

1 SETTLEMENT AGREEMENT BY AND BETWEEN  
2 COMMUNITIES FOR A BETTER ENVIRONMENT AND  
3 THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT

4 This Settlement Agreement (“Agreement”) is entered into by and between the BAY AREA AIR  
5 QUALITY MANAGEMENT DISTRICT (“Air District” or “District”) and COMMUNITIES FOR A  
6 BETTER ENVIRONMENT (“CBE”) (hereinafter referred to collectively as the “Parties,” and  
7 individually each as a “Party”) to fully and completely resolve CBE’s claims alleged and asserted  
8 against the Air District in *Communities for a Better Environment v. Bay Area Air Quality Management  
9 District et al.*, Alameda County Superior Court Case No. 22CV020451.

10 RECITALS

11 WHEREAS, the Air District adopted Regulation 11, Rule 18 (“Regulation 11-18”), a rule  
12 designed to reduce risks to community health from exposure to industrial air emissions, on November  
13 14, 2017;

14 WHEREAS, the Air District published an “Implementation Procedures” document in April of  
15 2018 describing procedures Air District staff would follow to implement Regulation 11-18, and  
16 subsequently published a revised version of the “Implementation Procedures” document in August of  
17 2020;

18 WHEREAS, CBE filed a “Petition for Writ of Mandate and Complaint for Declaratory and  
19 Injunctive Relief” (“Petition”) against the Air District on October 25, 2022, alleging (in addition to other  
20 claims asserted against other parties) that the 2020 Implementation Procedures document is an  
21 “underground regulation” that should have been, but was not, adopted through procedures required by  
22 the Administrative Procedure Act;

23 WHEREAS, although the Air District denies the claims and allegations against it in the Petition,  
24 the Parties have been working cooperatively to find ways in which the Air District can improve  
25 transparency and public participation in its programs as a means to resolve the matter without the need  
26 for litigation, which would be in the interests of both Parties and in the public interest;

27 WHEREAS, the Parties now agree that this Agreement has been negotiated by the Parties in  
28 good faith and will avoid litigation among the Parties regarding the allegations in CBE’s Petition, and  
that this Agreement is fair, reasonable, and in the public interest.

1 AGREEMENT

2 NOW, THEREFORE, based on the foregoing recitals, and in consideration of the mutual  
3 promises and covenants contained in this Agreement, and for other good and valuable consideration, the  
4 receipt and sufficiency of which are hereby acknowledged, the Air District and CBE hereby agree to and  
5 enter into this Settlement Agreement as follows:

6 1. Withdrawal of 2020 Implementation Procedures Document. Within five (5) calendar days  
7 after the Effective Date of this Agreement, the Air District shall withdraw the 2020 Implementation  
8 Procedures document for Regulation 11-18 and watermark the Air District's website version with text  
9 indicating it has been withdrawn.

10 2. Development of New Implementation Procedures Document With Full Public Notice and  
11 Opportunity to Comment. The Air District shall develop and publish a new Implementation Procedures  
12 document after public notice and an opportunity to comment pursuant to the following procedures:

13 a) *Meet and Confer Regarding Draft Implementation Procedures Document:* The Parties shall meet  
14 and confer regarding suggestions and proposals CBE may have for improving the  
15 Implementation Procedures. The Parties shall convene an initial meeting for this purpose no later  
16 than forty-five (45) calendar days after the Effective Date of this agreement. The Parties may  
17 convene additional meetings as appropriate for further discussions, in addition to communicating  
18 via email and/or other means. The Air District shall discuss and consider CBE's suggestions and  
19 proposals in good faith and shall incorporate them, to the extent feasible in light of technical,  
20 legal, and resource constraints and other similar limitations on Air District action, into the draft  
21 Implementation Procedures document developed pursuant to subparagraph 2.b. below.

22 b) *Publication of Draft Implementation Procedures for Notice and Comment:* The Air District shall  
23 develop and publish a draft Implementation Procedures document, taking into account CBE's  
24 input and suggestions developed through the discussions held pursuant to subparagraph 2.a.  
25 above. The Air District shall finalize and publish the draft Implementation Procedures document  
26 within one hundred twenty (120) calendar days after the Effective Date of this Agreement.

27 c) *Public Notice of Draft Implementation Procedures and Opportunity to Comment:* Before the  
28 commencement of the Public Comment Period provided pursuant to subparagraph 2.d. below,

1 the Air District shall provide public notice of (i) the availability of the Draft Implementation  
2 Procedures published pursuant to subparagraphs 2.a. and 2.b. above; (ii) the opportunity to  
3 provide public comment pursuant to subparagraph 2.d. below; and (iii) the public workshop that  
4 will be held pursuant to subparagraph 2.e. below. The Air District shall provide this public notice  
5 in compliance with all of the notice requirements applicable to Air District rulemaking activities  
6 under Health & Safety Code sections 40725 and 40726. The agreement to provide public notice  
7 and comment pursuant to this Paragraph 2 is not, and shall not be construed as, an admission or  
8 concession by either Party that such notice and comment procedures are or are not required for  
9 publication of Implementation Procedures.

