

Summary of Comments and Responses on Implementation Procedures and Proposed Rule Concepts for Amendments to Regulation 11: Hazardous Pollutants, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities

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List of Commenters

The following table lists the individuals and organizations from whom Air District staff received written comments prior to the February 29, 2024 comment deadline.

Commenter	Contact Information
Bay Area Clean Water Agencies (BACWA)	Lorien Fono BACWA Executive Director Letter, February 29, 2024
Benicia Community Air Monitoring Program (BCAMP)	Kathy Kerridge Member Oral Comment, February 15, 2024 / Letter, February 29, 2024
California Council for Environmental and Economic Balance (CCEEB)	Tim Carmichael President Oral Comment, February 15, 2024 / Letter, February 29, 2024

Commenter	Contact Information
Communities for a Better Environment (CBE)	Ruby Acevedo/Shana Lazerow Communities for a Better Environment Letter, February 29, 2024
Constance Beutel (C. Beutel)	Constance Beutel Founding Member, Air Watch Bay Area/Refinery Air Watch Letter, February 29, 2024
Gary Rubenstein (G. Rubenstein)	Gary Rubenstein Foul Weather Consulting Letter, January 29, 2024
Heidi Taylor (H. Taylor)	Heidi Taylor Founding Member, Healthy Martinez Refinery Accountability Group Letter, February 29, 2024
Jan Warren (J. Warren)	Jan Warren Private Individual Oral comment, February 15, 2024
Jeffrey Kilbreth (J. Kilbreth)	Jeffrey Kilbreth Private Individual Letter, February 29, 2024
Judith Sullivan (J. Sullivan)	Judith Sullivan Private Individual Letter, February 29, 2024
Ken Szutu (K. Szutu)	Ken Szutu Founder/Director, Citizen Air Monitoring Network Oral comment, February 15, 2024
Lucas Williams (L. Williams)	Lucas Williams Partner, Lexington Law Group Oral comment, February 15, 2024
Marilyn Bardet (M. Bardet)	Marilyn Bardet Founding Member, Good Neighbor Steering Committee Letter, February 29, 2024
Maureen Brennan (M. Brennan)	Maureen Brennan Private Individual Letter, February 29, 2024
Stephen Rosenblum (S. Rosenblum)	Stephen Rosenblum Private Individual Oral Comment, February 15, 2024
Tesla	Yamini Narasimhan Director, Environmental Health, and Safety Letter, February 28, 2024
Todd Osterberg (T. Osterberg)	Todd Osterberg Chevron Products Company Oral Comment, February 15, 2024

Implementation Procedures

Combine Facility Review and Public Comment Periods

Comment: The commenter strongly supports having the facility review period and public review period combined, since this will increase transparency and equality of information between the facilities, the Air District, and the public.

CBE

Response: The Air District thanks the commenter for their input. The Air District concurs and plans to hold one comment period on the Preliminary HRA during which both the facility and the public may comment on the Preliminary HRA. This procedure is described in the Implementation Procedures document.

Comment: The commenter states that combining the comment periods for the facility and public will lead to the public reviewing and commenting on a document that is incomplete and/or requires further refinement to correctly represent the health risk assessment results associated with the facility. The commenter believes that combining the facility and public comment periods will lead to increased alarm from the public that may be better managed with the existing separate facility review period and public comment period.

BACWA

Response: The Air District does not agree with this comment. The Air District does not share the same concern as the commenter. Air District staff work closely with facilities during their review of the toxic emission inventory and preparation of the Preliminary HRA. The Air District expects to have discussions with each facility about any major changes to the facility's toxic inventory prior to preparing the Preliminary HRA. Although the first formal public comment opportunity is proposed to include simultaneous review by both the facility and the public, at that point the toxic inventory and HRA input information is not expected to be incomplete or in need of major refinement. In cases where the public has inquiries about the data or method used to estimate emissions or health risk, the Air District believes that the simultaneous review process will demonstrate better transparency to the public than having sequential review processes. In addition, the Air District believes it will also streamline and speed up the overall process by eliminating the separate review and comment periods.

Comment: The commenter does not believe that eliminating the facility review period for the preliminary HRA will achieve the intended outcomes. Facility review of the preliminary HRA is a critical step to ensure accuracy. Providing inaccurate information to the public does not increase transparency and damages both the credibility of the Air District and the facility.

CCEEB

Response: The Air District does not agree with this comment for the reasons outlined in the immediately preceding response.

Comment: The commenter supports combining comment periods for the facility and public. The commenter recommends that the Air District limit the combined comment period to 60 days.

J. Kilbreth

Response: The Air District thanks the commenter for their support of the concept to combine the facility review period and public comment period into a single comment period. The Air District intends to add this procedure to the Implementation Procedures document. Reducing the comment period from 90 days to 60 days must be considered under Rule Concepts, because the current version of the rule (adopted 11/14/2017), Section 11-18-403, currently requires a 90-day review-and-comment period for facility owners and operators. This comment has been noted and will be considered in the continued development of potential amendments to Rule 11-18.

Dispute Resolution Panel Process

Comment: The commenter states that providing an at-will dispute resolution panel (DRP) guarantees its use; the commenter does not object to the concept of providing a clear path for dispute resolution given that the following conditions are met: 1) The DRP proceedings should in no event delay a Risk Reduction Plan (“RRP”) going into effect. A facility engaged in the DRP process must begin implementing risk reduction measures while pursuing their dispute resolution; 2) The DRP proceedings must be open to the public and any dispute resolution documents must be publicly available on the Rule 11-18 website; and 3) When a facility disagrees with the DRP outcome, the facility should have the option to pursue binding arbitration, at its own expense.

The commenter recommends that a rule amendment should allow the public at large to appeal, not just parties that submitted comments on draft HRAs or RRP.

The commenter also recommends that any notices that trigger the 15-day appeal period be circulated to the interested parties list as well as everyone who submitted comments and should also be posted on the Rule 11-18 webpage.

CBE

Response: The Air District thanks the commenter for their input. Below are the Air District's responses to the three conditions proposed for dispute resolution:

1) The Air District is not able to provide any guarantee at this point that there will be no delay in the implementation of risk reduction measures in the case where a dispute resolution is being pursued, given that dispute resolution precedes approval of the RRP and that Rule 11-18, Section 404.6's deadlines for RRP implementation run from approval of the RRP. The Air District will, to the best of its ability, ensure that a strict schedule is imposed on the DRP process to limit any implementation delay. The Air District may also consider rule amendments that would limit potential implementation delays caused by dispute resolution.

2) Proceedings are not expected to be open to the public as they are not intended to serve as a mechanism to facilitate public discussion of technical issues. This is to minimize any delay caused by the DRP review process. However, the public or any other interested party can submit a public record request if they wish to obtain a copy of any dispute resolution documents that are suitable for public disclosure under the California Public Records Act.

3) When the DRP has reached the end of its process, the DRP will provide a recommendation to the APCO of the Air District. This recommendation is not a binding decision. The APCO will consider the DRP's recommendations and make a final decision on the matter. The APCO's final decision is not subject to arbitration.

Regarding the comment about a rule amendment to allow the public at large to appeal to the DRP and not just the parties that submitted comments, the Air District does not agree. The Air District believes that the DRP process should not be used as an opportunity for new parties to raise new issues regarding an HRA or RRP. This will further delay implementation and was not the intended purpose of the DRP. Instead, a legitimate and unresolved difference of opinion on one of the matters identified in the Implementation Procedure document (e.g., on the inventory used, toxic air contaminant emission factors, emission calculation techniques, air dispersion modeling assumptions, the technical feasibility or economic burdens involved in a demonstration that more than five years is necessary to achieve compliance) should already have been identified by a commenter, considered by the Air District, discussed by both parties, and both parties should have agreed that they are at an impasse and need input from the DRP.

