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Jacob Finkle  
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sent via email: [jfinkle@baaqmd.gov](mailto:jfinkle@baaqmd.gov)

Re: WSPA Comments, Proposed Amendments to Regulation 2, Rule 1 and Rule 5

Dear Mr. Finkle,

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, and Washington. Our members in the Bay Area have operations and facilities regulated by the Bay Area Air Quality Management District (BAAQMD or District).

WSPA has a number of key concerns regarding the proposed revisions to Regulation 2, Rule 1 and Regulation 2, Rule 5.

WSPA understands the District's goal of addressing CalEnviroScreen scores in disadvantaged/overburdened communities. However, the District has not provided sufficient evidence or justification that the proposed Regulation 2 changes will accomplish this goal in any meaningful way. Furthermore, the proposed amendments to the rule will likely negatively impact those communities.

The District has not evaluated the socioeconomic impacts of this regulation nor made a good faith effort to minimize these impacts as required by Section 40728.5(a) of California's Health and Safety Code.

The District's staff report identifies that the primary justification for the draft rule amendments is driven by public concerns around addressing unequal risks/burdens to communities. However, the public's desire is largely driven by the District's failure to do the following:

- Putting risk into meaningful context, and implying that the potential air pollution risk differences between the current 10 in a million and proposed 6 in a million risk thresholds are significant.

- Evaluating the appropriateness of the proposed limits and the extent to which they are achievable.
- Assessing the collateral negative impacts to communities that the proposed amendments to the rules would create.

### **The District Should Provide Accurate Risk Context for the Public and Decisionmakers**

The figures on pages 9-19 of the District's Workshop Report focus solely on the differences between various risk assessment results relative to each other, while not providing any context with regard to the significance of those differences.

There is a statement on page 28 that, *"the six in one million cancer risk value is about one percent of the average Bay Area background cancer risk."* This is false by several orders of magnitude. The current national average lifetime cancer risk, as identified by the American Cancer Society<sup>1</sup> is estimated at 380,000 to 401,000 in-a-million; 6 in one million is roughly 0.0015% of that background cancer risk.

The District's statement appears to instead have been referring to the District's estimate of potential lifetime cancer risk of approximately 600 in-a-million for background air pollution in the Bay Area; which does not take into account higher occupational exposures, indoor exposures, or high-concentration exposures from activities such as cooking or driving in traffic.

District staff continue to falsely identify the air pollution health risk assessment (HRA) results as *"the expected cases of cancer incidences...due to air pollution exposure"* (p. 12 of the Staff Report). This is the exact opposite of what the OEHHA guidelines identify. Risk estimates generated by an HRA are not expected incident rates of disease in the exposed population, but are rather *"estimates of potential for disease, based on current knowledge and a number of assumptions"*.<sup>2</sup> OEHHA notes this,

*"there is a great deal of uncertainty associated with the process of risk assessment" and that the assumptions that they identify "are designed to err on the side of health protection in order to avoid underestimation of risk to the public."*<sup>3</sup>

Accordingly, decreasing a project's HRA criteria from 10-in-a-million to 6-in-a-million—not regionally, but at the single receptor that is most impacted by that project—does not mean that the best estimate of the decrease in lifetime cancer risk is 4-in-a-million. It means that 4-in-a-million is an upper bound on the risk – which OEHHA refers as the "potential" risk.

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<sup>1</sup> American Cancer Society, "Lifetime Risk of Developing or Dying From Cancer", available from <https://www.cancer.org/cancer/cancer-basics/lifetime-probability-of-developing-or-dying-from-cancer.html>, last accessed August 13, 2021, shows that the lifetime risk of developing cancer is 40.14% (401,400-in-a-million) for males and 38.70% (387,000-in-a-million) for females.

<sup>2</sup> OEHHA, "Air Toxics Hot Spots Program: Risk Assessment Guidelines, Guidance Manual for Preparation of Health Risk Assessments", February 2015, p. 1-6.

<sup>3</sup> *Ibid.*, p. 1-5.

Both the existing criteria of 10-in-a-million and the proposed criteria of 6-in-a-million pale in comparison to the actual lifetime cancer risk (all causes) of nearly 400,000-in-a-million.

### **The District Should Evaluate the Appropriateness of the Proposed Limits and the Extent to Which They Are Achievable**

There are already a multitude of emissions control requirements that apply to sources. Accordingly, California law requires the District to identify existing air pollution control requirements,<sup>4</sup> but the staff report does not do this.

