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Submitted electronically: gwu@aqmd.gov & hpourzand@aqmd.gov

May 19, 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. We appreciate the strides that have been made to the updated draft language and staff report. Specifically, the changes implemented to the definitions of Large Roadway, Large Roadway Project, and Material Piles. Additionally, we appreciate and support the changes allowing aggregate crushing and grinding operations within the prohibition zone under specific conditions. However, there continues to be several unresolved questions and concerns, many of which are detailed in this letter. A summary of our concerns includes drought conditions and material pile covers as the language is currently written. Please read below for more information.



1. Dust from Construction Roads Control Measure.

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 the regulations imposed by the SCAQMD are practical for the construction industry. Dust from Construction Roads found in Table 1 - Large Roadway Project Control Measures of the updated draft language states “[w]ater all unpaved roads within the project perimeter used for construction vehicular traffic at least once per every two hours of active operations [3 times per normal 8-hour workday]”. While the State of California is experiencing increasing drought concerns, the availability of water decreases.

On April 21, 2021 Governor Gavin Newsome declared a drought state of emergency in Mendocino and Sonoma counties due to severe drought conditions in the Russian River Watershed calling for increased conservative efforts. Although the emergency regulation will expire July 12, 2022, the State Water Board plans to adopt a 2022 emergency regulation which would renew specific drought sections passed in 2021 with amendments and refinements. The notice released May 11, 2022 states that “persistent dry conditions require immediate action to extend the State Water Board’s emergency authority in 2022 to most effectively administer water rights, ensure adequate reliable water supplies for minimum human health and safety needs, and prevent the unreasonable use of water in the Russian River watershed”. We understand that the Russian River Watershed is outside the jurisdiction of SCAQMD, however, this demonstrates that the drought is a state-wide issue and should be taken under consideration.

Furthermore, the counties within SCAQMD jurisdiction are experiencing moderate, severe, and extreme drought conditions according to the drought.gov website. Specifically, majority of San Bernadino County is experiencing extreme drought conditions: 17th driest April and 3rd driest year on record, over the past 128 years. Los Angeles county is experiencing severe and extreme drought conditions: 35th driest April and 4th driest year on record, over the past 128 years. Riverside county is experiencing moderate, severe, and extreme drought conditions: 25th driest April and 3rd driest year on record, over the past 128 years. Lastly, Orange County is experiencing moderate and severe drought conditions: 39th driest April and 4th driest year on record, over the past 128 years. This demonstrates that the drought is affecting the entire state of California, including the counties under SCAQMD jurisdiction.

Q1: Can SCAQMD ensure that there will be enough water to meet the needs of complying with PR 403.2?

Lastly, we understand that an alternative would be to “[a]pply a chemical stabilizer to all unpaved road surfaces in sufficient quantity and frequency to maintain a stabilized surface”. However, our members have expressed 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.

2. Definition of Material Pile Cover.

As the language is currently written, material pile covers refer to “plastic sheeting at least 10 mil thick that overlaps a minimum of 24 inches and is anchored and secured so that no portion of the



material pile is exposed to the atmosphere”. While AGC of California appreciates an additional alternative in controlling dust from material piles, our members have expressed concerns with the thickness of the cover. For instance, 20’ by 100’ rolls of 10 mil are approximately 95 pounds which may not be practical or feasible for construction crew members to carry up the slope of a material stockpile. However, in comparison, 20’ by 100’ rolls of 6 mil are approximately 58 pounds each. We encourage the SCAQMD to change the language of material pile covers from “at least 10 mil thick” to “at least 6 mil thick”. AGC of California asserts the need to protect the safety of construction crew members.

3. 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.” As mentioned previously, 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. Additionally, 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’

We support SCAQMD for adjusting the language of large roadway project, specifically for removing “with an annual daily average number of vehicle trips in excess of 100,000” due to our expressed concern regarding the use of the FHWA data to calculate estimates.

D. Definition of ‘material piles’

Additionally, we support SCAQMD for adjusting the language of material piles, specifically for changing the height restriction from 3 feet to 8 feet due to the concerns expressed by the Construction Industry Air Quality Coalition (CIAQC).

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.

SCAQMD altered the most recent draft language of material piles, specifically, that they “[s]hall not exceed a height of 30 feet” as opposed to the original 20 feet. AGC of California supports this change as it will allow for the construction industry to comply with this regulation more easily.

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 (f)(3) as stated above. It is very difficult for contractors to estimate commencement and completion dates due to the fluid nature of most construction projects.

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

“The responsible person(s) 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 implemented for each acidity or equipment.
- (C) The frequency of fugitive dust control measures implemented. If dust suppressant is used as the control measure for material piles, record the time and duration that the dust suppressant was applied, including the location of the material pile.
- (D) Purchase records or invoices for dust suppressants used for the large roadway project.”

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.

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 consider the changes we have expressed above. If you have any questions regarding the comments, please contact Brian Mello at 603-770-9264 (email: mellob@agc-ca.org). We appreciate the opportunity to comment and hope these concerns are addressed.



Sincerely,

Brian Mello

Brian Mello
Associate Vice President of Engagement & Regulatory Affairs
Associated General Contractors of California