The Air District will notify the interested parties list when any response to comments documents are made available on the website. Additionally, the Air District agrees to post information on the website indicating that a request to convene a DRP has been received, as well as when the DRP recommendation has been submitted to the Air District. DRP documents with confidential information redacted may be requested through the public records request process.

Comment: The commenter does not object to the Air District preparing site-specific modeling protocols for larger, more complex facilities. Where the Air District prepares such site-specific modeling protocols, the facility may reasonably seek to double-check the Air District's work. However, the Air District should not seek to appease facility complaints. It is sufficient that, after providing a 30-day review period to a facility if requested, BAAQMD strive to find agreement with the facility. The text of the procedures should delete the reference to dispute resolution in the last sentence of this section: "...the Air District will attempt to reach concurrence with the facility on modeling assumptions. ~~Review by a Dispute Resolution Panel may be requested later in this process if an impasse occurs.~~" Further, in the interest of transparency, when a facility requests a 30-day review of modeling assumptions, the Air District should make the information available to the public for review during the same period.

CBE

Response: The Air District thanks the commenter for their support for the Air District staff preparing a site-specific modeling protocol prior to the HRA, and the Air District agrees with the suggestion to delete the following sentence from the Rule 11-18 Implementation Procedures document because it is not necessary in that location: "Review by a Dispute Resolution Panel may be requested later in this process if an impasse occurs." The 30-day review period on the modeling protocol does not preclude further discussions on modeling assumptions or consideration of comments on modeling assumptions submitted during the Preliminary HRA comment period. However, air dispersion modeling assumptions are one of the items that can be

brought to the DRP should an impasse over a modeling assumption ultimately occur.

The Air District does not agree with the commenter's suggestion to make information associated with modeling assumptions available for public review and comment at this stage. Under the California Public Records Act, certain preliminary and deliberative materials are protected from public disclosure to ensure that the government is able to engage in free and candid deliberation. The Air District anticipates that at least some of the materials associated with the modeling assumptions will likely fall within the scope of these protections. However, please note that the public, along with the facility, will be given an opportunity to review and comment on the preliminary HRAs. The Air District welcomes any comment and feedback that the public may have after this review. The Air District follows set guidelines and procedures and does not appease a facility's complaints, as might have been alluded to in the comment. However, if either the public or the facility finds any errors in what the Air District prepares that are not consistent with the established guidelines and procedures, the Air District will make the needed corrections.

Comment: The commenter supports opportunities for dispute resolution earlier in the process than is currently proposed in the Draft Revised IP, which would limit dispute resolution until the end of the HRA process. The commenter believes that, if there is a dispute related to any of the data that will be used as an input to the HRA, there should be an opportunity to resolve this dispute prior to the preparation of the HRA.

CCEEB

Response: The Air District thanks the commenter for this comment. The Air District agrees that early dispute resolution is advantageous; however, the Air District does not agree that additional opportunities to convene the DRP are necessary or would be efficient. The Air District in general agrees that the Air District and the facility should have opportunities to discuss any disagreements over emission inventory and HRA input parameters prior to publication of the Preliminary HRA. The Air District expects to have such discussions with the facility and expects that most disagreements can be resolved through this discussion process rather than the formal DRP process. To clarify, the opportunity for review by the DRP will be available at two stages within the Rule 11-18 implementation process. The first opportunity will be given after the preliminary HRA comment and responses but before the Final HRA is approved. The second opportunity for DRP review is after the draft Risk Reduction Plan comment and response periods but before the Final RRP is approved. The Air District believes that having the opportunity for DRP review after the public comment periods would be the most efficient since the Air District may still be making changes to the inventory, HRA, and RRP at these times and the public may also want to request DRP review. Adding additional opportunities to convene the DRP would risk slowing the implementation process, which is counter to the objectives of the updated Implementation Procedures.

Comment: The commenter expresses concern regarding a trend of expediting the first phase of the process without the opportunity for back-and-forth. This essentially leaves all outstanding issues for the end of the process, including dispute resolution. While the commenter understands the Air District wants to become more efficient, it seems there could be a middle ground between

a lack of movement we've seen to date and rushing through important details. This is true for the many facilities who have not had the opportunity to review their inventories with the Air District in detail to better understand the Air District's processes for determining emissions. The commenter believes it is inefficient to move forward on what may be disputed premises through the full process.

CCEEB

Response: The Air District generally agrees with the concern about having sufficient opportunity for back-and-forth discussion but disagrees that the process discussed in the Implementation Procedures will result in rushing through important details or disputed premises.

The Air District currently prepares a toxic emission inventory for each permitted facility every year through the annual permit renewal process and reports the facility's toxic inventory to CARB on behalf of the facility. Each facility is responsible for ensuring that this toxic inventory is accurate. If a facility has questions or concerns about the toxic inventory that the Air District has been preparing during the annual permit renewal process, the facility should contact their permit engineer now to ensure that they understand their current toxic inventory and can assure that the inventory is accurate. These discussions do not need to wait for the Air District to begin a Rule 11-18 review. Facilities should already have a good understanding of their toxic inventory.

Once a Rule 11-18 review starts, the Air District notifies the facility of the inventory year that will be used and the source specific toxic inventory data for that year, and requests the facility provide any corrections to the inventory and the HRA input data. After receipt of this information, the Air District will review the facility's proposed data and determine if any toxic emissions are missing or need further correction. The Air District also plans to have discussions with facilities about any discrepancies between the facility and Air District toxic inventories and HRA inputs prior to the formal Preliminary HRA comment period. Thus, there is ample opportunity for facilities to have back-and-forth discussions with the Air District about their toxic inventory and HRA inputs.

This process and these informal discussion opportunities are intended to minimize the need for a DRP. However, it is critical that this discussion time be focused and efficient once the Rule 11-18 review process begins for a facility. Having a single comment period for the public and the facility on the Preliminary HRA will improve process efficiency.

Comment: The commenter is against combining the facility review period and the public comment period for the Risk Reduction Plan. First, the facility should have an opportunity to address any deficiencies before the plan is made available to the public. Second, releasing a Risk Reduction Plan with inaccurate information could elicit comments that may require additional time for the Air District and the facility to address, which may potentially offset any time savings gained through this amendment.

Tesla

Response: The Air District does not share the same concern as the commenter. The Air District believes the commenter's concern is adequately addressed by the RRP review process described in Rule 11-18, Section 405. The facility is responsible for preparing the draft RRP. The Air District will review the plan for completeness and notify the facility of deficiencies. The facility has opportunities to address any deficiencies before the draft RRP is posted for public comment. Therefore, by the time the draft RRP is made available for public comment, the information in the draft RRP is expected to be accurate. The Air District believes that the simultaneous review process (by both the facility and the public) will demonstrate better transparency to the public than having sequential review processes. The Air District believes doing so will also streamline and speed up the overall process by eliminating the separate review and comment periods.

Comment: The commenter supports the general approach of this rule concept. However, the facility recommends the Air District add a mediation component in the dispute resolution panel process prior to step two in the process that consists of a half-day meeting between the Air District, facility subject to the rule, requesting party and a mediator.

Tesla

Response: The Air District does not agree with this comment. The Air District sees an additional mediation component involving a mediator prior to selection of a Dispute Resolution Panel in the second step of the dispute resolution process (i.e., "Air District notifies panelists of the case and technical issues and chooses three panel members from those who are available to review the case. The Panel may select a Chair, if necessary") as a redundant effort. This is because the Dispute Resolution Panel is intended to serve as a mediator between the Air District and the requesting party. In addition to that, adding a mediation component would potentially lengthen the process.

