

8/3/2012
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Re: Comments on Rule 12-13 (Metal Melting and Processing Operations) and Rule 12-14 (Metal Recycling and Shredding Operations)

Dear Mr. Douglas:

This letter is on behalf of the West Berkeley Alliance for Clean Air & Safe Jobs, Bay Area Healthy 880 Communities-SL, West Oakland Air Monitors, Global Community Monitor, Bayview Hunters Point Community Advocates, and GreenAction regarding proposed regulations 12-13 (metal melting) and 12-14 (metal recycling).

Metal melting and recycling facilities have been the subject of numerous community complaints. We appreciate the District's efforts investigating solutions, and drafting a regulation.

However, the District substantially weakened an earlier proposed Regulation 12-13 metal melting rule version, which included specific enforceable control standards. These are now replaced with an Emissions Minimization Plan (EMP). While an EMP could be a valuable tool to complement specific standards, removing any standards has resulted in extremely vague requirements, with no definition at all about what "minimization" means. Even worse, the regulation doesn't ever actually state that emissions must be minimized. The EMP is practically meaningless without definitions and standards.

This weakening of Regulation 12-13 appears to have been done because of pressure from the industry at an earlier workshop (where hecklers impeded neighbors and environmental organization participants who wanted regulation from being able to speak¹), and because of the industry's complaints about the costs of controls, which we will discuss further. These tactics have unfortunately been rewarded by the District. Although the next workshop was carried out more civilly, the regulation has been greatly weakened, and Regulation 12-14 on recycling operations (a new regulation) follows the same outline as 12-13, using an EMP approach with no specific standards and no specific minimization requirement.

We urge the District to:

- Reinstate and beef up specific emissions limits, and add emission standards for toxics including metals, sulfur compounds, VOCs, dust, smoke, and any

¹ Please see the short video of this workshop provided through the following link:
<http://www.youtube.com/watch?v=kaP6OPmezPE&list=UUvso0P4IjQ579wUbsisyvzw&index=2&feature=plcp>

additional non-odorous toxics known to be emitted (not just particulate matter (PM) and odors).

- Retain but strengthen the EMP requirements.
- Require emissions to be minimized and add a definition of “minimization,” compared to clearly defined baselines, and require that EMPs that do not comply must be rejected.
- Add clarity to the pre-screening documentation that is essential to preventing processing of toxic materials that could result in invisible and non-odorous, but highly toxic, emissions; the rule should include a checklist to be completed regularly and submitted to the District that definitively identifies whether or not potentially toxic substances are brought into the facility, and accounting for them (e.g., mercury switches, lead batteries, electronics, and other items identified by the District of feedstocks that are potentially toxic).
- Require that smaller facilities not included in the regulation would lose their exemption if they receive a number of confirmed odor complaints within a specified time period, or at a minimum that they be required to carry out an EMP that will expeditiously resolve these complaints.
- Require emission minimization plans to be more specific about identifying changing activities. For example, the plans should identify special orders where facilities carry out activities different from normal operations, specifying operation changes over time and down to time periods short enough to identify activities that result in additional emissions (for instance, daily operations when opening oven doors that might be a source of odors, as discussed in the last workshop).
- Require identification of options for permanent air monitoring requirements, especially in the case of facilities demonstrating a history of complaints.
- Require more frequent review than the 5-year update of the EMP.
- Add to the EMP to specifically identify work areas and activities where emissions are captured, work areas and activities where emissions are controlled, areas and activities where work is done but no capture of emissions is carried out including indoor and outdoor areas, the frequency of work done outside of emissions capture areas, and levels achieved for capture and control.

As many advocates representing communities commented at workshops, we strongly support efforts to preserve industrial jobs, especially good union jobs. However, we reject the premise that regulation is bad for the economy. Some workshop participants have represented that activities that have caused so many community complaints should be tolerated, under threat that businesses will move elsewhere if they are regulated. While normal cost evaluations are part of regulatory process so that business can achieve cost-effective pollution prevention and still thrive, it should be considered a minimum baseline of normal business practice to operate without causing continued public nuisances and health concerns. When public health suffers, the economy also suffers. As

a public health agency with a responsibility for stewardship over our clean air, the District should consider the benefits of controlling metal melters and recyclers by performing a fuller analysis of the pollution reductions achieved by these rules.

Some of these points are discussed more fully below.

