



September 20, 2022

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via email: imacmillan@aqmd.gov

Re: South Coast AQMD must include robust community protections in the Indirect Source Rule for Commercial Marine Ports (PR 2304).

Dear Mr. MacMillan:

The undersigned community, environmental justice, health, and environmental groups, submit this comment letter in response to the latest working group meeting presentation for the South Coast Air Quality Management District's (SCAQMD) Indirect Source Rule (ISR) for commercial marine ports -Proposed Rule 2304. This rule is vital to the region's air pollution attainment strategies. By some estimates, the Proposed Rule 2304 ("Port ISR") has the potential to vastly reduce the number of harmful emissions in our region— resulting in even greater reductions than the recently passed Warehouse ISR.

We appreciate the work that the staff has put into providing informative working group presentations and facilitating public engagement. We look forward to our continued discussions at future meetings. Our comments here center on the presentation and discussion at the August 24th meeting. We offer the following key principles as you further develop the rule concept:

- 1) The ISR rule should be part of a holistic and comprehensive strategy for reducing freight and goods movement pollution and should work in tandem with the New Railyard and Warehouse ISR rules.
- 2) Public health should be at the center of the rulemaking process, and improving public health should take precedence over industry needs.

- 3) The rule should focus on moving the region to zero-emissions across all sectors, avoid the endorsement of LNG, and further investigate potential challenges posed by alternative low-carbon fuels.
- 4) The Air District must proceed expeditiously with rulemaking to maximize emissions reductions and provide clear direction to Port facilities and related operators about the actions that achieve compliance.

I. Rule 2304- Indirect Source Rule for Commercial Marine Ports should be part of a comprehensive strategy for addressing pollution from freight and goods movement

Under the California Clean Air Act, local Districts like the South Coast Air Quality Management District (“Air District”) bear primary responsibility for control of air pollution from all sources other than motor vehicles, and are required to enact and enforce rules and regulations that will achieve and maintain state and federal ambient air quality standards for all areas under their jurisdiction.¹ State law specifically requires the Air District to “provide for indirect source controls in those areas of the south coast district in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.”² Thus the Air District is expressly required to promulgate rules like Rule 2304 to address the high level of pollution in specific areas within the air basin.

While the Air District has decided to tackle its ISR strategy with five Facility-Based Mobile Source measures, each of these rules must work synchronously to tackle the impact of indirect sources in the region. This means that the rules cannot be crafted in a vacuum — the New Intermodal Railyards ISR, the Port ISR, the Warehouse ISR, and the Existing Railyards ISR must work together to ensure that the maximum level of emissions reduction is being achieved from these sources across the region.

The ISR for Commercial Marine Ports is not new. In fact, it was a prominent feature in the 2016 AQMP as one of several Facility Based measures that became part of the control strategies.³ These facility-based mobile source control measures are featured precisely because it was projected that emissions associated with the goods movement sector would continue to plague the region as a result of economic growth through 2040.⁴ It was recognized then, as it is now, that zero emissions technologies are critical to reducing near-source exposure to air toxics, especially around freight hubs and networks such as ports, railyards, and distribution centers.⁵

Unfortunately, the latest revised 2022 Draft AQMP does not chart a clear path to zero emissions at the Ports, nor does it establish clear emission reduction targets for getting to zero. Perhaps

¹ Cal. Health & Saf. Code §§40000 & 40001(d)(3).

² Health & Saf. Code, § 40440(b)(3)

³ SCAQMD 2016 AQMP Final, available at: <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/final2016aqmp.pdf?sfvrsn=15>

⁴ 2016 AQMP, p.4-27

⁵ *Id.* At 9-11

most troubling, even before the rule is developed, the Air District appears to concede that it will not achieve full emissions reductions associated with the measures committed to the State SIP strategy.⁶ This just highlights the Air Basin’s desperate need for ISR rules that work together to maximize emissions reductions across the entire goods movement sector.

II. The Port ISR should incorporate the following guiding principles to better align it with a comprehensive ISR strategy for freight and goods movement.

