APPENDIX B – RESPONSES TO PUBLIC WORKSHOP COMMENTS

This document summarizes the comments that Air District staff received on the May 2017 workshop drafts of the proposed amendments to Regulation 2. Air District staff published the drafts in connection with a series of three public workshops held in June of 2017 to discuss the proposal with interested members of the public. The Air District received comments on the workshop drafts from a large number of companies, organizations and individuals, both in writing and verbally at the workshops. Air District staff wish to thank all of the commenters for their insightful comments and suggestions on how to improve the proposed amendments.

Air District staff have considered all of the comments received and have revised the workshop drafts accordingly, as reflected in the final version of the Proposed Amendments. Staff have also prepared specific responses to all of the comments received. These responses are set forth below.

I. Comments on the "Significant Crude Slate Change" Provision

The Air District received numerous comments about the draft provisions that would require petroleum refineries to obtain pre-approval from the District before making any significant changes in their crude slates. As explained in detail in the Workshop Report, Staff proposed this provision in order to help the District enforce its New Source Review permit requirements when refineries change crude slates. If a refinery changes its operations in order to accommodate different crude slates in a way that will increase emissions, such a change is a "modification" that requires an NSR permit. But if the refinery goes ahead and makes such a modification without applying for or obtaining an NSR permit, the Air District may not ever know about the modification because the change may be subtle and not immediately obvious to District inspectors. The proposed change would require refineries to apply for and obtain approval from the Air District for any significant crude slate change, which would give the District full information about the change and an opportunity to determine whether the change involves a "modification" subject to NSR permitting requirements. Reviewing and approving such changes would allow the District to ensure that all NSR requirements are being fully complied with, to the extent that they apply to a given refinery when it changes its crude slate. Staff developed this proposal to implement Control Measure SS17 in the Air District's 2017 Clean Air Plan, *Spare the Air, Cool the Climate*.

A large number of commenters submitted comments on this proposal, some in favor of the proposal and some opposed to it. Many of the comments focused on the details of how the proposal would be implemented, including issues such as how a "significant" crude slate change requiring District pre-approval would be defined, the process and timing for obtaining District review and approval for such a change, and other important implementation issues. Some of the commenters also suggested that District staff should take more time to consider these issues and not move forward with the proposed crude slate provisions in the same rulemaking as the other amendments being considered.

These commenters pointed out that the technical and administrative changes required by EPA have an EPA-imposed deadline and need to be adopted relatively quickly, whereas the proposed crude slate changes do not face the same time pressures. The commenters suggested that the proposed crude slate changes should be decoupled from the technical and administrative changes and should proceed on a separate rulemaking track.

After further analysis of the issues involved, and after considering the points raised in the public comments, Staff have concluded that the most appropriate path forward at this point is to defer action on the proposed crude slate provisions in order to better evaluate how to implement the proposal. Allowing more time before finalizing the proposal will give Air District staff and other stakeholders the chance to consider in more detail exactly how the provision will work in practice.

In particular, deferring final action at this stage will allow staff and stakeholders to review and evaluate additional information about the refineries' crude slates and how crude slate changes may relate to air emissions. The Petroleum Refining Emissions Tracking Rule (Regulation 12, Rule 15) requires refineries to submit crude slate information to the District, but that requirement has only recently taken effect and the District has been receiving the information only for a short period of time. Taking the time for further evaluation will allow more data to be collected.

Moreover, initial indications from reviewing this crude slate data show that in some cases, the attributes of the crude slates that the refineries have processed historically are not "normally distributed," meaning that the observed data points are probably insufficient to get an accurate understanding of the normal variability of the data, which makes it very difficult to determine what is a significant change from normal operations. If the attributes of the crude that a refinery processes are highly variable from month to month even within the same crude source, it can be difficult to determine how much of a change signals a switch to a different crude source. Additional analysis will help Air District staff and stakeholders better understand how to make such a determination. Furthermore, it appears that in some cases historical data about crude slate attributes may not be immediately available and may require additional development. Some information on crude constituents may be able to be re-created from surrogate sources, but doing so will introduce inaccuracies that make it difficult to determine what is normal variation and what is a significant change. Given these circumstances, it would be prudent to take some additional time to assess the available data about the refineries' crude slates more comprehensively, to collect additional data, and to investigate further how changes in crude slates relate to changes in emissions from processing the crude.

