

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2018 - 08

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Adopting Expedited BARCT Implementation Schedule;
and
Certifying a CEQA Environmental Impact Report for the Project**

RECITALS

WHEREAS, Health & Safety Code section 40920.6 requires each air district that is a nonattainment area for one or more air pollutants to adopt, on or before January 1, 2019, an expedited schedule for implementation of best available retrofit control technology (BARCT) by the earliest feasible date, but no later than December 31, 2023;

WHEREAS, the San Francisco Bay Area Air Basin is designated by the California Air Resources Board as a nonattainment area for the state ambient eight-hour ozone standard of 0.070 ppm; the state ambient one-hour ozone standard of 0.09 ppm; the state ambient annual arithmetic mean particulate matter standard of 20 $\mu\text{g}/\text{m}^3$ for PM10; the state 24-hour particulate matter standard of 50 $\mu\text{g}/\text{m}^3$ for PM10; and the state ambient annual arithmetic mean particulate matter standard of 12 $\mu\text{g}/\text{m}^3$ for PM2.5;

WHEREAS, the Bay Area Air Quality Management District ("District") is therefore required by Health and Safety Code section 40920.6 to adopt an expedited schedule for implementation of BARCT;

WHEREAS, District staff have prepared the Expedited BARCT Implementation Schedule, as set forth in Attachment A hereto and incorporated herein by reference (the "BARCT Schedule"), in order to implement the provisions of Health & Safety Code section 40920.6;

WHEREAS, District staff developed a concept paper describing the BARCT determination process and potential rule development projects included in the Expedited BARCT implementation schedule and published the concept paper and rule development scope papers on the Air District website on May 24, 2018 and accepted written comments on the documents through June 15, 2018;

WHEREAS, on May 21, 2018 and July 30, 2018, District staff discussed the draft rule with the Stationary Source Committee of the Board of Directors;

WHEREAS, District staff also discussed the BARCT Schedule with representatives from community and environmental groups, as well as representatives from affected facilities and industries;

WHEREAS, based on comments received on the concept paper and rule development scope papers, and in discussions with community, environmental, and industry groups and representatives, District staff prepared an Initial Staff Report and revised rule development scope papers, which District staff published on the District website on September 5, 2018, and accepted comments on these documents through October 5, 2018;

WHEREAS, on September 5, 2018, District staff discussed the BARCT Schedule with the Board of Directors;

WHEREAS, District staff considered input received on the Initial Staff Report and revised rule development scope papers, and continued to conduct further analysis, coordinate with the California Air Resources Board and other air districts, and solicit public input, and based on the input so received and its own further analysis, District staff prepared the proposed BARCT Schedule and October 2018 Staff Report, which District staff published on the District website on October 23, 2018, and accepted comments on these documents through December 7, 2018;

WHEREAS, District staff have reviewed and considered all of the comments received and have revised the BARCT Schedule and associated documents accordingly, as reflected in the Final BARCT Schedule and final rule development scope papers, and have prepared written responses to the comments that have been provided to the Board of Directors for review;

WHEREAS, District staff has prepared and presented to the public and to the Board of Directors a detailed Final Staff Report describing the purpose of and need for the BARCT Schedule, the development of the BARCT Schedule, how the BARCT Schedule will comply with California Health and Safety Code section 40920.6, and how issues raised by members of the public are addressed by the BARCT Schedule, which Final Staff Report has been considered by this Board and is incorporated herein by reference;

WHEREAS, on October 23, 2018, Air District staff published in newspapers and distributed and published on the Air District's website a notice of a public hearing to be held on December 19, 2018 to consider adoption of the BARCT Schedule, and the notice included a request for public comments and input on the BARCT Schedule;

WHEREAS, the Board of Directors held a public hearing on December 19, 2018, to consider the BARCT Schedule, in accordance with all provisions of law, at which meeting District staff presented the BARCT Schedule and proposed it for adoption;

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

WHEREAS, at the public hearing and prior to adopting the BARCT Schedule, the Board of Directors took into account the local public health and clean air benefits to the surrounding community; the cost-effectiveness of each control option; and the air quality and attainment benefits of each control option, as required by subdivision (d) of Health and Safety Code section 40920.6;

WHEREAS, the Board of Directors has determined that, as required by paragraph (2) of subdivision (c) of Health & Safety Code section 40920.6, the BARCT Schedule will apply to each industrial source within the District that, as of January 1, 2017, was subject to a market-based compliance mechanism adopted by the state board pursuant to subdivision (c) of Health and Safety Code section 38562 (the “Cap and Trade Program”);

