



The Alliance's Comments re: Regulation 12, Rule 13

These comments have been submitted in August, 2011. v.2

The following constitutes initial comments by the West Berkeley Alliance for Clean Air and Safe Jobs regarding the Bay Area Air Quality Management District's Draft Metal Melting and Processing Facilities Rule (Regulation 12, Rule 13).

1. Section 206: Cancer Risk -- the Air District should drop the wording "age sensitivity factors are considered when appropriate" and clarify their definition, which would be consistent with OEHHA. OEHHA interpreted this in its SB 25 TAC prioritization report as follows:

It is the legal opinion of the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board (ARB) that Toxic Air Contaminants (TACs) that cause developmental or other adverse outcomes for infants or children as a result of prenatal exposure to those TACs are within the scope of SB 25.

It should be noted that this opinion (that prenatal exposure leading to adverse outcomes in infants in children is within the scope of SB 25) is not based on an assumption or determination that a fetus is a child. Rather, as discussed above, it is based on the fact that exposures of the fetus to certain pollutants prior to birth may lead to adverse effects that manifest themselves in infancy or childhood and that such exposures occurring in adulthood would not lead to similar toxicity.

2. Sections 226 and 401.3: In section 226, the definition of "odorous substances" should be defined more broadly and not limited to compounds for which the District already has approved analytical methods. It is possible that any particular facility covered by the proposed regulation could emit odor causing substances that are not on the list provided in Section 301.4. In addition, Section 401.3, dealing with Odor Management Plans, should include measures to comply with emission limits in section 301.4, as well as, measures to

reduce or eliminate emissions of any odorous substances that a facility may emit. This would make the reduction of odors (in general) a more proactive process, and avoid placing the burden of identifying nuisance emissions on the community, as is the case with the District's current odor policies.

3. Section 302: This section of the rule establishes an 85% minimum efficiency for emissions collection for various regulated processes. However, the District's BACT/TBACT workbook defines an abatement efficiency (including emissions collection) of greater than 90% for several types of operations (e.g., disk polishing in the semi-conductor industry and metal container coating processes). Thus, it would seem that some of the operations covered by the rule could also achieve a collection efficiency of 90% or greater. For the processes listed in Section 302, we recommend that the District require an operation-specific analysis to determine the greatest capture efficiency achievable.
4. Section 406: The District should state the types of information that are considered public, so that members of the public can easily understand their rights to such public information, and also to dissuade companies from making unreasonable privacy claims. For example, the district could use definitions similar to those in the federal Clean Air Act regulations. According to 40 CFR § 2.301, "emissions data" is public information, and consists of "Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source." This includes information such as a description of the device, installation, or operation constituting the source, the manner or rate of its operation, and the location of the source within the facility.
5. Exemptions to the rule should not only be based upon annual metal throughput and Air District toxic screening analysis, but should also consider a facility's potential to emit particulate matter into the nearby neighborhood. Prior to any exemption, the rule should also require PM concentration screening to ensure that the California and national ambient air standards are not being exceeded at any locations beyond the property line of a metal melting facility. In addition, facilities covered by the rule based upon throughput or toxic screening values should be required to model air concentrations of PM and mitigate any concentrations in exceedance of the ambient standards.
6. Section 401.2.1: This section seems to have some imprecise language and should be edited. For example, the list of control measures refers to a variety of pollutant emissions, not just particulate matter (as stated in the draft). 401.2.1(b) should include any scrapped object that contains a fuel or organic liquids tank, not just vehicles. 401.2.1(e) should include the removal of all lead-acid batteries, whether intact and sealed or damaged. In 401.2.1(h), change "would ensure" to "ensures."
7. Section 502: This section requires odor source testing once every five years. The rule should contain a measure to shorten the source-testing period in cases where odor complaints

involving a facility have been received in a period of less than 5 years from the time of the last source test.

8. Section 301: Emissions and Operations Standards -- include wording that existing facilities with an on-going problem of fugitive emissions must modernize old buildings to limit fugitive emissions.
9. Section 401.3: Odor Management Plan Section Requirements -- How is compliance with odor management plans ensured? Who is responsible for ensuring compliance, the facility or the Air District?
10. Section 403: Review and Approval of Comprehensive Compliance Plan ---How is compliance with the CCP ensured?
11. Section 501: Monitoring Requirements -- If a facility is an on-going problem, the District should monitor rather than the facility.
12. Section 604: Determination of the Emissions of Odorous Substances -- Other than odors, this draft rule is attempting to limit PM using a technology-based approach.
13. Is the District assuming that the Air Toxics Hot Spots law and its New Source Review rules take care of non-odorous toxics?
14. Facilities should be required to model their PM emissions to ensure that the California and national ambient air standards are not being exceeded in the vicinity of each qualifying facility and in the entire Bay Area.