Public nuisance enforcement without control equipment is frequently not enough

We support the efforts of the District to promulgate rules to control pollution from metal melters and recyclers because public nuisance rules are not sufficient to protect public health and welfare. While health and safety regulations already require that facilities operate without continuing public nuisance offenses to neighbors, there is a long statewide history, including in the Bay Area, of difficulty in applying these laws effectively.

In the experience of health advocates in both Northern and Southern California, the resolution of local facility problems through public nuisance complaints suffers repeatedly from the same entrenched patterns. It is difficult to ensure that inspectors are quickly available to respond to complaints, and odors can – and frequently do, in the case of metal melters – occur in the middle of the night when neighbors get disturbed by them, but don't necessarily want to have to further disrupt sleep by getting up to make a complaint and meet an inspector. Neighbors have had repeated problems getting inspectors to confirm strong smells that they are convinced (through their local experience of the neighborhood) are coming from specific facilities. Inspectors frequently find they are not sure which facility the smells are coming from, or the specific source within a facility. Inspectors vary greatly in their technical abilities as well as their ability to interact with neighbors. Some are highly competent, concerned, and effective, others are dismissive and at times lacking in background information about the facility against which a complaint is made. Repeated confirmed nuisances usually have to occur before action is taken to require additional controls. Neighbors through all parts of the state have repeated that they have given up calling Air Districts due to frustration that public nuisance complaints didn't help them resolve the problems. Further, followup findings of public nuisance violations by Air Districts may result in small penalties that are cheap compared to continuing to cause public nuisances.

Specific to BAAQMD, the District has generally had a policy of not sending inspectors after hours. The residents who complain about odors after hours therefore cannot receive confirmation of the complaint because, by the time an inspector arrives, the odor is gone. As specific to Pacific Steel Company, one of the companies intended to be covered by the new rules, the community's problem of being unable to confirm activities that produce noxious odors has been long documented – since the 1980's. A professor describes her personal experience with the complaint process and how difficult it is for the community to obtain a confirmed complaint despite genuine incidents:

[W]e often were unable to have our complaints confirmed. In the interval between our phone call and the arrival of the inspector, the odor often disappeared as a result

of shifts in wind direction or in the foundry's production processes. The inspector would arrive and sniff the air but neither she nor I could detect any trace of the smell. . . . Even our hard-won successes in confirmation did not usually trigger action, because five separate confirmations during a twenty-four hour period were required before the Air District would issue a citation to the foundry.

Noga Morag-Levine, *Chasing the Wind: Regulating Air Pollution in the Common Law State* ix-x (2003).

The District stated at the workshop a commitment to enforcement of public nuisance requirements and cited improvements in carrying out inspections and addressing complaints. We applaud further enforcement of these laws, but it is always best for both neighbors and workers onsite that requirements are set for engineering solutions to prevent pollution and permanently clean up problem facilities. That is why emissions standards, with control equipment that captures and controls emissions, or standards that eliminate polluting activities completely, are highly preferable to relying on enforcement of public nuisance law or a generalized and unspecified EMP. The District has considerable expertise in applying engineered solutions, but the politics of establishing such requirements often get in the way. In the current anti-regulatory setting, the District appears to have caved.

The Regulations don't actually state anywhere that emissions must be minimized

Regulation 12-14 for example (and similarly 12-13) states only that owners will *describe* practices for minimizing emissions that the owner has decided to carry out:

12-14-401 Emissions Minimization Plan Requirements: The owner or operator of any metal recycling facility subject to the requirements of this Rule shall develop and submit to the APCO in accordance with Sections 12-14-402 through 406 **an Emissions Minimization Plan (EMP) that details management practices, measures, equipment and procedures that are employed or will be implemented to minimize fugitive emissions of particulate matter (PM) and odorous substances.**

The EMP is instead basically an audit of equipment and practices that are already present or that the facility has already scheduled, to minimize emissions.

12-14-403 Contents of the EMP: The owner or operator of the metal recycling facility subject to Section 12-14-401 shall **prepare a complete and accurate EMP that details the management practices, measures, equipment and procedures that are employed or are scheduled to be implemented to minimize fugitive emissions of particulate matter and odorous** substances for all operations subject to the EMP

It is fundamental that an Emission Minimization Plan in both rules actually require that emissions *be* minimized. The District needs to add requirements to the rules that

emissions be minimized, and to add a definition of minimization. A clear method for establishing a baseline is also essential.

