



The California Asphalt Pavement Association

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Executive Director

MAILING ADDRESS
P.O. Box 981300
West Sacramento, CA 95798

MAIN OFFICE
1550 Harbor Blvd., Suite 211
West Sacramento, CA 95691
(916) 791-5044

WEBSITE
www.calapa.net

E-MAIL
info@calapa.net

Mr. George Wu and Mr. Henry Pourzard
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Proposed Rule 403.2 Fugitive Dust

Dear Mr. Wu and Mr. Pourzard:

The California Asphalt Pavement Association (CalAPA) would like to take this opportunity to memorialize our comments and provide data to the South Coast Air Quality Management District (SCAQMD) regarding proposed Rule 403.2 on Fugitive Dust. Our industry has a long and proud history of implementing various technologies and best practices to dramatically reduce emissions and other impacts from our facilities in Southern California, and we appreciate the opportunity to once again engage with the Air District in a productive dialogue about furthering Air District goals with regards to highway construction projects in a manner that is both reasonable, achievable and quantifiable. It should also be noted that voters and taxpayers in Southern California and around the state have spoken loudly on this issue – demanding that our vital transportation infrastructure be repaired. This is a safety and quality-of-life issue that impacts all residents of California.

At the outset, we should note that we do not understand why the air district is proposing a separate rule related to road construction when the air district already has robust rules in place to deal with visible emissions (Rule 401) and public nuisances (Rule 402), as well as the existing fugitive dust regulations (Rule 403). This proposed rule is, therefore, redundant and adds additional complexity with no discernable way to determine if it will be enforceable or meet overall air district goals. We also believe this current rule-making process has been rushed and has not provided adequate time for organizations like ours to solicit input from our membership.

Specifically, as currently drafted, much of Proposed Rule 403.2 is far too vague for our industry to comply with. After three Working Group Meetings there remains significant ambiguity to the applicability of the rule. For example, there are few details on milling and grinding of pavement surfaces and the concern about dust from these activities prior to repaving. Many of our members have been milling miles of roads without an issue with air quality and there is no known technology that can be utilized in lieu of milling a surface course before laying an asphalt overlay. The current pile height threshold of 3' on a large linear roadway project is essentially unworkable. There are a number of activities on these projects that create material that would be over 3' but would not be considered a storage pile, but it is unclear at this

time if this might be subject to additional control based on the information provided in the working group meetings.

The definitions of large roadways currently is dependent on average daily traffic counts, but in very few instances is that data ever captured and cataloged by Caltrans or local public agencies in a centralized database. At this point it is unclear how this data would be obtained and verified. Also, there has been discussion of determination of sensitive receptors and impacts. More work on the potential impact of the rule is needed with regards to proximity to sensitive receptors. A distance of 500 feet appears arbitrary and will include many "large roadway" projects in urban areas, strictly limiting projects.

The draft rule language also is unclear on how the air district proposes to measure the distance of road construction activity vis-à-vis proximity to nearby residents, and how the project boundaries will be defined. And how does the unique characteristics of a moving construction zone be factored in to this equation? The size of stockpiles also appears to be arbitrary and not connected to the reality of how road construction is done. There are already robust rules in place between public agencies and the contractor with regard to notification of nearby residents and businesses, as well as mitigating adverse impacts of construction activity. For the air district to impose regulations in this manner is stepping between legally binding contractual agreements between the project owner and the contractor.

Finally, we have recently been made aware of some innovative pilot projects by Caltrans District 8 (Riverside & San Bernardino counties) that we believe would be a better approach to targeting fugitive dust from road construction activities in a more real-world setting rather than with an overly broad and vague regulation.

We are requesting a clearer definition of the applicability of the rule and how it will be determined, so that work can begin on determining how to address the issues raised in this letter.

We thank you for the opportunity to provide our comments on this important matter. The California Asphalt Pavement Association, founded in 1953, is the only trade association that exclusively represents the asphalt pavement industry in California. Please feel free to contact me at (916) 791-5044 if you have any questions.

Sincerely,

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

RUSSELL W. SNYDER, CAE
Executive Director