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January 4, 2023

Michael Morris, Planning and Rules Manager
Planning, Rule Development and Implementation
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Regulatory Flexibility Group Comments on Proposed Amended Rule
("PAR") 1178

Dear Mr. Morris,

Thank you for the opportunity to provide comments regarding Proposed Amended Rule 1178 ("PAR 1178"). We submit these comments on behalf of the Regulatory Flexibility Group ("RFG"), a coalition of Southern California businesses in the aerospace, automotive, energy and petrochemical sectors. The RFG is committed to supporting strategies for achieving state and national air quality standards that are cost-effective and fairly allocated among all sectors of the Southern California economy.

We appreciate the number of Working Group meetings the South Coast Air Quality Management District ("District") has held on PAR 1178. We are, however, concerned with the current cost-effectiveness analysis. The District's analysis and methodology to date raise a number of issues that cut across sectors and industries as the District moves forward with future rulemakings, particularly in light of the Governing Board's recent adoption of the 2022 Air Quality Management Plan ("AQMP") and its reliance on "extensive use of zero emission technologies across all stationary and mobile sources."¹ Accordingly, and as summarized in more detail below, we respectfully request the District fully consider the costs of the proposed rule and anticipated equipment life-cycle when establishing a cost-effectiveness threshold, and that the District undertake a tiered cost-effectiveness, incremental cost-effectiveness, and socioeconomic analysis prior to bringing the rule forward for a public hearing², as required by the AQMP.

¹ South Coast Air Quality Management District, 2022 Air Quality Management Plan, at Preamble to Executive Summary.

² Currently scheduled for April 2023. *See* South Coast Air Quality Management District, Presentation for Working Group Meeting 7 ("WGM 7 Presentation"), at 28 (presentation posted December 30, 2022).

The District Should Consider Additional Information to Ensure an Accurate Cost-Effectiveness Analysis

The Health & Safety Code requires the District to adopt rules which, among other things, “are efficient and cost-effective” (Health & Safety Code § 40440(c).) The Code states that:

In adopting any regulation, the district shall consider, pursuant to Section 40922 [cost-effectiveness assessment], and make available to the public, its findings related to the cost-effectiveness of a control measure. . . . A district shall make reasonable efforts, to the extent feasible within existing budget constraints, to make specific reference to the direct costs expected to be incurred by regulated parties, including businesses and individuals.

(Health & Safety Code § 40703.)

Health & Safety Code Section 40440.8 requires the District to examine “[t]he availability and cost-effectiveness of alternatives to the rule or regulation” by considering the socioeconomic impacts of proposed rules and regulations.

Further, Health & Safety Code Section 40920.6 requires the District to, among other things:

- 1) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this paragraph, “cost-effectiveness” means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.
- 2) Calculate the incremental cost-effectiveness for the potential control options To determine the incremental cost-effectiveness under this paragraph, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.
- 3) [And consider t]he effectiveness of the proposed control option, . . . [t]he cost-effectiveness of each potential control option, . . . [and t]he incremental cost-effectiveness between the potential control options.

(Health & Safety Code § 40920.6.)

The requirements that the District create rules that are efficient and cost-effective and provide socioeconomic impact assessments reflect the legislature’s intent: that the District consider and seek to minimize socioeconomic impacts and have these considerations as objectives of its rulemaking authority.

However, at this point in the PAR 1178 process, the District has not fully taken into account the significant costs this rule will impose on the regulated community. Specifically, we respectfully request the District further consider the following:

- ***True Dome Installation Costs.*** When considering labor costs (particularly union labor), necessary tank cleaning and degassing prior to doming, required modifications to fire suppression systems, water treatment and disposal associated with the work and installation costs are significantly higher than the doming costs assumed by the District.
- ***Lost Productivity Costs.*** The contemplated doming could require refiners to take tanks offline for potentially months at time. This would result in productivity losses that could be orders of magnitude greater than the District's applied lost productivity number (0.50/barrel to tanks with diameters greater than 200 ft.) in the October 2022 Working Group Meeting presentation.³
- ***The Useful Life Expectation Must Consider Actual Anticipated Lifecycle of the Equipment.*** The District assumes, based on vendor and facility estimates, that the domes will have a 50-year life. However, this fails to recognize that state, regional, and local policies, rules and regulations will likely reduce the consumption of certain fuels produced by Basin refineries, and, accordingly, the likelihood that the domes required pursuant to this rule will actually be in place 50 years from now. Use of a 50-year assumption makes the control equipment appear more cost-effective by diluting the significant capital costs of required projects over a much longer time table than is likely to occur. The staff analysis should reflect a 25-year assumption, which is more consistent with the anticipated use of the domes. Considering actual anticipated life-cycle is also consistent with broader District commitments to consider equipment life on a case-by-case basis, attempt to avoid stranded assets, and in cases of stranded assets, include equipment replacement costs and salvage values in the analysis.⁴

