

**SAN DIEGO COUNTY  
AIR POLLUTION CONTROL DISTRICT**

**DRAFT PROPOSED AMENDMENTS TO  
RULE 1210 – TOXIC AIR CONTAMINANT PUBLIC HEALTH RISKS-  
PUBLIC NOTIFICATION AND RISK REDUCTION**

**WORKSHOP REPORT**

The San Diego County Air Pollution Control District (District) held a public workshop on August 5, 2021, to discuss and receive input on the draft proposed amendments to Rule 1210 – Toxic Air Contaminant Public Health Risks-Public Notification and Risk Reduction. A meeting notice was mailed to each permit holder, applicant, registration holder, chamber of commerce in the region, as well as the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB). Additionally, a meeting notice was posted on the District’s website and distributed to interested parties, including through the District’s electronic mail service.

The workshop was attended by 32 people and the District received 12 written comments. A summary of the comments and District responses are provided below:

**1. WORKSHOP COMMENT**

The District stated during the workshop that 30 facilities may be impacted by the proposed amendments. Will these facilities be notified by the District?

**DISTRICT RESPONSE**

Yes, if the proposed amendments to Rule 1210 are adopted, the District will notify each facility that it is subject to public notification and risk reduction requirements provided the estimated cancer risk reported in the health risk assessment, as approved by the District, is equal to or greater than 10 in one million. A current list of potentially impacted facilities is included as an Attachment to this Workshop Report.

**2. WORKSHOP COMMENT**

Will hospitals be affected by the proposed amendments?

**DISTRICT RESPONSE**

If Rule 1210 is adopted as proposed, any stationary source, including hospitals, would be subject to the rule’s public notification and risk reduction requirements provided the estimated cancer risk reported in the health risk assessment, as approved by the District, is equal to or greater than 10 in one million. At this time, two hospitals are on the list of potentially impacted facilities.

**3. WORKSHOP COMMENT**

Will dry cleaners be affected by the proposed amendments?

**DISTRICT RESPONSE**

Section (b) Exemptions provides an exemption from Section (d) Public Notification and Public Meeting Requirements and Section (e) Risk Reduction Audits and Plans to stationary sources for which industry-wide health risk assessments are prepared by the Air Pollution Control Officer pursuant to Section 44323 of the California Health and Safety Code. This exemption applies to dry cleaners.

**4. WORKSHOP COMMENT**

The District's website lists about 70 facilities that are subject to the Air Toxics "Hot Spots" Program. There are some facilities that have submitted emissions inventories and have yet to be prioritized and categorized by the District. How did the District determine that 30 facilities will be impacted by the proposed amendments if some of the health risk assessments are currently pending District approval?

**DISTRICT RESPONSE**

The District has completed emissions inventories and prioritization scores for all facilities subject to the Air Toxic "Hot Spots" Program up to the 2019 calendar year. For facilities that have exceeded the prioritization score thresholds, the District has requested health risk assessments to quantify the health risks.

There are currently 26 facilities that were required to conduct a health risk assessment as a result of cancer risk prioritization scores. A current list of potentially impacted facilities is included as an Attachment to this Workshop Report.

**5. WORKSHOP COMMENT**

Will specific industries be considered first under the proposed amendments?

**DISTRICT RESPONSE**

No. The public notification and risk reduction requirements apply to a stationary source only if the risks estimated in the approved health risk assessment are equal to or greater than the significant risk threshold(s) specified in the rule.

**6. WORKSHOP COMMENT**

Will the Air Toxics “Hot Spots” Program prioritization and refinement process be similar after amended Rule 1210 is adopted?

**DISTRICT RESPONSE**

Yes. The prioritization and refinement procedures that the District currently follows are not being revised with this proposal.

**7. WORKSHOP COMMENT**

Health risk assessments that were requested, submitted, or approved by the District prior to adoption of the proposed amended rule should remain subject to the requirements of existing Rule 1210, while the proposed rule amendments should only apply to new Air Toxics “Hot Spots” Program related emissions inventories.

**DISTRICT RESPONSE**

Proposed Subsection (e)(1) has been amended to clarify that risk reduction audits and plans apply to the significant risk threshold for maximum individual cancer risks 1) equal to or greater than 10 in one million for emissions inventory years 2018 and later, or 2) equal to or greater than 100 in one million for emissions inventory years prior to 2018.

**8. WORKSHOP COMMENT**

Section (b) Exemptions states that industry-wide health risk assessment sources are not subject to the public notification requirements. This section should be revised to require public notification if a source exceeds the significant risk threshold.

**DISTRICT RESPONSE**

Section (b) Exemptions is consistent with California Health and Safety Code Section 44323. The District still quantifies emissions from these facilities and calculates the prioritization scores. There are about 3,600 facilities under this category, including gas stations, emergency engines, boilers and other small operations. The District will evaluate alternatives to address facilities with elevated prioritization scores and make the information related to these facilities readily available to the public. The District will evaluate the feasibility of posting this information on the District’s website on an interactive map.

**9. WORKSHOP COMMENT**

Proposed Subsection (e)(3) (new proposed Subsection (e)(5)) specifies that the District may authorize a 3-year extension to implement the risk reduction audit and plan for facilities that qualify for the extension. Due to the nature of the military mission, the U.S. Department of Defense (DoD) must go through an extensive period of time to identify, develop, test, and approve new technologies. New technologies must not only meet risk reduction requirements but are required to meet strict military specification approvals and be procured through the DoD equipment acquisition process. Due to this potential impact to mission, the DoD requests a military specific exemption from proposed Subsection (e)(3) (new proposed Subsection (e)(5)) allowing military operations to continue under an ongoing emissions reduction plan approved by the District, without a specific time limit. This will ensure military operations are not impacted while going through the process to adopt new technology or to implement end of stack controls to limit air emissions.

**DISTRICT RESPONSE**

The District is unable to grant an unlimited extension for a particular regulated entity as it has a responsibility to ensure a level playing field for all regulated entities, especially as it relates to requirements designed to protect public health (such as reducing cancer risk). Additionally, facilities subject to risk reduction requirements have 5 years to reduce their health risks from when the District approves the risk reduction audit and plan. In the event facilities are unable to reduce the health risks within 5 years, extensions may be granted under certain circumstances. The proposed amended rule requires health risk reductions only to the extent it is feasible. Therefore, the proposed amended rule will not preclude facilities from operating provided all feasible control measures are implemented. Also, at this time the District does not anticipate that any military facilities will be impacted by the proposed rule amendments.

**10. WORKSHOP COMMENT**

Proposed Subsection (c)(2)(ii) should be revised to remove the phrase “*while taking into consideration the cost of achieving health risk reductions*” because the cost of a proven and feasible T-BARCT device or technique may preclude its implementation. Cost considerations are provided for in proposed Subsection (c)(4) definition for “Economically Practicable.”

**DISTRICT RESPONSE**

The proposed definition for “Economically Practicable” and references to the term in the rule have been removed from the proposed amended rule.

Per the proposed amended rule, the T-BARCT definition would only apply if a facility is unable to reduce the risk to below the significant risk threshold(s) within 5 years. Since T-BARCT is the Best Available **Retrofit** Control Technology for Toxics, it includes cost considerations. However, the District will not conduct a cost-effectiveness analysis (as conducted when implementing Best Available Control Technology (BACT) requirements) when determining if a facility can

implement T-BARCT. Since the proposed amended rule is designed to protect public health by decreasing health risks, such as cancer risk, in order to conduct a cost-effectiveness analysis, the District would need to assign a dollar value to health risk outcomes, which would not be reasonable.

When determining if T-BARCT has been implemented, District staff will review available information on current achievable emission limits and potential controls for each source category contributing to the risk exceedances. This information includes guidelines and recent determinations of BACT, T-BARCT, Reasonably Available Control Technology (RACT), and Lowest Achievable Emission Rate (LAER), Maximum Achievable Control Technology (MACT) from EPA, CARB, and other air districts. District staff will also review the following:

- Current levels of BACT/T-BARCT/RACT/LAER/MACT controls and emissions (and next more stringent levels of BACT/T-BARCT/RACT/LAER/MACT controls, if available);
- Potential emission reductions that would result in risk reductions (and incremental additional potential emission reductions, if available); and
- Estimated capital and annual costs for retrofit of controls to existing facilities to evaluate controls and emission limits with a cost within reasonable bounds. Specifically, District staff would evaluate if the costs are within the financial capability of the facility and would not result in adverse economic consequences, such as a significant loss of jobs or elimination of a product or service.
- Potential non-air quality health and environmental impacts and energy requirements to identify and minimize any environmental effects and promote sustainability.

Furthermore, the proposed amended rule only requires implementation of T-BARCT if a facility cannot reduce the risk to below the significant risk threshold(s) within 5 years. The District is proposing to implement a transparent process for determining whether an extension will be granted by conducting public meetings prior to granting an extension to any facility. During the meeting the District will explain its preliminary decision regarding the extension and solicit input. Therefore, the public will have an opportunity to provide input for all extensions to be considered by the District.

## **11. WORKSHOP COMMENT**

Proposed amended Rule 1210 has two different cost standards. Proposed Subsection (c)(2) “Best Available Retrofit Control Technology for Toxics (T-BARCT)” defines T-BARCT as “...taking into consideration the cost of achieving health risk reductions, any non-air quality health and environmental impacts, and energy requirements,” and proposed Subsection (c)(4) defines “Economically Practicable.” The reference to cost in the T-BARCT definition is sufficient as long as the District consistently and fairly evaluates the cost-effectiveness and reasonableness of the cost expenditure versus the reductions achieved. Therefore, proposed Subsection (c)(4) “Economically Practicable” and references to this term should be removed from the rule. Further,

the District should develop guidance, in collaboration with stakeholders, regarding cost considerations when requiring T-BARCT.

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**12. WORKSHOP COMMENT**

Existing Subsection (c)(10) definition of “Prioritization Score” and references to the term are proposed for removal from the rule. Prioritization scoring is an important tool for determining if a health risk assessment is required. This is a critical step in light of the additional facilities that will be subject to the proposed rule amendments. Why is the definition proposed for removal?

**DISTRICT RESPONSE**

Prioritization is one of the key elements of the Air Toxics “Hot Spots” Program that the District implements per State law. Existing Subsection (c)(10) “Prioritization Score” had been proposed for removal prior to the workshop because the term was referenced only in existing Subsection (d)(4)(i). That subsection was also proposed for removal because it is outdated and no longer needed. However, because proposed amended Subsection (d)(8) now references prioritization scores, the definition for “Prioritization Score” will remain in the rule.