10 d) *Public Comment Period:* The Air District shall provide a public comment period of no less than  
11 forty-five (45) calendar days from the date of the public notice provided pursuant to  
12 subparagraph 2.c. above, during which time the Air District shall invite and accept public  
13 comment on the draft Implementation Procedures document published pursuant to this Paragraph  
14 2.

15 e) *Public Workshop:* During the public comment period provided pursuant to subparagraph 2.d.  
16 above, the Air District shall hold a public workshop for the purpose of answering questions about  
17 the draft Implementation Procedures and receiving oral and written comment. The public  
18 workshop shall be held no earlier than thirty (30) calendar days following the date of the public  
19 notice provided pursuant to subparagraph 2.c. above, and no later than fourteen (14) calendar  
20 days before the end of the public comment period established pursuant to subparagraph 2.d.  
21 above.

22 f) *Consideration of Public Comments Received and Publication of Final Implementation*  
23 *Procedures Document:* After the conclusion of the public comment period provided under  
24 subparagraph 2.d. above, the Air District shall review and consider all comments received during  
25 the public comment period and shall develop and publish the final Implementation Procedures  
26 document taking into account the public comments as the Air District considers appropriate. In  
27 addition, the Air District shall publish a written response to all comments received stating  
28 whether the Air District agrees with them or not and the Air District's reasoning therefor. The

1 Air District shall publish the final Implementation Procedures and Response to Comments  
2 documents within sixty (60) calendar days after the end of the public comment period and shall  
3 post them on the Air District’s website.

4 3. Regulation 11-18 Implementation During the Development of the Implementation  
5 Procedures.

6 a) *Publication of Information Regarding Regulation 11-18 Implementation on Air District*  
7 *Website:* Within 60 days of the Effective Date of this Agreement for subparagraphs (a)(1)  
8 and (a)(2) and within 120 days of the Effective Date of this Agreement for subparagraphs  
9 (a)(3)-(a)(5), and periodically thereafter as indicated below, the Air District shall:

10 (1) revise its web posting at [https://www.baaqmd.gov/~media/files/ab617-community-](https://www.baaqmd.gov/~media/files/ab617-community-health/facility-risk-reduction/hra-facilities/risk-reduction-process-pdf.pdf?la=en)  
11 [health/facility-risk-reduction/hra-facilities/risk-reduction-process-pdf.pdf?la=en](https://www.baaqmd.gov/~media/files/ab617-community-health/facility-risk-reduction/hra-facilities/risk-reduction-process-pdf.pdf?la=en) to update  
12 its process flow chart of the health risk assessment (“HRA”) and risk reduction plan  
13 (“RRP”) process for facilities subject to Regulation 11-18 to:

14 (a) reflect how often BAAQMD screens facility emissions (box 1 on flow chart)  
15 to say, *e.g.*, “Air District screens facilities annually and finds that a facility  
16 exceeds pollutant threshold,” or, “Air District screens facilities when they apply  
17 for a permit to construct and finds that a facility exceeds pollutant threshold”);  
18 and

19 (b) identify the approximate process duration in a typical case from identification  
20 of facility to finalization of RRP;

21 (2) for Tier 1 facilities, update and keep current, the table at  
22 [https://www.baaqmd.gov/community-health/facility-risk-reduction-program/facility-risk-](https://www.baaqmd.gov/community-health/facility-risk-reduction-program/facility-risk-reduction-list)  
23 [reduction-list](https://www.baaqmd.gov/community-health/facility-risk-reduction-program/facility-risk-reduction-list), to identify:

24 (a) the Air District’s prioritization within Tier 1 of facilities for completion of the  
25 HRA/RRP process;

26 (b) the status of each Tier 1 facility in the HRA/RRP process; and

27 (c) the contact information for the BAAQMD staff contact.

28 (3) within 120 days of the Effective Date of this Agreement, and annually thereafter, re-

1 run the Air District's Priority Scoring to determine which facilities subject to Regulation  
2 11-18 shall remain in, be removed from, or be added to Tier 1;

3 (4) on the Air District's website, explain the rationale for any facility's addition to or  
4 removal from Tier 1 (based on, e.g., the facility's increase or reduction in emissions since  
5 the last Priority Scoring); and

6 (5) on the Air District's website, keep current a list of the non-Tier-1 facilities subject to  
7 Regulation 11-18.