The cost-effectiveness analysis called for throughout the Health & Safety Code is a critical element of the rulemaking process. The analysis is only as good as the assumptions made and the cost data used; use of incomplete and/or inaccurate data renders the entire process meaningless. While we appreciate that the rulemaking process has been underway for some time, it is clear that additional data is needed to support an appropriate cost-effectiveness determination.

And while we recognize the District has endeavored to consider some of the factors summarized above (and we appreciate the same), to date the analysis has not undergone the rigor necessary obtain meaningful cost-effectiveness numbers. We refer you to RFG member letters for additional detail on the anticipated costs of this rulemaking, and encourage you to work closely with the regulated community to get a more comprehensive understanding of the potential impacts of the rule.

³ South Coast Air Quality Management District, Working Group Meeting 6, at 28 n.2 (Oct. 27, 2022).

⁴ We acknowledge Staff's indication it is open to considering permit conditions to remove tanks from service upon a future date in lieu of doming. *See* WGM 7 Presentation, at 5. However, RFG still believes the Health & Safety Code-driven cost-effectiveness analysis must consider the anticipated use timeline of the domes, not just the technical "useful life."

The AQMP Requires the District to Engage in a “Tiered” Cost-Effectiveness, Incremental Cost-Effectiveness, and Socioeconomic Impact Analysis

As you know, proposed amendments to Rule 1178 stem from 2016 AQMP Control Measure FUG-01.⁵ The 2016 AQMP established cost-effectiveness thresholds for “tiered levels of analysis.” More specifically, the 2016 AQMP provides that the :

*2016 AQMP proposes **thresholds of \$30,000 per ton of VOC** and \$50,000 per ton of NO_x for tiered levels of analysis. Note, however, with the new focus on incentives and public funding, not all of this cost will necessarily be borne by industry. Specifically, proposed rules with an average cost-effectiveness above these thresholds will trigger a more rigorous average cost-effectiveness, incremental cost-effectiveness, and socioeconomic impact analysis. A public review and decision-making process will be instituted to seek lower, more cost-effective alternatives. In addition, the SCAQMD staff, with input from stakeholders, will attempt to develop viable control alternatives within the industry source categories that a rule is intended to regulate. If it is determined that control alternatives within the industry source category are not feasible, staff will perform an evaluation of the control measure as described in the next paragraph. Viable alternatives will be reviewed by the SCAQMD Governing Board at a public meeting no less than 90 days prior to rule adoption and direction can be given to staff for further analysis. During this review process, incremental cost-effectiveness scenarios and methodology will be specified, and industry-specific affordability issues will be identified as well as possible alternative control measures.⁶*

The tiered analysis supports rigorous and careful consideration of the balance between air quality improvements and the economic concerns and impacts on the regulated community. As summarized above, we believe the current cost-effectiveness analysis vastly underestimates the actual costs. Notwithstanding, even the District’s revised \$32,400 per ton cost⁷ exceeds the 2016 AQMP’s established threshold for tiered review. Accordingly, we respectfully request the District undertake the more rigorous average cost-effectiveness, incremental cost-effectiveness, and socioeconomic impact analysis in connection with this rulemaking.

⁵ See South Coast Air Quality Management District, 2016 Air Quality Management Plan at 4-21.

⁶ *Id.* at 4-54 (emphasis added).

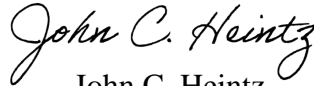
⁷ See South Coast Air Quality Management District, Presentation for Working Group Meeting 7, at 27 (presentation posted December 30, 2022).

LATHAM & WATKINS^{LLP}

Conclusion

Thank you for considering these comments. We will reach out separately to you in order to request a meeting with District staff to discuss these comments in greater detail as the rulemaking advances.

Sincerely,



John C. Heintz
of LATHAM & WATKINS LLP

cc: Michael Krause, Assistant Deputy Executive Officer, SCAQMD
Michael Carroll
RFG Members