

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2017- 11

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Adopting Regulation 11, Rule 18 (Hazardous Pollutants, Reduction of Risk from Air
Toxic Emissions at Existing Facilities);
and
Certifying a CEQA Environmental Impact Report for the Project**

RECITALS

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has the authority and the responsibility to adopt, amend, and repeal rules and regulations as necessary and appropriate to control air pollution emissions from stationary sources in the San Francisco Bay Area as provided in Sections 40000, 40001, and 40702 of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to amend the District's rules and regulations for hazardous pollutants by adopting new Regulation 11, Rule 18 (Hazardous Pollutants, Reduction of Risk from Air Toxic Emissions at Existing Facilities), as set forth in Attachment A hereto ("Proposed Rule");

WHEREAS, the need to amend the District's requirements for hazardous pollutants has arisen because of the need to further reduce health risks from toxic air contaminants, because of recent legislative and regulatory developments, and for other reasons as addressed in the Staff Report for the Proposed Rule and discussed at the public hearing held to consider the Proposed Rule;

WHEREAS, amending the District's hazardous pollutant requirements to add new requirements for existing sources was a commitment that the District made in Stationary Source Measure No. SSM 18 in the District's 2010 Clean Air Plan and No. SS 20 in the District's 2017 Clean Air Plan;

WHEREAS, District staff prepared initial draft rule language and published it for comment on October 14, 2016; held six public workshops to discuss the draft rule during the period from November 9-17, 2016; and accepted public comment on the rule until December 2, 2016;

WHEREAS, based on comments received on the initial draft rule, District staff prepared revised rule language and published it for comment on March 24, 2017; held four more public workshops during the period from March 27-30, 2017; and accepted public comment on the revised rule until May 8, 2017;

WHEREAS, on April 17 and September 18, 2017, District staff discussed the draft rule with the Stationary Source Committee of the Board of Directors of the Bay Area Air Quality Management District;

WHEREAS, on October 19, November 16, and December 7, 2016, and on September 20, 2017, District staff discussed the draft rule with the Board of Directors of the Bay Area Air Quality Management District;

WHEREAS, based on all of the comments and input received from members of the public and agency representatives, District staff developed the final version of the Proposed Rule for consideration by the Board of Directors;

WHEREAS, on October 4, 2017, the District transmitted the text of the Proposed Rule to the California Air Resources Board;

WHEREAS, District staff has prepared and presented to the public and to the Board of Directors a detailed Staff Report describing the purpose of and need for the Proposed Rule, how the Proposed Rule will affect the District's regulatory programs if adopted, and how issues raised by members of the public are addressed by the Proposed Rule, which Staff Report has been considered by this Board and is incorporated herein by reference;

WHEREAS, on or before September 1, 2017, District staff published in newspapers and distributed and published on the District's website a notice of a public hearing on November 15, 2017, to consider adoption of the Proposed Rule, and the notice included a request for public comments and input on the Proposed Rule;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on November 15, 2017, which was properly noticed in accordance with the provisions of Health & Safety Code Section 40725 and was conducted in accordance with the provisions of Health & Safety Code Section 40726, to consider the Proposed Rule in accordance with all provisions of law;

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

WHEREAS, in accordance with Health & Safety Code Section 40727, and based on substantial evidence presented at the hearing and described in the Staff Report and other documentation, the Board of Directors of the Bay Area Air Quality Management District has found and determined that the Proposed Rule is necessary; that the District has the authority to adopt the Proposed Rule; that the Proposed Rule is clearly written and displayed; that the Proposed Rule is consistent with other legal requirements; that the Proposed Rule is not impermissibly duplicative of existing regulatory requirements; and that the Proposed Rule will implement specific provisions of law as referenced and identified below;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to adopt the Proposed Rule to add new requirements to address toxic air contaminants from existing sources, among other reasons, as discussed at the public hearing and in the Staff Report and other documentation presented to the Board of Directors;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the District has the authority to adopt the Proposed Rule pursuant to Sections 40000, 40001 and 40702 of the Health & Safety Code, which authorize the District to adopt and implement regulations that are necessary to achieve and maintain air quality standards and to execute the powers and duties imposed upon the District;

