



**Linda S. Adams**  
Secretary for  
Environmental Protection

# Air Resources Board

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**Robert F. Sawyer, Ph.D., Chair**  
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**Arnold Schwarzenegger**  
Governor

December 18, 2006

Mr. Paul Cort  
Staff Attorney  
Earthjustice  
426 Seventeenth Street, 5th Floor  
Oakland, California 94612-2807

Dear Mr. Cort:

This is in response to your October 10, 2006 letter petitioning the Air Resources Board to conduct a public hearing to determine whether the September 21, 2006 revision to Rule 2201 of the San Joaquin Valley Unified Air Pollution Control District constitutes an impermissible weakening of the District's new source review (NSR) rules. We are denying your petition for the reasons provided below.

With exceptions not relevant here, amendments that weaken district NSR rules are generally prohibited by State law. The Protect California Act of 2003, (SB 288, Sher) enacted Health and Safety Code (HSC) sections 42500-42507. HSC Section 42504(a) states that "[n]o air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002."

The San Joaquin Valley rule revision at issue added Section 4.6.9 to District Rule 2201 to clarify that agricultural sources are exempt from NSR offset requirements to the extent provided by HSC section 42301.18(c). We believe that the rule amendment merely references a provision of State law, and accordingly does not constitute a weakening of Rule 2201 in contravention of SB 288. The underlying basis of your complaint concerns the District's interpretation and implementation of section 42301.18(c), rather than its inclusion in the District's NSR rules, and is not cognizable under SB 288.

The San Joaquin Valley Unified Air Pollution Control District has been a leader in regulating agricultural sources in California. The District removed the exemption from NSR for agricultural sources from Rule 2020 on December 19, 2002. Before the end of that year, ARB submitted the rule amendment to the U.S. Environmental Protection Agency (U.S. EPA) for approval. The rule amendment therefore falls within the purview of SB 288 pursuant to HSC section 42505. However, the amended Rules 2020 and 2201 were not approved by U.S. EPA until the District had the authority to require

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California Environmental Protection Agency

Mr. Paul Cort  
December 18, 2006  
Page 2

permits from agricultural sources, endowed by SB 700, Florez. U.S. EPA approved the rules as amended on May 17, 2004 (See 69 Fed. Reg. 27837-27838).

The reference to section 42301.18(c) in the challenged rule revision neither augments nor diminishes the list of exemptions in Rule 2020 (i.e. agricultural sources are not exempt from NSR but are subject to the permitting thresholds in HSC section 42301.16) or the sources that must supply offsets in Rule 2201. Both the sources subject to NSR and the offsets required of them must be determined in accordance with State law. The reference in Rule 2201 to section 42301.18(c) simply signals the applicability of a limitation set forth in California law. To the extent SB 700 explicitly addresses offsets for agricultural sources, we believe that if there is any conflict with SB 288, the more specific and subsequent statutory provision must prevail.

As we understand your petition, your focus is on the District's interpretation of the language of HSC section 42301.18(c) and the manner in which it is implementing that provision. ARB finds that the District has not weakened its NSR rules by referencing the text of the HSC section 42301.18(c) in Rule 2201. We hereby deny your petition as outside the purview of the Protect California Act.

If you have any questions, please contact Ms. Leslie Krinsk, Senior Staff Counsel at (805) 473-7325.

Sincerely,

***/S/***

Catherine Witherspoon  
Executive Officer

cc: See next page.

Mr. Paul Cort  
December 18, 2006  
Page 3

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