

Bay Area air regulatory agency's oversight, enforcement challenged in new report

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A toxic shipyard, two major freeways and a sewage treatment plant have been pointed to as factors in the disproportionate health outcomes of Bayview-Hunters Point residents, but environmental advocates allege that inadequate enforcement of air pollution laws is also adding to the neighborhood's plight.

A new report released in May by the Environmental Law and Justice Clinic of the Golden Gate University of Law charges that the Bay Area Air Quality Management District — tasked with regulating stationary sources of air pollution for the nine-county Bay Area — is allowing polluting companies in San Francisco to operate without proper permits by unduly delaying its permitting decisions and by failing to deliver on timely enforcement.

While the Air District's policies require permit-less polluters to submit permit applications within 90 days of being contacted by the agency, the districts' long standing practice of allowing applicants to cure application gaps past that timeline has resulted in some companies operating without permits for years, according to the report.

The report builds on a 2017 investigation of San Francisco concrete manufacturers.

In other cases, enforcement actions were delayed pending the approval of permit applications — a practice that places an already vulnerable community at increased risk, environmental advocates allege.

“There has been an ongoing problem of lapses and non-existent regulation and (regulators) looking the other way to benefit big corporations at the expense of the health of residents of Bayview-Hunters Point,” said Bradley Angel, executive director of Greenaction for Health and Environmental Justice, which has long pushed for increased oversight of the Hunters Point Shipyard's radioactive remediation.

In theory, the Air District must review whether an application is complete within 15 days, notify the applicant within 35 working days that the permit is approved, approved with conditions, or denied. If an application is incomplete and the applicant fails to submit the

information requested within 90 days, the Air District has the authority to cancel the permit application.

But this type of enforcement has consistently fallen through the cracks in regard to at least three companies operating in San Francisco, with some permit applications filed in 2016 and 2017 still under review by the Air District in 2020, the report alleges.

The 2020 follow-up investigation focuses on two concrete batch plants and a sand and aggregate processing facility — CEMEX Construction Materials Pacific LLC, Central Concrete Supply Co. Inc., and Hanson Aggregates Mid-Pacific Inc., respectively — that are currently operating on Piers 92 and 94 near India Basin and emit fine particulate (PM_{2.5}) matter in their production processes.

“Particulate matter consists of small particles and aerosols that can penetrate deep into the lungs and bloodstream,” per the report. “PM emissions are linked to significant health problems including aggravated asthma, decreased lung function, heart attack and premature death.”

According to the 2017 investigation, the Air District issued CEMEX a permit to operate despite an incorrect health risk assessment — a requirement for permit approval. The company “still operates under the same flawed permit” and has “also increased production without authorization from the Air District” — with its permit application pending approval by the district for more than three years, the 2020 report found.

The report alleges that Hanson, which operates a sand offloading facility at Pier 92 and an aggregate import terminal at Pier 94, has been doing so without a permit since 2001.

Hanson was issued a notice to comply in 2016 in which the Air District informed the company that it could “achieve compliance” by submitting a permit application.

While Hanson applied for permits for Piers 92 and 94 in 2016 and 2017, records show that the Air District had not completed its review of the applications as of April 2020, according to the report.

“The Air District is not complying with its own process. It's as if you are a driver and applied for your license and it takes years for you to get your license, and in the meantime you are driving,” said Helen Kang, a professor of law at Golden Gate and one of the report's authors.

The report also details a three-year delay in enforcement action against Central Concrete, which was issued a notice of violation in 2016 because its sand stockpiles contained less than the required 5% moisture content. In 2019, the district filed a complaint against the company alleging three health and safety code violations and seeking a \$75,000 penalty.

The Air District ultimately agreed to a \$9,000 settlement with Central Concrete.

“If companies do more for the community to make sure that the harm that they might have caused is offset by something good they do that might be excusable,” said Kang.

“The district did not ask for anything to benefit the community long term — like further reduction of some other (polluting) source — from (Central Concrete), so that the burden of community can be reduced. The district did not consider that.”

Requests for comment made to the Air District and the three companies were not returned.

The lack of oversight comes in spite of the Air District designating eastern San Francisco, including the Bayview, as an area that is disproportionately impacted by air pollution under its [CARE program](#), which aims to reduce and eliminate health disparities linked to air quality. A 2008 [Bay Area Regional Health Initiative](#) found that residents of the Bayview Hunters Point residents are expected to live 14 years less than those living in Russian Hill.

“The state has identified the Bayview as one of the communities that is most vulnerable to pollution based on environmental health socioeconomic indicators,” said Angel. “There is mounting evidence that communities become more vulnerable to Covid-19 when they are already at risk of pollution — So we have multiple pollution sources and government negligence if not outright complicity (converging in the Bayview) and people get sick and die as a result.”

https://www.bizjournals.com/sanfrancisco/news/2020/08/27/bay-area-air-regulatory-agency-challenged.html?iana=hpmvp_sfbt_news_headline