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VIA EMAIL

September 1, 2021

Ms. Susan Nakamura
Assistant Deputy Executive Officer
Planning, Rule Development
South Coast Air Quality Management District
21865 Copley Drive
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RE: Proposed Rule 461.1 Rulemaking Comments

Ms. Nakamura:

I would first like to thank you and the South Coast AQMD ("District") for the time and effort spent working alongside various governmental and industry stakeholders to address key comments and advance the proposed rulemaking for mobile fueling operations. I am writing on behalf of Booster Fuels, Inc. ("Booster") to provide comment on the vapor recovery requirements being considered for retail mobile fuelers that were proposed by the District during the last stakeholder meeting on August 4, 2021 ("Working Group Meeting #6").

Again, we are grateful for the movement the District has made with respect to the proposed allowance for retail mobile fueling operators to use ORVR-based CARB certified systems in lieu of Phase II (i.e. per CARB Executive Order VR-601-A). However, we were surprised to hear that the District is still proposing only allowing retail use of CARB certified non-vapor recovery equipment for dispensing to vehicles equipped with ORVR until a CARB certified Phase II vapor recovery system is commercially available.

Section 41954(a) of the California Health and Safety Code ("HSC") mandates:

> *The state board shall adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standard."*

As you know, on February 19, 2021, CARB certified Booster's Mobile Fueling On-Demand ("MFOD") Tank Vehicle Gasoline Dispensing System for ORVR Vehicles per the issuance of

Executive Order VR-601-A after determining it conformed with the certification procedures established by CARB pursuant to Section 41954 of the HSC.

If the District were to only allow retail use of the above CARB certified emission control measure until a CARB certified Phase II system is commercially available for mobile fuelers, it would mean that once a CARB certified Phase II system is commercially available then it would be **the only system allowed** for the control of gasoline vapor emissions during retail mobile dispensing operations under the proposed rule.

Section 41954(g) of the HSC requires **at least two** Phase II systems meeting stricter performance standards be certified by CARB for mobile fuelers before a District can implement a rule that would restrict the use of a CARB certified MFOD Tank Vehicle Gasoline Dispensing System for ORVR Vehicles.

Section 41954(g)(1) & (g)(3) states:

> *(1) Except as authorized by other provisions of law and except as provided in this subdivision, no district may adopt, after July 1, 1995, stricter procedures or performance standards than those adopted by the state board pursuant to subdivision (a), and no district may enforce any of those stricter procedures or performance standards.*
> *(3) Any stricter procedures or performance standards shall not be implemented **until at least two systems** meeting the stricter performance standards have been certified by the state board.*

Furthermore, even if the District were to believe a Phase II system would result in a higher degree of emission reduction compared to the fueling of only vehicles equipped with ORVR per Executive Order VR-601-A, there are additional state statutory requirements that have to be addressed prior to developing a rule that would require one control measure over another. Under Section 40406 of the HSC, "best available retrofit control technology" is defined as:

> *An **emission limitation** that is based on the maximum degree of reduction achievable, **taking into account environmental, energy, and economic impacts** by each class or category of source.*

One of the primary factors required to be evaluated by the District when adopting regulation is the cost effectiveness of available and proposed control measures. Under "General Powers and Duties" of Air Pollution Control Districts, Section 40703 of the HSC states:

> ***In adopting any regulation, the district shall consider, pursuant to Section 40922, and make available to the public, its findings related to the cost effectiveness of a control measure, as well as the basis for the findings and the considerations involved**. 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.*

Section 40922 of the HSC specifies additional factors to be considered by the District, such as technological feasibility, total emission reduction potential etc., when adopting a specific control measure. Section 40922 states:

> (a) *Each plan prepared pursuant to this chapter* ***shall include an assessment of the cost effectiveness of available and proposed control measures and shall contain a list which ranks the control measures from the least cost-effective to the most cost-effective.***
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> (b) *In developing an adoption and implementation schedule for a specific control measure,* ***the district shall consider the relative cost effectiveness of the measure****, as determined under subdivision (a),* ***as well as other factors including, but not limited to, technological feasibility, total emission reduction potential, the rate of reduction, public acceptability, and enforceability.***

