

➡§ 91200. Scope and Policy; Definition.

(a) The fee schedules in this Subchapter shall not supersede or preempt any rule or regulation of any air pollution control district governing fees for source testing.

(b) The following definitions apply for the purposes of this subchapter only.

(1) "Source" means (i) any permit unit, article, machine, equipment or other contrivance which may cause the issuance of air contaminants; or (ii) any substance, such as fuel or an architectural coating, the content, characteristics, manufacture, sale, distribution or use of which is restricted by any State or local law, rule, regulation or order relating to air pollution.

(2) "Responsible party" means (i) in reference to sources defined in subsection (b)(1)(i) of this section, the owner, operator, or user of a source; or (ii) in reference to sources defined in subsection (b)(1)(ii) of this section, the manufacturer who produced the substance in its entirety, the user of the substance, or any seller or offer or for sale of the substance.

(3) "Independent tester" means a person, other than an employee of the State Board, who engages in the testing of sources to determine compliance with State or local laws or regulations relating to air pollution.

(4) "Executive Officer" means the Executive Officer of the State Board or his or her authorized representative.

➡§ 91201. Source Testing Fee Schedule.

(a) Whenever the Executive Officer finds that it is necessary to determine compliance of any source with permit conditions or with any State or local law, order, rule, or regulation relating to air pollution, including confirmation of the reliability, accuracy and precision of any in-stack monitoring equipment, he or she may require the testing of such source by qualified personnel of the State Board, by an independent contractor to the State Board, or by an independent tester specified by the responsible party upon approval by the Executive Officer.

(b) For testing conducted by the State Board's personnel or an independent contractor to the Board, the responsible party shall pay a fee in accordance with the following schedule to cover the cost of planning, preliminary evaluation, sampling, sample analysis, calculations, and report preparation with respect to samples of emissions secured from the source. The fees listed in the schedule shall be the maximum fees and shall be reduced by the Executive Officer if the actual cost to conduct a specific test is less. Fees for any compliance test not listed in the schedule shall be determined by the Executive Officer based on the cost to conduct the test.

Estimated Costs to Perform Source Tests and Other Special Tests [\[FN1\]](#)

Type of Test	Fee
Continuous Analyzer Gaseous Emissions Test [FN1] with Van.....	\$1,620.00 plus \$55.00/hour
Non-continuous Emission Testing [FN1]	1,230.00 plus specific sample fee listed below
Particulate Matter Test.....	230.00/sample
Sulfur Dioxide Test.....	145.00/sample
Sulfuric Acid Mist (including sulfur trioxide) and Sulfur Dioxide Test.....	205.00/sample
Oxides of Nitrogen Test.....	90.00/sample
Hydrogen Sulfide Test.....	120.00/sample
Fluorides Test.....	400.00/sample
Carbon Monoxide Test.....	70.00/sample
Total Hydrocarbon Test.....	60.00/sample
Gas Chromatographic Analysis of Unknown Pollutants.....	110.00/sample
Vinyl Chloride Test.....	100.00/sample
Reid Vapor Pressure Test.....	45.00/test
Ambient Vinyl Chloride Test.....	100.00/sample
Visible Emission Evaluation Test.....	450.00/evaluation
Particulate Fallout Testing.....	75.00/sample
Floating Roof Tank Inspection.....	185.00/inspection
Vapor Recovery System Inspection.....	70.00-2,170.00/inspection
Valve and Flange Leak Test.....	1.75/test
Laboratory Fuel Analysis	
Carbon, Hydrogen, Nitrogen and Sulfur.....	30.00/sample
Ash.....	75.00/sample
Density.....	60.00/sample
Heat Content.....	180.00/sample
Water.....	75.00/sample
Asphaltenes.....	75.00/sample
Distillation.....	50.00/sample
Metals.....	295.00/sample
Bromine Number.....	50.00/sample
Lead.....	15.00/sample
Other Laboratory Analysis	
Water, Volatile Organic Compounds and Density (paints).....	50.00/sample
Methane.....	40.00/sample
Total Hydrocarbon.....	30.00/sample
Hydrocarbons (with one to nine carbons).....	55.00/sample

Molecular Weight Determination of Vapor Hydrocarbons.....	75.00/sample
Molecular Weight Determination of Liquid Hydrocarbons.....	50.00/sample
Hydrogen Sulfide.....	30.00/sample
Percent Water.....	30.00/sample
Asbestos (air filter sample).....	444.00/sample
Particle Size Distribution Optical Microscopy.....	148.00/sample
Particle Size Distribution Electron Microscopy.....	.296.00/sample

[FN1] Source test fees may also include additional cost of laboratory analysis as required.

➡§ 91202. Additional Testing.

(a) Where test results indicate that a source is in compliance with permit conditions or with any State or local law, order, rule or regulation relating to air pollution, the responsible party shall be assessed the applicable fees in Section 91201 only once per each 12-month period. This limitation shall not restrict the State Board from conducting additional testing at its own expense. The Executive Officer may assess fees for multiple testing, or for multiple samples, where the same is necessary to determine compliance.