8 b) *Regular Meetings of the Parties Regarding Implementation of Regulation 11-18, and*

9 *Responsiveness to Community Regarding Facilities Subject to Regulation 11-18:* The Air

10 District shall meet with CBE and other community-based public interest organizations whose

11 mission focuses on achieving environmental health and justice on a regular schedule to discuss

12 implementation of Regulation 11-18, and to discuss the air quality concerns that motivated this

13 action, for five (5) years after the Effective Date of this Agreement, unless terminated earlier by

14 agreement of the Parties. Meetings shall have the following schedule and scope, with precise

15 dates/times/locations to be determined by the Parties:

- 16
- 17 • Effective date + 4 months:
    - 18 a. Progress on Regulation 11-18 implementation
    - 19 b. Improvements to Air District processes for reporting, confirming, and publicly
    - 20 disclosing odor complaints
  - 21 • Effective date + 8 months:
    - 22 a. Progress on Regulation 11-18 implementation
    - 23 b. Improvements to Air District web site to increase availability of information about
    - 24 facilities subject to regulation 11-18
  - 25 • Effective date + 12 months:
    - 26 a. Progress on Regulation 11-18 implementation
    - 27 b. Progress on odor complaint and web transparency items
  - 28 • Last meeting date + 6 months, until agreement termination
    - a. Progress on Regulation 11-18 implementation

4. Filing and Publication of Settlement Agreements. The Air District shall file with the  
appropriate court and post on the Air District's public website (i) this Agreement, and (ii) all other  
agreements entered into after the effective date of this Agreement settling any lawsuit against the Air

1 District that involves the Air District's exercise of its regulatory authority over air pollution and air  
2 pollution emission sources within its jurisdiction, including without limitation the adoption and  
3 enforcement of regulations, the issuance of permits, the enforcement of its regulations, and any other  
4 issue related to its public functions as a governmental regulatory agency. Lawsuits against the Air  
5 District acting as a private entity (e.g., tort claims for personal injury involving alleged negligence by an  
6 Air District employee, employment claims involving the Air District as an employer, contract claims  
7 involving a vendor providing goods or services to the Air District, etc.) are excluded from this provision.

8       5.     Public Notice and Opportunity to Comment on Future Regulations. The Air District shall  
9 provide for public notice and comment in accordance with Health and Safety Code sections 40725 and  
10 40726 when adopting, amending, or repealing any rule or regulation.

11       6.     Dismissal of Petition as Against the Air District. The Parties have entered into this  
12 Agreement to fully settle and resolve all of CBE's claims against the Air District alleged and asserted in  
13 CBE's Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed in the  
14 matter of *Communities for a Better Environment v. Bay Area Air Quality Management District et al.*,  
15 Alameda County Superior Court Case No. 22CV020451 ("Petition"). Within ten (10) calendar days after  
16 the Effective Date of this Agreement, CBE shall serve and file with the Court a request to dismiss the  
17 Petition as against the Air District with prejudice pursuant to Code of Civil Procedure section 581. In the  
18 event that the Court does not dismiss the Petition as against the Air District, this Agreement shall be null  
19 and void.

20       7.     Costs and Attorneys' Fees. Each Party shall bear its own costs of this action, including  
21 attorneys' fees and costs.

22       8.     Meet-and-Confer Requirement in the Event of Breach. In the event that one Party  
23 believes that the other Party is or will be in breach of this Agreement, the Parties will meet and confer  
24 regarding the alleged breach and how it may be cured before any Party may take action to enforce this  
25 Agreement. If the Parties cannot agree to a mutually acceptable resolution following this meet-and-  
26 confer session, the Parties shall engage in non-binding mediation at the Air District's expense to try to  
27 resolve their differences, unless the Air District waives this requirement. The Air District shall pay for  
28 the costs of any such mediation, but each Party shall be responsible for their own costs and attorneys

1 fees associated with preparing for and participating in the mediation.

2 9. Representation by Counsel. The Air District and CBE are each separately represented by  
3 counsel of their choosing, and have consulted with their separate and individual counsel about the terms  
4 of this Agreement.

5 10. Effective Date. The Effective Date of this Agreement shall be the date upon which it is  
6 signed by both of the Parties.

7 11. No Admission of Liability. This Agreement does not constitute an admission by the Air  
8 District of any claims or allegations in CBE's Petition. This Agreement does not limit or affect the rights  
9 of the Air District against any third parties not party to this Agreement, nor shall this Agreement be  
10 construed to create rights in, or grant any cause of action to, any third party not party to this Agreement.  
11 The Air District reserves all defenses and all rights and remedies, legal and equitable, available to it in  
12 any action by a non-party to this Agreement regarding the allegations in the Petition.

13 12. Force Majeure. If any event beyond the control of a Party occurs that may delay the  
14 performance of that Party's Obligation(s) under this Agreement, the Party shall notify the other Party as  
15 soon as practicable, and the Parties shall negotiate a modification to this Agreement that will allow the  
16 Party additional time needed to perform its obligation(s).

