May 28, 2021

Jack Broadbent
Air Pollution Control Officer

Jacob Finkle
Senior Air Quality Specialist

Bay Area Air Quality Management District
375 Beale St., Suite 600
San Francisco, CA 94105

**Re: Comments on May 2021 Virtual Public Workshop on Concepts to Amend Regulation 2: Permits**

Dear Messrs. Broadbent and Finkle,

350 Bay Area represents over 25,000 Air District constituents who are deeply concerned about climate chaos, toxic air, and environmental injustice.

The Air District's permitting system serves like a machine that systematically and unceasingly piles up pollution, health impacts, and death in Bay Area communities, disproportionately upon low-income communities of color. All the hard-fought efforts by the agency and its partners to reduce emissions through rulemaking, strategic incentives, and other means — each project amounting to thousands of hours of staff time, tremendous investment by the Board of Directors, and deep engagement by community members — are directly undermined by ongoing flaws and loopholes in your permitting rules. Much of the agency spends all day every day trying to get the Bay Area out of the proverbial emissions hole it's in, while the permit program just keeps digging the hole deeper.

To that end, we appreciate the opportunity to review and provide comments on the May 12, 2021 Virtual Public Workshop on Concepts to Amend Regulation 2. Amendments deeper than those proposed will be required to even begin to rectify the unsustainable dynamic the District's permitting program has been perpetuating for decades.

Firstly, we strongly support each point made in the May 28, 2021 letter submitted by the Environmental Law and Justice Clinic at Golden Gate University School of Law on behalf of the West Oakland Environmental Indicators Project and Communities for a Better Environment. We will not restate those points in these comments, but you may consider them seconded. Our independent comments follow.

## The District Is Asleep at the Wheel on Local Land Use

In the Workshop and staff's corresponding presentation to the Stationary Source Committee on May 17, 2021, the Air District maintained that local land use decisions are the driver of community concerns over local pollution, rather than anything the Air District is or isn't doing. Air District staff indicated that the agency's role is simply to "develop and implement air quality and greenhouse gas (GHG) plans."

Even within this narrowly defined, laissez-faire concept of the agency's role in community health protection, the Air District seems to have failed broadly. To be sure, the District has developed air quality and GHG plans, but from the evidence we have seen in several years of engagement with the agency, it appears that next to zero effort has been invested into implementing any of them, making them largely just exercises in paper sitting on a shelf.

Staff first mentioned the 2017 Clean Air Plan, which has a full 33 Control Measures reliant on using the District's "soft power" to work with government partners and stakeholders — i.e., the Primary Implementation Tools titled "Facilitate Best Policies," "Outreach and Education," and "Advocacy."[1] These Control Measures cover every economic sector in the plan, including many relevant to land use planning; however, in the four years since the plan was adopted, the District has taken almost no action to implement any of these Control Measures.

The same can likely be said with respect to the other guidance documents mentioned at the Workshop, given the deeply injurious pollution outcomes at issue to so many community members. As was discussed by Workshop participants as well as by Stationary Source Committee members, most localities in the region have precious few policy staff, and the District's simply publishing some guidance documents and sending an email out does not actually change any real-world outcomes.

If local land use permitting is truly seen by the agency to be the crux of community discontent, why has the District invested so little energy into getting the guidance in the 2017 Clean Air Plan, Planning Healthy Places, and the like put into use and standardized in localities around the region? If local land use decision-making is working counter to your achieving your mission to protect clean air and community health, why would you let your CEQA thresholds and guidelines become so deeply outdated, despite talking for years about working on them?

The District must:

1. Stop abdicating its role in informing and driving sustainable and health-protective local land use decisions.
2. Devote substantial resources to implementing existing air quality plans instead of shelving them and making a joke of the planning process.
3. Devote substantial resources to disseminating land use planning guidance effectively to local jurisdictions and getting that guidance integrated successfully, including through advocacy, capacity-building, and direct assistance where needed.
4. Tighten its CEQA thresholds and guidelines for GHGs, particulate matter (PM), and toxic air contaminants (TACs) without any further delay.
5. Play as dominant a role as possible in CEQA processes with potentially significant community emissions impacts, including serving as co-lead agency wherever feasible.
6. Upgrade the public noticing language in Regulation 2 to notify nearby residents in overburdened communities *at the time that the District becomes aware of a local land use permitting process with significant community emissions impacts.*

## The Bay Area Deserves Less Cancer, & Overburdened Communities Deserve Maximum Protection

It was unclear in the Workshop presentation what the reasoning was for the specific proposals of three, five, and six in a million cancer risk from TACs, and we are not equipped to speak to the technical feasibility of achieving even lower cancer risk thresholds. If such thresholds could indeed be feasibly achieved, however, they should be investigated.

We believe that everyone in the Bay Area should be allowed increased opportunity to thrive free from the scourge of cancer caused by District-permitted polluters. We also believe that overburdened communities — which expand beyond just AB 617 communities or CARE communities — deserve the maximum protection that can be feasibly provided, given the generations of injury, illness, and premature death that structural racism and Air District permits have allowed to plague them disproportionately.

[1] BAAQMD, *2017 Clean Air Plan: Spare the Air, Cool the Climate*, April 2017, pp. 5/41-5/45 (Table 5-13).

