UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 26, 2012

Carol Lee, Senior Air Quality Engineer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

RE: EPA Comments on Draft Proposed Regulation 2, Rules 1 and 2

Dear Ms. Lee:

Thank you for the opportunity to review the draft revisions to Bay Area Air Quality Management District's (District) Regulation 2, Rules 1 and 2. We would also like to thank you for meeting with us to discuss our preliminary draft comments on these revisions. These draft revisions include adoption of the Prevention of Significant Deterioration (PSD) program, incorporation of fine particulates ($PM_{2.5}$) and greenhouse gas (GHG) requirements into the California State Implementation Plant (SIP), and other clarifying revisions to the SIP.

We have completed our initial review of the draft rule revisions and are providing comments in the enclosed attachment. Many of these comments are approvability issues which must be addressed prior to submittal of the rules for SIP approval. We will continue to work with you to resolve these issues before the revisions are adopted and submitted to the U. S. Environmental Protection Agency (EPA) for SIP approval. If you have any questions regarding these comments, please feel free to contact Shaheerah Kelly of my staff at (415) 947-4156.

Sincerely,

for Gerardo C. Rios
Chief, Permits Office
Air Division

Enclosure

cc: Alexander Crockett, BAAQMD
Gregory Stone, BAAQMD

ENCLOSURE

EPA Region 9 Comments on the DRAFT Revisions to BAAQMD Regulation 2, Rules 1 &2

I. REGULATION 2, RULE 1

1. Exemptions

a. The District must provide an analysis for each new or revised exemption (compared to current SIP version) consistent with Section 110(l) of the Clean Air Act (Act) and Title 40, Code of Federal Regulations, Section 51.160(e) (40 CFR 51.160(e)). 40 CFR 51.160(e) requires that the SIP contain provisions that identify the types and sizes of facilities, buildings, structures, or installations which will be subject to review, and discuss the basis for determining which facilities will be subject to review (i.e., justify exemptions from permit requirements). Since new exemptions typically mean fewer sources are subject to permit and emission control requirements, the analysis must show how exempting these new sources will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. (See section 110(l) of the Act). Based on EPA's discussions with the District on June 28, 2012, we understand District Staff are preparing this analysis.

b. District Rule 2-1-502 states "any person asserting that a source is exempt...shall, upon the request of the APCO, provide 'substantial credible evidence' proving to the APCO that the source meets all requirements necessary to qualify for the exemption." Many of the exemptions in sections 2-1-103 through 2-1-128 contain emission thresholds which may require the source to maintain usage, purchase or other types of monitoring records to demonstrate that their exemption status is applicable. To ensure these exempted sources are aware of the need to maintain appropriate documentation that can serve as "substantial creditable evidence," we recommend that District Rule 2-1-502 be revised to clarify that credible evidence means maintaining various types of records, such as purchase or usage records, or other documentation. Another alternative is to add specific language that records must be maintained to provide credible evidence of the applicability and compliance with a stated exemption.

2. Applicability Procedures for Determining if a Project will Result in a Major Modification

a. The procedures for determining nonattainment New Source Review (NSR) applicability are contained in 40 CFR 51.165(a)(2), and those for determining Prevention of Significant Deterioration (PSD) applicability are contained in 40 CFR 51.166(a)(7). Subparagraph 51.165(a)(2)(ii) states: Each plan shall use the specific provisions of paragraphs (a)(2)(ii)(A) through (F) of this section. Deviations from these provisions will be approved only if the State *specifically demonstrates* that the submitted provisions are *more stringent than or at least as stringent* <u>*in all respects*</u> as the corresponding provisions in paragraphs (a)(2)(ii)(A) through (F) of this section. (*Emphasis added*) Thus these specific procedures ("Federal

Modification Test") are required plan elements which must be included for SIP approval of the proposed rule revisions.