**13. WORKSHOP COMMENT**

The definition of “Sensitive Receptors” should be revised to include healthcare facilities, e.g., community clinics.

**DISTRICT RESPONSE**

The proposed definition of “Sensitive Receptors” has been revised to include healthcare facilities.

**14. WORKSHOP COMMENT**

When the Office of Environmental Health Hazard Assessment (OEHHA) updates its toxic air contaminant information, the Rule 1210 tables (Table I, II, and III) are affected, and a 30-day notice is published by the District. If OEHHA proposes a revision while the District is creating its prioritization score, the OEHHA toxic air contaminant list should be utilized. Likewise, if there are revisions to any of the toxic air contaminants midstream a permit process, the risk analysis should be updated accordingly. Therefore, proposed Subsection (c)(21) (new proposed Subsection (c)(23)) “Toxic Air Contaminant” should be revised to incorporate by reference the OEHHA updated toxic air contaminant list.

**DISTRICT RESPONSE**

The District disagrees. Both Rule 1200 – Toxic Air Contaminants-New Source Review and Rule 1210 have the same definition for “Toxic Air Contaminants” and the same Table I (carcinogenic), Table II (noncarcinogenic-chronic) and Table III (noncarcinogenic-acute). Amending the definition in one rule will make the definition and the tables in the other rule inconsistent, causing confusion. The District commits to revising the tables expeditiously, through the current 30-day public notification process, as soon as OEHHA makes changes to the Consolidated Table of OEHHA/ARB Approved Risk Assessment Health Values.

**15. WORKSHOP COMMENT**

The term “technically feasible” is referenced throughout the proposed amended rule for requiring T-BARCT and other potential modification to facility operations that are required to reduce emissions. However, the term is not defined in Section (c) Definitions and should be included.

**DISTRICT RESPONSE**

The District agrees. A definition for “Technically Feasible” has been added to the proposed amended rule.

**16. WORKSHOP COMMENT**

What is the rationale for defining proposed Subsection (c)(4) “Economically Practicable” in terms of 10% of the annual profits of a facility or 1% of the annual operational budget of a non-profit facility?

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**17. WORKSHOP COMMENT**

Proposed Subsection (c)(4) “Economically Practicable” should be revised so the definition applies to the parent company, not to the individual facility or branch of a company.

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**18. WORKSHOP COMMENT**

Proposed Subsection (c)(4) “Economically Practicable” should be revised to specify that annualized cost is calculated for a specific period of time, e.g., 5 years, or the number of years the device is projected to be in use.

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**19. WORKSHOP COMMENT**

The T-BARCT requirement should be included in the risk reduction audit and plan, and the economically practicable analysis should be applied for the plan and not for the device independent of the plan as specified in proposed Subsection (c)(2) “Best Available Retrofit Control Technology for Toxics (T-BARCT).”

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**20. WORKSHOP COMMENT**

The social costs of the toxic air contaminant emissions should be included in the economically practicable analysis. This analysis should include the costs associated with healthcare, premature morbidity, premature death, and loss of productivity or impaired ability to work due to illnesses.

**DISTRICT RESPONSE**

Proposed Subsection (c)(4) definition for “Economically Practicable” and references to the term have been removed from the proposed amended rule.

While the proposed definition of T-BARCT includes cost considerations, it is only intended to consider costs that would significantly impact facilities subject to risk reduction requirements to the extent the requirements can preclude facilities from operating. Cost-effectiveness is not meaningful for risk-based regulations, such as proposed amended Rule 1210, since many other factors besides the amount of pollution affect the risk such as the toxic potency and the location of receptors.

In terms of health benefits, based on vast scientific data established by OEHHHA, whose mission is to protect human health and the environment through scientific evaluation of risks posed by hazardous substances, the proposed amended rule can bring health benefits by reducing cancer risks from toxic emissions from facilities subject to the rule.

**21. WORKSHOP COMMENT**

A determination that a risk reduction measure is not economically practicable should be reevaluated biennially by the District to determine its continued accuracy.

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10. Also, new proposed Subsection (e)(5) has been added to require evaluation and implementation of all risk reduction measures which are technically feasible prior to approval of any subsequent 3-year extension (after the initial extension).

**22. WORKSHOP COMMENT**

Government operated institutions like landfills cannot be categorized under corporate or non-profit as provided in the rule. Therefore, proposed Subsection (c)(4) “Economically Practicable” should be revised to include a standard for government operated institutions as *“not more than 5% of the annual operating budget.”*

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**23. WORKSHOP COMMENT**

Proposed Subsection (c)(4) “Economically Practicable” and its application in implementing the proposed amended rule requirements are not adequate for the following reasons: 1. economic practicality must be considered on a case-by-case basis; 2. the purpose of air quality regulations and of the District is to protect the public, not to protect the profits of businesses; 3. businesses have an obligation to operate in a responsible manner, within the law; 4. air quality regulations have been in existence for many years and are an expected cost of doing business; and 5. it is not appropriate to ignore the health of the community by dismissing the company’s obligation to uphold air quality regulations for any reason.

Accordingly, proposed Subsection (c)(4) should be revised to: *“...the annualized cost of the airborne toxic risk reduction measures necessary to reduce the Rule 1210 Regulation XII health risk to below the significant risk threshold(s) will not put the facility out of business, as determined by a government approved independent assessor.”*

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

**24. WORKSHOP COMMENT**

Does the District have a guideline or procedure for evaluating what is economically practicable?

**DISTRICT RESPONSE**

Proposed Subsection (c)(4) definition for “Economically Practicable” and references to the term have been removed from the proposed amended rule.

Facilities that are not able to reduce health risks to below 10 in one million within a 5-year period may need to implement T-BARCT and/or all technically feasible measures on all emission units contributing to the exceedance of the significant risk threshold(s). The District will ensure a facility has implemented T-BARCT and/or technically feasible measures similarly to how it has been implementing T-BACT (Best Available Control Technology for Toxics) and LAER (Lowest Achievable Emission Rate) under Rule 1200 and New Source Review regulations. When applying these requirements, the District conducts extensive research to identify what control technologies, strategies or measures have been achieved in practice for the operation being evaluated.

**25. WORKSHOP COMMENT**

Can the District provide an example of an analysis demonstrating that a risk reduction measure was determined to be economically practicable?

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 24.

**26. WORKSHOP COMMENT**

The proposed amendments state that the time period for compliance may be shortened or extended based on what is “economically practicable” for a facility. “Economically practicable” means “whether, and to what extent, the annualized cost of the airborne toxic risk reduction measures necessary to reduce the health risk to below the significant risk threshold(s) is not more than 10% of the annual profits of a facility or 1% of the annual operational budget of a non-profit facility.” But the District has not assessed how such a definition might have an unduly burdensome impact on facilities in comparison to other definitions. Indeed, when asked about the rationale behind this proposed definition at the August 5, 2021 Workshop, the District merely responded that “the term is defined in our rule.” The District should consider and evaluate basing this definition on cost-effectiveness (i.e., level of emission reduction per dollar spent).

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 10.

## **27. WORKSHOP COMMENT**

The proposed definition of “Significant Risk Threshold” in Section (c) Definitions should include an incremental reduction over time to the proposed maximum individual cancer risk of equal to or greater than 10 in one million. Specifically, the cancer risk reduction threshold should be reduced by half to below 50 in one million upon adoption of the proposed amended rule, reduced to below 25 in one million in 3 years, and then to below 10 in one million in 5 years.

This incremental approach would allow the District time to evaluate the health impacts, environmental benefits, costs, and business impacts from this reduction. One of California’s largest air districts, Bay Area Air Quality Management District (BAAQMD), recently reduced the cancer risk reduction threshold, carefully analyzed, and documented the benefits of an incremental reduction approach, and chose to use that process to reach their risk threshold of 10 in one million.

### **DISTRICT RESPONSE**

At this time, only a few facilities would be subject to a cancer risk reduction threshold of 50 in one million or 25 in one million. Therefore, instead of establishing an incremental limit that would potentially result in delays in cancer risk reductions, the District is proposing a health protective threshold of 10 in one million. However, the proposed amended rule includes limited flexibility for facilities that need more time to achieve this limit due to current technological limitations.

In order to understand the District’s proposal to revise the cancer risk reduction threshold from 100 in one million to 10 in one million, it is important to first highlight that the proposal is based upon scientific data established by OEHHA. As the lead state agency for the assessment of health risks posed by environmental contaminants, OEHHA’s mission is to protect human health and the environment through scientific evaluation of risks posed by hazardous substances. OEHHA is one of five state departments within the California Environmental Protection Agency (Cal/EPA).

OEHHA implements the Toxic Enforcement Act of 1986, commonly known as Proposition 65<sup>1</sup>, and compiles the state’s list of substances that cause cancer or reproductive harm. OEHHA also develops health-protective exposure levels for contaminants in air as guidance for regulatory agencies and the public. These include both cancer potency factors<sup>2</sup> and non-cancer reference exposure levels<sup>3</sup> for the Air Toxics “Hot Spots” Program.

The Air Toxics “Hot Spots” Program establishes requirements for calculating emissions of toxic air contaminants from stationary sources and for evaluating the potential public health impacts of those emissions. It also requires the operator of “significant risk” facilities to reduce their risks below the level of significance, which is set by each air district in California and is reflected in their individually adopted cancer risk reduction thresholds.

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<sup>1</sup> <https://oehha.ca.gov/proposition-65/about-proposition-65>

<sup>2</sup> <https://oehha.ca.gov/media/CPFs042909.pdf>

<sup>3</sup> <https://oehha.ca.gov/air/air-toxics-hot-spots>

District Rule 1210 was first adopted in 1996 to establish public notification and cancer risk reduction thresholds and procedures for San Diego County. Rule 1210, which has not been revised since adoption, establishes the cancer risk reduction threshold as 100 in one million, which means that facilities contributing to an increased cancer risk do not need to reduce their risk until the risk is equal to or greater than 100 in one million (i.e., the likelihood that up to 100 people, out of one million equally exposed people, would contract cancer).