Existing sources are subject to Federal National Emissions Standards for Hazardous Air Pollutants (including standards to apply “Maximum Achievable Control Technology” or MACT), California Air Toxics Control Measures (ATCMs), and District emissions control regulations for hazardous pollutants (Regulation 11), as well as other requirements to control the criteria air pollutants of which the toxics are (predominantly) subsets of.

New and modified sources that were subject to District permitting processes are already subject to Federal and District requirements to install Best Available Control Technology (BACT), including toxics BACT; existing sources are subject to the toxics requirements of Regulation 11 Rule 18. The “Emissions or Exposure Reductions” section of the Staff Report is a general discussion that makes no reference to these existing requirements, or the fact that most if not all of what is feasible has already been implemented.

The ability to meet any risk threshold is dependent upon emissions inventory methods and OEHHA risk assessment guidelines, both of which have changed over time. Prior to the 2015 changes to the OEHHA guidelines, the District did not require risk reduction plans for existing facilities with projected potential risks below 100-in-a-million, and required new projects to meet a 10-in-a-million limit.<sup>5</sup>

BAAQMD’s proposed six in a million threshold conflicts with CARB’s guidance, which indicates compliance with a lower limit may not be achievable for essential public services. CARB’s Land Use Handbook<sup>6</sup> used a 10-in-a-million threshold. The 2015 OEHHA changes resulted in substantially higher risk estimates even if emissions were unchanged.<sup>7</sup> Accordingly, the 2015 CARB/CAPCOA Risk Management Guidance (1) recommended permit approval thresholds be 10- to 25-in-a-million<sup>8</sup> and (2) noted that,

*“sources that support essential goods and essential public services...may result in cancer risk estimates above District thresholds (e.g., gasoline dispensing facilities, emergency standby diesel engines)”*

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<sup>4</sup> Health & Safety Code sections 40727 and 40727.2(a).

<sup>5</sup> CARB, [“Risk Management Guidance for Stationary Sources of Air Toxics”, July 23, 2015](#), Tables F-1 and G-1.

<sup>6</sup> CARB, [“Air Quality and Land Use Handbook: A Community Health Perspective”, April 2005](#).

<sup>7</sup> The number often cited was “a factor of three”, although there is considerable variability in the increased stringency that depends on the specific details of the analysis.

<sup>8</sup> CARB, [“Risk Management Guidance for Stationary Sources of Air Toxics”, July 23, 2015](#), p. 21.

In addition,

*“There may be situations where permit approval above the permitting risk threshold is appropriate. Factors considered could include but are not limited to: source using TBACT; source supports essential goods or essential public services as determined by the Air Pollution Control Officer (APCO) or defined by the local District’s permitting policies rules, or programs; significant portion of operation due to readiness testing or emergency use; or other District-specific considerations.”<sup>9</sup>*

CARB and CAPCOA stated that they would develop Industrywide Guidelines for these essential public service sources by 2016. While CARB’s Gasoline Service Station Industrywide Risk Assessment Guidance webpage<sup>10</sup> still does not have a draft for public review, we are aware that CARB and CAPCOA have been drafting these guidelines. The staff report should but does not acknowledge this effort.

The ability to meet risk thresholds is also dependent on (a) OEHHA changes to reference exposure levels and risk factors (which are not predictable) and (b) the locations where the risk is required to be evaluated.

Regulation 2 Rule 5 currently defines receptors as being where people are “*reasonably expected to be exposed*” for the relevant time period, in accordance with OEHHA guidance and CARB guidance. However, the proposed draft identifies a new and vague definition for “Acute Receptor” – i.e., where people “may be” exposed.

The draft proposed rule does not actually refer to this term after defining it, and the staff report does not clarify what it means, but identifies that it “*will be useful for gas stations that will be subject to acute limits for the first time*”. The District needs to more explicitly identify how this new draft definition will be interpreted, and whether its impacts assessment incorporates this change or not.

WSPA requests that BAAQMD define “essential public service” to be consistent with the CARB/CAPCOA Risk Management Guidance and/or COVID-19 definitions of “essential infrastructure.” The District’s proposal to set more stringent limits lower than the range that CAPCOA and ARB suggested could jeopardize the ability for essential public services to operate.

