



February 22, 2021

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Subject: Comments on Proposed Rule 2305 (Warehouse Indirect Source Rule)

Dear Mr. MacMillan:

The Long Beach Area Chamber of Commerce officially opposes the adoption of Rule 2305 (Indirect Source Rule). A significant portion of our membership is involved in the support and development of distribution warehouses that are integral to the Southern California logistics industry. The logistics industry plays a crucial role in the response to the COVID-19 pandemic—not only in the distribution of medical supplies, vaccines, and equipment but also in delivering goods to a public that has become increasingly dependent on e-commerce.

We believe the District's proposed ISR is a misguided policy during the COVID-19 pandemic. The District is pursuing a regulation targeting a sector that serves as a lifeline to our region and the nation and is deemed essential by federal and state governments. Under the current draft rule, reporting obligations begin only 60 days from rule adoption. The substantive WAIRE Points obligations will commence as soon as July 2021.

The Long Beach Area Chamber of Commerce has the following comments in response to the District's Proposed Rule 2305 (Warehouse Indirect Source Rule):

1. This rule would impose additional/permanent costs on warehouses of approximately \$.90 per square foot. This extra cost would amount to targeting a specific essential industry with \$1 billion in annual fees during the worst possible time and while responding to the pandemic's challenges on behalf of our nation.
2. It is not feasible to comply with the ISR due to the following:
  - a) The proposed rule requires warehouses to control truck fleets and decrease truck emissions. Yet, warehouse operators are not able to accomplish this task.
  - b) Warehouses have no control over how truck engines are manufactured.
  - c) Warehouses do not own truck fleets, nor do they control what type of trucks shipping companies purchase.
  - d) Warehouse operators do not control which trucks come to warehouses, when they arrive, where they come from, or any other variables related to truck trips.

3. The technology is not available to accomplish items on the WAIRE menu. For example, there are no heavy-duty electric trucks available that are 100% viable from a technology and/or economically reasonable standard.
4. Warehouses have been deemed to be essential businesses by the State for important reasons including:
  - a) The approximately 18 million people who live in Southern California rely on warehouses as an integral part of the goods movement system to get them the items they need to survive, like food, medical supplies, clothes etc.
5. This rule creates tremendous uncertainty in the economy as the full negative impact of this ISR is not known.
  - a) Uncertainty should not be created in this critical, essential business sector, especially considering the current economic downturn/unemployment crisis associated with the COVID-19 pandemic.
6. Warehouses provide a broad range of jobs for people of every level of education and skillset. Warehouses and the logistics industry offer jobs that lead to upward mobility. This job creation is a socioeconomic benefit that the proposed ISR's onerous costs would threaten.
7. The proposed ISR seeks to "indirectly" regulate the trucking industry through the Warehouse industry. The District should publicly explain how it has the jurisdiction/authority to regulate a mobile source that is such an integral part of interstate commerce as the trucking industry.

Thank you for your attention to these comments. Please include these comments as part of the official record for Proposed Rule 2305 (Warehouse Indirect Source Rule) so that all SCAQMD Board Members may have the opportunity to review the above.

Respectfully,



Jeremy Harris  
President/CEO  
Long Beach Area Chamber of Commerce

cc: Long Beach Vice Mayor/SCAQMD Board Member Rex Richardson  
Los Angeles City Councilmember/SCAQMD Board Member Joe Buscaino

February 26, 2021



Mr. Victor Juan  
 Planning, Rule Development and Area Sources  
 South Coast Air Quality Management District  
 21865 Copley Drive  
 Diamond Bar, CA 91765

**RE: Proposed Rule 2305 – Warehouse Indirect Source Rule (ISR)**

Chairman Burke and Members of the Board,

Clean Energy greatly appreciates this opportunity to comment on proposed rule 2305 (PR 2305) which establishes a warehouse ISR. With rapidly approaching attainment deadlines, Clean Energy applauds the South Coast AQMD for taking bold action. While this measure alone will not achieve attainment, if done in an effective manner, it could be a significant step towards that goal. Clean Energy is concerned that the current proposal deviates from the stated purpose of the rule, "...to reduce local and regional NOx and PM emissions...", and as a consequence, its effectiveness will be greatly diminished unless amended.

PR 2305 requires warehouse owners and operators to earn a certain number of WAIRE points in order to comply. Unfortunately, a significant portion of points are awarded based on costs and not actual emissions reductions. This approach is detrimental to the success of the rule for three main reasons: (1) It allows warehouse operators to earn fewer points based on actual emission reductions (2) it disincentivizes the market to reduce costs in the future and (3) it disincentivizes cost-effective emission reduction solutions.

**Points should be awarded based on emission reductions and emission reductions should be treated equally and consistently regardless of how they are achieved.** The current WAIRE menu provides more than twice as many points for the acquisition of a Class 8 ZE truck than it does a Class 8 NZE truck, 126 and 55 points, respectively. Both vehicle types provide similar emissions reductions as demonstrated by Table 6 on page 92 of the Preliminary Draft Staff Report:

**Table 6. NOx and DPM emission reductions for the Annualized Unitary Metric**

WAIRE Menu Item		Annualized Unitary Metric (AUM)	Annualized Regional Emission Reductions (lb NOx/AUM)	Annualized Local Emission Reductions (lb DPM/AUM)
Class 8 Truck	NZE	365 truck visits	$0.9 \times 180.3 = 162.3$	1.3
Class 4-7 Truck			$0.9 \times 29.2 = 26.3$	0.1
Class 8 Truck	ZE		$0.247 \times 2 \times 365 = 180.3$	$0.002 \times 2 \times 365 = 1.3$
Class 4-7 Truck			$0.040 \times 2 \times 365 = 29.2$	$0.0002 \times 2 \times 365 = 0.1$
Class 2b-3	ZE		$0.027 \times 2 \times 365 = 19.7$	$0.0003 \times 2 \times 365 = 0.2$

If only emission reductions were used for awarding points, a Class 8 ZE truck acquisition would receive roughly 10% more points. Shockingly, the current proposal provides ZE trucks with 129% more points than a NZE truck under this category.

In addition to air quality benefits, NZE trucks fueled by renewable natural gas, provide superior greenhouse gas emission reductions while also providing performance that is comparable to diesel in terms of range, power, and refueling time. This cost-effective, viable and equally clean alternative should not be penalized if the District's goal is emissions reductions.

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**Amendment Request:** Points for the acquisition and usage of NZE and ZE vehicles should be based solely on the emissions reduction potential of each technology such that an NZE measure achieves 90% of the WAIRE points as a ZE measure. On a NOx reduction basis, near zero emission trucks should deliver the same NOx emissions reductions per AQMD staff and are certified to be 90% cleaner than diesel.

**Example:** Under the current proposal, a class 8 ZE truck acquisition receives 126 WAIRE points, therefore, based on CARB's 90 percent reduction certification of a low NOx engine, a class 8 NZE truck should receive 113 WAIRE points, not 55 points as currently proposed.

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**Discrimination against cost-effective solutions in the proposed rule is further illustrated by the exclusion of NZE yard trucks from earning WAIRE points.** NZE yard trucks should be included as an approved activity for purposes of not only equity but also flexibility for warehouse operators. These vehicles have been proven in the field to both operate and reduce emissions thereby providing an option that warehouse operators can depend upon and reach the desired goal. Every opportunity for operators to move away from diesel should be encouraged. More pointedly, if NZE yard tractors are not incentivized and no one has confidence in zero emission yard tractors, the default is a diesel yard tractor which is counter to goal.

**A third example of discrimination against cost-effective solutions is the exclusion of NZE infrastructure from earning WAIRE points** while ZE recharging infrastructure can receive a significant number of WAIRE points. An investment in infrastructure can represent 50 percent or more of the total investment for adoption of a clean vehicle fleet. Excluding NZE infrastructure from earning points puts a key emissions reduction technology at a major disadvantage.

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**Amendment Request:**

- (1) Include NZE trucks on the WAIRE menu and provide them 90% of the WAIRE points ZE yard trucks receive for acquisition (159 WAIRE points) and annual hours of use (261 WAIRE points).
- (2) Provide compliance points for renewable natural gas station installations on the WAIRE menu.

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**The Governor's Executive Order N-79-20 does not require PR 2305 to discriminate against NZE technology and the South Coast AQMD's 2016 Air Quality Management Plan (AQMP) prioritizes near zero natural gas engine technologies.** The executive order proclaims that *"It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the*

*State be zero-emission by 2045 for all operations where feasible...*” The warehouse ISR accelerates the adoption of zero-emission vehicles by including them as an activity eligible for WAIRE points. Additionally, the executive order establishes a non-binding goal that is over 20 years away. Therefore, discrimination against cost-effective NZE technology is not necessary for compliance with the executive order.

Furthermore, penalizing NZE technology for being cost-effective is contrary to the AQMD’s 2016 Air Quality Management Plan’s Resolution No. 17-2 which states:

Whereas, an accelerated deployment of current and emerging near-zero emission natural gas engine technologies will provide significant, cost-effective and near-term benefits to regional and local air quality, energy supply security, and public health;

Be it FURTHER RESOLVED, that the mobile source incentive program for heavy-duty vehicles outlined in the 2016 AQMP place priority on the most cost-effective technologies to reach short-term air quality goals such as current and emerging near-zero emission natural gas engine technologies.

### **Conclusion**

The 2016 AQMP states on page 4-9, “All technologies and fuels should be able to compete on an equal footing to meet environmental needs.” This guiding principle should be better reflected in PR 2305 by basing point allocations on emissions reductions rather than cost. In summary, we request the following changes:

- Points for the acquisition and usage of NZE and ZE vehicles should be based solely on the emissions reduction potential of each technology such that an NZE measure achieves 90% of the WAIRE points as a ZE measure. On a NOx reduction basis, near zero emission trucks should deliver the same NOx emissions reductions per AQMD staff and are certified to be 90% cleaner than diesel.
- Include NZE yard trucks on the WAIRE menu and provide them 90 percent of the WAIRE points ZE yard trucks receive for acquisition (159 WAIRE points) and annual hours of use (261 WAIRE points).
- Provide compliance points for renewable natural gas station installations on the WAIRE menu.

With quickly approaching attainment deadlines and local residents suffering from poor air quality, PR 2305 must treat cost-effective solutions fairly. Thank you for considering our requests.

Sincerely,



Todd R. Campbell  
Vice President, Public Policy & Regulatory Affairs



*"Promoting Jobs in a Competitive Business Climate"*

MARCH 1, 2021

**VIA E-MAIL**

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Re: Comments on Proposed Rule 2305 (Warehouse Indirect Source Rule)

Dear Mr. MacMillan and Mr. Juan:

The Carson Dominguez Employers Alliance (CDEA) officially opposes the adoption of Rule 2305 (Warehouse Indirect Source Rule). A significant portion of our membership engages with the warehouse industry on a daily basis as an integral component of the Southern California logistics sector. The warehouse and trucking industries are playing a key role in our regional and national response to the COVID-19 pandemic.

We believe the District's proposed ISR is a misguided policy in the midst of the COVID-19 pandemic. The District is pursuing a regulation targeted at a sector that serves as a lifeline to our region and nation. The warehouse industry and the trucking industry work in tandem in delivering the goods that we all count on during this pandemic.

At this time, the CDEA has the following comments in response to the Proposed Rule 2305 (Warehouse Indirect Source Rule):

1. The proposed ISR clearly seeks to "indirectly" regulate the trucking industry through the Warehouse industry. The District should publicly explain how it has the jurisdiction/authority to regulate a mobile source that is such an integral part of interstate commerce as the trucking industry.
2. The proposed ISR would impose additional/permanent costs on warehouses of about \$.90 per square foot. This would amount to targeting a specific essential industry with \$1 billion in annual fees during the worst possible time, as it responds to the challenges of the pandemic.
3. It is not feasible to comply with the ISR due to the following:
  - a.) The proposed rule requires warehouses to control truck fleets and decrease truck emissions but warehouse operators are not able to accomplish this task.
  - b.) Warehouses have no control over how truck engines are manufactured.
  - c.) Warehouses do not own trucks fleets nor control what type of trucks shipping companies purchase.
  - d.) Warehouse operators do not control which trucks come to warehouses, when they arrive, where they come from or any other variables related to truck trips.



*"Promoting Jobs in a Competitive Business Climate"*

4. The technology is not available to accomplish items on the WAIRE menu. For example, there are no heavy-duty electric trucks available that are 100% viable from a technology and/or economic reasonable standard.
5. Warehouses have been deemed to be essential businesses by the State for important reasons including. The approximately 18 million people who live in Southern California rely on warehouses as an integral part of the goods movement system, to get them the items they need to survive, like clothing, food, medical supplies, etc.
6. This rule creates tremendous uncertainty in the economy as the full negative impact of this ISR is not known. Uncertainty should not be created in this critical, essential business sector, especially in light of the current economic downturn/unemployment crisis associated with the COVID-19 pandemic.
7. Warehouses provide a broad range of jobs for people of every level of education and skill sets. Warehouses and the logistics industry as a whole, provide jobs that lead to upward mobility. This job creation is a socioeconomic benefit that would be threatened by the onerous costs imposed by the proposed ISR. Targeting one industry by imposing a fee of \$1 billion annually would have devastating impacts to jobs in this sector.

Thank you for your attention to these comments. Please include these comments as part of the official record for Proposed Rule 2305.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Christina Earle'.

Christina Earle  
On behalf of the board of the Carson Dominguez Employers Alliance

cc: Long Beach Vice Mayor/SCAQMD Board Member Rex Richardson  
Los Angeles City Councilmember/SCAQMD Board Member Joe Buscaino

March 1, 2021

Mr. Ian MacMillan

Mr. Victor Juan

**South Coast Air Quality Management District**

21865 Copley Drive

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*Via US Mail and Email*

[imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)

[vjuan@aqmd.gov](mailto:vjuan@aqmd.gov)

RE: Proposed Warehouse Indirect Source Rule (ISR)

Dear SCAQMD Leadership,

On behalf of Weber Logistics, and in concert with many of my colleagues providing Third Party Logistics (3PL) service, one of the most dynamic industries in California, I wish to express our strong opposition to the South Coast Air Quality Management District's (SCAQMD) proposed Warehouse Indirect Source Rule (ISR).

Weber Logistics employs over 500 logistics workers and professionals in California, and is poised to grow, providing good, high-paying jobs.

However, our clients have long been concerned that further cost and regulatory actions in California may make it uncompetitive for them to continue to store and ship their product from here, and have suggested that we open facilities to serve them in Arizona and Nevada.

***This potential loss of business to California directly impacts all our employees, their families, and the many industries with which purchase supplies and services. Please help us to keep our jobs in California!***

I wish to reiterate many of the points that you know and are hearing now.

- California has the cleanest supply chain in the United States. Thanks to two decades of investment in the cleanest available equipment, including early adoption by our collective members, localized emissions associated with warehouses have never been lower, falling by over 95% in the last decade.
- The goods movement system serves as the lifeblood of California's economy, delivering essential goods, services, and medicines. Never has this industry been more important than during the COVID-19 pandemic. Grocery store shelves have been stocked, vaccines delivered, and small retailers kept alive by e-commerce thanks to power of the modern supply chain, allowing Californians to shelter in place and abate the spread of COVID-19.
- Goods movement also powers high-paying blue-collar jobs vital to our economy. An estimated 1 in 22 jobs in Southern California are tied to the logistics industry.

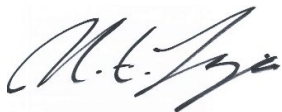
**All this progress and vital infrastructure is jeopardized.**



- The draft ISR creates a complicated system of Warehouse Actions and Investments to Reduce Emissions “WAIRE Points” that must be earned by owners and operators of warehouses, mostly through a fee on warehouse operators. This rule is a costly and duplicative effort that is not poised to achieve demonstrable improvements in air quality in the South Coast basin.
- As you know, California is the only state in the nation with the power to regulate mobile sources pursuant to its waiver under federal Clean Air Act. The California Air Resources Board (CARB) has used this power to adopt the country’s strictest emission laws, including adopting in July the world’s first mandate to manufacture and sell zero-emission commercial vehicles. CARB has also stated its intent to adopt regulations that will require nearly every equipment type at warehouses to operate in a zero-emission mode within the next year.
- SCAQMD’s proposed Warehouse ISR is duplicative of these regulations and **will create burdensome, expensive requirements for the supply chain for questionable environmental benefit.**
- During presentations, SCAQMD justified the draft rule by stating that additional action is necessary to address ozone and NO<sub>x</sub> concentrations in the basin. With respect to NO<sub>x</sub>, a recent technical analysis of the draft staff report found that the report does not adequately demonstrate that the proposed Warehouse ISR will provide NO<sub>x</sub> reductions beyond those generated by CARB regulations, despite the enormous costs that will be involved in complying with this rule.
- Further, as stated during AQMD’s Scientific, Technical & Modeling Peer Review Advisory Group Meeting on January 27, 2021, the small quantities of NO<sub>x</sub> reductions generated by this rule will not be sufficient to decrease the ozone concentrations in the basin. One is left with the impression that the rule, instead of addressing environmental concerns, is being used as a funding mechanism.
- Duplicative rulemaking by CARB and the SCAQMD that does not move the needle on environmental benefit in the basin not only wastes the state’s resources, but unnecessarily increases the cost of compliance for an industry that is gearing up for the all-electric future envisioned by CARB and Governor Newsom.

Weber Logistics hopes SCAQMD will reconsider this untimely, duplicative, and costly regulation and work with industry to develop a rule that takes into account the emissions reductions that already will occur due to CARB rulemaking and appropriately addresses emissions that are within the bounds of SCAQMD authority.

Yours very truly,



Robert E. Lilja  
Chief Executive Officer

CC: All Weber Logistics Employees and their Families



**Cody Phelps**  
Manager – California Air Compliance  
SFOEN

March 2, 2021

Via Email

Ian MacMillan, Planning & Rules Manager: [imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)

Victor Juan, Program Supervisor: [vjuan@aqmd.gov](mailto:vjuan@aqmd.gov)

Re: United Airlines Comments on *SCAQMD's Proposed Rule 2305 Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program*

Messrs. MacMillan and Juan:

United Airlines, Inc. (United) submits the following comments on behalf of its cargo operations (United Cargo) at Los Angeles International Airport (LAX). United leases a warehouse building at LAX with greater than 100,000 square feet of indoor floor space dedicated to / that may be used for warehousing and other aviation activities by United Cargo and other United operational groups, and therefore would be subject to the Proposed Rule as it is currently drafted. United appreciates this opportunity to engage with the South Coast Air Quality Management District (SCAQMD) regarding the development of an indirect source rule (ISR) for warehouses and distribution centers. The following comments refer to the draft proposal dated January 15, 2021 (Proposed Rule).<sup>1</sup> United reserves the right to supplement or amend the following comments as appropriate.

1. The Clean Air Act's indirect source provisions do not authorize the SCAQMD's regulation of cargo activities at commercial airports.

As an initial matter, United is concerned that the SCAQMD does not have the legal authority to promulgate an indirect source rule to address emissions from mobile sources by regulating existing air cargo warehouses located at airports. While indirect source regulations are provided for under the Clean Air Act (CAA), they cannot be used to regulate sources that CARB and the SCAQMD are preempted from regulating.

In particular, the Federal Aviation Act and the Airline Deregulation Act ("ADA") preempt the Proposed Rule's regulation of air cargo warehouse operations. The Federal Aviation Act preempts states from adopting regulations relating to the movement and operation of aircraft. 49 U.S.C. § 40103(a). The ADA preempts any state requirement "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1). The Proposed Rule seeks to regulate airport activities and aircraft cargo operations and their associated emissions and this regulation is preempted by both the Federal Aviation Act and the ADA. *See City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 63 (1973) (finding state regulation of airport transportation activities is generally preempted by federal law); *Federal Express Corp. v. California Public Utilities Comm'n*, 936 F.2d 1075, 1078 (9th Cir. 1991) (holding that the ADA preempts state regulation of airport cargo

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<sup>1</sup><https://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/proposed-rule-2305.pdf?sfvrsn=8>.

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vehicles, because “the use of the trucks depends on the conditions of air delivery. The timing of the trucks is meshed with the schedules of the planes.”).

2. The Proposed Rule is inconsistent with the SCAQMD’s voluntary memorandum of understanding approach for addressing mobile source emissions at commercial airports.

Consistent with the 2016 Air Quality Management Plan (AQMP), adopted in 2017, the SCAQMD Board approved staff’s recommendation to pursue a voluntary Memorandum of Understanding (MOU) approach (instead of an ISR approach) for commercial airports. The recommendation was based on the airports’ willingness to develop airport-specific Air Quality Improvement Plans/Measures (AQIP or AQIM), to avoid issues of federal preemption as described above, and the fact that commercial airports contribute only about 8 tons per day of NO<sub>x</sub> (excluding aircraft emissions).<sup>2</sup> Following the Board’s direction, the SCAQMD worked closely with the commercial airports and tenants to develop AQIPs, which included the airports’ comprehensive plans to reduce emissions from non-aircraft mobile sources related to airport operations (*e.g.*, ground support equipment, shuttle buses, and cargo delivery trucks). Based on the draft AQIPs or AQIMs, draft MOUs were developed for each of the five commercial airports. On December 6, 2019, the South Coast AQMD Governing Board approved the MOUs with the five commercial airports. The MOUs represent voluntary agreements between SCAQMD and each commercial airport with each party having specific responsibilities and commitments.<sup>3</sup>

The SCAQMD’s prior statements recommending against an ISR for commercial airports are equally applicable to the Proposed Rule. According to the SCAQMD:

While aircraft make up a substantial portion of airport-related emissions it has become evident through the working group process that this source of emissions presents a particularly unique challenge given the existing regulatory landscape for aircraft and the nature of aircraft activity (*e.g.*, interstate and international origins and destinations). The remaining (*i.e.*, minus aircrafts) emissions from this facility sector are about 8 tons per day, with about 5 of those tons coming from trucks serving the cargo operations at LAX and ONT.

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Staff is recommending to pursue a voluntary MOU approach at this time because of the limited emissions reductions that may be available from the non-aircraft sources in this sector, the complications with regulating airports due to overlapping federal jurisdiction, the existence of many existing emission reduction programs, and the potential willingness of airports to enter into cooperative agreements. SCAQMD staff is proposing that commercial airport operators in the Basin each develop their own [AQIPs]. Given the unique challenges with reducing emissions from airports

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<sup>2</sup> <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/facility-based-mobile-source-measures/airports-final-staff-report.pdf?sfvrsn=6>.

<sup>3</sup> <http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan/facility-based-mobile-source-measures/commercial-airports-mous>.

an [AQIP] would provide airport operators with a level of flexibility that is desirable to develop suitable emissions reduction strategies that avoid interference with the regulatory landscape of aircraft related activity and the day-to-day operations of commercial airports affected by national and global commerce. Key elements of the [AQIPs] would include a detailed emissions inventory of all sources both under direct and indirect airport control, emission reduction measures (*e.g.*, incentives, fleet policies, etc.) and measurable goals.<sup>4</sup>

The commercial airports have already pursued and implemented many policies that reduce emissions. For example, LAX has implemented alternative fuel policy for vehicles >8,500 pounds GVWR, a ground support equipment emission standard, an electric vehicle purchasing policy, a clean construction policy, gate electrification projects, and a new Landside Access Modernization Program to reduce emissions from passenger vehicles.

By approving the airport MOUs, the SCAQMD expressly rejected the development of an indirect source rule to achieve emission reductions from mobile sources attributed to cargo warehouse activities at commercial airports. The application of the Proposed Rule to warehouse cargo activities at the same commercial airports subject to MOUs undermines the commitments made by the airports and the SCAQMD. In this context, it is important to note that in its CEQA analysis the SCAQMD does not appear to have investigated and analyzed the potential environmental, economic and operational impacts the Proposed Rule may have on the existing airport AQIPs and MOUs.<sup>5</sup>

Furthermore, the Preliminary Draft Staff Report for the Proposed Rule makes clear that SCAQMD is seeking to achieve reductions of NOx and PM emissions primarily from trucks operating within the South Coast Air Basin region, in order to help meet federal air quality standards for ozone and particulate matter. It is not clear how the Proposed Rule will actually result in the desired emissions reductions when the compliance obligations are solely imposed on warehouse operators, particularly where such operators do not operate their own truck fleets. For warehouse operators that are not also truck operators, the WAIRE points menu provides extremely limited options for compliance, and none of the available options, such as installation of solar panels or installation of MERV 16 filters, would actually reduce mobile source NOx or PM emissions.

3. The proposed definition of “Warehouse” – Proposed Rule Section (c)(31) – is too broad and requires further clarification.

It is unclear what is intended by the terms “distribution” and “retail customers.” Given SCAMQD’s primary focus of reducing emissions associated with the operation of heavy-duty diesel trucks, United proposes that the term “warehouse” be limited to buildings that store goods for later distribution via truck. Buildings that are connected to, or part of, other transportation centers (such as a port, commercial airport or rail yard) should not be considered “warehouses”

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<sup>4</sup> <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2018/2018-may4-032.pdf> at 3-9 (emphasis added).

<sup>5</sup> [http://www.aqmd.gov/docs/default-source/ceqa/documents/aqmd-projects/2021/draftea\\_pr2305and316.pdf?sfvrsn=12](http://www.aqmd.gov/docs/default-source/ceqa/documents/aqmd-projects/2021/draftea_pr2305and316.pdf?sfvrsn=12)

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under the Proposed Rule. Although such buildings temporarily store goods that may ultimately be distributed to a business or retail customer, the immediate distribution is often to a boat, plane or train – a transfer that does not create a significant amount of additional, localized truck-related emissions.

In addition, the term “retail customer” should be deleted or further defined. Consider, for instance, that United sells its cargo products to individual customers, including by offering small package airport-to-airport service. It is unclear whether an individual who elects to ship a small package from LAX to an individual at another airport via United Cargo is a “retail customer” under the Proposed Rule, or whether SCAQMD intends to limit the applicability to warehouses that transport goods directly to business that operate retail stores.

United offers the following revisions to the definition of “warehouse” for SCAQMD’s consideration:

WAREHOUSE means a building that stores cargo, goods, or products on a short-or long long-term basis for later distribution, via truck or trailer, directly to a retail store ~~businesses and/or retail customers.~~

4. The proposed definition of “Warehouse Facility” – Proposed Rule Section (c)(29) – is unclear.

The Proposed Rule defines the term “warehouse facility” to mean “a property that includes a warehouse as well as accessory uses ...” Under this proposed definition, and given the broad definition of “warehouse” discussed above, LAX could be considered a “warehouse facility.” LAX is one property with multiple “warehouses,” each of which may be used by a different “warehouse operator.”

The obligations in the Proposed Rule are unclear with regard to “warehouse facilities,” such as LAX, that have multiple “warehouses” and “warehouse operators.” For example, per Section (d)(7) of the Proposed Rule, warehouse operators are responsible for submitting initial site information reports for their “warehouse facility.” The Proposed Rule should be revised to clarify that the warehouse facility for which an initial site information report must be submitted is only that portion of the warehouse facility leased by the warehouse operator. If SCAQMD requires information about an entire “warehouse facility,” such obligations should be imposed on the warehouse facility owners, rather than the warehouse operators, as the latter may not have access to information about all of the other warehouses and warehouse operators at the warehouse facility.

United requests that this provision and similar requirements throughout the Proposed Rule be revised to clearly allocate responsibility to warehouse owners and warehouse operators, as appropriate, in particular considering situations in which there may be multiple warehouses, each of which is leased by a different warehouse operator, at one warehouse facility. In addition to clearly allocating operator vs. owner requirements, the Proposed Rule should seek to incentivize owners in multi-tenant situations to take on the compliance obligation rather than placing the sole

burden on the operator and merely allowing the owner to earn WAIRE points voluntarily. Furthermore, where a warehouse operator is dependent upon the owner to earn the necessary WAIRE points, the Proposed Rule should provide for a process to seek a limited exemption or waiver of the requirements should the owner choose not to cooperate due to no fault of the operator.

## 5. Calculating Weighted Annual Truck Trips (WATTs)

### a. Proposed Rule Section (d)(1)(B)

As an initial matter, United notes that vehicle miles traveled (VMT) is not considered in the formula for calculating WATTs. Failing to consider the impact of VMT in determining the compliance obligation will lead to inequitable application of the rule. For example, warehouses with multiple operators, or warehouses located close together, could have similar compliance obligations to warehouses operated by single operators that attract trucks with much longer VMTs and therefore higher truck-related emissions. United does appreciate that the Proposed Rule specifies that “if a warehouse is occupied by more than one warehouse operator, the WATTs are calculated only for truck trips to or from that operator.” However, because the formula does not include consideration of the distance of each trip, the Proposed Rule should address how to calculate WATTs when a warehouse facility (i.e., LAX) is occupied by more than one warehouse and/or warehouse operator. If a truck visits a warehouse at LAX, but not United’s warehouse, United should not be held responsible for that truck trip. At the same time, if a truck visits both United’s warehouse and another warehouse / warehouse operator also located at LAX, the Proposed Rule should not consider each of those visits to be a separate truck trip. Such a formula would penalize co-located operations, which are inherently more efficient and result in fewer truck-related emissions.

United also understands that heavy-duty trucks may visit LAX for reasons that are wholly unrelated to warehouse activities (e.g., trucks associated with construction or trucks delivering provisions to airport vendors). Information about a truck’s purpose and overall movement at LAX, however, is not readily available to individual warehouse operators, and it would be inefficient and overly burdensome to ask each operator to separately seek to collect such information. The provisions in the Proposed Rule should be revised to specifically address WATTs calculations at warehouse facilities where there are multiple warehouses and warehouse operators, in addition to other non-warehouse operations. In such situations any warehouse points compliance obligation should be determined at the facility level by the warehouse facility owner.

### b. Proposed Rule Section (d)(1)(C)

United appreciates that the Proposed Rule offers an option in the event that a warehouse operator does not have information about the number of truck trips at a warehouse due to a force majeure event such as a destruction of records from a fire. The Proposed Rule should also allow for a reasonably determined default calculation of truck trip rates in the event of other circumstances that are outside of the warehouse operator’s control. For instance, many of the technological solutions for counting and classifying truck trips are not feasible for United Cargo at LAX. United

SCAQMD, 6

Cargo's leasehold is almost entirely limited to its building footprint. United Cargo does not have exclusive control over all of the roads and other spaces existing prior to its dock doors. Space constraints therefore would make it difficult to install technology for counting / classifying trucks without approval from, and significant cooperation with, the warehouse facility owner (LAWA). United should not be penalized if such approval cannot be obtained, and should not be required to manually count trucks – a solution that would not be cost effective or practical.

6. Transferring WAIRE Points – Proposed Rule Section (d)(6)(C)

United appreciates that the Proposed Rule allows the warehouse facility owner to transfer WAIRE points to the warehouse operators located within its facility, but asks that the rule be revised so that such points can be transferred without any discounting. This is particularly necessary where the warehouse facility owner has primary control over whether, and which type of, WAIRE points can be earned. As a lessee that does not own or operate a truck fleet, most of the WAIRE Menu projects that would be available to United (such as installing charging, fueling or solar infrastructure) would require United to obtain permission from, and otherwise cooperate with, LAWA and its other tenants. Some of the projects may not be feasible at United's warehouse building, but may be achievable at other LAX locations that are not controlled by United. If LAWA pursues such projects, a matter which is outside United's control, LAWA should be permitted to allocate any associated WAIRE points to the various warehouse operators on its property.

