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George Wu / Henry Pourzand
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Submitted electronically: gwu@aqmd.gov & hpourzand@aqmd.gov

March 15, 2022

**RE: Comments and Request for Feedback on Proposed Rule
403.2 Fugitive Dust from Large Roadways**

Dear George Wu & Henry Pourzand,

On behalf of the Associated General Contractors (AGC) of California, we are submitting comments to the South Coast Air Quality Management District (SCAQMD) in response to Proposed Rule 403.2 Fugitive Dust from Large Roadways.

AGC of California is a member-driven organization that statewide consists of over 950 companies. Our members provide commercial construction services on a broad range of projects within vertical building, highway & transportation, and utility. We believe the construction industry is vital to the success of California. Together, our members actively create opportunities to build and strengthen our state. We are passionate about shaping policy, improving industry relationships, and developing our workforce.

AGC of California appreciates the opportunities to participate in the SCAQMD public workgroup, workshop meetings, as well as the opportunity to submit a comment letter to address concerns and provide feedback. Additionally, we appreciate the strides that have been made to the updated draft language and staff report. However, there continues to be several unresolved questions and concerns, many of which are detailed in this letter. A summary of our concerns includes a lack of conclusive quantitative data justifying the implementation of PR 403.2, unclear understanding of various definitions, and requirements in



the most up-to-date draft rule language. Please read below for more information.

1. Lack of conclusive quantitative data justifying the need for PR 403.2.

AGC of California recognizes and supports environmental rules that protect air which make California an even safer place to live. However, it is important that these rules ensure benefits that are measurable and that they do not exert excessive overlapping of other requirements. As PR 403.2 is currently written, meaningful quantitative measurements have not been presented to demonstrate that the proposed rule will *significantly* reduce emissions. Based on the explanations of SCAQMD staff, PR 403.2 attempts to reduce the number of complaints received by the general public. AGC of California asserts that it is the right of the public to submit their complaints to any perceived rule violation, however, it is important that these complaints are properly evaluated for authentic merit. Additionally, proposed rules should address gaps in existing rules related to emissions, as opposed to reducing the number of complaints received by SCAQMD.

A. SCAQMD staff states that they regularly receive complaints from the public regarding fugitive dust projects (Public Workshop / Slide #3). However, SCAQMD has not provided conclusive data to support this statement.

SCAQMD states in their Workgroup #2 presentation, Slide #3 that there were “over 73 roadway construction/demolition dust related complaints in the last four years (2018 thru to the present”. Additionally, SCAQMD provided an update on the number of complaints in their Public Workshop presentation, Slide #3, specifically expressing that the complaints have now increased to 78. This information indicates that there have been 5 more complaints within a 20-week period: this equals to approximately one complaint a month. Furthermore, it appears that the 78 complaints occurred over the course of a 50-month period: this equals to less than 2 complaints a month. AGC of California would like to request additional information on how these complaints were evaluated for authentic merit. Although it has been explained by staff during the Public Workshop meeting on March 3, 2022 that complaints are not the sole deciding factor to implement PR 403.2, answers to the following questions will provide essential insight into the decision-making process of SCAQMD.

Q1) Are one or two complaints a month significant to SCAQMD? If this number is significant, can additional information be shared regarding the statistical calculation of significance? Specifically, what is the scope of the calculation; what are the p-values; and what are the confidence intervals?

Q2) We understand that some of the 78 complaints are still under pending investigation, therefore, information regarding these pending investigations is unavailable to the public. However, it would be beneficial to receive information regarding the complaints are that *no longer being investigated*. How many of the 78 complaints are still pending investigation?



Additionally, how many other unrelated complaints were also received between 2018 and now; and how many were repeat complaints?

Q3) It has been explained by staff during the Public Workshop meeting that some violations occurred due to the 78 complaints received, however, additional information regarding these violations would be beneficial to the public. For instance, what existing rule(s) were violated? Have SCAQMD evaluated the effectiveness and shortcomings of existing rules based on violations? If so, how were these rules evaluated; and what was the outcome of this evaluation? Did the violators meet the definition of a 'large operation' from Rule 403? Lastly, how many of the 78 complaints would PR 403.2 capture?