The only 12-14 provisions that mention any requirement for minimizing emissions are the following, but it is stated as something that “may” be required, but not *definitively* required in Section 404.1, or stated as a recommendation of the APCO in Section 405.3:

404.1 Submission of the Proposed EMP: Submit the EMP to the APCO no later than [six months following adoption of this Rule] or no later than the last day of the sixth month after becoming subject to the requirements set forth in Section 12-14-401. The Responsible Manager shall certify the EMP as complete and accurate and sign it. **The APCO may require** the owner or operator to submit additional information to assure the completeness and accuracy of the EMP to ensure the minimization of fugitive emissions of particulate matter, visible emissions, and odorous substances.

and

405.3 APCO Recommendations: Within 30 days of the close of the public comment period, the APCO shall review the draft EMP and the public comments and **notify the owner or operator of the APCO’s recommendations, if any, for additional processes and procedures to further reduce or prevent fugitive emissions from the metal recycling facility, based on technical and economic feasibility.**

Regulation 12-13 is similarly ambiguous and lacking in definitive requirements.

With these ambiguities, it would be impossible for communities to review the plans and to request any meaningful and effective changes through the public comment process. The communities are also left scrutinizing each plan and would be unable to bear the burden of such review without technical support from the District. Many of the community groups that are monitoring pollution from metal recyclers and melters do not have technical experts on staff.

The Emissions Minimizing Plan strategy hasn’t established *how* it will reduce emissions

The District first proposed a regulation that included emission standards that would have required installing control equipment. Then, after conceding to industry statements that control costs were high, the District has decided that an unspecified EMP will be enough to solve the problem. The District stated in the Workshop Notice regarding the current regulation proposal that emissions reductions can be realized that would reduce impacts on neighbors:²

² Available at District Rule Workshop webpage, 6/18/12 Workshop notice, at p. 1
http://www.baaqmd.gov/?sc_itemid=3D5CA577-D5F2-43D7-A982-95F98923BEF9

Staff has evaluated these industrial sectors and determined that **additional reductions in fugitive emissions of both PM and odorous substances may be realized that can result in improved air quality and fewer citizen complaints.** Implementation of emissions minimization practices should help minimize the impacts of these facilities to nearby residences and businesses.

The progression of this regulatory process is fundamentally illogical. Since the EMP requires no control equipment, the District has not provided a basis to identify how emissions reductions would be achieved without control equipment. The facility only needs to describe what it already does, or what it plans to do. Though the District will review and approve the EMPs, we don't see how the District would have any basis to disapprove an ineffective plan (since no standards are included), if the facility claimed they have minimized emissions compared to an unspecified baseline and criteria. Even an industry representative complained during the last workshop that the rule was vague, implying that it may make their clients vulnerable to standards that aren't objective. We cannot support a rule that basically says that facilities will propose how they want to "minimize" emissions, defining for themselves what "minimize" means, with the APCO deciding if it "may" require anything further.

The District has compared this EMP strategy to the flare regulation's Flare Minimization Plan (FMP). But the comparisons are unwarranted (although the Bay Area FMPs have also been legitimately criticized for lacking specific emission standards). The FMPs have certain additional characteristics that aren't present in the metals rule EMPs. Flares are continuously or semi-continuously monitored (sampled during flaring every 15 minutes) for VOCs and sulfur compounds (their primary emissions of concern), and are considered to be necessary only for emergencies, not for normal operations. Flares are connected with gas recovery compressors to prevent flaring most of the time.

In contrast, metals facility activities that are causing emissions are the main operation; and there is generally no monitoring equipment (and which will not be subject to additional control equipment in the proposed regulations). Metals facilities can also cause substantial fugitive emissions which goes unmonitored. Flare monitoring has minimum detection limits set for identifying flaring events to objectively identify whether and how much flaring occurred; no such thing is present in the metals rule EMP. Flaring was objectively and substantially reduced due to the Bay Area flaring regulation (although problem flaring regularly occurs, as a result of weaknesses in the FMP approach), and an iterative process of root cause analysis is required when flaring events occur. No such repeated analysis every time emissions are identified is required for the metals EMPs.

In the metals regulations EMP approach, we see no basis for concluding that any emissions reductions at all will be achieved, or even identified or measured.