The Federal Modification Test requires existing major facilities to calculate emission increases to determine if a physical or operational change triggers major NSR requirements (i.e., best available control technology (BACT), offsets, and/or air quality modeling or monitoring). In general, emission increases are determined by taking the difference between the "baseline actual emissions" before a change and the "projected actual emissions" or "potential to emit" (PTE) after a change, and net emission increases are determined by also adding any contemporaneous increases and subtracting any contemporaneous decreases from the source. Changes at a facility that result in both a significant emissions increase and a significant net emissions increase are subject to major NSR requirements.

The District's applicability procedures differ from the required Federal Modification Test in several important aspects. First, under the District's procedures, an existing facility undergoing a change must determine whether a change is a "modified source" as defined in District Rule 2-1-234 ("District Modification Test"). In general, a "modified source" is any action that results in an emissions increase in an existing source's PTE, regardless of whether the facility is a major or non-major existing facility. Emission increases are calculated based on the difference between a source's PTE before and after a change (i.e., a "PTE to PTE" test). A source that meets the definition of a "modified source" is then subject to the NSR permitting requirements in Regulation 2, Rule 2. Second, if the changed source will result in a "modified source", then the emission increase is calculated in accordance with District Rule 2-2-604, to determine if it triggers the emission thresholds in Regulation 2, Rule 2 for BACT and offsets, as well as other substantive requirements such as public participation.

According to the District's "Updates for NSR and Tile V Permitting Programs, Regulation 2 – Rules 1, 2, 4 & 6, Background Discussion for Second Draft of Proposed Amendments & Responses to Comments Received on First Draft" dated May 25, 2012 ("May 25, 2012 Response to Comments Document"), the District states that the District Modification Test is at least as stringent as, and likely more stringent than, EPA's Federal Modification Test. The District states for example that its approach has no "significance" threshold below which a modification is not subject to NSR requirements, such that ***any*** increase in a source's PTE is a "modification" subject to NSR permitting requirements. Additionally, the District Modification Test requires facilities to evaluate not only annual emission increases, but also daily emission increases to determine whether a change is a modification.

While EPA acknowledges that the District Modification Test may be more stringent in some respects when compared to the Federal Modification Test, it is not "at least as stringent in all respects." The Federal Modification Test requires evaluating emission increases on an "actual to projected or potential" basis. The purpose of this test is to evaluate the actual emission increase by the project, rather than the allowable emission increase. For example, an existing source with a PTE emission limit that is significantly higher than its actual emission rate prior to a project could propose changes that will make it economically feasible to operate the source again at a higher production rate. In such a case, there may be a

significant emission increase in actual emissions[1], but no increase in the PTE of the source. In this regard, the District NSR rules are not "*more stringent than or at least as stringent in all respects* as the corresponding provisions in paragraphs (a)(2)(ii)(A) through (F)...". Since some projects that would otherwise require a federal NSR permit are not required to obtain one under the District's proposed NSR regulations, the use of a PTE to PTE test to determine if a proposed project will result in a "modification" subject to further NSR regulations is not acceptable.

EPA notes that the language provided in the latest draft of Regulation 2, Rule 1 pertaining to applicability determinations would be acceptable in that it requires a project to perform the Federal Modification Test, and if the source is not a federal "major modification", then the District Modification Test may be used to determine which additional requirements apply to the proposed project. The draft revisions to Regulation 2, Rule 1 (see section 234) provided in the May 25, 2012 Response to Comments Document appear to contain new language that would be at least as stringent as the Federal Modification Test requirements in 40 CFR 51.165(a)(2) and 40 CFR 51.166(a)(7). However, the District has stated that it has provided this draft revision language only for public comment consideration and does not plan on retaining this revision unless it receives comments from EPA stating the rule is not approvable for the SIP without this revision.

The District also stated in their May 25, 2012 Response to Comments Document that EPA has already approved similar PTE to PTE tests in other California air district SIPs, further suggesting that this test is at least as stringent as the Federal Modification Test and approvable by EPA under the Clean Air Act. EPA disagrees. EPA reviewed the cited rules and has discussed them with the other respective California air districts to confirm that these rules only allow a PTE to PTE test after a test that meets the Federal Modification Test is performed to verify the project does not result in a "major modification."

