



AIR POLLUTION
CONTROL DISTRICT
COUNTY OF SAN LUIS OBISPO

Aeron Arlin Genet

06-1-6

January 25, 2006

Dr. Robert Sawyer, Chairman
California Air Resources Board
1001 J Street
Sacramento, CA 95814

SUBJECT: Proposed Clarification of the ARB/Railroad Statewide Agreement

Dear Dr. Sawyer,

The San Luis Obispo County Air Pollution Control District appreciates the opportunity to provide comment on the proposed clarifications to the 2005 ARB/Railroad Statewide Agreement (Agreement). We previously commented on the Agreement in an October 26, 2005 letter and in oral testimony at your October 27, 2005 public hearing in El Monte. The substance of our comments centered on three primary areas of concern: the release of obligation clause and its effect on local authority, the vagueness of various enforcement provisions, and the lack of public process in developing the Agreement. Our Board sent a subsequent letter to your Board dated November 30, 2005 requesting that our concerns, and those expressed by other stakeholders, be addressed through this clarification process.

In reviewing the staff report, it appears that implementation of various elements of the Agreement is proceeding well, and we are hopeful for continued success. As we have previously acknowledged, we believe the scope of the Agreement holds significant potential for achieving important reductions in criteria and toxic air pollutants and associated public health risks. However, important details of the Agreement are problematic for implementation, and we remain concerned that the proposed clarifications do not substantively address the fundamental flaws we articulated that seriously threaten the overall effectiveness of this Agreement.

The release of obligation clause has not been deleted or modified and remains our most significant concern. We are pleased to see the staff clarification indicating that existing local agreements with the railroads can still be enforced without triggering the release clause. However, we question ARB's ability to legally enforce this interpretation since the actual language of the Agreement has not been modified. We recommend that either the Agreement be revised to reflect this interpretation, or that a resolution signed by all parties to the Agreement be attached to the clarification document.

Apart from this clarification, the release clause raises significant public policy issues. Local control over local circumstances has long been a basic tenet of governance in California, particularly in the area of air pollution control. The ability to tailor our air quality programs to address the specific issues of our communities is essential to ensure that local needs are met within the broader context of compliance with state and federal mandates. Yet, by its very nature,

the release clause constrains the ability of local jurisdictions to exercise their appropriate authority by imposing the threat of significant repercussions throughout the state. This effect, intentional or not, could pit one jurisdiction against another and sets a public policy precedent that should not be endorsed by ARB, a public agency whose progressive policies and regulations are highly respected and emulated throughout the world.

We also urge the Board to request additional clarity in the enforcement provisions of the Agreement. As mentioned in our previous comments and testimony, there are many open-ended clauses and vague phrasing in the Agreement that contribute to a high potential for ambiguous interpretation as implementation proceeds. While trust is important in any relationship, we believe the public health protection entrusted to air quality agencies is a responsibility that requires a higher degree of enforceability than currently exists in the Agreement.

We believe the goals and basic elements addressed in the Agreement have the potential to provide significant public health benefits if properly implemented, and ask that your Board request additional clarifications to ensure those benefits are realized. We sincerely appreciate your attention to and consideration of our concerns on this important issue. Please contact me or Aeron Arlin Genet of my staff if you have questions or need additional information regarding these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Larry R. Allen", with a long horizontal flourish extending to the right.

Larry R. Allen
Air Pollution Control Officer