

**BAY AREA HEALTHY 880 COMMUNITIES
CALIFORNIA COMMUNITIES AGAINST TOXICS
CENTER FOR BIOLOGICAL DIVERSITY
CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE
CENTRAL CALIFORNIA ASTHMA COLLABORATIVE
COALITION FOR A SAFE ENVIRONMENT
COMITE CIVICO DE VALLE
COMMUNITIES FOR A BETTER ENVIRONMENT
DEL AMO ACTION COMMITTEE
EARTHJUSTICE
EAST YARDC COMMUNITIES FOR ENVIRONEMNTAL JUSTICE
ENDOIL/COMMUNITIES FOR CLEAN PORTS
LONG BEACH ALLIANCE FOR CHILDREN WITH ASTHMA
MEDICAL ADVOCATES FOR HEALTHY AIR
NATURAL RESOURCES DEFENSE COUNCIL
REGIONAL ASTHMA MANAGEMENT AND PREVENTION
SIERRA CLUB
SUNFLOWER ALLIANCE**

March 20, 2017

Chair Mary Nichols &
Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed 2016 State Strategy for the State Implementation Plan and South Coast Air Quality Management Plan.

Dear Chair Nichols and Board Members:

As this Board is well aware, ozone and fine particulate matter impose immense health impacts to the millions of Californians exposed to elevated levels of these pollutants. Despite progress over the years, California still struggles with two of the most polluted air sheds in the nation. Just last year, the South Coast air basin violated California's 8-hour ozone standard 132 days of the year. The San Joaquin Valley registered 113 days violating this standard. Both of these regions also struggle to meet fine particulate matter standards despite prior promises in prior air plans that the standards would be met. For years, environmental, health and community advocates have asked for real plans to finally make it safe to breathe. At the Board meeting, the ARB has two major plans before it – 1) the South Coast Air Quality Management Plan ("South Coast AQMP") (Agenda Item 17-3-4) and 2) the State Strategy, which is supposed to achieve deep cuts in emissions to help San Joaquin Valley and South Coast air basins, in addition to other air districts, meet federal and state clean air standards (Agenda Item 17-3-5).

Unfortunately, the plans before the Board will not bring the San Joaquin Valley and South Coast air basins into attainment with national or state standards. They do not satisfy the basic requirements of the Clean Air Act or the California Health and Safety Code. Nor do they demonstrate a commitment to the transformational change that all agree is necessary. To remedy these problems, we suggest two actions. First, the ARB should approve the South Coast AQMP, but direct ARB staff to vigilantly monitor the implementation of that plan to make sure the South Coast Air Quality Management District fully implements the regulatory commitments identified, including the swift conversion of the Nitrogen Oxide (“NOx”) Regional Clean Air Incentives Market (“RECLAIM”) to a command and control program. Second, the Board should direct staff to revise the State Strategy to include the commitments necessary to protect public health once and for all. At a minimum, ARB should place metrics and deadlines to monitor the progress to pivot to regulation immediately if staff cannot find billions of dollars to dramatically enhance programs to replace vehicles and other equipment.

The implications of not achieving our goals are too staggering to not ensure these plans are successful. The proposed strategy notes that 7,500 Californians die every year from air pollution-related causes. The majority of these deaths are in disadvantaged communities in the San Joaquin Valley and South Coast air basins. The South Coast air district estimates that 12 to 15 South Coast residents die every day as a result of the basin’s air pollution. This number far exceeds the number of people who die from car accidents and crime combined. Despite hard work over the years to clean up ozone pollution, the South Coast air basin has never met any of the national ozone standards, including the 1-hour standard adopted by the U.S. Environmental Protection Agency (“EPA”) in 1979. The failure is the result of refusing to produce a plan that has a serious chance to attain any ozone standard. As outlined in the Draft Vision for Clean Air, the ARB staff knows what is required to meet the national standards in the San Joaquin Valley and South Coast air basins, but the current plan does not get us there. Please help us change that.

