EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

CALIFORNIA REGIONAL OFFICE | SAN FRANCISCO
180 STEUART ST., #194330
SAN FRANCISCO, CA 94105
T: 415.217-2000
F: 415.217-2040

May 13, 2026

VIA EMAIL

Greg Nudd
Deputy Executive Officer of Policy
Regulatory Development Division
Rule Development
Bay Area Air District
375 Beale Street
San Francisco, CA 94105
Email: gnudd@baaqmd.gov
Rule Development: ruledevelopment@baaqmd.gov

Re: Proposed Update to Socioeconomic Analysis of Air District Rulemaking

Dear Mr. Nudd,

Thank you for the opportunity to comment on the Outline of a Policy for Socioeconomic Analysis of the Air District Rulemaking ("Outline").

The agency's core mission—to improve air quality to protect public health—is approaching an inflection point, where utilizing every remaining regulatory tool may determine whether meaningful progress on air pollution remains possible. Today, amid the outright assault on programs aimed at addressing environmental justice and climate at the federal level, it is up to the leaders at the Air District to uphold California's values and protect Bay Area residents from unchecked harmful air pollution.

To achieve those goals, the Air District's Socioeconomic Analysis (SEA) policy should inform decision-making without creating a structural disadvantage for the strongest, most health-protective measures to reduce pollution. A balanced SEA policy offers greater transparency into the Air District's policymaking, but it should do so to facilitate the strongest actions, not to thwart them. We urge the District to adopt an approach aligned with its environmental justice priorities and caution against allowing cost-effectiveness and socioeconomic analysis to become one-dimensional. A narrow, industry-focused SEA risks becoming weaponized by polluters to sow public distrust, manufacture opposition, and stop progress.

I. SEA Must Avoid Structural Bias Against Strong Pollution Reduction Strategies

The Air District should ensure that its SEA policy eliminates structural bias against strong pollution reduction strategies. To start, how it defines a "baseline" will likely determine the scope of analysis. Baseline definitions must avoid treating fossil incumbency and polluting systems as the default benchmark for economic reasonableness.

A. The Baseline Definition Should Reflect the Cost of Inaction

Section 2.2 of the Outline defines the baseline in terms of:

> "regulatory, technological, and market baseline for sectors affected directly by the proposed rule or rule amendments; expected trends absent the rule."

At first glance, this language sounds neutral. But analytically, it risks reinforcing current infrastructure, existing market conditions, and the presently deployed technology as the economically rational status quo. That framing will keep polluting technologies as the benchmark for evaluating future regulation without considering that those conditions are the product of decades of underpriced pollution burdens, entrenched fossil fuel dependency, and the externalization of health harms. In other words, making pollution the baseline normalizes it.

The current market should not serve as a neutral baseline, as it is already distorted by longstanding regulatory gaps and the failure to fully account for the costs of pollution harms. This static baseline ignores the fact that continued maintenance and reinvestment in polluting systems is not cost-free. Those systems not only perpetuate public health burdens and environmental harms but also continue to make the region more dependent on fossil fuels and hostage to its price volatility.

A baseline should not merely describe existing market conditions; it should also evaluate whether those conditions are sustainable, protective of public health, and economically rational once the full costs of pollution and infrastructure are considered. Therefore, in setting a baseline and evaluating the "expected trends absent the rule", SEA must also consider rising costs of maintaining polluting activities, both in terms of the infrastructure maintenance and fuel volatility, as well as the rising health cost burdens of maintaining the status quo.

B. Static Assumptions about Technology Availability Should Be Avoided

Often, opponents of regulation will use "unavailability" arguments to claim infrastructure is not ready, technology is immature, supply chains are uncertain, or deployment timelines are speculative. If "availability" is defined too rigidly, transformative rules will never emerge. Yet many of the strongest solutions available are still considered "emerging" as supportive infrastructure continues to scale.

Technological solutions that eliminate operational emissions should not be treated as "unavailable" simply because their deployment is still scaling up. Instead, the SEA should evaluate technology trajectories, not static snapshots, and determine whether a rule will catalyze significant changes that might expand the deployment of these solutions. That analysis could accompany a review of the types of jobs and economic opportunities that are likely to follow with accelerated market adoption.

The Air District already incorporates analyses of and cost-effectiveness for alternatives to rule development.[1] A key update to this approach would be to dismantle the static assumption that existing fossil infrastructure should serve as a neutral baseline when examining alternatives, and instead consider infrastructure growth and market scaling for new non-polluting technology, while also assessing the cost of maintaining outdated infrastructure that locks in additional pollution for the region.