Q4) What is SCAQMD's process for receiving, managing, and responding to complaints?

Answers to the above questions are essential in understanding the decision-making process behind PR 403.2. It will also provide clarity on whether PR 403.2 is truly essential to *significantly* lowering emissions of fugitive dust in Southern California regions.

Additionally, SCAQMD states in their Workgroup #2 presentation, Slide #3 that "[m]any road construction projects occur at any given time. Example: there are currently about 66 active/scheduled state and county road projects". It would be beneficial for the public to understand how many of these projects are related to the complaints mentioned above.

Q5) How many of the 66 active/scheduled projects received complaints; what is the nature of these complaints; and how many of these active/scheduled projects would be applicable to PR 403.2?

B. PR 403.2 overlaps with existing SCAQMD rules which make the justification of the regulation unclear; specifically Rule 403 'Fugitive Dust', Rule 1157 'PM10 Emission Reductions from Aggregate and Related Operations', and Rule 1466 'Control of Particulate Emissions from Solis with Toxic Air Contaminants'.

AGC of California appreciates the clarifications that were made during the Public Workshop meeting on March 3, 2022 to explain differences between the above-mentioned rules regarding applicability, requirements, and controls. SCAQMD states in their Public Workshop presentation / Slide #17 that there is a need for PR 403.2 because existing rules "have minimal requirements that are not adequately protective for large roadway projects". Additionally, SCAQMD states in Slide #17 that "[e]xisting rules do not require notice or information to be provided to the public regarding potential dust generating activities." However, there are still some unanswered questions. For the regulation to be clear and concise in which all stakeholders are adequately equipped to comply with AQMD regulations we would suggest potential changes to existing regulation. Supplemental regulations with inconsistent language causes confusion, which can lead to issues on-site. Regulations needs to be clear with consistent language to allow frontline leadership, such as our superintendents, foreman, and workers to understand specifics without multiple contradicting regulations.



C. Areas of concern regarding the use of the USC Children’s Health Study to support the justification of PR 403.2.

AGC of California encourages the proper use of sound scientific studies to support the justification of proposed regulations. Upon evaluating the USC Children’s Health Study, we agree that majority of the participants are within SCAQMD’s governing districts. Also, it appears that the study addressed many potential confounds that may otherwise explain the results. However, the dates in which data were collected is problematic for the justification of PR 403.2. Although the USC Children’s Health Study was published in 2013, data was collected between the years 2002-2003 and 2007-2008. Rule 403 was last amended in 2005; Rule 1157 was last amended in 2006; and Rule 1466 was last amended in 2021. Given that data was collected during or after the implementation of the above-mentioned rules, this study does not adequately reflect the current relationship between particulate matter and lung function. Therefore, this study cannot be used to justify the need to implement an additional rule targeting fugitive dust. AGC of California asserts the importance of conducting research that will reflect the *current* relationship because it will encompass the effects of the above-mentioned rules. We understand that scientific studies take time, therefore, we also urge that the adoption of this rule be extended until this information is collected and properly evaluated.

Upon evaluating a literature review, “Air pollution and lung function in children”, that evaluated the USC Children’s Health Study presented in the SCAQMD staff report, it is possible that the lower lung function in children were due to wildfires (Garcia, Rice, & Gold, 2021). They also mention knowledge gaps in research literature on this topic. Specifically, that “[l]ong-term consequences of air pollution on reduced lung function development in childhood are not fully understood” (pg 11).

D. Request for additional time and cost-benefit analysis.

As mentioned above, AGC of California urges that the adoption of this rule be extended until sufficient data is collected and properly evaluated. Implementing such a policy with large costs and impacts must be supported with conclusive quantitative data to justify it. Without conclusive evidence, imposing large costs and impacts may cause more harm than good. It would be beneficial for a thorough cost-benefit analysis to be conducted. However, simply providing the results of such an analysis would not be sufficient. It is important that the entire process of the cost-benefit analysis be made to the public to conduct a proper peer-review process to determine the merit, value, and generalizability of the study. This is standard scientific practice. If a governing body is using scientific evidence to support their justifications, then they must also be subjected to the scientific peer-review process. Refusing to be a part of the peer-review process is dangerous as it may result in decision-making that is unjustifiable. AGC of California asserts that extending the adoption hearing of PR 403.2 until sufficient data is collected *and* properly evaluated is essential; specifically, to reevaluate the need for PR 403.2 and to consider the potential impacts on the construction industry.