In addition to reinstating emissions standards, key toxic pollutants in both the emissions standards and the EMP should be required

The regulations need not only to reinstate emission standards for particulate matter and odors, but also to add to both the EMP and emissions standards that additional key pollutants be controlled, including metals, other toxics, sulfur compounds, VOCs, dust, smoke (and any additional non-odorous toxics known to be potentially emitted at levels that could potentially cause impacts in the neighborhood). The rule standards and EMP requirements should not be limited to particulate matter (PM) and odors. Although these are extremely important pollutants to address, metals recycling and melting operations do include processing of highly hazardous materials, for example, but not limited to, mercury, lead, PCBs, and plastics that can form dioxins and furans. The melting and recycling of mixed wastes is particularly of concern in this industry. Some facilities may never process mixed materials such as these, but those that do at any point in time must be heavily scrutinized.

Pre-screening and truly minimizing emissions of toxic materials

Regulation 12-14 does generally identify activities including toxics that are subject to the EMP:

12-14-402 Operations Subject to the EMP: The EMP shall address the management of fugitive emissions from all of the following operations that are conducted or areas located at, and the materials that handled at, the metal recycling facility: . . .

402.3 Receipt of Scrap Metal from Providers;

402.4 Auto Shredding Residue (ASR) management;

402.5 Lead Batteries;

402.6 Polychlorinated Biphenyl (PCB) Capacitors;

402.7 Mercury Switches;

However, the rule does not actually state that emissions of lead, mercury, PCBs, or any toxics are required to be minimized.

In both regulations, the District should develop a required checklist that must be regularly certified for all facilities and regularly updated, regarding whether toxic materials, or materials that become toxic when melted or otherwise processed, are brought into the facility. Federal regulations governing larger iron and steel foundries at 40 C.F.R. Part 63, Subpart ZZZZZ, could serve as a model for the checklist. Facilities which fundamentally don't include such activities should have to certify in writing that they never process such materials. Inspections should be required to confirm that the facilities comply.

Identification of emissions capture

The EMP should specifically identify work areas and activities where emissions are captured, work areas and activities where emissions are controlled, areas and activities where work is done but no capture of emissions is carried out including indoor and outdoor areas, the frequency of work done outside of emissions capture areas, and levels achieved for capture and control. Without these descriptions, it would be difficult to require work practices that minimize emissions and to require facilities to adopt practices to maximize emissions capture by existing pollution control equipment.

Cost-effectiveness of controls

It is important that cost-effectiveness analysis for controls includes the benefits of reduction of all pollutants. We did not have time to obtain the underlying cost documentation from the District to provide a detailed analysis of the potential for emissions underestimation and cost-overestimation for these rules that takes into account the benefits of reducing multiple pollutants, but we urge the District to provide the public with an evaluation based on the cost per unit of multiple pollutants (not just one pollutant).

With regard to “economic feasibility,” there is no definition of the term. *See, e.g.*, 12-13-405.3. Without a definition, it is unclear how the district is measuring economic feasibility.

Small facilities exemption

Small facilities that are not proposed to be covered under the rules should lose their exemption if they receive a number of odor complaints within a specified time that can be confirmed. Alternatively, small facilities that receive these complaints should be required to carry out an EMP that will expeditiously resolve the complaints.

Recordkeeping

Rule 12-13-501 lists examples certain records that the sources should keep. Even though they are examples and are not exhaustive, it would be better for the District to specifically list that these sources maintain the Material Safety Data Sheets for the binders as well as the VOCs percentages in the binders.

Public comment period

The public comment period is proposed to run simultaneously with the District’s review under 12 – 13 – 405. The public should be able to review the district’s comments before the public formulates its own comments.

Questions

- The District states that “the emissions limits contained in these various regulations [including the NESHAPS] effectively address process emissions of PM.” *See* Workshop Report at 22. The NESHAPS, however, do not apply to all of the facilities that would be covered by the district's proposed rule, and thus seems to be misleading. An explanation of how the various regulations effectively address process emissions of PM would be helpful.
- It is unclear what happens under 12-13-405 (and the corresponding rule in 12-14), when the district disapproves the plan, after the source attempts to correct the deficiency that the district initially identifies. For example, do the District's recommendations made pursuant to 405.3 become part of the plan?

We urge the District to evaluate these important issues since they not only strongly impact the quality of life for neighbors due to odors but also can cause highly toxic emissions.

Thank you for your consideration.

Sincerely,

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Signatories in support of the letter

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