The District is proposing to decrease the cancer risk reduction threshold from 100 in one million to 10 in one million for the following reasons:

1. Establish a health protective limit. Given the scientific data established by OEHHA, which demonstrates the contaminants emitted by the facilities subject to this amendment create an increased cancer risk, the District has a responsibility to require cancer risk reductions to the extent it is feasible. The rule, as proposed, allows for extensions when it is not feasible to reduce the cancer risk to below the significant risk threshold(s). The District must consider extensions because for some industries, control technology is still advancing.
2. Align the cancer risk notification threshold, which is currently 10 in one million, with the cancer risk reduction threshold. It's unacceptable to provide notification to the public about elevated health risks and at the same time inform them that the facility is not required to reduce the health risk when feasible.
3. Make the cancer risk reduction threshold consistent with 11 other California air districts that have already implemented a 10 in one million cancer risk reduction threshold. California has a total of 35 local air districts and out of these 35, the top five largest districts include: San Diego County Air Pollution Control District (SDAPCD), San Joaquin Valley Air Pollution Control District (Valley Air District), South Coast Air Quality Management District (South Coast AQMD), BAAQMD, and Sacramento Metropolitan Air Quality Management District (Sac Air Quality). Out of the top 5 largest districts, SDAPCD and the Valley Air District are the only districts that have a 100 in one million cancer risk reduction threshold. South Coast AQMD has a 25 in one million cancer risk reduction threshold and Sac Air Quality and BAAQMD have a 10 in one million cancer risk reduction threshold.
4. The District has carefully evaluated the impact of this proposal on the facilities under its jurisdiction (in San Diego County). Specifically, the District has quantified the toxic air contaminant emissions from all facilities subject to the Air Toxics "Hot Spots" Program through the 2019 calendar year. The District has also identified the facilities that might create elevated health risks and require health risk assessments, which quantify the health risks. In accordance with State law, health risk assessments are conducted by the facilities, reviewed by OEHHA, and approved by the Air Pollution Control Officer. Under this evaluation, the District identified up to 26 facilities that might be subject to the proposed lowering of the cancer risk reduction threshold. For context, the District evaluated approximately 400 facilities and, out of the 400 facilities evaluated, it identified up to 26 facilities that might be affected by this proposal. Based on the nature of the facilities identified, it is feasible for most of them to reduce cancer risks within a 5-year period. Some facilities might need additional time to reduce the cancer risk to below 10 in one

million due to lack of current technological advancements, which is why the proposed amended rule has provisions for extensions when reducing the cancer risk is not feasible.

5. The proposed 10 in one million cancer risk reduction threshold is preferable to other potential thresholds for the following reasons:
  - a. The existing 100 in one million threshold is ineffective since it does not apply to any facilities regulated by the District. No facilities in San Diego County currently exceed the 100 in one million cancer risk reduction threshold. Since Rule 1210 was adopted in 1996, only 2 facilities were subject to risk reduction requirements based on elevated cancer risk (i.e., cancer risk equal to or above 100 in one million).
  - b. A threshold of 50 in one million would not bring significant benefits since it would only apply to 2 facilities. Also, the District would miss an opportunity to reduce cancer risk and protect public health since it is feasible for facilities with a health risk below 50 in one million to reduce their cancer risk.
  - c. A threshold of 25 in one million would not be as effective as what is being proposed because it would also not apply to many facilities, and some facilities with an estimated cancer risk above 10 in one million and below 25 in one million are able to reduce their cancer risks.

## **28. WORKSHOP COMMENT**

The current significant risk threshold for maximum individual cancer risk (MICR) from stationary sources under Rule 1210 is equal to or greater than 100 in one million. The proposed amendments would redefine “significant risk threshold” to include “maximum individual cancer risks equal to or greater than 10 in one million,” decreasing the current threshold by 10 times. This is an incredibly drastic change for which the District has provided little, if any, meaningful justification.

The primary justification for the proposed change offered by the District at the August 5, 2021, workshop appeared to be that other air districts in California have adopted a 10 in one million threshold. While this is true, it is also true that other air districts have adopted higher thresholds. Perhaps most notably, the South Coast AQMD has adopted a 25 in one million threshold for requiring risk reduction measures and has just completed a comprehensive study that demonstrates the effectiveness of its program. At the August 6, 2021, meeting of the South Coast AQMD Governing Board, South Coast AQMD staff presented the results of its Multiple Air Toxics Exposure V (MATES V) Study. The MATES program characterizes the concentrations of airborne toxic compounds in the South Coast Air Basin and the cancer risks associated with air toxics and is part of the South Coast AQMD’s Environmental Justice (EJ) Initiative. The MATES V Study results reflect a decrease in air toxics cancer risk of approximately 50 percent since the MATES IV Study was completed in 2012-2013. Clearly, the South Coast AQMD program is effectively reducing cancer risk from toxic air contaminant emissions.

The District has not provided any justification for imposing a more stringent standard than that adopted by the South Coast AQMD, which has far more sources of toxic air contaminants than the District. The District has stated that alternatives were considered but has provided no analysis to support that assertion or the reasons why it chose to drop those alternatives from its evaluation.

Further, the District does not appear to have considered the conservatism built into the already-existing health risk assessment process, and the effect of changes to that process over time. For example, the addition of new compounds to the list of regulated toxic air contaminants and changes to risk factors assigned to compounds already on the list frequently means that the risk estimated by a health risk assessment the same or goes up even when a facility has implemented measures to reduce emissions. General Dynamics NASSCO (NASSCO) has experienced this at its facility in San Diego. Between 2009 and 2013, NASSCO reduced its diesel particulate emissions by 16 percent, its chromium (VI) emissions by 12 percent, and its nickel emissions by 56 percent. Despite this, the calculated risk for the NASSCO facility jumped from 21 in one million to 53 in one million.

Other air districts have recognized this phenomenon and have taken steps to ensure that their toxic air contaminant rules do not become more restrictive over time as a result. For example, in evaluating its program, the Valley Air District has stated: “As we move forward, it is important to recognize that although the risk calculation methodology is changing, and will result in higher calculated risk, the apparent increase in risk is not caused by increases in actual emissions or exposures to toxic air contaminants.” (See Ex. A, p. 3.) In response to this concern, the Valley Air District undertook an analysis to thoroughly evaluate the impacts of revisions to risk assessment methodologies. The District has not undertaken any similar effort.

The inherent conservatism in the risk assessment process, and the tendency for conservatism to increase over time, dictate that restraint be exercised in setting regulatory thresholds at increasingly more stringent levels. The District has not analyzed or considered the benefits of an incremental reduction. NASSCO supports the Industrial Environmental Association’s recommendation that the MICR significant risk threshold be reduced by half, to 50 in one million, at this time.

### **DISTRICT RESPONSE**

See Response to Workshop Comment No. 27.

In 2015, OEHHA refined its methodology by incorporating the latest science in toxics exposure. Therefore, health risk calculated with the previous methodology was underestimated due to the lack in scientific knowledge and understanding regarding the effects of toxic air contaminants on the human body.

As it relates to the recommendation to establish a cancer risk reduction threshold of 50 in one million, the proposed threshold would not be effective for San Diego County given that only 2 facilities would be subject to cancer risk reductions. One of these facilities would be NASSCO that would be required to reduce the estimated cancer risk from 53 in one million (based on the emissions that occurred in the 2013 calendar year) to below 50 in one million, which would not bring significant benefits to the community impacted by the elevated cancer risk.

**29. WORKSHOP COMMENT**

On May 22, 2019, the San Diego County Air Pollution Control Board (Board) directed the District to evaluate and analyze lowering the cancer risk significance threshold in Rule 1210.

The District has failed to conduct the analysis on toxic air pollutants as directed by the Board. To date, the regulatory process has not included meaningful opportunities for the industry to provide input on analyzing the toxic air pollution significance threshold. Although the District requested an extension in July 2020 so that it could complete further analyses as recommended by the Advisory Committee, no analysis has been provided. Instead, the District has unilaterally proposed a drastic reduction without any substantive analysis or reasoning. This is not the process that the Board envisioned or directed the District to do. The District must complete a detailed toxic emissions/risk analysis.

**DISTRICT RESPONSE**

Please see District Response to Workshop Comment No. 27. The District is meeting Board directions and all applicable mandates as it relates to this rulemaking process. Also, the District has held three public workshops on the different options for rule amendments, in addition to several smaller meetings with stakeholders.

**30. WORKSHOP COMMENT**

Has the District done an analysis of expected emission or risk reductions over time from lowering the cancer risk reduction threshold from 100 in one million to 10 in one million?

**DISTRICT RESPONSE**

Yes, the District has identified the facilities that will be potentially subject to this change, see Attachment. The District has also analyzed the potential control technologies that may be used by these facilities, as analyzed in the Socioeconomic Impact Assessment.

There are multiple methods to reduce health risks and the facilities subject to risk reduction requirements are required to propose how the risk reductions will be achieved. Specifically, these facilities are required to submit an application to the District proposing how the risk reductions will be achieved. It is possible that for some facilities, risk reductions will be achieved without corresponding emission reductions.

**31. WORKSHOP COMMENT**

Why did the San Joaquin Valley Air Pollution Control District (Valley Air District) and South Coast Air Quality Management District (South Coast AQMD) decide to maintain their cancer risk reduction thresholds at 100 in one million and 25 in one million, respectively?

**DISTRICT RESPONSE**

For South Coast AQMD, the cancer risk reduction threshold of 25 in one million, established in the early 1990s, was based on what information was available at the time.

In 2015, the Valley Air District’s Governing Board directed the district to maintain the cancer risk reduction threshold at 100 in one million considering that their population density is lower compared to other regions, and most of the higher emitting industries aren’t located near the higher population density areas.

**32. WORKSHOP COMMENT**

The proposed lowering of the significant risk threshold for maximum individual cancer risks to equal to or greater than 10 in one million is an appropriate first step. However, the District should reduce the cancer risk reduction threshold to one in one million to further protect public health.

**DISTRICT RESPONSE**

District Rule 1200 – Toxic Air Contaminants-New Source Review specifies a cancer risk reduction threshold of one in one million. This threshold applies to projects that are evaluated by the District prior to granting a Permit to Operate. The threshold being proposed under Rule 1210 applies to the entire stationary source.

**33. WORKSHOP COMMENT**

Section (d) Public Notification and Public Meeting Requirements should include the requirement to notify elected officials, community planning groups, and other government recognized organizations.