7. Mitigation Fee – Proposed Rule Section (d)(5)

United agrees that in lieu of earning WAIRE points a warehouse operator should be allowed to satisfy its compliance obligation through payment of a mitigation fee.

United suggests that the fee rate should change based on whether an operator chooses to pay a fee rather than earn WAIRE points (higher) or whether an operator was not able to earn WAIRE points due to circumstances outside of its control and the infeasibility of options available from the WAIRE menu (lower). For instance, if a landlord does not approve a WAIRE points project, or none of the WAIRE points projects are feasible in a given compliance year, the mitigation fee rate should be adjusted accordingly.

\* \* \* \*

Thank you for your consideration of these comments. Please contact me at [cody.phelps@united.com](mailto:cody.phelps@united.com) or 650-874-4572 with any questions.

Regards,

  
Cody Phelps



March 2, 2021

Mr. Ian MacMillan, Planning and Rules Manager  
Mr. Victor Juan, Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178

Mr. MacMillan and Mr. Juan,

Price Transfer, Inc. expresses its strong opposition to the South Coast Air Quality Management District's (SCAQMD) proposed Warehouse Indirect Source Rule (ISR).

The draft ISR creates a complicated system of Warehouse Actions and Investments to Reduce Emissions "WAIRE Points" that must be earned by owners and operators of warehouses, mostly through a fee on warehouse operators. This rule is a costly and duplicative effort that is not poised to achieve demonstrable improvements in air quality in the South Coast basin.

The Ports of Long Beach and Los Angeles are the 10<sup>th</sup> largest ports in the world on a combined basis and largest in the nation. They are the key to the goods movement system that serves as the lifeblood of California's and the nation's economy by delivering essential goods, services, and medicines. Never has this industry been more important than during the COVID-19 pandemic. Grocery store shelves have been stocked, vaccines delivered, and small retailers kept alive by e-commerce thanks to power of the modern supply chain, allowing Californians and the rest of the nation to shelter in place and abate the spread of COVID-19.

Goods movement also powers blue-collar jobs vital to our economy. An estimated 1 in 22 jobs in Southern California are tied to the logistics industry. The logistics industry in Southern California is already under pressure from higher operating costs, taxes, and regulation than the rest of the nation. An additional layer of cost and regulation from the ISR could lead to the Ports of Long Beach and Los Angeles becoming less competitive and giving companies incentive to use other US ports. This would result in significant job loss, abandoned warehouses, and lost tax revenue for the region.

California has the cleanest supply chain in the United States. Thanks to two decades of investment in the cleanest available equipment, including early adoption by our collective members, localized emissions associated with warehouses have never been lower, falling by over 95% in the last decade.

As you know, California is the only state in the nation with the power to regulate mobile sources pursuant to its waiver under federal Clean Air Act. The California Air Resources Board (CARB) has used



this power to adopt the country's strictest emission laws, including adopting in July the world's first mandate to manufacture and sell zero-emission commercial vehicles. CARB has also stated its intent to adopt regulations that will require nearly every equipment type at warehouses to operate in a zero-emission mode within the next year.

SCAQMD's proposed Warehouse ISR is duplicative of these regulations, exceeds the District's authority to regulate mobile sources, and will create burdensome, expensive requirements for the supply chain for questionable environmental benefit.

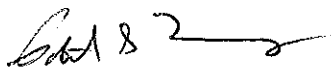
During presentations, SCAQMD justified the draft rule by stating that additional action is necessary to address ozone and NO<sub>x</sub> concentrations in the basin. With respect to NO<sub>x</sub>, a recent technical analysis of the draft staff report found that the report does not adequately demonstrate that the proposed Warehouse ISR will provide NO<sub>x</sub> reductions beyond those generated by CARB regulations, despite the enormous costs that will be involved in complying with this rule.

Further, as stated during AQMD's Scientific, Technical & Modeling Peer Review Advisory Group Meeting on January 27, 2021, the small quantities of NO<sub>x</sub> reductions generated by this rule will not be sufficient to decrease the ozone concentrations in the basin. One is left with the impression that the rule, instead of addressing environmental concerns, is being used as a funding mechanism.

Duplicative rulemaking by CARB and the SCAQMD that does not move the needle on environmental benefit in the basin not only wastes the state's resources, but unnecessarily increases the cost of compliance for an industry that is gearing up for the all-electric future envisioned by CARB and Governor Newsom.

We hope SCAQMD will reconsider this untimely, duplicative, and costly regulation and work with industry to develop a rule that takes into account the emissions reductions that already will occur due to CARB rulemaking and appropriately addresses emissions that are within the bounds of SCAQMD authority.

Thank you for taking the time to consider my public comment.



Patrick G. Farenga  
Chief Financial Officer  
Price Transfer, Inc.



March 2, 2021

Mr. Ian MacMillan, Planning and Rules Manager  
Mr. Victor Juan, Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178

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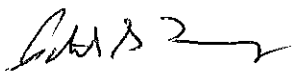
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We hope SCAQMD will reconsider this untimely, duplicative, and costly regulation and work with industry to develop a rule that takes into account the emissions reductions that already will occur due to CARB rulemaking and appropriately addresses emissions that are within the bounds of SCAQMD authority.

Thank you for taking the time to consider my public comment.



Patrick G. Farenga  
Chief Financial Officer  
FCL Logistics, LTD.



February 26, 2021

Dr. William A. Burke, Chair  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

via email: [clerkofboard@aqmd.gov](mailto:clerkofboard@aqmd.gov)

### **Support for Warehouse Indirect Source Rule**

Dear Dr. Burke and members of the Governing Board:

On behalf of the American Lung Association, we are writing to provide comments in support of the adoption of a strong Indirect Source Rule by the South Coast Air Quality Management District. We appreciate the work you, District staff and stakeholders have put into ensuring community health protections through clear targets for reducing ozone-forming emissions from indirect sources. As the rulemaking continues, we respectfully urge the District to act quickly to adopt the strongest possible rule.

In large part due to the transportation sector, including trucks serving warehouses throughout the region, the American Lung Association's annual [State of the Air](#) 2020 report found that the Los Angeles metropolitan area is the most ozone-polluted region in the United States, and among the most impacted by particle pollution. Too many communities face a significant number of days with unhealthy ozone or particle pollution levels that contribute to a wide range of health impacts, including asthma attacks, heart attacks and strokes, lung cancer and premature deaths. We are deeply concerned with the disparities that exist in exposures to transportation pollution which often fall most heavily on lower-income communities and communities of color nearest major trucking routes, warehouses and other diesel hotspots, as well as with workers impacted at these sites. Fortunately, decades of policy innovation has spurred significant progress in reducing harmful emissions and we look to the district to continue to build on this foundation.

Now, a strong Indirect Source Rule for warehouses is urgently needed to protect public health from the growing pollution impacts of major warehouse operations throughout the region. We believe the district should strengthen the final rule to ensure that the greatest possible emission reductions and health protections are required. We encourage the district to move forward as rapidly as possible, and to elevate the role and requirements for zero-emission

trucks serving warehouses to help provide critical air quality relief for the impacted communities and warehouse industry workers. The American Lung Association's 2020 [Road to Clean Air](#) report found that the greater Los Angeles Area could experience the greatest public health benefits in the nation through a widespread transition to zero-emission transportation, including over \$14 billion in annual public health benefits, more than 1,200 fewer deaths and 16,000 asthma attacks due to cleaner air. The Indirect Source Rule represents an important opportunity to reduce local pollution impacts, advance zero-emission transportation, and provide meaningful health protections for heavily impacted communities and workers within the region.

We look forward to working with the district to continue the important progress made and taking on the challenging work ahead to ensure clean, healthy air for all residents, especially for those most burdened by heavy trucking pollution today. Please don't hesitate to reach out Steven Jimenez at [steven.jimenez@lung.org](mailto:steven.jimenez@lung.org) with any questions.

Sincerely,

Karen Jakpor, MD  
Health Professional Volunteer

Afif El-Hasan, MD  
Health Professional Volunteer

Frances Mojica  
Executive Director, Los Angeles





Ian MacMillan, Planning and Rules Manager  
Victor Juan, Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

**Sent via Email and USPS**

March 2, 2021

Dear Mr. MacMillan and Mr. Juan:

The California Taxpayers Association (“CalTax”) is a nonprofit, nonpartisan research and advocacy association founded in 1926 to promote sound tax policy and government efficiency. In 2010, CalTax sponsored Proposition 26 to stop hidden taxes, after years of rising costs from government regulations and fees. Proposition 26 does not stop local agencies from raising revenue – but it does create a legal pathway for government to follow when imposing new taxes and fees.

The South Coast Air Quality Management District (SCAQMD) has proposed two new air quality rules: “Rule 2305: Warehouse Indirect Source Rule” and “Rule 316: Fees for Rule 2305.” These proposed rules would require warehouses with more than 100,000 square feet of indoor space in a single building to reduce emissions or pay a tax-like “mitigation fee.” Notwithstanding the “fee” labels, the proposed rules seek to impose a special tax that requires approval by a two-thirds vote of the electorate to take effect.

### **About CalTax**

CalTax is the oldest and largest organization representing taxpayers in California, including individuals, small businesses and Fortune 500 companies. CalTax sponsored Proposition 26 in 2010, and co-chaired the Stop Hidden Taxes campaign.

CalTax has a great interest in this issue, which will have a direct impact on CalTax, its members, and taxpayers both regionally and across the state. Because of CalTax’s broad-based membership and its expertise and experience -- in addition to that of its members -- concerning the legal and policy issues raised by this proposed rule, CalTax believes its perspective on the relevant issue will be of assistance to the District and its governing board in deliberating proposed rules 2305 and 316.

### **Brief History on Voter Approval for Local Taxes**

Prior to the passage of Proposition 26, which was approved by the voters in November 2010, the California Constitution required special taxes to be approved by a two-thirds vote of the electorate. This vote requirement was added to the Constitution in 1978 after voters approved Proposition 13.

After passage of Proposition 13, state and local governments frequently turned to tax-like “fees” to raise revenue.

In 1991, the state Legislature approved a tax-like “fee” on paint manufactures and manufacturers that produced lead-based products. This led to litigation, and the case eventually was decided by the California Supreme Court in *Sinclair Paint v. State Board of Equalization*, 15 Cal.4th 866 (1997). The Supreme Court opined: “In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.”<sup>1</sup> To the dismay of taxpayers, the Court ultimately held that the “fees” in the *Sinclair* case were valid regulatory fees, not taxes. The decision resulted in a 20-year effort to clarify the distinction between legitimate regulatory fees and taxes.

Addressing the legal history in the years that followed the *Sinclair* decision, Proposition 26 sought to codify certain decisions that address the characteristics and differences between taxes and fees:

- **Generating Revenue From Regulatory Programs Is Prohibited.** Regulatory programs cannot include a charge imposed primarily for the purpose of raising revenue. A regulatory-related charge can be considered a tax depending on how the charge is spent. State law requires a true regulatory charge to be spent in a manner that proportionately benefits those who pay. In *Northwest Energetic Services, LLC v. California Franchise Tax Board*, the court determined: “If revenue is the primary purpose and regulation is merely incidental the imposition is a tax.”<sup>2</sup>
- **Fees Must Provide a Specific Benefit to the Payor.** In 2008, the Fourth District Court of Appeal ruled in *Bay Area Cellular Telephone Co. v. City of Union City* that the 9-1-1 “fee” was a tax because “those who paid the Fee received no benefit not received by those who did not pay (and thus by the general public), thereby negating the distinguishing feature of a user fee.”<sup>3</sup>
- **Fees Must Be Fairly Apportioned Among Payors.** The California Supreme Court determined in *California Farm Bureau v. State Water Resources Control Board* that fees should be reasonably apportioned to the payors involved -- otherwise, the “fee” is a tax.<sup>4</sup> While the Supreme Court asked a lower court to determine proportionality, the court's findings may impact other situations where payors are treated differently by the law, but benefit from the same service or privilege. The court wrote that the question in the case “revolves around the scope and the cost of the ... regulatory activity and the relationship between those costs and the fees imposed. It is further complicated by the fact that not all those who hold water rights are required to pay the fee.”<sup>5</sup> The court concluded: “Focusing on the activity and its associated costs will allow the trial court to determine whether the assessed fees were reasonably proportional and thus not a tax. The court must determine whether the statutory scheme and its implementing regulations provide a fair, reasonable, and substantially proportionate assessment of all costs related to the regulation of affected payors.”<sup>6</sup>

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<sup>1</sup> *Sinclair Paint v. State Board of Equalization*, 15 Cal.4th 866, 874 (1997).

<sup>2</sup> *Northwest Energetic Services, LLC v. California Franchise Tax Board*, 159 Cal.App.4th 841, 855 (2008).

<sup>3</sup> *Bay Area Cellular Telephone Co. v. City of Union City*, 162 Cal.App.4th 686, 695 (2008).

<sup>4</sup> *California Farm Bureau Federation v. State Water Resources Control Board*, 146 Cal.App.4th 1126 (2011).

<sup>5</sup> *California Farm Bureau Federation v. State Water Resources Control Board*, 51 Cal.4th 421, 441 (2011).

<sup>6</sup> *Id* at 442.

- **Government Bears the Burden of Proving That a Fee Is Not a Tax.** Under Proposition 26, just as under *Sinclair*, government bears the burden of proving that a “fee” is not a tax. In *San Diego Gas & Electric*, the court found that “government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.”<sup>7</sup> Further, in *California Association of Professional Scientists v. Department of Fish and Game*, the court found: “The government bears the burden of proof ... It must establish ... the estimated costs of the service or regulatory charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.”<sup>8</sup>
- **Fees Must Be Reasonable.** Revenue derived from regulatory fees cannot be used for unnecessary regulatory activities, nor should revenues be used for unnecessary administrative costs. In *San Diego Gas & Electric Company v. San Diego County Air Pollution Control District*, the court stated that government must show “estimated costs of the service or regulatory activity, and the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair and reasonable relationship to the payor's burdens on or benefits from the regulatory activity.”<sup>9</sup>

### **The Definition of a Legitimate Fee**

The expansion of *Sinclair*-style tax-like “fees” eventually led to voters approving Proposition 26, which refined the definition of tax to ensure that state and local government could not circumvent the vote requirements for tax increases by labeling taxes as “fees.”

Effective January 1, 2010, all taxes and fees must comply with the requirements of Proposition 26. Fees adopted prior to 2010 may continue to be imposed under prior tax and fee definitions, such as the fees considered in *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal.App.4th 120 (2009).

Proposition 26 added Article XIII C, section 1 to the California Constitution, and defines a tax as “any levy, charge, or exaction of any kind imposed by a local government”<sup>10</sup> except for specific enumerated exceptions. The enumerated exceptions:

- (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
- (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

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<sup>7</sup> *San Diego Gas & Electric Company v. San Diego County Air Pollution Control District*, 203 Cal. App. 3d 1132, 1146 (1988).

*California Association of Professional Scientists v. Department of Fish and Game*, 79 Cal. App. 4th 935, 945 (2000).

<sup>9</sup> *San Diego Gas & Electric Company*, 203 Cal.App.3d at 1146.

<sup>10</sup> Cal. Const. article XIII C, § 1



- (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
- (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
- (5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
- (6) A charge imposed as a condition of property development.
- (7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.<sup>11</sup>

### **Proposition 26 Placed the Burden of Proof on the Government**

Proposition 26 placed the burden of proof on a local agency to prove “by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.”<sup>12</sup>

In this case, SCAQMD bears the burden of proof, by a preponderance of the evidence, to demonstrate that the proposal contained in Rules 2305 and 316 is not a tax, and that it complies with the provisions added by Proposition 26 in Article XIII C, section 1.

### **The South Coast Air Quality Management District’s Proposals Constitute a Tax**

SCAQMD’s proposed rules would result in the imposition of a tax.

In *Morning Star Co. v. Board of Equalization*, the court deliberated whether a hazardous-materials “fee” imposed by the California Board of Equalization was a tax or a fee. The court opined: “[T]he section 25205.6 charge to the Company is not regulatory because it does not seek to regulate the Company’s use, generation or storage of hazardous material but to raise money for the control of hazardous material generally. The charge is therefore a tax. At its most basic level, the section 25205.6 charge is not a regulatory fee because it is not regulatory. It is monetary.”<sup>13</sup>

The facts and circumstances litigated in the *Morning Star* case are similar to the fees proposed by SCAQMD. Proposed rules 2305 and 316 do not seek to regulate the specific fee-payers’ indirect source emissions, but instead aim to raise money for the control of emissions in the South Coast region generally. The District’s stated purpose is to “reduce local and regional emissions of NO<sub>x</sub> and PM associated with warehouses in order to assist in meeting state and federal air quality standards.”<sup>14</sup> The District also stated that proceeds from this new tax will be used “to provide financial incentives for truck owners to purchase NZE or ZE trucks, or for the

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Morning Star Co. v. Board of Equalization*, 201 Cal.App.4th 737, 755 (2011).

<sup>14</sup> PRELIMINARY DRAFT STAFF REPORT PROPOSED RULE 2305 – WAREHOUSE INDIRECT SOURCE RULE - WAREHOUSE ACTIONS AND INVESTMENTS TO REDUCE EMISSIONS (WAIRE) PROGRAM AND PROPOSED RULE 316 – FEES FOR RULE 2305 (2021), <http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/preliminary-draft-staff-report.pdf?sfvrsn=14>.

installation of fueling and charging infrastructure, with priority given for projects in the communities near warehouses that paid the fee.” The purpose and spending plan from SCAQMD do not appear to have any nexus to the specific fee-payers’ use or generation of indirect emissions, and the exaction therefore constitutes a tax.

The contemplated charge is monetary and not regulatory because, among other things, the proposed rules do not provide a sunset date for the charge. If the true purpose was regulatory and not monetary, the proposed rules would provide a mechanism for the charge to end. If the true goal of the District is to control local and regional emissions, the charge should end when that goal has been accomplished. By leaving an indefinite charge in place regardless of the emissions in the region, the purpose of the proposed rule appears more in line with a revenue-raising or monetary purpose.

Furthermore, in *California Chamber of Commerce v. State Air Resources Board*, the court ruled on whether the “Cap-and-Trade” auction was a tax that required two-thirds approval from the Legislature. In its analysis of the distinction between a tax and a fee, the court stated: “Although the term ‘tax’ has different meanings in different contexts, we find that, generally speaking, a tax has two hallmarks: (1) it is compulsory, and (2) it does not grant any special benefit to the payor.”<sup>15</sup> (In this case, the court found that the cap-and-trade auction was valid law, given that it was imposed prior to the enactment of Proposition 26. In 2017, when lawmakers extended the auction to 2030 [AB 398, Chapter 135, Statutes of 2017], they approved the legislation with a two-thirds vote.)

To be properly classified as a “fee” under California law, the government activity funded by a specific charge must benefit only the individuals and entities that pay the charge. Governmental activity benefiting entire communities or populations, and charges that exclude or exempt certain segments of the population, are not evenly distributed and therefore constitute a tax that must be presented to the voters.

The SCAQMD’s proposed indirect source rules would apply only to a limited subset of taxpayers — those that operate warehouses above a specific size. Since the proposed rules apply to a limited segment of the population, the charge is not evenly distributed and therefore is a tax subject to voter approval requirements, according to California law.

In addition, warehouses that would pay the “fees” under the District’s proposed rules will not receive any specific benefits for doing so. Again, the District’s preliminary staff report states that the proceeds from the proposals will be used “to provide financial incentives for truck owners to purchase NZE or ZE trucks, or for the installation of fueling and charging infrastructure, with priority given for projects in the communities near warehouses that paid the fee.” This proposed spending of the funds generated through these new proposed rules provides no special benefit to the warehouse operators who would be paying these new taxes. As most warehouse operators do not own or have reason to own trucks, the incentives to purchase NZE or ZE trucks will be of little to no use to them. Furthermore, warehouse operators have little or no control over which vehicles come and go from their facilities. Therefore, the installation of fueling and charging infrastructure, even if they were in communities near the warehouses paying the fee, provides no specific benefits to the payors.

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<sup>15</sup> *California Chamber of Commerce v. State Air Resources Bd.*, 10 Cal.App.5th 604, 640 (2017).

California courts have repeatedly maintained that the two primary indicators of distinguishing whether a levy, exaction or charge is a tax or a fee is that taxes are mandatory and provide no special benefits to the payor. The SCAQMD's proposed Rules 2305 and 316 bear these "two hallmarks" of a tax because the proposed charge is mandatory and provides no special benefit to the payor. The charge therefore is a tax that would require voter approval (with a two-thirds threshold, as it constitutes a special tax).

Thank you for considering these comments. If you have any questions, please feel free to contact CalTax using the information provided below.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Lee", with a long horizontal flourish extending to the right.

Ben Lee  
Tax Counsel  
California Taxpayers Association  
[ben@caltax.org](mailto:ben@caltax.org)

cc: South Coast Air Quality Management District Governing Board Members  
South Coast Air Quality Management District Governing Board Assistants and Consultants



March 2, 2021

Ian MacMillan, Planning and Rules Manager  
Victor Juan, Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

Sent via Email

Re: Comments on Draft Rule 2305 and Draft Staff Report

Dear Mr. MacMillan and Mr. Juan:

NAIOP, the Commercial Real Estate Development Association, is the leading national organization of developers, owners, and related professionals in office, industrial and mixed-use real estate. NAIOP advances responsible commercial real estate development, researches trends and innovations, provides educational programs, and advocates for effective public policy. The NAIOP SoCal and Inland Empire Chapters serve Los Angeles, Orange, Riverside and San Bernardino Counties, with a membership of over 1,300 members. We appreciate this opportunity to comment on Proposed Rule 2305 and the Draft Staff Report and submit this as part of the official rulemaking record.

We wish to emphasize at the outset that NAIOP supports the District's vision and objectives of cleaner air and reducing greenhouse gas emissions. We look forward to the day when technological advances will make these goals a reality while supporting a sustainable, thriving and prosperous economy that will provide opportunity and a high quality of life for all. **While we support the District's laudable clean air goals, there are several major concerns requiring that the rule should not be adopted at this time.**

The SCAQMD does not have the legal authority to adopt PR 2305 on existing facilities. Furthermore, the mitigation fee constitutes an illegal tax. The rule has numerous infeasible, as well as arbitrary and capricious provisions. The potential for emissions and ozone reductions, as well as any SIP credit, is unknown at best and most likely the rule cannot achieve any such results. Additionally, warehouses have no control over the marketplace for heavy duty trucks and most have no control over which trucks may come to a warehouse, which makes it infeasible to get WAIRE points for ZE or NZE trucks. No one knows when low emissions trucks will be commercially available in sufficient supply to even be able to achieve any WAIRE points, among other issues. Finally, the targeted mobile sources are already regulated by other agencies.

We want to make it clear that although staff has requested comments to be submitted by today, the full public comment period remains open up until and including the final vote on PR 2305. This correspondence is a preliminary reply and we reserve the right to submit additional comments. Our initial concerns with Proposed Rule 2305 are set forth in detail below.

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### **Warehouses are a Beneficial Essential Service**

It is important to view this entire issue of PR 2305 with a balanced and thoughtful perspective. Warehouses play a key role in the complex system of systems that delivers to the public all the items needed to live their lives on a daily basis for the approximate 18 million people in this four-county region. Everything, including our food supply, clothing, medical supplies, vaccines and essentially everything required for residents to survive on a daily basis goes through a warehouse. The ability to rapidly deliver to residents their daily needs has become far more critical as the public is even more dependent today on e-commerce. The vital importance of warehouses has never been made clearer than during the COVID-19 pandemic in distributing medical supplies and equipment, as well as vaccines. Warehouses are vital to the health and quality of life of the people who live in Southern California, which is why the State and Federal governments declared the warehousing industry to be an essential business.

In addition to providing the vital goods everyone needs, as the Governor's Office of Business and Economic Development (Go Biz) stated, "California's freight network is a vital economic force..." The goods movement system accounts for about 1/3rd of the state and regional economy and is responsible for providing millions of direct and indirect jobs for people with a large range of skill sets.

The critical role the warehousing sector has in supplying jobs to people has been proven over the years and become even more obvious during the COVID-19 pandemic. Warehousing has been one of the very few job creators, which has been critical for so many people due to the dramatic decline in traditional blue-collar jobs that has occurred in this region over the last several years. Moreover, the economic distress of COVID-19 has resulted in additional job losses and shuttering businesses across many sectors. Particularly hard-hit are retail and hospitality businesses – many of these jobs and businesses are lost forever. This is especially important to the many people, over 50% in the Inland Empire, whose highest level of education is a high school degree or less. The warehousing sector provides entry level jobs at compensation levels that exceed other jobs that do not require a college degree and many of the lost service sector jobs, along with providing the ability for upward mobility.

Taxing the very sector that provides a significant number of career pathways to minorities and people of color is bad public policy. The proposed increases would substantially increase the cost of all goods and services, including groceries, for our region's residents and families. Higher prices would hurt Angelinos and small businesses at a time they are already struggling to put food on the table.

Warehouses and warehouse development have over the years, and will continue to do so in the future, provided numerous community benefits at no cost to the taxpayer. Just some examples are;

1. Providing new and upgraded streets, sidewalks, and other community infrastructure;
2. Funding for local schools and parks;
3. Funding for regional infrastructure and benefits; and
4. Increased sales and property tax revenue to local jurisdictions.

### **Lack of Legal Authority to Enact PR 2305**

The SCAQMD does not have the legal authority to adopt PR 2305. The District is governed under the Lewis-Presley Air Quality Management Act, Cal. Health & Saf. Code, § 40400, et seq. The Lewis-Presley Act created the District. It provides the enabling legislation from which the District derives its powers, and it prescribes the limitations on those powers. The statute authorizing the District to adopt indirect source rules specifically provides that the District's indirect source controls must be limited to 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. Cal. Health & Saf. Code, § 40440(b)(3). In its current form, however, the SCAQMD is proposing that the rule apply to all distribution warehouses greater than or equal to 100,000 square feet irrespective of where they are located within the South Coast Basin, and irrespective of whether they are new or existing. Thus, Proposed Rule 2305 clearly exceeds the District's authority. Notably, in the Staff Report discussion of the District's legal authority for Rule 2305

staff omit any citation or discussion of section 40440, and instead rely entirely on authorities of other air pollution control districts.

Additionally, Proposed Rule 2305 exceeds the scope of an “indirect source review program,” as defined in the federal Clean Air Act. The federal Clean Air Act defines an “indirect source review program” as “the *facility-by-facility review* of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a *new or modified indirect source* will not attract mobile sources of air pollution . . .” 42 U.S.C. § 7410(a)(5)(D) (emphasis added). Rule 2305 does not involve any “facility-by-facility review” and is not limited in scope to “new or modified” indirect sources. Thus, the rule is a regulation of mobile sources, rather than a true “indirect source” rule.

In several respects Rule 2305 is arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair.” *California Building Industry Ass’n v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal. App. 4<sup>th</sup> 120, 129. Under this standard “the agency must act within the scope of its delegated authority, employ fair procedures, and be reasonable. ‘A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’” *Ibid.*

The District’s stated purpose for the rule is to assist in meeting state and federal air quality standards—principally the US EPA’s 8-hour ozone standard. Yet many aspects of Rule 2305 are disconnected from this purpose. To the extent that the zero-emission and near-zero-emission trucks are not available on a scale to satisfy the industry’s collective WAIRE Points obligation, operators will be required to either: (1) adopt other technologies such as installing on-site electrical truck charging or hydrogen fueling infrastructure, solar panels, or air filtration systems in local residences, schools, daycares, hospitals, or community centers; or (2) paying the District the mitigation fee. Of course, if the zero-emission and near-zero-emission trucks are not widely available, installing charging and fueling infrastructure for them won’t reduce any emissions. Nor will installing solar energy panels or indoor air filters do anything to reduce truck emissions or ambient ozone concentrations.

We reserve our right to challenge the District’s legal authority to adopt and enforce Rule 2305 on these and any other legal or constitutional grounds.

### **Mitigation Fee/Tax**

Rule 2305 also constitutes an illegal tax. The rule requires warehouse operators to satisfy their obligations by either adopting certain technologies (primarily by the purchase and use of zero-emission or near-zero-emission trucks or infrastructure for the same) or paying the District a “mitigation fee.” Currently, zero-emission and near-zero-emission technologies are not commercially available on a scale to enable warehouse operators to satisfy their collective compliance obligation. Therefore, warehouse operators will have no option but to pay the fee. The District concedes in its AQMP that “additional research and demonstration are needed to commercialize zero- and near-zero emission technologies for the heavier heavy-duty vehicles (with gross vehicle weight ratings greater than 26,000 pounds). [AQMP at 4-24.] Moreover, the District concedes in its staff report that some of the WAIRE menu technologies (including zero-emission class 8 trucks) are not currently technically feasible.

The District states that it will use the mitigation fees to subsidize the purchase of zero-emission and near-zero emission trucks and electric charging infrastructure. But if there are not enough zero-emission and near-zero-emission trucks to satisfy the warehouses’ collective WAIRE Points obligation, there won’t be clean trucks available to subsidize.

The District estimates that there are about 750,000,000 square feet of warehouse space that will be covered by this rule. Thus, warehouse operators could collectively pay the SCAQMD hundreds of millions of dollars per year in mitigation fees under Rule 2305 alone, up to \$630 million by the estimate of staff. For comparison, the SCAQMD's entire budget last year was \$173 million, and the budget for its Carl Moyer program was \$30 million. Thus, Rule 2305 is likely to bring in far more revenue for the District than it can spend reducing NOx and DPM from truck emissions.

Moreover, the District has not yet proposed any written subsidy plan or program to control expenditure of the mitigation fee, and it is not clear when, if ever, it will have such a plan. Furthermore, throughout the discussions of PR 2305 no copy of any plan has been provided for discussion by the Board or any of the stakeholders, even though there certainly have been various questions and comments of concern about this "program" by a broad spectrum of stakeholders.

The actual rule itself has just a short paragraph on page 10 that only sets out the amount of the "mitigation fee" at \$1,000 and says it is to be paid at the time of the Annual WAIRE Report. Nothing else. It does not even mention there will be any "WAIRE Mitigation Plan".

There is a less than a one-page reference of a "WAIRE Mitigation Program" on page 39 of the Draft Staff Report. This is where it is stated that it will use the mitigation fee proceeds to subsidize the acquisition of zero-emission and near-zero-emission trucks, or charging/fueling infrastructure. But, again, if those trucks are not widely available there is no assurance as to how much, if any, benefit the mitigation fee will have on air quality.

Moreover, this brief description on page 39 specifically states that "Because this funding program is wholly within the control of South Coast AQMD, funds may be combined with other incentive programs as allowable on a case-by-case basis." So, this sounds more like funds generated from a tax that can be used for a wide variety of purposes.

