

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION No. 2022-

**A Resolution of the Board of Directors of the Bay Area Air Quality Management District
Adopting Regulation 13, Rule 5 (Climate Pollutants – Industrial Hydrogen Plants) and
amending
Regulation 8, Rule 2 (Organic Compounds – Miscellaneous Operations);
and
Certifying a California Environmental Quality Act Environmental Impact Report**

RECITALS

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has the authority and the responsibility to adopt, amend and repeal rules and regulations as necessary and appropriate to control air pollution and climate change emissions from stationary sources in the San Francisco Bay Area as provided in Sections 38594, 40000, 40001, 40702 of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to amend the District's rules and regulations by adopting new Regulation 13, Rule 5 (Climate Pollutants – Industrial Hydrogen Plants), and by amending Regulation 8, Rule 2 (Organic Compounds – Miscellaneous Operations) as set forth in Attachment A hereto ("Proposed Rule" and "Proposed Amendments");

WHEREAS, the need to adopt the Air District's first Climate Pollutant rule and regulation has arisen because of the grave threats posed by climate change and to comply with the Air District's policy goal of reducing greenhouse gas emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050, and to assist in implementing the comprehensive Basin-Wide Methane Strategy in the Air District's 2017 Clean Air Plan;

WHEREAS, the Air District also needs to adopt Regulation 13, Rule 5 to assist in achieving the target adopted by the State of California in Senate Bill 1383 of reducing methane emissions 40 percent below 2013 levels by 2030;

WHEREAS, the Air District needs to amend Regulation 8, Rule 2 to harmonize it with Regulation 13, Rule 5 by exempting from Regulation 8, Rule 2 sources that are subject to the more stringent standard of Regulation 13, Rule 5;

WHEREAS, the Air District also needs to amend Regulation 8, Rule 2 to allow for alternative test methods to ensure that facilities that process non-petroleum products utilize the appropriate test methods for the materials that are being processed, consistent with other recently-amended Air District rules;

WHEREAS, Air District staff held a public workshop in January 27, 2020 to present and discuss draft regulatory language for Regulation 13, Rule 5, along with a workshop report;

WHEREAS, based on comments received and additional research, Air District staff revised the draft rule and published a revised draft and Preliminary Staff Report on September 4, 2020;

WHEREAS, the Air District received comments on the September 4, 2020 revised draft rule and subsequently updated the draft rule language to accommodate reasonable concerns related to definitions, testing methods, monitoring, reporting, and compliance timelines;

WHEREAS, the Air District released an updated draft rule on June 30, 2021;

WHEREAS, the Air District held a scoping meeting in a virtual format on July 27, 2021 and accepted comments on the revised rule language through July 30, 2021;

WHEREAS, in response to feedback from the public, the regulated community, and Air District staff, as well as the Board of Directors, Air District staff prepared a revised draft rule and amendments to District Regulation 8, Rule 2, along with a request for public comment, which staff published on the District website on January 24, 2022 and for which comments were accepted until March 10, 2022;

WHEREAS, on or before January 24, 2022, Air District staff published in newspapers, and published and distributed on the Air District's website a notice of a public hearing on or after April 6, 2022, to consider adoption of the Proposed Rule and Proposed Amendments;

WHEREAS, Air District staff released minor updates to the draft rule and associated documents on February 4, 2022;

WHEREAS, in connection with the notice of public hearing, Air District staff invited interested members of the public to submit comments on the Proposed Rule and Proposed Amendments, and have prepared summaries of the comments received and staff's responses in a Response to Comments document, which has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, Air District staff presented briefings to various committees of the Board of Directors during this rule development process, including to the Stationary Source & Climate Impacts committee on February 28, 2022;

WHEREAS, in response to feedback from the public, the regulated community, and Air District staff, as well as the Board of Directors, Air District staff prepared a revised Proposed Rule, along with a request for public comment, which staff published on the District website on March 25, 2022 and for which comments were accepted until April 15, 2022;

