

Southern California Association of Publicly Owned Treatment Works, Eastern Municipal Water District, Small Business Alliance, Southern California Gas Company, Southern California Air Quality Alliance, Western States Petroleum Association, Orange County Sanitation District, Los Angeles County Sanitation Districts, Irvine Ranch Water District, City of Corona, Department of Water and Power, City of Riverside Public Works Department, City of San Bernardino Municipal Water Department, Inland Empire Utilities Agency, South Orange County Wastewater Authority, California Independent Petroleum Association, California Association of Sanitation Agencies, Regulatory Flexibility Group, Waste Management

October 15, 2015

Dr. Philip Fine, Deputy Executive Officer
Planning, Rules Development & Area Sources
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Dear Dr. Fine:

**Comments on Proposed Amended Rule 1110.2 –
Sections Related to Breakdowns/Malfunctions**

We appreciate this opportunity to provide comments on Proposed Amended Rule 1110.2. Our coalition fully supports SCAQMD Governing Board's adoption of the proposed biogas amendments allowing the affected parties additional time to come into compliance with this rule. However, we are concerned about the proposed changes to the breakdown provisions. While seemingly benign in the context of Rule 1110.2, it is our opinion that they represent a fundamental change in SCAQMD enforcement policy by potentially altering how breakdowns are handled for all industries, especially industries that currently utilize Rule 430. Because of these widespread implications, we respectfully request that the rule be bifurcated to facilitate the approval of proposed biogas provisions, while allowing time for a thorough assessment of the policy issues, especially in light of EPA's new and evolving startup, shutdown, and malfunction (SSM) policy.

We understand that SCAQMD staff is proposing changes to the Rule 1110.2 breakdown provisions, in response to EPA's concerns about the July 9, 2010 amended version of Rule 1110.2, which was submitted for SIP approval in 2014. EPA believes that the existing breakdown provisions are inconsistent with new national SSM policy, and would prevent full approval of the rule. More specifically, these concerns stem from EPA's new and evolving SSM policy published in the Federal Register, Vol, 80, No. 113 on June 12, 2015 (36-State SIP Call). SCAQMD staff presented the proposed amended breakdown language on July 9, 2015 at a Rule 1110.2 Public Workshop, which was predominantly attended by biogas engine operators. In effect, the proposed breakdown provisions would establish a new SCAQMD SSM policy that could reach far beyond Rule 1110.2 and be applicable to any equipment operating during a SSM event.

As stated, we believe it is premature to proceed with the proposed Rule 1110.2 breakdown provisions until the general policy implications are vetted with all impacted industries. Also, we believe that it is premature to establish a new SCAQMD SSM policy because of two pending appellate court petitions that could affect EPA's national SSM policy: (1) August 11, 2015, U.S. Court of Appeals for the District of Columbia Circuit, Case No. 15-1267 filed by 17 states claiming that "...EPA erroneously concluded that the following State's EPA approved State Implementation Plans are 'substantially inadequate' with respect to periods of startup, shutdown and malfunction and must be revised.", and (2), July 8, 2015, U.S. Court of Appeals for the Fifth Circuit, Case No. 15-60424 filed by the State of Texas requesting "...that the Court review those parts of EPA's Final Rule that apply to the State of Texas, including...four provisions in Texas's approved State Implementation Plan..., which provide affirmative defenses for certain upset events, unplanned events, and opacity events..." The EPA SSM policy being challenged, itself rose from court challenges by environmental groups. Clearly, EPA's new policy has yet to withstand some significant legal challenges which, if successful by the plaintiffs, will once again alter EPA's SSM national policy.

In addition to the legal challenges facing EPA's new SSM policy, the policy itself is rather nebulous and is subject to interpretation. For example, "...The EPA emphasizes that there are other approaches that would be consistent with CAA requirements for SIP provisions that states can use to address emissions during SSM events. While automatic exemptions and director's discretion exemptions from otherwise applicable emission limitations are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel." At minimum, there is a tremendous amount of flexibility provided to the states.

In addition, we believe that the proposed breakdown language may be inconsistent with the intent of EPA's new SSM policy outlined in the June 12 Federal Register posting. EPA's policy explains that states and air districts must maintain EPA's authority to enforce and allow citizen suits. The policy calls for SIP revisions to remove deficient provisions, including "...enforcement discretion provisions that have the effect of barring enforcement by the EPA or through a citizen suit and affirmative defense provisions that are inconsistent with CAA requirements..." Proposed amended rule language contains provisions that, in our opinion, may not comply with the intent of EPA's policy.

As outlined, there are significant uncertainties in EPA's national SSM policy due to litigation and policy interpretation difficulties, and any changes to SCAQMD SSM policies are going to impact most industries. In addition, SCAQMD was not included in EPA's 36-State SIP Call. Therefore, rather than rushing to resolve EPA's potential objections at this time, we respectfully request that staff: (1) perform a thorough legal review and analysis of EPA's new policy; (2) assess the validity of pending litigation; and (3) convene a working group to discuss what direction SCAQMD's staff should take on its SSM policy approach.

Also, we understand that SCAQMD staff would like to provide the Governing Board an EPA approvable rule. However, we believe bifurcation of the rule, so the new biogas engine amendments can be adopted, would be the most prudent approach. We also believe that all options should be kept open, so in the spirit of cooperation, we could support the deletion and modification of the objectionable language, as identified by EPA. Specifically, we recommend modifying paragraph (f)(1)(D)(v)(III) of the rule as follows:

“An operator ~~shall not be considered~~ in violation of the emission limits of the rule or in permit conditions, due to a breakdown or malfunction, ~~if the operator~~ shall complyes with ~~this subparagraph and the reporting requirements of subparagraph (f)(1)(H)~~. Any emission check conducted by the District staff that finds excess emissions is a violation.”

We believe such a modification directly addresses the intent of EPA’s SSM policy. There are other changes that would be needed to ensure consistency throughout the rule with this approach, but these changes could be worked out quickly. At your earliest convenience, we would like to meet with you and your staff to discuss this proposal, as well as the bifurcation approach.

Thank you for the opportunity to comment on the proposed amended rule. If you have any questions regarding our concerns or recommendations, please do not hesitate to contact David Rothbart at (562) 908-4288, extension 2412.

Sincerely,

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