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Director of Policy and Impact Management
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March 26, 2012

VIA EMAIL

Ms. Carol Lee
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939 Ellis Street
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Re: United Air Lines, Inc.'s Comments on BAAQMD's Proposed Draft Regulation 2 (Permits) – Rules 1, 2, 4 and 6

Dear Ms. Lee:

I am writing on behalf of United Air Lines, Inc. (United) to provide the Bay Area Air Quality Management District (the District) with comments on the proposed draft Regulation 2 (Permits), Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking), and Rule 6 (Major Facility Review). United appreciates the District's decision to extend the deadline for submitting comments from March 2 to March 27, 2012.

The objective of these rule amendments is for the District to obtain an approved State Implementation Plan (SIP) for its Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs. The proposed amendments are complex and extensive in nature. The District has proposed to completely reorganize and modify Regulation 2, Rules 1 and 2.

United supports the District's decision to seek SIP-approval of its PSD permitting program. We recognize and appreciate the fact that, pursuant to Senate Bill 288, the "Protect California Air Act of 2003," the proposed amendments to Regulation 2 cannot as a whole be less stringent than the current Regulation.

Provided below are United's comments and proposed modifications on the proposed amendments. United respectfully reserves the right to supplement or revise its comments as this rulemaking process moves forward. We look forward to working with District staff in this rulemaking process.

United's Comments and Proposed Modifications

1. **The District's proposed definition of "portable" should reference or include a definition of the term "location."**

In Section 2-1-220, the District has proposed to redefine the term "portable." According to District staff, the stated purpose of this amendment is to clarify and amend the definition to match that of the California Air Resources Board's (ARB's) definition of portable.[1]

The proposed amendments to Section 2-1-220 are generally consistent with ARB's definition of "portable" in its Statewide Portable Equipment Registration Program (also known as the "PERP regulation"). *See* PERP regulation at section 2452(dd), http://www.arb.ca.gov/portable/perp/perpreg.pdf. However, unlike the PERP regulation, the District's proposed definition of "portable" does not define the term "location" that is used in several places within the definition of "portable." In contrast, in the PERP regulation, "location" is defined to mean "any single site at a building, structure, facility or installation." *See* section 2452(r).

United recommends that the District revise the proposed language in Section 2-1-220 and include a definition of "location" consistent with ARB's PERP regulation. This proposed modification is minor in nature. It is consistent with the District's stated purpose in amending Section 2-1-220 to track ARB's definition of "portable."

This proposed modification also is consistent with the District's proposed revision to Section 2-1-105 (Exemption, Registered Statewide Portable Equipment), which provides:

> Portable equipment is exempt from the requirements of Sections 2-1-301 and 302, provided that the equipment complies with all applicable requirements of the Statewide Portable Equipment Registration Program (California Code of Regulations Title 13, Division 3, Chapter 3, Article 5). If the equipment ceases to qualify for this exemption for any reason (for example, if it remains at any fixed location for more than twelve months or otherwise ceases to be portable as defined in Section 2-1-220), the equipment shall be subject to the requirements of Regulation 2 as if it were a new source.

See proposed amended Section 2-1-105 (emphasis added).

2. **Source determinations should continue to be made on a case-by-case basis.**

The District's Regulation 2 amendments appear to include two different proposed revised definitions to the term "facility" in Section 2-1-213. We assume that the proposed definition of "facility" in the District's "Draft Amendments to Rule 2-1: Permits" is simply a

[1] See BAAQMD's Summary of Proposed Changes to Regulation 2-1 at page 7, http://baaqmd.gov/~/media/Files/Planning%20and%20Research/Rules%20and%20Regs/Workshops/2012/0201_sum_012412.ashx?la=en

clerical error.[2] For example, this proposed definition of "facility" includes only strikeouts and does not include revisions addressing the concepts of common control, or aggregate or related sources.

