

Recent Comments on Proposed Amendments to Regulation 8, Rule 40 and District Staff Responses

NPP Comments and District Staff Responses:

Two representatives for NPP met with District staff from the Executive, Legal, Permit Services and Planning Divisions on December 2, 1999. The comments from NPP are summarized below.

1. Rule Applicability and Requirements: NPP cited several examples of tasks associated with site grading and general soil relocation activities. They then asked staff what would be required under Regulation 8, Rule 40 for these activities. NPP's initial understanding of the proposed amendments was that it would require treatment for all soil that contained greater than 50 ppmw organic compounds. Their projected cost for such soil decontamination would allegedly render many Brownfield redevelopment projects uneconomical. This would in turn prevent in-fill development and exacerbate urban sprawl, thereby causing a detrimental environmental impact. NPP argued that this economic impact was not addressed in either the cost effectiveness section of the Staff Report, nor the Socioeconomic Impact Report, and the potential environmental impact was ignored in the CEQA Negative Declaration. Given NPP's assumption that the proposed amendments would require such costly treatment, NPP questioned the validity of staff's supporting documents for the proposed amendments to Regulation 8, Rule 40.

Staff Response: Staff explained that the proposed amendments did not require treatment for all contaminated soil. For all of the examples of tasks provided by NPP, the proposed amendments would require emission minimization procedures such as watering and covering of contaminated soil during soil movement. These procedures are very inexpensive to implement, so they were not addressed in the cost analyses. NPP's arguments against the proposed CEQA Negative Declaration were based on the conclusory and highly speculative notion that the proposed amendments to Reg. 8, Rule 40 will deter development of Brownfield sites in the Bay Area by increasing site remediation costs. NPP offered no evidence to support this conclusion. Staff asserts that its Socioeconomic and CEQA analyses are reasonable.

2. Backfilling Requirements: NPP recommended that the definition of Backfill be modified to allow for deposition of contaminated soil other than in excavated pits. NPP proposed a number of additional emission minimization procedures to be included in the definition. These procedures would be listed in Section 8-40-306 as procedures to minimize exposure of contaminated soil to the atmosphere. The recommended language proposed by NPP did not require implementation of these measures specifically, but rather required exposure to be minimized by such measures. NPP also requested that backfilled soil be allowed to be left uncovered overnight, and possibly as long as over a weekend.

Staff Response: Staff agreed that backfill may be performed in such a way as to establish a new grade, so long as the contaminated soil is covered with clean fill and the backfilled location is the final resting place of the contaminated soil. The definition of Backfill in Section 8-40-215 has been amended to incorporate soil use where a new grade is established. Use of contaminated soil as cover material at landfills has been specifically excluded from this definition. A new Section 8-40-306.6 has been added to detail requirements to minimize emissions during backfilling. Included in this section is a requirement for covering of backfilled soil for periods of inactivity longer than 12 hours. This will allow for overnight breaks during backfill operations. District staff believes the potential for emissions to be just too great from backfilled soil over an entire weekend, especially during the summer ozone season.

3. Sampling Requirements: NPP feels that the sampling requirements contained in the rule are burdensome, particularly for sites involving large quantities of soil such as theirs. NPP suggested new language which would allow persons responsible for projects involving more than 750 cubic yards of contaminated soil to submit an alternate "sampling plan." This plan would justify "a sampling frequency based upon the soil characteristics and variability; provided, however, that the plan shall specify at least ten samples shall be collected and analyzed."

Staff Response: NPP's proposed language is entirely too broad and provides unjustified discretionary powers to whomever reviews such a plan. Staff believes the issues raised by NPP to be rendered moot, given the previously mentioned amendments to the sampling requirements and the provisions added for the use of an OVA for compliance monitoring. Brownfield redevelopment projects would not be required to collect any samples so long as the emission minimization methods are employed. The sampling requirements of Section 8-40-601 have been amended to detail specifically when sampling and laboratory analysis are required. This should allow for the use of an OVA to determine compliance where soil contamination is not previously known. Sampling is now only required for: a) prior to June 1, 2000, soil which will be aerated according to Table 1 in Section 8-40-301; b) excavation projects seeking the 8 yards at 500 ppmw exemption under Section 8-40-116.2; c) excavation projects seeking the 90 day resolution limit based on organic content (less than 500 ppmw); and d) soil associated with the removal of an underground storage tank.