A. The Proposed State Strategy is Not a Credible Plan for Attaining the National Ozone Standards.

The legal exercise here is to adopt a plan that provides for “the implementation of all reasonably available control measures as expeditiously as practicable” and “provide[s] for attainment of the national primary ambient air quality standards.” Clean Air Act § 172(c)(1). The Proposed State Strategy purports to satisfy this legal requirement by showing how the San Joaquin Valley and the South Coast air basins will meet the national ambient air quality standards for ozone. Despite the legal mandate, staff has proposed a plan with absolutely no reasonable likelihood of attainment in the South Coast air basin.

The relevant national ambient air quality standards are the ozone standards adopted by EPA in 1997 and 2008. The 1997 ozone standard requires areas to reduce 8-hour average ozone concentrations below 0.8 parts per million. The San Joaquin Valley and South Coast air basins must attain this standard by June 15, 2024. In 2008, EPA, recognizing that meeting the 1997 standard would still not protect the public, revised the 8-hour standard to 0.75 parts per million. The San Joaquin Valley and South Coast air basins must meet the 2008 standard by July 20,

2032.¹ In 2015, EPA found that the 2008 ozone also failed to protect public health, and lowered the standard further to 0.70 parts million. Even the 2015 standard is higher than the levels recommended by the American Lung Association, nearly every national medical association, and the World Health Organization. In other words, this proposed plan fails to meet standards that themselves are not fully protective. Beyond the legal deficiencies, offering partial efforts to meet standards that leave thousands of Californians dying every year from unhealthy air is hardly a commitment to protecting public health.

The Proposed State Strategy projects that the South Coast air basin will need 113 tons per day of additional nitrogen oxides (“NOx”) emission reductions in 2023 beyond those provided by current control measures in order to meet the 1997 ozone standard. To meet the 2008 standard, an additional 111 tons per day of NOx emission reductions will be needed in 2031 beyond those provided by the controls adopted to date. This massive shortfall is the product of not taking attainment planning seriously in the past. We urge the Board not to repeat these mistakes.

The Proposed State Strategy commits staff to develop specific control measures that staff projects could provide an additional 3 to 4 tons per day of NOx reduction in 2023 and 11 tons per day of NOx reductions in 2031. The Proposed State Strategy proposes to achieve the remaining 90-plus percent of necessary NOx emission reductions through (1) petitions for federal actions on mobile sources, and (2) open-ended strategies including voluntary incentive programs to encourage “further deployment of cleaner technologies.” Neither of these is a credible strategy.

The likelihood of the current EPA adopting the needed standards for trucks, locomotives, and marine vessels is species at best. The White House has proposed massive budget cuts for EPA and funding programs like the Diesel Emission Reduction Act. The Proposed State Strategy notes that EPA granted a petition to explore heavy-duty truck standards, but that was under the previous administration. Staff fails to note that EPA has given no similar hopeful signs for new national locomotive standards.

The “further deployment” portions of the plan are also not credible. The Proposed State Strategy estimates that the funding needs for “further deployment” incentives in the South Coast air basin range from \$4 to \$14 billion between now and 2031, which translates to \$250 million to approximately \$1 billion per year. One billion dollars is roughly the annual budget for all of EPA’s national climate and air quality work. The plan suggests that staff is working with the South Coast air district to identify funding sources, but this is not an honest report. The South Coast air district has actually prepared a “Funding Action Plan” that is built on brainstorming ideas that are political “nonstarters” such as an additional \$20 vehicle registration fee, new taxes on retail sales, gasoline and crude oil.

¹ Because these attainment deadlines fall in the middle of the ozone season, attainment must actually be demonstrated the year before (i.e., 2023 and 2031) so that an entire ozone season can be measured.

