



**Pacific Gas and
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October 22, 2012

**Jack Broadbent
Executive Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109**

Subject: Proposed Amendments to BAAQMD Rules 2-1, 2-2, 2-4, 2-6

Dear Mr. Broadbent:

This letter is regarding proposed amendments to BAAQMD's permit rules (Regulation 2, Rules 1, 2, 4, & 6). PG&E wishes to provide comments and request reconsideration of the proposed provision regarding NAAQS protection requirements in Regulation 2, Rule 2, Section 308.

PG&E has been involved from the beginning of the rule amendment process, has participated in workshops and technical work group meetings, and has provided comments as these rules have gone through several revisions. PG&E is concerned that proposed Section 2-2-308 would effectively prohibit the construction of new facilities and modification of existing facilities that would otherwise be deemed beneficial in "nonattainment" areas. It would likely push construction of new industrial facilities into more pristine areas of the region – even in cases where the project would *decrease* emissions in the region!

BAAQMD staff originally stated during the workshop of February 22, 2012 that the intent of these rule amendments was to add existing federal requirements for PM_{2.5} and GHGs into the BAAQMD's New Source Review procedures; to obtain EPA approval of BAAQMD's PSD permit regulations; and to clarify ambiguous provisions. Staff stated that there would be "no additional substantive changes" beyond those already in effect at local or federal level. However, midway through the process, District staff abruptly added a major provision (Section 2-2-308) that is outside of the scope of the objectives, and for which, the impact has not been adequately analyzed.

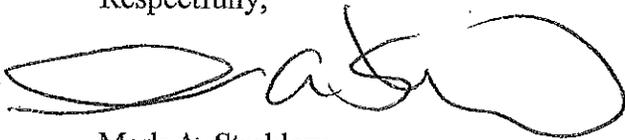
This provision would likely prohibit construction of new facilities that would otherwise be deemed beneficial and would create uncertainty in the permitting process that would inhibit planning of beneficial modifications to existing facilities in areas designated as "nonattainment" for the NAAQSs. The proposed provision could have significant impacts depending upon future changes in attainment status because of fluctuations in regional emissions and ambient air monitoring levels, enhanced ambient air monitoring (additional PM_{2.5} monitors, new ultrafine PM monitors, and near-road monitors), meteorological variation, climate change, revision of

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existing NAAQSs to more stringent levels, and potential establishment of new NAAQSs (e.g., ultrafine PM).

PG&E recommends that the BAAQMD remove Section 2-2-308 from the final rule or modify the provision to be less restrictive. We have attached more detailed comments to support our request and some alternative language for your consideration. Thank you in advance for your time and consideration of our request. We look forward to discussing in more detail. Should you have any questions or comments please do not hesitate to contact me at (415) 973-2889.

Respectfully,



Mark A. Strehlow
Air Program Manager,
Pacific Gas and Electric Company

cc:

Carol Lee
Jim Karas
Alexander Crockett
Brian Bateman
Henry Hilken
Dan Belik

Attachment: **Appendix A: PG&E Comments Regarding Proposed Amendments to BAAQMD Permit Rules**

Appendix B: Alternative 2-2-308

Appendix A: PG&E Comments Regarding Proposed Amendments to BAAQMD Permit Rules

PG&E wishes to provide comments and request reconsideration of one of the BAAQMD's proposed provisions of Regulation 2, Rule 2:

2-2-308 NAAQS Protection Requirement: The APCO shall not issue an authority to construct for a new or modified source that will result in a significant net increase in emissions of any pollutant for which a National Ambient Air Quality Standard has been established unless the APCO determines, based upon a demonstration submitted by the applicant, that such increase will not cause or contribute to an exceedance of any National Ambient Air Quality Standard for that pollutant. Such demonstration shall be made using the procedures for PSD Air Quality Impact Analyses set forth in subsections 2-2-305.1 through 2-2-305.4. Such demonstration shall not be required for ozone. A PSD Air Quality Impact Analysis and determination for a new or modified source that satisfies the requirements of Section 2-2-305 shall satisfy the requirements of this Section for all pollutants included in such analysis.

