

**CENTER FOR COMMUNITY ACTION & ENVIRONMENTAL JUSTICE
COALITION FOR A SAFE ENVIRONMENT
EARTHJUSTICE
EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE
LONG BEACH ALLIANCE FOR CHILDREN WITH ASTHMA
NATURAL RESOURCES DEFENSE COUNCIL
PACIFIC ENVIRONMENT
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SAN PEDRO & PENINSULA HOMEOWNERS COALITION
SIERRA CLUB
USC ENVIRONMENTAL JUSTICE RESEARCH LAB
WEST LONG BEACH ASSOCIATION**

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via email: imacmillan@aqmd.gov

Re: South Coast AQMD must include key measures that reflect improved public health, clean air, and community values in the Indirect Source Rule for New Intermodal Railyards (PR 2306).

Dear Mr. MacMillan:

Our organizations, which consist of community, environmental justice, health, and environmental groups, submit this comment letter with recommendations for how to structure the South Coast Air Quality Management District's (SCAQMD) Indirect Source Rule (ISR) for new intermodal railyard facilities (Proposed Rule 2306). We recognize that staff have been working hard to make sure this rule is as robust as possible in order to reduce the health harms and anticipated regional pollution from these proposed facilities. We want to thank staff for their continued interest in learning what the communities' greatest concerns are with adding any new railyards to the South Coast region.

I. The Rule needs to incorporate key measures that reflect the values of improved public health, clean air, and community.

We appreciate staff's attendance and active participation in a recent tour of Colton in San Bernardino County, which is the site of a proposed railyard in the region. On that tour, staff not only visited the site of BNSF's anticipated Colton Railyard, but also witnessed many other, already existing sources of pollution in the immediate vicinity. We hope the new information staff learned on this tour will impact the strength of PR 2306. Specifically, our organizations hope that staff will continue to listen to community voices by incorporating the following values

of public health, clean air, zero-emissions, no displacement, and centering community needs into the structure of the New Railyard ISR rule.

a. Protect the public health first and foremost.

Our organizations are committed to prioritizing public health and clean air for communities across the South Coast Air Basin. Indeed, as staff and the Board are all too aware, the region experiences some of the worst air quality in the nation, and the health harms from this pollution are unrelenting. Unfortunately, many of these harms hit close to home for members of our coalition. We are counting on the Air District to address this pollution and fulfill its statutory mandate. Indeed, the District’s mission, in full, is “To clean the air and protect the health of all residents in the South Coast Air District through practical and innovative strategies.”¹ Therefore, based on this plain mandate, the District’s primary goals in this and all future rulemakings should be to 1) clean the air and 2) protect community health. To fulfill these goals, we continue to ask the District to hire and assign a permanent public health expert to assist in this rulemaking.

Most importantly, this rulemaking should focus on people’s health not being impacted by any new railyards in the region. The single most important aspect of this rule must be that communities in the surroundings of any new sites experience no negative health effects from these projects. Staff should keep this goal in mind throughout the rulemaking process, and this should be the baseline that is used to measure the success of this rule.

Moreover, the rule should incorporate ways to assess whether emission reductions strategies are resulting in improved health outcomes. For example, the Air District should collect data to measure the number of ER visits for asthma related attacks, and track respiratory ailments in the general vicinity of these proposed facilities before and periodically after they are built (if the projects do move forward). This kind of tangible data is critical for the Air District and communities to be able to ascertain whether and to what extent these facilities are impacting public health.

b. Lock in clear path to complete transition to zero-emissions.

One essential goal of this rulemaking must be to lock in a clear path to a complete transition to zero-emissions for any new, yet-to-be-constructed railyards in the region. Bringing all existing railyards to zero-emissions should follow this. In fact, success for PR 2306 hinges on whether the rule sets a path for all new railyards (and railyard expansions) in the region to ultimately be zero-emission facilities. We want to remind the Air District that one of the key reasons staff justified proceeding with the “New Railyard ISR” before taking on the “Existing Railyard ISR” was because doing so would give the Air District an opportunity to establish the most stringent, health-protective standards for facilities that are not built yet precisely *because* they are not built yet. In the end, the Air District has authority to dictate what public health requirements the railroads and other industry must satisfy before they begin operations in the South Coast that will impact regional air quality. The District must wield its mandate-setting

¹ SCAQMD, Mission Statement (accessed on July 27, 2022), at <https://www.aqmd.gov/nav/about>.

authority in order to protect our air and public health. Here, that means setting a clear path to a complete zero-emissions transition. Anything less is not acceptable.

c. No displacement of communities.

