

Environment Now
Environmental Defense Fund
Natural Resources Defense Council
Pacoima Beautiful

February 20, 2009

Dr. Elaine Chang
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Comments on the January 2009 Draft of the South Coast Proposed Rule 2301, Emission Reductions from New or Redevelopment Projects

Dear Dr. Chang:

The undersigned organizations strongly support the development of an indirect source rule (ISR) within the South Coast Air Quality Management District (the “District”) to help the region meet its air quality requirements and improve public health. However, we are deeply concerned about the path the District is taking with Public Rule 2301, Control of Emissions from New or Redevelopment projects.

PR 2301 could achieve significant emissions reductions in the near and long terms, fill some of the “black box” emissions uncertainties, and greatly benefit public health and well being. Unless considerable changes are made to PR 2301, the rule will not achieve its full potential. As currently proposed, the rule could also be vulnerable to litigation, tying up implementation and AQMD staff resources for years to come.

Having participated in the San Joaquin Valley Air Pollution Control District’s ISR rulemaking, implementation, and legal challenges, we speak from experience. That rule was tightly designed and has won court approval at the state and federal levels. Given this, there are lessons to be learned from the San Joaquin Valley experience that can and should be applied to PR 2301.

Clarify and quantify operational mitigation measures

The AQMD’s proposed rule recommends a series of mitigation measures that must be selected and implemented based on a points system. While the District attempts to base at least some of the proposed mitigation measures on the URBEMIS model, some of measures remain unquantified. The District’s current approach of assigning a point value without consideration of a development’s context or any scientifically-based evaluation of the amount of emissions reductions that can be achieved may well be considered by a court as arbitrary.

Scientifically-based quantification of emissions is needed to provide uniformity in methodology and prevent misuse of calculation tools. We urge the District to reconsider its current approach

and ensure better quantification of mitigation measures, preferably through the use of a model like URBEMIS.

Include a fee option for off-site mitigation when onsite mitigation is not possible

The proposed rule should be designed to ensure as much on-site mitigation of indirect source pollution as feasible. However, it should also ensure that if the targeted on-site mitigation is not fully feasible, then a developer or property owner must be responsible for mitigating those emissions off site. One option for off-site reductions should include payment to the District of a fee closely linked to the amount of emissions that need mitigation and to the cost of mitigating those emissions off site. The District should be required to spend that fee within the South Coast Basin to capture reductions within six months of the project's construction. Such a fee would provide flexibility to the developer. It would also ensure that the project remains responsible for all feasible reductions, and not just those that a project proponent may feel are easily available on site. The lack of an off-site fee limits the District's ability to win appropriate reductions in air pollution from the development sector.

Expand construction equipment requirements

The current proposal relies mainly on compliance by construction contractors with the California Air Resources Board's current in-use off-road regulation. This approach does not adequately protect public health or fully engage the South Coast Air Quality Management District's ability and responsibility to ensure maximum feasible pollution reductions from indirect sources. Alternatively, the District's rule should specify an emission reduction target from the construction phase that indirect sources should be required to meet.

The proposed exemptions need to be clarified

The District needs to justify the proposed exemptions and set more rigorous boundaries for others. For example, as currently written, it appears that all projects on port properties, including building new hotels and parking lots would be exempt. This appears to be an unintended consequence of PR 2301.

Too much delegation to local governments could be problematic

The proposed rule would allow the District to delegate authority to implement Rule 2301 to local governments. The local government would either have to adopt the requirements of PR 2301 or adopt a program that would attain emissions reductions that are greater than or equal to those achieved by the District's rule.

Delegating authority to local agencies may alleviate the District's administrative burden from implementing the ISR. However, a well-documented quantification process is needed to determine whether reductions from the local government plan achieved greater than or equal to emissions reductions than the District's ISR, with final approval of a local government's process from the District. Plus, calculating the emissions should only be performed by the AQMD

because of its expertise in this area. It also may be appropriate for local governments to enforce on-site mitigation measures, again with supervision from the District.

Eliminate the phased-in compliance schedule

The proposal includes a three-year phase-in period. This is an unreasonable provision. It would allow unnecessary and extended public exposure to air pollution. A phase-in also may be confusing to applicants, local agencies, and possibly District staff. Instead, the rule should become effective three months after the District adopts the rule.

Include a provision to prevent project piecemealing

The rule should apply to projects that are on contiguous or adjacent property. Property under common ownership that, combined, meet the threshold for compliance with this rule, should be subject to the rule. The South Coast rule must include language that will eliminate loopholes, such as piecemealing, that might be used by the applicant to avoid compliance with PR 2301.

We thank you for the opportunity to comment on PR 2301. We look forward to continuing to be involved as the rule development progresses.

Sincerely,

Mara Burstein
Environment Now

Camille Kustin
Environmental Defense Fund

Melissa Lin Perrella
Natural Resources Defense Council

Patty Ochoa
Pacoima Beautiful

David Pettit
Natural Resources Defense Council

Kathryn Phillips
Environmental Defense Fund