The Air District’s recent working group presentation, given on August 24, 2022, hints at a few pathways for greater coordination between the various rules. Drayage trucks, locomotives, harbor craft, and cargo-handling equipment, as well as charging infrastructure and the Ports baseline emissions inventory, will appear as topics for further assessment and discussion at future working group meetings. We look forward to those discussions and will reserve our comments on those topics for those meetings. For now, we believe the following components are critical to ensuring coordination between the Port ISR and the New Railyard ISR:

- **On-Dock Rail-** we believe that any new railyard expansions, including for on-dock rail, should trigger the obligations under the New Railyard ISR to the extent these facilities operate as railyards and contribute the same indirect sources at issue in rule 2306. These expansions are already happening now, *i.e.*, Fenix Railyard at the Port of Los Angeles, so they should be covered by the New Railyard ISR.
- **Set a Clear Pathway to Zero Emissions-** no matter which ISR is triggered by a facility, both rules should consistently chart a clear path for a swift transition to zero emissions technology with the strictest possible emission reduction strategy and work to close all potential compliance loopholes.
- **Setting clear Emissions Caps for Port Facilities-** we support the rule concept of setting emissions caps for port facilities—one that will foster a results-based approach that lower overall emissions on a set schedule with the goal of reaching 0 and applicable to all pollution-generating activity.
- **Monitoring and Enforcement-** to the extent both rules result in an emissions cap establishing a clear path to zero, monitoring must be consistent across both rule structures to ensure the most accurate data is available for progress metrics and enforcement where needed.

III. The Port ISR should center on protecting public health as its primary focus

The latest working group meeting focused on the role that Ocean Going Vessels (“OGV”) play in contributing the largest source of dangerous emissions to the region. Understanding existing and developing technologies for emissions reduction in this sector will undoubtedly help shape a more effective port-based emissions cap. We continue, however, to call on staff to center the impact to public health throughout the rulemaking process, even in this investigatory stage.

⁶ *Id.*

The District’s mission is “To clean the air and protect the health of all residents in the South Coast Air District through practical and innovative strategies.”⁷ To better serve the health-protecting component of its mission, the District’s rule concept development should include analysis on how emissions from OGVs result in both acute and long-term health consequences not only for port adjacent communities, but across the region.

We continue to call on the District to support the staff’s request for a permanent public health expert to play a role in analyzing and advising on rulemaking, monitoring, and enforcement. The health dangers of ship emissions are well documented, including increased cancer risks and cardiovascular disease in port-adjacent communities. The entire rulemaking process will be stronger by including health risk and benefit assessments for OGV emission reduction strategies. Furthermore, this same analysis should be repeated at each stage of rulemaking as staff assess current and future technology solutions.

Centering public health at each stage will help identify the best strategies for lowering emissions and developing the strongest possible long-term public health protections. There are many proposals that claim to immediately lower certain pollutants but are not necessarily better for public health in the long run. We call on staff to prioritize those options that get at the strongest possible public health protections first and scrutinize the long-term health impacts of any proposals that continue the region’s reliance on fossil fuels and combustion technology.

IV. Technologic strategies for emissions reductions should prioritize zero emissions technologies

We are concerned that even at this early rulemaking stage, the District is elevating alternative fuels and combustion-based technologies in the name of claiming potential near-term emissions reductions. Unfortunately, we have seen a similar pattern in prior policies where the District invests time, energy, and resources on non-zero alternatives while acknowledging that achieving zero emissions is the ultimate goal. While we appreciate that many all-electric zero emissions formats for OGVs are still developing and may not be ultimately feasible for a subset of OGVs, we caution against rushing towards alleged near-term strategies that carry the potential of doing more harm.

We have grave concerns over a rule that might promote the build-out of Liquefied Natural Gas (“LNG”) infrastructure. While possible solutions for the decarbonization of a subset of OGVs—ammonia and hydrogen require further investigation. Staff must consider the public health impact of retrofit/conversion strategies that use these and other alternative fuels. Using LNG as a “drop-in” fuel, for example, increases the chances of methane leaks and the harms associated with this potent greenhouse gas.

LNG is not a clean fuel and has serious air polluting consequences in addition to the contribution to global climate change. Moreover, trucking in LNG to the ports, as is currently practiced, raises serious concerns for surrounding communities as it leads to transportation-derived pollution as well as the potential for leaks and methane exposure. We oppose proposals that promote LNG as

⁷ SCAQMD, Mission Statement (accessed on July 27, 2022), at <https://www.aqmd.gov/nav/about>.

an alternative to all-electric zero-emissions solutions. To the extent LNG is discussed in any capacity during rulemaking process, each of these potential health-harming impacts need to be prominently disclosed to the public.

