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**Title:** CONSIDERATION & APPROVAL BY COUNCIL TO ADOPT A RESOLUTION TO CONSIDER ESTABLISHING AN AGREEMENT WITH OR FILING AN ACTION TO COMPEL THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT TO ACCELERATE STATUTORY AND RULE 1180 IMPLEMENTATION OF FENCELINE AND COMMUNIITY AIR MONITORITNG SYSTEMS IN THE CITY (CITY COUNCIL)

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**Attachments:** 1. Exhibit A - Rule 1180, 2. Exhibit B - Health Safety Code s 42705.6, 3. Exhibit C - Rule 1180 Refinery Fenceline Air Monitoritng Plan Guidelines, 4. Exhibit D - Health Safety Code s 42705.5, 5. Exhibit E - January 5 2018 Letter from SCAQMD, 6. Exhibit F - Assessment of California's Statewide Air Monitoring Network for the Childrens Environmental Protect Act - SB 25

Date	Ver.	Action By	Action	Result
2/6/2018	1	City Council		

**Report to Mayor and City Council**

Tuesday, February 06, 2018

Discussion

**SUBJECT:**

**CONSIDERATION & APPROVAL BY COUNCIL TO ADOPT A RESOLUTION TO CONSIDER ESTABLISHING AN AGREEMENT WITH OR FILING AN ACTION TO COMPEL THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT TO ACCELERATE STATUTORY AND RULE 1180 IMPLEMENTATION OF FENCELINE AND COMMUNIITY AIR MONITORITNG SYSTEMS IN THE CITY (CITY COUNCIL)**

**I. SUMMARY**

On December 1, 2017, the South Coast Air Quality Management District (“SCAQMD”) adopted Rule 1180 (Exhibit “A”) to require community air monitoring systems and fenceline air monitoring systems that provide air quality information to the public at or near the property boundaries of petroleum refineries. Rule 1180 requires refineries to (1) submit a fenceline monitoring plan by August 1, 2018 to SCAQMD for approval, and (2) complete installation and begin operation of a real-time fenceline monitoring system within one year after the fenceline monitoring plan is approved, latest January 1, 2020. Rule 1180 also establishes the fees to be paid by the petroleum refineries to cover the costs associated

with the installation, operation and maintenance of community air monitoring systems.

The City is within the air shed of three major refineries, Andeavor (formerly Tesoro) Refinery in Carson, Phillips 66 in Carson, and Andeavor (formerly Tesoro) Refinery in Wilmington (to be combined with the Andeavor Refinery in Carson as part of the LARIC project) (“Carson Refineries”). However, there is no air quality monitoring station within the City boundaries. The Mayor is seeking City Council approval to establish agreements with SCAQMD for accelerated implementation of the Rule 1180 fenceline air monitoring requirements, to establish an agreement with SCAQMD to undertake the implementation of community air monitoring systems, and/or to take action to compel SCAQMD to prioritize the implementation of air monitoring systems in the City congruent with similar projects already in progress in surrounding municipalities.

## **II. RECOMMENDATION**

ESTABLISH AN AGREEMENT WITH SCAQMD AND/OR A JOINT AGREEMENT WITH CARSON REFINERIES AND SCAQMD for immediate implementation of fenceline and community air monitoring systems within an accelerated timeframe than that required by statute and Rule 1180.

## **III. ALTERNATIVES**

A. DO NOT TAKE ANY ACTION and allow SCAQMD to establish and implement air monitoring systems in accordance with statutory and Rule 1180 deadlines.

B. CONSIDER ADOPTING AN ORDINANCE that establishes stricter time standards for implementation of fenceline and community air monitoring systems.

C. FILE AN ACTION for judicial review of SCAQMD’s failure to implement air monitoring in the Carson community in congruence with similar projects in surrounding municipalities.

D. TAKE SUCH OTHER ACTION that the Council deems appropriate consistent with the requirements of law.

## **IV. BACKGROUND**

### **A. Requirement for Air Monitoring Systems**

Petroleum refineries are among the largest stationary sources of air pollutants in the Los Angeles area. In recent years, community concerns over emissions from refineries and the potential for community exposure to air contaminants has increased, both from routine facility operations and potential releases due to upset conditions or emergency situations. Operational activities and upset conditions can result in the release of air pollutants, volatile organic compounds, toxic metals and other toxic compounds. Within Carson, petroleum refineries are the largest stationary sources of toxic pollutants, but there is no air quality monitoring station in the City of Carson.