Even if the agencies could find the money that the plan projects will be necessary, there is zero chance that that money could be used to achieve the voluntary “further deployment” outlined as required in the plan. The targets for the “further deployment” measures in the Proposed State Strategy include the replacement over the next seven years of 70,000 to 85,000 passenger vehicles per year, the replacement of 15,000 to 20,000 heavy-duty trucks per year, 4,000 pieces of off-road equipment, all aircraft meeting standards less stringent than Tier 8, all locomotives meeting standards less than Tier 4, and an unspecified number of ocean-going marine vessels. The plan fails to put these numbers in perspective. The best year ever for South Coast’s vehicle replacement program was approximately 2,600 vehicles. The current program average is well below 1,000 vehicles per year (<http://www.aqmd.gov/home/programs/community/community-detail?title=ovs>). The heavy-duty targets are even more far fetched – even if the billions of dollars needed to replace thousands of trucks in the region could be obtained.

Incentives are useful for pilots and for achieving early compliance with regulatory measures. But the “further deployment” targets in this strategy are not pilot stage projects. The plan’s goal is broad adoption, which implicitly assumes commercial availability. This is what is particularly disingenuous about the strategy: if this scale of cars and trucks are commercially available, then why does the strategy avoid regulatory mandates to ensure that the targets are achieved, even if subsidies are used to encourage that deployment. Without regulatory mandates, incentives will not achieve the broad scale of “further deployment” envisioned.

We have identified a number of regulatory measures that should be strengthened or added to the plan. Any additional emission reductions achieved through these improved regulatory measures lessens the reliance on unrealistic voluntary incentive strategies and allows limited resources to be used where they will be most effective. Moreover, technology-forcing mandates will provide market certainty and spur development that will bring down technology costs and make successful deployment more likely.

This Proposed State Strategy is not a credible plan and the Board should say so and tell the staff to return with a credible plan.

B. The Legal Strategy for this Plan is Also Not Credible.

Beyond being completely unlikely to succeed, the Proposed State Strategy fails to meet the basic legal requirements of a Clean Air Act implementation plan. Specifically, these plans must “include enforceable limitations and other control measures, means, or techniques . . . , as well as schedules and timetables for compliance, as may be necessary [to demonstrate attainment].” Clean Air Act § 110(a)(2)(A). There is obviously no way to “enforce” the requests for EPA to adopt new mobile source standards; nor is there any way to enforce programs that rely on voluntary replacement of dirty mobile sources. Knowing that these are not legally creditable measures under the Clean Air Act, staff rely on flexibility provided under Clean Air Act section 182(e)(5). This provision, commonly referred to as the “black box,” allows the most polluted regions that have attainment deadlines 15 to 20 years beyond when the state implementation plan is due, to wait to see how technologies might advance over that time before

committing to a particular regulatory strategy. Here, however, staff is using this flexibility to avoid committing to enforceable regulatory strategies for a standard that must be met in 6 years. This is not the purpose of the “black box” flexibility. Staff knows what technologies will and will not be available in the next six years to meet the 1997 ozone standard.

Even for the 2008 ozone standard that must be met by 2031, there are no real questions on the specific sources that must be controlled and the emission standards that must be met. ARB has acknowledged that mobile sources must rapidly move to zero-emitting technologies in virtually all sectors. The “black box” strategy delays adoption of the regulatory mandates that all acknowledge are necessary to force technology development. Waiting to adopt these control measures, which could provide long-lead times and compliance flexibilities to ensure feasibility, will fail to meet the 2024 standard and “dig the hole deeper,” making the strategy for attainment in 2031 even more unrealistic.

The legal reliance on the “black box” flexibility only makes the regulatory challenges worse. For the South Coast air basin, the total NO_x emission reductions that must be achieved by the section 182(e)(5) “black box” by 2023 are 108 tons per day. Section 182(e)(5), however, requires ARB and the District to adopt specific control measures that can be immediately implemented should the basin fail to achieve the 108 tons per day of emission reductions included in the “black box.” These controls must be adopted and submitted to EPA at least three years before the attainment deadline. Because the South Coast air basin must meet the 1-hour ozone standard by 2022 and the 1997 8-hour standard by 2023, these contingency measures must be adopted by 2019. Staff, again, is misleading the Board into thinking that a regulatory control strategy can be avoided. To adopt control measures by 2019 capable of achieving 108 tons per day, means work needs to start immediately. ARB has taken years to identify the proposed measures to achieve 3 tons per day and has outlined a regulatory schedule that extends over the next several years. It is a disservice to all involved to pretend that ARB can avoid facing the difficult decisions in adopting enforceable control measures to remove 108 tons per day.

