HARDI HEATING AIR-CONDITIONING REFRIGERATION DISTRIBUTORS INTERNATIONAL

March 20, 2025

Chair Vanessa Delgado
South Coast Air Quality Management District
21865 Copley Dr,
Diamond Bar, California 91765

RE: HARDI Comment Letter – Opposition to Proposed Amended Rules 1111 and 1121

Dear Chair Delgado,

Heating, Air-conditioning, & Refrigeration Distributors International (HARDI) appreciates the opportunity to comment on the South Coast Air Quality Management District's (SCAQMD) Proposed Amended Rules (PAR) 1111 and 1121. HARDI **strongly urges SCAQMD not to adopt PAR 1111 and 1121**, as they are unnecessary to achieve air quality standards, conflict with federal law, impose severe economic burdens, raise serious privacy concerns, and are premature in light of pending litigation.

HARDI is a trade association comprised of more than 1,150 member companies, more than 490 of which are U.S.–based wholesale distribution companies. These include 26 wholesaler-distributor members in California, which serve HVACR contractors and technicians in the state. Over 80 percent of HARDI's distributor members are classified as small businesses that collectively employ more than 60,000 U.S. workers, representing an estimated 75 percent of the U.S. wholesale distribution market for HVACR equipment, supplies, and controls.

The proposed amendments would directly and adversely affect our members and the HVACR industry at large. We respectfully submit the following comments detailing our concerns, supported by data and legal precedent.

SCAQMD Already Meets Nox Air Quality Standards

Existing NO_2 Standards Attained: SCAQMD's mission is to attain National and California Ambient Air Quality Standards for pollutants like nitrogen dioxide (NOx). According to the U.S. EPA, the federal 1-hour NO_2 standard is 100 ppb, and the annual average standard is 53 ppb. California's standards are 180 ppb (1-hour) and 30 ppb (annual). SCAQMD's 2023 monitoring data show that NOx levels in the South Coast Air Basin are well below these limits – the highest 1-hour concentration was 88.2 ppb, and the annual average was 26.9 ppb.[1] In other words, **the region is already in compliance with both federal and state NO_2 thresholds**, indicating that current regulations suffice to protect air quality. In fact, the South Coast Air Basin has been in

[1] South Coast Air Quality Management District, 2023 Air Quality, https://www.aqmd.gov/docs/default-source/air-quality/historical-data-by-year/2023-air-quality-data-tables.pdf

attainment/maintenance for NO_2 for over two decades.[2] While HARDI fully supports efforts to maintain clean air, the **proposed zero-NOx requirements go far beyond what is needed** for attainment. SCAQMD is meeting its NOx reduction mandate under existing rules, so requiring **zero** emissions from new appliances is an overreach that will yield negligible air quality benefits. We urge the District to recognize that ambient air data do not warrant these rules and will not meaningfully improve regional NOx levels that are already below required standards.

Conflict with Federal Law – EPCA Preemption of Zero-NOx Appliance Mandates

EPCA Preempts Local Appliance Regulations: PAR 1111 and 1121 would mandate "zero-emission" NOx levels for gas-fired space heaters and water heaters, effectively prohibiting the use of natural gas appliances in new buildings by 2027 (and in replacements for existing buildings by 2029). This approach **squarely conflicts with the federal Energy Policy and Conservation Act (EPCA)**. Under EPCA, many HVAC appliances – including residential furnaces and water heaters – are "covered products" subject to federal energy efficiency standards (see 42 U.S.C. § 6292(a); § 6295). Once a federal standard is in place for a covered product, EPCA's preemption clause prohibits any state or local regulation "concerning the energy efficiency, energy use, or water use" of that product. Critically, EPCA defines "energy use" as "the quantity of energy directly consumed… at point of use," banning emissions from using natural gas is inherently a regulation of energy use. In California Restaurant Ass'n v. City of Berkeley (9th Cir. 2023), the U.S. Court of Appeals for the Ninth Circuit struck down a local ordinance banning natural gas hookups, expressly holding that EPCA preempts state or local rules that prevent consumers from using gas appliances. The court noted that by enacting EPCA, Congress ensured states "could not prevent consumers from using covered [gas] products in their homes" and that jurisdictions cannot skirt this prohibition by indirect means.[3] A requirement that appliances emit zero NOx (and thus consume no gas) is functionally a ban on gas-fueled appliances at the point of use, precisely the scenario EPCA's preemption clause was meant to forbid.