Monitoring within the community is generally conducted using a conventional, point monitor that provides information about pollutant concentrations at a single point within a survey area. Costs for a single monitoring station are estimated by SCAQMD to have an initial

capital cost up to \$1 million with an annual operating cost of \$500,000. In addition, technological improvements have allowed for the use of “open-path” technology to measure pollutant concentrations in real-time over an extensive area making it ideal for long-term air monitoring of emissions from refineries or other large area sources. Implementation of these monitoring systems will provide valuable information to petroleum refineries, nearby communities, and SCAQMD staff about the potential presence of air contaminants, including some toxics, resulting from petroleum refinery operations.

## **1. Fenceline Air Monitoring Requirements**

By its adoption at the State level, AB 1647 requires petroleum refineries, including the Carson Refineries, to develop, install, operate, and maintain a fenceline monitoring system in accordance with guidance from the appropriate districts, here the SCAQMD, by January 1, 2020. It provides that the refinery shall be responsible for the cost of implementing such system. (Health and Safety Code § 42705.6(c) & (f)) (Exhibit “B”). Pursuant to this legislation, SCAQMD adopted Rule 1180 and established the Rule 1180 Refinery Fenceline Air Monitoring Plan Guidelines (Exhibit “C”).

Rule 1180 requires that no later than August 1, 2018, all the refineries within the district, including the Carson Refineries, shall submit a written fenceline air monitoring plan to SCAQMD’s Executive Officer. Such plan shall describe the equipment, siting, maintenance procedures, quality assurance procedures, and data collection and dissemination procedures for real-time fenceline air monitoring. The rule provides that a plan should be submitted by each refinery for approval or disapproval. If disapproved, the refinery shall resubmit a revised plan within 30 days, and the Executive Officer will either approved the revised plan or modify the plan and approve it as modified. Once approved, the refinery has one year from the date of approval, latest January 1, 2020, to install and begin operating the monitoring system.

The statutory and Rule 1180 requirements ensure that the Carson Refineries will have operational fenceline air monitoring systems within two years. However, nothing precludes the City from establishing and agreement with SCAQMD for the accelerated development and implementation of fenceline air monitoring plans. Though the Carson Refineries would still have to abide by the Rule 1180 submission and approval requirements with SCAQMD, agreements between the City, SCAQMD, and the Carson Refineries could significantly reduce the time to operation of fenceline air monitoring systems for the protection of the residents of the City.

Additionally, the City is authorized to establish more stringent monitoring requirements, not in conflict with existing laws. (Health and Safety Code § 42708). Therefore, the City may adopt an ordinance requiring the Carson Refineries to begin immediate development and implementation of fenceline air monitoring plans. Though the Carson Refineries still must abide by the Rule 1180 submission and approval requirements with SCAQMD, a stricter time requirement may significantly reduce the time to operation of fenceline air monitoring systems for the protection of the residents of the City.

## **2. Community Air Monitoring Requirements**

AB 1647 also requires SCAQMD to install and operate a community air monitoring system near each refinery before January 1, 2020, in order to estimate associated pollutant exposures, health risks, and air pollution levels over time at or near sensitive receptor locations and in disadvantaged communities. SCAQMD is obligated to design, develop, install, operate, and maintain such community air monitoring systems, but will collect fees from the associated refineries to cover the costs of such systems. (Health and Safety Code § 42705.6(b)) (Exhibit “B”). Pursuant to this legislation, Rule 1180 established community air monitoring fees for all the refineries within the district, including the Carson Refineries. Rule 1180 provides a fee schedule for the installation of each refinery-related community air monitoring system, with the initial payment due by July 1, 2018 and the final payment due by January 30, 2019. It additionally provides for the collection of annual operating and maintenance fees pursuant to SCAQMD Rule 103.