Comment: The commenter suggests that the Air District consider including a limit on disputes that can be brought forward. The commenter suggests that only disputes involving impacts above a certain threshold should be allowed to delay finalization or implementation progress.

J. Kilbreth

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Rule 11-18 Implementation Procedures includes the types of matters that the dispute resolution panel will handle (please see Section 5 "Dispute Resolution Panel"), but it currently does not include a limitation for only disputes involving impacts above a certain threshold. However, a few rule amendment concepts are currently under review and consideration for a future rule amendment. Your comment will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter asks what components of the HRA are subject to the dispute resolution panel process.

J. Kilbreth

Response: The types of matters that the dispute resolution panel will handle are included in Section 5 ("Dispute Resolution Panel") of the Rule 11-18 Implementation Procedures document. The types of matters include: 1) inventory used, 2) toxic air contaminant emission factors, 3)

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emission calculation techniques, 4) air dispersion modeling assumptions, 5) the technical feasibility or economic burdens involved in a demonstration that more than five years is necessary to achieve compliance pursuant to Regulation 11-18-404.6.2, or 6) a determination of TBARCT pursuant to Regulation 11-18-404.6.3. For health risk assessments, the Air District assumptions that might be disputed could include the manner in which fugitive emissions are modeled, such as size of area or volume sources or release heights, choice of meteorological data, choice of air dispersion coefficients, or deposition rate. Other HRA inputs are fact-based data that have little cause for dispute, such as stack height, temperature, exhaust flow rate, and terrain elevation data.

Health Risk Assessment Procedures

Comment: The commenter recommends that the Air District should reduce the multi-step HRA process to begin the risk reduction process much faster.

CBE

Response: The Air District thanks the commenter for this comment. The Air District agrees with this comment and is reducing the HRA review time by combining the facility and public comment periods on the Preliminary HRA and by limiting DRP steps and review time, while ensuring sufficient time for public engagement in the HRA process. The proposed process is to ensure both the public and the facility are provided with an opportunity to review and comment before the Air District finalizes and approves the HRA. As described in the Rule 11-18 Implementation Procedures document, the preliminary HRA will be posted for comment, and afterwards a final HRA will be drafted. The draft version of the final HRA (referred to as "draft-final HRA report" in the Rule 11-18 Implementation Procedures document) may be discussed by the Dispute Resolution Panel if disputes reach an impasse and changes may be incorporated before the HRA is finalized.

Comment: The commenter is concerned that the emission inventory is under-reporting emissions, and therefore underestimating community exposures. The commenter states that power outages during Public Safety Power Shutoffs and extreme weather have led many emissions sources for Bay Area facilities to operate outside routine operation profiles and thus, assuming emissions from routine operation scenarios will lead to underestimation of emissions. The comment goes on to state: "Further, calculating toxic emissions assuming all installed abatement equipment is functioning as modeled during necessarily underestimates emissions." The commenter recommends that the Implementation Procedures should assume the toxic emissions reported according to the Emission Inventory Criteria and Guidelines ("EICG") represent the absolute floor of facility emissions. The commenter also suggests that the Air District consider public input at the stage when a representative year is selected.

CBE

Response: The Air District understands the commenter's concern and agrees that facilities must be held accountable for accurately reporting emissions. To ensure facility accountability, Air District-issued Permits to Operate include requirements that the facility maintain records (typically monthly) of material usages at each permitted source in a log. The facility is required to keep these logs on site and make them available to the Air District upon request. To ensure accurate emissions reporting, the Air District's Compliance & Enforcement Staff regularly visit

and inspect regulated facilities, and, as part of their inspection, check the operational logs kept on site to verify consistency with the information provided to the Air District on an annual basis. Enforcement action may be taken for any non-compliance with recordkeeping or reporting requirements, falsification of records, or violations of permit limits.

The reported material throughput information is used in conjunction with Air District-approved emission factors to estimate toxic emissions. As a standard procedure, the emission factors that the Air District uses for inventory purposes are the average or mean factors (not the upper or lower limit of the range that the factors may fall in). This method helps ensure the inventory is not under- or over-estimating emissions. Emission factors are developed using an accepted hierarchy of data references and standardized methodologies that follow federal, state, and Air District emission inventory guidelines.

Rule 11-18 HRAs and toxic emissions inventories are based on routine and predictable emissions from stationary sources. Non-routine or emergency events, such as power outages, and mobile source emissions fall outside the scope of both Rule 11-18 and the AB 2588 Air Toxic Hot Spots Program, on which the stationary source emission inventory guidelines are based. The Air District agrees that Rule 11-18 HRAs may not present a full picture of all emissions that are occurring at a facility. To this point, other toxic programs, such as state-wide efforts to reduce impacts from mobile sources of diesel PM, and local programs - for example, AB617 and local enforcement actions - are working to reduce emissions from non-stationary sources and to reduce frequency and impacts from emergency events and incidents.

The Air District does not clearly understand the commenter's statement that "... calculating toxic emissions assuming all installed abatement equipment is functioning as modeled during necessarily underestimates emissions." In most cases, sources that require abatement are not allowed to operate unless the abatement equipment is operating and functioning properly. Abated emission factors are often based on the minimum required control efficiency or maximum emission limit. In such cases, a toxic emission rate based on a maximum abated limit would not underestimate toxic emissions. On the other hand, if the commenter is referring to cases where an abatement device is allowed an amount of non-operation time (such as during start up or during an allowed down time) or if the device is not operating in compliance with its limits, then the Air District concurs that toxic emissions should be adjusted to account for these times when the abatement device is not operational.

Regarding allowing public input on selection of a representative year data, the Air District will provide an opportunity for the public to submit comments, questions, or other input when a preliminary HRA is posted for comment. Comments are welcome on selection of the data year and the toxic inventory for that data year, as well as the HRA. It would be inefficient to hold a public comment period on every step or decision in this process.

Comment: The commenter requests that the Air District incorporate an explanation of OEHHA's HRA preparation procedures into the process. The commenter believes more frequent meetings

or information sessions would be beneficial and allow for open communication and address questions about the Air District’s goals, timelines, and any challenges encountered.

CCEEB

Response: The Air District agrees with this comment. During the second step of the Rule 11-18 update process, after the revised Rule 11-18 Implementation Procedures document is released in April of 2024, the Air District will gather additional comments and feedback through another workshop and as part of the rule development process for rule amendments. The second round of revisions to the Rule 11-18 Implementation Procedures document will be to bring the document in line with the rule after it is amended.

As for the suggestion to incorporate an explanation of OEHHA’s HRA procedures into the Rule 11-18 Implementation Procedures document or into Rule 11-18 itself, the Air District believes it would be best to not repeat any other procedure in either document – this way the Air District’s documents would not get out of sync when OEHHA’s HRA preparation procedures are revised in the future. With that said, the Air District believes the best way to include OEHHA’s HRA procedures is by referencing them, and that is what the Air District has done. See a copy of Air District Health Risk Assessment Guidelines document on its Facility Risk Reduction Program page (<https://www.baaqmd.gov/community-health/facility-risk-reduction-program>), see document named “Air District TAC Emission Factor Guidance”). The guidelines conform to the Health Risk Assessment Guidelines adopted by Cal/EPA’s Office of Environmental Health Hazard Assessment (OEHHA) for use in the Air Toxics Hot Spots Program. The Air District will ensure a copy of the guidelines is kept on its Facility Risk Reduction Program page.