WSPA Comments and District Staff Response:

Two representatives of WSPA met with District staff from the Permit Services and Planning Divisions on December 2, 1999. The comments from WSPA are summarized below.

1. Small Volume Exemption: WSPA feels that the small volume exemption is too stringent for refineries. Once the one cubic yard or 8 cubic yard exemption has been used for that quarter, every shovelful of contaminated soil would be subject to all the notification, sampling, and control requirements of the rule. WSPA requests that the one cubic yard exemption be unlimited and that the 8 cubic yard (at less than 500 ppmw) exemption once per quarter be applied to any excavation site, not to a total facility.

Staff Response: Staff is inclined to modify the exemption; however, not to the extent requested by WSPA. The quarterly limit is necessary for the 8 cubic yards because the potential is just too great for circumventing the intent of the rule by applying the exemption repeatedly for various excavation projects. The quarterly limitation for small volume exemptions in Section 8-40-116 has been moved to subsection 8-40-116.2. This will allow for unlimited application of the one cubic yard exemption for soil excavation or aeration projects at individual facilities. Staff believes that circumvention of the rule requirements by over-use of this exemption is unlikely to occur due to the small size (one cubic yard). However, staff will monitor the refineries use of this exemption for circumvention and will return to the Board of Director's for a correction if the exemption is misused.

2. Use of an Organic Vapor Analyzer is not Definitive: WSPA objects to the wording of the Definition of Contaminated Soil. Since soil may be determined uncontaminated only by laboratory sampling, there is no point to using an Organic Vapor Analyzer (OVA) to determine compliance. An OVA reading of below 50 ppmv must be validated by sampling, which means that all uncontaminated soil must be sampled. The OVA needs to be authorized to determine that soil is not contaminated.

Staff Response: Due to the previous wording in the definition of Contaminated Soil, an OVA would likely only be used by District staff to find contaminated soil. To reduce the financial impacts of the proposed amendments at sites with minimally impacted soil, staff has made modifications to the proposed Rule amendments. The last sentence has been deleted from the definition of Contaminated Soil in Section 8-40-205. This sentence implied that only soil sampling and subsequent laboratory analysis could determine that soil was not contaminated. Deletion of this sentence allows the use of an OVA for compliance determinations. In addition, the sampling requirements of Section 8-40-601 have been amended to detail specifically when sampling and laboratory analysis are required. This should allow for the use of an OVA to determine compliance where soil contamination is not previously known.

3. 45 Day Limit for Soil Resolution: Although the time limit for resolution of excavated contaminated soil in Sections 8-40-306 had been previously raised from 30 to 45 days by District staff, WSPA still objects to this limit. WSPA feels that most of the emissions from a covered pile would be emitted in the first 30 days, so extending the time limit further would not likely result in excess emissions. Bob Chamberlain estimated the soil contamination levels at Chevron's Avon refinery to range from 100 to 500 ppmw, with an average of about 170 ppmw. He would prefer that the limit be raised to 6-months or a year, to prevent premature disposal of soil at a Landfill and allow for reuse of the soil onsite. Hazardous waste regulations currently subject facilities to a 90-day limit for resolution of hazardous waste. Adopting the same limit would avoid adding a significant level of regulatory complexity for overwhelmed petroleum refinery staff.

Staff Response: Staff is inclined to agree that excess emissions are unlikely to occur provided the soil is not highly contaminated. In keeping with the bifurcated small volume exemption, the time limit for resolution of excavated contaminated soil has been increased from 45 days to 90 days for soil containing less than 500 ppmw volatile organic compounds. Extending the timeframe will not likely result in significant emissions provided the soil cover is maintained as required.

4. OVA Measurement Distance: WSPA is concerned over the potential conflict which may result from stating the OVA measurement distance of "no more than 3 inches." Readings taken at the soil surface are likely to be different than those taken at 3 inches. WSPA would prefer that the measurement distance be changed to "at a distance of three inches."

Staff Response: The phrase "no more than 3 inches" was taken directly from South Coast AQMD rule 1166, and was left unchanged to allow for variability in the contour of the soil surface. In the interest of eliminating potential conflicts between OVA readings taken at different distances, the standard has been revised to "at a distance of 3 inches."

REC:rec