Lastly, we assert that this cost-benefit analysis be readily available to the public so that a proper peer-review process can be conducted.

2. Additional queries and requests for clarification regarding PR 403.2.

A. Definition of 'construction vehicle'

As the language is currently written, construction vehicles are defined as “graders, bulldozers, excavators, cranes, loaders, backhoes, tractors, haul trucks, and other similar vehicles used at a large roadway project.” Our members express concern regarding the broadness of this definition. We encourage SCAQMD to exclude personally owned vehicles or vehicles otherwise not used as construction machinery.

B. Definition of 'dust suppressants'

As the language is currently written, dust suppressants are defined as “water, hygroscopic materials, or non-toxic chemical stabilizers used as a treatment material to reduce fugitive dust emissions.” Our members express concern regarding the implementation of various dust suppressants. Project environments change by location. Depending on how county work is being conducted dust suppressants may be regulated. Specifically, water and hydrocarbon dust suppressants may not be easily accessible. Overuse of water may dry an area of their resources especially in dry, desert regions. AGC of California urges SCAQMD to evaluate the current Cal/OSHA regulation to ensure it is in alignment with state regulation. We encourage the language to be adjusted to incorporate 'project acceptable' dust suppressants in accordance with state regulation.

C. Definition of 'large roadway project'

As the language is currently written, large roadway projects are defined as “any portion of roadway with an annual daily average number of vehicle trips in excess of 100,000 based on the most recent Federal High Administration (FHWA) Average Annual Daily Traffic (AADT) data available.” Our members have expressed concern regarding the use of the FHWA data to calculate estimates. Specifically, that there appears to be issues with their traffic count book, such as loop detectors malfunctioning. AGC of California recommends using a database that is state-specific as it may better reflect the needs of our unique state. As mentioned above regulation needs to be clear and concise. Specific resources need to be clearly outlined in the regulation for contractors to determine if they are covered under the regulation or not.

D. Definition of 'material piles'

As the language is currently written, material piles are defined as “any accumulation of bulk materials, construction/demolition debris, excavated material, or typical roadway material which is not fully enclosed and attains a height of three feet or more and a total surface area of 150 or more square feet. Material piles located within 25 feet of each other as measured from the closest edge of each pile shall be considered a single material pile.” Our members



have expressed concern regarding the feasibility of this definition as it is currently written. Construction zones often have limited space available and are contained, therefore, reducing the size of the material piles may reduce the space available for construction crew members to maneuver. For example, the construction project on I-10 for lane extensions has extremely limited space to put material piles. AGC of California asserts that reducing the size of material piles may impose safety concerns. SCAQMD PR 403.2 aims to reduce emissions, however, this regulation may require additional laydown areas for stockpile material to comply with current language. This would require more machinery on-site and time to move material piles. Additionally, material piles often act as sound barriers to reduce noise pollution; reducing the size of material piles would conflict with existing regulation and would increase noise pollution. AGC of California believes the definition of material piles needs to be modified for it to be more feasible.

E. Additional Requirements

Under one of the stipulations of the most recent preliminary draft rule, dust control supervisors are required to complete the "South Coast AQMD Fugitive Dust Control Class and holds a valid Certificate of Completion for the class." This class is held only once a month which may interfere with the timely implementation of a project. AGC of California asserts that this class be asynchronous to allow for more flexibility.

