Dispensing Facilities

(E) Additional Permit Fee Schedules

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## Proposed Revisions to Regulation IV

### *Executive Summary*

The North Coast Unified Air Quality Management District (District) is the regional government agency responsible for the regulation of the air resource within the counties of Humboldt, Del Norte, and Trinity in northern California. The California Health & Safety Code (HSC) establishes the District's authority to adopt rules that limit discharges of pollution, the authority to issue conditional permits for the construction and operation of equipment, and the authority to collect fees for services provided to the community. Fees cannot exceed the reasonable regulatory cost to the District for issuing permits, performing inspections and audits, and the administrative enforcement and adjudication thereof. The District Board has adopted its own set of laws and codes which is referred to as the District Rules and Regulations. District Regulation IV outlines how fees are to be calculated, and when they are to be collected. The fee regulation was last revised in 2014.

#### **Highlights of the Proposed Rule Revisions include:**

- **Rule 405**
  - Amendment of Section (C), Table 9 – Internal Combustion Engines, the list of Authority To Construct permit fees for internal combustion engines to better reflect actual costs incurred by the District.
  - Amendment of Section (D), Table 9 – Internal Combustion Engines, the list of Permit To Operate permit fees for internal combustion engines to better reflect actual costs incurred by the District.
  - Deletion of Section (D)(10)(A) as it contains outdated requirements which were superseded by those listed in Section (D)(10)(B).
  - Addition of a narrative for the expedited permit processing fee to augment existing requirement listed in Table 1 of Section (E).
  - Miscellaneous formatting and typographical errors to general text and tables.

## BACKGROUND

California Health & Safety Code Section 40000 authorizes the District to establish a fee collection process. The fee structure must be “fee for service” in design and may only be increased by a maximum of 15% percent per year. The District’s current fee schedule recovers costs associated with the administration of various District programs using the procedures outlined in Sections 7.0, 8.0, and 9.0 of Rule 400. Each of the Sections makes reference to an “X” factor which is assigned annually by the District Governing Board during the budget adoption process.

The “X factor” is intended to represent the District’s cost to operate on an hourly basis. When determining the value of “X”, the types of services and activities performed by the District can be grouped into four categories: administration compliance, monitoring, and permitting.

The District recently completed a cost recovery study focused on internal combustion engines. The results serve as the basis for the proposed changes to the ATC and PTO fee schedules.

## PROPOSED RULE LANGUAGE

Both the District staff and the regulated community have acquired significant experience with the implementation of the District fee regulations since they were first adopted in 2006. The overall framework of the regulation is sound, and only a couple of key points are in need of refinement. The proposed modifications to Rule 405 can be grouped into the following three categories: fees for internal combustion engines, fees for gasoline dispensing facilities, and fees for the processing of permit applications. None of the proposed changes will result in an increase in the amount paid for services provided by the District.

### Internal Combustion Engines – ATC Fees Section C.

Based upon the results of a recently completed cost recovery analysis, Staff is proposing the addition of another category for engines with a power rating between 350 and 1,000 horsepower. District ATC program implementation costs for engines within this range were found to be “8X” per year as reflected in Table 9 below; a decrease of “4X” per unit over existing levels. A decrease of “2X” per unit for engines rated between 140 and 350 horsepower is proposed.

9. **Internal Combustion Schedule:** The X-Factor Multiplier for an internal combustion engine shall be determined based upon its rated design capacity measured in units of brake horsepower per hour as listed in the following table.

Table 9 – Internal Combustion Engines

Engine Brake Horsepower Rating	X-Factor Multiplier	
	Initial Permit Evaluation	Initial Toxic Evaluation
Less than 140	2	0.5
Greater than 140, but less than <del>700</del> 350	<del>6</del> 4	1
Greater than <del>700</del> 350, but less than <del>2,650</del> 1,000	<del>11</del> 6	2
<u>Greater than 1,000, but less than 3,000</u>	<u>10</u>	<u>2</u>
Greater than <del>2,650</del> 3,000, but less than 5,000	22	2
Greater than 5,000, but less than 10,000	34	3
Greater than 10,000, but less than 15,000	45	5
Greater than 15,000, but less than 20,000	80	7
Greater than 20,000	Either 130 or actual costs whichever is greater	<del>10</del> 8

