California Council for Environmental and Economic Balance
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VIA ELECTRONIC MAIL

March 27, 2012

Ms. Carol Lee
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Proposed Amendments to Regulation 2, Rules 1,2,4 & 6

Dear Ms. Lee:

This letter provides the comments of the California Council for Environmental and Economic Balance ("CCEEB") to the District's proposed changes to the above referenced regulation. CCEEB is a coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. Our members operate numerous facilities in the District. We support the District's ongoing efforts to improve air quality and meet federal air quality standards. Our members have made substantial capital investments to comply with the District's emission control standards and have significantly reduced their emissions.

1. Permit applicants should be able to use NSR Reform when not prohibited by state law (SB288)

   Perhaps the single greatest issue for CCEEB members is the method used to calculate emissions for new or modified sources. Under existing rules, the District requires a calculation that looks at "Actual Emissions" compared to "Potential To Emit (PTE)." Under federal NSR Reform, the calculation can be made by looking at Actual to Projected Actual for modified sources and Projected Actual for new sources. State law (SB 288 – Sher, 2003) limits changes to NSR programs that existed in 2003. EPA has determined that NSR Reform would not result in a backsliding of emissions, so one could assert that NSR Reform should be applied to all pollutants. At the very least, CCEEB believes that the restrictions contained in SB 288 do not apply to pollutants that were not regulated at the time SB 288 was signed into law. In particular, we do not believe SB 288 restricts the method used to calculate GHG emissions for new or modified sources.

   SB288 prohibits a district from adopting changes to its NSR or PSD program that have the effect of making the program less stringent than it was on December 31, 2002. On December 31, 2002 NSR and PSD programs did not include GHG regulations. Therefore, implementing GHG regulations will make NSR and PSD programs more stringent, not less. Accordingly, SB 288 should present no bar to applying the NSR Reform provisions of 40 CFR 52.21 to GHGs for the purposes of Rule 2.

CAPCOA worked with ARB to develop a model rule to accommodate EPA's Tailoring Rule. In the development of that model rule, ARB stated:

> *Based on the text and timing of SB 288, as well as other policy considerations discussed in the enclosed guidance document, ARB staff concludes that SB 288 is not applicable to those changes to district rules required to be implemented by the districts as a result of the Tailoring Rule. Therefore, SB 288 should not act as a barrier to the efforts underway to expeditiously develop rules for implementing the GHG Tailoring Rule.*

Without the use of NSR Reform, we believe the Actual to PTE approach for GHG emissions would cause facilities to face new, expensive and complex permitting requirements for many different types of projects, including simple projects such as single burner replacements. It could also delay or prevent energy efficiency projects from moving forward.

As an example, consider an industrial boiler with a PTE of 200,000 tpy of CO2e, with actual baseline emissions of 120,000 tpy of CO2e. The facility plans to make significant changes to the boiler to improve its energy efficiency so that projected actual emissions would only need to be 100,000 tpy of CO2e. However, the facility also wishes to retain the 200,000 tpy of CO2e limit. Under NSR Reform rules, this would rightly be seen as a project that decreases emissions of GHG. But under the District's proposed rules, this project increases GHG emissions by 80,000 tpy of CO2e, which can require the facility to get a PSD permit. The cost and length of time involved in obtaining a PSD permit may dissuade the facility from implementing the project, thereby discouraging a voluntary energy efficiency project.

2. Timing Still a Concern

CCEEB appreciates the additional Technical Working meetings and comment extension. However, we remain concerned with timing. The proposed changes to Regulation 2 are significant and substantive and need to be carefully developed and thoroughly vetted by the regulated community. After three meetings, we observe that the District has not yet decided a number of policy issues related to these permitting rules. We imagine that one or more iterations of rule language proposal and public comment might be needed before these regulations are ready to adopt. Therefore, we ask for staff to consider taking the proposal to the Board in September

3. Definition of "Facility"

We note that the proposal includes a new greatly expanded definition of "facility" that replaces "contiguous " with "three miles from fence line." What is the purpose of this change? We are concerned that the new definition would result in unintended consequences by co-mingling permits from non-contiguous facilities that are commonly owned. We note that the expanded definition is currently used to calculate offset requirements, but now covers all aspects of permitting.

For this issue, we have had an opportunity to review the comments prepared by Pacific Gas & Electric and fully endorse those suggestions.

4. "Alter" Definition Continues to Create Confusion

   We note that the proposal includes a new definition for "alter." We are unclear of the reason for this change. CCEEB ask for clarification of when this term would be applied and for what purpose. It seems that with the current proposed definition, most any change can be considered an alteration triggering a district review. For example, would staff consider changes to throughput or production an alteration?

5. Accelerated Permitting Program

   Under the proposal, CCEEB is concerned that most applicants will no longer have the ability to use the accelerated permit program. Is it staff's intent to prohibit the use of this program to any facility that emits over ten pounds per day or if the "increase" is over ten pounds per day?

6. Need Conversion Method from PM_{10} to $PM_{2.5}$

   We recognize and appreciate staff efforts to address this issue. With the current proposal, we ask for additional clarification. How will the District reconstruct the back half of the credits? Will the District accept best available data?

   CCEEB believes that it is critical to have a good understanding of the $PM_{2.5}$ market. In order to project the cost of $PM_{2.5}$ ERCs that would be required for a project. Without this information, it is difficult, if not impossible, to estimate project cost.

   Recognizing District cost constraints, as an interim measure, CCEEB would support an analysis and conversion of the top ten (or so) holders of PM_{10} ERCs. This would account for the majority of ERCs and give the market some idea of availability and potential cost.

   Regarding fees, we question why the fee should be at the same level as that of creating a new ERC. It seems that the process will require less staff time and, as such, should have a lower fee.

7. Credits From Shutdowns

   We ask for additional clarity with this portion of the proposal. We are unclear how credits from shutdowns are calculated when used as an internal offset versus the creation of an ERC. It is also unclear to us how an idling period will factor in to the credit creation. We ask that staff consider allowing some period of equipment idling, (we suggest six months) without impacting the ability to create ERCs from an otherwise qualifying shutdown. We also ask that the District create a definition for "idling period" in Regulation 2-4 in order to facilitate this understanding.

8. Potential Impact of Litigation

   CCEEB is very aware of challenges to EPA's Tailoring Rule. (We are not a party to any of this litigation.) Will the District proposal include language that contemplates significant changes to the federal requirement as a result of a court decision?

Thank you for considering our views. We would be pleased to meet with you should you wish to discuss in more detail.

Sincerely,

William J. Quinn
Vice President & Chief Operating Officer

cc: Mr. Jack Broadbent
Mr. Gerald D. Secundy