The statutory requirements make it highly likely that the Carson community will have operational community air monitoring systems near both the Andeavor Refinery and the Phillips 66 Refinery in Carson within two years. However, Rule 1180 allows for SCAQMD to determine the location of community monitors. The law explicitly allows SCAQMD to contract with a third party to implement the community air monitoring systems. (Health and Safety Code § 42705.6(b)(1)). Due to significant technological requirements and the need for securing locations, agreements, power, equipment procurement and testing, data systems, and quality control, the City may establish an agreement with SCAQMD, and possibly the Carson Refineries, to contract a third party to implement the monitoring systems. (Health and Safety Code § 40701(f)). The City could agree to fund the installation, and if it chooses, the operation and maintenance of such systems should SCAQMD agree to assign to the City or reimburse the City from the associated fees to be collected from the Carson Refineries. This structure may also allow the City to ensure the installation of a community air monitoring system associated with the Andeavor Refinery in Wilmington at a sensitive location within City boundaries.

It should be noted that AB 617 also provides for the deployment of community air monitoring systems. This legislation requires the California Air Resources Board (“CARB”) to identify high priority locations for community air monitoring based on highest exposure burdens for toxic air contaminants and criteria pollutants. (Health and Safety Code § 42705.5) (Exhibit “D”). Based on this priority determination, the regional districts are required to implement community air monitoring systems in the identified communities before July 1, 2019. The City may lobby CARB, which is required to make the determination before October 1, 2018, as a disadvantaged community with a high exposure burden; however, this does not guarantee that a Carson community would be selected, and only accelerates the deadline for system implementation by six months.

## **B. Carson and Other Municipalities within SCAQMD’s Jurisdiction**

SCAQMD is the lead air pollution agency in the South Coast Air Basin and has jurisdiction over all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties. SCAQMD is responsible for controlling emissions primarily from non-vehicular sources of air pollution, including petroleum refineries. When Rule 1180 was initiated by SCAQMD in early 2017, six working group meetings were held to provide the

public and stakeholders an opportunity to discuss important details about the proposed Rule and provide SCAQMD staff with important input during the Rule development process. Due to the importance of the public health of Carson residences, the City Council directed staff to actively encourage SCAQMD to develop a Rule to require fenceline monitoring and specifically assist the City in mitigating nearby refinery impacts. Mayor Robles submitted letters and provided testimony regarding the City's concerns.

The City lies in an area of Los Angeles County that has substantial exposure to multiple refinery operation sources, and is specifically within the air shed of three major refineries. Recent upset conditions include the August 2016 tank explosion accident at the Tesoro (now Andeavor) Refinery in Wilmington, resulting in the closure of Alameda Street between Sepulveda and 223rd (in Carson) and shelter-in-place for many areas, and the explosion at the former Exxon-Mobil Refinery in Torrance in 2015, also requiring shelter-in-place for nearby areas. Since 2000 there have been 96 air quality violation notices (average 5.6 per year) at the Tesoro (now Andeavor) Refinery in Carson and 58 violation notices (average 3.4 per year) at the Phillips 66 Refinery. Over 68% of these violations have been associated with either a leak or other air quality emissions, while the remaining are associated with administrative procedures. Historical refinery accidents include the accident at the then ARCO Carson Refinery in 1985, causing 4 fatalities and 45 injuries. These incidents have added to a heightened level of community concern and the need for local monitoring.

The City requests to have an accelerated schedule [be the first location] to receive fenceline air monitoring equipment and has requested community air monitoring stations near the Carson Refineries. However, pursuant to Rule 1180, implementation of fenceline monitoring will occur according to each facility's fenceline air monitoring plan, latest January 1, 2020, and is not within the discretion of SCAQMD. The timeline for implementation of community air monitoring systems is however, within the discretion of SCAQMD, though latest January 1, 2020. SCAQMD plans to form a public working group regarding the siting, implementation schedule, and distribution of community air monitoring funds. Though highly likely given its location relative to refinery operations, there is no guarantee that community air monitoring systems will be implemented in the City.

The City of Torrance has an AQMD monitoring station and plans are in motion for a temporary fenceline monitoring system for its single refinery. Similarly, the City of Long Beach also has an SCAQMD air quality monitoring station.

The City may file a court action against SCAQMD to compel implementation of air monitoring systems in the City congruent with similar projects already existing or in progress in surrounding municipalities. (Health and Safety Code § 40701(b)). Administrative agency decisions in which discretion is exercised may generally be challenged by a writ of administrative mandamus. (Code of Civil Procedure § 1094.5). If such challenge is brought, a court would look at whether SCAQMD abused its discretion by (1) approving agreements in other cities that provide for implementation of fenceline monitoring, while (2) not implementing community monitoring in the Carson community. An abuse of discretion is established if the decision is outside the scope of the agency's duties, is not supported by the findings, or the findings are not supported by the evidence. (Code of Civil Procedure § 1094.5(b)). SCAQMD is charged with the duty to control air pollution from all sources other than vehicular sources by adopting and enforcing rules and

regulations to achieve and maintain state and federal ambient air quality standards in all areas under their jurisdiction. (Health and Safety Code § 40000 et. seq.). It must do so in a manner that ensures the fair treatment of people of all populations under its jurisdiction.