(b) If the test results indicate that the specific source tested is not in compliance with permit conditions or with any State or local law, order, rule, or regulation relating to air pollution, the Executive Officer may require such additional source tests as may be necessary and may also exclude use of an independent tester for such additional tests. In such event, the responsible party shall pay for each additional test in accordance with the schedule of fees set forth in Section 91201 until compliance is achieved and confirmed.

➡§ 91203. Fee Payment.

(a) After completion of testing conducted by the State Board directly or by a contractor to the State Board, the responsible party shall be notified by the Accounting Office of the State Board, in writing, of the fees to be paid for such tests and of preliminary results. The failure to pay any such fee within 30 days of the receipt of the notice shall constitute grounds for the revocation or suspension of the permit to operate the equipment tested. The Executive Officer may request the district air pollution control officer to revoke or suspend any permit until the required fees are paid, in accordance with Health and Safety Code Sections 42304-42309.

(b) The responsible party shall be entitled to receive a copy of the source test results, if the testing was conducted by the State Board or an independent contractor to the State Board, as soon as such test results have been verified and finalized.

➡§ 91204. Financial Hardship Exemption.

(a) The responsible party may petition the Executive Officer, no later than 30 days after receipt of the fee notice described in Section 91203, to be excused from payment of fees, or a portion of such fees, on the grounds that payment of such fees would cause a demonstrable financial hardship.

(b) For the purposes of this Section, a demonstrable financial hardship shall consist of such evidence as is capable of demonstrating that full payment will prevent the responsible party from meeting other financial obligations as they come due, or will cause the taking of property or the practical closing and eliminating of a lawful business.

(c) Based on the evidence provided, the Executive Officer may exempt the responsible party from payment of all or a portion of the fees otherwise required under Section 91203.

➔§ 91205. Small Business.

(a) A small business shall not be required to pay any fees otherwise applicable under Section 91201. A "small business," for the purposes of this section, shall be as defined in subsection (1), Section 1896, Title 2 of the California Administrative Code.

(b) Any responsible party who desires to establish eligibility for non-payment of fees pursuant to subsection (a) shall do so by filing a written statement, under penalty of perjury, that the business is a small business, as defined.

➔§ 91206. Request for Independent Tester.

(a) By August 1, 1981, or by June 1 of any year thereafter, any responsible party who seeks to have compliance testing performed by an independent tester for the following fiscal year shall inform the Executive Officer in writing of this desire. If no such request is made, then compliance testing for the fiscal year may be conducted by the Executive Officer or by an independent contractor to the State Board.

(b) All requests for an independent tester shall include the name(s) of the independent testers, the type of source or sources to be tested, the type of test or tests to be performed, and a statement by the responsible party that it will comply with the requirements of Sections 91208-91212 of this subchapter and that the designated independent tester has agreed to perform any necessary source testing.

(c) Independent testers shall in all cases be subject to approval by the Executive Officer.

(d) At any time a responsible party which has previously designated an approved independent tester pursuant to subsection (a) of this section may apply for the substitution, addition or removal of a designation of an independent tester. No such change shall be effective for at least 60 days following the application.

(e) The Executive Officer may compliance test any source and charge a fee to the responsible party for the cost of such test, notwithstanding a request for an independent tester, if any of the following conditions prevail:

(1) The responsible party has not designated an independent tester to the Executive Officer by August 1, 1981 or by June 1 for any year thereafter.

(2) The Executive Officer has found the designated independent tester(s) non-approvable.

(3) The designated independent tester has not timely submitted information requested by the Executive Officer pursuant to Section 91207(a).

(4) A violation has been found by the most recent source test conducted within a year prior to the proposed current source test; provided, however, that such restriction shall only apply for the specific source found in violation.

(5) The Executive Officer has determined that other good cause exists to deny the request.

➡§ 91207. Approval of Independent Testers.

(a) Independent testers may be approved for performing any of the tests listed in Section 91201 of this subchapter or such other tests as deemed appropriate by the Executive Officer to determine compliance of a source with applicable laws and rules. Such approval can be accomplished by a potential tester's writing the Executive Officer and specifying the test(s) for which approval is sought. The potential tester shall then provide any necessary data requested by the Executive Officer which can substantiate the potential tester's qualifications for performing the noted test(s).

(b) Approval of an independent tester may be withdrawn at any time if the approved tester fails to comply with the requirements specified in Sections 91215-91218 of this subchapter or fails to provide the type and quality of data required by the Executive Officer.

(c) Upon disapproval or withdrawal of approval of an independent tester, the Executive Officer shall send by certified mail a written statement of the reasons for such action to the independent tester, and to any responsible party requesting or using such tester.