In sum, as discussed above, EPA's regulations require that deviations from the Federal Modification Test be approved only if the District specifically demonstrates that the submitted provisions are, *in all respects*, more stringent than, or at least as stringent as, the corresponding provisions in 40 CFR 51.165(a)(2) and 40 CFR 51.166(a)(7). The approach contained in the proposed rules is not "at least as stringent" as required by the federal programs, because an existing source could be modified or a new source added to a facility where the emission increase would be greater than the definition of a significant emission increase under the NSR program requirements, but not trigger the District's modification applicability determination (based on a PTE to PTE test) to see if a source is a major modification. Because there are some respects in which the District Modification Test is less stringent than the Federal Modification Test, the District's current proposed rule is not approvable for purposes of the Federal Modification Test.

b. As mentioned above, the latest draft revisions to Regulation 2, Rule 1 (see section 234) released by the District on May 25, 2012 appear to contain new language that would be as stringent as the Federal Modification Test requirements in 40 CFR 51.165(a)(2) and 40 CFR

[1] As "significant" is defined in 40 CFR 51.165(a)(1)(x)(A) and 40 CFR 51.166(b)(23).

51.166(a)(7). However, this provision must include the appropriate citations for the Federal Modification Test. This deficiency may be remedied by making the following revisions in bold/underline.

"234.2 Increase Over Actual Emissions Baseline: An increase that is a "major modification" under either of the following definitions:

2.1 Non-Attainment NSR Pollutants: For NOx, VOC, $PM_{2.5}$, and SO_2, a "major modification" as defined in 40 C.F.R. 51.165(a)(1)(v), ***determined pursuant to the requirements of 40 C.F.R. 51.165(a)(2)(ii)(A) through (F)***;

2.2 Other Federal NSR Pollutants: For other pollutants, a "major modification" as defined in 40 C.F.R. 166(b)(2), ***determined pursuant to the requirements of 40 C.F.R. 51.166(a)(7)(i) through (vi)***."

c. We note that the District's proposed revisions to District Rule 2-1-234 state: "To make any physical change, change in method of operation, change in throughput or production, or other similar change at an existing source, that results in an increase in daily or annual emissions." Please clarify whether daily emission increases are meant to apply to the Federal Modification Test in 2-1-234.2. Please note that emission increases under the Federal Modification Test are based on annual emission increases, not daily. If the District wants to include daily emission increases, the rule must explain how these daily increases are expected to be calculated using the Federal Modification Test.

3. **Particulate Matter Measurements** – District Rule 2-1-603 must include a requirement for approval of both the Air Pollution Control Officer (APCO) and EPA for use of other test methods. This can be remedied by adding the following revision in bold/underline: "Particulate Matter Measurements: $PM_{2.5}$ and PM_{10} shall be measured as prescribed in EPA Methods 201A and 202 (for measurements of emissions from specific sources) and in 40 C.F.R. Parts 50, 53 and 58 (for measurements of ambient concentrations). If such test methods cannot be used because the physical characteristics of the emissions being measured render such methods inappropriate (e.g., because of the emissions' high moisture content or high temperature), then another appropriate test method may be used upon prior written approval of the APCO ***and EPA***."

II. REGULATION 2, RULE 2

1. Federal Offsets

a. 40 CFR 51.165(a)(3)(ii)(J) specifies that amount of offsets required for a major modification be determined by summing the difference between the allowable emissions (as defined in 40 CFR 51.165(a)(1)(xi)) after the modification and the actual emissions (as defined in 40 CFR 51.165(a)(1)(xii)) before the modification for each emissions unit." However, District Rule 2-2-606.2 in the revised draft rule allows a PTE to PTE test for determining the amount of offsets for a Fully Offset Source as defined in 2-2-213. While it may be appropriate and reasonable to allow this test if offsets were provided in the recent past, such that the source has not yet operated at the emission level offsets were provided for, it is not appropriate to use a PTE to PTE test to determine the amount of offsets required if the unit was fully offset

at any time in the past. EPA believes that this type of test is approvable only if the source was fully offset within the contemporaneous period as defined by your rules.

b. District Rule 2-2-606 in the revised draft rule reads as follows.

