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VIA EMAIL

Bay Area Air Quality Management District

Carol Lee

Greg Stone

939 Ellis Street

San Francisco, CA 94109

clee@baaqmd.gov

gstone@baaqmd.gov

RE: CBE Comments on BAAQMD's Proposed Amendments to BAAQMD Regulation 2

The Bay Area Air Quality Management District ("District") proposes numerous amendments to regulations governing the New Source Review ("NSR") permitting requirements of new and modified sources. Communities for a Better Environment ("CBE") is an environmental health and justice organization that works in and with low income communities and communities of color in California's urban areas, including in the City of Richmond. We provide the following brief comments regarding BAAQMD's proposed amendments

First, on March 1, 2012, CBE provided its initial comments on the proposed amendments. We are disappointed to see that staff has not acted to incorporate our suggestions into the amendments.

Second, CBE is particularly concerned that the proposed amendments would weaken, or backslide¹, the protection provided by a robust, multi-pollutant requirement of Best Available Control Technology ("BACT"). This concern is not only legal - Section 2-2-222, applying BACT analysis under a "Pollutant-Specific Basis" raises the likelihood of degenerating air quality regionwide and increased harm to CBE's members in particular. The new definition explicitly limits the pollutants that are addressed in a BACT analysis. Essentially, rather than requiring BACT for all criteria pollutants when any pollutant exceeds a threshold, the amendments would apply it only to the exceeding pollutant.

¹ California Health and Safety Code Section 42500 through 42507 (SB288) mandates that the BAAQMD's NSR or PSD rules cannot be made less stringent than the rules that existed on December 30, 2002.

Single-pollutant BACT could have concrete mortality results in the Bay Area. BAAQMD acknowledges that Particulate Matter (“PM”) is linked to more than 1000 premature deaths annually. PM is regulated as a criteria pollutant. It also forms when two other pollutants – SO_x and NO_x – are released and combine. Under a single-pollutant rule, a refinery could propose a new source with SO_x emissions that trigger BACT, and NO_x emissions below the relevant threshold. Once released into the atmosphere, SO_x and NO_x will form PM. If the Pollutant-Specific Basis analysis only requires review of SO_x levels, and not NO_x levels that remain under the relevant applicability criteria, the same pollutant by pollutant analysis precludes examination of indirect NO_x emissions that in reaction with SO_x cause increased PM emissions.

The proposed amendments to Regulation 2 are vague as to whether they will allow the correct analysis of precursors. Contextually, this ambiguity could exacerbate the problem of allowing offsets, as CBE detailed in its March 1, 2012 Comments to the District. Offsets, allowing polluting facilities to pollute locally and offset the pollution elsewhere, inevitably harms health and to a disproportionate degree in communities like Richmond. Furthermore, the national standard for PM_{2.5}, which the EPA adopted in 2006, and the District proposes to comply with, does not fully protect the public from what happens after the combustion of fossil fuels. At a minimum, The District should cure the ambiguity of section 2-2-222 and formally acknowledge the potential increased PM emissions from indirect precursors. This is critical in order to address the disproportionate impacts of the District’s choices on low-income communities.²

The District’s solution to the Pollutant-Specific Basis problem does not, in fact, solve the problem. In its Draft EIR for the proposed amendments, the District posits that:

Finally, CEQA will also apply to individual projects at the time of permitting, and the potential for any control equipment or other design aspects of a project to have secondary adverse air quality impacts will be evaluated at that time. Should projects be proposed that could potentially generate significant impacts or are unusual in nature, a separate project-specific CEQA analysis will be applied to evaluate and mitigate or avoid any such impacts.³

The District should not rely on the general police powers of local governing bodies to regulate an area where the District retains paramount authority. These governing bodies defer to BAAQMD’s air quality analysis. Further, project-by-project analysis is ineffective to address regional impacts. The only solution is to require BACT for all criteria pollutants if it is triggered for any criteria pollutant.

Third, on September 10, 2012, the District formally agreed that it would require Chevron to use the “best available technology” in the rebuild of its crude unit. Fittingly, the proposed amendments to the District’s Regulation 2 require an NSR permitting process and also the use Best Available Control Technology (“BACT”). Whether

² Staff Report, pp. 5-6

³ Draft EIR at 3-28, discussing secondary adverse air quality impacts of the proposed BACT

Chevron proposes its rebuild before or after completion of amendments to Regulation 2, the District is committed to ensuring the safety of the community by requiring Chevron to use the most protective technology is meaningful. CBE looks forward to participating in the District's transparent NSR permitting process for whatever Chevron proposes. The process will, we trust, include an opportunity to provide feedback on BACT, which is the technology that:

[on] a case-by-case basis, taking into account *energy, environmental, and economic* impacts and other costs, ... is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, *clean fuels*, or treatment or innovative fuel combustion techniques for control of each such pollutant⁴

In sum, CBE appreciates the many improvements to the proposed rule amendments; however, CBE also has significant concerns. CBE recommends that staff revise the offset provisions to address disproportionate impacts on impacted communities. The District should also retain its multipollutant BACT analysis, or at least clarify its analysis of total, overall PM emissions. Specific to the City of Richmond, the District should clarify how it will follow through on its agreement to require the "best available technology" for refinery equipment damaged by Chevron's catastrophic recent corrosion and fire incident, and at a minimum promptly provide a full BACT analysis of that equipment.

In Health,

/s/

Roger Lin

⁴ Clean Air Act Section 169(3) (emphasis added)