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Lenzi, Chelsea

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**From:** Bruce F <brucefal100@gmail.com>  
**Sent:** Wednesday, March 27, 2019 8:41 AM  
**To:** Williams, Das; Hart, Gregg; Hartmann, Joan; Adam, Peter; Lavagnino, Steve; sbcob  
**Cc:** Andy Caldwell  
**Subject:** EHS Proposed fee increase- Hearing April 2, 2019  
**Attachments:** Letter on fee increases.pdf

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To the Board of Supervisors:

Attached is a comment letter on the proposed action for increasing EHS's fees hearing on April 2, 2019. I do not know the Agenda Item #.

Thank you for your consideration of letting industry comment on the proposed fees.

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March 27, 2019

Supervisor Das Williams, 1<sup>st</sup> District  
 Supervisor Joan Hartmann, 3<sup>rd</sup> District  
 Supervisor Steve Lavagnino, 5<sup>th</sup> District

Supervisor Greg Hart, 2<sup>nd</sup> District  
 Supervisor Peter Adam, 4<sup>th</sup> District

Re: Proposed Fee Increase- Environmental Health Services  
 April 2, 2019 hearing

Members of the Board:

I represent BE Conway Energy, Inc., a small oil producer in Santa Barbara County with the distinction of being the oldest continuously operating oil company in the County, operating for 46 years since 1973. I have represented Conway for the last 35 of those years. In that period, I have testified in front of the Board on many occasions on multiple matters.

April 2, 2019 the Board is hearing the Environmental Health Services' request to increase its fees. We object to this increase and have the following suggestions to adjust and make the fees approvable.

On March 21, others and I met with Larry Fay and his CUPA Supervisor Mr. Ray. It appears that the Board has chosen two competent individuals to lead the department. I reviewed the answers to COLAB's Public Records Request in preparing this letter. My issue has to do with the CUPA Business Plan ("BP") Fees and the way MGT proposes to change them. The reason is that Conway's Business Plan Fees for 6 very small operations go up from \$1,776/year to \$3,330/year, an 88% increase.

At our meeting, Mr. Fay indicated that they were not going to change anything about the fees. There would be no changes, despite hearing some good suggestions from the seven people at the meeting. He said that any change would have to be done by the Board of Supervisors. I hope this letter gets the Board to adopt changes to the fees as outlined below.

For reference, the BP program is now taking in \$496,800, but according to the MGT study, it needs \$646,240, meaning a 30.1% increase is required. I believe there is something very wrong with these numbers, as the metrics of work completed don't match. This is covered at the end of this letter.

**Current Flawed Fee Schedule:** This is the current fee schedule for BPs; it is based on the number of chemicals at a site. It has critical and fatal flaws in its design:

# of chemicals	# of sites <sup>(1)</sup>	Fee/site <sup>(1)</sup>	Step increase in # of chemicals	Incremental CUPA BP income/step
1-3	1184	\$254	Base	
4-6	267	\$304	3	\$50
7-10	136	\$355	4	\$51
11-20	105	\$408	10	\$53
21-100	48	\$449	80	\$41
>101	4	\$556	more	\$107
Total	1,744			

(1) From MGT Executive Summary, page 8, lines 6-11

In this program, the amount of time an inspector needs for a BP inspection is not the same for every site. Other than the 5 minutes of introductions, the time is totally based on the number of chemicals at the site. Each chemical must be verified. For a site with 3 chemicals, the inspector looks at the label, verifies the label's hazard warning, confirms the mapped location and the volume on site, and more. Then we walk to the next chemical and repeat it. Back at the EHS office, the inspector verifies more information; the CAS #, the hazardous components, the hazard risk shown on the SDS (formerly MSDS) sheets, the proper health risks are selected, and more, and do all this again for each chemical.

So, a site with 6 chemicals will take 100% more time than a site with only 3 chemicals. For that incremental time, EHS now receives \$50 (from column 5, line 2 above).