**DISTRICT RESPONSE**

The District will update its public notification policy which contains specific requirements for notifying the public and stakeholders.

**34. WORKSHOP COMMENT**

Proposed Subsection (d)(1) should be revised to include libraries on the public notification direct mailing list.

**DISTRICT RESPONSE**

Proposed Subsection (c)(15) (new proposed Subsection (c)(16)) “Sensitive Receptors” has been revised to include libraries. This will add libraries to the public notification direct mailing list.

**35. WORKSHOP COMMENT**

In some cases, where thousands of homes/businesses need to be notified, a sufficient time period is needed to properly identify and confirm the addresses, including sensitive receptors; identify school administrators; determine language needs; reserve a public meeting venue; develop the elements of the plans; and possibly prepare an optional stationary source informational letter. All of these activities will take time, especially for a facility that becomes subject to public notification requirements for the first time. Therefore, proposed Subsection (d)(2) should retain the 45-day time period for submitting the public notification plan as provided in the existing rule.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(2) has been revised as suggested.

**36. WORKSHOP COMMENT**

The 15-day time period specified in proposed Subsection (d)(2) may not be sufficient for the District to approve a public notification plan. Based on experience, communication between the District and the affected facility may be needed before the plan can be approved, and 15 days may not be sufficient to accomplish this in certain circumstances. Therefore, proposed Subsection (d)(2) should retain the 30-day time period for the District to approve a public notification plan as provided in the existing rule.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(2) has been revised as suggested.

**37. WORKSHOP COMMENT**

The 15-day time period specified in proposed Subsection (d)(3) is not sufficient to implement the public notification plan in situations where thousands of notifications, some bilingual, may be needed. Some facilities hire mailing services to assist with implementing the plan, in which case, 15 days would not be sufficient to secure a service, provide the addresses, and complete the mailing. Therefore, proposed Subsection (d)(3) should retain the 30-day timeline to implement the public notification plan as provided in the existing rule.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(3) has been revised as suggested.

**38. WORKSHOP COMMENT**

Proposed Subsection (d)(5) requires that the public notice be distributed through direct mailing. The District should also distribute public notification materials via other outreach methods, such as email, phone via automated calls and texts, social media, which can be targeted at specific zip codes, and other electronic communication methods.

**DISTRICT RESPONSE**

Despite advances in digital outreach methods, a physical notice mailed to a residence or business or sent home with children enrolled in a neighborhood school is a reliable form of direct notification for the purposes of the Air Toxics “Hot Spots” Program. The District will consider the use of additional outreach methods for public notification in the future that can be used in addition to the notice sent by mail.

**39. WORKSHOP COMMENT**

Public notices should also be posted on the District’s website, along with showing the affected area.

**DISTRICT RESPONSE**

The public notices are currently posted on the District’s website<sup>4</sup>, which includes a map showing the facilities subject to public notification and risk reduction requirements. Additionally, California Assembly Bill 423 (Gloria, 2019) (AB 423) established that by December 2021, the District shall post all records, such as health risk assessments and public notices, on the District’s website.

**40. WORKSHOP COMMENT**

The frequency for public notification in proposed Subsection (d)(8) is being revised from biennial to annual. However, even biennial notifications seem to result in very little public interest. Therefore, proposed Subsection (d)(8) should retain the frequency of biennial public notifications as provided in the existing rule.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(8) has been revised to require initial public notification and subsequent biennial notifications.

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<sup>4</sup>[https://www.sdapcd.org/content/sdc/apcd/en/engineering/Permits/Engineering\\_Emissions\\_Inventory/engineering\\_phase2hotspots.html](https://www.sdapcd.org/content/sdc/apcd/en/engineering/Permits/Engineering_Emissions_Inventory/engineering_phase2hotspots.html)

**41. WORKSHOP COMMENT**

Proposed Subsection (d)(9)(i) requires “receipts from the U.S. Postal Service, which describe the boundaries of notification, and addresses included in the mailing...” However, such receipts describing boundaries do not exist. Therefore, the subsection should be revised to specify that proof of distribution shall include “receipts from the U.S. Postal Service *or other postage provider for postage and the addresses included in the mailing...*”

**DISTRICT RESPONSE**

The District agrees. Proposed Subsections (d)(5) and (d)(9)(i) have been revised as suggested.

**42. WORKSHOP COMMENT**

Subsection (d)(1) specifies that public notice shall be distributed via direct mailing to any other sensitive receptor “potentially exposed to such risks.” However, this phrase is too vague. The subsection should be revised to specify the area that requires public notification by utilizing the addresses “*within the isopleth of any cancer risk greater than 10 in one million and/or acute or chronic health risk greater than 1.0*” or a similar requirement.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(1) has been revised to “*...within the isopleth exposed to health risks at or above the significant risk threshold(s).*”

**43. WORKSHOP COMMENT**

Consistency and accessibility of information via the public notice is critical. Therefore, the District should prepare the public notice.

**DISTRICT RESPONSE**

The District currently prepares the public notices and allows facilities to prepare an informational letter to accompany the public notification package. The informational letter shall be prepared in accordance with new proposed Subsection (d)(3)(iv) and must be approved by the District.

**44. WORKSHOP COMMENT**

The public notice should include clear and readable maps with isopleths derived from the health risk assessments, and a common language explanation of the health effects of the toxic air contaminant emissions from the chemicals or operations that the community is exposed to.

**DISTRICT RESPONSE**

The District agrees. New proposed Subsection (d)(2)(iii) has been added to specify that clear and readable maps with isopleths be included with the public notification package.

**45. WORKSHOP COMMENT**

The public notice should specify the risk reduction measures that have already been implemented, the additional measures that will be required, and the timeframe for installation of any new equipment or modification of existing operations.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(8) has been revised to specify that biennial notifications shall include the status of the risk reduction audit and plan.

**46. WORKSHOP COMMENT**

A public meeting should be convened after a risk reduction audit and plan has been received by the District, and a public comment period for the plan should be provided. The public meeting should provide the community with an update on the progress made and reductions achieved towards reducing the cancer risk to below the proposed 10 in one million cancer risk reduction threshold.

**DISTRICT RESPONSE**

New proposed Subsection (e)(3) requires the Air Pollution Control Officer to provide public notice within 30 days after receipt of the risk reduction audit and plan, and to make the plan available for public review to provide for a 30-day comment period. Additionally, a public meeting will be required prior to the consideration of an extension to reduce health risks to below the significant risk threshold(s).

As required by AB 423, all records related to risk reduction audits and plans will be readily available to the public.

**47. WORKSHOP COMMENT**

The District should manage all public meetings by developing a standard framework that is required to be used for each meeting.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(10) specifies the requirements for conducting public meetings. The District will also develop procedures for public meetings to provide consistency.

**48. WORKSHOP COMMENT**

The District should manage critical logistics for a public meeting to help ensure public participation including utilizing a consistent and knowledgeable facilitator, providing interpretation, and providing child care.

**DISTRICT RESPONSE**

Proposed Subsection (d)(10)(ii) specifies that the owner or operator of a stationary source shall make all necessary arrangements for the public meeting including, but not limited to, personnel and interpretation if required. The District will provide oversight to ensure the meeting meets all requirements of the rule, which include adequate outreach for the meeting.

**49. WORKSHOP COMMENT**

If little public interest is assessed for an in-person public meeting, the rule should include the option for a facility to conduct a virtual meeting.

**DISTRICT RESPONSE**

Proposed Subsection (d)(10)(i) provides the option of conducting a virtual public meeting with District approval.

**50. WORKSHOP COMMENT**

Public meetings should be conducted in-person with a virtual option, and not virtual only, unless there is a public health order prohibiting in-person meetings.

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 49.

**51. WORKSHOP COMMENT**

The proposed amendments would require annual notification and annual public meetings for any facility required to provide notification, regardless of the response (or lack thereof) to the notification. These changes will result in many more public meetings being held, including in

situations where there is little or no concern within the notified community. There is considerable expense associated with holding a public meeting, including securing a venue, providing audio-visual and translation capabilities, making facility personnel available, etc. These expenses will be incurred by the facility regardless of how many, if any, people attend the meeting. It does not make sense to impose these costs on facilities regardless of the level of interest in the notified community. Therefore, the District should retain the existing provisions related to the frequency of public notification, and process for determining whether or not a public meeting is warranted.

**DISTRICT RESPONSE**

Proposed Subsection (d)(10) has been revised to require a public meeting for all initial public notifications. A public meeting would be required for subsequent biennial notifications only if applicable as determined by the Air Pollution Control Officer.

**52. WORKSHOP COMMENT**

The use of the “meeting on request” postcard system, as currently used by the District, will assist the District and facility to better understand any areas of concern when developing the agenda for the meeting. It will also help to avoid unnecessary expenditures of resources and staff time in conducting meetings that may not have much public attendance. Therefore, the District should retain the use of the postcard system to assess the level of community interest before requiring a public meeting.

**DISTRICT RESPONSE**

Proposed Subsection (d)(3)(ii) specifies that a “Public Response Survey Card” reproduced from originals provided by the District be included with the public notice. This survey card will be used by the District to assess the level of community interest and determine if a public meeting for subsequent biennial notifications is warranted pursuant to proposed Subsection (d)(10).

**53. WORKSHOP COMMENT**

Much of the requirements in existing Section (d) Public Notification and Public Meeting Requirements pertaining to the historical basis for triggering a health risk assessment update is proposed to be removed. Section (d) should be revised to include a provision specifying when a health risk assessment or health risk assessment update will be requested.

**DISTRICT RESPONSE**

Proposed Subsection (d)(8) has been revised to specify that the health risk assessment requirement will be based on the most recent prioritization score.

**54. WORKSHOP COMMENT**

Will District requests for a risk reduction audit and plan be issued before, during, or after a facility's public notification process? Do proposed rule amendments establish when the District will issue either request relative to approving a health risk assessment? What is the District's rationale for shortening both timelines for facility response? Under the circumstances, it would seem that all parties are embarking on something new and will need more time to comply with the rule requirements.

**DISTRICT RESPONSE**

Per the California Health and Safety Code, Sections 44362(b) and 44391(a), upon approval of the health risk assessment, the District shall notify the facility about the applicable risk reduction and/or public notification requirements. Section 44362(a) of the Health and Safety Code also establishes that within one year the District shall approve a health risk assessment or return it for revision and resubmission.

