

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION No. 2017-12

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Adopting Technical and Administrative Amendments to:
Regulation 2, Rule 1 (Permits – General Requirements)
Regulation 2, Rule 2 (Permits – New Source Review)
Regulation 2, Rule 4 (Permits – Emissions Banking)
Regulation 2, Rule 6 (Permits – Major Facility Review)
and
Adopting a Negative Declaration under
the California Environmental Quality Act**

RECITALS

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has the authority and the responsibility to adopt, amend and repeal rules and regulations as necessary and appropriate to control air pollution emissions from stationary sources in the San Francisco Bay Area as provided in Sections 40000, 40001 and 40702 of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to amend the District's New Source Review and Title V permitting requirements by adopting amendments to District Regulation 2, Rule 1 (Permits – General Requirements), Regulation 2, Rule 2 (Permits – New Source Review), Regulation 2, Rule 4 (Permits – Emissions Banking), and Regulation 2, Rule 6 (Permits – Major Facility Review), as set forth in Attachment A hereto ("Proposed Amendments");

WHEREAS, a need to amend the Air District's New Source Review permitting requirements has arisen because the United States Environmental Protection Agency (EPA) has identified certain "deficiencies" that need to be corrected in order for EPA to be able to fully approve the District's New Source Review program under the federal Clean Air Act, as specified in EPA's Final Rule, *Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Source Permits*, 81 Fed. Reg. 50,339 (Aug. 1, 2016), and in EPA's Proposed Rule, *Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Emission Reduction Credit Banking*, 82 Fed. Reg. 43,202 (Sept. 14, 2017);

WHEREAS, an additional need to amend the Air District's New Source Review permitting requirements has arisen because Air District Staff have identified certain areas where additional revisions and clarifications are needed to ensure that the New Source Review program functions as effectively as possible, based on staff's experience in working with the current rules, which were last updated in 2012;

WHEREAS, a need to amend the Air District's New Source Review and Title V permitting requirements has arisen because the U.S. Supreme Court has issued a ruling in *Utility Air Regulatory Group v. EPA* (134 S.Ct. 2427 (2014)) that interpreted several relevant provisions of the federal Clean Air Act regarding the Act's New Source Review and Title V program requirements, and the Air District's regulations need to be revised to align them with this ruling;

WHEREAS, Air District staff prepared initial draft amendments and published them for comment on May 11, 2017, and held public workshops to discuss the draft amendments with interested members of the public on June 12 and 13, 2017, in San Francisco, Martinez, and Fremont, CA;

WHEREAS, Air District staff also met with and discussed the draft amendments with staff of EPA Region IX and the California Air Resources Board;

WHEREAS, based on comments received on the initial draft amendments, and on further consideration and analysis of the issues involved, Air District staff prepared a final version of the proposed amendments for consideration by the Board of Directors, which was initially published on August 24, 2017, and then re-published with certain revisions on October 12, 2017;

WHEREAS, Air District staff have prepared and presented to the public and to the Board of Directors a detailed Staff Report describing the purpose of and need for the Proposed Amendments, and how the Proposed Amendments will effect the Air District's regulatory programs if adopted, which Staff Report has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, on or before October 13, 2017, Air District staff published in newspapers and published and distributed on the Air District's website a notice of a public hearing on December 6, 2017, to consider adoption of the Proposed Amendments;

WHEREAS, in connection with the notice of public hearing, Air District staff invited interested members of the public to submit comments on the Proposed Amendments, and have prepared summaries of the comments received and staff's responses in a Response to Comments document, which has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on December 6, 2017, which was properly noticed in accordance with the provisions of Health & Safety Code Section 40725 and was conducted in accordance with the provisions of Health & Safety Code Section 40726, to consider the Proposed Amendments in accordance with all provisions of law;

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

WHEREAS, in accordance with Health & Safety Code Section 40727, and based on substantial evidence presented at the hearing and described in the Staff Report and other documentation, the Board of Directors of the Bay Area Air Quality Management District has found and determined that the Proposed Amendments are necessary; that the District has the authority to adopt the Proposed Amendments; that the Proposed Amendments are clearly written and displayed; that the Proposed Amendments are consistent with other legal requirements; that the Proposed Amendments are not impermissibly duplicative of existing regulatory requirements; and that the Proposed Amendments will implement specific provisions of law as referenced and identified below;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to adopt the Proposed Amendments to Regulation 2 (i) to revise the Air District's New Source Review requirements to address certain "deficiencies" identified by EPA in order to allow EPA to fully approve the District's New Source Review program under the federal Clean Air Act; (ii) to make certain additional revisions identified by Air District staff based on staff's experience in implementing the current regulations to ensure that the regulations function effectively; and (iii) to conform the Air District's programs to the Supreme Court's ruling in *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Air District has the authority to adopt the Proposed Amendments pursuant to Sections 40000, 40001 and 40702 of the Health & Safety Code, which authorize the Air District to adopt and implement regulations that are necessary to achieve and maintain air quality standards and to execute the powers and duties imposed upon the Air District; and under Title I and Title V of the Clean Air Act, which require California (through the Air District) to adopt permitting programs or face federal sanctions; among other legal authorities;