SCAQMD's approval of the agreements for Torrance and Long Beach do constitute discretionary agency actions. However, it is unlikely that a court would find that SCAQMD abused its discretion by not simultaneously implementing fence-line air monitoring systems in Carson, where circumstance that would trigger early implementation of Rule 1180 do not currently exist. The details concerning the agreement for Torrance which includes the findings and evidence on which SCAQMD based its approval of the agreement, is available on the SCAQMD website at the following links -

<http://www.aqmd.gov/home/news-events/community-investigations/torrance/sep->

. Since the cost and timing for implementing fence-line air monitoring is born by the refineries, accelerated implementation of Rule 1180 may most effectively be achieved by pursuing agreements with the Carson Refineries, in partnership with SCAQMD, to implement fence-line air monitoring systems at the Carson Refineries.

In pursuit of environmental justice, it is the duty of the California Environmental Protection Agency, and its sub-agencies, including CARB and SCAQMD, to promote enforcement of all health and environmental statutes in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low income populations. (Public Resources Code § 71110). Therefore, air quality management programs should be equitably applied across all jurisdictions and communities, with full consideration of those residences most heavily impacted by air pollutant emissions. SCAQMD is charged with protecting the public health from air pollution, with sensitivity to the impacts of its actions on the community. SCAQMD is developing data to evaluate past, current, and potential future funding of monitoring, mitigation, and outreach efforts in the communities near refineries to evaluate and ensure equity, while recognizing the different needs depending on the specific refinery facility.

Based on this data, the exposure burden in the Carson community, and other relevant factors, the City may challenge SCAQMD's lack of implementation of community air monitoring stations in the Carson community as an abuse of its discretion. It should be noted that in CARB's 2003 Assessment of California's Statewide Air Monitoring (Exhibit "F"), pursuant to SB 25, the Wilmington community was one of six communities selected to be part of a Neighborhood Assessment Program due to a number of air pollution sources concentrated in the community and near schools in the area. Again however, it is unlikely that a court would find that SCAQMD abused its discretion in this instance. The SCAQMD's siting of air monitoring stations is a subject of intricate and technical nature, requiring expertise and technical knowledge. A court will most likely not superimposed its own policy judgment on SCAQMD absent the showing of an arbitrary and capricious decision.

In making a determination, the Mayor and City Council should remember that air pollution does not abide by political boundaries. Thus, as eloquently stated by the late Dr. Martin Luther King, Jr. in his letter from the Birmingham Jail, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

## **V. FISCAL IMPACT**

The estimate of the installation of air quality monitoring equipment per refinery is \$1 million, with \$500,000 in annual operational costs. The City should be fully reimbursed by SCAQMD should it contract to implement the air monitoring systems mandated by state law and Rule 1180.

## **VI. EXHIBITS**

- A. Exhibit "A": Rule 1180 - Refinery Fenceline and Community Air Monitoring (December 1, 2017). {pp. 8-15}
- B. Exhibit "B": California Health & Safety Code § 42705.6 - Refinery-related community air monitoring systems; fence-line monitoring systems; requirements; data collection and maintenance; district guidance; allocation of costs. (January 1, 2018). {pp. 16-17}
- C. Exhibit "C": Rule 1180 Refinery Fenceline Air Monitoring Plan Guidelines. {pp. 18-44}
- D. Exhibit "D": California Health & Safety Code § 42705.5 - Preparation of monitoring plan regarding the availability and effectiveness of advanced sensing monitoring technologies and existing community air monitoring systems; toxic air contaminants and criteria air pollutants; deployment of community air monitoring systems; publication of air quality data (January 1, 2018) {pp. 45-46}.
- E. Exhibit "E": SCAQMD Response to Mayor Robles December 13, 2017 Letter (January 5, 2018) {pp. 47-50}.
- F. Exhibit "F": CARB Assessment of California's Statewide Air Monitoring Network for the Children's Environmental Protect Act (SB 25). {pp. 51-148}

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