There are many other issues. like lack of any nexus, surrounding the tax issue, but, in conclusion, the District lacks legal authority to issue taxes. It may impose regulatory fees. But regulatory fees must be limited to the costs required to administer a regulatory program and may not be levied for unrelated revenue purposes. See Health & Saf. Code, § 40522.5(a). The District is proposing a separate regulatory fee in a companion rule (Rule 316) to cover its costs of administering Rule 2305. Thus, the mitigation fee imposed by Rule 2305 is a special tax requiring approval by a two-thirds majority of the voters within the south coast district. Cal. Const., art. 13A, § 4; art.13C §1; Govt. Code, § 53722; see also *Santa Clara County Local Transp. Authority v. Guardino* (1995) 11 Cal.4<sup>th</sup> 220, 231-233.

### **Truck Emissions Have and Will Continue to Decrease Dramatically**

While PR 2305 claims to be about warehouses, there is no question the rule is solely about trucks and truck emissions, and really aimed at heavy duty truck (HDT) fleets. The organization in California that has the authority regarding truck emissions, the California Air Resources Board (CARB), has enacted numerous rules regulating truck emissions and many more are coming. Truck emissions have actually DECLINED and will continue to DECLINE.

The decline has been dramatic. All of the various rules from CARB and US EPA have reduced particulate matter (PM) emissions by 99% and NOx emissions by 90%. CARB has indicated that their own tests of the impact of requiring diesel particulate filters on trucks since 2014 demonstrate that "...PM filters virtually eliminate PM from truck exhaust and that the...air quality impacts following the adoption of PM filters into the on-road fleet have been substantial."

The reality is CARB has already adopted an entire suite of regulations requiring the trucking industry to meet the cleanest standards. They are the strictest rules in the country and cost the trucking industry about \$1 billion a year. CARB has stated the enhanced compliance provisions means 300,000 older diesel trucks will be cleaned up, which would be "...the equivalent of removing every single passenger car off California's roads in 2023."

Additional rules include the Drayage Truck Rule, the Tractor-Trailer Greenhouse Gas Reduction Measure, the 5-Minute Idling Rule, Refrigerated Trailer Rule, and the Periodic Smoke Inspection Program. Just this past summer CARB adopted the Low NOx Omnibus rule that will reduce NOx an additional 75% by 2024 and 90% by 2027 over and above the 90% plus reductions that have already been achieved, along with the Advanced Clean Trucks Rule.

In 2021, CARB is scheduled to adopt an Advanced Clean Fleets rule and a Truck Refrigerated Unit (TRU) rule, which will bring even further emissions reductions.

These rules cover a wide variety of issues and approaches to decreasing truck emissions. Thus, there is no question that the entire field of decreasing truck emissions is being addressed and will continue to be aggressively pushed by the agency with the real authority to make a true impact, CARB. The reality of what is truly going on regarding decreasing truck emissions certainly calls into question the need for and role of PR 2305.

### **Most Warehouse Operators do not Control What Trucks are Bought or Used**

It is also well known, and staff admits, that the vast majority of warehouses do not own trucks and have no need to buy them. This means an operator would have no reason to buy NZE or ZE trucks. So, this is not a realistic option.

Not only do the vast majority of warehouse operators not own any trucks, they also have no control over what trucks come and go to the facility. It is the shipping company that makes all the decisions about what trucks are used. The operator does not have any relationship to the shipping company. The operator cannot direct the shipper to only send a ZE or NZE truck to their warehouse. The operator does not even know what type of truck might arrive at the warehouse. It would be by complete chance that NZE or ZE trucks were used, even if there were any commercially available heavy-duty trucks. So, again, this is not a “feasible” option.

### **PR 2305 Negatively Impacts Incentive Funding of New Trucks**

There is no question the primary focus of PR 2305 is to force the turnover of the truck fleet from diesel to ZE and NZE trucks. It has been repeated many times by the SCAQMD staff and the Governing Board that incentive money is the key to achieving that objective due to the much higher cost of lower emissions trucks. Yet, staff has admitted that any truck purchased with incentive funds could not get WAIRE points credit. Staff has stated that the only way to get WAIRE points for the purchase of a truck is to NOT use incentive funding. So, this ISR will actually serve as a disincentive to purchase lower emissions vehicles, the opposite of what is trying to be achieved.

### **Ability to Have Sufficient EV Truck Purchases and Visits is Speculative**

While there is a lot of effort being undertaken to develop newer technology, it is widely known that there are no the commercially available Class 8 trucks, which are the ones that are the focus in relationship to warehouses. It is also unknown when they might become sufficiently commercially available for any type of widespread use. Even once they might begin to be available, in what quantity? Any electric trucks will be spread across the entire nation, not just the warehouses subject to this rule. You can't buy or use something that does not exist or is not realistically available.

Furthermore, most truck fleets are owned by small business operators with 1-5 trucks, and they don't have the capital to spend on newer trucks that will be significantly more expensive. So, again, the idea that there are going to be a lot of NZE or ZE trucks purchased in the near future is not reasonable.



The SCAQMD actually commissioned a study to look into transitioning truck fleets to electric trucks. This report, “Developing Markets for Zero Emissions Vehicles in Short Haul Goods Movement” (Report) was completed in February of 2020, but apparently never released and we do not know if the Governing Board has seen it. It is also not cited or referenced in any of the documents that have been released or any presentations given dealing with PR 2305. Yet, it raises many issues that impact this rule. Just a few points are noted below;

- Due to the different performance characteristics of electric trucks versus diesel trucks, namely range, load capacity, and refueling time, it is not a one for one trade-off between diesel and electric trucks. This can be as great as a near doubling of the fleet. Even as the technology improves, there will still be a need for additional trucks.
- The economic estimates of purchase cost of heavy-duty electric trucks are highly speculative due to lower production volumes.
- Many firms do not want to quick charge during a shift due to impacts in productivity; the long charging times mean a truck charging is one not working for quite a period of time.
- California’s diesel fleet is now relatively young due to all the upgrades that have recently occurred, which means that most diesel trucks will stay on the road for many years into the future.

#### **Charging Station Installation and Usage is Speculative-**

Once again, there is no real analysis about trying to force warehouses to build charging stations. Even the foundational question of where the best location for any charging facility is has not been answered. Would putting a charging facility at a warehouse actually lead to a quicker turnover of the fleet? Or would building facilities at publicly accessible areas similar to truck stops that are more easily accessible to all trucks be the way to push turnover of the fleet?

Additionally, there seems to be a lot of belief that because charging stations are installed they will be used. It must be remembered the warehouse operator cannot force any truck driver to use the charging station or the hydrogen station. That is entirely up to the decision of the truck driver, just as you decide when and where to refuel your car. So, the warehouse operator has to just hope the charging station or hydrogen station will be used. Thus, getting points for the use of the stations is completely arbitrary.

Simply mandating the installation of EV charging stations does not reduce emissions and ignores the nature of the warehousing business. First, the vast majority of warehouses are leased. Leases are short term, ranging from 3-5 years, and so the tenant is not inclined to go through the complicated process and cost of installing a charging station on a property they do not own. By the time the charging station is built, which staff admits can take years, the lease may end. Plus, once the lease ends, the tenant cannot take it with them, so they end up merely installing infrastructure on property they do not own. There is no incentive for the warehouse operator to install EV charging stations.

Also, as staff admits on page 13 of the WAIRE Menu Technical Report, currently “...the higher power chargers used for heavy duty vehicle charging have yet not followed a common standard, and proprietary charging systems are commonly tailored to each vehicle.” So, the operator does not know what charging infrastructure to install, and even if they did it may not work on the truck that shows up at the warehouse. This all increases the likelihood of stranded assets and added costs to replace a station. Thus, it is imperative that a common truck charging system be adopted before there are any rules focused on the installation or use of charging stations.

Currently, there are no commercially available heavy-duty electric trucks. So, one would not install a charger that will not be used. Even once there may be commercially available heavy-duty trucks, it is unclear how many over what period of time they will be manufactured. The proposed rule does not address this issue. It will take many years for sufficient for the manufacturers to produce a sufficient number of EV trucks that can use any charging stations on a daily basis or very frequently at all. So, again, the idea if getting WAIRE points to really count is not actually feasible and may not be for decades.

Since this rule only applies to existing buildings, SCAQMD is mandating the retrofit of facilities which were built to meet certain requirements of the city or county. All safety and building code requirements would still have to be met, such as parking spaces, which would be the most likely area to be used. There is the issue of whether there is even room to build EV infrastructure. Staff acknowledges that there would have to be a "...dedication of space for electrical equipment and vehicle parking..." Most existing warehouse sites were not developed with excess space that is not being used. Staff makes reference to the Floor Area Ratio (FAR) as an indicator, but that is not accurate. The FAR is set by the city or county at the time a warehouse is built to cover the requirements they have for landscaping, setbacks, auto parking, the needed area for trucks to safely maneuver on the property, trailer storage areas and more. It is not just vacant, available land.

Also, truck drivers do not have idle time to wait at a warehouse once the truck has been unloaded, and especially if they have taken on a load. They must quickly leave to get another load or deliver their cargo. Truck drivers do not get paid for waiting at a warehouse while hours of charging their vehicles are taking place.

There are additional challenges relating to the entire electrical infrastructure (i.e., trenches, transformers, switchboards, conduit, etc.) required to accept the additional power for the charging station. There is a great deal of accompanying infrastructure. Staff admits many facilities "may not have sufficient access to electrical utility infrastructure connections onsite or nearby." (Draft Staff report, page 117). This means the utilities will have to bring all that is needed to the property itself before any onsite work is even feasible, a huge expense. The tenant has no control over whether the utility might be willing to take on that expense and effort.

There are also growing concerns about the pressure put on electrical infrastructure that is in some cases already under stress, especially in congested areas such as Southern California. It is unknown what is the impact on the electrical power grid, and what improvements may be required to the grid.

Then there is the requirement to count each actual truck trip to the warehouse, and this has to be "collected using methods that contemporaneously record the truck trips and that are verifiable." (Page 5 of PR 2305) This is something that has never been done. Although staff tries to make this all sound easy, it is not, especially since you have to know if the truck is a ZE or NZE truck to get any WAIRE points. Plus, you cannot use the so-called "proxy" for determining the class of truck as the WAIRE menu has different points attributable to different classes of trucks. So, this would require setting up a check-in stand with employees stopping each truck to get all the needed information about each truck somehow, and contemporaneously record it. What would have to be done to make any such recording "verifiable"? Technical infrastructure would not be effective in getting the detailed information needed on if it is a diesel, ZE or NZE truck, and determine its class.

Furthermore, if a warehouse is used by more than one operator, which is about 40% of them, then this must be done by each individual operator. There certainly is not an ingress or egress assigned to any given operator. Now you have two or more check-in facilities set up to do the counting and additionally make sure which truck is going to which operator. This would take further time, decrease throughput and be inefficient. It could lead to trucks backing up into the streets, which is not wanted by anyone.

### **The Stringency Factor is Arbitrary**

The Draft Staff Report says there were four points considered in coming to a stringency factor; a.) need for emissions reductions, b.) the significance of the emissions reductions associated with warehouses, c.) potential emissions reductions, and d.) impact to industry. Then, supposedly “After balancing all of these factors” they somehow came to a number, .0025.

What was done to take the general description of the items and turn them into a number? Is there some model, data, mathematical equations, or anything that somehow transformed what is written in the report into a number? If so, we have not seen anything that sets out how the number was created. It just seems to have appeared on paper.

This even becomes more concerning when, as described below, staff has admitted any emissions reductions have not been modelled and are “speculative”. The impact to industry, the costs, are based upon made up scenarios the staff has admitted will never happen. Based upon what has been presented, picking the number .0025 can only be seen as some arbitrary choice.

### **Emissions Reductions, if any, from PR 2305 are Unknown**

While it is claimed there will be emissions reductions from PR 2305, the facts are no real reductions can be identified. The impact of the rule on any NO<sub>x</sub>, PM and ozone has not even been modelled, and is “speculative”.

In the comments provided by NAIOP to the Notice of Preparation (NOP) of the environmental document, the SCAQMD staff was specifically asked to quantify the NO<sub>x</sub> and DPM reductions that were expected to result from PR 2305. In response, staff stated:

“Potential changes in NO<sub>x</sub> and DPM concentrations would be speculative and have not been calculated as the underlying assumptions needed to conduct this analysis are too uncertain...” (emphasis added, Environmental Assessment (EA), C-41)

Staff was also asked to quantify the amount of any ozone reductions. Staff again stated:

“...ozone concentrations were not modeled. **Ozone concentrations cannot be reasonably calculated for individual rules** given the many variables needed to conduct this regional modeling analysis. (Emphasis added, C-41)

The draft staff report also admits that “it is not possible” to determine the emissions impacts of the rule. So, instead of trying to determine any potential emissions reductions, staff came up with 18 “scenarios” and “...all 2,902 warehouses were assumed to only comply with a single scenario approach from 2021 through 2031. **No single scenario in this bounding analysis is expected to occur.**” (emphasis added, pg. 60) This clearly means that any supposed emission reduction “estimates” are based upon imaginary scenarios that will never happen.

NAIOP also believes there are numerous questions about the baseline inventory analysis as is set out in the separate report from Ramboll that we incorporate by reference herein as though fully set forth. This could certainly lead to any claimed emissions reductions being overstated.

### **Cost of Compliance is Also Unknown**

In the Draft Staff Report, the only “estimated” costs of compliance to date also solely come from the same 18 scenario exercise as the claimed emissions reductions. So, as with emissions projections, any reference to costs is based upon imaginary scenarios that will never happen and provide no information as to what the actual costs of PR 2305 will be.

**SIP Credit is Also Unknown.**

The Board made it very clear the ability to get SIP credit for any actions taken, voluntary or not, was a necessary key issue. As the discussion of any potential approach to warehouses began, many meetings were held where the topic of SIP creditability and how to achieve it was discussed. Staff made it very clear that any approach would have to show it resulted in achieving SIP credits. That seems to have been dropped.

As staff has repeatedly said throughout the discussion of an ISR, “SIP creditable emission reductions must satisfy five key “Integrity Elements”. Namely, the emission reductions must be quantifiable, enforceable, verifiable, surplus, and real.” (original emphasis, Draft Staff report, page 146) Staff has not even attempted to show that any of the requirements in PR 2305 meet those standards. So, how much SIP credit will the SCAQMD get for this rule, if any?

A careful analysis of Appendix D in the Draft Staff Report reveals that PR 2305 will not produce any Prospective SIP credit, meaning that the reductions in the regulation do not meet EPA's "Integrity Elements". Staff elaborates that the primarily reason there are no creditable emission reductions is "because some emission reductions from PR 2305 will at least partially overlap with other SIP-creditable measures." Staff does not indicate how much overlap there could be, and it is certainly possible that there will be 100% overlap. In addition, while the draft Staff Report speculates that retrospective SIP credits could be generated in the future, no estimate of the amount of credits is provided.

**Installation and Use of Solar Panels and Filters in Existing Buildings**

According to PR 2305, “The purpose of this rule is to reduce local and regional emissions of nitrogen oxides and particulate matter, and to facilitate local and regional emission reductions associated with warehouses and the mobile sources attracted to warehouses in order to assist in meeting state and federal air quality standards for ozone and fine particulate matter.” How do these items in the WAIRE menu reduce or facilitate local and regional emissions reductions or assist in meeting state and federal air quality standards? They don't, and are clearly far beyond the scope and purpose of this rule and any ISR.

Solar panels and filters will also not create any SIP credits. The Draft Staff Report makes it clear that these two WAIRE menu items are not sources that may lead to any SIP credit.

The true complexity of trying to use solar panels or install filters is not even discussed in the staff report and needs to be considered. First, as to solar panels, since this rule is solely aimed at existing warehouses there is the fact that most existing warehouse roofs do not have the load bearing capacity to handle solar panels. Thus, to place solar panels would require an entire rebuilding of the roof. You again have the situation where the operator is not the owner of the building with a short lease and does not want to improve someone else's building with an asset with a useful life of around 20 years for others to use. Additionally, it is complicated and takes a long time to get all parties to agree to the necessary approvals, especially from the utilities and may require system upgrades and an interconnection study, and the list goes on.

Installing high efficiency filter systems in schools, daycare centers, hospitals and community centers is obviously very expensive in such large buildings. Yet, you would only get two points for each system, so there is no cost-effective reason to think of this option. Warehouses are not in the business of installing filters and here the number of WAIRE points, about four per filter, does not make this a real option or in any way cost-effective.

**Missing/Incomplete Documents**

First, not all the relevant documents have been released, so it is impossible to provide a thorough analysis of the rule. It has been indicated the Socioeconomic Assessment and the Comparative Analysis of Rules will not be released until 30 days before the hearing, which would be today, and it appears there could be other documents released as well.

More importantly, throughout PR 2305 there are numerous references to the operator or owner having to comply with the "WAIRE Program Implementation Guidelines". While these "Guidelines" are an integral part of PR 2305, they have never even been described, presented or discussed in any way. The only thing we know is the name, and staff just recently indicated they may be released by March 3. So, obviously, we cannot comment on the "Guidelines" at this time, and even if they are released there is no time to analyze them, comment, and have any actual discussion of the Guidelines.

As we analyzed the publicly available information, it became clear that an extensive amount of information was missing to fully understand and analyze PR 2305. Thus, Public Records Act requests were made, and we appreciate the large volume of information that has been provided to date, yet we have been told there is more information to be produced and some of it may not be provided until after the hearing on PR 2305.

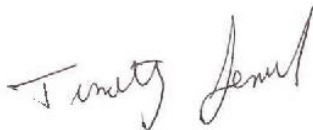
There is also the Environmental Assessment (EA), a 654-page document to which comments are due March 12, 2021. We appreciate that staff does take comments seriously and they "...want to ensure responses are appropriate." Staff made it clear to the Warehouse ISR Working Group in discussing the responses to the Notice of Preparation (NOP) of the EA, a 133-page document, that "This takes time." And we agree. Since staff must review the comments, which will be far more extensive than responses to the NOP, it is difficult to understand how in three weeks they could properly analyze comments, make any needed revisions to the EA and still transmit it to the Board in time for them to properly analyze PR 2305.

**Conclusion**

In light of the voluminous information that has been and is still being developed regarding this very complex, unusual rule, we are concerned about the Board truly having the proper amount of time to analyze everything surrounding PR 2305. The May 4, 2018 motion that was approved by the Board to proceed with a warehouse ISR included direction the Board was to receive progress reports every 4-6 months that should include information about key issues such as potential emissions reductions, cost of compliance, commercial availability, SIP credit and other matters. Unfortunately, the Board has not been kept apprised as promised. A sweeping rule with major consequences to jobs, the economy and with science needing careful analysis, it makes no sense the April 2, 2021 will mark the first time the full Governing Board will be thoroughly brought up to date on PR 2305.

We thank you for allowing us to comment on PR 2305. As you can see, there are many issues and concerns surrounding the rule as proposed. Based upon what is currently before us, we must respectfully submit that PR 2305 should not be approved.

Sincerely,



Timothy Jemal  
CEO, NAIOP SoCal



Robert Evans  
Executive Director, NAIOP Inland Empire

Cc: Governing Board Members



March 2, 2021

Sarah Rees, Ph.D.  
Deputy Executive Officer  
Planning, Rule Development & Area Sources  
South Coast Air Quality Management District  
21865 Copley Dr., Diamond Bar, CA 91765

**Re: SCE Comments on Proposed Warehouse Indirect Source Rule**

Dear Dr. Rees:

Southern California Edison (SCE) appreciates the opportunity to comment on the South Coast Air Quality Management District's (SCAQMD) proposed Warehouse Indirect Source Rule (ISR).

**SCE supports the SCAQMD Warehouse ISR and improving air quality in the region.**

SCE supports the Warehouse ISR and improving air quality in the region and especially appreciates the emphasis SCAQMD has placed on zero-emissions (ZE) technologies as a critical component of achieving significant emissions reductions in the warehouse sector, while still maintaining a flexible menu of other technology options for warehouse owners and operators to achieve compliance. SCE believes SCAQMD's continued encouragement to transition fleets to zero-emission vehicles (ZEVs) is especially important because procurement decisions made today will impact California for generations to come. SCAQMD's focus on ZEVs sends an important market signal. Encouraging transition to ZEVs could be an economic engine for California and our region in the coming decades and create thousands of good paying, skilled jobs.

With 42% of NO<sub>x</sub> emissions in Southern California coming from goods movement,<sup>1</sup> transitioning to a ZE medium- and heavy-duty (MDHD) truck fleet has the potential to dramatically reduce local and regional air pollution impacts from this sector, particularly in communities disproportionately impacted by truck emissions. The Warehouse ISR would achieve emissions reductions from both the direct warehouse operations and indirect truck emissions. As a business member of the San Bernardino, Muscoy AB 617 Community Steering Committee (CSC), SCE recognizes and has heard directly from the community that reducing local emissions is critical. Specifically, the San Bernardino, Muscoy CSC, in its Community Emission Reduction Plan, prioritized the pursuit of indirect source rules that would require emission reductions from warehouse operations.<sup>2</sup> The CSC and residents of San Bernardino, Muscoy are counting

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<sup>1</sup> "Zero-Emission Drayage Trucks Challenges and Opportunities for the San Pedro Bay Ports," p. 6, UCLA Luskin Center for Innovation, October 2019.

[https://innovation.luskin.ucla.edu/wp-content/uploads/2019/10/Zero\\_Emission\\_Drayage\\_Trucks.pdf](https://innovation.luskin.ucla.edu/wp-content/uploads/2019/10/Zero_Emission_Drayage_Trucks.pdf)

<sup>2</sup> Assembly Bill (AB 617) Community Air Initiatives, Community Emissions Reduction Plan, San Bernardino, Muscoy, Chapter 5c: Warehouses: <https://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/san-bernardino/cecp/carb-submittal/final-cecp.pdf?sfvrsn=9>

on the development of the Warehouse ISR to achieve emission reductions needed in their community. Addressing emissions from warehouses is vital for improving air quality to get closer to achieving attainment designations in the South Coast Air Basin, addressing the climate crisis, and addressing environmental justice issues in communities near warehouses.

### **SCE supports customers in transitioning truck fleets to zero-emissions electric alternatives.**

SCE is committed to helping customers identify electric infrastructure solutions to meet regulatory compliance commitments while also minimizing costs. SCE's Charge Ready Transport program will help accelerate infrastructure deployment and reduce costs for fleet owners over a five-year period (2019 to 2024) by working with customers to install electric infrastructure at eligible sites to support MDHD electric vehicles. SCE appreciates that the Warehouse ISR allows Warehouse Actions and Investments to Reduce Emissions (WAIRE) points to be earned from electric infrastructure installed with Charge Ready Transport funding. With an approved total program budget of \$356.4M, the program will achieve a minimum of 870 sites supporting approximately 8,500 MDHD electric vehicles within SCE's service territory in Southern California, a majority of which are also within SCAQMD jurisdiction. A minimum of 40% of SCE's budget for this program must be spent in disadvantaged communities, and also a minimum of 25% of the budget must serve vehicles operating at ports and warehouses. SCE also provides a rebate toward the cost of the qualified charging stations for eligible customers.<sup>3</sup>

Additionally, SCE's commercial EV rates help to reduce costs for commercial fleet customers interested in fueling with electricity. Launched in 2019, the rates waive demand charges over a five-year period and then gradually re-introduce them in a graduated manner over the subsequent five years. The rate also provides price signals to create opportunities for maximizing savings while charging during low-price periods. Additional incentives, such as revenues from Low Carbon Fuel Standard credits, can serve as an offset to the costs of fueling with electricity, further increasing the favorable economics of electrifying fleets.

SCE also provides resources and assistance for customers to navigate questions and challenges associated with electrifying vehicle fleets. SCE offers fleet assessments that provide customers with reports of vehicle options for fleets, associated benefits for going electric, customized rate analyses to help customers understand potential fuel costs, an online publicly available fuel cost calculator,<sup>4</sup> along with additional information on utility and non-utility programs and incentives. SCE also works onsite with customers to offer an assessment of the feasibility of installing infrastructure to serve potential EV fleet deployments. By providing consultation on infrastructure needs and siting, rates, charging needs and optimal siting of required charging infrastructure, SCE stands ready to help support customers utilize electrification as a means to comply with the Warehouse ISR.

### **Successful implementation of ZEV deployment requires continued forward-planning for infrastructure and electric system needs.**

Utilities, the SCAQMD, and fleets and facilities increasingly need to work together to anticipate and assess impacts of growing EV-driven demand and proactively plan accordingly. A strong, resilient grid ready for mass EV adoption that can achieve significant emission reductions is attainable through advanced forward planning, increased industry coordination, and new collaborative approaches in data-

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<sup>3</sup> SCE Charge Ready Transport Program details: <https://crt.sce.com/overview>

<sup>4</sup> SCE Electric Fleet Fuel Savings Calculator: <https://fleetfuelcalculator.sce.com/>

sharing and cooperation between public and private stakeholders. It is important to plan ahead in the early years to ensure that sufficient EV charging infrastructure needs are identified and addressed to meet longer-term policy and regulatory timelines, achieving important air quality improvement benefits. Electrification projects require site-specific planning and sometimes can take more than one year to implement. As such, SCE appreciates that the Warehouse ISR allows warehouses to earn WAIRE points from critical milestone steps such as purchase of Electric Vehicle Supply Equipment, construction mobilization and charger energization. Time for advanced planning is especially important for ensuring the grid is ready to support the increased EVs in sites and corridors affected by the Warehouse ISR which may require proactive grid expansion and upgrades that are potentially initiated to be ready to meet customer needs and regulatory timelines.

SCE is assessing system and EV infrastructure planning needs in the region. SCE is currently evaluating when and where EVs are likely to appear as a charging load, the potential magnitude of that load, and what potential infrastructure and system solutions would be necessary to accommodate that load. These infrastructure assessment and planning activities will be greatly aided by more and better data and information related to where, when, and how EVs will charge. The data reported through the Warehouse ISR would be incredibly insightful for infrastructure assessment and planning within the South Coast Air Basin. SCE requests that the data gathered be shared in order to help shape a clearer, more reliable picture of future system needs for large-scale fleet transitions to EVs and ultimately help utilities and other charging support providers confidently plan and make decisions to provide the necessary infrastructure to support fleet and facility plans in the region.

Thank you for considering our comments regarding this important regulation. While there will be challenges as zero-emission electric vehicles increase in commercial fleets, SCE views these challenges and work ahead as a critical call to action. SCE is committed to doing its part and partnering with the Air District, communities, and our customers to ensure successful implementation of the Warehouse ISR as well as the related necessary deployment of zero-emission vehicle technology in the region.

Sincerely,

/s/ Laura Renger

Laura Renger  
Director, Electrification & Customer Service Policy  
Regulatory Affairs  
Southern California Edison

CC: Ian McMillan, SCAQMD Planning & Rules Manager  
Victor Juan, SCAQMD Program Supervisor





March 1, 2021

Mr. Ian MacMillan  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765-4178

Re: Comments on Proposed Rule 2305

Dear Mr. MacMillan:

On behalf of over 56,000 members of the Southwest Regional Council of Carpenters, I write to respectfully request the board postpone any adoption of Rule 2305 (Indirect Source Rule or ISR) in light of the current economic and public health crisis. We are concerned that the current language and timeline of Rule 2305 would add uncertainty to the market and respectfully request that more analysis is given to its economic impact, particularly on construction.

While we strongly support a just transition to a clean energy economy, a policy change this broad and at this time would be destabilizing for the industry. The COVID-19 pandemic is a once-in-a-century event that has upended Southern California's economy and construction sector. The impacts of the pandemic have particular relevance to the warehouse industry as the growth in e-commerce has led to a surge in warehouse demand.

To best implement this policy, we ask that the SCAQMD continue this item at least 90 days so that the industry and its labor partners can more accurately assess its long-term impact. A greater understanding of the role the pandemic and the sudden shift to e-commerce is needed before a change of this magnitude is implemented. Thank you again for your consideration of this important issue.

Sincerely,

Daniel Langford  
Executive Secretary-Treasurer  
Southwest Regional Council of Carpenters

Mr. Victor Juan  
Warehouse ISR Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Dr  
Diamond Bar, CA 91765

**REVIEW OF THE SOUTH COAST AQMD'S PRELIMINARY DRAFT  
STAFF REPORT FOR PROPOSED RULE 2305 AND PROPOSED RULE 316**

Dear Mr. Juan:

March 2, 2021

On behalf of NAIOP, Ramboll US Consulting, Inc. (Ramboll) has reviewed South Coast Air Quality Management District (AQMD)'s Preliminary Draft Staff Report for the Proposed Rule (PR) 2305 and PR 316<sup>1</sup> dated January 2021. Our review included the supporting calculation spreadsheets (pr-2305-draft-baseline-emission-inventory.xlsx, pr-2305-draft-scenario-calculations.xlsm, and pr-2305-draft-truck-emission-rate-calculations.xlsx)<sup>2</sup> that were released in December 2020.

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**SUMMARY OF FINDINGS/PURPOSE OF RULE**

As stated in Chapter 1 of the Preliminary Draft Staff Report, the primary goal of PR 2305 and PR 316 is to achieve NO<sub>x</sub> emissions to meet the near-term attainment deadlines in 2023 and 2031 for federal air quality standards for ozone, however the emission analysis presented in this report does not substantiate these NO<sub>x</sub> reductions.

- Table 17 of the Preliminary Draft Staff Report presents the range of NO<sub>x</sub> reductions associated with the bounding scenarios for rule implementation as "zero" tons per day to 5.4 tons per day in 2023 and "zero" tons per day to 21.8 tons per day in 2031. Such a range of outcomes indicates that it is uncertain, and may be zero.
- The upper end of the range in 2023 is based on Scenario 5 (ZE Class 8 truck visits from non-owned fleet) which is not substantiated since ZE trucks are not currently commercially available. In 2031, the higher end of the range is based on Scenario 7 (Pay Mitigation Fee). As stated in the below in the section entitled WAIRE Mitigation Program, these reductions are likely overestimated.
- Further as noted subsequently in the section entitled Scenario Analysis, the discounting method used for the implementation of ACT, Omnibus, and HD I&M regulations is not accurate.

<sup>1</sup> Available at: <http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/preliminary-draft-staff-report.pdf?sfvrsn=14>. Accessed: February 2021.

<sup>2</sup> Available at: <http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan/facility-based-mobile-source-measures/fbmsm-mtngs>. Accessed: February 2021.

Hence, the analysis presented in this report does not demonstrate with substantial evidence that PR 2305 will provide NO<sub>x</sub> reductions beyond those generated by CARB regulations, despite the enormous costs that will be involved in complying with this rule.

Further, as stated during AQMD's Scientific, Technical & Modeling Peer Review Advisory Group Meeting<sup>3</sup> on January 27, 2021, the small quantities of NO<sub>x</sub> reductions generated by this rule will not be sufficient to decrease the ozone concentrations in the basin. A recent study by Parish et al,<sup>4</sup> indicates that it could take ~35 years of additional emission control efforts in the Los Angeles region to reach the federal ozone standard of 70ppb, because the background ozone concentration in the region is ~89% of the standard. Thus, it is unclear how this rule will help the basin attain the ozone standard by 2023, and unclear what the cost effectiveness of this rule is.