Prioritization Score Procedures

Comment: The commenter states that it appears the proximity adjustment factors reduce the score depending on how distant the closest receptors are located from the facility. The Implementation Procedures’ list of site-specific conditions to consider includes many indicators that will ensure these facilities merit extra attention. The comment recommends that the IP text be clarified to indicate that facilities where site-specific conditions are present will not have prioritization scores reduced through use of the Air District’s Prioritization Score Procedures. The commenter also has a question regarding Valero, which is a Phase 1 facility but has not had an HRA since 1991. Valero operates an asphalt plant along with the petroleum refinery, which has a health impact on the nearby community. Will facilities in AB 617 communities be prioritized for HRAs? Can the HRA for Valero be expedited considering that the HRA for Valero was not done since 1991?

J. Warren

Response: The Air District agrees with this comment because it is the intent of Section 4.1.2 (“Prioritization Scores”) of the Rule 11-18 Implementation Procedures document. The Air District will clarify in the Rule 11-18 Implementation Procedures document that, for facilities where site-specific conditions are present, a proximity adjustment factor (PAF) of 1 will be used. Please note that PAF is a multiplication factor that represents the potential reduction in ground level concentration of a toxic air contaminant that may occur at increasing distances from the site emitting the toxic air contaminant. The most conservative PAF is 1. The Air District hopes this will help avoid any future confusion.

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Comment: The commenter states that the Phase II facility designation under Rule 11-18 for Publicly Owned Treatment Works (POTW) allowed POTWs to participate in a statewide Pooled Emissions Study (driven by the updated reporting requirement issued by the California Air Resources Board) that has the objective of determining the air toxic emission factor and emission profile by 2027.

BACWA

Response: The Air District agrees with this comment. POTWs remain designated as Phase II Facilities. For most POTWs in Phase II, the updated pooled source tests and updated POTW emission factors are expected to be available before the Air District initiates the Rule 11-18 review for these POTWs. One POTW is on a more accelerated Rule 11-18 schedule because the facility is impacting an AB617 community. Once Rule 11-18 review has been initiated for this AB617 POTW, the Air District will work with the facility to ensure that updated test data and emissions information can be considered as soon as it is available.

Review Subset of Sources

Comment: The commenter indicates that Section 11-18-402 does not appear to support the proposed change to the Draft Revised IP, as it refers to a “facility” rather than a “subset of sources,” and as such seems to require rule amendment to accomplish the intent of the Air District. The commenter expresses concerns that it could create a disjointed process for facilities.

CCEEB

Response: The Air District does not agree with this comment. Section 11-18-402 states that the Air District may apply the risk action levels specified in Section 11-18-218.2 to any toxic risk “facility” located within a Priority Community. The Rule 11-18 Implementation Procedures document simply notes that the term "facility" here could also mean a subset of sources within a facility, especially when the Air District is already aware of those sources in a Priority Community having health risks above the risk action levels. In the Air District’s opinion, this reading is consistent with Section 11-18-402.

To clarify, regarding how an HRA for a subset of sources will impact or relate to the full facility-wide HRA, it depends on the facility prioritization score after the facility has implemented the risk reduction measures and complied with all other requirements in the approved Risk Reduction Plan. If, after implementation of the risk reduction measures, the facility prioritization score falls under the thresholds that trigger the requirements of Rule 11-18, then a full facility-wide HRA will not be required anymore. However, if after implementation, the facility prioritization score stays above the thresholds, then a full facility-wide HRA will still be required.

Toxic Emission Inventories

Comment: The commenter states that the draft revised IP indicates that the emissions inventories for refineries used for HRAs are prepared pursuant to Rule 12-15 with toxic emission inventory improvements incorporated where appropriate. The commenter asks why further refinements to

the 12-15 inventories would be necessary, given the time- and resource-intensive annual process staff undertakes to prepare accurate inventories for the purposes of Rule 12-15.

CCEEB

Response: To prepare the toxic inventories for refineries and their support facilities subject to the requirements of Rule 12-15, the Air District is using the Rule 12-15 inventory which will include the results of the Heavy Liquid Study (HLS) Data. This study produced VOC emission factors, and the Air District is working to develop Air District-approved toxic speciation data informed by the HLS. Therefore, it is expected that the preliminary Rule 11-18 toxic inventories may include compounds or pollutants not initially reported by the facilities. A copy of the Heavy Liquid Study report can be found on District's website:

<https://www.baaqmd.gov/permits/permitting-manuals/refinery-emissions-inventory-guidelines>.

The Air District is updating refinery emission guidelines to include these HLS refinements. Once these are incorporated into the 12-15 process, further refinement of Rule 12-15 inventories should be limited to minor corrections.

Comment: The commenter states that Section 4.1.1 of the IP must be edited for clarity. As drafted, the IP states both that Table 4-5 does not include the substances with OEHHA values and is updated regularly to include the OEHHA values. It appropriately describes the toxics reporting process that exists under state law and Air District rules. The commenter suggests that rather than simply referring to refinery reporting requirements through reference to Air District Regulation 12, Rule 15 in a footnote, the IP should provide the same high-level reporting procedure explanation for refineries it provides for non-refinery sources.

CBE

Response: The Air District thanks the commenter for this comment. To clarify, the toxic emission inventory methodology mentioned in the Rule 11-18 Implementation Procedures document (i.e., a methodology based on throughput rates, toxic air contaminant emission factors, and emission calculation algorithms specific to each source type) in general applies to refinery and non-refinery sources. The footnote referencing Rule 12-15 for petroleum refineries and support facilities was included in the Rule 11-18 Implementation Procedures document to serve for informational purposes only. With that said, default emission factors may differ between refinery and non-refinery sources due to the use of unique refinery-specific materials at the refineries, such as refinery make gas. For more information on this, please go to the Air District's Refinery Emissions Inventory Guidelines page: <https://www.baaqmd.gov/permits/permitting-manuals/refinery-emissions-inventory-guidelines>.

As for the comment regarding inclusion of the substances with OEHHA values, the Air District thanks the commenter for their input. The Air District plans to include all the compounds that have been identified by OEHHA as having health effect values into District Rule 2-5 ("New Source Review of Toxic Air Contaminants") and will do so when the Air District amends Rule 2-5.

Comment: The comment expressed concerns that the proposed IP does not incentivize facilities to affirmatively correct inaccurate information regarding their emissions reporting. The IP should include clarity that failing to accurately report for the inventory is a violation that will result in

an NOV. The commenter recommends deleting portions of the final paragraph of section 4.4.1 “If the Air District does not agree with a proposed emission factor or toxic emission inventory rate, the Air District will notify the site ~~and attempt to reach agreement with the facility on the appropriate data.~~ However, the Air District may move forward with a preliminary health risk assessment using Air District authorized emission factors, without reaching an agreement on emission factors, ~~to determine if any potentially significant health impacts are associated with the disputed factor.~~ Facilities will have an opportunity to bring toxic emission factor disputes before an independent Dispute Resolution Panel later in this review process.”

CBE

Response: The Air District understands the commenter's concern. This is why the Air District has procedures for staff to review the information submitted by the facility on a regular basis, during the permit renewal process. As part of this review effort, Engineering Staff review the data to check if: 1) information is reported correctly with no human errors, and 2) actual operation exceeds any permit limits. In the case where an exceedance occurs, Compliance & Enforcement Staff are contacted so that any necessary enforcement action can be taken. In addition to that, Compliance & Enforcement Staff regularly visit and inspect regulated facilities and, as part of their inspection, check the operational logs kept on site to verify consistency with the information provided to the Air District on an annual basis. Compliance & Enforcement Staff may work with the Air District's Legal Team if necessary. With that said, the Rule 11-18 Implementation Procedures document serves as a supporting document to Rule 11-18, and therefore the Air District does not believe it is an appropriate place to define the enforcement action that may result from the facility's failure to accurately report for the inventory, as that process is currently handled separately by the Air District's Compliance & Enforcement and Legal Staff.