Additionally, SCAQMD provided Table 1 – Large Roadway Project Control Measures. AGC of California appreciates this table as it provides more clarity on control measures. However, there is expressed concern regarding the control measure for 'dust from construction vehicles'; specifically, the limit to vehicle speed of 15 miles per hour on roadways. Our members have expressed that limiting the speed of construction vehicles on roadways may not always be feasible in certain environments. Our members take pride in safety being a top priority. All employers have an obligation to provide a healthy and safe work environment for those on-site, and for the public. During the preconstruction phases contractors conduct numerous site-specific safety plans addressing a variety of potential hazards. Those site-specific safety plans address hazards and controls on-site that correlate into the commencement of a project. Speed of machinery is usually evaluated during the pre-construction safety analysis.

Additionally, SCAQMD added stipulations regarding material piles under Table 1. As the draft language is currently written material piles must "maintain below a maximum height of 20 feet; and apply dust suppressant as necessary, but no less than twice per hour to maintain a stabilized surface and prevent visible emissions from extending farther than 100 feet as measured from the nearest edge or perimeter of the operation/material pile or equipment location; or install coverings; or install an enclosure with a minimum of three sides (the open side of which will face farthest from potentially impacted areas) and walls." Our members have expressed concern with how this language is currently written. As expressed previously,



the height restriction will limit the amount of space available for a project which would have costly implications. Additionally, as previously stated on the material pile definition, limiting the size of material piles may increase truck time on the road to move materials to other locations which would increase emissions thereby causing more problems than this regulation would solve. AGC of California urges SCAQMD to reconsider their definition and requirements of material piles to be more closely aligned with Rule 403.

AGC of California appreciates the changes made to the signage requirements as it now more closely aligns with Rule 403.

SCAQMD states in their most recent preliminary draft rule language that notifications must include "[e]stimated duration of the large roadway project including commencement and completion dates." The nation's current state construction projects continue to be fluid in nature, perhaps more so than they have ever been. For this reason, we urge SCAQMD cut through (4)(A)(ii) as stated above.

In SCAQMD's most recent preliminary draft rule language, they outline the recordkeeping process that includes the following:

"The responsible person for the large roadway project shall maintain daily records of the required fugitive dust control measures pursuant to paragraph (e)(2) for a large roadway project documenting: A) Each type of activity conducted and the associated permitted

powered equipment with the potential to generate fugitive dust; B) The specific fugitive dust control measures taken for each activity or equipment; and C) The frequency of fugitive dust control measures implemented. Records shall be retained for a minimum of three years by the responsible person for the large roadway project and shall be made available to the Executive Officer upon request."

All employers have an obligation to provide a healthy and safe work environment for those on-site, and for the public. During the preconstruction phases, contractors conduct numerous site-specific safety plans addressing a variety of potential hazards. Those site-specific safety plans address hazards and controls on-site that correlate into the commencement of a project. Recordkeeping and retention of safety documentation should be reevaluated as these documents are already executed by contractors.

F. Exemptions

AGC of California appreciates the modifications that SCAQMD is currently considering, specifically the exemption for large roadway projects that occur for a short duration of time and exemption for minor maintenance activities. We urge SCAQMD to incorporate these exemptions into the regulation as it will promote flexibility and safety.



PR 403.2 states that the regulation will take effect beginning six months after the date of adoption for any large roadway project. AGC of California asserts that projects that have already been implemented be exempted from this regulation.

Additionally, subdivision (d)(1) states that there be “no aggregate crushing and grinding operations or maintenance of a material pile within 100 feet of an area of public exposure or sensitive receptor.” AGC of California urges SCAQMD to reconsider this stipulation. Taking this area away from workers may be detrimental to the implementation of a project simply because there is no other place to do crushing on-site.

Conclusion

AGC of California appreciates South Coast Air Quality Management District (SCAQMD) for allowing AGC of California to comment on Proposed Rule 403.2 ‘Fugitive Dust for Large Roadways’. We assert that SCAQMD provide conclusive quantitative data to support the justification of this regulation, address areas of concern, and to clarify the definitions described above. If you have any questions regarding the comments, please contact Manny Leon at (909) 289-1208 (email: leonm@agc-ca.org). We appreciate the opportunity to comment and hope these concerns are addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Manny Leon", with a long horizontal line extending to the right.

Manny Leon
VP, Government Affairs
Associated General Contractors of California