Internal Combustion Engines – PTO Fees Section D

As reflected in Table 9 below, costs incurred by the District for the implementation of the PTO component of the permitting program are approximately one-half of the amount necessary to sustain the ATC component. The difference in cost is a result of a reduction in the resources expended while verifying compliance. Continuing on with the changes proposed in the ATC table, Staff is proposing to create a new PTO category for engines between 350 and 1,000 horsepower. Staff also recommends that the “X-Multiplier” engines rated at greater than 20,000 horsepower be adjusted to 50 for the annual permit evaluation fee and 8 for the annual toxic evaluation fee.

9. **Internal Combustion Schedule:** The X-Factor Multiplier for internal combustion engines shall be determined based upon its rated design capacity measured in units of brake horsepower per hour as listed in the following table.

Table 9 – Internal Combustion Engines

Engine Break Horsepower Rating	Annual Permit Evaluation	Annual Toxic Evaluation
Less than 140	1	0.5
Greater than 140, but less than <del>700</del> 350	<del>3</del> 2	1
Greater than <del>700</del> 350, but less than <del>2,650</del> 1,000	<del>6</del> 3	2
<u>Greater than 1,000, but less than 3,000</u>	<u>5</u>	<u>2</u>
Greater than <del>2,650</del> 3,000, but less than 5,000	11	2
Greater than 5,000, but less than 10,000	17	3
Greater than 10,000, but less than 15,000	22	5
Greater than 15,000, but less than 20,000	40	7
Greater than 20,000	<del>65</del> 50	<del>10</del> 8

Gasoline Dispensing Facility Fees – PTO Section D

In 2010, the Board recognized the need to adjust the gasoline dispensing equipment fee structure. The adjustments were to be phased in over a period of six years. Now that the phase in period has elapsed, the language outlining the process is no longer required. Staff proposes to delete the unnecessary text.

**10. A. Retail Gasoline Dispensing Facilities ~~(First of Two; Repealed June 30, 2015):~~** Each holder of a Permit to Operate shall be assessed a fee of  $2X + (Z*(X/133,333))$  where X is the X-Factor for the fiscal year in which the invoice is prepared, and Z is equal to the number of gallons of gasoline dispensed at the retail service station during the preceding calendar year. ~~The combined fee shall be assessed annually in accordance with Section B.2 this Rule. The fee calculations provided in the Section shall be phased in as follows. For a period of six years beginning on the date of adoption of this Section, the annual fee for a Permit to Operate shall be calculated as  $2X + (Y*(Z*(X/133,333)))$  where "Y" is equal to the value listed in the table below for the appropriate year.~~

Table 10

<b>Year</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>Value of "Y"</b>	0.34	0.44	0.55	0.69	0.83	1.00

~~a. This section shall remain in effect only until June 30, 2015, and as of that date is repealed.~~

**10. B. Retail Gasoline Dispensing Facilities ~~(Second of Two; Operative July 1, 2015):~~** Each holder of a Permit to Operate shall be assessed a fee of  $2X + (Z*(X/133,333))$  where X is the X-Factor for the fiscal year in which the invoice is prepared, and Z is equal to the number of gallons of gasoline dispensed at the retail service station during the preceding calendar year. ~~The combined fee shall be assessed annually in accordance with Section C.2 of this Rule.~~

~~a. This section shall become operative July 1, 2015.~~

Additional Permit Fee Schedules – Section E

The District began offering expedited permit processing in 2006 and adopted a fee schedule to support it. During the Rule update in 2014, the expedited fee was included in Table 1, however the narrative describing the purpose of the fee was not. Staff proposes to add the following text.

- 6. **Expedited Permit Processing Fee: Upon request, the District will expedite the processing of a permit application and shall assess a fee of 4 X or 25% of the normal fee for the processing of the application, whichever results in the greater total fee.**

Table 1 – Additional Permit Fees

Service	X-Factor Multiplier Special Services Fee
Public Notice	Either 2 or actual costs whichever is greater
Public Hearing	Reserved
New Source Review	Actual costs
Transfer of Ownership	First device, 50% of X; each additional, 25% of X
Duplicate Permit	\$10 per device
Health Risk Assessment	Either 2 or actual costs whichever is greater
Expedited Permit	Either 4 or 25% of normal fee whichever is greater

Miscellaneous Updates

On a final note, staff is recommending a single formatting change to Table 5 of Section D where the header “X-Factor Multiplier” is proposed to be added for consistency.