For all of these reasons, Air District staff are not finalizing the proposed crude slate provisions at this time. Staff are moving forward with the technical and administrative revisions, which are ready to be finalized and which are under an EPA-imposed deadline for final action. These revisions need to be finalized and approved by EPA before March 1, 2018, or the Bay Area could face sanctions under the Clean Air Act. Staff will continue

to work on developing the proposed crude slate provisions, and will develop a final proposal for consideration by the Board of Directors when all of the implementation details have been fully worked out.

In the meantime, Air District staff will continue to use existing enforcement tools to focus on refinery crude slate changes to help detect and prevent any non-compliance with NSR requirements. Specifically, District staff will continue to review monthly crude slate reports providing information on the attributes of the crude that each refinery processes each month under Regulation 12-15-408. If District staff find significant changes in the crude attributes suggesting that the refinery has changed its crude slate in a significant way, and if there are indications that the refinery may have undertaken a modification in order to accommodate the change, District inspectors and engineering staff will conduct an investigation to determine whether any violations of any NSR permit requirements have occurred. This enforcement approach will provide an effective interim measure to address the potential for NSR non-compliance while the District evaluates how best to implement the proposed crude slate provisions under Clean Air Plan control measure SS-9.

II. Comments on the "Best Available Control Technology" Threshold for Greenhouse Gases

The Air District also received a large number of comments on the proposal to expand the scope of the "Best Available Control Technology" requirement for greenhouse gases. The District proposed in the workshop drafts to require New Source Review permit applicants to implement Best Available Control Technology (BACT) to reduce their greenhouse gas emissions for any new or modified source with an emissions increase of 25,000 tpy CO_2e or more. This would represent a substantial expansion in the scope of the requirement, which currently applies only for projects with increases of 75,000 tpy CO_2e or more, and only at "major" facilities (those with criteria pollutant emissions of over 100 tpy or 250 tpy, depending on the type of facility). Staff developed this proposed change to implement Control Measure SS17 in the 2017 Clean Air Plan.

A large number of commenters commented on this proposal, with some in favor of reducing the threshold at which BACT applies to greenhouse gases (and some suggesting reducing the threshold well below 25,000 tpy), and some opposed to any reduction below the current 75,000 tpy. Some commenters also suggested that the Air District should take a different approach altogether to reducing GHG emissions in the Bay Area in order to achieve the region's aggressive long-term climate protection goals.

After the public workshops, however, the Legislature adopted AB 398, which added a new provision to the Health and Safety Code prohibiting the District from adopting any regulation to control CO_2 emissions from any sources subject to California's cap-and-trade regulations. The legislation amends Health & Safety Code section 38594 to state that "[a] district shall not adopt or implement an emission reduction rule for carbon dioxide from stationary sources that are also subject to [cap-and-trade]." This language effectively prohibits the District from moving forward and adopting the reduced BACT thresholds for

greenhouse gases contemplated by SS17, since nearly all stationary sources with emissions over 25,000 tpy that could be subject to NSR permitting are subject to the cap-and-trade regulations, and since the bulk of their greenhouse gas emissions are CO_2. Staff have therefore removed this provision from the final version of the Proposed Amendments.[1] Staff will continue to evaluate whether any alternative approaches to address non-CO_2 greenhouse gas pollutants (such as methane or black carbon) may be appropriate for further consideration. Any such alternatives would require additional development, however, and are beyond the scope of the current rulemaking project.

