



Western States Petroleum Association  
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Guy Bjerke

Manager, Bay Area Region & State Safety Issues

**VIA ELECTRONIC MAIL**

March 2, 2012

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

RE: Preliminary Comments on Proposed Amendments to Regulation 2 – New Source Review and Title V Permitting Programs

Dear Ms. Lee:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, Washington and Hawaii. Our members in the Bay Area have operations and facilities regulated by the Bay Area Air Quality Management District (BAAQMD or District). WSPA appreciates the opportunity to provide these preliminary comments on the proposed amendments to Regulation 2.

WSPA understands the District's desire to comprehensively update Regulation 2 in light of the Federal mandate to incorporate Particulate Matter (PM) 2.5 and Greenhouse Gases (GHG) into your permitting processes. However, it is the sheer number and extensive nature of the proposed amendments relative to the short timeline for finalization that is our initial concern. How the changes will impact project and operational permitting is only one aspect that must be addressed. We must also consider and resolve how the changes will impact future compliance and potential enforcement issues, especially in respect to PM monitoring and measurements.

Since the District's only hard deadline in considering this matter is the need to incorporate PM 2.5 into your permitting process by December 2012, we suggest the District separate out the basic changes necessary to accomplish that task and make it your initial goal. We want to work collaboratively with the District to ensure that there is a clear understanding of how PM 2.5 is measured, how emissions are calculated, and that future compliance options are considered. Separating and tackling the inclusion of PM 2.5 first will give the District and

stakeholders a more realistic timeframe to consider the rest of the proposed amendments to Regulation 2.

The United States Court of Appeals for the District of Columbia Circuit has recently concluded oral argument in a group of consolidated cases challenging federal regulation of Greenhouse Gases (GHG). *Coalition for Responsible Regulation v. EPA*, D.C. Cir., No. 10-1092, oral argument 2/29/12; *American Chemistry Council v. EPA*, D.C. Cir., No. 10-1167, oral argument 2/29/12. Among other arguments raised by the industry coalition in this regulatory challenge, petitioners note that EPA has devised a PSD regulatory scheme for pollutants in the absence of any corresponding promulgated national ambient air quality standard. For this and other reasons, the industrial petitioners assert that EPA's PSD program for GHG emissions is not consistent with or supported by Title I of the Clean Air Act. It is anticipated that the Court will issue its opinion in these consolidated cases within the next several months.

Because that opinion may dictate that EPA's current PSD regulatory scheme for GHG emissions is not supported by the underlying statute, or otherwise require changes to the current federal program, the District should postpone regulation of GHGs under BAAQMD Reg 2-2, at least until the federal litigation is resolved. In other words, it is unclear what would happen in a scenario where the Court of Appeals were to rule that GHGs could not be regulated under PSD, but the Board approves District rules that regulate GHGs under PSD. In this potential scenario, EPA may lack the authority to grant approval of the District's PSD program, causing unforeseen delays that conflict with the District's need to regulate PM 2.5 prior to the end of this year.

As a policy matter we think there is ample justification for the District to consider including Federal New Source Review (NSR) Reform methodologies for all regulated pollutants and we will be forwarding that information to you. Clearly new pollutants designated by EPA after adoption of SB 288 are eligible to use NSR Reform calculations and we request the District change the proposed amendments accordingly. Further, the Obama Administration is proposing new standards that the District may wish to anticipate by creating options for alternative methodologies.

We are still exploring the impact that the change from implementation of PSD pursuant to the existing delegation of authority from EPA Region 9, to adoption of what will ultimately be a State Implementation Plan-approved PSD program, will have on our permitting and operations. We understand and appreciate the value in avoidance of an unnecessary and duplicative process, including the possibility of lengthy appeals to EPA's Environmental Appeals Board. However, we are concerned that the District's overly strict interpretation of the limitations imposed by SB 288 could result in the postponement or cancellation of energy efficiency projects that would result in a net reduction in pollutants, but, under the District's proposed changes in calculation methodology, might nevertheless trigger PSD review. This would not only threaten the economic viability of these projects, but would forgo important environmental and efficiency reductions.

We are also concerned that the District has already informally determined that the proposed amendments will not have a significant effect on the environment and is proposing to prepare a Negative Declaration for this project under the California Environmental Quality Act (CEQA.) Our initial reaction to the totality of the proposed amendments is a concern that they would have a significant effect on the environment by hindering future permitting, impeding projects and actually delaying emission reductions.

We wish to thank District staff for setting up the Technical Workgroup meeting on February 28<sup>th</sup> following the Workshop on February 22<sup>nd</sup>. We are encouraged by the discussion and feedback received at the meeting regarding the definitions of Modifications and Alterations, Accelerated Permitting and our concern about eliminating “Bubbles.” We look forward to continuing this dialogue at the next Technical Workgroup meeting on March 8<sup>th</sup>.

Further substantive and technical comments will be submitted by the March 27<sup>th</sup> deadline. We appreciate your consideration of these comments. If you have any questions, please contact me at (925) 681-8206.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Bjerke". The signature is fluid and cursive, with the first name "Guy" being more prominent than the last name "Bjerke".

Guy Bjerke  
Manager, Bay Area Region & State Safety Issues

c. Alexander “Sandy” Crockett, Assistant Counsel  
Jim Karas, Director of Engineering  
Greg Stone, Manager – Air Quality Engineer