



ASSOCIATION OF
AMERICAN RAILROADS



American Short Line and
Regional Railroad Association

June 18, 2024

Sent via Electronic Mail Only

Mr. Ian McMillan
Assistant Deputy, Executive Officer
South Coast Air Resource Board
imacmillan@aqmd.gov

Dear Mr. McMillan:

This month the South Coast Air Quality Management District (“SCAQMD”) held a public workshop on June 4, 2024, to discuss Proposed Rules 2306 and 316.2 (“Proposed Rules”), and proposed the draft regulatory package. See https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/pr-2306/pdsr_pr2306-public-release-final.pdf?sfvrsn=2/. SCAQMD relies on authority granted to it under AB 617, governing Community Emissions Reduction Plans (“CERPs”), in promulgating this regulation. The Proposed Rules apply to owners and operators of proposed, new, and existing freight rail yards within the air district, and also propose fees associated with the implementation of PR 2306.

Although staff have requested public comment on the Proposed Rules by June 18, 2024, the draft documentation lacks adequate detail and supporting information to enable meaningful comment. As a result, today we provide limited comments focusing on the adequacy of the California Environmental Quality Act (“CEQA”) analysis as applied to PR 2306. We look forward to reviewing and commenting on the formal and complete regulatory package when publicly available.

The 2016 and 2022 AQMPs Fail to Meet the Standards Required By CEQA.

CEQA requires the preparation of an environmental impact report (“EIR”) in order “to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” Cal. Pub. Res. Code (“PRC”), § 21002.1; see also 14 Cal. Code Regs. (“CEQA Guidelines”) §§ 15000-15387. The primary purpose of CEQA is to require state agencies to consider and disclose to the public the environmental implications of their actions, to foster an informed and transparent public decision-making process. For the reasons explained below, the 2016 and 2022 Air Quality Management Plans (“the AQMPs”), on which SCAQMD relies to establish compliance with CEQA, fail to adequately evaluate the impacts of the Proposed Rule. This is hardly surprising since the AQMPs were prepared years before the Proposed Rules were finalized.

While CEQA sometimes allows an agency to rely on a Programmatic EIR (“PEIR”) to satisfy its statutorily mandated environmental review obligations, those situations are limited. Notably, it is the substance and details of PEIRs that dictate overall compliance with CEQA. See, e.g., *Citizens for a Sustainable Treasure Island v. San Francisco*, 227 Cal. App. 4th 1036 (2014).

In its draft Staff Report (“Draft Report”), SCAQMD asserts that “PR 2306 is a later activity within the scope of the programs approved earlier in the 2022 [] AQMP and 2016 AQMP[.]” See Draft Staff Report at 4-17. The Draft Report further states that the prior AQMPs “adequately describe the activities associated with implementing PR 2306 such that no new environmental document will be required.” *Id.* While the supporting analysis for this conclusion is not yet available, we write to express our position that it is inappropriate for SCAQMD to rely on the prior AQMPs in support of PR 2306.

The fundamental purpose of an EIR is “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.” PRC § 21061. To that end, the EIR “shall include a *detailed statement* setting forth . . . [a]ll significant effects on the environment of the proposed project.” PRC § 21100, subd. (b)(1) (emphasis added).

The AQMPs rely heavily on the introduction and expansion of infrastructure to meet the specified air quality goals and NOx emissions reduction targets. However, there is no ACMP PIER Electrical Section (4.3) regarding how much new electricity would be needed for mobile and other sources operating within freight railyards. Also, the electricity that may be needed for the indirect sources that operate within the SCAQMD and that would be attracted or travelled to individual freight railyards (e.g., trains that are electrified via catenary that travel from the SCAQMD borders to the individual FRYs) was not considered.

In addition, the SCAQMD staff has estimated the PR 2306 NOx emissions reductions – on average annually – at about nine (9) tons per day between rule implementation (approximately 2027) through 2050. The 2022 AQMP PEIR (November 2022) was unable to estimate the potential emission reductions and indicated that was yet to be determined. But a PEIR must clearly and separately identify potential impacts and mitigation measures. Those mitigation measures must be “discussed separately and the reasons for choosing one over the others should be stated.” *Sacramento Old City Assn. v. City Council*, 229 Cal. App. 3d 1011, 1027 (1991). SCAQMD has failed to undertake that analysis here with respect to railyards.

Finally, the 2022 AQMP PEIR Electrical Section (4.3) assesses future electricity needs, broadly indicating there would be an increase in electricity demand beyond then-current estimated growth projections. The Electrical Section of the Draft Report in support of the Proposed Rules estimates the specific increases in electrical demand for the Ports of Los Angeles and Long Beach to be approximately 100 MW to 300 MW. But it failed to account for freight railyards and the indirect sources they attract within the SCAQMD. Even absent these sources, the Draft Report concludes that the potential increase in electricity usage quantified would exceed baseline electricity consumption at the Ports by up to 11 percent. Further, even

after mitigation measures are applied, electricity demand impacts would remain significant. However, no mitigation associated with this increase is discussed in detail. This analysis fails to fulfill SCAQMD's obligations under CEQA.

For the reasons identified above, we ask that SCQAMD staff reconsider its determination that a detailed and complete CEQA is unnecessary for the Proposed Rule and allow the public and regulated entities – including railroads – to consider and comment on a complete EIR, as the statute requires.

Respectfully,

Kathryn D. Kirmayer
Theresa L. Romanosky
Association of American Railroads
425 Third Street, SW
Washington, D.C. 20024

Allen Doyel
BNSF Railway Company
2500 Lou Menk Drive
Ft. Worth, TX 76131

Rami Hanash
Union Pacific Railroad Co.
1400 Douglas St.
Omaha, NE 68179

Sarah Yurasko
American Short Line and Regional Railroad Association
50 F Street NW, Suite 500
Washington, D.C. 20001

CC Ms. Zoya Banan
Acting Program Supervisor
South Coast Air Quality Management District
zbanan@aqmd.gov

Ms. Elaine Shen
Planning and Rules Manager
South Coast Air Quality Management District
eshen@aqmd.gov

Ms. Barbara Radlein
Panning and Rules Manager
South Coast Air Quality Management District
bradlein@aqmd.gov

Ms. Daniel C. Hernandez
Assistant Air Quality Specialist
South Coast Air Quality Management District

Ms. Cindy Guzman De La Rocha
Assistant Air Quality Specialist
South Coast Air Quality Management District

Mr. Kevin Ni
Program Supervisor
South Coast Air Quality Management District
kni@aqmd.gov

Ms. Jivar Afshar
Air Quality Specialist
South Coast Air Quality Management District
jafshar@aqmd.gov