"To qualify as emission reduction credits, the emission reductions associated with any such change: (i) must be enforceable through permit conditions; through relinquishment of the source's permit; through physical removal of the source such that reinstallation or replacement would require a new permit under Regulation 2; or in the case of source shutdown where no permit is required for the source being shut down, through an alternative legally-enforceable mechanism ***such as contractual provisions in a legally binding and irrevocable written agreement which provisions are made expressly for the benefit of the District***; and (ii) must be real, permanent, quantifiable, and in excess of any reductions required by applicable regulatory requirements. Emissions that were offset with credits from the Small Facility Banking Account cannot be used to generate emission reduction credits."

The bold/underlined portion above is not approvable and must be removed. The use of a contractual provision is not sufficient to generate enforceable emission reduction credits (ERCs). Based on EPA's discussions with the District on June 28, 2012, we understand District Staff will remove this language.

c. 40 CFR 51.165(a)(3)(ii)(J) and 51.165(a)(1)(xi) require that allowable emissions be as stringent as "applicable standards set forth in 40 CFR part 60 or 61" which is not included in the District rules. This could be remedied by adding the bold/underlined language to District Rules 2-2-603.6 and 2-2-605(2.2).

2-2-603.6: "Determine Adjusted Baseline Emissions Rate: The adjusted baseline emission rate shall be determined by adjusting the baseline emission rate downward, if necessary, to reflect the most stringent of RACT, BARCT, and ***applicable federal and*** District rules and regulations in effect or contained in the most recently adopted Clean Air Plan...."

2-2-605(2.2): "…the source's potential to emit before the modification, adjusted downward, if necessary, to reflect the most stringent of RACT, BARCT, and ***applicable federal and*** District rules and regulations in effect or contained in the most recently adopted Clean Air Plan."

d. District Rule 2-2-603.6 contains the following language: "... except that for purposes of with determining whether a source or group of sources constitutes a PSD Project under Section 2-2-224, the adjusted baseline emission rate shall not be adjusted for reductions required by measures in the current Clean Air Plan approved by the BAAQMD that exceed the reductions required by use of RACT." The purpose and basis of this language is not clear to EPA. The definition of baseline actual emissions in 40 CFR 51.166(b)(47)(ii)(c) reads as follows:

"The average rate shall be adjusted downward to exclude any emissions that would have

exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of §51.165(a)(3)(ii)(G)."

Thus the basis for the baseline actual emission adjustment is any current applicable emission limit (except part 63 limits as noted above), and not RACT levels of control. Please revise this provision to be consistent with the 40 CFR 51.166(b)(47)(ii)(c) requirement.

4. Public Participation for PSD Projects

a. 40 CFR 51.166(q)(2)(v) requires SIPs to provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations. District Rule 2-2-404.6 does not contain a provision allowing for written comments. This may be remedied by making the revisions indicated in bold/underline to District Rule 2-2-404.6: "The APCO may elect to hold a public meeting to receive ***written and*** verbal comment***s*** from the public during the public comment period if the APCO finds that a public meeting is warranted and would substantially enhance public participation in the decision-making process."

b. 40 CFR 51.166(q)(2)(vii) requires SIPs to provide that within one year after receipt of a complete application the permitting authority shall make a final determination whether construction should be approved, approved with conditions, or disapproved. The rule currently does not contain this requirement. This may be remedied by adding the following revisions in bold/underline to 2-2-406: "If an application for an Authority to Construct is subject to the public notice and comment requirements of Section 2-2-404, the APCO shall…take final action on the application within 60 days after the close of the public comment period or within 30 days after final approval of a CEQA Negative Declaration or Environmental Impact Report for the project (if applicable), whichever is later, ***and shall not exceed one year after receipt of a complete application for a PSD Project or within a longer time period if necessary and if consented to by the applicant for a PSD Project***…"

c. Pursuant to 40 CFR 51.166(q)(2)(iv), District Rule 2-2-404.3 or elsewhere in the District's rules must require that the public notice to be sent to any Indian Governing body whose lands *may be affected* by emissions from the source or modification. There are two Indian Tribes located within the District's jurisdictional boundaries that must be notified when projects may affect their lands. The contact information we currently have for these Indian Tribes are listed below. Based on EPA's discussions with the District on June 28, 2012, we understand District Staff will add Indian Governing Bodies to the list of entities requiring notification in District Rule 2-2-404.3.