Our specific comments are summarized below and based on the information reviewed to date. To the extent new information becomes available, our comments may change.

### **BASELINE EMISSIONS INVENTORY**

The following comments pertain to the baseline emissions inventory prepared for 2019, 2023, and 2031. We understand that emissions of oxides of nitrogen (NO<sub>x</sub>) and diesel particulate matter (DPM) were developed for these three calendar years for heavy-duty trucks, passenger vehicles, transport refrigeration units (TRUs), and yard trucks.

#### **Truck Emissions**

##### Mobile Emissions Inventory Model

The AQMD mobile emissions were developed using EMFAC2017, while a newer version of the model with updated model assumptions, EMFAC2021, was released in Mid-January 2021.<sup>5</sup>

- This updated version includes the incorporation of the California Air Resources Board's (CARB's) Advanced Clean Trucks (ACT)<sup>6</sup> and Low NO<sub>x</sub> Omnibus<sup>7</sup> regulations. While AQMD's analysis in the Preliminary Draft Staff Report performs outside-model adjustments for these regulations, it is not clear how their outside-model adjustments compare to the EMFAC2021 analysis. To ensure the AQMD has accounted for these so that there is not double counting of reductions, the ACT and Low NO<sub>x</sub> Omnibus regulations should be accurately accounted for in the inventory.
- EMFAC2021 also includes several updates<sup>8</sup> to the heavy-duty truck emission factors as noted below:
  - Running exhaust NO<sub>x</sub> emission rates decrease,
  - Starting exhaust NO<sub>x</sub> emission rates increase,

<sup>3</sup> Available at: <http://www.aqmd.gov/home/news-events/meeting-agendas-minutes/agenda?title=stmpr-meeting-agenda-january-21-2021>. Accessed February 2021.

<sup>4</sup> 2017. Parrish, D. D., Young, L. M., Newman, M. H., Aikin, K. C., and Ryerson, T. B. Ozone design values in Southern California's air basins: Temporal evolution and U.S. background contribution. *Journal of Geophysical Research: Atmospheres*, 122, 11,166–11,182. <https://doi.org/10.1002/2016JD026329>.

<sup>5</sup> Available at: <https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/road-documentation/msei-modeling-tools-emfac>. Accessed: February 2021.

<sup>6</sup> Available at: <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks>. Accessed: February 2021.

<sup>7</sup> Available at: <https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox>. Accessed: February 2021.

<sup>8</sup> 2020. EMFAC202x Updates December Workshop. December 15. Available at: [https://ww2.arb.ca.gov/sites/default/files/2020-12/EMFAC202x\\_Dec\\_Workshop\\_20201215\\_rev.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-12/EMFAC202x_Dec_Workshop_20201215_rev.pdf). Accessed: February 2021.

- NO<sub>x</sub> for older fleets decrease due to new heavy-duty deterioration model, and
- NO<sub>x</sub> decreases due to heavy-duty activity profile updates such as vehicle miles traveled (VMT) distribution by speed and number of starts by soak time, and extended idling hours.

AQMD should either use EMFAC2021, or confirm that these changes do not materially change the findings regarding the anticipated emission reductions.

#### META Tool for South Coast

The Preliminary Draft Staff Report states that the District's analysis incorporates the emissions reductions associated with the ACT and Low NO<sub>x</sub> Omnibus Regulation using CARB's META tool. However, the version of CARB's META tool<sup>9</sup> available to the public presents zero-emission/near-zero emission (ZE/NZE) population and VMT data only for the statewide fleet. While AQMD's scenario calculation spreadsheet pr-2305-draft-scenario-calculations.xlsm provides ZE/NZE population and VMT data for South Coast heavy-duty truck fleet, it fails to state how these were derived. Without this detail it is not clear if the method AQMD used to account for ACT and the Low NO<sub>x</sub> Omnibus regulation is correct. AQMD should provide these details of the methodology for public review.

The Preliminary Draft Staff Report also stated that AQMD's analysis accounts for the reductions from the California Air Resources Board (CARB)'s proposed heavy-duty inspection and maintenance (HD I/M) program<sup>10</sup> using the META tool, but details of how these reductions were derived are not clear. Without this detail it is not clear if the method AQMD used to account for the HD I/M program is correct. AQMD should provide additional documentation that shows how these reductions were estimated for public review.

#### ZE Drayage Truck Fleet

The conversion of the drayage truck fleet to 100% ZE by 2035 is not incorporated into the analysis. Several regulatory actions and activities such as Governor Newsom's Executive Order (EO) N-79-20,<sup>11</sup> CARB's proposed Advanced Clean Fleets (ACF) regulation,<sup>12</sup> and the Port's Clean Air Action Plan (CAAP)<sup>13</sup> clearly indicate that the drayage truck fleet will be converted to a 100% ZE fleet by 2035. In order to achieve this conversion, beginning 2023 all new drayage trucks will have to be a zero-emission trucks.<sup>14</sup> AQMD should update their analysis to incorporate the proposed regulations as this would reduce the estimates for the 2031 baseline inventory.

#### Trip Lengths

AQMD's analysis used a basin average trip length to estimate the emissions associated with trucks travelling to and from warehouses. While a basin average value provides a general estimate across truck trip types within the basin, it may not represent the actual trip lengths of trucks visiting a

<sup>9</sup> Available at: <https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-modeling-tools>. Accessed: February 2021.

<sup>10</sup> Available at: <https://ww2.arb.ca.gov/our-work/programs/heavy-duty-inspection-and-maintenance-program>. Accessed: February 2021.

<sup>11</sup> Available at: <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-text.pdf>. Accessed: February 2021.

<sup>12</sup> Available at: <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets/advanced-clean-fleets-meetings-events>. Accessed: February 2021.

<sup>13</sup> Available at: <https://cleanairactionplan.org/strategies/trucks/>. Accessed: February 2021.

<sup>14</sup> Available at: [https://ww2.arb.ca.gov/sites/default/files/2020-12/201209drayagepres\\_ADA.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-12/201209drayagepres_ADA.pdf). Accessed: February 2021.

particular warehouse that would be regulated by PR 2305. As noted in Appendix B of the Preliminary Draft Staff Report, truck trip lengths can vary significantly from one warehouse to another. Therefore, using a basin average trip length does not appear to represent the actual activity for a regulated warehouse.

The basin average truck trip lengths and passenger car trip lengths used in AQMD's analysis to develop the baseline emission inventory are based on the 2016 Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). The 2020 RTP/SCS was adopted in September 2020,<sup>15</sup> and SCAG made major model enhancements from a trip-based model to an activity-based model for passenger vehicle trips. It does not appear that AQMD has assessed how this updated data would impact the analysis. We recommend that AQMD assess how the data in the 2020 RTP/SCS may affect the analysis, as it may greatly change the anticipated reductions.

#### Internalization

As stated on Page 48 of the Preliminary Draft Staff Report, AQMD's analysis assumes a 22.2% internalization for all Class 8 truck VMT to account for the trips made between warehouses by trucks. This value is based on a study that is specific to drayage (T7 Port of Los Angeles (POLA): Heavy-Heavy Duty Diesel Drayage Truck near South Coast) trucks.<sup>16</sup> However, drayage truck VMT accounts for  $\leq 25\%$  of the overall Class 8 truck VMT and the internalization rate may be very different at other warehouses. AQMD should provide more analysis to substantiate this assumption. Without further substantiation, the assumption is arbitrary.

#### **Yard Truck Emissions**

AQMD does not provide sufficient documentation for the development of the baseline NO<sub>x</sub> and DPM emissions for yard trucks (hostlers).

- AQMD refers to the Powersys webpage (Reference 75 in the Preliminary Draft Staff Report) as a source for the activity data that is used to develop yard truck emission factors but does not provide a copy of the specific report or study from which the values were derived. Thus, we are unable to confirm their findings.
- AQMD fails to provide a source for the 1.2 hostlers per million square feet assumption for warehouses between 100,000 and 200,000 square feet. The cited source (i.e., AQMD business survey<sup>17</sup>) provides data only for warehouses greater than 200,000 square feet.

We recommend that AQMD provide the documentation for these assumptions used to develop the baseline inventory for yard trucks, otherwise the assumptions are arbitrary.

#### **TRU Emissions**

Page 51 of the Preliminary Draft Staff Report states that the TRU emission estimates were based on CARB's current rulemaking efforts affecting TRUs but fails to provide details of how these estimates were made. A review of the calculation spreadsheet pr-2305-draft-baseline-emission-inventory.xlsx did not reveal any additional detail. AQMD should provide additional documentation for the NO<sub>x</sub> and DPM

<sup>15</sup> Available at: <https://scag.ca.gov/read-plan-adopted-final-plan>. Accessed: February 2021.

<sup>16</sup> Available at: [https://scag.ca.gov/sites/main/files/file-attachments/task4\\_understandingfacilityoperations.pdf](https://scag.ca.gov/sites/main/files/file-attachments/task4_understandingfacilityoperations.pdf). Accessed: February 2021.

<sup>17</sup> Available at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/business-survey-summary.pdf>. Accessed: February 2021.

emissions factors for yard trucks that were used for the development of the baseline inventory for calendar years 2019, 2023, and 2031, otherwise the assumption is arbitrary.

#### Calculational Errors

The baseline inventory for 2019 has calculation errors in the NO<sub>x</sub> and DPM emission factors for Class 4-7 and Class 8 heavy-duty trucks and for passenger vehicles.

- The 2019 Class 8 truck emission factors for NO<sub>x</sub> and DPM use T6 utility, T7 Ag, T7 CAIRP, T7 CAIRP construction, and T7 single construction vehicle categories instead of T7 CAIRP, T7 NNOOS, T7 NOOS, T7 POLA, and T7 Tractor.
- The 2019 Class 4-7 truck emission factors for NO<sub>x</sub> and DPM used SBUS, T6 CAIRP small, T6 instate construction (heavy & small), and T6 instate heavy vehicle categories instead of T6 CAIRP (Heavy & Small), T6 Instate (Heavy & Small), and T6 OOS (Heavy and small).
- The 2019 passenger vehicle emission factor for NO<sub>x</sub> and DPM was missing the LDT2 category.

Fixing these errors will result in higher baseline NO<sub>x</sub> emissions and slightly lower baseline DPM emissions in 2019 compared to those presented in Table 13 in Chapter 3 of the Preliminary Draft Staff Report for trucks and for passenger vehicles.

The calculations for baseline emission inventory for TRUs are erroneous. The factor applied to South Coast Air Basin TRU emissions to estimate emissions associated with cold storage warehouses in pr-2305-draft-baseline-emission-inventory.xlsx uses misaligned years (2019 square footage over the 2014 cold storage square footage). The impact of using data from aligned years (2014 data only) would be a lower fraction of cold storage square footage in SCAB in each calendar year.

#### SCENARIO ANALYSIS

##### Methodology Issues

The methodology used to estimate the emission reductions in the scenario analysis is separate and distinct from that used to prepare the baseline emission inventory.

- The differences in the approach used for the truck emission factors are particularly distinct.
  - While the baseline emission inventory applies reductions associated with ACT regulation, Low NO<sub>x</sub> Omnibus regulation, and HD I/M program to the emission factors for trucks, the scenario analysis does not apply reductions associated with all three regulations to each of the 18 scenarios.
  - That said the issues related to the truck emissions noted under the baseline inventory section (mobile emissions inventory model, META tool for South Coast, ZE drayage truck fleet, trip lengths, and internalization) apply to the scenario analysis as well.
- Although the baseline inventory does not include emissions associated with electricity use at the warehouse facilities, Scenario 11 (Rooftop solar panel installations and usage) estimates emission reductions associated with replacement of the electricity from the grid with electricity generated by the solar panel. The electricity emissions should be included in the baseline, or the reductions from solar should be removed.

The eighteen scenarios analyzed in the Preliminary Draft Staff Report that are meant to represent the range of emissions reductions that can be achieved by PR 2305 are unrealistic. These scenarios do not consider how WAIRE points might be generated due to the implementation of the CARB regulations

(ACT regulation, Low NO<sub>x</sub> Omnibus regulation, proposed ACF regulation) and Ports CAAP, i.e., WAIRE points presented in scenario analysis are not additional to what warehouses would earn from these regulations. More realistic scenarios should be developed to substantiate what reductions are realistic to expect from this rule.

#### **Discounting Method for CARB Regulations**

The discounting method used to avoid double counting of the ACT regulation, Low NO<sub>x</sub> Omnibus regulation, and HD I/M program are suspect and still potentially result in double counting. A summary of the issues noted in the calculation spreadsheet pr-2305-draft-scenario-calculations.xlsm are listed below:

- For scenarios that use NZE trucks (Scenario 1, 2, 3, 4, 8, and 9) to obtain WAIRE points, reductions associated with Low NO<sub>x</sub> Omnibus regulation are discounted. However, reductions from the ACT regulation are not considered.
- For scenarios (Scenario 5, 6, 10, 12, 13, and 14) that use ZE trucks and ZE fueling infrastructure to obtain WAIRE points, reductions associated with ACT regulation are discounted. However, reductions from Low NO<sub>x</sub> Omnibus regulation are not considered.
- Reductions associated with HD I/M are applied only to the discounted emissions associated with ACT/Low NO<sub>x</sub> Omnibus regulation rather than the reductions associated with the use of ZE/NZE trucks for obtaining WAIRE points.
- For scenarios that do not use ZE/NZE trucks or ZE fueling infrastructure to obtain WAIRE points (Scenario 7, 11, 15, 16, 17, and 18), reductions associated with ACT/Omnibus/HD I&M are not discounted.

#### **Calculation Errors**

NO<sub>x</sub> and DPM reductions calculations for Scenario 1 (NZE Class 8 truck acquisitions and subsequent visits from those trucks) shown in pr-2305-draft-scenario-calculations.xlsm have errors. These calculations are using truck emissions factors for calendar year 2023 and are therefore overestimating the reductions in the calendar years 2024 to 2027.

### **WAIRE MENU TECHNICAL REPORT**

#### **WAIRE Points Calculation Methodology**

As noted in Figure 1 of Appendix B of the Preliminary Draft Staff Report, WAIRE points assigned to each item in the WAIRE menu (seen in Table 3 of PR 2305) are estimated as a function of the cost of the item, and the regional (NO<sub>x</sub>) and local (DPM) emission benefit that the item would provide. The methodology used to estimate NO<sub>x</sub> and DPM emission benefits for WAIRE menu items such as NZE truck purchase, NZE truck visits, ZE truck purchase, ZE truck visits, Charging Station Usage, and Hydrogen Fueling Station Usage, are based on the truck emission factors in calendar year 2023. As seen in the outputs from the EMFAC2017 model, emission factors for trucks are expected to reduce in the future years (beyond 2023) due to implementation of CARB Regulations and the general fleet turnover to cleaner vehicles. However, the WAIRE Menu in Table 3 of PR 2305 uses a static value for the WAIRE points assigned to these menu items. This approach does not represent how the changing fleet will impact the potential emission benefits and thus the cost effectiveness. AQMD should also include an evaluation that calculates WAIRE points for these menu items in future years (2023 and beyond) to more accurately demonstrate how WAIRE points may change in the future.

### Total Cost of Ownership for Battery Electric Truck

The total cost of ownership analysis for the battery electric (BE) trucks presented in Appendix B of the Preliminary Draft Staff Report assumes that one battery electric truck can replace one diesel truck, thereby ignoring the operational implications of BE vehicle usage in the heavy-duty truck sector. Ramboll's study<sup>18</sup> on HD BE vehicles, specifically Los Angeles Metro's bus fleet operations, has shown that due to limited battery range, long charging times and unfavorable charging windows, more than one battery electric bus (BEB) will be needed to replace a conventional diesel bus. This is further corroborated by National Center for Sustainable Transportation's 2020 Study,<sup>19</sup> (that was funded by AQMD), on heavy duty trucks used for short haul goods movement. AQMD's assumption that a single battery electric truck can replace a diesel truck results underestimates the costs and therefore the WAIRE points that should be assigned to battery electric trucks in PR 2305. This should be corrected.

### Annualized usage estimated for ZE infrastructure

Annualized usage estimated for ZE infrastructure (EV charger, Hydrogen Station, and TRU plugs) appear to be arbitrary. Appendix B of the Preliminary Draft Staff report presents the following annualized usage estimates for ZE infrastructure, without stating a source or basis for these assumptions:

- 165,000 kWh/year for an EV charger, which is equivalent to 10 hours of charging time per day on a 50 kW EV charger.
- 6,152 kg of hydrogen per year which is equivalent to the 165,000 kWh/year of EV charger usage.
- 10,658 kWh/year for TRU plugs which is equivalent to 4 hours of charging per day with an average power draw of 7.3 kW.

### WAIRE MITIGATION PROGRAM

While Chapter 2 of the Preliminary Draft Staff Report states that the mitigation fee paid to AQMD by a warehouse operator will be used to fund NZE/ZE trucks or ZE charging/fueling infrastructure in the same geographic area that the warehouse is located, details of how this would be achieved are not presented. To understand how the NO<sub>x</sub> and DPM emissions reductions associated with the mitigation fee are achieved with the implementation of PR2305, AQMD should present the following details of the WAIRE Mitigation Program along with roll out of the regulation:

- project eligibility and selection criteria,
- application process,
- annual timeline for project selection, and
- tracking and verification of funded projects.

Without further substantiation, the basis for the reductions associated with mitigation fee are inadequate and may overestimate NO<sub>x</sub> reductions associated with Scenario 7 (Pay Mitigation Fee). As

<sup>18</sup> 2016. Ramboll Environ US Corporation and M.J. Bradley & Associates, LLC. Zero Emission Bus Options: Analysis of 2015-2055 Cost and Emissions - New Transit Vehicle Technologies and Advanced Technology Implementation (OP33203093). September 29. Available at: <https://static1.squarespace.com/static/53a09c47e4b050b5ad5bf4f5/t/5a60f1fc53450a3d768e51b6/1516302846755/MTA+RAMBOLL+ENVIRON+REPORT+SEPTEMBER+29+2016.pdf>. Accessed: February 2021.

<sup>19</sup> 2020. Giuliano G., Dessouky M., Dexter S., Fang J., Hu S., Stimetz S., O'Brien T., Miller M., and Fulton L. Developing Markets for Zero Emission Vehicles in Short Haul Goods Movement - A Research Report from the National Center for Sustainable Transportation. November. Available at: . Accessed: February 2021.



stated in the previous paragraph, AQMD plans to use the mitigation fees collected from warehouse operators to fund NZE/ZE trucks or ZE charging/fueling infrastructure. However, the cost-effectiveness value used of \$100,000 per ton of NOx used to estimate the NOx associated with Scenario 7 (Pay Mitigation Fee), is based on the "current criteria used for funding Class 8 NZE trucks". Since ZE trucks have a higher purchase price than NZE trucks, this cost effectiveness value is likely underestimated. Further, AQMD uses a cost effectiveness value of \$247,600,000 per ton of diesel particulate matter (DPM) to estimate the reductions in DPM associated with Scenario 7 in their calculation spreadsheet pr-2305-draft-scenario-calculations.xlsm. The basis for this assumption is not stated in the spreadsheet or the Preliminary Draft Staff Report. Without further substantiation, this assumption is arbitrary.

**CLOSING**

We appreciate the consideration of our comments. Please feel free to call Eric Lu at (949) 798-3650 if you have any comments or questions.

Yours sincerely,



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March 2, 2021

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Re: Comments for Proposed Rule 2305 – Warehouse Indirect Source Rule - Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program; and Proposed Rule 316 – Fees for Regulation XXIII

Dear Mr. Bañuelos and Mr. Juan:

Our client, the California Trucking Association (“CTA”), appreciates the opportunity to submit comments on the South Coast Air Quality Management District’s (“SCAQMD” or “District”) Preliminary Draft Staff Report (“PDSR”) and Draft Environmental Assessment (“Draft EA”) for the Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program; and Proposed Rule 316 – Fees For Regulation XXIII (collectively, the “Proposed Rules”).

Many members of the CTA will be directly regulated by the Proposed Rules and many others will be compelled to assist the covered warehouses in achieving compliance with the Proposed Rules. This will require substantial capital investment by CTA members and will have far reaching environmental and economic effects. The Proposed Rules as drafted are preempted by federal law and extend beyond the authority granted to the District by the State. For this reason, the District must revise the Proposed Rules before continuing with its rulemaking process.

## **I. Statement of Interest.**

“Truck driver” is one of the most common jobs in California. There are approximately 550,000 commercial vehicles registered in California and an additional 1.5 million commercial vehicles registered in other states to operate in California. Most of these vehicles are owned by small businesses: 50% of all trucks are owned by fleets of 3 or fewer trucks and 80% of all trucks are owned by fleets with fewer than 50 trucks.

The CTA is the largest state trade association representing trucking in the United States. Its 1,800 members include both large and small fleets with an average fleet size of 20 trucks. CTA members are actively participating in the development, piloting, and demonstration of alternative fuel and electric-drive capable vehicles. In fact, some member fleets have been working to bring electric-drive vehicles to market for nearly ten years. The CTA continues to support a coordinated and measured transition to alternative fuel and electric-drive capable vehicles.

## **II. The District Does Not Have Authority to Adopt an Indirect Source Rule that Applies to Existing Warehouses.**

Prior to the adoption of any regulation, the District must determine under Health and Safety Code section 40727 that it has the authority to adopt the regulation under state and federal law. Health and Safety Code (“HSC”) § 40727(a). The District cannot make such findings regarding the Proposed Rules. The District, as a creation of the Legislature, only possesses the authority specifically granted to it by state law. *PaintCare v. Mortensen* (2015) 233 Cal.App.4th 1292, 1305 (“An administrative agency ‘has only as much rulemaking power as is invested in it by statute’”); *Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 117 (similar). The District is an administrative agency which has no inherent “police power” nor any other “authority” beyond that explicitly conferred on the District by statute. *Candid Enterprises v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885. “An air pollution control district, as a special district, has only such powers as are given to it by statute and it is an entity, the powers and functions of which are derived entirely from the Legislature.” 74 Cal. Atty. Gen. Op. 196 (1991) (citing *People ex rel. City of Downey v. Downey County Water Dist.* (1962) 202 Cal.App.2d 786, 795). “The powers of public [agencies] are derived from the statutes which create them and define their functions.” *Imperial Irr. Dist. v. State Water Resources Control Bd.* (1990) 225 Cal.App.3d 548, 567; *see also Carmel Valley Fire Prot. Dist. v. State of California* (2001) 25 Cal.4th 287, 299-300. “No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes.” *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874. That an agency has been granted some authority to act within a given area does not mean that it enjoys plenary authority to act in that area. *Railway Labor Exec. Ass'n v. National Mediation Bd.* (D.C. Cir. 1994) 29 F.3d 655, 670 (en banc).

The District has identified no law that expressly grants it authority to adopt an indirect source rule (“ISR”) that regulates existing sources. Federal law allows, but does not require, states to adopt an “indirect source review program” as part of the state implementation plan. 42 U.S.C. § 7410(a)(5)(A)(i). However, an “indirect source program” is defined by statute to mean “the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure . . . that a *new or modified* indirect source will not attract mobile sources of pollution” that would cause or contribute to an exceedance of or prevent the maintenance of a National Ambient Air Quality Standard (“NAAQS”). *Id.* at § 7410(a)(5)(D) (emphasis added). The EPA expressly understood this to apply to the evaluation of indirect sources “effects on air

quality *prior to* their construction and modification.” 38 Fed. Reg. 9599 (1973) (emphasis added).<sup>1</sup> Nowhere does federal law grant states the authority to develop an indirect source program that applies to *existing* sources.

The authority granted to Air Districts to promulgate indirect source rules under the California Clean Air Act is similar. Section 40716 of the Health and Safety Code provides that a district “may adopt and implement regulations” that *both* “[r]educe or mitigate emissions from indirect and areawide sources of air pollution” and “[e]ncourage or require the use of measures which reduce the number or length of vehicle trips.” The District does not substantiate its claim that the Proposed Rules will reduce the number or length of trips. But even if it did, the District’s authority is further proscribed. First, the statute specific to the District grants limited authority for the District to create an indirect source rule. It explains that the District shall provide for indirect source controls for “any *new* source that will have a significant effect on air quality in the South Coast Air Basin.” HSC § 40440(b)(3) (emphasis added).<sup>2</sup> “In the grants [of powers] and the regulation of the mode of exercise, there is an implied negative; an implication that no other than the expressly granted power passes by the grant; that it is to be expressed only in the prescribed mode....” *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196. The express statutory authority of the District is thus to implement indirect source controls for *new* sources only, not existing, unmodified sources. “Any reasonable doubt concerning the existence of the power is to be resolved against the agency.” *California Chamber of Commerce v. State Air Resources Board* (2017) 10 Cal.App.5th 604, 620. Second, the statute requires all air districts to adopt “indirect source control programs.” *Id.* at § 40918. This term is not defined in California law, but is identical to the term used under the federal Clean Air Act in which indirect source control programs are limited to *new or modified* indirect sources. 42 U.S.C. § 7410(a)(5)(D). Thus, the Legislature did not grant the District authority to require existing, unmodified sources to comply with an indirect source control program.<sup>3</sup>

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<sup>1</sup> “It should be emphasized that the primary purpose of the review procedures is to insure that *proposed projects* are designed and located in a manner consistent with air quality requirements.” *Id.* (emphasis added).

<sup>2</sup> The District has also not demonstrated that “there are high-level, localized concentrations of pollutants” in the vicinity of covered warehouses. See HSC 40440(b)(3). The PDSR relies on an association between CalEnviroScreen rankings and warehouses. PDSR at 16-17. CalEnviroScreen uses a suite of 19 indicators to characterize pollution burden (12 indicators) and population characteristics (7 indicators). Each indicator is assigned a score for each census tract in the state based on the most up-to-date suitable data. Scores are weighted and added together within the two groups to derive a pollution burden score and a population characteristics score. Those scores are multiplied to give the final CalEnviroScreen score. These indicators are not limited to air quality, let alone to NO<sub>x</sub> which is a basin-wide contaminant (not one of “localized concentrations”). Instead, the indicators include drinking water contaminants, pesticide use, toxic releases from facilities, lead risk from housing, clean-up sites, ground water threats, and numerous other factors wholly unrelated to “high-level, localized concentrations of pollutants.” See Office of Environmental Health Hazard Assessment, Indicators Overview, available at <https://oehha.ca.gov/calenviroscreen/indicators>.

<sup>3</sup> It also appears no court has upheld such a program. See *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District* (2010) 627 F.3d 730 (upheld ISR program applied only to qualifying

The only support that the District references for its novel interpretation of its authority to adopt an existing source ISR is an Attorney General Opinion from 1993. Atty. Gen. Opinion 92-519 (1993). While opinions of the Attorney General are entitled to great weight, they are not binding law and may be “simply wrong.” *Building Industry Assn. v. City of Livermore* (1996) 45 Cal.App.4th 719, 730. In addition, the Attorney General cannot expand the authority granted to an entity created by state law via an advisory opinion. As explained above, the District’s authority only extends to the powers which it was expressly granted by the Legislature. See *PaintCare*, 233 Cal.App.4th at 1405; *Valero Refining Company-California v. Bay Area Air Quality Management District* (2020) 49 Cal.App.5th 618, 640 (same). Even if the Opinion were controlling law, it does not support the District’s claims of authority to adopt an ISR. The District apparently contends that because the Attorney General concluded that air districts may impose “reasonable post-construction measures,” the District’s authority to adopt ISRs extends to all indirect sources, even if they are long-standing and unmodified. However, nowhere in the Opinion does the Attorney General state that “reasonable post-construction measures” may be required for indirect sources that are neither new nor modified. The District’s strained interpretation is inconsistent not only with the law at the time the Opinion was issued, but also with the District’s own contemporaneous Air Quality Management Plan (“AQMP”).

Both the California Clean Air Act and the AQMP anticipated the implementation of control measures that could only come into effect after an indirect source was constructed. In 1993, at the time of the Opinion, Section 40716 allowed the districts to implement post-construction measures such as “encourag[ing] or requir[ing] ridesharing, vanpooling, flexible work hours, or other measures to reduce the number or length of vehicle trips.” HSC § 40716 (1993). For traditional indirect sources such as shopping centers or stadiums, these measures could only be implemented post-construction. In its 1989 AQMP, the District itself included numerous similar measures it characterized as indirect source controls that would be implemented post-construction, including:

- (1) Alternative work weeks and flextime, *id.* app. IV-G at 47-52;
- (2) Telecommunications, *id.* at 53-62;
- (3) Employer rideshare and transit incentives, *id.* at 65-70;
- (4) Vanpool purchase incentives, *id.* at 77-82; and
- (5) Merchant transportation incentives, *id.* at 83-88.

In the context of the law at the time and the District’s own contemporaneous understanding, it is clear the Opinion was referring to these types of measures as “reasonable post-construction

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new or modified development); *California Building Industry Association v. San Joaquin Valley Unified Air Pollution Control District* (2009) 178 Cal.App.4th 120 (same).

measures,” not establishing a carte blanche authority for the District to impose an ISR program on existing, unmodified sources. Thus, while the District may impose reasonable post-construction measures on new or modified indirect sources, the District has identified no law granting it authority to extend these measures to indirect sources that are neither new nor modified.

### **III. The Proposed Rules Are Preempted by Federal Law.**

Under the U.S. Constitution’s Supremacy Clause, “Congress has the authority, when acting pursuant to its enumerated powers, to preempt state and local law.” *Oxygenated Fuels Association, Inc. v. Davis* (9th Cir. 2003) 331 F.3d 665, 667. “Congressional intent to preempt state law must be clear and manifest” (*Williamson v. General Dynamics Corp.* (9th Cir. 2000) 208 F.3d 1144, 1150), but congressional purpose is the “ultimate touchstone” of preemption analysis. *Cippollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516. In this case, Congress has been clear in reserving to the federal government the ability to regulate purchase mandates under the Clean Air Act, the Federal Aviation and Administration Authorization Act (“FAAAA”), and the Energy Policy and Conservation Act (“EPCA”).

#### **A. The Proposed Rules Are Preempted as Purchase Mandates Under the Clean Air Act.**

The District may not adopt a purchase mandate under the guise of an ISR rule. Federal law preempts the adoption of such standards. While the District claims that the Proposed Rules provide sufficient flexibility to avoid a preempted mandate, the cost differential associated with the compliance pathways constitute an offer which cannot, in practical effect, be refused.

#### **1. Rules Establishing Purchase Mandates Are Preempted.**

Section 209(a) of the Clean Air Act (“CAA”) states:

“No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions ... as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.” 42 U.S.C. § 7543(a).

This prohibition is interpreted broadly. As the Supreme Court explained, because “[t]he manufacturer’s right to sell federally approved vehicles is meaningless in the absence of a purchaser’s right to buy them,” the term “standard” is not limited to regulations on manufacturers. *Engine Manufacturers Assn v. South Coast Air Quality Management Dist.* (2004) 541 U.S. 246, 252, 255 (“*EMA*”). To that end, the Supreme Court found that, “A command, accompanied by sanctions, that certain purchasers may buy only vehicles with particular

emission characteristics is as much an ‘attempt to enforce’ a ‘standard’ as a command, accompanied by sanctions, that a certain percentage of a manufacturer’s sales volume must consist of such vehicles.” *Id.* at 255.

