



California Council for Environmental and Economic Balance

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Mark Tang
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Bay Area Air Quality Management District
Submitted electronically to mtang@baaqmd.gov

Re: Amendments to Regulation 2, Permits, Rule 1, General Requirements and Rule 5, New Source Review of Toxic Air Contaminants

Dear Mr. Tang,

Thank you for the opportunity to provide comments on the proposed amendments to Regulation 2 Rule 1 (“Rule 2-1”) and Regulation 2 Rule 5 (“Rule 2-5”) (together, the “proposed amendments”) on behalf of the California Council for Environmental and Economic Balance (CCEEB). CCEEB is a non-profit and non-partisan coalition of business, labor, and public leaders that advances strategies for a sound economy and a healthy environment. Many of our members operate facilities and equipment that fall under the Bay Area Air Quality Management District’s (District’s) permitting authority.

CCEEB appreciates that staff recognizes that some components of the draft rule, as published in August, pose challenges that warrant further conversations with stakeholders.¹ We are committed to continuing to work with staff to explore the complex dynamics of reducing localized emissions in the face of energy shortages, increased demands on the grid as the state moves towards carbon neutrality, and an increase in extreme heat events and wildfires due to climate change.

Many of the concerns we expressed in our September 1, 2021 comment letter remain relevant in regards to the proposed amendments. Our concerns are as follows:

- Differential standards may lead to undesired outcomes for business activity, provision of essential public services, and public participation throughout the region. For example, some beneficial economic development and critical infrastructure may become restricted or discouraged in underserved communities and many of ABAG/MTC’s Priority Development Areas, such as, but not limited to, PDAs within Gilroy, Santa Rosa,

¹ Bay Area Air Quality Management District (BAAQMD). 2021a. *Staff Report: Proposed Amendments to Regulation 2, Rule 1 (Permits – General Requirements) and Proposed Amendments to Regulation 2, Rule 5 (Permits – New Source Review of Toxic Air Contaminants)*. https://www.baaqmd.gov/~media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211019_17_sr_rg0201_rg0205-pdf.pdf?la=en. October 19, 2021.

Redwood City, San Jose, and both East and West Contra Costa County.² In other communities, near-source impacts could go unrecognized because a lack of community notification. These tradeoffs must be clearly articulated to the Board.

- The District needs to provide permit processing information that is accessible to the public to facilitate transparency for all interested parties and to ensure efficiency in the permit process. CCEEB suggests that the District develops a web-based, publicly accessible permit dashboard.

Differential standards may lead to undesired outcomes for both business activity and public participation throughout the region.

Differential Standards Mean Different Economic Development Opportunities and Limits on Growth in Underserved Communities

CCEEB continues to oppose differential standards. Setting a more stringent cancer risk limit for new and modified sources in some communities than in the rest of the Bay Area may result in inequitable and undesirable reductions in economic activity – and loss of services, amenities, and local employment opportunities – across the region. The Socioeconomic Impact Analysis recognized that many business categories could be adversely impacted by the proposed amendments:

- residential and commercial properties
- community colleges, universities, and other educational institutions and campuses
- nursing and residential care
- data centers and technology firms
- telecommunications carriers
- gas stations
- cemeteries and crematories
- foundries
- cement and concrete manufacturing
- waste processing
- petroleum bulk stations and terminals
- remediation activities

The Socioeconomic Impact Analysis specifically identified potentially significant impacts to nursing and residential care centers and residential properties with backup generators run by small property management companies and individual landlords, using a threshold for determining significance of compliance costs greater than 10% of a business's estimated profits.³ While the Socioeconomic Impact Analysis touches on “regional impacts” and even acknowledges the potential for significant impacts, there is negligible detail provided as to what was considered

² Metropolitan Transportation Commission. 2020. “Priority Development Areas (Plan Bay Area 2050)” July 27, 2020. <https://opendata.mtc.ca.gov/datasets/MTC::priority-development-areas-plan-bay-area-2050/explore?location=37.897651%2C-122.289021%2C10.00>.

³ BAAQMD. 2021b. *Staff Report: Proposed Amendments to Regulation 2, Rule 1 (Permits – General Requirements) and Proposed Amendments to Regulation 2, Rule 5 (Permits – New Source Review of Toxic Air Contaminants)*. “Appendix F: Socio-Economic Impact Study” Prepared by bae urban economics. https://www.baaqmd.gov/~media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211013_11_appendixf_socioanalysis_rules0201and0205-pdf.pdf?la=en. October 19, 2021.

in evaluating these impacts. Further, while the analysis provides cost ranges for affected industries, it does not discuss the range of probable costs that may result outside of the affected industries, including consumer impacts, whether increased consumer prices or disproportionate access that may result from implementation of the proposed amendments.⁴

For example, the Socioeconomic Impact Analysis finds that, for at least two gasoline dispensing facilities in Overburdened Communities, the proposed amendments will result in a net impact of as much as 25% decrease on existing profits based on reduced throughput.⁵ While the District considers these net profit impacts, it does not consider the likely accompanying impacts on consumer costs and access to affordable fuel. As the Socioeconomic Impact Analysis indicates, “many gasoline dispensing facilities are independently owned small businesses.”⁶ It is possible that these facilities may pass on some or all of these losses onto consumers through higher and regressive pricing in order to sustain their operations. Alternatively, these facilities may choose to shut down and relocate further from customers in Overburdened Communities, many of whom rely on personal vehicles and face long commutes between the communities in which they live and work. Accordingly, the District should explicitly consider these economic equity issues before finalizing the Proposed Amendments, including providing consumers with an estimate of potential pricing impacts associated with its rulemaking to ensure that they are fully informed.