Lytton Racheria
437 Aviation Boulevard
Santa Rosa, California 95403-9059
(707) 575-5917 (phone)
(707) 575-6974 (fax)
Tribal Leader: Marjorie Mejia, Chairperson
Primary Environmental Contact: Brent Gudzus, Environmental Director

Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, California
(707) 566-2288 (phone)
(707) 566- 2291 (fax)
Tribal Leader: Greg Sarris, Chairman
Primary Environmental Contact: Devin Chatoian, Environmental Director

5. Minor NSR

a. **Public Notification -** The District must provide a justification for the emission threshold(s) selected in District Rule 2-2-404(ii) which apply to minor new sources and minor modifications, which meet the public notification requirements in 40 CFR 51.161(a) – (d).

EPA regulations at 40 CFR 51.160(e) allow State NSR programs to exclude new minor sources and minor modifications from the NSR program so long as such sources and modifications are not environmentally significant, consistent with the de minimis exemption criteria set forth in *Ala. Power Co. v. Costle*, 636 F.2d 323, at 360-361 (D.C. Cir. 1979). Given that 40 CFR 51.160(e) allows for sources and modifications that are not environmentally significant to be excluded entirely from the NSR program, it follows that a State or local agency can choose to exempt some new minor sources or modifications subject to permitting from public participation requirements, but, it must do so consistent with the de minimis principles and by application of well-defined objective criteria. Thus, EPA believes that 40 CFR 51.161(a) allows for the tailoring of the public participation process for less environmentally significant sources and modifications. See, generally, 60 FR 45530, at 45548-45549 (August 31, 1995).

b. **NAAQS Compliance** – Pursuant to 40 CFR 51.160(f), the SIP must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of 40 CFR 51.160. There are several approaches the District can take to make this demonstration, but it must be discussed in the staff report. For example, the District could use dispersion modeling for all new and modified sources that will result in a significant net increase in emissions at both major and non-major facilities to demonstrate that such sources will not cause or contribute to a NAAQS exceedance. Other methods may include demonstrating these emission increases are already accounted for as growth in emission projections of an attainment demonstration. Based on our discussions on June 28, we understand the District will be providing additional information to address this requirement.

6. **Availability of Records –** District Rule 2-2-405 provides that "the APCO shall consider any claims by the applicant regarding the confidentiality of trade secrets, as designated by the applicant prior to submission, in accordance with Section 6254.7 of the California Government Code". The SIP cannot allow any information, including emission data to be withheld if it is not also permissible to withhold that information pursuant to CAA Section 114(c) of the CAA. Please either 1) provide an analysis showing that the California State law cited does not withhold any more information than would be required to be released under the CAA, or 2) revise District Rule 2-2-405 as indicated in bold/underline: "In making information available for public inspection, the APCO shall consider any claims by the applicant regarding the confidentiality of trade secrets, as designated by the applicant prior to submission, in accordance with Section 6254.7 of the California Government Code***, and Section 114(c) of the Clean Air Act***."

7. **Visibility** – Pursuant to 40 CFR 51.307(b)(2), SIPs must contain provisions which require review of any major source or major modification proposing to locate in a nonattainment area, if the source or modification *may have an impact* on visibility in any mandatory Class I Federal Area. District Rule sections 2-2-307, 2-2-401.4, and 2-2-402 were all revised to include major modifications, but do not include *new major facilities* for nonattainment pollutants. This can be remedied by revising the District rule to apply to all new major sources and major modifications (including PSD and nonattainment NSR).