The EPA has agreed and further explained that even if a standard is not a direct mandate, it may still be preempted under the CAA. Specifically in the context of ISR regulations, the EPA identified two ways that an ISR rule that on its face is authorized under CAA section 110(a)(5) could nonetheless be preempted. 76 Fed. Reg. 26609, 26611 (May 9, 2011). First, the ISR rule could be preempted if the rule in practice acts to compel either the manufacturer or user of a vehicle to change the emission control design of the engine or vehicle, or second, an ISR rule could be preempted if it creates incentives so onerous as to be in effect a purchase mandate. *Id.*

This was the exact question placed before the U.S. District Court of New York in 2009 in *Metropolitan Taxicab Bd. of Trade v. City of New York* (2009) 633 F. Supp. 2d 83 (“*MTB*”). The City of New York (“City”) adopted new regulations for taxis that were designed to encourage the transition to cleaner vehicles. Specifically, the City adopted a rule, the Lease Cap Rule, increasing the maximum allowable lease rate for hybrid vehicles while decreasing the maximum allowable lease rate for conventional vehicles. While the new maximum did not eliminate the profit margin for the leasing of conventional taxis, it rendered these conventional fleets substantially less profitable than hybrid fleets. *Id.* at 85. The Court first considered whether the Lease Cap Rule effected a purchase mandate, finding that “[t]he combined effect of the lease cap changes, and even the disincentive alone, constitutes an offer which can not, in practical effect, be refused.” *Id.* at 99. While the City argued that fleet operators could continue to utilize conventional taxis under the Lease Cap Rule, the Court found that the cost differential made it clear that “the Lease Cap Rules do not present viable options for Fleet Owners and instead operate as an effective mandate to switch to hybrid vehicles.” *Id.* at 100.<sup>4</sup>

## **2. The Intent of the Proposed Rules Is to Force the Acquisition of ZE/NZE Vehicles.**

The District has made no secret of its dissatisfaction with the state-level progress on regulating emissions from mobile sources. In its comment letter on the Draft Mobile Source Strategy (“MSS”), the District called on CARB to “go even further” since CARB’s efforts to regulate

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<sup>4</sup> This is distinct from Rule 9510 considered by the Ninth Circuit in *National Assn. of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.* (2010) 627 F.3d 730 (“*NAHB*”). In that case, the ISR rule considered emissions that were “site-based,” rather than “engine- or vehicle-based.” Stated differently, Rule 9510 evaluated emissions from the whole of the development, including the emissions from the construction equipment used during development and from the vehicles of the final users of the site. While NAHB challenged the rule as a preempted purchase mandate, the court found that Rule 9510 “escape[d] preemption” because it did “not measure emissions by fleets or groups of vehicles”—the construction equipment—but rather the facility as a whole *Id.* at 740. The same cannot be said of the Proposed Rules which are entirely based on the emissions from vehicles that visit the site and for which the practical compliance mechanisms are limited to acquisition.

mobile sources were insufficient to meet upcoming 2023 and 2031 federal deadlines for ozone reduction. PDSR at 52. The District has explained the problem that the emissions reductions modeled in the Draft MSS were insufficient to meet federal deadlines and that, even in the most aggressive modeling in the Draft MSS, in 2023 more than 95% of heavy-duty trucks will be no cleaner than 2010 engine standards assumed for all trucks in the baseline emissions inventory from the 2016 AQMP and that these trucks will continue to make up about 57% of the truck fleet in 2031. PDSR at 52. In commenting on the Advance Clean Truck (“ACT”) regulation, the District explained that the 15% ZEV sales requirement in 2030 “will be insufficient and must be increased to generate the needed NOx reductions.” SCAQMD Letter to CARB, Comment Letter on Proposed Advanced Clean Trucks Regulation (Dec. 6, 2019).

With the Proposed Rule, the District is attempting to step into CARB’s shoes and regulate mobile sources by proxy, an action for which it lacks authority. The PDSR explains that the ACT Rule and the Low NOx Omnibus regulations have left a gap in that their “lower emissions occur only *if* trucks are sold.” *Id.* (emphasis original). The Proposed Rules are designed to fill this gap by forcing acquisition of lower emission trucks. Similarly, the District explained that while the upcoming TRU regulation is expected to require lower PM standards, it “will not mandate that fleets purchase them, nor will it direct sales in certain parts of the state.” *Id.* The Proposed Rules are designed to correct this deficiency by creating a de facto purchase mandate in the South Coast Basin. The District explains that NOx reductions are necessary to meet federal air quality standards and “mobile sources associated with goods movement make up about 52% of all NOx emissions” in the South Coast Basin. PDSR at 14. The Proposed Rules are intended “to support statewide efforts to increase the number of ZE vehicles.” *Id.* The Proposed Rules “provide a mechanism to require warehouse operators to encourage ZE vehicle use at their facilities.” *Id.* at 15. “The proposed project is intended to accelerate the use of ZE trucks and yard trucks that visit the warehouses in the South Coast AQMD region” and “encourage and incentivize the purchase and use of NZE and ZE vehicles instead of conventional gasoline and diesel vehicles.” Draft EA at 4.1-1, C-46.<sup>5</sup> The purpose of the Proposed Rules is thus clearly to force the acquisition and deployment of ZE trucks in the Basin.

### **3. Beyond the District’s Clear Intent to Force Purchase of ZE/NZE Vehicles, the Cost Differential Associated with the Compliance Pathways Forces Acquisition in Any Event.**

While the District has ostensibly designed the Proposed Rules to provide multiple compliance pathways, the actual effect is uniform—ZE trucks must be acquired. The PDSR analyzed 18 compliance pathways as shown in Table 14. Scenarios 1, 2, 3, 6, 8, 12, 13, and 18 require the acquisition and usage of ZE vehicles by the warehouse itself. Scenarios 4, 5, 9, 10, and 14 require ZE trucks to visit the warehouses, requiring non-warehouse fleet owners to acquire such

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<sup>5</sup> “[T]he proposed project would result in a greater turnover of diesel trucks to NZE and ZE trucks than would have occurred without the proposed project....” Draft EA at C-48–49.



vehicles. But, for the 45% of warehouses that own and operate their own fleet, relying on the indirect acquisition by non-covered fleet owners is not an option. The only scenarios that do not force an acquisition of a ZE vehicle are Scenarios 7 (pay mitigation fee), 11 (rooftop solar and mitigation fee), 15 (filter system installations) and 16 (filter purchases).<sup>6</sup> However, the costs of these non-acquisition pathways are far higher than acquisition.

Type	Sc. #	Description	Annual Cost per Year per Sq. Ft.
Direct Acquisition	1	NZE Class 8 truck acquisitions and subsequent visits from those trucks	\$0.08
Direct Acquisition	2	NZE Class 8 truck acquisitions and subsequent visits from those trucks (early purchase)	\$0.11
Direct Acquisition	3	NZE Class 8 truck acquisitions (funded by Carl Moyer program) and subsequent visits from those trucks	\$0.05
Direct Acquisition	6	Level 3 charger installations followed by ZE Class 6 & Class 8 truck acquisitions and subsequent visits from those trucks, using installed chargers	\$0.14
Direct Acquisition	8	NZE Class 6 truck acquisitions and subsequent visits from those trucks	\$0.16
Direct Acquisition	12	Hydrogen station installations followed by ZE Class 8 truck acquisitions and subsequent visits from those trucks, using the hydrogen station	\$0.82
Direct Acquisition	13	ZE Class 2b-3 truck acquisitions and subsequent visits from those trucks	\$0.04
Direct Acquisition	18	ZE Hostler Acquisitions and Usage	\$0.12
<b>Average Annual Cost per Year per Sq. Ft. for Direct Acquisition Compliance</b>			<b>\$0.19</b>
Indirect Acquisition	4	NZE Class 8 truck visits from non-owned fleets	\$0.05
Indirect Acquisition	5	ZE Class 8 truck visits from non-owned fleets	\$0.74
Indirect Acquisition	9	NZE Class 6 truck visits from non-owned fleets	\$0.79
Indirect Acquisition	10	ZE Class 6 truck visits from non-owned fleets	\$0.04

<sup>6</sup> Scenario 17 requires TRU plug installations and usage in cold storage facilities but is applicable only to cold storage warehouses.

Indirect Acquisition	14	ZE Class 2b-3 truck visits from non-owned fleets	\$0.48
<b>Average Annual Cost per Year per Sq. Ft. for Indirect Acquisition Compliance</b>			<b>\$0.42</b>
Non-Acquisition	7	Pay Mitigation Fee	\$0.78
Non-Acquisition	11	Rooftop solar panel installations and usage	\$1.14
Non-Acquisition	15	Filter System Installations	\$0.92
Non-Acquisition	16	Filter Purchases	\$0.92
Non-Acquisition	17	TRU plug installations and usage in cold storage facilities	\$0.50
<b>Average Annual Cost per Year per Sq. Ft. for Non- Acquisition Compliance</b>			<b>\$0.85</b>

Scenario 7 (Mitigation Fee) averages approximately \$0.90 per square foot in 2025, with an average of \$0.78 per square foot per year. PDSR at 66, 74. The estimated compliance cost for Scenarios 15 and 16 (Filter System Installations and Filter Purchases) is even higher at approximately \$1.00 per square foot in 2025, with an average of \$0.92 per square foot per year. *Id.* at 70, 74. Solar begins in 2025 at \$2.50 per square foot and an average annual cost of \$1.14 per square foot per year. *Id.* By contrast, the estimated compliance costs for “acquisition” based scenarios are less than \$0.20 in 2025, with an annual average cost per square foot typically ranging from \$0.04 to \$0.16 per square foot per year. *Id.* at 66, 74. This cost differential is of the District’s own making, by assigning a certain number of WAIRE points to each compliance action the District has intentionally chosen to compel acquisition by pricing other compliance pathways out of the running.

While the District may argue that the Proposed Rules are not a purchase mandate because of the varying compliance pathways, the non-acquisition pathways at least triple the compliance costs of covered warehouses. District staff acknowledged at the February 16, 2021 public workshop that facilities will find the “most cost-effective means to comply.” Just as the fleet owners in *MTB*, warehouse operators are “profit oriented and business owners trying to maximize profits” and will always choose the option that the District makes the least costly. *MTB*, 633 F. Supp. 2d at 100. Looking at all the evidence, it is clear that the Proposed Rules do not “present viable options” for warehouses other than acquisition and “instead operate[] as an effective mandate to switch to [ZE] vehicles.” *Id.* For this reason, the Proposed Rules are preempted as a purchase mandate.

## **B. The Proposed Rules Are Preempted Under the FAAAA.**

The FAAAA “preempts a wide range of state regulation of intrastate motor carriage.” *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1187. It specifically provides that, “a State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... with respect to the transportation of property.” 49 U.S.C. § 14501(c)(1). The terms “rates, routes, and services” were “used by Congress in the public utility sense; that is, service refers to such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided.... Rates indicates price; routes refers to courses of travel.” *Air Transport Ass’n of Am. v. City & Cnty. of San Francisco* (9th Cir. 2001) 266 F.3d 1064, 1071. Congress enacted this preemption provision because it “believed that across-the-board deregulation was in the public interest as well as necessary to eliminate non-uniform state regulations of motor carriers which had caused significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and curtailed the expansion of markets.” *Id.* at 1187 (quotations omitted).

The Supreme Court has observed that state laws may be preempted “even if a state law’s effect on rates, routes or services is only indirect.” *Rowe v. New Hampshire Motor Transport Ass’n* (2008) 552 U.S. 364, 370. The District has acknowledged that the Proposed Rules will increase the costs for warehouses in the District, many of whom are fleet owners. PDSR at 58 (“there will be financial impacts to industry to implement PR 2305, and it will also require many warehouse operators and cargo owners to change their business practices to implement actions required by PR 2305”), 45 (“Of the warehouses expected to be required to earn WAIRE Points ... about 45% may own a truck fleet”). The District also acknowledges that the Proposed Rules incentivize changes to routes and service. PDSR at 33 (“Because the WPCO is tied to a warehouse’s annual truck trips, if a facility can find ways to improve efficiency and reduce its number of truck trips, then its compliance obligation under PR 2305 will be lower.”). Because the Proposed Rules have a force and effect that is related to the price, route, and service of motor carriers, they are preempted under the FAAAA.

## **C. The Proposed Rules Are Preempted Under the EPCA.**

The EPCA authorizes the National Highway Traffic Safety Administration (“NHTSA”) to create fuel-efficiency standards in order “to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses” and “to provide for improved energy efficiency of motor vehicles.” 49 U.S.C. § 6201. “[W]hile the primary focus of the EPCA was to regulate the country’s consumption of energy resources, Congress intended that passage of the EPCA would not unnecessarily restrict purchase options.” *Ophir v. City of Boston* (2009) 647 F. Supp. 2d 86, 93. To that end, NHTSA may only establish a fuel economy standard after evaluating four factors: “technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United

States to conserve energy.” *Id.* § 32902(f). In order to promote a uniform application, the EPCA preempts the authority of the states or any political subdivision of a state from “adopt[ing] or enforc[ing] a law or regulation *related to* fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.” *Id.* at § 32919 (emphasis added). “Fuel economy” is defined as “the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used.” *Id.* at 32901(a)(11). The EPA Administrator is directed by EPCA to “include in the calculation of average fuel economy ... equivalent petroleum-based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles,” (*id.* at 32904(a)(2)(B)), which the EPA calculates in terms of miles per gallon equivalent, or MPGe. *Id.*

As described above, it is the District’s intent to drive the acquisition of ZE/NZE vehicles in the District’s jurisdiction. The City of Boston had a similar objective when it adopted a taxi regulation requiring the acquisition of hybrid vehicles. A federal district court found the regulation preempted by the EPCA, even though the rule was adopted to “modernize and improve the quality of appearance” of the taxi fleet, not for purposes of increased fuel economy. *Ophir*, 647 F. Supp. 2d at 89, 94. Here, the District is compelling the acquisition of a certain type of vehicle, ostensibly to reduce vehicle emissions, but with the effect of mandating lower fuel economy standards. As the Supreme Court explained in *EMA*, “if one State or political subdivision may enact such rules, then so may any other; and the end result would undo Congress's carefully calibrated regulatory scheme.” 541 U.S. at 255.

#### **IV. The Proposed Rules Are An Improper Regulatory Fee.**

There are three general categories of fees or assessments that are distinguishable from special taxes and thus can be imposed without a two-thirds majority vote: special assessments based on the value of benefits conferred on property, development fees exacted in return for permits or government privileges, and regulatory fees imposed under the police power. *California Building Industry Association v. San Joaquin Valley Unified Air Pollution Control District* (2009) 178 Cal.App.4th 120, 130. ISR fees are regulatory fees in that they are not associated with the issuance of a permit or government privilege.<sup>7</sup> *Id.* However, a regulatory fee may not exceed the amount required to carry out the purposes and provisions of the regulation and cannot be levied for unrelated revenue purposes. *Id.* at 131.

In the first instance, the District has identified no authority allowing it to impose an ISR fee on existing, unmodified sources. See Part II, *supra*. The District has also not established a reasonable relationship between the fee charged and the activity the District seeks to regulate.

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<sup>7</sup> In the alternative, the fees under the Proposed Rules are an improper tax under Proposition 13. Unlike the allowances at issue in *Cal. Chamber of Commerce v. State Air Resources Board* (2017) 10 Cal.App.5th 604, the WAIRE points have no economic value that can be traded, a fixed price unchanged by market forces, and—as state and federal regulations phase in—will become compulsory. Thus, they are a tax subject to the requirements of Proposition 13, which have not been met.

The District states that the amount of the fee was calculated based on the cost-per-point of various other compliance actions. PDSR at 33. However, as the District acknowledges, these costs vary across the actions. *Id.* The District does not explain its methodology for determining the \$1,000 per point cost. Additionally, the District’s proposed cost is based on the cost of compliance for individual entities, not on the cost of the offsets the *District* would need to fund to offset total emissions from truck trips to warehouses in the Basin to achieve the emission reductions goals of the program. The District has acknowledged that there are economies of scale associated with the compliance pathways, which the District is uniquely positioned to access as the administrator of the mitigation funds. The District is required by law to perform an analysis of administering the costs of its own program, i.e., funding the offsets necessary to reduce emissions, rather than analyzing the cost of compliance actions of individual entities.

In addition, the court in *California Building Industry Association* upheld an ISR fee where the covered entities could choose whether or not to pay the fee based on their activities. However, in light of the increasing requirements for ZE/NZE vehicles discussed *infra* and the additionality requirement found in Proposed Rule 2305(d)(3), it is very likely that covered warehouses will have no option but to pay the fee at some point. As District staff acknowledged during the February 17, 2021 community meeting, Proposed Rule 2305 has no sunset and no off-ramp available for even fully electric warehouses. Yet these warehouses will continue to accumulate a compliance obligation based on the trucks that visit their locations regardless of the type of truck. Thus, no true choice between paying the fee and other compliance pathways exists in the Proposed Rules.

#### **V. The Goals of the Proposed Rules Are Presently Infeasible.**

As explained in Parts III.B and III.C, *supra*, the intent of the Proposed Rules is to accelerate the transition to ZE trucks. Yet, the District specifically acknowledges that it “cannot predict and has no feasible way to identify” suppliers of items necessary to accumulate WAIRE points and that the “investment or the quantity of items is speculative.” Draft EA at 532. CARB recently rejected a proposal to require a higher sales percentage of ZE vehicles under the ACT Rule “due to concerns about the feasibility of manufacturers to comply with even higher sales requirements especially for Class 2b-3 vehicles and tractors.” Advanced Clean Trucks Regulation, Final Statement of Reasons (January 2021) at 99 (“ACT FSOR”). As CARB explained just last month:

“At this time, both Class 2b-3 and Class 7-8 tractors have more focused concerns about payload, range, towing, charging/refueling infrastructure, and model availability than other vehicles. These issues will present more challenges in identifying suitable applications for their deployment in the early market. Increasing the number of ZEV sales further also increases the likelihood that manufacturers would need to produce more costly long-range vehicles, and that vehicles may need to be placed in applications where they may not be fully

suitable. Therefore, the Board determined that the approved regulation is the most feasible path to meet ZEV deployment goals at this time.” *Id.*

The District has not explained how its mandate to increase the use of ZE vehicles—which is intended to be in excess of CARB’s requirement (*see* PDSR at 15)—is in fact feasible when CARB determined it is not.

Additionally, the District has not contended with whether it is feasible to impose these accelerated requirements for trucks that leave the District. Industrial Economics, Incorporated determined that only 34% of goods moved within the District stay in the District; the vast majority are bound for destinations outside of the District’s authority.<sup>8</sup> Yet the District has offered no evidence of whether the infrastructure exists in other jurisdictions to support the endpoint of these trips. A rule that is infeasible is necessarily arbitrary and capricious and unsupported by substantial evidence.

## **VI. The District Cannot Make the Findings Required by Health and Safety Code Section 40727.**

Prior to the adoption of any new regulation, the District must make findings regarding “necessity, authority, clarity, consistency, nonduplication, and reference.” HSC § 40727. The District’s findings must be based on substantial evidence that is “reasonable, credible, and of solid value” (*Plastic Pipe and Fittings Ass’n v. Cal. Bldg. Standards Comm.* (2004) 124 Cal.App.4th 1390, 1407), and that bears a “rational connection” to the District’s ultimate determination (*Am. Coatings Ass’n v. South Coast Air Quality Dist.* (2012) 54 Cal.4th 446, 460). The District cannot make the necessary findings for the Proposed Rules.

“Authority” is defined to mean a provision of law or of state or federal regulation that permits or requires the regional agency to adopt the regulation. *Id.* As discussed in Part II, *supra*, the District has no authority to adopt a regulation imposing an ISR on existing, unmodified sources and, as discussed in Part III, *infra*, the Proposed Rules are preempted by federal law. The District cites to Health and Safety Code sections 39002, 39650 to 39669, 40000, 40001, 40440, 40441, 40522.5, 40701, 40702, 40716, 47017 to 40728, 40910, 40920.5, 41508, 41511, and 41700 for authority for the Proposed Rules. PDSR at 83. None of these provide authority for either an ISR for existing, unmodified sources or for a program effecting a purchase mandate of vehicle sources.

“Necessity” means that a need exists for the regulation as demonstrated by the record. HSC § 40727(b). The District has failed to demonstrate that there is a need for the Proposed Rules.

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<sup>8</sup> Industrial Economics, Inc., Assessment of Warehouse Relocations Associated with the South Coast Air Quality Management District Warehouse Indirect Source Rule (Dec. 23, 2020), available at [http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/iec\\_pr-2305-warehouse-relocation-report-\(12-23-20\).pdf?sfvrsn=8](http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/iec_pr-2305-warehouse-relocation-report-(12-23-20).pdf?sfvrsn=8).

The District explains that the District will not meet federal standards for ozone and fine particulate matter, that NO<sub>x</sub> is the primary pollutant needed to meet federal air quality standards, and that mobile sources associated with goods movement make up about 52% of all NO<sub>x</sub> emissions in the Basin. PDSR at 13-14. But the District does not bridge the analytical gap between the projected NO<sub>x</sub> emissions and the federal standards for ozone. For example, the District projects in Table 3 of the PDSR that NO<sub>x</sub> emissions per day will decrease from 42.72 tons to 26.86 tons (PDSR at 13), but does not explain or quantify how these reductions will achieve federal ozone standards, the actual cited need. Further, the District does not explain what NO<sub>x</sub> emissions are attributable to the specific entities it seeks to regulate. The Proposed Rules apply to the owners and operators of warehouses in the District's jurisdiction. Proposed Rule 2305(b). But the District has not demonstrated that the warehouses are a significant indirect source. While the District states that 52% of all NO<sub>x</sub> emissions in the Basin are attributable to the movement of goods, this figure includes locomotives, cargo handling equipment, ocean going vessels and commercial harbor craft.<sup>9</sup> Trucks themselves are responsible for only 58% of the 52% of NO<sub>x</sub> emissions, or less than a third of the need originally cited by the District. In its later modeling, the District claims that NO<sub>x</sub> emissions from trucks that visit warehouses account for less than 20% of the District's carrying capacity even before the Proposed Rules. PDSR at 52. The District's necessity finding is further undercut by its own scenario analysis which demonstrate that despite the enormous implementation costs, it is possible that the Proposed Rules will result in no reduced emissions of NO<sub>x</sub> and PM at all. PDSR at 63-64.

The District has also claimed that the Proposed Rules are necessary because, while CARB's Draft MSS calls for a 100% ZE truck fleet by 2045, a 100% ZE drayage truck fleet (trucks that visit ports and railyards) by 2035, and 100% ZE off-road equipment operations by 2035, CARB's policy does not include any enforceable mechanism to achieve these targets. PDSR at 10. To reach this conclusion, the District ignores the effects of the ACT Rule requiring greater sales of ZE/NZE trucks and ignores CARB's further efforts to adopt the Advanced Clean Fleets ("ACF") rule, which CARB anticipates will be implemented from 2024 to 2045.<sup>10</sup> During its public workshops, the District further discounted these regulations by emphasizing that the Proposed Rules will begin achieving emissions reductions beginning in 2023, where the ACT Rule and proposed ACF rule will not reach full implementation until 2035 and 2045 respectively. But the annual variable associated with the Proposed Rules indicates that they will not reach full implementation until after CARB's programs go into effect. The District thus has not demonstrated that it is necessary for it to usurp CARB's authority in this area.

Under section 40727, the District must also find that the regulation "is written or displayed so that its meaning can be easily understood by the persons directly affected by it," a required

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<sup>9</sup> PDSR at 14, citing Southern California Association of Governments, Transportation System Goods Movement Technical Report (Sept. 2020) at 58, available at [https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial\\_goods-movement.pdf?1606001690](https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial_goods-movement.pdf?1606001690).

<sup>10</sup> CARB, Zero-Emission Fleet Rule Workshop, Advanced Clean Truck Fleets (Feb. 12, 2020), available at [https://ww2.arb.ca.gov/sites/default/files/2020-02/200212presentation\\_ADA\\_1.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-02/200212presentation_ADA_1.pdf).

“clarity” finding. The District cannot make such a finding for the Proposed Rules because the means to comply with the Proposed Rules are based on a landscape of shifting sand. Specifically, each warehouse operator can only earn points toward their compliance obligation by taking actions beyond the requirements of U.S. EPA, CARB, and the District’s other regulations. Proposed Rule 2305(d)(3). But as described above, these regulations are becoming increasingly stringent and new rules are being evaluated continuously. Covered warehouses are therefore unable to evaluate how the Proposed Rules will specifically affect them or the level of compliance actions that may be necessary. This materially effects the ability of covered warehouses to operate and makes the District unable to make the required finding of clarity.

## **VII. The Environmental Assessment Fails as an Informational Document.**

The basic purpose of an EIR is to “provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511 (quoting Pub. Res. Code § 21061) (“*Friant Ranch*”). “If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights*”). For environmental review to be successful, it must not only provide a comprehensive disclosure but also connect the analytical dots in order to explain to the decisionmakers and the public the effects of the agency’s decision.

While the District has significantly improved the discussion of the environmental impacts of the Proposed Rules from the Initial Study, the Draft EA still fails to provide a full picture of the reasonably foreseeable effects of the Proposed Rules.

### **A. The District Improperly Relies on Analysis from an Earlier Project.**

The District has abandoned its attempt to fully divorce the Proposed Rules from their indirect effects and now provides a cursory discussion of the Proposed Rules’ hazards and hazardous materials, aesthetic, mineral, biological, air quality, greenhouse gases, biological resources, land use, and agricultural resources impacts. However, the analysis remains legally insufficient. The District’s analysis is largely limited to incorporating CARB’s analysis of the impacts associated with the ACT Rule in order to describe and assess the effects of the Proposed Rules. This is improper and misleading. The District has repeatedly explained that the Proposed Rules are designed to be in surplus of state and federal regulations, meaning that the effects of the Proposed Rules are also necessarily in surplus of the effects described in the ACT Rule Environmental Assessment.



To illustrate, the District acknowledges that the Proposed Rules will drive an increase in specialized hazardous waste, including various types of batteries and fuel cells as well as prematurely retired vehicles. The District relies on CARB’s description and assessment of the ACT Rule’s effects on the creation and management of hazards, but the District never explains how the specific effects of the Proposed Rule—e.g., how much more demand for recycling or solid waste disposal the Proposed Rules generate vis a vis the ACT Rule. Because the District will be driving additional fleet turnover and additional ZE/NZE deployment, the effects of the Proposed Rules are necessarily in excess of what CARB analyzed in its own assessment. The District has failed to meaningfully inform the public and the Board of the reasonably foreseeable effects of the covered warehouses’ compliance actions. These incremental effects are likely substantial. While CARB predicts total deployment of 100,000 ZE vehicles under the ACT Rule by 2032 (ACT Environmental Assessment at IX-6), the District’s bounding analysis indicates the Proposed Rules could add an additional 28,000 ZE trucks by 2031, a 28% increase. The District’s repeated reliance on CARB’s assessment thus fails to disclose the effects of the District’s action in adopting the Proposed Rules.

A lead agency may reuse an EIR prepared for an earlier project for another separate project if the “circumstances of the projects are essentially the same.” CEQA Guidelines § 15153(a). An EIR from an earlier project “shall not be used” for a later project if any of the conditions for supplementation have been met. In *Save Berkeley’s Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226, the court found that the university could not rely on a previously prepared EIR that analyzed an increase in enrollment when the proposed project would further increase student enrollment. The same principles apply to the District. The District cannot crib from CARB’s own analysis when the District intends its Proposed Rules to increase turnover and deployment beyond what CARB contemplated, particularly not when the District can reasonably foresee a 28% increase in deployment *in a single air district* beyond what CARB anticipated for the *entire state*.

This error is not unique to the hazards analysis, although the comparison is particularly apt. The same problem permeates the District’s analysis of other impact areas, including but not limited to, aesthetic, mineral, biological, air quality, greenhouse gases, biological resources, land use, and agricultural resources impacts. While the District argues that these impacts are speculative and subject to the permitting decisions of other agencies, the District has demonstrated it is capable of performing a bounding analysis to determine the maximum potential impacts associated with air emissions and electricity demand and could certainly use this scenario to forecast potential impacts across other impact areas.

### **1. Increased Grid Capacity.**

The District has modeled 18 compliance scenarios to provide a “bracketing” of the fiscal impact associated with the Proposed Rules and should provide the same level of information for the environmental impacts. While the District now quantifies a high-electrification scenario, it does

not disclose what this means to the public or the environment. To meet the state’s ambitious climate goals, nearly all of this new demand would be met by wind, solar and battery storage.<sup>11</sup> This would require the construction of 109,834 megawatts (“MW”) of new solar capacity (a nearly 900 percent increase from current levels), 14,585 MW of new wind capacity (more than a 200 percent increase from current levels), and 73,933 MW of new available grid battery storage (a 15,560 percent increase from the current 478 MW).<sup>12</sup> The District can and should evaluate and disclose to the public the approximate amount of acreage required to generate the necessary electricity from wind and solar and should quantify the amount of emissions that would result from the use of natural gas power plants.

## **2. Increased Need for Lithium Extraction.**

The District could use its most battery-intense scenario along with projections of useful life to determine the demand for lithium and other necessary minerals and inform the public and decisionmakers of the potential real world impacts of the Proposed Rules, including the percentage increase over existing extraction to accommodate these Rules and other similar reasonably foreseeable electrification efforts.

## **3. Increased Disposal Facilities.**

Using the same bounding scenario, the District could project the amount and type of waste the Proposed Rules would induce through accelerated transition. While the District indicates that conventional trucks replaced by ZE/NZE vehicles before the end of their useful life will likely replace older, dirtier trucks, the District must still contend with the disposal of these trucks. Additionally, the District’s reliance on still-in-development battery recycling technology is speculative and lacks the support of substantial evidence. In order to succeed as an informational document, the District must provide an assessment of the foreseeable impacts, including increased demand for disposal facilities. This is not outside of the realm of reason. The District has demonstrated it is capable of preparing a bounding analysis and can use this, along with reasonable assumptions regarding useful life, to determine the rate of waste generation attributable to the Proposed Rules. This can and must be prepared and compared against existing disposal capacity in light of other reasonably foreseeable projects to inform the public of the potential scale of development necessary to accommodate the Proposed Rules.

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<sup>11</sup> Ming et al., Long-Run Resource Adequacy under Deep Decarbonization Pathways for California, June 2019 [https://www.ethree.com/wp-content/uploads/2019/06/E3\\_Long\\_Run\\_Resource\\_Adequacy\\_CA\\_Deep-Decarbonization\\_Final.pdf](https://www.ethree.com/wp-content/uploads/2019/06/E3_Long_Run_Resource_Adequacy_CA_Deep-Decarbonization_Final.pdf).