(d) An independent tester may request reconsideration of the decision of the Executive Officer to disapprove or withdraw approval of such tester. The request must be received by the Executive Officer within 30 days after mailing the written statement described in subsection (c), and shall contain all evidence the independent tester asserts justifies reconsideration. The Executive Officer may rescind the disapproval or withdrawal if he or she determines that the independent tester satisfies the applicable requirements of this

subchapter. A written statement of the reasons for the Executive Officer's decision shall be transmitted in accordance with subsection (c) of this section.

➡§ 91208. Conflict of Interest.

(a) An independent tester shall not be allowed to conduct a compliance source test pursuant to this subchapter if:

- (1) It is owned in whole or in part by the responsible party of the source; or
- (2) In the 12 months preceding the test, the independent tester has received gross income from the responsible party, other than as a result of source test contracts entered into pursuant to this subchapter, in excess of \$100,000, or in excess of ten percent of the independent tester's gross annualized revenues; provided that for the purpose of this subsection, "independent tester" and "responsible party" shall include any entity under common ownership with such tester or party; or
- (3) The independent tester manufactured or installed any emission control device or monitor utilized in connection with the specific source to be tested.

(b) An independent tester shall not utilize in a compliance test pursuant to this subchapter any employee or agent who holds a direct or indirect investment in the responsible party of the source of \$1,000 or more, or who has directly received in the previous 12 months income in excess of \$250 from the responsible party of the source, or who is a director, officer, partner, employee, trustee, or holds any position of management in the responsible party of the source.

(c) If the Executive Officer determines that a compliance source test administered pursuant to this subchapter was not conducted in accordance with the provisions of this section, he or she may invalidate the results of the test and the tester may be subject to disqualification from further testing on the Board's behalf.

➡§ 91209. Pretest Inspection Right of Entry.

The responsible party which has requested testing by an independent tester must allow entry to both authorized representatives of the independent tester and authorized representatives of the Executive Officer for the purpose of conducting a pretest inspection.

➡§ 91210. Right of Entry During Independent Testing.

When a responsible party requests to be tested by an independent tester, the responsible party shall grant entry to the actual test site, without prior notice, to both the tester's authorized personnel and the Executive Officer's authorized personnel.

➡§ 91211. Oversight.

All testing requested by the Executive Officer and conducted by an independent tester may be observed by an authorized representative of the Executive Officer.

➡§ 91212. Audit Testing of Independent Testers.

Without prior notice the responsible party must allow personnel and equipment authorized by the Executive Officer entry for the purpose of testing the capability of the independent tester during the performance of a test.

➡§ 91213. Availability of Independent Tester.

The responsible party must notify the designated independent tester that he or she may be called upon to perform testing with at least 24 hours advance notice from the Executive Officer. If the tester cannot respond within the required time, then the Executive Officer may conduct the required testing. In such cases the responsible party will be charged for the testing in accordance with Section 91201, Title 17, California Administrative Code.

➡§ 91214. Fee and Payment for Testing by Independent Testers.

Fees and payment for testing conducted by independent testers shall be arranged by agreement between the independent tester and the responsible party. In no case will the State Board be responsible for collection of fees for any independent tester.

➡§ 91215. Confidentiality of Test Information.

Without prior approval of the Executive Officer, the independent tester shall not disclose to the responsible party or the responsible party's personnel in advance of the test the dates, locations, or times of testing. The independent tester shall not disclose to the responsible party the results of the test prior to disclosure to the Air Resources Board. Failure to keep such information confidential for such a period may result in indefinite disqualification of the tester.

➡§ 91216. Records and Reports.

All original records made during testing requested by the State Board shall become the property of the State Board. All or part of such records may be requested by the Executive Officer at any time during or after the test period. All original records and the report of results from the tester should be provided to the Executive Officer no later than 30 days after the testing is complete. Failure to provide the required records or reports may result in disqualification of the tester for further testing required by the State Board.

➡§ 91217. Conformity During Testing.

An independent tester shall conform to reasonable requests made by the Executive

Officer during the test period. Failure to conform as such may result in disqualification from testing as required by the State Board.

➡§ 91218. Testimony.

When requested by the Executive Officer, the independent tester shall provide testimony in court or other prosecutorial assistance related to violations discovered as a result of the independent tester's compliance source test. Charges of the independent tester to the State Board for such services shall not exceed the actual travel costs, the per diem rate for state employees applicable at the time of the services, and remuneration for personal services on an hourly basis not to exceed the hourly cost to the State of an employee of the State Board whose job functions are mostly closely equivalent to the functions of the representative of the independent tester rendering the personal services.

➡§ 91219. Validity of Independent Tester's Compliance Test Data.

Test data produced during compliance testing of a source by an independent tester will be reviewed by the Executive Officer to determine its validity. If such data is determined after consultation with the independent tester and the responsible party to be invalid, the Executive Officer may require a repeat compliance test of the source.

➡§ 91220. Unannounced Testing.

When there is reasonable cause to believe that a violation has occurred, is occurring, or will occur, the Executive Officer may test directly without prior notice and without allowing such testing to be conducted by an independent tester.