



California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

VIA ELECTRONIC MAIL

October 26, 2012

Ms. Carol Lee
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Proposed Amendments to Regulation 2 – New Source Review and Title V
Permitting Programs

Dear Ms. Lee:

The California Council for Environmental and Economic Balance (“CCEEB”) is a coalition of California business, labor and public leaders that advances strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

Our members have great interest in Regulation 2, as it stands as the basis for all permitting decisions made by the District. Collectively, our members spend hundreds of millions of dollars to construct and modify facilities in the region and provide jobs to thousands of Bay Area residents. An effective permitting system that is understood by all stakeholders, especially the applicants and all appropriate District staff, is essential to the economic vitality of the region.

This letter is CCEEB’s third set of written comments on this proposal. We have met with members of your staff on numerous occasions and we have had a meeting with officials from EPA Region 9. Through all of this interaction, we have seen great improvement to the proposal, yet there remain three areas of significant concern.

1. Concerns with Requirement for Proposed NAAQS Compliance Demonstration for Non-Attainment Pollutants (Section 2-2-308)

Banked ERCs and offset provisions have been traditionally used to assure reasonable progress towards attainment and provide flexibility for future growth and development. The new proposal is based on net emission increases that include on-site contemporaneous reductions, not off-site banked ERCs. A proposed new facility, or expansion of an existing facility that would emit a significant quantity of a non-attainment pollutant, would not be permitted in an area that has an ambient background (monitored) concentration in excess of a

NAAQS (an impact less than a Significant Impact Level) would still incrementally contribute to background concentration). Should the District fall into non-attainment for PM_{2.5} or other criteria pollutants, we fear that the rule as proposed would prohibit permitting in many portions of the Bay Area. This provision is not required under the Clean Air Act or by state law. We recommend that staff remove the provision from the proposal. If the District nevertheless adopts this provision, we strongly urge the District not to submit it to EPA for inclusion in the SIP, as the provision is not required by the Clean Air Act.

2. Federal Backstop Provision Adds Unnecessary Complexity

We understand that this requirement is added as a result of discussions and correspondence with EPA. We disagree with EPA's conclusion. To our knowledge, this dual approach has not been mandated by EPA in any other location. In an earlier draft, the District proposed using its existing definition of "modification." EPA approved this definition and the corresponding analysis when this rule was last submitted to EPA for SIP approval. The addition of a second definition of "modification," as suggested by EPA, would add significant complexity and uncertainty to the permitting process for most projects by requiring projects to be analyzed twice, using different methods. Certainly, this cannot be the desire of the District as the basis for a sound permitting system. We believe your earlier definition of "modification" *is as least as stringent* as EPA's definition. The District should adopt a single definition of "modification" as proposed in your earlier draft and work with EPA to show that such a definition is in compliance with the Clean Air Act.

3. Need for Greater Understanding to Ease Permitting Concerns

The proposed changes to Regulation 2 are significant and go well beyond the stated intent of incorporating PM_{2.5} and GHGs. We are very concerned that the new rule will lead to greater uncertainty when preparing and processing permits. For example, if the rule is adopted as proposed, we will need to understand how to work with different sets of calculations, address the uncertainties of BACT for GHGs, factor in the potential limited availability of PM_{2.5} ERCs, and gain a better understanding of modeling for PM₁₀. Overlaying all of these concerns, we need assurance that District staff will have the proper training and be prepared to process permit applications consistently, accurately, and in an efficient manner.

To help ease the transition of these changes, CCEEB requests two actions by District staff. First, we believe it is necessary to hold one additional technical workgroup meeting prior to final adoption of the rule to allow stakeholders to walk through permitting examples with District staff in an effort to gain a clear understanding of how the District will make permitting decisions. It is critical that the regulated community has clear and consistent direction from all District staff when it comes to permitting decisions.

Ms. Carol Lee
October 26, 2012
Page 3

We also request that the District use the time from when the rule is submitted to EPA to a time prior to EPA approval to evaluate if additional clarification is needed with any rule language. Should the District identify the need for such changes, we ask the District to commit to an amended submittal prior to final EPA action.

Thank you for considering our views. We would be pleased to meet with you and your colleagues should you wish to discuss in more detail.

Sincerely,



William J. Quinn
Vice President & Chief Operating Officer

cc: Mr. Jack Broadbent
Mr. Alexander Crockett
Mr. Jim Karas
Mr. Gerald D. Secundy
Members, CCEEB's Bay Area Partnership