While “Low carbon fuels” such as ammonia, hydrogen, and methanol may be part of the solution for a subset of OGVs, they also carry public health risks and should be thoroughly investigated. As the staff has recognized, these fuels also have uncertain criteria pollutant impacts that need to be studied further. Before these approaches are endorsed, more research needs to shed light on whether they offer emissions reduction without further harming public health and undermining the State’s climate strategies. This is especially true with hydrogen, which raises significant air quality, public safety, and climate concerns depending on its application, generation, and distribution. A recent study, for example, highlights the dangers of hydrogen blending with natural gas⁸—a practice often discussed as a necessary component of augmenting its use in Port operations. These include disturbing findings that hydrogen blending can lead to pipe erosion and leaks throughout the system.⁹

The Air Basin is better served by focusing on long-term commitments to true zero-emissions strategies rather than supporting so-called “low-NOx” combustion-based strategies that will tether the region to infrastructure and transportation pathways that ultimately rely on fossil fuels. Realizing zero-emissions operations across port operations will require a concerted effort to quickly build out the infrastructure needed to support such a transition. Any rule that encourages further maintenance of fossil fuel-based infrastructure only delays what is required.

Moreover, the unprecedented level of support for zero-emissions made available through federal and state grants has made this agency’s role in directing that transition even more relevant and urgent. For example, the Inflation Reduction Act of 2022 (“IRA”) will allow agencies across the air basin to work together to fund infrastructure, deploy clean zero-emissions technologies, and eliminate health-harming pollution across multiple sectors. The San Pedro Bay Ports have explicitly been targeted with this unprecedented level of support to help transition to a zero-emissions future. The IRA offers nearly \$3 billion in investments to help electrify port operations- with rebates and grants supporting the purchase and installation of zero-emissions port equipment or technology, assisting with planning and permitting to deploy this technology, and developing climate action plans. A \$750 million reserve goes directly to nonattainment areas such as the South Coast. In addition, the most recent California State budget includes \$1.4 billion to support ports and goods movement infrastructure and operational efficiency.

In short, the time to move aggressively towards electric zero-emissions solutions to address port pollution is now. There has never been greater support from the federal and state government to make this transition. The Air District plays an integral role by ensuring that the ISR rules reflect

⁸ Raju, Arun SK, and Alfredo Martinez-Morales, Hydrogen Blending Impacts Study- Final Report to The California Public Utilities Commission, University of California, Riverside (July 18, 2022); available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M493/K760/493760600.PDF>

⁹ *Id.*, pp. 111-112

strategies that will swiftly get the region to zero-emissions across all goods movement and freight sectors.

V. The Port ISR rulemaking process must be completed without further delay

It bears repeating that the Port ISR is one that is long overdue. It has been delayed multiple times, having appeared as a control measure in the 2016 AQMP and originally forecasted for completion in the 2017-2018 rulemaking cycle. Most recently, despite staff's recommendations to the contrary, the Board stalled the public rulemaking process last year by six months in a last-ditch effort to entertain voluntary measures at the Ports.

We agree that understanding port operations to better capture potential emissions reduction strategies is important. The rule concept should reflect how each regulated entity can maximize emission reduction at each source. We are concerned, however, that the proposal to stagger rulemaking by terminal type, focusing first on container terminals, will result in even more delay in finalizing the rule. The staggered approach seems inconsistent with the staff's own finding that industry consolidation has resulted in more centralized control throughout the Ports' operations. We are equally concerned that the proposed staggered approach will create unnecessary loopholes that prevent the facility-wide emissions cap necessary for a results-based approach to indirect sources.

Should the staff see a potential for increased emissions reduction through individual terminal-type rules, we ask for staff's supporting analysis showing how this strategy will result in greater emission reductions as compared to developing a more comprehensive industry-wide rule like the warehouse ISR. Moreover, we ask that before advancing a staggered approach to the Port ISR, staff project to the foregone emissions reductions resulting from any delay in finalizing and implementing the rule.

We thank you for the opportunity to comment on the important rule and look forward to our continued exchange of ideas as this important rule is being developed. We offer our continued support to both the staff and the Board to ensure that this process results in the strongest possible Port ISR to protect the public health in the South Coast Air Basin.

Sincerely,



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