III. Comments on the Technical and Administrative Changes to Regulation 2

Comment – Contractors' Equipment Located at the Same Facility for 12 months (Reg. 2-1-213.2): Commenters requested that Air District staff clarify what it means for a source to be "at the facility" for purposes of the proposed provision in Section 2-1-213.2 specifying that equipment owned by a third-party contractor hired by the facility must be included in the facility's permit (and not the third-party contractor's permit) if the equipment remains at the facility for 12 months or more. Specifically, the commenters asked District staff to clarify three points: ***First***, would a source located in a contractor's on-site storage yard at the facility be covered? The commenters stated that if that scenario is included, contractors will simply drive their equipment off-site to avoid the regulation, which would increase emissions. ***Second***, will the 12-month limit be 12 consecutive months, or 12 months in total over all time? The latter would potentially cover sources that are temporary and only used intermittently, but may be used multiple times for short-term temporary purposes at a given facility over the years. ***Third***, what does it mean for a source to be used "for the same purpose" at a facility? For example, what if a pump is used at one storage tank at one time, then at a different storage tank at a different time? What if it is used at a tank first and then subsequently at an oil-water separator?

Response: Regarding the ***first*** question, a contractor's source is covered by the 12-month time limit in proposed Section 2-1-213.2 if it stays anywhere within the facility for 12 consecutive months, regardless of whether it is in a contractor's on-site storage yard or out in other areas of the facility. District staff did not intend to make an exception for this scenario, and there is no language in the proposed regulatory text that makes any exception. Staff's intent is that if a piece of equipment is sufficiently dedicated to serving a single facility that the contractor keeps it at the facility for over a year, then it should be included in the facility's permit and not the contractor's permit. This rationale applies equally whether the contractor is keeping the equipment within its own storage yard or somewhere else within the facility. With respect to the concern about the contractor simply driving the source off-site for a period of time to stop the 12-month clock, if a contractor

[1] Note that the District's authority to maintain the existing 75,000 tpy threshold is not affected. The 75,000 tpy threshold is required under the Federal Clean Air Act as set forth in EPA's implementing regulations in 40 C.F.R. section 51.166. The provision in AB 398 stripping the District of its authority to implement greenhouse gas regulations specifically excludes regulations "required to comply with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or regulations implementing that act."

did so solely to circumvent the regulatory requirement without any other legitimate business reason, that would be a violation District Regulation 1-104, "Circumvention Not Permitted," which prohibits "any practice intended or designed to evade or circumvent District Rules or Regulations."

Regarding the ***second*** question, the proposed provision is intended to cover sources at the same facility for 12 *consecutive* months or more. Although the term "consecutive" was included in a similar provision being added in Section 2-1-413.7, in the public workshop drafts the term was inadvertently left out in Section 2-1-213.2. Air District staff have inserted the term in the final version of the Proposed Amendments to make clear that the equipment must remain at the facility for more than "12 consecutive months" in order to implicate Section 2-1-213.2. If a contractor uses a piece of equipment a facility for a few months and then takes it away for use at some other facility (and not solely in order to circumvent the regulation), the 12-consecutive-month clock starts all over again if the contractor subsequently brings it back to the same facility again.

Regarding the ***third*** question, District staff intended to cover contractor equipment that is used at the same source within the facility. If a contractor is using a piece of equipment to service a particular source at the facility, and then swaps it out with a different piece of equipment to perform the same service at the same source, both pieces of equipment should count towards the 12-month limit. But if the contractor takes away the equipment serving one source at the facility and then brings in a different piece of equipment serving a completely different source, then the second piece of equipment should get its own 12-month period. Staff have revised the language in proposed subsection 2-1-213.2 to make this point more clear. Staff have also made a similar revision to the proposed language in subsection 2-1-413.7 (adding a similar 12-month time limit for sources using multi-location permits) to clarify that provision as well.[2]

Comment – Adding GHGs to the Exemption Backstop (Reg. 2-1-319.1): A commenter suggested that the District should add GHGs to the exemption backstop in Section 2-1-319.1. This is a provision that limits the use of the permitting exemptions in Regulation 2-1 to small sources with emissions of less than 5 tpy of any regulated air pollutant other than GHGs. The commenter suggested that a size limit should be specified for GHGs as well. The commenter suggested that 2,500 tpy of GHGs should be the limit – i.e., a source would not be eligible for a permitting exemption if its GHG emissions are over 2,500 tpy.