Look at the fifth line of the table; this is for an operation with 21-100 chemicals. There are 48 in the County. For this fee step, I can have up to 80 more chemicals, but EHS only receives \$41 for its time, less than even the previous step! Based on a \$143/hour all-in rate, EHS only gets paid for 17 minutes of time, but must look at 80 more chemicals. One can't even list off the technical names of 80 chemicals in 17 minutes, much less find the SDS and cross check any of them. It takes multiple hours.

**Conclusion-** The old fee schedule is biased towards the entities with many chemicals. The small operations are subsidizing the entities with more than 10 chemicals (a 3 chemical step is a \$50 increase, or worth 17 minutes of time for each step). The new fee schedule must account for this flaw in its development.

**Why the Proposed Fee Schedule is Bad:** Let's look at MGD's proposed fee schedule. It is not based on number of chemicals, it is based on the largest container on site. But the largest container has no bearing on the number of chemicals, and no bearing on the amount of time needed for each entity.

Fee Level	Volume/step	# of sites	Fee/site	Hours needed <sup>(1)</sup>	Hours/site <sup>(2)</sup>
BP 1	55 gallons-275 gallons	412	\$275	824	2.00
BP 2	276-500	202	\$345	505	2.50
BP 3	501-5500	518	\$415	1554	3.00
BP 4	5501-10,000	132	\$485	462	3.50
BP 5	>10,000 gallons	332	\$555	1328	4.00
Total		1,596		4,673	

Note- the discrepancy of the number of current sites (1,744 and the new level of 1,596 is not addressed in the report)

(1) From MGT Executive Summary, page 8. lines 12-16

(2) Division of hours needed by number of sites.

Interpreting the fatal flaws with this table, if I have one chemical in a 55-gallon drum, I pay \$275. If I have one chemical in a 20,000-gallon tank, I pay \$555, a 100% increase. MGT charges based on a belief that it takes 2 hours of inspection time if it is in a 55-gallon drum, but 4 hours for it if it is in a >10,000-gallon tank. Based on my experience, it does not take more time, but actually less time to look at the larger container. It takes less time because a 500 bbl tank is not labelled like the 55-gallon drum and the 500 bbl tank usually is holding a material of little concern.

Alternatively, if I have 100 different chemicals all in 55-gallon drums, I only pay \$275 (BP 1 level- 2 hours) since the largest tank is only 55 gallons. But if I have 1 chemical in a single 10,000-gallon tank, I pay \$555 (BP 5 level- 4 hours) twice as much. Even if you have never been on an inspection, it is obvious that it will not take twice the time to inspect 1 chemical compared to 100 chemicals. It will take an average of 1/100<sup>th</sup> of the time.

Or another case. I could have 100 different chemicals, with one 20,000-gallon tank and 99 drums and pay the exact same as the entity with only 1 chemical in the 20,000-gallon tank. I get all the time to inspect 99 chemicals for free.

Keep in mind that the degree of toxicity or risk has no bearing on CUPA's BP work. I can have dioxin in an unattended 20,000-gallon tank located right next to a pre-school or the same dioxin in a 55-gallon triple-lined concrete container with second by second visual monitoring, and it will make no difference in EHS's work as it is related to the CUPA Business Plan program. *(It does make a difference in the risk programs, and aboveground storage programs, but not the BP's.)*

**Conclusion:** This sort of fee schedule demonstrates that the table does not have any correlation to the work done, what the inspector monitors, and how that time is spent.

MGT will try to argue that "other Counties do it this way". That has no bearing. It doesn't mean that it is correct, or representative of the cost. The other Counties just haven't had someone understand and then question the fee process. If other Counties had the County subsidize 75% of the program, would that suddenly have a bearing and cause SBC to subsidize the program? Of course not.