<sup>12</sup> Ming et al., Long-Run Resource Adequacy under Deep Decarbonization Pathways for California, June 2019 [https://www.ethree.com/wp-content/uploads/2019/06/E3\\_Long\\_Run\\_Resource\\_Adequacy\\_CA\\_Deep-Decarbonization\\_Final.pdf](https://www.ethree.com/wp-content/uploads/2019/06/E3_Long_Run_Resource_Adequacy_CA_Deep-Decarbonization_Final.pdf).

**B. The District’s Analysis of Air Quality Effects Relies on Outdated Modeling and Inconsistent Assumptions.**

The District relies on a version of CARB’s Emission Factor (“EMFAC”) from 2017 to characterize emissions and reductions. While CARB applies some post-hoc modifications to approximate the effect of CARB’s more recent regulations including the ACT Rule and Low NOx Omnibus, these are merely approximations. CARB has recently released EMFAC2021 which reflects CARB’s own best estimates of the effect of these regulations on emissions. The District should re-characterize its analysis based on EMFAC2021 before taking action on the Proposed Rules. At the very least, the District should verify its modifications against the latest EMFAC modeling. Not doing so means that the District’s analysis supporting adoption of the Proposed Rules is not based on the most up-to-date information and thus lacks substantial evidence. Similarly, the District relies on a version of the Southern California Association of Government’s (“SCAG”) Regional Transportation Plan/Sustainable Community Strategy (“RTP/SCS”) that is a half-decade out of date. SCAG adopted its latest RTP/SCS in September 2020 which incorporates updated trip modeling. This information was plainly available the District long before it released its draft EA and thus there is no excuse for the District not to include the updated trip modeling information in the EA. The EA thus must be updated to reflect the most recent trip lengths analysis. *See Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 430; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 444-45 (court invalidated an EIR’s analysis of farmland impacts because the agency relied on “a methodology with known data gaps, [which] produced unreliable estimates ... of the [project’s] impacts”).

The assessment of the Proposed Rules’ air quality effects also rely on faulty assumptions. First, the scenario analyses do not account for increasingly strict state-level requirements that could reduce the emission reductions achieved by the Proposed Rules. These new requirements include the ACT Rule, the Low NOx Omnibus regulation, the ACF regulation, and the Ports Clean Air Action Plan. While these regulations are at least partially incorporated into an assessment of baseline emissions through the post-hoc modifications discussed above, the District does not carry these forward through its scenario analysis. This means that the range of emission reductions stated in the PDSR do not represent realistic assumptions of potential emission reductions from the Proposed Rules. Because all WAIRE points must constitute reductions that are additional to those generated by other federal and state laws, the District over counts potential reductions as attributable to the Proposed Rules, when they will actually be attributable to the enhanced state requirements and thus not eligible for WAIRE points. In this way, the District overstates the emission reductions the Proposed Rules will achieve. Second, the scenario analyses compares apples and oranges. The District claims as benefits of the Proposed Rules decreases in emissions associated from decreased demand for utility-based electricity as a result of the installation of on-site solar. But the District neglects to perform a similar analysis regarding the increased emissions from increased demand for utility-based electricity as a result of ZE vehicle deployment and charger installations. The District cannot adequately inform the

public by quantifying only the benefits and none of the costs. The District must quantify and disclose both halves of the equation, including whether compelling ZE deployment actually results in the scale of emissions reductions the District has predicted.

**C. The District Fails to Adequately Explain the Proposed Rules' Effects on the Environment.**

It is not enough for an agency to declare that there is an environmental effect; “there must be a disclosure of the analytic route the ... agency traveled from evidence to action.” *Laurel Heights*, 47 Cal.3d at 403 (quotations and citations omitted); *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514-15 (“an EIR’s designation of a particular adverse environmental effect as ‘significant’ does not excuse the EIR’s failure to reasonably describe the nature and magnitude of the adverse effect”); *Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 (“The EIR’s approach of simply labeling the effect ‘significant’ without accompanying analysis of the project’s impact on the health of the Airport’s employees and nearby residents is inadequate to meet the environmental assessment requirements of CEQA.”). Unfortunately, the District has obfuscated the real impacts of the Proposed Rules and failed to provide a meaningful analysis of the effects.

For example, the District declares that “impacts associated with the need for new or substantially altered power utility systems, new and expanded infrastructure, and effects on peak and base period demands to accommodate the increase in demand from electric vehicles and refueling infrastructure by compliance year 2031” are conservatively considered a significant environmental effect of the proposed project, but it fails to provide a meaningful analysis of this effect. Like the agency in *Friant Ranch*, the District has analyzed the issue and disclosed the general effects, but it “did not connect the raw” energy numbers and their effects to specific adverse effects on the built environment. 6 Cal.5th at 518. After reading the EA, “the public would have no idea of the ... consequences that result from” dramatically increasing electricity demand. *Id.* at 519.

And the increase will be dramatic. The Draft EA discloses the electricity demands created by various compliance options, including Scenario 6 which would result in an additional 847 gigawatt hours per year of electricity demand. But the District never explains to the reader what this means for the electricity grid. The District predicts up to 28,569 new ZE/NZE trucks in 2031 as a result of the Proposed Rules (Draft EA at 4.1-24) and states that the California Energy Commission (“CEC”) assumed that 100,000 ZE trucks will be deployed by 2031 (Draft EA at 4.2-17), but fails to bridge the analytical divide and further fails to contextualize this increase. A cursory review of the ACT Rule Environmental Assessment indicates that CARB already anticipates driving the deployment of the full 100,000 ZE capacity assumed by the CEC by 2032 through the ACT Rule. ACT Environmental Assessment at IX-6. The additional 28,569 NE/NZE trucks that would occur from implementation of the Proposed Rules are thus wholly unaccounted

for in the CEC’s assumptions—as the District has gone to great pains to ensure that all trucks under the Proposed Rules will be in addition to those required by CARB. Thus, the District has failed the lead agency’s obligation to explain how the large increase in ZE/NZE trucks will affect electricity demand and energy supply, and lead to environmental impacts in California.

Further, the District never explains what a nearly 30% increase in ZE/NZE trucks in a single air district means for the human environment. What are the “effects on peak and base period demands to accommodate the increase in demand from electric vehicles and refueling infrastructure by compliance year 2031”? The public and the Board are left—figuratively and possibly literally—in the dark.

This cursory conclusion without a full disclosure of the real effects on the human environment is widespread throughout the District’s analysis. “Because the [EA] as written makes it impossible for the public to translate the bare numbers provided into adverse health impacts or to understand why such translation is not possible at this time (and what limited translation is, in fact, possible)” (*Friant Ranch*, 6 Cal.5th at 521), the EA fails in its purpose as an informational document.

#### **D. The Draft EA Fails to Adequately Analyze the Proposed Rule’s Impacts on the Transportation Sector.**

As raised in CTA’s Scoping Comment letter, the Proposed Rules create significant uncertainty in commercial transportation. By compelling the early transition to ZE/NZE vehicles, the Proposed Rules drive rapid and premature fleet turnover for high-cost ZE/NZE vehicles while imposing the uncertain but often high costs of electricity and hydrogen fuel on the logistics sector. Additionally, while the Proposed Rules may incentivize the transition to ZE/NZE vehicles in the District’s jurisdiction, neither the Initial Study nor the Draft EA appears to have considered whether there is sufficient charging infrastructure to support these fleets outside of the District. Goods move across the air districts, but there is no analysis of whether the infrastructure exists for the anticipated ZE/NZE vehicles to complete these trips. Additionally, as California responds to increasing wildfire threats, public safety power shutoff (“PSPS”) events have become increasingly common.

In response to CTA’s Scoping Comment, the District first states that it is not feasible to anticipate the frequency of PSPS events or to analyze their effects. Draft EA at C-34. This is incorrect. Following each PSPS event, California utilities are required to file reports with the Public Utilities Commission disclosing what occurred. These reports are publicly available and the District can and should assess the number and coverage of PSPS events in its jurisdiction to understand, evaluate, and disclose the interaction between increased electrification and increasing grid instability. The District also deflects from the impacts of PSPS events by relying on the additional solar and battery technologies that it envisions will be implemented at covered warehouses. *Id.* at C-35. However, the District repeatedly explained throughout the PDSR and

the Draft EA that predicting the manner in which the warehouse may choose to comply would be pure speculation. The District's reliance on solar infrastructure to defray the potential significant effects of reliance on unstable grids thus is similarly pure speculation. Additionally, as discussed *supra*, the cost differential created by the District in fact disincentivizes the deployment of on-site solar in favor of ZE/NZE acquisition. Thus, there is evidence that the District's reliance on solar infrastructure to defray potentially significant effects on the grid is misplaced.

While impacts to the State's logistics infrastructure are not specifically listed as impacts in Appendix G, the Appendix "is only an illustrative checklist and does not set forth an exhaustive list of potentially significant environmental impacts under CEQA or standards of significance for those impacts." *City of San Diego v California State University* (2011) 201 Cal.App.4th 1134, 1191; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1111. "Also, the lack of precise quantification or criteria for determining whether an environmental effect is 'significant' under CEQA does not excuse a lead agency from using its best efforts to evaluate whether an effect is significant. *City of San Diego*, 201 Cal.App.4th at 1191; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1370. The District provides no satisfactory explanation for its failure to analyze and disclose the effects of the Proposed Rules on the State's logistics infrastructure. The EA should consider the interaction between expedited electrification and PSPS events. It is reasonably foreseeable that the Proposed Rules will lead to significant disruptions to freight transportation, specifically in light of PSPS events.

#### **E. The District Omits Projects from Its Cumulative Impact Analysis.**

An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable." CEQA Guidelines § 15130(a). This determination is based on an assessment of the project's incremental effects "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." *Id.* at § 15065(a)(3); *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228.

The District contends that a cumulative impact analysis is not required because the Proposed Rules are consistent with the 2016 AQMP, the State SIP Strategy, and the ACT Rule. Draft EA at 4-11-12. However, the Proposed Rules are not consistent with the ACT Rule in that they are specifically designed to be additional to the requirements of the ACT Rule. Similarly, the District cannot rely on the analysis completed for the State SIP strategy since that analysis was focused on statewide emission control strategies adopted by CARB (including the ACT Rule), and did not contemplate further purchase mandates from local air districts.

As to the 2016 AQMP, the District may only rely on the cumulative analysis discussion to the extent cumulative effects were previously adequately addressed and there are no new significant cumulative effects. CEQA Guidelines § 15152(f). In the half decade that has elapsed since the

environmental review for the 2016 AQMP, numerous other proposals to reduce emissions through electrification have been proposed both within and outside the District's jurisdiction that will impact the same electric grid and resources. For example, the cities of Santa Monica and West Hollywood have adopted Reach Building Codes driving full electrification. The cities of Culver City and Hermosa Beach are considering similar initiatives. The California Public Utilities Commission has initiated a rulemaking along with the CEC on building decarbonization (R.19-01-011) and on transitioning from natural gas (R.20-01-007). The cumulative effects of these and other electrification initiatives must be analyzed. CEQA Guidelines § 15130(a)(1); *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 907 (an EIR's analysis of cumulative impacts must consider all sources of related impacts, not just similar sources or projects). While a lead agency has discretion to establish a reasonable cutoff date for future projects to include in its cumulative impact analysis, that determination must be supported by substantial evidence. *South of Market Community Action Network v. City & County of San Francisco* (2019) 33 Cal.App.5th 321, 336. The cumulative effects of mass electrification initiatives adopted and proposed since the 2016 AQMP may risk environmental disaster or severe environmental harm and require evaluation. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408; *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 720. The EA must disclose these new projects and their cumulative effects.

#### **F. The Draft EA Unlawfully Rejects Alternative B.**

The Draft EA impermissibly dismisses an alternative that, if appropriately analyzed and characterized, could reduce environmental impacts. "Pursuant to CEQA's 'substantive mandate,' an agency may not approve a proposed project if feasible alternatives exist that would substantially lessen its significant environmental effects." *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 520; see Pub. Resources Code § 21002. Despite identifying environmental benefits associated with Alternative B (Decreased Emissions Reductions), the Draft EA determines that it is not environmentally superior to the Proposed Rules. The Draft EA does not adequately support its conclusion that only Alternative C (Increased Emissions Reductions) is "environmentally superior." Draft EA at 5-27.

The Draft EA indicates that the Proposed Rules would have significant and unavoidable direct impacts (1) on energy resources, (2) from hazardous materials and solid and hazardous waste, and (3) on transportation and significant and unavoidable indirect impacts on (1) aesthetics, (2) agriculture and forestry, (3) biological resources, (4) cultural resources, (5) geology and soils, (6) hydrology and water quality, (7) noise, (8) mineral resources and (9) utilities and service systems. Draft EA at 6-2-3. The Draft EA further acknowledges that *all* of these significant and unavoidable impacts are in fact *worsened* by Alternative C. *Id.* at 5-16-17. Yet the District paradoxically labels this as the environmentally superior alternative because the NOx and PM emissions will be lower than under the Proposed Rules. The District is measuring with the wrong yardstick. The environmentally superior alternative is an alternative that *lessens* the project's *significant effects*. The District itself acknowledges that the Proposed Rules have a less than

significant effect on long-term air quality impacts. *Id.* at ES-4. There is no significant effect of the Proposed Rules that Alternative C in fact lessens.

By contrast, Alternative B would “lead to less cargo growth potentially being diverted to other ports and resulting in less GHG emissions from cargo growth diversion than the proposed project,” “lead to a lower demand on utilities,” reduce infrastructure needs, “reduce the number of batteries that need to be recycled, and “have less adverse direct impacts to energy and hazardous materials and solid and hazardous waste.” *Id.* at 5-15. “Alternative B’s indirect adverse environmental impacts on air quality and GHG emissions, energy, hazardous materials and solid and hazardous waste, and transportation would likely be less than the proposed project.” *Id.* “The reduction in the number or intensity of development of new facilities and grid improvement would likely lead to less adverse indirect environmental impacts in the areas of Aesthetics, Agriculture and Forestry, Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality, Mineral Resources (with regards to long-term operational-related impacts from reduced demand for new mines and mining activities because of the reduced use and demand of lithium-based batteries in ZE vehicles), Noise, and Utilities than the proposed project.” *Id.* The only metric by which the District finds Alternative B insufficient is that “Alternative B’s ongoing, long-term, and permanent air quality and public health **benefits would be less** when compared to the proposed project.” *Id.* at 5-16. But as described above, this is not the standard—the question is whether the alternative would lessen the significant effects and the District has determined that the Proposed Rules’ effect on long-term air quality impacts is **less than significant**.

The only grounds on which the District may reject an environmentally superior alternative is if it is infeasible. The District evaluated five alternatives to the Proposed Rules, including a no project alternative. One of these, Alternative B, was a version of the Proposed Rules with a narrower application (only to warehouses greater than 200,000 square feet), a year delay in compliance obligations, and less aggressive emissions reduction targets as a result of a decreased rule stringency factor. Draft EA at 5-6. As noted in Table 5-2, Alternative B would accomplish **all** of the District’s objectives. Draft EA at 5-12. Despite the reduced environment impacts described above, the District rejected Alternative B because it did not reduce emissions quite as much. However, a lead agency cannot adopt artificially narrow project objectives that would preclude consideration of reasonable alternatives for achieving the project’s underlying purpose. *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 669; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 203. Alternative B accomplishes the District’s aims while reducing the environmental impacts.

## VIII. Conclusion.

The District has not been granted the authority to impose a sweeping purchase mandate on existing, unmodified warehouses under the guise of an ISR regulation. While the District’s goals of reducing air emissions in the Basin are laudable, the District has only the rulemaking authority



Ryan Bañuelos  
Victor Juan  
March 2, 2021  
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invested in it by statute. Even if the Legislature had granted the District such authority, it is preempted by federal law. The regulation as proposed fails to meet the standards specified by the Health and Safety Code and the accompanying Draft EA fails to meet the District's obligations under CEQA and fails as an informational document. For this reason, the District must revise the Proposed Rules and EA before adoption in order to bring them into compliance with state and federal law.

Sincerely yours,

HOLLAND & KNIGHT LLP



Marne S. Sussman

cc: Chris Shimoda



The Resource for Warehouse Logistics

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March 2, 2021

Ian McMillan, Planning and Rules Manager  
Victor Juan, Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765-4178

Sent via email

**Re: Comments on Proposed Rule 2305**

Dear Mr. McMillan & Mr. Juan:

The California Chapter of the International Warehouse Logistics Association (IWLA) would like to request that the comments in this letter be included in the administrative record in response to the Draft Staff Report for proposed rule 2305.

Members of the IWLA are an integral part of Southern California supply chain and face unique challenges as a frontline essential workforce. Our members provide warehouse and other logistics services in every sector of the economy: manufacturers, wholesalers and retailers, and handle all kinds of products ranging from food to pharmaceuticals, medical supplies to consumer goods, domestically and internationally. Approximately 18 million people who live in Southern California rely on warehouses and the goods movement system to get them the items they need to survive.

**Comments for consideration:**

- The SCAQMD has authority over stationary sources in our region and has reached outside their mandate with the proposed rule to regulate mobile sources as this authority resides with the California Air Resources Board (CARB).
- The proposed rule requires warehouses to control truck fleets and decrease truck emissions, but technology is not available for heavy-duty electric trucks at present.
- Warehouses don't control which trucks come to their facilities, when they arrive, where they come from or anything related to truck trips, so using truck trips as a way to meet the rule requirements is not feasible and arbitrary.
- Warehouses have no control over how truck engines are made and in most cases don't own trucks nor control what type of trucks shipping companies purchase.
- The Stringency factor seems to be arbitrary as there doesn't seem to be any rational, modeling or science behind how the number .0025 was derived. It's based off hypothetical cost emission reductions that don't appear to be practical.

- Warehouses provide a vast array of jobs for people of any level of education and skill set that provide upward mobility in the job market, especially in light of the economic downturn and the COVID-19 pandemic.
- The proposed rule will impose a significant burden and expense in the hundreds of thousands for an average size 250 thousand square foot warehouse. This is at a time where over 18 million people who live in Southern California and rely on warehouses and the goods movement system to get them the items they need to survive will face increased costs that will be regressive and hit lower income communities the hardest.
- Warehouses in SCAQMD coverage areas will be placed at a competitive disadvantage and beneficial cargo owners will look to divert their cargo to alternative areas in surrounding states or alternative ports of entry to warehouse and distribute their cargo.
- Jobs are scarce now, and a mitigation fee/tax of \$1 per square foot of warehouse space will critically impact warehouse operator's ability to create new jobs or sustain existing ones. This would be a permanent increase that has no sunset clause or limits to how it could rise. Most if not all warehouses will end up paying the fee/tax due to the impossibility of compliance with this mandate.

We appreciate your consideration and look forward to your response to our comments. Additionally we would like to be included in your distribution list for all future correspondence concerning Proposed Rule 2305.

Sincerely,



Mike Williams  
Executive Director  
IWLA California Government Relations  
(916) 704-2392



March 2, 2021

**VIA E-MAIL**

Ian MacMillan  
Victor Juan  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765-4178  
imacmillan@aqmd.gov / vjuan@aqmd.gov

Re: Comments on Proposed Rule 2305 (Warehouse Indirect Source Rule)

Dear Mr. MacMillan and Mr. Juan:

Watson Land Company is an owner and developer of master planned business and industrial centers in Southern California and the East Coast. The company strives to be a good corporate citizen by attracting quality companies that bring jobs and other economic benefits to the communities where Watson has real estate holdings.

As an owner of logistics facilities (“warehouses”), Watson Land Company provides needed infrastructure and is proud to be part of the supply chain industry that has been deemed essential by both state and federal governments. As you know, the warehouse industry has played a vital role in the regional and national response to the Covid-19 pandemic. Many of our customers are warehouse operators engaged in the delivery of much-needed goods and medicines to the population of Southern California during these difficult times.

We adamantly oppose the adoption of Proposed Rule 2305 (Warehouse Indirect Source Rule or “ISR”). We believe the District’s proposed ISR would have severe unintended consequences and is ill-timed in the midst of the COVID-19 pandemic and what will likely be a long economic recovery. The District is pursuing a regulation targeted at a specific sector that serves our region and nation, and which is experiencing enormous strains due to the challenges of the current pandemic.

The ISR will impose an entirely new regulatory compliance regiment onto distribution warehouse operators. Many warehouse operators are not structured or staffed with the systems and personnel needed to satisfy the oppressive compliance requirements embodied in the proposed rule. They generally lack the personnel and systems needed to gather the information required to be reported. Thus, the District’s rulemaking would divert industry resources and attention to this rule at a time when the industry needs to maintain focus on the efficient and reliable delivery of essential goods.

Watson Land Company has the following comments regarding the ISR:

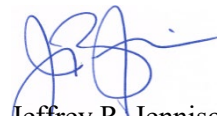
1. The SCAQMD does not have the legal authority to adopt the ISR. The District has the authority to engage in such rulemaking with NEW Construction projects, but not EXISTING facilities. The proposed ISR seeks to regulate existing buildings/facilities. In addition, the District has not substantiated its jurisdiction/authority to regulate the trucking industry, which is integral part of interstate commerce. As noted in the name of the proposed rule, the proposed rule is an

“indirect” means of regulating the trucking industry through warehouses. The District should publicly explain its rationale in seeking to regulate interstate commerce activity, thereby presenting Federal preemption issues with this proposed ISR.

2. This rule would impose additional/permanent costs on our customers of approximately \$90,000 to over \$1 million annually. Many of these businesses are struggling to remain in California, given the current regulatory environment. The proposed ISR targets a specific essential industry with \$1 billion in annual taxes/fees during the worst possible time, as it responds to the challenges of the pandemic on behalf of our region and nation.
3. The District has not clarified how these “fees” would provide any benefit/service to the group from which it is collected (the warehouse industry). Thus, these “fees” may easily be classified as a tax. This presents a question of the District exceeding its jurisdiction/authority in imposing this tax.
4. It is not feasible for the warehouse industry to comply with the ISR due to the following: Under the current proposed rule, reporting obligations begin only 60 days from rule adoption, and the substantive WAIRE Points obligations will commence as soon as July, 2021. The proposed rule requires warehouses to control truck fleets and decrease truck emissions but warehouse operators are not able to accomplish this task. Warehouses have no control over how truck engines are manufactured. Warehouse operators do not own truck fleets nor control what type of trucks shipping companies purchase. Warehouse operators do not control which trucks come to warehouses, when they arrive, where they come from or any other variables related to truck trips.
5. The technology is not fully available to accomplish items on the WAIRE menu. For example, there are no heavy-duty electric trucks available that are 100% viable from a technology and/or economically reasonable standard.
6. Warehouses provide a broad range of jobs for people with diverse levels of education and skill sets, leading to upward mobility. The San Pedro Bay Ports are an economic engine responsible for approximately 3.1 million jobs throughout the nation. The warehouse industry serves as essential infrastructure to these ports. This socioeconomic benefit is threatened by the onerous costs imposed by the ISR.

Should you have any questions or wish to discuss our perspective, please feel free to contact me.

Respectfully,



Jeffrey R. Jennison  
President and Chief Executive Officer  
Watson Land Company

cc: SCAQMD Governing Board



March 2, 2021

Victor Juan  
Program Supervisor  
South Coast Air Quality Management District  
28165 Copley Drive  
Diamond Bar, CA 91765

**Re: Proposed Rule 2305: Warehouse Indirect Source - WAIRE Program and Proposed Rule 316 - Fees for Regulation**

Dear Mr. Juan,

On behalf of the [Los Angeles Cleantech Incubator](#) (LACI), thank you for providing the opportunity to comment on South Coast Air Quality Management District's (SCAQMD) *Proposed Rule 2305: Warehouse Indirect Source - Warehouse Actions and Investment in Reduction of Emissions (WAIRE) Program and Proposed Rule 316 - Fees for Regulation*. LACI supports passing an Indirect Source Rule focused on warehouses, as its enforcement is a necessary effort to reduce air pollution and climate emissions in the region. LACI also believes that a strong WAIRE Program will accelerate deployment of the zero emissions technology required to meet air pollution and climate goals of the state while also providing economic benefits to the local workforce and goods movement industry. These effects of the WAIRE Program align with LACI's efforts to advance transportation electrification in the greater Los Angeles region.

In May 2018, LACI convened the [Transportation Electrification Partnership](#) (TEP), an unprecedented regional public-private collaboration to accelerate deep reductions in climate and air pollution by the time of the 2028 Olympic and Paralympic Games by pursuing bold targets, pilots, initiatives, and policies that are equity-driven, create quality jobs, and grow the economy. The 30+ members of TEP represent state regulators, local government, utilities, industry leaders, labor organizations and startups, all of whom are working to achieve [bold transportation electrification targets](#) in Los Angeles County, including the following:

- 95,000 chargers installed for goods movements to enable 60% of medium-duty delivery trucks to be electric and 40% of short-haul and drayage trucks on the road to be zero emissions by 2028

Implementation of the WAIRE Program will provide a regulatory solution to difficult problems, including access to depot charging infrastructure for fleets that do not own the facilities on which they operate. To further advance reductions in air pollution and climate emissions, LACI wishes to offer the following specific support and recommendations to Proposed Rule 2305:

1. Maintain Zero Emission Yard Trucks as the Sole Acceptable Yard Truck Technology for Earning WAIRE Points

Zero emission yard trucks have been in commercial operation at warehouses and rail yards in SCAQMD territory since 2017, having long proved their economic and operational viability. As structured, acquiring and deploying zero emission yard tractors provides an opportunity to earn large quantities of WAIRE points, and SCAQMD should not distract from this incentive by including any ability to earn points from deployment of NZE yard tractors.

2. Consider Offering WAIRE Points per EVSE Successfully Installed and Energized

As structured, purchasing EVSE earns WAIRE Points for each unit acquired, while beginning and completing an installation charges earns WAIRE Points per construction permit, whether the construction project entailed installing one or ten EVSE. We encourage SCAQMD to review this structure to ensure that the Program incentivizes timely completion of construction projects and energizing of EVSE, as well as maximizing the size of EVSE depots deployed.

3. Consider Increasing the Stringency Level

We consider the current proposed stringency value of 0.0025 WAIRE points/WATT as too low to accelerate deployment of zero emission vehicles and reduce air pollution in burdened communities, and urge the Air District to evaluate and consider higher stringency values for the final rule.

In the face of increasing rents and cargo diversion, the regional warehousing industry continues growing. Thus, the industry can, and must, shoulder regulatory costs aimed at reducing air pollution. We request that the agency adopt at least a 0.005 WAIRE points per WATT stringency and agree to revisit the effectiveness of this rule at a later date. The Air District's own analysis shows that a stronger rule would have a marginal result in warehouses leaving the region, and a higher stringency value is necessary to bring about a transformation of Southern California's goods movement industry.

4. Consider Increasing the Mitigation Fee to Further Encourage Investments in Zero Emissions Technology

Implementing too low of a mitigation fee option would allow regulated facilities to pay their way into compliance, rather than invest in on-site WAIRE menu items to clean up operations. This is proven by the agency's own projections showing that the \$1000/point fee remains a cheaper compliance pathway in the initial phases of the rule. In order to incentivize investment in the WAIRE menu items, we ask that staff consider a higher mitigation fee. Additionally, should warehouses opt to pay their way into compliance, the

Air District should require that these funds are spent in the communities surrounding those facilities.

5. Provide Transparency on Data Relevant to Enforcing Compliance

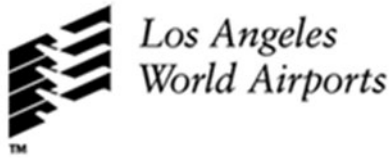
The Air District must make certain information relevant to Proposed Rule 2305 available to the public to ensure transparency in enforcement and compliance effectiveness. This type of information includes, but is not limited to, the number of truck trips to each regulated facility and those trucks' fuel types. This traffic information is critical to understanding the impacts of warehouses on adjacent communities and will be essential for proper enforcement of the rule, as well as targeted advancement of zero emission deployments.

We thank you for the opportunity to provide comment on Proposed Rule 2305. LACI believes this is an important step towards the region and the state realizing its air pollution and climate emissions goals, and supports an equitable and immediate implementation of the rule that maximizes the opportunities for the region to remain a leader in goods movement and clean transportation.

Sincerely,

Jack Symington  
Program Manager, Transportation  
Los Angeles Cleantech Incubator





Submit via-email

March 2, 2021

South Coast Air Quality Management District  
c/o Victor Juan  
Program Supervisor  
Planning and Rules  
21865 Copley Drive  
Diamond Bar, CA 91765

LAX  
Van Nuys  
City of Los Angeles

**RE: Comments Regarding Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305**

Eric Garcetti  
Mayor  
Board of Airport  
Commissioners  
Sean O. Burton  
President  
Valeria C. Velasco  
Vice President

Dear Mr. Juan:

Gabriel L. Eshaghian  
Beatrice C. Hsu  
Nicholas P. Roxborough  
Dr. Cynthia A. Telles  
Karim Webb  
Justin Erbacci  
Chief Executive Officer

Los Angeles World Airports (LAWA) appreciates the opportunity to participate in the South Coast Air Quality Management District’s (AQMD) Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305 (proposed rule) rule making development. LAWA supports the need to develop programs to achieve applicable national ambient air quality standards (NAAQS) and reduce greenhouse gas emissions in the South Coast region. AQMD and LAWA recently entered into a Memorandum of Understanding with mutually agreed upon air quality emission reduction programs at Los Angeles International Airport (LAX) that will achieve State Implementation Plan (SIP) creditable emission reductions.

We would like to offer the following comments on the proposed rule as staff continues to develop the rule and emission reduction opportunities for the Warehouse Indirect Source Rule.

First, LAWA is concerned about the potential to overcount truck trips that visit cargo and warehouse facilities on a single campus like LAX. LAX has several cargo facilities in close proximity to one-another. Often, one truck will visit two different cargo operators within the same physical facility (physically moving from one loading dock to another) or visit multiple cargo facilities at LAX before departure. Under the proposed rule, where actual truck trips will be collected by each cargo operator and operators will accrue WAIRE points compliance obligations based on the number of truck trips to their facility, this may result in overcounting truck trips at LAX and unfairly penalize warehouse operators at LAX by inflating the number of WAIRE points compliance obligations as compared to warehouse operators at off-airport facilities. The counting of truck trips by each operator will also make it appear that there is far more truck traffic at LAX than



there actually is. LAWA requests AQMD refine its methodology for calculating an operator's Weighted Annual Truck Trips (WATTs) to eliminate the overcounting of truck trips to a single campus like LAX. Revising the methodology for calculating WATTs to account for trucks that pick-up cargo from multiple operators on a single campus will better represent the actual number of truck trips and the actual oxides of nitrogen (NOx) emissions from warehouse activity and thereby not unfairly burden cargo operators located on a single campus with excessive compliance obligations that require them to undertake additional mitigation actions.

Second, LAWA would like additional flexibility to develop a custom WAIRE project to assist LAX cargo operators earn WAIRE points based on LAWA's modernization projects and electric infrastructure upgrades. LAWA is currently undergoing several large capital improvement projects, including the Landside Access Modernization Program (LAMP), that support emission reduction activities. A component of LAMP is the Automated People Mover, which will be a zero-emission electric train system connecting LAX to the regional rail system and transporting passengers, guests, and employees to and from the Central Terminal Area at LAX more efficiently. LAWA would like to be able to use these campus-wide upgrades, such as LAMP, as actions that count towards an individual operator's WAIRE points.

