

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2016-13

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Adopting Amendments to District Regulation 2, Rule 5:
New Source Review of Toxic Air Contaminants;
and Adopting a CEQA Negative Declaration for the Project**

WHEREAS, a public hearing has been properly noticed in accordance with the provisions of Health & Safety Code section 40725;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to adopt proposed amendments to District Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants (“Proposed Amendments”);

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District obtains its authority to adopt, amend or repeal rules and regulations from sections 40000, 40001, 40702, and 40725 through 40728.5, of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Amendments are written or displayed so that their meaning can be easily understood by the persons directly affected by the rule;

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

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Amendments do not impose the same requirements as any existing state or federal regulation, and are necessary and proper to execute the power and duties granted to, and imposed upon, the District;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District by adopting the Proposed Amendments is implementing, interpreting or making specific the provisions of Health & Safety Code section 40001 (rules to achieve ambient air quality standards), and section 40702 (rulemaking actions that are necessary and proper to execute the powers and duties granted to it);

WHEREAS, the District has, since 1987, maintained a program called the Air Toxics New Source Review (“toxics NSR”) program to reduce emissions of toxic air contaminants (TACs) from new and modified sources of TACs;

WHEREAS, the District derives its authority for the toxics NSR program from Health & Safety Code sections 39002 and 40000 (granting local air districts primary responsibility for control of air pollution from sources other than vehicles), section 39013 (defining "air contaminant" and "air pollutant" broadly to include all emissions), section 39659 (allowing districts to establish

procedures for issuing permits for the regulation of hazardous air pollutants which have been listed as toxic air contaminants), section 41700 (prohibiting discharge of air contaminants that cause injury or endanger health), section 42300 (authorizing districts to require permits for the construction or alteration of sources of air contaminants), and section 42301 (prohibiting issuance of permits to sources that do not comply with Division 26 of the Health and Safety Code, which includes section 41700);

WHEREAS, from 1987 to 2005, the District implemented its toxics NSR program through a combination of District rule provisions and policy and procedure documents;

WHEREAS, in 2005, the Board of Directors of the Bay Area Air Quality Management District adopted the then existing program policy and procedure documents into the District's Rules and Regulations and, at the same time, clarified and made more stringent various requirements of the toxics NSR program;

WHEREAS, District staff began the effort to develop the Proposed Amendments by posting a draft of the Proposed Amendments on the District website on January 13, 2016;

WHEREAS, District staff presented the draft of the Proposed Amendments at a series of community open houses held in Redwood City on January 28, 2016, in San Jose on February 2, 2016, and in Richmond on February 4, 2016, and accepted comments on the draft through March 9, 2016;

WHEREAS, District staff received and considered public comments on the January 2016 proposal and subsequently further discussed these amendments with interested members of the public;

WHEREAS, District staff revised the January 2016 proposal and, on October 26, 2016, issued a revised draft of the Proposed Amendments, posted the draft on the District website, and accepted comments through November 28, 2016;

WHEREAS, District staff received comments on the Proposed Amendments and prepared written responses which have been incorporated into the staff report made available to the Board of Directors;

WHEREAS, on October 28, 2016, the District published in newspapers, and on October 27, 2016, published on the District's website, a notice indicating that the Board of Directors of the Bay Area Air Quality Management District would hold a public hearing on December 7, 2016 to discuss adoption of the Proposed Amendments;

WHEREAS, on October 27, 2016, the District transmitted the text of the proposed rule amendments to the California Air Resources Board;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on December 7, 2016, to consider the Proposed Amendments in accordance with all provisions of law;

WHEREAS, at the December 7, 2016 public hearing, the subject matter of the Proposed Amendments was discussed with interested persons in accordance with all provisions of law;

WHEREAS, District staff has prepared and presented to this Board a detailed staff report regarding the Proposed Amendments, which staff report has been considered by this Board and is incorporated herein by reference;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District finds and determines that the Proposed Amendments are considered a “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 CEQA Guidelines section 15050 (14 California Code of Regulations (“CCR”) section 15050);

WHEREAS, District staff contracted with Environmental Audit, Inc., of Placentia, California to prepare an assessment of the potential environmental effects from the adoption and implementation of the Proposed Amendments;

WHEREAS, Environmental Audit, Inc., prepared an Initial Study as required by CEQA, in which the potential environmental effects from the adoption and implementation of the Proposed Amendments were analyzed, and subsequently prepared a Draft Negative Declaration for the proposed rulemaking project because the Initial Study identified no potentially significant effects on the environment and because there is no evidence in the record before the District that there could be a significant effect on the environment from the adoption and implementation of this rulemaking project;

WHEREAS, that Draft Negative Declaration and Initial Study were offered for and subjected to public review and comment (Public Resources Code §§ 21082.1, 21091, 21092; California Code of Regulations, title 14, § 15070 *et seq.*);