Back when the fees were first established around 1995, the fee was the sum of the number of chemicals from table shown above as one component; PLUS, a component that was based on the size of the largest container, which is MGT's new fee proposal. After SBC EHS and the Fire Department developed an understanding of the requirements of the program, they realized that the size of container was not a variable in a fee to be concerned with and eliminated that component, probably around 2005. That is why it is not part of the fees now. It was part, but it was eliminated as being part for the reasons I state above. MGT's proposal goes back to past history that was proven unsuccessful. Why do it again?

**Suggested Fee Schedule:** Since the Board wants to go to a 100% cost recovery program, the fee schedule must similarly charge each entity a fair share of work done on its behalf. It is easy to do with an equation that can easily be plugged into the billing computers, and recover the dollars needed.

The County must recover \$646,240 (MGT Executive Summary, Page 8, sum of line 12-16, fourth from last column).

The individual entity fee equation is:  $\text{Fee} = \text{Base Amount} + (\text{number of chemicals} * \text{fee/chemical})$

The base fee is really a reflection of that time that is generally the same amount of general overhead time spent per entity (i.e. vacation, training, non-recoverable time, overhead, etc.). Once the base fee/entity is decided (it is an assumption), say \$100/entity, the rest of the variables are all determined.

Example: Base fee: \$100/entity. I chose this, because it reflects about an hour of work.

With 1,744 sites (MGT Executive Summary, page 8, column 4, sum of lines 6-11), \$174,400 is recovered from the Base Fee. The balance needed to be recovered is \$471,840 (\$646,240-\$174,400).

The number of Countywide individual chemicals is simple to get. One just adds up the number of chemicals reported on the Business Plan for the 1,744 entities. Electronically, it probably is already obtainable from the CalEPA reporting site. This number is not given in the MGT report, but it would be about 9,795 reported chemicals (my estimate is the sum of the average number for each fee step multiplied by the number of entities in that step). \$471,840 divided by 9,795 results in a charge of \$48/chemical (for reference, the range would be \$34-\$82 using the outside ranges of the fee steps).

With this, the individual site will pay  $\$100 + \$48 \times$  the number of chemicals. The more chemicals, the more one pays. A site with 3 chemicals would pay \$245, close to what it currently pays, a site with 9 chemicals would pay \$534, a \$179 increase, and a site with 15 chemicals would pay \$823, a \$415 increase. A site with 100 chemicals will pay \$4,900, an increase of \$4,344, which is a much better estimate of the time spent.

After all, if the County wants 100% reimbursement, how can it argue that one separate independent business must pay more than its fair share and another one less, when the time spent/chemical is the same? Reduce the number of chemicals.

**Second year:** If this is adopted (or even if the MGT proposal is adopted), there will be a scrambling and readjustment of each entity's inventory (to save fee money). The total number of chemicals will drop, as a business with 85 chemicals now paying \$4,200 (from \$556) will suddenly discover that it only needs 30 chemicals and save \$1,500 in fees. This will be a direct loss of reimbursable EHS dollars. It is suggested that for the 2020-2021 budget cycle, the fee equation calculation be redone, changing the number of chemicals and the new required income the same way.

After this time, things should be in a steady state; the number of chemicals will stabilize.

**Subsequent years:**

Finally, the Board has decided that this department must recover 100% of its costs. I make the following suggestion. The MGT report suggests that they be employed to redo this report every 3-5 years (MGT Executive Summary, page 6-7). That is not necessary.

As opposed to doing another study, there is a very simple fix the SBCAPCD adopted in March, 2005. At that time, the Board was having to adopt a new fee schedule about every five years to recover costs, due primarily to wages that increased. At Industry's suggestion, the APCD adopted an annual cost of living increase in 2005 (Rule 210.V.C), to cover those increases, so a review of fee amounts would only have to occur when new programs were added, and just for that program. (This assumes that MGT for this study accurately portrayed of the relationship of fees to hours of work level, not like the BP issue).

