

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION No. 2021 - 23

**A Resolution of the Board of Directors of the Bay Area Air Quality Management District
Adopting Amendments to Regulation 2, Rule 1 (Permits – General Requirements) and
Regulation 2, Rule 5 (Permits – New Source Review of Toxic Air Contaminants);
Approving Amendments to the Health Risk Assessment Guidelines; and
Adopting a Negative Declaration under the California Environmental Quality Act**

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, and to establish a permitting program for such sources, as provided in Sections 40000, 40001, 40702, and 42300 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 Air District's permitting regulations in District Regulation 2;

WHEREAS, the Air District's permitting regulations need to be amended to provide additional protections to disadvantaged communities within the Bay Area that experience disproportionately high levels of air pollution;

WHEREAS, the Air District's permitting regulations also need to be amended to update the regulations' health risk evaluation procedures so that the Air District uses the most accurate and up to date information when it assesses health risks from proposed projects;

WHEREAS, the Air District's permitting regulations also need to be amended to update and clarify internal processing procedures to ensure that the changes referenced in the preceding two Recitals can be implemented effectively;

WHEREAS, Air District staff have prepared proposed amendments to Air District Regulation 2 to accomplish these goals as set forth in Attached A hereto, which include (i) proposed amendments to District Regulation 2, Rule 1 (Permits – General Requirements) and District Regulation 2, Rule 5 (Permits – New Source Review of Toxic Air Contaminants), and (ii) proposed revisions to the District's Health Risk Assessment Guidelines, which are incorporated by reference into Regulation 2, Rule 5, Section 603 (collectively, the "Proposed Amendments");

WHEREAS, Air District staff published a Concept Paper on April 21, 2021, outlining the background and need for amending the District's permitting regulations, and then held a virtual public workshop to discuss conceptual ideas for implementing these necessary amendments with interested members of the public on May 12, 2021;

WHEREAS, Air District staff then published an initial draft of the Proposed Amendments on July 22, 2021, and held a further virtual public workshop to discuss the initial draft with interested members of the public on August 24, 2021;

WHEREAS, based on comments received on the initial draft amendments, and upon further consideration and analysis of the issues involved, Air District staff prepared a final version of the proposed amendments for consideration by the Board of Directors, which was published on October 19, 2021;

WHEREAS, Air District staff also presented briefings to various committees of the Board of Directors during this rule development process, including to the Stationary Source & Climate Impacts committee on May 17, 2021, and September 27, 2021, and to the Community Equity, Health & Justice Committee on July 1, 2021;

WHEREAS, Air District staff received important public feedback during this public engagement process, which is reflected in the final version of the Proposed Amendments that staff proposed for adoption by the Board of Directors;

WHEREAS, community advocates raised certain legal and policy concerns during the rule development process that were beyond the scope of the Proposed Amendments, but which Air District staff and the Board of Directors agree are important and should be addressed in future rule development activities;

WHEREAS, Air District staff intend to develop further rule amendments for consideration by the Board of Directors to address these legal and policy concerns raised by community advocates;

WHEREAS, Air District staff have 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 Amendments, and how the Proposed Amendments will effect the Air District's permitting program, which Staff Report has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, on or before October 19, 2021, Air District staff published in newspapers and published and distributed on the Air District's website a notice of a public hearing on December 15, 2021, to consider adoption of the Proposed Amendments;

WHEREAS, in connection with the notice of public hearing, Air District staff invited interested members of the public to submit comments on the Proposed Amendments, and have prepared summaries of the comments received and staff's responses in a Response to Comments document, which has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on December 15, 2021, 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 Amendments in accordance with all provisions of law;

WHEREAS, at the public hearing, the subject matter of the Proposed Amendments 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 Amendments are necessary; that the District has the authority to adopt the Proposed Amendments; that the Proposed Amendments are clearly written and displayed; that the Proposed Amendments are consistent with other legal requirements; that the Proposed Amendments are not impermissibly duplicative of existing regulatory requirements; and that the Proposed Amendments 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 Amendments to Regulation 2 (i) to provide additional protections and transparency in connection with permitting new and modified sources of air pollution in overburdened communities; (ii) to update the Regulation's health risk evaluation procedures to incorporate the most accurate and up-to-date information and practices; and (iii) to update and clarify the Air District's permit processing procedures to ensure that the changes referenced in (i) and (ii) can be implemented effectively;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Air District has the authority to adopt the Proposed Amendments pursuant to Sections 40000, 40001, 40702, and 42300 of the Health & Safety Code, which authorize the Air District to adopt and implement regulations to control air pollution emissions from stationary sources, to execute the powers and duties imposed upon the Air District, and to establish a permitting program for air pollution sources, among other things;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined, based on a review of the text of the Proposed Amendments set forth in Attachment A and the rulemaking materials prepared by District staff, that the Proposed Amendments are written and displayed so that their meaning can be easily understood by the persons directly affected by the Rules addressed by the Proposed Amendments, and by the public at large;

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 regulations, except to the extent necessary and proper to execute the powers and duties granted to and imposed upon the Air District as the agency responsible for implementing state and/or federal permitting requirements 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 Amendments will implement, interpret and/or make

specific the provisions of Sections 40000, 40001, 40702, and 42300 of the California Health & Safety Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District finds and intends that its determinations stated in the preceding paragraphs to constitute the findings the Board is required to make before adopting the Proposed Amendments pursuant to Health & Safety Code Section 40727;