In contrast, the second proposed definition of "facility" located in the District's "Rule 2-1 Draft Amendments Summary" provides the following:

> **2-1-213 Facility**: Any ~~property~~ source, building, structure or installation ~~(or any aggregation of facilities) located on one or more contiguous or adjacent properties and under common ownership or control of the same person~~ that emits or may emit any air pollutant; or any aggregation of such sources, buildings, structures or installations that are located within a distance of three miles of each other and (i) are in ~~and is considered a single~~ the same major industrial grouping (identified by the first two-digits of the applicable code in The Standard Industrial Classification Manual) and under common ownership and control or (ii) are related sources, as defined in Section 2-1-242 [sic], even if such related sources are not within the same major industrial grouping and/or are not under common ownership and control. ~~In addition, facilities which include cargo loading or unloading from cargo carriers other than motor vehicles shall include the cargo carriers as part of the source which receives or loads the cargo. Accordingly, all emissions from such carriers while operating in the District, or within California Coastal Waters adjacent to the District, shall be included as part of the source.~~[3]

In Section 2-1-242 (Related Sources), the District has proposed to define the term "related sources" to mean: "Two or more sources where the operation of one is dependent upon, supports or affects the operation of the other(s)."

The proposed definition of "facility" would adopt a bright-line test for purposes of determining whether adjacent sources should be considered a single facility. Under the District's proposal, sources that are (1) located within a distance of three miles of each other; (2) are in the same major industrial grouping (first two-digits of the SIC Manual); and (3) are under common ownership and control, would constitute a single "facility."

United recognizes and appreciates the District's desire to adopt a bright-line test by providing a specific distance of three miles as a replacement to the definition of "adjacent." It is our understanding that the District's prior single-source determinations were made on a case-by-case basis.

We are unaware of other permitting authorities or EPA offices that have attempted to indicate a specific distance for "adjacent" sources on anything other than a case-by-case basis. EPA has stated previously that it could not "say precisely how far apart activities must be in order to be treated separately" and directed that such determinations be made

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[2] *See* BAAQMD's Proposed Amendments to Regulation 2-1 at page 2-1-17. http://baaqmd.gov/~/media/Files/Planning%20and%20Research/Rules%20and%20Regs/Workshops/2012/0201_dr_012412.ashx?la=en

[3] *See* BAAQMD's Summary of Proposed Changes to Regulation 2-1 at page 6. http://baaqmd.gov/~/media/Files/Planning%20and%20Research/Rules%20and%20Regs/Workshops/2012/0201_sum_012412.ashx?la=en

on a case-by-case basis. *See* 45 Fed. Reg. 52676, 52695 (August 7, 1980). Since that time, EPA has indicated that source determinations should be made on a "case-by-case" and "highly fact-specific" basis, where "no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances" and where a fact-specific inquiry is necessary to establish whether emissions sources should be grouped together. In 2009, EPA recognized that, while the proximity of disparate emissions units is important, it is not necessarily the deciding factor in making an aggregation determination.[4]

United is concerned that the District's proposed bright-line test of three miles may require single source determinations to be made even in situations where the District should retain the discretion to consider extenuating circumstances.

In addition, the District's proposed definition of "facility" incorporates a new definition of "related sources" in Section 2-1-242. The definition of "related sources" appears to incorporate the concept of "support facility." The District has previously analyzed "support facility" or "related sources" determinations on a case-by-case basis.[5]

Based on the foregoing, United recommends the following definition of "facility" in Section 2-1-213:

> **Proposed Section 2-1-213 Facility**: Any source, building, structure or installation (or any aggregation of facilities) located on one or more contiguous or adjacent properties and under common ownership and control of the same person that emits or may emit any air pollutant and is considered a single major industrial grouping (identified by the first two-digits of the applicable code in The Standard Industrial Classification Manual). The determination as to whether any group of sources, buildings, structures or installations are located on contiguous or adjacent properties, and/or are under common ownership and control, and/or whether the pollutant emitting activities at such group of stationary sources are "related sources" shall be made on a case-by-case-basis.

United believes that this approach is consistent with the District's past permitting practice, as well as available EPA guidance on single source permitting under the Title V program.

3. For consistency purposes, the term "change" utilized in Sections 2-2-604 and 2-2-606 should be replaced with the terms "modify" or "modification."

In Sections 2-1-233 and 2-1-234, the District has proposed to amend the definitions of "modification" and "alteration." Section 2-1-234, now entitled "modify," provides that a "modification" is either a change that increases emissions above a permitted level, or if there is no permit limit, a change that increases emissions above the maximum operational capacity of the source. Section 2-1-233, now entitled "alter," provides that an "alteration" at a source is any change that is not a "modification" under Section 2-1-234.