8. **Other** – District Rule section 2-2-407.2 (2.2) as applicable to a modified source, allows a 90 day period after initial operation of the source before the offsets must be "in effect." This language is not approvable. The offset requirement for modified sources must be the same as required for a new source (2.1) in the draft rule. EPA notes that a replacement source is not considered to commence operation until after the end of a shakedown period, and since the offsets must be in effect prior to commencing operation, they are not required until the end of the shakedown period. But to use this provision, the District should specifically add such a provision for replacement units, which may also require a definition for such units. Based on EPA's discussions with the District on June 28, 2012, we understand District Staff will revise the rules to address this issue.

III. DEFINITIONS

1. 40 CFR 51.165(a)(1) and 51.166(b) require that SIPs use the federal definitions listed in these sections, and allow approval of deviations from the wording of these definitions "only if the [permitting agency] specifically demonstrates that the submitted definition is more stringent, or at least as stringent*, in all respects* as the corresponding definitions..." The District's rules do not include several of these definitions. The District has stated that several of these missing terms are "incorporated by reference" because they are included in the definition of a term that is defined within the rule, or that where this is not the case the District will use the general dictionary definition of these terms. This approach is not consistent with the plain requirements of 40 CFR 51.165(a)(1) and 51.166(b). The District rules must include a definition for each term listed in 40 CFR Subpart I, unless the term is not used in the rule. EPA has determined that additional definitions must be provided for the terms listed below. In all cases, the missing definition may be provided by either explicitly defining these terms in the District's rules consistent with the federal definitions, or incorporating the federal definitions by reference into the District's rules.

2. The term "commence" must be defined pursuant to 40 CFR 51.165(a)(1)(xvi), 40 CFR 166(b)(9), and section 169(2)(A) of the Act. Section 165(a) of the Act requires that new and modified major facilities in attainment areas obtain a PSD permit (section 165(a)) before *commencing* construction, and section 173(a) of the Act requires new and modified major facilities in nonattainment areas obtain sufficient offsets before *commencing* operation. The federal definition of "commence" as applied to construction of a new major facility or major modification at an existing major facility means that the owner or operator has all necessary preconstruction approvals or permits **and** either has: (1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. "Commence" must be defined in the District's rules to establish when a facility can commence construction and when a facility will commence operation, to ensure offsets are provided prior to that time.

EPA notes that although section 1-209 of Regulation 1 in the District's rules defines the term "commenced," it is not adequate since it does not require a person (i.e., owner or operator under the District's rules) to have all necessary preconstruction approvals or permits before commencing construction or operation. Alternatively, the District may consider revising this term to meet the federal definition of "commence" by making the following revision in bold/underline to Section 1-209: "Where a person ***has obtained all necessary preconstruction approvals pursuant to 2-1-301 as a precondition to undertaking construction, and either (1)*** has undertaken a continuous program of construction, reconstruction or modification, or ~~a person~~ ***(2)*** has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, reconstruction or modification."

3. Pursuant to 51.165(a)(1)(xv) and 51.166(b)(11), "begin actual construction" must be defined in the District's rules. "Begin actual construction" is generally the initiation of physical on-site construction activities on an emissions unit or facility which are of a permanent nature. This differs from "commencing" construction in which a person or facility can rely on entering into binding contractual obligations to undertake a program of actual construction of the emissions unit or facility.

4. Pursuant to 40 CFR 51.166(b), "baseline concentration", "major source baseline date", and "baseline area" were deleted in the proposed revision of District Rule 2-2, but must be retained for SIP approval.

5. Pursuant to 40 CFR 51.166(b), "subject to regulation" must be defined. Although the District has stated in discussion with EPA that the term is already included because it is used within the incorporated by reference definition of PSD Pollutant (i.e., Any Regulated NSR Pollutant as defined in 40 C.F.R. Section 51.166(b)(49)), this does not satisfy the requirement to include all of the 40 CFR Subpart I definitions.