WHEREAS, in accordance with the requirements of Health & Safety Code Section 40728 and other requirements of law, the Air 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 Initial Study prepared for the project 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, CA 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 Amendments and has reviewed and considered the Socioeconomic Impact Analysis for the Proposed Amendments prepared by BAE Urban Economics, and has determined that the Proposed Amendments will not have any significant adverse socioeconomic impacts;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District finds and determines that the Proposed Amendments are a "project" pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* (CEQA);

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

WHEREAS, Air District staff have prepared an Initial Study for the Proposed Amendments pursuant to the requirements of CEQA, including but not limited to Sections 15063 and 15365 of the CEQA Guidelines, with assistance from and based on information and analysis developed by the Air District's CEQA Consultant Environmental Audit, Inc.;

WHEREAS, the Initial Study determined that the Proposed Amendments will not have any significant effect on the environment;

WHEREAS, based on the Initial Study and all of the information in the administrative record for the Proposed Amendments, Air District staff have prepared a proposed Negative Declaration for review and consideration by the Board of Directors, which finds that the Proposed Amendments will not have any significant effect on the environment;

WHEREAS, Air District staff published and provided notice of the Initial Study and proposed Negative Declaration on or before October 19, 2021, pursuant to all applicable requirements of CEQA, including but not limited to Section 15072 of the CEQA Guidelines, which included publication of notice in Bay Area newspapers, in County Clerks' offices, on the Air District's website, by email and United States mail;

WHEREAS, in connection with the notice of the Initial Study and proposed Negative Declaration, Air District staff invited interested members of the public to submit comments on the Initial Study and proposed Negative Declaration, and staff have prepared summaries of the comments received and staff's responses in the Response to Comments document referred to above, which has been considered by the Board of Directors and is incorporated herein by reference;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has considered the entire record, including the Initial Study and the public comments received, and has determined using its own independent judgment and analysis that there is no substantial evidence that the Proposed Amendments could have a significant effect on the environment, and has therefore determined that it is appropriate to adopt the Negative Declaration as proposed by Air District staff pursuant to Section 15074 of the CEQA Guidelines; and

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District finds that it is necessary and appropriate to adopt the Proposed Amendments with a future effective date of July 1, 2022, to allow time for Air District staff to develop, and the Board of Directors to consider, amendments to the District's fee schedule that may be necessitated as a result of the Proposed Amendments.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Negative Declaration set forth in attachment B hereto and incorporated by reference as if fully set forth herein, finding that, in the Board's own independent judgment and analysis, and based on the whole record (including the Initial Study, the proposed Negative Declaration, and any and all public comments received), there is no substantial evidence that the Proposed Amendments will have a significant effect on the environment;

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the proposed amendments to Air District Regulation 2, Rule 1 (Permits – General Requirements), and Regulation 2, Rule 5 (Permits – New Source Review of Toxic Air Contaminants), as set forth in Attachment A hereto and incorporated by reference as if fully set forth herein, with an effective date of July 1, 2022, and with instructions to staff to correct any typographical or formatting errors before final publication;

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby approve the revisions to the Air District's Health Risk Assessment Guidelines, as set forth in Attachment A hereto and incorporated by reference as if fully set forth herein, with an effective date of July 1, 2022, and with instructions to staff to correct

any typographical or formatting errors before final publication;

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby direct that the amendments to Air District Regulation 2, Rule 1 (Permits – General Requirements), Regulation 2, Rule 5 (Permits – New Source Review of Toxic Air Contaminants), and Health Risk Assessment Guidelines adopted herein shall not take effect until July 1, 2022, and that the pre-existing versions of those Rules and Guidelines in effect prior to the adoption of this Resolution shall remain in force and effect up until July 1, 2022;

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District directs Air District staff to continue to engage community advocates on methods to address the legal and policy concerns raised during the rulemaking process for the Proposed Amendments, including developing additional proposed amendments to Air District Rules and Regulations and including additional environmental justice considerations in the permitting process;

BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District directs Air District staff to form a working group comprised of regional operators of publicly owned treatment works to help facilitate the implementation of the Proposed Amendments and address other concerns related to toxic air contaminant reduction at these facilities and future rule development; the working group will provide updates to this Board of Directors on a regular basis;

BE IT FURTHER RESOLVED that the record documents and other materials supporting this Resolution shall be maintained and made available for public review at the headquarters of the Bay Area Air Quality Management District at 375 Beale Street, Suite 600, San Francisco, CA 94105, and that the custodian for these documents and other materials shall be Marcy Hiratzka, Clerk of the Boards.

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 CUTTER, seconded by VICE CHAIR MITCHOFF, on the 15th day of DECEMBER 2021, by the following vote of the Board:

AYES: John Bauters, Cindy Chavez, Pauline Russo Cutter, John Gioia, David Haubert, David Hudson, Davina Hurt, Tyrone Jue, Nate Miley, Karen Mitchoff, Rob Rennie, Katie Rice, Mark Ross, Brad Wagenknecht.

NOES: NONE.

ABSENT: Margaret Abe-Koga, Teresa Barrett, David Canepa, Rich Constantine, Carole Groom, Erin Hannigan, Lynda Hopkins, Myrna Melgar, Shamann Walton, Lori Wilson.

ABSTAIN: NONE.

ATTEST:



Cindy Chavez
Chairperson of the Board of Directors



John J. Bauters
Secretary of the Board of Directors