

August 19, 2021

Chair Nora Vargas, County Supervisor
San Diego County Air Pollution Control District Governing Board

Via: Randy Consolacion at Randy.Consolacion@sdcounty.ca.gov

Re: Rule 1210

Dear Chair Vargas:

Environmental Health Coalition (EHC) is very pleased to have the opportunity to provide our recommendations to the SDAPCD Governing Board regarding the proposed revisions of Rule 1210.

Overall, EHC supports the proposed changes to Rule 1210. Most significantly EHC supports the long overdue revision of the **Significant Risk Threshold to 10 cancers per million**. It establishes a health-protective emission limit for stationary sources, which will result in a requirement to appropriately reduce cancer risks. This change is very significant and meaningful in the real world as it reduces the chances of contracting cancer by 10 times. It also provides consistency with the public notification level of 10 cancers per million which has been in place for many years. It is confusing and distressing for the public to receive notification of exposure to harmful pollution levels without an action plan for reducing these emissions. This rule change brings San Diego into alignment with 11 other districts that have already implemented a 10 in a million-risk reduction threshold.

This rule change is a significant step towards environmental justice as toxic air contaminant (TAC) emitting facilities are not evenly spread throughout the region. Environmental justice communities often have more than their share of facilities that release TACs. If each one is emitting up to the allowed limit and beyond the risk threshold, the cumulative effect can be much higher than that of other communities. No standard exists for what is the upper bound of cancer risk from ambient air that any one community has to bear. For this reason, it is especially important to ensure that each individual facility has minimized its emissions and health risks to its neighbors.

PUBLIC NOTIFICATION & INVOLVEMENT

Public notification is a critical major function of the rule. Notification must be clear, understandable and easily accessible by the general public. The proposed rule revisions in Rule 1210(d) improves the public's access to information in several important way. The addition of **public meetings** is a good addition and very necessary for public communication.

EHC offers the following recommendations to ensure that **meetings** are consistently effective:

- APCD should manage all community meetings by developing a standard framework that is required to be used for the meetings;

- APCD should manage critical logistics that ensure public participation including: utilizing a consistent and knowledgeable facilitator; providing interpretation; providing child care;
- Meetings should be in person with a virtual option – not virtual only, unless there is a public health order prohibiting in-person meetings
- Meetings should be convened after a Risk Reduction plan has been received and a public comment period for the RRP should be provided

Public notification revisions represent significant improvements in the rule, revisions which EHC supports. We offer the following suggestions for increasing effectiveness of the public notice requirements:

- The proposed rule references notice to “potentially exposed to such risks” which seems too vague. We propose specifying the area that requires notification by utilizing the addresses “within the isopleth of any cancer risk greater than 10/million and/or acute or chronic health risk greater than 1.0” or a similar requirement.
- EHC supports the continued notification requirement using direct mail to impacted residents, however we suggest using other communication tools such as email; phone via automated calls and texts; social media, which can be targeted at specific zip codes and other electronic communication methods.
- Consistency and accessibility of information via the notices is critical and therefore we recommend that the APCD create the written notices.
- Notices should include clear and readable maps with isopleths derived from the HRAs and a common language explanation of the health effects of the TAC emissions from the chemicals or operations that residents are exposed to;
- Distribution of the notices should be increased to include to local schools, libraries, health care facilities not included in sensitive receptors, like community clinics; elected officials – local, state, federal; community planning groups and other government-recognized organizations and the notice should be posted on the APCD website
- The notice should also include actions already taken to reduce emissions and those that will be required and the timeframe for installation of the new equipment or modification of existing operations.
- Depending on the Risk Reduction Plan elements, an annual notice and meeting should be convened to provide the community with an update on the progress made and reductions achieved towards the 10/million cancer risk requirement

EHC requests an explanation of Section b) **Exemptions** which states that industry-wide HRA sources are not subject to the public notification requirements. This provision should be changed to require notification if those sources exceeding the threshold as impacted communities have a right to know about potential impacts to their health, regardless of the source.

DEFINITIONS

EHC requests deletion of the highlighted phrase in the following definition. The phrase raises concerns that the cost of a proven and feasible T-BARCT device or technique could allow the facility to be exempted from using it. Cost considerations are provided for in the Economic Practicability provision.

(2) “**Best Available Retrofit Control Technology for Toxics (T-BARCT)**” means the most effective emission limitation, or retrofit emission control device or control technique, which:

- (i) has been achieved in practice for that source or category of source; or

(ii) is any other emissions limitation or retrofit control technique found by the Air Pollution Control Officer to be technically feasible for that source or category of source, or for a specific source, **while taking into consideration the cost of achieving health risk reductions**, any non-air quality health and environmental impacts, and energy requirements.

RISK REDUCTION AUDIT & PLANS: EHC supports and the California Health & Safety code requires the completion of a risk reduction audit and plan. The plan must be completed in a timely manner and should be available for distribution in a draft form for public comment in the public notification and at the community meeting.

In regards to Subsection (e)(4)(iv) – EHC supports the requirement for a “A schedule for implementing the proposed airborne toxic risk reduction measures” and annual progress reports. This requirement provides a clear statement of dates by which emission reductions are expected to occur. That said, there is no language regarding consequences or actions that would be taken should these required benchmarks be missed.

