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May 27, 2010

*Via E-mail*

Andrew Steckel  
U.S. Environmental Protection Agency  
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San Francisco, CA 94105-3901  
[Steckel.andrew@epa.gov](mailto:Steckel.andrew@epa.gov)

*Re: Comments on Proposed Rule Revising California State Implementation Plan, Imperial County Air Pollution Control District*

Dear Mr. Steckel:

This firm represents EcoLogic Partners, Inc. ("EcoLogic"), a non-profit consortium of recreation groups dedicated to preserving public access to recreational venues in the southwestern United States. On behalf of EcoLogic and its member organizations, I have reviewed EPA's Proposed Rule, issued on February 23, 2010, provisionally disapproving aspects of the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP).<sup>1</sup> The Proposed Rule, however, provides little technical information in support of its "disapproval" of ICAPCD's efforts to control PM<sub>10</sub> emissions in Imperial County.

As stated in the Proposed Rule, Imperial County is a "serious nonattainment area" for PM<sub>10</sub> and, as such, is subject to Best Available Control Measures (BACM). ICAPCD must adopt rules that implement these measures, which it has done in the form of Rules 800 through 806. The issue is whether these rules satisfy the BACM requirements of the Clean Air Act. (CAA §189(b)(1)(B)). ICAPCD thinks they do; the EPA thinks otherwise.

My client's concerns relate to the effect of the Proposed Rule on off-highway vehicle (OHV) recreation in Imperial County. Specifically, my clients disagree with EPA's allegation that ICAPCD Rule 804 provides deficient BACM for addressing OHV-related PM<sub>10</sub> in the open

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<sup>1</sup> I am providing this comment letter on behalf of EcoLogic and on behalf of each of its four member organizations: the American Sand Association, the American Motorcyclists Association District 37, the San Diego Off-Road Coalition, and the Off-Road Business Association.

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areas of the county.<sup>2</sup> The Proposed Rule states that “[r]ecreational off-highway vehicle activity causes much of the PM<sub>10</sub> emissions from open areas in Imperial County,” and that Rule 804 (which addresses open areas) “regulates only a small portion of these emissions.” This statement is sweeping in scope and unsupported by any technical evidence. The Proposed Rule should, but does not, identify where the OHV-related PM<sub>10</sub> is coming from and be specific about location. This is especially important given that the PM<sub>10</sub> exceedances identified in the Technical Support Document for the Proposed Rule occurred in areas at some geographic remove from public OHV recreation venues. (Tech. Support Doc. (Feb. 2010), at p.6.) In addition, the Proposed Rule should, but does not, explain how the EPA determined that OHV activity “causes much of the PM<sub>10</sub> emissions from open areas in Imperial County.” Which open areas were monitored and by what method? Where are the data from this monitoring effort? How was EPA able to distinguish OHV-related PM<sub>10</sub> emissions from those of other sources? To what extent do the OHV-related PM<sub>10</sub> emissions affect sensitive receptors (e.g., residences, hospitals, schools)? Without answers to these questions, the Proposed Rule lacks a sufficient evidentiary foundation. Worse, any new regulations that ICAPCD might adopt and implement in response to EPA’s position may address the wrong problem.

The Proposed Rule also does a poor job explaining whether and to what extent OHV activity on federal land is subject to the Proposed Rule or ICAPCD jurisdiction generally. The Imperial Sand Dunes Recreation Area (ISDRA), which is managed by the Bureau of Land Management (BLM), is the premier destination for dune-related OHV activity in the western United States. It receives close to 1.5 million visitors per year and plays an important role in the economies of both Imperial County and Yuma County. If, to reduce PM<sub>10</sub> emissions, the EPA and/or ICAPCD are contemplating closures or other restrictions on OHV use in the ISDRA, the Proposed Rule should state this explicitly and provide quantitative data as to why such actions are necessary to protect sensitive receptors.

Similar data should be provided with respect to any restriction proposed for the Ocotillo Wells State Vehicle Recreation Area (OWSVRA), which is managed by the California Department of Parks and Recreation (DPR). To our knowledge, PM<sub>10</sub> emissions at the OWSVRA have not been monitored by ICAPCD, DPR, or any other entity, so it is premature for EPA to identify OHV activity at the OWSVRA as a major contributor to the county’s PM<sub>10</sub> problem.

Finally, the Proposed Rule directs ICAPCD to “evaluate the feasibility . . . of additional restrictions in recreational OHV areas, such as closing some of the 250 square miles that are open to OHV use that are particularly likely to impact populations . . . .” (Proposed Rule, p. 8011). This sentence is vague and ambiguous, as it (1) does not describe with any particularity

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<sup>2</sup> Section II.C.1.a. of the Proposed Rule. Federal Register Volume 75, Number 35, p. 8010.

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where these 250 square miles of alleged open OHV area are located, and (2) does not indicate whether *all* 250 square miles of alleged open OHV area are "likely to impact populations." The Proposed Rule should be revised to clarify these key points and to identify the technical data that supports EPA's directive regarding "additional restrictions" on OHV use.

Thank you for this opportunity to comment on the Proposed Rule. Please provide me with any updates on the Proposed Rule as they become available.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Hubbard". The signature is fluid and cursive, with a large, sweeping flourish at the end.

David P Hubbard

of

Gatzke Dillon & Ballance LLP

DPH:rlf