17 13. Dispute Resolution. If any dispute arises regarding this Agreement, the Parties shall first  
18 notify one another of any dispute and attempt to resolve it informally before taking legal action. If  
19 notification of a dispute or legal action is taken, the obligation as to which the dispute or action relates  
20 shall not be taken or continued until the dispute or legal action is finally resolved or adjudicated.

21 14. Paragraph Headings. Headings to the sections of this Agreement, as set forth in  
22 underlined or italicized type, are provided for convenience only, and they are not part of and do not  
23 affect the meaning or interpretation of the provisions of this Agreement.

24 15. Entire Agreement. This Agreement constitutes the entire agreement and understanding  
25 between the Parties, and fully supersedes and replaces any and all prior negotiations and agreements of  
26 any kind or nature, whether written or oral, between the Parties concerning the claims alleged in CBE's  
27 complaint.

28 16. Modification of Agreement. No agreement to modify, amend, extend, supersede,

1 terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is  
2 in writing and signed by the Parties.

3 17. California Law Governs. This Agreement shall be interpreted and enforced in accordance  
4 with the laws of the State of California, without regard to California's choice-of-law rules.

5 18. Notices. Unless otherwise specified in this Agreement, whenever notice or  
6 communications are required by or related to this Agreement, they shall be made and provided in  
7 writing by email as provided below:

8 As to the Air District:  
9 Bay Area Air Quality Management District  
10 Alexander G. Crockett, General Counsel  
11 [ACrockett@baaqmd.gov](mailto:ACrockett@baaqmd.gov)

12 As to CBE:  
13 Shana Lazerow, Legal Director  
14 [slazerow@cbecal.org](mailto:slazerow@cbecal.org)

15 with a CCs to the UC Berkeley Environmental Law Clinic:  
16 Steve Castleman, Staff Attorney  
17 [scastleman@clinical.law.berkeley.edu](mailto:scastleman@clinical.law.berkeley.edu)  
18 Claudia Polsky, Director,  
19 [cpolsky@clinical.law.berkeley.edu](mailto:cpolsky@clinical.law.berkeley.edu)

20 Each of the Parties may, by written notice to the other Party, change its designated notice recipient(s) or  
21 notice address provided above.

22 19. Applicability of Agreement. Upon execution by both Parties, this Agreement will become  
23 final and binding upon CBE and any of its principals, officers, receivers, trustees, successors and  
24 assignees, subsidiary and parent organizations, and the Air District and any successor agency that may  
25 have responsibility for and jurisdiction over the subject matter of this Agreement.

26 20. Severability. Each provision of this Agreement is severable, and in the event that any  
27 provision, or part thereof, of this Agreement is held to be illegal, invalid or unenforceable in any  
28 jurisdiction, the remainder of this Agreement remains in full force and effect.

21. Jointly Drafted Document. The Air District and CBE have jointly prepared this  
Agreement. This Agreement shall be deemed to have been jointly drafted by the Parties for the purpose  
of applying any rule of construction to the effect that ambiguities are to be construed against the party



1 drafting the agreement.

2 19. Signatures and counterparts. This Settlement Agreement may be executed in  
3 counterparts. Electronic, facsimile, and photocopied signatures shall be considered as valid signatures.

4 20. Authority of Signatories. Each of the undersigned expressly represents that he or she is  
5 authorized to execute this Agreement on behalf of the Party for whom he or she signs below.


6 \* \* \* \* \*

7 SO AGREED, STIPULATED AND EXECUTED:

8 BAY AREA AIR QUALITY  
9 MANAGEMENT DISTRICT  
10 375 Beale Street, Suite 600  
11 San Francisco, California 94105

COMMUNITIES FOR A BETTER  
ENVIRONMENT  
6325 Pacific Blvd., Suite 300  
Huntington Park, CA 90255

12 By:   
7314B577922A46A...

By: 

13 PHILIP M. FINE  
EXECUTIVE OFFICER/APCO

DARRYL MOLINA SARMIENTO  
EXECUTIVE DIRECTOR


13 Date: 9/2/2023

Date: August 31, 2023

15 APPROVED AS TO FORM BY:  
16 BAY AREA AIR QUALITY  
17 MANAGEMENT DISTRICT  
18 375 Beale Street, Suite 600  
San Francisco, California 94105

APPROVED AS TO FORM BY:  
ENVIRONMENTAL LAW CLINIC  
UC BERKELEY SCHOOL OF LAW  
434 Law Building (N. Addition)  
Berkeley, CA 94720-7200

19 By:   
6DC7110552B5451...  
20 ALEXANDER G. CROCKETT, ESQ.  
21 DISTRICT COUNSEL

By:   
22 CLAUDIA POLSKY  
23 DIRECTOR

24 Date: 9/2/2023  
25 \_\_\_\_\_, 2023

Date: August 30, 2023