Expanded View Essential Public Services Needed to Protect Public Health

Furthermore, we remain concerned about the narrow definition of Essential Public Services. The proposed definition is limited to police or firefighting facilities, hospitals and other medical emergency facilities, and buildings designated as emergency shelter locations. The narrowness of this proposed definition could significantly limit critical infrastructure serving Overburdened Communities and, if key infrastructure supporting regional service providers is located in Overburdened Communities, for the region as a whole. It is our opinion that it is inappropriate for the District alone – without input from other agencies – to limit public and private utilities, goods movement infrastructure, and public and privately owned fire and flood protection infrastructure in Overburdened Communities.

We appreciate that staff is interested in identifying a definition of Essential Public Services that is of an appropriate scope for this rule. This tension highlights the fundamental concern of establishing differential standards, particularly for permitting purposes – the District is faced with the difficult decision to limit not only commercial activity in Overburdened Communities, but also the many public and private service providers whose infrastructure keeps the Bay Area running. Notably, unlike other standards that may be temporarily relieved if necessary to meet obligations during a proclaimed emergency, this limitation will be set at the permitting level, eliminating any future discretion about which facilities may need to operate in Overburdened Communities during emergencies.

⁴ While reducing exposure to air contaminants, as contemplated by the Proposed Amendments, is an important part of serving these communities, environmental equity cannot be separated from issues of economic equity. As President Biden’s infrastructure plan recently emphasized, redressing historic inequities related to transportation and infrastructure development depends on “ensur[ing] new projects increase opportunity, advance racial equity and environmental justice, and promote affordable access.” See FACT SHEET: THE AMERICAN JOBS PLAN (Mar. 31, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/> (emphasis added).

⁵ BAAQMD 2021b, p. 18

⁶ BAAQMD 2021b, p. 42

CCEEB continues to hold that the California Air Resource Board's definition of Provider of Essential Public Services provided in 2452(hh) of the PERP regulation is the most appropriate for the District to use in Section 2-5-230 to ensure continuity of service from all critical infrastructure. The District should explicitly exempt equipment used in firefighting, flood prevention, and emergency response.

Risk Should Be Explained in Simple, Clear Terms and in Context

In addition to the decreased cancer risk threshold, the proposed amendments would require that residents of Overburdened Communities receive notice of projects that require a Health Risk Assessment. CCEEB supports the public's right to know about air pollution and potential risks in their community, and for this reason we are concerned about the approach described in the proposed amendments.

Firstly, an important principle of public transparency is providing adequate communications about what cancer risk does and doesn't mean so that individual residents are armed with accurate and understandable information. One important component of such communication is contextualization about the relative contribution of risk generated by a facility. For example, the allowable threshold of additional incremental cancer risk from a project is currently 10 in one million (10/M), or a 0.001 percent chance, and the proposed amendments would add an additional project-level threshold of six in one million (6/M), or a 0.0006 percent chance. A cancer risk threshold of 10/M represents the chance that, in a population of one million people, not more than ten additional people would be expected to develop cancer as the result of the exposure to the substance causing that risk at outdoor air levels 24 hours a day, 350 days a year, for 70 years.⁷ Because of these conservative exposure assumptions, an individual's actual risk of contracting cancer from exposure to air pollution from a project is often less than the theoretical risk to the entire population calculated in the risk assessment for that project.

It is important to contextualize risk from projects at stationary sources against other potential sources and existing health risks in the Bay Area. The Staff Report indicates that the overall cancer risk from air toxics in the Bay Area is about 600/M (0.06 percent), with the majority of cancer risk being driven by diesel particulate matter from mobile sources.⁸ Comparatively, the overall risk of an American contracting cancer risk from all potential causes is about 400,000/M (40 percent).⁹

The District should develop standardized risk communication materials to distribute with public notices that provides this information on probability and risk contextualization. We believe that these opportunities for risk communication and knowledge-sharing would help to empower communities to engage with different sources of risk in their neighborhoods.

