



Chair Delgado & Members of the Board
 Governing Board
 South Coast Air Quality Management District
 21865 Copley Drive
 Diamond Bar, CA 91765
cob@aqmd.gov

July 30, 2024

Re: Proposed Rule 2306 – Freight Rail Yards and Proposed Rule 316.2 – Fees for Rule 2306

Dear Chair Delgado and Members of the Governing Board:

On behalf of the undersigned environmental justice, health, environmental and labor organizations, we urge the South Coast Air Quality Management (SCAQMD) Governing Board to vote to adopt the Railyard Indirect Source Review (ISR) Rule (PR 2306) today.

In March 2017, the SCAQMD Governing Board adopted the 2016 Air Quality Management Plan, which directed staff to pursue facility-based mobile source measures to reduce emissions from vehicles and equipment associated with rail yards and intermodal facilities (Railyard ISR - PR 2306), commercial marine ports (Port ISR - PR 2304), warehouse distribution centers (Warehouse ISR -

Rule 2305), and commercial airports (Commercial Airports Memorandum of Understanding).¹ The Railyard ISR rule is the culmination of the Board's direction to staff to reduce harmful emissions from the 20 or more railyards operating in the South Coast Air Basin and all new rail yards.

We ask the Board to vote to adopt this important facility-based measure to chart a path to a zero-emissions future for Southern California where community members do not have to worry about whether the air is safe to breathe.

1. The Board must vote to adopt the life-saving Railyard ISR rule fully.

The AQMD Governing Board has a critical opportunity to finally take action to address harmful railyard pollution that has threatened communities for decades. Our organizations urge the Board to vote to adopt the life-saving Railyard ISR rule. This rule is years in the making—not only have staff been developing the Railyard ISR rule over the last three years, but a regulation to reduce the harms of rail operations has been in the works for a decade and a half. The Board must remain strong in its conviction to hold industry accountable to clean up its pollution and vote to adopt the Railyard ISR rule.

Any delay in adopting the Railyard ISR rule, last-minute change to the proposed regulation, or eleventh-hour deference to industry when the railroads have failed to meaningfully participate in the regulatory process is unacceptable and must not be entertained.

Similarly, Congresswoman Nanette Barragan, who represents California's 44th district and the Ports of Los Angeles and Long Beach, submitted a letter to the Board (attached) expressing strong support for the Railyard ISR and calling on the Board to adopt the regulation on August 2.

2. The Railyard ISR rule is critical to reducing railyard pollution in the South Coast.

There are *at least* 20 existing freight rail yards potentially subject to PR 2306 in the basin.² While advocates would like the rule to be stronger, the Railyard ISR rule is nevertheless critical to reducing railyard pollution in the South Coast.

After years of collaboration between the Board, staff, and stakeholders, staff developed a Railyard ISR that will be a binding, enforceable agreement that applies to all new and existing railyards in the South Coast. The regulation will ensure the benefits of the California Air Resources Board's (CARB) In-Use Locomotive Regulation and the Advanced Clean Fleets Regulation are implemented proportionately in the South Coast basin by requiring NOx emission reductions for each railyard. In addition, the ISR rule helps chart a path to a widescale zero-emissions infrastructure buildout in the region by requiring railyard operators to share their zero-emission infrastructure plans with the Air District and demonstrate that they are taking steps to submit infrastructure build out applications to utilities. The rule will also help increase transparency and accountability of the

¹ SCAQMD, Final 2016 Air Quality Management Plan, (March 2017), <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/final2016aqmp.pdf?sfvrsn=15>.

² SCAQMD, Proposed Rule 2306 – Freight Rail Yards Virtual Community Workshop PowerPoint Presentation, (June 5, 2024), https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/pr-2306/pr-2306_community-meeting_presentation-06052024.pdf?sfvrsn=12.

railroad industry by requiring railyards to submit information and status reports regarding certain aspects of their operations.

Each of these components of the rule is important to reducing NOx emissions in the region and building a goods movement system that does not poison people. We cannot afford to lose any of these components of the rule. The Board must adopt the Railyard ISR rule proposal in full.

Finally, staff moved on-dock rail yards from the Railyard ISR rule to the Port ISR rule. While we are not opposed to this change in theory, staff and the Board must ensure that on-dock rail yards are properly and adequately addressed in the Port ISR rule to incentivize port electrification and ensure lasting emission reductions.

3. The rule doesn't go far enough to clean up regional railyard pollution.

We ask the Board to adopt the rule in its current form on August 2—we do not want any further delay. After the Board adopts the Railyard ISR rule and the Port ISR rule, we ask the Board to use its authority to strengthen the Railyard ISR rule so that it reduces all NOx emissions from rail yards to zero and ensures consistent auditing to track emissions reductions from rail operations among other things.