PG&E is concerned that the effects of Section 2-2-308 would be to prohibit beneficial projects in areas that currently are or would likely become nonattainment and recommends that the BAAQMD remove this provision from the proposed rule prior to adoption. At the very least, the BAAQMD could adopt provisions that are more flexible but still consistent with federal NSR permitting requirements. PG&E has provided alternative language in Appendix B.

Background: U.S.EPA established National Ambient Air Quality Standards (NAAQS) for criteria pollutants and regulatory permitting procedures to ensure that permitting authorities would be able to allow new equipment and reasonable economic growth while maintaining good air quality in attainment areas (Prevention of Significant Deterioration) and achieving reasonable progress towards attainment in nonattainment areas (Nonattainment New Source Review). EPA's guidance is to treat new projects under one or the other new source program. A PSD-type air quality impact analysis is not required for nonattainment NSR because it would be impossible to show that sources of nonattainment pollutants would not contribute to exceedances of NAAQSs in areas where such exceedances already happen. EPA instead allows use of control equipment and Emission Reduction Credits to offset emission increases, providing regional benefits and assuring reasonable progress towards achieving attainment of a NAAQS while allow some necessary industrial growth.

BAAQMD Proposal: In contrast to EPA's approach, BAAQMD staff is now proposing to subject some projects to requirements of both of these programs: facilities subject to nonattainment NSR would also be subject to PSD-type requirements. In areas that have concentrations that exceed a NAAQS, a new project with significant emissions of a nonattainment pollutant¹ could not be permitted, regardless of whether the project would decrease emissions in the region and generally be considered beneficial. PG&E believes it would be better public policy to continue with the standard nonattainment NSR policies and use BACT and offsets to provide regional benefits (i.e., a "positive net air quality benefit" that EPA guidance requires for major nonattainment NSR).

Staff has commented that most projects that emit PM_{2.5} would not be affected because recent ambient monitoring indicates levels about 15% below the 24-hour NAAQS and that this "headspace" would allow successful modeling demonstrations (that projects would not cause or contribute to a NAAQS exceedance). While this may be true for some projects at certain locations, ambient levels of PM_{2.5} may not remain at or below current levels or even below NAAQS levels. In fact, staff acknowledged that the BAAQMD does not even intend to petition EPA for an attainment designation for PM_{2.5} because of the uncertainty of maintaining the current level of monitoring values.

Hypothetical Example: Please consider this hypothetical example: a large combustion source is being considered to replace an older higher emitting source approximately 10 miles from the new site; the new facility will use Best Available Control Equipment for NO_x; NO_x emissions and GHG emissions would be reduced significantly by the replacement of the older less efficient source; no localized ERCs are available and ERCs from the older higher emitting plant are planned to offset the emissions increase at the new site. It is likely that the new PM_{2.5} emissions would cause an increased impact in close proximity to the new site, although impacts elsewhere would be reduced (substantially more near the older plant that would be shut down). Because the new site is in an area with monitoring data that show exceedances of the PM_{2.5} NAAQS, any incremental increase of PM_{2.5} would contribute to an exceedance of the NAAQS; therefore, the BAAQMD would not grant authority to construct this beneficial project. This project would be permitted under the standard nonattainment NSR process in other parts of the nation.

PG&E Concerns: If the nonattainment status worsens, then the potential for permit appeals and litigation would increase because of the number of projects subject to Section 2-2-308. PG&E also recommends focusing on PM_{2.5} because of the uncertainty about potential changes to NAAQS attainment status for other pollutants. Existing PSD and CEQA processes should be adequate for maintaining good air quality and protecting the public health.

¹ During technical work group meetings, several commenters pointed out that the Bay Area air basin is designated as nonattainment for ozone, that estimating the impact of an individual project using ozone modeling is extremely difficult, and that any project that emits a precursor of ozone would contribute to NAAQS exceedances and therefore would not be granted authority to construct. BAAQMD staff subsequently added an exception for ozone in 2-2-308 but retained these provisions for PM_{2.5}.