C. SEA Should Not Systematically Favor Polluting Technology

The overemphasis on upfront capital costs poses similar challenges to cost-effectiveness— it forces comparisons of non-polluting technology with the status quo without accounting for already depreciated fossil-fueled systems and infrastructure that are more costly to maintain in the long run. A narrow focus on upfront costs of electrification, for example, fails to account for the prospect of stranded assets, costly repairs, and maintenance of aging methane gas systems. Without accounting for these hidden costs to the status quo, the SEA might insulate more polluting activities from stronger scrutiny rather than conducting a more balanced assessment of true costs.

Take, for example, Rule 9-6, the current Zero-NOx standard for water heaters. Until the rule is fully implemented, each time a Bay Area resident buys an emissive gas-fired water heater, they not only pay for the cost of the unit at a retail outlet or through an installer, but they are also agreeing to pay for the gas pipeline system that will provide the fuel to power that unit for the life of the equipment. That could be a decade or more of maintaining a system whose costs have grown exponentially over the last decade. In fact, Californians spend nearly $10 billion annually just to maintain that system, with those costs passed through to ratepayers.[2] These costs remain hidden if the policy focuses solely on the unit price and installation costs for newer equipment.

---

[1] Bay Area Air District, *Overview of Socioeconomic Analysis for Air District Rulemaking,* Staff Presentation to Stationary Source Committee (November 12, 2025), slide 6; https://www.baaqmd.gov/~/media/files/board-of-directors/2025/ssc_presentations_111225_op-pdf.pdf?rev=af310eeb6b4a4174baf6edd2c937cbb9&sc_lang=en

[2] Denise Grab, Brennon Mendez, and Craig Holt Segall, *Go Big, Save Big: Approaches to Fund Building Electrification in California,* (UCLA Sch. Of L., Emmett Institute on Climate Change & The Environment [2025]), p. 4; https://law.ucla.edu/sites/default/files/Go%20Big%20Save%20Big%20FINAL.pdf.

The issue is not whether compliance costs matter. The issue is whether the framework used will fully and fairly evaluate the public health benefits, the avoided environmental harms, and the long-term economic transition benefits, as aging infrastructure currently propping up fossil fuel dependency gives way to superior alternatives that more adequately protect Bay Area residents.

In short, the SEA should avoid narrow, near-term cost comparisons between technologies, incorporate lifecycle costs of maintaining the status quo, account for the pollution burdens avoided by a technology shift, and recognize long-term operational savings of non-polluting alternatives.

II. The SEA Should Exclude Arbitrary Cost-Effectiveness Thresholds

Section 3 of the Outline proposes creating a new "enhanced" socioeconomic analysis when costs exceed a specified threshold. This is essentially creating a cost-effectiveness threshold when there is no legal requirement for the Air District to require this additional layer of analysis. The Air District is essentially self-imposing this additional work.

We strongly urge you to abandon this approach. It creates duplicative and onerous requirements that contradict the Air District's own direction to control emissions and address environmental justice concerns.

Nowhere does California Health & Safety Code Section 40728.5 require the Air District to further burden its rulemaking process by creating an arbitrary cost-effectiveness threshold to even more scrutiny of its rules. It merely requires the Air District to evaluate the cost-effectiveness of each proposed rule or rule amendment. A rule's cost effectiveness should be evaluated relative to available alternatives, not relative to a threshold.

Arbitrarily including a cost-effectiveness threshold may prevent the district from pursuing regulations that would otherwise be permissible within its discretion. The "enhanced" SEA that this threshold would trigger would require additional time, resources, and study to assess decades' worth of data on existing rules—with particular emphasis on reevaluating the Air District's own analysis by comparing it to industry-produced data. This would open the door to even more challenges to existing rules that are effectively reducing pollution in the region by asking the Air District to speculate on its rules impacts on a host of tangentially related consumer prices and even industries not directly regulated by its rules.

Further, incorporating a cost-effectiveness threshold into the analysis that is already required is duplicative. The Air District is already actively considering the socioeconomic impacts of proposed regulations and making good-faith efforts to minimize any adverse impacts. This would require the Air District to redo the work when the threshold is triggered—essentially reopening the rulemaking process and potentially delaying or postponing pollution-reduction strategies.

Moreover, many of the 'triggering' events for enhanced socioeconomic analysis require the Air District to engage in speculation (e.g., if the "[r]ule is expected to have a significant impact on the energy or the housing sector and therefore may result in noticeable cost increases for consumers"). Reasons similar to those Air District had in opposing AB 2752 apply here.[3] Predicting housing and energy costs, which are influenced by multiple factors, are best left to state agencies responsible for those policies, not air regulators.

To the extent staff believe a cost-effectiveness threshold is essential (even though the law does not require it)— it should start with the following two elements:

1) Apply enhanced SEA only to the rule with the highest overall implementation and enforcement/administrative costs (both circumstances must be present before enhanced SEA is applied);
2) Prioritize enhanced SEA elements that look at the cumulative efficacy of the rule, health benefits, the socioeconomic impacts of health burdens, and an analysis of who bears costs and who receives benefits (by income, class, race/ethnicity, and geography).

