



October 5, 2023

The Honorable Vanessa Delgado
Chair of the Governing Board
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

SUBJECT: Significant concerns regarding proposal to pursue a Memorandum of Understanding (MOU) on emission reductions with the Class I Railroads

Dear Chair Delgado,

We are writing to express significant concerns regarding the South Coast Air Quality Management District's (SCAQMD) sudden shift to considering an MOU with the railroads. While we will wait to see the details of the MOU proposal before taking a formal position, we echo many of the concerns voiced by other environmental and environmental justice organizations. We are highly skeptical of the MOU's process, substance and enforceability, as well as its potential impacts on other rulemaking proceedings, such as the ports indirect source rule (ISR).

An MOU is unlikely to meet the air quality and public health needs of the South Coast Air Basin, which is the smoggiest air basin in the country. By design, an MOU will only achieve what the railroads are willing to "live with", while also preventing SCAQMD from requiring further emission reductions or establishing more aggressive implementation schedules. More worrisome is the possibility that the railroads are negotiating in bad faith with the district. Rather than achieving needed emission reductions, the MOU could be intentionally designed to be difficult or impossible to implement and enforce through overly complex or one-sided provisions. For example, had SCAQMD accepted the Port of Long Beach's (PoLB) MOU proposal, the district would have surrendered its rulemaking authority for the duration of the agreement and have been required to repay PoLB up to \$100 million for early termination of the MOU. Complex or ambiguous provisions are likely to bog down implementation of the whole agreement due to adjudication, additional negotiations and legal proceedings. Another possibility is the MOU is merely a ploy to delay and divert resources away from the ISR process. Given the railroad's actions during the development of the California Air Resources Board's (CARB) "In-Use Locomotive" regulation, those possibilities cannot be discounted.

We acknowledge that pursuing an ISR on railyards presents its own challenges. In addition, SCAQMD's plan to pursue separate ISRs for new and existing railyards is not ideal, both in terms of rule planning and delivering needed emission reductions for communities currently near rail facilities. Despite these concerns, however, we, along with other environmental, environmental justice and community advocates find the ISR far preferable to an MOU. Further, the Community Emission Reduction Plans for multiple communities in the AB 617 Community Air Protection Program specify the development of a rail ISR. Diverging from the promises made during the AB 617 process should be discussed with the respective Community Steering Committees as well as the

communities themselves. That consultation, or any rail MOU-related public process for that matter, has not occurred.

The SCAQMD executive staff needs clear direction from the Governing Board on this matter. We encourage the Governing Board to direct staff to proceed with the development of an ISR for railyards. If SCAQMD decides to continue down the MOU path, we urge the district to consider and address the following issues:

- **Enforceability:** Any policy must have enforcement mechanisms built into it. Merely taking the railroads to court for noncompliance with the MOU is not sufficient, nor will it deliver timely relief to the frontline communities being harmed by pollution. Noncompliance by the railroads would, in all likelihood, result in the development of an ISR and years of delays in railyard emission reductions. A regulation, meanwhile, can provide SCAQMD with more enforcement tools, including both punitive fines and legal remedies. Further, to ensure both the air district and the railroads are complying with the terms of the MOU, third party enforcement rights are necessary.
- **Robust public participation process and environmental review:** SCAQMD must provide ample opportunities for public participation and comment during its consideration of the MOU proposal, as well as provide written responses to comments. We invite collaboration on a public, transparent, and open process with all stakeholders and SCAQMD. Yet, so far, the public process has been nonexistent outside of staff updates provided to the Governing Board and Mobile Source Committee. Save for a few bullet points on slide presentations, the MOU proposal itself is not even public, making it impossible for stakeholders to review the proposal and provide substantive feedback. While we appreciate the conversations with SCAQMD staff, they are no replacement for a public process. The three rail MOU community meetings that were supposed to have taken place in September were postponed for the sake of gathering additional information. Even though these meetings have yet to be rescheduled, SCAQMD still intends to approve the MOU by the December board meeting, a timeframe of only two months (not counting the holiday season). Lastly, as a discretionary action, the MOU must undergo environmental review under the California Environmental Quality Act (CEQA). Failure to conduct a proper CEQA analysis is almost certain to result in a legal challenge to the MOU, the very thing SCAQMD is trying to avoid.
- **Maximizing emission reductions and local health benefits:** SCAQMD must demonstrate which policy option maximizes emission reductions, with a particular focus on localized pollutants in communities near railyards. In its analysis, SCAQMD must consider air toxics like diesel particulate matter in addition to greenhouse gas and criteria pollutants. Public health needs, such as addressing increased risk for asthma, cardiovascular and pulmonary impacts and cancer, should also be factored into SCAQMD's considerations. Lastly, both the ISR and an MOU need to exceed requirements already set by federal and state laws and regulations.
- **Aggressively deploy the cleanest technology available and prioritize zero-emissions technology:** SCAQMD must implement a policy that will maximize the deployment of zero-emissions technology wherever possible. Further, there must be a corresponding ramp-up

of renewable, zero-emissions electricity to power zero-emissions equipment. In cases where zero-emissions technology is not yet feasible, the cleanest available technology should be deployed, and SCAQMD must continually review and reassess feasibility as technology develops. Requirements to deploy zero-emissions equipment was a significant point of contention with the failed port MOU process. Those discussions frequently devolved into endless negotiations about which pieces of equipment were covered and not covered by the MOU. A repeat of that failed process is not acceptable, and SCAQMD should require nothing less than the aggressive deployment of the cleanest possible equipment in every category of emissions source.

- **A rail MOU threatens to undermine the ports ISR:** Considering a rail MOU reopens the door for a ports MOU, which wasted years of SCAQMD's time and resources and resulted in zero emission reductions. Already, the ports have publicly pressured SCAQMD to restart the failed MOU process both in comments to the air district and in other venues. For example, a recent all-day hearing of the Assembly Select Committee on Ports and Goods Movement focused on attacking SCAQMD and the ports ISR. Should SCAQMD agree to a rail MOU, the pressure from the ports and goods movement industry will be even greater, both politically and legally.

The choice before SCAQMD is not easy – both the MOU and the ISR have unique challenges and considerations. But from our perspective, strong rules have yielded better results for, and stronger trust with, the community. The past few years have proven very fruitful, with the passage of Rule 2305 (the warehouse ISR), Rule 1109.1 (reductions of NOx from petroleum refineries), Rule 1178 (reductions of VOC emissions from petroleum storage tanks), as well as implementation of AB 617 and other efforts. Key to these successes was the partnership, understanding and improved trust between SCAQMD and environmental, environmental justice and community stakeholders. Choosing the wrong policy through the wrong decision-making process could very well threaten the progress we have made so far, as well as future progress in providing healthy, breathable air to all Southern Californians.

Sincerely,



Chris Chavez
Deputy Policy Director



Dori Chandler
Policy Advocate

Cc:

Members of the SCAQMD Governing Board
Wayne Nastri, Executive Officer, SCAQMD