The Board should consider strengthening the Railyard ISR in the following ways:

- **First**, require fenceline air monitoring at every railyard facility in the basin. Community members continue to experience the daily negative effects from rail yard pollution, but it is not adequately monitored or reported so their experiences are not accurately represented or addressed.
- **Second**, the Board should bolster the NOx emission reduction targets to require all rail yards to become zero-emission facilities. While PR 2306 makes meaningful strides to reduce NOx emissions at railyards, supports the build out of zero-emission infrastructure, and increases transparency, it does not include a target to bring rail yards to zero-emissions. This means that the Railyard ISR does not go far enough to clean up regional railyard pollution. Because locomotives, trucks, cargo-handling equipment, transport refrigeration units and other equipment are powered by cancer-causing diesel, climate-warming natural gas and/or other polluting fuels, any pollution from railyards is harmful to our health and the planet.
- **Third**, at a future point, the Board should strengthen the rule to incentivize and require rail yards to build electric charging infrastructure, rather than just requiring rail yard operators to submit their zero-emission infrastructure plans to the Air District.
- **Fourth**, the Railyard ISR rule should ensure that a collective of community advisors determine how any fines for non-compliance should be used.
- **Fifth**, the rule should require railyards to report on new jobs and training associated with zero-emissions equipment and infrastructure in the reporting requirements section of the rule.

We are greatly appreciative of all the hard work and effort staff and the Board have put into developing this Railyard ISR rule. Our organizations urge the Board to adopt PR 2306 in full on

August 2, and we look forward to continuing to work with SCAQMD in reducing pollution from the goods movement sector.

4. SCAQMD has clear authority to adopt the Railyard ISR, as explained in the Staff Report.

SCAQMD has clear authority to adopt the Railyard ISR, as articulated in the Staff Report, our coalition's comment later submitted on January 31, 2023, and detailed in part below.

California's Health and Safety Code specifically grants South Coast AQMD authority to "adopt and enforce rules and regulations to achieve the state and federal ambient air quality standards in all areas affected by emission sources under [the Air District's] jurisdiction."³ Health and Safety Code section 40716 also provides that air districts may adopt and implement regulations to reduce or mitigate emissions from indirect and areawide sources in order to meet state ambient air quality standards. Section 40440(b)(3) further directs South Coast AQMD to regulate indirect source emissions in areas where there are high-level localized levels of pollutants and new sources which will have a significant impact on air quality. The South Coast Air Basin remains in nonattainment of the federal National Ambient Air Quality Standards (NAAQS) for ozone and for some PM2.5 standards. Data from the California Air Resources Board's (CARB) 2008 Railyard Health Risk Assessments highlights the high level of localized pollution near railyards in the South Coast Air Basin.⁴

Likewise, the Clean Air Act recognizes that "[a]ny State may include in a State implementation plan . . . any indirect source review program," and "[t]he [U.S Environmental Protection Agency] Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan."⁵ The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution."⁶ Like ports, airports, and warehouses, railyards are indirect sources because they are structures or facilities that attract highly polluting mobile sources, including locomotives, trucks, transport refrigeration units, and cargo handling equipment.⁷

The Clean Air Act further provides that air districts are empowered to "adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution" so long as it is not less stringent than a comparable federal standard and complies with other sections of the Clean Air Act.⁸ The Railyard ISR regulation is not federally preempted by the Interstate Commerce Commission Termination Act (ICCTA) because it will become federal law and therefore the relevant sections of the Clean Air Act will be subject to

³ Health & Safety Code Section 40001; *see also id.* section 40702.

⁴ CARB, Railyard Health Risk Assessments and Mitigation Measures, <https://ww2.arb.ca.gov/resources/documents/railyard-health-risk-assessments-and-mitigation-measures>.

⁵ 42 U.S.C. § 7410(a)(5)(A)(i).

⁶ *Id.* § 7410(a)(5)(C).

⁷ *See, e.g., Nat'l Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.*, 627 F.3d 730, 737 (9th Cir. 2010) (development sites constitute "indirect sources").

⁸ 42 U.S.C. § 7416; *see also id.* § 7543.

harmonization with ICCTA upon the U.S. Environmental Protection Agency’s (EPA) approval of the regulation in California’s statement implementation plan.⁹