WHEREAS, the Board of Directors has determined that, as required by paragraph (3) of subdivision (c) of Health & Safety Code section 40920.6, the BARCT Schedule will give highest priority to those permitted units that have not modified emissions-related permit conditions for the greatest period of time, and will not apply to any emissions unit that has implemented BARCT due to a permit revision or a new permit issuance since 2007;

WHEREAS, the BARCT Schedule complies with the applicable terms and conditions of Health & Safety Code section 40920.6 requiring certain air districts to adopt an expedited schedule for the implementation of best available retrofit control technology, including but not limited to the provisions referred to above;

WHEREAS, the proposed adoption of the BARCT Schedule constitutes a “project” pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code §§ 21000 et seq.);

WHEREAS, the District is the lead agency for this project under CEQA Guidelines section 15050 (14 California Code of Regulations section 15050);

WHEREAS, District staff caused to be prepared an environmental impact report (“EIR”) analyzing the potential environmental impacts of the BARCT Schedule in accordance with the requirements of CEQA;

WHEREAS, the District prepared a Notice of Preparation and an Initial Study (NOP/IS) for the Draft Environmental Impact Report (DEIR) for the Expedited BARCT Implementation Schedule, which the District distributed in accordance with CEQA Guidelines section 15082 and published on the District’s website on August 7, 2018 for review and comment, and accepted written comments on the NOP/IS through September 7, 2018;

WHEREAS, the District noticed and conducted a scoping meeting in accordance with CEQA Guidelines section 15082, which meeting occurred on August 24, 2018;

WHEREAS, the District received two written comment letters regarding the NOP/IS during the 31-day public review and comment period;

WHEREAS, District staff considered all of the comments received and, taking due account of the comments and input received in the course of the scoping and consultation process, caused a Draft EIR to be prepared and publicized for review and comment by interested members of the public and others as required by CEQA;

WHEREAS, on or before October 23, 2018, the District published the Draft EIR and provided notification to the public and to other interested parties, via newspaper advertisement, email notifications, and on the District's website (among other means), that the Draft EIR was complete and was available for public review and comment;

WHEREAS, the public notification materials published by the District (i) informed the public that the Draft EIR was available on the District website and by request to the District and (ii) invited public comments on the Draft EIR during the period from October 23, 2018 through December 7, 2018;

WHEREAS, the District received one written comment letter regarding the Draft EIR during the 45-day public review and comment period;

WHEREAS, District staff considered all of the comments received and has prepared a Final EIR, which incorporates certain revisions to the Draft EIR based on the comments received as well as other considerations, and which includes copies of the comments received as well as written responses to the comments prepared by District staff;

WHEREAS, the Final EIR, a copy of which is attached hereto and incorporated herein by reference, was presented to the Board of Directors and proposed for certification by the Board of Directors at a public meeting of the Board of Directors on December 19, 2018;

WHEREAS, none of the revisions to the Draft EIR include any significant new information that would require recirculation of the Draft EIR under CEQA Guidelines section 15088.5;

WHEREAS, the EIR found that the BARCT Schedule will have the potential to create a significant adverse impact on air quality that comes from construction emissions and cannot be mitigated to a level that is less than significant, as described in Chapter 3.2 of the Final EIR;

WHEREAS, the EIR found that the BARCT Schedule will have the potential to create a significant adverse impact on water demand that cannot be mitigated to a level that is less than significant, as described in Chapter 3.4 of the Final EIR;

WHEREAS, the EIR discussed potential mitigation measures for construction emission impacts as specified in Section 3.2.5 of Chapter 3.2 and water demand impacts in Section 3.4.5 of Chapter 3.4 which might reduce the significant air quality and water demand impacts identified in the EIR, as explained in Section 1.4 of Chapter 1 of the Final EIR, but those mitigation measures are within the responsibility and jurisdiction of public agencies other than the District, and such measures have been or could be adopted by such other agencies;

WHEREAS, substantial evidence in the record demonstrates that approval of the BARCT Schedule involves specific considerations related to the need identified by the Legislature to reduce air pollution and protect public health and the environment through the expeditious implementation of best available retrofit control technology at industrial sources subject to the Cap

and Trade Program, and the District's obligation to do so under Health and Safety Code section 40920.6, that make the alternatives identified in the EIR that would avoid or substantially lessen the significant air quality and water demand impacts infeasible, as explained in Section 1.5 of Chapter 1 of the Final EIR;

WHEREAS, substantial evidence in the record demonstrates that the significant and unavoidable impacts to air quality during construction and from increases in water demand are acceptable as provided in CEQA Guidelines section 15093 because the public health and air quality benefits from the BARCT Schedule outweigh the Schedule's significant unavoidable impacts;