Response: District staff disagree that there is a need to include a specific greenhouse gas emissions level in the exemption backstop provision in Section 2-1-319.1. The existing backstop provision that applies at 5 tpy of other regulated pollutants is sufficient

[2] Note that this discussion addresses situations were one piece of equipment is removed from the facility and then a different piece of equipment is brought to the facility. In the case of the same piece of equipment remaining at the facility and being moved from one source to another, that piece of equipment would be subject to the 12 month limit because it is remaining at the same facility. In that case, if the equipment is sufficiently dedicated to that particular facility that it remains there for over 12 months serving various different sources, then it should be included in the facility's permit, not under a contractor's permit.

to ensure that only small sources can take advantage of the exemption. If a source has substantial greenhouse gas emissions, then it will most likely have substantial emissions of other regulated pollutants as well that push it over the 5 tpy backstop threshold. In this way, large greenhouse gas sources will be precluded from taking advantage of the exemptions under the current provision, even without a specific greenhouse gas threshold included in the backstop language.

Furthermore, if the Air District adopted a specific greenhouse gas threshold in the backstop, it could be argued that this would violate the provision in AB 398 prohibiting the District from adopting CO_2 regulations for sources subject to cap and trade. Such a provision could be seen as impermissibly imposing the permit requirements of Regulation 2 on sources solely because of their CO_2, as applicability could depend on whether their greenhouse gases – which in most cases essentially means CO_2 – are above or below the threshold. That is, to the extent that there are sources that are currently exempt, but would become subject to permitting requirements because their CO_2 emissions exceed 2,500 tpy (or any other numerical threshold), it could be argued that the District is attempting to impose emission reduction rules for CO_2 in violation of AB 398. District staff believe that it is preferable to continue to rely on the existing 5 tpy backstop for other regulated pollutants, which will be effective to cover large greenhouse gas sources as well, rather than to try to test the limits of the District's remaining legal authority under AB 398.

Comment – Time Limits for Requesting Offset Refunds (Reg. 2-2-411.1): Several commenters commented on the proposed provision in Section 2-2-411.1 that will require a permit applicant to request a refund of any excess offsets (emission reduction credits) provided for an application within 6 months after the issuance of the permit to operate. The commenters stated that sometimes a source may need to operate for a certain period of time in order to determine the extent to which offsets are required for a project, which determines the amount of any refund available. The commenters requested that sources should be given up to 18 months after issuance of the permit to operate to request a refund of any extra offsets that have been provided over and above what is required, instead of the 6 month limit that was proposed.

Response: District staff agree with the observation that sources may need to operate for a certain period of time in order to determine the exact amount of offsets required for a project. But this period of initial operation is accommodated by the "startup period" between the time when the source first commences operation and the point where the permit to operate is issued. Sources are authorized by District Regulation 2-1-411 to operate during this startup period under their authority to construct for purposes of equipment commissioning, emissions testing, etc., pending issuance of a permit to operate. This startup period will allow the source to begin operating, to conduct source tests, and do whatever other work is necessary to determine the exact amount of offsets required. That work will be completed, and the amount of offsets required will be clear, by the time the permit to operate is issued. Providing six months beyond that time should be

more than sufficient for applicants to submit refund requests for any offsets submitted in excess of what is required for the project.

Comment – Effect of Failure to Make Offsets Equivalence Demonstration (Reg. 2-2-412): A commenter stated that the District should not require applicants to submit additional offsets in the event that the District cannot make the offsets "equivalence demonstration" required under Section 2-2-412. The commenter stated that if the District is unable to make the equivalence demonstration, that failure "falls on the District," and the public should not have to bear any additional costs that result.