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

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule is in harmony with and not in conflict with or contradictory to existing statutes, court decisions, and state and federal regulations, and in doing so has considered the analysis of existing regulatory requirements identified in the Staff Report in accordance with Section 40727.2 of the Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule does not impose the same requirements as any existing state or federal regulation, except to the extent necessary and proper to execute the power and duties granted to, and imposed upon, the District as the agency responsible for controlling toxic air contaminant emissions from stationary sources in the San Francisco Bay Area;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has identified and determined that the Proposed Rule will implement, interpret and/or make specific the provisions of Sections 40000, 40001, and 40702 of the California Health & Safety Code;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728 and other requirements of law, the District has maintained a file of the documents and other materials that constitute the record of proceedings on which this rulemaking project is based (including the environmental analysis for the project prepared in accordance with the California Environmental Quality Act), which record documents and other materials are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, 94105, and the custodian for which is Marcy Hiratzka, Clerk of the Boards;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728.5 to the extent that such requirements are applicable, and also as a matter of sound public policy notwithstanding whether or not such requirements are applicable, the Board

of Directors of the Bay Area Air Quality Management District has actively considered the socioeconomic impacts of the Proposed Rule and has reviewed and considered the analysis thereof in the Staff Report; and has determined that the Proposed Rule will have significant socioeconomic impacts;

WHEREAS, the Board of Directors finds and determines that the Proposed Rule is a "project" pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*);

WHEREAS, the District is the CEQA lead agency for this project pursuant to Section 21067 of CEQA and Sections 15050 and 15051 of the CEQA Guidelines ("Guidelines") (Title 14 of the California Code of Regulations);

WHEREAS, District staff has prepared an Environmental Impact Report (EIR) for the Proposed Rule pursuant to the requirements of CEQA, in connection with and based on information and analysis developed by the District's CEQA contractor, Environmental Audit, Inc., of Placentia, California;

WHEREAS, as part of the development of the EIR, District staff prepared and published (with the assistance of Environmental Audit, Inc.) an Initial Study and Notice of Preparation for the EIR, which was published and noticed in accordance with the requirements of CEQA (including CEQA Sections 21082.1, 21091, 21092 and Guidelines Sections 15070 *et seq.*) on October 14, 2016;

WHEREAS, District staff also convened CEQA scoping meetings on November 14 and 16, 2016, to solicit input from interested members of the public on the Initial Study and on the scope and contents of the EIR and the potential environmental impacts to be evaluated in it;

WHEREAS, District staff then completed a draft EIR ("DEIR"), and published the DEIR and provided notice of such publication to the public and to interested parties and agencies, in accordance with the requirements of CEQA (including CEQA Sections 21082.1, 21091, 21092 and Guidelines Sections 15070 *et seq.*) on or before March 24, 2017;

WHEREAS, the DEIR was circulated for public review during the period from March 24, 2017, to May 8, 2017;

WHEREAS, the District received comments on the DEIR;

WHEREAS, the District subsequently chose to revise the project, which had originally included the Proposed Rule and another rule, by limiting the project to the Proposed Rule only;

WHEREAS, the District prepared a recirculated draft EIR ("RDEIR") that focused on impacts of the project, as revised to include only the Proposed Rule, and published the RDEIR on or before September 1, 2017;

WHEREAS, pursuant to Guidelines Section 15088.5, the District recirculated the RDEIR and provided notice of such recirculation to the public and to interested parties and agencies, in accordance with the requirements of CEQA, during the period from September 1, 2017, to October 16, 2017;

WHEREAS, pursuant to Guidelines Section 15088.5, the District provided separate notice of recirculation to those who commented on the original DEIR;

WHEREAS, pursuant to Guidelines Section 15088.5, the District advised RDEIR reviewers that new comments must be submitted on the RDEIR and that the District would not respond to prior comments, except that commenters on the RDEIR could specifically identify prior comments on the DEIR and ask that they be considered as comments on the RDEIR;

WHEREAS, the District received five written comment letters on the RDEIR during the 45-day public review and comment period;

WHEREAS, the Final EIR, a copy of which is attached hereto and incorporated herein by reference, was presented to the Board of Directors and proposed for certification by the Board of Directors at a public meeting of the Board of Directors on November 15, 2017;