WHEREAS, on or before March 25, 2022, Air District staff published in newspapers, and published and distributed on the Air District's website a notice of a public hearing on or after May 4, 2022, to consider adoption of the Proposed Rule and Proposed Amendments;

WHEREAS, Air District staff have prepared and presented to the public and to the Board of Directors a detailed Staff Report describing the purpose of and need for the Proposed Rule and Proposed Amendments, which has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, Air District staff received important public feedback during the additional public comment process, which is reflected in the final version of the Proposed Rule and Proposed Amendments that staff proposed for adoption by the Board of Directors;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on May 4, 2022, which was properly noticed in accordance with the provisions of Health & Safety Code Section 40725 and was conducted in accordance with the provisions of Health & Safety Code Section 40726, to consider the Proposed Rule and Proposed Amendments in accordance with all provisions of law;

WHEREAS, at the public hearing, the subject matter of the Proposed Rule and Proposed Amendments was discussed with interested persons in accordance with all provisions of law;

WHEREAS, in accordance with Health & Safety Code Section 40727, and based on substantial evidence presented at the hearing and described in the Staff Report and other documentation, the Board of Directors of the Bay Area Air Quality Management District has found and determined that the Proposed Rule and Proposed Amendments are necessary; that the District has the authority to adopt the Proposed Rule and Proposed Amendments; that the Proposed Rule and Proposed Amendments are clearly written and displayed; that the Proposed Rule and Proposed Amendments are consistent with other legal requirements; that the Proposed Rule and Proposed Amendments are not impermissibly duplicative of existing regulatory requirements; and that the Proposed Rule and Proposed Amendments will implement specific provisions of law as referenced and identified below;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to adopt the Proposed Rule and Proposed Amendments to address methane emissions from industrial hydrogen plants;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Air District has the authority to adopt the Proposed Rule and Proposed Amendments pursuant to Sections 38594, 40000, 40001, 40702 of the Health & Safety Code, which authorize the Air District to adopt and implement regulations to control air pollution and GHG emissions from stationary sources, and to execute the powers and duties imposed upon the Air District, among other things;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined, based on a review of the text of the Proposed Rule and Proposed Amendments set forth in Attachment A and the rulemaking materials prepared by District staff, that the Proposed Rule and Proposed Amendments are written and displayed so that their meaning can be easily understood by the persons directly affected by the Proposed Rule and Proposed Amendments, and by the public at large;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule and Proposed Amendments are in harmony with and not in conflict with or contradictory to existing statutes, court decisions, and state and federal regulations;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule and Proposed Amendments do not impose the same requirements as any existing state or federal regulations, except to the extent necessary and proper to execute the powers and duties granted to and imposed upon the Air District as the agency with authority to control air quality and methane emissions in the San Francisco Bay Area;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has identified and determined that the Proposed Amendments will implement, interpret and/or make specific the provisions of Sections 38594, 40000, 40001, 40702 of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District finds and intends that its determinations stated in the preceding paragraphs constitute the findings the Board is required to make before adopting the Proposed Rule and Proposed Amendments pursuant to Health & Safety Code Section 40727;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728 and other requirements of law, the District has maintained a file of the documents and other materials that constitute the record of proceedings on which this rulemaking project is based (including the environmental analysis for the project prepared in accordance with the California Environmental Quality Act), which record documents and other materials are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, 94105, and the custodian for which is Marcy Hiratzka, Clerk of the Boards;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728.5, to the extent that such requirements are applicable, and also as a matter of sound public policy notwithstanding whether or not such requirements are applicable, the Board of Directors of the Bay Area Air Quality Management District has actively considered the socioeconomic impacts of the Proposed Rule and has reviewed and considered the analysis thereof in the Staff Report; and has determined that the Proposed Rule will not have significant socioeconomic impacts;