As for the second part of the comment regarding Section 4.1.4, the Air District thanks the commenter for their input and agrees with the comment. The Rule 11-18 Implementation Procedures document has been revised accordingly.

Comment: The commenter states that the Draft Revised IP indicates that “it is not necessary to complete all of the typical review steps” if an emissions inventory is “sufficiently accurate” and asks what criteria would be used to determine whether an emissions inventory is sufficiently accurate.

CCEEB

Response: The draft Rule 11-18 Implementation Procedures document refers to the first two steps within the review process: 1) identify facilities that are potentially subject to Rule 11-18, and 2) update toxic inventory and assess health impacts resulting from toxic emissions. This 2-step review process may be skipped if the facility meets the following criteria: a) The Air District determines that the annual toxic inventory generated during permit renewal is sufficiently accurate, b) There is already an Air District-approved HRA that has been conducted for other air toxic programs (e.g., AB2588 or Rule 2-5), and the HRA identifies excesses of risk action levels. To determine if an emission inventory is sufficiently accurate and no data corrections are needed, the Air District reviews the usages and/or emissions data that facilities submit annually. As part of its review, the Air District checks to ensure that all usages are reported in the correct units and

do not exceed any applicable permit limits; in addition, the Air District also compares its emission inventory against last year's as an added layer of check to identify any data reported in error.

If both of the above criteria are met, the Air District may move directly to implementing Rule 11-18 risk reduction requirements.

Comment: The commenter states the Air District staff have disallowed the use of some CEMS and source test data without explanation, or with vague explanations such as: 'the Air District cannot verify if this is a certified CEMS unit' or 'the source test cannot be use as it has not been approved by the Air District'. In both such cases, the Air District disregarded valid data in favor of default emissions factors which in most cases are over 40 years old, thus artificially inflating emissions.

CCEEB

Response: The Air District does not agree with this comment. When a facility installs any CEMS unit, they are required to have the unit certified with the Air District to make sure it is installed and operates properly so that the data from the unit is accurate. When Air District staff finds any CEMS unit that is not certified by the Air District, the validity and accuracy of the data become questionable (i.e., data can either under-represent or over-represent actual emissions), and therefore the Air District is not able to use the data. Similarly, to ensure reliable information regarding emissions of air toxics, it is important for source tests to be reviewed by the Air District to ensure proper procedures were followed. In the case where CEMS and source test data cannot be used either because the equipment/test was not operated/conducted in accordance with Air District-approved procedures or because the data are not representative of operating conditions during the calendar year, the Air District will notify the facility and will use the next most representative information to estimate emissions, such as default emissions factors.

Comment: The commenter supports the proposal to develop toxic emissions calculation guidance for specific types of sources. The Air District has already developed such guidance for refineries, but not for the many other types of facilities subject to the rule. The commenter encourages the Air District to prioritize completion of this guidance as soon as possible, with opportunities for review and comment.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment has been noted. The development of toxic emissions calculation guidance for specific types of sources is an ongoing task that the Air District is undertaking. A copy of this guidance can be found on the Air District's Facility Risk Reduction Program page (link: <https://www.baaqmd.gov/community-health/facility-risk-reduction-program>, see document named "Air District TAC Emission Factor Guidance"). The Air District will continue its effort to develop this guidance in order to improve its toxic emissions inventories. The Air District does not currently plan to conduct a formal notice and comment process for this guidance. However, the Air District will accept informal comments in an ongoing way on existing guidance and may revise the guidance in response to comments.

Comment: The commenter asks if the emissions inventory for Rule 11-18 includes emissions from incidents, start-up, and shutdown. The commenter believes that the Air District should consider including emissions from incidents, start-up, and shutdown in the emissions inventory since the occurrences of these events have been sufficiently frequent that these non-routine events have become a routine part of the refinery operations.

K. Szutu

Response: The emissions inventory focuses on routine and predictable emissions, following the criteria outlined in the AB 2588 Air Toxic Hot Spots Program. This ensures consistency and compliance with state regulations. Non-routine or emergency events, such as power outages, and mobile source emissions fall outside the scope of both Rule 11-18 and the AB 2588 Air Toxic Hot Spots Program, on which the stationary source emission inventory guidelines are based. The Air District understands the concern about incidents, start-ups, and shutdowns becoming routine. The Air District will consider the nature of these emissions on a case-by-case basis to determine if these incidents or start-up/shutdown emissions have become both routine and predictable.

The Air District agrees that Rule 11-18 HRAs may not present a full picture of everything that is happening at a facility, but other toxic programs, such as state-wide efforts to reduce impacts from mobile sources of diesel PM, and local programs, such as AB617 and local enforcement actions, are working to reduce emissions from non-stationary sources and to reduce frequency and impacts from emergency events and incidents.

Other Comments Related to Implementation Procedures

Comment: The commenter recommends adding a cost-effectiveness guideline to the IP. In addition, the commenter recommends incorporating the Implementation Procedures document into the District's Manual of Procedures through a Board adoption.

Tesla

Response: The Air District does not agree with this comment recommending the addition of a cost-effectiveness guideline to the Rule 11-18 Implementation Procedures document. However, the Air District thanks the commenter for their input, and the comment has been noted. When making TBARCT determinations, the cost of risk reductions and non-air quality impacts must be considered, but there are no specific cost-effectiveness thresholds for toxic emissions. As for the recommendation to incorporate the Implementation Procedures document into the Air District's Manual of Procedures through a Board adoption, there is currently no plan for the Air District to add the Implementation Procedures document to its Manual of Procedures.

Comment: The commenter supports any amendments to implementation procedures that provide any clarifications, but is against any amendments that limit flexibility or create compliance traps.

Tesla

Response: The Air District thanks the commenter for their input. The proposed changes to the Implementation Procedures will not limit the flexibility of the current rule or create compliance traps, as the Implementation Procedures document does not have the force of law.

Proposed Rule Concepts and Future Amendments to Implementation Procedures

Require Facilities to Complete HRAs

Comment: The commenter strenuously opposes facilities preparing their own HRAs or hiring consultants to prepare HRAs. The commenter states that the facility or third-party prepared HRAs will allow facilities to cherry-pick data, methods or interpretations. The commenter recommends that the Air District prepare the HRAs for all facilities. The commenter does not necessarily object to the Air District contracting HRA preparation with a third-party vendor under the following specific conditions: 1) showing by Air District lacks staff capacity to move forward the HRA internally; 2) the Air District has screened the facility from all interactions with the third-party vendor; and 3) the Air District has supervised the third-party vendor through the entire HRA process. The commenter objects to the process proposed in the Implementation Procedures, in which the Air District would notify the facility of its decision to retain a third-party vendor. The commenter states that facility should not have the opportunity to influence the decision of the Air District on who to retain or the vendor itself.

CBE

Response: The Air District does not share the commenter's concern about facilities being able to potentially manipulate their HRAs—either under the process in the Implementation Procedures, where vendors may be used to prepare HRAs for Phase II sites, or under the proposed rule concept, where facilities may prepare HRAs themselves. The practice of facilities submitting HRAs is standard under AB2588, the Air Toxic Hot Spots Act. However, the facilities are required to consult with the Air District on all aspects of the HRA including inventory, modeling procedures, and risk calculations. Most facilities do not have the expertise to conduct their own HRAs and hire knowledgeable consultants to conduct these HRAs.