As it relates to the timelines in Rule 1210, the District had intended to streamline the process in order to minimize any unnecessary delays. However, in consideration of the comments received, proposed Subsections (d)(2), (d)(3) and (e)(1) have been revised to retain the various deadline requirements provided in the existing rule, i.e., 45 days to submit a public notification plan, 30 days for the Air Pollution Control Officer to approve the plan, 30 days to implement the public notification plan, and 180 days to submit a risk reduction audit and plan.

**55. WORKSHOP COMMENT**

Depending on the level of risk, a facility may need to hire consultants, consult with control technology vendors, coordinate and consult with the District, seek internal approval of plans and funding, and develop the plan. This is a lengthy process that may take more than the proposed 120 days to submit a risk reduction audit and plan. This is especially the case for large and complex facilities where it may not be feasible to perform all steps necessary to evaluate potential risk reduction measures, including re-running health risk assessments and performing engineering analyses within 120 days. The 6-month timeframe in the existing rule is consistent with the requirements of California Health and Safety Code Chapter 6. Facility Toxic Air Contaminant Risk Reduction Audit and Plan, Section 44391 (f). Therefore, Subsection (e)(1) should retain the 6-month period from the date of notification from the District to submit a risk reduction audit and plan as provided in the existing rule.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (e)(1) has been revised to require a risk reduction audit and plan to be submitted within 180 days of written notice from the District.

**56. WORKSHOP COMMENT**

Proposed Subsection (e)(2) provides the District discretion to shorten a facility's 5-year period to reduce risk to below the significant risk thresholds. The proposed 10 in one million cancer risk reduction threshold is so aggressive, and will present challenges related to technology and costs, that this provision is not necessary. Therefore, proposed Subsection (e)(2) should be removed.

**DISTRICT RESPONSE**

Former proposed Subsection (e)(2) has been removed. However, California Health and Safety Code, Section 44391(b) states the following: *“The period to implement the plan required by subdivision (a) may be shortened by the district if it finds that it is technically feasible and economically practicable to implement the plan to reduce emissions below the significant risk level more quickly or if it finds that the emissions from the facility pose an unreasonable health risk.”*

**57. WORKSHOP COMMENT**

Proposed Subsection (e)(2) reduces the time period for which the District may authorize an extension from five to three years. The 5-year extension period provided in the existing rule is consistent with California Health and Safety Code Chapter 6. Facility Toxic Air Contaminant Risk Reduction Audit and Plan, Section 44391(c) to ensure there is sufficient time for new technologies to be developed and demonstrated in the field. Therefore, proposed Subsection (e)(2) should retain the 5-year extension period to reduce risks to below the significant risk thresholds as provided in the existing rule.

**DISTRICT RESPONSE**

Former proposed Subsection (e)(2), which provided the District discretion to shorten a facility's period to reduce risk to below the significant risk thresholds, has been removed. However, the District believes that it is adequate to reevaluate the need for extensions every 3 years.

**58. WORKSHOP COMMENT**

Proposed Subsection (e)(4)(ii) (new proposed Subsection (e)(2)(ii)) requires a facility risk characterization to be included with the risk reduction audit and plan, which includes an updated emissions inventory report and health risk assessment if the risk due to total facility emissions has increased to above or decreased to below the levels indicated in the previously approved health risk assessment. This requirement is not necessary since the risk reduction audit and plan is presumably triggered by a recent health risk assessment and performing another health risk assessment seems redundant and unnecessary. A facility's emissions and risks will vary from year to year based on the normal course of operations. Therefore, proposed Subsection (e)(4)(ii) (new proposed Subsection (e)(2)(ii)) should be revised to require an updated health risk assessment when emissions increase by more than 20% for the pollutants that contribute the most to the estimated health risk.

**DISTRICT RESPONSE**

The District disagrees. Owners or operators should use the most recent approved emissions inventory reports and health risk assessments to develop the risk reduction audit and plan.

New proposed Subsection (e)(2)(ii), formerly proposed Subsection (e)(4)(ii), is intended to require emissions and health risks that are representative for when the risk reduction audit and plan is submitted to the District. This is required as facilities might reduce or increase emissions between when the risk reduction audit and plan is requested and when the plan is submitted. It usually takes 2.5 to 3 years between when the toxic emissions occur and when a risk reduction audit and plan is required due to all the regulatory requirements that apply to risk reduction requirements. More specifically, per state law risk reduction requirements apply based on the health risks calculated by health risk assessments, which are required based on emissions of toxic air contaminants calculated by the District. The following table lists all the applicable requirements between the time when the emissions are calculated and a risk reduction audit and plan is requested by the District.

<b>Timeframe</b>	<b>Requirement</b>
During Emissions Inventory Year (Year 0)	This is the year for which the District evaluates emissions.
During Subsequent Year (Year 1)	District requests emission data from previous calendar year. Facility submits emission data. District completes emissions calculations. District identifies facilities that may present public health concerns. District requests health risk assessments.
During Following Year (Year 2)	Facilities submit health risk assessments. District submits health risk assessments to OEHHA. OEHHA completes the review of the health risk assessment.
During Following Year (Year 3)	Taking comments from OEHHA into consideration, the District approves or returns for revision and resubmission and then approves, the health risk assessment. District implements applicable public notification and risk reduction requirements.

Therefore, risk reduction audit and plans need to include current emissions and health risks so the District is able to evaluate control techniques that will reduce health risks.

**59. WORKSHOP COMMENT**

Proposed Subsection (e)(4)(vi) ((new proposed Subsection (e)(2)(vi)) should be revised to specify that progress reports shall include the compliance status (e.g., Notice to Comply, Notice of Violation, Variance Petition) and demonstration of the emission units reducing toxic air contaminants and health risk. If there is a variance request for an emission unit identified in a risk

reduction audit and plan, the health risk-based impact should be evaluated not only for the individual emission unit's risk but also for the facility's overall risk.

### **DISTRICT RESPONSE**

Any entities that do not comply with any of the rules or regulations under the District's jurisdiction are subject to compliance action.

Notices to Comply can only be issued for minor violations as established in Rule 6 – Minor Violations. As provided in State law, a Notice of Violation may result in monetary penalties civil suit, or in serious cases, criminal prosecution. California Health and Safety Code specifies maximum penalties for violations of State and District laws, rules, and permits based on level of culpability. In determining the amount assessed and per California Health and Safety Code Section 42403, the District is required to take into consideration all relevant circumstances, including but not limited to: extent of harm, nature and persistence of violation, length of time, frequency of past violations, record of maintenance, unproven/innovative nature of control equipment, action taken to mitigate the violation, and financial burden. There are restrictions for variances that can be granted by the Hearing Board.<sup>5</sup> Variances from State law requirements cannot be granted.

Since the District is responsible for taking enforcement actions, requiring compliance information from facilities is not necessary since the District will have this information. Additionally, AB 423 establishes that all compliance actions will be available to the public on the District's website after December 2021.

### **60. WORKSHOP COMMENT**

The Department of the Navy (Navy) is concerned that the restrictive language in the proposed amendments to Rule 1210 implies limited operations at a stationary source at or above the cancer risk reduction threshold (i.e., 10 in one million), even when all technically feasible and economically practicable options have been implemented. Thus, the proposed amendments may limit or stop mission critical operations that support national security and defense.

Given the unique and crucial role of the Navy in support of national security matters and the unknown implications of emission reduction requirements on the Navy's mission critical operations, the Navy requests that a provision be included in the rule to allow for continued mission critical operations on installations where risk reduction audit and plans are required and all technical and economically feasible measures for emission reductions have been implemented, understanding that future technological advancements will allow for additional emission reductions via new production pathways, processes, or application of control technology.

Therefore, the rule should be revised to include a new proposed Subsection (e)(6) as follows: *"In accordance with Health and Safety Code 40100.6(4)(g)(l), the Air Pollution Control Officer (APCO) shall consult with a Department of Navy and where an installation required to submit a*

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<sup>5</sup> [https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Compliance/APCD\\_Variance\\_Fact\\_Sheet.pdf](https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Compliance/APCD_Variance_Fact_Sheet.pdf)

*risk reduction audit and plan has implemented available technologically and economically feasible steps, military operations will be allowed to continue indefinitely, as required for national security and defense, under an ongoing emissions reduction plan approved by the APCO."*

### **DISTRICT RESPONSE**

The California Health and Safety Code, Section 40100.6(4)(g)(1) states that "*The San Diego County Air Pollution Control District governing board shall consult with the United States Navy, the United States Marine Corps, and the United States Coast Guard on all permitting, rules, regulations, and planning issues that have the potential to impact the mission of the United States Navy, the United States Marine Corps, and the United States Coast Guard.*" This requirement is being met.

Currently, military installations are not subject to the proposed amended rule. If operations at military installations change in the future to the extent that the military installation becomes subject to risk reduction requirements, the proposed amended rule only requires risk reductions to the extent it is technically feasible. Therefore, this proposal will not limit or stop mission critical operations that support national security and defense.

### **61. WORKSHOP COMMENT**

Will an expedited review process be available for facilities that are required to submit a risk reduction audit and plan?

### **DISTRICT RESPONSE**

If the proposed amendments to Rule 1210 are adopted, the District will review each risk reduction audit and plan received as expeditiously as possible. Most of these plans will be submitted to the District through a permit application. The applications for cancer risk reduction will be prioritized by the District.

The District has established timelines for the application process as specified in Rule 18 – Action on Applications, and facilities may request an expedited review process for any application submitted to the District.

### **62. WORKSHOP COMMENT**

If the significant risk threshold is reduced to below 10 in one million for cancer risk, some facilities in San Diego may not be able to reduce their risk to below this level even after implementing all available options in the proposed amended rule, including the granting of an extension. The proposed amended rule should provide an allowance for a facility to continue operating if their cancer risk reduction threshold is equal to or greater than 10 in one million, provided that all "feasible" and "reasonable" risk reduction steps have been implemented.

Therefore, the rule should be revised to include the following provision: *“A stationary source that is required to submit a risk reduction audit and plan and has implemented available technologically feasible and economically practicable options may continue to operate legally, under an ongoing emissions reduction plan approved by the Air Pollution Control Officer, and continue to implement technologically feasible and economically practicable measures to reduce their risks as these measures become available.”*

### **DISTRICT RESPONSE**

The District disagrees. Proposed Subsections (e)(4) and (e)(5) include provisions for extensions. If it is not technically feasible to reduce health risks, facilities can apply for subsequent extensions. If the District approves these extensions, facilities may continue to operate even if their health risk has not been reduced to below the proposed cancer risk reduction threshold.

