

Proposed Rule 120: Credible Evidence

January 11, 2018



Background: Timeline

Congress clarified EPA's authority by providing that penalty assessment criteria may be established by "any credible evidence."

EPA finalized its own credible evidence revisions in the Federal Register.

1990

1993

1994

1997

The federal Clean Air Act authorizes enforcement action based on "any information available to the Administrator."

EPA called for states to amend their applicable implementation plans to ensure that any credible evidence may be used as evidence of a violation of an applicable plan.

Background

- ◆ The EPA has rejected rule revisions to our state implementation plan (SIP), if they preclude use of certain types of evidence to prove a violation of an emission standard.
- ◆ Certain SCAQMD rules have been revised to explicitly allow credible evidence, others have not; seeking a global rule to clarify existing authority, and mirror with EPA requirements.
- ◆ Sources will also be able to use credible evidence for contesting allegations of noncompliance in enforcement actions.
- ◆ Other states and air districts have rules based on that authority:
 - ◆ Monterey Bay APCD – Rule 421
 - ◆ Other states including Kansas, Iowa, Nebraska

Proposed Rule

- ◆ PR 120:
 - ◆ Allow for any credible evidence to establish emissions violations of any plan, order, permit, rule, regulation, or law.
 - ◆ Establish that testing, monitoring, or other information gathering methods approved by SCAQMD, CARB, and EPA can be considered credible evidence.

Proposed Rule (Cont.)

- Plan (*example*):
 - Air Monitoring Plan (*Rule 1420*)
 - Compliance Plan (*through settlement, or rule, i.e. 1146, 1404*)
 - Emission Control Plan (*Rule 1110.2*)
 - Odor Mitigation Plan (*Rule 415*)
- Order for Abatement (Stipulated or not)
- Law:
 - Health and Safety Code

Proposed Rule (Cont.)

- ◆ For example:
 - ◆ Those cases in which a designated test method specifies a specific make and model of an instrument to be used, alternatively one could use the results from the same type of instrument (not the make and model in the test method) to demonstrate that data is credible and valid when verifying compliance.

Examples of Credible Evidence

- ◆ Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
 - ◆ An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64;
 - ◆ A monitoring method approved for the source pursuant to 40 CFR 70.6 (a)(3) and incorporated into a SCAQMD Regulation XXX (Title V) permit;
 - ◆ Compliance test methods specified in the State Implementation Plan;
 - ◆ Compliance test methods specified in a rule; or
 - ◆ Any federally-enforceable monitoring or testing methods.

Comments Received

- ◆ Rule development timeline is too short
 - ◆ Timeline meets requirements for an administrative rule (no socioeconomic or CEQA impacts)
- ◆ “Credible evidence” is not specifically defined
 - ◆ Presumptively defined in the rule (“approved testing, monitoring, & other information gathering methods”)
 - ◆ Examples of credible evidence will be further discussed in staff report
- ◆ PR120 would override the compliance demonstration requirements contained in any existing rule.
 - ◆ Compliance demonstrations based on specified test methods in a rule will be the benchmark against which other data will be measured; however, if such data does not exist, any credible evidence can be used to demonstrate compliance.
 - ◆ To be further discussed in the staff report

District Staff Contact

- ◆ CEQA
Ms. Diana Thai
AQ Specialist
dthai@aqmd.gov
909-396-3443
- ◆ Socioeconomics
Mr. Shah Dabirian
Program Supervisor
sdabirian@aqmd.gov
909-396-3076

- ◆ Rule Development
Ms. Nicole Silva
AQ Specialist
nsilva@aqmd.gov
909-396-3384

Schedule

- ◆ Stakeholder Meetings
 - ◆ Ongoing
- ◆ Stationary Source Committee
 - ◆ January 19, 2018
- ◆ Comments Due
 - ◆ January 25, 2018
- ◆ Set Hearing
 - ◆ February 2, 2018
- ◆ Governing Board Meeting
 - ◆ March 2, 2018



Proposed Amended Rule 408: Circumvention

JANUARY 11, 2018

Background

- Predates SCAQMD
All four county air agencies prohibit “dilution as a solution” to air pollution.
- Rule 408 - *Circumvention* adopted by SCAQMD in May 1976 as part of Prohibitory Rules
- Recent enforcement issues triggered this proposed amendment
- Amendment supports current enforcement practices



Proposed Amendment

- Objective:
 - Ensure emissions are not being concealed when mitigating the nuisance odors.
- Amendment:
 - Clarifies that concealment includes dilution or suppression.
 - Clarifies that any plan, order, permit, rule, regulation, or law cannot be circumvented.
 - Facilities retain the ability to use equipment or techniques to mitigate nuisance odors.
 - Prior approval is necessary to allow the Executive Officer to verify that the equipment and techniques are only mitigating nuisance odors, and not concealing emissions.
 - Prohibit alterations to operations or equipment to avoid detection of emissions during monitoring or testing.

Proposed Amendments (Cont.)

- Plan (*example*):
 - Air Monitoring Plan (*Rule 1420*)
 - Compliance Plan (*Rule 1146, Rule 1404*)
 - Emission Control Plan (*Rule 1110.2*)
 - Odor Mitigation Plan (*Rule 415*)
- Order for Abatement (Stipulated or not)
- Law:
 - Health and Safety Code

Circumvention Examples

- A facility blocks the stack or vent from their emission control device to alter emissions readings.
- A facility installs fans from their exhaust points to “mitigate odors.” In doing so, this also conceals air contaminants by directing the emissions away from the monitors placed around the facility.
- A facility is required to be monitored by the District to verify correction of a violation, but the facility alters operations by decreasing their normal output by outsourcing operations to avoid higher readings during monitoring.

Comments Received

- Timeline is rushed for these “significant” changes.
 - Timeline meets requirements for an administrative rule (no socioeconomic or CEQA impacts).
- Proposed amendment broadens the rule’s applicability.
 - Circumvention of any plan, order, permit, rule, regulation, or law is already a violation.
- Previous objective in the Board letter synopsis has changed.
 - The objective and purpose remains the same; however, the way to achieve that objective has changed.
- Proposed amendment would cause significant delays in facilities’ efforts to resolve odor nuisance problems.
 - Staff will consider suggestions to streamline the approval process.

District Staff Contact

- Rule Development
Ms. Nicole Silva
AQ Specialist
nsilva@aqmd.gov
909-396-3384
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dthai@aqmd.gov
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