



August 8, 2023

VIA ELECTRONIC MAIL ONLY

Michael Krause, Assistant DEO
South Coast Air Quality Management District
mkrause@aqmd.gov

Re: Proposed Amended Rule 1180 and Proposed Rule 1180.1 Fenceline and Community Air Monitoring for Petroleum and Alternative Feedstock Refineries and Related Operations

Dear Mr. Krause:

On behalf of East Yard Communities for Environmental Justice, we submit the following comments on the draft Proposed Amended Rule 1180 and Proposed Rule 1180.1 (collectively “Refinery Monitoring Rules”). While South Coast AQMD has proposed significant improvements to the current refinery fenceline and community air monitoring program under this rulemaking, we have identified several areas of concern with the draft Refinery Monitoring Rules that should be addressed by staff.

- **The Refinery Monitoring Rules create a compliance loophole by restricting monitoring to facilities with operations related to refining operations that are “located on *contiguous* properties” and “with the *Same Ownership*” as the petroleum refinery.**

The draft Refinery Monitoring Rules would allow some refining operations to exclude support facilities that may not be “contiguous” (i.e., bordering the refinery) but that might instead be “adjacent” to or located near but not necessarily sharing a border with the refinery.¹ This draft language is also at odds with definitions used by other air districts; for example, the Bay Area Air Quality Management District defines refineries as operations that are “located on one or more *contiguous or adjacent* properties that processes any petroleum or alternative feedstock.”² Moreover, this draft language limits monitoring requirements to related facilities under the “Same Ownership” as the refinery. A facility is under the “Same Ownership” when it has the same “subsidiaries,” “same board of directors,” or “same

¹ See, e.g., Proposed Amended Rule 1180, subd. (b) (applicability), (c)(5) (defining “facilities with operations related to petroleum refineries.” See also “Contiguous” defined as “[t]ouching at a point or along a boundary.” “Adjacent” defined as “[l]ying near or close to, but not necessarily touching.” *Black’s Law Dictionary* (11th ed. 2019).

² BAAQMD Rule 12-15.

parent corporation” as the refinery.³ Requiring that facilities be under the “Same Ownership” creates enforcement uncertainty and a compliance loophole that would allow refineries to exclude related facilities through corporate schemes. This approach also ignores what actually occurs in practice, where third-party operations that are essential to refinery operations are often under different ownership.

- **The proposed “independent audit” requirement under the Refinery Monitoring Rules should be completed in an expedited manner with community involvement and additional oversight by South Coast AQMD staff to ensure fenceline monitoring systems are operating as planned.**

South Coast AQMD staff must make several important updates to the “independent audit” requirement under the proposed Refinery Monitoring Rules as part of this rulemaking. First, South Coast AQMD staff should approve of auditors selected by refineries to ensure independence and appropriate qualifications to evaluate the adequacy of fenceline air monitoring systems. Second, the initial audit for fenceline air monitoring systems installed after rule adoption should be completed within a few months rather than one year to ensure data quality. Third, audits should be conducted every two years after the initial audit rather than every three years to maintain or modify fenceline air monitoring systems as needed. Finally, the Refinery Monitoring Rules should establish a deadline for approval or disapproval of audit-related corrective action plans by South Coast AQMD and community engagement by refineries when corrective action is necessary to ensure that fenceline air monitoring system issues are resolved by refineries in an expedited manner and that affected residents are aware of deficiencies.

- **The definition of “fenceline air monitoring plan” under the Refinery Monitoring Rules should underscore the need to detail not only data *reporting* under these plans but also a *data provision element* that outlines data objectives and standards.**

The draft Refinery Monitoring Rules language defines “fenceline air monitoring plan” as a compliance plan that details “data reporting methods” and other important data quality assurance measures.⁴ In addition to highlighting the importance of data reporting, the Refinery Monitoring Rules should require that fenceline air monitoring plans establish key data objectives and standards as part of a data provision element. This standalone plan element should detail the objectives, procedures, and tasks that would be performed to ensure data produced by fenceline air monitoring systems are made available to the public

³ See, e.g., Proposed Amended Rule 1180, subd. (c)(6).