Third, LAX depends upon financial incentives, including the Federal Aviation Administration's Voluntary Airport Low Emission Program (VALE), to fund emission reduction programs. VALE funding supports a wide-range of emission reduction activities at airports and could include electrification of cargo operations. Projects recently funded under the VALE program include the purchase of electric buses and infrastructure to provide ground power to parked aircraft. In order to be eligible for VALE grant funds, airport emission reduction projects must be voluntary. If airport projects are the result of a regulatory program, such as the proposed rule, LAWA will lose eligibility for VALE funding, and important emission reduction projects may not be implemented as a result.

Fourth, the AQMD should consider potential preemption issues under 49 U.S.C. §§ 41713(b) [the Airline Deregulation Act] and 14501(c) [the Federal Motor Carrier Act], which, respectively, restrict the ability of local authorities to enact or enforce any regulation related to a price, route, or service of any air carrier or any motor carrier engaged in the transportation of property.

Lastly, consider clarifying or replacing the phrase "may be used" in the Requirements section on page 4, section (d)(1), from the proposed rule. This phrase is not defined and raises confusion about what constitutes "floor area" in a warehouse that "may be used" for warehousing activities and how warehouse operators apply the rule to their warehouses.

***Section (d)(1) "...Only warehouse operators in buildings with greater than or equal to 100,000 square feet of floor area that may be used for warehousing activities and who operate at lease 50,000 square feet of the warehouse are required to earn WAIRE Points." (emphasis added).***

LAWA supports the AQMD's goal to improve air quality in the region and would like to work with staff to create a framework that better reflects cargo operations at airports and does not unfairly penalize cargo operators on airport property. We believe these revisions to the proposed rule will provide greater visibility and understanding of cargo operations and related air quality improvement programs at airports and encourage the development of new programs resulting in

Mr. Victor Juan  
March 2, 2021  
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cleaner air. Active engagement between SCAQMD staff, airports, and other stakeholders can drive the change towards cleaner air.

LAWA appreciates the opportunity to provide these comments and looks forward to continuing to work with SCAQMD staff and the Warehouse Indirect Source Rule Development Group to achieve emissions reductions through a collaborative approach. If you have any questions, please contact Tami Mccrossen-Orr of LAWA's Environmental Programs Group, at (424) 646-6734.

Sincerely,

*Samantha Bricker*

Samantha Bricker  
Chief Sustainability & Revenue Management Officer  
Los Angeles World Airports

SB:TMO:eb

cc: Councilman Joe Busciano, City of Los Angeles Representative, AQMD Board Member  
Wayne Nastri, Executive Office, AQMD  
Ian MacMillan, Planning and Rules Manager, AQMD

**CENTER FOR COMMUNITY ACTION & ENVIRONMENTAL JUSTICE  
 EARTHJUSTICE  
 EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE  
 LONG BEACH ALLIANCE FOR CHILDREN WITH ASTHMA  
 NATURAL RESOURCES DEFENSE COUNCIL  
 PARTNERSHIP FOR WORKING FAMILIES  
 SAN PEDRO & PENINSULA HOMEOWNERS COALITION  
 SIERRA CLUB  
 THE LOS ANGELES COUNTY ELECTRIC TRUCK & BUS COALITION  
 WAREHOUSE WORKER RESOURCE CENTER  
 WEST LONG BEACH ASSOCIATION**

March 2, 2021

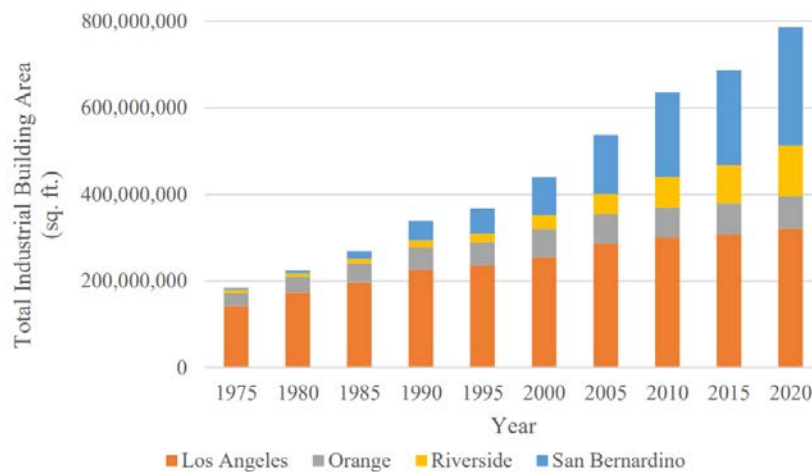
Victor Juan  
 Program Supervisor  
 South Coast Air Quality Management District  
 21865 Copley Drive  
 Diamond Bar, CA 91765

**Re: Comments on the Warehouse Indirect Source Rule (Proposed Rule 2305)**

Dear Mr. Juan,

On behalf of the undersigned coalition of organizations, we submit these comments on Proposed Rule 2305. We appreciate staff’s continued work on the warehouse indirect source rule, but we remain concerned that the current proposal will not meaningfully regulate an industry that has polluted communities for years. As demonstrated in the figure below, the warehouse industry has grown steadily in the South Coast Air Basin in the past two decades,<sup>1</sup> and nearby communities continue to be disproportionately impacted by the polluting trucks visiting these facilities.

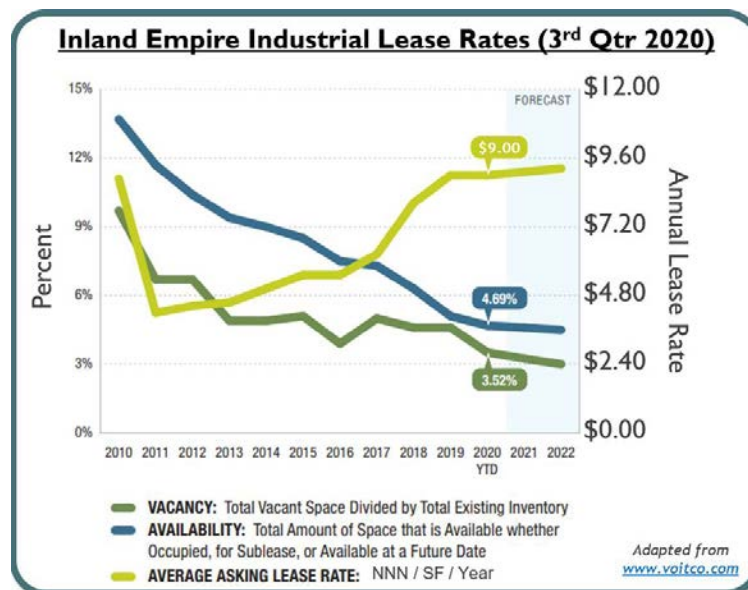
**Figure 10: Industrial Building Growth by County**



<sup>1</sup> SCAQMD, Preliminary Draft Staff Report, 45.

The ongoing covid-19 pandemic has exacerbated the unacceptable health risks that these frontline communities face every day. Last year, this public health crisis coincided with one of the worst smog seasons in the South Coast Air Basin in decades – with a total of 157 days of ozone pollution levels exceeding state and federal air quality standards.<sup>2</sup>

Meanwhile, the warehouse industry has reported record-breaking profits during the pandemic as consumers increasingly rely on e-commerce. Last year, the San Pedro Bay Ports hit record freight volumes for several months. At the Port of Long Beach, December 2020 was the Port’s busiest month in its 110-year history, and 2020 was the Port’s “all-time busiest year.”<sup>3</sup> This increased port activity has only accelerated the expansion of an already booming warehouse industry, further compounding the health burdens on nearby communities.<sup>4</sup> In the Inland Empire, warehouse vacancy rates have reached their lowest in a decade while lease rates have increased.<sup>5</sup>



Industry analysts have further noted that the industry is doing particularly well financially. “Major investors like Blackstone; and household tenants like Amazon; and landlords like Dedeaux Properties, Prologis, and Rexford Industrial Realty are raking in all the chips in the changing landscape brought on by the coronavirus crisis.”<sup>6</sup>

A strong warehouse indirect source rule will address these growing disproportionate pollution burdens, provide basic health protections to our communities, and put the South Coast on track to attain

<sup>2</sup> Tony Barboza, *L.A. began 2020 with a clean-air streak but ended with its worst smog in decades*, Los Angeles Times (Dec. 6, 2020), <https://www.latimes.com/california/story/2020-12-06/2020-la-air-quality-southern-california-pollution-analysis>.

<sup>3</sup> Port of Long Beach, *Port Moves a Record 8.1 Million TEUs in 2020*, Jan. 15, 2021, <https://www.polb.com/port-info/news-and-press/port-moves-a-record-8-1-million-teus-in-2020-01-15-2021/>.

<sup>4</sup> See Justin Ho, *As imports boom, warehouses fill up, and businesses face a storage shortage*, Marketplace (Oct. 1, 2020), <https://www.marketplace.org/2020/10/01/imports-boom-warehouses-fill-up-businesses-face-storage-shortage-online-shopping-covid19/>.

<sup>5</sup> See also Greg Cornfield, *Southern California Industrial Real Estate Market: What to Know for 2021*, Commercial Observer (Feb. 3, 2021), <https://commercialobserver.com/2021/02/southern-california-industrial-real-estate-2021-warehouse/>.

<sup>6</sup> *Id.*

federal and state ambient air quality standards. But the Air District must prioritize public health and take into account community needs in the development of this rule.

**I. The Air District must increase the proposed stringency in order to meaningfully address public health concerns.**

We oppose the current proposed stringency value of 0.0025 WAIRE points per WATT and urge the Air District to evaluate and consider higher stringency values for the final rule. The undersigned organizations have repeatedly asked for a rule that starts with sufficient stringency to provide relief to communities sooner.

The Air District has identified several factors that were taken into consideration in determining the stringency.<sup>7</sup> We disagree with the agency's approach of "balancing all factors." Public health concerns are unequivocally of greater importance than the financial impact to an industry that profits at the expense of our communities' health. As the Air District has acknowledged, the warehouse industry is experiencing record profits and all-time low vacancies. Despite increasing rents and cargo diversion, the industry continues to grow in the region and facilities are not choosing to leave the area.<sup>8</sup> The industry can, and must, shoulder these regulatory costs. A transformation of the warehouse industry is long overdue, and public health must be the single most important factor in guiding the stringency of this rule.

The current range of stringency values, if implemented, is far too low to bring about meaningful change to warehouse operations.<sup>9</sup> The lowest stringency value studied by the Air District (0.0001) would only reduce, at a maximum, 1.5 tons per day of nitrogen oxide emissions and 0.01 tons per day of diesel particulate matter emissions.<sup>10</sup> Due to the annual variable and phase-in schedule, the full stringency would not even apply to many warehouses for years.<sup>11</sup> These emissions reductions will not be sufficient to bring relief to communities living adjacent to warehouse facilities in the near future. We request that the agency adopt at least a 0.005 WAIRE points per WATT stringency and agree to revisit whether this is sufficient at a later date. The Air District's analysis shows that a stronger rule would have a marginal result in warehouses leaving the region (i.e. six warehouses leaving under a 0.005 stringency level and three for a 0.0025 stringency level), and a higher stringency value is necessary to bring about a transformation of this industry.

**II. A strong warehouse ISR must prioritize zero-emissions technology.**

As noted in our previous comment letters, a strong warehouse indirect source rule must prioritize zero-emissions technology and infrastructure, the only solution that will effectively address the air quality and health impacts caused by this industry. Yet, the Air District's scenario analysis continues to overestimate the emissions reductions for near-zero technologies. For example, facilities earn the same amount of points for NZE class 4-7 truck visits and ZE class 4-7 truck visits.<sup>12</sup> This obscures the real costs of near-zero technologies – further investment in natural gas and oil infrastructure that will perpetuate harm in frontline communities. We request that the Air District update the WAIRE menu to incentivize investment in zero-emissions technology and infrastructure.

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<sup>7</sup> Preliminary Draft Staff Report, 6.

<sup>8</sup> *Id.* at 58.

<sup>9</sup> SCAQMD, *Warehouse ISR Working Group Presentation* (Dec. 17, 2020), slides 21-22.

<sup>10</sup> *Id.* at slide 22.

<sup>11</sup> Preliminary Draft Staff Report, 29.

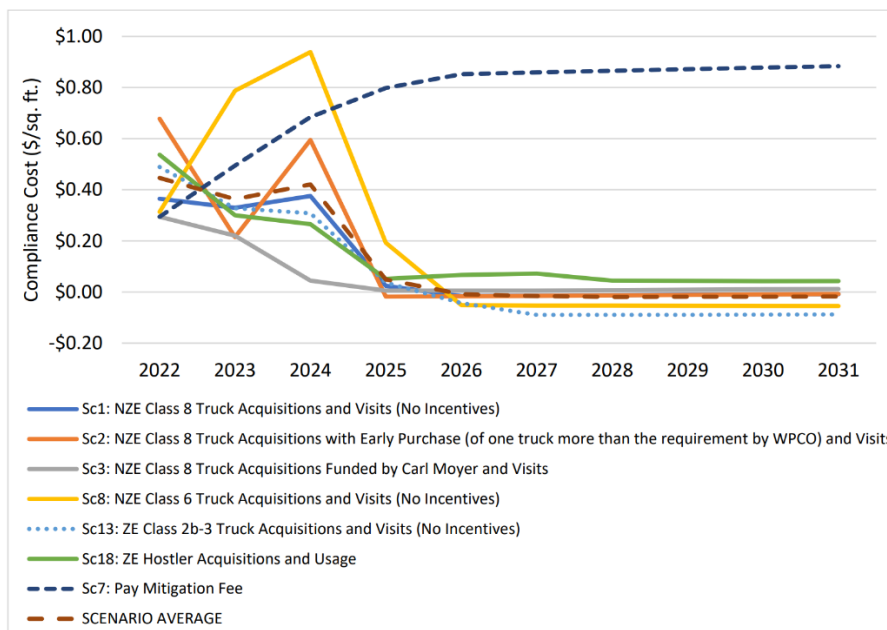
<sup>12</sup> *Id.* at 97.

A rule that incentivizes zero-emissions technology will protect the health of our communities and create quality jobs. The transition towards zero-emissions will require the installation of charging infrastructure, on-site solar panels, and the manufacturing of electric vehicles – all of which will lead to meaningful job opportunities in the implementation of cleaner technologies at warehouses. The manufacturing of zero-emission buses and solar panel installation on larger commercial buildings have created and broadened access to unionized jobs with quality wages and benefits for workers. The warehouse indirect source rule can facilitate a similar transformation that will further increase demand for quality jobs in the greening energy, transportation, and manufacturing sectors. The Air District should not waste an opportunity to develop a rule that will lead to significant emissions reductions and create access to good jobs.

**III. The Air District must increase the mitigation fee to encourage investment in zero-emissions.**

We remain concerned about the mitigation fee option as it allows regulated facilities to pay their way into compliance, rather than invest in on-site WAIRE menu items to clean up operations. Although the scenario cost analysis estimates that the mitigation fee will be a more costly option and not frequently used, the agency’s projections show that the \$1000/point fee remains a cheaper compliance pathway in the initial phases of the rule.<sup>13</sup>

**Figure 14: Potential Bounding Analysis Costs from Truck Acquisition and Subsequent Usage Scenarios**



In order to incentivize investment in the WAIRE menu items, we ask that staff consider a higher mitigation fee. In the event that warehouses opt to pay their way into compliance, the Air District should require that these funds are spent in the communities surrounding those facilities.

**IV. The Air District should release data on warehouse facilities that is relevant to compliance.**

In order to ensure proper public engagement, the Air District must make certain information relevant to compliance available to the public. Specifically, we request that the agency release the

<sup>13</sup> *Id.* at 66.

following data: the number of truck trips to each regulated facility; the number of trucks and tractors serving a warehouse, by truck class and fuel type; the trucking companies servicing the regulated facilities; and the truck routes to and from each facility.

This information is critical to understanding the impacts of warehouses in nearby communities. There is no legal rationale to withhold this information from the public. Such data does not constitute confidential business information and will be essential for proper enforcement of the rule.

**V. We cannot afford further delays of the warehouse indirect source rule.**

Finally, the Air District must adopt the warehouse indirect source rule as expeditiously as possible, and no later than April. We appreciate staff's continued work on this critical regulation, but the rule has experienced numerous delays while the freight industry continues to pollute communities living near warehouses. The Air District has the opportunity to adopt a strong and equitable warehouse indirect source rule that will provide significant health benefits to frontline communities. We ask that staff continue to engage with community members so that community needs and concerns can be addressed in the development of this rule.

We appreciate your consideration of these comments and the staff's work on this important rule. We look forward to continuing to work with the Air District to develop a regulation that prioritizes public health.

Sincerely,

Regina Hsu  
Michelle Ghafar  
Adrian Martinez  
Earthjustice

Ivette Torres  
Center for Community Action & Environmental Justice

Taylor Thomas  
East Yard Communities for Environmental Justice

Sylvia Betancourt  
Long Beach Alliance for Children with Asthma

Heather Kryczka  
Natural Resources Defense Council

Kathy Hoang  
Partnership for Working Families

Peter M. Warren  
San Pedro & Peninsula Homeowners Coalition

Carlo De La Cruz  
Sierra Club



Yasmine Agelidis  
The Los Angeles County Electric Truck & Bus Coalition

Andrea Vidaurre  
Warehouse Worker Resource Center

Theral Golden  
West Long Beach Association

cc:

Wayne Natri  
Executive Officer  
South Coast Air Quality Management District

Sarah Rees  
Deputy Executive Officer  
Planning, Rule Development & Area Sources  
South Coast Air Quality Management District

Ian MacMillan  
Planning and Rules Manager  
South Coast Air Quality Management District

March 2, 2021

Ian MacMillan  
Victor Juan  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765-4178

Sent Via Email: imacmillan@aqmd.gov / vjuan@aqmd.gov

**Subject: Comments on Proposed Rule 2305 (Warehouse Indirect Source Rule)**

Dear Mr. MacMillan:

BizFed opposes the adoption of Rule 2305 (Indirect Source Rule). Warehouses are integral to the Southern California logistics industry. The logistics industry plays a crucial role in the response to the COVID-19 pandemic—not only in the distribution of medical supplies, vaccines, and equipment but also in delivering goods to a public that has become increasingly dependent on e-commerce.

The District's proposed ISR seems to be a misguided policy during the COVID-19 pandemic. The District is pursuing a regulation targeting a sector that serves as a lifeline to our region and the nation and is deemed essential by federal and state governments. Under the current draft rule, reporting obligations begin only 60 days from rule adoption. The substantive WAIRE Points obligations will commence as soon as July 2021.

The following further comments are provided in response to the District's Proposed Rule 2305:

1. This rule would impose additional/permanent costs on warehouses of approximately \$.90 per square foot. This extra cost would amount to targeting a specific essential industry with \$1 billion in annual fees during the worst possible time and while responding to the pandemic's challenges on behalf of our nation.
2. It is not feasible to comply with the ISR due to the following:
  - a) The proposed rule requires warehouses to control truck fleets and decrease truck emissions. Yet, warehouse operators are not able to accomplish this task
  - b) Warehouses have no control over how truck engines are manufactured.
  - c) Warehouses do not own truck fleets, nor do they control what type of trucks shipping companies purchase
  - d) Warehouse operators do not control which trucks come to warehouses, when they arrive, where they come from, or any other variables related to truck trips.
3. The technology is not available to accomplish items on the WAIRE menu. For example, there are no heavy-duty electric trucks available that are viable from a technology and/or economically reasonable standard.
4. Warehouses have been deemed to be essential businesses by the State for important reasons including:
  - a) The approximately 18 million people who live in Southern California rely on warehouses as an integral part of the goods movement system to get them the items they need to survive, like food, medical supplies, clothes etc.

5. This rule creates tremendous uncertainty in the economy as the full negative impact of this ISR is not known.

a) Uncertainty should not be created in this critical, essential business sector, especially considering the current economic downturn/unemployment crisis associated with the COVID-19 pandemic.

6. Warehouses provide a broad range of jobs for people of every level of education and skillset. Warehouses and the logistics industry offer jobs that lead to upward ability. This job creation is a socioeconomic benefit that the proposed ISR's onerous costs would threaten.

7. The proposed ISR seeks to "indirectly" regulate the trucking industry through the Warehouse industry. The District should publicly explain how it has the jurisdiction/authority to regulate a mobile source that is such an integral part of interstate commerce as the trucking industry.

Thank you for your attention to these comments. Please include these comments as part of the official record for Proposed Rule 2305 (Warehouse Indirect Source Rule) so that all SCAQMD Board Members may have the opportunity to review the above.

If you have any questions, please contact [sarah.wiltfong@bizfed.org](mailto:sarah.wiltfong@bizfed.org).

Respectfully,



Donna Dupperon  
BizFed Chair  
Torrance Area Chamber



David Fleming  
BizFed Founding Chair



Tracy Hernandez  
BizFed Founding CEO  
IMPOWER, Inc.

## BizFed Association Members

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Action Apartment Association  
Alhambra Chamber of Commerce  
American Beverage Association  
American Institute of Architects - Los Angeles Angeles Emerald  
Apartment Association of Greater Los Angeles Apartment Association, CA Southern Cities, Inc.  
Arcadia Association of Realtors  
AREAA North Los Angeles SFV SCV  
Armenian Trade and Labor Association  
Associated Builders & Contractors, Inc. Southern California Chapter  
Association of Club Executives  
Association of Independent Commercial Producers  
Azusa Chamber of Commerce  
Bell Gardens Chamber of Commerce  
Beverly Hills Bar Association  
Beverly Hills Chamber of Commerce  
Black Business Association  
BN14SUCCESS  
Bowling Centers of Southern California  
Boyle Heights Chamber of Commerce  
Building Industry Association - Baldyview  
Building Industry Association - LA/Ventura Counties  
Building Industry Association - Southern California  
Building Owners & Managers Association of Greater Los Angeles  
Burbank Association of REALTORS  
Burbank Chamber of Commerce  
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Business Resource Group  
CA Natural Resources Producers Assoc  
CalAsian Chamber  
California Apartment Association- Los Angeles  
California Asphalt Pavement Association  
California Bankers Association  
California Business Properties Association  
California Business Roundtable  
California Cannabis Industry Association  
California Cleaners Association  
California Construction Industry and Materials Association  
California Contract Cities Association  
California Fashion Association  
California Gaming Association  
California Grocers Association  
California Hispanic Chamber  
California Hotel & Lodging Association  
California Independent Oil Marketers Association (CIOMA)  
California Independent Petroleum Association  
California Life Sciences Association  
California Manufacturers & Technology Association  
California Metals Coalition  
California Restaurant Association  
California Retailers Association  
California Small Business Alliance  
California Self Storage Association  
California Society of CPAs - Los Angeles Chapter  
California Trucking Association  
Californians for Balanced Energy Solutions  
Carson Chamber of Commerce  
Carson Dominguez Employers Alliance  
CDC Small Business Finance  
Central City Association  
Century City Chamber of Commerce  
Cerritos Regional Chamber of Commerce  
Chatsworth/Porter Ranch Chamber of Commerce  
Citrus Valley Association of Realtors  
Coalition for Renewable Natural Gas  
Coalition for Small Rental Property Owners  
Commercial Industrial Council/Chamber of Commerce  
Construction Industry Air Quality Coalition  
Construction Industry Coalition on Water

Quality  
Council on Trade and Investment for Filipino Americans  
Covina Chamber  
Crescenta Valley Chamber of Commerce  
Culver City Chamber of Commerce  
Downey Association of REALTORS  
Downey Chamber of Commerce  
Downtown Center Business Improvement District  
Downtown Long Beach Alliance  
El Monte/South El Monte Chamber  
El Segundo Chamber of Commerce  
Employers Group  
Encino Chamber of Commerce  
Engineering Contractor's Association  
EXP  
F.A.S.T.- Fixing Angelenos Stuck in Traffic FilmLA  
Friends of Hollywood Central Park  
FuturePorts  
Gardena Valley Chamber  
Gateway to LA  
Glendale Association of Realtors  
Glendale Chamber  
Glendora Chamber  
Greater Antelope Valley AOR  
Greater Bakersfield Chamber of Commerce  
Greater Lakewood Chamber of Commerce  
Greater Los Angeles African American Chamber  
Greater Los Angeles Association of REALTORS  
Greater Los Angeles New Car Dealers Association  
Greater San Fernando Valley Regional Chamber  
Harbor Association of Industry and Commerce  
Harbor Trucking Association  
Historic Core BID of Downtown Los Angeles  
Hollywood Chamber  
Hong Kong Trade Development Council  
Hospital Association of Southern California  
Hotel Association of Los Angeles  
Huntington Park Area Chamber of Commerce  
Independent Cities Association  
Industrial Environmental Association  
Industry Business Council  
Inland Empire Economic Partnership  
International Cannabis Business Women Association  
Irwindale Chamber of Commerce  
La Cañada Flintridge Chamber  
LA Fashion District BID  
LA South Chamber of Commerce  
Lancaster Chamber of Commerce  
Larchmont Boulevard Association  
Latin Business Association  
Latino Food Industry Association  
Latino Restaurant Association  
LAX Coastal Area Chamber  
League of California Cities  
Long Beach Area Chamber  
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Western Manufactured Housing Association  
Western States Petroleum Association  
Westside Council of Chambers  
Whittier Chamber of Commerce  
Wilmington Chamber  
World Trade Center



March 2, 2021

Victor Juan  
Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive Diamond Bar, CA 91765

**Re: Comments Proposed Rule 2305 (the Warehouse Indirect Source Rule)**

Dear Mr. Juan,

The Coalition for Clean Air (CCA) appreciates the opportunity to provide comments on Proposed Rule (PR) 2305. Southern California has long been a hub of the global goods movement industry. Nearly 40 % of all imports into the United States enter through the Ports of Los Angeles and Long Beach. Most of these imports are then transported via truck to warehouses in the Harbor Area, East Los Angeles, and increasingly, in the Inland Empire.

As a result, communities near goods movement corridors or facilities suffer disproportionately from emissions. Diesel particulate matter – a known carcinogen – is the primary air toxic contaminant in the South Coast Air Basin. This impact is even more severe in communities near goods movement corridors and facilities. Ozone continues to plague the South Coast Air Basin; not only is the district in Extreme Nonattainment of the National Ambient Air Quality Standards, but the district is also on track to fail meeting standards by the 2023 deadline. Meanwhile, residents near warehouses are impacted by emissions, traffic and other intrusions and disruptions.

Given the exponential growth of the warehousing industry and the associated impacts on air quality, SCAQMD should implement a strong, effective warehouse Indirect Source Rule (ISR.) Four of the five AB 617 Community Steering Committees in the South Coast Air Basin have explicitly identified ISRs as a strategy for reducing emissions from trucks. Failure to consider, adopt, and implement a warehouse ISR would break the commitments made to these communities. Further, failing to pass a strong warehouse ISR would create a bad precedent for other indirect sources, such as railyards, ports, and airports.

For the warehouse ISR to be effective, PR 2305 must prioritize public health and addressing community needs. To this end, we offer the following comments on how PR 2305 could be strengthened and improved.

**1. The stringency value should be increased to maximize emissions reductions. Further, the WAIRE formula should consider cumulative impacts from warehousing and other emissions sources.**

The proposed “stringency value” (.0025) in the Warehouse Actions and Investments to Reduce Emissions (WAIRE) points compliance obligation formula is insufficient and should be increased. Using this stringency value, SCAQMD staff anticipates emissions reductions of 2.5-4 tons per day (tpd) once PR 2305 is fully phased in by the district. This is not significantly higher than the lowest potential stringency value of .0001, which would yield emissions reductions of 1.5 tpd. As such, we join other environmental and air quality advocates in calling on the district to increase the stringency value to increase PR 2305’s emissions reductions.

Further, community advocates are concerned that PR 2305 does not address local needs. Warehouses do not operate in a vacuum – in many cases, communities are adjacent to multiple warehouses. These communities are also often impacted by other emissions sources, such as freeways, railyards, and industrial sources. As such, the district should revise the WAIRE formula to take cumulative community impacts in consideration.

**2. The potential for loopholes, emissions trading and paper compliance must be eliminated.**

We laud SCAQMD staff for explicitly stating WAIRE points will not be tradable among different warehouse operators. We remain concerned, however, that PR 2305 leaves the door open to game the system. In particular, the transferability of points between the same warehouse operator and the ability to pay a compliance fee in lieu of earning WAIRE points could result in loopholes and opportunities for paper compliance rather than actual emissions reductions.

Regarding the transferring of WAIRE points, we understand the district’s intent is to discount points based on their “vintage” (age) or from where the points are transferred. Yet, the district must take care to ensure benefits from emissions reductions are not being transferred out of disadvantaged communities. For example, a warehouse operator could transfer excess points from a warehouse in a non-disadvantaged community to a warehouse in a disadvantaged community. This would have the effect to reducing the emissions reductions in the disadvantaged community.

Further, we remain concerned that warehouse operators can buy their way out of compliance and merely pay a “mitigation fee.” While the proceeds of this compliance fee would result in some emissions reductions due to truck replacements or funding other actions, it does not truly maximize emissions reductions. Rather, allowing warehouses to pay a mitigation fee could result in a pay-to-pollute scenario where paying the fee is

incentivized over actual emissions reductions. As such, SCAQMD must ensure earning WAIRE points is the primary way to achieve compliance with PR 2305.

**3. We agree mitigation fee revenues should be used locally; however, SCAQMD must use the fee to support clean technology, infrastructure deployment, and other actions which will reduce emissions.**

We appreciate SCAQMD Board Members expressing a desire to see mitigation fee revenues be used in the same communities from where they are collected. Using mitigation fee revenues will maximize PR 2305's benefits to warehouse-adjacent communities as well as deliver broader benefits to the South Coast Air Basin. Yet, we are concerned about the potential overreliance on air filtration. At the last Mobile Source Committee meeting, a Board Member cited filtration **as an example** of projects eligible for mitigation fee revenues. We do not believe; however, the comment should be construed as the Governing Board prioritizing air filtration over other projects. While air filtration may have a role, mitigation is no substitute for emissions reductions. As such, SCAQMD should commit to prioritizing projects which would reduce emissions in communities impacted by warehouses and the goods movement industry.

**4. Any emissions reductions from the WAIRE program and PR 2305 must be above and beyond the reductions stemming from California Air Resources Board (CARB) regulations or state and local action.**

To maximize emissions reductions, PR 2305 should exceed the reductions built into previously adopted regulations by CARB, SCAQMD and other governmental entities. While the draft staff report notes, at the current time, it is too speculative to determine if PR 2305 will result in State Implementation Plan (SIP)-creditable actions, SCAQMD should ensure that emissions reductions exceed pre-existing commitments.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Chavez". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chris Chavez  
Deputy Policy Director



# CALIFORNIA BUSINESS PROPERTIES ASSOCIATION

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March 2, 2021

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STEVE SELCER, Association of Commercial Real Estate of SoCal

KYM SNYDER, Prologis

MARY TIGUE, Jones, Lang, Lasalle

ROBERT WEBSTER, Bohannon Development Company

DANIEL WINTON, Daniel K. Winton Law Office

Sarah Rees, Deputy Executive Officer  
South Coast Air Quality Management District  
21865 Copley Dr.  
Diamond Bar, CA 91765

Dear Ms. Rees:

The California Business Properties Association representing over 400 individual companies and every major commercial real estate association is opposed to the South Coast Air Quality Management District's (SCAQMD) proposed Warehouse Indirect Source Rule (ISR).