Response: The "equivalence demonstration" is a demonstration that the Air District's offsets program is, in total, more stringent than EPA's federal program (i.e., the Air District's program in total requires more offsets that what EPA would require). In the event that the Air District is ever unable to demonstrate equivalence, that would not be an indication of fault on anyone's part, and it would not "fall on" anyone. It would simply be an indication that, for a period of time, the Air District's offsets program has become less stringent than what EPA's federal regulations require. If and when that scenario ever came to pass, it would be entirely appropriate to require major facilities to provide additional offsets according to what EPA requires, instead of requiring the District to make up the difference. (Note that EPA's requirements apply only to major facilities with significant emissions increases, so only those facilities would ever have to provide additional offsets.) If the Air District were to have to procure additional offsets to help major facilities get their permits, it would have to do so by purchasing credits on the open market using public funds, or by using credits that have been reserved for small facilities in the Small Facilities Banking Account. Giving major facilities free credits at the expense of small facilities and/or the District's public funds would not be an appropriate way to handle a situation where additional credits are required for major facilities under EPA's federal requirements.

Comment – Clarify that "Surplus-At-Time-of-Use" Adjustment is Not Retroactive (Reg. 2-2-412): A commenter stated that the proposed amendments are not clear regarding how the offsets "surplus-at-time-of-use" adjustment would be applied when the offset program "equivalence demonstration" under Section 2-2-412 shows a shortfall. The commenter requested that the District clarify that it will not go back and reopen past permits that have already been finally issued to require additional offsets.

Response: The commenter is correct that the federal "surplus-at-time-of-use" adjustment will not be retroactive. If there is ever a shortfall in offsets that prevents the Air District from making the equivalence demonstration, the requirement to provide additional offsets will apply only to subsequent permits issued after that point. The District will not go back and require additional offsets from sources that have already received their permits. The language in the proposed amendments to Section 2-2-412 addressing what happens in a shortfall situation clearly states the way this will work. As the language states:

> If the District has not submitted an analysis by March 1 that makes the required demonstration for any pollutant, the District shall adjust the offsets

> submitted for that pollutant in connection with any subsequent permitting of a new "major stationary source" as defined in 40 C.F.R. section 51.165(a)(1)(iv) or "major modification" as defined in 40 C.F.R. section 51.165(a)(1)(v) to the extent that any of the developments listed in subsections 412.1 through 412.3 have occurred between the time the offset credit was generated and the time the offset credit is used. The District shall not allow any offset credit in excess of this adjusted amount to be used for compliance with the offset requirements of Sections 2-2-302 and 2-2-303. The District shall continue to make this adjustment to offsets submitted in connection with the permitting of such major stationary sources and major modifications for all authorities to construct issued after March 1 until such time as the District makes the required demonstration of equivalence.

The underlined passages make clear that if the District cannot make the demonstration by the March 1 due date, then it is *subsequent* permits issued *after* that date that have to provide the additional offsets – up until such time as equivalence can be demonstrated again.[3] The language about requiring additional offsets does not allow or require the District to reopen settled permits to require additional offsets.

Comment – Emission Reduction Credit Calculation Procedures Should Be Consistent With Other District Rules and Procedures (Regs. 2-2-603 through 2-2-605): A commenter suggested that the emission reduction credit calculation procedures in the Reg. 2-2 NSR permitting rules should be consistent with the emission calculation procedures that the Air District has used to assess fees to the source. For refineries, the commenter stated that credit calculations should be based on the same emission calculation procedures that were used for the most recent emissions inventory submittal approved by the District under Regulation 12-15-404.4.

Response: The emission reduction credit calculation procedures specify that emission reductions must be calculated from a baseline established by a source's actual emissions during a defined baseline period. These calculation procedures use the same approach as all other provisions of Air District regulations that refer to actual emissions in their calculations (although different provisions may look to actual emissions over different time periods, e.g., a one-year period for annual emissions inventories vs. a three-year period for establishing the baseline for emission reduction credits). In all cases, the best available information on a source's actual emissions during the relevant period should be used. This is true for establishing the baseline for calculating emission reduction credits under Regulations 2-2-603 through 2-2-605, for assessing fees under Regulation 3 in situations where the fee is based on a source's actual emissions, and for actual emissions that must be reported to the District in a petroleum refinery's annual emissions inventory required under Regulation 12-15.

[3] Note that Air District staff made certain revisions to the offset equivalence demonstration provisions when they revised and re-noticed the Proposed Amendments in October 2017. As a result of these further revisions, the specific language in the passage quoted here has changed. The revised language has the same substantive effect, however, and so the substantive points made in this response still apply.