WHEREAS, the EIR found that the Proposed Rule will have the potential to create a significant adverse impact on air quality that comes from construction emissions and cannot be mitigated to a level that is less than significant, as described in Chapter 3.2 of the Final EIR;

WHEREAS, the EIR found that the Proposed Rule will have the potential to create significant adverse greenhouse gas impacts that come from operation of air pollution control equipment and cannot be mitigated to a level that is less than significant, as described in Chapter 3.3 of the Final EIR;

WHEREAS, the EIR found that the Proposed Rule will have the potential to create a significant adverse impact on water demand that comes from the use of wet gas scrubbers and cannot be mitigated to a level that is less than significant, as described in Chapter 3.5 of the Final EIR;

WHEREAS, the EIR discussed potential mitigation measures for construction emission impacts as specified in Section 3.2.5 of Chapter 3.2, greenhouse gas impacts as specified in Section 3.3.5 of Chapter 3.3, and water demand impacts in Section 3.5.5 of Chapter 3.5 which might reduce the significant air quality, greenhouse gas, and water demand impacts identified in the EIR, as explained in Section 1.4 of Chapter 1 of the Final EIR, but those mitigation measures are within the responsibility and jurisdiction of public agencies other than the District, and such measures have been or could be adopted by such other agencies;

WHEREAS, substantial evidence in the record demonstrates that approval of the Proposed Rule involves specific considerations related to the need to reduce air pollution

and protect public health and the environment that make the alternatives identified in the EIR that would avoid or substantially lessen the significant air quality, greenhouse gas, and water demand impacts infeasible, as explained in Section 1.5 of Chapter 1 of the Final EIR;

WHEREAS, substantial evidence in the record demonstrates that the significant and unavoidable impacts to air quality during construction, from greenhouse gases, and from increases in water demand are acceptable as provided in Guidelines Section 15093 because the public health and air quality benefits from the Proposed Rule outweigh the Proposed Rule's significant unavoidable impacts;

WHEREAS, this matter has been duly noticed and heard in compliance with applicable requirements of the Health & Safety Code and the Public Resources Code;

WHEREAS, District staff provided copies of (i) the Proposed Rule, and (ii) the Final EIR, including the comments received on the Draft EIR and staff's responses thereto, to each of the members of the Board of Directors for their review and consideration in advance of the public meeting of the Board of Directors on November 15, 2017;

WHEREAS, District staff has recommended that the Board of Directors adopt the Proposed Rule;

WHEREAS, the Board of Directors concurs with recommendations of District staff regarding the Proposed Rule;

WHEREAS, District staff has recommended that the Board of Directors certify the Final EIR, which was prepared as the CEQA document for the Proposed Rule, as being in compliance with all applicable requirements of CEQA;

WHEREAS, the Board of Directors concurs with recommendations of District staff regarding the Final EIR for the Proposed Rule;

WHEREAS, the Board of Directors understands that, in implementing the Proposed Rule, staff will convene a panel of technical experts (Dispute Resolution Panel) by the time the first health risk assessments under the Proposed Rule are completed to advise staff regarding resolution of disputes over implementation of the Proposed Rule, and, in particular, disputes by an affected facility regarding the inventory used in a health risk assessment, the methodology used for a health risk assessment, the technical feasibility or economic burdens involved in a demonstration pursuant to Section 11-18-404.6.2 or 11-18-404.6.3, or a determination of best available retrofit control technology for toxics (TBARCT).

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District understands that staff will convene a Tracking and Implementation Workgroup within three months of issuance of the first health risk assessments under the Proposed Rule that will consist of District representatives, industry representatives, community representatives, and interested citizens that will meet to discuss issues related to rule

implementation, receive periodic reports from the Dispute Resolution Panel, and otherwise review implementation of the Proposed Rule with District staff.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District does hereby certify and adopt the Final EIR pursuant to CEQA for the Proposed Rule.