To that end, given only the choices provided at the Workshop, we would suggest amending the cancer risk threshold District-wide to five in a million and amending the cancer risk threshold within overburdened communities to three in a million. Again, if a tighter risk threshold than three in a million could be feasibly achieved, it must be considered in order to start to relieve the cumulative impacts that have been dealt to overburdened communities for generations. Exemptions for public safety and any other prosocial uses favored by local communities can be included in the rule amendments to eliminate any concern that setting thresholds too low would prevent certain facility upgrades or construction that the community needs.

## The Advisory Council's Strong Findings on PM Demand "Maximum Feasible Action" to Reduce It

The Air District's Advisory Council recently spent over a year studying in depth the issue of PM emissions in the Bay Area context, including convening national experts and EPA staff, and presented their findings to the Board of Directors on December 16, 2020 in the *Particulate Matter: Spotlight on Health Protection* report.

One of the primary conclusions of that work is that "(t)he Air District should move as quickly as possible to take maximal feasible action within its authority to reduce emissions from PM sources, prioritizing the most impacted areas."[2] Here, the District's Advisory Council is clearly communicating to the agency that it should integrate meaningful PM limits into the permit rules as quickly as possible — as it is 100% clear by definition that anything less would not be maximum feasible action within its authority. If staff cannot generate emissions limits based on health risk in a timely fashion despite having been discussing this topic for years, the District should include early and timely action that it can take in these rule amendments to improve the status quo that has led to disproportionate impacts in certain local communities.

The Advisory Council also communicated prominently that "(w)ildfire PM exposure is projected to increase in duration and intensity, due to climate change, and this justifies greater efforts to reduce controllable sources of PM to reduce overall health risk."[3] They made clear in their deliberations that we needed to go as far as we could to limit PM emissions we could control, given the huge and injurious doses of wildfire PM we cannot control, and which we can expect to receive into the future.

The Council's deliberation and findings could not be more intimately connected to the subject matter of this rulemaking. We encourage the District to broaden their concept of these rule amendments with the urgency and weight of the Advisory Council's December presentation in mind.

## Previous Proposals on GHGs, PM, & Ozone Precursors Were Ignored & Must Be Considered

350 Bay Area has discussed ideas to reform the permit rules with District staff for years, beginning in approximately 2016 and culminating in the requested submission of proposals in writing in early 2019. Those detailed and ambitious proposals on strengthening permitting on GHGs, PM, and ozone precursors were largely ignored. The salience of reducing GHGs and PM in the region has only increased over the last years, and these life-saving concepts must be considered without further delay.

Our March 12, 2019 submission titled "Updated Climate/Health Permit Rule Concepts" is being appended to these comments for inclusion into this rulemaking process.

## Conclusion

The Air District has a critical, life-or-death mandate to fulfill. The permitting program impacts us and our neighbors. Those impacted neighbors are your constituents, and they are disproportionately from communities of color and low-income communities. The time is now to start to rectify these longtime injustices, and not in a token fashion.

[2] BAAQMD Advisory Council, *Particulate Matter: Spotlight on Health Protection*, December 16, 2020, p. 8.
[3] Ibid., p.7.

We look forward to seeing progress on many of the issues that we have highlighted in these comments, and we look forward to continuing to work with you to achieve our collective goals. Thank you for carrying out the most important work in the Bay Area — keeping people healthy so we have the opportunity to thrive.

Best regards, on behalf of more than 25,000 of your constituents,

Jed Holtzman
Senior Policy Analyst

# Updated Climate/Health Permit Rule Concepts

These concepts are for discussion and do not include an exhaustive review of all Regulation 2 provisions that would need to be amended.

1. Amend Regulation 2-1-319 (and other rules and sections as needed) to:
    a. Add GHG-specific thresholds specifying when a source must obtain a Permit to Operate notwithstanding exemptions in Rule 2-1, and
    b. Add a permit exclusion for CO2 from facilities subject to Cap and Trade.
2. Phase out PM emission trading in Permit Rules to protect health in local communities.
3. Regulate GHGs in the New Source Review program as if they were non-attainment pollutants.
    a. In general, establish GHG-specific thresholds (as opposed to thresholds for CO2e) based on Global Warming Potential (GWP) and harm to human health and the environment, and
    b. Create a no net increase strategy for GHGs. Any GHG-specific offset program should be restricted to reductions of actual emissions that are quantifiable, enforceable, permanent, surplus, located within the Air District, and with the assurance that impacted communities are not burdened with increased emissions.
4. Update permit program requirements for PM and ozone precursors (VOC and NOx) to better protect public health, the environment and the climate.
5. Amend the definition of Major Modification in Rule 2-2-218 New Source Review such that federal calculation procedures specified in Rule 2-1-234.1 apply to certain modifications at major and non-major facilities as follows:
    a. Add GHG-specific Major Modification thresholds based on an evaluation of Global Warming Potential and harm to human health and the environment,
    b. Lower the PM10 and PM 2.5 Major Modification thresholds from 15 and 10 tons per year respectively to 10 pounds per day, and
    c. Lower the POC and NOx Major Modification thresholds from 40 tons per year to 10 pounds per day.
6. Require review of clean energy alternatives to proposed new and modified sources and abatement devices. One possibility would be adding Best Alternative Technology (BAT) review to BACT review.