Any new facility, railyard, port, or otherwise, should not lead to the displacement of people who live in the vicinity of the proposed site. Southern California faces a severe housing crisis with shortages of affordable housing causing housing costs to rise exponentially in the last decade—pricing many moderate to low-income families out of the housing market in key areas where job growth is strongest.² This has often led to the untenable result of pushing lower-income residents further out of urban centers and away from jobs, forcing them to commute longer hours and increasing vehicle miles traveled in older, more polluting cars—creating further challenges to greenhouse gas and air pollution reduction strategies.³

It is therefore imperative that this agency, which is charged with reducing air pollution in the region, also examine ways in which its rules might be able to reverse these trends—or at least not exacerbate the problems of displacement by ensuring that incentives and emissions reduction strategies do not inadvertently result in further displacement of households along proposed new rail projects. The district could, for example, insist that any compliance credit given to industries taking on the construction of new infrastructure, storage or routing is only afforded to plans that offer protections to existing communities.

d. Listen to and support community voices.

We appreciate staff’s continued, clear interest in listening to community voices throughout this rulemaking process. We recognize that staff listened to our requests for additional communication and more transparency by adding additional, recurring meetings with environmental advocates and community members to the calendar. We hope this remains a focus of this rulemaking—and importantly, that staff also prioritize our coalition’s substantive asks for how the rule can be structured to better address community needs. Local advocates have a lot of on-the-ground as well as regulatory experience that we know is a great support for this process.

II. The New Railyard ISR Rule should cover any railyard expansions at existing facilities.

The railroads are not slowing down their expansion operations any time soon. This much is evident from the numerous railyard and rail line expansions we continue to learn about in our communities. For example, the Fenix Railyard at the Port of Los Angeles is doing a capacity-

² California Budget & Policy Center, *California’s Housing Affordability Crisis Hits Renters and Households with the Lowest Income the Hardest*, Issue Brief (April 2019) at: https://calbudgetcenter.org/app/uploads/2019/04/Report_California-Housing-Affordability-Crisis-Hits-Renters-and-Households-With-the-Lowest-Incomes-the-Hardest_04.2019.pdf

³ Shuetz, Jenny, *Cost, Crowding, or Commuting? Housing Stress on the Middle Class*, Brookings Institute Report (May 7, 2019); at <https://www.brookings.edu/research/cost-crowding-or-commuting-housing-stress-on-the-middle-class/>

building project that will expand its operations by adding five new tracks that will carry 520,000 additional TEUs every year by rail. Similarly, BNSF is building a new track in Colton, which will be just across a neighborhood street from people's homes. We understand that staff would like to develop the New Railyard ISR before transitioning to the Existing Railyard ISR, so that AQMD can require standards before these facilities are built. The same logic should apply to expansions of existing facilities. **We hope staff and the Board will take this request under serious consideration as it is a key priority for our coalition.** In this same vein, we ask that *any* railyard expansion (or rail line expansion) be included in the New Railyard ISR, including the Fenix Railyard expansion and BNSF's Colton rail line expansion.

III. We support staff developing a more reflective locomotive emissions inventory here, but caution that the rule's central focus must be on ensuring these proposed projects result in zero emissions.

We understand that staff is developing an emissions inventory for locomotives that more accurately reflects rail use in the region. Overall, we are supportive of this. As staff noted in the Working Group presentation on August 10, 2022, the emissions inventory included in the 2012 SCIG Final Environmental Impact Report is very much outdated, and cannot be relied on as is. The same can be said for the emissions inventory in EPA's 2008 rulemaking. In particular, as staff noted, both of those documents assumed significantly higher Tier 4 adoption than proved true. Therefore, we agree that relying on CARB's 2020 emissions inventory as a basis for updating the 2012 SCIG emissions inventory is the best approach here. We expect that the Air District's resulting emissions inventory will support even further why this rulemaking *must* include mandates to reduce locomotive pollution (as well as pollution from other mobile sources).

At the same time, we want to caution staff not to use this emissions inventory as the central baseline of this rulemaking. Instead, because these facilities have yet to be built, the goal for this rulemaking must be to protect the public health from any additional pollution from these new railyards or expansions. This is even more important because these facilities would be located in areas where there are significant cumulative emissions from various pollution sources. The central goal for this rulemaking must be for these proposed railyards and expansion projects to result in 0 emissions.

IV. The Rule should limit as much pollution as technologically feasible for all new railyards and railyard expansions.

The most important result of the New Railyard ISR rule is to limit as much pollution as technologically possible for all new railyards in the South Coast region. With this goal in mind, the rule must prioritize getting to zero-emissions for all technologies used in railyards, including line-haul and switcher locomotives, cargo handling equipment, and heavy-duty trucks. We recommend the following structure for this rule, in order to address this goal.

