



December 2, 2016

SUBMITTAL VIA EMAIL TO: vdouglas@baaqmd.gov

Mr. Victor Douglas
Principal Air Quality Specialist
Technical Services
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

SUBJECT: COMMENT LETTER ON PROPOSED BAAQMD
REGULATION 11, RULE 18: REDUCTION OF RISK FROM AIR TOXIC
EMISSIONS AT EXISTING FACILITIES

Dear Mr. Douglas:

The Bay Area Clean Water Agencies Air Issues and Regulations Committee (BACWA AIR) appreciates the opportunity to comment on the Bay Area Air Quality Management District's (BAAQMD) proposed Regulation 11, Rule 18 (Rule 11-18). BACWA is a joint powers agency whose members own and operate publicly-owned wastewater treatment works (POTWs) that collectively provide sanitary services to over 6.5 million people in the nine-county San Francisco Bay (SF Bay) Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health. The AIR Committee is a coalition of SF Bay Area POTWs working cooperatively to address air quality and climate change issues, under the guidance of BACWA.

It appears that the proposed Rule 11-18 has been developed in reaction to community concern about only a few existing facilities, and the BAAQMD's proposed regulatory response impacts more agencies than necessary to reach its air quality goals. BAAQMD staff estimate that hundreds of facilities could be affected by this rule (Notice of Preparation/Initial Study; Regulation 11, Rule 18 and Regulation 12, Rule 16; Page 1-9 October 2016). While BACWA appreciates the outreach that BAAQMD staff has done, there are dozens of POTWs that have not been engaged on this issue, and have only very recently become somewhat aware of this significant regulatory initiative. Based on this sector, it seems likely that there are far more, perhaps hundreds, of potentially impacted facilities who are not aware nor have considered the impact and cost of this Regulation, and have thus not had the opportunity to provide meaningful comments for your consideration. Therefore, we ask that the BAAQMD to consider a more robust effort to meet in workshop formats with all affected facilities to review the basis for the Regulation, describe the proposed compliance routes, and collectively understand its potential

impacts. BACWA would also like an opportunity to discuss this proposed Regulation directly with BAAQMD staff and will be in contact to set up a meeting.

The BACWA AIR Committee's specific comments on the proposed Rule 11-18 are as follows:

1) The timeframe for submission of HRA information should be extended

Draft Section 11-18-401 proposes a 30-day deadline after the initial request by BAAQMD to provide the necessary information to complete a Health Risk Assessment (HRA) of the facility. The data collection phase for a facility-wide HRA can be complex, and time-consuming, and may require hiring a consultant to help perform this work in an expedient manner. It is essential to incorporate accurate site-specific data for input into the HRA. This process will likely cost POTWs between \$20,000 and \$200,000 to collect the data, which requires budgetary approval from their Board who meet monthly.

BACWA recommends extending the response time for the HRA information requirement to 90 days, in order for POTWs to get approval of funds and provide accurate site-specific data.

2) The schedule for compliance is too short for a major capital project at a public agency

Draft Section 11-18-402 proposes a three-year implementation timeline for risk reduction measures to reduce a facility's health risk. For the protection of its rate payers and to address technical and financial feasibility challenges associated with any project a POTW is considering carrying forward, the planning process for capital projects at public agencies requires a multi-year process, with rate increases being voted on in three to five year increments. In most cases, the timeline associated with identifying, planning, funding, designing, and constructing a capital project in response to reducing risk through the installation of a Toxics Best Available Control Retrofit Technology (TBARCT) will require more than three years.

Early estimates of what could be required as risk reduction measures at POTWs in response to Rule 11-18 range up to tens of millions of dollars for installation of yet to be identified advanced control technologies. As public agencies governed by Proposition 218, POTWs rely on local residents to approve and fund the capital improvement program. Additionally, rate increases require the approval of each POTW's Board of Directors. If TBARCT requires a significant expense to the point where agencies would need to borrow loans or raise rates, Proposition 218 will not allow an agency to raise its sewer service charges aggressively with limited notice to the public.

POTWs make long term investments in public infrastructure, using careful financial analysis to maximize the usefulness of public funds over the functional lifetime of facilities. Depending on the type of facility, equipment and process structures are designed to function for up to several decades. If structural or equipment changes are required shortly into the planned life of a facility, public funds will not be used effectively. Given the uncertainty of appropriate process specific control technology and the associated planning horizon that would be necessary to research, design, and construct an undefined TBARCT, the proposed timeline is extremely aggressive.

Without reasonable time to develop the Risk Reduction Plan with the required approvals, the proposed Rule 11-18 may lead to inadequate financial planning for implementation.

Additionally, there are concerns related to projects already underway (i.e., facilities that are in design or under construction). If it is determined that a POTW is required to implement a project in response to Rule 11-18 on a project already in progress, redesign or change orders to these projects may take years as site specific issues and the necessity of keeping the essential public service fully operational makes construction sequencing a key concern.

In the past, BAAQMD has recognized the need for longer response times by the regulated community. For example, when Regulation 9, Rule 8 was amended in 2007, facilities were provided a compliance horizon of nearly a decade, until 2016. This rule provided agencies the needed time to plan and budget for their compliance response.