All Communities Deserve Notice of New Local Sources of Cancer Risk

Secondly, if the proposed amendments are adopted as drafted, the District will have determined that public right-to-know is guided not by the risk posed by the facility alone but by the characteristics of the census tracts surrounding the project. In practice, this would mean that

⁷ BAAQMD. 2005. *Proposed BAAQMD Air Toxics NSR Program Health Risk Screening Analysis (HRS) Guidelines*. July 2005. https://www.baaqmd.gov/~media/files/engineering/policy_and_procedures/appendix_d_06-06-05.pdf?la=en

⁸ BAAQMD 2021a, p. 15

⁹ National Cancer Institute. 2021. "Cancer Stat Facts: Cancer of Any Site." <https://seer.cancer.gov/statfacts/html/all.html>

different projects with identical risk profiles are being noticed in some communities but not others. In some parts of the Bay Area, one part of a city would receive risk communication about a project in their neighborhood that other neighborhoods in the same city would not, *even if the cancer risk from each project was the same*. While we recognize that different communities warrant different methods of outreach to ensure the public is receiving information that is meaningful and culturally competent, the District should find a way to promote community engagement in Overburdened Communities without drawing a line in the sand about who gets information and who doesn't.

The District should create a publicly available online permit dashboard to facilitate transparency across the board and to ensure efficiency in the permit process.

The proposed amendments would increase the permit processing timelines for all applications, with longer time periods for major sources and for facilities requiring public noticing and/or environmental review. As described in CCEEB's September 1, 2021 comment letter, permit approval plays a significant role in project development, both for financial and operational planning for facility changes. Predictable permit processing time is critical, yet in many cases, facilities are faced with processing times that extend far beyond the regulatory timeframes described in both the existing rules and the proposed amendments. We appreciate staff's desire to set achievable benchmarks that accurately communicate timelines to potential permit applicants who need to plan their projects around Air District processing timelines. However, these changes come on top of, and could further exacerbate, the existing permit backlog and delays that CCEEB members and other projects currently face at the District. Indeed, review of the proposed amendments has prompted a broader discussion of how effective the permitting program is at achieving the District's goals and missions, as well as areas that could be improved for the benefit of all.

If the District chooses to move forward with setting a stricter cancer risk limit for new and modified sources in Overburdened Communities, it is imperative that it simultaneously provides public access to permit data through a publicly available permit dashboard that shows permit activity across the region. A permit dashboard would provide critical information to all District stakeholders:

- The Board and the public would have visibility into economic activity within the Bay Area, as permits activity can provide a gauge of economic growth and/or stagnation at a highly local level;
- Community members, environmental justice organizations, and other members of the public would have transparency into permit activity in their neighborhoods; and
- Project applicants would be able to track the progress of their permit through the District's process at a granular level that is not available today.

Many agencies that regularly grant air permits provide publicly accessible data about the status of permit applications on their website.¹⁰ The South Coast Air Quality Management District's Facility Information Detail (FIND) web tool allows anyone to search by facility name, address, community, or permit application number to find information on each facility.¹¹ This system also houses status information on a permit application's progress through the process, including how much time has elapsed since critical milestones and where in the internal process the permit is currently sitting. This would provide permit applicants much needed transparency into where and why permits are delayed.

We are committed to working with staff to identify potential efficiencies to resolve current permit processing delays and ensure the proposed amendments do not exacerbate backlogs. We support staff's suggestion that the amendments not take effect until an analysis of the resources needed to process the permits according to the proposed timelines has been completed, whether these resources come from efficiencies identified as part of the upcoming management audit and/or from additional staff resources. The District should explicitly memorialize the proposed July 1, 2022 effective date in the final rule. Having a clear effective date ensures that stakeholders and regulated entities are afforded adequate certainty for project scheduling and implementation. However, for certain projects, such as diesel engines that will require retrofits, implementing compliance measures will take more time.¹² A proposed July 1, 2022 effective date will afford these entities appropriate time in which to safely and effectively secure compliance, which will in turn allow for more efficient and effective implementation of the proposed amendments.

We recognize that the District has been working for many years to attempt to address emissions and exposure reductions in communities that experience significant air pollution and that are socioeconomically vulnerable. However, we respectfully submit these comments with concern that setting different standards in different communities will not result in the equitable outcomes the District has expressed it wishes to see. For that reason, we feel our request for continued analysis of permit trends and appropriately contextualized, publicly available data is an urgent one that should be shared by all Bay Area residents.

Please feel free to contact me at 415-512-7890, extension 113 should you have any questions.

Sincerely,



Christine Wolfe
California Council for Environmental and Economic Balance

cc:

Bill Quinn, CCEEB
Janet Whittick, CCEEB
Jason Henderson, CCEEB
CCEEB Bay Area Project Members

¹⁰ For selected examples, see: South Coast Air Quality Management District's Facility Information Detail: <https://www.aqmd.gov/nav/FIND>, Texas Commission on Environmental Quality's New Source Review Air Permits online dashboard: <https://www2.tceq.texas.gov/airperm/index.cfm?fuseaction=airpermits.start>, Illinois Environmental Protection Agency's Bureau of Air Permitting Statistics: <https://www2.illinois.gov/epa/topics/forms/air-permits/streamlining/Pages/statistics.aspx>

¹¹ South Coast Air Quality Management District. 2021. "Facility Information Detail." <https://www.aqmd.gov/nav/FIND>.

¹² Diesel engines make up the majority of affected permit applications. The District acknowledges in its Staff Report that certain diesel engines may need to turn to retrofitting in order to comply with the emissions limits in the proposed amendments.