Lastly, Sections 40920.6 & 40001(d) of the HSC explicitly address adoption of District rules and regulations with respect to "best available retrofit control technology" and alternative methods of complying with emission control requirements. Under Section 40920.6(a) & (f) of the HSC:

> (a) *Prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914, districts shall, in addition to other requirements of this division, do all of the following:*
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> *(1) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.*
>
> *(2) 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.*
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> *(3) Calculate the incremental cost-effectiveness for the potential control options identified in paragraph (1).* ***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.***
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> *(4) Consider, and review in a public meeting, all of the following:*
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> *(A) The effectiveness of the proposed control option in meeting the requirements of this chapter and the requirements adopted by the state board pursuant to subdivision (b) of Section 39610.*
>
> *(B) The cost-effectiveness of each potential control option as assessed pursuant to paragraph (2).*
>
> *(C) The incremental cost-effectiveness between the potential control options as calculated pursuant to paragraph (3).*
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> *(5)* ***Make findings at the public hearing at which the regulation is adopted stating the reasons for the district's adoption of the proposed control option or options.***

(f) *After a district has established the cost-effectiveness, in a dollar amount, for any rule or regulation adopted pursuant to this section or Section 40406, 40703, 40914, 40918, 40919, 40920, 40920.6, or 40922,* ***the district, consistent with subdivision (d) of Section 40001, shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced,*** *including the use of emission reduction credits, for any stationary source that has a demonstrated compliance cost exceeding that established dollar amount.*

While Section 40001(d) of the HSC states:

(d) (1) *The* ***district rules and regulations shall include a process to approve alternative methods of complying with emission control requirements that provide equivalent emission reductions, emissions monitoring, or recordkeeping****.*

(2) A ***district shall allow the implementation of alternative methods of emission reduction, emissions monitoring, or recordkeeping if a facility demonstrates to the satisfaction of the district that those alternative methods will provide equivalent performance****. Any alternative method of emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall not violate other provisions of law.*

(3) ***If a district rule specifies an emission limit for a facility or system, the district shall not set operational or effectiveness requirements for any specific emission control equipment operating on a facility or system under that limit****. Any alternative method of emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall include the necessary operational and effectiveness measurement elements that can be included as permit conditions by the district to ensure compliance with, and enforcement of, the equivalent performance requirements of paragraphs (1) and (2). Nothing in this subdivision limits the district's authority to inspect a facility's equipment or records to ensure operational compliance. This paragraph shall apply to existing rules and facilities operating under those rules.*

We raise these above concerns to avoid the development of a rule that would prohibit the use of an alternative CARB-certified method of complying with emission control requirements for retail mobile fuel dispensing if there happens to be a lack of availability in the market for a CARB-certified Phase II system. As you are aware, there is currently only one Phase II system that has ever been certified by CARB for a mobile fuel tank vehicle and that system is currently not commercially available. Even if that system were to become commercially available, it would be the only Phase II system certified by CARB for mobile fuelers, leaving retail mobile fueling operators with no available alternatives on the market under the proposed rule. Furthermore, based upon market research, that CARB-certified Phase II system for mobile fuelers was previously marketed with a price point ranging from approximately $75,000 to $100,000. That would be nearly equivalent to the entire purchase cost of a DOT-certified mobile fuel tank vehicle. The development of a rule that allows for only one CARB certified system to be used will undoubtedly create a competitive disadvantage in the retail mobile dispensing market to the detriment of small business development and innovation within the basin.

Again, we thank you and your team for the time and effort that you are putting into this process. We are happy to be a resource as you go through this rulemaking, and we would be glad to meet with you to discuss this or any other issues relating to the rulemaking process.

Thank you for your attention to this matter.

Best regards,

Joseph Okpaku
Chief Policy Officer
Booster Fuels, Inc.