When BAAQMD staff initially proposed Rule 2-2-308, they were under the impression that this provision was required in order to comply with 40 CFR § 51.160.² However, at a recent meeting with CCEEB and BAAQMD, EPA Region IX staff clarified that while modeling of individual projects was one method of demonstrating compliance with 40 CFR § 51.160, it was not required, and that compliance could be demonstrated by using a number of alternative methods (consistent with the rest of the nation). EPA's staff reiterated this in their July 26, 2012, comments regarding NAAQS compliance.

Because of proposed 2-2-308, beneficial modifications at existing Bay Area facilities in nonattainment areas could be denied, whereas, they would be permitted in other parts of the nation. Companies searching for options to mitigate GHGs may be forced to secure these reductions outside of the District, thereby denying Bay Area residents of the air quality co-benefits of such mitigation.

We recommend that the BAAQMD eliminate this restrictive permitting provision from the proposed rule revision and instead rely on the current nonattainment NSR process, the current PSD permitting process, and the recently enhanced CEQA process to provide adequate environmental protection and necessary discretion for policy makers to consider benefits of proposed projects that mitigate localized impacts. The APCO often recommends mitigation that is beneficial for local communities for projects undergoing CEQA review, and PG&E believes that allowing the APCO and county and city officials to propose mitigation during the evaluation of the merits of large projects is preferable to a bright line prohibition of new projects in certain areas of the Bay Area that are subject to change because of the many factors discussed above.

If BAAQMD nonetheless determines that a rule is needed to address potential PM_{2.5} impacts, PG&E suggests the alternative language set forth in Appendix B, which will:

- focus on PM_{2.5}, the pollutant of concern; adds specified and direct reference to standard of concern;
- retain the "headroom" approach if ambient levels remain less than NAAQS;
- explicitly allow the de minimis screening level approach (SIL concept) if ambient levels become greater than NAAQS; and
- allow the APCO to use existing rules which guarantee compliance with NAAQS.

² BAAQMD staff's position that individual project modeling is necessary to demonstrate compliance with the NAAQSs is not consistent with its own arguments presented to EPA's Environmental Appeals Board regarding Russell City Energy Company that modeling was not required because the district had been designated as nonattainment for PM_{2.5} during the permit process. As Calpine had previously commented: both the EAB and the U.S. Court of Appeals for the Ninth Circuit affirmed during review of the RCEC case that no provision of the Clean Air Act requires demonstration of attainment with the NAAQS for a nonattainment pollutant as a prerequisite of granting a PSD permit (in this case, for 24-hour PM_{2.5}). It would follow that it is also not a prerequisite for granting a non-PSD permit

Appendix B: Alternative 2-2-308

2-2-308 PM_{2.5} Nonattainment Requirements: The APCO shall not issue an authority to construct for a project that will result in a net emissions increase of PM_{2.5} greater than 10 tons per year from new and/or modified source(s) unless the APCO determines that the project's net emissions increase would result in one of the following:

1. The ambient air impact of the project's net emission increase is equal to or less than a screening level of 2.0 µg/m³ [24-hour average] or 0.50 µg/m³ [annual average];
2. The net emission increase is offset by emission reduction credits that provide a positive net air quality benefit; or
3. The project will not significantly contribute to an exceedance of a NAAQS (annual average or 24-hour average) for PM_{2.5} that was in effect as of <date of adoption of proposed amendments>.

In making these determinations, the APCO may use the guidance and procedures set forth in subsections 2-2-305.1 through 2-2-305.3 regarding ambient air impacts and/or 40 CFR 51, Appendix S (Emission Offset Interpretative Ruling) regarding net air quality benefit. Alternative methods may be used at the APCO's discretion.

The APCO also has the permitting discretion to consider other environmental benefits of the project (e.g., significant GHG reductions) to make a determination of overriding considerations, consistent with the California Environmental Quality Act.

Emission reduction credits provided for a net air quality benefit determination exclusively for this section shall be subject to the offset ratios in the following table:

Table 2-2-308, Distance Offset Ratios for PM_{2.5}

ORIGINAL LOCATION OF ERC	OFFSET RATIO
At the same facility as the new or modified source	1.0
Off-site & 15 miles or less from the centroid of the project	1.2
Greater than 15 miles from the centroid of the project	1.5