WHEREAS, this matter has been duly noticed and heard in compliance with applicable requirements of the Health and Safety Code and the Public Resources Code;

WHEREAS, the documents and other materials that constitute the record of proceedings on which the BARCT Schedule and the Final EIR are 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 Marcy Hiratzka, Clerk of the Boards;

WHEREAS, District staff provided copies of (i) the BARCT Schedule, and (ii) the Final EIR, including the comments received on the Draft EIR and staff's responses thereto, to each of the members of the Board of Directors for their review and consideration in advance of the public meeting of the Board of Directors on December 19, 2018;

WHEREAS, District staff has recommended that the Board of Directors adopt the BARCT Schedule;

WHEREAS, the Board of Directors concurs with recommendations of District staff regarding the BARCT Schedule;

WHEREAS, District staff has recommended that the Board of Directors certify the Final EIR, which was prepared as the CEQA document for the BARCT Schedule, as being in compliance with all applicable requirements of CEQA;

WHEREAS, the Board of Directors concurs with recommendations of District staff regarding the Final EIR for the BARCT Schedule;

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District does hereby certify and adopt the Final EIR pursuant to CEQA for the BARCT Schedule.

BE IT FURTHER RESOLVED that in support of and as part of its certification and adoption of the Final EIR for the BARCT Schedule, the Board of Directors hereby makes the following findings and certifications:

1. The Final EIR for the BARCT Schedule has been prepared in accordance with all requirements of CEQA.
2. The Final EIR for the BARCT Schedule was duly presented to the Board of Directors for its consideration in accordance with CEQA and other applicable legal requirements.
3. The Board of Directors has reviewed and considered the information in the Final EIR and the evidence in the record described and summarized in the Final EIR, including but not limited to (i) the Final EIR's conclusion that the BARCT Schedule will have significant air quality and water demand impacts as described in the Final EIR, (ii) the mitigation measures proposed to mitigate the significant air quality and water demand impacts outlined in the Final EIR, and (iii) the alternatives considered to avoid or substantially lessen the significant air quality and water demand impact that are evaluated in the Final EIR.
4. The Board of Directors specifically approves the mitigation measures outlined in the Final EIR, which are incorporated by reference as if fully set forth herein, to mitigate the BARCT Schedule's significant air quality and water demand impacts. No additional feasible mitigation measures have been identified that can further mitigate the significant impacts.
5. The Board of Directors finds that the mitigation measures for construction emission impacts discussed in Section 3.2.5 of Chapter 3.2 and water demand impacts in Section 3.4.5 of Chapter 3.4 of the Final EIR, as explained in Section 1.4 of Chapter 1 of the Final EIR, are within the responsibility and jurisdiction of public agencies other than the District, and such measures have been or could be adopted by such other agencies.
6. The analysis of alternatives set forth in Chapter 4 of the Final EIR has provided the Board of Directors with a basis for considering ways in which the significant air quality and water demand impacts could be avoided or substantially lessened while still achieving all or most of the Plan's objectives. The alternatives analysis in the Final EIR is sufficient to carry out the purposes of such analysis under CEQA.
7. The Board of Directors finds that there is a pressing need to reduce air pollution and to protect public health and the environment, and to comply with the mandate of the Legislature set forth in subdivisions (c) and (d) of Health and Safety Code section 40920.6, which the BARCT Schedule addresses. The Board of Directors finds that the benefits that will be obtained from the BARCT Schedule in addressing these needs constitute specific considerations that make the alternatives identified in the Final EIR to avoid or significantly lessen the BARCT Schedule's significant air quality and water demand impacts infeasible. In making this finding, the Board of Directors has considered and agrees with the reasons supporting the finding as set forth in Section 1.5 of Chapter 1 of the Final EIR, which are incorporated by reference as if fully set forth herein and which the Board of Directors adopts as its own.
8. The Final EIR (including responses to comments) is complete, adequate and in full compliance with CEQA as a basis for considering and acting upon the BARCT Schedule.

9. The Final EIR reflects the independent judgment and analysis of the Bay Area Air Quality Management District.
10. The Board of Directors has exercised its own independent judgment in reviewing, considering and certifying the Final EIR and in making the findings and certifications set forth in this Resolution, which reflects the independent judgment and analysis of the Board of Directors.