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

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, and state and 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 regulations, except to the extent necessary and proper to execute the powers and duties granted to and imposed upon the Air District as the agency responsible for implementing New Source Review and Title V permitting in the San Francisco Bay Area;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has identified and determined that the Proposed Amendments will implement, interpret and/or make specific the provisions of Sections 40000, 40001, and 40702 of the California Health & Safety Code; Title I and Title V of the Clean Air Act; Part 51 and Part 70 of Title 40 of the Code of Federal Regulations; and related statutory, regulatory and judicial authorities;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728 and other requirements of law, the Air District has maintained a file of the documents and other materials that constitute the record of proceedings on which this rulemaking project is based (including the Initial Study prepared for the project in accordance with the California Environmental Quality Act), which record documents and other materials are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, and the custodian for which is Marcy Hiratzka, Clerk of the Boards;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728.5 to the extent such requirements are applicable, and also as a matter of sound public policy notwithstanding whether or not such requirements are applicable, the Board of Directors of the Bay Area Air Quality Management District has actively considered the socioeconomic impacts of the Proposed Amendments and has reviewed and considered the Socioeconomic Impact Analysis for the Proposed Amendments prepared by Applied Development Economics, Inc.; and has determined that the Proposed Amendments will not have any significant adverse socioeconomic impacts;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District finds and determines that the Proposed Amendments are a “project” pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* (CEQA);

WHEREAS, the Air District is the CEQA lead agency for this project pursuant to Section 21067 of CEQA and Sections 15050 and 15051 of the State CEQA Guidelines (Title 14 of the California Code of Regulations);

WHEREAS, Air District staff have prepared an Initial Study for the Proposed Amendments pursuant to the requirements of CEQA, including but not limited to Sections 15063 and 15365 of the CEQA Guidelines, with assistance from and based on information and analysis developed by the Air District’s CEQA Consultant Environmental Audit, Inc.;

WHEREAS, the Initial Study determined that the Proposed Amendments will not have any significant effect on the environment;

WHEREAS, based on the Initial Study and all of the information in the administrative record for the Proposed Amendments, Air District staff have prepared a proposed Negative Declaration for review and consideration by the Board of Directors, which finds that the proposed amendments will not have any significant effect on the environment;

WHEREAS, Air District staff published and provided notice of the Initial Study and proposed Negative Declaration on or before October 13, 2017, pursuant to all applicable requirements of CEQA, including but not limited to Section 15072 of the CEQA Guidelines, which included publication of notice in Bay Area newspapers, in County Clerks’ offices, on the Air District’s website, by email and United States mail, and by submission to the State CEQA Clearinghouse;

WHEREAS, in connection with the notice of the Initial Study and proposed Negative Declaration, Air District staff invited interested members of the public to submit comments on the Initial Study and proposed Negative Declaration, and staff have prepared summaries of the comments received and staff's responses in the Response to Comments document referred to above, which has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has considered the entire record, including the Initial Study and the public comments received, and had determined using its own independent judgment and analysis there is no substantial evidence that the Proposed Amendments will have a significant effect on the environment, and has therefore determined that it is appropriate to adopt the Negative Declaration as proposed by Air District staff pursuant to Section 15074 of the CEQA Guidelines;

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Negative Declaration set forth in attachment A hereto and incorporated by reference as if fully set forth herein, finding that, in the Board's own independent judgment and analysis, and based on the whole record (including the Initial Study, the proposed Negative Declaration, and all public comments received), there is no substantial evidence that the Proposed Amendments will have a significant effect on the environment

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Proposed Amendments, which consist of the amendments to Air District Regulation 2, Rule 1 (Permits – General Requirements), Regulation 2, Rule 2 (Permits – New Source Review), Regulation 2, Rule 4 (Permits – Emissions Banking), and Regulation 2, Rule 6 (Permits, Major Facility Review), as set forth in Attachment B hereto and incorporated by reference as if fully set forth herein; and with instructions to staff to correct any typographical or formatting errors before final publication;

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District intends and directs that all references to state and federal regulations set forth in Regulation 2, Rule 1; Regulation 2, Rule 2; Regulation 2, Rule 4; and Regulation 2, Rule 6 (including references in provisions of those Rules that are not affected by the Proposed Amendments as well as in provisions that are affected by the Proposed Amendments) shall refer to and be interpreted according to the referenced state and federal regulations as they exist on the date of this Resolution;

BE IT FURTHER RESOLVED that the record documents and other materials supporting this Resolution are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, and that the custodian for the documents and other materials is Marcy Hiratzka, Clerk of the Boards.