1. *Require facility caps on emissions to limit the exact amount of pollution from every railyard.*

First and foremost, the focus of the rule should be on setting strong facility caps on emissions. The primary benefit of this is that it is a results-based approach that, if properly measured and tracked, will be a clear way to know how much pollution a facility is emitting. Below are some principles we would like to see included in a facility cap measure:

- If not initially set at 0, the facility cap should be lowered to ultimately reach zero-emissions.
- The rule should include a schedule to reduce the facility emissions cap to 0 within three years after construction begins.
- The facility cap should be generally applicable to all pollution-generating activity used at the railyard, including but not limited to rail, trucks, cargo handling equipment, and charging infrastructure.
- The emissions cap should only ever be lowered. Facilities should not be entitled to expand operations and increase their facility cap. If industry feels it is forced to expand its operations at that facility, it must do so by relying on zero-emissions or cleaner technology. Communities and our air should not have to pay the cost of industry expansion.
- The agency must develop a careful approach for measuring emissions at each facility. A detailed, rigorous enforcement plan will be critical to the success and accuracy of this component of the rule.

2. *Facilities that fail to meet their emissions cap must put funds into a Spending Account that can be used to purchase zero-emissions equipment only.*

If a facility fails to meet its emissions cap for a given year, it must put a certain amount of funds into a Spending Account that can be used to purchase zero-emissions equipment only. This mirrors the approach in the California Air Resources Board's In-Use Locomotive regulation. Here are some guiding principles for this approach:

- The facility cap should be generally applicable to all pollution-generating activity at the railyard, including but not limited to rail, trucks, cargo handling equipment, and charging infrastructure.
- The amount that facilities or operators must deposit into the fund should be significant enough that it serves as a motivator to actually meeting the facility emissions cap, instead of simply 'pay to pollute' scheme.

3. *Couple this with a point system that rewards early action for deploying next-generation zero-emissions technology.*

Combining a facility cap approach with a point system will give industry flexibility to determine which technologies best satisfy their needs, while also regulating the air that

communities breathe. Here are some principles that we would like to see addressed in a point system that supplements the facility cap:

- Facilities or operators should be given points only for being early adopters of newer zero-emission technology entering the market and helping establish new pathways for achieving zero-emissions.
- No points should be given to a facility or operator for using methane-burning gas, diesel, blue or grey hydrogen, or any other combustion technology.
- Facilities or operators may use accumulated points to qualify for some benefit that serves the transition to zero-emissions (and zero-emissions only). For example, one option might be qualification for targeted incentives for zero-emission equipment or infrastructure.

4. *Require buildout of zero-emissions charging infrastructure.*

New railyard facilities stand to make substantial profits in an era of exponential growth in goods movement. Precisely because these are new railyard facilities, there is an opportunity for them to serve as catalysts for the region's transition to zero-emissions across multiple sectors, including the buildout of electric charging hubs. Below are some suggestions for how the rule can support zero-emissions charging infrastructure:

- Require all new facilities and expansions to build zero-emissions, electric charging infrastructure that will meet the long-term charging needs for each facility.
- Facilities and operators should be encouraged to work directly with local and state utilities in an effort to support regional coordination around electric charging infrastructure. This may mean working to allow co-location of charging hubs for shipping companies serving the railyards in addition to ensuring that energy needs for these operations enhance efforts to electrify other sectors in the region as well as support the transition to zero-emissions transportation in the region.
- Infrastructure should be built to be compatible with vehicle grid integration, including vehicle-to-grid.
- The rule should highlight that the focus should be on electric charging infrastructure, rather than hydrogen fueling, given that all of the equipment used at railyards can be supported with electricity, and hydrogen fueling may have serious negative consequences to nearby communities and our communities do not want this.
- Require all facilities and operators to apply for federal and state funding for zero-emissions charging infrastructure and fleets. With once-in-a-lifetime funding available in the State budget and the federal Inflation Reduction Act for electrification of fleets and zero-emission infrastructure, now is the time to make sure the South Coast Air Basin is set up to take advantage of these funds for life-saving equipment.