WHEREAS, public notice was provided and copies of the Draft Negative Declaration were made available to all interested persons for an adequate comment period of at least 20 days pursuant to CEQA Guidelines § 15105, subdivision (b);

WHEREAS, one comment on the CEQA document was received from interested persons during the CEQA comment period;

WHEREAS, the comment indicated a belief that greenhouse gas emissions from implementation of the Proposed Amendments might exceed the 1100 MT CO₂e/year greenhouse gas threshold used in the Initial Study because the underlying assumption that the Proposed Amendments would result in installation of three additional thermal oxidizers per year might underestimate the number of thermal oxidizers used and because use of diesel particulate filters might increase fuel consumption;

WHEREAS, District staff responded to this comment by explaining that District staff had reviewed recent permit applications and, based on that review, which it documented in the staff report, had determined the types of controls that would likely be required;

WHEREAS, District staff further responded to the comment by explaining that, based on its review of applications, the Proposed Amendments are not likely to affect larger projects, which will already be subject to TBACT requirements, and will instead be most likely to affect small projects that are not subject to TBACT requirements and for which there are multiple control options, so that the assumption of three additional thermal oxidizers represents a reasonable worst-case estimate, and, further, again based on its project review, that potential increases in greenhouse gases from use of diesel particulate filters would be more than offset by reductions in engine operating hours;

WHEREAS, District staff, in exercising its independent judgment, has determined that there is no substantial evidence, in light of the whole record before the District, that the adoption and implementation of the Proposed Amendments could have a significant effect on the environment;

WHEREAS, it is necessary that the adequacy of the Draft Negative Declaration be determined by the Board of Directors of the Bay Area Air Quality Management District prior to its adoption;

WHEREAS, the members of the Board of Directors voting on this Resolution have reviewed and considered the Draft Negative Declaration;

WHEREAS, the Board of Directors finds and determines that in light of the whole record before it (which specifically includes the Initial Study and the Draft Negative Declaration), the Proposed Amendments will not have any significant adverse impacts on the environment, and the Negative Declaration reflects the District's independent judgment and analysis;

WHEREAS, the Board of Directors, pursuant to the requirements of Health & Safety Code § 40728.5, has actively considered the socioeconomic impacts of the Proposed Amendments and has reviewed and considered the report entitled "Proposed Changes to the Air District's Air Toxics New Source Review (NSR) Program" prepared for the District by BAE Urban Economics and has determined that the Proposed Amendments would have no significant socioeconomic impacts;

WHEREAS, the District staff has determined that an incremental cost-effectiveness analysis of the Proposed Amendment pursuant to Health & Safety Code section 40920.6 is not required because the Proposed Amendments apply only to new and modified sources and do not impose best available retrofit control requirements;

WHEREAS, the District has prepared, pursuant to the requirements of Health & Safety Code § 40727.2, an analysis of federal, state, and District requirements applicable to this source category and has found that the Proposed Amendments would not be conflict with any federal, state, or other District rules, and the Board of Directors has agreed with these findings;

WHEREAS, the documents and other materials that constitute the record of proceedings on which this rulemaking project is based are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco 94105, and the custodian for these documents is Marcie Hiratzka, Clerk of the Boards;

WHEREAS, District staff recommends adoption of the Proposed Amendments and adoption of the Negative Declaration for this rulemaking project;

WHEREAS, the Board of Directors concurs with District staff's recommendations and desires to adopt the Proposed Amendments and to adopt the Negative Declaration for the Proposed Amendments to comply with CEQA.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Proposed Amendments, pursuant to the authority granted by law, as set forth in Attachment A hereto, and discussed in the Staff Report (including Appendices) with instructions to staff to correct any typographical or formatting errors before final publication of the Proposed Amendments.

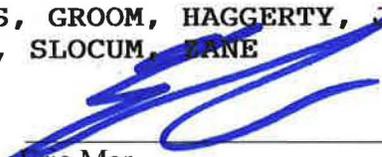
BE IT FURTHER RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Negative Declaration pursuant to CEQA for the Proposed Amendments.

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 GIOIA, seconded by Director WAGENKNECHT, on the 7th day of DECEMBER, 2016 by the following vote of the Board:

AYES: **AVALOS, BATES, CANEPA, CHAVEZ, GIOIA, HUDSON, KAPLAN, KNISS, MAR, RICE, ROSS, SPERING, WAGENKNECHT**

NOES: **NONE**

ABSENT: **BARRETT, DAVIS, GROOM, HAGGERTY, JOE, MILEY, MITCHOFF, PEPPER, SINKS, SLOCUM, EARNE**


Eric Mar
Chairperson of the Board of Directors

ATTEST:


David E. Hudson
Secretary of the Board of Directors