BACWA recommends a minimum five-year implementation timeline for the risk reduction measures, with a possible extension of an additional five years.

3) Risk Reduction Plan submission deadline should be extended

Draft Section 11-18-402 allows for 180 days to complete a Risk Reduction Plan for BAAQMD's review and approval. The Risk Reduction Plan, as described in draft Section 11-18-403, requires a detailed characterization of each source of toxic emissions, an evaluation of risk reduction measures to be implemented, and a schedule to implement the proposed risk reduction measures. The development of risk reduction measures requires elaborate characterization studies, careful planning, and preliminary design of the air pollution control technologies to reduce toxic emissions. Allowing only 180 days to complete a Risk Reduction Plan may result in insufficient characterization and planning, with higher potential for unnecessary engineering.

BACWA recommends extending the response time to a full year (365 days) to complete the Risk Reduction Plan.

4) Facilities should be notified of cancer prioritization scores

The cancer prioritization scores are not currently available to the facilities. Given the accelerated implementation of the proposed Rule 11-18, BAAQMD needs to notify the impacted facilities as soon as possible to ensure proper planning and engineering.

BACWA recommends disclosing the cancer prioritization scores as soon as possible.

5) Public notification by BAAQMD for Rule 11-18 should clarify that emissions have not increased

Despite there being no change in a POTW's emissions levels, incorporating the updated California Air Pollution Control Officers Association (CAPCOA) risk factors and

guidelines may result in the first notification the public receives about an existing facility within its vicinity. This notification could result in greater public anxiety about health risks from existing stationary sources. Providing a clear explanation that the changes in facility risk estimates are due exclusively to changes in risk assessment methodology, not actual increases in emissions (and health risk), should be incorporated in the public notification.

BACWA recommends the public notification of risk include language providing context to the risk values to improve public understanding and reduce potential anxiety.

6) Proposed rule should not inadvertently discourage renewable energy production

While the purpose of the proposed Rule 11-18 is to reduce toxic air contaminants and protect public health, it may discourage the production and beneficial use of biogas for the generation of renewable energy or fuel, resulting in a wasted (flared) resource. Most BACWA members already beneficially use biogas generated from anaerobic digestion of sewage sludge or from nearby landfills to generate renewable electricity. Not only does this practice offset the treatment plant's dependence on fossil fuel based energy, it reduces the resulting anthropogenic greenhouse gas emissions.

The production of biogas, production of renewable energy, and the reduction of greenhouse gas emissions support statewide greenhouse gas reduction goals set under Assembly Bill 32 and Senate Bill 32. Furthermore, the State Air Resources Board would like to see POTWs accept additional organic waste streams (specifically, diverted food waste and fats, oils, and grease from landfills) for co-digestion with sewage sludge to increase generation of biogas, in turn increasing renewable energy/fuel production in support newly adopted mandates under Senate Bill 1383 (reducing methane emissions across the state). However, the proposed Rule 11-18 may restrict use of biogas since its combustion may contribute to a slight increase in some toxic air contaminants, potentially forcing POTWs to purchase fossil fuel based electricity or natural gas. This would result in an increasing in fossil fuel based greenhouse gas emissions statewide and is in direct contradiction with the Governor's goals for 2020, 2030, and beyond.

BACWA recommends BAAQMD consider providing exceptions in Rule 11-18 for projects that contribute toward achieving state goals for reductions in greenhouse gas emissions through the diversion of organic waste from landfills, and increased production of biogas for the generation of renewable energy or fuel.

7) BAAQMD should consider cross-media environmental impacts

POTWs are regulated by a number of different governmental agencies whose goals can result in contradictory impacts to the municipal wastewater treatment sector. While regulatory actions may be seen as effective when each media (air, water, land) is addressed separately, the deficiencies become evident when the regulations are viewed holistically for protecting the overall environment and public health. BACWA previously

submitted a letter to BAAQMD (addressed to Christy Riviere, June 6, 2014)¹ detailing the impact cross-media issues can have on wastewater treatment plants. There are increasing concerns about cross-media impacts and the potential operational and financial effects they will have on POTWs that are trying to provide an essential public service while maintaining compliance with regulations supporting contradictory goals.

BACWA recommends a holistic approach and asks BAAQMD to address the cross-media environmental impacts of the proposed Rule 11-18 and in future proposed regulations.

Thank you for the opportunity to comment on the draft Rule 11-18. BACWA supports BAAQMD's intent to protect the Bay Area's air quality, and asks BAAQMD to carefully address BACWA's concerns. We would be happy to discuss any questions regarding these comments. Nohemy Revilla and Randy Schmidt, BACWA AIR Committee Co-Chairs, can be reached at NRevilla@sfwater.org and RSchmidt@centralsan.org, respectively.

Sincerely,



David R. Williams
BACWA Executive Director

Cc: BACWA Executive Board
Nohemy Revilla, BACWA AIR Committee Co-Chair
Randy Schmidt, BACWA AIR Committee Co-Chair
Courtney Mizutani, BACWA AIR Committee Project Manager
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¹ See http://bacwa.org/wp-content/uploads/2014/06/BACWA_Cross-Media-Letter.pdf