



CONSTRUCTION INDUSTRY
AIR QUALITY COALITION

Coalition Members



Associated General Contractors
America-San Diego Chapter, Inc.



Building Industry Association
of Southern California



California Construction Trucking
Association



Engineering
Contractors Association



United Contractors



Southern California
Contractors Association

March 16, 2022

TO: Ian McMillan imacmillan@aqmd.gov
Eugene Kang ekang@aqmd.gov
George Wu gwu@aqmd.gov
Henry Pourzand hpourzand@aqmd.gov

FROM: Michael Lewis mike@lewisandco.net

RE: **Proposed Rule 403.2 Fugitive Dust From Large Roadway Projects**

The Construction Industry Air Quality Coalition (CIAQC) would like to submit the following comments about February 18th draft of Proposed rule 403.2 and the accompanying draft staff report. We appreciate the time the staff has spent with members of our industry to understand the impacts of this rule and the practices of the industry when construction and maintaining freeway projects is the South Coast Air Quality Management District.

All of the stakeholders are concerned that this matter is being “rushed” by a May deadline to get to the Board whether or not the rule is finished. We have made considerable progress since the initial concept last summer. We hope you would take a few more weeks if necessary to get this right rather than to get it done, but incomplete.

We believe that rule 403 already covers all of the activities of concern in rule 403.2 and would be better managed if the proposed actions were included as a part of rule 403 rather than a stand-alone rule. Our industry goal is to achieve rules and regulations that are easily understandable and can be implemented in the field by workers who are trying to maintain a construction schedule while complying with a myriad of rules from OSHA, AQMD, Regional Water Quality Control and the project owner, to name a few. The simpler we make it the more likely it will be properly implemented and achieve the district’s goals.

Storing materials on-site for use or reuse is an important way to reduce emissions from hauling-away and returning the items to the site and meets the societal goal of maximizing recycling when providing much needed infrastructure.

CIAQC has been working closely with CALCIMA, CALAPA and Caltrans to provide comprehensive comments on the variety of activities that take place on a large roadway project to assist AQMD staff in better focusing the rule. We support the comments submitted by each of those organizations.

We appreciate that the staff has already aligned the definitions and terminology in 403.2 to be consistent with those is in rule 403, 403.1, 1157, and 1456. This will avoid confusion and violations based on dueling rule language.

We believe that the current definition of a large roadway project defined as a roadway exceeding 100,000 AADT (Average Annual Daily Traffic) vehicle count is too broad and will include many arterial highways where it would be impossible to maintain the distance requirements in the rule. The definition needs to be narrowed to include right-of-way width, number of lanes, or even in much higher AADT count. Maybe a definition used by Caltrans for their own projects would be more appropriate.

We are also concerned that routine maintenance activities will be limited by this rule and important safety items such as cold-plaining, asphalt replacement/recycling, and overnight pavement replacement should be exempted from the rule. These activities are already conducted with district permitted equipment. We would recommend that any project with less than a 30-day completion be exempted from the rule. These activities do not involve the creation of storage piles which could be the source of fugitive dust targeted by this rule. They are also typically performed during limited hours, on the roadway surface itself and the total project may only last a few days.

Limiting storage piles to three feet is unrealistic. The material involved is usually large and it is easier to control dust from a large pile rather than one that is short and spread out over a large area. In fact, in most cases, the area for these storage piles is limited and a higher pile is the only way to accommodate all the material on one site. Proper dust controls will control dust from a large pile just as effectively as from a small one. The smaller the surface area, the lower the opportunity for dust creation.

We are still anxious to see the complaint data that is being used as the basis for this rule. While 70+ complaints in a three-year period may seem like a lot there are hundreds of roadway projects underway in the South Coast Air Basin. Further we don't know if all these complaints were about seventy different projects or 70 complaints about one project. That information would be very helpful in crafting a rule that addresses a real problem if there really is such a problem.

The notification requirements for adjacent owners and tenants are still too vague. More detail on the method of notification would be helpful. Is a flyer adequate. Can it be delivered by hand, mail or text message? Are tenants sufficient? What about an absentee landlord? Are visitors included in the case of a hotel, park, or hospital? We want to avoid a long subjective argument about whether or not a notice was sufficient and complete.

Finally, we are aware that the staff is developing changes to the rule, and we are limited in our ability to comment since no language has been proposed at this point. We will continue to work with the staff on refining the proposal to make it as effective as possible. We appreciate the continued communication and look forward to seeing the next draft of the rule.

Sincerely,

A handwritten signature in black ink that reads "Michael W. Lewis". The signature is written in a cursive, flowing style.

Michael W. Lewis,
Senior Vice President