IV. General Comments

Comment – Air District Should Consider Impacts on Businesses and Municipalities: Commenters stated that the Air District should consider the impacts of its proposed rules on businesses, and find ways to allow businesses to modernize. They stated that the District should consider impacts of its own rules along with those of other regulatory agencies that also require permits, and should also consider impacts on municipalities, as their compliance costs will come from taxpayers. The commenters were concerned that too many permits are required, that fees are too high, and that businesses are being harmed as a result.

Response: Air District staff agree that the District should always strive to minimize impacts on businesses, municipalities, and other entities that may face compliance costs, and that District regulations should encourage modernization wherever possible. District staff also agree that the District should consider the impacts from the Air District's rules in the larger context of Bay Area's regulatory environment, in which regulated entities are subject to regulations from multiple different agencies (air, water, waste, etc.). Air District staff have kept these considerations in mind in developing the proposed amendments. District staff believe that the proposed amendments will allow the District to implement its NSR and Title V permitting programs with the least amount of compliance cost impacts possible, while still achieving the important air quality goals of those programs as mandated by state and federal law.

Comment – Air District Rules Should Promote Modernization: Commenters stated that the Air District's rules should promote investing in facility modernization. They asserted that the current NSR permitting rules do not promote modernization, they penalize modernization, which is perverse because it inhibits modernization projects that would ultimately reduce emissions. The commenters stated that regulated businesses need to see some sort of "payoff" in the form of a credit or a fee reduction or some other benefit for upgrading to cleaner equipment.

Response: Air District staff agree that the District's rules should promote modernization. District staff have kept this goal in mind in developing the proposed amendments, and disagree that anything in the proposed amendments penalizes modernization. Obviously, having to invest in pollution control equipment when a facility modernizes adds a certain amount of compliance costs, and any amount of additional cost makes a modernization less attractive. But at the same time, facilities need to take reasonable steps to install pollution control equipment to ensure that they do not unduly jeopardize air quality, public health, and the global climate, even if doing so may impose some cost burden.

Furthermore, the New Source Review program requires facilities to invest in effective pollution control equipment at the time of modernization (i.e., when the facility installs a new source or modifies an existing source) specifically because this is a very appropriate time to upgrade pollution controls to reflect the current state of the art. The alternative is to require facilities to retrofit their existing equipment with new pollution controls as soon as the new controls are developed. This is appropriate in certain cases, and the District

often does take a “retrofit” approach with its regulations. But it is not necessarily the right approach in all cases across the board, and so it is not appropriate for a very broad permitting program like New Source Review, which applies to essentially every regulated facility throughout the Bay Area. Instead, the NSR program does not require facilities to upgrade their pollution controls immediately when the state of emissions control technology advances. It waits until the facility undertakes a modernization project (i.e., the installation of new sources and/or modification of existing sources), when the facility is already investing in upgrades and improvements for its own independent business reasons. This is the most appropriate time to require the installation of state-of-the-art emissions control equipment, as a facility can incorporate such control equipment most efficiently when it is modernizing its processes anyway, and because the capital expenditure for such improvements is most appropriate when the facility is already investing in facility improvements for other reasons. These considerations demonstrate how the New Source Review program is not set up to *inhibit* modernization, it is set up to require facilities to modernize their pollution control equipment *at the most appropriate time*, which is when they are modernizing their processes anyway for their own reasons.

Comment – District Authority to Require Offsets for Emissions from Facilities' Cargo Carriers: A commenter objected to provisions in Reg. 2-2 that require facilities to provide offsets for emissions from the cargo carriers that serve the facility. The commenter stated that the Air District lacks the legal authority to regulate these emissions and suggested that the District should remove all such provisions from Reg. 2-2.

Response: District staff are not proposing any changes to any requirements of District regulations related to offsetting a facility's emissions increases resulting from cargo carriers. The District has for many years required facilities to provide offsets for emissions from their cargo carriers when they install a new source or modify an existing source. California's other air districts have done so for years as well. District staff are not proposing to change these longstanding regulations in the proposed amendments.