BE IT FURTHER RESOLVED that in support of and as part of its certification and adoption of the Final EIR for the Proposed Rule, the Board of Directors hereby makes the following findings and certifications:

1. The Final EIR for the Proposed Rule has been prepared in accordance with all requirements of CEQA.
2. The Final EIR for the Proposed Rule was duly presented to the Board of Directors for its consideration in accordance with CEQA and other applicable legal requirements.
3. The Board of Directors has reviewed and considered the information in the Final EIR and the evidence in the record described and summarized in the Final EIR, including but not limited to (i) the Final EIR's conclusion that the Proposed Rule will have significant air quality, greenhouse gas, and water demand impacts as described in the Final EIR, (ii) the mitigation measures proposed to mitigate the significant air quality, greenhouse gas, and water demand impacts outlined in the Final EIR, and (iii) the alternatives considered to avoid or substantially lessen the significant water demand impact that are evaluated in the Final EIR.
4. The Board of Directors specifically approves the mitigation measures outlined in the Final EIR, which are incorporated by reference as if fully set forth herein, to mitigate the Proposed Rule's significant air quality, greenhouse gas, and water demand impacts. No additional feasible mitigation measures have been identified that can further mitigate the significant impacts.
5. The Board of Directors finds that the mitigation measures for construction emission impacts discussed in Section 3.2.5 of Chapter 3.2, greenhouse gas impacts as specified in Section 3.3.5 of Chapter 3.3, and water demand impacts in Section 3.5.5 of Chapter 3.5 of the Final EIR, as explained in Section 1.4 of Chapter 1 of the Final EIR, are within the responsibility and jurisdiction of public agencies other than the District, and such measures have been or could be adopted by such other agencies.
6. The analysis of alternatives set forth in Chapter 4 the Final EIR has provided the Board of Directors with a basis for considering ways in which the significant air quality, greenhouse gas, and water demand impacts could be avoided or substantially lessened while still achieving all or most of the Plan's objectives.

The alternatives analysis in the Final EIR is sufficient to carry out the purposes of such analysis under CEQA.

7. The Board of Directors finds that there is a pressing need to reduce toxic air pollution and to protect public health and the environment, which the Proposed Rule addresses. The Board of Directors finds that the benefits that will be obtained from the Proposed Rule in addressing this need constitute specific considerations that make the alternatives identified in the Final EIR to avoid or significantly lessen the Proposed Rule's significant air quality, greenhouse gas, and water demand impacts infeasible. In making this finding, the Board of Directors has considered and agrees with the reasons supporting the finding as set forth in Section 1.5 of Chapter 1 of the Final EIR, which are incorporated by reference as if fully set forth herein and which the Board of Directors adopts as its own.
8. The Final EIR (including responses to comments) is complete, adequate and in full compliance with CEQA as a basis for considering and acting upon the Proposed Rule.
9. The Final EIR reflects the independent judgment and analysis of the Bay Area Air Quality Management District.
10. The Board of Directors has exercised its own independent judgment in reviewing, considering and certifying the Final EIR and in making the findings and certifications set forth in this Resolution, which reflects the independent judgment and analysis of the Board of Directors.

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt District Regulation 11, Rule 18 (Hazardous Pollutants, Reduction of Risk from Air Toxic Emissions at Existing Facilities) with instructions to staff to correct any typographical or formatting errors before final publication.

BE IT FURTHER RESOLVED that in support of and as part of its adoption of the Proposed Rule, the Board of Directors hereby makes the following findings and certifications:

1. The Proposed Rule is necessary; the District has the authority to adopt the Proposed Rule; the Proposed Rule is clearly written and displayed; the Proposed Rule is consistent with other legal requirements; the Proposed Rule is not impermissibly duplicative of existing regulatory requirements; and the Proposed Rule will implement specific provisions of law as referenced and identified.
2. The Board of Director's approval of the Proposed Rule is based on and supported by (among other things) the Board's consideration of the Final EIR for the Proposed Rule.