By adding this in, and duplicating the annual COL increase, changes in wages would be covered and make that redo study not necessary for what I think will be well over a decade. The APCD has been 14 years. Since Conway is paying its share of the 100% recovery that the MGT study charges, we just don't want to subsidize this make-work study in 3 years. After all, it's our money that is paying for it, and the Board is just managing it for us under the 100% recovery plan.

**Metrics of the MGT Study do not Match Operations.** Something bothers me about MGT's study. What I see in the field does not match the impressive tables in the study. For instance, the CUPA-BP portion is supposed to be underfunded by \$149,440 (\$646,240-\$496,800). The entire County subsidy of all CUPA programs is \$369,637 (Executive Summary). The employee load of the BP Section is 2.99 FTE. So, the Study is saying that 40.4% of the revenue shortfall for the CUPA program comes from 2.99 people out of a CUPA staff of 12??? Really?

Or a little differently, the \$149,440 is CUPA-BP's shortfall. The entire County EHS program has a \$880,802 shortfall and that is from 43.75 employees. But 17% of the shortfall (\$149K/\$881K) comes from just 2.99 people (6.8% of the total staff)?

Digging deeper, looking at Attachment C, the Time Study Detail, it shows that (as stated above) there are 1,744 entities in the BP program now. Inspections are once every 3 years, making 581 inspections per year. There are 2.99 FTE being charged to the program. This is an average of 194 inspections/year/FTE. Divide it out and they only do an inspection every day and ½? And the time-on-site I have seen for an inspection is only 15-20 minutes? Where are the other 10½ hours going?

According to Mr. Ray (personal talk), an inspector should be performing 450 inspections/year. This means inspectors are only 43% as efficient as they should be and as other BP inspectors across the State are. Do you believe that these employees are that inefficient? I don't.

Based on my watching every BP inspection that Conway has had since 1993, I know that this is not correct and it does not reflect the rate these inspectors work at. My guess is that there are accounting errors resulting in employees charging for BP activities, when in reality, they are performing activities for other Programs. Or the overhead is being allocated incorrectly. Why in the Salary Model Table would 8.28 CUPA non-supervisory employees need 3.75 supervisors (Program 2010) (12.03 total CUPA Employees) FTEs? And the balance of 28.97 EHS non-supervisory employees need 2.75 supervisors (Program 1000)? The ratios don't work out.

I think that the CUPA-BP Program is being used as the dumping ground for charging unallocatable time, or is just being innocently miscoded on timesheets. An inspector goes out and performs a BP and an Aboveground Storage Tank inspection at the same time. While the BP portion takes 15 minutes, the Tank one takes much longer, maybe 90 minutes, as a Spill Protection Plan of 30-40 pages must be reviewed, berms, dikes, and containment inspected, employee training checked, etc. While the correct technical allocation of time is 14%-86%, including travel time, the inspector allocates it 50%-50%, or 75%-25%. This would be easily determined with a quick audit, or discussion with the inspector about his actual timesheet practices.

As to the metrics, there needs to be a better study performed with industry's input and oversight. Without it, in 2-3 years you will see that EHS will again not meet its budget and MGT will have to come in for another study. Garbage in results in garbage out.

It's like the BP fee allocation issue. When you change the schedule to be based on size of tanks, businesses will just drop the size of the tanks, and still have the same number of chemicals or more, because there is no cost impact to the entity for it. And EHS' income drops and the workload increases. If the fee schedule is not changed, we already have plans of making a simple paperwork change and drop six operations from a BP Level 5 to a BP Level 1. You can't fault us for doing it. We save \$1,280/year, CUPA-BP loses \$1,280, and CUPA inspectors do the same amount of work with less cash.

I hope that you will carefully consider Conway's suggestions. If you have any questions, please call me. Thank you very much.

Sincerely,



Bruce Falkenhagen

cc: Bruce Conway, President  
Andy Caldwell, COLAB