Violation of EPCA Precedent: Applying the Ninth Circuit's reasoning to SCAQMD's proposal leads to an unequivocal conclusion: **PAR 1111 and 1121 are preempted by EPCA** and thus invalid. By setting a NOx emission limit of zero for covered appliances, the rules would force a complete fuel switch from natural gas to electric, directly regulating the energy consumption (fuel type and quantity) of those appliances in homes and businesses. This is precisely the kind of state-level energy use regulation that EPCA prohibits. Indeed, the Ninth Circuit in the Berkeley case underscored that

[2] Environmental Protection Agency, Green Book, Nitrogen Dioxide (1971) Designated Area/State Information, https://www3.epa.gov/airquality/greenbook/nbtc.html

[3] CRA V. CITY OF BERKELEY, No. 21-16278 (9th Cir. 2024)

states and localities "can't skirt the text of [EPCA's] broad preemption provisions by doing indirectly what Congress says they can't do directly."[4] SCAQMD's zero-NOx mandate is an indirect ban on gas appliance usage and cannot stand alongside EPCA's supremacy. Notably, no exemption or waiver to EPCA preemption has been sought or obtained for these rules, and none is available for a requirement of this nature.[5]

Nationwide Consistency and Commerce: Beyond EPCA, the proposed rules raise concerns about fragmented standards and interstate commerce. Forcing manufacturers to produce California-only zero-NOx models (while gas appliances remain legal federally and in other states) undermines the uniform national marketplace for appliances. This is exactly the "patchwork of regulatory standards" that Congress sought to prevent with EPCA's broad preemption. Manufacturers would be compelled to segregate products for one region, incurring redesign and retooling costs that ultimately burden consumers nationwide. Imposing such unique requirements on appliances in one air district also risks running afoul of the Dormant Commerce Clause, as it would place undue burdens on interstate manufacturers and distributors to accommodate divergent California requirements. In short, **the proposed zero-emission rules are on legally tenuous ground** – they conflict with federal law and established court precedent. Adopting them invites almost certain legal challenges and invalidation, as discussed further below. We urge SCAQMD to avoid this outcome by withdrawing or substantially revising PAR 1111 and 1121 to align with federal limitations.

Economic Impact – Unreasonable Mitigation Fees Burdening Industry and Consumers

Mitigation Fee Structure: SCAQMD staff has proposed an "alternative compliance" pathway for manufacturers to allow the continued sale of gas-fired units after the zero-NOx effective dates, but only by paying a hefty per-unit mitigation fee. Beginning in 2027, each gas-fired furnace or water heater sold would incur a base fee (proposed around $100 for furnaces and $50 for water heaters), and manufacturers exceeding specific "zero emission" sales targets would pay an additional **$500 per unit** over the limit – with that $500 fee slated to **increase by $100 every two years** thereafter. HARDI is deeply concerned that this fee structure will make gas appliances prohibitively expensive and devastate the market: the initial $500 fee alone exceeds the typical per-unit profit margin for manufacturers, meaning it cannot simply be absorbed. Inevitably, manufacturers would add the fee to the wholesale price of each unit, distributors would, in turn, mark up the cost to cover their overhead, and contractors/retailers would pass the increase to end users. At each

[4] Ibid.
[5] 42 U.S.C. § 6297(d), (f).

step, the $500+ fee cascades directly to higher prices for consumers, quickly adding $500–$1,000 to the purchase price of a furnace or water heater when it reaches a homeowner. This does not even account for the scheduled fee escalations, which would push costs even higher every two years.