### **63. WORKSHOP COMMENT**

The proposed amended rule does not specify the enforcement actions that the District may take in the event of non-compliance with the deadlines included in the risk reduction audit and plan and any extensions of time granted by the District. Additional language should be included to specify the penalties for non-compliance, and/or referenced if they are included in other rules.

### **DISTRICT RESPONSE**

The District disagrees. Any entities that do not comply with any of the rules or regulations under the District’s jurisdiction are subject to compliance actions. State law requires the District to take enforcement actions when it documents a violation.

As provided in State law, a Notice of Violation may result in monetary penalties, civil suit, or in serious cases, criminal prosecution. The California Health and Safety Code specifies maximum penalties for violations of State and District laws, and rules and permits based on level of culpability. Additionally, Health and Safety Code section 44381 prescribes civil penalties for specified violations related to the Hot Spots program. In determining the amount assessed and per California Health and Safety Code Section 42403, the District is required to take into consideration all relevant circumstances, including, but not limited to: extent of harm, nature and persistence of violation, length of time, frequency of past violations, record of maintenance, unproven/innovative nature of control equipment, action taken to mitigate the violation, and financial burden.

Since noncompliance with any of the rules or regulations under the District’s jurisdiction may result in compliance actions, it is not necessary to include potential enforcement actions in the proposed amended rule.

**64. WORKSHOP COMMENT**

If a determination of technical infeasibility is made which limits the emission reductions in the risk reduction audit and plan, an updated technology review must be conducted annually, and findings must be included in the plan and/or updates requiring additional action by the facility.

**DISTRICT RESPONSE**

The District disagrees. The District believes that annual technology review would not result in significant benefits. If an extension request is submitted, it will be evaluated under a permit application. District Rule 18 – Action on Applications allows up to 180 days for the review of permit applications. The District believes that it will need time to carefully review the risk reduction audit and plan, and determine if it meets the proposed amended rule requirements.

To promote transparency, the District is proposing to conduct a public meeting prior to consideration of a request for an extension. At the request of the Air Pollution Control Officer, a public meeting may also be conducted prior to approving a risk reduction audit and plan.

**65. WORKSHOP COMMENT**

How will the proposed amendments improve public health?

**DISTRICT RESPONSE**

See District Response to Workshop Comment No. 27.

**66. WORKSHOP COMMENT**

The District must provide data to support that air toxic emissions cause cancers, and that lowering the cancer risk reduction threshold will decrease the incidence of cancer in an affected area.

**DISTRICT RESPONSE**

As stated under District Response to Comment No. 27, toxic compounds have been extensively studied by toxicologists, doctors, and other medical health experts who have determined that these compounds are cancer causing agents. OEHHA has extensive health data demonstrating that pollutants created by facilities subject to Rule 1210 contribute to cancer risk.

Rule 1210 was adopted in 1996 to establish public notification and cancer risk reduction thresholds and procedures in response to the Air Toxics “Hot Spots” Program, which was designed to quantify toxic air contaminants from stationary sources and evaluate the potential public health impacts of those emissions. Rule 1210 is intended to reduce cancer risk, as opposed to cancer rate.

Lowering the cancer risk reduction threshold will decrease the cancer risk in San Diego County. Currently, facilities emitting toxic air contaminants that contribute to cancer risk do not need to reduce the risk until it is equal to or above 100 in one million. That is, for every 1,000,000 people exposed to the toxic emissions created by a facility, 100 people might develop cancer. This threshold is inefficient for San Diego County as there are no facilities in the region that create a cancer risk equal to or above 100 in one million. This proposal includes requiring facilities to decrease the cancer risk created by their emissions when the risk is equal to or above 10 in one million, which will be effective for the region as multiple facilities currently exceed the proposed 10 in one million threshold.

**67. WORKSHOP COMMENT**

The term “public” is proposed for removal throughout the rule. Because the Division of Occupational Safety and Health Administration (Cal/OSHA) protects and improves the health and safety of workers in California through setting and enforcing standards, issuing permits, licenses, certifications, registrations, and approvals, the term “public” should be retained in the rule to clarify that the rule addresses general public safety exclusive of occupational safety.

**DISTRICT RESPONSE**

The District disagrees. The term “public” is proposed for removal from the rule because, in accordance with OEHHA guidelines and Rule 1210, the health risks from worker exposure is calculated.

**68. WORKSHOP COMMENT**

CARB conducted an economic analysis for the Airborne Toxic Control Measure (ATCM) for Stationary Compression Ignition Engines. Can a similar analysis be done for Rule 1210?

**DISTRICT RESPONSE**

Yes, the District is publishing a Socioeconomic Impact Assessment. It’s important to note that the ATCM is specific for stationary diesel engines only. The Socioeconomic Impact Assessment prepared for proposed amended Rule 1210 will differ from the analysis for the ATCM due to the variability in the emission source types (e.g., engines, spraying operations) and the primary toxic compounds that contribute to facility-wide estimated cancer risk.

**69. WORKSHOP COMMENT**

If two facilities have similar estimated cancer risks, they could potentially have vastly different costs to implement their respective risk reduction measures.

**DISTRICT RESPONSE**

There may be considerable cost differences between facilities due to the variability in the types of risk reduction measures that may be considered. The owner or operator of an affected facility shall, at their discretion, first determine the specific risk reduction measures to include in their proposed risk reduction audit and plan, and then the District will evaluate the plan to ensure it meets the requirements in Rule 1210 and will be implemented as expeditiously as possible.

**70. WORKSHOP COMMENT**

Are financial resources available to help facilities offset the potential costs to comply with the proposed lowering of the cancer risk reduction threshold?

**DISTRICT RESPONSE**

No, but cost is considered under the T-BARCT definition. The proposed amended rule does not apply to small businesses.

**71. WORKSHOP COMMENT**

To date, the District has not conducted or circulated a Socioeconomic Impact Assessment for public review (California Health and Safety Code Section 40728.5) even though the proposed amendments are scheduled to come before the Governing Board in less than 60 days. This means that the District's decision to propose a 10 in one million significant risk threshold is completely uninformed by any understanding of the socioeconomic impacts associated with that proposal.

The District has not considered the enormous cost the proposed amendments will impose upon facilities in order to implement measures in an effort to reduce their MICR to below 10 in one million, particularly in such a short period of time for compliance. To reach this lower threshold, or attempt to do so, facilities will likely need to engage in costly changes, including changes to production processes, feed stock modifications, product reformulations, production system modifications, system enclosures or relocations within the facility, emissions capture, and modifications to operational standards or practices. The District has considered none of this or how the costs to facilities will be compounded by such a short period of time to comply. Nor has the District considered the ripple effects that these increased costs of compliance may have on the price of goods and services provided by the affected companies, and the impacts on employment and the broader economy.

During the public workshop on August 5, 2021, the District suggested that some facilities can reduce their MICR by implementing changes that involve little or no cost, such as relocating operations within the facility. Relocating operations may or may not be a low-cost proposition, depending on the nature and size of the operations and the facility. Furthermore, even if the assertion that some facilities may have low costs of compliance is accurate, that does not mean that other facilities will not have high costs of compliance, and it certainly does not absolve the

District from its statutory obligation to evaluate the socioeconomic impacts of the proposed amendments.

The District has also suggested that conducting a Socioeconomic Impact Assessment for the proposed amendments is difficult because staff does not now know what steps facilities will take to reduce their MICR. California Health and Safety Code Section 40728.5 does not relieve districts from conducting a Socioeconomic Impact Assessment on the basis that doing so may be complicated. Furthermore, it is unclear why conducting the assessment in this case would be particularly complicated. The District has identified a relatively small number of facilities that it believes currently have an MICR above 10 in one million. The District has detailed health risk assessments for each of those facilities, and any necessary information is easily obtainable by reaching out to the regulated community and conducting site visits. Therefore, it does not appear particularly complicated to make assumptions about the control measures that each facility is likely to implement and the costs associated therewith. If the District needs additional information related to costs, then it should solicit that information from the affected facilities as is frequently done in air district rulemakings.

Once completed, the Socioeconomic Impact Assessment should be subject to independent third-party review by a reputable firm with expertise in conducting socioeconomic analysis. The final assessment must also be circulated for public review and comment. Finally, the District should reassess the proposed amendments in light of the results of the Socioeconomic Impact Assessment.

### **DISTRICT RESPONSE**

The District will publish a Socioeconomic Impact Assessment even though it is not required by the California Health and Safety Code, and it will be in compliance with all the applicable California Health and Safety Code mandates related to this rulemaking process.

### **72. WORKSHOP COMMENT**

California Health and Safety Code Section 40703 requires air districts adopting any regulation to “consider, pursuant to Section 40922, and make available to the public, its findings related to the cost-effectiveness of a control measure, as well as the basis for the findings and the considerations involved.” To date, the District has not undertaken any effort to evaluate the cost-effectiveness of control measures that facilities might be required to implement if the proposed amendments were adopted. When asked about this issue during the August 5, 2021 workshop, the District responded that toxics rules, such as the proposed amendments, do not lend themselves to the typical cost-effectiveness analysis used for criteria pollutants, because doing so would necessarily require the district to assign a dollar value to health outcomes avoided.

Even if the distinction suggested by the District was valid, that would not eliminate the need to assess the cost-effectiveness of the proposed amendments pursuant to California Health and Safety Code Section 40703. Furthermore, the distinction is not valid. Air districts, including the District, regularly elect not to adopt best available retrofit control (BARCT) standards limiting emissions of criteria pollutants that exceed a specified cost-effectiveness threshold. In doing so, the District

is making a decision that the additional adverse health outcomes that might be avoided by imposing a more stringent standard that exceeds the cost-effectiveness threshold do not justify the additional costs of the more stringent standard. The analysis is no different here.

In fact, the proposed amendments already include this concept in proposed Subsection (c)(2) “Best Available Retrofit Control Technology for Toxics (T-BARCT),” which includes any emissions limitation or retrofit control technique found by the District to be technically feasible “taking into consideration the cost of achieving health risk reductions,” among other things. Thus, the proposed amendments already acknowledge that the cost of achieving health risk reductions is a factor that can and should be taken into consideration with establishing toxic air contaminant emission standards.