When submitting an HRA, a facility, or any consultant who would conduct an HRA, would be required to obtain Air District approval of the toxics emissions inventory and HRA modeling protocol prior to conducting the Preliminary HRA. The facility or contractor would be required to follow strict and prescriptive guidelines. After the HRA was completed, the Air District would review the HRA to ensure the analysis was done in accordance with all applicable guidelines and procedures. Consequently, the room for discretion by the facility or vendor will be very limited. This is to ensure that there is no opportunity to cherry-pick the emission data used for the HRA.

Comment: The commenter suggests that limited staff resources should be spent on facility prioritization, inventory review and preparation, HRA review and approval, RRP review and approval, and progress monitoring, rather than running standard HRA models that are conducted by third-party consultants for all other similar regulatory programs. The commenter recommends that the rule provide at least one year notice to facilities prior to this amendment becoming effective.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment, including suggested resource prioritization, has been noted.

As for the comment regarding the Air District's notice to the facilities, the comment is noted. Any proposed rule amendments requiring facility submittal of HRAs would need submission due dates, which could be based on several factors such as location within a priority community and prioritization score.

Comment: The commenter states that section 4.2 of the draft Implementation Procedures discusses the possibility of outside contractors or consultants being used to conduct health risk assessments. The commenter also states that the details associated with how this will be implemented are unclear and suggests that the contractor or consultant experienced with POTWs should be required to conduct the POTW health risk assessments. The commenter recommends that the Air District include specific guidelines and criteria for POTW health risk assessments and the specific requirements and parameters for acceptable health risk assessment should be provided by the Air District. The commenters recommend that the contractor or consultant performing the health risk assessment sign a conflict of interest disclosures to address any potential conflict of interest.

BACWA

Response: The Air District thanks the commenter for their input, and the comment has been noted. The concept of allowing outside vendors for HRA services is currently under review and consideration for a future rule amendment. The revision being considered is to require facilities to submit HRAs that are reviewed and approved by the Air District, while still allowing the Air District to perform HRAs when needed. Any rule revisions will be accompanied by further amendments to this Rule 11-18 Implementation Procedures document. Processing of HRAs for Phase II facilities is not expected to begin until after Rule 11-18 is amended. As for the comment regarding specific guidelines and criteria for POTW HRAs, the Air District thanks the commenter for the input; however, since the Rule 11-18 Implementation Procedures document is not intended to focus on specific source categories, it would not be appropriate to include specific guidelines and criteria for POTW HRAs in the document. The Air District will consider the commenter's recommendation for addressing potential conflict of interest in the future.

Comment: The facility supports this rule concept as it would allow the Air District to save time and resources. However, the Air District must have clear criteria for what can be deemed an acceptable HRA for the Air District.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter asks whether it is accurate that a facility will not be conducting the HRA, but a third-party consultant and contractor will be conducting the HRA if the facility is required to complete the HRA.

T. Osterberg

Response: Facilities commonly use third-party consultants to conduct facility-wide HRAs rather than conducting the HRA themselves. A Rule 11-18 revision is being considered to require facilities to submit HRAs that are reviewed and approved by the Air District, while still allowing the Air District to perform HRAs when needed. Any rule revisions will be accompanied by further amendments to this Rule 11-18 Implementation Procedures document.

Comment: The commenter asks if the facility will be conducting the health risk assessment under the proposed rule concept.

J. Warren

Response: The Air District is considering a rule amendment that would expedite the implementation of the rule by requiring facilities to provide HRA. Emissions inventories will still be reviewed and approved by the Air District. The emissions inventory steps have been the most time-consuming steps in the program. Following the approval of the emissions inventory, the facility will be required to provide an HRA that is conducted in accordance with the HRA guideline that is strict and very prescriptive. Several rule amendment concepts are intended to reduce the implementation time for risk reduction measures.

Comment: The commenters believe that facility conducting the HRA instead of the Air District will cause the HRA result to be unreliable due to the use of inaccurate emissions data. The commenters strongly urge the Air District to perform the HRA instead of the facility or have the facility pay for a third-party contractor to conduct the HRA to ensure that the emissions data and HRA results are accurate.

M. Bardet, C. Beutel, M. Brennan, K. Kerridge, H. Taylor

Response: While the Air District understands the commenter's concern, the practice of facilities submitting their own HRAs will not compromise the quality of the HRA, because the Air District will still be reviewing and approving the toxics emissions inventory and all HRA inputs before the Preliminary HRA is conducted. When conducting an HRA, the facility will be required to follow strict and prescriptive risk calculation guidelines that limit discretion. After the HRA has been completed, the Air District will review each HRA submitted to ensure the analysis has been done in accordance with all applicable guidelines and procedures.

[Allow Early Voluntary Submission of Risk Reduction Plan](#)

Comment: The commenter supports this proposed rule concept if it helps reduce delays and address overdue emissions reductions, but expresses concern that this could result in potentially inaccurate and inadequate RRP. The commenter also states that they conditionally support this rule concept to the extent that this proposed rule amendment ensures accuracy and adequacy of the RRP and provides for transparency. This support would be contingent on including safeguards to ensure that any RRP submitted before an HRA is conducted would be temporary and subject to amendment upon completion of the HRA.

CBE

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development

of Rule 11-18 amendments. The Air District agrees that it is important for RRP's to be accurate and adequate.

Comment: The commenter is concerned that earlier deadlines will not be attainable in some situations, including concerns around permit processing timelines.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Air District currently gives high priority to permitting emission control equipment, especially when controls are necessary to meet rules and regulations. The Air District's strategic planning process will consider such goals and staffing needed to support such goals.

Comment: The commenter supports this proposed rule concept as it will lead to time and resource savings if the facility already requires a risk reduction. The commenter states that the public may raise concerns regarding lack of information on current impacts in the absence of the HRA step. The commenter suggests that the Air District should ensure that the Risk Reduction Plan contains information regarding pre- and post-risk reduction emissions.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Compliance Milestones

Comment: The commenter supports regular reporting on the progress of the risk reduction measures implemented.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter believes other improvements provided in the Revised Draft IP and rule amendments will sufficiently achieve the primary goals of the amendment for the Air District. The commenter urges the Air District to develop an expedited permitting process for projects required per Rule 11-18.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter supports requirements for each plan that rank the risk reduction measures by benefits and to require reasonable voluntary implementation of these measures as early as possible but is against having enforceable intermediate risk reduction goals prior to the 5-year deadline.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter believes that intermediate compliance milestone requirements will increase the workload and would further exacerbate the staffing shortage issue for the Rule 11-18 Program. The commenter suggests that the Air District consider the resource burden this requirement may cause and the marginal health benefit.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Air District agrees the resource burden of this requirement should be considered, and the Air District will do so in the continued development of Rule 11-18 amendments.

Comment: The commenter supports having compliance milestones prior to the deadline of five years for the RRP. The commenter suggests using percent-based health risk reduction goal for the compliance milestone.

J. Kilbreth

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Limit Facility Extensions for RRP Implementation

Comment: The commenter supports this proposal to ensure there are no unnecessary delays in implementing risk reductions measures at facilities in a timely manner.

CBE

Response: The Air District thanks the commenter for their input, and the comment has been noted.

Comment: The commenter supports this proposal to ensure there are no unnecessary delays in implementing risk reductions at facilities implementing the RRP. The commenter, however, states that, in cases where the RRP delay is associated with issues outside the facilities' control, this must be understood and provided for in the extension process. The commenter notes examples including permitting, CEQA, and availability/lead times for critical equipment required to compete the emissions reduction projects.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter requests that the Air District provide clarification on to what extent the Risk Reduction Plan would be limited in terms of extensions under this rule concept.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Air District has yet to decide about limitations on time frame extensions for Risk Reduction Plans. The Air District will provide clarity on this concept during the development of Rule 11-18 amendments.

Comment: The commenter supports limiting RRP extensions to a specific source rather than allowing an extension on the entire RRP.

J. Kilbreth

Response: The Air District thanks the commenter for their input, and the comment has been noted.

Earlier Risk Reduction Deadlines for High-Risk Facilities

Comment: The commenter expresses concern that earlier deadlines will not be attainable in some situations, including concerns around permit processing timeline. The commenter believes other improvements provided in the IP and rule amendments will sufficiently achieve what matters most to the Air District. The commenter urges the Air District to develop an expedited permitting process for projects required per Rule 11-18.

BACWA

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Air District currently gives high priority to permitting emission control equipment, especially when controls are necessary to meet rules and regulations. The Air District's strategic planning process will consider such goals and staffing needed to support such goals. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter strongly supports having earlier risk reduction deadlines for high risk facilities. The commenter believes that the Air District would need to determine the number of facilities subject to this requirement, what the advanced deadline would be, and how the rule would define "to the extent feasible."

CBE

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Prioritize HRAs in Priority Communities/Priority Community Definition

Comment: The commenter strongly supports this amendment that accelerates implementation of Rule 11-18 for the environmental justice community.

CBE

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Air District agrees and understands the importance of implementation of Rule 11-18 in environmental justice communities. This is why Regulation 11-18-402 allows the Air District to conduct HRAs and apply Regulation 11-18-218.2 risk action levels to any facility located within a Priority Community at any time. Your comments for the Air District to accelerate implementation of Rule 11-18 in Priority Communities will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter states that Overburdened Community is not defined in Rule 11-18. In addition, the Priority Community definition seems vague and may need additional clarification.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. The Air District is considering clarifying the definition for Priority Community in Section 11-18-217 in the upcoming rule amendment to reference the Overburdened Community definition in Section 2-1-243 of the Air District's Permitting Rule (Rule 2-1). Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Other Items Related to Rule Amendments

Comment: The commenter urges the Air District to include a rule amendment item to require operational limits including throughout and feedstock limits for any facility whose RRP's conclude it is infeasible to adopt risk reduction measures sufficient to reduce risks below the risk action levels.

CBE

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter suggests that Rule 11-18 should include emissions outside of routine operations since emissions emitted during non-routine scenarios may impact communities with increasing frequency and severity. The commenter also states that Rule 11-18 should be amended to include more expansive toxic emissions in inventories, HRA analysis, and RRP's. To the extent startups, shutdowns, or emergencies or other conditions are excluded, the Air District should adopt narrow, objective standards.

CBE

Response: The emissions inventory focuses on routine and predictable emissions, following the criteria outlined in the AB 2588 Air Toxic Hot Spots Program. This ensures consistency and compliance with state regulations. Non-routine or emergency events, such as power outages, and mobile source emissions fall outside the scope of both Rule 11-18 and the AB 2588 Air Toxic Hot Spots Program, on which the stationary source emission inventory guidelines are based. The Air District understands the concern about incidents, start-ups, and shutdowns becoming routine. The Air District will consider the nature of these emissions on a case-by-case basis to determine if these incident or start-up/shutdown emissions have become both routine and predictable.

The Air District agrees that Rule 11-18 HRAs may not present a full picture of everything that is happening at a facility, but other toxic programs, such as state-wide efforts to reduce impacts from mobile sources of diesel PM, and local programs, such as AB617 and local enforcement actions, are working to reduce emissions from non-stationary sources and to reduce frequency and impacts from emergency events and incidents.

Comment: The commenter recommends that the Air District revise the Significant Risk Threshold to be higher as the threshold is equal to Air District's historical de minimis level of 1 in a million for cancer risk. The commenter states that the Air District should include a cost benefit analysis in revising the threshold level.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter states that the TBARCT definition in the rule should be amended to include cost-effectiveness. The commenter states that without the cost-effectiveness component to the TBARCT evaluation, TBARCT would not be enforceable.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter suggests that the Air District review only a subset of TACs in order to more efficiently expedite the emissions inventory and HRA process.

J. Kilbreth

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Comment: The commenter suggests that the Air District conserve program resources on low risk facilities and focus HRAs for high risk facilities. The commenter provides a list of potential measures to screen out low risk facilities, including utilizing data from HRAs conducted in the Permitting Program for the prioritization score calculation, and conducting simplified health risk modeling.

Tesla

Response: The Air District thanks the commenter for their input, and the comment has been noted. Comments on the proposed rule concepts will be considered in the continued development of Rule 11-18 amendments.

Other Comments

Comment: The commenter supports ongoing stakeholder meetings and appreciates BAAQMD's dedication to implementing this important rule.

CBE

Response: The Air District thanks the commenter for their input, and the comment has been noted.

Comment: The commenter believes that it would be beneficial for the Air District to convene a working group that brings together community members, technical experts, affected facilities, and other agencies with purview over risk reduction efforts to facilitate continued mutual learning and dialogue about Rule 11-18 as well as the many complementary regulatory programs that seek to improve community-scale health outcome.

CCEEB

Response: The Air District thanks the commenter for their input, and the comment has been noted. As stated in section 6 of the Implementation Procedures document, the Air District plans to periodically hold meetings with interested stakeholders to explain procedures, answer questions, and inform communities and industry about the status of the emissions inventory reviews, health risk assessments, risk reduction plan reviews, and installation of risk reduction measures. Stakeholders may also inform the Air District about educational or informational needs or public concerns about Rule 11-18 actions, facilities that are subject to Rule 11-18 or otherwise under review, and general air toxics concerns.

Comment: The commenter states that the emissions inventory step for Rule 11-18 seems like a bottleneck that delays implementation of the rule and asks whether the Air District has a plan to improve the review process for the emissions inventory.

K. Szutu

Response: The development of toxic emissions calculation guidance for specific types of sources is an ongoing task that the Air District is undertaking. A copy of this guidance can be found on the Air District's Facility Risk Reduction Program page (<https://www.baaqmd.gov/community-health/facility-risk-reduction-program>), see document named "Air District TAC Emission Factor Guidance". The Air District will continue its effort to develop default toxic air contaminant factors from different source types and include the final default factors in this guidance in order to improve its toxic emissions inventories. The Air District agrees that standardizing the process this way will help speed up the process.

Comment: The commenter expresses concerns about emissions monitoring. The commenter states that current practices demonstrate a lack of transparency from stationary source emitters, with delayed reporting of incidents and frequent sensor malfunctions – even during obvious flaring events. The commenter suggests the Air District require third-parties report directly to the Air District. The commenter also requests the Air District to maintain public websites that provide real-time updates on emissions issues as they occur.

S. Rosenblum

Response: The Air District thanks the commenter for their input, and the comment has been noted.

Comment: The commenter asks how the review of the emissions inventory and health risk assessment will be conducted for Rule 11-18 for the refineries subject to Rule 11-18.

K. Szutu

Response: In order to prioritize facilities with high potential for health risks, the Air District split the inventory update and health risk assessment review into two phases: Phase I and Phase II, with Phase I for sites with higher potential for health risks than Phase II. All five Bay Area refineries have been designated as Phase I facilities. For more information about this designation, please visit the Air District's Rule 11-18 Risk Reduction Facilities Page (link: <https://www.baaqmd.gov/community-health/facility-risk-reduction-program/facility-risk-reduction-list>).

Comment: The commenter asks whether the Air District can consider process improvement measures that will allow HRA-related items to be performed in parallel to expedite the health risk assessment process.

K. Szutu

Response: While some aspects of the HRA, such as data collection, could potentially be conducted in parallel for multiple facilities by external consultants, the Air District's limitations in staff and resources restrict them from processing a large number of facilities simultaneously. However, once the emissions inventories for various facilities are approved, the Air District may utilize third-party consultants to conduct HRAs concurrently which would allow for a faster overall process.

Comment: The commenter asks whether the health risk assessment for Valero can be prioritized considering that the health risk assessment for Valero has not been performed since 1991 under AB 2588.

J. Warren

Response: The Air District agrees with this comment. The Air District is currently focusing its resources for facilities in AB 617 communities. While not located within any AB 617 community, Valero has been designated as a top-priority Phase I facility, and the HRA for Valero is prioritized.

Comment: The commenter asks why the Air District has not provided the annual toxic inventory under the AB2588 Hot Spots Act between 2020 and 2023. The commenter also asks whether this is due to Rule 11-18.

L. Williams

Response: The Air District thanks the commenter for this comment. There was a delay in the Air District's effort to post the annual toxic inventory reports for 2020, 2021, and 2022 due to limited staff resources. However, in March of 2024, the Air District posted the annual toxic inventory

reports for those years on its Toxic Air Contaminants page: <https://www.baaqmd.gov/about-air-quality/emission-inventory/toxic-air-contaminants>. The Air District is consolidating emissions inventory and prioritization reporting efforts for Rule 11-18 and AB2588 purposes to ensure future reports are posted on a timely basis.

Comment: The commenter asks if Rule 11-18 is intended to supplant the duties of the Air District under the AB2588 Hot Spots Act. The commenter also asks, if Rule 11-18 is intended to supplant the AB2588 Hot Spots Act, whether the legal authority can be provided.

L. Williams

Response: Rule 11-18 does not supplant the Air District's duties under the Hot Spots Act. Rule 11-18 is a local rule that applies in addition to AB2588.

Comment: The commenter requests the legal authority for outsourcing the HRA preparation. The commenter believes this is contrary to AB2588 Hot Spots Act.

L. Williams

Response: The Air District is not aware of any legal authority that would preclude outsourcing Rule 11-18 HRAs. The Air District has reviewed the Hot Spots Act and does not believe any provisions of that law preclude outsourcing HRAs.

Comment: The commenter stated that the Air District needs real time data from refinery facilities in order to understand their impacts.

J. Sullivan

Response: The Air District thanks the commenter for their input, and the comment has been noted.

Comment: The commenter asks what early application of risk level to the AB 617 community means in Rule 11-18.

J. Kilbreth

Response: Early application of risk level is a reference to Section 11-18-402 of Rule 11-18 ("Early Application of Risk Action Levels") which allows the Air District to conduct HRAs and apply risk action levels to any facility located within a Priority Community at any time. The Air District typically uses this provision to schedule the review of facilities within a batch. Facilities located within Priority Communities are given the highest priority for review. The Air District may also elevate a facility located within a Priority Community from a future review batch to the current review batch at any time.

Comment: The commenter asks how the emissions data translates into health risk metrics (e.g. cancer risk and non-cancer hazard index) in the Rule 11-18 program. The commenter asks whether Chevron is close to the current risk thresholds and the outcome for the facility after 11-18 is implemented.

J. Kilbreth

Response: The Air District thanks the commenter for this comment and is happy to provide clarification.

To determine if the requirements of Rule 11-18 are triggered, the Air District uses a state-approved ranking metric called the facility “prioritization score.” Prioritization scores represent the relative potential for health impacts from a facility based on the amount of TACs emitted from a facility, the relative toxicity of the TACs emitted, and the proximity of the facility to possible receptors. The Air District uses prioritization scores to rank facilities based on health impact potential and to determine when facilities should undergo further review, such as HRA, and the order in which facilities need to be reviewed. For more information about this, please check BAAQMD Prioritization Score Procedures for Air Toxics Hot Spots Program and Proposed Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities: https://www.baaqmd.gov/~media/dotgov/files/rules/regulation-11-rule-18/documents/20171003_priorproc_1118-pdf.pdf?rev=14cd7841f4b64710907d28122806c45e.

Health risk assessments use air dispersion modeling programs to determine how emissions from a facility will get transported into the community and health risk calculation programs to determine the potential health impacts that may occur based on the toxic compound concentrations produced by the air dispersion program. HRA air dispersion modeling and risk calculations must be conducted in accordance with the procedures described in state-wide guidance documents: the OEHHA Health Risk Assessment Guidelines for the Air Toxics Hot Spots Program adopted by OEHHA on March 6, 2015 and using the recommended breathing rates described in the ARB/CAPCOA Risk Management Guidance for Stationary Sources of Air Toxics adopted by ARB on July 23, 2015. For more information about this, please check BAAQMD Air Toxics Control Programs Health Risk Assessment Guidelines: https://www.baaqmd.gov/~media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211215_hraguidelines-pdf.pdf?rev=eb18ff83f96049fa84d54552b58baee3.

The results of an HRA will contain three types of health risk metrics: cancer risk, non-cancer chronic hazard index and non-cancer acute hazard index. These health risk metrics and the health risk thresholds are defined in Regulation 11, Rule 18.

For the question related to the HRA results for Chevron, the Air District is currently still working towards finalizing the toxic emission inventory data to be used as the basis for the HRA. Therefore, the HRA results are not available yet and it will be premature to predict what the health risk will look like after Rule 11-18 has been implemented.

Comment: The commenter asks whether inclusion of acute health risk threshold is adequate in Rule 11-18.

J. Kilbreth

Response: The Air District thanks the commenter for their question. Yes, acute health risk regulation is included in Rule 11-18 and therefore will be included in the HRAs conducted as part of the implementation of the rule. Inclusion of acute health risk regulation is consistent with the AB2588 program. The risk action level for acute hazard index is 1.0. A non-cancer acute

hazard index of less than 1.0 indicates that health risks are not expected for even sensitive receptors. Thus, an acute hazard index action level of 1.0 is health protective.

Comment: The commenter asks for the cause of delays for HRA for Chevron and requests that the Air District provide the key issues leading to the delay.

J. Kilbreth

Response: The HRA for Chevron has been given highest priority and work is progressing. To provide a status update on Rule 11-18 implementation for Chevron, the Air District is currently reviewing comments from the facility about the emissions inventory that will be used as the basis for their HRA. While the work is progressing, the Air District's limitations in staff and resources restrict them from implementing Rule 11-18 at the pace they would like to. However, the concept of allowing outside vendors for HRA services is currently under review and consideration for a future rule amendment. The revision being considered is to require facilities to submit HRAs that are reviewed and approved by the Air District, while still allowing the Air District to perform HRAs when needed. While this concept is still under review, if included in the upcoming rule amendments, it will allow the Air District to outsource the HRA work and will expedite the process.

Comment: Has Chevron ever notified the public of potential health risks from toxics as required under AB 2588? -J. Kilbreth

J. Kilbreth

Response: The Air District has conducted a facility-wide HRA only once on Chevron, and it was conducted back in 1990 with the results of cancer risk of 8.00 in a million and chronic hazard index of 0.0200. Therefore, the AB 2588 notification requirements were not triggered.

Comment: The commenter suggests that Chevron should be subject to major penalties if it frivolously delays Rule 11-18's implementation.

J. Kilbreth

Response: The Air District recognizes the commenter's interest in significant penalties for violations that delay implementation of Regulation 11-18. When there is a violation of Air District regulations, the Air District is statutorily required to consider eight factors in determining an appropriate penalty. (Health and Safety Code, section 42403(b).) To the extent that an action that delays Rule 11-18's implementation constitutes a violation of Air District regulations, the Air District will seek an appropriate penalty based on the specific facts of the violation at issue, taking these factors into consideration.