5. *Apply incentive funds in a targeted way to support zero-emission use only for operators facing challenges.*

As we have stated before, incentives can serve as a powerful tool to catalyze the type of rapid change needed to meet the region’s air quality needs, especially for sectors that may face challenges in making a transition. However, incentives alone will never make the mark. Many of the Air District’s past air planning failures have stemmed from an over-reliance on incentives and voluntary measures, when the much more effective mechanism is regulation and enforcement. These mandates are what is needed to set a clear roadmap for industry on the decisions they must make to improve air quality. Here are some principles for how the rule should incorporate incentive funds:

- To the extent that this rule incorporates incentives, they should be entirely focused on the transition to zero-emissions. The 2022 Draft Air Quality Management Plan (AQMP) unequivocally states that “there is no viable pathway to achieve the needed reductions without widespread adoption of zero emissions (ZE) technologies across all mobile sectors and stationary sources large and small.”⁴ We agree. This rulemaking must incorporate this understanding.
- No incentive funds should go towards combustion technology. It is imperative that the District’s limited funds not be wasted on combustion technology that will only serve to bind the region to dirty strategies for decades to come.

6. *Require enhanced monitoring around facilities, including at sensitive receptors.*

The success of this rule depends on whether it will improve and protect our public health. Measuring that success is therefore fundamental to the rule, and this should be at the forefront of staff’s considerations as you develop rule concepts. Only through robust monitoring will we be able to assess whether new railyard facilities or railyard expansions are achieving emissions reductions that are in line with the facility caps and other measures in this rule. Monitoring is also the only way the public will know whether industry is meeting these standards. Below are some recommendations for what this enhanced monitoring should look like:

- The rule should require that either facilities, operators, or the Air District set up air monitors around facilities to determine whether facilities are meeting their emissions cap.
- Air monitors should also be set up at nearby sites, including at sensitive receptors like in communities and at local schools.
- Air monitors should be set up at any new railyards or rail lines being built, as to get an accurate baseline.
- Monitoring data should be contemporaneously transmitted to the Air District, and this data should be publicly accessible so that the community, advocates, the Air District, and industry can be made aware of the emissions from these facilities.

⁴ 2022 Draft AQMP, at p. ES-5.

- Monitoring equipment should be regularly checked and maintained to ensure proper operation and any faulty monitors should be quickly replaced and brought online.

7. *Focus primarily on addressing pollution in ways that go above and beyond other regulations.*

As staff outlined in a recent working group meeting presentation, thankfully, various agencies are working on cleaning up pollution from locomotives, trucks, and other onsite equipment that is operated at railyards. Each of these regulations is one piece of a larger jigsaw puzzle. It is very important that this rule not only align with the other regulations that the California Air Resources Board and the Environmental Protection Agency are developing (and have already developed), but also that this rule does more than these regulations alone. For example, if this rule were to simply give credit to truck fleets for doing what is otherwise required of them under the drayage section of CARB's Advanced Clean Fleets rule, this would serve no additional benefit and could actually weaken the rule. So, it is absolutely critical that this rule focus primarily on addressing pollution in ways that go above and beyond other regulations.

8. *Commit the Air District to push lead agencies for new railyard projects in the South Coast to be zero-emissions only.*

As the local air agency, the Air District has authority to push lead agencies for the proposed Colton Railyard (i.e., the California High Speed Rail Authority) and the Southern California International Gateway (SCIG) Railyard (i.e., the City of Los Angeles) to develop projects that meet all the criteria noted above, including being zero-emissions only projects. We encourage staff to meet regularly with these agencies and push them to plan for these projects to be zero-emissions and as clean as possible. We recently heard from one of these lead agencies that they are looking to South Coast staff and this Railyard ISR as they are developing their plans for the new Colton Railyard, so that they do not need to make additional modifications to those projects after the rule comes out. It seems like maintaining open communication with these agencies would be extremely beneficial for all involved.

V. *Staff should study the impact of electrification on public health, especially in the rail context.*

Finally, we urge staff to invest in studying the impact of electrification on public health, especially in the rail context. We believe the data on the public health benefits of electric, zero-emissions rail will speak for itself. In the Warehouse ISR rule, review of the rule's impacts to public health was delayed and staff did not turn to it until after performing a number of economic analyses. Staff should do this earlier this time. Indeed, economic analysis of technology use is just one element that the Air District must consider. By prioritizing economic analysis, the District runs the risk of chilling consideration of more aggressive and innovative strategies that do the most to improve public health outcomes. Staff must begin the public health analysis within the next month to ensure that vital information becomes available before the rule concepts are further developed.

VI. Conclusion.

We appreciate all the work and effort staff is putting into developing a strong New Railyard ISR rule. This regulation has the potential to save and improve many lives in one of the most polluted air basins in the country. We urge staff to develop the strongest rule possible, that prioritizes maintaining and improving the lives of people living and working near new and expanding railyards—this must remain the top priority. Our organizations are eager to support staff and the Board in whatever ways possible to get this done. Please do not hesitate to reach out to us with ways we can do this. We look forward to continuing to work on this rule together.

Sincerely,

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