Not only has the District failed to conduct a cost-effectiveness analysis for the proposed amendments, it has not proposed any mechanism in the rule that would preclude the need to implement control measures that are demonstrably not cost-effective. The only limitations are that the control measures be technically feasible and “economically practicable.” It is entirely conceivable that there could be very costly control measures that are technically feasible and “economically practicable,” but which produce little or no risk reduction. The District conceded during the August 5, 2021 workshop that some risk reduction measures may not result in any emission reductions. It would be inconsistent with the California Health and Safety Code’s mandates, and indeed absurd, to require a facility modification that has de minimis reduction in risk but costs millions of dollars to implement. And, because of the tenfold decrease in the MICR significant risk threshold, far more facilities will be affected and required to reduce their estimated cancer risk.

The District must evaluate the relative costs and benefits of lowering the cancer risk reduction threshold from 100 in one million to 10 in one million, as well as other interim alternatives such as 50 in one million and 25 in one million. In addition, the District must provide in the rule a mechanism for screening out control measures that do not result in risk reduction commensurate with the cost of implementation.

### **DISTRICT RESPONSE**

The District is complying with all mandates applicable to this rulemaking process, including the Socioeconomic Impact Assessment. As stated under District Response to Comment No. 27, the District has carefully evaluated other cancer risk reduction thresholds. The definition of and references to the term “economically practicable” have been removed from the proposed amended rule. Facilities that are unable to reduce their cancer risks to below 10 in one million in 5 years might be eligible for extensions based on implementation of T-BARCT and all technically feasible measures.

**73. WORKSHOP COMMENT**

The District should outline its plans to manage the expected increase in workload associated with the additional health risk assessments, public notifications, and risk reduction audit and plans that will be required by the proposed amended rule. Specifically, the report should specify how facilities will be treated consistently and equitably.

**DISTRICT RESPONSE**

The only change that will slightly increase the number of facilities subject to Rule 1210 is the proposed lowering of the cancer risk reduction threshold. This change would only affect up to 26 facilities in San Diego County. For context, the District regulates over 4,000 facilities. For this reason, the District does not expect a significant workload increase associated with this proposal.

**74. WORKSHOP COMMENT**

CARB recently adopted amendments to their Emission Inventory Criteria and Guidelines Regulation (EICG Regulation), which included the adoption of an additional 700+ toxic air contaminants, and the use of total particulate matter (PM) rather than PM10 as is the current practice. How will these amendments to the EICG Regulation apply to additional facilities and impact those that have reduced their emissions?

**DISTRICT RESPONSE**

There is no information on the health risk values for all of these additional compounds. Consequently, the impact on a facility's estimated cancer and noncancer risks cannot be determined at this time.

**75. WORKSHOP COMMENT**

Rule 1210 should be revised to include provisions regarding the preparation of toxic emissions inventories, the process for calculating prioritization scores, and criteria for determining that a health risk assessment will be required.

**DISTRICT RESPONSE**

The District disagrees. The suggested revision is not necessary because the requirements for emissions inventories and prioritization scores are specified in other regulations or procedures.

The EICG Regulation provides directions for facilities to compile and submit air toxic emission data to local districts. The requirements within the EICG Regulation have been incorporated by reference into Title 17 of the California Code of Regulations and thus are enforceable by air districts and CARB.

The prioritization procedure is specified in the District's Air Toxics "Hot Spots" Program Prioritization Procedures, January 2017. Each stationary source prioritization score is evaluated individually and placed in either Category A (high priority), Category B (intermediate priority) or Category C (low priority) based upon the total score and thresholds. Sources categorized as "high" are subject to health risk assessment requirements. Sources categorized as "intermediate" may be subject to health risk assessment requirements based on additional factors or further evaluation. Facilities categorized as "low" are not subject to health risk assessment requirements.

**76. WORKSHOP COMMENT**

The term "potential" is proposed for removal throughout the rule. While toxic emissions modeled in health risk assessments are estimated as "actual" emissions, current rule references describing risk itself as "potential" should remain as such. The word "potential" is inherent to Air Toxics "Hot Spots" Information and Assessment Act (AB 2588) and appropriate for describing risk. Therefore, the term "potential" should be retained in the rule.

**DISTRICT RESPONSE**

The District disagrees. The cancer and noncancer risks referenced in the rule are estimated risks, which infers potential risks. Therefore, the tandem use of the terms "potential" and "estimated" is redundant, and accordingly the term "potential" is proposed for removal throughout the rule.

**77. WORKSHOP COMMENT**

Under the California Environmental Quality Act (CEQA), all public agencies must give careful, deliberate consideration to preventing environmental damage. Thus, when a public agency must issue a discretionary approval for a proposed project, CEQA requires disclosure of the project's significant environmental impacts and mitigation or avoidance of those impacts where feasible prior to agency approval. To do so, the agency must follow procedures that the Legislature has established to achieve CEQA's goals, chiefly through the development and certification of an Environmental Impact Report (EIR). The EIR is the very heart of CEQA.

Here, the proposed amendments are undisputedly a "project" under CEQA. CEQA defines a project as an "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA projects include an agency's adoption of a rule or regulation, including those aimed at environmental protection. Despite this, the District has conducted no environmental analysis whatsoever. The District has offered no explanation of the proposed amendments' potential significant environmental impacts, and its failure to do so is a violation of CEQA.

Implementation of control measures to comply with the proposed amendments will produce potentially significant impacts, including construction emissions, water quality impacts associated with paving to reduce fugitive emissions, new or additional hazardous materials used at facilities,

utility impacts associated with increased electricity consumption, etc. All of these potential impacts must be analyzed and disclosed to the public.

### **DISTRICT RESPONSE**

The District will complete an environmental review of proposed amendments to Rule 1210. However, Rule 1210 does not specify the actions affected facilities will take to comply with the rule. The types of facilities in San Diego County which may be affected by the amended rule are mineral processing, shipbuilding, landfills, sewage treatment, Turbine Repair and Testing, hospitals, power plants and a university and scientific research facility. These types of facilities currently have permits with the District, but it is not known which actions each facility will take to comply. The potential actions they take include installing control devices or modifying their operations. The list of potential control devices that may be installed are baghouses, carbon adsorption and oxidation catalysts, enclosures with HEPA filters or diesel particulate filters or diesel oxidation catalysts. Adding these types of control devices will require a modification of their District permit to operate. A facility may also choose to modify their operation by paving haul roads, using soil stabilizers, increased watering of haul roads or by limiting their hours of operation. These types of operational changes would also be reflected in a facility's permit to operate. A facility specific CEQA review will be conducted during permit modification to determine if proposed actions to comply with Rule 1210 could result in an environmental impact.

### **78. WORKSHOP COMMENT**

California Health and Safety Code Section 40725 requires the District to provide public notification to potentially affected parties. The backlog of unapproved health risk assessments means that the District cannot possibly know the full implications of the proposed amendments. Therefore, adequate public notification cannot be provided because the District does not know how many facilities will be affected. Furthermore, even if a facility has been notified, it cannot evaluate the potential implications of the proposed amendments if its health risk assessment has not been fully reviewed by the District. There can be no meaningful opportunity for participation in the rulemaking process for facilities that cannot know what, if any, affect the proposed amendments will have on their operations.

### **DISTRICT RESPONSE**

The District has carefully evaluated the impact of this proposal on the facilities under its jurisdiction. Specifically, the District has quantified the toxic air contaminants from all facilities subject to the Air Toxics "Hot Spots" Program through the 2019 calendar year. The District has also identified the facilities that might create elevated health risks and required health risk assessments, which quantify the health risks. In accordance with State law, health risk assessments are conducted by the facilities, reviewed by OEHHA, and approved by the District. Under this evaluation the District identified up to 26 facilities that might be subject to the proposed lowering of the cancer risk reduction threshold. For context, the District evaluated approximately 400 facilities under its jurisdiction (in San Diego County) and, out of the 400 facilities evaluated, it identified up to 26 facilities that might be affected by this proposal.

## **79. WORKSHOP COMMENT**

California Health and Safety Code Section 40727 requires that the District make certain findings before adopting or amending a rule, including findings of necessity, authority, clarity, consistency, nonduplication, and reference. California Health and Safety Code Section 40727.2 requires that the District prepare a written analysis, as specified therein, to support the findings required by Section 40727. The District has not provided sufficient evidence to support the required findings, and certainly has not done so in writing.

The District has not provided support required to reach the conclusion that these amendments are necessary. “Necessity” means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.” During the August 5 workshop, the District generally asserted that reducing the MICR significant risk threshold to below 10 in one million would “reduce risks” and that it would align with the public notification requirement. But the District has not provided any analysis to support the first assertion or to explain why it is necessary to align cancer risk reduction thresholds with notification thresholds. Notably, other air districts, including the South Coast AQMD, have alternative thresholds for notification and risk reduction. Nor has the District shown why it is necessary to increase public notifications from biennial to annual or mandate annual public meetings rather than at the discretion of the Air Pollution Control Officer.

As indicated in the 2018 Air Toxics “Hot Spots” Program Report for San Diego County prepared by the District, the stationary sources subject to Rule 1210 account for only 2.3% of the toxic air contaminant emissions in San Diego County (See Ex. B). Since the stationary sources subject to Rule 1210 make such a small contribution to total emissions, it is highly questionable that further restrictions on these sources will have a material impact on reducing risk in San Diego County. This brings into question the necessity for the proposed amendments.

## **DISTRICT RESPONSE**

The District has and will comply with all the California Health and Safety Code mandates as it relates to this rulemaking process. The findings required by Section 40727 are required to be made prior to rule adoption.

Please see District Response to Workshop Comment No. 27 for an explanation of why this change is necessary.

District Rule 1210 was adopted to establish public notification and cancer risk reduction thresholds in response to the Air Toxics “Hot Spots” Program, which only applies to stationary sources. Additionally, there is a difference between emission and health risks. Facilities can decrease their emissions and increase the health risks. It’s also critical to highlight the scientific data established by OEHHA, which develops health-protective exposure levels for contaminants in air as guidance for regulatory agencies and the public. These include both cancer potency factors<sup>6</sup> and non-cancer

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<sup>6</sup> <https://oehha.ca.gov/media/CPFs042909.pdf>

reference exposure levels<sup>7</sup> for the Air Toxics “Hot Spots” Program. Therefore, there is scientific data demonstrating that toxic contaminants emitted by facilities subject to Rule 1210 contribute to an increased cancer risk.