**COMMENTS FROM STAKEHOLDERS**

During the months preceding the public hearing for Rule adoption, the District will receive comments from interested parties for a minimum of 30 days. The rule amendment will be noticed in the District’s newspaper of record, The Times Standard. At the conclusion of the public comment period, District staff will prepare a document summarizing all comments received from the public and will provide a response to each suggestion. The results will be presented to the Governing Board for consideration at the rule adoption public hearing.

## REQUIRED REGULATORY FINDINGS

Findings required by Division 26 of the California Health and Safety Code requires local districts to comply with a rule adoption protocol as set forth in Section 40727 of the Code. This section has been revised through legislative mandate to contain six findings that the District must make when developing, amending, or repealing a rule or regulation. These findings require that prior to adopting regulatory changes, the District Board make specified findings concerning authority, necessity, consistency, non-duplication and code references. The proposed revisions to Regulation I satisfy the requirements for each of the required findings as discussed below.

### Authority

*Authority - A provision of law or of a state or federal regulation which permits or requires the regional agency to adopt, amend, or repeal the regulation.*

California Health and Safety Code (HSC) Section 40702 requires the District to adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by the HSC and other statutory provisions. HSC 42311(a) authorizes the District Board to adopt, by regulations, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs. HSC 42311(f) authorizes the District to access fees to cover the cost of administering toxic air contaminant programs. HSC Section 41512 limits the percentage increase in fees to no more than 15 percent per year.

### Necessity

*Necessity - A need exists for the regulation, or for its amendment or repeal as demonstrated by the record of the rulemaking authority.*

The rule amendments are necessary to fund the District's efforts to attain and maintain federal and state ambient air quality standards. The amendments result in a reduction in the amount assessed for internal combustion engines.

## Clarity

*Clarity - The regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.*

The proposed regulation is written in plain English utilizing generally recognized grammatical structure, and commonly understood words. The terminology used is consistent throughout the Regulations, and is consistent with State and Federal rule language. The amendments are written so that the meaning can be understood by the affected parties.

## Consistency

*Consistency – The regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.*

The proposed rule language does not conflict with District Regulations, State, or Federal law.

## Non-Duplication

*Non-Duplication - A regulations does not impose the same requirements as an existing state or federal regulation unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, a district.*

Regulation IV, Rule 405 contains the tables and schedules used to calculate fees for stationary and portable sources. The requirements of these Rules are not duplicated elsewhere in the District Regulations nor are they replicated in other volumes of federal or state law.

## Reference

*Reference – Means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.*

The changes to the proposed Rules will affect District Regulation IV, Rule 405. The changes are being completed in accordance with HSC 40702, 42311(a), 42311(f), and 42311.5. The Rules are intended to ensure cost recovery for permitting program costs pursuant to 40 CFR 70.9.

## ENVIRONMENTAL IMPACTS

The California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency that undertakes or approves a discretionary project to prepare documentation identifying the potential environmental impacts of that project. The Guidelines exempt certain types of actions. Section 15273 of the CEQA Guidelines states: “*CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies...*” Therefore, the portions of this rule making action pertaining to fees are exempt from CEQA.

California Health & Safety Code (HSC) Section 40727.2 imposes requirements on the adoption, amendment, and repeal of district regulations. This Code Section requires districts to identify all existing federal, state and district air pollution control requirements that apply to the same equipment or source type as the proposed rule, and the differences between these requirements and the proposed rule. The proposed fee rule amendments do not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements; therefore, HSC Section 40727.2 does not apply to the proposed fee revisions.

California Health & Safety Code (HSC) Section 40728.5 - *Required Assessment*, specifies that District conduct a socioeconomic impact analysis on proposed regulations. However, pursuant to Section (d), because the combined population of Humboldt, Del Norte, and Trinity Counties is less than 500,000 persons, the District is not required to prepare the assessment.