Burden on Distributors and Small Businesses: HARDI's member distributors operate on relatively thin margins in a highly competitive industry. Over 80% of our members are small businesses. They will be hit particularly hard by handling pricier products and potentially declining sales volume. A $500+ increase per unit could make it difficult for distributors to finance inventory and contractors to sell replacement appliances, especially in price-sensitive markets. Small HVAC businesses – from wholesalers to the thousands of independent contractors who install and service equipment – could face revenue losses due to suppressed demand, inventory write-downs, and customers postponing equipment upgrades. In comments on similar rules, manufacturers have noted that forcing rapid electrification and penalizing gas appliance sales will create "substantial financial losses" for many businesses, including stranded inventory and retraining costs, and could put smaller companies at risk.[6] HARDI echoes these concerns. The mitigation fee is a tax that will reverberate through the entire HVAC distribution chain, squeezing each market level. We also note that this fee is intended to fund electric heat pump incentives. Yet, it will be levied on those who continue to need gas appliances – effectively a cross-subsidy paid by one group of consumers to benefit another, an inequitable outcome.

Cost to Consumers and Communities: Southern California consumers will ultimately bear these added costs. Many households rely on gas furnaces and water heaters for affordability and performance. Under the proposed rules, they will have two choices:

> (1) buy a compliant electric heat pump system, which often involves much higher upfront costs (the average heat pump water heater costs $1,700–$2,200, vs. ~$1,000 for a gas water heater, and can cost ~$400 more in installation expenses, or
> (2) pay a premium for a gas unit via the mitigation fee. Either scenario means hundreds to thousands of dollars in extra expenses for homeowners.

Such cost increases will disproportionately affect low- and middle-income families, landlords of older properties, and small businesses. In many cases, expensive electrical panel upgrades or home retrofits would be required to accommodate all-electric appliances, adding further financial strain. California is already experiencing housing affordability challenges, and layering new appliance costs and retrofit expenses on residents will only exacerbate these issues. HARDI is concerned that this

[6] Rinnai, Comments on EPA Proposed Approval of BAAQMD Rules 9-4 and 9-6, Dkt. No. EPA-R09- OAR-2024-0417

fee-driven approach could backfire. If new gas units become too costly, consumers may delay replacing older, less efficient equipment (prolonging emissions) or seek uncertified alternatives. In summary, the economic impact of the mitigation fee approach is severe and far-reaching. We urge the Board to carefully weigh whether the benefits of theoretical emissions justify the very real financial pain to manufacturers, distributors, and consumers in the region.

Privacy and Logistical Concerns – Tracking Sales in the Supply Chain

Infeasible Tracking Requirements: Besides cost, the mitigation fee program raises serious implementation challenges. It appears the rules would require manufacturers to report all gas appliance sales within SCAQMD's boundaries and perhaps to pay fees based on those sales. Unlike point-of-sale retail businesses, manufacturers of HVAC equipment typically sell through independent distributors and have **no direct knowledge of where each unit is ultimately installed**. A single manufacturer may ship products to multiple distributors, some inside SCAQMD and some outside, and those distributors sell to hundreds of contractors. Units can be moved across regions before reaching the end user. In practice, it would be exceedingly difficult for a manufacturer to reliably trace which of its furnaces or water heaters end up in homes within SCAQMD. SCAQMD has no jurisdiction over many downstream entities (e.g., a distributor in San Diego County or a contractor in Ventura County who might serve customers in the SCAQMD region), which means enforcing accurate reporting would be problematic . Even if such tracking were technically possible, it would impose a heavy administrative burden on businesses to collect, share, and verify sales data across the supply chain.

Privacy and Confidential Business Data: HARDI is also profoundly concerned about the privacy implications of this tracking scheme. To enforce the mitigation fees, SCAQMD presumably needs detailed information on each gas appliance sale, including the customer's location or address. Manufacturers and distributors would be forced to disclose sensitive sales information – essentially mapping out their distribution networks and customer base – to a government agency. This differs from standard business practice and could expose **confidential business information** (such as sales volumes, client lists, and market territories). For customers, it raises questions about personal data privacy since information about where and what appliances they purchase could be collected. Such requirements would constitute a massive invasion of privacy into business operations and consumer transactions. HARDI believes it is inappropriate for an air quality district to insert itself into the stream of commerce to this degree. The logistical hurdles and privacy risks further underscore that the mitigation fee concept is unworkable and intrusive. We urge SCAQMD to reconsider any enforcement mechanism that relies on tracking individual product sales or installations and instead seek approaches that do not demand such invasive oversight.