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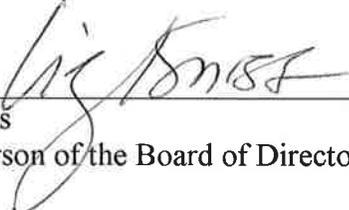
The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of DIRECTOR GIOIA, seconded by DIRECTOR MITCHOFF, on the 6th day of December 2017, by the following vote of the Board:

AYES: ABE-KOGA, BARRETT, CANEPA, CHAVEZ, CUTTER, GIOIA, GROOM, HAGGERTY, HUDSON, KAPLAN, KIM, KNISS, MILEY, MITCHOFF, RICE, ROSS, SANCHEZ, SHEEHY, SINKS, SPERING, AND WAGENKNECHT

NOES: NONE

ABSENT: JUE, RONEN, ZANE

ABSTAIN: NONE



Lis Kniss
Chairperson of the Board of Directors

ATTEST:



Katie Rice
Secretary of the Board of Directors

ATTACHMENT A

CEQA NEGATIVE DECLARATION

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NEGATIVE DECLARATION

Technical and Administrative Amendments to Bay Area Air Quality Management District New Source Review and Title V Permitting Programs

Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code §§ 21800 *et seq.*, and Sections 15071 and 15074 of the CEQA Guidelines, the Board of Directors of the Bay Area Air Quality Management District (Air District) hereby adopts this Negative Declaration finding that the adoption of technical and administrative amendments to the Air District's New Source Review and Title V permitting programs will not have a significant effect on the environment.

Project Name: Technical and Administrative Amendments to the Bay Area Air Quality Management District New Source Review and Title V Permitting Programs.

Project Description: This Project is a set of technical and administrative amendments to the Air District's New Source Review (NSR) and Title V permitting programs. The amendments involve four rules in Regulation 2, which is the Air District's permitting regulation. The four rules are Regulation 2, Rule 1 (Permits – General Requirements), Regulation 2, Rule 2 (Permits – New Source Review), Regulation 2, Rule 4 (Permits – Emissions Banking), and Regulation 2, Rule 6 (Permits – Title V Major Facility Review). The amendments make certain revisions to these four rules (i) to address certain “deficiencies” identified by the U.S. Environmental Protection Agency (EPA) in order to allow EPA to fully approve the District's NSR program under the federal Clean Air Act; (ii) to address certain other areas where further revisions and clarifications of the NSR regulations are needed; and (iii) to align the Air District's programs with the U.S. Supreme Court's ruling in *Utility Air Regulatory Group v. EPA*. The amendments are described in more detail in the Initial Study attached hereto and in the Staff Report that Air District staff prepared to explain the basis for these revisions.

Project Location: The nine-county jurisdiction of the Bay Area Air Quality Management District, which includes all of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and Napa Counties, and portions of southwestern Solano County and southern Sonoma County. A map of the project location is provided on page 2-2 of the Initial Study attached hereto.

Project Proponent and Lead Agency: The Bay Area Air Quality Management District.

Finding of No Significant Impact: The Board of Directors of the Bay Area Air Quality Management District hereby finds, using its own independent judgment and analysis, that based on the whole record (including the Initial Study and public comments received) that there is no substantial evidence that the Technical and Administrative Amendments to the Bay Area Air Quality Management District New Source Review and Title V Permitting Programs will have a significant effect on the environment.

Initial Study: A copy of the Initial Study documenting the reasons supporting the finding of no significant impact is attached hereto.

Mitigation Measures: No mitigation measures need to be included in the project to avoid potentially significant effects, as the project will not have any potentially significant effects.

ATTACHMENT B

AMENDMENTS TO :

Regulation 2, Rule 1 (Permits – General Requirements)

Regulation 2, Rule 2 (Permits – New Source Review)

Regulation 2, Rule 4 (Permits – Emissions Banking)

Regulation 2, Rule 6 (Permits – Major Facility Review)