

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2018 - 10

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Amending District Regulation 11, Rule 10: Hexavalent Chromium Emissions from
All Cooling Towers and Total Hydrocarbon Emissions from Petroleum Refinery
Cooling Towers; and Adopting a CEQA Environmental Impact Report for the
Project**

WHEREAS, public hearings have been properly noticed in accordance with the provisions of Health & Safety Code § 40725;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District (“Air District”) has determined that a need exists to amend District rules and regulations by adopting amendments to Regulation 11, Rule 10: Hexavalent Chromium Emissions from All Cooling Towers and Total Hydrocarbon Emissions from Petroleum Refinery Cooling Towers; as set forth in Attachment A hereto (“Proposed Amendments”);

WHEREAS, the Board of Directors of the Air 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 Air 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 rule;

WHEREAS, the Board of Directors of the Air 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 Air 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 Air District;

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

WHEREAS, the Board of Directors of the Air District last amended Regulation 11, Rule 10 on December 16, 2015;

WHEREAS, in response to a lawsuit filed by the Western States Petroleum Association and three Bay Area refineries, the Air District entered into a settlement agreement with these parties dated March 24, 2017 in which Air District staff committed to propose revisions similar to the Proposed Revisions to the District Board of Directors for adoption;

WHEREAS, Air District staff has determined that Proposed Revisions are appropriate modifications to Regulation 11, Rule 10;

WHEREAS, the Air District prepared initial draft amendments, published them for comment on August 1, 2018;

WHEREAS, on July 25, 2018, Air District staff discussed the Proposed Amendments with the Ad Hoc Refinery Oversight Committee of the Board of Directors of the Air District;

WHEREAS, on October 24, 2018, the Air District transmitted the text of the Proposed Amendments to California Air Resources Board;

WHEREAS, on or before October 22, 2018, Air District staff published in newspapers and distributed and published on the District's website a notice of a public hearing to be held on December 19, 2018 to consider adoption of the Proposed Amendments, and the notice included a request for public comments and input on the Proposed Amendments;

WHEREAS, the Board of Directors of the Air District held a public hearing on December 19, 2018 to consider the Proposed Amendments in accordance with all provisions of law ("Public Hearing");

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, Air District staff has prepared and presented to the Board of Directors 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 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 Air District is the CEQA lead agency for this project pursuant to CEQA Guidelines § 15050 (14 California Code of Regulations ("CCR") § 15050);

WHEREAS, Air 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 proposed revisions to three rules, including the Proposed Amendments, were analyzed, and subsequently prepared a Draft Environmental Impact Report because the Initial Study identified a potentially significant effect on the environment associated with the Proposed Amendments;

WHEREAS, the Draft Environment Impact Report found no evidence in the record before the District that there could be a significant effect on the environment from the adoption and implementation of the Proposed Amendments because there would be no actual emissions increase relative to Regulation 11, Rule 10 as it has been implemented;

WHEREAS, the Draft Environmental Impact Report also found that, in comparing the Proposed Amendments to Regulation 11, Rule 10 as it was adopted (but not implemented), there is a theoretical difference in emissions reductions, and that these foregone emissions reductions could have a significant effect on the environment;

WHEREAS, that Draft Environmental Impact Report was 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 Environmental Impact Report were made available to all interested persons and an adequate comment period of at least 45 days was provided pursuant to CEQA Guidelines § 15105, subdivision (b);

WHEREAS, no comments were received on the Draft Environmental Impact Report;

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

WHEREAS, Air District staff, in exercising its independent judgment, has determined that even if theoretical foregone emissions reductions are considered to be a significant impact for CEQA purposes, there are no feasible means of mitigating these foregone emissions reductions to a less than significant level;

WHEREAS, it is necessary that the adequacy of the Draft Environmental Impact Report be determined by the Board of Directors prior to its adoption;

WHEREAS, the members of the Board of Directors voting on this Resolution have reviewed and considered the Draft Environmental Impact Report;

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 Environmental Impact Report), the Proposed Amendments will not have any significant effect on the environment, and the Environmental Impact Report reflects the Air District's independent judgment and analysis;

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 Environmental Impact Report), to the extent there is a theoretical significant emissions impact from foregone emissions reductions from the Proposed Amendments, there are no feasible means of reducing the impact to a less than significant level, and the Environmental Impact Report reflects the Air District's independent judgment and analysis;

WHEREAS, the Staff Report explains that the Proposed Amendments will have no impacts on costs, and therefore will have no socioeconomic impacts;

WHEREAS, the Board of Directors finds and determines that there are no socioeconomic impacts to consider pursuant to the requirements of Health & Safety Code § 40728.5;

WHEREAS, the Board of Directors, pursuant to the requirements of Health & Safety Code § 40920.6, has actively considered the incremental cost-effectiveness of the Proposed Amendments in meeting emission reduction goals under the California Clean Air Act as set forth in the Staff Report, and finds and determines that there are no incrementally more cost-effective potential control options that would achieve the emission reduction objectives of the Proposed Amendments;

WHEREAS, the Air District has prepared, pursuant to the requirements of Health & Safety Code § 40727.2, a written 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 Air 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, San Francisco, 94105, and the custodian for these documents is Marcy Hiratzka, Clerk of the Boards;

WHEREAS, Air District staff recommends adoption of the Proposed Amendments and adoption of the Environmental Impact Report for this rulemaking project;

WHEREAS, the Board of Directors concurs with Air District staff's recommendations and desires to adopt the Proposed Amendments and to adopt the Environmental Impact Report 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 Air District 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 Environmental Impact Report 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 WAGENKNECHT, seconded by Director ZANE, on the 19th day of December, 2018 by the following vote of the Board:

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

NOES: NONE

ABSENT: ABE-KOGA, CANEPA, HAGGERTY, KIM, RONEN, SANCHEZ, SPERING



David E. Hudson
Chairperson of the Board of Directors

ATTEST: NONE



Rod Sinks
Secretary of the Board of Directors

ATTACHMENT A

[PROPOSED AMENDMENTS]

**Amended Regulation 11, Rule 10: Hexavalent Chromium
Emissions from All Cooling Towers and Total Hydrocarbon
Emissions from Petroleum refinery Cooling Towers**