Pending Litigation – Premature to Adopt New Rules Under Judicial Review

Active Lawsuit (Rinnai America Corp. v. SCAQMD): We note that SCAQMD is currently a defendant in an active federal lawsuit challenging its recently adopted zero-NOx emission standards for water heaters (Rule 1121) on the grounds of federal preemption and other legal issues. In *Rinnai America Corp. et al. v. South Coast AQMD* (C.D. Cal., Case No. 2:24-cv-10482, filed Dec. 2024), a broad coalition of stakeholders – including a water heater manufacturer (Rinnai) alongside home builders' associations, hotel and restaurant groups, apartment owners, and a pipefitters union – assert that EPCA preempts SCAQMD's zero-emission appliance requirements and have sought an injunction against their enforcement. This lawsuit directly implicates the legality of mandating zero-NOx (effectively all-electric) appliances. Its outcome will likely determine whether SCAQMD can impose the requirements proposed in PAR 1111 and 1121. **It is not prudent for the District to advance new regulations while the issue is litigated**. Adopting PAR 1111/1121 now would create tremendous uncertainty: if the court rules against SCAQMD (as the plaintiffs' request), any zero-NOx rule would be invalidated or stayed after manufacturers and businesses have expended resources preparing for compliance. Alternatively, if the rules are adopted, SCAQMD could face additional legal challenges (from HARDI or others) piling onto the ongoing case. In either scenario, moving forward before the litigation is resolved would be a costly and inefficient course. SCAQMD's proposal offers an "alternative pathway" already under judicial scrutiny, indicating that a pause is warranted. It is a fundamental principle of sound governance to avoid adopting rules that the courts may soon moot or overturn. HARDI respectfully recommends that the Board delay any further action on adopting PAR 1111 and 1121 until the legal challenges are resolved. This will allow all parties to proceed with clarity and avoid potentially wasting effort on regulations that cannot be lawfully implemented.

Conclusion

In conclusion, **HARDI strongly believes that Proposed Amended Rules 1111 and 1121 should not be adopted in their current form**. While well-intentioned for environmental goals, the drive toward zero-NOx emissions conflicts with prevailing law and practical reality. SCAQMD is already attaining the relevant NOx air quality standards, so an aggressive zero-emission mandate overshoots what is necessary for clean air compliance. Moreover, the proposed rules violate the federal EPCA preemption by effectively banning gas appliances, a legal issue now under litigation with far-reaching implications. The economic harm to manufacturers, distributors, and consumers would be significant – from exorbitant mitigation fees that raise appliance costs across Southern Californiato potential job losses and business disruptions as the industry transitions prematurely. The privacy and logistical challenges of enforcing these rules further make them untenable and intrusive for

businesses and residents . Finally, given the pending court case on similar provisions, enacting new zero-NOx requirements at this time would be imprudent and potentially wasteful.

HARDI and its member companies stand ready to work with SCAQMD on solutions that improve air quality without violating federal law or harming our local economy. We encourage the District to explore collaborative approaches – for example, incentive-based programs, realistic emission reduction targets, or federal partnerships – that can reduce NOx emissions from buildings gradually and legally, in line with market readiness and grid capacity. **Regulations of this magnitude should be vetted thoroughly and implemented only when they are feasible, fair, and firmly grounded in law.** We urge you to reconsider PAR 1111 and 1121 and to refrain from adopting these amendments as currently written. Thank you for the opportunity to provide comments. HARDI is committed to ongoing dialogue and constructive engagement to achieve our shared clean air objectives in a balanced manner.

Sincerely,

Todd Titus
Director of State and Public Affairs
Heating, Air-conditioning, & Refrigeration Distributors International