Regarding the source of authority under which the Air District adopted these regulations, the Air District has authority under Health and Safety Code sections 40001, 40702, and 40910 to require facilities to offset any criteria pollutant emissions increases that will result when the facility installs a new source or modifies an existing source. If the facility is going to increase emissions within the Bay Area as a result of the new or modified source – including increases that will result from cargo carriers serving the source – then the District has the authority to require the facility to provide offsets for those increased emissions. Doing so is important and necessary to ensure that the facility is not causing any net emissions increase as a result of installing its new or modified source. This authority is well-settled under California air pollution law, as reflected by the offsets provisions that the Air District and its sister California air districts have been implementing for many years.

Comment – Consistency Across Definitions Used in All Refinery-Related Rules: Commenters stated that the District needs to ensure that all definitions of terms in Rules 12-15, 12-16, 13-1, 2-1, and 2-2 are consistent with each other. The commenters stated

that if a definition is modified, the District should explain why the modification is necessary and why it does not apply in other refinery-related rules.

Response: District staff generally agree that definitions should be consistent across different regulations to the extent possible – although in some cases there will be sound reasons why differing definitions may be necessary, for example where a similar term needs to function differently in the context of one regulation compared to how it functions in the context of another regulation. District staff have sought to maintain consistently across all District regulations as much as possible. Staff have explained all of the proposed revisions to definitions in Regulation 2 in the Staff Report for the Proposed Amendments.

V. Comments on the Rule Development Process

Comment – District Should Address the Crude Slate and GHG BACT Revisions on a Separate Track from the EPA-Required Revisions: Commenters noted that the technical and administrative changes required by EPA must happen on a very quick timeline, but the other proposed revisions are more complicated and require more work and deliberation. The commenters suggested that the District should therefore move forward with the technical and administrative changes to the NSR rules as a separate rulemaking from the substantive changes the District is proposing with respect to GHG BACT thresholds and crude slate changes.

Response: Air District staff agree that it would be appropriate to decouple the technical and administrative revisions, which are ready to be finalized immediately, from the crude slate change provisions, which need further consideration and development. As discussed in Section I above, staff are proposing that the Board of Directors move forward and adopt the technical and administrative revisions now, in order to meet the EPA-imposed deadline for submission and EPA approval by March 1, 2018. Staff will finalize the crude slate provisions on a separate track and propose them for adoption at a later date. (And as noted above in Section II, AB 398 has restricted the District's legal authority to adopt the reduced BACT threshold, so staff cannot move forward with that provision unless the District's authority gets reinstated.)

Comment – CEQA "Piecemealing": Commenters stated that under CEQA, the District needs to evaluate "the whole of the project," which they claimed in this case includes all of the rules addressed in the Petroleum Refinery Emissions Reduction Strategy. The commenters noted the overlap between the crude slate changes proposed in this rulemaking and recently adopted Reg. 12-15, which was adopted in part to require submission of crude slate data so that the District could review the potential for crude slate changes to result in increased refinery emissions. The commenters stated that the District needs to evaluate all of these rulemaking projects together under CEQA.

Response: Air District staff disagree that the Petroleum Refinery Emissions Reduction Strategy is a "project" that needed to be evaluated under CEQA separate and apart from the specific regulatory actions that have come out of, or may come out of, the work by Air District staff in implementing that strategy. Furthermore, to the extent that CEQA would

require the Air District to evaluate the potential environmental impacts from multiple District rule development activities that the District is currently undertaking or has recently undertaken, the Air District's CEQA analysis for the 2017 Clean Air Plan would be sufficient to satisfy any such requirements. The Air District adopted a detailed Environmental Impact Report for the Plan, which covered all of the District's recent and proposed rule development activities cited by the commenters. The Environmental Impact Report is available at www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-e_final-eir_041217-pdf.pdf?la=en. To the extent the commenters believe that the Air District must evaluate all of these rulemaking projects together as one large "project," the District has already done so in the Clean Air Plan EIR.

