

From: Kirk Riley
Sent: Sunday, August 15, 2021 2:06 PM
To: Consolacion, Randy; Fisch, Angela
Subject: [External] Comments about the draft proposed amendments to Rule 1210

To: Randy Consolacion at Randy.Consolacion@sdcountry.ca.gov, 858-586-2752 and
Angela M. Fisch at Angela.Fisch@sdcountry.ca.gov, 858-229-0256

From: Kirk Riley

Date: August 13, 2021

Subject: Comments about the draft proposed amendments to Rule 1210.

COMMENT ONE:

I consider the change in the Significant Risk Threshold for maximum individual cancer risks equal to or greater than 10 in one million to be a step in the right direction. However, one in one million would be better and more in keeping with the public's desire to keep the air clean, and I urge the APCD to consider this.

COMMENT TWO:

The proposed definition for "Economically Practicable" (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) is not more than 10% of the annual profits of a facility or 1% of the annual operational budget of a non-profit facility) and its application in enforcing air quality regulations is NOT ACCEPTABLE. I propose: "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." My reasoning is explained below.

1. Economic practicality must be considered on a case-by-case basis. There is no "one size fits all" formula. There is a huge difference between different companies and the different circumstances under which they operate.
 - a. Consider the vast differences between a small agricultural business that operates in a sparsely populated area and a huge mega-facility that operates in a densely populated residential area. These two companies cannot reasonably be compared in their budget constraints, their obligations to the surrounding communities, and the harm their pollution can inflict on surrounding communities.
 - b. As another example, some companies are allowed to do business only because of special considerations granted by a Conditional Use Permit. In return for such favorable considerations, these companies should be held to the absolute highest standards of protecting the surrounding communities.
 - c. Accounting statements can be manipulated to show the desired results. Money can be moved from account to account. This is not news to anyone, and it's not illegal. Pay the CEOs more and reduce the profits; that has been done many times.
 - d. Should the amount that a company spends on political contributions and lobbying (which can be considerable sums) be counted as expenses when determining how much profit a company has left to spend on protecting the public health?

e. Almost certainly it will take more work to figure out economic practicality on a case-by-case basis. However, Rule 1210 should not be about making the decision-making process easier (one size fits all) for the APCD. It should be about making the best possible decisions compatible with protecting the health of the public.

f. If a business knows that it will not be required to make changes if the annualized costs of the changes exceed 10% of its profits, that's equivalent to a "safety zone" for a business to operate knowing that they will not be required to improve health risks. It could easily be a mentality of "They can't make us change; it would cost too much. We have the figures to prove it."

2. The purpose of air quality regulations and the purpose of the APCD is to protect the public, not to protect the profits of businesses.

a. We operate in a free market (capitalism) economy. Companies have to adjust to changing circumstances. That is part of doing business. If the law requires a company to change, then the company needs to figure out how to do it. That's the way private enterprise works. It is not the responsibility of the public or the APCD to adjust public health needs to fit into the budget constraints of a business.

b. For example, if the minimum wage goes up, companies adjust to the new law. They have to pay minimum wages. There is no exception that employers have to pay minimum wage as long as that doesn't cost more than 10% of their annual profits. It is the job of the company to figure out how to do it.

c. As another example, when rules were determined for dealing with Covid restrictions, the government did not say that all non-essential businesses had to impose restrictions if it was economically practical for them to do so. No. Safety was the first consideration. The job of the APCD is to protect the public from pollution, not to protect business profits.

3. Businesses have an obligation to operate in a responsible manner, within the law.

a. A business cannot ignore taxes, employment laws, antidiscrimination laws or any other laws it operates under, even if it is an economic hardship for the company. Air quality regulations should not be an exception.

4. Air quality regulations have been in existence for many years and are an expected cost of doing business.

a. If a totally new and unexpected law goes into effect, it may be appropriate to balance the expenses of the new regulations with the viability of existing businesses. However, air quality regulations are not new. For the past 65 years, business owners have known about and had to comply with regulations of the APCD. The regulations may be tweaked from time to time, but the results are not unexpected.

b. If a company has the potential to pollute, it has to obtain permits from the APCD to operate. All permits require compliance with air quality regulations. In fact, none of the permits say that compliance is required as long as it is not an inconvenience for the business. Compliance with regulations is a cost of doing business. It is the responsibility of the business to take that into account.

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.

a. If a business is an essential business (one that is vital to the community) and air quality regulations threaten the existence of the business, then it may be appropriate to look at tax-payer or government support. But it is not appropriate to keep a business in operation by letting the business ignore important health regulations.