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Expedited BARCT Implementation Schedule, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that in support of and as part of its adoption of the BARCT Schedule, the Board of Directors hereby makes the following findings and certifications:

1. The BARCT Schedule provides for the implementation by the earliest feasible date, which in any event will be no later than December 31, 2023, of best available retrofit control technology at each industrial source within the District that, as of January 1, 2017, was subject to the Cap and Trade Program.
2. The BARCT Schedule will give highest priority to those permitted units that have not modified emissions-related permit conditions for the greatest period of time and will not apply to any emissions unit that has implemented BARCT due to a permit revision or a new permit issuance since 2007.
3. At the public hearing and prior to adopting the BARCT Schedule, the Board of Directors took into account the local public health and clean air benefits to the surrounding community; the cost-effectiveness of each control option; and the air quality and attainment benefits of each control option.
4. The Board of Directors' approval of the BARCT Schedule is based on and supported by (among other things) the Board's consideration of the Final EIR for the BARCT Schedule.
5. The Board of Directors has balanced the benefits of the BARCT Schedule against its unavoidable environmental risks in determining whether to approve the BARCT Schedule. The Board of Directors finds that the BARCT Schedule's benefits in reducing air pollution and protecting public health, and in fulfilling the specific mandate of the Legislature to adopt a BARCT Schedule as set forth in subdivisions (c) and (d) of Health and Safety Code section 40920.6, outweigh the adverse impacts from air quality impacts from construction emissions and increases in water demand from operation of air pollution control equipment that are expected to result from implementing the BARCT Schedule. The Board of Directors therefore finds that these significant impacts from the BARCT Schedule are acceptable pursuant to Section 15093 of the CEQA Guidelines, 14 Cal. Code Regs. § 15093; and makes this finding as a "Statement of Overriding Considerations" pursuant to Section 15093. The specific reasons supporting this finding and Statement of Overriding Considerations are as follows:

- a. The Board of Directors has considered the air quality impacts associated with construction of air pollution control equipment to comply with the BARCT Schedule, which would be expected to be, in the worst-case, 70.5 pounds per day of reactive organic gases (in light of Bay Area emissions of approximately 273 tons per day), 347.7 pounds per day of carbon monoxide (in light of Bay Area emissions of approximately 1327 tons per day), 395.2 pounds per day of nitrogen oxides (in light of Bay Area emissions of approximately 316 tons per day), 1.5 pounds per day of sulfur oxides (in light of Bay Area emissions of approximately 21 tons per day), 135.6 pounds per day of PM10 (in light of Bay Area emissions of approximately 105 tons per day), and 81.3 pounds per day of PM2.5 (in light of Bay Area emissions of approximately 45 tons per day).
- b. The Board of Directors has considered the water demand increase of approximately 1.74 million gallons per day that is expected to result from the BARCT Schedule, which the Board of Directors has evaluated in light of the significant adverse impact the increase will have on the region's water supply resources as described in Chapter 3.4 of the Final EIR, and also in light of the Bay Area's total water usage of over one billion gallons per day, as well as the fact that the recent drought that has made water supply issues an especially acute concern over the past few years is now over.
- c. The Board of Directors has considered that, as explained in Section 1.4 of Chapter 1 and in Chapter 4 of the Final EIR, the air quality impacts associated with construction of air pollution control equipment and the water demand increase associated with the operation of air pollution control equipment are unavoidable consequences of the adoption of an expedited schedule for the implementation of best available retrofit control technology at sources subject to the Cap and Trade program in the District, and that the District's adoption of such a schedule is required under subdivisions (c) and (d) of Health and Safety Code section 40920.6, which were enacted as part of Assembly Bill 617, which was signed by the Governor in July 2017 and is intended "... to reduce emissions of toxic air contaminants and criteria pollutants in communities affected by a high cumulative exposure burden."
- d. In addition to the reasons outlined in subparagraphs a.-c. above, the Board of Directors has reviewed and considered the more detailed summary of reasons why the BARCT Schedule's benefits in reducing air pollution and protecting public health outweigh the BARCT Schedule's adverse air quality and water demand impacts set forth in Section 1.4 of Chapter 1 of the Final EIR for the BARCT Schedule. The Board of Directors agrees with the reasons set forth therein, and it adopts those reasons as its own and incorporates them by reference as if fully set forth herein as specific reasons supporting this finding and Statement of Overriding Considerations.

* * * * *

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 WAGENKNECHT, seconded by VICE CHAIR RICE, on the 19th day of December, 2018 by the following vote of the Board:

AYES: BARRETT, BAUTERS, CHAVEZ, CUTTER, GIOIA, GROOM, HAGGERTY, HUDSON, JUE, KNISS, MANDELMAN, MILEY, MITCHOFF, RICE, RONEN, ROSS, SINKS, SPERING, WAGENKNECHT, ZANE

NOES: NONE

ABSENT: ABE-KOGA, CANEPA, KIM, SANCHEZ

ABSTAIN: NONE



David E. Hudson
Chairperson of the Board of Directors

ATTEST:



Rod Sinks
Secretary of the Board of Directors