



## California Council for Environmental and Economic Balance

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May 28, 2021

Jacob Finkle  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
Email: [jfinkle@baaqmd.gov](mailto:jfinkle@baaqmd.gov)

RE: Potential 2021 Amendments Regarding Regulation 2: Permits

Dear Mr. Finkle,

Thank you for the opportunity to provide comments regarding the consideration of amendments for **Regulation 2: Permits**. We submit the following comments on behalf of the California Council for Environmental and Economic Balance (CCEEB). CCEEB is a nonpartisan, nonprofit coalition of business, labor, and public leaders that advances strategies for a healthy environment and sound economy. CCEEB represents many facilities that operate in the District and are routinely subject to the outcomes of its rulemaking processes.

CCEEB has consistently supported development of rules that provide for both a sound economy and healthy environment. It is our longstanding experience that regulatory rules are successful when they are developed utilizing the right information and follow a strong work process that respects California statutes. Consistent with this experience, we submit the following comments regarding the potential amendments to the subject rule you are considering.

In November 2017, BAAQMD approved Regulation 11 Rule 18, which was established to reduce health risks of toxic emissions from stationary facilities. This rule set the most stringent standard for any air agency with large industrial facilities, at a cancer risk level for air toxics of no more than ten per million. The implementation of this regulation is in its early stages; indeed, only one facility has even had a public review of the outcome of the Health Risk Assessment (“HRA”), which is an output of the process. This review was held earlier this month.<sup>1</sup> Given this, it is important to recognize that the implementation timeline of this regulation has not yet allowed the time for an evaluation of the efficacy and complications of Regulation 11 Rule 18; we foresee that the complications associated with Regulation 11 Rule 18 implementation will become exacerbated for facilities applying for permits under Regulation 2. BAAQMD should complete a critical number of the assessments mandated by this rule and following this undertake an informed review of these before progressing any proposal to also reduce the risk level for projects permitted under Regulation 2, particularly since

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<sup>1</sup> HRA workshop for AB&I Foundry, at <https://www.baaqmd.gov/news-and-events/page-resources/2021-news/050521-abandi-hra-workshop>

many of the facilities that may be impacted are sources that have never been significantly scrutinized. Such facilities include water districts, communications and other utilities infrastructure, tech companies / data centers and government operations offices.

As noted by the District staff in the workshop, the current standard already reduces specific air toxics risks to levels that are less than 2% of the approximate 600 per million background cancer risk in the Bay Area. These risks must be put into perspective and effectively communicated for context. The current 10 per million risk threshold is assessed against “maximally exposed individuals,” which itself will be a small subset of the total population. Other risk factors – including socioeconomic, genetic and behavioral factors – are orders of magnitude more significant. As an example, credible estimates of the collective risk from smoking, UV exposure, obesity and sedentary lifestyle are in the range of 150,000 per million.<sup>2</sup> Progressing this evaluation without appropriately framing this relative risk perspective creates a significant likelihood of deploying significant District resources for negligible benefit. Indeed, it has reached the point that achieving desired benefits to overburdened communities would be better met by enhancing incentive programs to target mobile source pollutants, for which there may soon be significant opportunities based on concepts being discussed at the Federal and State levels.

Building on the above, CCEEB is also concerned about the focus of this activity. Per the District’s Concept Paper regarding these considerations, it acknowledges that only 6% of the toxic air contaminant emissions arise from industrial and commercial equipment.<sup>3</sup> Even if these emissions were driven to zero, there would be no noticeable change in background emission levels and the cancer risk in the Bay Area would not materially change. While it is easy to focus efforts on stationary facilities, it really does not materially improve outcomes in the Bay Area. It does, though, risk the loss of good paying, family wage jobs that do not require a college degree, which are becoming even scarcer in our local economy.

CCEEB appreciates the cautionary notes that were made in the concept paper regarding the potential for further reductions in toxic risk levels to create a disincentive to build new facilities that are localized emission sources, such as restaurants,<sup>4</sup> or facilities that need emergency power to operate – including fire stations, retirement homes, hotels and hospitals.<sup>5</sup> This could be even more problematic if such lower limits were focused only on overburdened communities, and would potentially lead to further economic inequality as a result of new opportunities – which could be the catalyst for rejuvenation of an area – being forced to be implemented elsewhere. Such concerns would need to be carefully considered with any proposed change to the currently established risk

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<sup>2</sup> South Coast Air Quality Management District, “MATES V Draft Report Introduction,” at <http://www.aqmd.gov/docs/default-source/planning/mates-v/mates-v-chapter-1---15april---345pm-with-footnotes.pdf?sfvrsn=8>, page 1-8, accessed May 2021.

<sup>3</sup> Figure 6, in “Concepts to Amend the Air District’s Permitting Rules in Response to Localized Differences in Air Quality and Permitting in Overburdened Communities,” at [https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20210416\\_concept-paper\\_reg0200-pdf.pdf?la=en](https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20210416_concept-paper_reg0200-pdf.pdf?la=en), accessed May 2021.

<sup>4</sup> Concept Paper as per footnote 3, at page 12.

<sup>5</sup> Concept Paper as per footnote 3, at pages 16, 17

levels. Again, getting further information regarding the impact of the current standard would be prudent.

Consistent with our longstanding experience that rules are successful when developed utilizing the right information and following a strong work process, CCEEB would advocate that a multi-stakeholder working group be established to thoughtfully consider the issues that any potential revisions to the air toxics risk level would precipitate. This working group should be inclusive of subject matter experts on toxicology as well as representatives from the community, local government and both smaller and larger stationary sources. CCEEB would also strongly recommend that community advisory panels that exist at several stationary sources be leveraged in this rulemaking as well as the ongoing HRA review processes under Reg 11 Rule 18. These panels include people who demonstrate concern about their communities and the capabilities of these panels could lead to effective discussions regarding community concerns.

On a particular point of process proposed by the District, CCEEB would be open to concepts to enhance public noticing for permits; but, we would caution that any such changes should not further extend the permitting timeline. Such noticing would need to be data-based, be developed without bias and inclusive of perspectives from both the community and the stationary source.

We look forward to continuing to work with you through the considerations outlined in your Concept Paper and further presented in the May 12, 2021 workshop on this topic. Again, we thank staff for this opportunity to comment on them. Should you have questions or wish to discuss our comments in more detail, please contact Bill Quinn at [billq@cceeb.org](mailto:billq@cceeb.org) or (415) 512-7890 ext. 115.

Sincerely,

A handwritten signature in blue ink that reads "Bill Quinn".

Bill Quinn  
President, CCEEB

cc: Michael Carr, CCEEB Consultant  
Janet Whittick, CCEEB  
Christine Wolfe, CCEEB