WHEREAS, the Board of Directors finds and determines that the Proposed Rule and Proposed Amendments are collectively a "project" ("Proposed Project") pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.);

WHEREAS, the District is the CEQA lead agency for this project pursuant to Section 21067 of CEQA and Sections 15050 and 15051 of the CEQA Guidelines ("Guidelines") (Title 14 of the California Code of Regulations);

WHEREAS, District staff has prepared an Environmental Impact Report (EIR) for the Proposed Project pursuant to the requirements of CEQA, in connection with and based on information and analysis developed by the District's CEQA contractor, Environmental Audit, Inc., of Placentia, California;

WHEREAS, as part of the development of the EIR, District staff prepared and published (with the assistance of Environmental Audit, Inc.) an Initial Study and Notice of Preparation for the EIR, which was published and noticed in accordance with the requirements of CEQA (including CEQA Sections 21082.1, 21091, 21092 and Guidelines Sections 15070 et seq.) on June 30, 2021;

WHEREAS, District staff also convened a CEQA scoping meeting on July 27, 2021, to solicit input from interested members of the public on the Initial Study and on the scope and contents of the EIR and the potential environmental impacts to be evaluated in it;

WHEREAS, District staff then completed a draft EIR ("DEIR"), and published the DEIR and provided notice of such publication to the public and to interested parties and agencies, in accordance with the requirements of CEQA (including CEQA Sections 21082.1, 21091, 21092 and Guidelines Sections 15070 et seq.) on or before January 24, 2022;

WHEREAS, the DEIR was circulated for public review during the period from January 24, 2022 to March 10, 2022;

WHEREAS, the District received comments on the DEIR;

WHEREAS, minor clarifications and revisions to the DEIR have been incorporated in the Final EIR, none of which affect the environmental impacts of the project or otherwise represent "significant new information" requiring recirculation within the meaning of CEQA Guidelines Section 15088.5;

WHEREAS, the Final EIR, a copy of which is attached hereto and incorporated herein by reference, was presented to the Board of Directors and proposed for certification by the Board of Directors at a public meeting of the Board of Directors on May 4, 2022;

WHEREAS, the Final EIR finds that the Proposed Project will have the potential to create a significant adverse impact on air quality that comes from construction and operational emissions from air pollution control equipment that cannot be mitigated to a level that is less than significant, as described in Chapter 3.2 of the Final EIR;

WHEREAS, the Final EIR also finds that the Proposed Project will have the potential to create significant and unavoidable cumulative air quality impacts;

WHEREAS, the Final EIR finds that the Proposed Project will not have the potential to create any other significant adverse environmental impacts;

WHEREAS, the Final EIR discusses potential mitigation measures for air quality impacts as specified in Section 3.2.5 of Chapter 3.2, as explained in Section 1.4 of Chapter 1 of the Final EIR, but those mitigation measures may not reduce air quality impacts to a less than significant level;

WHEREAS, the Final EIR discusses potential alternatives to the Proposed Project which would achieve the project objectives but avoid or substantially lessen its potentially significant effects, including an alternative that would substantially reduce potential air quality impacts associated with the project, but that alternative is infeasible due to specific economic considerations;

WHEREAS, substantial evidence in the record demonstrates that approval of the Proposed Project involves specific considerations related to the need to reduce GHG emissions and protect the environment that make the alternatives identified in the Final EIR that would avoid or substantially

lessen the significant air quality impacts infeasible, as explained in Section 1.5 of Chapter 1 of the Final EIR;

WHEREAS, substantial evidence in the record demonstrates that the significant and unavoidable impacts to air quality are acceptable as provided in Guidelines Section 15093 because the climate change benefits from the Proposed Rule outweigh the Proposed Rule's significant unavoidable impacts;

WHEREAS, this matter has been duly noticed and heard in compliance with applicable requirements of the Health & Safety Code and the Public Resources Code;