⁴ See, e.g., Proposed Amended Rule 1180, subd. (c)(8).

in a timely and accessible manner that conforms to the FAIR standards (i.e., standards concerning the Findability, Accessibility, Interoperability, and Reuse of digital assets).⁵

- **The definition of “fenceline air monitoring system” under the Refinery Monitoring Rules should clarify that these systems must also make air pollutant concentration data available to the public, not merely display or report this data.**

The draft Refinery Monitoring Rules language defining “fenceline air monitoring system” notes that these systems are comprised of “equipment that measures, records, and reports air pollutant concentrations” from refineries.⁶ The proposed rules, however, should make clear that refineries must also make available or public the air monitoring data generated by these monitoring systems. There should be no ambiguity that South Coast AQMD is requiring that refineries make this data available to the public for download.

- **In describing the web-based fenceline data display program, the Refinery Monitoring Rules should expand on what it means to make “information publicly available,” which should involve more than the current practice of displaying data online.**

The South Coast AQMD staff should make clear that the web-based fenceline data program must make “information publicly available,” which includes public access to monitoring data in an easily downloadable, accessible format (e.g., .csv via an API).⁷ Moreover, if applicable, data accessed through these systems should provide for a widely permissive licensing statement, such as creative commons licensing statement.⁸ There should be no restrictions on the public use of this data.

- **The web-based fenceline data display and notification program should explain the health impacts associated with exposure to pollutants, when detailing the pollutants measured at the fenceline monitoring system.**

The draft Refinery Monitoring Rules currently require that refinery websites “[d]escribe all pollutants” monitored by the refinery.⁹ In describing pollutants, refineries should also be directed to note the health impacts, such as developmental and cancer risk, associated with exposure to pollutants at certain levels and duration that are monitored at the fenceline. Similarly, South Coast AQMD should do the same on its own website for

⁵ GO FAIR, *Fair Principles*, <https://www.go-fair.org/fair-principles/> [archived at <https://perma.cc/829C-CQEL>].

⁶ See, e.g., See, e.g., Proposed Amended Rule 1180, subd. (c)(9).

⁷ See Appendix B, Earthjustice, *Crossing the Fenceline: Critical Reforms to California’s Petroleum Refinery Emissions Monitoring Law*, https://earthjustice.org/wp-content/uploads/fenceline_2022.pdf

⁸ Creative Commons, *About CC Licenses*, <https://creativecommons.org/about/clicenses/> [archived at <https://perma.cc/Y8AH-ZHJP>].

⁹ Proposed Amended Rule 1180, subd. (g)(1)(A).

community air monitoring systems to assist community members in understanding when pollution levels become hazardous or would have negative health effects.

- **The fenceline air monitoring plan “methods for dissemination of data” description should be expanded to detail methods for maintaining data to ensure the public has reliable access to this air monitoring data.**

The South Coast AQMD’s objective in this rulemaking process should entail more than just data dissemination – it should also ensure adequate data management. To achieve this objective, fenceline air monitoring plans should also provide methods for maintaining data and ensuring findable, accessible, interoperable, and reusable data for government agencies, researchers, and the public.

- **The “notification to [the] Executive Officer” by refineries of equipment failures should also occur when there are problems with data collection and retention or other database problems, not just monitoring equipment issues.**

The draft Refinery Monitoring Rules should also require that South Coast AQMD be notified of instances where data for a period of 24 hours or greater is missing from publicly accessible data archives.¹⁰ The agency should be made aware of database and other electronic infrastructure failures that undermine monitoring goals.

We appreciate your consideration of these issues. We welcome the opportunity to discuss our concerns and we look forward to receiving a response to these comments.

Sincerely,



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¹⁰ See, e.g., Proposed Amended Rule 1180, subd. (h)(2)