California considers retail gas stations part of essential public infrastructure. If retail gas stations close, then emissions will increase as people will be forced to drive further to a gas station. Independently owned equipment essential for firefighting and flood prevention are part of essential infrastructure, but not included in BAAQMD’s currently proposed definition of “essential public service.”

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<sup>9</sup> Ibid., pages 26 and 31.

<sup>10</sup> <http://ww2.arb.ca.gov/resources/documents/gasoline-service-station-industrywide-risk-assessment-guidance>

WSPA also requests that the rule include contingencies for the case where an essential public service's risk assessment results in a value higher than the limit and projects are already applying the best available control technology.

The draft proposed amendments are likely to have substantial negative impacts on the communities that the District is wanting to help, as discussed below.

### **The District Should Assess Rule Amendment Impacts**

The rule amendments target "Overburdened Communities", defined as being based on a CalEnviroScreen Version 4.0 score at or above the 70<sup>th</sup> percentile, or within 1,000 feet of any such census tract. As shown in Figures 6 through 11 of the Staff Report, this will create a patchwork of applicability across the region, adding complexity to the permitting process.

A key concern we have with this definition is that CalEnviroScreen identifies many factors that influence their classification of "overburdened" that have no relationship to air pollution. Basing applicability on CalEnviroScreen scores will result in businesses that locate in some tracts that already have lower air pollutant concentrations to become subject to more restrictive requirements than tracts with higher air pollutant concentrations.

Most importantly, the regulation is likely to negatively impact the very communities it is supposed to be helping by impacting essential infrastructure and small business that serve community residents. In many cases, the most overburdened populations are those with the highest percentages of poverty and unemployment.

The draft rule amendments create further economic disadvantage in depressed communities by limiting growth, new businesses and equipment improvements—that can actually improve the livelihood of local residents—and shifting that development (and jobs) elsewhere.

It is less clear whether the District has informed the public that air permits are not just required for growth and emissions increases, they are also required for other projects that serve community interests as well. Projects as simple as replacing a single-walled underground storage tank with a double-walled one—which does not increase emissions at all—are also subject to the requirement to obtain a District air permit first.

Even if the original facility had been able to show compliance with the draft six-in-a-million risk limit and hazard index of 1.0 based on pre-2015 OEHHA guidelines and pre-2014 OEHHA reference exposure levels (RELs), the draft rule will deny a project a permit if it is unable to show it will meet the new 6-in-a-million risk limit and hazard index of 1.0 based on current OEHHA guidelines and RELs (and potentially a revised description of where the risk assessment receptors need to be located).

Alternatively, if a gas station owner can afford to meet limits by minimizing throughput during the peak hour (to reduce modeled one-hour impacts) or reduce annual throughput below what is demanded, the inconveniences of longer lines and/or localized fuel shortages will be borne by the overburdened community.

In some cases, there are other existing regulations to reduce pollutants that involve tradeoffs with regard to toxics (including but not limited to diesel PM emissions associated with construction of control devices/equipment, etc.). CARB's Ocean-Going Vessels At Berth Regulation and Cap-and-Trade Program, and BAAQMD Regulation 6-5 all have this potential. The district should add language to the rule amendments that allows projects required by regulation to be exempt from the proposed changes.

Another example of projects not associated with growth/expansion is backup power for cases where electricity is expected to potentially be lost, either due to rolling blackouts, fires or other emergencies. Such losses can be devastating to businesses—including small businesses like grocery stores—that require refrigeration for their products, for medical supplies, etc.

As BAAQMD is well aware, businesses have already been installing backup power generators, including ones that are already equipped with the diesel particulate filters that the staff report mentions. Urban businesses may have receptors in close proximity. Those businesses in “overburdened” areas will have the additional burden of more stringent risk limits to meet at those receptors.

The proposed regulatory changes will also lower the acute emissions triggers in overburdened communities for all pollutants in all areas by 80% and require permitting of engines under 50 horsepower when facility-wide engine horsepower exceeds 50. This will further burden the District's already overtaxed staff resources for processing permit applications and delay their processing throughout its jurisdiction even more than is currently the case.

Concerning the acute and chronic trigger levels in Table 2-5-1, the District needs to develop a screening threshold that is not based solely on emissions rates. For decades, CAPCOA has had prioritization guidance for the state's AB2588 program that took into account not just emissions rates but also distances to receptors; a similar approach would make sense for Regulation 2 Rule 5.

WSPA appreciates the opportunity to provide input on this important matter, and looks forward to staff response to our comments.

Sincerely,