CBPA is the designated legislative advocate for the International Council of Shopping Centers (ICSC), the California Chapters of the Commercial Real Estate Development Association (NAIOP), the Building Owners and Managers Association of California (BOMA), the Retail Industry Leaders Association (RILA), the Institute of Real Estate Management (IREM), and the Association of Commercial Real Estate – Northern and Southern California (ACRE) the National Association of Real Estate Investment Trusts (NAREIT), and AIR Commercial Real Estate Association (AIR CRE).

Our members believe the draft ISR Warehouse Actions and Investments to Reduce Emissions "WAIRE Points," is too complicated, costly, and duplicative of existing efforts, and will not achieve the stated desired outcomes.

California already regulates mobile sources pursuant to its waiver under federal Clean Air Act, and this power is unique in the nation. The California Air Resources Board (CARB) has used this power to adopt the country's strictest emission laws, including adopting the world's first mandate to manufacture and sell zero-emission commercial vehicles.

CARB has also stated its intent to adopt regulations by the end of 2021 that will require nearly every equipment type at warehouses to operate in a zero-emission mode.

On behalf of the commercial real estate industry, I ask that SCAQMD not engage in duplicative rulemaking that will have a disastrous effect on the economy of the state, make goods more difficult and expensive to get to consumers, and will have marginal – if any – environmental benefit.

Thank you for taking our views into consideration.

Sincerely,

Rex S. Hime  
President & CEO

cc: Governor Gavin Newsom  
All Members SCAQMD  
CBPA Board of Directors



## RE: PR2305 Definition Electric Charger



Jiang, Hao <Hao.Jiang@disney.com>

To: Ian MacMillan

Cc: Victor Juan

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Mon 2/22/2021 4:47 PM

Thank you!

---

**From:** Ian MacMillan [<mailto:imacmillan@aqmd.gov>]  
**Sent:** Monday, February 22, 2021 4:33 PM  
**To:** Jiang, Hao <[Hao.Jiang@disney.com](mailto:Hao.Jiang@disney.com)>  
**Cc:** Victor Juan <[vjuan@aqmd.gov](mailto:vjuan@aqmd.gov)>  
**Subject:** RE: PR2305 Definition Electric Charger

Yes.

---

**From:** Jiang, Hao <[Hao.Jiang@disney.com](mailto:Hao.Jiang@disney.com)>  
**Sent:** Monday, February 22, 2021 4:31 PM  
**To:** Ian MacMillan <[imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)>  
**Subject:** RE: PR2305 Definition Electric Charger

Ok.

Now does "the use of onsite EV charging" in Table 3 WAIRE Menu include kWh charged into employee personal vehicle?

---

**From:** Ian MacMillan [<mailto:imacmillan@aqmd.gov>]  
**Sent:** Monday, February 22, 2021 3:41 PM  
**To:** Jiang, Hao <[Hao.Jiang@disney.com](mailto:Hao.Jiang@disney.com)>  
**Subject:** RE: PR2305 Definition Electric Charger

In our experience, it appears that electric forklifts are the default for warehouses covered by PR 2305. They are therefore not included in the menu.

---

**From:** Jiang, Hao <[Hao.Jiang@disney.com](mailto:Hao.Jiang@disney.com)>  
**Sent:** Monday, February 22, 2021 3:38 PM  
**To:** Ian MacMillan <[imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)>  
**Subject:** PR2305 Definition Electric Charger

Hi Ian,

I could not make it sure on whether or not an electric forklift charger is included in the definition of PR2305 for Electric Charger. We have e-Forklift chargers that cannot charge EV truck.

Thank you  
Hao  
---

PR2305(c)(15):

**ELECTRIC CHARGER** means an electric charging station for vehicles. Each unique plug that can charge an individual vehicle at any time, regardless of whether other electric chargers/plugs are operating, counts as one electric charger. This equipment is also referred to as Electric Vehicle Supply Equipment (EVSE).



ATTN: Clerk of the Board, [clerkofboard@aqmd.gov](mailto:clerkofboard@aqmd.gov), Wayne Nastri, [wnastri@aqmd.gov](mailto:wnastri@aqmd.gov), Sarah Reese, [SRees@aqmd.gov](mailto:SRees@aqmd.gov) Ian Macmillan [imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)

To the Governing Board of the South Coast Air Quality Management District and Senior Staff:

These comments are submitted on behalf of the Natural Resources Defense Council (NRDC) and our roughly 3 million members and activists. NRDC uses law, science, and the support of its members to ensure the rights of all people to the air, the water, and the environment.

We at NRDC believe that action must be taken now to combat climate change and solve the air quality issues of southern California, environmental crises that harm residents in the region every day. As we continue to contend with the ongoing COVID-19 pandemic, essential workers and their families - particularly in the logistics industry - are put at even greater risk due to unsafe work conditions and worsening air quality. Our workers deserve higher workplace standards so that they are able to breathe safely and power their business without creating harmful air pollution.

To date, the warehouse industry continues to operate in ways that put workers and communities at risk every day. My organization believes that the **Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program Fees for Rule 2305** is a critical step to addressing the air quality impacts of this sector of the goods movement industry.

We must work together to clean up warehouses. The Warehouse Indirect Source Rule will be critical to holding these facilities accountable, and we urge the South Coast AQMD to pass a strong rule that protects our communities' health.

Warehouses have spewed toxic air pollution in nearby communities for years and a strong program, like the warehouse indirect source rule, is necessary to transform this industry. But to effectively clean up the warehouse industry, the rule must be more stringent to provide relief for communities that breathe the most ozone-polluted air in the nation.

We also believe that warehouses must move towards zero emission technology and the warehouse indirect source rule should incentivize this shift. This will provide air quality benefits and create access to quality jobs by increasing demand for labor as the industry begins to

**NATURAL RESOURCES DEFENSE COUNCIL**

1314 2ND STREET | SANTA MONICA, CA | 90401 | T 310.434.2300 | F 310.434.2399 | NRDC.ORG

implement zero emission technologies. These job opportunities have been proven to provide quality wages and benefits for workers, unlike many temporary low-wage warehouse jobs.

We hope the Board will pass a strong warehouse indirect source rule that serves public health, supports a new green economy, and provides regional air quality benefits.

Sincerely,

Heather Kryczka  
Project Attorney  
Natural Resources Defense Council

David Pettit  
Senior Attorney  
Natural Resources Defense Council



March 2, 2021

Sarah Rees, Deputy Executive Officer  
Ian MacMillan, Planning and Rules Manager  
Victor Juan, Program Supervisor  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

**Subject: Comments on Proposed Rule 2305 – Warehouse Indirect Source Rule and Related Fees and Staff Report**

Submitted via email

Dear Ms. Rees, Mr. MacMillan and Mr. Juan:

Thank you for this opportunity to comment on SCAQMD's proposed Rule 2305 – Warehouse Indirect Source Rule and related Fees and Staff Report.

Maersk is an integrated international container logistics company. Our container vessels make over 500 calls in California ports each year, with both inbound freight and extensive exports of California agriculture and medical goods, technologies and the huge variety of materials and products essential to our lives. The goods brought to California by these vessels are unloaded in four California Ports, and we both operate and contract with a significant number of California trucking and warehousing companies to provide smooth inland supply chain flow.

Maersk has long been an environmental leader in goods movement and is committed to going beyond compliance to achieve environmental excellence. Some of our commitments include Net Zero Carbon Shipping by 2050, a 60% reduction in emissions by 2030, and launching our first carbon neutral biofuel/e-fuel vessel by 2023. As we continue to fine tune our inland capabilities to better serve our customers, we are bringing that same level of sustainability to the full end-to-end supply chain operation. More information on these programs is available on our website and in our annual sustainability reports at [www.maersk.com/about/sustainability](http://www.maersk.com/about/sustainability).

We have attended SCAQMD presentations on the Warehouse Indirect Source Rule (ISR) and reviewed materials provided. However, we have not had the opportunity to review the materials provided on the morning of March 3, when these comments are due. We therefore reserve the option to provide further comments on the proposal as it evolves or is better understood. We also participated in the



development of the industry coalition letter submitted to SCAQMD by the California Trucking Association and other stakeholders on the Warehouse ISR, and endorse and incorporate those more detailed comments by reference.

We would like to particularly emphasize the following high-level concerns:

1. The California Air Resources Board (CARB) has the authority to regulate mobile sources and is already well into the process of regulating freight sources with several rules that are comprehensive, complex and costly. We question SCAQMD's authority to impose separate regulations on these same operations, and specifically with regards to existing freight and warehousing facilities.
2. The proposed SCAQMD rule has significant overlap with the many programs being actively implemented and developed at the state level by CARB.
  - a. It is unclear whether the proposed rule will achieve reductions beyond those that will be achieved by the CARB programs.
  - b. The proposed rule differs from the CARB approaches in metrics, management and reporting, adding significant cost and administrative burden.
3. The SCAQMD Warehouse ISR rules, and especially the WAIRE points system, are extremely complex, and highly variable in cost and opportunities based on facility locations. This will result in uneven competitive conditions for operations in a highly competitive market. Supply chain operations are highly fluid and very cost-sensitive; the business flows to the locations with the most efficient operations and lowest costs.

We therefore respectfully request that the SCAQMD Board and Staff take the time needed to fully understand the authority question, the probability of achieving additional reductions, the complexity of the approach and the cost-benefit analysis in light of CARB's existing and planned regulations.

I am available to discuss these concerns or provide further information if it will be helpful.

Sincerely,

A handwritten signature in black ink that reads "Lee Kindberg". The signature is written in a cursive style with a large, looping final letter.

Lee Kindberg, PhD, GCB.D

Head of Environment & Sustainability, North America



VIA E-MAIL

March 3, 2021

Mr. Ian MacMillan  
Mr. Victor Juan  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765-4178  
[imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)  
[vjuan@aqmd.gov](mailto:vjuan@aqmd.gov)

**RE: Warehouse Indirect Source Rule (ISR)**

Dear Messrs. MacMillan and Juan:

I am one of the owners of Motivational Fulfillment & Logistics Services. We currently occupy four facilities in Chino and we would like to express our strong opposition to the South Coast Air Quality Management District's (SCAQMD) proposed Warehouse Indirect Source Rule (ISR).

The draft ISR creates a complicated system of Warehouse Actions and Investments to Reduce Emissions "WAIRE Points" that must be earned by owners and operators of warehouses, mostly through a fee on warehouse operators. This rule is a costly and duplicative effort that is not poised to achieve demonstrable improvements in air quality in the South Coast basin.

The goods movement system serves as the lifeblood of California's economy, delivering essential goods, services, and medicines. Never has this industry been more important than during the COVID-19 pandemic. Grocery store shelves have been stocked, vaccines delivered, and small retailers kept alive by e-commerce thanks to power of the modern supply chain, allowing Californians to shelter in place and abate the spread of COVID-19.

Goods movement also powers blue-collar jobs vital to our economy. An estimated 1 in 22 jobs in Southern California are tied to the logistics industry.

California has the cleanest supply chain in the United States. Thanks to two decades of investment in the cleanest available equipment, including early adoption by our collective members, localized emissions associated with warehouses have never been lower, falling by over 95% in the last decade.

As you know, California is the only state in the nation with the power to regulate mobile sources pursuant to its waiver under federal Clean Air Act. The California Air Resources Board (CARB) has used this power to adopt the country's strictest emission laws, including adopting in July the world's first mandate to manufacture and sell zero-emission commercial vehicles. CARB has also stated its intent to adopt regulations that will require nearly every equipment type at warehouses to operate in a zero-emission mode within the next year.

SCAQMD's proposed Warehouse ISR is duplicative of these regulations, exceeds the District's authority to regulate mobile sources, and will create burdensome, expensive requirements for the supply chain for questionable environmental benefit.

During presentations, SCAQMD justified the draft rule by stating that additional action is necessary to address ozone and NO<sub>x</sub> concentrations in the basin. With respect to NO<sub>x</sub>, a recent technical analysis of the draft staff report found that the report does not adequately demonstrate that the proposed Warehouse ISR will provide NO<sub>x</sub> reductions beyond those generated by CARB regulations, despite the enormous costs that will be involved in complying with this rule.

Further, as stated during AQMD's Scientific, Technical & Modeling Peer Review Advisory Group Meeting on January 27, 2021, the small quantities of NO<sub>x</sub> reductions generated by this rule will not be sufficient to decrease the ozone concentrations in the basin. One is left with the impression that the rule, instead of addressing environmental concerns, is being used as a funding mechanism.

Duplicative rulemaking by CARB and the SCAQMD that does not move the needle on environmental benefit in the basin not only wastes the state's resources, but unnecessarily increases the cost of compliance for an industry that is gearing up for the all-electric future envisioned by CARB and Governor Newsom. We hope SCAQMD will reconsider this untimely, duplicative, and costly regulation and work with industry to develop a rule that takes into account the emissions reductions that already will occur due to CARB rulemaking and appropriately addresses emissions that are within the bounds of SCAQMD authority.

With kind regards,



Anthony Altman  
Chief Operating Officer and General Counsel











March 3, 2021

Sarah Rees, Deputy Executive Officer  
South Coast Air Quality Management District  
21865 Copley Dr.  
Diamond Bar, CA 91765

Submitted electronically

The California Trucking Association, the California Chamber of Commerce, and the **55** undersigned organizations submit this letter in strong opposition to the South Coast Air Quality Management District's (SCAQMD) proposed Warehouse Indirect Source Rule (ISR).

The draft ISR creates a complicated system of Warehouse Actions and Investments to Reduce Emissions (WAIRE) Points that must be earned by owners and operators of warehouses, mostly through a fee on warehouse operators or by turnover of already regulated mobile sources. This rule is a costly and duplicative effort that fails to achieve demonstrable improvements in air quality in the South Coast basin.

The goods movement system serves as the lifeblood of California's economy, delivering essential goods, services, and medicines. Never has this industry been more important than during the COVID-19 pandemic. Grocery store shelves have been stocked, vaccines delivered, and small retailers kept alive by e-commerce thanks to the power of the modern supply chain, allowing Californians to shelter in place and abate the spread of COVID-19.

Goods movement also powers blue-collar jobs vital to our economy. An estimated 1 in 22 jobs in Southern California are tied to the logistics industry.

California has the cleanest supply chain in the United States. Thanks to two decades of investment in the cleanest available equipment, including early adoption by our collective members, localized emissions associated with warehouses have never been lower, falling by over 95% in the last decade.

As you know, California is the only state in the nation with the power to regulate mobile sources pursuant to its waiver under federal Clean Air Act. The California Air Resources Board (CARB) has used this power to adopt the country's strictest emission laws, including adopting the world's first mandate to manufacture and sell zero-emission commercial vehicles. CARB has also stated its intent to adopt regulations by the end of 2021 that will require nearly every equipment type at warehouses to operate in a zero-emission mode.

SCAQMD's proposed Warehouse ISR is duplicative of these regulations, exceeds the District's authority to regulate mobile sources, and will create burdensome, expensive requirements for the supply chain for questionable environmental benefit.

SCAQMD has justified the draft rule by stating that additional action is necessary to address ozone and NOx concentrations in the basin. With respect to NOx, a recent technical analysis of the draft staff report found that SCAQMD does not adequately demonstrate that the proposed Warehouse ISR will provide NOx reductions beyond those generated by CARB regulations, despite the enormous costs that will be involved in complying with this rule.

Further, as stated during AQMD's Scientific, Technical & Modeling Peer Review Advisory Group Meeting on January 27, 2021, the small quantities of NOx reductions generated by this rule will not be sufficient to decrease the ozone concentrations in the basin.

Duplicative rulemaking by CARB and the SCAQMD that does not move the needle on environmental benefit in the basin not only wastes the state's resources, but unnecessarily increases the cost of compliance for an industry that is gearing up for the all-electric future envisioned by CARB and Governor Newsom. We ask SCAQMD to reconsider this untimely, duplicative, and costly regulation and work with industry to develop a rule that takes into account the emissions reductions due to CARB rulemaking and appropriately addresses emissions that are within the bounds of SCAQMD authority.

If you have any questions, please feel free to contact:

Chris Shimoda, VP of Government Affairs  
California Trucking Association  
[cshimoda@caltrux.org](mailto:cshimoda@caltrux.org)

Leah Silverthorn, Policy Advocate  
California Chamber of Commerce  
[Leah.Silverthorn@calchamber.com](mailto:Leah.Silverthorn@calchamber.com)

Thank You,

California Trucking Association  
California Chamber of Commerce  
Beaumont Chamber of Commerce  
Big Bear Chamber of Commerce  
Building Owners and Managers Association of California  
Building Owners and Managers Association of Los Angeles  
Californians for Affordable and Reliable Energy  
California Beer and Beverage Distributors

California Business Properties Association  
California Business Roundtable  
California Distributors Association  
California Fuels and Convenience Alliance  
California Manufacturers and Technologies Association  
California Railroads Association  
California Retailers Association  
California Taxpayers Association  
Carson-Dominguez Employers Alliance  
Chino Valley Chamber of Commerce  
Construction Industry Air Quality Coalition  
Engineering Contractors Association  
Fontana Chamber of Commerce  
Futureports  
Greater Coachella Valley Chamber  
Greater High Desert Chamber of Commerce  
Greater Ontario Business Council  
Harbor Trucking Association  
Hemet/San Jacinto Chamber of Commerce  
Highland Area Chamber of Commerce  
Industry Business Council  
Inland Action  
Inland Empire Economic Partnership  
International Council of Shopping Centers  
International Warehouse Logistics Association  
Long Beach Area Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Los Angeles County Business Federation (BizFed)  
Moreno Valley Chamber of Commerce  
Murrieta/Wildomar Chamber of Commerce  
NAIOP of California  
NAIOP Inland Empire  
NAIOP SoCAL  
National Association of Chemical Distributors  
Orange County Business Council  
Pacific Merchant Shipping Association  
Perris Valley Chamber of Commerce  
Pomona Chamber of Commerce  
Rancho Cucamonga Chamber  
Rebuild SoCal Partnership  
Redlands Chamber of Commerce  
San Gabriel Valley Economic Partnership  
Southern California Leadership Council

Temecula Valley Chamber of Commerce  
Upland Chamber of Commerce  
Western Aerosol Information Bureau  
Wilmington Chamber of Commerce

cc:  
SCAQMD Governing Board Members



March 2, 2021

Sarah Rees, Deputy Executive Officer  
South Coast Air Quality Management District  
21865 Copley Dr.  
Diamond Bar, CA 91765

Re: Warehouse Indirect Source Rule (Rule 2305)

Submitted via Email

On behalf of the California Retailers Association (CRA), I write to express our opposition to the adoption of Rule 2305. We believe the pursuit of such a policy is deeply misguided at this time given the enormous pandemic-related challenges already facing California's supply chain and goods movement. It would also create substantial new fees and other costs that will serve only to raise the cost of goods to consumers and displace local jobs.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which prior to the pandemic operated over 400,000 retail establishments with a gross domestic product of \$330 billion annually and employs over 3 million people—one fourth of California's total employment.

Localized emissions related to warehouse operations have fallen over 95% over the last decade. Given these substantial reductions plus the California Air Resources Board's (CARB) clean fleet rule and its stated intent to adopt regulations in the next year to require most warehouse equipment types to operate at zero emissions, we question what marginal additional benefit could be derived from the enormous costs and practical challenges posed by the ISR.

In pursuit of questionable benefits this proposal imposes considerable costs on warehousing. The proposed mitigation fee of \$.90/sf would add up to \$1 billion in new costs on warehouses which will impact which will be felt by everyone throughout the supply chain, including consumers. The ISR further punishes warehouse operators for circumstances out of their control. For instance:

- SCAQMD would implement these rules well before truck manufacturers can make zero or near-zero emission fleets available and affordable. The obligation to accrue substantive WAIRE Points will commence as soon as July 2021, yet these fleets are not anticipated to be widely available until sometime between 2025 and 2030. There is nothing that our retailers or warehouse operators can do to accelerate those timelines in order to comply.

- The proposed ISR establishes unrealistic timeframes for collecting and reporting of data that retailers and other warehouse owners or operators currently do not have. Under the current draft rule, reporting obligations begin only 60 days from rule adoption, and require reporting of information that either does not currently exist or is held by other entities and not readily accessible. Obtaining and reporting the necessary data will in some cases require significant changes to how facilities operate, particularly at cross-docking facilities where there is little to no storage of freight and drivers may visit multiple times per day. This requirement would be extremely challenging even on a much longer timeline.

This is both an inappropriate time and method for targeting a key part of our state's critical infrastructure. Approximately 18 million people who live in Southern California rely on warehousing as an integral part of the supply chain for items they need like food, medical supplies, and clothing. Warehouses also provide a broad range of jobs for people of every level of education and skillset – a benefit which this ISR would threaten.

Given its high costs, compliance challenges, questionable benefits, the massive challenges currently facing goods movement in our state as well as the current economic uncertainty, CRA urges the Board to reject this costly, duplicative rule.

Sincerely,

A handwritten signature in cursive script that reads "Steve McCarthy".

Steve McCarthy  
Vice President, Public Policy  
California Retailers Association



Andris R. Abele  
2919 Bonanza · San Clemente, CA 92673  
(949) 212-7701 · [arabele@techcompass.net](mailto:arabele@techcompass.net)

---

March 2, 2021

William A. Burke, Ed.D.  
Chairman  
South Coast Air Quality Management District  
21865 E. Copley Drive  
Diamond Bar, CA 91765

Subject:       Agenda No. 32, March 5, 2021  
                  Approve and Adopt Technology Advancement Office Clean Fuels Program 2020  
                  Annual Report and 2021 Plan Update, Resolution and Membership Changes for  
                  Clean Fuels Advisory Group and Receive and File Updated Membership of  
                  Technology Advancement Advisory Group

Dear Chairman Burke -

I have two comments regarding the subject agenda item.

My first comment is actually a question regarding the Annual Report part of the item. The Clean Fuels Program has been in existence for over 30 years. The South Coast AQMD has spent over \$340 million of public/taxpayer funds through about 1000 projects/contracts (my “guesstimate”). The purpose of those Clean Fuels Program funds, as stated in California H&SC 40448.5, is to “... increase the utilization of clean-burning fuels that reduce public health hazards from air pollution.” So the question is, what air pollution emission reductions have been achieved to date over the 30+ year life of the Clean Fuels Program? That is, after all, the South Coast AQMD’s ultimate objective, isn’t it?

I fully understand that the demonstration projects funded have resulted in insignificant emission reductions since they have been, for the most part, short term demonstration periods of a small number of prototypes. The question goes to the essence of the program – bringing clean fuel technologies into production for real world use with resulting real world emissions benefits. How many of the South Coast AQMD cofounded projects have actually resulted in commercially available products that have been or are being sold in significant numbers – significant enough to achieve real world emission reductions?

As examples of projects that resulted in actual products, I have come up with a few from memory:

- Methanol and M85 flexible fuel vehicles. The South Coast AQMD actively supported development and deployment efforts for M85. Ultimately, over 20,000 OEM-built methanol (M85) FFVs were sold, and an infrastructure of about 100 public and private refueling stations was deployed in California.
- In addition, the technical success of Methanol and FFVs directly led to the accelerated development of reformulated gasoline (RFG), so the South Coast AQMD can also take credit for some of the emission reductions resulting from RFG implementation.

- Progressively cleaner heavy-duty natural gas engines. In the early years of the program, the South Coast AQMD supported the development, certification, and deployment of natural gas engines by Caterpillar, Cummins, Detroit Diesel, John Deere, Mack, and Navistar. Most of those engines were put in production and real world use.
- The South Coast AQMD Clean Fuels Program funding has most recently supported the development of 3 near-zero emission natural gas engines and 1 propane engine. I believe those four engines have been commercially available for a couple years now.
- Ballard Fuel Cell Bus. The early support by the South Coast AQMD of prototypes by Ballard resulted in the development and deployment of fuel cell transit buses, albeit in relatively small numbers.

There are likely more that the South Coast AQMD can identify. Perhaps the South Coast AQMD has already compiled this data. If not, I might suggest a spreadsheet that includes, at a minimum:

- Product and manufacturer
- Number of units sold
- Sales period
- Actual real world emission reductions by the sold units to date (NO<sub>x</sub>, PM, etc.)
- AQMD contract information (number, \$, contract term)

My second comment has to do with the Plan part of the agenda item. It is disappointing that the South Coast AQMD continues its unfocused, broad portfolio approach even as technology trends have become ever more focused. We are at a remarkable time when battery electric vehicles (BEVs) are coming to market in the next 1-5 years from many OEMs. The commercial introduction of zero emission technologies is actually accelerating as battery costs have fallen faster than anyone expected.<sup>1</sup> Those emerging zero emission products together with the already available medium and heavy duty alternative fuel near-zero emission engines lay out a clear path for the near term emission reductions that the South Coast AQMD is seeking.

As you are well aware, there remain many challenges in increasing the penetration, market acceptance, and corresponding emission reduction benefits, of BEVs. It's not yet easy to convince buyers to buy BEVs. So, I would recommend the South Coast AQMD support projects that help promote the use of BEVs and address concerns of hesitant, potential BEV buyers. I have offered the following suggested projects before, as far back as 10 years ago, as well as others, that would go to that end. These suggestions are still relevant today.

- Support the deployment of smart BEV charging for the workplace, multi-unit housing, gas stations/convenience stores, and other publicly accessible locations to expand the addressable market opportunity for BEVs. One of the selling points of BEVs is the ability to charge at home. This opportunity does not exist for renters and those living in multi-unit housing, a large segment of the car buying public. Developing and supporting the deployment of smart charging systems to address this currently neglected segment would increase the potential market size for light-duty BEVs.

---

<sup>1</sup> [https://www.truckinginfo.com/359610/number-of-zero-emissions-commercial-vehicles-models-expected-to-double-by-2023?utm\\_source=email&utm\\_medium=newsletter&utm\\_campaign=20200602-NL-HDT-FuelSmarts-BOBCD200527026&omdt=NL-HDT-FuelSmarts&omid=1000944640&oly\\_enc\\_id=8898A2489578E6S](https://www.truckinginfo.com/359610/number-of-zero-emissions-commercial-vehicles-models-expected-to-double-by-2023?utm_source=email&utm_medium=newsletter&utm_campaign=20200602-NL-HDT-FuelSmarts-BOBCD200527026&omdt=NL-HDT-FuelSmarts&omid=1000944640&oly_enc_id=8898A2489578E6S)

- Support the development and deployment of smart charging systems for battery electric medium- and heavy-duty applications, including integration of battery storage to enable energy management. As has been seen over the last year, the increase in use of intermittent renewable energy resources has resulted in challenges to electrical grid resiliency. Fleet operators are necessarily focused on operating costs and productivity, and, thus, reliable charging will be essential. Demonstrating and deploying smart charging systems integrated with energy storage would help provide the needed reliability. Integrated energy storage would enable management of energy usage, helping fleets control costs, maintain fleet availability/productivity, and facilitate renewable energy integration.
- Demonstration of second-life electric vehicle batteries in energy storage systems for the integration and management of renewable energy and BEV charging systems. As the number of BEVs increase, used battery packs will need to be reused and/or recycled. An effective option would be to recover the used battery packs and integrate them into stationary energy storage systems for a second use, a use with less stringent demands than in BEVs. This second life could help reduce the net cost of the BEV battery packs. These second life batteries could well be integrated to support fast EV chargers.

The plan overemphasizes hydrogen and fuel cell technologies. Although they represent a potential zero emission pathway, they are not ready for prime time. Given the current state of the technology, hydrogen and fuel cell vehicles will not be commercially viable for at least 10+ years. It is not a question of whether it works – hydrogen and fuel cell vehicles have been successfully demonstrated in a number of applications. However, hydrogen and fuel cell vehicle technologies suffer from high costs across the value chain – costs that cannot be sufficiently reduced simply through economies of scale. Technical breakthroughs are still necessary to reduce costs for hydrogen and fuel cells to become commercially viable. In addition, hydrogen as energy storage suffers from low round trip energy efficiency, especially when compared to existing technologies. This technical challenge further exacerbates the high costs of hydrogen and fuel cell technologies.

I would be pleased to discuss any of these issues with appropriate staff. My hope is that the South Coast AQMD finds these comments helpful in using public/taxpayer Clean Fuels Program funds to effectively promote and increase utilization of BEVs and near-zero technologies starting to come to market and, ultimately, benefitting air quality in the Basin.

Thank you for your consideration.

Respectfully,



Andris R. Abele

From: Sari Fordham <[sfordham@lasierra.edu](mailto:sfordham@lasierra.edu)>

Sent: Thursday, March 4, 2021 8:00 AM

To: Clerk of Board <[Front\\_PC@aqmd.gov](mailto:Front_PC@aqmd.gov)>; Wayne Nastri <[wnastr@aqmd.gov](mailto:wnastr@aqmd.gov)>; Sarah Rees <[SRees@aqmd.gov](mailto:SRees@aqmd.gov)>; Ian MacMillan <[imacmillan@aqmd.gov](mailto:imacmillan@aqmd.gov)>

Subject: Warehouse Indirect Source Rule

To the Governing Board of the South Coast Air Quality Management District and Senior Staff:

We at Riverside 350 believe that we have a moral imperative to respond to climate change and improve the air quality of the Inland Empire. Our children breathe some of the most unhealthy air in the country, and our COVID-19 first responders are at increased risk because of their exposure to ozone-pollution. To fix these problems, we must identify the problem.

To date, the warehouse industry operates without being subject to any proper regulations, putting workers and communities at risk. My organization believes that the **Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program Fees for Rule 2305** is an important piece to stop this abuse in the goods movement sector.

The logistics industry wants to be here. They aren't leaving if we hold them to higher standards. Rather, we have the opportunity to ensure that they become good neighbors. The Warehouse Indirect Source Rule will be critical to holding these facilities accountable, but only if the South Coast AQMD passes a rule that is strong enough to protect our communities' health.

Warehouses have spewed toxic air pollution in nearby communities for years and a strong mandatory program, like the warehouse indirect source rule, is necessary to transform this industry. But to effectively clean up the warehouse industry, the rule must be more stringent to provide relief for our communities.

We also believe that warehouses must move towards zero emission technology and the warehouse indirect source rule should incentivize this shift. This will provide air quality benefits and create access to quality jobs by increasing demand for labor as the industry begins to implement zero emission technologies. These job opportunities have been proven to provide quality wages and benefits for workers, unlike many temporary low-wage warehouse jobs.

We hope the Board will pass a strong warehouse indirect source rule that serves public health, supports a new green economy, and provides regional air quality benefits.

Sincerely,

Sari Fordham  
President  
Riverside 350



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"In a time of destruction, create something." Maxine Hong Kingston

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