In addition, PR 2306 survives ICCTA preemption because it is a “law[] of general applicability that do[es] not unreasonably interfere with interstate commerce.”¹⁰ A generally applicable law “must address state concerns generally, without targeting the railroad industry” and set requirements for railroads that parallel those for “similarly situated entities.”¹¹ The South Coast AQMD Board committed in its 2016 Air Quality Management Plan (AQMP) and again in its 2022 AQMP to address pollution from the indirect sources that are major magnets for mobile source emissions in the South Coast Air Basin. The 2016 AQMP was subsequently approved by CARB and included in California’s SIP, and the ozone-related portion of the AQMP was approved by EPA in 2019. The 2016 AQMP included MOB-01: Emission Reductions at Commercial Marine Ports, MOB-02: Emission Reductions at Rail Yard and Intermodal Facilities, MOB-03: Emission Reductions at Warehouse Distribution Centers, and MOB-04: Emission Reductions at Commercial Airports.¹² Likewise, in the 2022 AQMP, the Air District further detailed its progress on the Air District’s facility-based emission reduction plan in discussing the indirect source measures for Commercial Marine Ports (PR 2304, in progress), Railyards and Intermodal Facilities (PR 2306, in progress), Warehouse Distribution Centers (Warehouse ISR, adopted in 2021), and Commercial Airports (Airport MOU, approved in 2019).¹³ The Air District has made steady progress in adopting control measures to reduce emissions from all of these facilities and the polluting mobile sources that they attract.

Finally, our organizations support the California Environmental Quality Act (CEQA) analysis as referenced in the Staff Report and as approved in the 2022 and 2016 AQMPs. PR 2306 is a rulemaking within the scope of the programs approved earlier in the 2022 AQMP and 2016 AQMP per CEQA Guidelines Section 15168(c)(2) and the Final Program Environmental Impact Report (EIR) for the 2022 AQMP and the Final Program EIR for the 2016 AQMP.

5. Conclusion

We appreciate all of the hard work the Board and staff put into developing the Railyard ISR rule and urge the Board to vote to adopt the rule in full on August 2, so that communities can begin to breathe easier.

Sincerely,

⁹ *Ass’n of Am. R.R.s v. South Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010); *BNSF Ry. Co. v. Clark Cnty.*, 11 F.4th 961, 966 (9th Cir. 2021); *Boston & Maine Corp. & Town of Ayer*, 5 S.T.B. 500, 2001 WL 458685, at *5 (2001).

¹⁰ *Ass’n of Am. R.R.s*, 622 F.3d at 1097.

¹¹ *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 254 (3d. Cir. 2007); *Adrian & Blissfield R.R. Co. v. Vill. of Blissfield*, 550 F.3d 533, 541-42 (6th Cir. 2008).

¹² SCAQMD, 2016 AQMP, (March 2017), at 4-27-29.

¹³ SCAQMD, 2022 AQMP (Dec. 2022), at 4-25-26.

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July 24, 2024

Members of the Governing Board
South Coast Air Quality Management District
21865 Copley Drive
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RE: Proposed Rule 2306 – Freight Rail Yards

Dear Members of the Governing Board:

I support the South Coast Air Quality Management District's (SCAQMD) Proposed Rule 2306 – Freight Rail Yards (Rail Yards ISR) and urge the Governing Board to adopt the rule at the next meeting on August 2, 2024. The need to reduce pollution from freight rail yards in the South Coast Air Basin is long overdue and the proposed rule would result in significant air quality improvements and benefits for the region.

The Rail Yards ISR will deliver the greatest benefits to those living in neighborhoods adjacent to railyards and disproportionately exposed to the deadly impacts of rail pollution. In conjunction with CARB's In-Use Locomotive Rule and Advanced Clean Fleets regulations, the proposed Rail Yards ISR is estimated to reduce over 9 tons of nitrogen oxide emissions each day, which would greatly contribute to improved regional air quality and protecting public health. Additionally, the proposed rule is expected to prevent 275 premature deaths and over 1,940 emergency room visits and hospital admissions each year.

Railroads are an essential part of the supply chain, as well as our local and national economies, but they are also major sources of air pollution with serious public health consequences. My Congressional District, which includes the railyard adjacent communities of Wilmington and Long Beach, is burdened by one of the highest asthma rates in the nation. Existing regulations on locomotives have not kept pace with the cleaner technology readily available, and the railroads have not made sufficient investments in reducing emissions to meet the district's clean air goals or combat excessively polluting trains from operating in the South Coast Air Basin. Strengthening regulations on rail yards will have a significant impact on the health and quality of life of my constituents.

Adoption of the proposed Rail Yards ISR is a necessary step, but the air district must use their legal authority, provided by Congress, to strengthen the regulations and continue to work with our frontline AB617 communities toward solutions that will more effectively reduce pollution

from freight rail yards, accelerate the transition to zero emission facilities, and provide greater public transparency of how the district will hold violators accountable.

As the Representative of California's 44th Congressional District, I respectfully urge the SCAQMD Governing Board to consider the health and quality of life of frontline communities across the South Coast Air Basin by adopting the proposed Rail Yards ISR.

Sincerely,

A handwritten signature in blue ink that reads "Nanette Diaz Barragán". The signature is written in a cursive style.

Nanette Barragán
Member of Congress