Comment – CEQA Consideration of Cumulative Impacts of Multiple District Rules: Commenters stated that the District should prepare an EIR that will review and compare the cumulative impacts of all recently adopted and planned regulations covered by the Petroleum Refinery Emission Reduction Strategy.

Response: CEQA requires the lead agency to consider the extent to which the proposed project will make an incremental contribution to a significant cumulative impact caused by multiple projects in combination with each other. This requirement is set forth in Section 15064(h) of the CEQA Guidelines, which states that the lead agency must consider whether "the project's incremental effect, though individually limited, is cumulatively considerable." The lead agency is required to consider the project's incremental contribution to the impact in connection with the effects of all past projects, current projects, and probable future projects to determine if the project's incremental contribution to the larger problem is "cumulatively considerable." If the project's incremental contribution to a significant cumulative impact is less than "cumulatively considerable," then the project is not treated as significant under CEQA.

The Air District has fully complied with this requirement, as it has considered cumulative impacts in the CEQA analysis that it has prepared for the proposed amendments. That analysis, contained in the Initial Study being published in connection with the proposed amendments, found that there will not be any significant impacts from the proposed amendments. As required by CEQA, the analysis examined both (i) whether the proposed amendments by themselves will have a significant environmental impact and (ii) whether the proposed amendments will make a cumulatively considerable contribution to a significant cumulative impact. The analysis answered both inquiries in the negative – i.e., the proposed amendments will not have any significant impacts, either individually or cumulatively.[4] To the extent that there are environmental resources that are being cumulatively impacted in a significant way by multiple past, present and reasonably foreseeable future projects, the proposed amendments will not be making any further

[4] Note also that the analysis considered cumulative impacts resulting from the combined effects of *all* past, present and reasonably foreseeable future projects on each environmental resource evaluated – not just effects from other recently adopted and planned regulations adopted by the Air District. CEQA requires that the analysis consider all such projects that will add to a cumulative impact, not just projects of a similar type adopted by the same lead agency.

incremental contribution to those significant cumulative problems – and certainly not any "cumulatively considerable" contribution, which is the threshold at which the proposed amendments would be treated as cumulatively significant under CEQA.

Comment – Compliance With Requirements for Undertaking CEQA Analysis: Commenters stated that when the District undertakes its CEQA analysis, it must ensure that it complies with applicable CEQA requirements, such as ensuring that its analysis and findings are based upon creditable substantive evidence, that a reasonable range of alternatives are considered, that significant impacts are avoided or mitigated, etc.

Response: Air District staff agree that the District must fully comply with all CEQA requirements in connection with adopting the proposed amendments. The District has had an Initial Study prepared to evaluate the potential impacts from the Proposed Amendments, which is being published in conjunction with the proposed amendments. As explained in the Initial Study, there will not be any significant environmental impacts. Staff will be proposing that the Board of Directors adopt a Negative Declaration based on the Initial Study, in full compliance with all CEQA requirements.

Comment – Archived Webcasts: A commenter said that she could not find archives of all of the workshop webcasts on the District's website. She asked how District staff keeps track of verbal comments made during the workshops, if the webcasts are not archived.

Response: The District archived the webcast of one of the three public workshops, and it is available on the District's website at www.baaqmd.gov/permits/permit-fee-rule and at https://vimeo.com/221342313. The other two workshops featured essentially the same presentation, and so they have not been archived. Air District staff present at all of the workshops took notes of the comments and questions raised, and staff have considered this input in finalizing the Proposed Amendments along with the written comments.

Comment – Rule Development Web Page: A commenter stated that the materials for this rulemaking are not on the "Rules Under Development" page on the District's website, they are only in the "regulatory workshops (archive)" page. The commenter stated that this makes the materials for this rulemaking harder to find.

Response: Air District staff have added links to the rulemaking materials for the proposed amendments to the website's main summary page for "Rules Under Development." Members of the public can access the rule development materials for the proposed amendments by clicking on the links from the "Rules Under Development" page, at www.baaqmd.gov/rules-and-compliance/rule-development/rules-under-development.