WHEREAS, District staff provided copies of (i) the Proposed Rule, and (ii) the Final EIR, including the comments received on the Draft EIR and staff's responses thereto, to each of the members of the Board of Directors for their review and consideration in advance of the public meeting of the Board of Directors on May 4, 2022;

WHEREAS, District staff recommends that the Board of Directors adopt the Proposed Rule and Proposed Amendments;

WHEREAS, the Board of Directors concurs with the recommendations of District staff regarding the Proposed Rule and Proposed Amendments;

WHEREAS, District staff has recommended that the Board of Directors certify the Final EIR, which was prepared as the CEQA document for the Proposed Project, as being in compliance with all applicable requirements of CEQA, and make a Statement of Overriding Considerations;

WHEREAS, the Board of Directors concurs with recommendations of District staff regarding the Final EIR for the Proposed Project.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District does hereby certify and adopt the Final EIR pursuant to CEQA for the Proposed Project.

BE IT FURTHER RESOLVED that in support of and as part of its certification and adoption of the Final EIR for the Proposed Project, the Board of Directors hereby makes the following findings and certifications:

1. The Final EIR for the Proposed Project has been prepared in accordance with all requirements of CEQA.
2. The Final EIR includes minor clarifications and revisions, none of which affect the environmental impacts of the project or otherwise represent "significant new information" requiring recirculation within the meaning of CEQA Guidelines Section 15088.5

3. The Final EIR for the Proposed Project was duly presented to the Board of Directors for its consideration in accordance with CEQA and other applicable legal requirements.
4. The Board of Directors has reviewed and considered the information in the Final EIR and the evidence in the record described and summarized in the Final EIR, including but not limited to (i) the Final EIR's conclusion that the Proposed Project will have significant air quality impacts as described in the Final EIR, (ii) the mitigation measures proposed to mitigate the significant air quality impacts outlined in the Final EIR, and (iii) the alternatives considered to avoid or substantially lessen the significant air quality impact that are evaluated in the Final EIR.
5. The Board of Directors specifically approves the mitigation measures outlined in the Final EIR, which are incorporated by reference as if fully set forth herein, to mitigate the Proposed Rule's significant air quality impacts. No additional feasible mitigation measures have been identified that can further mitigate the significant impacts.
6. The analysis of alternatives set forth in Chapter 4 the Final EIR has provided the Board of Directors with a basis for considering ways in which the significant air quality impacts could be avoided or substantially lessened while still achieving all or most of the project's objectives. The alternatives analysis in the Final EIR is sufficient to carry out the purposes of such analysis under CEQA.
7. The Board of Directors finds that specific economic considerations make infeasible the alternative discussed in the Final EIR that would substantially reduce potential air quality impacts associated with the Proposed Project.
8. The Board of Directors finds that there is a pressing need to reduce GHG emissions and to protect public health and the environment, which the Proposed Project addresses. The Board of Directors finds that specific considerations make the alternatives identified in the Final EIR to avoid or significantly lessen the Proposed Rule's significant air quality impacts infeasible. In making this finding, the Board of Directors has considered and agrees with the reasons supporting the finding as set forth in Section 1.5 of Chapter 1 of the Final EIR, which are incorporated by reference as if fully set forth herein and which the Board of Directors adopts as its own.
9. The Final EIR (including responses to comments) is complete, adequate and in full compliance with CEQA as a basis for considering and acting upon the Proposed Rule.
10. The Final EIR reflects the independent judgment and analysis of the Bay Area Air Quality Management District.

11. The Board of Directors has exercised its own independent judgment in reviewing, considering and certifying the Final EIR and in making the findings and certifications set forth in this Resolution, which reflects the independent judgment and analysis of the Board of Directors.

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt Regulation 13, Rule 5 (Climate Pollutants – Industrial Hydrogen Plants) and the proposed amendments to Regulation 8, Rule 2 (Organic Compounds – Miscellaneous Operations) with instructions to staff to correct any typographical or formatting errors before final publication.