III. Make Public Health and Environmental Justice Central—Not Just Supplemental

In the current outline, health and equity are referenced as having played a "supplemental" role in prior rulemaking. The Air District must make the health and equity benefits of proposed regulations a core component of *all* rule evaluations. This is especially important given the Air District has prioritized environmental justice, equity, and addressing cumulative impacts as part of its Strategic Plan and AB 617 community commitments.

Health impacts are never supplemental in frontline communities. Frontline communities already bear substantial, uncompensated economic burdens from air pollution. Cumulative exposure to PM2.5 and NOx is known to pose a threat to human health. And the avoidable illnesses this pollution engenders have real economic consequences in the form of missed work and school days, high hospitalization costs, premature mortality, and increased caregiving burdens. If compliance costs for polluters are rigorously quantified, but the externalized costs of health harms are not afforded proper deference, the framework's imbalance will arbitrarily obstruct otherwise crucial measures to protect communities.

Moreover, a fixation on regional macroeconomic analysis may obscure more localized harms that regulated activities create. While we are encouraged by the Air District's willingness to

[3] Ltr. From Dr. Phillip Fine to the Hon. Isaac G. Brian, Chair Assemb. Nat. Res. Comm., Cal. State Assemb. (April 9, 2026) (regarding AB 2752-Avila Arias), at page 2, ("[P]redicting changes [to] statewide gas supply levels should be left to the California Energy Commission, which currently performs that function well.").

incorporate cumulative impact evaluation, this should be embedded throughout the SEA policy, especially in Economic Impact Modeling (Section 4.2).

Finally, we urge you to go beyond mapping regional disparities using CalEnviroScreen alone to assess the cumulative impact on affected communities in the Distributional Analysis (Section 4.3). CalEnviroScreen seeks to "help [] identify California communities that are most affected by many sources of pollution, and that are often especially vulnerable to pollution effects"[4]—but it is not, and never has been, a tool to assess neighborhood-level pollution sources. CalEnviroScreen "[p]resent[s] a relative, rather than an absolute, evaluation of pollution burdens and vulnerabilities in California communities by providing a relative ranking of communities across the state of California."[5] CalEnviroScreen does not, and cannot, provide the whole picture of community experiences of pollution. A valuable model for this task is community-based participatory research. This model focuses on opportunities to bring community partners, supported by researchers, to gather data about pollution sources and their proximity to sensitive receptors.[6] We encourage you to consider adding such a model to the Distributional Analysis.

IV. Rulemaking Must Move Forward

Rulemaking at the Air District is the most consequential task the Air District has to protect the public from harmful air pollution, help clean up the region's air, and attain federal and state air quality standards. Over the past several decades, most of the region's air quality improvements can be traced back to regulations that have catalyzed shifts away from the most polluting activities towards more sustainable, health-protective practices.

There are several vital rules that the Air District is currently either implementing, amending, or developing that are well underway and have included multiple workshops and stakeholder engagement. District and stakeholder resources and constituent time has already been spent developing those rules that are now overdue. The Air District should not allow current rulemaking to be upended by the exploration of an SEA revamp.

If the Air District is inclined to move forward with a new SEA policy, we recommend that it not apply to any rules in process or adopted within 18 months of the policy's adoption.

---

[4] OEHHA and CalEPA, CalEnviroScreen 3.0 Factsheet, https://dtsc.ca.gov/wp-content/uploads/sites/31/2015/09/CalEnviro-Screen-Fact-Sheet-English-accessible.pdf (last accessed May 12, 2026).
[5] CalEPA and OEHHA, Update to the California Communities Environmental Health Screening Tool: CalEnviroScreen
[6] See, e.g., James Sadd, et. al, The Truth, the Whole Truth, and Nothing but the Ground-Truth: Methods to Advance Environmental Justice and Researcher–Community Partnership, 41 Health Education & Behavior, no. 3, 2014, at 281– 290, https://escholarship.org/content/qt7hm4r98d/qt7hm4r98d.pdf.

V. Conclusion

Analytical methodologies are not neutral. The assumptions built into this framework can structurally shape outcomes and bias against the strongest solutions for the region. The SEA framework must not systematically disadvantage transformative pollution-reducing measures. The District's final policy should center on protecting public health and reducing cumulative impacts, while fully assessing the long-term transition benefits of zero-emissions solutions.

Thank you for considering our comments.

Sincerely,

Fernando Gaytan

Senior Attorney

Cc: Dr. Phillip Fine, Executive Officer, Bay Area Air District,
Clerk Marcy Hiratzka, Clerk of the Boards