Generally, the West Berkeley Alliance for Clean Air and Safe Jobs feels that Air District stringency of oversight, as well as effective community participation and input, are crucial to make this rule sufficiently strong and health-protective. The Alliance also encourages the Air District to work with Cal/OSHA so that workers (inside facilities) as well as community members in the vicinity of facilities are adequately health-protected. It is important to address these and other concerns before finalizing the rule. Please don't take the rule to the board for adoption until October, 2011 at the earliest. Many people are unable to participate in the summer due to other plans.

Previous Comments Submitted with BAEHC re: the Metal Melting Rule

The Alliance would like a response explaining why BAEHC's comments sent on December 20th, 2010 weren't accepted into the draft rule. These are revised versions of those comments we hope to see written into the rule:

15. Notice will be provided to the community when there are (two?) notices of violations issued to a facility (in a five year period?).
16. Notice will be provided to the community when _____ (# of complaints, maybe 10 in one month?) are made by community residents.
17. Any person residing or working within _____ (some distance, maybe 3000 feet?) of a facility subject to this rule may file a metal-melting facility complaint with the District relating to odors or air pollution emissions from such facility, or an occurrence of a possible violation of the rule.
18. A specific metal melting facility complaint form will be created for public use and will provide a thorough menu of public records to request regarding the facility.
19. Facilities subject to this rule shall maintain onsite for a period of (two?) years and make available to a District representative upon request a record of the results of all monitoring activities required by the District to demonstrate compliance with this rule.
20. Upon request of a person residing or working within _____ (some distance, maybe 3000 feet?) of a facility subject to this rule, the District shall obtain onsite records relevant to a complaint registered according to Section X of this rule and make such monitoring records easily available to the public.

Public Participation Policy Comments

The West Berkeley Alliance for Clean Air and Safe Jobs signed on to a letter submitted to the Air District by the Bay Area Environmental Health Collaborative (BAEHC) dealing with the draft Metal Melting and Processing Facilities rule. The main points made in that letter should be incorporated into the Public Engagement Policy the Air District is currently writing. Points made below should be incorporated into rule-making procedures and relevant rules.

Public Workshops

21. District staff should contact organizations, advocates, and community leaders in impacted communities (where metal melting facilities) to determine which days, times, locations, and means of publicity are best for each impacted community. Only two workshops are currently scheduled, one in Oakland at 6pm and one in Redwood City at 1:30pm.
22. Comment period: The public comment period should not start until notice has been given to affected residents and concerned organizations/advocates and until public workshops have occurred. The comment period should be 60 days at the very least.
23. Response: BAAQMD should respond in writing to all public comments (made both during the comment period and at workshops) with explanations of whether comments are being incorporated and if not, the reason. The response should be posted on the website in a timely manner.
24. Public Record: BAAQMD should keep a public record of all comments, as well as BAAQMD responses.
25. Prep time: residents, organizations, and District staff need sufficient time to plan public workshops. Clearly defined ground rules should be explained before workshops begin.
26. Workshop times: nighttime workshops are needed
27. Number and location of workshops: more than two workshops are needed. Two evening workshops should occur in the East Bay. Workshops should be located in impacted areas where there are metal melting facilities, such as West Oakland, West Berkeley, San Jose, and San Leandro.
28. Video recordings: videotaping of all workshops should occur and be made available to the public, through email lists and the website.
29. Simultaneous translation: translation services should be available at the workshops and should be publicized in all notices.

30. Agendas: should be coordinated in collaboration with community groups to ensure successful participation.
31. Publicity: should be ambitious and coordinated in collaboration with community organizations to ensure successful participation.
32. Materials: hard copies of the draft rule and easily understandable versions should be available at workshops.

Public Notice

33. Notice must be more extensive than emailing or calling a few people you have relationships with.
34. Distribute notices of availability of public documents and access to public workshops.
35. Provide notice to residents, property owners, organizations and businesses within 3,000 feet of metal melting facilities via mail, door hangers, newspaper announcements, fliers at repositories (libraries, community centers, churches, etc.). Send notices to groups or people who have complained about metal melting facilities (such as Pacific Steel Casting Company).
36. Notice language should be easily understandable, unbiased, translated into languages identified by BAAQMD's Limited English Proficient Assessment (2010), should clarify that public comment is sought on the rule, and should state that translation services and documents are available upon request.
37. Website: Post the notice and public process timeline on the website, along with public workshop information.

Document Language

38. The draft rule: a version of the rule should be written in easily understandable, unbiased language, and should be translated upon request.
39. Non-English comments: should be translated and responded to in the original language.