The Board should direct staff to present the regulatory efforts required to provide the contingency measures required under section 182(e)(5) to meet attainment. Staff must begin now to develop the measures needed when it becomes clear by the end of 2017 that the billions in incentive funding levels are not being secured, that the federal government is not going to implement stringent truck and locomotive regulations, and that the voluntary replacement targets are not going to be met. The Board must prioritize the lives of tens of thousands of South Coast and San Joaquin Valley residents that are on the line if the standards are not met.

C. Ensuring Successful Implementation of the South Coast AQMP Requires Oversight from CARB.

Many of our organizations spent years working on the most recent South Coast Air Quality Management Plan (“AQMP”). In the final public hearing for the South Coast AQMP in February, environmental, health and community groups pushed on three main topics: (1) fixing the broken NO_x Regional Clean Air Incentives Market (“RECLAIM”) program; (2) addressing port pollution; and (3) addressing warehouse pollution.

We are very pleased that in March the Governing Board of South Coast AQMD directed staff to phase out the Nitrogen Oxide Regional Clean Air Incentives Market (“RECLAIM”) program. For years, this program has been used in a way that has prevented life saving pollution control technologies from being installed at refineries. As such, a shift to command and control is necessary. We encourage ARB to direct staff to monitor this program closely to make sure the transition to command and control is done in a manner that protects health and achieves desperately needed NOx reductions as soon as feasible.

Although some AQMD Governing Board members pushed for moving forward quickly to create mandatory programs to control warehouse and port pollution, we were very disappointed in the failure of these measures to pass, which would have been effective in addressing pollution from these large freight sources. We are deeply concerned with the wait-and-see approach that the South Coast AQMD adopts to see if voluntary approaches will achieve the dramatic cuts in pollution necessary to meet clean air standards and protect neighboring communities. As such, ARB should push forward with regulations designed to protect those impacted by ports and warehouses on a statewide level using its indirect source authority. Either agency has authority to adopt this type of measure, and the South Coast AQMD has been clear it is not willing to take that step now. Accordingly, ARB should move forward with a statewide facility-based rule.

D. Conclusion

This is not the first time we have raised many of the concerns in this letter. For years, we have requested a more robust regulatory agenda to spur the zero-emission technological transformation needed to bring us into attainment. For those of us who have been working for decades on cleaning up California’s air pollution, it is disappointing that we are again considering a state implementation plan that all reasonable people know will not work. Attainment of the national standards in the San Joaquin Valley and South Coast air basins is difficult. Indeed, everyone knows that attainment will require transformational change in our use of fossil fuels. But that is where the State Strategy falls so short. We ask the Board to demonstrate care for long-suffering residents and end this pattern of approving deficient plans that have resulted in California being home to the two most polluted regions in the country. ARB is a public health agency. It knows how deadly our air pollution is, and it knows what is required to protect the public. We ask the Board to demand staff produce a plan that will actually do what is necessary to finally achieve air that is safe for everyone to breathe.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Cort". The signature is fluid and cursive, with the first name "Paul" being more prominent than the last name "Cort".

Paul Cort

Nike Adeyeye

Adriano L. Martinez

Earthjustice

Wafaa Aborashed
Bay Area Healthy 880 Communities

Jane Williams
California Communities Against Toxics

Maya Golden Krasner
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Rev. Earl W. Koteen

SunFlower Alliance

Jim Stewart, PhD

Sierra Club Angeles Chapter

Cc: Richard Corey, Executive Office, ARB