



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

*Office of the Executive Officer
Wayne Nastri
909.396.2100, fax 909.396.3340*

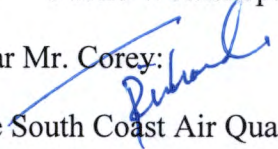
May 17, 2019

via Electronic Portal Submittal and U.S. Mail

Mr. Richard Corey,
Executive Officer
California Air Resources Board
1000 I Street
Sacramento, CA 95814

Re: Public Workshop: Advance Payment Regulation, May 20, 2019

Dear Mr. Corey:

The South Coast Air Quality Management District (South Coast AQMD) staff appreciates the opportunity to comment on the proposed Advanced Payment Regulation. In our view, the currently-proposed regulation represents a significant improvement over the prior version. We are grateful for the changes made and commend the Air Resources Board (ARB) staff on working with stakeholders on these issues.

First, the prior version of the proposed regulation included a provision that would have allowed the ARB Executive Officer to require collateral upfront as a condition of receiving advance payment. We had commented that this proposal was not authorized by statute and would prevent the air districts from implementing incentive programs. This provision has now been removed. We appreciate this correction and commend ARB staff on listening to the air districts' concerns.

Second, the proposed regulation includes a revised provision in the requirements for large districts and other entities. An entity now must show it does not have any relevant "uncorrected material misstatement..." in its financial audits. The South Coast AQMD strongly supports the inclusion of the "materiality" provision in this language. The purpose of this requirement is to "ensure the moneys are used properly." Health & Saf. Code § 39603.1(b). The legislation should be interpreted in light of its intent and purpose. Not every conceivable audit finding would represent a risk to the proper use of advance payment moneys or evidence a weakness in internal controls that would present such a risk. Instead, we believe that the legislature was concerned about potential material weaknesses that might present a risk of improper use of funds. The revised language appropriately addresses this concern. Again, thank you for listening. We strongly urge ARB to incorporate this change in current grant agreements even

Mr. Richard Corey,
California Air Resources Board
May 17, 2019
Page 2

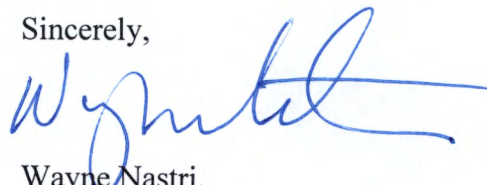
before the regulation is adopted since it is a reasonable interpretation of the statute. ARB can incorporate its reasonable interpretation into grant agreements signed during the period ARB is operating directly under the statute and before the regulation is adopted since these agreements must necessarily be signed well before the rule is adopted.

We do share the California Air Pollution Control Officers' Association's (CAPCOA) concerns regarding the inability of that organization to serve as a pass-through agency for administering funds, especially to small districts. This result is due to the requirement that large districts and other entities (such as CAPCOA) provide a spending plan which includes "a commitment not to provide advance payment to any other entity." §§ 91043(b)(4) and (c)(3). Thus, if CAPCOA were provided advance funding, it could not advance funding further to the districts, including small districts.

In contrast, the proposed regulation provides that a small district may not "provide payments in advance to grantees, *except to another district.*" § 91043(a)(5) (emphasis added). The purpose of this exception is unclear, but it may be intended to recognize that in some cases a small district may not want to undertake the administrative burden of implementing a grant program, but would want to contract with another district to implement it. The current language would allow this to occur. But it would not allow CAPCOA to enter into an agreement with the ARB to disburse the funds to the small districts. This can easily be addressed by adding "except a district" at the end of § 91043(c)(3). This small change would also remove the currently-unexplained differential treatment between large and small districts on this issue. We believe that the regulation should be internally consistent, and allow *all* air districts (and other entities such as CAPCOA) to advance funds to air districts only.

Thank you for your consideration of our comments. If you have any questions or would like to discuss this further, please contact the undersigned at 909.396-2100 or wnastri@aqmd.gov, or Barbara Baird, Chief Deputy Counsel, at 909.396.2302 or bbaird@aqmd.gov.

Sincerely,



Wayne Nastri,
Executive Officer

WN:BB/pa
Comments/IL-comments carb advance payment regulation.docx

cc: Mr. Adam Yang, ARB