Progress reports should include the compliance status and demonstration (e.g., Notice to Comply, Notice of Violation, Variance Petition) of those emission units reducing TACs and health risk. If there is a variance request for an emission unit identified in a RRP, 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.

Risk Reductions Should Occur as Expeditiously as Possible

Rule 1210 Section (e)(1) states that as provided by the California Health & Safety Code, a facility must achieve a cancer risk below 10 in a million within 5 years of plan submission. Section (e)(2) states:

The Air Pollution Control Officer may shorten the period for an owner or operator of a stationary source to reduce risks to below the significant risk threshold(s) if the Air Pollution Control Officer finds that it is **technically feasible and economically practicable** for the stationary source to do so or if the Air Pollution Control Officer finds that the emissions from the stationary source pose an **unreasonable health risk**.

Section (e)(3) states: The Air Pollution Control Officer may allow additional time for an owner or operator of a stationary source to reduce risks to below the significant risk threshold(s). However, no extension of time may be granted unless the owner or operator has reduced the health risk from all emission units within the stationary source contributing to the exceedance of the significant risk threshold(s) to an extent that is **technically feasible** and **economically practicable**. The owner or operator shall submit an extension request to the Air Pollution Control Officer, in the manner and form prescribed by the Air Pollution Control Officer, which shall include all of the following:

These provisions and others that follow are all key to ensuring that emission reductions are achieved expeditiously; however, the repeated use of ‘technically feasible’ and ‘economically practicable’ is vague and are not well defined. These are potentially opportunities for TAC emitting facilities to avoid compliance.

Economically Practicable provisions are too broad and ill defined

Rule 1210 Section (c) (4) defines: **“Economically Practicable”** as: 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.

This definition should be clarified and modified to include the following:

- The standard applies to the parent company, not to the individual facility or branch of a company.
- 'Annualized cost' should be defined over a specific period of time such as 5 years or the number of years the device is projected to be in use
- The T-BARCT requirement should be included in the Risk Reduction Plan and the economic practicability analysis should be applied for the plan not for the device independent of the plan, as included in the definition in Definition (c) (2), Best Available Retrofit Control Technology for Toxics (T-BARCT)
- The social costs of the TAC emissions should be included in the economically practicable analysis. This analysis should include the costs associated with health care, premature morbidity, premature death, and loss of productivity or impaired ability to work due to illnesses.
- A determination of 'economically impracticable' should be re-evaluated biennially to determine its continued accuracy
- Government operated institutions like landfills do not fit into corporate or non-profit definitions provided in the rule. Government is, by definition, by and for the people it serves. It should therefore, be a model of compliance and not present health or quality of life risks. The rule should be amended to provide a clear standard for government which EHC recommends to be 'not more than 5% of the annual operating budget'

Technical Feasibility Should be Defined and Continuously Update

- Technical feasibility is referenced repeatedly as a criterion for requiring T-BARCT and other potential modification to facility operations that would reduce emissions. It is, however, not defined in the DEFINITIONS section or any of the subsequent provisions that rely on a finding of 'technical feasibility' for approval. EHC requests development of criteria for determination of technical feasibility.
- If a finding of technical infeasibility is made which limits the emission reductions in the risk reduction plan, an updated technology review must be conducted annually and findings must be included in the plan and/or updates requiring additional action added.

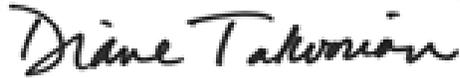
Other provisions requiring clarification and/or amendment:

- Regarding compliance deadlines included in the RRP and any extensions of time granted by the APCO, the rule is silent on consequences for non-compliance. Additional language should be included to address the non-compliance and lack of timely implementation of risk reductions. Penalties for non-compliance should be included and/or referenced if they are included in other rules
- For the identified (c)(21) Toxic Air Contaminants, when OEHHA updates its TAC information, the TAC tables (Table I, II, and III) are affected and a 30-day notice is published. Why is OEHHA's updated TACs list not incorporated by rule reference? If a change is proposed while APCD is creating its prioritization score which determines those facilities that are required to do an HRA and eventually those that will trigger significant risk threshold, the OEHHA TAC list should be utilized. Likewise, if

there are revisions to any of the TACS midstream a permit process for a RRP related emissions unit, the risk analysis should be updated, accordingly

As you may hear from others, the majority of the health risk is from area and mobile sources, and it is true that reductions from these sources are needed as well as those from stationary sources. Reductions in cancer risk from **all** sources are needed. EHC urges APCD to incorporate EHC's recommendations herein and move forward to adopt the long overdue revisions to Rule 1210. This may be one of the most important environmental justice actions SDAPCD can take and we appreciate your diligence to move forward with it.

Sincerely,

A handwritten signature in black ink that reads "Diane Takvorian". The signature is written in a cursive, flowing style.

Diane Takvorian
Executive Director

cc:

Vice Chair Esther Sanchez
Board Member Consuelo Martinez
Board Member Nathan Fletcher
Board Member Stephen Whitburn
Board Member Marcus Bush
Board Member Jack Shu
Board Member Sean Elo-Rivera
Board Member Georgette Gomez
Board Member Enrique Medina
Board Member Anne Marie Birbeck-Garcia