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[4] *See* McCarthy memorandum, dated Sept. 22, 2009 at http://www.epa.gov/region7/air/nsr/nsrmemos/oilgaswithdrawal.pdf.

[5] *See* http://www.epa.gov/region9/air/permit/pdf/bayarea-final-report9-29-09.pdf at page 135 of PDF.

The District's NSR program is set forth in Regulation 2, Rule 2. Rule 2 applies to all new and "modified" sources that are subject to Sections 2-1-301 and/or 2-1-302.

In draft Sections 2-2-604 and 2-2-606, the District utilizes the phrase "changes at existing sources." The use of this phrase appears to be inconsistent with the definition of "modify" in Section 2-1-234. In order to clarify the requirements of these Sections, United recommends the following revisions:

> 2-2-604 Emission Increase/Decrease Calculation Procedures, New Sources and ~~Changes~~ **Modifications** at Existing Sources: The amount of any emissions increase (or decrease) associated with a new source, or with a **modification** ~~physical change, change in the method of operation, change in throughput or production, or other similar change~~ at an existing source, shall be calculated according to the following procedures: ...
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> 604.2 ~~Change to~~ **Modification of** Existing Source: The emissions increase (or decrease) associated with a **modification** ~~physical change, change in the method of operation, change in throughput or production, or other similar change~~ at an existing source (including a permanent shutdown of the source) shall be calculated as the difference between: (i) the source's potential to emit after the ~~change~~ **modification**; and (ii) the source's adjusted baseline emissions before the ~~change~~ **modification** calculated in accordance with Section 2-2-603.
>
> .....
>
> 2-2-606.1 Non-Fully-Offset Source: For a source that is not fully offset as defined in Section 2-2-213, the amount of emission reduction credits is the difference between: (i) the source's adjusted baseline emissions before the ~~change~~ **modification** calculated pursuant to Section 2-2-603; and (ii) the source's potential to emit after the ~~change~~ **modification**.
>
> 606.2 Fully-Offset Source: For a source that is fully offset as defined in Section 2-2-213, the amount of emission reduction credits is the difference between: (i) the source's potential to emit before the ~~change~~ **modification**, adjusted downward, if necessary, to reflect the most stringent of RACT, BARCT, and District rules and regulations in effect or contained in the most recently adopted Clean Air Plan; and (ii) the source's potential to emit after the ~~change~~ **modification**.
>
> To qualify as emission reduction credits, the emission reductions associated with any such ~~change~~ **modification**: ....

4. **The Baseline Emissions Calculation Procedures in Section 2-2-603 should be modified to allow the use of a different time period upon a determination that it is more "representative of normal source operation."**

The proposed amendments in Section 2-2-603 set forth the methodology that shall be used to determine a source's baseline emissions for purposes of calculating an emissions increase or decrease from a new or modified source. Subsection 2-2-603.1 provides that the baseline period is "the 3 year period immediately preceding the date on which the

application for authority to construct/permit to operate the new or modified source is determined to be complete."

United recommends that Subsection 2-2-603.1 be modified to allow the use of a different baseline time period upon a determination that it is more representative of normal source operation.

Under this approach, the source would be required to demonstrate that recent or historical operations were abnormal or unusual and that a different time period is more representative of normal source operations. This proposed modification is consistent with Senate Bill 288 in that it would not affect the existing requirement that a source's baseline emissions be calculated using actual emissions.

5. **United recommends a minor change in Section 2-2-226 to clarify the definition of "significant" in connection with the Rule's PSD provisions.**

Subsection 2-2-226.1 provides: "For determining whether an increase in emissions of a PSD pollutant is 'significant' for purposes of the PSD provisions of this Rule, the increase is significant: 1.1 if it exceeds the values specified in the following table, or for pollutants that are not listed in the following table, if it is greater than zero; ...."

For clarification purposes, the language in Subsection 2-2-226.1.1 should specifically reference "PSD Pollutant." For example, Subsection 2-2-226.1.1 would now state: "1.1 if it exceeds the values specified in the following table~~, or~~ for **any PSD** ~~p~~**P**ollutant ~~that are not listed in the following table, if greater than zero;~~ ...."

Conclusion

United appreciates your consideration of these comments. If you or your colleagues have questions or require additional information concerning the issues raised in this letter, please feel free to contact David Weintraub at (650) 634-4572, david.weintraub@united.com.

Sincerely,

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