## **80. WORKSHOP COMMENT**

The District has proposed to bring the proposed amendments before the Air Pollution Control District Governing Board (Governing Board) at its October meeting. It is not possible for the District to complete the rulemaking process in a manner that complies with applicable legal requirements within the proposed timeframe.

First, the District has provided very little information related to its rule development process. Given the lack of details and documentation provided to the public regarding the rationale and support for the Proposed Amendments, on August 5, 2021, NASSCO submitted to the District a request for public records, requesting access to specified public records under the Public Records Act, Government Code Section 6250, et seq. (PRA Request). The PRA Request sought, among other things, documents, communications, and comments related to development of proposed amendments to Rule 1210, Rule 1210 meetings and workshops, and the District’s decision to initiate amendments to Rule 1210. These documents should all be readily available to the public as part of the rulemaking process. The District must build time into the process to collect and disclose these documents and provide the public with an opportunity to review them.

Second, the District must complete a number of statutorily required reviews and analysis, including the Socioeconomic Impact Assessment and the CEQA review. It is not clear when those materials will be released for public review, and there must be ample time for the affected facilities and the general public to review and comment on them.

Third, according to the District’s website, the District has requested a number of facilities to complete a health risk assessment. Many of these health risk assessments are still pending evaluation by the District. With such a large number of outstanding facilities, it is impossible for the District to fully assess the impacts of the proposed amendments. The District must complete its review of all of the pending health risk assessments prior to proceedings with the rulemaking process.

Based on the foregoing, an extension of at least six months appears to be warranted, and perhaps longer depending on how long it takes the District to complete and disseminate the required information and analysis.

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<sup>7</sup> <https://oehha.ca.gov/air/air-toxics-hot-spots>

### **DISTRICT RESPONSE**

The District is proposing to present this proposal to its Governing Board on November 4, 2021. The District will continue to meet all California Health and Safety Code mandates related to this proposal and has provided all responsive documents that are not exempt from disclosure in response to the PRA submitted.

The District will publish the workshop report, Socioeconomic Impact Assessment and environmental review prior to the hearing.

The District has carefully evaluated the impact of this proposal on the facilities under its jurisdiction. Specifically, the District has quantified the toxic air contaminants from all facilities subject to the Air Toxics “Hot Spots” Program through the 2019 calendar year. The District has also identified the facilities that might create elevated health risks and required health risk assessment, which quantify the health risks. In accordance with State law, health risk assessments are conducted by the facilities, reviewed by OEHHA, and approved by the District. Under this evaluation the District identified up to 26 facilities that might be subject to the proposed lowering of the cancer risk reduction threshold. For context the District evaluated a total of approximately 400 facilities under its jurisdiction (in San Diego County) and, out of the 400 facilities evaluated, it identified up to 26 facilities that might be affected by this proposal. Although some health risk assessments conducted by facilities are pending District approval, if the facilities conducted the health risks assessment utilizing the OEHHA methodologies and the emissions under the emissions inventory approved by the Districts, the health risk calculated by the health risk assessment conducted by the facilities should be accurate.

The District disagrees that additional time is required for this rulemaking process.

### **81. WORKSHOP COMMENT**

How can the public communicate support for the proposed rule amendments?

### **DISTRICT RESPONSE**

Written comments may be submitted to the Governing Board by using the form under the “Submit Written Public Comments Here” section on the following webpage:

<https://www.sdapcd.org/content/sdc/apcd/en/apcd-cob-agendas-and-meeting-materials-.html>.

If the public wishes to submit written materials for submission into the record, or have an attachment to the comment, the comment may be sent via email to:

[APCDPublicComment@sdcountry.ca.gov](mailto:APCDPublicComment@sdcountry.ca.gov), or sent via U.S. Mail to 10124 Old Grove Road, San Diego, CA 92131.

Comments received prior to the start of the meeting will be distributed to the Governing Board and posted online with the meeting materials. Comments received after the start of the meeting but before the item is called will be submitted into the written record for the corresponding agenda

item. Materials submitted via U.S. Mail will need to be received the business day prior in order for it to be distributed to the Governing Board.

The Governing Board meeting is scheduled for November 4, 2021, at 1:30 p.m., to consider proposed amended Rule 1210.

**82. CARB COMMENT**

The Purpose suggests that the rule directly specifies limits for maximum individual cancer risk, cancer burden, and total acute and chronic noncancer health hazard indexes which are defined in the term “Significant Risk Threshold.” For clarification, the Purpose should be revised to reference significant risk threshold as follows:

*“...health hazard indexes through the determination of a significant risk threshold applicable to total stationary source emissions and by requiring stationary sources to implement public notifications and health risk reduction plans, and conduct public meetings, to achieve specified health risk threshold limits, as required by the Air Toxics “Hot Spots” Information and Assessment Act (AB 2588) and District Rule 1210.”*

**DISTRICT RESPONSE**

The proposed “Purpose” has been removed.

**83. CARB COMMENT**

Subsection (d)(1) specifies that public notice shall be by direct mailing to any other sensitive receptor potentially exposed to such risks as specified by the Air Pollution Control Officer. The subsection should be revised to include refence elements or criteria to be considered by the District to determine how other sensitive receptors will receive such designation.

**DISTRICT RESPONSE**

A definition of “Sensitive Receptors” has been included in new proposed Subsection (c)(16). The definition includes hospitals, healthcare facilities (e.g., community clinics), schools, day care facilities, elderly housing and convalescent facilities, libraries, and other facilities where the occupants are more susceptible to the adverse effects of exposure to toxic air contaminants. The term “sensitive receptor” is intended to identify facilities where more susceptible members of the community, e.g., children, elderly, and those who are infirm, may be exposed. However, the term cannot be all inclusive, and thus warrants District discretion in identifying facilities that are not specified in new proposed Subsection (c)(16) “Sensitive Receptors.”

**84. CARB COMMENT**

Proposed Subsection (d)(2)(vii) (new proposed Subsection (d)(2)(viii)) specifies that a list of the primary languages spoken by non-English speaking persons in the area to receive notification where such language is the primary language of 5% or more of the total persons to be notified in any census tract in the area to receive notification. The subsection should be revised to include reference for the source of information used to determine those primary languages spoken by non-English speaking persons in the area to receive notification.

**DISTRICT RESPONSE**

The District disagrees. Facilities use the latest census to determine the primary language(s) spoken at home on a census tract basis, and if any language is 5% or more of the total persons to be notified, that language(s) is included in the public notifications.

**85. CARB COMMENT**

Proposed Subsection (d)(2)(viii) (new proposed Subsection (d)(2)(xi)) specifies that the public notification plan shall include a proposed method for responding to public comments and requests. The subsection should be revised such that a timeline and due date are to be included in the proposed method for responding to public comments and requests.

**DISTRICT RESPONSE**

The District agrees. Proposed Subsection (d)(2)(viii) (new proposed Subsection (d)(2)(ix)) has been revised as suggested.

AMF:RC:jl  
10/05/21

**Attachment - List of Facilities Potentially Affected by Proposed Amended Rule 1210**  
(current as of 10/5/2021)

<b>Emission Inventory Year</b>	<b>Facility Name</b>	<b>Facility ZIP Code</b>	<b>Estimated cancer risk Reported by Health Risk Assessment Conducted by Facility</b>
2013	BAE Systems	92113	<b>11.8<sup>a</sup></b>
2017	BAE Systems	92113	<b>10.5</b>
2018	CA Commercial Asphalt Enterprises	92145	Pending
2019	CA Commercial Asphalt Enterprises	92040	Pending
2013	Canyon Rock	92120	<b>12.4<sup>a</sup></b>
2017	Canyon Rock	92120	Pending
2016	Chromalloy - San Diego	92121	0.08
2016	City of San Diego -Public Utilities Department	92121	5.25
2017	City of San Diego/Miramar Landfill	92111	<b>19.5<sup>b</sup></b>
2017	Encina Wastewater Authority	92011	4.16
2013	General Dynamics NASSCO	92113	<b>53<sup>a</sup></b>
2017	General Dynamics NASSCO	92113	<b>53<sup>a</sup></b>
2018	Grossmont District Hospital	91942	Pending
2017	Hanson Aggregates	92145	3.30
2019	Hanson Aggregates Pacific Southwest Region	92071	1.69
2018	Kaiser Foundation Hospitals	92120	0.69
2018	Minnesota Methane LLC San Diego Miramar Facility	92111	0.22
2013	Otay Landfill Inc	91911	<b>32.95<sup>a</sup></b>
2017	Otay Landfill Inc	91911	7.6
2019	Pacific Ship Repair & Fabrication Inc	92113	<b>63.4</b>
2019	Robertsons	92154	1.7
2019	Robertsons	92121	3.8
2015	Salk Institute	92037	7.86
2019	Salk Institute	92037	7.86
2017	San Diego County – Pub Wks San Marcos Landfill	92078	7.00 <sup>a</sup>
2017	San Diego State University	92182	9.4
2018	San Marcos Energy LLC	92078	0.11
2019	Superior Ready Mix LP	92025	2.3
2016	Sycamore Energy LLC	92071	0.02
2019	Sycamore Energy LLC	92071	0.02
2013	Sycamore Landfill Inc	92071	<b>38.3<sup>a</sup></b>
2017	Sycamore Landfill Inc	92071	<b>11.3</b>
2017	Vulcan Materials Western Division	92126	0.4

Notes

1. This list includes all facilities that were required to conduct a health risk assessment based on their potential estimated cancer risk and may be affected by revisions to cancer risk reductions thresholds under Rule 1210.

Workshop Report  
Rule 1210

2. This list includes the potential estimated cancer risks that were reported by the health risk assessment conducted by the facility. Per state law, all health risk assessments must be reviewed and approved by the Air Pollution Control Officer.
3. Calculated estimated cancer risks with (a) have been reviewed and approved by the Air Pollution Control Officer.
4. Potential estimated cancer risks in **bold** are greater than 10, based on information currently available.
5. Facilities that have "pending" under the "estimated cancer risk" have a future deadline to submit the health risk assessment or are subject to enforcement actions for not submitting a health risk assessment to the Air Pollution Control Officer in accordance with State law.
6. (b) Based on revised health risk assessment.
7. This list of potentially affected facilities is subject to change as more recent health risk assessments are evaluated and approved by the Air Pollution Control Officer.