3. The Board of Directors has balanced the benefits of the Proposed Rule against its unavoidable environmental risks in determining whether to approve the Proposed Rule. The Board of Directors finds that the Proposed Rule's benefits in reducing air pollution and protecting public health outweigh the adverse impacts from air quality impacts from construction emissions, greenhouse gas impacts from operation of air pollution control equipment, and increases in water demand from operation of wet gas scrubbers that are expected to result from implementing the Proposed Rule. The Board of Directors therefore finds that these significant impacts from the Proposed Rule are acceptable pursuant to Section 15093 of the CEQA Guidelines, 14 Cal. Code Regs. § 15093; and makes this finding as a "Statement of Overriding Considerations" pursuant to Section 15093. The specific reasons supporting this finding and Statement of Overriding Considerations are as follows:
 - a. The Board of Directors has considered the air quality impacts associated with construction of air pollution control equipment to comply with the rule, which would be expected to be, in the worst-case, 2.8 tons per year of reactive organic gases (in light of Bay Area emissions of approximately 273 tons per day), 14.1 tons per year of carbon monoxide (in light of Bay Area emissions of approximately 1327 tons per day), 19.1 tons per day of nitrogen oxides (in light of Bay Area emissions of approximately 316 tons per day), 0.06 tons per year of sulfur oxides (in light of Bay Area emissions of approximately 21 tons per day), 2.4 tons per year of PM10 (in light of Bay Area emissions of approximately 105 tons per day), and 2.1 tons per year of PM2.5 (in light of Bay Area emissions of approximately 45 tons per day).
 - b. The Board of Directors has considered the greenhouse gas impacts of approximately 21,000 CO₂-equivalent metric tons per year of greenhouse gas emissions that are expected to result from the operation of air pollution control equipment in light of annual Bay Area greenhouse gas emissions of approximately 90 million CO₂-equivalent metric tons per year.
 - c. The Board of Directors has considered the water demand increase of 1.3 to 1.4 million gallons per day that is expected to result from the Proposed Rule, which the Board of Directors has evaluated in light of the significant adverse impact the increase will have on the region's water supply resources as described in Chapter 3.5 of the Final EIR, and also in light of the Bay Area's total water usage of over one billion gallons per day, as well as the fact that the recent drought that has made water supply issues an especially acute concern over the past few years is now over.
 - d. The Board of Directors has considered that the reductions in toxic air contaminants that will come from the Proposed Rule will help to address some of the District's potential obligations under Assembly Bill 617, which was signed by the Governor in July 2017 and is intended "...to reduce emissions of toxic air contaminants and criteria pollutants in communities affected by a high cumulative exposure burden." One requirement under AB 617 is for the

California Air Resources Board to select communities with high exposure burdens, with the air districts where the communities are located then obligated to prepare community emissions reduction programs for toxics and criteria pollutants.

- e. In addition to the reasons outlined in subparagraphs a.-d. above, the Board of Directors has reviewed and considered the more detailed summary of reasons why the Proposed Rule's benefits in reducing air pollution and protecting public health outweigh the Proposed Rule's adverse air quality, greenhouse gas, and water demand impacts set forth in Section 1.4 of Chapter 1 of the Final EIR for the Proposed Rule. The Board of Directors agrees with the reasons set forth therein, and it adopts those reasons as its own and incorporates them by reference as if fully set forth herein as specific reasons supporting this finding and Statement of Overriding Considerations.

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby direct staff to report back to the Board periodically regarding progress on implementation of the rule, and, in particular, any issues encountered during implementation, any proposals regarding the Dispute Resolution Panel or the Tracking and Implementation Workgroup, or any proposals for amendments to the regulation.

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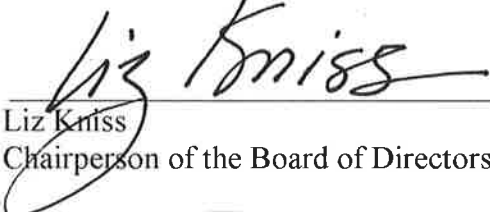
The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director GIOIA, seconded by Director SINKS, on the 15th day of NOVEMBER, 2017 by the following vote of the Board:

AYES: ABE-KOGA, BARRETT, CANEPA, CUTTER, GIOIA, GROOM, HAGGERTY, HUDSON, JUE, KAPLAN, KIM, KNISS, MILEY, MITCHOFF, RICE, RONEN, ROSS, SINKS, SPERING, WAGENKNECHT.

NOES: NONE.

ABSTAIN: NONE.

ABSENT: CHAVEZ, SANCHEZ, SHEEHY, ZANE.



Liz Kniss
Chairperson of the Board of Directors

ATTEST:



Katie Rice
Secretary of the Board of Directors