BE IT FURTHER RESOLVED that in support of and as part of its adoption of the Proposed Rule and Proposed Amendments, the Board of Directors hereby makes the following findings and certifications:

1. The Proposed Rule and Proposed Amendments are necessary; the District has the authority to adopt the Proposed Rule and Proposed Amendments; the Proposed Rule and Proposed Amendments are clearly written and displayed; the Proposed Rule and Proposed Amendments are consistent with other legal requirements; the Proposed Rule and Proposed Amendments are not impermissibly duplicative of existing regulatory requirements; and the Proposed Rule and Proposed Amendments will implement specific provisions of law as referenced and identified.
2. The Board of Director's approval of the Proposed Rule and Proposed Amendments is based on and supported by (among other things) the Board's consideration of the Final EIR for the Proposed Project.
3. The Board of Directors has balanced the benefits of the Proposed Project against its unavoidable environmental risks in determining whether to approve the Proposed Project. The Board of Directors finds that the Proposed Project's benefits in reducing greenhouse gas emissions and protecting public health outweigh the adverse air quality impacts that are expected to result from implementing the Proposed Project. The Board of Directors therefore finds that these significant impacts from the Proposed Rule are acceptable pursuant to Section 15093 of the CEQA Guidelines, 14 Cal. Code Regs. § 15093; and makes this finding as a "Statement of Overriding Considerations" pursuant to Section 15093. The specific reasons supporting this finding and Statement of Overriding Considerations are as follows:
 - a. The Board of Directors has considered the potentially significant air quality impacts associated with construction of air pollution control equipment to comply with the Proposed Project, which would be expected to be, in the worst-case, 55.31 pounds per day of nitrogen oxides (in light of Bay Area emissions of approximately 298 tons per day).
 - b. The Board of Directors has considered the potentially significant air quality impacts associated with operation of air pollution control equipment to

comply with the Proposed Project, which would be expected to be, in the worst-case, 35.2 tons per year of nitrogen oxides (in light of Bay Area emissions of approximately 298 tons per day).

- c. The Board of Directors has considered that, given that the Bay Area is not in attainment with the federal and state ozone standard, and that implementation of Proposed Rule 13-5 could result in significant air quality impacts due to NOx emissions from construction and operation of air pollution control equipment, cumulative air quality impacts are also potentially significant.
- d. The Board of Directors has considered that the estimated 77,543 metric tons of carbon dioxide equivalent GHG emission reductions based on a 100-year global warming potential that will come from the Proposed Project will help to achieve the Air District's policy goals of reducing methane, as well as assist in implementing the comprehensive Basin-Wide Methane Strategy in the Air District's 2017 Clean Air Plan and the target adopted by the State of California in Senate Bill 1383 of reducing methane emissions 40 percent below 2013 levels by 2030.
- e. In addition to the reasons outlined in subparagraphs a.-d. above, the Board of Directors has reviewed and considered the more detailed summary of reasons why the Proposed Project benefits in reducing GHG emissions and protecting public health outweigh the Proposed Project's adverse air quality impacts set forth in Section 1.4 of Chapter 1 of the Final EIR for the Proposed Project. The Board of Directors agrees with the reasons set forth in the Final EIR and the Staff Report, and it adopts those reasons as its own and incorporates them by reference as if fully set forth herein as specific reasons supporting this finding and Statement of Overriding Considerations.

BE IT FURTHER RESOLVED that the record documents and other materials supporting this Resolution shall be maintained and made available for public review at the headquarters of the Bay Area Air Quality Management District at 375 Beale Street, Suite 600, San Francisco, CA 94105, and that the custodian for these documents and other materials shall be Marcy Hiratzka, Clerk of the Boards.

The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director _____, seconded by Director _____, on the ____ day of _____, 2022, by the following vote of the Board: