

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2016-10

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Adopting Proposed Amendments to District Regulation 9, Rule 13: Nitrogen Oxides,
Particulate Matter, and Toxic Air Contaminants from Portland Cement
Manufacturing**

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

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to adopt proposed amendments to District Regulation 9, Rule 13: Nitrogen Oxides, Particulate Matter, and Toxic Air Contaminants from Portland Cement Manufacturing; as set forth in Attachment A hereto (“Proposed Amendments”);

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District obtains its authority to adopt, amend or repeal rules and regulations from Sections 40000, 40001, 40702, and 40725 through 40728.5, of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Amendments are written and displayed so that their meaning can be easily understood by the persons directly affected by the rule;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Amendments are in harmony with and not in conflict with or contradictory to existing statutes, court decisions, and state and federal regulations;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Amendments do not impose the same requirements as any existing state or federal regulation, and are necessary and proper to execute the power and duties granted to, and imposed upon, the District;

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

WHEREAS, on September 19, 2012 the Board of Directors of the Bay Area Air Quality Management District adopted a new Regulation 9, Rule 13 (“Rule”);

WHEREAS, section 301.4 of the Rule sets forth a limit on ammonia intended to control “ammonia slip,” i.e., ammonia emitted in excess of that which is necessary to facilitate control of Nitrogen Oxides;

WHEREAS, sections 402 and 610 of the Rule provide a methodology to determine the baseline level of ammonia emissions;

WHEREAS, subsequent to adoption of Regulation 9, Rule 13, the District determined that the averaging period for the ammonia standard as it is currently stated in the rule is of insufficient duration to account for the variable background ammonia in the exhaust stream caused by the inherent variability of nitrate content in the limestone feedstock used to make cement, and that the procedure set forth in the rule for determining background ammonia levels is similarly problematic;

WHEREAS, the problems described in the preceding paragraph rendered compliance with the ammonia limit of section 301.4 infeasible;

WHEREAS, the District seeks to correct these problems by revising the averaging period and concentration limit on ammonia in section 301.4;

WHEREAS, the Proposed Amendments will effectuate the original intent of section 301.4 and will not result in emissions in excess of what was originally intended;

WHEREAS, the District prepared a preliminary staff report and draft amendments, and published them for comment on July 21, 2016;

WHEREAS, the District held public stakeholder’s meetings in Cupertino, CA, on March 10, May 16, and September 7, 2016 to discuss the draft amendments with interested parties and the public;

WHEREAS, on April 19 and September 19 2016, District staff discussed the draft amendments with the Stationary Source Committee of the Board of Directors of the Bay Area Air Quality Management District;

WHEREAS, on September 1, 2016, District staff published the draft amendments for comment in advance of the public hearing;

WHEREAS, on September 2, 2016, the District transmitted the text of the draft amendments to California Air Resources Board;

WHEREAS, on or before September 1, 2016, District staff published in newspapers and distributed and published on the District’s website a notice of a public hearing to be held on October 19, 2016 to consider adoption of the draft amendments, and the notice included a request for public comments and input on the draft amendments;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on October 19, 2016 to consider the draft amendments in accordance with all provisions of law;

WHEREAS, at the public hearings, the subject matter of the Proposed Amendments was discussed with interested persons in accordance with all provisions of law;

WHEREAS, District staff has prepared and presented to the Board of Directors a detailed Staff Report regarding the Proposed Amendments, which Staff Report has been considered by this Board and is incorporated herein by reference;

WHEREAS, the Air District contracted with Environmental Audit, Inc., to conduct a California Environmental Quality Act (“CEQA”) analysis of the Proposed Amendments, which concludes that the Proposed Amendments are exempt from CEQA review pursuant to CEQA Guidelines section 15301, Class 1;

WHEREAS, District staff has reviewed the CEQA analysis prepared by Environmental Audit, Inc., and agrees with its conclusions;

WHEREAS, the Board of Directors finds and determines that the Proposed Amendments are exempt from review under the California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*);

WHEREAS, the Air District contracted with Bay Area Economics to prepare an analysis of the socioeconomic impact of the Proposed Amendments, which concludes that the Proposed Amendments would not have a significant economic impact or cause regional job loss;

WHEREAS, District staff has reviewed the socioeconomic analysis prepared by Bay Area Economics and agrees with its conclusions;

WHEREAS, the Board of Directors, pursuant to the requirements of Health & Safety Code § 40728.5, has actively considered the socioeconomic impacts of Proposed Amendments and has determined that the Proposed Amendments would have no significant socioeconomic impacts;

WHEREAS, the District has prepared, pursuant to the requirements of Health & Safety Code § 40727.2, a written analysis of federal, state, and District requirements applicable to this source category, as set forth in Staff Report, and has found that the Proposed Amendments would not be conflict with any federal, state, or other District rules, and the Board of Directors has agreed with these findings;

WHEREAS, the documents and other materials that constitute the record of proceedings on which this rulemaking project is based are located at the Bay Area Air Quality Management District, 375 Beale Street, San Francisco, 94105, and the custodian for these documents is Marcy Hiratzka, Clerk of the Boards;

WHEREAS, District staff recommends adoption of the Proposed Amendments;

WHEREAS, the Board of Directors concurs with District staff's recommendations and desires to adopt the Proposed Amendments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Proposed Amendments, pursuant to the authority granted by law, as set forth in Attachment A hereto, and discussed in the Staff Report (including Appendices) with instructions to staff to correct any typographical or formatting errors before final publication of the Proposed Amendments.

The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director SINKS, seconded by Director KNISS, on the 19th day of OCTOBER, 2016 by the following vote of the Board:

AYES: AVALOS, BARRETT, BATES, GIOIA, GROOM, HUDSON, KAPLAN, KNISS, MAR, MILEY, MITCHOFF, JUE, RICE, ROSS, SINKS, SLOCUM, SPERING, WAGENKNECHT


NOES: NONE.

ABSENT: CANEPA, CHAVEZ, DAVIS, HAGGERTY, PEPPER, ZANE



Supervisor Eric Mar
Chairperson of the Board of Directors

ATTEST:



Council Member David E. Hudson
Secretary of the Board of Directors

Attachment "A"

**Proposed Amendments to District Regulation 9, Rule 13: Nitrogen Oxides,
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Manufacturing**