6. Pursuant to 40 CFR 51.165(a)(1)(xxi) and 40 CFR 51.166(b)(32), the definition for replacement source in District Rule 2-1-232.4 must be consistent with the federal definition of "replacement

unit," or the District must explain how their definition is "at least as stringent." The District's rules must be revised to be consistent with the following provisions pursuant to 40 CFR 51.165(a)(1)(xxi)(A)-(D) and 40 CFR 51.166(b)(32)(i)-(iv) for replacement sources.

- The emissions unit is a reconstructed unit within the meaning of §60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- The replacement does not alter the basic design parameters of the process unit.
- The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

7. EPA identified tribes located within the Bay Area in a previous comment above. If "Indian Governing Body" is added to the list of entities in District Rule 2-2-404.3, this term must be defined in the District's rule pursuant to 40 CFR 51.166(b)(28). "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

8. The definition of "contemporaneous" in 2-2-206 must be revised to be consistent with the federal definition in 40 CFR 51.165(a)(1) & 51.166(b)(9). Based on EPA's discussions with the District on June 28, 2012, we understand the District will make the following change in bold/underline:

> "Contemporaneous: Occurring (i) within a five year period of time immediately prior to the date of a complete application for an authority to construct or permit to operate for a source; ***and/or*** (ii) on or after the date of a complete application for an authority to construct or permit to operate but prior to initial operation of the source (or for a source that is a replacement, in whole or in part, for an existing source, with respect to emission reduction credits being generated by the shutdown of the existing source being replaced, 90 days after initial operation of the replacement source)."

9. The definition of "potential to emit" in District Rule 2-1-217 reads as "any physical or operational limitation...is enforceable by the District *or* EPA." Pursuant to 40 CFR 51.165(a)(1)(iii) and 51.166(b)(4), the definition of "potential to emit" in 2-1-217 must be federally enforceable or practically and legally enforceable. Stating that a limit must be enforceable by the District alone is not sufficient. This can be remedied by making one of the following revisions in bold/underline to District Rule 2-1-217.

- "any physical or operational limitation.....is enforceable by the District ***and*** EPA"; or
- "any physical or operational limitation.....is ***federally enforceable***"; or
- "any physical or operational limitation.....is ***legally and practically enforceable. A physical or operational limitation is enforceable as a practical matter (or practically enforceable) if the physical or operational limitation establishes a clear legal obligation for the source and allow compliance to be verified.***"

10. The term "secondary emissions" is used in District Rule 2-2-102 for control equipment, but is not defined in the revised draft rules. This term must be defined either in accordance with 40 CFR 51.166(b)(18) or based on the meaning of the term as used in the District's rules.

11. EPA notes that the definition of "portable" in District Rule 2-1-220 was deleted from the draft rule revisions. However, this term is used in the following provisions and therefore must be defined in the District's rules to provide clarity and enforceability when the term is used in these provisions.

- 2-1-113.2(2.6)
- 2.1.114.2(2.3)
- 2-1-118.3
- 2-1-232.3

12. EPA notes that the definition of "shutdown" in District Rule 2-1-235 was deleted from the draft rule revisions. However, this term is used in the following provisions, and therefore must be defined in the District's rules to provide clarity and enforceability when the term is used in these provisions.

- 2-1-428.2
- 2-2-206
- 2-2-407.2(2.3)
- 2-2-604.2
- 2-2-606

13. The definition of "Regulated Air Pollutant" in District Rule 2-1-218 is not consistent with the federal definition in 40 CFR 51.165(a)(1)(xxxvii) and 40 CFR 51.166(b)(49). This may be remedied by making the changes indicated in bold/underline.

> "Regulated Air Pollutant: Except for purposes of major facility review in connection with Regulation 2, Rule 6, for which the definition in Section 2-6-222 applies, a regulated air pollutant is any air pollutant that is subject to a ~~regulation adopted or implemented by the District~~ ***Federal and California Clean Air Act regulation.***"

14. The SIP must also include the federal definitions used in 40 CFR 51.165(a)(2)(ii)(A) through (F) and 40 CFR 51.166(a)(7)(i) through (vi) which are incorporated by reference in District Rule 2-2-234.2. These definitions include, but are not limited to, "baseline actual emissions" and "projected actual emissions."